

**DATED THE                      DAY OF**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF KENYA**

**AND**

**THE.....FOUNDATION**

## MEMORANDUM OF AGREEMENT

Between

THE GOVERNMENT OF THE REPUBLIC OF KENYA

And

THE ..... FOUNDATION

**THIS MEMORANDUM OF AGREEMENT** (hereinafter referred to as "the Agreement") is made this day of .....

### BETWEEN

(1) **THE GOVERNMENT OF THE REPUBLIC OF KENYA** acting through the Ministry of Finance and Planning of Post Office Box Number 30007, Nairobi, Kenya (hereinafter called "the Government") of the one part,

AND

(2) **THE ..... FOUNDATION** having its head offices at ....., Kenya (hereafter called "the Foundation") and acting through its Regional Representative for Eastern Africa of the other part.

### preamble

a **whereas** the Foundation is a private international philanthropic donor organization established in ....., incorporated and existing under the laws of the .....

B **AND WHEREAS** the purpose of the Foundation is to promote the advancement of human welfare in the world and has for many years provided grants, support and fellowships to governmental and private institutions and individuals in support of charitable, educational, scientific, health, arts, cultural and social efforts in Kenya, Eastern Africa and elsewhere in the world;

C **AND WHEREAS** the Government and the Foundation have enjoyed and continue to enjoy very cordial relations since the Foundation established its presence in Kenya and commenced its activities in .....

D **AND WHEREAS** the Foundation with the co-operation and agreement of the Government pursuant inter alia to the Memorandum of Understanding dated ..... made between the parties confirmed the establishment of the Foundation's legal presence and regional headquarters in Kenya from which it has carried on and continues to carry on its said purpose assisting and supporting Programs in Eastern Africa;

E **AND WHEREAS** the Government and the Foundation desire to continue this relationship and promote closer co-operation between the parties.

**THEREFORE IN ORDER** to make arrangements by means of this present Agreement for the continuing recognition and maintenance of the Foundation's legal presence and offices in Kenya and to promote and strengthen the cooperation between the parties and to define the privileges and immunities granted to the Foundation in Kenya

THE GOVERNMENT AND THE FOUNDATION NOW HEREBY AGREE as follows:-

#### **ARTICLE 1 - DEFINITIONS**

For the purposes of this Agreement the following expressions shall have the meaning herein assigned to them:-

- (a) "Parties" - means the Government and the Foundation.
- (b) "Programs" - means the activities of the Foundations so far as they relate to the Region and more particularly described in Article 5 hereof.
- (c) "Region" - means Kenya, Uganda, Tanzania and such other countries in Africa as the Foundation may from time to time determine.
- (d) "Regional Office" - means the headquarters of the Foundation located in Nairobi for the purpose of carrying out its activities in the Region.
- (e) "Regional Representative" - means the official representative appointed by the Foundation in that capacity located in Nairobi to direct and manage the Foundation's activities in the Region.

#### **ARTICLE 2 - LEGAL CAPACITY OF THE FOUNDATION**

- (a) The Government confirms its recognition of the Foundation's legal presence in Kenya.
- (b) The Foundation shall, as a legal person, have the power to enter into contracts, acquire, hold, manage and dispose of movable and immovable property and to sue and be sued in its own name.
- (c) The Foundation shall, as a legal person, be represented in Kenya and the Region by the Regional Representative.

#### **ARTICLE 3 - REGIONAL OFFICE**

- (a) The Government authorizes the Foundation to continue to operate the Regional Office which serves as the base for its operations and activities within the Region and which shall be directed and managed by the Regional Representative or such other person as

the Foundation may direct in writing.

- (b) The Foundation shall pay all costs and outgoings relating to the operation of the Regional Office including salaries and transportation inside and outside Kenya.

#### **ARTICLE 4 - APPOINTMENT OF STAFF**

- (a) The Foundation may appoint such Kenyan ~~and/or~~ expatriate ~~staff whether~~ professional, ~~and technical~~ ~~or otherwise~~ staff, on a permanent or temporary basis, as it shall from time to time consider necessary for the implementation of this Agreement and the establishment of contacts with the Government, other institutions, international organizations, persons and other entities in ~~the~~ Region.
- (b) The Foundation shall endeavour wherever possible to employ Kenyan nationals possessing the requisite training, skills and experience but provided that all decisions relating to the employment of such local and expatriate personnel shall be at the sole discretion of the Foundation.
- (c) The Foundation shall take all reasonable steps to ensure that its staff members, advisors or consultants in Kenya do not engage in activities that are incompatible with the aims and objectives of the Foundation or in contravention of the laws and regulations of Kenya.

#### **ARTICLE 5 - FOUNDATION ASSISTANCE**

- (a) The Foundation may, in accordance with its resources and fields of Program interest, provide or continue to provide assistance in such Programs as Asset Building and Community Development, Education, Media, Arts and Culture, Peace and Social Justice, and any other fields of economic and social development, where Foundation assistance might be requested and granted in accordance with the provisions of Articles 8 and 9 of this Agreement.
- (b) The Foundation shall provide funding and assistance through the Programs to persons and organisations identified on the basis of need as determined by the Foundation regardless of ethnic, political, religious or racial ancestry ~~or~~ heritage, and shall endeavour to co-operate with governmental, non-governmental and religious organisations and agencies whose activities are consistent with the Foundation's purpose and guiding principles and complementary to the Programs.

#### **ARTICLE 6 - FORMS OF ASSISTANCE BY THE FOUNDATION**

Foundation assistance may be requested in accordance with the provisions of Article 8 and granted in accordance with the provisions of Article 9 of this Agreement. It may be used (but need not be limited) to fund:-

strengthening of educational, research and other institutions in the Programs described in Article 5 above;

study and other educational travel opportunities;

technical, research and other assistance through Kenyan or non-Kenyan experts, consultants or institutions;

the purchase of books, periodicals and equipment; and

other charitable activities related to education, science or other fields in or outside Kenya.

#### **ARTICLE 7 - RECIPIENTS OF FOUNDATION ASSISTANCE**

Foundation assistance may be granted in the Region to the persons or entities listed below:-

- Governments through their various institutions;
- government-controlled associations, trade groups or enterprises;
- autonomous, semi-autonomous, private or non-governmental organizations, other institutions or organizations within or outside Kenya;
- individuals; and
- international organizations.

#### **ARTICLE 8 - REQUESTS FOR AND NEGOTIATIONS RELATING TO FOUNDATION ASSISTANCE**

- (a) Negotiations relating to Foundation assistance may be conducted directly between the Foundation and any beneficiary or prospective recipient of a grant.
- (b) The Foundation may, before making a final commitment, require pertinent information from the recipient or beneficiary of the grant evidencing the charitable, educational, scientific or other program purpose for which the grant is requested.
- (c) In every case, before Foundation assistance is finally committed, the Foundation will require a letter (hereinafter called a "Request Letter") from the prospective grantee or grant beneficiary requesting the assistance and containing specific and detailed information.

#### **ARTICLE 9 - COMMITMENT OF ASSISTANCE BY THE FOUNDATION**

- (a) Foundation assistance will be committed only when the prospective recipient has received and countersigned a letter (hereinafter called a "Grant Notification Letter") from the headquarters of the Foundation in ..... or the Regional Office.
- (b) Each Grant Notification Letter shall specify the purpose of the grant as well as the amount and the time period of the grant or other assistance and shall also include a budget.

As the Foundation is subject to certain laws of the ..... covering charitable and educational foundations, the Grant Notification Letter shall also specify required general and financial reporting requirements and other terms. If, in particular cases, more detailed specifications of operating procedures under grants or other assistance are mutually desired, the recipient or beneficiary of the grant may enter into an agreement with the Foundation for the purpose.

## **ARTICLE 10 - EXEMPTIONS AND OTHER PRIVILEGES**

(a) The Government shall procure that the Foundation and the Foundation's expatriate staff shall be granted the privileges and immunities afforded to external development agencies with which the Government has entered into agreements under the provisions of section 11 of the Privileges and Immunities Act (Chapter 179 of the Laws of Kenya) subject to such exceptions or qualifications as the Government may deem necessary.

(b) To the extent that the following exemptions and privileges are not accorded to the Foundation or the Foundation's staff pursuant to this Article or under the general law from time to time being in force in Kenya, the Government shall procure that:

(i) The Foundation, its assets, income and other property, shall be exempted from all forms of tax including corporation tax and value added tax.

The Foundation may import, for its official use and use in its development and assistance Programs within Kenya and the Region, new or used furniture, office supplies, medical supplies, books, periodicals and equipment (including but not limited to motor vehicles and computers and their spare parts; major pieces of machinery; refrigerators, freezers and other appliances; electrical, electronic, sound reproduction, moving picture and video equipment; photographic equipment) exempt from all customs and import duties, excise, taxes, value added tax and all other taxes, fees, charges and levies otherwise payable in respect of their importation, storage and use in Kenya and free of any and all currency controls, licensing requirements and other limitations on their import. As necessary, the Government will grant the Foundation the benefit of temporary admission of its service vehicles deployed elsewhere.

Imports exempted under this Agreement are intended for the direct use of the Foundation, its personnel or resident family members of such personnel or its grantees. They are not intended for sale or other disposition in Kenya.

Such imports mentioned in paragraphs (b) (ii) and (iii) of this Article may be re-exported from Kenya free of all customs or export duties, excise, taxes, fees, charges and other levies otherwise payable in respect of their exportation from Kenya and free of any and all currency controls, excise licensing requirements and other limitations on their export. Such imports will be taxable if sold within Kenya, except if the sale is to an organization or personnel of an organization similarly exempt from duties and other taxes or donated to an institution designated by the Government.

(iv) The Foundation's expatriate staff and any expatriate consultant engaged by the Foundation in connection with the Programs in Kenya and the Region shall be exempt from income tax on salaries, fees and all emoluments received by them in respect of their employment by or services rendered by them in Kenya to the Foundation.

- (v) The Foundation's expatriate staff shall be exempt from all taxes, duties and levies on personal and household effects, including one motor vehicle, imported by each of them within six (6) months of their first arrival to take up their posts in Kenya, provided that such duties and taxes shall become immediately due and payable in the event of the goods being sold in Kenya to persons not entitled to a similar exemption in respect thereof.
- (vi) The Foundation's expatriate staff shall be exempt from immigration restrictions and alien registration requirements and in particular from the requirement to obtain entry permits or passes and shall be permitted to enter and remain in Kenya and to move freely into and out of Kenya without any restriction whatsoever.
- (vii) The Foundation and the Foundation's staff shall be entitled to maintain and operate freely bank accounts in any currency whatsoever, subject to any limitation in the services offered by Kenya banks, and shall be allowed to transfer funds freely into and out of Kenya.
- (viii) In case of international or internal crisis, the Government shall grant Foundation personnel and their families the same facilities for repatriation as are accorded to personnel of the United Nations.
- (ix) To consider favorably applications for visas submitted by or on behalf of officers and staff of the Foundation including expert consultants, trainees, scholars, advisers and other persons invited by the Foundation to the Regional Office on official business provided that sufficient time is allowed to process the said documents.
- (x) The Government shall endeavour to ensure that the Foundation personnel shall be safe from arrest or detention resulting from any act or commission performed in the discharge of their duties.
- (xi) The Government reserves the right to cancel or withdraw any or all of the rights created or conferred by the provisions of this Agreement from any person whose conduct is found to be unsatisfactory and/ or incompatible with the objectives of the Republic of Kenya. The Government shall inform the Foundation in writing prior to such cancellation of withdrawal.
- (xii) Documents relating to the premises and immovable property which are owned or rented by the Foundation and required for its operations, including the residence of the Regional Representative, shall be exempted from registration fees and stamp duty.

## **ARTICLE 11 - ASSISTANCE AND CO-OPERATION**

The Government shall ensure that:-

- (a) The Foundation's staff shall be permitted to move freely within Kenya for the purpose of implementing and supervising the Foundation's various Programs and where such Programs are carried out in co-operation with any governmental agency or authority, the Foundation shall be permitted free access to and communication with beneficiary

communities and organisations and shall have the right to inspect, without obstruction, all operations of such Programs throughout Kenya and shall further be permitted to carry out an audit, including inspection of all Program records and accounts at such intervals as the Foundation may consider appropriate.

- (b) The Foundation shall be permitted access to government statistical data, including without limitation, on population, poverty, health, education, agricultural output and food distribution and shall be permitted to conduct independent research for the purpose of gathering statistical information necessary for proposals made by the Foundation to other donors, strategic planning and program impact analysts.
- (c) The Foundation shall receive such assistance as it requires and which the Government is able to provide with regard to compliance with the Foundation's conditions and requirements and any special conditions notified by the Foundation to Government pursuant to paragraph (a) and (b) of this Article.
- (d) The Foundation shall receive the assistance and cooperation of governmental and administration officials in ensuring that its operations and Programs within Kenya are not hampered and that the Foundation's staff and property are secure and protected within the Foundation's program areas and shall further ensure that appropriate legal action is taken against any person or persons found to have been engaged in theft or misuse of supplies, commodities, funds, equipment or other property designated for use in the Foundation's programs or against any person who commits an illegal act against any member of the Foundation's staff.

#### **ARTICLE 12 - EXEMPTION FROM REGISTRATION**

The Government shall ensure that the Foundation shall be exempted from any requirement to register under the provisions of any Act from time to time being in force in Kenya which has as its main purpose the regulation of activities of the kind in which the Foundation is engaged in Kenya or under similar rules and regulations made by any regulatory authority, including but not limited to the Non-Governmental Organisations Co-ordination Act (Act No. 19 of 1990) and The Companies Act (Chapter 486 of the Laws of Kenya).

#### **ARTICLE 13 - UNDERTAKING BY GOVERNMENT**

The Government hereby undertakes to expedite the approval and publication of all orders, legal notices and gazette notices as may be required under the applicable legislation for the time being in force in Kenya, for the purposes of giving legal effect to the exemptions, privileges accorded to the Foundation and the Foundation's staff under the provisions of this Agreement and to facilitate and expedite the grant of any approvals, consents, certificates or other authorizations required by the Foundation from time to time in order to claim any general exemption to which it is entitled under the provisions of this Agreement.

#### **ARTICLE 14 - GOVERNMENT RESPONSIBILITY FOR ENFORCING AGREEMENT**



The Government, through the Ministry, shall be responsible for enforcing this Agreement with other Government ministries, departments, agencies and officials in order to facilitate the transport, entry and export of equipment and personal effects and personnel under the terms of this Agreement.

#### **ARTICLE 15 - RECOGNITION OF DONOR**

The Foundation shall be free to recognize publicly if it so wishes its funding and assistance in such manner as it may consider appropriate.

#### **ARTICLE 16 - COMPLIANCE WITH KENYAN LAW**

Subject to such exceptions as are expressly set out in this Agreement, the Regional Representative and all the Foundation's expatriate staff serving in Kenya shall be subject to and shall comply with the laws and regulations for the time being in force in the Republic of Kenya and the Foundation shall promptly advise the Government of any illegal use of the Foundation's resources or any abuse of the privileges granted to the Foundation or the Foundation's personnel pursuant to this Agreement. The Foundation shall further comply with any special conditions applicable to admission, storage, transportation, distribution or utilization of commodities and Program equipment as may be notified by Government from time to time under this Agreement.

#### **ARTICLE 17 - LEGAL DISPUTES**

- (a) In accordance with international conventions and regulations to which it is a party, the Government will facilitate the Foundation's use of Government postal and other communications services (e.g. telephone, telex, telegraph, email, etc).
- (b) The Government shall respond to all claims that a third party could bring against the Foundation and its personnel and shall exonerate the Foundation and its personnel acting in their official capacity from liability and responsibility for all claims a third party could present against the Foundation and such personnel except if the Government and the Foundation mutually agree that the claim results from gross negligence or intentional wrongdoing.

#### **ARTICLE 18 - DISPUTE RESOLUTION**

Any dispute arising between the parties as to the performance of their respective obligations under this Agreement or as to the interpretation of the provisions of this Agreement shall be settled amicably in the spirit of co-operation and taking into consideration the interests of the parties and the beneficiaries of the Foundation's Programs.

#### **ARTICLE 19 - GENERAL PROVISIONS**

- (a) This Agreement shall take effect on the date of execution and shall continue in effect for as long as the Foundation shall maintain a presence within Kenya and shall continue to carry on or fund development and assistance Programs within Kenya and the Region.
- (b) This Agreement may be modified or amended by written agreement between the parties.
- (c) This Agreement may be terminated at any time upon at least Six (6) months written notice given by either party to the other provided that such termination shall be without prejudice to the validity of any acts done pursuant to the provisions hereof prior to the date of such termination.
- (d) This Agreement replaces and supersedes the Memorandum between the parties dated 7 March 1968.

**ARTICLE 20 - NOTICES AND ADDRESSES**

Any notice required to be given or made pursuant to this Memorandum shall be deemed to have been duly given or made when it shall been delivered by hand, registered mail, fax telex telegram to the party to which it is required to be given or made, at the address specified herebelow.

**For the Government**

Mail Address:	Ministry of Finance and Planning
Tel: 338111	Treasury Building
Fax:	P.O. Box 30007
Email:	NAIROBI

**For the Foundation**

**IN WITNESS WHEREOF**, the Parties hereto, acting through their duly authorised representatives, have signed this Agreement on the date first above written.

\_\_\_\_\_  
 For and on behalf of the Government  
 of the Republic of Kenya

\_\_\_\_\_  
 For and on behalf of the  
 .....Foundation

.....  
 Regional Representative