REPUBLIC OF KENYA

# PARTICIPATION AGREEMENT

## ON THE SECOND KENYA DEVOLUTION SUPPORT PROGRAM (KDSP II)

## BETWEEN

## THE NATIONAL GOVERNMENT OF THE REPUBLIC OF KENYA

## AND

## COUNTY GOVERNMENT OF GARISSA

.....

This Participation Agreement (hereinafter referred to as "the Agreement") is made this.....20th.....day of.....May.....2024 between the National Government of the Republic of Kenya acting through the State Department for Devolution (SDD) (hereinafter referred to as "the National Government") on the one part, and the County Government of.....Garissa..... (hereinafter referred to as "the County Government") of the other part (the National Government and the County Government are hereinafter collectively referred to as "the Parties" and each "a Party").

## INTRODUCTION

[A] **WHEREAS** The Government of the Republic of Kenya developed the Devolution Sector Plan (2023–2027) aimed at accelerating the achievement of the objects of Devolution as defined in Article 174 of the Constitution, principal among them the social and economic transformation of communities; improved access by communities to decentralized services; measures to address diversity, marginalization, and exclusion; and ensuring of effective participation by communities in their own governance and socio-economic development.

[B] **WHEREAS** The Devolution Sector Plan (2023–2027) is intended to enhance and further institutionalize the benefits of devolution that have been experienced in the last decade.

[C] **WHEREAS** The SDD focuses on the coordination of devolution affairs to fast-track the achievement of the objects of Devolution and enhance the coordination of Intergovernmental Relations.

[D] **WHEREAS** Article 6 of the Constitution provides that the Governments at the National and County Levels are distinct and interdependent and shall conduct their mutual relations based on consultation and cooperation.

[E] **WHEREAS** Article 189 of the Constitution requires that Government at either level shall:-

(a) Perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of Government at the other level and respects the constitutional status and Institutions of Government at the other level and, in the case of County Government, within the County Level;

(b) Assist, support, and consult and, as appropriate, implement the legislation of the other Level of Government; and

(c) Liaise with the Government at the other level for exchanging information, coordinating policies and administration, and enhancing capacity.

[F] **WHEREAS** The World Bank during the period 2016–2021 undertook the Kenya Devolution Support Program ("KDSP") whereby it partially supported the National Capacity-Building Framework (NCBF) by providing grants to eligible County Governments, access to which was conditional on the performance of the Counties, measured through the Annual Capacity Performance Assessment ("ACPA") and other details as per the requirements of KDSP.

[G] **WHEREAS** the SDD, through the support of the World Bank, wishes to undertake the Second Kenya Devolution Support Program ("KDSP II" or "Program") to build on the foundations of KDSP and support the implementation of the Devolution Sector Plan with the cooperation of the County Governments.

**WHEREAS** by an agreement (Credit No. IDA-7447-KE) between the Republic of Kenya and the International Development Association (World Bank) (the "Financing Agreement") dated February 2nd, 2024, the World Bank has agreed to extend to the Republic of Kenya, credits in the total sum of EUR 140,700,000 to finance activities under KDSP II for the period 2023–2027.

[M] **WHEREAS** The SDD undertakes to establish activities that support;

(a) Enhancing financing and expenditure management by Counties;

(b) National and County Governments initiatives toward strengthening intergovernmental coordination, institutional performance, and human resource management; and

(c) Improvements in oversight, participation, and accountability for County resources.

**NOW PARTIES HEREUNTO** enter into this Participation Agreement to define their roles and obligations to facilitate eligibility to KDSP II and make the following undertakings:

## A. OBLIGATIONS OF THE NATIONAL GOVERNMENT

1. The National Government undertakes to develop:

(a) Frameworks and guidelines for County Revenue Mobilization;

(b) Policies to support financing for service delivery units;

(c) Structures and tools to support Counties' institutionalization of shared project management functions, that includes, the County Single Project Management Unit;

(d) Policy, legal, regulatory and administrative procedures for the operationalization of intergovernmental, intercity, and inter-municipality forums;

(e) Guidelines on County HR which may include skills audits, model organization structures for customization by Counties, and performance management;

(f) A framework to support the management and administration of County finances;

(g) Guidelines on project stocktaking, community-led project management committees, and climate change risk screening and preparedness (including assessment of the climate resilience of existing infrastructure assets); and

(h) The rollout of the County Performance Improvement Management Framework.

2. The National Government will also:-

(a) Provide support to the County Government for the establishment and operationalization of County institutional arrangements and for the initial preparation of County Infrastructure Investments through—

i. Providing Institutional Strengthening Grants (Level 1) and the Service Delivery Investment Grants (Level 2) to the County Government; and

ii. Specifying the minimum conditions for accessing the Level 1 and Level 2 Grants;

(b) Provide capacity building and technical assistance to Counties for the achievement of Program results; and

(c) Ensure sound Program management and provide support as may be required for the proper implementation of KDSP II.

3. The Principal Secretary responsible for devolution (or his or her designate), on the advice of the Program Steering Committee, and in consultation with the World Bank, may suspend and/or terminate the right to the County Government to use or benefit from the Level 1 or Level 2 Grants upon failure by the County Government to comply with the Program requirements as captured in the Financing Agreement, Program Appraisal Document, and Program Operations Manual (POM).

## B. OBLIGATIONS OF THE COUNTY GOVERNMENT

4. The County Government undertakes to:-

(a) Carry out its activities under the Program with due diligence and efficiency and in adherence to the KDSP II Financing Agreement, Program Appraisal Document (PAD), Program Operations Manual;

(b) Establish County Program implementation arrangements with composition, terms of reference, and resources as detailed in the Financing Agreements, PAD and the POM;

(c) Ensure adherence to the minimum conditions and performance standards of the Level 1 and Level 2 Grants;

(d) Use the funds within the eligible expenditure areas and maintain adequate records in accordance with sound accounting practices and KDSP II guidelines and properly code the revenues and expenditure of the Program resources;

(e) Report on the utilization of the Program funds to the National Government and ensure accountability for the use of funds to the SDD, the National Treasury, and the Office of the Auditor General (OAG);

(f) Ensure transparency and disclosure of the use of all County funds including publishing of budget and expenditure data. Counties will disclose the following documents on their County website on an annual basis:

i) Annual Development Plan

ii) County Fiscal Strategy Paper

iii) Approved Program-based Budget

iv) County Finance Act

v) County Budget Review and Outlook Paper

vi) Quarterly Budget Implementation Reports (Q1 to Q4);

(g) Disclose the County Integrated Development Plans on the County website;

(h) Ensure that the goods, works, and services financed from the proceeds of the Program shall be procured in accordance with the procurement procedures as provided by the laws of Republic of Kenya;

(i) Ensure that the SDD, World Bank, and Independent Verification Agent (IVA) Performance Assessment and OAG teams shall have the right to obtain all information as they shall reasonably request regarding the administration, operation, and financial management of the Program;

(j) Adhere with environmental and social management system and safeguard practices;

(k) Ensure proper compilation and resolution of complaints on issues of environmental and social safeguards, procurement, fraud, and corruption; and

(l) Submit any complaints or evidence of fraud involving Program expenditures to the Ethics and Anti-Corruption Commission.

## C. DISPUTE RESOLUTION AND GOVERNING LAW

5. Any dispute between the Parties shall be resolved in accordance with Part IV of the Intergovernmental Relations Act.

6. This Agreement shall be governed and construed in accordance with the Laws of Kenya.

## D. VALIDITY

7. This Agreement shall be valid from the date of the last signature by the Parties below to the end of the Program period as stated in the Financing Agreement, or such other date as may be modified by the National Government and the World Bank.

8. This Agreement will become invalid in the event of cancellation of the Financing Agreement by the World Bank before the end of the Program.

9. This Agreement may be terminated by either Party through a three-month's written notice.

## E. TERM

10. This Agreement shall be in force for the duration of the Program unless otherwise terminated by either Party by giving a written notice.

**IN WITNESS WHEREOF** The Parties hereto through their duly authorized representatives have caused this Agreement to be signed the day and year first herein before written.

**FOR AND ON BEHALF OF THE COUNTY GOVERNMENT OF**

.....

**OFFICIAL SEAL**

**NAME OF THE GOVERNOR:**

.....NATHIF JAMA ADAN.....

SIGNATURE: .....

DATE: ..... 7TH MAY 2024 .....

**FOR AND ON BEHALF OF THE NATIONAL GOVERNMENT OF THE REPUBLIC OF KENYA**

**PRINCIPAL SECRETARY STATE DEPARTMENT FOR DEVOLUTION**

**OFFICIAL STAMP**

**NAME OF PRINCIPAL SECRETARY:**

..... TERESIA MBAIKA M. .....

SIGNATURE: .....

DATE: 5/6/2024 .....

The Principal Secretary
Office Of The Deputy President
State Department For Devolution
P. O. Box 30004 - 00100, Nairobi