

TOWA PROJECT
SUB-FINANCING AGREEMENT

BETWEEN

THE NATIONAL AIDS CONTROL COUNCIL

AND

SOUTH EASTERN UNIVERSITY COLLEGE

FOR THE PROVISION OF SUB-FINANCING UNDER THE TOTAL WAR AGAINST HIV and AIDS
PROJECT (Credit No. 4336-KE)-

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THE DIRECTOR
NATIONAL AIDS CONTROL COUNCIL
P. O. BOX 21207
NAIROBI

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THIS SUB-FINANCING AGREEMENT is made on the 27th day of March 2012

Between

the **NATIONAL AIDS CONTROL COUNCIL (NACC)**, a State Corporation, having its principal offices at Landmark Plaza, 9th Floor, opposite the Nairobi Hospital, Argwings Kodhek Road and of Post Office Box Number 61307 code 00200, Nairobi, Kenya and the Project Implementing Entity for the Total War Against HIV and AIDS Project (hereinafter referred to as 'the NACC')

And

SOUTH EASTERN UNIVERSITY COLLEGE (the beneficiary) with its principal place of business at **Kitui, Kenya**.

Hereinafter referred to as ("the Sub- Project Implementing Entity" or "the 'SPIE'") and both hereinafter referred to as "the parties." The Sub-Financing Agreement is in furtherance of the intention of the NACC to provide grants to the SPIEs to implement sub-projects under the Total War Against HIV and AIDS Project (TOWA).

1. WHEREAS the Government of the Republic of Kenya (GOK) has applied for financial assistance from the International Development Agency (IDA) to support the Total War against HIV and AIDS Project, Cr4336-KE (hereinafter referred to as TOWA project) and earmarked part of the proceeds from the project to support the implementation of targeted HIV and AIDS prevention and impact mitigation activities by public sector Institutions whose sub-projects have been approved by the NACC, the TOWA Project Implementing Entity.

2. WHEREAS the TOWA Project SPIE, now has capacity to receive, account and report on TOWA project funds advanced through NACC;

NOW THEREFORE, the parties to this Sub-Financing Agreement agree as follows:

3. DEFINITIONS AND INTERPRETATIONS

In this Sub-Financing Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

- a. 'Court of Law', means a Kenyan court of law;
- b. 'COBPAR' means Community Based Activity Programme Reporting;
- c. 'Default' is defined as failure to satisfactorily use and account for the funds advanced within three months from the date the SPIE receives the funds;
- d. 'Disbursement' means the payment of funds;
- e. 'FMA' means the Financial Management Agency who in this case is PricewaterhouseCoopers Limited

- f. 'SPIE Procedures means the 'TOWA Public Sector Accountability and Reporting Requirements, Government Financial Management Regulations and Procedures, and World Bank Procurement Procedures.
- g. 'Non-performance' includes but is not limited to failure to fully account for funds (on due dates), failure to meet set sub-project targets as per the approved work plan and budget, and failure to comply with reporting requirements.
- h. 'Sub-Project Financing Agreement' means this Agreement together with all annexes hereto as the same may be supplemented or amended from time to time;
- i. 'Monthly Financial Report', means the interim financial reports (on receipts and expenditures and reconciled funds balance), submitted monthly;
- j. 'Quarterly Budgetary Control Report' means a quarterly financial report (on uses), submitted monthly and quarterly;
- k. 'Quarterly Technical progress' means an Interim Progress Report on Activities and Outputs and is the quarterly report which compares a work plan with actual agreed activities, outputs and targets undertaken during the period, giving reasons for any variances.
- l. In this Sub-Financing Agreement unless the context otherwise requires the following interpretations shall govern;
- i. reference to a day, week, month or year is reference to a calendar day, week month or year;
 - ii. reference to clauses appendices, paragraphs, lists, sections and figures are references to the clauses, appendices, paragraphs, lists, sections and figures contained in this Agreement;
 - iii. words importing the singular meaning include the plural meaning and vice versa;
 - iv. the term 'including' shall be construed without limitation;
 - v. in the event of any conflict between the paragraphs and the appendices, the paragraphs which shall also include the sub-paragraphs, will prevail;
 - vi. the headings in this Sub-Financing Agreement are for convenience only and shall not affect its interpretation;
 - vii. Notwithstanding any other provisions hereof, this Sub-Financing Agreement shall not be read or construed as governing any relationship between the parties, which is now or may in future be the subject of a separate written agreement.

4. SUB-IMPLEMENTING ENTITY'S DETAILS

| | |
|---|---|
| Grant Number | PS041/P1 |
| Type of Institution | Public Sector |
| Project Sub-Implementers' officials in charge of the sub-project (attach certified copies of ID/Passport of at least 2 officials) | Prof. Geoffrey Muluvi-Principal, Prof. Dorothy Mutisya-Deputy Principal, Dr. Josphert Kimatu-Chairman ACU |
| Address for correspondence | P.O. Box 170-90200, Kitui, Kenya. |
| Physical address | Kitui, Kenya |
| Telephone/Cell phone Number: | 020-4213850/020-2531395 |
| Fax Number: | |
| Email address: | info@seuco.ac.ke |
| | |

BANK ACCOUNT

| | |
|-----------------|------------------------|
| Account Name: | SEUCO Research Account |
| Account Number: | 2153302500 |
| Bank Name: | National Bank of Kenya |
| Bank Branch | Kitui |
| Bank Address: | |

- 4.1 The SPIE hereby fully agrees to implement the sub-project according to the approved proposal, the approved work plan and budget, the approved procurement plan, and cash forecast as received and endorsed by the NACC, and which forms part of this Sub-Financing Agreement and is annexed hereto Appendix II, and in accordance with all the conditions described in this Agreement.
- 4.2 This Sub-Financing Agreement shall remain in force subject to the existence of the TOWA Financing Agreement between IDA and the Republic of Kenya and the Project Agreement between IDA and the NACC.
- 4.3 The NACC through the Financial Management Agent (FMA) will disburse to the SPIE an amount not exceeding **Kshs.2,000,000 (Kenya Shillings Two Million Only)** (hereinafter referred to as the 'funds'). This amount has been established on the basis of the approved work-plan and budget. The subproject duration shall be **9 months** from the **date of disbursement**.
- 4.4 The NACC through a designated Financial Management Agent will disburse the funds provided for in the Clause 4.3 above to the SPIE in quarterly tranches.
- 4.5 The NACC and or any Agents duly appointed by NACC will monitor the implementation of this Sub-Financing Agreement and may propose amendments to the implementation or withhold

funds if any or all of the conditions herein are not fulfilled to NACC's expectations and satisfaction.

- 4.6 The Permanent Secretary of the Public sector mainstreaming department shall appoint an AIE holder who will be responsible for the implementation of the Sub-Project and full accountability of the TOWA project funds extended to the department.

5. **Conditions Precedent to Disbursement**

The first disbursement shall be made after:

- 5.1. NACC has approved the SPIEs work-plans and budget. The work-plans should have clear targets and indicators and shall serve as the procurement plan;

5.1.1 The authorised representatives of the parties have signed this Sub-Financing Agreement and placed upon every page of the Sub-Financing Agreement and its annexes, the initials of the persons authorised to sign on behalf of the SPIE;

5.1.2 The SPIE has completed a request for disbursement of funds as set out in Appendix I of this Sub-Financing Agreement;

5.1.3 The SPIE has provided details of the Bank account for the sub project funds. The NACC shall not issue cheques or cash but shall only electronically transfer funds to the bank account stated in the official letter from the Permanent Secretary of the Public sector department to the Director, NACC.

- 5.2 The first request for disbursement of funds should be made within 30 days of the signing of this Sub-Financing Agreement by all the parties.

- 5.3 Before the commencement of implementation of the sub-project, the officials, members or staff of the SPIE shall familiarize themselves with the following documents:

- a) this Sub-Financing Agreement;
- b) the attachments to the Sub-Financing Agreement and more particularly the project proposal, approved work-plans, budget, cash forecast and reporting formats; and the TOWA Public sector accountability and reporting requirements
- c) the Government of Kenya Public Sector financial management regulations and procedures
- d) the World Bank procurement procedures (posted in the World bank Website)
- e) NACC Public Sector Monitoring and Evaluation requirements (provided by NACC).

6. **Commencement Date**

- 6.1 The commencement date shall be deemed to be the date the Sub-Financing Agreement is signed by all parties to the Sub-Financing Agreement.

7. **Obligations of the Sub-Project Implementing Entity**



- 7.1 The SPIE shall be responsible for the sound management of the funds that may be disbursed and upon receipt of each disbursement, must send a copy of the credit slip or bank statement to the NACC through the FMA within 7 days;
- 7.2 Disbursements from the NACC through the FMA to the SPIE and expenditures by the SPIE shall be made in accordance with the 'TOWA Public Sector minimum accountability and reporting guidelines (Annexed in Appendix 111) the Government Financial Management regulations and the World Bank procurement procedures, which form part of this Sub-Financing Agreement.
- 7.3 The Sub-project funds shall only be used for the approved budgeted sub-project activities;
- 7.4 The SPIE shall ensure adherence to the work-plans and budget lines and shall not make any variation. However in justifiable circumstances, and except for administration costs, the SPIE may re-allocate resources from one budget category to another up to a maximum of 10% of the value of either category in such a way as to have no adverse effect on the overall budget and targets. In the event of variation, the SPIE shall clearly state the extent and reason for the variation in their quarterly budgetary control report.
- 7.5 At least 85% of the sub-project funds must be utilised for implementation of approved programme activities and not more than 15% of the funds should be allocated to administrative and operational costs.
- 7.6 To be recognized, costs incurred by the SPIE for the execution of the approved budgeted sub-project activities must be reasonable, i.e., not exceeding costs that would be prudently incurred in the execution of similar activities, assignable to the needs of the sub-project, and be eligible, i.e., responding to budget categories, limitations and restrictions as established in the approved costed work-plans and budget for the sub-project;
- 7.7 The SPIE shall keep a record of all expenditures related to the grant under this Sub-Financing Agreement in accordance with the SPIE procedures and shall make available all financial and technical performance records for inspection by the staff of the FMA and/or agents and persons authorised to act for the FMA and NACC;
- 7.8 The SPIE shall provide all necessary information and documentation to the staff or agents of the NACC, IDA and any other organization which is providing co-financing to the Project and shall not in any way obstruct any investigation, audit or verification by the said staff or agents.
- 7.9 The SPIE shall submit quarterly financial reports, quarterly technical progress reports, and quarterly procurement reports, to the FMA before the 10th of the month following the report period.
- 7.10 The reports shall be subjected to the Government Internal Control and approval mechanisms and certified by the AIE holder and the Permanent Secretary before being submitted to the FMA.
- 7.11 In addition to the reports required under this Sub-Financing Agreement, the SPIE shall ensure that it prepares and submits quarterly activity progress reports to NACC through the FMA. The SPIE shall also adhere to any other reporting and monitoring and evaluation requirements under the National Monitoring and Evaluation Framework, details whereof may be obtained from NACC from time to time.

- 7.12 The SPIE shall notify the NACC through the FMA of any delays occurring between the time of justification and request for release of disbursements and receipt of the next disbursement. This may be by letter, fax or e-mail; All disbursements received by the SPIE under this Sub-Financing Agreement shall be fully accounted for;
- 7.13 Subsequent disbursements (where applicable) shall be made on application by the SPIE and after at least 75% of previously disbursed funds have been properly and satisfactorily accounted for.
- 7.14 Where the sub-project is ongoing, subsequent disbursements shall be reduced by the amount not properly and satisfactorily accounted for.
- 7.15 The SPIE hereby agrees to refund disbursements that are not properly and satisfactorily accounted for, or not expended in conformity with the sub-project work-plan and budget, to the FMA and/or NACC following an official demand by the FMA and/or NACC.
- 7.16 Subsequent disbursements will depend on the satisfactory implementation of sub-project activities and achievement of agreed sub-project targets as evidenced by the technical progress reports and where necessary, verified by NACC and or any agent appointed by NACC for that purpose.
- 7.17 In the event of misuse of funds or lack of progress in sub-project implementation, the disbursements shall be suspended and investigations carried out by the FMA, NACC, the relevant arms of the Government of Kenya and or their authorised agents. Disbursements may only resume if full clearance is given for all expenditures made and the conclusions endorsed by the authorised representative of the FMA and the NACC;
- 7.18 NACC may also direct the termination or suspension of disbursement to the SPIE if there is reason to believe that the funds are not being utilized for the purposes for which they were intended or there are risks that could significantly hinder attainment of sub-project objectives.

Procurement Guidelines and Anti-Corruption Guidelines

- 7.19 The SPIE shall ensure that all procurements/purchases are made in accordance with the expenditure items, and in keeping with the quantities and estimates costs indicated in the broken down budget, and the procurement plan, provided that the SPIE shall exercise utmost care to ensure that all goods and services are purchased at the prevailing market prices.
- 7.20 The SPIE agrees to procure the goods, works and services required for the Subprojects and to be financed out of the Sub-financing in accordance with the procurement procedures set out in the TOWA Financing Agreement which are summarized in the TOWA SPIE Simplified Accounting, Procurement Monitoring and Reporting Manual.
- 7.21 The SPIE agrees to carry out the Subproject in accordance with the provisions of the World Bank's Anti-Corruption Guidelines applicable to recipients of loan proceeds.

8. Obligations of NACC



THE DIRECTOR
NATIONAL ANTI-CORRUPTION COUNCIL
P. O. BOX 91397
Nairobi, Kenya



- 8.1 Funding obligations to the sub-project shall be subject to continued availability of the TOWA Project funds;
- 8.2 The NACC through FMA shall disburse the grant funds towards the implementation of the sub-project in accordance with the approved budget, procurement plan and work plan on condition that the requirements set forth in this Sub-Financing Agreement are fulfilled;
- 8.3 Reports shall be presented to the NACC through FMA in accordance with the SPIE procedures. The FMA shall be responsible for review of the reports to ensure that the procedures to further disbursement have been met. The NACC through FMA undertakes to carry out a review of the reports expeditiously;
- 8.4 The review stated in paragraph 8.3 above may be correlated with reports of technical progress and achievement of sub-project targets to be carried out by a Performance Auditor appointed by NACC and based on the Performance Audit report, NACC may advise the FMA to withhold further disbursements to the SPIE.
- 8.5 NACC or the FMA shall not be responsible for any expenditure incurred by the SPIE prior to the disbursement of funds under this Sub-Financing Agreement or any expenditure in excess of the approved budget, including promises and/or commitments to any parties or organization that the SPIE may be involved with;
- 8.6 NACC or the FMA shall not be responsible for any indemnity or compensation whatsoever that may be sought by the SPIEs' employees or third parties in respect of any salary, benefit, claim, debt, delays, damages or demands arising out of the implementation of this sub-project and which may be made against the SPIE;
- 8.7 NACC or the FMA shall not be responsible for any compensation for the death, disability or any other hazards, which may be suffered by directors, staff, agents or members, of the SPIE as a result of their employment or association with the sub-project that is the subject matter of this Sub-Financing Agreement.

9. **Taxation**

- 9.1 The grant funds shall be taxed where applicable, in accordance with Kenyan Laws.

10. **Changes to the Sub-Financing Agreement**

10.1 No variation to this Sub-Financing Agreement shall be effective unless the variation is in writing and signed by the authorized representatives of all the parties;

11. **Confidentiality**

11.1 Each of the parties to this Sub-Financing Agreement shall:

11.1.1 Treat information pertaining to another party gained as a result of this Sub-Financing Agreement as confidential;

11.1.2 Not disclose such information to third parties; and

11.1.3 Only use such information for the purposes for which it was disclosed.



11.2 Confidential information may be disclosed by any of the parties if such party can show that such information is:

11.2.1 In the public domain without any breach of this Sub-Financing Agreement;

11.2.2 In its lawful possession prior to disclosure;

11.2.3 Independently generated;

11.2.4 Provided by a third party in lawful possession thereof; or

11.2.5 Required to be disclosed by law or other regulation to an authorised Government authority or regulatory body provided that the disclosing party uses its best endeavours to ensure the recipient keeps the information confidential and does not use it except for the purposes for which disclosure was made.

12. Publications

12.1 All documents to be published by the SPIE under this project must be authorised by the NACC and disclosure shall not be unreasonably withheld.

13.0 Dispute Resolution

13.1 In the event of any dispute between the parties as to the implementation or interpretation of any of the terms of this Sub-Financing Agreement, other than a dispute relating to non-performance, misuse, misappropriation and/or non-accountability of funds, the parties agree that the dispute shall be referred to an Arbitrator approved under the Arbitration Act, Laws of Kenya. The decision of the Arbitrator on the submissions made to arbitration shall be binding;

14. Termination

The NACC at recommendations from the FMA may terminate this Agreement in the event;

- a) the SPIE does not remedy a failure in the performance of this Agreement within 30 days after notification in writing or any further subsequent period as the NACC may subsequently indicate in writing;
- b) the planned activities in the approved work-plans are not met within the stipulated time; and
- c) of fraud by the SPIE or any of its staff and agents.

15. Extension

In the event the SPIE anticipates the need for a reasonable extension of time, the parties herein shall convene a consultative meeting 30 DAYS prior to the expiry of the contract period, to determine the appropriate action to be taken in view of the anticipated delay and the extent of the work needed to be done to complete the project in question.

16. **Applicable law**

This Sub-Financing Agreement shall be interpreted solely in accordance with the laws of the Republic of Kenya.

17. **Authorization**

The signatories to this Agreement declare that they have the relevant authority to sign and to commit their organisations to this Sub-Financing Agreement as is evidenced by the authorization to sign.

18. **Severability**

In the event of any clause in this Agreement being construed as illegal, or invalid for any reason whatsoever, the remainder of this Sub-Financing Agreement shall not be invalid as a result thereof, and shall remain in full force and effect to the extent possible

19 **Acceptance of obligations, terms and conditions**

In witness whereof this Agreement has been entered into the day and year first above written:

Signed for and on behalf of:

In the presence of:

NATIONAL AIDS CONTROL COUNCIL

Signature: _____

Name: PROF. ALLOYS DRAGO

Position: DIRECTOR

Signature: _____

Name: GILBERT OMOKE

Position: LEGAL OFFICER

SOUTH EASTERN UNIVERSITY COLLEGE:

Signature (1): _____

Name: PROF. GEOFFREY MULUVI

Position: PRINCIPAL

Signature: _____

Name: IRENE MUKYAO

Occupation: NURSING OFFICER

Address: 170 - KIROI - 90200

Signature (2): _____

Name: Dr. Josphert N. Kimatu

Position: ACU, Chairman

Signature: _____

Name: CORNELIUS MUYOKA

Occupation: TECHNOLOGIST

Address: 170 - 90200 - KIROI