



REPUBLIC OF KENYA

This Intergovernmental Conditional Allocations Transfer Agreement is made pursuant to section 191A of the Public Finance Management Act (PFMA), 2012 on [ACTUAL DATE OF AGREEMENT]

BETWEEN: -

The National Treasury whose address is P.O. Box 30007 – 00100, Nairobi;

And

The participating County Government (as presented in Annex I)

RECITALS: -

Whereas the Article 6 of the Constitution provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation;

Whereas Article 187 of the Constitution provides that the National and County Governments may cooperate in the performance of functions and exercise of powers;

Whereas Article 190 of the Constitution provides that Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions;

Whereas Article 202 of the Constitution provides that County Governments may be given additional allocations from the National Governments Share of revenue either conditionally or unconditionally;

Whereas Article 228 of the Constitution further provides that the Controller of Budget shall not approve any withdrawal from a public fund unless satisfied the withdrawal is authorized by law; and

Whereas section 191A to E of the Public Finance Management Act, 2012 requires that the National Treasury and County Governments shall enter into intergovernmental agreements for purposes of the additional allocations;

Now the parties herein agree as follows:

1. DEFINITIONS

In this Intergovernmental Transfer Agreement:

“Authorized Signatories” has the same meaning assigned in Section 2 of the County Governments Additional Allocation Act, 2022

“Conditional Allocation Framework” refers to the conditions and other information in respect of a conditional allocation as outlined in Annex II

“Ineligible Expenditure” means expenditure that has been made in excess of a provision in the budgets or has been used for purposes other than for which it was approved for

“Funding Period” means the period set out in the Schedule.

“Conditional Additional Allocation” means the sum to be transferred to the participating County Government in accordance with the Conditional Allocations Framework

“Participating County government” means a county government that has duly entered into this intergovernmental transfer agreement.

“Project” means the project or program as described in the Conditional Allocations Framework.

“Project Targets” means the objectives, activities or targets described in the Conditional Allocation framework.

“Terms and Conditions” refers to the rights, obligations, rules and limitations of the Conditional Allocation, as set out in this Intergovernmental Transfer Agreement. For the avoidance of doubt, this includes the Special Conditions set out in the Schedule to this Transfer Agreement.

2. INTERPRETATION

In this Intergovernmental Transfer Agreement:

- a) reference to this 'Intergovernmental Transfer Agreement' includes any agreed and signed variations made from time to time in the Conditional Grant framework pursuant to these Terms and Conditions; and
- b) reference to any statute or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the Republic of Kenya.

3. CONDITIONAL ADDITIONAL ALLOCATION

3.1 This Agreement is made on the basis of the Conditional Allocation Framework as set out in Annex II.

3.2 The National Treasury shall transfer to the County Government conditional allocation for the purpose of supporting the Project as described in the Conditional Allocation Framework.

3.3 The National Treasury shall be responsible for the Conditional Allocation Transfer upon receipt of written instructions from the accounting officer of the relevant Ministries, Departments and Agencies authenticating the disbursement of the transfer in accordance with the Disbursement Schedules prepared pursuant to section 17 of the PFMA.

3.4 The Conditional Allocation shall not be used for any other purpose apart from what is agreed in the Conditional Allocations Framework. Any other Expenditure shall be considered ineligible.

3.5 The projects funded and supported by this Conditional Allocation must be executed within the Funding Period.

3.6 The Conditional Allocation shall be provided and managed in accordance with the Terms and Conditions of this Intergovernmental Conditional Allocation Agreement, and County Participation Agreement as set out in the Schedule.

4. PROGRESS REPORTING

4.1 The County Government shall provide regular reports to the responsible Ministries, Departments and Agencies regarding progress on implementation of the Project as set out in the Conditional Allocation Framework and as set out in section 163 of the PFMA on reporting

4.2 If the County government is experiencing any financial or administrative difficulties that may hinder or prevent the completion of the Project within a set period, the County Government shall inform the responsible Ministries, Departments and Agencies and the National Treasury immediately.

5. VARIATIONS TO THE PROJECT

5.1 Any changes to the Project shall be agreed in writing by way of Variation Request (Annex IV) with the responsible Ministries, Departments and Agencies and communicated to the National Treasury before implementation.

6. EVENTS OF DEFAULT ON INTERGOVERNMENTAL TRANSFER AGREEMENT

6.1 If the County government fails to comply with any of the Terms and Conditions of Additional Allocations Framework, the National Treasury with written instructions from the relevant Ministries, Departments and Agencies may reduce, suspend, or stop transfers of Conditional Additional Allocation, or require any part or all of the Conditional Additional Allocation to be repaid by the County government.

6.2 National Treasury shall upon receipt of written instructions under 6.1, notify the county government within 14 days.

6.3 The County government may act within 21 days to address the National Treasury's concern or rectify the breach, and may consult or agree on an action plan to resolve the problem with the National Treasury.

6.4 Where any part or all of the conditional additional allocation is required to be repaid in accordance with clause 6.1 above, the County government must repay this amount within 90 days of receiving the demand for repayment.

7. FINANCING ARRANGEMENTS

7.1 The Ministries, Departments and Agencies responsible for the functions being financed through the additional allocations shall include in its budget estimates a transfer to the County Government.

7.2 The county government shall in its annual budget statements provide for the programs to be financed by this additional allocation.

7.3 The National Treasury shall transfer the additional allocations to the County Revenue Fund, the amounts indicated in the County Governments' Additional Allocation Act in line with the provision of clause 3.3

7.4 The County Executive Committee Member for the time being responsible for finance shall requisition for the additional allocations from the County Revenue Fund through the Controller of Budget

7.5 All requisitions shall be accompanied with a description of the amounts and purpose for which the amounts are being requisitioned as contained in the approved budget estimates and the County Governments Additional Allocations Act for the respective financial year.

7.6 If satisfied that the requisition is legally supported, the controller of Budget shall approve the requisition or otherwise give reasons for the failure to approve.

7.7 The additional allocations not spent in the financial year for which they were disbursed shall be re-voted in the subsequent financial year upon request and based on budget process.

8. DISPUTES

8.1 All disputes and complaints that may arise out of the implementation and interpretation of this agreement will be settled through mutual consultations between the parties.

8.2 Where no such settlement is reached within 21 days of the commencement of such consultation, the parties will refer the dispute to the Intergovernmental Relations Technical Committee.

9. FORCE MAJEURE

9.1 Notwithstanding any provision contained in this agreement, neither party shall be liable to the other to the extent, fulfilment or performance, if any terms or provisions of this Agreement is delayed or prevented by revolution or other civil disorders wars, acts of enemies, strikes, labour disputes, fires, floods, acts of God, or without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent, whether of the class of causes hereinbefore enumerated or not.

9.2 A party affected by an event of Force Majeure shall notify in writing to the other party of such event as soon as possible, and in any event not later than seven (7) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

9.3 The failure of a party to fulfil any of its obligations hereunder shall not be considered to be a breach/default under this agreement insofar as such inability arises from an event of force majeure, provided that the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this agreement.

9.4 A party affected by an event of Force Majeure shall take all reasonable measures to remove such party's liability to fulfil its obligations hereunder with minimum delay.

10. GOVERNING LAW

The construction, validity and performance of this agreement shall be governed in all respects by the Law of Kenya.

11. AUTHORISED SIGNATORIES

Authorized to sign for and on behalf of the National Treasury

Name
Designation
Signature
Date
 Witnessed by
 Name
 Designation
 Signature
 Date

Authorised to sign for and on behalf of the (County Government)

Name
Designation
Signature
Date

Witnessed by
Name
Designation
Signature
Date

Annex I: List of Participating County Governments

County Code	County Name
1	Mombasa
47	Nairobi

DRAFT

Annex II: Conditional Additional Allocations Framework

	Project/ programme Name	Insert Name of Project
1	Ministry / State Department Responsible	
2	Accounting officer of National Government Responsible	
3	Responsibilities of the National Government Accounting officer	
4	County Department Responsible	
5	Accounting officer of County Government Responsible	
6	Responsibilities of the County Government Accounting officer	
7	Conditions	
8	Cost of Project	
9	Purpose and Objective of the Conditional Additional Allocation	
10	Allocation criteria	
11	Project Duration	
12	Priority of Government that this additional allocation primarily contributes to	
13	Reasons not incorporated in the Equitable Share	

Annex III: Allocation Schedule

DRAFT

Annex IV: Variation Request

WHEREAS the County government and The National Treasury entered into an Intergovernmental Transfer Agreement for the approved Project dated (INSERT DATE) as varied on (INSERT DATE) (the “Intergovernmental Transfer Agreement”) and now wish to amend this Agreement.

IT IS AGREED as follows

1. DEFINITION

1.1 Terms defined in the Intergovernmental Transfer Agreement shall have the same meaning when used in this Variation Request, unless defined otherwise.

2. VARIATION

2.1 With effect from (INSERT START DATE) the Intergovernmental Transfer Agreement shall be amended as set out in this Variation Request:

1.	Variation requestor	INSERT NAME OF CECM
2.	Summary of variation	INSERT FULL DETAILS OF VARIATION
3.	Reason for variation	INSERT REASONS FOR VARIATION
4.	Revised Amounts	INSERT NEW AMOUNT
5.	Revised Funding Period	INSERT NEW START DATE AND END DATE
6.	Revised Payment Arrangements	INSERT NEW PAYMENT ARRANGEMENTS
7.	Other Variation	INSERT ANY OTHER NEW PROPOSED CHANGE TO THE INTER GOVERNMENTAL TRANSER AGREEMENT TERMS

2.2 Save as herein amended all other Terms and Conditions of the Intergovernmental Transfer Agreement shall remain in full force and effect.

Authorised to sign for and on behalf
of Principal Secretary,
The National Treasury

Authorised to sign for and on behalf of
(Name of County Government)

Signature
Name in Capitals
Date
Address in full

Signature
Name in Capitals
Date
Address in full

DRAFT