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REPUBLIC OF KENYA

DEPARTMENT OF SPECIAL PROGRAMMES AND PARTNERSHIPS.

MIGORI COUNTY PRIVATE SECTOR ENGAGEMENT FRAMEWORK.

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1.1 Introduction

The private sector is a key partner of the Migori county government since its inception. It is a growing contributor of financial resources, as well as an effective partner providing non-financial (in-kind) support to Migori county government programs. The County recognizes that the engagement with private sector partners is a vital part of increasing impact, increasing resources and developing innovative solutions to bolster the socio-economic development in the county.

To maintain the integrity of its operations and brand, the county government needs to ensure that contributions are derived from reputable private sector partners that subscribe to the principles of the county. In addition, it is important to ensure that partners or groups of partners do not have undue influence on decisions made by the county government through strong internal processes and a core principle of transparency. Any breaches, whether perceived, potential or actual, may diminish public confidence in the county government and may even affect the performance of its projects and programs.

The county government recognizes the need for a strong and well-implemented risk management approach and associated procedures that will help in ensuring the benefits of partnerships are recognized in the context of appropriate risk assessment. This approach will also assist in improving fairness and transparency in decision making processes, improving trust and confidence among key stakeholders and the general public and protecting the reputation and integrity of the Migori county government and associated organizations.

1.2 Framework Purpose

This Framework gives guidance on the county government's approach to partnerships with the private sector and outlines accountabilities governing private sector engagement for resource mobilization. It recognizes the need to identify the risks of private sector engagement and balance these against the expected benefits. It will:

- Support the county government in establishing significant and impactful private sector partnerships that are relevant and consistent with the principles of the Global Fund's approach;
- Enhance transparency and facilitate communications with prospective private sector partners;
- Ensure that interested stakeholders within and external to the county government are consulted as appropriate; and
- Enable relationship managers to apply risk controls and monitoring at a level proportionate to each private sector partnership.

2. Types of Private Sector Partners and Contributions

2.1 Types of Private Sector Partners

There are many types of potential private sector partners. The principle types of partners considered under this framework are:

2.1.1 Corporations.

This refers to a company or group of people authorized to act as a legal person and recognized as such in law. These are commercial enterprises, either publicly listed or privately owned, that are intended to make a profit for their owners. They typically operate in a regulated legal compliance and financial environment particularly if they are publicly-listed.

2.1.2 Private Foundations.

These are private non-profit entities such as foundations and trusts, whose assets are provided by donors and whose income is spent on socially useful purposes. Such entities typically operate in a similar environment as companies when it comes to operating standards in developed countries but the legal, bureaucratic, and political framework for foundations and trusts in the developing world tends to be more varied.

2.1.3 Individuals

This refers primarily to High-Net-Worth Individuals (HNWIs). Partnerships with such individuals and their families are typically focused on philanthropy, through individual gifts, family foundations or other vehicles such as donor advised funds.

2.2 Types of contributions

There are various forms of contributions that can be received from the partnerships with the private sector. These contributions include the but is not limited to the following:

2.2.1 Financial Resources.

The Migori county government mobilizes financial contributions to uplift the socio-economic development of the residents. The financial contributions must be aligned to the provisions of the Constitution of Kenya and the Public Finance Management Act. These contributions can be notionally earmarked to a grant, or contributions, which result in additional funds and activities for an already funds from exchequer.

2.2.2 Non-financial /in-kind partnerships that support the county government and/or its grant recipients.

Non-financial support can includes provision of pro bono expertise and/or services to support capacity building initiatives and generate performance efficiency and/or effectiveness improvements to the County Government Staff and/or grant recipients either directly by the partner's employees or through funding third parties to provide such expertise.

2.2.3 In-kind donations

In-kind donations products can be accepted, subject to compliance with internal requirements that ensure the county government objectives and interests are not compromised as a result e.g., chairs for ECDE schools, health products to support promote health services etc.

3. Principles, Benefits and Risks of Engagement

This Framework provides a firm basis for enhancing private sector engagement through the lens of a clear set of principles, and serves as an instrument for identifying the risks and balancing them against the expected benefits, while protecting and preserving the county government integrity, reputation and mandate for the elimination of poverty, ignorance and diseases. County government staff are required to adhere to the Framework and its associated procedures.

3.1 Principles

While the county government strives to identify opportunities for shared value creation and enters into partnerships, it will be guided by the following principles:

- Demonstration of a clear potential benefit to the county government's mandate and general program of work.
- The partner has an alignment with the county government's mission and is committed to reducing ignorance, diseases prevalence and poverty.
- The engagement must support the County Government's strategic priorities and complies with all its policies and guidelines.
- The engagement will be conducted on the basis of transparency, openness, inclusiveness, accountability, integrity and mutual respect.
- The structure of the engagement will protect the county government from any undue influence and will not compromise the county government's integrity, independence, and credibility.
- The engagement will be effectively managed, including by mitigating potential conflicts of interest and other forms of risks to the county government.

3.2 Benefits

Benefits arising from such engagements shall include:

- The financial and non-financial contributions of the private sector to support the mandate of the county government.
- The influence that the county government can have on private sector actors to enhance their impact on the county's mandate and public health or to influence the social, economic and environmental determinants.
- The leadership and influence that the private sector can bring to support the awareness, visibility and financing of the county's mandate.

3.3 Risks

These benefits outlined above must be weighed against the potential risks of engagement. These need to be effectively managed and, where appropriate, avoided. Potential risk areas include (non-exhaustive):

3.3.1 Reputational risk

Where the partnership has the potential to impact negatively on the reputation, integrity or credibility of the County Government or her agencies and entities. Examples include: questionable partner business practices or behaviors; conflicts of interest; industry or partner type-specific issues; partnership being leveraged by the partner to serve its interests with limited benefits for the county government; partnership conferring an endorsement of the partner's name, brand, product, views or activity; whitewashing of a partner's image through engagement with the county government.

3.3.2 Financial risk

This is where the partnership has the potential to impact negatively on the county's work linked to issues with its financial contribution. Examples include: contribution default (non-payment or delay); currency exchange risk; appropriate balancing of the county government and partner financial contributions to grants.

3.3.3 Program Effectiveness risk

Where an in-kind partnership has the potential to negatively affect the performance of grants and/or grant implementers. Examples include: undue or improper influence exercised by a private sector partner; non-delivery of in-kind services; marginal or no impact of the intervention; lack of country support; lack of scale up; non-sustainability of donated products or services; captive solutions.

Engagement with the private sector is underpinned by a comprehensive risk management process with clear roles and responsibilities for decision making. Risk screening will include assessment against a comprehensive set of criteria, as well as additional criteria specifically relevant for particular partnerships. Examples of core assessment areas include:

- Business policy and practice e.g. appropriate marketing policy, sanctions lists, bribery, fraud, collusion, corruption, money laundering, tax avoidance, terrorist financing, labor rights.
- Political exposure.
- Environmental policy and practice.
- Human rights and gender policy and practice.
- Privacy and data security.

Mandatory due diligence processes assess the fit with the principles described above, as well as risks associated with each prospective partnership.

3.4 Private sector partnerships requiring particular caution

The County Government shall take particular caution when considering engagement with private sector actors whose policies or activities may negatively affect human health, including those related to both infectious and non-communicable diseases, do not support education and public awareness, economic stability of citizens, those who advance terrorism ideologies and advance any sort of discrimination. In these situations, as for other engagement proposals, a case-by-case assessment shall be conducted in accordance with this Framework.

4. Avoidance of Conflict of Interest

4.1 Conflict of Interest

In the partnership context, a conflict of interest occurs when a prospective or existing private sector partner of the county government could use their position to advance their personal interests, the interests of an institution with which they are affiliated to or those of a close associate in a way that disadvantages or excludes others or is otherwise detrimental to the overall effectiveness of the county government's programs.

The county government takes a broader view of the ethics of its partnerships that extends beyond just the strict definition of conflict of interest. The contribution should be made in good faith and the private sector partner should not seek to utilize their position as a partner with the county government, their relationship with the county, or the knowledge and information they have received in connection with their relationship with the county to derive direct commercial advantage related to the county's activities.

Examples of conflicts of interest include when an external party makes an offer of support to:

- Influence county government decision-making or seek a favorable business relationship with it.
  Obtain favorable business relations with a party involved in the county's activities, including: Principal Recipients, Sub-Recipients, or suppliers of products.
- Imply an endorsement by the county government of their products or services.

The Migori county government also recognizes that there are significant risks associated with the perception of conflict of interest that can have impact on the county's reputation.

4.2 Material Interest

Each prospective private sector partner is required to provide adequate disclosure of any material interests that may place the various roles of the partners in conflict or result in reputational, financial or programmatic damage due to perceptions of undue influence of the partner on the county government or its grant recipients.

A material interest includes, but is not limited to, the following:

- Being a staff member or member of an organization or institution that is a Principal Recipient, Sub-Recipient or other Implementing Partner aided by the county government grants.
- Being a party to a contract, or directly involved in a transaction, for the provision of goods and services to an organization aided by the county government grants.
- Having a significant financial interest in an entity that is involved in a contract or transaction for the provision of goods and services to an organization aided by the county government grants, through being an owner, shareholder or employee.

5. Disclosure Requirement

5.1 Duty to Disclose

Partners must disclose any material conflicts of interest or breaches of the principles detailed above during partnership discussions and also during the term of the partnership. Where clear breaches or conflicts of interest are identified, the county government will take appropriate action, including rejecting the partnership or contribution. Such measures may also be applied for perceived conflicts of interest. On an ongoing basis existing partners are required to disclose any material interest or issue that could lead to a conflict of interest or a breaching of the principles of the partnership.

5.2 Failure to Disclose

If the County Government learns that a private sector partner failed to disclose a material interest or issue as defined by the County's disclosure requirements at the time the relationship between the County and the entity was established:

- The county government should inform the entity of this fact and provide it with an opportunity to respond; and
- Where there is confirmation of a failure to properly disclose, the county government will take the most appropriate course of action including, if needed, ending or revising the relationship with the entity and a public announcement to that effect.

6. Key Roles and Responsibilities

6.1. The Migori County special programmes and partnerships department: responsible for application and compliance of this engagement framework and due diligence procedures, and regular monitoring and tracking of partnership risks.
6.2. The Migori County Ethics and Legal department: Responsible for overseeing due diligence including those related to private sector partner disclosures, as well as monitoring and supporting risk management practices. Headed by county Attorney

6.3. The Migori county Ethics and Legal Department: Responsible for advising on the county government framework applicable to proposed private sector partnerships and risks (including non-compliance risk), and negotiating and advising on contractual commitments, amendments, addendums.

6.4 The Migori county Communications Department: Responsible for advising, developing and, implementing communication strategies relating to private sector partnerships, including any risk mitigation plans to minimize reputational risks.

6.5 The Migori County Special Programmes and Partnerships Department: Responsible for assessing and advising on institutional-level risks and relevant risk mitigation plans relating to private sector partnerships.

6.6 The Migori County Finance Department: Responsible for advising on finance-related risks for private sector partnerships and advising where appropriate on related risk mitigation measures.

6.7 The County Finance Department: Key stakeholder in determining the value and relevance of the prospective partnership within country context and priorities. Responsible for assessing country-specific risks for partnerships that involve country stakeholders, e.g. for partnerships that include restricted financial contributions, and/or service and in-kind support to grant recipients.

6.8 The Migori County Sports, Culture & Gender Department: Responsible for advising on risks for private sector partnerships relating to community impact and engagement, human rights and gender equality, and advising where appropriate on related risk mitigation plans. Headed by **chief officer Sports, Culture and Gender**