

WEAPONS

Proliferation

**Agreement Between the
UNITED STATES OF AMERICA
and KENYA**

Signed at Nairobi July 24, 2015

Entered into force April 6, 2017

and

Agreement Extending the Agreement
of July 24, 2015

Signed at Nairobi April 5, 2022

Entered into force April 5, 2022



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

**AGREEMENT
BETWEEN
THE GOVERNMENT OF
THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF
THE REPUBLIC OF KENYA
CONCERNING
COOPERATION IN THREAT REDUCTION
BIOLOGICAL ENGAGEMENT PROGRAMS**

PREAMBLE

This Agreement is by and between the Government of the United States of America and the Government of the Republic of Kenya, hereinafter referred to jointly as “the Parties” and singularly as the “Party”;

Desiring to establish a cooperative program to facilitate mutually beneficial efforts to reduce biological threats of common concern;

Seeking to promote health security, including the Global Health Security Agenda, to reinforce the norms of safe and responsible conduct with respect to biological pathogens and toxins, and to obtain timely and accurate insight on current and emerging biological risks;

Intending to begin this cooperation with joint undertakings to address the dangers of naturally occurring and human-made or human-spread biological pathogens and toxins, to build capacity for disease surveillance, detection, diagnosis, and reporting, and to improve capacity against infectious diseases;

Proceeding consistently with the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow on April 10, 1972, particularly Article X; the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968; and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris on January 13, 1993;

Stressing the significance of United Nations Security Council Resolution 1540 of 2004, which expressed the Council’s determination to facilitate effective responses to global threats of proliferation and terrorism and reaffirmed the need to combat these dangers to international peace and security;

Committed to the World Health Organization’s International Health Regulations, 2005, which contribute to States’ efforts to develop, strengthen, and maintain core national public health capacities to prevent, protect against, and control the spread of disease;

Anticipating the possible development of enhanced regional and global approaches to addressing shared safety and security; and

Determined to initiate the cooperative program rapidly and to establish terms that will help sustain the program and ensure its flexibility and responsiveness into the future;

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

ARTICLE I: PURPOSE

1. The purpose of this cooperative program is to facilitate efforts to reduce the threat from naturally occurring diseases, biological attacks, or unintentional release of biological pathogens and toxins, and the risks posed by non-state actors of bioterrorism. The United States of America may provide, as agreed by the Parties, as appropriate and at no cost to the Government of the Republic of Kenya, assistance in support of efforts to identify; detect; predict; monitor; control; safeguard against; reduce; eliminate; prevent the proliferation of; ensure the safe storage and transport of; enhance the reporting of; improve mechanisms for response to; and strengthen research, training, and education related to potential biological threats.
2. The program shall consist of mutually agreed projects related to potential biological threats, including naturally occurring diseases, biological attacks, or unintentional releases of biological pathogens or toxins, and biological weapons-related pathogens and toxins, materials, processes, and knowledge.
3. For purposes of this Agreement:
 - a. "goods and services" shall refer to all materials including biological materials and related information, equipment, supplies, commodities, facilities, services, funds, documents, records, technology, training, construction, property, personal property, or other assistance provided or used under this Agreement;
 - b. "personnel" shall refer to the civilian and military personnel of both Parties;
 - c. "contractors" shall refer to individuals and entities under contract or subcontract with the military and civilian agencies of both Parties, including its prime contractors and their employees, and first tier subcontractors and their employees; and



- d. "pathogens" shall refer to pathogens of security concern which include those agents and toxins included on the Select Agents and Toxins List as well as pathogens that cause emerging and re-emerging diseases capable of becoming threats to security through outbreaks, whether they be naturally occurring or caused by accidental or purposeful release.

ARTICLE II: SCOPE OF COOPERATION

1. The Parties shall cooperate in pursuing the goal of reducing the threat from naturally occurring diseases, biological attacks, or unintentional releases of biological pathogens and toxins, and the risks posed by non-state actors of bioterrorism. Areas of cooperation under this Agreement may include but are not limited to:
 - a. Implementation of a comprehensive, sustainable, and legally embedded national program for biosafety and biosecurity;
 - b. Enhancement of the Government of the Republic of Kenya's capability to identify, consolidate, and secure collections of biological pathogens and toxins of security concern in order to prevent the sale, theft, diversion, or accidental release of biological pathogens and toxins;
 - c. Enhancement of the Government of the Republic of Kenya's capability to rapidly and accurately survey, detect, diagnose, investigate alleged misuse of biological pathogens and toxins, and report biological terrorism and outbreaks from biological pathogens and toxins of security concern in accordance with international reporting requirements;
 - d. Implementation of a functioning surveillance system within Kenya, capable of identifying and responding to potential events of concern to health security from biological pathogens and toxins;
 - e. Implementation of policies and practices to minimize the spillover and spread, of emerging diseases;
 - f. Supporting the implementation of an effective nationwide laboratory system within Kenya, capable of safe and accurate detection, identification, and characterization of biological pathogens and toxins of security concern, including both known and novel threats, that leverages regional resources



and is commensurate with available technological capacities;

- g. Supporting collaborative research programs in biosurveillance, biosecurity, and biosafety;
- h. Supporting human resource development programs in biosafety and biosecurity; and
- i. Supporting training and awareness creation on biosafety and biosecurity issues.

The Parties shall agree upon implementing agreements that will identify specific project areas and requirements guided by the areas of cooperation specified above.

- 2. All activities undertaken pursuant to this Agreement shall be for peaceful purposes only and in compliance with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow on April 10, 1972; and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris on January 13, 1993.
- 3. The Parties shall agree upon the disposition of any intellectual property discoveries or products resulting from activities undertaken pursuant to this Agreement.
- 4. The Parties shall agree, before implementation of cooperative biological research activities pursuant to this Agreement, on the following issues that may arise as a result of the activities undertaken pursuant to this Agreement:
 - a. Intellectual property rights;
 - b. Access and benefits sharing in relation to utilization of biological and genetic resources, traditional knowledge and folklore; and
 - c. Technology transfer.



ARTICLE III: EXECUTIVE AGENTS AND IMPLEMENTING AGREEMENTS

1. Each Party hereby designates an executive agent responsible for the coordination and facilitation of cooperative activities under this Agreement. The United States Department of Defense shall be the executive agent for the Government of the United States of America, unless the Government of the United States of America otherwise notifies the Government of the Republic of Kenya. The Ministry of Health, in collaboration with the Ministry of Defense and Ministry of Interior and Coordination of National Government, shall be the executive agent for the Government of the Republic of Kenya, unless the Government of the Republic of Kenya otherwise notifies the Government of the United States of America. Each Party may designate additional executive agents to this Agreement by written notification to the other Party.
2. Each Party, through its executive agents, may delegate rights and responsibilities under this Agreement to other agencies, departments, or units of its government or to other entities, as deemed appropriate, by written notification to the other Party.
3. The Parties or their executive agents may conclude agreements and arrangements to implement this Agreement.
4. The terms of this Agreement shall apply to any future implementing agreements and arrangements and to the activities undertaken pursuant thereto. In the event of any inconsistency between this Agreement and any implementing agreement or arrangement, the provisions of this Agreement shall prevail, unless otherwise specified.

ARTICLE IV: COSTS

Expenditures by the Government of the United States of America pursuant to this Agreement, including associated expenses and transportation costs, shall be subject to the availability of appropriated funds available to the U.S. executive agent or the responsible implementing agency for these purposes.



ARTICLE V: TAXATION, IMPORTS, AND EXPORTS

1. The Parties' personnel and other individuals conducting activities under this Agreement, who are in the other Party's country purposely for the implementation of this Agreement, shall be exempt from income tax of the host Party or any other deductions from their pay allowances and other emoluments and benefits (whether in cash or in kind) paid to them, obtained pursuant to activities under this Agreement. This paragraph shall not apply to citizens or residents of the Party in whose country the activities are performed.
2. Goods and services purchased locally or imported for direct use in the implementation of activities under this Agreement or exported after such implementation shall be exempt from all taxes, duties, and levies, including import duty, excise duty, Value Added Tax, Import Declaration Fee, and the Railway Development Levy.
3. If any license or permit is necessary for the import or export of goods or services under this Agreement, the appropriate executive agent or other implementing agency for the receiving Party shall facilitate the obtaining of the necessary licenses or permits in an expeditious manner. Fees for licenses and permits imposed by the Government of the receiving Party on imports and exports for direct use in the implementation of the activities under this Agreement shall be borne by the receiving Party.

ARTICLE VI: LIABILITY

1. With respect to claims, other than contractual claims, the Parties shall not bring legal proceedings against each other or each other's personnel, contractors, and contractors' personnel for damage to each other's property, or death or injury to each other's personnel, in the territory of either party arising out of activities undertaken pursuant to this Agreement.
2. The Parties shall consult regarding claims by third parties against either Party, its personnel, contractors, and subcontractors for damage, loss, or destruction of property, or injury or death to any individual arising out of activities under this Agreement. The provisions of this Article shall not prevent the Parties from providing compensation in accordance with their national laws.



ARTICLE VII: RESPECT OF DOMESTIC LAW

Civilian and military personnel of the Government of the United States of America who are present in Kenya in connection with this Agreement shall respect the laws of the Republic of Kenya at all times.

ARTICLE VIII: AUDITS AND EXAMINATIONS, ACCESS TO THE SITES

1. The Parties shall jointly monitor the implementation of this Agreement, to observe the progress of activities undertaken pursuant thereto, and to examine the use of goods and services provided under this Agreement. Such reviews shall occur at the site of the relevant work or activity, or, as agreed, at any other location. For the purpose of a project performed pursuant to this Agreement, the Parties shall have access to sites where the projects are undertaken or planned to be undertaken. A Party providing assistance under this Agreement shall have the right to inspect and audit all records and documents related to activities undertaken pursuant to this Agreement both during and for three years after the completion of each activity. The inspected Party shall prepare for and participate in such audits. For each audit and inspection visit, the inspecting Party shall provide written notification, to include the scope of the audit and the inspection, to the other party prior to the visit. For each audit and inspection visit, the inspected Party shall provide written confirmation for inspection or audit and may give input to the scope of the audit. A Party receiving assistance under this Agreement shall have the right to request an audit related to such assistance.
2. The Parties shall receive a copy of any official audit or inspection report prepared jointly, on activities undertaken under this Agreement. The Party that is subject to such an inspection shall provide a response to the report.
3. The Parties shall establish a committee to monitor the implementation of this Agreement.

ARTICLE IX: PROHIBITION ON TRANSFERS AND UNAUTHORIZED USE

1. No Party shall transfer title to, or possession or control over, goods or services provided under this Agreement or shall permit the use of such goods or services



for purposes other than those for which they have been provided, without the consent of the other Party.

2. The Party in possession of goods and services provided pursuant to this Agreement shall take all reasonable measures to ensure security of the goods and services and shall protect them from theft or transfer to anyone other than someone designated by both Parties.
3. Each Party shall facilitate processing of goods and services related to this Agreement, within its territory, in order to ensure prompt delivery to their ultimate destinations.
4. The Parties shall agree on the modalities of transfer and sustainability of the goods and services pursuant to activities under the Agreement.

ARTICLE X: CONTRACTING

Any contract awarded by a Party for the acquisition of goods and services pursuant to this Agreement, including construction, shall be awarded to contractors, which may include U.S. and Kenyan contractors, and administered in accordance with that Party's acquisition and procurement laws and regulations.

ARTICLE XI: SETTLEMENT OF DISPUTES

Any differences concerning the interpretation or implementation of this Agreement shall be resolved solely through consultation or negotiation between the Parties.

ARTICLE XII: ENTRY INTO FORCE AND DURATION

1. This Agreement shall enter into force on the date of the last written notification in an exchange of notifications between the Parties by which the Parties notify each other, through diplomatic channels, of the completion of their internal legal procedures required for entry into force.
2. This Agreement shall remain in force, subject to Article XIII(2), for a period of five years from the date of its entry into force.
3. This Agreement may be renewed for an agreed period, upon mutual consultations and consent.



ARTICLE XIII: AMENDMENT AND TERMINATION

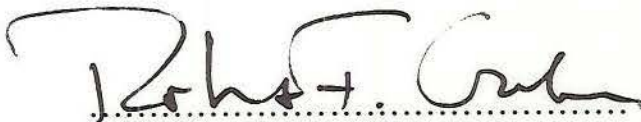
1. This Agreement may be amended by mutual written agreement of the Parties.
2. This Agreement may be terminated by either Party upon giving the other Party at least six (6) months written notification of intention to terminate.
3. Notwithstanding the termination of this Agreement, the obligations of both Parties with respect to the on-going activities shall continue until their completion subject to Article IV of this Agreement. Additionally, the obligations of the Parties, with respect to the goods and services provided under this Agreement, shall continue to apply, as specified in Article IX, unless otherwise agreed, and as specified in Articles VI and VIII.
4. Upon termination, the Parties shall consult regarding issues that arise in that context.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Parties, have signed this Agreement in two originals, in English.

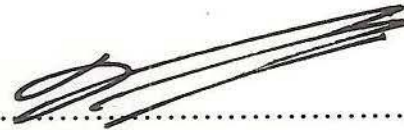
DONE at Nairobi, this 24 July 2015

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA



AMB. ROBERT F. GODEC
AMBASSADOR OF THE UNITED
STATES OF AMERICA TO KENYA



MR. JAMES MACHARIA
CABINET SECRETARY FOR
HEALTH



**AGREEMENT TO RENEW
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF KENYA
CONCERNING COOPERATION IN THREAT REDUCTION BIOLOGICAL
ENGAGEMENT PROGRAMS**

The Government of the United States of America and the Government of the Republic of Kenya, hereinafter referred to jointly as the “Parties”;

Recalling the Agreement between the Government of the United States of America and the Government of the Republic of Kenya Concerning Cooperation in Threat Reduction Biological Engagement Programs, done at Nairobi July 24, 2015, and entered into force April 6, 2017 (the “Umbrella Agreement”);

Hereby agree as follows:


1. The Umbrella Agreement shall be renewed for a period of seven years, through April 5, 2029.
2. This Agreement shall enter into force upon signature by both Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Protocol.

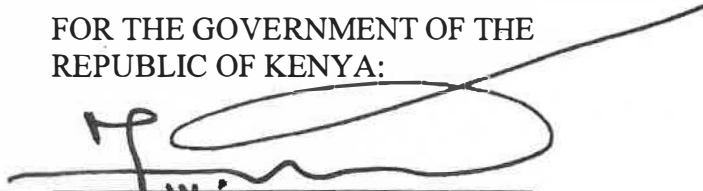
DONE at AFYA HOUSE, NAIROBI, on 5th APRIL 2022 in two originals, in the English language.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF KENYA:



CHARGÉ D’AFFAIRES, A.I.
ERIC KNEEDLER
EMBASSY OF THE UNITED STATES OF
AMERICA
NAIROBI, KENYA



SEN. MUTAHI KAGWE, EGH,
CABINET SECRETARY,
MINISTRY OF HEALTH,
KENYA