

Term sheets for COD Aid contracts

This appendix provides term sheets and schedules for two contracts necessary to implement a Cash on Delivery Aid (COD Aid) agreement on primary education. The first contract and schedule detail the relationship and commitments between funders and recipients, and the second those between funders and a “verification agent”—that is, the organization contracted to verify delivery of the outcomes detailed in the first contract. The terms sheets for the contract are generic and can be used for any COD Aid agreement by replacing the education goal with an alternative. In such a case, the schedules presented here—specific to the primary education proposal—would be replaced with correspondingly detailed schedules specific to the alternative goal.

We developed these terms sheets through research and consultation with representatives from government, nongovernmental organizations, research centers, and development agencies. They represent our best effort to propose a set of contracts with a strong likelihood of success, since they address a range of concerns that experts and practitioners raised. Funders and recipients can use this template to draw up contracts that suit their needs. Brackets are used to indicate items that require specification (for example, the baseline of enrollment or the name of an organization). In cases where several options exist and the optimal choice is unclear, we have provided notes that discuss other options.

Model term sheet for Contract 1:***COD Aid agreement between Funder(s) and Recipient(s)***

1. *Parties:* One or more governmental grant-making agencies, multilateral agencies or initiatives, or non-governmental organizations or foundations (each a “**Funder**”)[1], and one or more governments or governmental agencies (each an “**Implementing Authority**”).[2]

2. *Purpose of Contract:* Create a legally binding series of agreements that guarantees the Funder(s) will make a fixed payment to the Implementing Authority for each additional unit of progress toward one or more educational goals (the “**Education Goal**”)[3] as specified in Schedule A, “Contract provisions regarding units of measurement and payment.”[4]

3. *Benefits to Funder:* Fulfills the Funder’s philanthropic mission (in the case of a non-governmental entity) and/or the Funder’s statutory or regulatory mandate (in the case of a governmental entity) by (a) giving the Implementing Authority(s) an incentive to accelerate progress in reaching the Education Goal, (b) providing the Implementing Authority(s) with financial resources that can be used flexibly to advance the Education Goal, and (c) reducing the administrative burden of providing financial assistance to reach the Education Goal.

4. *Benefits to Implementing Authority:* Allows the Implementing Authority (a) to pursue a comprehensive strategy for reaching the Education Goal with less intrusive engagement by the Funder(s); (b) to use the Funder(s)’ financial assistance in whatever manner it chooses to reach the Education Goal most effectively and efficiently; (c) to reduce the administrative burden of receiving financial assistance; (d) to shift accountability for the use of financial assistance from foreign taxpayers to domestic constituencies; and (e) to reorient the discussion between the Funder(s) and the Implementing Authority(s) from a focus on inputs to a focus on measurement and results.

5. *Conditions of payment:* Funder(s) agree(s) to pay the Implementing Authority an amount for each unit of progress as specified in Schedule A, with no minimum targets to activate payment and no restrictions on the use of the funds.

6. *Term:* The contract term is five years, with the expectation that it will be renewed in five-year increments.

7. *Reporting:* The Implementing Authority will submit annual reports on progress toward the Education Goal within the time-frame set forth in Schedule A.

8. *Verification:* The Funder(s) will contract a firm or agency from the list in Schedule B (hereafter the **Verification Agent**)[5] to audit the government’s report and verify its accuracy through the use of independently collected information (for example, a

[1] Funders can be bilateral and multilateral agencies, private foundations, or other non-governmental actors.

[2] This is written with national governments in mind. But the Implementing Authority could be a ministry of education, ministerial department (for example, for primary education), subnational government, or non-governmental or private education system.

[3] See chapter 3 for a detailed discussion on choosing the education goal.

[4] The contract could be aimed at goals in other sectors instead.

[5] The Verification Agent can be a consulting firm, research firm, or agency selected by the Funder(s) from a list of agents agreed to by the Funder(s) and the Implementing

statistically representative survey). The Implementing Authority will allow the Verification Agent the access needed to complete this report.

9. Additionality: The Funder(s) commits to ensuring that the payments made under this contract are treated as additional to other assistance provided in or to the country of the Implementing Authority. The Funder(s) commits to abide by existing aid commitments and to act in good faith so that the payments made under this contract are treated as additional to other forms of financial assistance by the Funder(s).

10. Termination and indemnification: The Implementing Authority can terminate the contract at any time upon giving 90 days notice. In such an event, the Implementing Authority will forfeit any payments associated with progress subsequent to the previous annual progress report and can make no further claims on the Funder with respect to this contract. The Funder can terminate the contract with 90 days notice after paying a penalty equivalent to the expected value of the contract to the Implementing Authority over the remaining term of the contract, as determined by an independent committee (hereafter the **Arbitration Committee**) to be selected according to procedures detailed in Schedule C.[6]

11. Dispute resolution: The Funder and Implementing Authority may appeal any unresolved disputes to an Arbitration Committee, comprised of five individuals mutually agreed upon by the Parties according to procedures detailed in Schedule C. Members of the Arbitration Committee will be reimbursed for reasonable travel expenses and paid a reasonable honorarium in compensation for their service. The plaintiff will pay the expenses of the Arbitration Committee; however, plaintiff can be reimbursed for these expenses if the appeal is successful, at the discretion of the Committee.

12. Public disclosure: The contents of this contract, the reports on progress with respect to the Education Goal, and the report of the Verification Agent will be publicly disseminated as set forth in Schedule A.

13. Accompanying research: The Implementing Authority is obligated to allow and facilitate research into how education policies and institutions may change as a result of this contract. Although the Implementing Authority has no obligation to finance such research, it is required to facilitate researchers' access to primary educational and public finance data, including test scores at the individual level with appropriate safeguards to ensure privacy of the individuals who have been tested. The final research report will be subject to external peer review before publication, and appropriate measures will be taken to protect privacy of all individuals.

14. Dispute resolution: [TBD]

Authority(s) as part of this contract (see Schedule A). This list could be established by requesting initial bids from interested organizations, which could be reviewed and approved by the Funder(s) and Implementing Authority before finalizing the contract. Schedule B would be a list, and a model version is not included in this appendix.

[6] A model for Schedule C is not included in this appendix. It would provide procedures and criteria for selecting an Arbitration Committee in the event of a dispute between the parties. It could establish a process for each party to nominate individuals for the committee. The criteria would require that individuals serving on the Arbitration Committee are internationally respected individuals who are not citizens of the countries involved in the dispute and who have relevant expertise in law, education, finance, or the social sciences.

15. *Governing law*: [TBD]

16. *Waiver of immunity*: [Appropriate provisions to ensure that if either or both parties are sovereign, they will be bound by the terms of the contract]

17. *Force majeure*: [TBD]

18. *Other provisions*: [TBD]

Model term sheet for Contract 1, Schedule A:

Specification of the Education Goal for the COD Aid agreement between Funder(s) and Recipient(s)

1. *Education Goal*: The Education Goal is to ensure that every child completes a good quality primary education.[1]

2. *Units of measurement and payment*: The Funder commits to pay the Implementing Authority \$20 per assessed completer to a maximum set by the Base Year Enrollment of [NUMBER] students[2] and \$200 per assessed completer in excess of the Base Year Enrollment.[3] Upon first renewing the contract (after 5 years), the Base Year Enrollment will be adjusted annually, becoming equal to the total number of assessed completers five years earlier.

3. *Assessed completers*: An assessed completer is a student who is enrolled in the terminal year of primary school and who takes an approved standardized test. The examination must be a standardized test of relevant competencies that is equated to permit comparisons from year to year and which is mutually accepted by the Funder and the Implementing Authority.[4]

4. *Reporting*: The Implementing Authority will report the number of assessed completers and average test scores for each primary school to the Funder and the Verification Agent in a timely fashion. The information will be provided in a format that facilitates analysis of the information's validity, reliability, accuracy, and ease of dissemination.

5. *Verification*: The Verification Agent will conduct a retest of a random sample of schools within 3 weeks of the official test. The date of the retest will be public information but the exact schools chosen will be known only to the Verification Agent. The sample will be large enough to test, with 95 percent confidence, that the official report is no more than 5 percent above the Verification Agent's estimate of the true number of assessed completers. The Verification Agent will also gather information from schools regarding enrollment to compare with the list of eligible assessed completers and compare test scores to identify significant discrepancies that might indicate manipulation of results.

[1] Other education goals that have been suggested include improved quality of schooling, numbers of students completing primary school, and numbers of students successfully entering or completing secondary school. For further discussion, see chapter 3.

[2] The base year enrollment may not be known with certainty if the Implementing Authority's education information system is unreliable. What is essential is that the two parties agree on a number for the base year enrollment, specified here, to determine the level at which the higher payment is triggered.

[3] For a discussion on setting the amount of the payment, see chapter 3.

[4] The specific exam does not have to be agreed upon before the contract is signed. The criteria for an acceptable exam and a process for judging whether the test meets those criteria are required before signature. See chapter 3 for a detailed discussion of testing and criteria.

6. *Conditions for and timing of payments:* The Funder will make payments as specified in Contract 1, Schedule A, Item 2 after: (a) the Verification Agent’s Report confirms that the Implementing Authority’s reported number of assessed completers is no more than 5 percent higher than the estimated number of assessed completers; (b) the Implementing Authority is complying with the commitment to publicly disseminate the number of assessed completers and test scores at the school level; and (c) the Implementing Authority is cooperating with researchers who have been contracted to evaluate the COD Aid agreement. This payment will be effected within three (3) months of receiving the Implementing Authority’s Report. [5]

7. *Discrepancies between official and estimated test results:* If the Verification Agent finds that the Implementing Authority’s Report overstates the number of assessed completers by more than 5 percent (with 95 percent statistical confidence), then the amount paid by the Funder will be reduced and calculated as follows. The Verification Agent’s estimate of total assessed completers (V1) will be divided by the Implementing Authority’s reported number of assessed completers (I1) to calculate a Quotient (Q). The amount paid for each assessed completer up to the Base Year Enrollment (as described in Item 2) will be equal to the Quotient (Q) multiplied by \$20, and the amount paid for each assessed completer in excess of Base Year Enrollment (as described in Item 2) will be the Quotient (Q) multiplied by \$200.

8. *Public dissemination:* The Implementing Authority will publicly disseminate its report on assessed completers and average test scores for each school, and by gender and ethnic or racial classifications reported in the most recent census.[6]

9. *Eligibility:* The Implementing Authority will be eligible only if it (a) operates in a low-income country (as defined by the World Bank); and (b) is legally responsible for providing primary education to a large share of the population in a relevant geographic area.[7][8]

[5] The level of disaggregation in the publicly disseminated report could be set at the school, school district, municipal, or state levels. It should be set at the finest level of disaggregation that is possible relative to the precision and reliability of the information.

Initially, national test scores could be reported publicly, with the level of disaggregation increasing over time as confidence in the national learning assessment’s validity and reliability increase.

[6] See note [5].

[7] Alternative eligibility criteria could be used. For example, middle-income countries could be included, with the expectation that the amount of money would be most attractive to lower income countries.

[8] Additional eligibility could be included to address such factors as reliable information systems, good quality data collection, institutional capacity, availability of standardized tests, effective governance in managing public funds, and participation in an international sector strategy process (for example, SWAPs or FTI). But adding such restrictions would preclude COD Aid agreements with many countries that might otherwise benefit significantly (see chapter 2).

Model term sheet for Contract 2:***Contract between Funder(s) and Verification Agent***

1. *Parties:* The **Funder(s)** party to Contract 1 and a consulting firm, research firm, or agency (hereafter the **Verification Agent**) selected through the process specified in Contract 1.
2. *Purpose of contract:* To create a legally binding agreement by which the Funder(s) appoints the Verification Agent to verify the accuracy of each annual Report on Progress provided by the Implementing Authority (as specified in Contract 1, Schedule A, Item 6).
3. *Term:* The term of this contract shall be the same as the initial term of Contract 1.
4. *Report:* The Verification Agent shall submit its Verification Report to the Funder(s) and Implementing Authority within 4 weeks of completing a retest of sample schools.
5. *Compensation:* Funder(s) agree(s) to pay Verification Agent annually [cost plus fee] upon determining that the annual Verification Report meets the standards set forth in Contract 2, Schedule A. If the Funder(s) does not make such a determination within 30 days of receiving the report, the Funder(s) is obligated to pay the annual fee in full.
6. *Termination:* If Contract 1 for any reason is terminated or otherwise becomes void, Verification Agent shall cease work on the current Verification Report. Verification Agent shall then present an invoice and Funder(s) shall compensate Verification Agent for expenditures made on the current Verification Report.
7. *Dispute resolution:* [Process for resolution of disputes between Funder and Verification Agent or Implementing Authority and Verification Agent.]

Model term sheet for Contract 2, Schedule A:***Specification of the Verification Report in the case of Primary Education***

1. *Purpose:* The Verification Report will provide adequate information to judge the accuracy of the annual Report on Progress submitted by the Implementing Authority. The Report on Progress will be considered accurate if the Verification Agent can demonstrate with 95 percent confidence that the number of assessed completers in the Report on Progress is no more than 5 percent greater than the Verification Agent's estimate of the true number of assessed completers.

2. *Content:* The Verification Report will verify the quality of the data presented in the Report on Progress by the Implementing Authority.

3. *Transparency:* The Verification Report will include a full description of the methods, sampling, data collection, data, analysis, and conclusions.

4. *Characteristics of Data Quality Verification:* the Verification Agent will review and assess the data, reporting, and procedures used by the Implementing Authority to prepare its Report on Progress. This review will include normal audit procedures and the results of a retest of a randomly selected nationally representative sample of schools.

The Verification Agent will verify the reported numbers of students taking the approved test and the number of assessed completers according to agreed parameters (for example, enrollment in final year of primary school) as specified in Contract 1, Schedule A.

The Verification Agent will verify the reported average test scores for each school and for the nationally representative sample as specified in Contract 1, Schedule A.

The Verification Agent will verify that the test is comparable from one year to the next and that it meets previously agreed upon standards as set forth in Contract 1, Schedule A.