



Development Objective Agreement and Bilateral Project Agreement Template [non-health]

A Mandatory Reference for ADS Chapters 350 and
220

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When used as a Bilateral Project Agreement, substitute all instances of “Development Objective Agreement” with “Bilateral Project Agreement” and substitute all instances of “Development Objective” with “Project.”

Development Objective Grant Agreement (DOAG)

DOAG Principal Text.

USAID Grant Agreement No. _____

DEVELOPMENT OBJECTIVE GRANT AGREEMENT

BETWEEN THE

UNITED STATES OF AMERICA

AND

[NAME OF COUNTRY]

FOR

[]

Dated:

Development Objective Grant Agreement

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DEVELOPMENT OBJECTIVE GRANT AGREEMENT

Dated:

Between

The United States of America, acting through the United States Agency for International Development ("USAID")

and

[Name of Country] (hereinafter referred to as the "Grantee")

Article 1: Purpose.

The purpose of this Development Objective Grant Agreement ("Agreement") is to set out the understanding of the parties named above (the "Parties") about the Development Objective described below.

Article 2: Development Objective and Results.

Section 2.1. Development Objective. The Development Objective ("Objective") is: [state objective].

Section 2.2. Results. In order to achieve that Objective, the Parties agree to work together to achieve the following Results: [state Results]. Within the limits of the definition of the Objective in Section 2.1, this Section 2.2 [insert "may" or "may not"] be changed by written agreement of the authorized representatives of the Parties without formal amendment to the Agreement.

Section 2.3. Annex 1, Amplified Description. Annex 1, attached, amplifies the above Objective and Results. Within the limits of the above [Option 1 (changes to Annex 1 limited by definition of Development Objective): "definition of the Objective in Section 2.1."][Option 2 (changes to Annex 1 limited by both Development Objective and Results sections): "definitions of the Objective in Section 2.1 and the Results in Section 2.2,"] Annex 1 may be changed by written agreement of the Authorized Representatives of the Parties without formal amendment of this Agreement.

Article 3: Contributions of the Parties.

Section 3.1. USAID Contribution.

(a) The Grant. To help achieve the Objective set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee under the terms of the Agreement not to exceed _____ United States ("U.S.") Dollars (\$_____) (the "Grant").

[If incrementally funded, insert the following paragraph (b)]

(b) Total Estimated USAID Contribution. USAID's total estimated contribution to achievement of the Objective will be U.S. \$ _____, which will be provided in increments. Subsequent increments will be subject to the availability of funds to USAID for this purpose [Insert one of the following:¹ “and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed” OR “and may be provided by USAID upon written notice to the Grantee”]. The Parties agree that each such incremental contribution provided, if any, shall cumulatively increase the total amount of the Grant set forth in Section 3.1(a) and consequently may increase the Grantee’s contribution under Section 3.2. [In the case of unilateral incremental funding, insert the following: “The Grantee further agrees to acknowledge by written notice to USAID each such incremental contribution, if any.”]

(c) If at any time USAID determines that its contribution under Section 3.1(a) exceeds the amount which reasonably can be committed for achieving the Objective or Results or activities during the current or next U.S. fiscal year, USAID may, upon written notice to the Grantee, withdraw the excess amount, thereby reducing the amount of the Grant as set forth in Section 3.1(a). [If incrementally funded, insert the following: "Actions taken pursuant to this subsection will not revise USAID's total estimated contribution set forth in 3.1(b)." If NOT incrementally funded, insert the following: "Actions taken pursuant to this subsection will not revise USAID's total estimated contribution below that set forth in 3.1(a), subject to the availability of funds to USAID for this purpose and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed."]

Section 3.2. Grantee Contribution.

(a) The Grantee agrees to provide or cause to be provided all funds, in addition to those provided by USAID and any other donor identified in Annex 1, and all other resources required to complete, on or before the Completion Date, all activities necessary to achieve the Results.

(b) The Grantee's contribution will not be less than the equivalent of U.S. \$ [], or x units of local currency, including in-kind contributions. The dollar equivalent was calculated at the exchange rate of [U.S. \$1 = _] The Grantee will report at least annually in a format to be agreed upon with USAID on its cash and "in-kind" contributions.

[If Grantee contribution is to be tied to USAID increments or subject to conditions, one of the following or other appropriate language may be inserted in lieu of (b) above:

"(b) The Grantee's contribution, based on USAID's contribution in Section 3.1(a), will not be less than the equivalent of U.S. \$ [], including in-kind contributions. If USAID increases the amount of the Grant in Section 3.1(a) incrementally, as contemplated herein, the Grantee’s contribution shall increase with each increment accordingly, such that the Grantee’s contribution will not be less than the equivalent of [one-third] of that portion of the Grant that is used to support activities that either directly provides substantial benefit to the Government of _____ or involves the direct and substantial involvement of the Government of _____ in the administration, control or management of such assistance. The precise amount of Grantee contribution shall be indicated in USAID’s written notice of each incremental

¹ In the case of incremental funding that will be mutually agreed upon by both parties, use the first option. In the case of unilateral incremental funding by USAID, use the second option.

contribution. The Grantee's Total Estimated Planned Contribution to the Objective will be subject to availability of funds to the Grantee for this purpose and to USAID providing the total estimated amount in Section 3.1(b). The Grantee will report at least annually in a format to be agreed upon with USAID on its cash and in-kind contributions."²

"(b) The Grantee's contribution, based on USAID's contribution in Section 3.1(a), will not be less than the equivalent of one-third of the portion of the Grant that is used to support activities that directly benefit the Grantee or involves the direct and substantial involvement of the Government of [Insert: Name of Country] in the administration, provided that such amount may be reduced with the written consent of USAID. The Grantee's contribution may include either cash or in-kind contributions or both. The dollar equivalent amount of the Grantee's contribution shall be set forth in an Implementation Letter and shall be subsequently included in the Illustrative Financial Plan included in Annex 1 of this Agreement. The amount of the Grantee's contribution shall be adjusted upon any increase in the amount of the Grant set forth in Section 3.1(a), in accordance with the formula described in the first sentence of this paragraph, and the precise amount of such adjustment shall be indicated in an Implementation Letter. The Grantee will report at least annually in a format to be agreed upon with USAID on its cash and "in-kind" contributions."]³

Article 4: Completion Date.

(a) The Completion Date, which is [insert date], or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objective and Results will be completed.

(b) Except as USAID may otherwise agree to in writing, USAID will not issue or approve documentation that would authorize disbursement of the Grant for services performed or goods furnished after the Completion Date.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, are to be received by USAID no later than nine (9) months following the Completion Date, or such other period as USAID agrees to in writing before or after such period. After such period USAID, at any time or times, may give notice in writing to the Grantee and reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period.

Article 5: Conditions Precedent to Disbursement.

Section 5.1. First Disbursement. Prior to the first disbursement under the Grant, or to the issuance by USAID of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to USAID in form and substance satisfactory to USAID:

² This paragraph may be used in the case where the Grantee contribution is to be tied to USAID increments or subject to conditions.

³ This paragraph may be used in the case where the Grantee contribution is to be tied to USAID increments and is to be determined in subsequent Implementation Letters.

[Insert conditions precedent to first disbursement, such as:

"(a) An opinion of counsel acceptable to USAID that (i) this Agreement has been duly authorized or ratified by, and executed on behalf of the Grantee, and (ii) constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms, and (iii) all internal actions and approvals necessary to give effect to this Agreement have been obtained by or on behalf of the Grantee; and

"(b) A signed statement in the name of the person holding or acting in the office of the Grantee specified in Section 7.2, which designates by name and title of any additional representatives, each of whom may act pursuant to Section 7.2."

(c) [Additional conditions as determined by the Operating Unit]]

[If there are conditions precedent to additional disbursement insert the following:]

Section 5.2. Additional Disbursement. Prior to additional disbursement under the Grant, or to the issuance by USAID of documentation pursuant to which additional disbursement will be made, the Grantee will, unless waived in writing by USAID, furnish to USAID, in form and substance satisfactory to USAID:

[Insert conditions precedent to additional disbursement.]

Section 5.3. Notification. USAID will promptly notify the Grantee when USAID has determined that a condition precedent has been met.

Section 5.4. Terminal Dates for Conditions Precedent.

(a) The terminal date for meeting the conditions specified in Section 5.1 is [] days from the date of this Agreement or such later date as USAID may agree to in writing before or after the above terminal date. If the conditions precedent in Section 5.1 have not been met by the above terminal date, USAID, at any time, may terminate this Agreement by written notice to the Grantee.

[If there is a terminal date(s) for conditions precedent to additional disbursement insert the following:]

(b) The terminal date for meeting the conditions specified in Section 5.2 is [] days from the date of this Agreement or such later date as USAID may agree to in writing before or after the above terminal date. If the conditions precedent in Section 5.2 have not been met by the above terminal date, USAID, at any time, may cancel the undisbursed balance of the Grant, to the extent not irrevocably committed to third parties, and terminate this Agreement by written notice to the Grantee.

Article 6: Special Covenants.

(a) The Grantee, in conjunction with the appropriate Government of _____ ministries and offices, hereby covenants and agrees to issue, renew and/or extend free of charge and in a timely manner all official permits, visas, exemptions and any other permissions (including all approvals as may be required from time to time to ensure full access to information, project sites and relevant offices) for the Applicable Persons (as defined below) carrying out activities

financed by USAID under this Agreement (collectively, the “Required Documents”). For purposes of this provision, Applicable Persons is defined as: (i) employees and consultants of any contractors, grantees and other organizations carrying out activities financed by USAID under this Agreement and (ii) members of such employees’ and consultants’ households. Any renewals or extensions of such Required Documents that are required, or become required, in order for such employees, consultants and dependent family members to legally reside in [Insert: Name of Country] and undertake the activities contemplated by and financed under this Agreement shall also be issued free of charge.

[Insert any additional special covenants, and appropriately include the phrase “Except as USAID may otherwise agree in writing”.]

Article 7: Miscellaneous.

Section 7.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram telefax cable or electronic mail (“e-mail”), and will be deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address:

United States Agency for International Development

Alternate address for cables:

Telefax:

E-mail:

To the Grantee:

Mail Address:

Alternate address for cables:

Telefax:

E-mail:

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

Section 7.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the Office of [] and USAID will be represented by the individual holding or acting in the Office of [], each of whom, by written notice, may designate additional representatives for [insert "all purposes" or specific purposes and any conditions governing actions of additional representatives, e.g. other than signing formal amendments to the Agreement or exercising the power under Sections 2.2 or 2.3 to revise the Results or Annex 1]. The names and titles of the additional representatives of the Grantee will be provided pursuant to Section 5.1(b) to USAID, which may accept as duly

authorized any instrument signed by such additional representatives (or any individuals subsequent holding or acting in the office of such representatives) in accordance with this Section 7.2, until receipt of written notice of revocation of their authority.

Section 7.3. Standard Provisions Annex. A "Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

Section 7.4. Language of Agreement. This Agreement is prepared in both English and [French, Spanish, etc.]. In the event of ambiguity or conflict between the two versions, the English language version will control.

IN WITNESS WHEREOF, the United States of America and the Grantee, each acting through its duly authorized representatives, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

UNITED STATES OF AMERICA⁴

[NAME OF COUNTRY OR GRANTEE]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

⁴ Note that if it is desired that the Ambassador sign this agreement, (a) his/her signature should be *in addition to* the authorized USAID representative, and a corresponding Grantee representative signature block should be included as well, or (b) a delegation of authority to the Ambassador must be made.

DOAG Annex 1 Amplified Description

I. Introduction.

This annex describes the activities to be undertaken and the results to be achieved with the funds obligated under this Development Objective Agreement] for [state objective from Section 2.1]. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

II. Background.

[Concise description of the problem(s) being addressed at the macro, sectoral or subsectoral level]

III. Funding.

Financial Plan. The financial plan for the Program is set forth in the attached table.

[Suggested language on the discretion to amend the Financial Plan: "Changes may be made to the financial plan by representatives of the Parties without formal amendment to the Agreement, if such changes do not cause (1) USAID's contribution to exceed the amount specified in Section 3.1 of the Agreement, or (2) the Grantee's contribution to be less than the amount specified in Section 3.2 of the Agreement."]

IV. Results To Be Achieved/Results Framework.

[Using the results framework, list the essential or significant results here or in the Agreement.]

V. Indicators.

[State interim and final measurable indicators by which achievement of Results will be measured.]

VI. Activities/Activity Selection.

[Either state the specific activities to be financed under the DOAG or, if specific activities are not yet identified, the objective criteria and procedures for selection of actual activities.]

VII. Roles and Responsibilities of the Parties.

[Discussion of involvement of other partners and customers should be included.]

VIII. Environment. [Discussion of DOAG-specific environmental requirements from the IEE, as identified upon initial and incremental obligations.]

IX. Monitoring and Evaluation.

X. Other Implementation Issues.

[For example, with respect to the audit provisions of B.5 of the Standard Provisions Annex,

Annex 1

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there could be provisions on the methodology, funding and timing of audits of host country contractors and other sub-recipients receiving funds directly from the Grantee and agreement that for sub-recipients receiving funds directly from USAID that in lieu of an audit plan, their grants and contracts will contain the necessary audit provisions.]

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Standard Provisions

Article A: Definitions and Implementation Letters.

Section A.1. Definitions. As used in this Annex, the "Agreement" refers to the Development Objective Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Section A.2. Implementation Letters. To assist the Grantee in the implementation of the Agreement, USAID, from time to time, will issue Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Implementation Letters can also be issued to record revisions or exceptions that are permitted by the Agreement.

Article B: General Covenants.

Section B.1. Consultation. The Parties will cooperate to assure that the Objective and Results of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on progress towards the Objective and Results, the performance of obligations under this Agreement, the performance of any consultants, contractors, or suppliers engaged under the Agreement, and other matters relating to the Agreement.

Section B.2. Execution of Agreement. The Grantee will:

(a) Carry out the Agreement and the activities required to be undertaken directly (or caused to be undertaken) by the Grantee, or cause the Agreement and such activities to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules, or other arrangements, and with any modifications therein, approved by USAID pursuant to this Agreement; and

(b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of activities financed under the Agreement, and, as applicable for continuing activities, cause those activities to be operated and maintained in such manner as to assure the continuing and successful achievement of the Objective and Results of the Agreement.

Section B.3. Utilization of Goods and Services.

Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be devoted to the Agreement until the completion or termination of the Agreement, and thereafter (as well as during any period of suspension of the Agreement) will be used to further the Objective of the Agreement and as USAID may direct in Implementation Letters.

Section B.4. Taxation. [See ADS 350 or <http://www.state.gov/m/rm/c10443.htm> for more information on taxation.]

(a) General Exemption. The Agreement and the assistance thereunder are free from any taxes imposed under laws in effect in the territory of the Grantee.

(b) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to (1) any activity, contract, grant or other implementing agreement financed by USAID under this Agreement; (2) any transaction or supplies, equipment, materials, property or other goods (hereinafter collectively "goods") under (1) above; (3) any contractor, grantee, or other organization carrying out activities financed by USAID under this Agreement; (4) any employee of such organizations; and (5) any individual contractor or grantee carrying out activities financed by USAID under this Agreement.

(c) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to, the following taxes:

(1) Exemption 1. Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for the personal use of non-national individuals or their family members.

Exemption 1 includes, but is not limited to, all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo.

(2) Exemption 2. Taxes on the income, profits or property of all (i) non-national organizations of any type, (ii) non-national employees of national and non-national organizations, or (iii) non-national individual contractors and grantees. Exemption 2 includes income and social security taxes of all types and all taxes on the property, personal or real, owned by such non-national organizations or persons. The term "national" refers to organizations established under the laws of the Grantee and citizens of the Grantee, other than permanent resident aliens in the United States.

(3) Exemption 3. Taxes levied on the last transaction for the purchase of goods or services financed by USAID under this Agreement, including sales taxes, value-added taxes (VAT), or taxes on purchases or rentals of real or personal property. The term "last transaction" refers to the last transaction by which the goods or services were purchased for use in the activities financed by USAID under this Agreement.

(d) If a tax has been levied and paid contrary to the provisions of an exemption, USAID may, in its discretion, (1) require the Grantee to refund to USAID or to others as USAID may direct the amount of such tax with funds other than those provided under the Agreement, or (2) offset the amount of such tax from amounts to be disbursed under this or any other agreement between the Parties.

(e) In the event of a disagreement about the application of an exemption, the Parties agree to promptly meet and resolve such matters, guided by the principle that the

assistance furnished by USAID is free from direct taxation, so that all of the assistance furnished by USAID will contribute directly to the economic development of the country of the Grantee.

Section B.5. Reports and Information, Agreement Books and Records, Audits, and Inspections.

(a) Reports and Information. The Grantee shall furnish USAID accounting records and such other information and reports relating to the Agreement as USAID may reasonably request.

(b) Grantee Agreement Books and Records. The Grantee shall maintain accounting books, records, documents and other evidence relating to the Agreement, adequate to show, without limitation, all costs incurred by the Grantee under the Agreement, the receipt and use of goods and services acquired under the Agreement by the Grantee, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Grantee, the basis of award of Grantee contracts and orders, and the overall progress of the Agreement toward completion ("Agreement books and records"). The Grantee shall maintain Agreement books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the Grantee's option, with approval by USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Board (a subsidiary of the International Financial Reporting Standards Foundation) or (2) prevailing in the country of the Grantee. Agreement books and records shall be maintained for at least three years after the date of last disbursement by USAID or for such longer period, if any, required to resolve any litigation, claims or audit findings. For the avoidance of doubt, this Section B.5(b) applies solely to Grant funds expended directly by the Grantee.

(c) Grantee Audit. If \$300,000 or more of USAID funds are expended directly by the Grantee in its fiscal year under the Agreement, the Grantee shall have financial audits made of the expenditures in accordance with the following terms, except as the Parties may otherwise agree in writing:

(1) With USAID approval, the Grantee shall use its Supreme Audit Institution or select an independent auditor in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General ("Guidelines"), and the audits shall be performed in accordance with the "Guidelines"; and

(2) The audit shall determine whether the receipt and expenditure of the funds provided under the Agreement are presented in accordance with generally accepted accounting principles agreed to in sub-section (b) above and whether the Grantee has complied with the terms of the Agreement. Each audit shall be completed no later than nine months after the close of the Grantee's year under audit.

(d) Sub-recipient Audits. The Grantee, except as the Parties may otherwise agree in writing, must ensure that "covered" sub-recipients, as defined below, are audited, and submit to USAID, no later than the end of the Grantee's year under audit, in form and

substance satisfactory to USAID, a plan for the audit of the expenditures of "covered" sub-recipients, as defined below, that receive funds in connection with a direct contract or agreement entered into directly with the Grantee pursuant to the activities contemplated by this Agreement.

(1) A "covered" sub-recipient is one who expends \$300,000 or more in its fiscal year in "USAID awards" (i.e., as contractors or sub-recipients under USAID-financed development objective agreements and other grant agreements with foreign governments).

(2) The plan shall describe the methodology to be used by the Grantee to satisfy its audit responsibilities for covered sub-recipients. The Grantee may satisfy such audit responsibilities by relying on independent audits of the sub-recipients; expanding the scope of the independent financial audit of the Grantee to encompass testing of sub-recipients' accounts; or a combination of these procedures.

(3) The plan shall identify the funds made available to covered sub-recipients that will be covered by audits conducted in accordance with other audit provisions that would satisfy the Grantee's audit responsibilities. (A nonprofit organization organized in the United States is required to arrange for its own audits. A for-profit contractor organized in the United States that has a direct contract with USAID is audited by the cognizant U.S. Government Agency. A private voluntary organization organized outside the United States with a direct grant from USAID is required to arrange for its own audits. A Grantee contractor should be audited by the Grantee's auditing agency.)

(4) The Grantee shall ensure that covered sub-recipients under direct contracts or agreements with the Grantee take appropriate and timely corrective actions; consider whether sub-recipients' audits necessitate adjustment of its own records; and require each such sub-recipient to permit independent auditors to have access to records and financial statements as necessary.

(e) Audit Reports. The Grantee shall furnish or cause to be furnished to USAID an audit report for each audit arranged for by the Grantee in accordance with this Section within 30 days after completion of the audit and no later than nine months after the end of the period under audit.

(f) Other Covered Sub-recipients. For "covered" sub-recipients who receive funds under the Agreement pursuant to direct contracts or agreements with USAID, USAID will include appropriate audit requirements in such contracts or agreements and will, on behalf of the Grantee, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(g) Cost of Audits. Subject to USAID approval in writing, allowable, allocable and reasonable costs of audits performed in accordance with the terms of this Section may be charged to the Agreement.

(h) Audit by USAID. USAID retains the right to perform the audits required under this Agreement on behalf of the Grantee by utilizing funds under the Agreement or other resources available to USAID for this purpose, conduct a financial review, or otherwise

ensure accountability of organizations expending USAID funds regardless of the audit requirement.

(i) Opportunity to Audit or Inspect. The Grantee shall afford authorized representatives of USAID the opportunity at all reasonable times to audit or inspect activities financed under the Agreement, the utilization of goods and services financed by USAID, and books, records and other documents relating to the Agreement.

(j) Sub-recipient Books and Records. The Grantee will incorporate paragraphs (a), (b), (d), (e), (g), (h) and (i) of this provision into all sub-agreements with non-U.S. organizations which meet the \$300,000 threshold of paragraph (c) of this provision. Sub-agreements with non-U.S. organizations, which do not meet the \$300,000 threshold, shall, at a minimum, incorporate paragraphs (h) and (i) of this provision. Sub-agreements with U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

Section B.6. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed USAID, or caused USAID to be informed, in the course of reaching agreement with USAID on the Agreement, are accurate and complete, and include all facts and circumstances that might materially affect the Agreement and the discharge of responsibilities under this Agreement; and

(b) that it will inform USAID in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Agreement or the discharge of responsibilities under this Agreement.

Section B.7. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Agreement, except fees, taxes, or similar payments legally established in the country of the Grantee.

Section B.8. Information and Marking. The Grantee will give appropriate publicity to the Agreement as a program to which the United States has contributed, identify Agreement activity sites, and mark goods financed by USAID, as described in Implementation Letters.

Article C: Procurement Provisions.

Section C.1. Source and Nationality.

(a) All goods financed under the Agreement shall have their source, and the suppliers of all goods and services financed under the Agreement shall have their nationality, in countries included in Geographic Code [937 or 935¹], except as USAID may otherwise

¹ 937 is default unless waiver applicable to entire DOAG is approved before signing DOAG.

agree in writing and as follows:

- (1) Ocean transportation costs shall be financed under the Agreement only on vessels under flag registry of countries included in Code 935. Also see Section C.6 on use of U.S. flag vessels.
 - (2) Any motor vehicles financed under the Agreement will be of United States manufacture, except as USAID may otherwise agree in writing.
- (b) The nationality of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.
- (c) Provisions concerning restricted and ineligible goods and services may be provided in an Implementation Letter.
- (d) Transportation by air of property or persons financed under this Agreement will be on carriers holding United States certification, to the extent service by such carriers is available under the Fly America Act. This requirement may be further described by USAID in Implementation Letters.

Section C.2. Eligibility Date. No goods or services may be financed under the Agreement which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

Section C.3. Plans, Specifications and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

- (a) The Grantee will furnish to USAID upon preparation:
- (1) any plans, specifications, procurement or construction schedules, contracts, or other documentation between the Grantee and third parties, relating to goods or services to be financed under the Agreement, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished USAID on preparation; and
 - (2) such documentation will also be furnished to USAID, upon preparation, relating to any goods or services, which, though not financed under the Agreement, are deemed by USAID to be of major importance to the Agreement. Aspects of the Agreement involving matters under this subsection (a)(2) will be identified in Implementation Letters.
- (b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Agreement will be approved by USAID in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Agreement for engineering and other professional services, for construction services, and for such other services, equipment, or materials as may be specified in Implementation Letters, will be approved by USAID in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by USAID prior to execution; and

(d) Consulting firms used by the Grantee for the Agreement but not financed under the Agreement, the scope of their services and such of their personnel assigned to activities financed under the Agreement as USAID may specify, and construction contractors used by the Grantee for the Agreement but not financed under the Agreement, shall be acceptable to USAID.

Section C.4. Reasonable Price. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Agreement. Such items will be procured on a fair and, to the maximum extent practicable, competitive basis.

Section C.5. Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Agreement, the Grantee will furnish USAID such information with regard thereto, and at such times, as USAID may request in Implementation Letters.

Section C.6. Transportation

(a) In addition to the requirements in Section C.1(a), costs of ocean or air transportation and related delivery services may not be financed under the Grant, if the costs are for transportation under an ocean vessel or air charter which has not received prior USAID approval.

(b) Unless USAID determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, or otherwise agrees in writing:

(1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by USAID which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels; and

(2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by USAID and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.7. Insurance.

(a) Marine insurance on goods financed by USAID which are to be transported to the territory of the Grantee may be financed [as a Foreign Exchange Cost] under this

Agreement provided

- (1) such insurance is placed at the most advantageous competitive rate;
- (2) such insurance is placed in a country which is authorized under Section C.1(a); and
- (3) claims thereunder are payable in U.S. dollars or any freely convertible currency unless USAID agrees otherwise in writing.

If the Grantee (or government of the Grantee), by statute, decree, rule, regulation, or practice discriminates with respect to USAID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by USAID hereunder shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do marine insurance business in the United States.

(b) Except as USAID may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Agreement imported for the Agreement against risks incident to their transit to the point of their use under the Agreement; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Any such replacement will be of source and nationality of countries listed in USAID Geographic Code 935 as in effect at the time of replacement and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. Government-Owned Excess Property. The Grantee agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Agreement may be used to finance the costs of obtaining such property.

Section C.9. Procurement and Disbursement of Funds: The Grantee agrees that with respect to implementation of activities set forth in Annex 1, funds under the Grant may be contracted or otherwise committed and disbursed directly by USAID to third parties in accordance with USAID's normal regulations and procedures, unless otherwise agreed to by USAID in writing. USAID undertakes to provide periodic reports to the Grantee as to the status of USAID direct contracts and grants to third parties made with funds under the Grant no more frequently than quarterly or as the Parties may otherwise agree in writing.

Article D: Disbursements. [D.1, 2 and 3 are optional; clause can provide that disbursements will be made through such means as the Parties agree to in writing or as set forth in Annex 1. Modify C.7 (a) usage accordingly.]

Section D.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of conditions precedent, if any, the Grantee may obtain disbursements of funds under the Agreement for the Foreign Exchange Costs of goods or services required for the Agreement in accordance with its terms, by such of the following methods as may be mutually agreed upon:

(1) by submitting to USAID, with necessary supporting documentation as prescribed in Implementation Letters, (A) requests for reimbursement for such goods or services, or, (B) requests for USAID to procure commodities or services in Grantee's behalf for the Agreement; or,

(2) by requesting USAID to issue Letters of Commitment for specified amounts directly to one or more contractors or suppliers, committing USAID to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by the Grantee in connection with Letters of Commitment will be financed under the Agreement unless the Grantee instructs USAID to the contrary. Such other charges as the Parties may agree to may also be financed under the Agreement.

Section D.2. Disbursement for Local Currency Costs.

(a) After satisfaction of conditions precedent, if any, the Grantee may obtain disbursements of funds under the Agreement for Local Currency Costs required for the Agreement in accordance with terms of this Agreement, by submitting to USAID, with necessary supporting documentation as prescribed in Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursements may be purchased by USAID with U.S. Dollars. The U.S. Dollar equivalent of the local currency made available hereunder will be the amount of U.S. Dollars required by USAID to obtain the local currency.

Section D.3. Other Forms of Disbursement. Disbursements may also be made through such other means as the Parties may agree to in writing.

Section D.4. Rate of Exchange. If funds provided under the Agreement are introduced into the Partner Country by USAID or any public or private agency for purposes of carrying out obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee to any person for any purpose.

Article E: Termination; Remedies.

Section E.1. Suspension and Termination.

(a) Either Party may terminate this Agreement in its entirety by giving the other Party thirty (30) days written notice. USAID also may terminate this Agreement in part by

giving the Grantee thirty (30) days written notice, and suspend this Agreement in whole or in part upon giving the Grantee written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving the Grantee written notice, if (i) the Grantee fails to comply with any provision of this Agreement, (ii) an event occurs that USAID determines makes it improbable that the Objective or Results of the Agreement or the assistance program will be attained or that the Grantee will be able to perform its obligations under this Agreement, or (iii) any disbursement or use of funds in the manner herein contemplated would be in violation of the legislation governing USAID, whether now or hereafter in effect.

(b) Except for payment which the Parties are committed to make pursuant to non-cancellable commitments entered into with third parties prior to such suspension or termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to the Agreement, or to the suspended or terminated portion of the Agreement, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.

(c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under the Agreement, or under the applicable portion of the Agreement, be transferred to USAID if the goods are in a deliverable state.

Section E.2. Refunds.

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, USAID, notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed or supported under the Agreement are not used effectively in accordance with this Agreement, USAID may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for or in connection with such goods or services in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.

(c) The right under subsections (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

(d) (1) Any refunds under subsections (a) or (b), or (2) any refund to USAID from a contractor, supplier, bank or other third party with respect to goods or services financed under the Agreement, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the Agreement, to the

extent justified, and (B) the remainder, if any, will be subtracted from the amount of the Grant the amount of the Grant.

(e) Any interest or other earnings on funds disbursed by USAID to the Grantee under this Agreement prior to the authorized use of such funds for the Agreement will be returned to USAID in U.S. Dollars by the Grantee, unless USAID otherwise agrees in writing.

Section E.3. Non-waiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

Section E.4. Assignment. The Grantee agrees, upon request, to execute an assignment to USAID of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a Party to a direct U.S. Dollar contract which USAID financed in whole or in part out of funds granted by USAID under this Agreement.

Article F: Miscellaneous.

Section F.1. Investment Promotion. [include in agreements where investment promotion issues could be relevant]

Except as specifically set forth in the Grant or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used to provide a financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States.

Section F.2. Abortion and Involuntary Sterilization Restrictions. [Include in any Agreement that finances any democracy and governance activities that will support constitutional or any health-related legislative reform.]

(a) Funds made available under this Agreement must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

(b) No funds made available under this Agreement will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all

pregnancy options.

(c) No funds made available under this Agreement will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

(d) This provision must be included in all subagreements, including contracts and subawards, issued under this Agreement.

(e) USAID may issue implementation letters that more fully describe the requirements of this section.

Section F.3. Prohibition on Assistance to Drug Traffickers. [Include section if the Partner is a Major Narcotics Country- see ADS 206]

(a) USAID may terminate the Agreement or take other appropriate measures if the Grantee or a key individual of the Grantee is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

[If there are COVERED PARTICIPANTS]

(b) USAID may terminate assistance to, or take or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

[If there are LOANS OVER \$1000]

(c) For any loan over \$1000 made under the Agreement, the Grantee shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the Grantee if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(d) Upon notice by USAID of a determination under section (a) and at USAID's option, the Grantee agrees to immediately cancel, accelerate or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.

[If there is a DESIGNATED SUBRECIPIENT - modify the clause to fit the category of sub-recipient, e.g., if the designated sub-recipient is a U.S. NGO, review is not required and subparagraph (1) can be deleted]

(e) The Grantee agrees not to disburse, or sign documents committing the Grantee to disburse, funds to a sub-recipient designated by USAID ("Designated Sub-recipient") until advised by USAID that: (1) any United States Government review of the Designated Sub-recipient and its key individuals has been completed; (2) any related certifications have been obtained; and (3) the assistance to the Designated Sub-recipient has been

approved.

(1) The Grantee shall insert the following clause, or its substance, in its agreement with the Designated Sub-recipient:

(2) The Grantee reserves the right to terminate this Agreement or take other appropriate measures if the [Sub-recipient] or a key individual of the [Sub-recipient] is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking.”

Section F.4. Workers’ Rights. [Include in DOAGs where this may be relevant.]

Except as specifically set forth in the Grant or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that contributes to the violation of internationally recognized workers’ rights in the Partner country.

Section F.5 Terrorist Financing.

Consistent with numerous United Nations Security Council resolutions, both USAID and the Partner are firmly committed to the international fight against terrorism, and in particular, against the financing of terrorism. It is the policy of USAID to seek to ensure that none of its funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism. In accordance with this policy, the Partner agrees to use reasonable efforts to ensure that none of the USAID funds provided under this Agreement are used to provide support to individuals or entities associated with terrorism. USAID may issue Implementation Letters that more fully describe the requirements of this section.