



# Mandatory Standard Provisions For Non-U.S., Nongovernmental Recipients

A Mandatory Reference for ADS Chapter 303

Revision Date: 01/12/2007  
Responsible Office: M/OAA/P  
File Name: 303mab\_011207\_cd46

## Mandatory Standard Provisions For Non-U.S., Nongovernmental Recipients

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I. MANDATORY STANDARD PROVISIONS FOR NON-U.S. NONGOVERNMENTAL RECIPIENTS

1. ALLOWABLE COSTS (OCTOBER 1998)

a. The recipient shall be reimbursed for costs incurred in carrying out the purposes of this award which are determined by the Agreement Officer to be reasonable, allocable, and allowable in accordance with the terms of this award and the applicable\* cost principles in effect on the date of this award. The recipient may obtain a copy from the Agreement Officer. Brief definitions of what may be considered as reasonable, allocable, and allowable costs are provided below, however, it is the recipient's responsibility to ensure that costs incurred are in accordance with the applicable set of Cost Principles.

(1) Reasonable. Shall mean those costs which are generally recognized as ordinary and necessary and would be incurred by a prudent person in the conduct of normal business.

(2) Allocable Costs. Shall mean those costs which are incurred specifically for the award.

(3) Allowable Costs. Shall mean those costs which conform to any limitations in the award.

b. Prior to incurring a questionable or unique cost, the recipient shall obtain the Agreement Officer's written determination on whether the cost will be allowable.

c. It is USAID policy that no funds shall be paid as profit or fee to a recipient under this agreement or any subrecipient. This restriction does not apply to contractual relationships under this agreement.

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\*NOTE: For educational institutions use OMB Circular A-21; for all other non-profit organizations use OMB Circular A-122; and for profit making firms use Federal Acquisition Regulation 31.2 and USAID Acquisition Regulation 731.2.  
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[END OF PROVISION]

2. ACCOUNTING, AUDIT, AND RECORDS (OCTOBER 1998)

a. The recipient shall maintain financial records, supporting documents, statistical records and all other records pertinent to the award in accordance with generally accepted accounting principles formally prescribed by the U.S., the cooperating

\*An asterisk indicates that the adjacent information is new or substantively revised.

country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to sufficiently substantiate charges to this award. Accounting records that are supported by documentation will as a minimum be adequate to show all costs incurred under the award, receipt, and use of goods and services acquired under the award, the costs of the program supplied from other sources, and the overall progress of the program. Unless otherwise notified, the recipient records and subrecipient records which pertain to this award shall be retained for a period of three years from the date of submission of the final expenditure report and may be audited by USAID and/or its representatives.

- b. Foreign for-profit and non-profit organizations that expend \$300,000 or more per their fiscal year in "USAID awards", i.e. as recipients or subrecipients of USAID grants or cooperative agreements, or as cost reimbursable subcontractors of USAID grants or cooperative agreements, shall have an annual audit conducted in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General.
- c. Foreign for-profit and non-profit organizations expending less than \$300,000 per their fiscal year under USAID cost-reimbursable contracts, grants, cooperative agreements, or agreements with host governments shall be exempt from the above financial audit requirements, but are subject to the requirement to make records available upon request for review by USAID officials or their designees.
- d. USAID shall retain the right to conduct a financial review, require an audit, or otherwise ensure adequate accountability of organizations expending USAID funds regardless of the audit requirement.
- e. Foreign organizations that provide USAID resources to other organizations to carry out the USAID program and activities shall be responsible for monitoring their subcontractors or subgrantees. Allowable costs for limited scope subrecipient audits charged to USAID funds shall be limited to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort; earmarking; and reporting.
- f. The audit report shall be submitted to USAID within 30 days after completion of the audit; the audit shall be completed, and the report submitted, not later than 9 months after the close of the recipient's fiscal year. The USAID Inspector General will review this report to determine whether it complies with the audit requirements of this award. No audit costs may be charged to this award if audits have not been made in accordance with the terms of this provision. In cases of continued inability or unwillingness to have an audit performed in accordance with the terms of this provision, USAID will consider appropriate sanctions which may include suspension of all or a percentage of disbursements until the audit is satisfactorily completed.

- g. This provision in its entirety shall be incorporated into all subawards with non-U.S. organizations which meet the \$300,000 threshold as described at paragraph (b) of this Provision. Subawards to non-U.S. organizations which are for more than \$10,000 but do not meet the \$300,000 threshold shall at a minimum incorporate paragraph (d) of this Provision. Subawards of grants and cooperative agreements made to U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

[END OF PROVISION]

### **3. PAYMENT ADVANCES AND REFUNDS (OCTOBER 1998)**

- a. Recipients shall maintain advances of USAID funds in interest bearing accounts, unless:
  - (1) the recipient receives less than \$120,000 in U.S. Government awards per year;
  - (2) the best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on U.S. Government cash balances; or
  - (3) the depository would require an average or minimum balance so high that it would not be practical to maintain the advance in an interest bearing account.
- b. Interest earned on advances will be remitted to USAID. However, the recipient may retain up to \$250 of interest earnings per account per year, for administrative expenses.
- c. At the time the award expires or is terminated, the following types of funds shall immediately revert to USAID:
  - (1) USAID has obligated funds to the award, but has not disbursed them to the recipient; or
  - (2) USAID has advanced funds to the recipient, but the recipient has not expended them.Notwithstanding (c) (1) and (2) above, funds which the recipient has obligated in legally binding transactions applicable to this award will not revert to USAID.
- d. USAID reserves the right to require refund by the recipient of any amount which the recipient did not spend in accordance with the terms and conditions of this

award. In the event that a final audit has not been performed prior to the closeout of this award, USAID retains the right to a refund until all claims which may result from the final audit have been resolved between USAID and the recipient.

[END OF PROVISION]

#### **4. REVISION OF AWARD BUDGET (OCTOBER 1998)**

- a. The approved award budget is the financial expression of the recipient's program as approved during the award process.
- b. The recipient is required to report deviations from budget and program plans, and request prior approvals from the Agreement Officer for any of the following reasons:
  - (1) To change the scope or the objectives of the project and/or revise the funding allocated among project objectives.
  - (2) To change a key person where specified in the award, or allow a 25% reduction in time devoted to the project.
  - (3) Additional funding is needed.
  - (4) Where indirect costs have been authorized, the recipient plans to transfer funds budgeted for indirect costs to absorb increases in direct costs or vice versa.
  - (5) The inclusion of costs that require prior approval in accordance with the applicable set of Cost Principles.
  - (6) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.
  - (7) The recipient intends to contract or subaward any of the work under this award, and such contracts or subawards were not included in the approved award budget.
- c. If specified in the Schedule of the award, the recipient may be further restricted from transferring funds among cost categories. Such a restriction would require the recipient to get the prior approval of the Agreement Officer before making budget shifts which expect to exceed 10% of the total budget.
- d. USAID is under no obligation to reimburse the recipient for costs incurred in excess of the total amount obligated under the award. If the total obligated

amount under the award has been increased, the Agreement Officer will notify the recipient in writing of the increase and specify the new total obligated award amount.

[END OF PROVISION]

## **5. TERMINATION AND SUSPENSION (OCTOBER 1998)**

- a. The Agreement Officer may terminate this award at any time, in whole or in part, upon written notice to the recipient, whenever it is determined that the recipient has materially failed to comply with the terms and conditions of the award.
- b. This award may be terminated at any time, in whole or in part, by the Agreement Officer with the consent of the recipient. Both parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion of the award to be terminated. The agreement to terminate shall be set forth in a letter from the Agreement Officer to the recipient.
- c. This award may be terminated at any time in whole or in part by the recipient upon sending written notification to the Agreement Officer with the following information: the reasons for the termination, the effective date, and, in the case of a partial termination, the portion to be terminated. However, if USAID determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, USAID may terminate the award in its entirety in accordance with paragraphs (a) or (b) above.
- d. If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate this award in whole or part and prohibit the recipient from incurring additional obligations chargeable to this award other than those costs specified in the notice of suspension during the period of suspension. If the situation causing the suspension continues for 60 days or more, then USAID may terminate this award on written notice to the recipient and cancel that portion of this award which has not been disbursed or irrevocably committed to third parties.
- e. Termination and Suspension Procedures. Upon receipt of and in accordance with a termination notice as specified above, the recipient shall take immediate action to minimize all expenditures and obligations financed by this award and shall cancel such unliquidated obligations whenever possible. Except as provided below, the recipient shall not incur costs after the effective date of termination.



The recipient shall within 30 calendar days after the effective date of such termination repay to the U.S. Government all unexpended USAID funds which are not otherwise obligated by a legally binding transaction applicable to this award. Should the funds paid by USAID to the recipient prior to the effective date of the termination of this award be insufficient to cover the recipient's obligations in the legally binding transaction, the recipient may submit to the Government within 90 calendar days after the effective date of such termination a written claim covering such obligations. The Agreement Officer shall determine the amount(s) to be paid by USAID to the recipient under such claim in accordance with the applicable Cost Principles.

This provision must be included in all subagreements.

[END OF PROVISION]

## **6. DISPUTES (OCTOBER 1998)**

- a. Any dispute under this award shall be decided by the USAID Agreement Officer. The Agreement Officer shall furnish the recipient a written copy of the decision.
- b. Decisions of the USAID Agreement Officer shall be final unless, within 30 days of receipt of the decision of the Agreement Officer, the recipient appeals the decision to USAID's Assistance Executive. Any appeal made under this provision shall be in writing and addressed to the Assistance Executive, U.S. Agency for International Development, Office of Procurement, 1300 Pennsylvania Ave, N.W., Washington, D.C. 20523. A copy of the appeal shall be concurrently furnished to the Agreement Officer.
- c. In order to facilitate review on the record by the Assistance Executive, the recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.
- d. A decision under this provision by the Assistance Executive shall be final.

[END OF PROVISION]

## **7. INELIGIBLE COUNTRIES (MAY 1986)**

Unless otherwise approved by the USAID Agreement Officer, funds will only be expended for assistance to countries eligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

[END OF PROVISION]

## **8. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (JANUARY 2004)**

a. The recipient agrees to notify the Agreement Officer immediately upon learning that it or any of its principals:

(1) Are presently excluded or disqualified from covered transactions by any Federal department or agency;

(2) Have been convicted within the preceding three-years period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(3) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b); and

(4) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.

b. The recipient agrees that, unless authorized by the Agreement Officer, it will not knowingly enter into any subagreements or contracts under this grant with a person or entity that is included on the Excluded Parties List System (<http://epls.arnet.gov>). The recipient further agrees to include the following provision in any subagreements or contracts entered into under this award:

### **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (DECEMBER 2003)**

The recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

c. The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in 22 CFR Part 208.

[END OF PROVISION]

## **9. DRUG-FREE WORKPLACE (JANUARY 2004)**

- a. The recipient agrees that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any Federal award. The statement must
  - (1) Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - (2) Specify the actions the recipient will take against employees for violating that prohibition; and
  - (3) Let each employee know that, as a condition of employment under any award, he or she
    - (i) Must abide by the terms of the statement, and
    - (ii) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five calendar days after the conviction.
- b. The recipient agrees that it will establish an ongoing drug-free awareness program to inform employees about
  - (i) The dangers of drug abuse in the workplace;
  - (ii) Your policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation and employee assistance programs; and
  - (iv) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
- c. Without the Agreement Officer's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this award, or the completion date of this award, whichever occurs first.
- d. The recipient agrees to immediately notify the Agreement Officer if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the number of each award on which the employee worked. The notification must be sent to the Agreement Officer within ten calendar days after the recipient learns of the conviction.

- e. Within 30 calendar days of learning about an employee's conviction, the recipient must either
  - (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
  - (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- f. The policies and procedures applicable to violations of these requirements are set forth in 22 CFR Part 210.

[END OF PROVISION]

## **10. NONLIABILITY (NOVEMBER 1985)**

USAID does not assume liability for any third party claims for damages arising out of this award.

[END OF PROVISION]

## **11. AMENDMENT (OCTOBER 1998)**

The award may be amended by formal modifications to the basic award document or by means of an exchange of letters or forms between the Agreement Officer and an appropriate official of the recipient.

[END OF PROVISION]

## **12. NOTICES (OCTOBER 1998)**

Any notice given by USAID or the recipient shall be sufficient only if in writing and delivered in person or mailed as follows:

To the USAID Agreement Officer and Cognizant Technical Officer, at the addresses specified in the award. To recipient, at recipient's address shown in the award or to such other address designated within the award.

Notices shall be effective when delivered in accordance with this provision, or on effective date of the notice, whichever is later.

[END OF PROVISION]

### **13. METRIC SYSTEM OF MEASUREMENT (AUGUST 1992)**

Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the Agreement Officer in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

[END OF PROVISION]

### **\*14. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND COMMUNITY ORGANIZATIONS (FEBRUARY 2004)**

- a. The recipient may not discriminate against any beneficiary or potential beneficiary under this award on the basis of religion or religious belief. Accordingly, in providing services supported in whole or in part by this agreement or in its outreach activities related to such services, the recipient may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice;
- b. The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution. Therefore, if the recipient engages in inherently religious activities, such as worship, religious instruction, and proselytization, it must offer those services at a different time or location from any programs or services directly funded by this award, and participation by beneficiaries in any such inherently religious activities must be voluntary.
- c. If the recipient makes subawards under this agreement, faith-based organizations should be eligible to participate on the same basis as other organizations, and should not be discriminated against on the basis of their religious character or affiliation.

[END OF PROVISION]

## 15. IMPLEMENTATION OF E.O. 13224 -- EXECUTIVE ORDER ON TERRORIST FINANCING (MARCH 2002)

The Recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all contracts/subawards issued under this agreement

[END OF PROVISION]

## \*16. MARKING UNDER USAID-FUNDED ASSISTANCE INSTRUMENTS (DECEMBER 2005)

### (a) Definitions

**Commodities** mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use, in administration of the USAID funded grant, cooperative agreement, or other agreement or subagreement.

**Principal Officer** means the most senior officer in a USAID Operating Unit in the field, e.g., USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries, such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/Office of Foreign Disaster Assistance and Office of Transition Initiatives. For non-presence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the non-presence country, or in the absence of such a responsible operating unit, the Principal U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

**Programs** mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

**Projects** include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

**Public communications** are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to,

correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and so forth.

**Subrecipient** means any person or government (including cooperating country government) department, agency, establishment, or for profit or nonprofit organization that receives a USAID subaward, as defined in 22 C.F.R. 226.2.

**Technical Assistance** means the provision of funds, goods, services, or other foreign assistance, such as loan guarantees or food for work, to developing countries and other USAID recipients, and through such recipients to subrecipients, in direct support of a development objective – as opposed to the internal management of the foreign assistance program.

**USAID Identity (Identity)** means the official marking for the United States Agency for International Development (USAID), comprised of the USAID logo or seal and new brandmark, with the tagline that clearly communicates that our assistance is “from the American people.” The USAID Identity is available on the USAID website at [www.usaid.gov/branding](http://www.usaid.gov/branding) and USAID provides it without royalty, license, or other fee to recipients of USAID-funded grants, or cooperative agreements, or other assistance awards

#### **(b) Marking of Program Deliverables**

(1) All recipients must mark appropriately all overseas programs, projects, activities, public communications, and commodities partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's, or any other third party's identity or logo.

(2) The Recipient will mark all program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) with the USAID Identity. The Recipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the Recipient must install a permanent, durable sign, plaque or other marking.

(3) The Recipient will mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.

(4) The Recipient will appropriately mark events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials, such as signs and banners, with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, the recipient is encouraged otherwise to acknowledge USAID and the American people's support.

(5) The Recipient will mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies, and other materials funded by USAID, and their export packaging with the USAID Identity.

(6) The Agreement Officer may require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant, and as appropriate depending on the audience, program goals, and materials produced.

(7) The Agreement Officer may require marking with the USAID Identity in the event that the recipient does not choose to mark with its own identity or logo.

(8) The Agreement Officer may require a pre-production review of USAID-funded public communications and program materials for compliance with the approved Marking Plan.

(9) Subrecipients. To ensure that the marking requirements "flow down" to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards will include the USAID-approved marking provision in any USAID funded subaward, as follows:

*"As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity."*

(10) Any 'public communications', as defined in 22 C.F.R. 226.2, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:



*“This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.”*

(11) The recipient will provide the Cognizant Technical Officer (CTO) or other USAID personnel designated in the grant or cooperative agreement with two copies of all program and communications materials produced under the award. In addition, the recipient will submit one electronic or one hard copy of all final documents to USAID’s Development Experience Clearinghouse.

**(c) Implementation of marking requirements.**

(1) When the grant or cooperative agreement contains an approved Marking Plan, the recipient will implement the requirements of this provision following the approved Marking Plan.

(2) When the grant or cooperative agreement does not contain an approved Marking Plan, the recipient will propose and submit a plan for implementing the requirements of this provision within **[Agreement Officer fill-in]** days after the effective date of this provision. The plan will include:

(i) A description of the program deliverables specified in paragraph (b) of this provision that the recipient will produce as a part of the grant or cooperative agreement and which will visibly bear the USAID Identity.

(ii) the type of marking and what materials the applicant uses to mark the program deliverables with the USAID Identity,

(iii) when in the performance period the applicant will mark the program deliverables, and where the applicant will place the marking,

(3) The recipient may request program deliverables not be marked with the USAID Identity by identifying the program deliverables and providing a rationale for not marking these program deliverables. Program deliverables may be exempted from USAID marking requirements when:

(i) USAID marking requirements would compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;

(ii) USAID marking requirements would diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;

(iii) USAID marking requirements would undercut host-country government “ownership” of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as “by” or “from” a cooperating country ministry or government official;

(iv) USAID marking requirements would impair the functionality of an item;

(v) USAID marking requirements would incur substantial costs or be impractical;

(vi) USAID marking requirements would offend local cultural or social norms, or be considered inappropriate;

(vii) USAID marking requirements would conflict with international law.

(4) The proposed plan for implementing the requirements of this provision, including any proposed exemptions, will be negotiated within the time specified by the Agreement Officer after receipt of the proposed plan. Failure to negotiate an approved plan with the time specified by the Agreement Officer may be considered as noncompliance with the requirements is provision.

**(d) Waivers.**

(1) The recipient may request a waiver of the Marking Plan or of the marking requirements of this provision, in whole or in part, for each program, project, activity, public communication or commodity, or, in exceptional circumstances, for a region or country, when USAID required marking would pose compelling political, safety, or security concerns, or when marking would have an adverse impact in the cooperating country. The recipient will submit the request through the Cognizant Technical Officer. The Principal Officer is responsible for approvals or disapprovals of waiver requests.

(2) The request will describe the compelling political, safety, security concerns, or adverse impact that require a waiver, detail the circumstances and rationale for the waiver, detail the specific requirements to be waived, the specific portion of the Marking Plan to be waived, or specific marking to be waived, and include a description of how program materials will be marked (if at all) if the USAID Identity is removed. The request should also provide a rationale for any use of recipient’s own identity/logo or that of a third party on materials that will be subject to the waiver.

(3) Approved waivers are not limited in duration but are subject to Principal Officer review at any time, due to changed circumstances.

(4) Approved waivers “flow down” to recipients of subawards unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.

(5) Determinations regarding waiver requests are subject to appeal to the Principal Officer’s cognizant Assistant Administrator. The recipient may appeal by submitting a written request to reconsider the Principal Officer’s waiver determination to the cognizant Assistant Administrator.

**(e) Non-retroactivity.** The requirements of this provision do not apply to any materials, events, or commodities produced prior to January 2, 2006. The requirements of this provision do not apply to program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management) where the construction and implementation of these are complete prior to January 2, 2006 and the period of the grant does not extend past January 2, 2006.

[END OF PROVISION]

## **\*17. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006)**

### Requirements for Voluntary Sterilization Programs

- (1) None of the funds made available under this award shall 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.

### Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award 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, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

- (2) No funds made available under this award 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.

[END OF PROVISION]

**[END OF MANDATORY PROVISIONS]**

## Required As Applicable Standard Provisions For Non-U.S., Nongovernmental Recipients

The following standard provisions are required to be used when applicable. Applicability statements are contained in the parenthetical statement preceding the standard provision. When a standard provision is determined to be applicable in accordance with the applicability statement, the use of such standard provision is mandatory unless a deviation has been approved in accordance with ADS Chapter 303.3.4. **EACH AWARD IS REQUIRED TO HAVE A PAYMENT PROVISION.**

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## **II. REQUIRED AS APPLICABLE STANDARD PROVISIONS FOR NON-U.S., NONGOVERNMENTAL RECIPIENTS**

### **1. PAYMENT – ADVANCE (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable when the recipient's accounting and financial management systems conform to the standards for funds control and accountability required under: the standard provision of this agreement entitled "Accounting, Audit, and Records", ADS Chapter 303.5.9 and 22 CFR 226.20 through 226.22.*

#### **PAYMENT – ADVANCE (OCTOBER 1998)**

- a. In accordance with the Standard Provision entitled "Payment Advances and Refund": USAID funds shall not be commingled with other recipient owned or controlled funds; the recipient shall deposit all USAID cash advances in a separate bank account and shall make all disbursements for goods and services from this account.
- b. Advances shall be limited to the minimum amounts needed to meet current disbursement needs (generally 30 days) and shall be scheduled so that the funds are available to the grantee as close as is administratively feasible to the actual disbursements by the grantee for program costs. Advances made by the recipient to subrecipients or the recipient's field organizations shall conform substantially to the same standards of timing and amount as apply to cash advances by USAID to the recipient.

#### Procedures

- c. After receipt of the initial advance, the recipient shall submit a Standard Form 1034 for each upcoming month (30 day period), with the statement "Request for Advance" printed at the top of the form. The recipient may submit a set of these forms on a quarterly basis (i.e. submission of three SF 1034s one for each month in the upcoming quarter). At the end of each quarter the recipient shall submit a SF 1034 (marked "Liquidation of Advances") to liquidate the advances of the previous quarter. The recipient may submit a new set of SF 1034s ("Request for Advance") once the "Liquidation of Advances" has been submitted. Each SF 1034 shall be identified by the appropriate award number.

[END OF PROVISION]

## **2. PAYMENT – REIMBURSEMENT (MAY 1986)**

*APPLICABILITY: This provision is applicable to grants for construction or to awards where the recipient does not meet the conditions for periodic advance payment.*

### **PAYMENT – REIMBURSEMENT (MAY 1986)**

- a. The recipient shall submit to the USAID Controller noted in the Schedule of the award an original and 2 copies of SF 1034, "Public Voucher for Purchases and Services Other Than Personal" and SF 1034A, Continuation of SF 1034, on a monthly basis and in no event no later than on a quarterly basis. Each voucher shall be identified by the award number and shall state the total costs for which reimbursement is being requested.
- b. Copies of SF 1034 and 1034A may be obtained from the Controller.

[END OF PROVISION]

## **3. INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (JUNE 1999)**

*APPLICABILITY: This provision is applicable when costs for international travel or transportation will be funded by USAID. This provision is not applicable if the recipient is providing for travel with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.*

### **INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (JUNE 1999)**

#### **a. PRIOR BUDGET APPROVAL**

In accordance with OMB Cost Principles, direct charges for foreign travel costs are allowable only when each foreign trip has received prior budget approval. Such approval will be deemed to have been met when:

- (1) the trip is identified. Identification is accomplished by providing the following information: the number of trips, the number of individuals per trip, and the destination country(s).
- (2) the information noted at (a)(1) above is incorporated in: the proposal, the program description or schedule of the award, the annual implementation plan (initial or revisions), or amendments to the award; and

- (3) the costs related to the travel are incorporated in the approved budget of the award.

The Agreement Officer may approve travel which has not been incorporated in writing as required by paragraph (a)(2). In such case, a copy of the Agreement Officer's approval must be included in the agreement file.

b. NOTIFICATION

- (1) As long as prior budget approval has been met in accordance with paragraph (a) above, a separate Notification will not be necessary unless:

- (i) the primary purpose of the trip is to work with USAID Mission personnel, or
- (ii) the recipient expects significant administrative or substantive programmatic support from the Mission.

Neither the USAID Mission nor the Embassy will require Country Clearance of employees or contractors of USAID Recipients.

- (2) Where notification is required in accordance with paragraph (1)(i) or (ii) above, the recipient will observe the following standards:

- (i) Send a written notice to the USAID Cognizant Technical Officer in the Mission. If the recipient's primary point of contact is a Technical Officer in USAID/W, the recipient may send the notice to that person. It will be the responsibility of the USAID/W Cognizant Technical Officer to forward the notice to the field.
- (ii) The notice should be sent as far in advance as possible, but at least 14 calendar days in advance of the proposed travel. This notice may be sent by fax or e-mail. The recipient should retain proof that notification was made.
- (iii) The notification shall contain the following information: the award number, the cognizant Technical Officer, the traveler's name (if known), date of arrival, and the purpose of the trip.
- (iv) The USAID Mission will respond only if travel has been denied. It will be the responsibility of the Cognizant Technical Officer in the Mission to contact the recipient within 5 working days of having received the notice if the travel is denied. If the recipient has not received a response within the time frame, the recipient will be considered to have met these



standards for notification, and may travel.

(v) If a subrecipient is required to issue a Notification, as per this section, the subrecipient may contact the USAID Cognizant Technical Officer directly, or the prime may contact USAID on the subrecipient's behalf.

c. SECURITY ISSUES

Recipients are encouraged to obtain the latest Department of State Travel Advisory Notices before traveling. These Notices are available to the general public and may be obtained directly from the State Department, or via Internet.

Where security is a concern in a specific region, recipients may choose to notify the US Embassy of their presence when they have entered the country. This may be especially important for long-term posting.

d. USE OF U.S.-OWNED LOCAL CURRENCY

Travel to certain countries shall, at USAID's option, be funded from U.S.-owned local currency. When USAID intends to exercise this option, USAID will either issue a U.S. Government S.F. 1169, Transportation Request (GTR) which the grantee may exchange for tickets, or issue the tickets directly. Use of such U.S.-owned currencies will constitute a dollar charge to this grant.

e. THE FLY AMERICA ACT

The Fly America Act (49 U.S.C. 40118) requires that all air travel and shipments under this award must be made on U.S. flag air carriers to the extent service by such carriers is available. The Administrator of General Services Administration (GSA) is authorized to issue regulations for purposes of implementation. Those regulations may be found at 41 CFR part 301, and are hereby incorporated by reference into this award.

f. COST PRINCIPLES

The recipient will be reimbursed for travel and the reasonable cost of subsistence, post differentials, and other allowances paid to employees in international travel status in accordance with the recipient's applicable cost principles and established policies and practices which are uniformly applied to federally financed and other activities of the recipient.

If the recipient does not have written established policies regarding travel costs, the standard for determining the reasonableness of reimbursement for overseas allowance will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current subsistence, post differentials, and other allowances may be obtained from the Agreement Officer.

g. SUBAWARDS

This provision will be included in all subawards and contracts which require international air travel and transportation under this award.

[END OF PROVISION]

#### **4. OCEAN SHIPMENT OF GOODS (JUNE 1999)**

**APPLICABILITY:** *This provision is applicable for awards and subawards for \$100,000 or more and when goods purchased with funds provided under this award are transported to cooperating countries on ocean vessels whether or not award funds are used for the transportation.*

##### **OCEAN SHIPMENT OF GOODS (JUNE 1999)**

- a. At least 50% of the gross tonnage of all goods purchased under this award and transported to the cooperating countries shall be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates.
- b. At least 50% of the gross freight revenue generated by shipments of goods purchased under this award and transported to the cooperating countries on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.
- c. When U.S. flag vessels are not available, or their use would result in a significant delay, the recipient may request a determination of non-availability from the USAID, Transportation and Commodities Division, Office of Procurement, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523, giving the basis for the request which will relieve the recipient of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimbursable under this award.

- d. The recipient shall send a copy of each ocean bill of lading, stating all of the carrier's charges including the basis for calculation such as weight or cubic measurement, covering a shipment under this agreement to:

U.S. Department of Transportation,  
Maritime Administration, Division of National Cargo,  
400 7th Street, S.W.,  
Washington DC 20590,

and

U.S. Agency for International Development,  
Office of Procurement, Transportation Division  
1300 Pennsylvania Avenue, N.W.  
Washington, DC 20523-7900

- e. Shipments by voluntary nonprofit relief agencies (i.e., PVOs) shall be governed by this standard provision and by USAID Regulation 2, "Overseas Shipments of Supplies by Voluntary Nonprofit Relief Agencies" (22 CFR 202).
- f. Shipments financed under this award must meet applicable eligibility requirements set out in 22 CFR 228.21.
- g. This provision will be included in all subagreements which will finance goods to be shipped on ocean vessels.

[END OF PROVISION]

## **5. PROCUREMENT OF GOODS AND SERVICES (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable when the procurement element of an award is over \$10,000.*

### **PROCUREMENT OF GOODS AND SERVICES (OCTOBER 1998)**

The recipient may use its own procurement policies and practices for the procurement of goods and services under this award, provided they conform to all of USAID's requirements listed below and the standard provision entitled "USAID Eligibility Rules For Goods and Services".

a. General Requirements:

(1) The recipient shall maintain a written code or standards of conduct that shall govern the performance of its employees engaged in the awarding and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such conflict would arise when the employee, officer or agent, or any member of the employee's immediate family, the employee's partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(2) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Contracts shall be made to the offeror whose offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered. Solicitations shall clearly establish all requirements that the bidder or offeror shall fulfill in order to be evaluated by the recipient. Any and all offers may be rejected when it is in the recipient's interest to do so.

(3) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

(i) Recipients avoid purchasing unnecessary items,

(ii) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement, and

(iii) Solicitations for goods and services provide for all of the following:

(A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive

procurements, such a description shall not contain features which unduly restrict competition.

(B) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(D) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(iv) Positive efforts shall be made by the recipients to utilize U.S. small business, minority owned firms, and women's business enterprises, whenever possible. Recipients of USAID awards shall take all of the following steps to further this goal:

(A) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient shall to the maximum extent possible provide the following information to the Office of Small and Disadvantaged Business Utilization (OSDBU/MRC), USAID, Washington, D.C. 20523, at least 45 days prior to placing any order or contract in excess of \$100,000:

- (a) Brief general description and quantity of goods or services;
- (b) Closing date for receiving quotations, proposals, or bids; and
- (c) Address where solicitations or specifications can be obtained.

(B) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(C) Encourage contracting with consortiums of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually.

(D) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.

(v) The type of procurement instruments used, (e.g. fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts), shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(vi) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Contracts shall not be made with firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with copy of this list upon request.

(vii) Recipients shall, on request, make available for USAID, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(A) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part, and

(B) The procurement is expected to exceed \$10,000.

(viii) The recipient shall document some form of price or cost analysis in its procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, and market prices, together with discounts.

Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(ix) Procurement records and files for purchases in excess of the recipient's own small purchase threshold shall include the following at a minimum:

(A) Basis for contractor selection;

(B) Justification for lack of competition when competitive bids or offers are not obtained, and;

(C) Basis for award cost or price.

(x) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

b. The recipient shall include, in addition to provisions to define a sound and complete contract, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(1) Contracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All negotiated contracts (except those for less than the recipient's small purchase threshold) awarded by the recipient shall include a provision to the effect that the recipient, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(4) In all contracts for construction or facility improvement awarded for more than \$100,000, the recipient shall observe generally accepted bonding requirements.

(5) Contracts, the principal purpose of which is to create, develop, or improve products, processes, or methods; or for exploration into fields that directly concern public health, safety, or welfare; or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by the U.S. Government, shall contain a notice to the effect that matters regarding rights to inventions, intellectual property, and materials generated under the contract are subject to the regulations included in these grant provisions. The contractor shall be advised as to the source of additional information regarding these matters.

[END OF PROVISION]

## **6. USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (SEPTEMBER 1998)**

*APPLICABILITY: This provision is applicable when the costs for goods or services will be paid for with USAID funds. This provision is not applicable if the recipient is providing for the goods or services with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.*

### **USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (SEPTEMBER 1998)**

a. Ineligible and Restricted Goods and Services: USAID's policies on ineligible and restricted goods and services are contained in ADS Chapter 312. (See ADS 312)

(1) Ineligible Goods and Services. Under no circumstances shall the recipient procure any of the following under this award:

- (i) Military equipment,
- (ii) Surveillance equipment,
- (iii) Commodities and services for support of police or other law enforcement activities,
- (iv) Abortion equipment and services,
- (v) Luxury goods and gambling equipment, or
- (vi) Weather modification equipment.

(2) Ineligible Suppliers. Funds provided under this award shall not be used to procure any goods or services furnished by any firm or individual whose name appears on the "Lists of Parties Excluded from Federal Procurement and



Nonprocurement Programs." USAID will provide the recipient with this list upon request.

(3) Restricted Goods. The recipient shall not procure any of the following goods and services without the prior approval of the Agreement Officer:

- (i) Agricultural commodities,
- (ii) Motor vehicles,
- (iii) Pharmaceuticals,
- (iv) Pesticides,
- (v) Used equipment,
- (vi) U.S. Government-owned excess property, or
- (vii) Fertilizer.

Prior approval will be deemed to have been met when:

- (i) The item is of U.S. source/origin;
- (ii) The item has been identified and incorporated in the program description or schedule of the award (initial or revisions), or amendments to the award; and
- (iii) The costs related to the item are incorporated in the approved budget of the award. Where the item has not been incorporated into the award as described above, a separate written authorization from the Agreement Officer must be provided before the item is procured.

b. Source, Origin, and Nationality: The eligibility rules for goods and services based on source, origin, and nationality are divided into two categories. One applies when the total procurement element during the life of the award is over \$250,000 and the other applies when the total procurement element during the life of the award is not over \$250,000, or the award is funded under the Development Fund for Africa (DFA) regardless of the amount. The total procurement element includes procurement of all goods (e.g. equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source, origin and nationality are contained in 22 CFR 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development, which is incorporated into this Award in its entirety. A copy will be provided upon request.

(1) For DFA funded awards or when the total procurement element during the life of the award is valued at \$250,000 or less, the following rules apply:

(i) The authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World," and such goods and services must meet the source, origin and nationality requirements set forth in 22 CFR 228 in accordance with the following order of preference:

- (A) The United States (USAID Geographic Code 000),
- (B) The Cooperating Country,
- (C) USAID Geographic Code 941, and
- (D) USAID Geographic Code 935.

(ii) Application of Order of Preference: When the recipient procures goods and services from other than U.S. sources, under the order of preference in paragraph (b)(1)(i) above, the recipient shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the recipient's documentation:

- (A) The procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources,
- (B) The price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,
- (C) Compelling local political considerations precluded consideration of U.S. sources,
- (D) The goods or services were not available from U.S. sources, or
- (E) Procurement of locally available goods and services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the award.

(2) When the total procurement element exceeds \$250,000, (unless funded by DFA), the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars, which will be reimbursed under this award must meet the source, (including origin) and nationality requirements set forth in 22 CFR 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 000, the United States.

- c. Printed or Audio-Visual Teaching Materials: If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by USAID in whole or in part and if other funds including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources in order of preference:
  - (1) The United States (USAID Geographic Code 000),
  - (2) The Cooperating Country,
  - (3) "Selected Free World" countries (USAID Geographic Code 941),
  - (4) "Special Free World" countries (USAID Geographic Code 899).
- d. If USAID determines that the recipient has procured any of these specific restricted goods under this award without the prior written authorization of the Agreement Officer, and has received payment for such purposes, the Agreement Officer may require the recipient to refund the entire amount of the purchase.
- e. This provision will be included in all subagreements which include procurement of goods or services which total over \$5,000.

[END OF PROVISION]

## **7. SUBAGREEMENTS (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable when subgrants or cooperative agreements are financed under the award.)*

### **SUBAGREEMENTS (OCTOBER 1998)**

- a. Subawards shall be made only with responsible recipients who possess the potential ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Awards shall not be made to firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with a copy of this list upon request.

- b. All subagreements shall at a minimum contain provisions to define a sound and complete agreement in addition to those that are specifically required by any other provisions in this award. Whenever a provision within this award is required to be inserted in a subagreement, the recipient shall insert a statement in the subagreement that in all instances where USAID is mentioned, the recipient's name will be substituted. If subagreements are being made to U.S. organizations, a suggested subaward format incorporating 22 CFR 226 and Standard Provisions will be provided.

[END OF PROVISION]

## **8. LOCAL PROCUREMENT (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable when goods or services are procured under the award.*

### **LOCAL PROCUREMENT (OCTOBER 1998)**

- a. Financing local procurement involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers, or producers, with payment normally being in the currency of the cooperating country. Regardless of which source, origin, and nationality rules in paragraph (b) of the Provision entitled "USAID Eligibility Rules for Goods and Services" apply, these rules may be followed for local procurement. Rules on Ineligible and Restricted goods continue to apply.
- b. Locally financed procurements must be covered by source and nationality waivers as set forth in 22 CFR 228, Subpart F, except as provided for in the Standard Provision "USAID Eligibility Rules for Goods and Services," or when one of the following exceptions applies:
  - (1) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed \$100,000 exclusive of transportation costs.
  - (2) Commodities of geographic code 935 origin if the value of the transaction does not exceed the local currency equivalent of \$5,000.
  - (3) Professional services contracts estimated not to exceed \$250,000.
  - (4) Construction services contracts estimated not to exceed \$5,000,000.

(5) Commodities and services available only in the local economy (no specific per transaction value applies to this category). This category includes the following items:

- (i) Utilities including fuel for heating and cooking, waste disposal and trash collection;
- (ii) Communications - telephone, telex, fax, postal and courier services;
- (iii) Rental costs for housing and office space;
- (iv) Petroleum, oils and lubricants for operating vehicles and equipment;
- (v) Newspapers, periodicals and books published in the cooperating country;
- (vi) Other commodities and services and related expenses that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.

- c. The coverage on ineligible and restricted goods and services in the standard provision entitled, "USAID Eligibility Rules for Goods and Services," also apply to local procurement.
- d. This provision will be included in all subagreements where local procurement of goods or services will be financed with USAID funds.

[END OF PROVISION]

## **9. PATENT RIGHTS (JUNE 1993)**

*APPLICABILITY: This provision is applicable whenever patentable processes or practices are financed by the award.*

### **PATENT RIGHTS (JUNE 1993)**

- a. Definitions:
  - (1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

- (2) Subject invention means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.
  - (3) Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
  - (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
  - (5) Small business firm means a small business concern which meets the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively.
  - (6) Nonprofit organization means a university or other institution of higher education or an organization which is not organized for profit as described in the laws of the country in which it was organized.
- b. Allocation of Principal Rights: The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.
- c. Invention Disclosure, Election of Title, and Filing of Patent Applications by Recipient:
- (1) The recipient shall disclose each subject invention to USAID within two months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to USAID shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to USAID the recipient shall promptly notify USAID of the acceptance of any manuscript describing the invention for publication or of any on sale or

public use planned by the recipient.

- (2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying USAID within two years of disclosure to USAID. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by USAID to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The recipient shall file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (4) Requests for extension of the time for disclosure to USAID, election, and filing may, at the discretion of USAID, be granted.

d. Conditions When the Government May Obtain Title: The recipient shall convey to USAID, upon written request, title to any subject invention:

- (1) If the recipient fails to disclose or elect the subject invention within the times specified in (c) above, or elects not to retain title, USAID may only request title within sixty days after learning of the recipient's failure to report or elect within the specified times.
- (2) In those countries in which the recipient fails to file patent applications within the times specified in (c) above; provided, however, that if the recipient has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of USAID the recipient shall continue to retain title in that country.
- (3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on a patent on a subject invention.

e. Minimum Rights to Recipient:

- (1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the recipient fails to disclose the subject invention within the

times specified in (c) above. The recipient's license extends to its subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of USAID except when transferred to the successor of that party of the recipient's business to which the invention pertains.

- (2) The recipient's license may be revoked or modified by USAID to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the 37 CFR Part 4 and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of USAID to the extent the recipient, its licensees, or its subsidiaries or affiliates have failed to achieve practical application.
- (3) Before revocation or modification of the license, USAID will furnish the recipient written notice of its intention to revoke or modify the license, and the recipient shall be allowed thirty days (or such other time as may be authorized by USAID for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Recipient Action to Protect the Government's Interest:

- (1) The recipient agrees to execute or to have executed and promptly deliver to USAID all instruments necessary to (i) establish or conform the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to USAID when requested under paragraph (d) above, and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to



establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1) above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- (3) The recipient shall notify USAID of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
  - (4) The recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement awarded by USAID). The Government has certain rights in this invention."
- g. Subagreements and Contracts: The recipient shall include this standard provision suitably modified to identify the parties, in all subagreements and contracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient or contractor shall retain all rights provided for the recipient in this standard provision, and the recipient shall not, as part of the consideration for awarding the contract or subagreement, obtain rights in the contractor's or subrecipient's subject inventions.
- h. Reporting Utilization of Subject Inventions: The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as USAID may reasonably specify. The recipient also agrees to provide additional reports as may be requested by USAID in connection with any march-in proceedings undertaken by USAID in accordance with paragraph (j) of this provision. As required by 35 USC 202(c)(5), USAID agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.
- i. Preference for United States Industry: Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by USAID upon a

showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances manufacture in the United States is not commercially feasible.

- j. **March-in Rights:** The recipient agrees that with respect to any subject invention in which it has acquired title, USAID has the right, in accordance with the procedures in 37 CFR 401.6 and any supplemental Agency regulations, to require the recipient, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, USAID has the right to grant such a license itself if USAID determines that:
- (1) Such action is necessary because the recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
  - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;
  - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or
  - (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. **Special Provisions for Awards with Nonprofit Organizations:** If the recipient is a nonprofit organization, it agrees that:
- (1) Rights to a subject invention may not be assigned without the approval of USAID, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided that such assignee shall be subject to the same provisions as the recipient.
  - (2) The recipient shall share royalties collected on a subject invention with the inventor, including Federal Employee coinventors, when USAID deems it appropriate when the subject invention is assigned in accordance with 35 USC 202(e) and 37 CFR 401.10;

- (3) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.
  - (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and it will give preference to a small business firm when licensing a subject invention if the recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the grantee. However, the recipient agrees that the Secretary of Commerce may review the recipient's licensing program and decisions regarding small business applicants, and the recipient shall negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the recipient could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).
- I. Communications: Communications concerning this provision shall be addressed to the Agreement Officer at the address shown in this agreement.

[END OF PROVISION]

## **10. PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)**

*APPLICABILITY: This provision is applicable when publications are financed under the award.*

### **PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)**

- a. The recipient shall provide the USAID Cognizant Technical Officer one copy of all published works developed under the award with lists of other written work produced under the award. In addition, the recipient shall submit final documents in electronic format unless no electronic version exists at the following address:

Online (preferred):  
<http://www.dec.org/submit.cfm>

Mailing address:  
Document Acquisitions  
USAID Development Experience Clearinghouse (DEC)  
8403 Colesville Road Suite 210  
Silver Spring, MD 20910-6368  
Contract Information  
Telephone (301) 562-0641  
Fax (301) 588-7787  
E-mail: [docsubmit@dec.cdie.org](mailto:docsubmit@dec.cdie.org)

Electronic documents must consist of only one electronic file that comprises the complete and final equivalent of a hard copy. They may be submitted online (preferred); on 3.5" diskettes, a Zip disk, CD-R, or by e-mail. Electronic documents should be in PDF (Portable Document Format). Submission in other formats is acceptable but discouraged.

Each document submitted should contain essential bibliographic elements, such as 1) descriptive title; 2) author(s) name; 3) award number; 4) sponsoring USAID office; 5) strategic objective; and 6) date of publication,;

- b. In the event award funds are used to underwrite the cost of publishing, in lieu of the publisher assuming this cost as is the normal practice, any profits or royalties up to the amount of such cost shall be credited to the award unless the schedule of the award has identified the profits or royalties as program income.
- c. Except as otherwise provided in the terms and conditions of the award, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this award, but USAID reserves a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

[END OF PROVISION]

## **11. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)**

*APPLICABILITY: This provision is applicable when work under the award is performed in the United States or when employees are recruited in the United States.*

## **NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)**

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.

[END OF PROVISION]

## **12. REGULATIONS GOVERNING EMPLOYEES (JUNE 1993)**

*APPLICABILITY: The following applies to the recipient's employees who are not citizens of the cooperating country.*

### **REGULATIONS GOVERNING EMPLOYEES (JUNE 1993)**

- a. The recipient's employees shall maintain private status and may not rely on local U.S. Government offices or facilities for support while under this recipient.
- b. The sale of personal property or automobiles by recipient employees and their dependents in the foreign country to which they are assigned shall be subject to the same limitations and prohibitions which apply to direct-hire USAID personnel employed by the Mission including the rules contained in 22 CFR Part 136, except as this may conflict with host government regulations.
- c. Other than work to be performed under this award for which an employee is assigned by the recipient, no employee of the recipient shall engage directly or indirectly, either in the individual's own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which the individual is assigned, nor shall the individual make loans or investments to or in any business, profession, or occupation in the foreign countries to which the individual is assigned.
- d. The recipient's employees, while in a foreign country, are expected to show respect for its convention, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.
- e. In the event the conduct of any recipient employee is not in accordance with the preceding paragraphs, the recipient's chief of party shall consult with the USAID Mission Director and the employee involved, and shall recommend to the recipient a course of action with regard to such employee.

- f. The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this award of any third country national when, in the discretion of the Ambassador, the interests of the United States so require.
- g. If it is determined, under either (e) or (f) above, that the services of such employee shall be terminated, the recipient shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

[END OF PROVISION]

### **13. PARTICIPANT TRAINING (OCTOBER 1998)**

**APPLICABILITY:** *This provision is applicable when any participant training is financed under the award.*

#### **PARTICIPANT TRAINING (OCTOBER 1998)**

- a. Definitions: A participant is any non-U.S. individual being trained under this award outside of that individual's home country.
- b. Application of ADS Chapter 253: Participant training under this award shall comply with the policies established in ADS Chapter 253, Participant Training (including TrainNet requirements), except to the extent that specific exceptions to ADS 253 have been provided in this award with the concurrence of the Global Bureau's Center for Human Capacity Development. (See ADS 253) (ADS 253 may be obtained by submitting a request to the Agreement Officer.)
- c. Orientation: In addition to the mandatory requirements in ADS 253, recipients are strongly encouraged to provide, in collaboration with the Mission training officer, predeparture orientation and orientation in Washington at the Washington International Center. The latter orientation program also provides the opportunity to arrange for home hospitality in Washington and elsewhere in the U.S. through liaison with the National Council for International Visitors (NCIV). If the Washington orientation is determined not to be feasible, home hospitality can be arranged in most U.S. cities if a request for such is directed to the Agreement Officer, who will transmit the request to NCIV through R&O/IT.

[END OF PROVISION]

**\*14. VOLUNTARY POPULATION PLANNING ACTIVITIES –  
SUPPLEMENTAL REQUIREMENTS (MAY 2006)**

*APPLICABILITY: This provision is applicable to all awards involving any aspect of voluntary population planning activities.*

**VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL  
REQUIREMENTS (MAY 2006)**

- a. Voluntary Participation and Family Planning Methods:
  - (1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the recipient agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.
  - (2) Activities which provide family planning services or information to individuals, financed in whole or in part under this agreement, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.
- b. Requirements for Voluntary Family Planning Projects
  - (1) A Family planning project must comply with the requirements of this paragraph.
  - (2) A project is a discrete activity through which a governmental or nongovernmental organization or public international organization provides family planning services to people and for which funds obligated under this award, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.

- (3) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- (4) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.
- (5) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.
- (6) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.
- (7) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.
- (8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under this award, the organization implementing a project for which such assistance is provided shall agree



that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.

(9)

- i) The recipient shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (3), (4), (5) or (7) of this paragraph;
- ii) the recipient shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.
- iii) The recipient shall provide USAID such additional information about violations as USAID may request.

c. Additional Requirements for Voluntary Sterilization Programs

(1) None of the funds made available under this award shall 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.

(2) The recipient shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

(3) Further, the recipient shall document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and

by the signature or mark of a witness who shall speak the same language as the patient.

(4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization for a period of three years after performance of the sterilization procedure.

d. Prohibition on Abortion-Related Activities:

(1) No funds made available under this award 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, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

(2) No funds made available under this award 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.

\* e. Ineligibility of Foreign Nongovernmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning.

I. Grants and Cooperative Agreements with U.S. Nongovernmental Organizations

(1) The recipient agrees that it will not furnish assistance for family planning under this award to any foreign nongovernmental organization that performs or actively promotes abortion as a method of family planning in USAID-recipient countries or that provides financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph (e), a foreign nongovernmental organization is a nongovernmental organization that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(2) Prior to furnishing funds provided under this award to another nongovernmental organization organized under the laws of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the recipient shall obtain the written agreement of such organization that the organization shall not furnish assistance for family

planning under this award to any foreign nongovernmental organization except under the conditions and requirements that are applicable to the recipient as set forth in this paragraph (e).

(3) The recipient may not furnish assistance for family planning under this award to a foreign nongovernmental organization (the subrecipient) unless:

(i) The subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities; and

(ii) The recipient obtains the written agreement of the subrecipient containing the undertakings described in subparagraph (4) below.

(4) Prior to furnishing assistance for family planning under this award to a subrecipient, the subrecipient must agree in writing that:

(i) The subrecipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to other foreign nongovernmental organizations that conduct such activities;

(ii) The recipient and authorized representatives of USAID may, at any reasonable time: (A) inspect the documents and materials maintained or prepared by the subrecipient in the usual course of its operations that describe the family planning activities of the subrecipient, including reports, brochures and service statistics; (B) observe the family planning activity conducted by the subrecipient; (C) consult with family planning personnel of the subrecipient; and (D) obtain a copy of the audited financial statement or report of the subrecipient, if there is one;

(iii) In the event that the recipient or USAID has reasonable cause to believe that a subrecipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall review the family planning program of the subrecipient to determine whether a violation of the undertaking has occurred. The subrecipient shall make available to the recipient such books and records and other information as may be reasonably requested in order to conduct the review. USAID may also review the family planning program of the subrecipient under these circumstances, and USAID shall have access to such books and records and information for inspection upon request;

(iv) The subrecipient shall refund to the recipient the entire amount of assistance for family planning furnished to the subrecipient under this award in the event it is determined that the certification provided by the subrecipient under subparagraph (3), above, is false;

(v) Assistance for family planning provided to the subrecipient under this award shall be terminated if the subrecipient violates any undertaking in the agreement required by subparagraphs (3) and (4), and the subrecipient shall refund to the recipient the value of any assistance furnished under this award that is used to perform or actively promote abortion as a method of family planning; and

(vi) The subrecipient may furnish assistance for family planning under this award to another foreign nongovernmental organization (the sub-subrecipient) only if: (A) the sub-subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities; and (B) the subrecipient obtains the written agreement of the sub-subrecipient that contains the same undertakings and obligations to the subrecipient as those provided by the subrecipient to the recipient as described in subparagraphs (4)(i)-(v) above.

(5) Agreements with subrecipients and sub-subrecipients required under subparagraphs (3) and (4) shall contain the definitions set forth in subparagraph (10) of this paragraph (e).

(6) The recipient shall be liable to USAID for a refund for a violation of any requirement of this paragraph (e) only if: (i) the recipient knowingly furnishes assistance for family planning to a subrecipient who performs or actively promotes abortion as a method of family planning; or (ii) the certification provided by a subrecipient is false and the recipient failed to make reasonable efforts to verify the validity of the certification prior to furnishing assistance to the subrecipient; or (iii) the recipient knows or has reason to know, by virtue of the monitoring which the recipient is required to perform under the terms of this award, that a subrecipient has violated any of the undertakings required under subparagraph (4) and the recipient fails to terminate assistance for family planning to the subrecipient, or fails to require the subrecipient to terminate assistance to a sub-subrecipient that violates any undertaking of the agreement required under subparagraph 4(vi), above. If the recipient finds, in exercising its monitoring responsibility under this award, that a subrecipient or sub-subrecipient receives frequent requests for the information described in subparagraph (10)(iii)(A)(II), below, the recipient shall verify that this information is being provided properly in accordance with subparagraph

(10)(iii)(A)(II) and shall describe to USAID the reasons for reaching its conclusion.

(7) In submitting a request to USAID for approval of a recipient's decision to furnish assistance for family planning to a subrecipient, the recipient shall include a description of the efforts made by the recipient to verify the validity of the certification provided by the subrecipient. USAID may request the recipient to make additional efforts to verify the validity of the certification. USAID will inform the recipient in writing when USAID is satisfied that reasonable efforts have been made. If USAID concludes that these efforts are reasonable within the meaning of subparagraph (6) above, the recipient shall not be liable to USAID for a refund in the event the subrecipient's certification is false unless the recipient knew the certification to be false or misrepresented to USAID the efforts made by the recipient to verify the validity of the certification.

(8) It is understood that USAID may make independent inquiries, in the community served by a subrecipient or sub-subrecipient, regarding whether it performs or actively promotes abortion as a method of family planning.

(9) A subrecipient must provide the certification required under subparagraph (3) and a sub-subrecipient must provide the certification required under subparagraph (4)(vi) each time a new agreement is executed with the subrecipient or sub-subrecipient in furnishing assistance for family planning under the award.

(10) The following definitions apply for purposes of this paragraph (e):

(i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).

(ii) To perform abortions means to operate a facility where abortions are performed as a method of family planning. Excluded from this definition are clinics or hospitals that do not include abortion in their family planning programs. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, postabortion care.

(iii) To actively promote abortion means for an organization to commit resources, financial or other, in a substantial or continuing

effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following:

(I) Operating a family planning counseling service that includes, as part of the regular program, providing advice and information regarding the benefits and availability of abortion as a method of family planning;

(II) Providing advice that abortion is an available option in the event other methods of family planning are not used or are not successful or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and

(IV) Conducting a public information campaign in USAID-recipient countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if the fetus were carried to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that the individual is acting on behalf of the organization.

- (iv) To furnish assistance for family planning to a foreign nongovernmental organization means to provide financial support under this award to the family planning program of the organization, and includes the transfer of funds made available under this award or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient, subrecipient or sub-subrecipient.
- (v) To control an organization means the possession of the power to direct or cause the direction of the management and policies of an organization.

(11) In determining whether a foreign nongovernmental organization is eligible to be a subrecipient or sub-subrecipient of assistance for family planning under this award, the action of separate nongovernmental organizations shall not be imputed to the subrecipient or sub-subrecipient, unless, in the judgment of USAID, a separate nongovernmental organization is being used as a sham to avoid the restrictions of this paragraph (e). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request USAID's approval to treat as separate the family planning activities of two or more organizations, that would not be considered separate under the preceding sentence, if the recipient believes, and provides a written justification to USAID therefore, that the family planning activities of the organizations are sufficiently distinct so as to warrant not imputing the activity of one to the other.

(12) Assistance for family planning may be furnished under this award by a recipient, subrecipient or sub-subrecipient to a foreign government event though the government includes abortion in its family planning program, provided that no assistance may be furnished in support of the abortion activity of the government and any funds transferred to the government shall be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government.

(13) The requirements of this paragraph are not applicable to child spacing assistance furnished to a foreign nongovernmental organization that is engaged primarily in providing health services if the objective of the assistance is to finance integrated health care services to mothers and children and child spacing is one of several health care services being provided by the organization as part of a larger child survival effort with the objective of reducing infant and child mortality.

## II. Grants and Cooperative Agreements with Non-U.S., Nongovernmental Organizations

(1) The recipient certifies that it does not now and will not during the term of this award perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph (e), a foreign nongovernmental organization is a nongovernmental organization that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(2) The recipient agrees that the authorized representative of USAID may, at any reasonable time: (i) inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that describe the family planning activities of the recipient, including reports, brochures and service statistics; (ii) observe the family planning activity conducted by the recipient, (iii) consult with the family planning personnel of the recipient; and (iv) obtain a copy of the audited financial statement or report of the recipient, if there is one.

(3) In the event USAID has reasonable cause to believe that the recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall make available to USAID such books and records and other information as USAID may reasonably request in order to determine whether a violation of the undertaking has occurred.

(4) The recipient shall refund to USAID the entire amount of assistance for family planning furnished under this award in the event it is determined that the certification provided by the recipient under subparagraph (1), above, is false.

(5) Assistance for family planning to the recipient under this award shall be terminated if the recipient violates any undertaking required by this paragraph (e), and the recipient shall refund to USAID the value of any assistance furnished under this award that is used to perform or actively promote abortion as a method of family planning.

(6) The recipient may not furnish assistance for family planning under this award to a foreign nongovernmental organization (the subrecipient) unless: (i) the subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities; and (ii) the recipient obtains the written agreement of the subrecipient containing the undertakings described in subparagraph (7), below.



(7) Prior to furnishing assistance for family planning under this award to a subrecipient, the subrecipient must agree in writing that:

(i) The subrecipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to other nongovernmental organizations that conduct such activities.

(ii) The recipient and authorized representatives of USAID may, at any reasonable time: (A) inspect the documents and materials maintained or prepared by the subrecipient in the usual course of its operations that describe the family planning activities of the subrecipient, including reports, brochures and service statistics; (B) observe the family planning activity conducted by the subrecipient; (C) consult with family planning personnel of the subrecipient; and (D) obtain a copy of the audited financial statement or report of the subrecipient, if there is one.

(iii) In the event the recipient or USAID has reasonable cause to believe that a subrecipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall review the family planning program of the subrecipient to determine whether a violation of the undertaking has occurred. The subrecipient shall make available to the recipient such books and records and other information as may be reasonably requested in order to conduct the review. USAID may also review the family planning program of the subrecipient under these circumstances, and USAID shall have access to such books and records and information for inspection upon request.

(iv) The subrecipient shall refund to the recipient the entire amount of assistance for family planning furnished to the subrecipient under this award in the event it is determined that the certification provided by the subrecipient under subparagraph (6), above, is false.

(v) Assistance for family planning to the subrecipient under this award shall be terminated if the subrecipient violates any undertaking required by this paragraph (e), and the subrecipient shall refund to the recipient the value of any assistance furnished under this award that is used to perform or actively promote abortion as a method of family planning.

(vi) The subrecipient may furnish assistance for family planning under this award to another foreign nongovernmental organization (the subsubrecipient) only if: (A) the sub-subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts

such activities; and (B) the subrecipient obtains the written agreement of the sub-subrecipient that contains the same undertakings and obligations to the subrecipient as those provided by the subrecipient to the recipient as described in subparagraphs (7)(i)-(v), above.

(8) Agreements with subrecipients and sub-subrecipients required under subparagraphs (6) and (7) shall contain the definitions set forth in subparagraph (13) of this paragraph (e).

(9) The recipient shall be liable to USAID for a refund for a violation by a subrecipient relating to its certification required under subparagraph (6) or by a subrecipient or a sub-subrecipient relating to its undertakings in the agreement required under subparagraphs (6) and (7) only if: (i) the recipient knowingly furnishes assistance for family planning to a subrecipient that performs or actively promotes abortion as a method of family planning; or (ii) the certification provided by a subrecipient is false and the recipient failed to make reasonable efforts to verify the validity of the certification prior to furnishing assistance to the subrecipient; or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a subrecipient has violated any of the undertakings required under subparagraph (7) and the recipient fails to terminate assistance for family planning to the subrecipient, or fails to require the subrecipient to terminate assistance to a sub-subrecipient that violates any undertaking of the agreement required under subparagraph 7(vi), above. If the recipient finds, in exercising its monitoring responsibility under this award, that a subrecipient or sub-subrecipient receives frequent requests for the information described in subparagraph (13)(iii)(A)(II), below, the recipient shall verify that this information is being provided properly in accordance with subparagraph 13(iii)(A)(II) and shall describe to USAID the reasons for reaching its conclusion.

(10) In submitting a request to USAID for approval of a recipient's decision to furnish assistance for family planning to a subrecipient, the recipient shall include a description of the efforts made by the recipient to verify the validity of the certification provided by the subrecipient. USAID may request the recipient to make additional efforts to verify the validity of the certification. USAID will inform the recipient in writing when USAID is satisfied that reasonable efforts have been made. If USAID concludes that these efforts are reasonable within the meaning of subparagraph (9) above, the recipient shall not be liable to USAID for a refund in the event the subrecipient's certification is false unless the recipient knew the certification to be false or misrepresented to USAID the efforts made by the recipient to verify the validity of the certification.

(11) It is understood that USAID may make independent inquiries, in the community served by a subrecipient or sub-subrecipient, regarding whether it performs or actively promotes abortion as a method of family planning.

(12) A subrecipient must provide the certification required under subparagraph (6) and a sub-subrecipient must provide the certification required under subparagraph (7)(vi) each time a new agreement is executed with the subrecipient or sub-subrecipient in furnishing assistance for family planning under this award.

(13) The following definitions apply for purposes of paragraph (e):

(i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).

(ii) To perform abortions means to operate a facility where abortions are performed as a method of family planning. Excluded from this definition are clinics or hospitals that do not include abortion in their family planning programs. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(iii) To actively promote abortion means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following:

(I) Operating a family planning counseling service that includes, as part of the regular program, providing advice and information regarding the benefits and availability of abortion as a method of family planning;

(II) Providing advice that abortion is an available option in the event other methods of family planning are not used or are not successful or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and

(IV) Conducting a public information campaign in USAID-recipient countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest or if the life of the mother would be endangered if the fetus were carried to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(C) Action by an individual acting in the individual's own capacity shall not be attributed to an organization with which the individual is associated, provided that the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent the individual is acting on behalf of the organization.

(iv) To furnish assistance for family planning to a foreign nongovernmental organization means to provide financial support under this award to the family planning program of the organization, and includes the transfer of funds made available under this award or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient, subrecipient or sub-subrecipient.

(v) To control an organization means the possession of the power to direct or cause the direction of the management and policies of an organization.

(14) In determining whether a foreign nongovernmental organization is eligible to be a recipient, subrecipient or sub-subrecipient of assistance for family planning under this award, the action of separate nongovernmental organizations shall not be imputed to the recipient, subrecipient or sub-subrecipient, unless, in the judgment of USAID, a separate nongovernmental organization is being used as a sham to avoid the restrictions of this paragraph (e). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request USAID's

approval to treat as separate the family planning activities of two or more organizations, which would not be considered separate under the preceding sentence, if the recipient believes, and provides a written justification to USAID therefore, that the family planning activities of the organizations are sufficiently distinct so as to warrant not imputing the activity of one of the other.

(15) Assistance for family planning may be furnished under this award by a recipient, subrecipient or sub-subrecipient to a foreign government even though the government includes abortion in its family planning program, provided that no assistance may be furnished in support of the abortion activity of the government and any funds transferred to the government shall be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government.

(16) The requirements of this paragraph are not applicable to child spacing assistance furnished to a foreign nongovernmental organization that is engaged primarily in providing health services if the objective of the assistance is to finance integrated health care services to mothers and children and child spacing is one of several health care services being provided by the organization as part of a larger child survival effort with the objective of reducing infant and child mortality.

### III. Exceptions

The paragraphs set forth in sections (I) and (II) above are not applicable in the situations described below:

(1) While the paragraphs are to be used in grants and cooperative agreements (and assistance subagreements) that provide financing for family planning activity or activities, if family planning is a component of an activity involving assistance or other purposes, such as food and nutrition, health for education, paragraph (e), "Ineligibility of Foreign Nongovernmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning," applies only to the family planning component.

(2) When health or child survival funds are used to provide assistance for child spacing as well as health purposes, these paragraphs are applicable to such assistance unless: (a) the foreign nongovernmental organization is one that primarily provides health services; (b) the objective of the assistance is to finance integrated health care services to mothers and children; and (c) child spacing is one of several health care services being provided as part of a larger child survival effort with the objective of reducing infant and child mortality. These paragraphs need not be included in the assistance agreement if it indicates that assistance for child spacing will be provided only in this way. USAID support under these circumstances is considered a contribution to a health service delivery program and not to a family planning program. In such a case, these paragraphs need not be included in an assistance agreement.

(3) These paragraphs need not be included in assistance agreements with United States nongovernmental organizations for family planning purposes if implementation of the activity does not involve assistance to foreign nongovernmental organizations.

- f. The recipient shall insert paragraphs (a), (b), (c), (d) and (f) of this provision in all subsequent subagreements and contracts involving family planning or population activities that will be supported in whole or in part from funds under this award. Paragraph (e) shall be inserted in subagreements and sub-subagreements in accordance with the terms of paragraph e. The term subagreements means subgrants and subcooperative agreements."

[END OF PROVISION]

## **15. PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable when human subjects are involved in research financed by the award.*

### **PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (OCTOBER 1998)**

- a. Safeguarding the rights and welfare of human subjects involved in research supported by USAID is the responsibility of the organization to which support is awarded. USAID has adopted the Common Federal Policy for the Protection of Human Subjects, Part 225 of Title 22 of the Code of Federal Regulations (the "Policy"). Additional interpretation, procedures, and implementation guidance of the Policy are found in USAID General Notice entitled "Procedures for the Protection of Human Subjects in Research Supported by USAID", issued April 19, 1995, as from time to time amended. USAID's Cognizant Human Subjects Officer (CHSO) in USAID/W has oversight, guidance, and interpretation responsibility for the Policy.
- b. Recipient organizations must comply with USAID policy when humans are the subject of research, as defined in 22 CFR 225.102(d), funded by the grant and recipients MUST provide "assurance", as required by 22 CFR 225.103, that they follow and abide by the procedures in the Policy. See also Section 5 of the April 19, 1995, USAID General Notice which sets forth activities to which the Policy is applicable. The existence of a BONA FIDE, applicable assurance approved by the Department of Health and Human Services (HHS) such as the "multiple project assurance" (MPA) will satisfy this requirement. Alternatively, organizations can provide an acceptable written assurance to USAID as described in 22 CFR 225.103. SUCH ASSURANCES MUST BE DETERMINED BY THE CHSO TO BE ACCEPTABLE PRIOR TO ANY APPLICABLE

RESEARCH BEING INITIATED OR CONDUCTED UNDER THE AWARD. In some limited instances outside the U.S., alternative systems for the protection of human subjects may be used provided they are deemed "at least equivalent" to those outlined in Part 225 (See 22 CFR 225.101[h]). Criteria and procedures for making this determination are described in the General Notice cited in the preceding paragraph.

- c. Since the welfare of the research subject is a matter of concern to USAID as well as to the organization, USAID staff consultants and advisory groups may independently review and inspect research and research processes and procedures involving human subjects, and based on such findings, the CHSO may prohibit research which presents unacceptable hazards or otherwise fails to comply with USAID procedures. Informed consent documents must include the stipulation that the subject's records may be subject to such review.

[END OF PROVISION]

## **16. INDIRECT COST RATES - PROVISIONAL (Nonprofit) (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable to all recipients whose indirect cost rates under this award are on a provisional basis.*

### **INDIRECT COST RATES - PROVISIONAL (Nonprofit) (OCTOBER 1998)**

- a. Provisional indirect cost rates shall be established for the recipient's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the Schedule of this award.
- b. The recipient, not later than nine months after the close of each of its accounting periods during the term of this award, shall submit to the Agreement Officer proposed final indirect cost rates with supporting cost data. The proposed rates shall be based on the recipient's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of the recipient's proposal.
- c. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
- d. The results of each negotiation shall be set forth in an indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply and (4) the items treated as direct costs. The agreement shall not change any monetary

ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.

- e. Pending establishment of final indirect cost rates for any fiscal year, the recipient shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Agreement Officer, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.
- f. Any failure by the parties to agree on any final rate(s) under this provision shall be considered a dispute within the meaning of the standard provision of the grant, entitled "Disputes".

[END OF PROVISION]

## **17. TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; OVER \$50,000) (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable only when title to property is vested in the recipient and over \$50,000 in equipment is expected to be procured with USAID funds. Equipment is defined as any tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.*

### **TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; OVER \$50,000) (OCTOBER 1998)**

- a. Title to all property financed under this award shall vest in the recipient.
- b. The recipient agrees to use and maintain the property for the purpose of the award in accordance with the following procedures:
  - 1) The recipient shall not use equipment acquired with U.S. Government funds to provide services to non-U.S. Government outside organizations for a fee that is less than private companies charge for equivalent services.
  - 2) The recipient shall use the equipment in the program for which it was acquired as long as needed, whether or not the program continues to be supported by U.S. Government funds and shall not encumber the property without approval of USAID. When no longer needed for the original program, the recipient shall use the equipment in connection with its other Federally-sponsored activities, in the following order of priority:



- i) Activities sponsored by USAID, then
  - ii) Activities sponsored by other U.S. Government agencies.
- 3) During the time that equipment is used on the program for which it was acquired, the recipient shall make it available for use on other programs if such other use will not interfere with the work on the program for which the equipment was originally acquired. User charges shall be treated as program income.
- 4) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Agreement Officer.
- 5) The recipient's property management standards for equipment acquired with U.S. Government funds and federally-owned equipment shall include all of the following:
- i) Equipment records shall be maintained accurately and shall include the following information:
    - A) A description of the equipment,
    - B) Manufacturer's serial number, model number, U.S. Government stock number, national stock number, or other identification number;
    - C) Source of the equipment, including the award number;
    - D) Whether title vests in the recipient, the U.S. Government or other specified entity;
    - E) Acquisition date (or date received, if the equipment was furnished by the U.S. Government) and cost;
    - F) Information from which one can calculate the percentage of U.S. Government participation in the cost of the equipment (not applicable to equipment furnished by the U.S. Government);
    - G) Location and condition of the equipment and the date the information was reported;
    - H) Unit acquisition cost;

- i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensated USAID for its share.
  - ii) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
  - iii) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated and fully documented and the recipient shall promptly notify the Agreement Officer.
  - iv) Adequate maintenance procedures shall be implemented to keep the equipment in good condition;
  - v) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.
- 6) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:
  - i) For equipment with a current per unit fair market value of \$5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to USAID for its share.
  - ii) If the recipient has no need for USAID-financed equipment, the recipient shall request disposition instructions from the Agreement Officer.
    - A) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse USAID its share. The recipient shall be permitted to deduct and retain from the USAID share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.
    - B) If the recipient is instructed to ship or otherwise dispose of the equipment, the recipient will be reimbursed by USAID for reasonable expenses incurred in disposition.

- c. USAID reserves the right to transfer the title to USAID or a third party. The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing by the Agreement Officer. When USAID exercises its right to take title, the equipment shall be subject to the Standard Provision entitled "Title to and Care of Property" (U.S. Government Title).
- d. Within 90 calendar days after the date of completion of the award the recipient shall submit an inventory of all property with the final performance report. The final inventory shall list all equipment acquired with award funds or received from USAID.
- e. Title to supplies and other expendable equipment shall vest in the recipient upon acquisition. If there is a residual inventory of new/unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other U.S. Government-sponsored project or program, the recipient may retain the supplies but must compensate USAID for its share. The recipient shall not use supplies acquired with USAID funds to provide services to outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by U.S. Government statute as long as the U.S. Government retains an interest in the supplies.
- f. Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient.
- g. If the purchase of real property (meaning land, land improvements, structures, and appurtenances thereto) is supported under the award, separate instructions will be provided to the recipient by the Agreement Officer.

[END OF PROVISION]

## **18. TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; \$50,000 and Under) (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable only when title to property is vested in the recipient and under \$50,000 in equipment is expected to be procured with USAID funds. Equipment is defined as any tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.*

**TITLE TO AND USE OF PROPERTY (RECIPIENT TITLE; \$50,000 and Under)  
(OCTOBER 1998)**

- a. Title to all property financed under this award shall vest in the recipient.
- b. The recipient agrees to use and maintain the property for the purpose of the award and in accordance with the procedures established in this Provision.
- c. With respect to property having an acquired value of \$5,000 or more, the recipient agrees to report such items to the Agreement Officer as they are acquired and to maintain a control system which will permit their ready identification and location.
- d. Within ninety calendar days after the end of the award, the recipient will provide a list to the Agreement Officer and the Cognizant Technical Officer of each item that has current fair market value of \$5,000 or more with a detailed proposal of what the recipient intends to do with that property. If the Agreement Officer does not respond within 120 calendar days, the recipient may proceed with the disposition of the property. However, if the recipient uses the property for purposes other than those of the award or sells or leases the property, USAID shall be reimbursed of its share of the property unless the Agreement Officer authorizes USAID's share of the income from selling or leasing the property to be used as program income. This share is based upon the percentage of USAID's contribution to the recipient's program. If USAID paid 100% of the recipient's costs, then USAID would receive 100% of the selling cost less a nominal selling fee of \$500 or 10%, whichever is less.

[END OF PROVISION]

**19. TITLE TO AND CARE OF PROPERTY (U.S. GOVERNMENT TITLE)  
(OCTOBER 1998)**

*APPLICABILITY: This provision is applicable when title to property is vested in the U.S. Government.*

**TITLE TO AND CARE OF PROPERTY (U.S. GOVERNMENT TITLE) (OCTOBER  
1998)**

- a. Property, title to which vests in the Government under this award, whether furnished by the Government or acquired by the recipient, is subject to this provision and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personal property by reason of affixation to any real property.
- b. Use of Government Property: Government property shall, unless otherwise provided herein or approved by the Agreement Officer, be used only for the performance of this award.
- c. Control, Maintenance and Repair of Government Property:
  - (1) The recipient shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this award. The recipient shall take all reasonable steps to comply with all appropriate directions or instructions which the Agreement Officer may prescribe as reasonably necessary for the protection of the Government property.
  - (2) The recipient shall submit, for review by the Agreement Officer, a records system for property control and a program for orderly maintenance of Government property; however, if the property control and maintenance system has been reviewed by another U.S. Government department or agency pursuant to Section \_\_.30 through \_\_.36 of OMB Circular A-110, the recipient shall furnish the Agreement Officer proof of such review in lieu of another submission.
  - (3) Property Control: The property control system shall include but not be limited to the following:
    - (i) Identification of each item of Government property acquired or furnished under the award by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of U.S. Government."
    - (ii) The price of each item of property acquired or furnished under this award.
    - (iii) The location of each item of property acquired or furnished under this award.

(iv) A record of any usable components which are permanently removed from items of Government property as a result of modification or otherwise.

(v) A record of disposition of each item acquired or furnished under the award.

(vi) The official property control records shall be kept in such condition that at any stage of completion of the work under this award, the status of property acquired or furnished under this award may be readily ascertained. A report of current status of all items of property acquired or furnished under the award shall be submitted yearly concurrently with the annual report.

(4) Maintenance Program: The recipient's maintenance program shall be consistent with sound business practice, the terms of the award, and provide for:

(i) Disclosure of need for and the performance of preventive maintenance,

(ii) Disclosure and reporting of need for capital type rehabilitation, and

(iii) Recording of work accomplished under the program.

(A) Preventative maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

(B) Records of maintenance - The recipient's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

(C) A report of status of maintenance of Government property shall be submitted annually with the annual report.

d. Risk of Loss:

(1) The recipient shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the recipient shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the recipient's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the recipient's business, or all or substantially all of the recipient's operation at any one plant, laboratory, or separate location in which this award is being performed;

(ii) Which results from a failure on the part of the recipient, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above:

(A) To maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (i) above, or

(B) To take all reasonable steps to comply with any appropriate written directions of the Agreement Officer under (c) above;

(iii) For which the recipient is otherwise responsible under the express terms designated in the schedule of this award;

(iv) Which results from a risk expressly required to be insured under some other provision of this award, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater;

(v) Which results from a risk which is in fact covered by insurance or for which the recipient is otherwise reimbursed, but only to the extent of such insurance or reimbursement; or

(vi) Provided, that, if more than one of the above exceptions shall be applicable in any case, the recipient's liability under any one exception shall not be limited by any other exception.

(2) The recipient shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the recipient to carry such insurance under any other provision of this award.

(3) Upon the happening of loss or destruction of or damage to the Government property, the recipient shall notify the Agreement Officer thereof, shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all

the Government property in the best possible order, and furnish to the Agreement Officer a statement of:

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled property.

(4) The recipient shall make repairs and renovations of the damaged Government property or take such other action as the Agreement Officer directs.

(5) In the event the recipient is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the award, or shall otherwise reimburse the Government, as directed by the Agreement Officer. The recipient shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the Agreement Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suits and the execution of instruments or assignments in favor of the Government) in obtaining recovery.

- e. Access: The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.
- f. Final Accounting and Disposition of Government Property: Upon completion of this award, or at such earlier dates as may be fixed by the Agreement Officer, the recipient shall submit, in a form acceptable to the Agreement Officer, inventory schedules covering all items of Government property not consumed in the performance of this award or not theretofore delivered to the Government, and shall prepare, deliver, or make such other disposition of the Government property as may be directed or authorized by the Agreement Officer.
- g. Communications: All communications issued pursuant to this provision shall be in writing.

[END OF PROVISION]



## **20. TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (OCTOBER 1998)**

*APPLICABILITY: This provision is applicable when an award is funded under an agreement between USAID and the Host Country, or when the award provides for property titled in the name of the Host Country or such public or private agency as the Host Country Government may designate to be furnished to or acquired by the recipient.*

### **TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (OCTOBER 1998)**

- a. Except as modified by the Schedule of this award, title to all equipment, materials, and supplies, the cost of which is reimbursable to the recipient by USAID or by the cooperating country, shall at all times be in the name of the cooperating country or such public or private agency as the cooperating Government may designate, unless title to specified types or classes of equipment is reserved to USAID under provisions set forth in the Schedule of this award, but all such property shall be under the custody and control of recipient until the owner of title directs otherwise or completion of work under this award or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers shall be taken in the name of the title owner.
- b. The recipient shall prepare and establish a program, for the receipt, use, maintenance, protection, custody, and care of equipment, materials, and supplies for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program. The recipient shall be guided by the requirements of 22 CFR Part 226.30 through 226.36.
- c. Within 90 days after completion of this award, or at such other date as may be fixed by the Agreement Officer, the recipient shall submit an inventory schedule covering all items of equipment, materials, and supplies under the recipient's custody, title to which is in the cooperating country or public or private agency designated by the cooperating country, which have not been consumed in the performance of this award. The recipient shall also indicate what disposition has been made of such property.

[END OF PROVISION]

## 21. COST SHARING (MATCHING) (JULY 2002)

*APPLICABILITY: This provision is applicable when the recipient is required to provide a matching share or to cost share.*

### COST SHARING (MATCHING) (JULY 2002)

- a. During the period of this award, the recipient agrees to spend funds from non-U.S. Government sources in an amount at least equal to the amount or percentage of the total expenditures under this award specified in the schedule of the award. The schedule of this award may also contain restrictions on the application of cost sharing (matching) funds. The schedule of the award takes precedence over the terms of this provision.
- b. Eligibility of non-U.S. Government funds applied to satisfy cost sharing (matching) requirements under this award are set forth below:
  - (1) Charges incurred by the recipient as project costs. Not all charges require cash outlays by the recipient during the project period; examples are depreciation and use charges for buildings and equipment.
  - (2) Project costs financed with cash contributed or donated to the recipient by other non-U.S. Government organizations (may include public international organizations or foreign governments and institutions, private organizations, or individuals), and
  - (3) Project costs represented by services and real and personal property, or use thereof, donated by other non-U.S. Government agencies and institutions, and private organizations and individuals.
- c. All contributions, both cash and in-kind, shall be accepted as part of the recipient's cost sharing (matching) when such contributions meet all of the following criteria:
  - (1) Are verifiable from the recipient's records;
  - (2) Are not included as contributions for any other U.S. Government-assisted program;
  - (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;
  - (4) Are types of charges that would be allowable under the applicable Federal cost principles;

- (5) Are not paid by the U.S. Government under another grant or agreement (unless the grant or agreement is authorized by U.S. Government law to be used for cost sharing or matching);
- (6) Are provided for in the approved budget when required by USAID; and
- (7) Conform to other provisions of this paragraph.

The source, origin and nationality requirements and the restricted goods provision established in the Standard Provision entitled "USAID Eligibility Rules for Goods and Services" do not apply to cost sharing (matching) expenditures.

- d. Values for recipient in-kind contributions will be established in accordance with the applicable Federal cost principles.
- e. Specific procedures for the recipient in establishing the value of in-kind contributions from non-U.S. Government third parties are set forth below:
  - (1) Valuation of volunteer services: Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.
    - (i) Rates for volunteer services: Rates for volunteers should be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient's organization, rates should be consistent with those paid for similar work in the labor market in which the recipient competes of the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.
    - (ii) Volunteers furnished by other organizations: When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs) provided these services are of the same skill for which the employee is normally paid.
  - (2) Valuation of donated supplies: Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost (matching) share shall be reasonable and shall not exceed the market value of the property at the time of the donation.

- (3) Valuation of donated equipment, buildings, and land or use thereof:
- (i) The method used for charging cost sharing or matching for donated equipment, buildings, and land for which title passes to the recipient may differ according to the purpose of the award as follows:
- (A) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings, or land, the total value of the donated property may be claimed as cost sharing or matching.
- (B) If the purpose of the award is to support activities that require the use of equipment, buildings, or land; normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the USAID Agreement Officer has approved the charges.
- (ii) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:
- (A) Land and buildings: The value of donated land and buildings shall not exceed its fair market value, at the time of donation to the recipient as established by an independent appraiser (e.g. certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.
- (B) Equipment: The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.
- (C) Use of space: The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.
- (D) Loaned equipment: The value of loaned equipment shall not exceed its fair rental value.
- f. The following requirements pertain to the recipient's supporting records for in kind contributions from third parties. With the authorization of the Agreement Officer, the recipient may attribute cost share contributions from subrecipients to the prime award.

- (1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.
- (2) The basis for determining the valuation for personal services, material, equipment, buildings, and land shall be documented.
- g. Individual expenditures do not have to be shared or matched provided that the total expenditures incurred during the year (or funding period) are shared or matched in accordance with the agreed upon amount or percentage set forth in the schedule of the award.
- h. If at the end of any or funding period hereunder, the recipient has expended an amount of non-U.S. Government funds less than the agreed upon amount or percentage of total expenditures, the Agreement Officer may apply the difference to reduce the amount of USAID funding for the following funding period, or, if this award has expired or been terminated, may require that the recipient refund the difference to USAID.
- i. If the recipient fails to act in good faith to meet the cost sharing (matching) requirements set forth in paragraph (a) above, the Agreement Officer may consider it sufficient reason to terminate this award for cause in accordance with the Standard Provision of this award entitled "Termination and Suspension".
- j. The restrictions on the use of USAID funds set forth in the standard provisions of this award are applicable to expenditures incurred with USAID funds provided under this award. Except for the requirements of this standard provision, the restrictions set forth in the standard provisions of this grant are not applicable to costs incurred by the recipient from non-U.S. Government funds. The recipient will account for the USAID funds in accordance with the standard provision of this award entitled "Accounting, Audit, and Records"; however, in the event of disallowances of expenditures from USAID award funds, the recipient may substitute expenditures made with funds provided from non-U.S. Government sources, provided they are eligible in accordance with all the standard provisions of this award.
- k. Notwithstanding paragraph (b) of the standard provision of this award entitled "Refunds", the parties agree that in the event of any disallowance of expenditures from USAID award funds provided hereunder, the recipient may substitute expenditures made with funds provided from non-Federal sources provided they are otherwise eligible in accordance with paragraph (b) of this provision.

[END OF PROVISION]

## **22. PUBLIC NOTICES (JUNE 1993)**

**APPLICABILITY:** *This provision is applicable when the cognizant Technical Officer or SO Team determines that the award is of public interest and requests that the provision be included in the award.*

### **PUBLIC NOTICES (JUNE 1993)**

It is USAID's policy to inform the public as fully as possible of its programs and activities. The recipient is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"The U.S. Agency for International Development administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries worldwide."

The recipient may call on USAID's Office of External Affairs for advice regarding public notices. The recipient is requested to provide copies of notices or announcements to the cognizant technical officer and to USAID's Office of Legislative and Public Affairs as far in advance of release as possible.

[END OF PROVISION]

## **23. PROGRAM INCOME (OCTOBER 1998)**

**APPLICABILITY:** *This provision shall be applicable when Program Income is earned under the award.*

### **PROGRAM INCOME (OCTOBER 1998)**

- a. The Recipient shall apply the standards set forth in this Provision to account for program income earned under the award.
- b. Program Income earned during the project period shall be retained by the recipient and, in accordance with USAID regulations, other implementing guidance, or the terms and conditions of the award, shall be used in one or more of the following ways:
  - 1) Added to funds committed by USAID and the recipient to the project or program, and used to further eligible project or program objectives.
  - 2) Used to finance the non-U.S. Government share of the project or program.

- 3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the U.S. Government share of costs is based.
- c. When the agreement authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.
  - d. If the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(2) of this section shall apply automatically; program income in excess of the cost share amount may be applied in accordance with paragraph (b)(1). Recipients which are commercial organizations may not apply paragraph (b)(1) of this section.
  - e. Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.
  - f. Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award and they comply with the applicable Cost Principles.
  - g. Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the U.S. Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research awards.

[END OF PROVISION]

## **24. (RESERVED)**

## **25. PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)**

*APPLICABILITY: This provision is applicable where performance of the award will take place in "Covered" Countries, as described in ADS 206.*

### **PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)**

- a. USAID reserves the right to terminate assistance to, 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 as defined in 22 CFR Part 140.

- b. (1) For any loan over \$1000 made under this agreement, the recipient shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the recipient 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 as defined in 22 CFR Part 140.
- (2) Upon notice by USAID of a determination under section (1) and at USAID's option, the recipient 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.
- c. (1) The recipient agrees not to disburse, or sign documents committing the recipient to disburse, funds to a subrecipient designated by USAID ("Designated Subrecipient") until advised by USAID that: (i) any United States Government review of the Designated Subrecipient and its key individuals has been completed; (ii) any related certifications have been obtained; and (iii) the assistance to the Designated Subrecipient has been approved. Designation means that the subrecipient has been unilaterally selected by USAID as the subrecipient. USAID approval of a subrecipient, selected by another party, or joint selection by USAID and another party is not designation.
- 2) The recipient shall insert the following clause, or its substance, in its agreement with the Designated Subrecipient:

"The recipient reserves the right to terminate this [Agreement/Contract] or take other appropriate measures if the [Subrecipient] or a key individual of the [Subrecipient] is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140."

[END OF PROVISION]

## **26. INVESTMENT PROMOTION (NOVEMBER 2003)**

*APPLICABILITY: The following clause is required for grants and cooperative agreements when the program includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS 225 (see 225.3.1.8)*

### **INVESTMENT PROMOTION (NOVEMBER 2003)**

- a. Except as specifically set forth in this award or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.



- b. In the event the recipient is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the recipient must notify the Agreement Officer and provide a detailed description of the proposed activity. The recipient must not proceed with the activity until advised by USAID that it may do so.
- c. The recipient must ensure that its employees and sub-recipients and contractors providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all contracts and other sub-agreements entered into hereunder.

[END OF PROVISION]

## **27. REPORTING OF FOREIGN TAXES (MARCH 2006)**

*APPLICABILITY: This provision is applicable to all USAID agreements that obligate or subobligate FY 2003 or later funds except for agreements funded with Operating Expense, Pub. L. 480 funds, or trust funds, or agreements where there will be no commodity transactions in a foreign country over the amount of \$500.*

### **REPORTING OF FOREIGN TAXES (MARCH 2006)**

- a. The recipient must annually submit a report by April 16 of the next year.
- b. Contents of Report. The report must contain:
  - (i) Contractor/recipient name.
  - (ii) Contact name with phone, fax and email.
  - (iii) Agreement number(s).
  - (iv) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.
  - (v) Only foreign taxes assessed by the foreign government in the country receiving U.S. assistance is to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if an assistance program for Lesotho involves the purchase of commodities in South Africa using foreign assistance funds, any taxes imposed by South Africa would not be reported in the report for Lesotho (or South Africa).

(vi) Any reimbursements received by the Recipient during the period in (iv) regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in (iv) received through March 31.

(vii) Reports are required even if the recipient did not pay any taxes during the report period.

(viii) Cumulative reports may be provided if the recipient is implementing more than one program in a foreign country.

c. Definitions. For purposes of this clause:

(i) "Agreement" includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.

(ii) "Commodity" means any material, article, supply, goods, or equipment.

(iii) "Foreign government" includes any foreign governmental entity.

(iv) "Foreign taxes" means value-added taxes and custom duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.

d. Where. Submit the reports to: [insert address and point of contact at the Embassy, Mission or FM/CMP as appropriate. see b. below] [optional with a copy to ]

e. Subagreements. The recipient must include this reporting requirement in all applicable subcontracts, subgrants and other subagreements.

f. For further information see <http://www.state.gov/m/rm/c10443.htm>

[END OF PROVISION]

## **28. FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JANUARY 2002)**

*APPLICABILITY: Include this provision in agreements funded from the following accounts,:*

- *Development Assistance, including assistance for sub-Saharan Africa,*
- *Child Survival and Disease Programs Fund, and*
- *Micro and Small Enterprise Development Program Account.*

## **FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JANUARY 2002)**

Funds in this agreement may not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a public international organization, except as provided in ADS Mandatory Reference "Guidance on Funding Foreign Government Delegations to International Conferences or as approved by the Agreement Officer.

[END OF PROVISION]

## **29. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)**

*APPLICABILITY: This provision must be included in any Request for Application (RFA) or Annual Program Statement (APS) that could lead to a grant or cooperative agreement for activities related to human trafficking funded from any year program resources.*

### **ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)**

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked. Foreign organizations, whether prime or subrecipients, that receive U.S. Government funds to fight trafficking in persons cannot promote, support or advocate the legalization or practice of prostitution when they are engaged in overseas activities. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.

[END OF PROVISION]

## **30. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION - ASSISTANCE (JULY 2004)**

*APPLICABILITY: This provision must be included in any grant or cooperative agreement that uses funds made available for activities related to human trafficking funded from any year program resources.*

### **PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION - ASSISTANCE (JULY 2004)**

a. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

b. [This subsection (b) only applies to foreign non-governmental organizations and PIOs receiving U.S. Government funds to carry out programs that target victims of severe forms of trafficking as either prime awardees or subawardees.]

(1) For programs that target victims of severe forms of trafficking, as a condition of entering into this agreement or subagreement, the recipient/subrecipient agrees that in its activities outside of the United States and its possessions it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.

(2) The following definitions apply for purposes of this clause:

**FOREIGN NON-GOVERNMENTAL ORGANIZATION** – The term “foreign non-governmental organization” means an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

**SEVERE FORMS OF TRAFFICKING IN PERSONS.** -- The term “severe forms of trafficking in persons” means—

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(C) The recipient shall insert this provision in all sub-agreements under this award.

(D) This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination, in whole or in part, of the agreement by USAID prior to the end of its term.

[END OF PROVISION]

### **31. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)**

*APPLICABILITY: This provision must be included in any agreement financing HIV/AIDS activities.*

#### **ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)**

An organization that is otherwise eligible to receive funds under this agreement to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

[END OF PROVISION]

### **32. CONDOMS (JUNE 2005)**

*APPLICABILITY: This provision must be included in any agreement financing HIV/AIDS activities.*

#### **CONDOMS (JUNE 2005)**

Information provided about the use of condoms as part of projects or activities that are funded under this agreement shall be medically accurate and shall include the public health benefits and failure rates of such use and shall be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms. This fact sheet may be accessed at:

[http://www.usaid.gov/our\\_work/global\\_health/aids/TechAreas/prevention/condom\\_factsheet.html](http://www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condom_factsheet.html)

[END OF PROVISION]

### **33. PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (JUNE 2005)**

*APPLICABILITY: This provision must be included in any agreement financing HIV/AIDS activities.*

## **PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (JUNE 2005)**

a. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

b. Except as noted in the second sentence of this paragraph, as a condition of entering into this agreement or any subagreement, a non-governmental organization or public international organization recipient/subrecipient must have a policy explicitly opposing prostitution and sex trafficking. The following organizations are exempt from this paragraph: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.

c. The following definition applies for purposes of this provision:

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

d. The recipient shall insert this provision, which is a standard provision, in all subagreements.

e. This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

[END OF PROVISION]

## **34. USAID DISABILITY POLICY - ASSISTANCE (DECEMBER 2004)**

*APPLICABILITY: This provision must be included in Request for Applications (RFAs), and in awards.*

### **USAID DISABILITY POLICY - ASSISTANCE (DECEMBER 2004)**

a. The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and

sector strategies, activity designs and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other U.S. government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities. The full text of the policy paper can be found at the following website: [http://pdf.dec.org/pdf\\_docs/PDABQ631.pdf](http://pdf.dec.org/pdf_docs/PDABQ631.pdf).

b. USAID therefore requires that the recipient not discriminate against people with disabilities in the implementation of USAID funded programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing the program under this grant or cooperative agreement. To that end and to the extent it can accomplish this goal within the scope of the program objectives, the recipient should demonstrate a comprehensive and consistent approach for including men, women and children with disabilities.

[END OF PROVISION]

### **35. STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (SEPTEMBER 2004)**

*APPLICABILITY: This provision must be included in Request for Applications (RFAs) and in awards involving construction.*

#### **STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (SEPTEMBER 2004)**

a. One of the objectives of the USAID Disability Policy is to engage other U.S. government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities. As part of this policy USAID has established standards for any new or renovation construction project funded by USAID to allow access by people with disabilities (PWDs). The full text of the policy paper can be found at the following website: [http://pdf.dec.org/pdf\\_docs/PDABQ631.pdf](http://pdf.dec.org/pdf_docs/PDABQ631.pdf).

b. USAID requires the recipient to comply with standards of accessibility for people with disabilities in all structures, buildings or facilities resulting from new or renovation construction or alterations of an existing structure.

c. The recipient will comply with the host country or regional standards for accessibility in construction when such standards result in at least substantially equivalent accessibility and usability as the standard provided in the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) Accessibility Guidelines of July 2004. Where there are no host country or regional standards for

universal access or where the host country or regional standards fail to meet the ADA/ABA threshold, the standard prescribed in the ADA and the ABA will be used.

d. New Construction. All new construction will comply with the above standards for accessibility.

e. Alterations. Changes to an existing structure that affect, or could affect, the usability of the structure will comply with the above standards for accessibility unless the recipient obtains the Agreement Officer's advance approval that compliance is technically infeasible or constitutes an undue burden or both. Compliance is technically infeasible where structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements of the standard. Compliance is an undue burden where it entails either a significant difficulty or expense or both.

f. Exceptions. The following construction related activities are excepted from the requirements of paragraphs (a) through (d) above:

(1) Normal maintenance, re-roofing, painting or wallpapering, or changes to mechanical or electrical systems are not alterations and the above standards do not apply unless they affect the accessibility of the building or facility; and

(2) emergency construction (which may entail the provision of plastic sheeting or tents, minor repair and upgrading of existing structures, rebuilding of part of existing structures, or provision of temporary structures) intended to be temporary in nature. A portion of emergency construction assistance may be provided to people with disabilities as part of the process of identifying disaster- and crisis-affected people as "most vulnerable."

[END OF PROVISION]

**[END OF STANDARD PROVISIONS]**

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