

**DEVELOPMENT ASSISTANCE GRANT AGREEMENT NO. 615-009
MILLENNIUM CHALLENGE ACCOUNT
THRESHOLD PROGRAM**

DEVELOPMENT ASSISTANCE GRANT AGREEMENT

BETWEEN

THE GOVERNMENT OF

THE UNITED STATES OF AMERICA

AND

**THE GOVERNMENT OF
THE REPUBLIC OF KENYA**

FOR

**REFORMING THE PUBLIC PROCUREMENT SYSTEM AND
IMPROVING DELIVERY OF HEALTH SERVICES**

DATE: 23 MAR 2007.

**Millennium Challenge Account Threshold Program
DEVELOPMENT ASSISTANCE GRANT AGREEMENT
615-009**

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USAID DEVELOPMENT ASSISTANCE GRANT AGREEMENT NO. 615-009

Between

**The Government of the United States of America,
Acting through the United States Agency for International Development ("USAID").**

And

**The Government of the Republic of Kenya (hereinafter referred to as the "Government of
Kenya," "GOK" or "Grantee"),
Acting through the Ministry of Finance ("MOF")**

Article 1: Purpose.

The purpose of this Development Assistance Grant Agreement ("DAGA" or "Agreement") is to set out the understanding of the parties named above (the "Parties") concerning the Development Assistance described below.

Article 2: Strategic Objective and Results.

Section 2.1. Strategic Objective. The strategic objective ("Strategic Objective" or "Objective") of this Agreement is to reform public procurement. In particular, the proposed activities focus on making Kenya's national public procurement process transparent in order to reduce corruption, improve financial and expenditure management, and enhance efficiency in service delivery. The health sector will receive specific assistance, as a model for reform in all sectors.

This Section 2.1 may not be changed except by formal written amendment to this Agreement by the Authorized Representatives, as defined in Section 9.2.

Section 2.2. Results. In order to achieve the Objective, the Parties agree to work together to achieve the following results (each a "Result" and collectively, the "Results"):

- (a) Reduced opportunities for corruption in public procurement;
- (b) Improved health care procurement and delivery; and
- (c) Improved public sector and civil society monitoring and evaluation of public procurement practices.

This Section 2.2 may not be changed except by formal written amendment to this Agreement by the Authorized Representatives, as defined in Section 9.2.

Section 2.3. Annex 1, Amplified Program Description. Annex 1, attached hereto, forms part of this Agreement and amplifies the above Strategic Objective and the Results to be achieved. Within the limits of the above definition of the Strategic Objective in Section 2.1, Annex 1 may be changed by written agreement of the authorized representatives of the Parties through Implementation Letters without formal amendment of this Agreement.

Article 3. Contributions of the Parties.

Section 3.1. USAID Contribution.

(a) *The Grant.* To help achieve the Objective set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, and Section 616 of the Millennium Challenge Act of 2003, hereby grants to the Grantee under the terms of this Agreement an amount not to exceed Twelve Million Seven Hundred Twenty-Three Thousand United States dollars (US \$12,723,000), (“the Grant”).

(b) If at any time USAID determines that its contribution under Section 3.1 (a) exceeds the amount which reasonably can be committed for achieving the Objective or Results during the current or next U.S. fiscal year, USAID may, upon written notice to the Grantee, withdraw the excess amount, thereby reducing the amount of the Grant as set forth in Section 3.1(a).

Section 3.2. The Grantee (GOK) Contribution. The Grantee shall provide or cause to be provided all funds, in addition to those provided by USAID and any other donor identified in Annex 1, and all other resources required to complete, on or before the Completion Date, all activities necessary to achieve the Results. Grantee support shall include, but shall not be limited to, all organizational costs associated with achieving the Results. The GOK’s contribution, based on the September 2006 Kenya Country Plan for the Millennium Challenge Account (MCA) Threshold Program will be the equivalent of Three Million Six Hundred Eighty-Eight Thousand ("U.S.") dollars (\$3,688,000). The contribution will be in-kind support, including personnel, vehicles, office space, and other facilities necessary for successful achievement of the Objective. The GOK will report at least annually in a format to be agreed upon with USAID on its in-kind contributions.

Article 4: Completion Date.

(a) The Completion Date, which is September 30, 2009, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objective and Results will be completed.

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

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

Article 5: Conditions Precedent to Disbursement.

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

(a) An opinion of counsel acceptable to USAID that this Agreement has been duly authorized or ratified by, and executed on behalf of the GOK, and that it constitutes a valid and legally binding obligation of the GOK in accordance with all of its terms; and

(b) A statement signed by the Authorized Representative of the Grantee specified in Section 9.2, of the name and title of each person who will act as a representative of the GOK under Section 9.2, together with a specimen signature of each person specified in such statement; and of any additional representatives, together with a specimen signature of each person specified in such statement.

Section 5.2. Notification. USAID will notify the GOK within 21 days from the date of receipt of the statement signed in Section 5.1(b) when USAID has determined that a condition precedent has been met.

Section 5.3. Terminal Dates for Conditions Precedent. The terminal date for meeting the conditions specified in Section 5.1 is 30 days from the date of this Agreement or such later date as USAID may agree to in writing before or after the above terminal date. If the conditions precedent in Section 5.1 have not been met by the above terminal date, USAID, at any time, may terminate this Agreement by written notice to the Grantee.

Article 6: Covenants.

Section 6.1. Implementation Plans. For each Component of the Program, the Parties will develop and approve an implementation plan that includes a statement of the objectives, as well as the activities to achieve the objectives, and the relevant timeline and cost information.

Section 6.2. Quarterly Progress Reviews. The Authorized Representatives of the

United States Government and the Government of Kenya as specified in Section 9.2 or their designees will meet at least quarterly to ensure that Program is being implemented as agreed and that the expected results will be achieved.

Section 6.3. Evaluations. The Parties agree that in addition to the Monitoring and Evaluation Component of the Program, if it is deemed necessary and reasonable, the activities undertaken to achieve the Objective, and their impact, may be evaluated before the Completion Date. If the decision is made to conduct such an evaluation, the Parties will jointly decide on the appropriate scope, mechanism and timetable for the evaluation.

Article 7: Financial Requirements and Expenditure Reporting

Section 7.1. Method of Disbursement. The activities funded under this Agreement will be undertaken in conformity with United States Government rules, regulations, policies and procedures. Funds under this Agreement will be disbursed by USAID through what is termed the direct payment method under the GOK system of financial administration for donor funds. Under this method, the funds remain with the donor. USAID will make direct payment on behalf of the GOK once the GOK has notified USAID that the goods or services received are acceptable. Upon signing of this Agreement, the GOK will reflect funds provided to the GOK entities under this Agreement in its budget as “Appropriations-In-Aid” (A-I-A).

Section 7.2. Expenditure Reporting Requirements. USAID will furnish the Accounting Officers of the GOK implementing entities, as applicable, quarterly expenditure statements certified by the USAID Financial Controller for accounting and expenditure data captured whenever USAID makes procurement or direct payments for the Program. Each Accounting Officer will thereafter make a return and forward it to the National Authorized Officer in the Ministry of Finance.

Article 8: Procurement Procedures.

(a) Unless the Parties agree otherwise in writing, USAID will use USAID procedures to commit and subobligate all Grant funds for the activities and objectives described in Annex 1, the Amplified Program Description.

(b) Government of Kenya officials or other individuals designated by the Government of Kenya will participate in the processes of developing procurement documentation, the solicitation for and awarding of grants and contracts to implement the Program, and in monitoring and evaluating the performance and progress of implementing organizations selected to assist the Parties to implement the Program. Details of cooperation between the Parties on procurement procedures are provided in Annex 1, and may be further agreed by Implementation Letter, as provided in the Standard Provisions, Annex 2.

(c) The Parties agree that, in addition to Kenyan public bodies and private

organizations, several U.S. or international organizations may work under contracts, grants or other agreements with USAID to provide technical assistance in order to implement the Program. The Program will be registered with the Government of Kenya and the U.S. or international organizations will be accredited to the Government of Kenya as provided for under Government of Kenya procedures.

Article 9: Miscellaneous.

Section 9.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram, telefax or cable, and will be deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address: Mission Director
United States Agency for International Development (USAID/Kenya)
P. O. Box 629
Village Market 00621
Nairobi, Kenya

Alternate address for cables: USAID/Kenya, AmEmbassy, Nairobi

Telefax: 862-2678

To the Grantee:

Mail Address: Permanent Secretary
Ministry of Finance
P. O. Box 30007
Nairobi

Alternate address for cables: Finance, Nairobi, Kenya

Telefax: 217593

Other addresses may be substituted for the above upon the giving of notice.

Section 9.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the Office of the Permanent Secretary, Ministry of Finance, and USAID will be represented by the individual holding or acting in the Office of the Mission Director, USAID Kenya (each an “Authorized Representative” and together, the “Authorized Representatives”). Each of the Authorized Representatives, by written

notice, may designate additional representatives for all purposes except this Agreement, signing formal amendments to the agreement or exercising the power under Sections 2.2 or 2.3 to modify Annex 1. The names of the representatives of the GOK entities, with specimen signatures, will be provided to USAID, which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 9.3. Standard Provisions Annex. A Standard Provisions Annex (Annex 2) is attached to and forms part of this Agreement.

Section 9.4. Amendments. Unless otherwise specified herein, the Parties may amend this Agreement only by a formal written amendment signed by the Authorized Representatives.

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

FOR THE GOVERNMENT OF THE
~~REPUBLIC~~ REPUBLIC OF KENYA

BY: _____ / s /
Hon. Peter Kenneth
Assistant Minister for Finance

DATE: 23/3/2007

FOR THE GOVERNMENT OF THE UNITED
STATES OF AMERICA

BY: _____ / s /
Stephen M. Haykin
USAID/Kenya, Director

DATE: 23/3/2007

WITNESSED BY:

BY: _____ / s /
Maureen Harrington
Vice President for Policy and
International Relations, Millennium Challenge
Corporation

BY: _____ / s /
Michael E. Ranneberger
Ambassador of the
United States of America to Kenya

ANNEX 1: AMPLIFIED PROGRAM DESCRIPTION

ANNEX 1

AMPLIFIED PROGRAM DESCRIPTION

I. Introduction

This Annex describes the activities to be undertaken and the Results to be achieved with the funds obligated under this Agreement. Nothing in this Annex shall be construed as amending any of the definitions or terms of the Agreement.

II. Background

In 2003, after almost two decades of economic and social hardship, the Government of Kenya recognized the negative impact of corruption on economic growth and development and resolved to deal with it decisively, addressing inefficiency in the use of public resources and weak institutions of governance. The Government of Kenya has been implementing reforms in this regard, including: (a) development of anti-corruption strategies to facilitate the fight against corruption; and (b) enactment of the Public Officer Ethics Act 2003, the Anti-Corruption and Economic Crimes Act 2003, the Financial Management Act 2004, and the Public Procurement and Disposal Act 2005. The latter will make the public procurement process more transparent, ensure accountability and reduce wastage of public resources. Similarly, in 2005, the Privatization Act was enacted to ensure transparency in the privatization of state-owned enterprises and thereby strengthening accountability. In addition, since April 2005 in partnership with development partners, the Government has been implementing various governance-related reforms under the anti-corruption strategy.

The Government has also developed the Public Financial Management Reform (PFMR) strategy, in collaboration with development partners including USAID, Department for International Development, Swedish International Development Agency, the World Bank, Canadian International Development Agency (CIDA), and the European Commission (EC). The PFMR strategy aims at ensuring efficiency in the use of public resources to facilitate effective implementation of government policies. The Procurement Component of the PFMR strategy will yield improvements in Financial Management and Audit.

The Millennium Challenge Corporation (MCC) selected Kenya as eligible to receive Threshold Program assistance in September 2004. The Government of Kenya submitted its proposal for Threshold Program assistance in October 2006. MCC approved such assistance for Kenya in February 2007, as provided for in this Agreement (the "Program").

The Program will be a part of the overarching reform strategy described above and will support public procurement reform, placing a special focus on the Ministry of Health, with a view to improving Kenya's performance with respect to the MCC indicators related to the Control of Corruption, Immunization Rates and Health Expenditures.

III. Strategic Objective: Results to be Achieved

The Strategic Objective of this Agreement is to reform public procurement. In particular, the proposed activities focus on making the making public procurement process transparent in order to reduce corruption, improve financial and expenditure management, and enhance efficiency in service delivery. The Health Sector will receive specific assistance as a model for reform in all sectors.

In order to achieve the Objective, the following Results must be achieved for the respective Program Components:

- (a) Reduced opportunities for corruption in public procurement;
- (b) Improved health care procurement and delivery; and
- (c) Improved public sector and civil society monitoring and evaluation of public procurement practices.

IV. Program Components – Objectives and Proposed Activities

Component 1: Reform the Public Procurement System:

A 2005 “Independent Procurement Review,” conducted jointly by the Government of Kenya and the European Union, identified several critical problems with the current procurement system. Among the weaknesses identified were weak oversight institutions, a lack of transparency, poor linkages between procurements and expenditures, delays and inefficiencies and poor records management. The Program will address each of these weaknesses. The Government of Kenya has sought to improve its public procurement systems by enacting the Public Procurement and Disposal Act and creating the Public Procurement Oversight Authority (PPOA). The Program will strengthen the PPOA and assist the Government of Kenya as it rolls out an e-procurement system, implements new regulations and institutes new records management procedures.

Result: Reduced opportunities for corruption in the public procurement process.

Proposed Activities:

- (a) Strengthen the capacity of the newly created Public Procurement Oversight Authority through enhanced technology, exchange programs, and training of staff.
- (b) Develop and roll out an e-procurement system in five key ministries (Office of the President, Education, Roads and Public Works, Energy and Health).

- (c) Develop and implement new procurement regulations and guidelines.
- (d) Institute proper records management protocols for public entities.

Component 2. Improve Health Care Procurement and Delivery:

The Ministry of Health and the Kenya Medical Supplies Agency (KEMSA) are key Government entities in the provision of basic health services to the country. The Independent Procurement Review, however, identified the Ministry of Health and its medical supplies procurement and delivery body, the Kenya Medical Supplies Agency (KEMSA), as being particularly susceptible to waste, fraud and abuse throughout the procurement and delivery process.

The Program will, in addition to instituting a broader overhaul of procurement practices and oversight, concentrate closely on improving procurement and supply chain management in the health care sector, an area that has experienced significant loss of funds due to corruption.

Result: Improved health care procurement and delivery.

Proposed Activities:

- (a) Strengthen KEMSA's procurement capacity and accountability.
- (b) Improve supply chain management of public health resources.
- (c) Establish capacity within the Ministry of Health (MOH) to monitor KEMSA's procurement function and assess compliance.
- (d) Strengthen the supervision of medical supplies delivered to Rural Health Facilities.

Component 3. Monitoring and Evaluation of the Program:

Component Three of the Program will use a number of monitoring and evaluation methods, to be employed both internally and externally and to include an emphasis on data gathering, the measurement of outcomes along with inputs, quality control and sustainability.

Result: Improved public sector and civil society monitoring and evaluation of public procurement practices.

Proposed Activities:

- (a) Use internal monitoring and evaluation by the PPOA, MOH and KEMSA to measure progress of the Program, to include baseline studies and the auditing of program activities.
- (b) Support external monitoring and evaluation by non-state actors, to include civil society and private sector groups, to ensure transparency and accountability and to report on progress, results and impacts.

V. Roles and Responsibilities

The Government of Kenya and USAID will collaborate to achieve the desired level of collaboration and coordination. A GOK-USAID Management Team representing the Ministry of Finance, Ministry of Health, the Kenya Medical Supplies Agency (KEMSA), the Kenyan Institute for Policy Planning, Research and Analysis and USAID has been formed. All implementation planning, supervision and monitoring, and evaluation activities will be mutually agreed upon. The GOK will ensure that these activities are incorporated into the annual work plans of the Public Financial Management Reform (PFMR) and Health Sector Wide Approach (Health SWAs) programs, both of which are being supported by multiple development partners.

A. Government of Kenya

In connection with the implementation of the activities under this Agreement, the Government shall use its very best efforts to ensure that the Results and Objective are achieved, as contemplated in this Agreement.

In furtherance of, but without limiting the foregoing, the Government shall: (a) pay for the annual salaries and organizational costs of the Government staff assigned to oversee the Program; (b) provide office space for staff of selected Implementing Organizations (as defined below); (c) provide Program monitoring; and (d) ensure budget support and replication of successful lessons learned to sustain and expand Program activities after the Completion Date.

B. United States Agency for International Development

USAID will be the lead U.S. Government agency implementing the Program. It will be assisted by other U.S. agencies as required to successfully implement the Program.

USAID will work closely with the Government of Kenya to assist the Government to successfully implement the Program and achieve the Results and the Objective contemplated by this Agreement.

USAID and the GOK will jointly develop the necessary procurement or grant documentation. USAID will serve as the GOK's procurement or grant agent under the Program and will enter into one or more agreements with one or more third-party implementing partners (each an "Implementing Partner") to implement the Program. Such agreements may include but not be limited to grants, cooperative agreements, contracts and interagency agreements. The Implementing Partners may be from Kenya, the United States, or a third country and may also be private sector, governmental, international public, or non-governmental organizations or persons. The Government of Kenya and USAID will jointly develop the procurement or grant specifications/terms of reference and participate in the selection of implementing partners. As the procurement or grant agent, USAID will ensure that all awards made are in accordance with USAID regulations and policies and in consultation with representatives of the GOK and MCC. For the purposes of this Agreement, "Implementing Partner" shall include any legal entity (whether or not a resident of Kenya) that has legal responsibility for implementing the Program in whole or in part on the basis of a written agreement with USAID.

USAID, in consultation with the GOK, will monitor performance under such agreements and will oversee the performance of the Implementing Partners and progress toward achievement of the Results.

C. Implementing Partners

USAID will select the Implementing Partners, in consultation with the GOK, and will ensure that the Implementing Partners carry out the implementation of the Program in conformance with this Agreement report directly to USAID and indirectly to the GOK-USAID Management Team. Each agreement between USAID and an Implementing Partner that is an organization will be consistent with this Agreement and will include a monitoring and evaluation plan, including indicators, targets and outputs.

D. Millennium Challenge Corporation

MCC has charged USAID with responsibility for administering and overseeing the implementation of this Agreement under principles of country ownership, accountability and emphasis on results. MCC is not a party to this Agreement.

VI. Financial Plan

The financial plan (the "Financial Plan") for the Program is set forth below. Changes may be made to the Financial Plan in writing by the Authorized Representatives without formal amendment to the Agreement, if such changes do not cause USAID's contribution to exceed the amount specified in Section 3.1 of the Agreement.

Program Component	USAID Contribution (\$ US)	GOK Contribution (\$ US)	Total (\$ US)
1. Reform the Public Procurement System			
2. Improve Health Care Procurement and Delivery			
3. Monitoring and Evaluation of the MCA Threshold Program			
Total Program Cost	12,723,000	3,688,263	16,411,263

VII. Monitoring and Evaluation

Program monitoring and evaluation will be based on quantitative as well as qualitative factors, and will be carried out by the Government of Kenya, the Implementing Partners and USAID.

Achievement of the Results and the Strategic Objective shall be measured upon the following performance indicators and targets:

1. Indicators

- (a) Improve Transparency, Accountability and Corruption in the Public Sector
Baseline 3.0 (2005); Target 3.5 (2008)
Source: World Bank Country Policy and Institutional Assessment
- (b) Reduction in undocumented extra payments or bribes connected with the awarding of public contracts.
Baseline 3.7 (2006); Target 4.3 (2008)
Source: Global Competitiveness Report
- (c) Reduction in the extent to which the health sector is affected by corruption
Baseline 3.2 (2005); Target 2.4 (2008)
Source: Transparency International Global Corruption Barometer

2. Component 1: Reform the Public Procurement System

Criteria	Unit	Baseline	Target Year 1	Target Year 2
(a) Comprehensive procurement audits undertaken by the PPOA targeting high value procuring entities and published on the PPOA website.	Lot	0	3	3
(b) Percentage reduction in the time taken to complete the procurement process	Days	120-162	100 - 120	90-120

Component 1.1 Strengthening the Capacity of the Newly Created Public Procurement Oversight Authority (PPOA)

- (a) An operational Public Procurement Oversight Authority (PPOA) which has:
 - (1) An operational website with up-to-date information such as the procurement law and regulations, manuals and guidelines issued by PPOA. The website will also contain a consolidated list of tender awards and opportunities from the various procuring entities, and decisions of the Review Board.
 - (2) An operational Information Communication Technology (ICT) infrastructure to support its oversight role in public procurement.
 - (3) Relevant Boards of the Authority (the Advisory Board and the Review Board) are able to make principled and informed decisions related to their respective governance and administrative review responsibilities.
- (b) Establishment of benchmarks and best operating practices and guidelines by the PPOA.
- (c) Cases heard by the Review Board published in the print media and relevant websites.

Component 1.2 Development and Roll-Out of an E-Procurement System

- (a) An e-procurement system in place in five key ministries – Office of the President, Education, Roads and Public Works, Energy and Health. These are the ministries that are the largest spenders of public funds and where the positive impacts of an e-procurement system (cost savings, efficiency and transparency) will be most greatly felt.
- (b) Improved dissemination of procurement information to the public. This includes an annual report prepared by PPOA on the general performance of the public

procurement system presented to the Minister and distributed to the public via the PPOA website.

- (c) Timely receipt by PPOA of procurement information from the procuring entities.

Component 1.3 Roll-Out of New Procurement Regulations and Guidelines

- (a) Provision of guidelines and other accessible tools to assist procuring entities in improving their procurement practice.
- (b) Increased knowledge amongst all stakeholders on their roles and responsibilities in the emerging procurement framework.

Component 1.4: Instituting Proper Records Management

- (a) Proper records management.
- (b) Proper coordination of financial management functions, to include linkage of procurement files to other expenditure files and training of financial management staff on the new procurement framework.

3. Component 2: Improve Health Care Procurement and Delivery

CRITERIA	UNIT	Baseline	Target Year 1	Target Year 2
Percentage increase in stock accuracy records at KEMSA	%	50	60	90
Reduction in the percentage value of drugs that are ruined annually due to poor storage	%	12	6	4
Increase in the percentage availability of essential drugs to rural health facilities	%	55	65	75

Component 2.1: Strengthening KEMSA’s Procurement Capacity and Accountability

- (a) Procurement software in place and procurement staff competent in the use of the procurement software.
- (b) Effective KEMSA tender committee established and functional and all the members trained.
- (c) Corporate governance manual in place.
- (d) Web-enabled and automated procurement system which includes bidding, technical and financial evaluation process in KEMSA.
- (e) 2005/06 – 2006/07 Medium-Term Procurement Plan for Health Commodities published on the MOH website and KEMSA website.
- (f) Annual procurement plan for 2006/7 in place and published on KEMSA, MOH

and the PPOA websites.

- (g) Increased supplier confidence in the manner in which KEMSA carries out its procurement.

Component 2.2: Improving Supply Chain Management of Public Health Resources

- (a) Leakage and wastage reduced.
- (b) Improved storage conditions of medical commodities at KEMSA.
- (c) Improved record keeping at KEMSA.
- (d) Accurate reports of quantities and values of medical commodities supplied to public health facilities.
- (e) Automation of supply chain in selected health facilities.
- (f) Increase in the stock visibility within the public medical supply system.
- (g) Health care workers trained in inventory management.
- (h) An increase in public confidence in the public health care system.
- (i) An increase in the utilization of public health facilities.

Component 2.3: Establishing Capacity within MOH to Monitor KEMSA's Procurement Function and Assess Compliance

- (a) An oversight mechanism over KEMSA established, to include training of MOH procurement staff to collect and analyze information from KEMSA.
- (b) Quality control systems in place.
- (c) MOH staff trained on quality assurance.
- (d) Regular audit reports on KEMSA's procurement process completed and disseminated to the general public via websites.
- (e) Competitive prices for medical commodities procured by KEMSA.
- (f) Price list/database based on market surveys/analysis established.

Component 2.4: Strengthening the Supervision of Medical Supplies to Rural Health Facilities (RHF's)

- (a) Operational District Health Management Team (DHMT) Supervision Committees.
- (b) Supervision tools for DHMTs.
- (c) Quarterly publications of delivery schedules for medical supplies to health facilities
- (d) FM radio announcements on distribution schedules.
- (e) Expanded mandate of the rural health facilities communities committees to include overseeing receipt, storage and usage of medical supplies.

- (f) Regular audit reports for medical supplies to rural health facilities.

4. Component 3: Monitoring and Evaluation of the MCA Threshold Program

External Monitoring and Evaluation — Non-State Actors will monitor and report on the following:

- (a) Establishment of frameworks within the PPOA to ensure transparency and accountability in the government's overall procurement system.
- (b) Establishment of structures to ensure reduced delays in healthcare procurement and delivery.
- (c) Enhanced linkage of healthcare procurement to public expenditure process leading to improved public financial management in government.
- (d) A reduction in the number of corruption and rent-seeking instances cited by the public as a barrier to their access to affordable and efficient services.

Internal Monitoring and Evaluation:

- (a) Independent baseline surveys of PPOA, MOH and KEMSA to verify proposed indicators and other operational targets.

ATTACHMENT 1 TO ANNEX 1
 MILLENNIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM
 SUMMARY OF ACTIVITY COSTS BY EXPENSE CATEGORY AND SOURCE OF FUNDING
 (IN US DOLLARS)

EXPENSE CATEGORY	Prior Obligation		Obligation this period		Cumulative Budget		Grant Total
	USAID \$	Implementing Agency Cont (Equiv.)	USAID \$	Implementing Agency Cont (Equiv.)	USAID \$	Implementing Agency Cont (Equiv.)	
Reform the Public Procurement System	0	0	0	0	0	0	0
Improve Health Care Procurement and Delivery	0	0	0	0	0	0	0
Monitoring and Evaluation of the MCA Threshold Program	0	0	0	0	0	0	0
TOTAL	0	0	12,723,000	3,688,263	12,723,000	3,688,263	16,411,263

Annex 2
Standard Provisions

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Section F.1. Investment Promotion.

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Standard Provisions

Article A: Definitions and Implementation Letters.

Section A.1. Definitions. As used in this Annex, the "Agreement" refers to the Strategic Objective Grant Agreement, including Annex 1 thereto, to which this Annex is attached and of which this Annex forms a part. Capitalized terms used and not otherwise defined in this Annex have the same meaning or reference as in the Agreement.

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

Article B: General Covenants.

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

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

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

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

Section B.3. Utilization of Goods and Services.

(a) Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be devoted to the Agreement until the completion or termination of the Agreement, and thereafter (as well as during any period of suspension

of the Agreement) will be used to further the Objective of the Agreement and as USAID may direct in Implementation Letters.

(b) Goods or services financed under this Agreement, except as USAID may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in USAID Geographic Code 935 as in effect at the time of such use.

Section B.4. Taxation.

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

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

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

(1) Exemption 1. Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for the personal use of non-national individuals or their family members. Exemption 1 includes, but is not limited to, all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo.

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

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

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

(e) In the event of a disagreement about the application of an exemption, the Parties agree to promptly meet and resolve such matters, guided by the principle that the assistance furnished by USAID is free from direct taxation, so that all of the assistance furnished by USAID will contribute directly to the economic development of the country of the Grantee.

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

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

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

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

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

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

(d) Sub-recipient Audits. The Grantee, except as the Parties may otherwise agree in writing, shall submit to USAID, in form and substance satisfactory to USAID, a plan for the audit of the expenditures of "covered" sub-recipients, as defined below, that receive funds under this Agreement pursuant to a direct contract or agreement with the Grantee.

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

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

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

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

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

(f) Other Covered Sub-recipients. For "covered" sub-recipients who receive funds under the Agreement pursuant to direct contracts or agreements with USAID, USAID

will include appropriate audit requirements in such contracts or agreements and will, on behalf of the Grantee, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

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

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

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

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

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

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

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

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

Section B.8. Information and Marking. The Grantee will give appropriate publicity to the Agreement as a program to which the United States has contributed,

identify Agreement activity sites, and mark goods financed by USAID, as described in Implementation Letters.

Article C: Procurement Provisions.

Section C.1. Source and Origin.

(a) Disbursements under this Agreement will be used exclusively to finance the costs of goods and services required for the Agreement having, with respect to goods, their source and origin and, with respect to the suppliers of goods and services, their nationality, in countries included in Geographic Code 935 as in effect at the time orders are placed or contracts entered into for such goods or services, except as USAID may otherwise agree in writing and as follows:

(1) Ocean transportation costs shall be financed under the Agreement only on vessels under flag registry of countries included in Geographic Code 935. Also see Section C.6 on use of U.S. flag vessels.

(2) The country of the Grantee is an eligible source for marine insurance.

(b) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(c) Provisions concerning restricted and ineligible goods and services may be provided in an Implementation Letter.

(d) Transportation by air of property or persons financed under this Agreement will be on carriers holding United States certification, to the extent service by such carriers is available under the Fly America Act. This requirement may be further described by USAID in Implementation Letters.

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

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

(a) The Grantee will furnish to USAID upon preparation:

(1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation between the Grantee and third parties, relating to goods or services to be financed under the Agreement, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals.

Material modifications in such documentation will likewise be furnished USAID on preparation; and

(2) Such documentation will also be furnished to USAID, upon preparation, relating to any goods or services, which, though not financed under the Agreement, are deemed by USAID to be of major importance to the Agreement. Aspects of the Agreement involving matters under this subsection (a) (2) will be identified in Implementation Letters.

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Agreement will be approved by USAID in writing prior to their issuance, and their terms will include United States standards and measurements;

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

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

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

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

Section C.6. Shipping/Transportation

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

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

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

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

Section C.7. Insurance.

(a) Marine insurance on goods financed by USAID which are to be transported to the territory of the Grantee may be financed under this Agreement provided (1) such insurance is placed at the most advantageous competitive rate; (2) such insurance is placed in a country which is authorized under Section C.1(a); and (3) claims thereunder are payable in U.S. dollars or any freely convertible currency unless USAID agrees otherwise in writing.

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

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

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

Article D. Miscellaneous.

Section D.1. Disbursements. No disbursements to the Grantee are contemplated under this Agreement. Should disbursements to the Grantee be required, disbursements will be made through such means as the Parties agree to in writing or as set forth in Annex 1.

Section D.2. Rate of Exchange. If funds provided under the Agreement are introduced into the territory of the Grantee by USAID or any public or private agency for purposes of carrying out the obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee to any person for any purpose.

Article E. Termination; Remedies

Section E.1. Suspension and Termination

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

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

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

Section E.2. Refunds.

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in

accordance with this Agreement, USAID, notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. dollars to USAID within sixty (60) days after receipt of a request therefor.

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

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

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

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

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

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

Article F: Miscellaneous

Section F.1. Investment Promotion.

(a) Except as specifically set forth in the Agreement 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 Grantee 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 Grantee must notify USAID and provide a detailed description of the proposed activity. The Grantee must not proceed with the activity until advised by USAID that it may do so.

(c) The Grantee must ensure that its employees and subcontractors and sub-recipients providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts and other sub-agreements entered into hereunder.

Section F.2. Voluntary Family Planning. The Parties agree that all USAID funds provided under this Agreement shall be used in accordance with applicable United States policy and statutory requirements relating to voluntary family planning projects, and that none of the USAID funds provided under this Agreement, or goods or services financed by such funds, may be used for

(a) the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions;

(b) the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations; or

(c) any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a method family planning.

USAID will issue implementation letters that more fully describe the requirements of this section.

Section F.3. Prohibition on Assistance to Drug Traffickers. USAID reserves the right to terminate this Agreement or take other appropriate measures if the Grantee or a key individual of the Grantee is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 Code of Federal Regulations (CFR) Part 140.

Section F.4. Workers' Rights.

(a) Except as specifically set forth in the Agreement or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves workers' rights in a foreign country.

(b) In the event the Grantee 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 Grantee must notify USAID and

provide a detailed description of the proposed activity. The Grantee must not proceed with the activity until advised by USAID that it may do so.

(c) The Grantee must ensure that all employees and subcontractors and sub-recipients providing employment-related services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts and other sub-agreements entered into hereunder.