

USAID/Rwanda Assistance Agreement No. 696-AG-696-MCC-X7-08-00001

MILLENNIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM

ASSISTANCE AGREEMENT

BETWEEN THE

UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF RWANDA

TO

STRENGTHEN POLITICAL RIGHTS, CIVIL LIBERTIES AND VOICE AND
ACCOUNTABILITY



Millennium Challenge Account Threshold Program
Assistance Agreement

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**MILLENNIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM
ASSISTANCE AGREEMENT**

Dated: September 24, 2008

Between

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

and

The Government of the Republic of Rwanda (the “Grantee” or the “Government of Rwanda”)

Article 1: Purpose.

The purpose of this agreement (the “Agreement”) is to set out the understanding of the parties named above (the “Parties”) in connection with the program to strengthen political rights, civil liberties and voice and accountability in Rwanda (the “Program”) as described below.

Article 2: Program Objective and Results.

Section 2.1. Program Objective. The objective of the Program (the “Objective”) is to support the Grantee’s efforts to strengthen the judicial sector; strengthen civic participation; and promote civil rights and liberties.

This Section 2.1 may not be changed except by formal written amendment to this Agreement by the Authorized Representatives, as defined in Section 7.2.

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

- (a) Increase the capacity of civil society to successfully advocate for reform;
- (b) Strengthen the Grantee’s capacity to respond to civil society and citizens;
- (c) Advance the professionalism and skills of the media;
- (d) Strengthen the independence of the judiciary and the public’s confidence in the judiciary;
- (e) Develop a code of conduct for civil servants; and
- (f) Ensure the quality and accountability of police internal investigations.

This Section 2.2 may not be changed except by formal written amendment to this Agreement by the Authorized Representatives.

Section 2.3. Annex 1, Amplified Description. Annex 1, attached hereto, forms part of this Agreement and amplifies the above Objective and Results. Within the limits of the definitions of

the Objective in Section 2.1 and the Results in Section 2.2, Annex 1 may be changed by written agreement of the Authorized Representatives without formal amendment of this Agreement.

Article 3: Contributions of the Parties.

Section 3.1. USAID Contribution; the Grant. To help achieve the Objective, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, and the Millennium Challenge Act of 2003, as amended, hereby grants to the Grantee under the terms of this Agreement an amount not to exceed twenty-four million seven hundred thirty thousand United States (“U.S.”) Dollars (\$24,730,000) (the “Grant”).

Section 3.2. Grantee 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 Objective.

Article 4: Completion Date.

(a) The Completion Date, which is December 31, 2011, 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 will be completed; provided, however, that the Parties estimate that all activities related to component 1 and component 3 of the Program as described in Annex 1 will be completed by December 31, 2010, or such other date as the Parties may agree to in writing.

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

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

Article 5: Conditions Precedent to Disbursement.

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

(a) An opinion of counsel acceptable to USAID that (i) this Agreement has been duly authorized by, and executed on behalf of the Grantee, (ii) this Agreement constitutes a valid and

legally binding obligation of the Grantee in accordance with all of its terms, and (iii) all internal actions and approvals necessary to give effect to this Agreement have been obtained by or on behalf of the Grantee; and

(b) A signed statement in the name of the person holding or acting in the office of the Grantee specified in Section 7.2, which designates by name and title any Additional Representatives, as defined in Section 7.2.

Section 5.2. Notification. USAID will promptly notify the Grantee in writing when USAID has determined that a condition precedent has been met.

Section 5.3. Terminal Date for Conditions Precedent. The terminal date for meeting the conditions specified in Section 5.1 is 30 calendar 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: Special Covenants.

(a) The Grantee will (as applicable) issue, renew or extend free of charge and in a timely manner all official permits, visas, exemptions and any other permissions (including all approvals as may be required from time to time to ensure full access to information, Program activity sites and relevant offices) for the Applicable Persons (as defined below) carrying out activities financed by USAID under this Agreement (collectively, the “Required Documents”). For purposes of this Article 6, “Applicable Persons” is defined as (1) employees and consultants of any contractors, grantees and other organizations carrying out activities financed by USAID under this Agreement and (2) members of such employees’ and consultants’ households.

(b) Any renewals or extensions of such Required Documents that are required, or become required, in order for such employees, consultants and dependent family members to legally reside in the Republic of Rwanda and undertake the activities contemplated by and financed under this Agreement will also be issued free of charge.

Article 7: Miscellaneous.

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

To USAID:

Mail Address: United States Agency for International Development
B. P. 2948 or P.O. Box 28
Kigali, Rwanda

Telefax: (250) 598 442
E-mail: kigali@usaid.gov
ATTN: The Mission Director

To the Grantee:

Mail Address: The Government of the Republic of Rwanda
P.O. Box 158
Kigali, Rwanda
Telefax: (250) 577 581
E-mail: mfin@rwanda1.com
ATTN: The Minister of Finance and Economic Planning

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

Section 7.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the Office of Minister of Finance and Economic Planning, and USAID will be represented by the individual holding or acting in the Office of USAID Mission Director in Rwanda (each an "Authorized Representative" and together, the "Authorized Representatives"). Each of the Authorized Representatives, by written notice, may designate additional authorized representatives ("Additional Representatives") for specific purposes and any conditions governing actions of additional authorized representatives. The names and titles of the Additional Representatives of the Grantee will be provided pursuant to Section 5.1(b) to USAID, which may accept as duly authorized any instrument signed by the Additional Representatives (or any individuals subsequently holding or acting in the office of such representatives) in accordance with this Section 7.2, until receipt of written notice of revocation of their authority.

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

Section 7.4. 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 first above written.

UNITED STATES OF AMERICA

/ s /

By: _____

Dennis Weller

Mission Director

U.S. Agency for International Development

REPUBLIC OF RWANDA

/ s /

By: _____

James Musoni

Minister of Finance and Economic Planning

Ministry of Finance and Economic Planning

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 will be construed as amending any of the definitions or terms of this Agreement.

II. Background

The Millennium Challenge Corporation selected Rwanda as eligible for threshold program assistance in 2006. In July 2008, the Millennium Challenge Corporation approved threshold program assistance for Rwanda for a program focused on the following indicators on which eligibility for compact assistance under the Millennium Challenge Act is based: *Political Rights, Civil Liberties and Voice and Accountability*.

III. Program Components and Proposed Activities

The Program consists of the following components, which are further described below:

- Component 1: Strengthen the Judicial Sector
- Component 2: Strengthen Civic Participation
- Component 3: Promote Civil Rights and Liberties

A. Component 1: Strengthen the Judicial Sector

1. Training and Technical Assistance to the Judiciary

Purpose: To build the capacity of the judiciary to render legally effective decisions with impartiality, fairness and efficiency, without interference from other branches of government.

Proposed Activities:

- Assist the Institute of Legal Practice and Development to develop its post-graduate curriculum for judicial staff.
- Assist the Institute of Legal Practice and Development to develop continuing education modules for legal practitioners, including lawyers, judges, and court officials, to increase their confidence, skills, and knowledge.
- Train judicial staff and other legal professionals in a wide range of areas, with a focus on issues of judicial functioning, judicial independence, and impartiality.
- Support judicial exchanges to increase knowledge and understanding of the functioning of judiciaries in other countries.

- Provide on-the-job training and technical assistance for judicial staff to supplement, enhance, and cement knowledge and skills gained in the classroom.

2. Facilitate the Rapid Implementation of the Legislative Reform Agenda

Purpose: To promote and expand continued legal and judicial reform.

Proposed Activities:

- Support Rwanda's new Law Reform Commission to conduct specific policy analysis and research, build the capacity of its members to review existing and planned legislation, and make recommendations for continued legal reform and judicial independence.
- Provide technical assistance and training to the Ministry of Justice's Legislative Drafting Unit to increase the staff's legal drafting and research skills and enable it to act on recommendations from the Law Reform Commission in order to further the government of Rwanda's legal reform agenda.
- Establish and provide training and technical assistance to a new legislative drafting unit for Parliament. (This unit will have the ability to draft legislation introduced by Parliament, review and revise legislation proposed by the executive branch as directed by Parliament, review legislation in light of existing domestic and international laws and the constitution, liaise with the executive branch about proposed legislation, and translate laws into Rwanda's three official languages.)
- Provide resources to libraries of both legislative drafting units providing information technology equipment and resources.

B. Component 2: Strengthen Civic Participation

1. Build the Capacity of Civil Society Organizations

Purpose: To enhance the technical skills of civil society actors in analyzing and contributing to public policy and monitoring government performance in order to promote the independence of civil society organizations and their effective engagement with the government and other institutions.

Proposed Activities:

- Provide training and technical assistance to national civil society organizations to ensure their independence and sustainability, as well as to engage more effectively with government, media, private sector, and the public. (This assistance will enable civil society organizations to engage in policy formulation, planning, budget review, advocacy, and monitoring.)

- Provide training and technical assistance to local civil society organizations to enable them to engage more effectively with government, media, private sector, and the public. (This assistance will enable civil society organizations to participate in planning and implementation of development activities and carry out effective monitoring and evaluation of government service delivery at the local level.)
- Provide small grants to national civil society organizations for activities focused on capacity building, civil liberties, political rights, and voice and accountability.
- Provide small grants to local civil society organizations for capacity building, local community development projects, civic participation, and monitoring of service provision.
- Establish community radio stations in rural areas to enhance citizen engagement and empowerment.
- Build capacity of civil society organizations to provide voter education and conduct monitoring of the elections for the Lower Chamber of Parliament scheduled for November 2008.

2. Strengthen the Capacity of Local Officials for Public Participation

Purpose: To strengthen and improve the government's ability to productively interact with citizens and civil society to formulate policy, deliver services and plan development.

Proposed Activities:

- Provide training and technical assistance to local officials in public participation methods and public engagement, including the code of conduct for civil servants.
- Support the Ministry of Finance and Economic Planning to (a) translate the budget into Kinyarwanda; (b) develop pamphlets summarizing the budget for distribution in all districts to the general public, civil society organizations, and donors; and (c) carry out workshops and other sensitization activities to ensure that citizens and civil society actors understand the budget process and the role they play in it.
- Support the roll-out of a citizen report card and community score card system in several pilot districts to improve the transparency and accountability of public institutions and strengthen civic participation in development planning and policy; train and provide technical assistance to councilors and civil society actors to jointly manage and implement the report and score card system.
- Provide limited support and assistance to district officials to sponsor public forums or provide other mechanisms in which citizens can offer input and voice concerns.
- Provide small grants to districts to address local needs identified and prioritized through a participatory process.



3. Technical Assistance to Develop and Disseminate a Code of Conduct for Civil Servants

Purpose: To develop a code of conduct for civil servants to provide a system through which civil society organizations and individuals are able to offer feedback to the government on the conduct of civil servants and to make recommendations about the content of the code that will promote public accountability for civil servants.

Proposed Activities:

- Provide support for the development of a code of conduct for civil servants involving multiple civil society actors and a series of public discussions.
- Conduct a training-of-trainers to create cadres of civil servant instructors in government ministries and local governments.
- Support training, particularly in ministries that engage significantly with the public, focused on the content of the code as well as on compliance with the code.
- Provide support to the Ministry of Public Service to plan and execute a sensitization program for the general public on the content of the code.


C. Component 3: Promote Civil Rights and Liberties

1. Support the Professionalism of Journalists and the Media

Purpose: To promote free, responsible media in Rwanda by building the capacity of professional media associations and the skills of individual journalists, and to assist journalists to produce and utilize a national professional code of conduct.

Proposed Activities:

- Provide training to enable journalists to produce high-quality stories characterized by fairness and accuracy.
- Provide training to publishers and media owners so that they understand the importance of their role in promoting an independent, professional media in Rwanda.
- Provide technical assistance to the Association of Rwandan Journalists and the Press House, increasing their capacity and sustainability as independent civil society organizations.
- Support media associations so they can (a) support individual journalists by providing them with access to information technology equipment, small travel grants, and technical guidance; (b) provide training to journalists; (c) advocate for the interests of the media; and (d) educate the public about the role of the media and journalists in a democratic society.



2. Support the Inspectorate Service of the Police to Effectively Monitor Police Performance

Purpose: To promote stronger and more effective engagement of civil society in the monitoring of police performance, and to deter police misconduct by establishing a program of internal and external oversight of the police.

Proposed Activities:

- Provide training to Inspectorate officers in investigation techniques and the proper handling and treatment of fellow officers suspected of unethical conduct.
- Provide technical assistance to the Inspectorate to formulate investigative procedures, internal policies, and avenues for citizen participation in the disciplinary processes.
- Provide technical support to the Inspectorate to improve the process for making, receiving, tracking, investigating, analyzing and concluding complaints and commendations regarding police conduct.
- Train trainers on the role of the Inspectorate.
- Provide training and technical support to the Inspectorate to develop their public relations capacity to (a) publicize information about the police and the professional and ethical standards the police are required to abide by and to (b) liaise more effectively with the media and civil society on the results of Inspectorate investigations.
- Provide technical assistance and, where appropriate, training to the Office of the Commissioner General of the Rwandan National Police to build capacity to identify and correct problems in police performance.

IV. Roles and Responsibilities

The Government of Rwanda and the USAID will collaborate to implement the Program. All implementation planning, supervision, and monitoring and evaluation activities will be mutually agreed upon by USAID and Government of Rwanda.

A. The Government of Rwanda

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

To support the Program, the Government of Rwanda will take those actions necessary to:



- strengthen the professionalism, impartiality, and independence of the judiciary to enhance the balance of powers between the judicial, legislative, and executive branches of government;
- establish a Law Reform Commission, build the legislative drafting, lawmaking, and rulemaking capacity of the Ministry of Justice, and create a new legislative drafting unit in Parliament and build its legislative drafting, lawmaking, and rulemaking capacity in order to extend the reform process already underway and pave the way for a greater role for civil society in policy formulation;
- support the independent efforts of civil society organizations to interact effectively with the government, private sector, media, and the public by enabling them to analyze public policy and budgets, monitor government performance, evaluate local service delivery, support local public participation processes, advocate for the interests of members of civil society organizations, conduct and publish research, improve service delivery and contribute effectively to policy reform;
- strengthen the capacity of local officials to solicit, facilitate, and encourage effective public participation processes by offering selected local officials, including district and sector-level officials, training and technical assistance designed to improve the quality of their interaction with civil society actors and citizens;
- engage in a participatory consultative process to develop a code of conduct for civil servants in order to elicit meaningful discussion about the ideal role of public officials *vis à vis* ordinary citizens and the ways that this can be achieved;
- support the development of the professional capacity of journalists, media owners, and professional media associations and support the establishment of a code of ethics for journalists;
- establish a program of effective monitoring and investigation of police performance and external oversight; and
- to ensure the success of the Program and the achievement of the Objective and the Results by encouraging the coordinated participation of relevant ministries, local government entities, commissions and other donors.

B. USAID

USAID will be the lead United States government agency administering the Program. Other United States government agencies will assist USAID, as required. USAID will work closely with the Government of Rwanda to help it successfully implement the Program and achieve the Results and the Objective set forth by this Agreement.

USAID 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 Rwanda, the United States, or a third country, and may also be private-sector, governmental, international public, or nongovernmental organizations or persons. In consultation with the Government of Rwanda, USAID will develop the procurement specifications and terms of reference and select Implementing Partners. USAID will ensure that all procurement and grants awards made are in accordance with USAID regulations and policies. For the purposes of this Agreement, "Implementing Partner" will include any legal entity (whether or not a resident of Rwanda) that has legal responsibility for implementing the Program in whole or in part on the basis of a written agreement with USAID.

Implementation will be managed by USAID in partnership with the Government of Rwanda. USAID will work closely with the Government of Rwanda to obtain concurrence, substantive input, and strategic direction on all activities and Government of Rwanda representation on all procurement technical review committees. Monitoring performance under such agreements, oversight of the performance of the Implementing Partners and measurement of the progress toward the achievement of the Results will be done by USAID in partnership with the Government of Rwanda in full accordance with applicable rules and regulations.

C. Implementing Partners

USAID will select the Implementing Partners in consultation with the Government of Rwanda, and will ensure that the Implementing Partners carry out the implementation of the Program in conformance with this Agreement. The Implementing Partners will report directly to USAID. Each agreement between USAID and an Implementing Partner will be consistent with this Agreement and will include a monitoring and evaluation plan with indicators, targets, and outputs.

D. Millennium Challenge Corporation

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

V. 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 this Agreement, if such changes do not cause USAID's contribution to exceed the amount specified in Section 3.1 of this Agreement.

Component 1: Strengthen the Judicial Sector	\$5,645,000
Component 2: Strengthen Civic Participation	\$15,860,000
Component 3: Promote Civil Rights and Liberties	\$3,225,000
USAID Contribution in U.S. Dollars	\$24,730,000

VI. 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 Rwanda, USAID, the Threshold Program Implementation Committee, and Implementing Partners. Achievement of the Results will be measured by the performance indicators and targets listed below (as well as others). Baseline data will be collected to assess the status of the indicators at the start of the Program.

VII. Highlights of Expected Outcomes

The overarching goal of this Program is to positively impact Rwanda's scores on the Millennium Challenge Corporation *Ruling Justly* indicators, particularly *Political Rights, Civil Liberties, and Voice and Accountability*. The Program aims to address these indicators primarily by strengthening the effective engagement between government, civil society, and citizens in the areas of policy making and development planning. The following Program outcomes are expected:

- Parliament passes eight new laws, or amendments to existing laws, that significantly improve civil liberties, political rights and voice and accountability.
- The quality of court decisions is improved based on international standards.
- The majority of national and local civil society organizations receiving assistance under the Program undertake advocacy initiatives.
- The percentage of local civil society organizations that have read the national budget and feel that they understand the budget process and their role in it is increased.
- Rwanda's professional media associations are perceived by their members to actively represent their interests.
- The number of complaints about police misconduct that are investigated, resolved and made public in conformity with international standards is increased.



ANNEX 2

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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 Assistance 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, which 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 assistance agreements and other grant agreements with foreign governments).

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

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

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 of 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.

