

Strategic Objective Agreement (SOA)

USAID Agreement No. 121-0002

MILLENNIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM

STRATEGIC OBJECTIVE AGREEMENT

BETWEEN

THE GOVERNMENT OF

THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF UKRAINE

FOR THE PROGRAM TO

REDUCE CORRUPTION IN THE PUBLIC SECTOR

Millennium Challenge Account Threshold Program

STRATEGIC OBJECTIVE AGREEMENT

Between

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

The Government of Ukraine, acting through the Ministry of Economy of Ukraine
(hereinafter referred to as the "GoU" or "Grantee")

Article 1: Purpose.

The purpose of this Strategic Objective Agreement ("Agreement") is to set out the understanding of the parties named above (the "Parties") about the Strategic Objective described below. This Agreement is concluded within the framework of the Agreement between the Government of the United States of America and the Government of Ukraine regarding Humanitarian and Technical Economic Cooperation dated May 7, 1992 ("1992 Bilateral Agreement").

Article 2: Strategic Objective and Results.

Section 2.1: Strategic Objective. The Strategic Objective ("Objective") is to reduce corruption in the public sector through strengthening civil society's monitoring and exposure of corruption, judicial reform, strengthening government monitoring and enforcement of ethical and administrative standards, streamlining and enforcing regulations and combating corruption in higher education.

Section 2.2: Annex 1, Amplified Description. Annex 1, attached, amplifies the above Objective, describes the Program to Reduce Corruption in the Public Sector (the "Program"), and the expected Results. Within the limits of the above definition of the Objective in Section 2.1, Annex 1 may be changed by written agreement of the authorized representatives of the Parties, without formal amendment of this Agreement.

Article 3: Contributions of the Parties.

Section 3.1: USAID Contribution.

- (a) The Grant. To help achieve the Objective, 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 GoU, under the terms of this Agreement, not to exceed Thirteen Million Eight Hundred and Twenty Thousand United States ("U.S.") Dollars (\$13,820,000) (the "Grant"). The Grant is made on a gratuitous and non-returnable basis, except as required by the 1992 Bilateral Agreement or by Annex 2 to this Agreement.

- (b) Total Estimated USAID Contribution. USAID's total estimated contribution to achievement of the Objective will be U.S. \$44,970,000, which will be provided in increments. Subsequent increments will be subject to the availability of funds to USAID for this purpose, the conditions precedent stated in Section 5.2, and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed.

Section 3.2: Government of Ukraine Contribution.

The GoU agrees to provide or cause to be provided all funds approved in the State Budget of Ukraine for each year during the Program, 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. The GoU agrees to propose inclusion of funds sufficient to carry out the Program in annual draft laws on the State Budget of Ukraine, and to use its best efforts to advocate and secure approval of such funds by the Verhovna Rada.

Article 4: Completion Date.

- (a) The Completion Date, which is January 31, 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 GoU 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

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 for activities other than those of Component 1 of the Program, the GoU 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, or other official document acceptable to USAID stating that this Agreement has been duly authorized or ratified by, and executed on behalf of the GoU, and that it constitutes a valid and legally binding obligation of the Government of Ukraine in accordance with all of its terms;

- (b) A statement of the name of the Authorized Representative of the Grantee specified in Section 8.2, and of any Additional Representatives of the Grantee, as provided in Section 8.2, for the management and implementation of Components 2 through 5 of the Program, as described in Annex 1, together with a specimen signature of each person specified in such statement;
- (c) Documents demonstrating that an MCC Threshold Program Board of the GoU (the "Board") has been established, detailing the membership of the Board, the officials primarily responsible for overseeing implementation of Components 2 through 5 of the Program, the powers and responsibilities of the Chairman and other primary officials of the Board, and demonstrating that an appropriate person has been appointed as Chairman of the Board;
- (d) A general plan for coordination by the GoU of implementation of Components 2 through 5 of the Program, that assigns implementation responsibilities for each Component among the central and other bodies of executive power of the Grantee and that explains arrangements for coordination of Program implementation activities by the Board with the Cabinet of Ministers, the Presidential Secretariat, the Judicial Branch, and the Verhovna Rada; and
- (e) A statement of the laws that the GoU needs to propose to the Verhovna Rada for enactment or amendment, and of the regulations that the GoU needs to issue or amend in order to attain the Results expected under each Component of the Program, and to accomplish the Objective.

Section 5.2. Disbursement for Components 2, 3, 4 or 5 of the Program. Prior to Disbursement under the Grant in excess of \$1 000,000 for any of Components 2, 3, 4 or 5 of the Program, or to the issuance by USAID of documentation pursuant to which such disbursement will be made the GoU will, except as the Parties may otherwise agree in writing, furnish to USAID, in form and substance satisfactory to USAID, an implementation plan for such Component, demonstrating how activities will be implemented in order to attain the Results and accomplish the Objective, with timetables for implementation of activities within each such Component, including timing of the enactment or amendment of the laws and the issuance or amendment of the regulations necessary to do so.

Section 5.3: Notification. USAID will promptly notify the Grantee in writing when USAID has determined that the conditions precedent in Section 5.1 or Section 5.2 have been met, respectively.

Section 5.4: Terminal Dates for Conditions Precedent. The terminal date for meeting the conditions specified in Section 5.1 and Section 5.2 is 90 days from the effective 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 precedents in Section 5.1 and Section 5.2 have not been met by the above terminal date, USAID, at any time, may terminate this Agreement in whole or in part by written notice to the Grantee.

Article 6: Covenants Regarding Program Implementation.

The Parties recognize that successful implementation of the Program in order to achieve the Results and accomplish the Objective will require the continual political will to accomplish the Objective, coordination and cooperation among many agencies of both

governments and their grantees and contractors, and the drafting and enactment of many new or amended laws and regulations.

- (a) Successful accomplishment of the Strategic Objective, and achievement of the Results expected by implementation of the five Components of the Program will require the GoU to develop and propose for enactment several new or amended laws, and to develop and issue many new or amended regulations or procedures concerning the operations of agencies of the GoU and concerning economic activities and legal rights and responsibilities of citizens. The GoU promises to develop and propose such new or amended laws to the Verhovna Rada for debate and enactment, and to use its best efforts to advocate and secure the enactment of such laws by the Verhovna Rada. The GoU further promises to develop and issue appropriate regulations and procedures, and to effectively and impartially implement such laws and regulations, in order to promote and accelerate the accomplishment of the Strategic Objective, the reduction of corruption in the public sector, and achievement of the expected Results, as described in this Agreement.
- (b) For each of Components 2 through 5, consistent with Section 5.2 above, the Parties will develop and approve an implementation plan that includes a statement of the major laws and regulations that must be enacted, issued or amended, in order to ensure the achievement of the expected Results, and the accomplishment of the Strategic Objective, with an estimated timetable for enactment or issuance. If USAID determines that the accomplishment of the Results expected for a Component, or the accomplishment of the Strategic Objective overall is improbable because of failure of the GoU to draft new or amended laws and advocate their enactment by the Verhovna Rada, or to issue or amend regulations necessary to achievement of the Results and accomplishment of the Strategic Objective in a timely manner, then USAID may utilize the procedures stated in Annex 2, Section E.1. to suspend or terminate assistance for the Component or for specified activities within the Component that are affected by the lack of enactment of appropriate laws, or issuance of appropriate regulations, until such time as such laws are enacted or regulations issued.
- (c) The GoU will appoint, hire or assign sufficient and appropriate staff to the Secretariat of its Board, including appropriate personnel of senior rank who have access to senior decision-makers in the Cabinet of Ministers, the Presidential Secretariat, the Judicial Branch, and to members of the Verhovna Rada, so that the Board and its Secretariat will be able to actively coordinate activities of the GoU to implement Components 2 through 5 of the Program in order to attain the Results and accomplish the Objective.

Article 7: Procurement and Grant-Making Procedures.

- (a) Unless the Parties agree otherwise in writing, USAID shall commit and subobligate all Grant funds under USAID procedures for grants and contracts for the activities and Results described in Annex 1, the Amplified Description of the Program, through U.S. Government procedures for awarding grants and contracts. The provisions of the 1992 Bilateral Agreement, and the provisions of the Memorandum of Understanding between the United States Agency for International Development and the National Agency of Ukraine for Development and European Integration on Procedures for Cooperation on Technical Assistance dated December 7, 1999 ("1999 Memorandum"), shall apply to

activities and to implementing organizations funded through this Agreement. For the purposes of this Agreement "implementing organization" shall mean any legal entity (resident or non-resident of Ukraine) that has legal responsibility for implementing the Program, described in Annex 1, in whole or in part, and has a written agreement with USAID.

- (b) GoU officials or other individuals designated by the GoU will participate in the processes of 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 and grant-making 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 Ukrainian public bodies and private organizations, several U.S. or other international implementing organizations may work under contracts or grants with USAID to provide technical assistance in order to implement the Program under the 1992 Bilateral Agreement. The Program will be registered with the GoU, and the U.S. or other international implementing organizations will be accredited with the GoU, as provided in the 1999 Memorandum.

Article 8: Miscellaneous.

Section 8.1: Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telefax, and will be deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address:

Director,
United States Agency for International Development (USAID)
Regional Mission for Ukraine, Belarus and Moldova
19 Nyzhny Val
04071 Kyiv, Ukraine

Telephone: (380-44) 537-4600

Telefax: (380-44) 537-4684

To the Grantee:

Mail Address:

Minister,
Ministry of Economy of Ukraine
12/2 M. Hrushevskoho
01008 Kyiv, Ukraine

Telephone/Telefax: (380-44) 253-0683
Telephone: (380 44) 253 -1233

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

Section 8.2: Authorized and Additional Representatives.

For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding the position or acting as Minister of Economy of Ukraine and USAID will be represented by the individual holding or acting in the Office of Director, USAID Regional Mission to Ukraine, Belarus and Moldova (the "Authorized Representatives" of the Parties) each of whom, by written notice, may designate additional representatives for specific purposes other than signing formal amendments to the Agreement or exercising the power under Section 2.2 to revise Annex 1 ("Additional Representatives"). The names of the Representatives of the Grantee, 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 8.3: Standard Provisions

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

Section 8.4: Language of Agreement.

This Agreement is prepared in both English and Ukrainian, both texts being equally authentic.

IN WITNESS WHEREOF, the Government of United States of America and the Government of Ukraine, each acting through its duly authorized representatives, have caused this Agreement to be signed in their names and delivered in Washington, D.C, as of this 4th day of December 2006. This Agreement shall enter into force upon signature by both Parties.

GOVERNMENT OF UNITED STATES OF AMERICA	GOVERNMENT OF UKRAINE
By: _____ / s / _____	By: _____ / s / _____
Name: Drew W. Luten	Name: Volodymyr Makukha
Title: Acting Assistant Administrator Bureau For Europe and Eurasia United States Agency for International Development	Title: Minister of Economy of Ukraine

SOA No. 121-0002 Annex 1

Amplified Description of the Program to Reduce Corruption in the Public Sector in Ukraine

This Annex describes the activities to be undertaken by the Parties, and the Results expected to be achieved with the funds obligated under this Agreement. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

I. Background:

The Government of Ukraine has recently made some reforms in such areas as the police force, customs service, and tax administration. International organizations and experts have repeatedly highlighted the targeted areas as significantly contributing to corruption in Ukraine, constraining economic investment and growth and limiting access to fair and equal opportunity and justice for the Ukrainian people. Initial steps for introducing reform in these four areas have already been taken – including passage of the Concept of Judicial Reform, deregulation at the national and oblast levels, and passage and initial implementation of the Permit System Law. The Government of Ukraine and the Government of the United States of America signed a separate Strategic Objective Agreement for the Program to Combat Corruption and Strengthen the Rule of Law on June 6, 2006 (“the Agreement of June 6, 2006”).

The Government of Ukraine proposed a larger Threshold Country Plan with a single Strategic Objective - the Reduction of Corruption in the Public Sector. The Millennium Challenge Corporation (MCC) of the U.S. Government agreed to provide funds to assist in the implementation of the Plan as set forth in this Agreement, described herein as the Program. The Program is an aggressive, multifaceted undertaking that will build upon lessons learned and initiate necessary steps to invigorate ongoing efforts to attack public sector corruption. The Program funded by this Agreement, and activities funded by the Agreement of June 6, 2006, will be implemented in a complementary and coordinated manner.

II. Strategic Objective: The Strategic Objective of the Program is to reduce corruption in the public sector through strengthening civil society’s monitoring and exposure of corruption, judicial reform, strengthening government monitoring and enforcement of ethical and administrative standards, streamlining and enforcing regulations and combating corruption in higher education.

III. Program Components – Results and Proposed Activities:

The Program consists of five components to reduce corruption in the public sector. These are:

1. Strengthening Civil Society’s Monitoring and Exposure of Corruption
2. Judicial Reform
3. Strengthening Government of Ukraine Monitoring and Enforcement of Ethical and Administrative Standards
4. Streamlining and Enforcing Regulations
5. Combating Corruption in Higher Education

Component 1. Strengthening Civil Society’s Monitoring and Exposure of Corruption: Thousands of Ukrainian nongovernmental organizations (NGOs) actively

represent the interests of their constituencies, promote public policies, monitor government performance, and successfully advocate for reforms. Furthermore, the mass media enjoy fundamental press freedoms and offer the public a range of sources of professional news and information. Despite the substantial progress of recent years, Ukrainian civil society and media are not meeting their full potential as effective monitors of government and advocates for reform.

Result: Reduce opportunities for corruption by enabling civil society to be more effective monitors of government and advocates for reform.

Proposed Activities:

- A. Design, conduct and publicize surveys to provide a more detailed, targeted, and timely measure of the Government of Ukraine's anti-corruption efforts.
- B. Implement a grants program to support the work of NGOs that monitor government performance and/or advocate for improvements in higher education, asset declaration, the judicial system, customs, government procurement, land and property ownership, the permit systems for construction, land use, municipal services or other areas where corruption issues emerge.
- C. Improve investigative journalism, improve access to information by journalists and NGOs and strengthen other media anti-corruption efforts through training and capacity building in order to increase exposure of corruption by the media, increase the number of anti-corruption investigations and increase sanctions for corruption as a result of media reports.

Component 2. Judicial Reform: Critical to efforts to fight corruption is increasing the level of transparency in the delivery of justice by introducing permanent improvements in key legislative, procedural and institutional arrangements. The proposed activities will also contribute to fostering a more professional cadre of administrative judges, court personnel, and notaries.

Result: Increase transparency in the judicial sector.

Proposed Activities

- A. Establish a unified registry of court decisions and implement computerized random case assignment by administrative personnel.
- B. Implement an effective, transparent and competitive process of judicial appointment and an adequate and transparent disciplinary procedures for judges.
- C. Improve the system of enforcing judicial decisions based on international best practices.
- D. Train administrative judges and establish an electronic network for administrative courts.
- E. Eliminate corruption opportunities in the notary system by improving the legal and regulatory framework for regulation of notaries.

Component 3. Strengthening Government Monitoring and Enforcement of Ethical and Administrative Standards: Currently Ukraine has no general conflict of interest legislation for government officials except for certain provisions that limit business opportunities for family members of officials. Additionally, although there are requirements that candidates for public office and civil servants declare their assets, the methodology has flaws and omissions, and submitted declarations are rarely checked and even more rarely are sanctions imposed for falsification.

Result: Create systems to strengthen accountability among government officials and enable the Government of Ukraine to better monitor and enforce ethical and administrative standards.

Proposed Activities

- A. Introduce transparency and accountability in government agencies through the establishment of Internal Investigation Units and adoption of conflict of interest legislation and ethics standards for government officials consistent with international best practices.
- B. Improve the system for government declaration of assets and monitoring of expenses.

Component 4. Streamlining and Enforcing Regulations: Complicated, confusing and overlapping systems providing construction permits, delivery of municipal services, land and property ownership and usage are sources of significant corruption. Both private individuals and legal entities must complete an enormous number of steps to start any construction activity. The processes are neither transparent, nor defined in time, and there is clear evidence of corruption at all steps.

Result: Improve the legislative and regulatory framework for property transactions, reform the permit system, and streamline lines of responsibilities and procedures in order to reduce corruption in these areas.

Proposed Activities

- A. Implement regulatory reform in transborder transportation and create a single integrated database for cross-border shipments to effectively eliminate the opportunity to either enter false data or change data, reducing the opportunity for bribery for such services and significantly reducing shadow shipments.
- B. Introduce a one-stop shop approach to obtaining construction permits, municipal services and inspections.
- C. Streamline land usage and property ownership rights and consolidate all soil and water environmental protection functions in one government agency.

Component 5. Combating Corruption in Higher Education: Recognizing the importance of reducing corruption within the educational system, a national testing center, the Ukrainian Center of Evaluation of Education (UCEE), has been established. Assistance is required, however, to fully implement the external testing system as well as to ensure its integrity.

Result: Reduce corruption in higher education by establishing a legal framework requiring a minimum test score for admission to universities; developing a functioning security system for test results; and ensuring that 100 percent of students are tested and the test centers are fully operational.

Proposed Activities:

- A. Assist the UCEE in drafting and ensuring passage of legislation to codify requirements for university entry that will be based on the results of external testing, address the issues of sustainable funding of this system, and responsibilities for violations and sanctions.
- B. Assist the UCEE in developing a system of ensuring security of the process of external testing.

- C. Procure the necessary equipment for full operation of nine regional testing centers, including printing equipment for confidential printing, packaging and scanning equipment.

IV. Highlights of Expected Results:

1. Reduce the perceived level of corruption in all areas by 10 percent.
2. Reduce experiential corruption in all areas by 20 percent.
3. 30 percent of NGO advocacy campaigns result in government reforms.
4. Reduce the number of cases brought to the European Court of Justice by 30 percent.
5. Increase the number of notary violation findings that result in sanctions or prosecutions by 30 percent.
6. Increase compliance with procedures in ministries with an Internal Investigative Unit (target to be determined upon establishment of the Internal Investigative Unit).
7. Reduce the number of users who indicate that they made unofficial payments in areas of customs, transportation, construction, land ownership, land usage, and municipal services by 20 percent.
8. Increase to 100 percent the percentage of students tested for university admission.

The Government of Ukraine will also use additional indicators on corruption drawn from MCC's "Control of Corruption" indicator to measure program effectiveness.

V. Government of Ukraine Implementation Arrangements: In order to ensure accountability and high efficiency of the government management system, the GoU will establish within itself the Board for the Program. The Board will be established by a decree of the President of Ukraine and will include mostly government officials. The Board will meet on a monthly basis. Its main functions will include: (1) concurring in work plans for implementing organizations; (2) concurring in amendments to the work plans; (3) confirming the key personnel to be hired by the implementing organizations; (4) making recommendations on the changes in key personnel (if necessary); (5) reviewing monthly reports of implementing organizations and providing feedback; and (6) ensuring implementation by the Grantee of accepted recommendations provided by implementing organizations.

To ensure effective work of the Board, the GoU will establish the position of Executive Director of the MCC Threshold Program. The Executive Director will be a member of the Board and will be aided by the Secretariat of the Board (consisting of six people, one of whom will be an expatriate, three newly-hired local experts, including a liaison for nongovernmental organizations, and two delegated Ukrainian civil servants). In addition, as the need arises, the Executive Director will hire limited short-term assistance. The functions of the Executive Director and the Secretariat of the Board will include: (1) preparation of arrangements and documents for monthly meetings of the Board; (2) liaison with U.S. government implementing agencies; (3) analysis of work plans and reports and provision of comments and feedback to the Board; and (4) ensuring consistency and unity of the Program.

The GoU will actively manage this Program, so that there will be national ownership of the reform process through a clearly established system of responsibility for accomplishing the results of the Program. However, in order to avoid a conflict of interest and ensure independent evaluation of the impact of the Program, Component 1, Civil Society Monitoring and Exposure of Corruption, will be implemented outside of the GoU's management system. Even though civil society organizations will not be members of the

Board, the Board shall afford ample opportunity for civil society to engage with the Board and provide input throughout the course of the Program. To this end, the Secretariat shall organize at least monthly events that provide an opportunity for dialogue between representatives of civil society and the Board. The Secretariat will ensure that the civil society interlocutors represent a cross-section of civil society and have solicited the opinions of their constituents. Furthermore, to accommodate a larger number of participants from civil society, at least twice within the first year of the Program, the Secretariat will arrange for a public hearing at which Board members will discuss Program issues and activities with interested members of the public.

VI. U.S. Government Implementation Arrangements: For the Government of the United States of America, MCC has charged USAID with responsibility for administering and overseeing the overall implementation of this Agreement under MCC principles of country ownership, accountability and emphasis on results. USAID, the U.S. Department of Justice, the U.S. Department of State and the United States Embassy in Kiev will play key roles in implementation of the Program and liaison with the GoU.

VII. Other Donors: The GoU and USAID have carefully considered past and ongoing donor efforts while developing this Program. Activities conducted by the Organization for Security and Cooperation in Europe, European Commission, Council of Europe, the International Renaissance Foundation, World Bank, International Finance Corporation, and USAID were specifically reviewed and taken into account. The GoU and USAID are confident that this Program will complement current reform activities supported by other donors. The Parties will continue to consult with other donors in order to assure the success of this Program and related activities of the other donors.

VIII. Program Budget:

The estimated budget for the Program is shown by Component below.

1. Strengthening civil society's monitoring and exposure of corruption	\$ 9,820,000
2. Judicial reform	\$ 8,085,000
3. Strengthening government monitoring and enforcement of ethical and administrative standards	\$11,515,000
4. Streamlining and enforcing regulations	\$ 9,900,000
5. Combating corruption in higher education	<u>\$ 5,650,000</u>
TOTAL	<u>\$44,970,000</u>

As necessary to accomplish the Strategic Objective, the Authorized Representatives of the Parties may reallocate funds among the components by exchange of countersigned Implementation Letters or other written agreements, without formal amendment of the Agreement.

Annex 2 STANDARD PROVISIONS

Article A: Definitions and Implementation Letters.

Section A.1: Definitions

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

Section A.2: Implementation Letters

To assist the Grantee in the implementation of the Agreement, USAID, from time to time, will issue Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Implementation Letters can also be issued to record revisions or exceptions 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, implementing organizations 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. USAID's regulation on Geographic Codes is Attachment A.

Section B.4: Taxation

- (a) General Exemption. This Agreement and the assistance hereunder are free from any taxes imposed under laws in effect in the territory of Ukraine, under the terms of the Bilateral Agreement of 1992 and the 1999 Memorandum.
- (b) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies 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 organization carrying out activities financed by USAID under this Agreement; and (4) any employee of such organizations who is not a national or permanent resident of Ukraine per Article I of the 1992 Bilateral Agreement.
- (c) If a tax has been levied and paid contrary to the provisions of an exemption, USAID may, in its discretion, offset the amount of such tax from amounts to be disbursed under this or any other agreement between the Parties.
- (d) 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 not prohibited by the legislation of the country of Grantee 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 body that is authorized to conduct state financial audit and inspection 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 implementing organization 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 implementing organization 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 U.S. laws and regulations on this topic.

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 applicable U.S. laws and regulations. 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 implementing organizations 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 implementing organizations, 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 implementing organizations financed under the Agreement for engineering and other professional services, for construction services, and for such other services, equipment, or materials as may be specified in Implementation Letters, will be approved by USAID in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by USAID prior to execution; and
- (d) Consulting firms used by the Grantee for the Agreement but not financed under the Agreement, the scope of their services and such of their personnel assigned to activities financed under the Agreement as USAID may specify, and construction contractors used by the Grantee for the Agreement but not financed under the Agreement, shall be acceptable to USAID.

Section C.4. Reasonable Price

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

Section C.5. Notification to Potential Suppliers

To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Agreement, the Grantee will furnish USAID such information not prohibited by the legislation of the country of Grantee with regard thereto, and at such times, as USAID may request in Implementation Letters.

Section C.6. Transportation

- (a) In addition to the requirements in Section C.1(a), costs of ocean or air transportation and related delivery services may not be financed under the Grant, if the costs are for transportation under an ocean vessel or air charter which has not received prior USAID approval.
- (b) Unless USAID determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, or otherwise agrees in writing:
 - (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by USAID which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels; and
 - (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by USAID and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.7. Insurance

- (a) Marine insurance on goods financed by USAID which are to be transported to the territory of the Grantee may be financed 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.
- (b) If 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.

(c) 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 financed out of funds granted by USAID under this Agreement and 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 Agreement, should be utilized. Funds under the Agreement may be used to finance the costs of obtaining such property.

Article D: Disbursements.

Section D.1. Disbursements

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 Cooperating Country by USAID or any public or private agency for purposes of carrying out obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee to any person for any purpose.

Article E: Termination; Remedies.

Section E.1. Suspension and Termination

(a) Either Party may terminate this Agreement in its entirety by giving the other Party 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, whether now or hereafter in effect.

- (b) Except for payment which the Parties are committed to make pursuant to non-cancelable commitments entered into with third parties prior to such suspension or termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to the Agreement, or to the suspended or terminated portion of the Agreement, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.
- (c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under the Agreement, or under the applicable portion of the Agreement, be transferred to USAID if the goods are in a deliverable state.

Section E.2. Refunds

- (a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, USAID, notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.
- (b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed or supported under the Agreement are not used effectively in accordance with this Agreement, USAID may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for or in connection with such goods or services in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.
- (c) The right under subsections (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.
- (d) (1) Any refunds under subsections (a) or (b), or (2) any refund to USAID from a implementing organization, 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. Non-waiver of Remedies

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

Section E.4. Assignment

The Grantee agrees, upon request, to execute an assignment to USAID of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by any organization that has 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 the recipient 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

- (a) 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 relevant U.S. laws and regulations.
- (b) USAID reserves the right to terminate assistance to, or take or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in relevant U.S. laws and regulations.
- (c) For any loan over \$1000 made under this Agreement, the Grantee shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the Grantee if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in relevant U.S. laws and regulations.
- (d) Upon notice by USAID of a determination under subsection (c) and at USAID's option, the Grantee agrees to immediately cancel, accelerate or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.

Section F.4. Workers' Rights

- (a) None of the funds obligated by this Agreement may be used to provide assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, provided that this restriction commensurate with the level of development of the recipient country and sector, shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.
- (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.

Attachment A

Code of Federal Regulations (*Excerpt*)

Title 22: Foreign Relations

Chapter II – Agency for International Agency

§ 228.03 *Identification of principal geographic code numbers.*

The USAID Geographic Code Book sets forth the official description of all geographic codes used by USAID in authorizing or implementing documents, to designate authorized source countries or areas. The following are summaries of the principal codes:

(a) Code 000—*The United States*: The United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S.-associated sovereignty, including commonwealths, territories and possessions.

(b) Code 899—Any area or country, except the cooperating country itself and the following foreign policy restricted countries: Cuba, Iraq, Iran, Laos, Libya, North Korea, and Syria.

(c) Code 935—Any area or country including the cooperating country, but excluding the foreign policy restricted countries.

(d) Code 941—The United States and any independent country (except foreign policy restricted countries) except the cooperating country itself and the following: Albania, Andorra, Angola, Armenia, Austria, Australia, Azerbaijan, Bahamas, Bahrain, Belgium, Bosnia and Herzegovina, Bulgaria, Belarus, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia,* Malta, Moldova, Monaco, Mongolia, Montenegro*, Netherlands, New Zealand, Norway, People's Republic of China, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia*, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan*, Tajikistan, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, and Vatican City.