

**DEVELOPMENT ASSISTANCE GRANT AGREEMENT NO. 617-AO8  
MILLENNIUM CHALLENGE ACCOUNT  
THRESHOLD PROGRAM**

**DEVELOPMENT ASSISTANCE GRANT AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF**

**THE UNITED STATES OF AMERICA**

**AND**

**THE GOVERNMENT OF**

**UGANDA**

**FOR STRENGTHENING UGANDA'S CAPACITY  
TO FIGHT CORRUPTION**

**DATE: March 29, 2007**

**Millennium Challenge Account Threshold Program  
DEVELOPMENT ASSISTANCE GRANT AGREEMENT  
617-A08**

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**USAID DEVELOPMENT ASSISTANCE GRANT AGREEMENT NO. 617-A08**

**Between**

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

**And**

**The Government of Uganda (hereinafter referred to as the "GOU" or "Grantee")**

**Article 1: Purpose.**

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

**Article 2: Objective and Results**

Section 2.1. Objective. The objective of this Agreement is to build Uganda's capacity to fight public sector corruption, particularly in public procurement, which is a major area of vulnerability in Uganda.

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

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

- (a) Prevent corruption related to public procurement in Uganda;
- (b) Increase the rate of successful prosecutions; and
- (c) Strengthen the role of civil society in the fight against corruption.

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

Section 2.3. Annex 1, Amplified Program Description. Annex 1, attached hereto, forms part of this Agreement and amplifies the above Objective and the Results to be achieved. 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 through Implementation Letters without formal amendment of this Agreement.

### **Article 3. Contributions of the Parties.**

Section 3.1. USAID Contribution. *The Grant.* To help achieve the Objective set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, and Section 616 of the Millennium Challenge Act of 2003, hereby grants to the Grantee an amount not to exceed Ten Million Four Hundred and Forty-Six Thousand One Hundred Eighty ("U.S.") dollars (\$10,446,180), ("the Grant").

Section 3.2. The Grantee (GOU) Contribution. The Grantee shall provide or cause to be provided all funds, in addition to those provided by USAID in Annex 1, and all other resources required to complete, on or before the Completion Date, all activities necessary to achieve the Results. Grantee support shall include, but shall not be limited to, all organizational costs associated with achieving the Results. The GOU's contribution, based on the July 2006 Uganda Country Plan for the Millennium Challenge Account (MCA) Threshold Program, will not be less than the equivalent of Two Million Two Hundred Thousand ("U.S.") dollars (\$2,200,000). The contribution will be budgetary resources for the six key GOU anti-corruption agencies; as well as other non-monetary commitments to establish an Anti-Corruption Court, review GOU civil service remuneration policies, and support the passage of a number of key bills in Parliament. The GOU will report at least annually in a format to be agreed upon with USAID on its in-kind contributions.

### **Article 4: Completion Date.**

- (a) The Completion Date, which is December 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 Grantee and reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period.

### **Article 5: Conditions Precedent to Disbursement.**

Section 5.1. First Disbursement. Prior to the first disbursement under the Grant, or to the issuance by USAID of documentation pursuant to which disbursement will be made, the 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 acceptable to USAID 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 GOU in accordance with all of its terms; and

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

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

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

#### **Article 6: Covenants.**

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

Section 6.2. Quarterly Progress Reviews. The Authorized Representatives of the United States Government and the Government of Uganda as specified in Section 9.2 or their designees will meet at least quarterly to ensure that the Program is being implemented as agreed upon and that the expected results will be achieved.

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

#### **Article 7: Financial Requirements and Expenditure Reporting**

Section 7.1. Method of Disbursement. The activities funded under this Agreement will be undertaken in conformity with United States Government rules, regulations, policies and procedures. Funds under this Agreement will be disbursed directly by USAID.

**Article 8: Procurement Procedures.**

(a) Unless the Parties agree otherwise in writing, USAID will use USAID procedures to commit and subobligate all Grant funds.

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

(c) In addition to Ugandan public bodies and private organizations, U.S. or international Implementing Partners may work under contracts, grants or other agreements with USAID to implement the Program.

**Article 9: Miscellaneous.**

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

To USAID:

Mail Address: Mission Director  
United States Agency for International  
Development (USAID/Uganda)  
P. O. Box 7856  
Kampala, Uganda

Fax: 041-306-661

To the Grantee:

Mail Address: Permanent Secretary  
Ministry of Finance, Planning and Economic Development  
P. O. Box 8147  
Kampala, Uganda

Fax: 041- 343-023

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

Section 9.2. Representatives. For all purposes relevant to this Agreement, the Grantee

will be represented by the individual holding or acting in the Office of the Permanent Secretary, Ministry of Finance, Planning and Economic Development, and USAID will be represented by the individual holding or acting in the Office of the Mission Director, USAID/Uganda. Each of the Authorized Representatives, by written notice, may designate additional representatives for all purposes except for this Agreement, signing formal amendments to the agreement or exercising the power under Section 2.2 or 2.3 to modify Annex 1.

The names of the representatives of the GOU entities, with specimen signatures, will be provided to USAID, which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

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

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

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

FOR THE GOVERNMENT OF  
UGANDA

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA

BY: \_\_\_\_\_ / s / \_\_\_\_\_

BY: \_\_\_\_\_ / s / \_\_\_\_\_

NAME: Hon. Dr. Ezra Suruma

NAME: Margot Ellis

TITLE: Minister for Finance, Planning  
and Economic Development

TITLE: USAID/Uganda, Director

DATE: 29 Nov 2007

DATE: 3/25/03

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## **ANNEX 1: AMPLIFIED PROGRAM DESCRIPTION**



## ANNEX 1 AMPLIFIED PROGRAM DESCRIPTION

### I. Introduction

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

### II. Background

Corruption in public procurement and service delivery poses a serious obstacle to economic and social development in Uganda. The Government of Uganda (GOU) and Ugandan civil society acknowledge the seriousness of corruption and recognize that corruption has led to “significant losses of public funds through mishandled procurements and outright embezzlement.” To help fight corruption, Uganda launched the National Strategy to Fight Corruption and Rebuild Ethics and Integrity in Public Office (2004-2007) in July 2004. The strategy provides a plan of action to guide Government and donor interventions and actions in the fight against corruption in the context of the GOU’s policy of “Zero Tolerance to Corruption.”

The GOU’s Directorate of Ethics and Integrity (DEI) coordinates the work of the six agencies at the core of the GOU’s anti-corruption effort. These agencies are the Public Procurement and Disposal of Assets Authority (PPDA); the Office of the Auditor General (OAG); the Inspectorate General of Government (IGG); the Criminal Investigations Department’s Fraud Squad (CID); the Directorate of Public Prosecutions (DPP); and the DEI itself. These and other Government of Uganda agencies and leading civil society organizations are affiliated through an Inter-Agency Forum (IAF), which reviews Uganda’s progress on the anti-corruption front.

Despite these efforts, Uganda’s capacity to deal effectively with corruption has been hampered by an inability to enforce and implement existing laws and policies. Corruption therefore continues to constrain severely public policy execution and public service delivery. Although serious challenges exist at a variety of levels and in a variety of sectors, corruption within the public procurement process represents a particularly acute concern and a major threat to the economy. Moreover, failure to bring offenders to justice in the past has led to a perception by the public that corruption is condoned in Uganda.

The Millennium Challenge Corporation (MCC) selected Uganda as eligible to receive Threshold Program assistance in September 2004. The Government of Uganda submitted its proposal for Threshold Program assistance in July 2006. MCC approved such assistance for Uganda in February 2007, as provided for in this Agreement (the “Program”). The Program will address corruption by:

- coordinating and improving enforcement mechanisms;
- strengthening the legislative and regulatory frameworks;
- involving the public in the fight against corruption;
- addressing agency staffing and other institutional issues; and
- encouraging political support for anti-corruption efforts.

### **III. Objective and Results to be Achieved**

The Program will support the GOU's and civil society's fight against corruption by addressing critical gaps. Among the most important of these gaps are insufficient human, organizational, and technological capacities to effectively investigate and prosecute corruption offenders. For example, the six core GOU anti-corruption agencies lack the staff, support systems, and tools to investigate and prosecute increasingly sophisticated financial crimes. These same constraints among civil society organizations also hamper efforts to combat corruption. Many have also questioned the GOU's political will to fight corruption. As a result, the perpetrators of corruption in Uganda, including civil servants who have broad authority over public procurement, have continued to operate with an insufficient fear of meaningful social, political, and administrative sanctions or criminal penalties. Bringing to life the GOU's new policy of "zero tolerance" towards corruption will require a dramatically enhanced ability to prevent, investigate, and prosecute successfully a variety of corruption cases – including high profile cases – and clear expressions and manifestations of political will.

The Program will help build Uganda's capacity to fight public sector corruptions, particularly in public procurement and will seek to achieve the following Results:

1. Prevent corruption related to public procurement in Uganda,
2. Increase the rate of successful prosecutions, and
3. Strengthen the role of civil society in the fight against corruption.

### **IV. Program Components – Objectives and Proposed Activities**

The Program will help to modernize procurement and audit practices; successfully initiate and conclude investigations and prosecutions; and enhance the capacity of civil society to demand greater transparency and accountability.

#### **A. Component 1: Prevent Corruption Related to Public Procurement**

Objective: To reduce corruption by (1) developing the capacities of the PDDA, the OAG to conduct better audits, to prepare better procurement reports, and to communicate more effectively this work to civil society and the public, thus increasing the quality of the audits and reports and enhancing the chances that effective administrative and legal action may be taken against corrupt officials or those undertaking improper procurement actions, and (2) making more functional and effective the IAF, the Public Accounts Committees (PACs), the Government Accounting Officers (GAOs), and the Public Service Commissioners (PSCs).

Proposed Activities:

1. Build capacity within the PPDA by improving procurement systems. Specifically, the Program will improve financial management systems; increase the frequency of central government and local government audits; more effectively follow up on procurement audit findings; develop a national system for certification of procurement professionals; and establish a procurement provider's register.
2. Improve audit systems by addressing a lack of human and logistical capacity at the OAG so that technical findings and recommendations will be better understood by recipients. The Program will fund training seminars for audit recipient agencies; the training of OAG staff to conduct audits; and the provision of coordination and logistical support in the form of equipment and technology.
3. Convene quarterly meetings of the Inter-Agency Forum where five anti-corruption agencies and two civil society organizations will share key information.
4. Offer technical support to anti-corruption agencies to reform and streamline the handling of corruption cases to remove administrative bottlenecks.

**B. Component 2: Increase the Rate of Successful Prosecutions**

Objective: To strengthen the GOU's ability to investigate and prosecute effectively corrupt individuals by providing technical assistance and effective, hands-on mentoring to the CID, the DPP, the IGG, and the Anti-Corruption Court to improve their abilities to detect, investigate, prosecute, and adjudicate corruption cases quickly and successfully, especially those related to procurement. In this regard, the anti-corruption effort will be extended to local government, where a considerable amount of corruption is known to occur in contract award and management.

Proposed Activities:

1. Support and train investigators; provide necessary equipment and logistical support; provide for the outsourcing of certain investigative and forensic services; and create a whistleblower and witness protection program.
2. Support and train prosecutors; provide necessary equipment and logistical support; develop online legal resources; and provide for the outsourcing of legal services.
3. Support the establishment and decentralization of the Anti-Corruption Court; and provide legal aid for complainants and victims of corruption.

### **C. Component 3: Strengthen the Role of Civil Society in the Fight Against Corruption**

Objective: To build the capacity of Ugandan civil society organizations to increase public awareness of corruption, to enhance civil society organization and citizen capacity to fight more effectively corruption and to participate more effectively in governmental and non-governmental anti-corruption forums and activities.

#### Proposed Activities:

1. Involve civil society organizations in the Inter-Agency Forum and provide technological, equipment and logistical support to the Inter-Agency Forum.
2. Build human and technological capacity for civil society organizations.
3. Support the Directorate of Ethics and Integrity's public information campaign and support national awareness campaigns and the dissemination of critical public information by civil society organizations.
4. Provide legal aid for public complainants and victims of corruption and support branding materials, notably the National Book of Shame and the annual Anti-Corruption Awards.

### **V. Roles and Responsibilities**

The Government of Uganda and the United States Government will collaborate to implement the Program. To achieve the desired level of collaboration and coordination, a GOU-USAID Management Team representing the Ministry of Finance, representatives of the GOU anti-corruption agencies (IGG, DPP, PPDA, CID and DEI), of leading civil society organizations, of the donor anti-corruption working group, and USAID has been formed. All implementation planning, supervision, and monitoring and evaluation activities will be mutually agreed upon.

#### **A. Government of Uganda**

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

To support the Program, the GOU will:

- provide an additional Ugandan Shilling (USh) contribution equivalent to (\$1.2 million) in budgetary resources to the six key GOU anti-corruption agencies during the two GOU fiscal years 2007/8 and 2008/9;
- provide funding of \$1.0 million for vehicles for the GOU anti-corruption agencies in GOU fiscal year 2007/8;

- assist in passing the Audit Bill, which if passed would significantly strengthen the effectiveness and operations of the OAG, in part by allowing it to offer more competitive remuneration packages to its professional employees;
- reconsider the GOU's civil service remuneration policies with a view to introducing reforms to enable performance-based (job evaluation) salary structures for anti-corruption prosecutors, investigators, and other officers within GOU entities such as the DEI, DPP and the CID fraud squad;
- ensure that the Anti-Corruption Court is established, that judges and other staff are appointed, and that the Court begins to function during GOU fiscal year 2007/8;
- ensure that the laws required to support the Anti-Corruption Court – such as the Whistleblower Qui-Tam Act and the Prevention of Corruption (Amendment) Bill – are presented before Parliament for debate; and
- hold quarterly meetings of the Inter-Agency Forum.

## **B. United States Agency for International Development**

USAID will be the lead U.S. Government agency implementing the Program. It will be assisted by other U.S. agencies as required. USAID will work closely with the Government of Uganda to help it to successfully implement the Program and achieve the Results and the Objective contemplated 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 Uganda, 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 GOU and MCC, USAID will develop the procurement specifications and terms of reference and select Implementing Partners. USAID will ensure that all procurement and grant awards made are in accordance with USAID regulations and policies. For the purposes of this Agreement, "Implementing Partner" shall include any legal entity (whether or not a resident of Uganda) that has legal responsibility for implementing the Program in whole or in part on the basis of a written agreement with USAID.

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

### **C. Implementing Partners**

USAID will select the Implementing Partners, in consultation with the GOU, and will ensure that the Implementing Partners carry out the implementation of the Program in conformance with this Agreement and report directly to USAID and indirectly to the GOU-USAID Management Team. 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**

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

## **VI. Financial Plan**

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

<b>Program Component</b>	<b>USAID Contribution (\$ US)</b>	<b>GOU Contribution (\$ US)</b>	<b>Total (\$ US)</b>
1. Prevent corruption related to public procurement	3,390,000	540,000	3,930,000
2. Increase the rate of successful prosecutions	5,066,000	1,670,000	6,736,000
3. Strengthen the role of civil society in the fight against corruption	1,990,180	70,000	2,060,180
<b>Total Program Cost</b>	<b>10,446,180</b>	<b>2,280,000</b>	<b>12,726,180</b>

## **VII. Monitoring and Evaluation**

Program monitoring and evaluation will be based on quantitative as well as qualitative factors, and will be carried out by the Government of Uganda, the Implementing Partners and USAID. Achievement of the Results will be measured by the following performance indicators and targets (among others):

**Highlights of Expected Results:**

- Reduce losses due to procurement-related corruption by \$10 million from a baseline estimate of between \$64 to \$85 million.
- Decrease by 33 percent the amount of unaccounted central government expenditures.
- Increase the number of procurement audit findings that lead to investigations, legal or administrative actions or referrals to other agencies from 3 to 10 per year.
- Improve by 20 percent three of the following four categories: number of material audit findings (decrease); number of repeat occurrences of the same material audit findings (decrease); number of clean audit reports (increase); and number of audit findings implemented (increase).
- Increase the number of criminal cases investigated and prosecuted to completion as a share of cases reported from 1 to 10 percent.
- Increase the number of National Fraud Squad criminal cases that reach prosecution as a share of cases investigated from 18 to 40 percent.
- Increase the number of convictions as a percentage of all corruption cases investigated from 30 to 50 percent.
- Through the work of civil society organizations, expose at least 10 corruption cases, with three public institutions, five private companies, and two high-profile personalities subject to in-depth inquiry.

**Annex 2**  
**Standard Provisions**

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## Standard Provisions

### Article A: Definitions and Implementation Letters.

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

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

### Article B: General Covenants.

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

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

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

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

Section B.3. Utilization of Goods and Services.

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

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

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

#### Section B.4. Taxation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article C: Procurement Provisions.

Section C.1. Source and Origin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section C.6. Shipping/Transportation

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

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



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

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

#### Section C.7. Insurance.

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

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

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

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

#### Article D. Miscellaneous.

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

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

## Article E. Termination; Remedies

### Section E.1. Suspension and Termination

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

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

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

### Section E.2. Refunds.

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

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

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

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

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

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

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

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

## Article F: Miscellaneous

### Section F.1. Investment Promotion.

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

(b) In the event the Grantee is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the Grantee must notify USAID and provide a detailed description of the proposed activity. The Grantee must not proceed with the activity until advised by USAID that it may do so.

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

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

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

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

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

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

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

**Section F.4. Workers' Rights.**

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

(b) In the event the Grantee is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the Grantee must notify USAID and

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

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