



USAID
FROM THE AMERICAN PEOPLE

Required, As Applicable, Standard
Provisions for
Fixed Obligation Grants to
Nongovernmental Recipients

A Mandatory Reference for ADS Chapter 303

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Required, As Applicable, Standard Provisions For Fixed Obligation Grants to Nongovernmental Recipients

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

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I. REQUIRED, AS APPLICABLE, STANDARD PROVISIONS FOR FIXED OBLIGATION GRANTS TO NONGOVERNMENTAL RECIPIENTS

1. PAYMENT – ADVANCE (FEBRUARY 2012)

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

PAYMENT – ADVANCE (FEBRUARY 2012)

- a. In accordance with the Standard Provision entitled "Payment Advances and Refund": USAID funds must not be commingled with other recipient owned or controlled funds; the recipient must deposit all USAID cash advances in a separate bank account and must make all disbursements for goods and services from this account.
- b. Advances must be limited to the minimum amounts needed to meet current disbursement needs (generally 30 days) and must be scheduled so that the funds are available to the grantee as close as is administratively feasible to the actual disbursements by the grantee for program costs. Advances made by the recipient to subrecipients or the recipient's field organizations must conform substantially to the same standards of timing and amount as apply to cash advances by USAID to the recipient.
- c. Procedures. After receipt of the initial advance, the recipient must submit a Standard Form 1034 for each upcoming month (30-day period), with the statement "Request for Advance" printed at the top of the form. The recipient may submit a set of these forms on a quarterly basis (i.e. submission of three SF 1034s, one for each month in the upcoming quarter). At the end of each quarter the recipient must submit a SF 1034 (marked "Liquidation of Advances") to liquidate the advances of the previous quarter. The recipient may submit a new set of SF 1034s ("Request for Advance") once the "Liquidation of Advances" has been submitted. Each SF 1034 must be identified by the appropriate award number.
- d. Notwithstanding any of the above, advances will only be liquidated upon milestone achievement.

[END OF PROVISION]

2. PAYMENT ADVANCES AND REFUNDS (OCTOBER 1998)

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

[END OF PROVISION]

3. PAYMENT – REIMBURSEMENT (MAY 1986)

APPLICABILITY: This provision is applicable to grants for construction or to awards

where the recipient does not meet the conditions for periodic advance payment.

PAYMENT – REIMBURSEMENT (MAY 1986)

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

[END OF PROVISION]

**4. INTERNATIONAL AIR TRAVEL AND TRANSPORTATION
(FEBRUARY 2012)**

APPLICABILITY: The Fly America portion of this provision is applicable only when flights are listed as or in milestones.

INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (FEBRUARY 2012)

a. NOTIFICATION

- (1) As long as prior budget approval has been met in accordance with paragraph a. above, a separate Notification will not be necessary unless:
 - (i) The primary purpose of the trip is to work with USAID Mission personnel, or
 - (ii) The recipient expects significant administrative or substantive programmatic support from the Mission.

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

- (2) Where notification is required in accordance with paragraph (1)(i) or (ii) above, the recipient will observe the following standards:
 - (i) Send a written notice to the USAID Agreement Officer's Technical Representative (AOTR) in the Mission. If the recipient's primary point of contact is a Technical Officer in USAID/W, the recipient may send the notice to that person. It will be the responsibility of the USAID/W AOTR to forward the notice to the field.

- (ii) The notice should be sent as far in advance as possible, but at least 14 calendar days in advance of the proposed travel. This notice may be sent by fax or e-mail. The recipient should retain proof that notification was made.
- (iii) The notification must contain the following information: the award number, the AOTR, the traveler's name (if known), date of arrival, and the purpose of the trip.
- (iv) The USAID Mission will respond only if travel has been denied. It will be the responsibility of the AOTR in the Mission to contact the recipient within five working days of having received the notice if the travel is denied. If the recipient has not received a response within the time frame, the recipient will be considered to have met these standards for notification, and may travel.
- (v) If a subrecipient is required to issue a Notification, as per this section, the subrecipient may contact the AOTR directly, or the prime recipient may contact USAID on the subrecipient's behalf.

b. SECURITY ISSUES

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

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

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

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

d. THE FLY AMERICA ACT

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

e. SUBAWARDS

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

[END OF PROVISION]

5. OCEAN SHIPMENT OF GOODS (JUNE 1999)

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

OCEAN SHIPMENT OF GOODS (JUNE 1999)

- a. At least 50% of the gross tonnage of all goods purchased under this award and transported to the cooperating countries must be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates.
- b. At least 50% of the gross freight revenue generated by shipments of goods purchased under this award and transported to the cooperating countries on dry cargo liners must be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.
- c. When U.S. flag vessels are not available, or their use would result in a significant delay, the recipient may request a determination of non-availability from the USAID, Office of Procurement, Transportation and Commodities Division, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, giving the basis for the request which will relieve the recipient of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimbursable under this award.
- d. The recipient must send a copy of each ocean bill of lading, stating all of the carrier's charges including the basis for calculation such as weight or cubic measurement, covering a shipment under this agreement to:

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

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

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

[END OF PROVISION]

6. PROCUREMENT OF GOODS AND SERVICES (OCTOBER 1998)

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

PROCUREMENT OF GOODS AND SERVICES (OCTOBER 1998)

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

- a. General Requirements:
 - (1) The recipient must maintain a written code or standards of conduct that will govern the performance of its employees engaged in the awarding and administration of contracts. An employee, officer, or agent must not participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such conflict would arise when the employee, officer or agent, or any member of the employee's immediate family, the employee's partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subagreements. However,

recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

- (2) All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient must be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals must be excluded from competing for such procurements. Contracts must be made to the offeror whose offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered. Solicitations must clearly establish all requirements that the bidder or offeror must fulfill in order to be evaluated by the recipient. Any and all offers may be rejected when it is in the recipient's interest to do so.
- (3) All recipients must establish written procurement procedures. These procedures must provide, at a minimum, that:
 - (i) Recipients avoid purchasing unnecessary items,
 - (ii) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement, and
 - (iii) Solicitations for goods and services provide for all of the following:
 - (A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description must not contain features which unduly restrict competition.
 - (B) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 - (C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

- (D) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
 - (E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - (F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (iv) Positive efforts must be made by the recipients to utilize U.S. small business, minority-owned firms, and women's business enterprises, whenever possible. Recipients of USAID awards must take all of the following steps to further this goal:
- (A) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient must to the maximum extent possible provide the following information to the Office of Small and Disadvantaged Business Utilization (OSDBU/MRC), USAID, Washington, DC 20523, at least 45 days prior to placing any order or contract in excess of \$100,000:
 - (a) Brief general description and quantity of goods or services;
 - (b) Closing date for receiving quotations, proposals, or bids; and
 - (c) Address where solicitations or specifications can be obtained.
 - (B) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

- (C) Encourage contracting with consortiums of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - (D) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.
- (v) The type of procurement instruments used (for example, fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts), must be determined by the recipient but, must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.
 - (vi) Contracts must be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration must be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Contracts must not be made with firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with copy of this list upon request.
 - (vii) Recipients must, on request, make available for USAID, preaward review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:
 - (A) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part, and
 - (B) The procurement is expected to exceed \$10,000.
 - (viii) The recipient must document some form of price or cost analysis in its procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, and market prices, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability,

and allowability.

- (ix) Procurement records and files for purchases in excess of the recipient's own small purchase threshold must include the following at a minimum:
 - (A) Basis for contractor selection;
 - (B) Justification for lack of competition when competitive bids or offers are not obtained, and;
 - (C) Basis for award cost or price.
- (x) A system for contract administration must be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients must evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

- b. The recipient must include, in addition to provisions to define a sound and complete contract, the following provisions in all contracts. The following provisions must also be applied to subcontracts.
 - (1) Contracts in excess of \$10,000 must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
 - (2) All contracts in excess of \$10,000 must contain suitable provisions for termination by the recipient, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
 - (3) All negotiated contracts (except those for less than the recipient's small purchase threshold) awarded by the recipient must include a provision to the effect that the recipient, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

- (4) In all contracts for construction or facility improvement awarded for more than \$100,000, the recipient must observe generally accepted bonding requirements.
- (5) Contracts, the principal purpose of which is to create, develop, or improve products, processes, or methods; or for exploration into fields that directly concern public health, safety, or welfare; or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by the U.S. Government (USG), must contain a notice to the effect that matters regarding rights to inventions, intellectual property, and materials generated under the contract are subject to the regulations included in these grant provisions. The contractor must be advised as to the source of additional information regarding these matters.

[END OF PROVISION]

7. USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (FEBRUARY 2012)

This provision is only applicable when specific goods or services are listed as or in milestones.

Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source and nationality are contained in [22 CFR Part 228, Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds](#), which is incorporated into this Award in its entirety. **22 CFR 228** is supplemented by the policies and procedures in ADS Chapters [310](#) and [312](#).

a. Ineligible and Restricted Goods and Services:

- (1) Ineligible Goods and Services. The recipient must not, under any circumstances, procure any of the following under this award:
 - (i) Military equipment,
 - (ii) Surveillance equipment,
 - (iii) Commodities and services for support of police or other law enforcement activities,
 - (iv) Abortion equipment and services,
 - (v) Luxury goods and gambling equipment, or
 - (vi) Weather modification equipment.

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

Nonprocurement Programs" (See <https://www.epls.gov/>). USAID will provide the recipient with a copy of these lists upon request.

(3) Restricted Goods. The recipient must obtain prior written approval of the Agreement Officer or comply with required procedures under an applicable waiver as provided by the Agreement Officer when procuring any of the following goods or services:

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

b. Source and Nationality:

The eligibility rules for goods and services based on source and nationality are divided into two categories: One applies when the total procurement element during the life of the award is \$250,000 or less, and the other applies when the total procurement element during the life of the award is over \$250,000. The total procurement element includes procurement of all goods (for example, equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer.

1) When the total procurement element during the life of this award is valued at \$250,000 or less, the authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World." Such goods and services must meet the source and nationality requirements set forth in 22 CFR 228.

2) When the total procurement element exceeds \$250,000, the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars which will be reimbursed under this award must meet the source and nationality requirements set forth in 22 CFR 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 937.

c. If USAID determines that the recipient has procured any of these goods or services under this award contrary to the requirements of this provision, and has received payment for such purposes, the Agreement Officer may require the recipient to refund the entire amount of the purchase.

This provision must be included in all subagreements which include procurement of goods or services.

[END OF PROVISION]

8. SUBAGREEMENTS (OCTOBER 1998)

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

SUBAGREEMENTS (OCTOBER 1998)

- a. Subawards must be made only with responsible recipients who possess the potential ability to perform successfully under the terms and conditions of a proposed agreement. Consideration must be given to such matters as integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources. Awards must not be made to firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with a copy of this list upon request.
- b. All subagreements must at a minimum contain provisions to define a sound and complete agreement in addition to those that are specifically required by any other provisions in this award. Whenever a provision within this award is required to be inserted in a subagreement, the recipient must insert a statement in the subagreement that in all instances where USAID is mentioned, the recipient's name will be substituted. If subagreements are being made to U.S. organizations, a suggested subaward format incorporating 22 CFR 226 and standard provisions will be provided.

[END OF PROVISION]

9. PATENT RIGHTS (JUNE 1993)

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

PATENT RIGHTS (JUNE 1993)

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

Code.

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

publication at the time of disclosure. In addition, after disclosure to USAID the recipient must promptly notify USAID of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.

- (2) The recipient must elect in writing whether or not to retain title to any such invention by notifying USAID within two years of disclosure to USAID. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by USAID to a date that is no more than 60 days prior to the end of the statutory period.
 - (3) The recipient must file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient must file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (4) Requests for extension of the time for disclosure to USAID, election, and filing may, at the discretion of USAID, be granted.
- d. Conditions When the Government May Obtain Title. The recipient must convey to USAID, upon written request, title to any subject invention:
- (1) If the recipient fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title, USAID may only request title within sixty days after learning of the recipient's failure to report or elect within the specified times.
 - (2) In those countries in which the recipient fails to file patent applications within the times specified in c. above; provided, however, that if the recipient has filed a patent application in a country after the times specified in c. above, but prior to its receipt of the written request of USAID the recipient must continue to retain title in that country.
 - (3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on a patent on a subject invention.
- e. Minimum Rights to Recipient:

- (1) The recipient must retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the recipient fails to disclose the subject invention within the times specified in c. above. The recipient's license extends to its subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of USAID except when transferred to the successor of that party of the recipient's business to which the invention pertains.
- (2) The recipient's license may be revoked or modified by USAID to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the 37 CFR 404 and Agency licensing regulations (if any). This license must not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of USAID to the extent the recipient, its licensees, or its subsidiaries or affiliates have failed to achieve practical application.
- (3) Before revocation or modification of the license, USAID will furnish the recipient written notice of its intention to revoke or modify the license, and the recipient must be allowed thirty days (or such other time as may be authorized by USAID for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable regulations in 37 CFR 404 and Agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

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

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

patent matters and in a format suggested by the grantee each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by c.(1) above. The recipient must instruct such employees through employee agreements, or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

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

person the exclusive right to use or sell any subject invention in the United States, unless such person agrees that any products embodying the subject invention must be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by USAID upon a showing by the recipient or its assignee that reasonable, but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances manufacture in the United States is not commercially feasible.

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

inventor, including Federal employee coinventors, when USAID deems it appropriate when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

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

- I. Communications: Communications concerning this provision must be addressed to the Agreement Officer at the address shown in this agreement.

[END OF PROVISION]

10. PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)

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

PUBLICATIONS AND MEDIA RELEASES (MARCH 2006)

- a. The recipient must provide the Agreement Officer's Technical Representative (AOTR) one copy of all published works developed under the award with lists of other written work produced under the award. In addition, the recipient must submit final documents in electronic format, unless no electronic version exists at the following address:

Online (preferred):

dec.usaid.gov/index.cfm?p=docsubmit.submitDoc&CFID=17392230&CFTOKEN=91583381

Mailing address:

Document Acquisitions
USAID Development Experience Clearinghouse (DEC)
8403 Colesville Road, Suite 210
Silver Spring, MD 20910-6368

Contract Information

Telephone (301) 562-0641

Fax (301) 588-7787

E-mail: docsubmit@dec.cdie.org

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

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

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

[END OF PROVISION]

11. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)

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

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MAY 1986)

U.S. citizens or legal residents must not be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this award on the basis of race, color, national origin, age, handicap, or sex.

[END OF PROVISION]

12. REGULATIONS GOVERNING EMPLOYEES (JUNE 1993)

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

REGULATIONS GOVERNING EMPLOYEES (JUNE 1993)

- a. The recipient's employees must maintain private status and may not rely on local U.S. Government offices or facilities for support while under this recipient.
- b. The sale of personal property or automobiles by recipient employees and their dependents in the foreign country to which they are assigned are subject to the same limitations and prohibitions which apply to direct-hire USAID personnel employed by the Mission, including the rules contained in 22 CFR 136, except as this may conflict with host government regulations.
- c. Other than work to be performed under this award for which an employee is assigned by the recipient, employees of the recipient must not engage directly or indirectly, either in the individual's own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which the individual is assigned. In addition, the individual must not make loans or investments to or in any business, profession, or occupation in the foreign countries to which the individual is assigned.
- d. The recipient's employees, while in a foreign country, are expected to show respect for its convention, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.
- e. In the event the conduct of any recipient employee is not in accordance with the preceding paragraphs, the recipient's chief of party must consult with the USAID Mission Director and the employee involved, and must recommend to the

recipient a course of action with regard to such employee.

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

[END OF PROVISION]

13. PARTICIPANT TRAINING (OCTOBER 1998)

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

PARTICIPANT TRAINING (OCTOBER 1998)

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

[END OF PROVISION]

14. VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009)

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

VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009)

a. Voluntary Participation and Family Planning Methods:

- (1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the recipient agrees to conduct its activities in a manner which safeguards the rights, health, and welfare of all individuals who take part in the program.
- (2) Activities which provide family planning services or information to individuals, financed, in whole or in part, under this agreement, must provide a broad range of family planning methods and services available in the country in which the activity is conducted or must provide information to such individuals regarding where such methods and services may be obtained.

b. Requirements for Voluntary Family Planning Projects

- (1) A family planning project must comply with the requirements of this paragraph.
- (2) A project is a discrete activity through which a governmental or nongovernmental organization or Public International Organization (PIO) provides family planning services to people and for which funds obligated under this award, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- (3) Service providers and referral agents in the project must not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or

referral agents in the project are required to achieve the estimates or indicators.

- (4) The project must not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor, or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.
- (5) A person must not be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.
- (6) The project must provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.
- (7) The project must ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.
- (8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under this award, the organization implementing a project for which such assistance is provided must agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.
- (9)
 - i) The recipient must notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs b.(3), b.(4), b.(5), or b.(7).

- ii) The recipient must investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph b.(6) and must notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.
- iii) The recipient must provide USAID such additional information about violations as USAID may request.

c. Additional Requirements for Voluntary Sterilization Programs

- (1) Funds made available under this award must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.
- (2) The recipient must ensure that any surgical sterilization procedures supported, in whole or in part, by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.
- (3) Further, the recipient must document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation must be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who speaks the same language as the patient.
- (4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization for a period of three

years after performance of the sterilization procedure.

d. Prohibition on Abortion-Related Activities:

- (1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.
- (2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

- e. The recipient must insert this provision in all subsequent subagreements and contracts involving family planning or population activities that will be supported, in whole or in part, from funds under this award. The term subagreement means subgrants and subcooperative agreements.

[END OF PROVISION]

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

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

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

- a. Safeguarding the rights and welfare of human subjects involved in research supported by USAID is the responsibility of the organization to which support is awarded. USAID has adopted the Common Federal Policy for the Protection of Human Subjects, Part 225 of Title 22 of the Code of Federal Regulations (the "Policy"). Additional interpretation, procedures, and implementation guidance of the Policy are found in USAID General Notice entitled "Procedures for the Protection of Human Subjects in Research Supported by USAID", issued April 19, 1995, as amended. USAID's Cognizant Human Subjects Officer (CHSO) in

USAID/W has oversight, guidance, and interpretation responsibility for the Policy.

- b. Recipient organizations must comply with USAID policy when humans are the subject of research, as defined in 22 CFR 225.102(d), funded by the grant and recipients MUST provide "assurance", as required by 22 CFR 225.103, that they follow and abide by the procedures in the Policy. See also Section 5 of the April 19, 1995, USAID General Notice which sets forth activities to which the Policy is applicable. The existence of a bona fide, applicable assurance approved by the Department of Health and Human Services (HHS) such as the "multiple project assurance" (MPA) will satisfy this requirement. Alternatively, organizations can provide an acceptable written assurance to USAID as described in 22 CFR 225.103. **SUCH ASSURANCES MUST BE DETERMINED BY THE CHSO TO BE ACCEPTABLE PRIOR TO ANY APPLICABLE RESEARCH BEING INITIATED OR CONDUCTED UNDER THE AWARD.** In some limited instances outside the U.S., alternative systems for the protection of human subjects may be used provided they are deemed "at least equivalent" to those outlined in Part 225 (See 22 CFR 225.101[h]). Criteria and procedures for making this determination are described in the General Notice cited in the preceding paragraph.
- c. Since the welfare of the research subject is a matter of concern to USAID as well as to the organization, USAID staff consultants and advisory groups may independently review and inspect research and research processes and procedures involving human subjects, and based on such findings, the CHSO may prohibit research which presents unacceptable hazards or otherwise fails to comply with USAID procedures. Informed consent documents must include the stipulation that the subject's records may be subject to such review.

[END OF PROVISION]

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

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

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

- a. Property, title to which vests in the Government under this award, whether furnished by the Government or acquired by the recipient, is subject to this provision and is hereinafter collectively referred to as "Government property." Title to Government property must not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor must such

Government property, or any part thereof, be or become a fixture or lose its identity as personal property by reason of affixation to any real property.

- b. Use of Government Property: Government property must, unless otherwise provided herein or approved by the Agreement Officer, be used only for the performance of this award.
- c. Control, Maintenance and Repair of Government Property:
 - (1) The recipient must maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this award. The recipient must take all reasonable steps to comply with all appropriate directions or instructions which the Agreement Officer may prescribe as reasonably necessary for the protection of the Government property.
 - (2) The recipient must submit, for review by the Agreement Officer, a records system for property control and a program for orderly maintenance of Government property; however, if the property control and maintenance system has been reviewed by another U.S. Government department or agency pursuant to Section __.30 through __.36 of OMB Circular A-110, the recipient must furnish the Agreement Officer proof of such review in lieu of another submission.
 - (3) Property Control: The property control system must include but not be limited to the following:
 - (i) Identification of each item of Government property acquired or furnished under the award by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of U.S. Government."
 - (ii) The price of each item of property acquired or furnished under this award.
 - (iii) The location of each item of property acquired or furnished under this award.
 - (iv) A record of any usable components which are permanently removed from items of Government property as a result of modification or otherwise.
 - (v) A record of disposition of each item acquired or furnished under the award.
 - (vi) The official property control records must be kept in such condition

that at any stage of completion of the work under this award, the status of property acquired or furnished under this award may be readily ascertained. A report of current status of all items of property acquired or furnished under the award must be submitted yearly, concurrently with the annual report.

- (4) Maintenance Program: The recipient's maintenance program must be consistent with sound business practice, the terms of the award, and provide for:
- (i) Disclosure of need for and the performance of preventive maintenance,
 - (ii) Disclosure and reporting of need for capital type rehabilitation, and
 - (iii) Recording of work accomplished under the program.
 - (A) Preventative maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.
 - (B) Records of maintenance - The recipient's maintenance program must provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.
 - (C) A report of status of maintenance of Government property must be submitted annually with the annual report.

d. Risk of Loss:

- (1) The recipient must not be liable for any loss of, or damage to, the Government property, or for expenses incidental to such loss or damage except that the recipient must be responsible for any such loss or damage (including expenses incidental thereto):
 - (i) Which results from willful misconduct or lack of good faith on the part of any of the recipient's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the recipient's business, or all or substantially all of the recipient's operation at any one plant, laboratory, or separate location in which this award is being performed;

- (ii) Which results from a failure on the part of the recipient, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above:
 - (A) To maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (i) above, or
 - (B) To take all reasonable steps to comply with any appropriate written directions of the Agreement Officer under c. above;
 - (iii) For which the recipient is otherwise responsible under the express terms designated in the schedule of this award;
 - (iv) Which results from a risk expressly required to be insured under some other provision of this award, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater;
 - (v) Which results from a risk which is in fact covered by insurance or for which the recipient is otherwise reimbursed, but only to the extent of such insurance or reimbursement; or
 - (vi) Provided, that, if more than one of the above exceptions must be applicable in any case, the recipient's liability under any one exception must not be limited by any other exception.
- (2) The recipient must not be reimbursed for, and must not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the recipient to carry such insurance under any other provision of this award.
- (3) Upon the happening of loss or destruction of or damage to the Government property, the recipient must notify the Agreement Officer thereof, must take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Agreement Officer a statement of:
- (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;

- (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (4) The recipient must make repairs and renovations of the damaged Government property or take such other action as the Agreement Officer directs.
- (5) In the event the recipient is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it must use the proceeds to repair, renovate, or replace the Government property involved, or must credit such proceeds against the cost of the work covered by the award, or must otherwise reimburse the Government, as directed by the Agreement Officer. The recipient must do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the Agreement Officer, must, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suits and the execution of instruments or assignments in favor of the Government) in obtaining recovery.
- e. Access: The Government, and any persons designated by it, must at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.
- f. Final Accounting and Disposition of Government Property: Upon completion of this award, or at such earlier dates as may be fixed by the Agreement Officer, the recipient must submit, in a form acceptable to the Agreement Officer, inventory schedules covering all items of Government property not consumed in the performance of this award or not theretofore delivered to the Government, and must prepare, deliver, or make such other disposition of the Government property as may be directed or authorized by the Agreement Officer.
- g. Communications: All communications issued pursuant to this provision must be in writing.

[END OF PROVISION]

17. TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (OCTOBER 1998)

APPLICABILITY: *This provision is applicable when an award is funded under an*

**An asterisk and yellow highlight indicates that the adjacent information is new to this chapter or substantively revised*

agreement between USAID and the host country, or when the award provides for property titled in the name of the host country or such public or private agency as the host country government may designate to be furnished to or acquired by the recipient.

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

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

[END OF PROVISION]

18. PUBLIC NOTICES (JUNE 1993)

APPLICABILITY: *This provision is applicable when the Agreement Officer's Technical Representative (AOTR) or Strategic Objective (SO) Team determines that the award is of public interest and requests that the provision be included in the award.*

PUBLIC NOTICES (JUNE 1993)

It is USAID's policy to inform the public as fully as possible of its programs and

activities. The recipient is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

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

The recipient may call on USAID's Office of External Affairs for advice regarding public notices. The recipient is requested to provide copies of notices or announcements to the Agreement Officer's Technical Representative (AOTR) and to USAID's Office of Legislative and Public Affairs as far in advance of release as possible.

[END OF PROVISION]

19. PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)

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

PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)

- a. USAID reserves the right to terminate assistance to, or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140.
- b. For any loan over \$1,000 made under this agreement, the recipient must insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the recipient if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140.
- c. Upon notice by USAID of a determination under section (1) and at USAID's option, the recipient agrees to immediately cancel, accelerate, or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.
- d. The recipient agrees not to disburse, or sign documents committing the recipient to disburse, funds to a subrecipient designated by USAID ("Designated Subrecipient") until advised by USAID that: (i) any USG review of the Designated Subrecipient and its key individuals has been completed; (ii) any related certifications have been obtained; and (iii) the assistance to the Designated Subrecipient has been approved. Designation means that the subrecipient has been unilaterally selected by USAID as the subrecipient. USAID approval of a

subrecipient, selected by another party, or joint selection by USAID and another party is not designation.

- e. The recipient must insert the following clause, or its substance, in its agreement with the Designated Subrecipient:

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

[END OF PROVISION]

20. INVESTMENT PROMOTION (NOVEMBER 2003)

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

INVESTMENT PROMOTION (NOVEMBER 2003)

- a. Except as specifically set forth in this award or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.
- b. In the event the recipient is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the recipient must notify the Agreement Officer and provide a detailed description of the proposed activity. The recipient must not proceed with the activity until advised by USAID that it may do so.
- c. The recipient must ensure that its employees and subrecipients and contractors providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all contracts and other subagreements entered into hereunder.

[END OF PROVISION]

21. REPORTING OF FOREIGN TAXES (MARCH 2006)

APPLICABILITY: This provision is only applicable only if the tax is charged on items specifically listed as or in milestones. This provision does not apply to agreements funded with Operating Expense, Pub. L. 480 funds, or trust funds, or agreements where

there will be no commodity transactions in a foreign country over the amount of \$500.

REPORTING OF FOREIGN TAXES (MARCH 2006)

- a. The recipient must annually submit a report by April 16 of the next year.
- b. Contents of Report. The report must contain:
 - (i) Contractor/recipient name.
 - (ii) Contact name with phone, fax and e-mail.
 - (iii) Agreement number(s).
 - (iv) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.
 - (v) Only foreign taxes assessed by the foreign government, in the country receiving U.S. assistance, is to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if an assistance program for Lesotho involves the purchase of commodities in South Africa using foreign assistance funds, any taxes imposed by South Africa would not be reported in the report for Lesotho (or South Africa).
 - (vi) Any reimbursements received by the recipient during the period in (iv) regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in (iv) received through March 31.
 - (vii) Reports are required even if the recipient did not pay any taxes during the report period.
 - (viii) Cumulative reports may be provided if the recipient is implementing more than one program in a foreign country.
- c. Definitions. For purposes of this clause:
 - (i) "Agreement" includes USAID direct and country contracts, grants, cooperative agreements, and interagency agreements.
 - (ii) "Commodity" means any material, article, supply, goods, or equipment.
 - (iii) "Foreign government" includes any foreign governmental entity.
 - (iv) "Foreign taxes" means value-added taxes and custom duties assessed by

a foreign government on a commodity. It does not include foreign sales taxes.

- d. Where. Submit the reports to: [insert address and point of contact at the Embassy, Mission, or FM/CMP as appropriate (see b. above) [may include an “optional with a copy to”].
- e. Subagreements. The recipient must include this reporting requirement in all applicable subcontracts, subgrants, and other subagreements.
- f. For further information see www.usaid.gov/policy/ads/300/302mac.pdf.

[END OF PROVISION]

22. FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JANUARY 2002)

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

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

FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JANUARY 2002)

Funds in this agreement may not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government’s delegation to an international conference sponsored by a Public International Organization (PIO), except as provided in “Guidance on Funding Foreign Government Delegations to International Conferences,” or as approved by the Agreement Officer.

[END OF PROVISION]

23. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)

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

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)

The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of

**An asterisk and yellow highlight indicates that the adjacent information is new to this chapter or substantively revised*

the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. The preceding sentence must not be construed to preclude assistance designed to alleviate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked. Foreign organizations, whether prime or subrecipients, that receive USG funds to fight trafficking in persons cannot promote, support, or advocate the legalization or practice of prostitution when they are engaged in overseas activities. The preceding sentence does not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.

[END OF PROVISION]

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

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

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

- a. The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. The preceding sentence must not be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.
- b. [This subsection b. only applies to foreign nongovernmental organizations and PIOs receiving USG funds to carry out programs that target victims of severe forms of trafficking as either prime awardees or subawardees.]
 - (1) For programs that target victims of severe forms of trafficking, as a condition of entering into this agreement or subagreement, the recipient/subrecipient agrees that in its activities outside of the United States and its possessions it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence does not apply to organizations that provide services to individuals solely after they

are no longer engaged in activities that resulted from such victims being trafficked.

- (2) The following definitions apply for purposes of this clause:
Foreign nongovernmental organization – The term “foreign nongovernmental organization” means an entity that is not organized under the laws of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Severe forms of trafficking in persons. -- The term “severe forms of trafficking in persons” means —

- (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (C) The recipient must insert this provision in all subagreements under this award.
- (D) This provision includes express terms and conditions of the agreement and any violation of it are grounds for unilateral termination, in whole or in part, of the agreement by USAID prior to the end of its term.

[END OF PROVISION]

25. ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)

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

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JUNE 2005)

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

[END OF PROVISION]

26. CONDOMS (JUNE 2005)

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

CONDOMS (JUNE 2005)

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

This fact sheet may be accessed at:

www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condomfactsheet.html

[END OF PROVISION]

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

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

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

- a. The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. The preceding sentence must not be construed to preclude the provision to individuals of palliative care, treatment, or postexposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.
- b. Except as noted in the second sentence of this paragraph, as a condition of entering into this agreement or any subagreement, a nongovernmental organization or public international organization recipient/subrecipient must have a policy explicitly opposing prostitution and sex trafficking. The following organizations are exempt from this paragraph: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization (WHO); the International AIDS Vaccine Initiative; and any United Nations agency.
- c. The following definition applies for purposes of this provision:

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102(9)).
- d. The recipient must insert this provision, which is a standard provision, in all subagreements.

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

[END OF PROVISION]

28 USAID DISABILITY POLICY - ASSISTANCE (DECEMBER 2004)

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

USAID DISABILITY POLICY - ASSISTANCE (DECEMBER 2004)

- a. The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other USG agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities. The full text of the policy paper can be found at the following Web site:
pdf.usaid.gov/pdf_docs/PDABQ631.pdf
- b. USAID therefore requires that the recipient not discriminate against people with disabilities in the implementation of USAID funded programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing the program under this grant or cooperative agreement. To that end, and to the extent it can accomplish this goal within the scope of the program objectives, the recipient should demonstrate a comprehensive and consistent approach for including men, women, and children with disabilities.

[END OF PROVISION]

[END OF STANDARD PROVISIONS]

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