

REQUEST FOR PROPOSAL – Training for Bhutan on “Regulatory Process for Cost Reflective Tariff Design”

RFP issue date:	August 03, 2021
Last date for queries submission:	August 12, 2021 (18:00 IST)
Response to queries:	August 19, 2021
Closing date of RFP:	September 03, 2021 (18:00 IST)
Implementing Program:	South Asia Regional Energy Hub (SAREH)
Funding Agency:	United States Agency for International Development (USAID)
Maximum Award Amount:	\$30,000 USD (Inclusive of all applicable taxes)
Training recipients:	Government of Bhutan
Location of training:	Online via video conferencing

This training program is designed for the Government of Bhutan to enhance participants’ understanding on regulatory principles, mechanisms and processes for developing cost-reflective tariffs. The training will be conducted as part of the U.S. Agency for International Development’s (USAID) South Asia Regional Energy Hub (SAREH) program.

Please submit your offer in soft copy with a read receipt to Mr. Pramod Kumar Singh, Chief of Party, South Asia Regional Energy Hub, at pramod.singh@sannams4.com.

I. INTRODUCTION

This activity is funded by the United States Agency for International Development (USAID) [South Asia Regional Energy Hub \(SAREH\)](#) which is implemented through a cooperative agreement between USAID’s Bureau for Development, Democracy, and Innovation (DDI) and the [U.S. Energy Association \(USEA\)](#).

USEA, headquartered in Washington, DC, is an association of public and private energy-related organizations, corporations, and government agencies. USEA is the implementing partner of USAID’s Energy Utility Partnership Program (EUPP). EUPP, which is available to all USAID-assisted countries, assists developing countries to increase environmentally sustainable energy production and use and improve the operational efficiency and increased financial viability of their utilities and related institutions. The goal of the EUPP is to increase access in USAID-assisted countries to environmentally sound energy services.

In 2020, USAID/India established the South Asia Regional Energy Hub (SAREH) under the EUPP mechanism with USEA as the implementing partner. SAREH covers the six countries of Bangladesh, Bhutan, India, the Maldives, Nepal and Sri Lanka. It aims to support USAID to achieve Asia EDGE activities by facilitating coordination and collaboration, while creating new avenues for private sector participation.

USEA has appointed [Sannam S4 Management Services India Private Limited](#) as a subcontractor to provide necessary infrastructure support, local staff and administrative support and day-to-day implementation of the SAREH program, under the guidance of USAID/India and USEA, operating from its office at 3rd Floor, Devika Tower No.6, Nehru Place, New Delhi- 110019, India.

As SAREH is a USAID-funded program, this procurement process follows USAID Procurement Regulations and Laws. All bidder details will be kept confidential.

II. SUMMARY

Since 2000, Bhutan has been a key USAID partner under the South Asia Regional Initiative for Energy (SARI/E) program that focuses on regional energy cooperation. The initiative has helped develop a strong collaboration between the Royal Government of Bhutan (RGOB) and USAID. USAID has expanded its partnership with the RGOB to cover both domestic energy sector development as well as regional integration and power trade as a part of its Asia Enhancing Growth and Development through Energy (EDGE) initiative.

Setting electricity tariffs based on sound economic basis is necessary for power utilities to provide a reliable electricity supply, modern customer services, and also for future investment in modernizing the network. A critical function of energy regulatory commissions is to set tariffs that ensure financial viability of the sector and meet customers' expectations of service quality and affordability. As Bhutan prepares to increase the share of electricity in the country's energy mix while promoting distributed renewable generation in the system and simultaneously modernizing the supply system and services, it is necessary to determine if the existing methods and processes of tariff design need any adjustment.

This training program is designed for the Royal Government of Bhutan with an aim to enhance participants' understanding of regulatory principles, methods and processes of tariff design. In addition to the retail tariff of electricity, the workshop will also touch upon various tariff-setting mechanisms for regulation of generation and transmission infrastructure.

III. SCOPE OF WORK

Classroom-style lectures are to be delivered by highly experienced instructors, supplemented by hands-on exercises and activities for the participants that enhance and develop skills and concepts for designing cost-reflective electricity tariffs. The expected number of participants will be about 30, representing various departments and agencies of the RGOB including from Bhutan Electricity Authority (BEA) and Bhutan Power Corporation (BPC). Participants from other organizations/departments such as the Department of Hydropower & Power Systems, Druk Green Power Corporation, and the Department of Renewable Energy may also be included for part/entire workshop duration.

The training will include but is not limited to the following topics. Bidders must refer to the indicate list of topics (Annexure-A) for details of the modules to be covered under this training program.

1. Tariff Design Fundamentals
2. Innovative tariff mechanisms for Generation and Transmission Function
3. Regulatory Process for Determining Revenue Requirement of Distribution Utility
4. Regulatory Process for Determining Cost Recovery Mechanisms
5. Regulatory Process for Annual True-up of Generation, Transmission, and Distribution Costs
6. Regulatory Procedure of Retail Tariff Setting
7. Tariff setting for distributed generation

Training Program Requirements

- The training will be conducted online via video conferencing. The selected bidder will be responsible to make suitable logistics arrangements to conduct the training.
- All training sessions will be recorded. Selected bidder will share the recording with SAREH in a downloadable format without any restriction or access control. SAREH may then plan to use these recordings as they find fit.
- The program duration is envisaged to be of minimum 22 hours to be tentatively covered in 4 or 5 days (consecutive or intermittent days). This excludes about 1 hour that will be allocated for opening and closing

sessions with remarks from USAID, USEA, and RGOB. Bidders should propose a format that they consider sufficient to cover all the requested topics/modules along with mock exercises.

- The bidder must have expert knowledge and training experience on regulatory principles and procedures of tariff designing. The bidder must have extensive knowledge of the tariff design fundamentals, revenue determination techniques, cost recovery mechanisms, and knowledge of regulatory processes for tariff setting mechanisms for generation, transmission, and distribution infrastructure.
- The bidder is expected to have prior relevant working experience in the region and a good understanding of the South Asian power market. The case studies and practice exercises presented during the training should be customized to Bhutan for this program.
- The bidder should propose a training approach, course content, duration and schedule in their proposal. Bidders should provide a detailed agenda in their technical proposal that allows for sufficient coverage of all the requested topics and practical exercises. The agenda should outline the total number of hours of training, number of hours/days, and training workshop structure. Please note that this will be indicative; the final workshop agenda and number of days are subject to acceptance from Bhutan government.
- The selected bidder will participate in an interactive session with Bhutan Electricity Authority at the project inception stage to understand the existing regulatory regime, existing process of tariff design, future plans or ambitions for adopting new tariff mechanisms, and expectation from the workshop.
- Bidder will prepare pre-training reading materials for participants to provide them with as much background knowledge on the subject that is suitable, reasonable and concise. The training material will be shared with participants at least one week before the training workshop.
- The training material should be tailored to Bhutan. Bidder should have experience in creating customized course material and should conduct a prior assessment of Bhutan's existing tariff design, structure, stakeholders involved, orders from recent past, consumer categories, tariff for distributed generation, etc. and include associated examples/data/information in the training material.
- Training sessions shall include pre-training and post-training assessment for all participants, both will be conducted online. A pre-training assessment shall be conducted prior to the commencement of the training workshop. It will be designed to assess participants' baseline knowledge and competencies and to identify knowledge gaps. The planned training modules shall be modified to address the identified gaps, hence pre-training assessment is to be conducted few weeks before the workshop. A post-training/skill assessment will take place after the workshop completion and will be designed to measure trainees' knowledge improvements in the subject areas. The assessments should inform quantitative and qualitative results.
- The trainer will provide certificates of participation to each workshop trainee, the format of which will be finalized by SAREH.

Responsibilities of SAREH

- Facilitate meeting with Bhutan Electricity Authority to understand the existing tariff mechanism and expectations from the workshop. This information will be utilized by the selected bidder to refine the workshop agenda and curate the training modules
- Liaison with USAID and Government of Bhutan to finalize the agenda, dates, and participants for the workshop
- Feedback on the draft training materials (presentation, pre-training reading materials, pre-training and post-training assessment form templates, etc.)
- Inputs to conduct group activities and mock exercises
- Feedback on certificate designed for trainees

Deliverables

Based on the Scope of Work, the following deliverables shall be submitted for the training program.

Pre-training deliverables

The following documents will be provided to SAREH for review and approval:

- Detailed agenda with training course content curated for Bhutan, including mock/practice exercises or other hands-on working sessions wherever applicable
- Pre-training reading materials, power point presentations, mock exercise material and all other training materials proposed by the bidder

- Pre-training and Post-training assessment forms - Assessments will measure pre and post knowledge levels on all training topics, open feedback on what topics were most and least useful, and open feedback on what topics require further training/were not adequately covered in the workshop
- Draft copy of certificate. (Certificates will be offered to each trainee, with signatures included from USAID and USEA, which will be decided at a later stage)

Post-training deliverables

- Electronic copies of final agenda, all power point presentations, and other training material
- Recording of the complete training program
- Attendance sheets for each day of training, providing detail of number of hours each trainee was online for each day
- Database of pre and post training assessment forms filled by the participants
- Final report that includes the following, but not limited to:
 - Summary of major outcomes of the training program
 - Challenges encountered and knowledge/skills acquired by participants
 - Qualitative and quantitative summary of the participants' training assessments
 - Recommendations for additional training as appropriate

Schedule of Activities

The project has an expected duration of eight weeks as per the following schedule.

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|---------------------------------|--------------------|
| • Contract signing (expected) | September 30, 2021 |
| • Kickoff meeting | Week 1 |
| • Pre-training deliverables | Week 4 |
| • Delivery of training workshop | Week 6/7 |
| • Post-training deliverables | Week 8 |

Reporting

The selected bidder will report to SAREH's team in New Delhi.

IV. AGREEMENT MANAGEMENT AND OVERSIGHT

The purpose of this RFP is to solicit proposals from interested organizations from India and abroad (private/government/non-governmental/institutes/not-for-profit/civil societies) and select the organization deemed most suitable to undertake the project. The bidder can propose an association/consortium/partnership of maximum two organizations, however, one organization must be identified as the lead organization. An agreement between Sannam S4 Management Services India Private Limited and the selected bidder shall be subject to all USEA/USAID Special Terms and Conditions, including all mandatory FAR Flow-Down clauses, where applicable, and the provisions included in 2CFR200 and 2CFR700. All bidders are strongly encouraged to review these provisions prior to submitting a proposal.

- Standard Provisions for U.S. Nongovernmental Organizations:
<https://www.usaid.gov/sites/default/files/documents/1868/303maa.pdf>
- 2CFR200: <https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf>
- 2CFR700: <https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part700.pdf>
- USAID Mandatory Standard Provisions that are mentioned in USEA's cooperative agreement (Annexure-E)

The agreement management, oversight, and payment will be carried out by Sannam S4 Management Services India Private Limited.

V. PROPOSAL CONTENT

The proposal **must** follow the structure outlined below, contain the following components, and be within the page limitations specified below. Failure to follow the outline and page limits prescribed or exclusion of any of the required items will impact the proposal's scoring and may even lead to disqualification.

Minimum Eligibility			
Subject heading	Description	Additional Notes	Maximum page length
DUNS and SAM	<p>Must include bidder's current Data Universal Numbering System (DUNS) number.</p> <p>Give status of System of Award Management (SAM) registration.</p>	<p>DUN and SAM registration are only required for proposals over \$25,000 USD. If the offer is below \$25,000, then the bidder must include exchange rate proof to substantiate that the bid is under the \$25,000 threshold.</p> <p>Proposals in value of \$25,000 or greater without a DUNS number will not be considered and need not apply.</p>	2 pages
Eligibility Requirements	<p>Bidders must demonstrate the following experience in the recent 5 years.</p> <ul style="list-style-type: none"> • Prior experience of providing training and institutional capacity building to regulators on tariff design, regulatory procedures related to tariff-setting, etc. The capacity building assistance should have been provided under a contract and not conducted voluntarily. • Prior experience of providing capacity building assistance to national governments or sub-national governments or power utilities on related topics such as tariff mechanism for generation/transmission/distribution, tariff for distributed generation, annual revenue requirement, cost recovery, etc. The assistance should have been provided under a contract and not conducted voluntarily. 	<p>Bidder to provide information to demonstrate past experience relevant to the eligibility requirements. The information must include client name, year of training, number of participants trained, topics covered. If the bidder was a lead consultant or an associate, activities delivered by the bidder, key team members* involved.</p> <p>*The proposed team assigned to this project should have ideally worked on these projects. The other eligibility requirements for team members are mentioned later in this section.</p>	2 pages
Technical Proposal			
Subject heading	Description	Additional Notes	Maximum page limit
Understanding of requirements	Bidder's understanding of the scope of work based on the knowledge and experience.	Bidder to avoid repeating the information already provided in the RFP.	3 pages

Approach & Methodology	Bidder's approach and methodology to complete the scope of work and fulfill deliverables	<p>Include details about training approach and methodology, course content, roster of trainers, duration and schedule. Bidders should provide a detailed agenda/curriculum in their technical proposal that allows for sufficient coverage of the scope of work.</p> <p>Bidder should also include case studies, mock/practice exercise for hands-on training for the participants, wherever useful and appropriate.</p>	6 pages
Schedule of Tasks	Timeline for activities and deliverables in accordance with the scope of work.	Include tasks related to regular discussion with SAREH, draft deliverables submission, and expected time for feedback from SAREH	2 pages
Team members, key responsibilities, and bio note	<p>Bidder must propose a team of 4 people minimum with the following requirements.</p> <ul style="list-style-type: none"> • Lead Expert cum Program Manager should have a minimum 15 years professional and a minimum of 7 years' experience in providing training on regulatory mechanisms such as tariff setting mechanisms for power generation/transmission/distribution; master's degree (MBA/MS) in relevant field. • Three Training Experts should have a minimum 10 years professional experience each and a minimum of 5 years' experience each in providing training on regulatory mechanisms related to tariff setting. • Additional experts as felt necessary by the bidder. 	<p>Bidder to present the key responsibilities and subject areas assigned for conducting the training, to each team member.</p> <p>Related to the responsibilities and subject areas assigned, bidder to present a brief bio note for each team member showcasing suitability of each team member to conduct training on the assigned subject area.</p>	<p>1 page to demonstrate the fulfillment of the minimum eligibility requirements.</p> <p>1 page to describe the responsibilities and subject areas assigned to the proposed team members.</p> <p>1 page each for the bio note of every team member describing the current role in the bidder's organization, education, relevant experience related to fulfillment of the eligibility requirements, and relevant experience aligned to the proposed role in this project.</p>

Financial proposal			
Subject heading	Description	Additional Notes	Maximum page limit
Summary of Fees	Break down of the proposed fee associated with the project such as fee towards labor, direct and indirect costs (printing, administrative supplies, etc.), all applicable taxes, (such as GST, VAT, service tax etc.)	<p>The bidder can submit quote in INR or in foreign currency. The fee will be subject to withholding tax in India based on the documents provided by the selected bidder.</p> <p>If bidding in a currency other than the U.S. Dollar (USD), then the bidder must submit a proof of exchange rate of August 19, 2021 (available in https://www.federalreserve.gov/releases/h10/current/) to substantiate that the bid is under the \$30,000 USD threshold. For the purpose of comparative evaluation of bids, exchange rate of August 19, 2021 from https://www.federalreserve.gov/releases/h10/current/ will be used to convert all bids in USD.</p> <p>The quoted price will be firm and no price variation due to any escalation, inflation, fluctuation in exchange rates, taxes, bank charges, or any other market factors shall be accepted after the proposal submission.</p>	1 page

Annex			
No.	Description	Notes	Requirement
Annex 1	USAID Contractor Employee Biographical Data Sheet	Completed USAID Contractor Employee Biographical Data Sheet forms for each employee proposed for this project https://www.usaid.gov/sites/default/files/documents/1868/AID-1420-17-6-13-19FINAL.doc	Required
Annex 2	Organization experience	Summary of the company's or companies' background and experience with relevant projects.	Required (2 pages)
Annex 3	Proof of System of Award Management (SAM) registration	<p>Please note that SAM registration is a 10-step process and can take weeks to complete. Please refer the SAM website for more information.</p> <p>If a bidder has not completed the SAM registration process by the proposal submission due date, SAREH will accept a proposal if it includes a PDF copy of an email from "notification@sam.gov" to the bidder stating that the bidder "<i>successfully submitted the entity registration for NAME OF COMPANY in the U.S. Government's System for Award Management (SAM)</i>". Proposals without proof of SAM registration or an email from notification@sam.gov stating acceptance of SAM application, will not be considered and need not apply.</p> <p>SAM registration is mandatory for signing of the contract. The selected bidder should submit proof of SAM registration completion within seven business days of SAREH's intimation regarding their selection. Failing which, it will be SAREHs' sole</p>	Required

		discretion to either extend the timeline for submission of these documents, or make an offer to another bidder.	
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VI. EVALUATION CRITERIA

Selection of an offer for award will be based on an evaluation of proposals against qualifications, subject matter expertise, technical approach, and budget justification. Proposals shall first be evaluated from a technical standpoint (qualifications, subject matter expertise, and technical approach) without regard to proposed budget justification. Proposals scoring minimum 70% on technical criteria will be considered for financial evaluation. For those proposals determined to be technically acceptable, budget justification will be evaluated to arrive at the best value for money.

Evaluation scores:

20 marks:	Bidder's experience with similar projects
30 marks:	Expertise of team members (education and professional experience)
25 marks:	Technical approach
25 marks:	Fee

VII. PAYMENT SCHEDULE

- Submission of pre-training deliverables – 30%
- Completion of workshop – 50%
- Post-training deliverables – 20%

VIII. QUESTIONS AND PROPOSAL TIMEFRAME

All questions related to this RFP should be submitted via email with a read-receipt to Pramod Kumar Singh at pramod.singh@sannams4.com no later than 18:00 IST, **August 12, 2021**. All questions and answers will be made available on USEA website on **August 19, 2021**.

Interested parties are requested to submit final proposals no later than 18:00 IST, **September 03, 2021**. Proposals should be sent via email with a read receipt to Pramod Kumar Singh at pramod.singh@sannams4.com.

IX. PROPOSAL VALIDITY

The bidder shall submit the response to this RFP document which shall remain valid up to sixty days from the RFP closing date ("Bid Validity"). SAREH reserves the right to reject the proposal which does not meet the aforementioned validity requirement.

X. ERRORS & OMISSIONS

Prospective bidders shall not take advantage of any apparent errors or omissions in the RFP document. In the event that any errors or omissions are discovered by the bidder, it is requested to inform Pramod Kumar Singh at pramod.singh@sannams4.com, immediately.

XI. ANNEXURES AND ENCLOSURES

Interested parties are requested to review the following mandatory enclosures. The enclosures shall be treated as an integral part of this RFP document and the agreement that will result from this RFP.

1. Draft Agenda (Annexure-A)
2. Confidentiality Agreement and Undertaking (Annexure-B)
3. Master Service Agreement (Annexure-C)
4. Letter of Undertaking on Anti-Corruption (Annexure-D)
5. USAID Mandatory Standard Provisions mentioned in USEA cooperative agreement (Annexure-E)

Annexure-A

Indicate topics with tentative time allocation

Module I: Tariff Design Fundamentals (2 hours)

- Principles of tariff design
- Cost based tariff setting and performance-based tariff setting; pros and cons of both
- Annual tariff setting and multiyear tariff setting
- Single part tariff and Two-part tariff
- Case studies on tariff design fundamentals from other countries

Module II: Innovative tariff mechanisms for Generation and Transmission Function (3 hours)

- Innovative generation pricing framework especially for hydro plants
- Innovative transmission pricing framework such as based on injection point, voltage level, congestion pricing
- Case studies on innovative mechanisms
- Pros and cons of such mechanisms and challenges for Bhutan

Module III: Regulatory Process for Determining Revenue Requirement of Distribution Utility (6.5 hours)

- Electricity demand projections (with end-use efficiency consideration)
- Electricity generation availability projections
- Elements for revenue determination such as capital expenditure, cost of equity/capital, power purchase cost, system losses, operation cost, depreciation, etc.
- Determining asset base for distribution and retail function
- Determining weighted average cost of capital (WACC) or cost of equity/capital
- Treatment of controllable and uncontrollable costs
- Moving from cost-based tariff setting to performance-based tariff setting for distribution and retail function
- Including performance-based parameters in revenue requirement (e.g. network loss reduction, efficiency in end-use demand management)
- Data availability related challenges
- Case studies from other jurisdictions and lessons learned
- Interactive session – Discussion on WACC and performance-based parameters in revenue requirement
- Demo of revenue requirement estimation in practice (by an Indian regulator or Indian power distribution company)

Module IV: Regulatory Process for Determining Cost Recovery Mechanisms (3 hours)

- Policy and social considerations
- Method for allocation of total revenue requirement to different customer categories
- Method for determining revenue requirement for power wheeling (providing network and not electricity sales)
- Method for determination of revenue requirement through non-tariff means
- Determination of end-use customer categories
- Treatment of subsidies and cross-subsidies
- Case studies from other jurisdictions
- Role of Government and its interface with Regulatory institution in tariff fixation process
- Group discussion with participants

Module V: Regulatory Process for Annual True-up of Generation, Transmission and Distribution Costs (1 hour)

Module VI: Regulatory Procedure of Retail Tariff Setting (4 hours)

- Procedures and tools used for tariff setting in practice. This includes the tariff cycle of petition filing>review>public hearing>notification>>true-up
 - Setting a control period for retail tariff
 - Procedure for true-up (reconciliation)
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- Demo of tariff petition tools (preferably by an Indian regulator or Indian power distribution company)
- Increasing public participation in the process
- Case studies and important lessons for Bhutan
- Considerations for efficiency in consumption – e.g. Time-of-day (TOD) tariff
- Exercise on TOD design

Module VII: Tariff setting for distributed generation (2.5 hours)

- Feed-in-tariff
 - Time-of-day delivery-based generation tariff
 - Gross-metering and Net-metering of prosumers
 - Exercise on distributed generation tariff
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Annexure-B

CONFIDENTIALITY AGREEMENT AND UNDERTAKING

THIS AGREEMENT IS MADE ON THE DAY OF <DATE> ("AGREEMENT")

BY AND BETWEEN: -

_____, A COMPANY WHOSE REGISTERED OFFICE IS SITUATED AT _____, ("RECIPIENT") WHICH EXPRESSION UNLESS REPUGNANT TO THE CONTEXT OR MEANING THEREOF SHALL MEAN AND INCLUDE SUCCESSORS, HEIRS, LEGAL REPRESENTATIVES, ADMINISTRATORS AND PERMITTED ASSIGNS OF THE FIRST PART;
AND

(2) Sannam S4 Management Services India Private Limited _____, A COMPANY WHOSE REGISTERED OFFICE IS SITUATED AT _____, ("ORIGINATOR") WHICH EXPRESSION UNLESS REPUGNANT TO THE CONTEXT OR MEANING THEREOF SHALL MEAN AND INCLUDE ITS SUCCESSORS, AFFILIATES AND ASSIGNS, OF THE OTHER PART.

THE TERMS 'RECIPIENT' AND 'ORIGINATOR' MAY HEREINAFTER BE COLLECTIVELY AND INDIVIDUALLY REFERRED TO AS 'PARTIES' AND 'PARTIES', RESPECTIVELY.

WHEREAS: -

(A) THE ORIGINATOR REPRESENTS THAT IT HAS CERTAIN CONFIDENTIAL INFORMATION (AS HEREINAFTER DEFINED) IN ITS POSSESSION WHICH IT IS ENTITLED TO DISCLOSE AND THE RECIPIENT WISHES TO RECEIVE SUCH CONFIDENTIAL INFORMATION IN CONNECTION WITH AN ASSIGNMENT/PROPOSED ASSIGNMENT RELATED 'ENGAGEMENT OF PROFESSIONAL SERVICES TO BE RENDERED TO THE COMPANY' ("PROJECT" OR "PURPOSE").

(B) THE RECIPIENT IS WILLING, IN CONSIDERATION OF BEING SUPPLIED WITH THE CONFIDENTIAL INFORMATION TO GIVE TO ORIGINATOR THE UNDERTAKINGS CONTAINED IN THIS AGREEMENT AND, IN CONSIDERATION OF SUCH UNDERTAKING, THE ORIGINATOR IS WILLING TO DISCLOSE THE CONFIDENTIAL INFORMATION TO THE RECIPIENT SUBJECT TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES, THE MUTUAL COVENANTS PROVIDED FOR HEREIN AND THE BENEFITS INURING TO THE PARTIES HERETO, IT IS AGREED AS FOLLOWS: -

1. DEFINITIONS AND INTERPRETATION

1.1 IN THIS AGREEMENT, UNLESS THE SUBJECT OR CONTEXT OTHERWISE REQUIRES THE FOLLOWING WORDS AND EXPRESSIONS SHALL HAVE THE FOLLOWING MEANINGS: -

"AFFILIATE" MEANS ANY COMPANY, PARTNERSHIP OR OTHER ENTITY WHICH DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL OF ORIGINATOR;

"CONFIDENTIAL INFORMATION" MEANS ANY INFORMATION WHICH IS MADE AVAILABLE TO THE DULY RECIPIENT AND/OR THE AUTHORIZED REPRESENTATIVES OF THE RECIPIENT (WHETHER TRANSMITTED ORALLY, IN WRITING, OR ELECTRONICALLY OR IN ANY GRAPHIC OR IN OTHER TANGIBLE OR INTANGIBLE FORMS) IN WRITING OR OTHERWISE AND NO MATTER IN WHAT FORM OR ON WHAT MEDIUM AND INCLUDES WITHOUT LIMITATION RECORDS, DATA, BANK INFORMATION, FILE MATERIAL, SCHEMATICS, NOTES, MODELS, PLANS, RESEARCH, INVENTIONS, DISCOVERIES, FORMULAE, PROCESSES, DESIGNS, SOFTWARE, COMPUTER PROGRAMS, OBJECT CODES, SOURCE CODES, DRAWINGS, PROTOTYPES, PRODUCTS, SAMPLES, IMPROVEMENTS, DEVELOPMENTS, APPLICATIONS, MARKETING DATA, FINANCIAL DATA, OR PLANS, PROJECTS, PROPOSALS AND ALL INFORMATION AND SPECIFICS RELATED TO FINANCIALS, INVESTORS, SHAREHOLDERS, MANAGEMENT, ECONOMIC, MARKETING AND TECHNICAL INFORMATION, SPECIFICATIONS, IDEAS, CONCEPTS, TECHNOLOGY, PROCESSES, FLOWCHARTS, SOFTWARE, ALGORITHMS,

KNOWLEDGE AND KNOW-HOW TOGETHER WITH ALL INFORMATION ABOUT AND CONTACT DETAILS OF POTENTIAL CLIENT COMPANIES/ FIRMS/ ENTITIES, BUSINESS PARTNERS AND/OR COLLABORATORS, ALL NAMES, TELEPHONE NUMBERS, TELEX/FACSIMILE NUMBERS, AND ADDRESSES OF BUSINESS ASSOCIATES, BROKERS, AGENTS, INTERMEDIARIES, ASSOCIATES, BUYER AND PRICES, MARGINS AND INFORMATION RELATING TO RESEARCH AND DEVELOPMENT, CURRENT PERFORMANCE AND FUTURE STRATEGY AND ANY INFORMATION, ANALYSES, COMPILATIONS, NOTES, STUDIES, MEMORANDA OR OTHER DOCUMENTS DERIVED FROM, CONTAINING OR REFLECTING SUCH INFORMATION BELONGING TO THE ORIGINATOR OR SECURED BY THE ORIGINATOR UNDER CONFIDENTIALITY OBLIGATIONS ASSUMED BY THE ORIGINATOR WITH RESPECT TO CONFIDENTIAL INFORMATION PROPRIETARY TO A THIRD PARTY FOR EXECUTION OF A PROJECT ASSIGNED TO THE ORIGINATOR;

“CONTROL” MEANS THE RIGHT TO APPOINT MAJORITY OF THE DIRECTORS OR TO CONTROL THE MANAGEMENT OR POLICY DECISIONS EXERCISABLE BY A PERSON OR PERSONS ACTING INDIVIDUALLY OR IN CONCERT, DIRECTLY OR INDIRECTLY, INCLUDING BY VIRTUE OF THEIR SHAREHOLDING OR MANAGEMENT RIGHTS OR SHAREHOLDERS AGREEMENTS OR VOTING AGREEMENTS OR IN ANY OTHER MANNER;

“EFFECTIVE DATE” SHALL MEAN THE DATE OF EXECUTION OF THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED; AND

“REPRESENTATIVE” MEANS, AS TO ANY PERSON, SUCH PERSON’S SUBSIDIARIES AND ASSOCIATED COMPANIES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ADVISERS (INCLUDING WITH LIMITATION, FINANCIAL ADVISERS, LEGAL ADVISERS AND ACCOUNTANTS).

2. RECIPIENT’S UNDERTAKING

2.1 IN CONSIDERATION OF ORIGINATOR AGREEING AT THE REQUEST OF THE RECIPIENT TO MAKE AVAILABLE TO THE RECIPIENT AND/OR ITS REPRESENTATIVES THE CONFIDENTIAL INFORMATION IN CONNECTION WITH THE PROJECT, THE RECIPIENT HEREBY REPRESENTS UNDERTAKES AND WARRANTS TO ORIGINATOR AS FOLLOWS: -

2.1.1 THE RECIPIENT AND ITS REPRESENTATIVES WILL NOT USE (WHETHER DIRECTLY OR INDIRECTLY), NOW OR AT ANY TIME, OR PERMIT OR CAUSE TO BE USED, ANY CONFIDENTIAL INFORMATION FOR ANY PURPOSE OTHER THAN UTILIZING THE CONFIDENTIAL INFORMATION EXCLUSIVELY IN CONNECTION WITH AND FOR THE PURPOSES AS DESCRIBED IN THIS AGREEMENT;

2.1.2 THE RECIPIENT SHALL, AND SHALL PROCURE THAT EACH OF ITS REPRESENTATIVES SHALL, KEEP THE CONFIDENTIAL INFORMATION IN COMPLETE CONFIDENCE AND WILL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF ORIGINATOR, AT ANY TIME NOW OR HEREAFTER, DIRECTLY OR INDIRECTLY, DISCLOSE, COPY, REPRODUCE, DISTRIBUTE OR SUPPLY THE SAME, IN WHOLE OR IN PART, TO ANY OTHER THIRD PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF ORIGINATOR, WHICH CONSENT SHALL BE GRANTED BY THE ORIGINATOR AT ITS SOLE AND ABSOLUTE DISCRETION);

2.1.3 THAT THE CONFIDENTIAL INFORMATION SHALL BE KEPT IN A SECURE PLACE AT ALL TIMES AND SHALL BE PROPERLY PROTECTED AGAINST THEFT, DAMAGE, LOSS OR UNAUTHORIZED ACCESS;

2.1.4 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE CONFIDENTIAL INFORMATION MAY ONLY BE DISCLOSED TO SUCH OF THE RECIPIENT’S REPRESENTATIVES WHO ARE DIRECTLY CONCERNED WITH THE PROJECT AND WHOSE KNOWLEDGE OF SUCH INFORMATION IS ESSENTIAL FOR SUCH PURPOSE AND WHO (PRIOR TO SUCH DISCLOSURE) AGREE IN WRITING TO KEEP SUCH INFORMATION CONFIDENTIAL BY EXECUTING IN FAVOUR OF RECIPIENT A CONFIDENTIALITY UNDERTAKING TO THE SAME EXTENT AS THIS AGREEMENT;

2.1.5 THE RECIPIENT ACKNOWLEDGES THAT THE CONFIDENTIAL INFORMATION AND ANY COPIES THEREOF SHALL REMAIN AS THE PROPERTY OF ORIGINATOR AND ITS DISCLOSURE BY THE ORIGINATOR SHALL NOT CONFER ON THE RECIPIENT AND/OR ITS REPRESENTATIVES ANY RIGHTS OR LICENSES IN RELATION TO THE CONFIDENTIAL INFORMATION WHATSOEVER BEYOND THOSE CONTAINED IN THIS AGREEMENT. THE RECIPIENT ACKNOWLEDGES THAT ALL RIGHT, TITLE AND INTEREST IN AND TO THE CONFIDENTIAL INFORMATION VESTS IN THE ORIGINATOR AND

ALL SUCH CONFIDENTIAL INFORMATION SHALL REMAIN THE PROPRIETARY MATERIAL OF THE ORIGINATOR AT ALL TIMES;

2.1.6 UPON THE REQUEST OF ORIGINATOR, THE RECIPIENT SHALL: (A) PROMPTLY DESTROY OR RETURN (AT THE OPTION OF ORIGINATOR), AND/OR PROCURE TO BE DESTROYED OR RETURNED, TO ORIGINATOR ALL CONFIDENTIAL INFORMATION IN WHATEVER FORM (INCLUDING ALL COPIES OR EXTRACTS THEREOF, AND SUMMARIES, ANALYSES, COMPILATIONS, FORECASTS, STUDIES, REPORTS, NOTES OR OTHER DOCUMENTS OR MATERIALS DERIVED THERE FROM OR IN ANY WAY RELATES OR PERTAINS TO THE CONFIDENTIAL INFORMATION, WHETHER PREPARED BY OR SUPPLIED TO THE RECIPIENT AND/OR ITS REPRESENTATIVES ON THEIR RESPECTIVE BEHALF) IN THE POSSESSION OF THE RECIPIENT AND/OR ANY OF ITS REPRESENTATIVES AND SHALL DELETE AND REMOVE, OR PROCURE TO BE DELETED AND REMOVED, ALL CONFIDENTIAL INFORMATION FROM ANY DATABASE OR DOCUMENT RETRIEVAL SYSTEM INTO WHICH THE CONFIDENTIAL INFORMATION HAS BEEN PLACED; AND (B) PROVIDE A CERTIFICATE SIGNED BY ONE OF THE RECIPIENT'S DIRECTORS OR ANY AUTHORISED PERSON TO THE EFFECT THAT ALL CONFIDENTIAL INFORMATION HAS BEEN DESTROYED, RETURNED AND/OR REMOVED (AS THE CASE MAY BE) IN ACCORDANCE WITH CLAUSE 2.1.6 (A);

2.1.7 ANY INVOLVEMENT IN THE PROJECT BY THE RECIPIENT SHALL BE THROUGH ORIGINATOR OR ITS AFFILIATES;

2.1.8 THE RECIPIENT SHALL USE THE SAME DEGREE OF CARE AS IT EMPLOYS WITH RESPECT TO ITS OWN CONFIDENTIAL AND PROPRIETARY INFORMATION TO AVOID UNAUTHORIZED DISCLOSURE OR USE OF SUCH CONFIDENTIAL INFORMATION;

2.1.9 THE RECIPIENT AGREES AND ACKNOWLEDGES THAT ANY BREACH OR THREATENED BREACH BY IT AND/OR ITS REPRESENTATIVES OF THE UNDERTAKINGS AND OBLIGATIONS SET FORTH IN THIS AGREEMENT WILL CAUSE IRREPARABLE INJURY TO ORIGINATOR AND ITS AFFILIATES FOR WHICH MONETARY DAMAGES WOULD BE AN INADEQUATE REMEDY AND THAT, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE, IN LAW, IN EQUITY OR OTHERWISE, ORIGINATOR SHALL BE ENTITLED TO OBTAIN INJUNCTIVE RELIEF AGAINST THE BREACH OR THREATENED BREACH OF THIS AGREEMENT OR THE CONTINUATION OF ANY SUCH BREACH BY THE RECIPIENT AND/OR ITS REPRESENTATIVES, WITHOUT THE NECESSITY OF PROVING ACTUAL DAMAGES AND THE RECIPIENT SHALL HOLD HARMLESS AND INDEMNIFY THE ORIGINATOR AND ITS AFFILIATES FOR ANY COSTS, CLAIMS, DEMANDS, LOSSES OR LIABILITIES OF WHATSOEVER NATURE ARISING DIRECTLY OR INDIRECTLY OUT OF A BREACH OF THE OBLIGATIONS OF THE RECIPIENT AND/OR ITS REPRESENTATIVES HEREUNDER, SUBJECT TO THE MAXIMUM OF THE FEE RECEIVED BY THE RECIPIENT IN REGARD TO SUCH SPECIFIC PROJECT WITH RESPECT TO WHICH BREACH WOULD HAVE OCCURRED.

3. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, THE OBLIGATION OF CONFIDENTIALITY OF THE RECIPIENT UNDER THIS AGREEMENT SHALL NOT APPLY TO THE CONFIDENTIAL INFORMATION OR ANY PART THEREOF WHICH:

(A) HAS BECOME PUBLIC KNOWLEDGE THROUGH NO BREACH OF THIS AGREEMENT, OR;

(B) CAN BE SHOWN REASONABLY DOCUMENTED PROOF AS BEING IN THE RECIPIENT'S POSSESSION AT THE TIME OF DISCLOSURE TO THE RECIPIENT BY ORIGINATOR, OR;

(C) IS AUTHORIZED IN WRITING BY THE ORIGINATOR TO BE DISCLOSED OR RELEASED IN WRITING AS NO LONGER BEING CONFIDENTIAL OR PROPRIETARY BUT ONLY TO THE EXTENT AUTHORIZED, OR;

(D) IS DISCLOSED TO THE RECIPIENT AT ANY TIME BY THIRD PARTIES WITH THE LAWFUL RIGHT TO MAKE SUCH DISCLOSURES AND SUCH THIRD PARTIES ARE NOT BOUND TO ORIGINATOR TO KEEP THE SAME SECRET AND CONFIDENTIAL, OR;

(E) IS DISCLOSED PURSUANT TO A REQUIREMENT IMPOSED BY A GOVERNMENT AGENCY OR AN ORDER FROM A COURT OR A QUASI-JUDICIAL BODY OR IS OTHERWISE REQUIRED TO BE DISCLOSED BY OPERATION OF LAW, EXCEPT THAT PRIOR TO ANY DISCLOSURE PURSUANT TO THIS SUBSECTION, THE RECIPIENT RECEIVING THE REQUEST FOR THE INFORMATION SHALL NOTIFY AND CONSULT WITH THE ORIGINATOR REGARDING SUCH DISCLOSURE AND ASSISTS THE ORIGINATOR, IF SO REQUESTED, IN SEEKING A PROTECTIVE ORDER OR OTHER APPROPRIATE REMEDY.

4. GENERAL MATTERS

4.1 REMEDIES

NO REMEDY CONFERRED BY ANY OF THE PROVISIONS OF THIS AGREEMENT IS INTENDED TO BE EXCLUSIVE OF ANY OTHER REMEDY WHICH IS OTHERWISE AVAILABLE AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE, AND ALL SUCH REMEDIES SHALL BE CUMULATIVE AND SHALL BE IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXISTING AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE. THE ELECTION OF ANY ONE OR MORE OF SUCH REMEDIES BY THE ORIGINATOR SHALL NOT CONSTITUTE A WAIVER BY THE ORIGINATOR OF THE RIGHT TO PURSUE ANY OTHER AVAILABLE REMEDY, INCLUDING BUT NOT LIMITED TO SPECIFIC PERFORMANCE OF THIS AGREEMENT AND RECOVERY OF MONETARY DAMAGES.

4.2 ASSIGNMENT

THIS AGREEMENT SHALL BE BINDING UPON AND FOR THE BENEFIT OF THE PARTIES HERETO, THEIR SUCCESSORS AND ASSIGNS, PROVIDED THAT THE RECIPIENT MAY NOT ASSIGN OR TRANSFER ALL OR ANY PART OF ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF ORIGINATOR WHICH CONSENT SHALL BE GRANTED BY THE ORIGINATOR AT ITS SOLE AND ABSOLUTE DISCRETION.

4.3 ACCURACY

THE CONFIDENTIAL INFORMATION IS PROVIDED WITH NO WARRANTY, REPRESENTATION OR UNDERTAKING AS TO ITS ACCURACY, COMPLETENESS OR FINANCIAL FEASIBILITY. ORIGINATOR AND ITS AFFILIATES ACCEPT NO RESPONSIBILITY TOWARDS THE RECIPIENT AND/OR ITS REPRESENTATIVES FOR THE CONTENT OF THE CONFIDENTIAL INFORMATION, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE. THE RECIPIENT SHALL MAKE ITS OWN INDEPENDENT ANALYSIS, VERIFICATION OF SUCH CONFIDENTIAL INFORMATION AND DRAW ITS OWN CONCLUSIONS.

4.4 DURATION

4.4.1 THIS AGREEMENT AND THE CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE BINDING UPON THE RECIPIENT EFFECTIVE FROM THE DATE OF THIS AGREEMENT AND DURING THE SUBSISTENCE OF THE RELEVANT SERVICE AGREEMENT BETWEEN THE PARTIES AND SHALL ALSO SURVIVE TERMINATION OF SAID SERVICE AGREEMENT BETWEEN THE PARTIES, TILL THE TIME THE RECIPIENT IS IN CUSTODY OF ANY CONFIDENTIAL INFORMATION.

4.4.2 THE OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION PROPRIETARY TO A THIRD PARTY AND IN RELATION TO THE PROJECT UNDERTAKEN IN TERMS OF THIS AGREEMENT SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

4.5 ANTI-BRIBERY / ANTI-CORRUPTION

THE RECIPIENT IS AWARE THAT THE ORIGINATOR FOLLOWS CERTAIN POLICIES AND STANDARDS WHILE CONDUCTING ITS BUSINESS PRACTICES AND IS ALSO GOVERNED BY THE PROVISIONS OF UK BRIBERY ACT 2010, US FOREIGN CORRUPT PRACTICES ACT. THE RECIPIENT ACCORDINGLY HEREIN EXPLICITLY UNDERTAKES TO PERFORM THE SERVICES AND CONDUCT ITS BUSINESS WHILE RENDERING ITS SERVICES TO THE COMPANY, IN A LAWFUL AND ETHICAL MANNER, AND IN ACCORDANCE WITH THE APPLICABLE LAWS AND REGULATIONS.

4.6 DATA PRIVACY

THE RECIPIENT HEREIN ACKNOWLEDGES THAT FOR THE PURPOSES OF RENDERING SERVICES IN RESPECT OF THE PROJECT, THE RECIPIENT MAY BE IN RECEIPT OF CERTAIN SENSITIVE PERSONAL DATA OR INFORMATION (SPDI) OF EMPLOYEES OR REPRESENTATIVES OF THE ORIGINATOR. THE RECIPIENT HEREIN EXPLICITLY AND UNEQUIVOCALLY UNDERTAKES, THAT IT SHALL, AT ALL TIMES, UTILISE SUCH INFORMATION ONLY FOR IN RESPECT OF THE PROJECT AND SHALL CONDUCT AND RENDER ITS SERVICES IN ACCORDANCE WITH AND IN COMPLIANCE WITH APPLICABLE PROVISIONS OF LAW GOVERNING DATA PRIVACY AND IN CASE OF BREACH THEREOF, SHALL BE LIABLE THEREUNDER.

5. ENTIRE AGREEMENT

THIS AGREEMENT IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND SUPERSEDES ALL PRIOR AGREEMENTS AND UNDERSTANDINGS WITH RESPECT TO THIS SUBJECT. THIS AGREEMENT MAY BE AMENDED ONLY BY WRITTEN AGREEMENT EXECUTED BY THE PARTIES HERETO.

6. NOTICES

ALL NOTICES REQUIRED BY THIS AGREEMENT SHALL BE IN ENGLISH AND SHALL BE EFFECTIVE ON THE DATE OF RECEIPT, AND SHALL BE TRANSMITTED BY MEANS OF WRITTEN COMMUNICATION, ADDRESSED AS FOLLOWS:

TO ORIGINATOR:

SANNAM S4 _____

ADDRESS: _____

ATTENTION: _____

E-MAIL: _____

TO RECIPIENT:

ADDRESS:

ATTENTION:

E-MAIL:

ALL WRITTEN NOTICES TO, AND OTHER WRITTEN COMMUNICATIONS BETWEEN THE PARTIES TO THIS AGREEMENT SHALL BE DEEMED RECEIVED (A) WHEN PERSONALLY DELIVERED BY MESSENGER OR BY MAIL OR (B) FIVE (5) DAYS AFTER BEING SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, OR (C) WHEN ACTUALLY RECEIVED, IF GIVEN IN ANY OTHER MANNER INCLUDING VIA ELECTRONIC MAIL.

7. GOVERNING LAW AND DISPUTE RESOLUTION

7.1 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF INDIA.

7.2 IN THE EVENT OF ANY DISPUTES AND /OR ANY DIFFERENCES ARISING BETWEEN TO THE PARTIES TO THIS AGREEMENT AND/OR ANY BREACH OF THIS AGREEMENT, THE PARTIES WILL ATTEMPT TO RESOLVE IT MUTUALLY WITHIN FIFTEEN (15) DAYS OF ONE PARTY GIVING NOTICE TO THE OTHER, FAILURE TO ARRIVE AT AN AMICABLE RESOLUTION OF THE DISPUTE OR DIFFERENCE MAY BE REFERRED TO ARBITRATION BY A SOLE ARBITRATOR APPOINTED BY THE ORIGINATOR. THE ARBITRATION SHALL BE HELD AT NEW DELHI. THE LANGUAGE OF THE ARBITRATIONS SHALL BE ENGLISH. THE AWARD OF THE ARBITRATOR SHALL BE FINAL AND CONCLUSIVE AND BINDING UPON THE PARTIES. THIS CLAUSE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7.3 SUBJECT TO CLAUSE 7.2 ABOVE, THE COURTS AT NEW DELHI SHALL HAVE JURISDICTION TO ADJUDICATE THE MATTERS PERTAINING TO THIS AGREEMENT.

//REMAINING PAGE LEFT BLANK INTENTIONALLY//

//SIGNATURE PAGE SHALL FOLLOW//

IN WITNESS WHEREOF BOTH THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATE MENTIONED HEREIN.

FOR AND ON BEHALF OF THE ORIGINATOR:

SIGN:

NAME:
DESIGNATION:
DATE:

FOR AND ON BEHALF OF THE RECIPIENT:

SIGN:
NAME:
DESIGNATION:
DATE:



Annexure-C

MASTER SERVICES AGREEMENT

[To be printed and executed on an Indian non-judicial stamp paper of requisite value]

This Master Services Agreement ("Agreement") entered into on this [insert date] day of [insert month and year] at [insert place of execution];

BY AND BETWEEN:

Sannam S4 Management Services India Private Limited, a company incorporated under the laws of India, and having its registered office at (hereinafter referred to as the "Company" which term shall be deemed to mean and include its successors and permitted assigns) of the FIRST PART;

AND

....., a company incorporated under the laws of India, and having its registered office at, acting through its authorised signatory, duly authorised (hereinafter referred to as the "Service Provider", which term shall be deemed to mean and include its successors and permitted assigns) of the SECOND PART.

The "Company" and the "Service Provider" are, wherever the context so requires, hereinafter collectively referred to as the "Parties" and individually as "Party".

WHEREAS:

A. The Company requires certain services to be provided to it in support of its business (which services are more specifically set out under the Statement of Works ("SoW") stated in the serially numbered Annexures as annexed herewith or as may be added from time-to-time by way of entering into Addendum to this Agreement ("Services") hereto.

B. The Service Provider has represented that it is able to assist the Company by providing the services set out in respective Annexure.

C. The Parties desire to record the terms and conditions which shall govern the engagement of the Service Provider in respect of the Services by the Company as set out in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be bound legally, agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

All defined terms used in this Agreement (whether capitalized or not and in all their grammatical variations) shall have the meanings assigned to them in this Clause, unless otherwise clearly indicated or defined in this Agreement.

(a) "Agreement" shall mean this Master Services Agreement, as originally entered into between the Parties herein, duly executed and delivered and shall include any and all attached Exhibit(s)/Schedule(s)/Annexure(s) and all instruments supplemental to or in amendment or confirmation of this Agreement and shall also include any renewal, entered into by the Parties in writing in terms of this Agreement;

- (b) “Business Days” shall mean a day, not being a Saturday or Sunday or when banks in New Delhi, India are open for business;
- (c) “Confidential Information” shall mean provisions of this Agreement, confidential and proprietary information relating to the business of the Parties, including Intellectual Property, information relating to the operations, customers, financial results, reports, forecasts, pitches, tenders, incidents or investigations of the past, trade secrets, software development, inventions, designs and products of the Parties, in any form whatsoever;
- (d) “Effective Date” shall mean the date of execution of this Agreement or in case this Agreement is signed by the Parties at different places on different dates, the term “Effective Date” shall mean the date of which this Agreement is last signed by a Party to this Agreement;
- (e) “Intellectual Property” shall mean any current and future intellectual property, including, copyrights, trademarks, trade names, domain names, rights in logos, inventions, trade secrets and know-how including commercial know-how, design rights, patents, utility models, all rights of whatsoever nature in computer software and data, rights in databases, privacy rights and all intangible rights and privileges of a nature similar, analogous or allied to any of the above in every case in any part of the world and whether or not registered, including all granted registrations and all applications for registration, all renewals, reversions or extensions, the right to sue for damages for past infringement and all forms of protection of a similar nature which may subsist anywhere in the world;
- (f) “Service(s)” shall have the meaning ascribed to it in Recital A hereto and more specifically set out in respective Annexures hereto;
- (g) “Services Fees” shall have the meaning ascribed to it in Clause 4 and more specifically set out in respective Annexures hereto;
- (h) “Service Request” shall mean the requests for rendering any Service in terms of this Agreement;
- (i) “Term” shall have the meaning ascribed to it in Clause 2.4 hereto.

1.2 Construction

- (a) Unless otherwise stated, any reference herein to any Recital, Clause or Annexure is to a recital or clause of or annexure to this Agreement. The Recitals to this Agreement shall be deemed to form an integral part of this Agreement.
- (b) Headings are solely for the sake of convenience and shall not be applied in the interpretation of this Agreement.
- (c) Unless the context otherwise requires, words importing the singular include the plural and vice versa, and pronouns importing a gender include each of the masculine, feminine and neuter genders.
- (d) The terms “hereof”, “herein”, “hereby”, “hereto” and derivatives or similar words refer to this entire Agreement or specified clauses of this Agreement, as the case may be.
- (e) Reference to statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the date of this Agreement) for the time being in force and to all statutory instruments or orders made pursuant to such statutory provisions.
- (f) The words “including”, “include”, “in particular” and words of similar effect shall not be deemed to limit the general effect of the words which precede them.
- (g) References in this Agreement to any document or agreement shall be deemed to include references to such document or agreement as amended, varied, restated, supplemented or replaced from time to time in accordance
-

with the terms thereof and to include any letters executed in connection therewith, except as otherwise provided in this Agreement.

(h) The term "person" shall mean and include an individual, an association, a corporation, a partnership, a joint venture, a venture capital fund, a trust, an unincorporated organisation, a joint stock company or other entity or organisation, including a government or political subdivision, or an agency or instrumentality thereof and/or any other legal entity (as the case may be).

(i) References to writing include printing, typing, lithography and other means of reproducing words in a visible form.

(j) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, modifications, re-enactments or replacements of any of them, as may be applicable to this Agreement.

(k) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

(l) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 (twenty-four) hours later.

2. SERVICES

2.1 The Company hereby engages the Service Provider to render the Services as set forth in terms of this Agreement.

2.2 The Service Provider hereby agrees to provide the Services to the Company as set forth in terms of this Agreement.

2.3 This Agreement shall come into force on the date first mentioned hereinabove and shall remain in force until the term/validity as set forth in the respective SoW unless terminated earlier in terms of Clause 8 hereto.

2.4 The Service Provider agrees to provide its Services to the Company under this Agreement as per the timelines mutually agreed and set forth herein between the Parties.

2.5 No authority is hereby given by the Company to the Service Provider to execute any contracts or sign any agreements or documents on behalf of the Company for any purpose whatsoever.

3. OBLIGATIONS OF THE SERVICE PROVIDER

3.1 The Service Provider shall perform its duties, responsibilities and obligations under or pursuant to this Agreement and shall provide Services by devoting utmost due diligence, time and expertise.

3.2 The Service Provider shall render the Services strictly in accordance with the terms and conditions of this Services Agreement.

3.3 The Services Provider shall ensure that all Service Requests are processed validly in terms of this Services Agreement.

3.4 The Service Provider shall notify the Company with immediate effect in the event any circumstance arises which could result in the Company incurring any liability to a third party for negligence.

4. PAYMENTS AND DEDUCTIONS

4.1 In consideration of the provision of the Services and the fulfilment and performance of these Services, the Company shall pay and the Service Provider shall receive such fees on the basis of invoices raised by the Service Provider from time-to-time, and as per the fees as set out in respective SoW (the "Fees") - on a monthly basis, or as may be stated otherwise in respective SoW.

4.2 For avoidance of doubt, the Parties herein explicitly agree that any invoices received after 90 (ninety) days from the date of transaction will be considered as service not received and will not be paid by the Company.

4.3 All Fees paid to the Service Provider under or pursuant to this Agreement shall be subject to the applicable withholding taxes under the laws of India. Any Goods and Service tax (GST) liability, if applicable and charged by the Service Provider, shall be borne by the Company. The Service Provider shall ensure timely deposit and due filings of the same with appropriate authorities.

4.4 It is agreed by the Service Provider that any expenses incurred by it while carrying out the Services will be in line with the Company's expense policies as agreed between the Parties, from time-to-time.

4.5 Company is maintaining its billing cycles which run on 5th (fifth), 15th (fifteenth) and 25th (twenty-fifth) day of every calendar month and on such days the Company will release the payment to the Service Provider towards the settled and approved invoices raised by the Service Provider and which have completed age of 21 (twenty one) days from the date of approval from the concerned official of the Company.

4.6 The Service Provider shall be responsible to verify every Service Request made to it with the concerned official of the Company.

5. ACKNOWLEDGEMENTS AND UNDERTAKINGS

5.1 The Parties acknowledge that, for the purposes of this Agreement, the Service Provider is an independent contractor and that the Service Provider is not entitled and shall not, negotiate, enter into or accept any contract binding upon the Company or an order for and on behalf of the Company, incur any liability on behalf of the Company or in any way pledge the credit of the Company, and nothing in this Agreement shall constitute a partnership or agency relationship between the Parties. The Parties have entered into this Agreement on a principal to principal basis.

5.2 The Service Provider agrees at all times to uphold the good name and reputation of the Company and not to do or permit or attempt to do any act or thing likely to cause any damage to or bring discredit upon the Company. The Service Provider shall, at all times, act with all due care and utmost good faith in connection with the affairs of the Company and shall observe strict confidentiality with regard to information obtained in pursuance of this Agreement.

5.3 The Service Provider herein acknowledges that for the purposes of rendering the Services under this Agreement, the Service Provider may be in receipt of certain Sensitive Personal Data or Information (SPDI) of respective employees of the Company.

5.4 Further, in respect of SPDI, the Service Provider herein explicitly and unequivocally undertakes, that it shall, at all times, conduct and render the Services in accordance with and in compliance with applicable provisions of law, inter-alia Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 or such other applicable laws, as may be applicable and in-force law, and in case of breach thereof, shall be liable thereunder.

5.5 Any data provided, used, generated and/or database created or maintained in the provision of Services shall be owned by the Company and the Service Provider shall not have any right, title or interest in the same.

6. REPRESENTATIONS AND WARRANTIES

6.1 Each Party represents and warrants to the other that the following statements are true and correct:

(a) It has the requisite power and authority to enter into this Agreement and to perform its obligations. This Agreement has been duly authorised by all necessary resolutions and will be duly executed and delivered by it and upon such execution and delivery; it shall constitute a legal, valid and binding obligation, enforceable against it in accordance with its terms.

(b) The execution and delivery of this Agreement does not, and the performance of the terms of this Agreement will not, conflict with, or result in any violation or breach of or default under, any provision of (i) its constitutional documents; and / or (ii) any contract to which it is a party; and / or (iii) any law applicable to it.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The exclusive ownership of all Intellectual Property and all other rights in respect of all plans, drawings, calculations, designs, systems, databases and all other documents, whether registered or un-registered, whether registrable or un-registrable, whether accruing as a result of law or fact, made or created by the Service Provider, during the term hereof, shall in their current version and any other earlier version be the sole and exclusive property of the Company are hereby assigned directly and forthwith to the Company, in perpetuity and shall be treated as “works done for hire”. The Service Provider hereby irrevocably and unconditionally transfers and assigns to the Company, in perpetuity, total, absolute, unfettered and unrestricted title (present and future) in any of the above, that, due to applicable law, or otherwise, constitute the property of the Service Provider or any person employed by the Service Provider for the creation of any of the above. This assignment shall survive the termination or cancellation or expiry of this Agreement regardless of the method or manner in which it was terminated or cancelled. In order to give effect to such assignment, the Service Provider hereby irrevocably designates and appoints the Company and its duly authorised officers and agents as the Service Provider’s agent and attorney in fact, to act for and on the Service Provider’s behalf and stead. The Parties agree that the Service Provider will not be entitled to any additional remuneration or compensation in this regard and the terms and conditions of this Agreement shall be sufficient consideration for the same.

7.2 The Parties agree and acknowledge that the above clause is necessary to protect the Company as it is the Company that would be bearing all expenses and exposure to risk under this Agreement and that the Service Provider is not responsible for any innovation and bears no risks.

7.3 The Service Provider shall ensure that all employees or persons employed by it for the provision of the Services under this Agreement are bound by the provisions of this Clause.

7.4 The Service Provider shall not, without prior written consent of the Company, use or copy any Intellectual Property for any purposes whatsoever except to the extent necessary to provide Services in accordance with this Agreement.

7.5 The Service Provider agrees that all written records of all Intellectual Property, in the form of notes, sketches, drawings, and any other format, shall be available to and remain at all times the sole property of the Company.

7.6 This Clause 7 shall survive any expiry or earlier termination of this Agreement.

8. TERMINATION

8.1 Either Party may terminate this Agreement at any time by giving to the other Party 30 (thirty) days’ prior written notice. Except as agreed in this Agreement, no compensation/damages shall be payable to either Party due to the termination of this Agreement.

8.2 The Company (the “Terminating Party”) shall have the right to terminate this Agreement forthwith without any notice to the Service Provider in the event of the occurrence of any of the following (“Default”):

- (a) If the Service Provider commits any breach of this Agreement and fails to cure the same within 7 (seven) days of receipt of written notice from the Company / Terminating Party with respect to such breach;
- (b) If the Service Provider fails to or is not ready and willing to fulfil any of its obligations under the terms of this Agreement;
- (c) If the Service Provider commits an act or conducts itself in a manner or becomes involved in a situation which in the reasonable opinion of the Company being the Terminating Party, brings it/them into public disrepute, contempt, scandal or ridicule, is detrimental to his/their image and brand, offends public opinion or the sensibilities of any substantial class or group, or reflects unfavourably upon the reputation of the Company;
- (d) If the Service Provider is barred/ prohibited/ restricted in any manner howsoever from fulfilling its obligations hereunder;
- (e) If the Service Provider breaches any of its representations or warranties or any of them are found to be untrue or misleading; or
- (f) If the Service Provider demonstrates gross negligence or wilful misconduct, or commits any tortuous or criminal act, or wilfully or intentionally acts in any way with the intent to harm the Company.

8.3 The Service Provider herein explicitly and unequivocally agrees that in the event of termination of this Agreement pursuant to a Default hereinabove, wherein the Terminating Party is the Company, the Service Provider shall be entitled only to the Fees till the date of termination of this Agreement.

9. INDEMNITY

9.1 The Service Provider (the "Indemnifying Party") hereby agrees to indemnify and hold harmless, the Company (the "Indemnified Party") and its respective officers, directors and shareholders from and against any actions, suits, penalties, losses, liabilities, damages or costs (including reasonable legal fees) arising out of a breach of the provisions of this Agreement, any of its representations, warranties and covenants as set forth in this Agreement or, where the Service Provider (being the Indemnifying Party), as a result of its actions and/ or activities being in excess of the scope specifically authorised in this Agreement. This Clause shall survive any expiry or earlier termination of this Agreement. No Party shall be liable to indemnify the other for any indirect or consequential loss or damage caused to the other.

10. CONFIDENTIALITY

10.1 The Service Provider acknowledges that, in the course of providing Services to the Company, it may become aware of or come into possession of certain Confidential Information. The Service Provider hereby undertakes and agrees not to disclose such information, except with the prior written approval of the authorised representative of the Company.

10.2 The terms and conditions specified in Clause 10.1 above shall not apply to:

- (a) information which, at the time of disclosure, is in the public domain; or
- (b) information which, after disclosure, becomes part of the public domain by publication or otherwise, other than by breach of this Agreement; or
- (c) all property, notes, memoranda, disks, lists of customers, technical information, marketing information, drawings, plans, and other papers or materials, documents, and copies thereof, relating or belonging to the Company, must immediately upon the termination of this Agreement or its expiry, be delivered by the Service Provider to the Company. This Clause shall survive any expiry or earlier termination of this Agreement.

11. ASSIGNMENT

Neither Party shall be entitled to assign this Agreement or any of their rights or obligations hereunder, without the prior written consent of the other Party.

12. Dispute Resolution and Governing Law

12.1 This Agreement shall be interpreted and governed in all respects by the laws prevailing in India.

12.2 If any dispute shall at any time arise between the Parties with respect to the validity, interpretation, implementation, termination or alleged breach of any provision of this Agreement or the rights or obligations of the Parties hereunder, then the Parties shall attempt to settle such dispute amicably between them.

12.3 In the event that such dispute has not been amicably settled within 10 (ten) days from the date of initiation of such discussions by way of written notice, then such a question or dispute shall be referred to arbitration.

12.4 The arbitration proceedings shall be carried out in accordance with the Indian Arbitration and Conciliation Act.

12.5 For the purposes of the arbitration proceedings hereunder, a sole arbitrator shall be appointed by the Company only.

12.6 The place and seat of arbitration shall be at New Delhi only and the language to be used in the arbitral proceedings shall be English.

12.7 The fees of the arbitrator(s) shall be borne equally by the Parties. All other costs and expenses of the arbitration shall be borne by the Parties as the arbitrator may award.

12.8 Subject to Clauses 12.1 to 12.7, each Party submits to the exclusive jurisdiction of the courts of New Delhi, India.

13. Anti-Corruption Principles

13.1 The Service Provider is aware that the Company follows certain policies and standards while conducting its business practices. The Service Provider is aware and herein acknowledges that the Company strongly believes in transparency and probity in its business dealings and that the Company does not tolerate receiving or giving bribes for any reason whatsoever. The Service Provider accordingly herein explicitly undertakes to perform the Services and conduct its business while rendering its Services to the Company, in a lawful and ethical manner, and in accordance with the aforementioned business practice of the Company and all Indian applicable laws and regulations.

13.2 Further, the Service Provider herein explicitly acknowledges that the aforesaid policies and business practices of the Company prohibits it from making, promising, or authorising the making of a payment or providing anything of value to any Government Official to improperly or corruptly induce that official to make any governmental act or decision to assist the Company in obtaining or retaining business, or to otherwise obtain an improper advantage in respect of the scope of Services envisaged in this Agreement.

13.3 The Service Provider is aware that the Company follows certain policies and standards while conducting its business practices and is also governed by the provisions of UK Bribery Act 2010, US Foreign Corrupt Practices Act. The Service Provider shall execute a separate Letter of Undertaking, to the effect of its undertaking to comply with applicable anti-bribery laws and do such acts and deeds, as the Company may deem fit and require the Service Provider to undertake.

14. MISCELLANEOUS

14.1 Survival

Notwithstanding anything contained in this Agreement, Clauses 5, 6, 7, 9, 10, 12 and 14 will survive the termination and/or expiry of this Agreement.

14.2 Notices

(a) Any notice required to be sent under this Agreement shall be in writing and shall be sent or delivered to the receiving Party at the address set forth at the beginning of this Agreement, or at such other address as the Parties may from time to time designate in writing.

(b) Any notice or other communication shall be sent by certified or registered mail/post, internationally recognised courier, email, or by hand delivery.

(c) All notices referred in this Agreement or other communications shall be deemed to have been duly given or made:

1. in case of a registered mail, 7 (seven) days after its posting by the Party;
2. in case of a courier, 4 (four) days after its dispatch by the Party;
3. in case of hand delivery, at the time of delivery;
4. if delivered by email, when the activity report confirms successful transmission provided delivery.

14.3 Modification

No modification of, or amendment to this Agreement, nor any waiver of any rights under this Agreement will be effective unless in writing and signed by the Parties.

14.4 Waiver

No failure or delay on the part of any of the Parties to this Agreement relating to the exercise of any right, power, privilege or remedy provided under this Agreement shall operate as a waiver of such right, power, privilege or remedy, or as a waiver of any preceding or succeeding breach by the other Party to this Agreement nor shall any single or partial exercise of any right, power, privilege or remedy preclude, any other or further exercise of such or any other right, power, privilege or remedy provided in this Agreement all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to a Party at law.

14.5 Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, prohibited or unenforceable to any extent for any reason, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative and shall not be part of the consideration moving from one Party to another and the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and such other provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

14.6 Force Majeure

No Party shall be liable for non-performance or delay in performance of any obligation stipulated in this Agreement if such non-performance or delay is caused by an event of Force Majeure (being an event beyond the control of the affected Party) that materially impairs the ability of the affected Party to perform its obligations under this Agreement, subject to however, (i) the affected Party giving prompt notice (together with any notice or information it has received regarding the Force Majeure event) and its likely duration to the other Party advising of the

occurrence and effects of the event of Force Majeure and (ii) ensuring (and where required produce evidence for) using all reasonable efforts to minimize any adverse consequences resulting from the event of any Force Majeure event.

14.7 Non-Solicitation

The Service Provider agrees that during the subsistence of this Agreement and for a period of 12 months following the expiration of this Agreement, the Service Provider will not, directly or indirectly, solicit, induce, recruit or encourage other's employees, consultants, representatives or agents to terminate their employment, representation or other association with their respective employer, or take away such employees, representatives, agents or consultants, or attempt to solicit, induce, recruit, encourage or take away such employees, representatives, agents or consultants, either for its own benefit or for the benefit of any other person or entity.

14.8 Complete Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof to the exclusion of all other previous understandings and assurances, between all or any of the Parties in relation to all or any of such matters.

14.9 Counterparts

This Agreement may be signed in any number of counterparts, each of which is an original and all of which, taken together, constitutes one and the same instrument.

14.10 Binding Effect

This Agreement shall be binding on the Parties. Parties assure that they have read and understand the contents of this Agreement.

//Remaining page left blank intentionally//
//Signature page shall follow//

IN WITNESS WHEREOF BOTH THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATE MENTIONED HEREIN.

For and on behalf of the Company - Sannam S4 _____:

Sign: Name: Designation: Date:

For and on behalf of the Service Provider - _____:

Sign: Name: Designation: Date:

ANNEXURE 1 Statement of Works ("SoW") 1

This Statement of Works ("SoW") is in reference to the Master Services Agreement dated _____ entered into between Sannam S4 Management Services India Private Limited ("Company") and _____ ("Service Provider") and reads as under:

AGREEMENT MANAGEMENT AND OVERSIGHT

This Agreement between the Parties shall be subject to all USEA/USAID Special Terms and Conditions (mentioned below), including all mandatory FAR Flow-Down clauses, where applicable, and the provisions included in 2CFR200 and 2CFR700 as mentioned in RFP titled "REQUEST FOR PROPOSAL – Training for Bhutan on Regulatory Process for Cost Reflective Tariff Design" dated _____, the clarifications dated _____, and other documents/submissions as mentioned below:

The links containing aforesaid Terms and Conditions are given below for reference:

- a. Standard Provisions for U.S. Nongovernmental Organizations:
<https://www.usaid.gov/sites/default/files/documents/1868/303maa.pdf>
- b. 2CFR200: <https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf>
- c. 2CFR700: <https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part700.pdf>
- d. USAID Mandatory Standard Provisions to USEA cooperative agreement _____
- e. Request for proposal: _____
- f. Clarifications: _____
- g. Proposal: _____

Statement of Works ("SoW") 1

Nature of Services Fees (INR)

[insert specification of services] [insert fee details payable]

Fee schedule:

Effective Date and Term:

This SoW and the Fees stated herein shall be valid for a period effective from _____ to _____. [insert effective date and term of the SoW]

Terms of this SoW are to be read along with the terms of the above-mentioned Master Services Agreement and are hereby acknowledged and agreed by:

For and on behalf of:

Sannam S4 _____

Sign:

Name:

Designation:

Date:

For and on behalf of:

_____ [insert name of the Service Provider]

Sign:

Name:

Designation:

Date

Annexure-D

LETTER OF UNDERTAKING (Anti-Corruption)

_____, 20XX

To
The Board
Sannam S4 _____,

Sub: Letter of Undertaking to comply with applicable anti-bribery laws.

Ref: Letter of Engagement / Agreement dated _____ ("Agreement").

Dear Sir/Madam,

This is in reference to the aforementioned Agreement entered into between Sannam S4 _____, hereinafter referred to as the "Company" and _____ hereinafter referred to as the "Service Provider".

The Service Provider is aware that the Company follows certain policies and standards while conducting its business practices. The Service Provider is aware and herein acknowledges that the Company strongly believes in transparency and probity in its business dealings and that the Company does not tolerate receiving or giving bribes for any reason whatsoever.

The Service Provider herein explicitly acknowledges that the aforesaid policies and business practices of the Company prohibits it from making, promising, or authorising the making of a payment or providing anything of value to any Government Official to improperly or corruptly induce that official to make any governmental act or decision to assist the Company in obtaining or retaining business, or to otherwise obtain an improper advantage in respect of the scope of Services envisaged in the Agreement.

The Service Provider accordingly herein explicitly undertakes to perform the Services and conduct its business while rendering its Services to the Company, in a lawful and ethical manner, and in accordance with the aforementioned business practice of the Company and all Indian applicable laws and regulations.

The Service Provider herein explicitly and unequivocally agrees and undertakes to abide by the anti-bribery policies as may be applicable on the Company as defined under UK Bribery Act 2010, US Foreign Corrupt Practices Act or other similar legislation and, in this regard, undertakes to undergo and complete requisite trainings, as may be required and directed by the Company, from time-to-time.

The Service Provider herein explicitly acknowledges that the Company shall have the right to forthwith terminate the Agreement, in case the Service Provider fails to comply with Anti-bribery policy of the Company and / or complete aforementioned requisite trainings.

For and on behalf of _____
Name: _____
Designation: _____
Date: _____

ATTACHMENT D – MANDATORY STANDARD PROVISIONS

M1. APPLICABILITY OF 2 CFR 200 and 2 CFR 700 (DECEMBER 2014)

- a. All provisions of 2 CFR 200, 2 CFR 700, and all Standard Provisions attached to this agreement are applicable to the recipient and to subrecipients which meet the definition of “Recipient” in part 2 CFR 200.86, unless a section specifically excludes a subrecipient from coverage. The recipient must assure that subrecipients have copies of all the attached standard provisions.
- b. For any subawards made with Non-U.S. subrecipients the recipient must include the applicable “Standard Provisions for Non-US Nongovernmental Organizations.” Recipients are required to ensure compliance with monitoring procedures in accordance with 2 CFR 200 and 2 CFR 700.

[END OF PROVISION]

M2. INELIGIBLE COUNTRIES (MAY 1986)

Unless otherwise approved by the USAID Agreement Officer, funds will only be expended for assistance to countries eligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

[END OF PROVISION]

M3. NONDISCRIMINATION (JUNE 2012)

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the basis of race, color, national origin, age, disability, or sex under any program or activity funded by this award when work under the grant is performed in the U.S. or when employees are recruited from the U.S.

Additionally, USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination, including harassment, in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran’s status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee.

In addition, the Agency strongly encourages its recipients and their subrecipients and vendors (at all tiers), performing both in the U.S. and overseas, to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection for all their employees on these expanded bases, subject to applicable law.

[END OF PROVISION]

M4. AMENDMENT OF AWARD (JUNE 2012)

This award may only be amended in writing, by formal amendment or letter, signed by the Agreement Officer (AO), and in the case of a bilateral amendment, by the AO and an authorized official of the recipient.

[END OF PROVISION]

M5. NOTICES (JUNE 2012)

Any notice given by USAID or the recipient is sufficient only if in writing and delivered in person, mailed or e-mailed as follows:

- (1) To the USAID Agreement Officer, at the address specified in this award; or
- (2) To the recipient, at the recipient's address shown in this award, or to such other address specified in this award.

[END OF PROVISION]

M6. SUBAWARDS AND CONTRACTS (DECEMBER 2014)

- a. Subawardees and contractors have no relationship with USAID under the terms of this award. All required USAID approvals must be directed through the recipient to USAID.
- b. Notwithstanding any other term of this award, subawardees and contractors have no right to submit claims directly to USAID and USAID assumes no liability for any third party claims against the recipient.

[END OF PROVISION]

**M7. OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT
(DECEMBER 2014)**

Information collection requirements imposed by this award are covered by OMB approval number 0412-0510; the current expiration date is 04/30/2005. The Standard Provisions containing the requirement and an estimate of the public reporting burden (including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) are

<u>Standard Provision</u>	<u>Burden Estimate</u>
Air Travel and Transportation	1 (hour)
Ocean Shipment of Goods	.5
Patent Rights	.5
Publications	.5
Negotiated Indirect Cost Rates - (Predetermined and Provisional)	1
Voluntary Population Planning	.5
Protection of the Individual as a Research Subject	1
<u>22 CFR 200</u>	<u>Burden Estimate</u>
2 CFR 200.318-326, Procurement Standards	1
2 CFR 200.310-315, Property Standards	1.5

Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), U.S. Agency for International Development, Washington, DC 20523 and to the Office of Management and Budget, Paperwork Reduction Project (0412-0510), Washington, DC 20503.

[END OF PROVISION]

**M8. USAID ELIGIBILITY RULES FOR GOODS AND SERVICES
(JUNE 2012)**

- a. This provision is not applicable to commodities or services that the recipient provides with private funds as part of a cost-sharing requirement, or with Program Income generated under this award.
- b. Ineligible and Restricted Commodities and Services:

- (1) **Ineligible Commodities 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.** Any firms or individuals that do not comply with the requirements in Standard Provision, "Debarment, Suspension and Other Responsibility Matters" and Standard Provision, "Preventing Terrorist Financing" must not be used to provide any commodities or services funded under this award.
- (3) **Restricted Commodities.** The recipient must obtain prior written approval of the Agreement Officer (AO) or comply with required procedures under an applicable waiver, as provided by the AO when procuring any of the following commodities:
 - (i) Agricultural commodities,
 - (ii) Motor vehicles,
 - (iii) Pharmaceuticals,
 - (iv) Pesticides,
 - (v) Used equipment,
 - (vi) U.S. Government-owned excess property, or
 - (vii) Fertilizer.

c. **Source and Nationality:**

Except as may be specifically approved in advance by the AO, all commodities and services that will be reimbursed by USAID under this award must be from the authorized geographic code specified in this award and must meet the source and nationality requirements set forth in 22 CFR 228. If the geographic code is not specified, the authorized geographic code is 937. When the total value of procurement for commodities and services during the life of this award is valued at \$250,000 or less, the authorized geographic code for procurement of all goods and services to be reimbursed under this award is code 935. For a current list of countries within each geographic code, see: <http://www.usaid.gov/ads/policy/300/310>.

- d. Guidance on the eligibility of specific commodities and services may be obtained from the AO. If USAID determines that the recipient has procured any commodities or services under this award contrary to the requirements of this provision, and has received

payment for such purposes, the AO may require the recipient to refund the entire amount of the purchase.

- e. This provision must be included in all subawards and contracts which include procurement of commodities or services.

[END OF PROVISION]

**M9. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
(JUNE 2012)**

- a. The recipient agrees to notify the Agreement Officer (AO) immediately upon learning that it or any of its principals:
 - (1) Are presently excluded or disqualified from covered transactions by any Federal department or agency;
 - (2) Have been convicted within the preceding three-year period preceding this proposal; been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
 - (3) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph a.(2); and
 - (4) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.
- b. The recipient agrees that, unless authorized by the AO, it will not knowingly enter into any subawards or contracts under this award with a person or entity that has an active exclusion on the System for Award Management (SAM) (www.sam.gov). The recipient further agrees to include the following provision in any subawards or contracts entered into under this award:

**DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION
(JUNE 2012)**

The recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

- c. The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in Subpart C of 2 CFR Section 180, as supplemented by 2 CFR 780.

[END OF PROVISION]

M10. DRUG-FREE WORKPLACE (JUNE 2012)

The recipient must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an individual) of 2 CFR 782, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

[END OF PROVISION]

M11. EQUAL PARTICIPATION BY FAITH-BASED ORGANIZATIONS (JUNE 2016)

a. Faith-Based Organizations Encouraged

Faith-based organizations are eligible, on the same basis as any other organization, to participate in any USAID program for which they are otherwise eligible. Neither USAID nor entities that make and administer subawards of USAID funds shall discriminate for or against an organization on the basis of the organization's religious character or affiliation. Additionally, religious organizations shall not be disqualified from participating in USAID programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

Decisions about awards of USAID financial assistance must be free from political interference or even the appearance of such interference. Awards must be made on the basis of merit, not the basis of the religious affiliation of an applicant, or lack thereof. A faith-based organization may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, within the limits contained in this provision. For more information, see the [USAID Faith-Based and Community Initiatives Web site](#) and [22 CFR 205.1](#).

b. Explicitly Religious Activities Prohibited.

- (1) Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, prayer, or proselytization.

- (2) The recipient must not engage in explicitly religious activities as part of the programs or services directly funded with financial assistance from USAID. If the recipient engages in explicitly religious activities, the activities must be offered separately, in time or location, from any programs or services directly funded by this award, and participation must be voluntary for beneficiaries of the programs or services funded with USAID assistance.
- (3) These restrictions apply equally to religious and secular organizations. All organizations that participate in USAID programs, as recipients or subawardees, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing USAID-funded activities.
- (4) Notwithstanding the restrictions of b.(1) and (2), a religious organization that participates in USAID-funded programs or services:
 - (i) May retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support or engage in any explicitly religious activities or in any other manner prohibited by law;
 - (ii) May use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols; and
 - (iii) May retain its authority over its internal governance, and may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- c. Implementation in accordance with the Establishment Clause: Nothing in this provision shall be construed as authorizing the use of USAID funds for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law.
- d. Discrimination Based on Religion Prohibited: The recipient must not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.
- e. A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1 is not forfeited when the organization receives financial assistance from USAID.

- f. The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.
- g. This provision must be included in all subawards under this award.

[END OF PROVISION]

M12. PREVENTING TERRORIST FINANCING -- IMPLEMENTATION OF E.O. 13224 (AUGUST 2013)

- a. The recipient must not engage in transactions with, or provide resources or support to, individuals and organizations associated with terrorism, including those individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).
- b. This provision must be included in all subawards and contracts issued under this award.

[END OF PROVISION]

M13. MARKING AND PUBLIC COMMUNICATIONS UNDER USAID-FUNDED ASSISTANCE (DECEMBER 2014)

- a. The USAID Identity is the official marking for USAID, comprised of the USAID logo and landmark with the tagline "from the American people," unless amended by USAID to include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency initiative. The USAID Identity (including any required presidential initiative or related identity) is on the USAID Web site at www.usaid.gov/branding. Recipients must use the USAID Identity, of a size and prominence equivalent to or greater than any other identity or logo displayed, to mark the following:
 - (1) Programs, projects, activities, public communications, and commodities partially or fully funded by USAID;
 - (2) Program, project, or activity sites funded by USAID, including visible infrastructure projects or other physical sites;
 - (3) Technical assistance, studies, reports, papers, publications, audio-visual

productions, public service announcements, Web sites/Internet activities, promotional, informational, media, or communications products funded by USAID;

- (4) Commodities, equipment, supplies, and other materials funded by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs; and
 - (5) Events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities. If the USAID Identity cannot be displayed, the recipient is encouraged to otherwise acknowledge USAID and the support of the American people.
- b. The recipient must implement the requirements of this provision following the approved Marking Plan in the award.
- c. The AO may require a preproduction review of program materials and “public communications” (documents and messages intended for external distribution, including but not limited to correspondence; publications; studies; reports; audio visual productions; applications; forms; press; and promotional materials) used in connection with USAID-funded programs, projects or activities, for compliance with an approved Marking Plan.
- d. The recipient is encouraged to give public notice of the receipt of this award and announce progress and accomplishments. The recipient must provide copies of notices or announcements to the Agreement Officer’s Representative (AOR) and to USAID’s Office of Legislative and Public Affairs in advance of release, as practicable. Press releases or other public notices must 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.”
- e. Any “public communication” in which the content has not been approved by USAID must contain the following disclaimer:

“This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.”
- f. The recipient must provide the USAID AOR with two copies of all program and communications materials produced under this award.

- g. The recipient may request an exception from USAID marking requirements when USAID marking requirements would:
- (1) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;
 - (2) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;
 - (3) Undercut host-country government "ownership" of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications;
 - (4) Impair the functionality of an item;
 - (5) Incur substantial costs or be impractical;
 - (6) Offend local cultural or social norms, or be considered inappropriate; or
 - (7) Conflict with international law.
- h. The recipient may submit a waiver request of the marking requirements of this provision or the Marking Plan, through the AOR, when USAID-required marking would pose compelling political, safety, or security concerns, or have an adverse impact in the cooperating country.
- (1) Approved waivers "flow down" to subawards and contracts unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.
 - (2) USAID determinations regarding waiver requests are subject to appeal by the recipient, by submitting a written request to reconsider the determination to the cognizant Assistant Administrator.
- i. The recipient must include the following marking provision in any subawards entered into under this award:
- "As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's, or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity."*

[END OF PROVISION]

M14. REGULATIONS GOVERNING EMPLOYEES (AUGUST 1992)

(The following applies to the recipient's employees working in the cooperating country under the agreement who are not citizens of the cooperating country.)

- 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 grant.
- 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 conventions, 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 grant award of any third country national when, in the discretion of the Ambassador, the interests of the United States so require.
- g. If it is determined, either under e. or f. above, that the services of such employee should 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]

**M15. CONVERSION OF UNITED STATES DOLLARS TO LOCAL CURRENCY
(NOVEMBER 1985)**

(This provision applies when activities are undertaken outside the United States.)

Upon arrival in the cooperating country, and from time to time as appropriate, the recipient's chief of party must consult with the Mission Director who must provide, in writing, the procedure the recipient and its employees must follow in the conversion of United States dollars to local currency. This may include, but is not limited to, the conversion of currency through the cognizant United States Disbursing Officer or Mission Controller, as appropriate.

[END OF PROVISION]

M16. USE OF POUCH FACILITIES (AUGUST 1992)

(This provision applies when activities are undertaken outside the United States.)

- a. Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for USAID recipients and their employees as a general policy, as detailed in items (1) through (6) below. However, the final decision regarding use of pouch facilities rest with the Embassy or USAID Mission. In consideration of the use of pouch facilities, the recipient and its employees agree to indemnify and hold harmless, the Department of State and USAID for loss or damage occurring in pouch transmission:

- (1) Recipients and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of .9 kgs per shipment of correspondence and documents needed in the administration of assistance programs.
- (2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of .45 kgs per shipment (but see a.(3) below).
- (3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this standard provision and are not authorized to be sent or received by pouch.
- (4) Official and personal mail pursuant to a.(1) and (2) above sent by pouch should be addressed as follows:

Name of individual or organization (followed by
letter symbol "G")

City Name of post (USAID/____)

Agency for International Development

Washington, DC 20523-0001

- (5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.
- (6) Recipient personnel are NOT authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide.
- b. The recipient is responsible for advising its employees of this authorization, these guidelines, and limitations on use of pouch facilities.
- c. Specific additional guidance on grantee use of pouch facilities in accordance with this standard provision is available from the Post Communication Center at the Embassy or USAID Mission.

[END OF PROVISION]

M17. TRAVEL AND INTERNATIONAL AIR TRANSPORTATION (DECEMBER 2014)

a. TRAVEL COSTS

All travel costs must comply with the applicable cost principles and must be consistent with those normally allowed in like circumstances in the recipient's non-USAID-funded activities. Costs incurred by employees and officers for travel, including air fare, costs of lodging, other subsistence, and incidental expenses, may be considered reasonable and allowable only to the extent such costs do not exceed reasonable charges normally allowed by the recipient in its regular operations as the result of the recipient organization's written travel policy and are within the limits established by the applicable cost principles.

In the absence of a reasonable written policy regarding international travel costs, the standard for determining the reasonableness of reimbursement for international travel costs will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current Standardized Regulations on international travel costs may be obtained from the AO. In the event that the cost for air fare exceeds the customary standard commercial airfare (coach or equivalent) or the lowest commercial discount airfare, the recipient must document one of the allowable exceptions from the applicable cost principles.

b. FLY AMERICA ACT RESTRICTIONS

- (1) The recipient must use U.S. Flag Air Carriers for all international air transportation (including personal effects) funded by this award pursuant to the Fly America Act and its implementing regulations to the extent service by such carriers is available.
- (2) In the event that the recipient selects a carrier other than a U.S. Flag Air Carrier for international air transportation, in order for the costs of such international air transportation to be allowable, the recipient must document such transportation in accordance with this provision and maintain such documentation pursuant to the Standard Provision, "Accounting, Audit and Records." The documentation must use one of the following reasons or other exception under the Fly America Act:
 - (i) The recipient uses a European Union (EU) flag air carrier, which is an airline operating from an EU country that has signed the US-EU "Open Skies" agreement (<http://www.state.gov/e/eb/rls/othr/ata/i/ic/170684.htm>).
 - (ii) Travel to or from one of the following countries on an airline of that country when no city pair fare is in effect for that leg (see <http://apps.fas.gsa.gov/citypairs/search/>):
 - a. Australia on an Australian airline,
 - b. Switzerland on a Swiss airline, or
 - c. Japan on a Japanese airline;
 - (iii) Only for a particular leg of a route on which no US Flag Air Carrier provides service on that route;
 - (iv) For a trip of 3 hours or less, the use of a US Flag Air Carrier at least doubles the travel time;
 - (v) If the US Flag Air Carrier offers direct service, use of the US Flag Air Carrier would increase the travel time by more than 24 hours; or
 - (vi) If the US Flag Air Carrier does not offer direct service,
 - a. Use of the US Flag Air Carrier increases the number of aircraft changes by 2 or more,
 - b. Use of the US Flag Air Carrier extends travel time by 6 hours or more, or

- c. Use of the US Flag Air Carrier requires a layover at an overseas interchange of 4 hours or more.

c. DEFINITIONS

The terms used in this provision have the following meanings:

- (1) "Travel costs" means expenses for transportation, lodging, subsistence (meals and incidentals), and related expenses incurred by employees who are on travel status on official business of the recipient for any travel outside the country in which the organization is located. "Travel costs" do not include expenses incurred by employees who are not on official business of the recipient, such as rest and recuperation (R&R) travel offered as part of an employee's benefits package that are consistent with the recipient's personnel and travel policies and procedures.
- (2) "International air transportation" means international air travel by individuals (and their personal effects) or transportation of cargo by air between a place in the United States and a place outside thereof, or between two places both of which are outside the United States.
- (3) "U.S. Flag Air Carrier" means an air carrier on the list issued by the U.S. Department of Transportation at <http://ostpxweb.dot.gov/aviation/certific/certlist.htm>. U.S. Flag Air Carrier service also includes service provided under a code share agreement with another air carrier when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number.
- (4) For this provision, the term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

d. SUBAWARDS AND CONTRACTS

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

[END OF PROVISION]

M18. OCEAN SHIPMENT OF GOODS (JUNE 2012)

APPLICABILITY: *This provision is applicable for awards and subawards for which the recipient contracts for ocean transportation for goods purchased or financed with USAID funds.*

In accordance with 22 CFR 228.21, ocean transportation shipments are subject to the provisions of 46 CFR Part 381.

OCEAN SHIPMENT OF GOODS (JUNE 2012)

- a. Prior to contracting for ocean transportation to ship goods purchased or financed with USAID funds under this award, the recipient must contact the office below to determine the flag and class of vessel to be used for shipment:

U.S. Agency for International Development,
Bureau for Management
Office of Acquisition and Assistance, Transportation Division
1300 Pennsylvania Avenue, NW
Washington, DC 20523
Email: oceantransportation@usaid.gov

- b. This provision must be included in all subawards and contracts.

[END OF PROVISION]

M19. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006)

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.

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.

[END OF PROVISION]

M20. TRAFFICKING IN PERSONS (April 2016)

- a. The recipient, subawardee, or contractor, at any tier, or their employees, labor recruiters, brokers or other agents, must not engage in:
 - (1) Trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime) during the period of this award;
 - (2) Procurement of a commercial sex act during the period of this award;
 - (3) Use of forced labor in the performance of this award;
 - (4) Acts that directly support or advance trafficking in persons, including the following acts:
 - i. Destroying, concealing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
 - ii. Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:
 - a) exempted from the requirement to provide or pay for such return transportation by USAID under this award; or
 - b) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;
 - iii. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;
 - iv. Charging employees recruitment fees; or

- v. Providing or arranging housing that fails to meet the host country housing and safety standards.
- b. In the event of a violation of section (a) of this provision, USAID is authorized to terminate this award, without penalty, and is also authorized to pursue any other remedial actions authorized as stated in section 1704(c) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013).
- c. If the estimated value of services required to be performed under the award outside the United States exceeds \$500,000, the recipient must submit to the Agreement Officer, the annual "Certification regarding Trafficking in Persons, Implementing Title XVII of the National Defense Authorization Act for Fiscal Year 2013" as required prior to this award, and must implement a compliance plan to prevent the activities described above in section (a) of this provision. The recipient must provide a copy of the compliance plan to the Agreement Officer upon request and must post the useful and relevant contents of the plan or related materials on its website (if one is maintained) and at the workplace.
- d. The recipient's compliance plan must be appropriate to the size and complexity of the award and to the nature and scope of the activities, including the number of non-United States citizens expected to be employed. The plan must include, at a minimum, the following:
 - (1) An awareness program to inform employees about the trafficking related prohibitions included in this provision, the activities prohibited and the action that will be taken against the employee for violations.
 - (2) A reporting process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking, including a means to make available to all employees the Global Human Trafficking Hotline at 1-844-888-FREE and its e-mail address at help@befree.org.
 - (3) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging of recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
 - (4) A housing plan, if the recipient or any subawardee intends to provide or arrange housing. The housing plan is required to meet any host-country housing and safety standards.
 - (5) Procedures for the recipient to prevent any agents or subawardee at any tier and at any dollar value from engaging in trafficking in persons activities described in section a of this provision. The recipient must also have procedures to monitor,

detect, and terminate any agents or subawardee or subawardee employees that have engaged in such activities.

- e. If the Recipient receives any credible information regarding a violation listed in section a(1)-(4) of this provision, the recipient must immediately notify the cognizant Agreement Officer and the USAID Office of the Inspector General; and must fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.
- f. The Agreement Officer may direct the Recipient to take specific steps to abate an alleged violation or enforce the requirements of a compliance plan.
- g. For purposes of this provision, "employee" means an individual who is engaged in the performance of this award as a direct employee, consultant, or volunteer of the recipient or any subrecipient.
- h. The recipient must include in all subawards and contracts a provision prohibiting the conduct described in section a(1)-(4) by the subrecipient, contractor, or any of their employees, or any agents. The recipient must also include a provision authorizing the recipient to terminate the award as described in section b of this provision.

[END OF PROVISION]

M21. SUBMISSIONS TO THE DEVELOPMENT EXPERIENCE CLEARINGHOUSE AND PUBLICATIONS (JUNE 2012)

- a. Submissions to the Development Experience Clearinghouse (DEC).
 - 1) The recipient must provide the Agreement Officer's Representative one copy of any Intellectual Work that is published, and a list of any Intellectual Work that is not published.
 - 2) In addition, the recipient must submit Intellectual Work, whether published or not, to the DEC, either on-line (preferred) or by mail. The recipient must review the DEC Web site for submission instructions, including document formatting and the types of documents to submit. Submission instructions can be found at: <http://dec.usaid.gov>.
 - 3) For purposes of submissions to the DEC, Intellectual Work includes all works that document the implementation, evaluation, and results of international development assistance activities developed or acquired under this award, which may include program and communications materials, evaluations and assessments, information products, research and technical reports, progress and

performance reports required under this award (excluding administrative financial information), and other reports, articles and papers prepared by the recipient under the award, whether published or not. The term does not include the recipient's information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

- 4) Each document submitted should contain essential bibliographic information, such as 1) descriptive title; 2) author(s) name; 3) award number; 4) sponsoring USAID office; 5) development objective; and 6) date of publication.
 - 5) The recipient must not submit to the DEC any financially sensitive information or personally identifiable information, such as social security numbers, home addresses and dates of birth. Such information must be removed prior to submission. The recipient must not submit classified documents to the DEC.
- 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.

[END OF PROVISION]

M22. LIMITING CONSTRUCTION ACTIVITIES (AUGUST 2013)

APPLICABILITY: *In accordance with the policy at ADS 303.3.30, AOs must include this provision in all solicitations and awards. When no construction activities are contemplated under the award, the AO must insert "Construction is not eligible for reimbursement under this award" in section d) of this provision. If the award permits construction activities based on the policy above (or as authorized by waiver), the AO must insert the description and location(s) of the specific construction activities in section d) of this provision. The AO must not make a general reference to the Program Description. The AO must also ensure that there is a specific line item for construction activities in the award budget.*

LIMITING CONSTRUCTION ACTIVITIES (AUGUST 2013)

- a) Construction is not eligible for reimbursement under this award unless specifically identified in paragraph d) below.
- b) Construction means —construction, alteration, or repair (including dredging and excavation) of buildings, structures, or other real property and includes, without limitation, improvements, renovation, alteration and refurbishment. The term includes, without limitation, roads, power plants, buildings, bridges, water treatment facilities, and vertical structures.

- c) Agreement Officers will not approve any subawards or procurements by recipients for construction activities that are not listed in paragraph d) below. USAID will reimburse allowable costs for only the construction activities listed in this provision not to exceed the amount specified in the construction line item of the award budget. The recipient must receive prior written approval from the AO to transfer funds allotted for construction activities to other cost categories, or vice versa.
- d) Description
[Type of construction and location(s)]
- e) The recipient must include this provision in all subawards and procurements and make vendors providing services under this award and subrecipients aware of the restrictions of this provision.

[END OF PROVISION]

M23. USAID IMPLEMENTING PARTNER NOTICES (IPN) PORTAL FOR ASSISTANCE (JULY 2014)

APPLICABILITY: For use in all solicitations and resulting awards. Please refer to [ADS 303, Section 303.3.31, "USAID Implementing Partner Notices \(IPN\) Portal For Assistance"](#) for additional guidance.

USAID IMPLEMENTING PARTNER NOTICES (IPN) PORTAL FOR ASSISTANCE (JULY 2014)

(a) Definitions

"USAID Implementing Partner Notices (IPN) Portal for Assistance ("IPN Portal)" means the single point where USAID posts proposed universal bilateral amendments for USAID awards, which can be accessed electronically by registered USAID recipients. The IPN Portal is located at <https://sites.google.com/site/usaaidipnforassistance/>. Universal amendments are those which affect all assistance awards or a designated class of awards as specified in each amendment by the IPN Portal Administrator.

"IPN Portal Administrator" means the USAID official designated by the Director, M/OAA, who has overall responsibility for managing the USAID Implementing Partner Notices Portal for Assistance.

“Universal bilateral amendment” means those amendments with revisions or new requirements or provisions that affect all awards or a designated class of awards, as specified in the Agency notification of such revisions or new requirements.

(b) By submission of an application and execution of an award, the Applicant/Recipient acknowledges the requirement to:

- (1) Register with the IPN Portal if awarded an assistance award resulting from this solicitation, and
- (2) Receive universal bilateral amendments to this award and general notices via the IPN Portal.

(c) Procedure to register for notifications.

Go to <https://sites.google.com/site/usaidipnforassistance/> and click the “Register” button at the top of the page. Recipient representatives must use their official organization email address when subscribing, not personal email addresses.

(d) Processing of IPN Portal Amendments

The Recipient may access the IPN Portal at any time to review all IPN Portal amendments; however, the system will also notify the Recipient by email when the USAID IPN Portal Administrator posts a universal bilateral amendment for Recipient’s review and signature. Proposed USAID IPN Portal amendments distributed via the IPN Portal are applicable to all awards, unless otherwise noted in the proposed amendment.

Within 15 calendar days from receipt of the notification email from the IPN Portal, the Recipient must do one of the following:

- (1) (a) verify applicability of the proposed amendment for their award(s) per the instructions provided with each amendment; (b) download the amendment and incorporate the following information on the amendment form: award number, organization name, and organization mailing address as it appears in the basic award; (c) sign the hardcopy version; and (d) send the signed amendment (by email or hardcopy) to the AO for signature. The Recipient must not incorporate any other changes to the IPN Portal amendment. Bilateral amendments provided through the IPN Portal are not effective until the both the Recipient and the AO sign the amendment;
- (2) Notify the AO in writing if the amendment requires negotiation of additional changes to terms and conditions of the award; or
- (3) Notify the AO that the Recipient declines to sign the amendment.

Within 30 calendar days of receipt of a signed amendment from the Recipient, the AO must provide the fully executed amendment to the Recipient or initiate discussions with the Recipient.

[End of Provision]

M24. PILOT PROGRAM FOR ENHANCEMENT OF GRANTEE EMPLOYEE WHISTLEBLOWER PROTECTIONS (SEPTEMBER 2014)

The requirement to comply with and inform all employees of the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" is retroactively effective for all assistance awards and subawards (including subcontracts) issued beginning July 1, 2013.

The Grantee must:

1. Inform its employees working under this award in the predominant native language of the workforce that they are afforded the employee whistleblower rights and protections provided under 41 U.S.C. § 4712; and
2. Include such requirement in any subaward or subcontract made under this award.

41 U.S.C. § 4712 states that an employee of a Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes" is evidence of any of the following:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of the U.S. Congress, or a representative of a U.S. Congressional Committee;
- A cognizant U.S. Inspector General;
- The U.S. Government Accountability Office;
- A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- A U.S. court or grand jury; or,

- A management official or other employee of the Grantee who has the responsibility to investigate, discover, or address misconduct.

[End of Provision]

M25. SUBMISSION OF DATASETS TO THE DEVELOPMENT DATA LIBRARY (OCTOBER 2014)

a. Definitions. For the purpose of submissions to the DDL:

- (1) “Dataset” is an organized collection of structured data, including data contained in spreadsheets, whether presented in tabular or non-tabular form. For example, a Dataset may represent a single spreadsheet, an extensible mark-up language (XML) file, a geospatial data file, or an organized collection of these. This requirement does not apply to aggregated performance reporting data that the recipient submits directly to a USAID portfolio management system or to unstructured data, such as email messages, PDF files, PowerPoint presentations, word processing documents, photos and graphic images, audio files, collaboration software, and instant messages. Neither does the requirement apply to the recipient’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information. Datasets submitted to the DDL will generally be those generated with USAID resources and created in support of Intellectual Work that is uploaded to the Development Experience Clearinghouse (DEC) (See M21. SUBMISSIONS TO THE DEVELOPMENT EXPERIENCE CLEARINGHOUSE AND PUBLICATIONS (JUNE 2012).
- (2) “Intellectual Work” includes all works that document the implementation, monitoring, evaluation, and results of international development assistance activities developed or acquired under this award, which may include program and communications materials, evaluations and assessments, information products, research and technical reports, progress and performance reports required under this award (excluding administrative financial information), and other reports, articles and papers prepared by the recipient under the award, whether published or not. The term does not include the recipient’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

b. Submissions to the Development Data Library (DDL)

- (1) The recipient must submit to the Development Data Library (DDL) at www.usaid.gov/data, in a machine-readable, non-proprietary format, a copy of any Dataset created or obtained in performance of this award, including Datasets

produced by a subawardee or a contractor at any tier. The submission must include supporting documentation describing the Dataset, such as code books, data dictionaries, data gathering tools, notes on data quality, and explanations of redactions.

- (2) Unless otherwise directed by the Agreement Officer (AO) or the Agreement Officer Representative (AOR), the recipient must submit the Dataset and supporting documentation to the DDL within thirty (30) calendar days after the Dataset is first used to produce an Intellectual Work or is of sufficient quality to produce an Intellectual Work. Within thirty (30) calendar days after award completion, the recipient must submit to the DDL any Datasets and supporting documentation that have not previously been submitted to the DDL, along with an index of all Datasets and Intellectual Work created or obtained under the award. The recipient must also provide to the AOR an itemized list of any and all DDL submissions.

The recipient is not required to submit the data to the DDL, when, in accordance with the terms and conditions of this award, Datasets containing results of federally funded scientific research are submitted to a publicly accessible research database. However, the recipient must submit a notice to the DDL by following the instructions at www.usaid.gov/data, with a copy to the agreement officer representative, providing details on where and how to access the data. The direct results of federally funded scientific research must be reported no later than when the data are ready to be submitted to a peer-reviewed journal for publication, or no later than five calendar days prior to the conclusion of the award, whichever occurs earlier.

- (3) The recipient must submit the Datasets following the submission instructions and acceptable formats found at www.usaid.gov/data.
- (4) The recipient must ensure that any Dataset submitted to the DDL does not contain any proprietary or personally identifiable information, such as social security numbers, home addresses, and dates of birth. Such information must be removed prior to submission.
- (5) The recipient must not submit classified data to the DDL.

[End of Provision]

M26. PROHIBITION ON PROVIDING FEDERAL ASSISTANCE TO ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (APRIL 2015)

- (a) The recipient must not require employees, subawardees, or contractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees, subawardees, or contractor from lawfully reporting such waste, fraud, or abuse to a designated Investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- (b) The recipient must notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this provision are no longer in effect.
- (c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (d) (1) In accordance with section 743 of Division E, Title VI I, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the recipient is not in compliance with the requirements of this provision.

(2) The Government may seek any available remedies in the event the recipient fails to comply with the requirements of this provision.
[End of Provision]

M27. CHILD SAFEGUARDING (June 2015)

- (a) Because the activities to be funded under this award may involve children, or personnel engaged in the implementation of the award may come into contact with children, these activities could raise the risk of child abuse, exploitation, or neglect within USAID-funded programs. The organization agrees to abide by the following child safeguarding core principles:
 - (1) Ensure compliance with host country and local child welfare and protection legislation or international standards, whichever gives greater protection, and with U.S. law where applicable;
 - (2) Prohibit all personnel from engaging in child abuse, exploitation, or neglect;
 - (3) Consider child safeguarding in project planning and implementation to determine potential risks to children that are associated with project activities and operations;
 - (4) Apply measures to reduce the risk of child abuse, exploitation, or neglect, including, but not limited to, limiting unsupervised interactions with children; prohibiting

exposure to pornography; and complying with applicable laws, regulations, or customs regarding the photographing, filming, or other image-generating activities of children;

- (5) Promote child-safe screening procedures for personnel, particularly personnel whose work brings them in direct contact with children; and
 - (6) Have a procedure for ensuring that personnel and others recognize child abuse, exploitation, or neglect; mandating that personnel and others report allegations; investigating and managing allegations; and taking appropriate action in response to such allegations, including, but not limited to, dismissal of personnel.
- (b) The organization must also include in their code of conduct for all personnel implementing USAID-funded activities the child safeguarding principles in (a) (1) through (6).
- (c) The following definitions apply for purposes of this provision:
- (1) Child: A child or children are defined as persons who have not attained 18 years of age.
 - (2) Child abuse, exploitation, or neglect: Constitutes any form of physical abuse; emotional ill-treatment; sexual abuse; neglect or insufficient supervision; trafficking; or commercial, transactional, labor, or other exploitation resulting in actual or potential harm to the child's health, well-being, survival, development, or dignity. It includes, but is not limited to: any act or failure to act which results in death, serious physical or emotional harm to a child, or an act or failure to act which presents an imminent risk of serious harm to a child.
 - (3) Physical abuse: Constitutes acts or failures to act resulting in injury (not necessarily visible), unnecessary or unjustified pain or suffering without causing injury, harm or risk of harm to a child's health or welfare, or death. Such acts may include, but are not limited to: punching, beating, kicking, biting, shaking, throwing, stabbing, choking, or hitting (regardless of object used), or burning. These acts are considered abuse regardless of whether they were intended to hurt the child.
 - (4) Sexual Abuse: Constitutes fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure, and exploitation through prostitution or the production of pornographic materials.
 - (5) Emotional abuse or ill treatment: Constitutes injury to the psychological capacity or emotional stability of the child caused by acts, threats of acts, or coercive tactics. Emotional abuse may include, but is not limited to: humiliation, control, isolation,

withholding of information, or any other deliberate activity that makes the child feel diminished or embarrassed.

(6) **Exploitation:** Constitutes the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner. Exploitation represents a form of coercion and violence that is detrimental to the child's physical or mental health, development, education, or well-being.

(7) **Neglect:** Constitutes failure to provide for a child's basic needs within USAID-funded activities that are responsible for the care of a child in the absence of the child's parent or guardian.

(d) The recipient must insert the provisions in (a) and (b) in all sub-awards under this award.

[End of Provision]

M28. MANDATORY DISCLOSURES (July 2015)

Consistent with 2 CFR §200.113, applicants and recipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General, with a copy to the cognizant Agreement Officer, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subrecipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General and to the prime recipient (pass through entity) all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Disclosures must be sent to:

U.S. Agency for International Development
Office of the Inspector General
P.O. Box 657
Washington, DC 20044-0657

Phone: [1-800-230-6539](tel:1-800-230-6539) or [202-712-1023](tel:202-712-1023)
Email: ig.hotline@usaid.gov
URL: <https://oig.usaid.gov/content/usaid-contractor-reporting-form>

Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment (See 2 CFR 180, 2 CFR 780 and 31 U.S.C. 3321).

The recipient must include this mandatory disclosure requirement in all subawards and contracts under this award.

[End of Provision]

M29. NONDISCRIMINATION AGAINST BENEFICIARIES (November 2016).

(a) USAID policy requires that the recipient not discriminate against any beneficiaries in implementation of this award, such as, but not limited to, by withholding, adversely impacting, or denying equitable access to the benefits provided through this award on the basis of any factor not expressly stated in the award. This includes, for example, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, disability, age, genetic information, marital status, parental status, political affiliation, or veteran's status. Nothing in this provision is intended to limit the ability of the recipient to target activities toward the assistance needs of certain populations as defined in the award.

(b) The recipient must insert this provision, including this paragraph, in all subawards and contracts under this award.

[End of Provision]

**REQUIRED AS APPLICABLE STANDARD PROVISIONS FOR U.S.
NONGOVERNMENTAL ORGANIZATIONS**

**RAA2. NEGOTIATED INDIRECT COST RATES - PROVISIONAL (Nonprofit)
(DECEMBER 2014)**

***APPLICABILITY:** This provision is applicable to any nonprofit organizations whose indirect cost rates under this award are on a provisional basis.*

NEGOTIATED INDIRECT COST RATES - PROVISIONAL (Nonprofit) (DECEMBER 2014)

- a. Provisional indirect cost rates must be established for each of the recipient's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs must be reimbursed at the rates, on the bases, and for the periods shown in the schedule of the award
- b. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year. Except as otherwise provided in §200.414 Indirect (F&A) costs paragraph (e) of this Part, a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made

and, in no event, later than three months after the effective date of the Federal award.

If USAID is the cognizant agency or no cognizant agency has been designated, the recipient must submit four copies of the audit report, along with the proposed final indirect cost rates and supporting cost data, to the Overhead, Special Costs, and Closeout Branch, Office of Acquisition and Assistance, USAID, Washington, DC 20523-7802. The proposed rates must be based on the recipient's actual cost experience during that fiscal year. Negotiations of final indirect cost rates must begin soon after receipt of the recipient's proposal. No proposal to establish indirect (F&A) cost rates will be acceptable unless such costs have been certified by the non-profit organization using the Certificate of Indirect (F&A) Costs set forth in 2 CFR 200, Appendix IV, Section j. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

- c. Allowability of costs and acceptability of cost allocation methods must be determined in accordance with the applicable cost principles.
- d. The results of each negotiation must be set forth in a written indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and must specify (1) the agreed upon final rates, (2) the bases to which the rates apply, and (3) the fiscal year for which the rates apply. The agreement must not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
- e. Pending establishment of final indirect cost rate(s) for any fiscal year, the recipient must be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Agreement Officer, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year.
- f. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

[END OF PROVISION]

RAA4.EXCHANGE VISITORS AND PARTICIPANT TRAINING (JUNE 2012)

APPLICABILITY: *This provision applies to awards that contain funding for any exchange visitor activities or participant training, as defined in [ADS 252](#) and [253](#), respectively, conducted or paid for by the recipient with USAID funds under this award.*

EXCHANGE VISITORS AND PARTICIPANT TRAINING (JUNE 2012)

For any Exchange Visitor, Participant Training or Invitational Travel activities, the recipient must comply with this provision.

a. **Definitions:**

- (1) An **Exchange Visitor** is any host-country or third-country national traveling to the U.S., for any purpose, including Participant Training and Invitational Travel, funded by USAID in whole or in part, directly or indirectly.
- (2) A **Participant** is a host-country or third-country national sponsored by USAID for a Participant Training activity taking place in the U.S., a third country, or in the host country.
- (3) **Participant Training** is a learning activity conducted within the U.S., a third country, or in the host country for the purpose of furthering USAID development objectives. A learning activity takes place in a setting in which an individual (the Participant) interacts with a knowledgeable professional, predominantly for the purpose of acquiring knowledge or skills for the professional or technical enhancement of the individual. Learning activities may be formally structured, such as an academic program or a technical course, or they may be more informal, such as an observational study tour.
- (4) **Invitational Travel** is a type of travel that USAID funds for non-U.S. Government employees. This type of travel may be approved for both U.S. and foreign citizens who are not employed by the U.S. Government (USG), not receiving any type of compensation from the USG for such travel, and only when it is determined that the functions to be performed are essential to the interests of USAID.

b. **Program Monitoring and Data Reporting:** The recipient must monitor Exchange Visitors' and Participants' progress during their program and ensure that problems are identified and resolved quickly.

- (1) For U.S.-based activities, the recipient must use USAID's official Exchange Visitor and Participant Training information system, currently called "Training Results and Information Network – TraiNet" (see <http://trainethelp.usaid.gov/>), to report and manage Exchange Visitor and Participant Training data. The recipient must also use the USAID Visa Compliance System – VCS (see <http://trainethelp.usaid.gov/>) to transfer required data for USAID Exchange Visitors to the Department of Homeland Security's Student and Exchange Visitor Information System (SEVIS).

- (2) For all third-country activities, and for host-country activities of two consecutive days or 16 contact hours or more in duration, the recipient must use USAID's official Exchange Visitor and Participant Training information system, currently called "Training Results and Information Network – TrainNet" (see <http://trainethelp.usaid.gov/>), to report and manage Participant Training data.

c. Health and Accident Insurance:

- (1) For Exchange Visitors traveling to the United States, the recipient must enroll Exchange Visitors in health and accident insurance coverage that meets or exceeds Department of State and USAID minimum coverage requirements as set forth in 22 CFR 62.14 and ADS 253.3.6.2. The requirements may be obtained from the Agreement Officer's Representative.
- (2) For Participants traveling to a third country, the recipient must obtain health and accident insurance coverage for all Participants.
- (3) For Participants traveling within the host country, the recipient must determine whether specific in-country participant training activities subject them to any risk of health and accident liability for medical costs. Participants may incur, and if so, take appropriate steps according to the local situation, including obtaining health and accident insurance coverage for Participants.

d. Immigration Requirements:

- (1) For Exchange Visitors traveling to the United States, the recipient must ensure that all USAID-sponsored Exchange Visitors obtain, use, and comply with the terms of the J-1 visa, issued in conjunction with a USAID-issued Certificate of Eligibility for J-1 Visa Status (DS-2019).
- (2) For Participants traveling to a third country or within the host country, the recipient must ensure that all Participants obtain, use, and comply with the terms of all applicable immigration, visa and other similar requirements.

e. Language Proficiency: The recipient must verify language proficiency. Exchange Visitors must possess sufficient English language proficiency to participate in a U.S.-based activity. Participants of third-country or host-country training must be proficient in the language of training at a sufficient level for participation, unless an interpreter has been arranged. Language competency can be verified through a variety of means including proficiency assessments of interviews, publications, presentations, education conducted in English, and formal testing.

f. Pre-departure Orientation: The recipient must conduct pre-departure orientation for U.S-bound Exchange Visitors and Participants of third-country training programs. Pre-

departure orientation covers: program objectives; administrative and policy review; cultural aspects; and training/learning methods

- g. **Conditions of Sponsorship:** The recipient must ensure that all Exchange Visitors read and sign the Conditions of Sponsorship for U.S.-Based Activities form (AID 1381-6). The recipient must also ensure that all Participants of long-term (six months or longer) third-country training read and sign the form Conditions of Sponsorship for Third-Country Training form (AID 1381-7). The recipient must report to the Agreement Officer any known violations by Exchange Visitors of visa or other immigration requirements or conditions.
- h. **Exchange Visitor Security Risk and Fraud Inquiry:** Each USAID Mission has an established process for conducting a Security Risk and Fraud Inquiry (SRFI) for Exchange Visitors. The recipient must be prepared to assist Missions in conducting the SRFI, if requested. However, the recipient's role is contributive, and the Mission is ultimately responsible for conducting the SRFI.
- i. **Fly America:** To the extent that participants travel by international air travel, the recipient must comply with the Standard Provision, "International Air Travel and Air Transportation of Property."
- j. **Use of Minority Serving Institutions:** For U.S.-based Participant Training, the recipient must, to the maximum extent possible, maintain their use of Historically Black Colleges and Universities (HBCUs) and other Minority Serving Institutions (MSIs), including Hispanic Serving Institutions and Tribal Colleges and Universities, as training or education providers.

[END OF PROVISION]

RAA8. TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (NOVEMBER 1985)

APPLICABILITY: *This provision is applicable to property titled in the name of the cooperating country or such public or private agency as the cooperating country government may designate.*

TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE) (NOVEMBER 1985)

- a. Except as modified by the schedule of this grant, 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 country 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. 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 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 grant. 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.
- c. The recipient must prepare and establish a program, to be approved by the appropriate USAID Mission, 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 following requirements:
 - (1) Property Control: The property control system must include but not be limited to the following:
 - (i) Identification of each item of cooperating country 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 (insert name of cooperating country)."
 - (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 cooperating country property as a result of modification or otherwise.
 - (v) A record of disposition of each item acquired or furnished under the award.
 - (vi) Date of order and receipt of any item acquired or furnished under the award.
 - (vii) 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.

- (2) **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) Preventive 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 cooperating country property must be submitted annually concurrently with the annual report.

d. **Risk of Loss:**

- (1) The recipient is not liable for any loss of or damage to the cooperating country property, or for expenses incidental to such loss or damage except that the recipient is 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 cooperating country 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 b. 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; or
 - (v) Which results from a risk which is in fact covered by insurance or for which the grantee is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (vi) Provided, that, if more than one of the above exceptions is applicable in any case, the recipient's liability under any one exception is not 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 cooperating country property, except to the extent that USAID 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 cooperating country property, the recipient must notify the Agreement Officer thereof, must take all reasonable steps to protect the cooperating country property from further damage, separate the damaged and undamaged cooperating country property, put all the cooperating country property in the best possible order, and furnish to the Agreement Officer a statement of:
- (i) The lost, destroyed, or damaged cooperating country property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the cooperating

country 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 cooperating country 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 cooperating country property, it must use the proceeds to repair, renovate or replace the cooperating country property involved, or must credit such proceeds against the cost of the work covered by the award, or must otherwise reimburse USAID, as directed by the Agreement Officer. The recipient must do nothing to prejudice USAID'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 USAID 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: USAID, and any persons designated by it, must at all reasonable times have access to the premises wherein any cooperating country property is located, for the purpose of inspecting the cooperating country property.
 - f. Final Accounting and Disposition of Cooperating Country Property: 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 to the Agreement Officer 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.
 - g. Communications: All communications issued pursuant to this provision must be in writing.

[END OF PROVISION]

RAA10. 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.
 - (1) 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.
 - (2) 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.
- c.
 - (1) 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 United States Government 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.
 - (2) 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]

RAA11. 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 subawards and contracts entered into hereunder.

[END OF PROVISION]

RAA12. REPORTING HOST GOVERNMENT TAXES (DECEMBER 2014)

APPLICABILITY: *This provision is applicable to all USAID agreements that obligate or subobligate FY 2003 or later funds except for 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. Please insert address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate under section (b) of this provision.*

REPORTING HOST GOVERNMENT TAXES (JUNE 2012)

- a. By April 16 of each year, the recipient must submit a report containing:
 - (1) Contractor/recipient name.
 - (2) Contact name with phone, fax and e-mail.
 - (3) Agreement number(s).
 - (4) The total amount of value-added taxes and customs duties (but not sales taxes) assessed by the host government (or any entity thereof) on purchases in excess of

\$500 per transaction of supplies, materials, goods or equipment, during the 12 months ending on the preceding September 30, using funds provided under this contract/agreement.

- (5) Any reimbursements received by April 1 of the current year on value-added taxes and customs duties reported in (iv).
 - (6) Reports are required even if the recipient did not pay any taxes or receive any reimbursements during the reporting period.
 - (7) Cumulative reports may be provided if the recipient is implementing more than one program in a foreign country.
- b. Submit the reports to: [insert address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate, may include an optional "with a copy to"].
 - c. Host government taxes are not allowable where the Agreement Officer provides the necessary means to the recipient to obtain an exemption or refund of such taxes, and the recipient fails to take reasonable steps to obtain such exemption or refund. Otherwise, taxes are allowable in accordance with the Standard Provision, "Allowable Costs," and must be reported as required in this provision.
 - d. The recipient must include this reporting requirement in all applicable subawards and contracts.

[END OF PROVISION]

RAA13. FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES (JUNE 2012)

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

- *Development Assistance, including assistance for sub-Saharan Africa,*
- *Global Health Programs, and*
- *Micro and Small Enterprise Development Program Account.*

Further information found in the Mandatory Reference for ADS 303, "Guidance on Funding Foreign Government Delegations to International Conferences,"

(<http://www.usaid.gov/ads/policy/300/350maa>).

**FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES
(JUNE 2012)**

- a. U.S. Government funds under this award must 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 multilateral organization, as defined below, unless approved by the Agreement Officer in writing.

b. Definitions:

- (1) A foreign government delegation is appointed by the national government (including ministries and agencies but excluding local, state and provincial entities) to act on behalf of the appointing authority at the international conference. A conference participant is a delegate for the purposes of this provision, only when there is an appointment or designation that the individual is authorized to officially represent the government or agency. A delegate may be a private citizen.
- (2) An international conference is a meeting where there is an agenda, an organizational structure, and delegations from countries other than the conference location, in which country delegations participate through discussion, votes, etc.
- (3) A multilateral organization is an organization established by international agreement and whose governing body is composed principally of foreign governments or other multilateral organizations.

[END OF PROVISION]

**RAA14. CONSCIENCE CLAUSE IMPLEMENTATION (ASSISTANCE)
(FEBRUARY 2012)**

***APPLICABILITY:** This provision must be included in any new assistance award or amendment to an existing award (if not already incorporated into the agreement) obligating FY04 or later funds made available for HIV/AIDS activities, regardless of the program account. Further guidance is found in AAPD 14-04, Section 2.D.*

CONSCIENCE CLAUSE IMPLEMENTATION (ASSISTANCE) (FEBRUARY 2012)

An organization, including a faith-based organization, that is otherwise eligible to receive funds under this agreement for HIV/AIDS prevention, treatment, or care—

- (a) Shall not be required, as a condition of receiving such assistance—
 - (1) To endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or

- (2) To endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection; and
- (b) Shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements for refusing to meet any requirement described in paragraph (a) above.

[END OF PROVISION]

**RAA17. 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 U.S. Government 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.
- 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]

**RAA22. UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT
(July 2015)**

***APPLICABILITY:** This provision is required in accordance with 2 CFR 25, Universal Identifier And System of Award Management. Agreement Officers (AOs) must include this provision in all assistance solicitations and all awards, unless the AO exempts an organization*

from compliance with the provision under one of the following exceptions, from paragraph d. below:

Exceptions. The requirements of this provision to obtain a Data Universal Numbering System (DUNS) number and maintain a current registration in the System of Award Management (SAM) do not apply, at the prime award or subaward level, to:

(1) Awards to individuals

(2) Awards less than \$25,000 to foreign recipients to be performed outside the United States (based on a USAID determination)

(3) Awards where the AO determines, in writing, that these requirements would cause personal safety concerns.

UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT (July 2015)

- a. Requirement for System of Award Management (SAM).** Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently, if required by changes in your information or another award term.
- b. Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make subawards under this award, you:
 - (1) Must notify potential subrecipients that no entity (see definition in paragraph c. of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
 - (2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.
- c. Definitions.** For purposes of this award term:
 - (1) System of Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at www.sam.gov).
 - (2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone

(currently 866-705-5711) or the Internet (currently at fedgov.dnb.com/webform).

- (3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR 25, subpart C:
 - (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization; and
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (4) Subaward:
 - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart F Audit Requirements).
 - (iii) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- (5) Subrecipient means an entity that:
 - (i) Receives a subaward from you under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

ADDENDUM (JUNE 2012):

- a. **Exceptions.** The requirements of this provision to obtain a Data Universal Numbering System (DUNS) number and maintain a current registration in the System of Award Management (SAM) do not apply, at the prime award or subaward level, to:

- (1) Awards to individuals
- (2) Awards less than \$25,000 to foreign recipients to be performed outside the United States (based on a USAID determination)
- (3) Awards where the Agreement Officer determines, in writing, that these requirements would cause personal safety concerns.

b. This provision does not need to be included in subawards.

[END OF PROVISION]

**RAA23. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION
(DECEMBER 2014)**

APPLICABILITY: *This provision is required in accordance with 2 CFR 170, Award Term for Reporting Subawards and Executive Compensation. AOs must include this provision in all assistance solicitations and all awards expected to exceed \$25,000, unless an exemption applies under paragraph d. of the provision or the exemptions listed below in this applicability statement. If the AO determines that an exemption applies, the AO must provide guidance to the recipient on reporting with generic information.*

Exemptions.

- (1) *The requirements to report under this provision do not apply to:*
 - (i) *Awards to individuals*
 - (ii) *Awards less than \$25,000*
- (2) *When the AO determines, in writing, that these requirements would cause personal safety concerns, reporting under this provision can be accomplished using generic information.*

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (DECEMBER 2014)

a. Reporting of first-tier subawards.

- (1) **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

- (2) Where and when to report.
 - (i) You must report each obligating action described in paragraph a.(1) of this award term to www.fsrs.gov.
 - (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- (3) What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

- (1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
 - (i) The total Federal funding authorized to date under this award is \$25,000 or more;
 - (ii) In the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report executive total compensation

described in paragraph b.(1) of this award term:

- (i) As part of your registration profile at www.sam.gov.
- (ii) By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

- (1) Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - (i) In the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
- (2) Where and when to report. You must report subrecipient executive total compensation described in paragraph c.(1) of this award term:
 - (i) To the recipient.
 - (ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (for example, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- (1) Subawards, and
- (2) The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions.

For purposes of this award term:

- (1) Entity means all of the following, as defined in 2 CFR 25:
 - (i) A governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization; and
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (2) Executive means officers, managing partners, or any other employees in management positions.
- (3) Subaward:
 - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart F Audit Requirements).
 - (iii) A subaward may be provided through any legal agreement, including an

agreement that you or a subrecipient considers a contract.

- (4) Subrecipient means an entity that:
 - (i) Receives a subaward from you (the recipient) under this award; and
 - (ii) Is accountable to you for the use of the Federal funds provided by the subaward.
- (5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - (i) Salary and bonus.
 - (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - (iii) Earnings for services under nonequity incentive plans. This does not include group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (v) Above-market earnings on deferred compensation which is not tax-qualified.
 - (vi) Other compensation, if the aggregate value of all such other compensation (for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

[END OF PROVISION]

RAA26. CONTRACT PROVISION FOR DBA INSURANCE UNDER RECIPIENT PROCUREMENTS (DECEMBER 2014)

APPLICABILITY: *The following provision is required when the recipient is expected to*

procure services to be performed overseas.

**DEFENSE BASE ACT (DBA) WORKERS' COMPENSATION INSURANCE FOR
PROCUREMENT CONTRACT (DECEMBER 2014)**

All contracts made by the recipient under this award for services to be performed overseas must contain the following provision, as applicable.

Workers' Compensation Insurance (Defense Base Act)

(a) The Contractor must--

(1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing Defense Base Act (DBA) insurance pursuant to the terms of the contract between USAID and USAID's DBA insurance carrier unless the Contractor qualifies as a self-insurer under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) as extended by the Defense Base Act (42 U.S.C. 1651, et seq.), or has an approved retrospective rating agreement for DBA. The Contractor must continue to maintain these provisions to provide such Defense Base Act benefits until contract performance is completed.

(2) If USAID or the Contractor has secured a waiver of DBA coverage in accordance with AIDAR 728.305-70(a) for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to USAID-financed contracts performed in countries listed in the DEFENSE BASE ACT (DBA) WAIVER LIST.

(3) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 930(a), 20 CFR 702.201 to 702.203).

(4) Pay all compensation due for disability or death within the timeframes required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914, 20 CFR 702.231 and 703.232).

(5) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 907, 20 CFR 702.402 and 702.419).

(6) If controverting the right to compensation, submit Form LS-207 (Notice of Controversion of

Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(d), 20 CFR 702.251).

(7) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c), 20 CFR 702.234).

(8) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914 (c) and (g), 20 CFR 702.234 and 702.235).

(9) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.

For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhwc/lsdba.htm>.

The Contractor must insert the substance of this clause including this paragraph (c), in all subcontracts to which the Defense Base Act applies.

[END OF PROVISION]

RAA27. AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (April 2016)

APPLICABILITY: *This provision must be incorporated into awards if the total federal share of the award may include more than \$500,000 over the period of performance.*

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of [Public Law 110-417](#), as amended ([41 U.S.C. 2313](#)).

As required by section 3010 of [Public Law 111-212](#), all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[END OF PROVISION]

END OF ATTACHMENT D

