

SUBAGREEMENT

BETWEEN

THE UNITED STATES ENERGY ASSOCIATION, INC.

AND

XXXXXXXXXX

SUBAGREEMENT NO. 7200AA22CA00028-2024-XXXXX

This Subagreement (“Subagreement”) is entered into on the xx day of xxx, 2024, between the United States Energy Association, Inc. (“USEA”), located at 1300 Pennsylvania Avenue, NW, Washington, DC 20004, and xxxxx (“Subrecipient”) located at xxxxx. Xxxx’s Unique Entity Identifier is xxxxxxxxxxxx. USEA and the Subrecipient may be referred to herein in their individual capacities as a “Party” and collectively as the “Parties”.

WHEREAS, the Subrecipient has demonstrated to USEA's satisfaction its predominant capacity to perform the services for which it is being engaged; and USEA desires to engage the Subrecipient to perform the services described and set forth herein; and

WHEREAS, the Subrecipient wishes to accept engagement by USEA on the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the Parties hereto mutually agree as follows:

ARTICLE 1 -- SCOPE OF WORK; PERFORMANCE STANDARD

- 1.1 Scope of Work. The Scope of Work is attached to this agreement as “**Annex 1: Scope of Work**”
- 1.2 Standard for Performance. Subrecipient warrants that the Services to be provided under this Subagreement shall be performed in a professional manner conforming to generally accepted industry standards and practices.

ARTICLE 2 -- PERIOD OF PERFORMANCE

The period of performance of this Subagreement shall commence on xxxx xx, 2024 and continue unless terminated earlier pursuant to its terms until xxxx xx, 2024. The Subagreement shall not extend beyond this expiration date without prior written approval of the Parties.

ARTICLE 3 -- BUDGET, CONSIDERATION AND PAYMENT

Fixed Price Agreement for labor-

- 3.1 Compensation: The services to be provided under this Subagreement are for a firm fixed price for labor in the amount of **\$xx,xxx.xx**. This price includes compensation for all time related to this agreement. Payment is contingent upon satisfactory acceptance of the deliverables required by the payment schedule in **Annex 1: Scope of Work** and all previous deliverables required by the payment schedule. Additionally, USEA will provide staff support to the Subrecipient to coordinate program activities (meeting organization, agenda drafting, etc.), airfare, lodging, meals, and incidental expenses upon approval by USEA and in accordance with USAID regulations necessary to implement the Statements of Work in Annex One.
- 3.2 Invoicing. The Subrecipient shall invoice USEA for costs and expenses incurred. USEA shall make payment to within 30 days of USEA’s receipt of payment from the United States Agency for International Development and upon receipt of a proper invoice. The term “proper invoice” shall mean a numbered and dated original invoice containing the USEA subagreement number. Each invoice must be accompanied by the deliverable corresponding to the invoicing period as outlined in Annex 1: Scope of Work.
- 3.3 Invoices and any required submissions shall be submitted to the following address:

United States Energy Association
1300 Pennsylvania Avenue, NW
Suite 550 Mail Box 142
Washington, DC 20004-3022
Attn: Sharon Lucas
- 3.4 Audits of Non-Profit Subrecipient. This Section 3.5 applies to non-profit Subrecipients

only. If the Subrecipient expends \$750,000 or more in a year in Federal awards, it will undergo, at Subrecipient's cost, an OMB compliance audit, in accordance with the provisions contained in OMB 2 CFR Chapter I and Chapter II, Part 200 or such other audit as may be required by any governmental authority, at its own expense. Annually, the Subrecipient will submit to USEA a copy of its audit and a copy of its annual financial statements within six months after the fiscal year end.

3.5 Records, Access to Records and Audits.

(a) The Subrecipient (whether for-profit and non-profit) shall keep accurate records and books showing items and costs billed under this Subagreement, as well as cost data supporting the proposed costs.

(b) The Subrecipient shall preserve and make available, records and books of accounts for a period of three years from the date of final payment under this Subagreement; provided, however, that if this Subagreement or any task is terminated as provided in Article 10 herein, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of the final settlement; and provided further that records and books of accounts which relate to litigation or any settlement of claims arising out of the performance of this Subagreement, or costs and expenses of this Subagreement of which exception has been taken by USEA, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(c) Upon reasonable notice, USEA reserves the right to audit the Subrecipient's records pertaining to this Subagreement. This right includes an examination of the Subrecipient's books, records, documents and other evidence and accounting procedures and practices relating to this Subagreement.

(d) Annually, the Subrecipient will submit to USEA a copy of any such audit and a copy of its annual financial statements within six months after the fiscal year end.

3.6 Disallowance of Costs Clause - Direct or Indirect. If for any reason USEA shall be required to repay or refund the United States Agency for International Development any amount, or if any costs are subsequently disallowed, of any amount billed to USEA by the Subrecipient and/or paid by USEA to the Subrecipient, the Subrecipient shall, upon the written request of USEA, either retract the invoice if unpaid and/or return to USEA any amount so specified. The Subrecipient shall nonetheless retain all of its rights and defenses with respect to the amount refunded.

ARTICLE 4 -- TYPE OF SUBAGREEMENT

This is a firm fixed price subagreement for labor. Refer to Article 3.1 for specific details on compensation.

ARTICLE 5 -- REPORTING

The Subrecipient shall submit the following reports to USEA: All reports are described in detail in **Annex 1: Scope of Work**.

ARTICLE 6 -- USEA SUBSTANTIAL INVOLVEMENT

Subrecipient acknowledges and agrees that USEA will be involved in the activities under this Subagreement in the following ways:

Please see article 8.

ARTICLE 7 -- TRAVEL

- 7.1 All travel incurred in execution of this project must comply with the relevant U.S. Government travel policy, procedures, regulations and restrictions. Further, it is the responsibility of the Subrecipient to be aware of and comply with such regulations and to have internal travel policies or directives as may be required.
- 7.2 USEA Approval. USEA must give prior written approval for all travel by the Subrecipient.

ARTICLE 8 -- TECHNICAL DIRECTION

- 8.1 USEA Technical Representative.
- (a) The Subrecipient shall report to and receive technical direction only from the USEA Technical Representative or his designee. The USEA Technical Representative or his designee shall monitor the Subrecipient's performance with regard to compliance with requirements of the **Annex 1: Scope of Work**.
- (b) Technical direction is defined as a directive to the Subrecipient within the requirements of **Annex 1: Scope of Work**. Technical direction shall not impose tasks or requirements different from or in addition to those tasks and requirements stated in Article 1 of this Subagreement.
- 8.2 The USEA Technical Representative for this Subagreement is William L. Polen, Senior Director, United States Energy Association.

ARTICLE 9 -- AUTHORITY FOR SUBAGREEMENT CHANGES

- 9.1 The USEA Contracts Administrator is the only person authorized to approve changes in any of the requirements under this Subagreement. Notwithstanding any provisions contained elsewhere in this Subagreement, the said authority remains solely with the

USEA Contracts Administrator. Verbal statements of any kind regarding changes in this Subagreement shall not be binding and shall not affect the terms of this Subagreement. In the event the Subrecipient effects any such change at the direction of any such person other than the USEA Contracts Administrator, the change will be considered to have been made without authority and no adjustment will be made in the Subagreement to cover any increase in cost incurred as a result thereof, provided however, that the USEA Contracts Administrator may ratify any such change at his/her discretion.

- 9.2 Upon receiving any correspondence in connection with this Subagreement from any source other than the USEA Technical Representative or his/her designee, containing instructions such as corrections, clarifications, or directions which in the opinion of the Subrecipient represent an impact on cost, schedule and/or performance implemented, the Subrecipient shall provide notification of the same to the USEA Contracts Administrator in writing within three working days, with an information copy to the USEA Technical Representative. The Subrecipient shall take no further action with regard to the corrections, clarifications or directions pending resolution of this matter by the USEA Contracts Administrator.
- 9.3 The USEA Contracts Administrator of this Subagreement is Brian Kearns, Chief Operating Officer.

ARTICLE 10 -- TERMINATION OF SUBAGREEMENT

- 10.1 Termination by the Parties. This Subagreement may be terminated at any time by USEA or by the Subrecipient upon the giving of thirty (30) days' notice in writing to the other Party. Upon termination, USEA shall not be liable for payment of additional services or expenses. USEA shall reimburse the Subrecipient for services provided and for any expenses incurred up to, the date thirty (30) days after the notification of termination is received by the Subrecipient or the actual date of termination, whichever occurs at a later date.

In the event this Subagreement is terminated by USEA while an officer, agent or employee of the Subrecipient is traveling for or on behalf of USEA, the Subrecipient shall be compensated in accordance with Article 7 for expenses incurred in returning to his/her residence.

- 10.2 Termination for Convenience of the Government. USEA, by written notice, may terminate this Subagreement, in whole or in part, when and if the Government terminates the (insert Federal agency) Agreement for convenience. The United States Agency for International Development Cooperative Agreement" shall be that agreement between USEA and United State Agency for International Development pursuant to which the Subrecipient is being engaged by USEA ("Cooperative Agreement"). If this Cooperative Agreement is so terminated, the rights, duties and obligations of the Parties hereto shall be in accordance with this Subagreement, provided however, that notwithstanding the above, any such termination shall only be upon 30 days after Subrecipient's receipt of such written notice, and provided further that the Subrecipient shall not be liable to

perform any service, or incur any expenses, after the 30-day notification period. USEA shall reimburse the Subrecipient for services provided and for any expenses contracted for prior to, and/or incurred up to, the date of 30 days after the notification of termination is received by the Subrecipient or the actual date of termination, whichever occurs later.

- 10.3 Force Majeure. If either Party shall be prevented from performing any of its obligations hereunder by events of Force Majeure, such as war, fire, flood, earthquake, civil commotion, governmental act or refusal to act, strikes, inclement weather or any other event beyond the reasonable control of such Party, the time period for performance of such obligations shall be extended by a period equal to the delay caused by such event, and the parties hereto shall conduct friendly negotiations as soon as possible to seek a mutually satisfactory resolution of the problems caused by such events.

ARTICLE 11 -- RESOLUTION OF CONFLICTS

- 11.1 Conflicts. Conflicts between this Subagreement and any of the Attachments shall be resolved by applying the following descending order of precedence:

- X Subagreement – including Applicable Terms and Conditions
- X Annex 1: Scope of Work

- 11.2 Initial Resolution by Parties. Any claim, controversy or dispute concerning questions of fact or law arising out of or relating to this Subagreement, or to the performance by either Party hereunder, or to the threatened, alleged, or actual breach thereof by either Party, which is not disposed of by mutual agreement within a period of 30 days after one Party has provided written notice of the dispute to the other, shall be subject to review by the executive directors of USEA and the Subrecipient. If this review process is not successful within a reasonable period of time (or at any time at the request of the Subrecipient), then USEA shall designate, in its discretion, that portion of the dispute to be considered a “United States Agency for International Development Agreement Dispute” and that portion to be considered a” Subagreement Dispute” and USEA shall inform the Subrecipient in writing of such designation.

- 11.3 Cooperative Agreement Dispute. That portion of the dispute designated a Cooperative Agreement Dispute shall be construed and interpreted according to the Federal law of U.S. Government Contracts as enunciated and applied by Federal Statutes and Regulations and by Federal Judicial Bodies, Boards of Contract Appeals and other Judicial Agencies of the Federal Government.

If a decision is issued by the Contracting Officer under the USAID Cooperative Agreement Disputes “Disputes” clause and the decision relates to this Subagreement, said decision, if binding upon the USEA under the Cooperative Agreement, shall also be binding upon the USEA and the Subrecipient with respect to this Subagreement. If the Subrecipient is affected by the Contracting Officer’s decision, and the USEA elects not to appeal such decision under the “Disputes” clause of the Cooperative Agreement, USEA,

at its discretion, may permit the Subrecipient to appeal the Contracting Officer's decision in the name of the USEA. The USEA agrees not to withhold unreasonably from the Subrecipient, the right to appeal the Contracting Officer's decision in the name of the USEA.

As to any claim by the Subrecipient, arising from issues pertaining to the U.S. Government, the Subrecipient shall submit with such claim a certification to the USEA, and at the request of the USEA, to the U.S. Government, certifying that such claim is made in good faith, that the supporting data and documentation are accurate, current and complete, to the best of the Subrecipient's knowledge and belief and that the amount requested accurately reflects the adjustment or other relief for which the Subrecipient believes the U.S. Government is liable to the USEA. The Subrecipient shall indemnify and hold USEA harmless for any misrepresentation of fact, fraud, or breach of such certification.

The Subrecipient agrees to comply with any and all commercially reasonable requests by USEA or the U.S. Government to perform an audit of the claim or Subagreement costs, and further agrees to promptly provide all documentation reasonably requested by the USEA or U.S. Government to support claims made and costs incurred.

The Subrecipient agrees to furnish at its own expense all documents, statements, witnesses and other information reasonably required by USEA or U.S. Government, and to pay for all costs incurred in connection with the submittal and prosecution of the Subrecipient's claims.

11.4 Subagreement Disputes. Subagreement disputes shall be resolved in accordance with this section.

(a) Any dispute designated by USEA as a Subagreement Dispute (the "Subagreement Dispute") and any dispute originally designated a Cooperative Agreement but later converted to a Subagreement Dispute shall be submitted to binding arbitration. The claim, controversy or dispute shall be arbitrated pursuant to the Commercial Rules of the American Arbitration Association, before three arbitrators, one to be selected by each Party and the third to be selected by the other two selected arbitrators.

(b) Upon any request of either Party, the arbitrators may authorize discovery of the types permitted by the discovery rules of the Federal Rules of Civil Procedure and identify the factors to be considered in determining which types of discovery are appropriate for a particular proceeding, the arbitrators should consider the parties' desire to resolve the matter as expeditiously and economically as is practical.

(c) Any such arbitration shall be held in the Washington, D.C. Metropolitan Area. The decision of the arbitrators shall be final and conclusive upon the parties. Payment of fees and costs may be awarded at the discretion of the arbitrators. Judgment upon an award rendered by the arbitrators may be entered in any court of competent jurisdiction.

11.5 Exclusive Remedies. Except as otherwise specifically provided in this Article 11, neither Party shall institute any action or proceeding against the other Party in any court with respect to any dispute which is or could be the subject of a claim or proceeding pursuant to this Article 11.

11.6 Continued Performance. Subject to continued compensation pursuant to the terms of this Subagreement, the Subrecipient shall proceed diligently with performance of this Subagreement, pending final resolution of any request for relief, claim, appeal, or action arising under this Subagreement or relating to the Subagreement, and comply with any decision of the USEA.

ARTICLE 12 -- CONFLICT OF INTEREST

The Subrecipient hereby represents and warrants that Subrecipient has no conflict of interest with any other party and USEA. The Subrecipient shall notify USEA if a conflict of interest or possible appearance of a conflict of interest arises in the future. The Subrecipient also warrants that its work under this Subagreement in no way violates the Ethics in Government Act of 1978, Pub. L. No. 95-521, as amended.

ARTICLE 13 - NOTICES

13.1 All notices to the USEA under this Subagreement shall be sent in duplicate to the following address:

United States Energy Association
1300 Pennsylvania Avenue, NW
Suite 550 Mail Box 142
Washington, DC 20004-3022

13.2 All notices sent to the Subrecipient under this Subagreement shall be sent in writing to:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

ARTICLE 14 -- INSPECTION AND ACCEPTANCE

USEA reserves the right to review services performed pursuant to this Subagreement. The Subrecipient is required to submit all deliverables under the Subagreement as specified in **Annex 1: Scope of Work**. The USEA Technical Representative is authorized to accept the Subrecipient's deliverables under this Subagreement.

ARTICLE 15 -- TITLE TO INFORMATION AND EQUIPMENT

The Subrecipient grants to the U.S. Agency for International Development (or other federal agency as applicable) and the United States Energy Association, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly all data produced under this Agreement.

ARTICLE 16 -- SAFETY AND SECURITY REGULATIONS

The Subrecipient shall comply with all applicable U.S. Government safety and security regulations.

ARTICLE 17 -- INVENTIONS, PATENTS, TRADEMARKS AND COPYRIGHTS

If the Contractor retains ownership of any subject invention produced under this agreement, the U.S. Agency for International Development (or other federal agency as applicable) shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world

ARTICLE 18 -- PROPRIETARY RIGHTS: CONFIDENTIAL INFORMATION

(a) Subrecipient agrees that the work products from the services provided to USEA under this Subagreement shall be owned by USEA. Nothing contained in this Article shall be construed as prohibiting Subrecipient from utilizing in any manner, knowledge and experience of a general nature acquired in the performance of services for USEA. All work performed under this Subagreement is the sole property of USEA. Any and all documents produced by Subrecipient shall so indicate and no copies may be distributed without written permission of the by the USEA Technical Representative or the Executive Director of USEA.

(b) "Confidential information" includes all information identified USEA as proprietary and confidential, which confidential information shall remain the sole property of USEA unless the ownership of such confidential information is otherwise expressly set forth in this Subagreement. Items will not be considered confidential information if: (a) available to public other than by a breach of an agreement by the recipient; (b) rightfully received from a third party not in breach of any obligation of any confidentiality; (c) independently developed by one Party without access to the confidential information of the other; or (d) rightly known to the recipient at the time of disclosure as verified by its written records.

(c) Subrecipient agrees that it shall not use for any purpose or disclose to any third Party any confidential information of USEA without the express written consent of USEA. Subrecipient agrees to safeguard the confidential information of USEA against use or disclosure other than as authorized by or pursuant to this Subagreement through measures, and exercising a degree of care, which are at least as protective as those Subrecipient exercises in safeguarding the confidentiality of its own proprietary information, but no less than a reasonable degree of care under the circumstances. Subrecipient shall permit access to the confidential information

USEA only to those individuals (i) who have entered into a written nondisclosure agreement with the other Party on terms equally as restrictive as those set forth herein, and (ii) who require access in performance of their duties to the other Party in connection with the other Party's rights under this Subagreement.

(d) Subrecipient acknowledges that the wrongful use or disclosure of confidential information of USEA may result in irreparable harm for which there will be no adequate remedy at law. In the event of a breach by Subrecipient or any of its officers, employees or agents of its or their obligations under this Section 5, USEA may immediately terminate this Subagreement without liability to the other Party and may bring an appropriate legal action to enjoin such breach, and shall be entitled to recover from the breaching Party reasonable legal fees and cost in addition to other appropriate relief.

ARTICLE 19 – INSURANCE (Applicable to U. S. consultants only)

19.1 If the Subrecipient is an individual, they must provide USEA evidence that they have personal health insurance, comprehensive general liability insurance, emergency health and evacuation insurance (if overseas travel is anticipated), and workers compensation insurance (if applicable). Every Subrecipient must submit a copy of the insurance policies to USEA showing coverage during the period of work of the Subagreement.

19.2 Regarding workers compensation insurance, the Subrecipient must have it if the Subrecipient employs others. Individuals who do not employ others need not provide proof of workers compensation documentation unless this Subagreement plus any other Subagreement or contracts entered into with USEA during the period of work exceed \$30,000 in value.

19.3 If the Subrecipient has workers compensation insurance, the Subrecipient must provide USEA a “Certificate of Liability Insurance”, showing USEA as the “Certificate Holder” and naming the Certificate Holder as an “Additional Insured with regard to the Liability Coverage.” The coverage term should extend for the entire period of work under this Subagreement.

19.4 If there is any change to insurance coverages during the period of work, the Subrecipient must communicate this immediately to USEA and provide copies of the new policies and, for workers compensation insurance, new Certificates of Liability Insurance. Failure to provide this insurance information will be grounds to void this Subagreement.

ARTICLE 20 – INDEMNIFICATION; LIMITATION OF LIABILITY

20.1 The Subrecipient shall indemnify and hold harmless USEA on the same terms as provided in 2 CFR 200.447, hereby incorporated by reference into this Subagreement. For purposes of this Subagreement, replace references to “Government” with “USEA” and replace “USEA” with “The Subrecipient”. In addition, the Subrecipient shall give USEA prompt notice of any claim hereunder.

20.2 Neither Party shall be liable to the other under this subcontract for indirect, consequential, special, speculative, lost profits or punitive damages, even though a Party may have been aware of the possibility of lost profits.

ARTICLE 21 -- DRUG-FREE WORKPLACE

As a recipient of funds from the U.S. Government and in accordance with the provisions of Subsections 5151-5159 of the Drug-Free Workplace Act of 1988 (Pub. 100-690), USEA is prohibited from awarding a Subagreement for services unless the Subrecipient certifies that it will not be involved with illegal drugs in the performance of the said Subagreement. By accepting award of the Subagreement, the Subrecipient agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in Schedules I through V of Section 812 and further defined in regulation 21 CFR Subsection 1308.11-1308.15. Failure of the Subrecipient to comply with the requirements of this paragraph shall constitute a material breach of this Subagreement entitling USEA to suspend payments, terminate the Subagreement, suspend or debar the Subrecipient from Government work in accordance with Subsection 5152 (b) (2) Pub. L 100-690, or take such action as may be accordance with the law of this Subagreement.

ARTICLE 22 – ASSIGNMENT

The Subrecipient shall not assign this Subagreement or any responsibilities under this Subagreement to any other party without prior written consent of the USEA Technical Representative or his designee.

ARTICLE 23 -- APPLICABILITY OF SPECIAL TERMS AND CONDITIONS NON-GOVERNMENTAL ENTITIES

All Special Terms and Conditions shall be applied to the Subrecipient and all of the Subrecipient’s Subrecipients. All mandatory 2 CFR 200 and/or Standard Provisions, where applicable, shall apply.

ARTICLE 24 -- APPLICABLE LAW

This Subagreement shall be governed by the laws of the District of Columbia without regard to its conflict of laws provisions and applicable 2 CFR 200 and/or Standard Provisions.

ARTICLE 25 -- CERTIFICATE OF INDIRECT COSTS

By executing this Subagreement, the undersigned officer of the Subrecipient certifies to the best of his knowledge and belief that:

- (i) All costs included by the Subrecipient to establish billing or final indirect cost rates as are allowable in accordance with the requirements of contracts and agreements to

which they apply and with the cost principles of the U.S. Federal Government applicable to those contracts and agreements;

(ii) The Subrecipient's indirect cost rates do not include any costs which are unallowable under applicable cost principles of the U.S. Federal Government such as (without limitation) advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense or fraud proceedings, and goodwill; and

(iii) All costs include in the Subrecipient's indirect cost rates are properly allocable to the contracts or agreements on the basis of a beneficial or causal relationship between the expenses incurred and the contracts or agreements to which they are allocated in accordance with applicable acquisition regulations.

Additionally, the Subrecipient agrees that, if the Subrecipient is reimbursed for any indirect costs that are later determined to be unallowable, the Subrecipient shall reimburse USEA for the amount of the unallowable costs within 60 days of notification by USEA.

ARTICLE 26 – COMPLIANCE WITH LAWS; FOREIGN CORRUPT PRACTICES ACT

Subrecipient shall comply with all applicable laws and regulations in the performance of this Subagreement. Subrecipient acknowledges their familiarity with the Foreign Corrupt Practices Act and agrees to comply with all provisions. Subrecipient represents and warrants to USEA that it has not been debarred from providing services under contracts with the United States Government and its agencies and instrumentalities.

ARTICLE 27 -- ENTIRE SUBAGREEMENT

This instrument and the Exhibits hereto contain the entire Subagreement between USEA and the Subrecipient on the subject matter hereof and supersede and cancel all previous negotiations, agreements, representations, commitments, and writings in respect thereto, and may not be released, discharged, abandoned, changed or modified in any manner, orally or otherwise, except by an instrument in writing signed by duly authorized officers or representatives of each of the parties hereto.

WITNESS WHEREOF, the parties hereto agree to all the requirements of the Subagreement including the terms and conditions as stated above, and have executed the Subagreement as stated in its entirety as of the day and year set forth below:

U.S. ENERGY ASSOCIATION

XXXXX

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ANNEX ONE: SCOPE OF WORK

ANNEX TWO: APPLICABLE TERMS AND CONDITIONS

MANDATORY STANDARD PROVISIONS FOR U.S. NONGOVERNMENTAL ORGANIZATIONS

M1. Applicability of 2 CFR 200 And 2 CFR 700 (November 2020)

- a. All provisions of 2 CFR 200 and 2 CFR 700 in effect on the date of this award, and all Standard Provisions attached to this agreement are applicable to the recipient and to subrecipients that meet the definition of “Non-Federal Entity” in part 2 CFR 200.1, 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

XX _____

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XX _____

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

2 CFR 200

Burden
Estimate

**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 (May 2020)

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 Transactions with, or the Provision of Resources or Support to, Sanctioned Groups and Individuals” 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 Transactions With, or the Provision of Resources or Support to, Sanctioned Groups and Individuals (May 2020)

a. In carrying out activities under this award, except as authorized by a license issued by the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury, the recipient will not engage in transactions with, or provide resources or support to, any individual or entity that is subject to sanctions administered by OFAC or the United Nations (UN), including any individual or entity that is included on the Specially Designated Nationals and Blocked Persons List maintained by OFAC (<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or on the UN Security Council consolidated list (<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>).

b. Any violation of the above will be grounds for unilateral termination of the agreement by USAID.

c. The Recipient must include this provision 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 brand mark 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 (June 2018)

- a. While working overseas, the recipient's employees who are not citizens of the cooperating country must maintain private status, and may not rely on local U.S. Government offices or facilities for support while under this award.
- b. The sale of personal property or automobiles by the recipient’s non-cooperating country citizen employees and their dependents in the foreign country to which they are assigned, are subject to the same limitations and prohibitions that 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 who are not citizens of the cooperating country 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 who are not citizens of the cooperating country, 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 accordance with the internal control requirements in 2 CFR 200.303, which require the recipient to establish standards of conduct for its employees, the recipient must ensure that all its employees adhere to these standards of conduct in a manner consistent with the standards for United Nations (UN) employees in Section 3 of the UN Secretary-General's Bulletin - Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13).

f. If the recipient determines that the conduct of any recipient employee is not in accordance with the preceding paragraphs, the recipient's Chief of Party must consult with the Agreement Officer and the USAID Mission Director, and the employee involved, and must recommend to the recipient a course of action with regard to such employee.

g. The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen, or the discharge from this award of any individual (U.S., third-country, or cooperating-country national) when, in the discretion of the Ambassador, the interests of the United States so require.

h. If it is determined, under paragraph (f) or (g) 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 third-country point of origin, as appropriate, and replace the employee with an acceptable substitute at no cost to USAID.

i. Any matters relating to subrecipients, including the employees of subrecipients, must be coordinated through the recipient's Chief of Party.

[END OF PROVISION]

M15. Conversion of United States Dollars to Local Currency (November 1985)

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)

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)

- 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)

Submission to the Development Clearinghouse (DEC) is waived. Therefore, the recipient is not required to submit reports based on the waiver approved by the USAID Procurement Executive.

M22. 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**
Construction is not eligible for reimbursement under this award.
- 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)

(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/usaidipnforassistance/>.

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 subagreements) 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 Subagreement 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)

Submission to the Development Data Library (DDL) is waived. Therefore, the recipient is not required to submit reports based on the waiver approved by the USAID Procurement Executive.

M26. Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (May 2017)

(a) Definitions.

“Contract” has the meaning given in 2 CFR Part 200.

“Contractor” means an entity that receives a contract as defined in 2 CFR Part 200.

“Internal confidentiality agreement or statement” means a confidentiality agreement or any other written statement that the recipient requires any of its employees or subrecipients to sign regarding nondisclosure of recipient information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that recipient employees or subrecipients sign at the behest of a Federal agency.

“Subaward” has the meaning given in 2 CFR Part 200.

“Subrecipient” has the meaning given in 2 CFR Part 200.

(b) The recipient must not require its employees, subrecipients, or contractors to sign or comply with internal confidentiality agreements or statements that prohibit or otherwise restrict employees, subrecipients, or contractors from lawfully reporting waste, fraud, or abuse related to the performance of a Federal award to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (for example, the Agency Office of the Inspector General).

(c) The recipient must notify current employees and subrecipients that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this provision, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this provision, are no longer in effect.

(d) The prohibition in paragraph (b) of this provision does not contravene the requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the recipient is not in compliance with the requirements of this provision.

(f) The recipient must include the substance of this provision, including this paragraph (f), in subawards and contracts under such awards.

[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 or 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 §200.339 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]

M30. Conflict of Interest (August 2018)

- a. A conflict of interest in the award, administration, or monitoring of subawards arises when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in, or a tangible personal benefit from, a subrecipient considered for a subaward. The officers, employees, and agents of the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or parties to subawards. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- b. The recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of subawards. The standards must prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a conflict of interest. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
- c. The recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means a situation in which the recipient is unable or appears to be unable to be impartial in conducting a subaward action involving a related organization because of relationships with a parent company, affiliate, or subsidiary organization.
- d. The recipient must have a system or systems in place to identify, address, resolve, and disclose to USAID any conflicts of interest as described in this provision that affect any subaward, regardless of the amount of funding.
- e. The recipient must disclose any conflict of interest, including organizational conflicts of interest, and the recipient's approach for resolving the conflict of interest to the cognizant Agreement Officer for the award within ten (10) calendar days of the discovery of the conflict of interest.
- f. Upon notice from the recipient of a potential conflict of interest and the approach for resolving it, the Agreement Officer will make a determination regarding the effectiveness of the recipient's actions to resolve the conflict of interest within thirty (30) calendar days of receipt of the recipient's notice, unless the Agreement Officer advises the recipient that a longer period is necessary.
- g. The recipient must not request payment from USAID for costs for transactions subject to the conflict of interest pending notification of USAID's determination. The recipient's failure to disclose a conflict of interest may result in cost disallowances by USAID.
- h. For conflicts of interest, including organizational conflicts of interest, involving contracts, the recipient must follow 2 CFR 200.318, general procurement standards.

i. The recipient must insert the substance of this provision, including paragraph (i), in all subawards under this award, at any subaward tier.

[End of Provision]

M31. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (July 2022)

a. In accordance with the cost principles in 2 CFR § 200.471, obligating or expending costs for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR § 200.216 are unallowable. Recipients and subrecipients are prohibited from using award funds, including direct and indirect costs, cost share and program income, for such covered telecommunications and video surveillance services or equipment. This provision implements temporary waivers granted to USAID under Section 889(d)(2) that allow the recipient to use award funds for:

- (1) All costs for covered telecommunications and video surveillance services or equipment incurred through September 30, 2022; and
- (2) Costs for covered telecommunications and video surveillance services or equipment incurred on or after October 1, 2022, through September 30, 2028, only if the recipient has determined that there is no available alternate eligible source for the covered telecommunications and video surveillance services or equipment.

b. After September 30, 2028, in accordance with 2 CFR § 200.471 costs of all covered telecommunications and video surveillance services or equipment as specified in 2 CFR § 200.216 will be unallowable.

c. The Recipient must include this provision in all subawards and contracts issued under this award.

[End of Provision]

[END OF MANDATORY PROVISIONS]

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

RAA1. Negotiated Indirect Cost Rates – Predetermined (November 2020)

N/A

RAA2. Negotiated Indirect Cost Rates – Provisional (Nonprofit) (NOVEMBER 2020)

N/A

RAA3. Negotiated Indirect Cost Rates – Provisional (Profit) (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) and (f), 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. Indirect Cost Rates – De Minimis Rate (November 2020)

N/A

RAA5. Exchange Visitors and Participant Training (June 2012)

Reserved [ADS 253 was archived based on Agency Notice dated December 11, 2020]

RAA6. Voluntary Population Activities – Supplemental Requirements (January 2009)

N/A

RAA7. Protection of the Individual as a Research Subject (April 1998)

N/A

RAA8. Care of laboratory Animals (March 2004)

N/A

RAA9. Title to and care of Property (Cooperating Country Title) (November 1985)

N/A

RAA10. Cost Sharing (Matching) (February 2012)

a. If at the end of any funding period, the recipient has expended an amount of nonfederal funds less than the agreed upon amount or percentage of total expenditures, the Agreement Officer may apply the difference to reduce the amount of USAID incremental funding in the following funding period. If the award has expired or has been terminated, the Agreement Officer may require the recipient to refund the difference to USAID.

b. The source and nationality requirements and the restricted goods provision established in the Standard Provision entitled "USAID Eligibility Rules for Goods and Services" do not apply to cost sharing (matching) expenditures.

[END OF PROVISION]

RAA11. Prohibition of Assistance to drug traffickers (June 1999)

N/A

RAA12. Investment Promotion (November 2003)

N/A

RAA13. Reporting Host Government Taxes (December 2014)

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]

RAA14. Foreign Government Delegates to International Conferences (June 2012)

a. U.S. Government funds under this award must not be used to finance the travel, per diem,

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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]

RAA15. Conscience Clause Implementation (Assistance) (February 2012)

N/A

RAA16. Condoms (Assistance) (September 2014)

N/A

RAA17. Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking (Assistance) (September 2014)

N/A

RAA18. 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

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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]

RAA19. Standards for Accessibility for the Disabled in USAID Assistance awards involving Construction

N/A

RAA20. Statement for the Implementers of Anti-trafficking Activities on lack of Support for Prostitution (June 2012)

N/A

RAA21. Eligibility of subrecipients of anti-trafficking funds (June 2012)

N/A

RAA22. Prohibition on the use of Anti-trafficking funds to Promote, Support, or Advocate for the legalization or Practice of Prostitution (June 2012)

N/A

RAA23. Universal Identifier and System for Award Management (November 2020)

a. Requirement for System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal 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 Federal award term.

b. Requirement for Unique Entity Identifier. If you are authorized to make subawards under this Federal 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 until the entity has provided its Unique Entity Identifier to you.

(2) May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

c. Definitions. For purposes of this term:

(1) System for Award Management (SAM) means the Federal repository into which a recipient 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 <https://www.sam.gov>).

(2) Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

(3) Entity includes non-Federal entities as defined in 2 CFR 200.1 and also includes all of the following, for purposes of this part:

- a. A foreign organization;
- b. A foreign public entity;
- c. A domestic for-profit organization; and
- d. A Federal agency.

(4) Subaward has the meaning given in 2 CFR 200.1.

(5) Subrecipient has the meaning given in 2 CFR 200.1.

ADDENDUM (NOVEMBER 2020):

d. Exceptions. The requirements of this provision to obtain a Unique Entity Identifier and maintain a current registration in the SAM do not apply, at the prime award or subaward level, to:

(1) Awards to individuals

(2) Awards less than \$25,000, with no anticipated subawards, to foreign organizations to be performed outside the United States (based on a USAID determination)

(3) Awards where the Agreement Officer determines, in writing, that the Agency must protect entity information from disclosure due to national security or foreign policy interests of the United States or that these requirements would cause personal safety concerns.

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

[END OF PROVISION]

RAA24. Reporting Subaward and Executive Compensation (November 2020)

a. Reporting of first-tier subawards.

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(1) Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

(2) Where and when to report.

(i) The non-Federal entity or Federal agency must report each obligating action described in paragraph a.(1) of this award term to www.fsr.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.fsr.gov specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

(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 Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;

(ii) In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subagreements) 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 subagreements) 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 non-Federal entity 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 subagreements) 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 subagreements), 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/excomp.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) Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

(2) Non-Federal 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; and

(iv) A domestic or foreign for-profit organization.

(3) Executive means officers, managing partners, or any other employees in management positions.

(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 200.331).

(iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

(5) Subrecipient means a non-Federal entity or Federal agency 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.

(6) 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]

RAA25. Patent Reporting Procedures (November 2020)

N/A

RAA26. Access to USAID Facilities and USAID'S Information Systems (August 2013)

N/A

RAA27. Contract Provision for DBA Insurance under Recipient Procurements (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 LS208 (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.

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

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

[END OF PROVISION]

RAA28. Award Term and Condition for Recipient Integrity and Performance Matters (April 2016)

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]

RAA29. Reserved

RAA30. Program Income (August 2020)

N/A

RAA31. Never Contract with the Enemy (November 2020)

1. Prohibition on Providing Funds to the Enemy

(a) The recipient must—

(1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR 180.300 prior to issuing a subaward or contract and;

(2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

(b) The recipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

(c) The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

2. Additional Access to Recipient Records

(a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.

(b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

[END OF PROVISION]

[END OF REQUIRED AS APPLICABLE PROVISIONS]

