

USAID Assistance Agreement No. 367-012 (3670182.00)

ASSISTANCE AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF NEPAL  
FOR  
USAID  
FOREIGN ASSISTANCE PROGRAMS

September 22, 2009

## Assistance Agreement

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# ASSISTANCE AGREEMENT

Dated: September 22, 2009

Between

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

and

The Government of Nepal (hereinafter referred to as the "Government of Nepal" or "Grantee")

## Article 1: Purpose.

The purpose of this Assistance Agreement (the "Agreement") is to set out the understanding of the parties named above (the "Parties") in connection with the Objectives described below.

## Article 2: Objectives of the Assistance and Results.

Section 2.1. Objectives. In an effort to assist the Government of Nepal to build and sustain a democratic, well-governed state that responds to the needs of its people and reduces widespread poverty, the following six objectives will be pursued under this agreement: 1. Peace and Security; 2. Governing Justly and Democratically; 3. Investing in People; 4. Economic Growth; 5. Humanitarian Assistance; and 6. Program Development and Program Administrative Costs (the "Objectives").

Description of Objectives:

- 1. Peace and Security:** To help nations effectively establish the conditions and capacity for achieving peace, security, and stability; and for responding effectively against rising threats to national or international security and stability.
- 2. Governing Justly and Democratically:** To promote and strengthen effective democracies in recipient states and move them along a continuum toward democratic consolidation.
- 3. Investing in People:** To help nations achieve sustainable improvements in the well-being and productivity of their populations through effective and accountable investments in education, health, and other social services.
- 4. Economic Growth:** To generate rapid, sustained, and broad-based economic growth.

**5. Humanitarian Assistance:** To strengthen national capacity to respond to disasters and address the needs of vulnerable populations.

**6. Program Development and Program Administrative Costs:** To provide the general management support required to ensure completion of U.S. foreign assistance objectives by facilitating program management, accounting and tracking for costs.

Section 2.2. Results. In order to achieve the Objectives, the Parties agree to work together to achieve progress against the indicators described in Annex 1, Amplified Description.

Section 2.3. Annex 1, Amplified Description. Annex 1, Amplified Description (attached hereto and forming part of this Agreement), further describes the Objectives as well as indicators that will be used to measure the progress and achievement in each of the Objectives. Within the limits of the definitions of the Objectives set forth in Section 2.1, Annex 1 may be changed by written agreement of the authorized representatives of the Parties without formal amendment of this Agreement.

Article 3: Contributions of the Parties.

Section 3.1. USAID Contribution.

(a) The Grant. To help achieve the Objectives set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee under the terms of the Agreement an amount not to exceed \$40,720,292 (Forty Million Seven Hundred Twenty Thousand Two Hundred Ninety-Two United States ("U.S.") Dollars) (the "Grant").

(b) Total Estimated USAID Contribution. USAID's total estimated contribution to achievement of the Objectives will be U.S. \$205,000,000 (Two Hundred Five Million U.S. Dollars), which will be provided in increments. Subsequent increments in excess of the amount granted in Section 3.1(a) of this Agreement will be subject to the availability of funds to USAID for this purpose and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed. The Parties agree that each such subsequent incremental contribution provided, if any, shall cumulatively increase the total amount of the Grant set forth in Section 3.1(a) and consequently may increase the Grantee's contribution per Section 3.2.

(c) If at any time USAID determines that its contribution under Section 3.1(a) exceeds the amount which reasonably can be committed for achieving the Objectives during the current or next U.S. fiscal year, USAID may, upon written notice to the Grantee, withdraw the excess amount, thereby reducing the amount of the Grant as set forth in Section 3.1(a). Actions taken pursuant to this subsection will not revise USAID's total estimated contribution set forth in 3.1(b).

### Section 3.2. Grantee Contribution.

(a) The Grantee agrees to provide or cause to be provided all funds, in addition to those provided by USAID and any other donor identified in Annex 1, and all other resources required to complete, on or before the Completion Date, all activities necessary to achieve the Objectives.

(b) The Grantee's contribution, based on USAID's contribution in Section 3.1(a), will not be less than the equivalent of one-fourth of the portion of the Grant that is used to support activities that directly benefit the Grantee or involves the direct and substantial involvement of the Government of Nepal in the administration, control or management of such assistance, provided that such amount may be reduced with the written consent of USAID. The Grantee's contribution may include either cash or in-kind contributions or both. The dollar equivalent amount of the Grantee's contribution shall be set forth in an Implementation Letter (as defined in Annex 2, Standard Provisions, attached hereto and hereinafter defined) and shall be subsequently included in the Illustrative Financial Plan included in Annex 1 of this Agreement. The amount of the Grantee's contribution shall be adjusted upon any increase in the amount of the Grant set forth in Section 3.1(a), in accordance with the formula described in the first sentence of this paragraph, and the precise amount of such adjustment shall be indicated in an Implementation Letter. The Grantee will report at least annually in a format to be agreed upon with USAID on its cash and in-kind contributions.

### Article 4: Completion Date.

(a) The Completion Date, which is September 30, 2014, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objectives will be completed.

(b) Except as USAID may otherwise agree to in writing, USAID will not issue or approve documentation that would authorize disbursement of the Grant for services performed or goods furnished after the Completion Date.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, are to be received by USAID no later than nine (9) months following the Completion Date, or such other period as USAID agrees to in writing before or after such period. After such period USAID, at any time or times, may give notice in writing to the Grantee and reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period.

### Article 5: Conditions Precedent to Disbursement.

Section 5.1. First Disbursement. Prior to the first disbursement under the Grant, or to the issuance by USAID of documentation pursuant to which disbursement

will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to USAID in form and substance satisfactory to USAID:

(a) An opinion of counsel acceptable to USAID that: (i) this Agreement has been duly authorized or ratified by, and executed on behalf of the Grantee; (ii) this Agreement constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms; and (iii) all internal actions and approvals necessary to give effect to this Agreement have been obtained by or on behalf of the Grantee; and

(b) A signed statement in the name of the person holding or acting in the office of the Grantee specified in Section 7.2, which designates by name and title any additional representatives each of whom may act pursuant to Section 7.2.

Section 5.2. Notification. USAID will promptly notify the Grantee when USAID has determined that the conditions precedent have been met.

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

#### Article 6: Special Covenants.

Section 6.1. Required Documents. The Grantee, in conjunction with the appropriate Government of Nepal ministries and offices, hereby covenants and agrees to issue, renew and/or extend free of charge and in a timely manner all official permits, visas, exemptions and any other permissions (including all approvals as may be required from time to time to ensure full access to information, project sites and relevant offices) for the Applicable Persons (as defined below) carrying out activities financed by USAID under this Agreement (collectively, the "Required Documents"). For purposes of this provision, Applicable Persons is defined as: (1) employees and consultants of any contractors, grantees and other organizations carrying out activities financed by USAID under this Agreement; and (2) members of such employees' and consultants' households. Any renewals or extensions of such Required Documents that are required, or become required, in order for such employees, consultants and dependent family members to legally reside in Nepal and undertake the activities contemplated by and financed under this Agreement shall also be issued free of charge.

Section 6.2. Procurement and Disbursement of Funds. The Grantee agrees that any or all funds under the Grant may be contracted, granted, or otherwise committed and disbursed directly by USAID to third parties in accordance with USAID's normal regulations and procedures and in coordination with the Government of Nepal, unless otherwise agreed to by USAID in writing.

subsequently holding or acting in the office of such representatives) in accordance with this Section 7.2, until receipt of written notice of revocation of their authority.

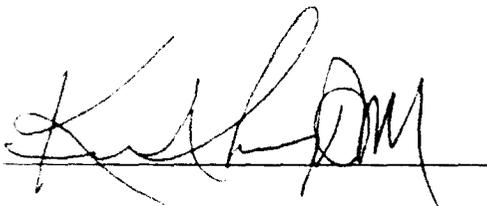
Section 7.3. Standard Provisions Annex. Annex 2, Standard Provisions, is attached to and forms part of this Agreement.

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

ON BEHALF OF THE  
UNITED STATES OF AMERICA

ON BEHALF OF THE GOVERNMENT  
OF NEPAL

By: \_\_\_\_\_



Name: Kevin A. Rushing, DVM

Title: Mission Director  
USAID/Nepal

By: \_\_\_\_\_



Name: Kapil Dev Ghimire

Title: Joint Secretary  
Ministry of Finance

Section 6.3. Taxation. As set forth in greater detail in Annex 2, Standard Provisions (attached hereto and hereinafter defined), the Grantee agrees to ensure that assistance provided under this Agreement will not be subject to any taxation.

Article 7: Miscellaneous.

Section 7.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram, telefax, cable or electronic mail ("e-mail"), and will be deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address:  
United States Agency for International Development  
U.S. Embassy  
P.O. Box 295  
Maharajgunj  
Kathmandu, Nepal

Telefax: 977-1-400-7285

E-mail: [krushing@usaid.gov](mailto:krushing@usaid.gov); [imeline@usaid.gov](mailto:imeline@usaid.gov)

To the Grantee:

Mail Address:  
Secretary or Joint Secretary  
Foreign Aid Coordination Division  
Ministry of Finance  
Singh Durbar  
Kathmandu, Nepal

Telefax: 977-1-425-9891

E-mail: [kghimire@mof.gov.np](mailto:kghimire@mof.gov.np)

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

Section 7.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the Office of the Secretary or Joint Secretary of the Ministry of Finance, and USAID will be represented by the individual holding or acting in the Office of the Mission Director, each of whom, by written notice, may designate additional representatives for all purposes other than signing formal amendments to the Agreement or exercising the authority under Section 2.3 to change Annex 1. The names and titles of the additional representatives of the Grantee will be provided pursuant to Section 5.1(b) to USAID, which may accept as duly authorized any instrument signed by such additional representatives (or any individuals

# **ANNEX 1**

## **Amplified Description**

## Annex 1 to Assistance Agreement Amplified Description

### I. Introduction.

This Annex 1 describes the activities to be undertaken and the progress and achievements to be made with the funds obligated under this Agreement. Terms used in this Annex 1 have the same meaning or reference as in the Agreement, and nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

### II. Background.

The United States has had a positive and productive relationship with Nepal for more than 55 years and has contributed more than \$1 billion in assistance. This assistance has affected the lives of the Nepali people in measurable ways. For example, during the last 25 years, U.S. assistance has helped Nepal reduce the fertility rate from 6.3 to 3.1 children per woman. In just the last 10 to 15 years, USAID has also helped to increase contraceptive prevalence from 15% to 44.2% and lower under-five mortality by 52%. In recent years, more than 275,000 rural farmers have increased their incomes by at least 50% and 735,000 Nepalese now benefit from access to rural roads as a result of U.S. assistance programs.

Following a decade-long insurgency, Nepal has sustained a comprehensive peace agreement for more than three years and has taken major steps toward instituting democratic constitutional rule. The monarchy has been abolished and a representative Constituent Assembly has been elected to draft a new constitution and serve as an interim legislative body. There is a broad national consensus on the need to address critical development challenges and on the need for political reform.

USAID anticipates that Nepal will continue to seek assistance to address peace-building, democracy, and governance objectives. Sustained robust U.S. assistance will also be needed for longer-term development priorities in the health, natural resource management, and economic growth sectors to facilitate a more durable peace and put Nepal more firmly on the path of development.

In all of USAID/Nepal's foreign assistance Objectives, there will be a special focus on social inclusion and supporting Nepal's youth. USAID recognizes the critical importance of the broad participation of all members of society, particularly those who were historically disadvantaged, and of the youth of Nepal. It is one of the Mission's highest priorities to engage with these groups in pursuit of all activities under this Agreement.

### III. Funding.

**Financial Plan.** The financial plan for the Objectives is set forth in the attached table. Changes may be made to the financial plan by representatives of the Parties without

formal amendment to the Agreement, if such changes do not cause (1) USAID's contribution to exceed the amount specified in Section 3.1 of the Agreement; or (2) the Grantee's contribution to be less than the amount called for in Section 3.2 of the Agreement.

#### IV. Activities/Activity Selection.

##### **“Peace and Security” Objective**

The Peace and Security program will support peace-building at the national and local levels. Assistance will be provided to continue to strengthen national and local peace structures and promote engagement of disadvantaged groups, including Terai communities, in the peace process. The program will build on the achievements of past programs and will prioritize activities that rebuild conflict-affected communities.

Assistance to support national and local peace structures may include technical assistance and training for both the Government of Nepal (GON) and civil society organizations. USAID may provide technical support to transitional peace structures that may be formed in concurrence with the Comprehensive Peace Agreement, such as a Truth and Reconciliation Commission, High Level Peace Commission, Commission for Disappearance, and Local Peace Committees.

USAID support to civil society will help to shape the national peace dialogue, advance human rights protection, promote and build networking capacity, and disseminate information and gather public opinion on peace-building and transition issues. USAID will also support community-level peace and reconciliation processes. Illustrative activities include: community dialogue and mediation; small infrastructure repair; local development projects; and, strengthening of civil society organizations to facilitate peaceful advocacy and monitoring of the peace process.

USAID will also launch a new anti-trafficking-in-persons (TIP) program. This program will focus on three priority programmatic areas in Nepal: prevention; prosecution; and protection. Illustrative activities include: increasing public awareness of TIP; establishing and supporting safe-migration protocols; strengthening the capacity of Nepal's institutions to combat TIP; providing life skills and vocational training to those particularly at risk to trafficking and trafficking survivors in order to provide alternative employment opportunities; providing services that address the social and economic rehabilitation of the survivors; strengthening protection efforts by providing trainings on safe migration; applying standard operating procedures during rescue and rehabilitation; and training court staff, prosecutors, judges, law enforcement and social service agencies on trafficking guidelines, existing laws, and witness protection issues.

##### **“Governing Justly and Democratically” Objective**

USAID's Governing Justly and Democratically program will bolster democratic approaches to politics and governance, address key transitional processes and issues.

foster greater inclusion of disadvantaged groups, protect and support independent media, and monitor the political transition and improve public understanding of it.

USAID's programs to strengthen good governance at the national level will support Nepal's legislative functions and processes to institutionalize and uphold democratic practices. More specifically, USAID will provide technical assistance and training, as requested, to build the capacity of the Constituent Assembly/Parliament to serve as a legislative body and to reach out to constituents, civil society, and marginalized groups. USAID will also support citizen groups and organizations to help them understand and participate in legislative proceedings. At the local level, USAID plans to support government and civil society to improve service delivery to disadvantaged communities, particularly in the Terai region. This may include assisting local government officials to plan, manage, deliver, and account for local public goods and services.

USAID will continue to support peaceful political competition by creating and strengthening vehicles for all Nepalis to engage in political institutions and processes. Interventions in this area will focus on supporting systems and institutions to make the constitution drafting process transparent and participatory; strengthening elections and political processes; and assisting political parties to be more representative, democratic, and responsive to their constituencies. Illustrative activities include, but are not limited to: technical assistance (e.g., constitutional expertise, comparative research and other types of information) and training to members and staff of the Constituent Assembly/Parliament; support to civil society organizations to conduct civic education, including on the scope and limitations of a constitution; technical assistance and training to the Election Commission of Nepal and selected civil society organizations; support for reform of the voter registry system to conduct voter information/education campaigns; and technical assistance and training for political parties to reform internal party governing structures to foster more internally democratic practices, improve constituency outreach, address issues of marginalized groups within parties, and develop party platforms. USAID may also support media and local civil society organizations to constructively participate in the constitution-writing process, build their democratic oversight role, and communicate their communities' concerns to their elected representatives.

USAID may also support a Rule of Law program that will complement the efforts being undertaken by the GON and build the capacity of civil society organizations to foster public confidence and demand for an independent judiciary. Illustrative activities may include, but are not limited to: support to civil society to advocate for fair and accountable judicial processes and monitor and report publicly on judicial performance; strengthening court administration; and expanding access to justice by supporting the judiciary's efforts to introduce additional court-referred mediation centers and by making available additional legal aid services to poor and disadvantaged groups. USAID will continue to support the promotion and protection of human rights in Nepal, in part by building the capacity of national institutions to promote and protect human rights.

## **“Investing in People” Objective**

USAID's Investing in People programs will assist the GON to provide sustainable, accessible, and quality basic health services to its people, particularly the poor, and strengthen its delivery systems to ensure achievement of its 2015 Millennium Development Goals (MDGs) for health. U.S. Foreign assistance programs will coordinate closely with the Ministry of Health and Population (MOHP) and other health sector donors to achieve maximum impact through the development of a unified Nepal Health Sector Implementation Plan – Phase II (2010 to 2015).

USAID will support the achievement of GON health sector goals in voluntary family planning and reproductive health; maternal, neonatal and child health; nutrition; and HIV/AIDS programs. Assistance to the GON to expand proven interventions that reduce maternal, neonatal and child mortality in more areas will continue, as well as testing and documenting new approaches that focus on community-based, life-saving interventions. Programs will target women, traditionally excluded groups, and groups disadvantaged by health status. All program elements address cross-cutting themes including gender, civil society and community mobilization, inclusive development, local institutional capacity building, TIP, and youth.

More specifically, USAID programs aim to stabilize and reduce HIV prevalence levels in key, high-transmission groups. This includes surveillance of the epidemic; policy development; prevention, care and supply chain management for treatment; and improving the capacity of the local non-government and private sector and the GON to deliver high-quality HIV-related services.

In the Maternal and Child Health program element, USAID will also support the GON in increasing deliveries in health facilities; increasing deliveries attended by skilled birth attendants; and expanding the following three proven health interventions to reach more Nepalis: misoprostol to prevent post partum hemorrhage; the application of chlorhexadine for umbilical cord care to prevent infection; and the distribution of calcium to pregnant women to prevent eclampsia and pre-eclampsia.

USAID will also help the GON to expand the Community-Based Integrated Management of Childhood Illness (CB-IMCI) and Community-Based Maternal and Newborn Care (CB-MNC) programs that help reduce under-five and maternal mortality through comprehensive and coordinated care. Concurrently, USAID will continue support for the national Vitamin A program, polio immunization, Avian Influenza surveillance and preparedness, and other infectious disease surveillance initiatives.

USAID, in coordination with other stakeholders and the GON, plans to design and implement a comprehensive nutrition activity to address malnutrition of women and children. This activity will be designed based on recommendations provided from a joint National Nutrition Assessment to be completed in August 2009.

USAID plans to continue to provide leadership and management training for health facility management committees. The support will focus on: management, monitoring, social inclusion of underrepresented community members, and community mobilization.

USAID will continue to support the National Family Planning Program by providing technical assistance nationally and in districts and sub-districts, to ensure year-round availability of voluntary, comprehensive quality family planning services. This will include addressing the challenges of hard-to-reach geographic areas as well as families with men who migrate seasonally, younger married couples and socially and economically marginalized populations. To strengthen appropriate and rational availability of family planning commodities in the public sector, USAID will maintain support of the GON's procurement and logistics management information system. Assistance will also continue to support initiatives that encourage the use of subsidized health products and services such as condoms and other temporary methods of contraception using social marketing mechanisms. USAID will continue to supply donated contraceptive commodities to ensure that subsidized family planning products reach those most in need.

USAID will seek to improve the quality of services for victims of armed conflict and others who have suffered mobility-related injuries. USAID will work with the GON and local service organizations to provide treatment and community-based rehabilitation services to people living with disabilities and to improve the quality of rehabilitation treatment services available in Nepal.

USAID will also work with the GON to improve primary school retention levels and learning outcomes through a comprehensive Early Childhood Development (ECD) program. USAID will help to revise the ECD as needed and support teacher training. This activity could also include support for non-formal home-based care, parenting orientation and parent community groups as well as support for child development centers which would provide a holistic learning environment and instruction for pre-school-aged children.

### **“Economic Growth” Objective**

In 2009 USAID will launch a comprehensive economic growth program aimed at improving the foundation for rapid, sustained, and inclusive economic growth. Program activities will support the GON, the private sector, and civil society organizations to foster a conducive business environment for private sector-led growth; encourage competitiveness and exports in selected agricultural and non-agricultural commodities or services; increase agricultural productivity to enhance food security; improve trade and fiscal policies and practices to facilitate trade and increase revenues without distorting the economy; strengthen microfinance policies and institutions to further the participation of the poor; and train youth and disadvantaged groups to contribute productively to the economy.

Proposed assistance for macroeconomic policy development will be focused on improving fiscal policy. At the request of the GON, USAID plans to provide technical assistance, training and limited commodity support to help the GON improve revenue collection.

In the area of trade and investment, USAID plans to work with business associations, chambers of commerce, civil society, and consumer groups and firms to identify constraints and opportunities. USAID will then help actors along the value chain, from producers to manufacturers to wholesalers, to plan sector-enhancing strategies. Program interventions may focus on agricultural commodities with the greatest potential for high-value export: non-timber forest products, off-season vegetables, essential oils, tea, and coffee, cardamom, lentils, and honey. Potential non-agricultural exportable products and services may include: tourism, overseas employment, gems and jewelry, and wooden handicrafts. Quality, price, timing, transparency, and dependability will be promoted as part of a market-driven, private-sector approach. USAID will strive to create equitable opportunities for disadvantaged groups to market and brand their own products. In addition, USAID will promote the formation of private-public partnerships in an effort to form lasting business relationships between producers and wholesalers.

USAID will also aim to improve the competitiveness and the production of selected exportable agricultural products by providing technical assistance in production and marketing to all players in the value chain, from farmers to manufacturers to wholesalers. Technical assistance will also be provided to aid both government and civil society to create a business environment which supports rapid, sustained and inclusive economic growth. This program will encourage private-public partnerships, and the inclusion of disadvantaged groups, and will support microenterprise activity. Additionally it will support pilot projects focused on innovative production, processing, and/or marketing ideas for commodities or services. The project may also use funding to increase and improve existing production, processing and marketing practices.

To improve private sector competitiveness, USAID will implement a range of activities to improve the business environment, enhance competition and encourage business expansion. Likely interventions include technical support for key institutions, including regional chambers of commerce and industry and the National Planning Commission; and assisting with preparation and active dissemination of economic policy analyses on topics such as: the role of the private sector in creating wealth and jobs in a market economy; essential reforms to ensure private sector investment and inclusive growth; and trade reform for growth.

USAID's assistance for the environment will be two-pronged, consisting of community-based interventions in priority geographic areas and policy and legal reform activities focused on improving the enabling policy and legal environment. USAID's policy and legal activities will engage at the national and local-levels to encourage the inclusion of community rights to natural resources in the constitutional and federal process, as well as any new policies and regulations. USAID will also build on its success in working with local communities that are dependent on the environment for their livelihoods to

improve biodiversity conservation and sustainable forest management while also improving income.

USAID's vocational education program will combine skills training, literacy, and targeted scholarships for disadvantaged youth - including internally-displaced persons, low-caste groups, ethnic minorities, and girls - aimed at building a functionally literate and employable workforce in underserved communities.

#### **“Humanitarian Assistance” Objective**

USAID's support for humanitarian assistance and recovery seeks to strengthen national capacity to respond to disasters and address the needs of vulnerable populations. Specifically, USAID will continue its flood recovery program, which re-builds the livelihoods of flood-affected communities in a way that will leave them more prepared in the event of future flooding. Because floods have damaged crops and arable land, water and sanitation sources, and community infrastructure, all of these sub-sectors need to be addressed through comprehensive recovery interventions. USAID assistance will integrate livelihoods, health, and infrastructure interventions for increased efficiency and synergies.

The program supports rehabilitation and rebuilding of small-scale infrastructure; provision of income-generation activities; improved sanitation, hygiene and nutrition; strengthening of local peace committees or other local groups; and the protection of women and children, all with the aim of making communities less vulnerable to future floods.

#### **“Program Development and Program Administrative Costs” Objective**

Under this Objective, funds will be used to support the following illustrative program-funded costs: salaries of staff working for the U.S. Government managing, administering, and supporting programs and their program-funded benefits; the program-funded share of operational expenses including utilities; equipment and supplies; vehicle fuel and maintenance; institutional contractors that provide such staff; and staff training costs and the cost of developing and administering training programs.

In addition, funds will also be used to develop and conduct needs assessments, baseline studies, targeted evaluations, special studies or other information-gathering efforts specifically for the design, monitoring and evaluation of USG-funded programs. Activities may also include developing and disseminating best practices and lessons learned, testing demonstration and/or pilot models, or the preparation of strategic plans and other short-term programming tasks. Funds may also be used for web page development and maintenance; outreach such as publications and the cost of their preparation (including staff costs); and technical assistance to ensure USG compliance with regulations.

## V. Indicators.

A representative sample of the main indicators of performance under each Objective is listed below. They are listed here as illustrative indicators only and will be modified as performance-monitoring plans are developed.

### 1. **“Peace and Security” Objective**

- Number of people in host country trained on TIP-related issues with USG assistance
- Number of public awareness campaigns about TIP completed
- Number of TIP victims assisted by USG programs
- Number of traffickers, smugglers and accomplices arrested in USG-assisted areas
- Number of USG-supported activities that demonstrate the positive impact of a peace process through the demonstration of tangible, practical benefits
- Number of USG-supported/facilitated events geared toward strengthening understanding among conflict-affected groups
- Number of people attending facilitated events that are geared toward strengthening understanding among conflict-affected groups that were supported with USG assistance

### 2. **“Governing Justly and Democratically” Objective**

- Number of justice sector personnel that received USG training
- Number of legal aid groups and law clinics assisted by USG
- Number of legal institutions and associations supported by USG
- Number of domestic human rights NGOs receiving USG support
- Number of national legislators and national legislative staff attending USG-sponsored training or educational events
- Number of public forums resulting from USG assistance in which national legislators and members of the public interact
- Number of USG-assisted civil society organizations that participate in legislative proceedings and/or engage in advocacy with national legislature and its committees
- Number of local mechanisms supported with USG assistance for citizens to engage their sub-national government
- Number of people reached by USG-assisted voter education
- Number of individuals who receive USG-assisted political party training

### 3. **“Investing in People” Objective**

- Number of individuals who received counseling and testing for HIV and received their test results
- Total number of individuals provided with HIV-related palliative care (including TB/HIV)

- Number of postpartum/newborn visits within 3 days of birth in USG-assisted programs
- Number of cases of child pneumonia treated with antibiotics by trained facility or community health workers in USG-supported programs
- Number of USG-assisted service delivery points experiencing stock-outs of specific tracer drugs and contraceptives
- Number of people trained in health through USG-supported programs
- Couple Years of Protection (CYP) in USG-supported programs
- Number of administrators and officials trained
- Number of teachers/educators trained with USG support

#### **4. “Economic Growth” Objective**

- Number of key personnel in fiscal policy and fiscal administration trained with USG assistance
- Number of consultative processes with private sector as a result of USG assistance
- Number of customs harmonization procedures implemented in accordance with internationally-accepted standards as a result of U.S. assistance
- Number of USG-supported training events held that related to improving the trade and investment environment
- Number of USG-supported training events on topics related to investment capacity building and improving trade
- Number of new technologies or management practices made available for transfer as a result of USG assistance
- Number of rural households benefiting directly from USG interventions
- Number of producers organizations, water users’ associations, trade and business associations, and community-based organizations (CBOs) receiving USG assistance
- Number of the core commercial laws drafted and presented for public/stakeholder consultation as a result of USG assistance
- Number of microfinance institutions supported by USG financial or technical assistance
- Number of people with increased economic benefits derived from sustainable natural resource management and conservation as a result of USG assistance
- Number of people receiving USG-supported training in global climate change including framework convention on climate change, greenhouse gas inventories, mitigation, and adaption analysis

#### **5. “Humanitarian Assistance” Objective**

- Number of beneficiaries assisted by USG-supported protection and solutions activities

#### **6. “Program Development and Program Administrative Costs” Objective**

USAID does not have indicators for program administrative costs. USAID uses the following indicators for program development activities:

- Number of baseline or feasibility studies, sector assessments, monitoring plans, evaluations conducted
- Number of people trained in monitoring and evaluation

#### VI. Roles and Responsibilities of the Parties.

Activities to be undertaken to achieve the Objectives under this Agreement will be implemented by USAID through Implementation Letters (as defined in Annex 2, Standard Provisions), contracts, grant agreements, cooperative agreements and interagency agreements, as appropriate.

The overall program of support will be reviewed at least once a year to assess the previous year's results. USAID will also prepare, review and approve of the next year's work plan. Once the work plan is approved, USAID will document the plan in an Implementation Letter to the Ministry of Finance.

USAID will be responsible for issuing and managing all USAID direct grants, sub-grants, cooperative agreements, contracts and interagency agreements funded under this Agreement. Implementing agencies (e.g., contractors or grantees) will be responsible for achieving the results set forth in their agreements with USAID, as well as for coordinating with appropriate GON offices and providing required support (including such in-kind resources as staff and office facilities) for specific activities undertaken with Ministries and/or other governmental bodies.

#### VII. Monitoring and Evaluation.

The Parties agree that activities being implemented to achieve the Objectives will be monitored regularly by USAID to assess progress towards achieving the desired results. Implementing entities will establish performance monitoring plans for their activities, including measurable indicators and timetables for collection of data. USAID will also establish a performance monitoring plan that builds on Objective-level indicators to enable the GON and USAID to measure progress towards achievement of Objectives. The Objective Team will meet at least once a year to review progress on indicators and overall program performance.

Performance monitoring will be used to direct program implementation, allocate resources, and identify and evaluate problem areas or constraints that may inhibit achievement of results. Consistent with applicable USAID rules, regulations and policies, USAID agrees to make available all information in its possession, and the GON will share with USAID all information it possesses, in order to determine whether the results have been met.

## Illustrative Financial Plan

Assistance Agreement  
USAID Agreement No. 3670182.00USAID Foreign Assistance Programs  
(USAID Contribution)

(in US \$)

Program Objective	Program Objective Name	Total Estimated USAID Contribution	Current Obligation Amount	Balance to be Contributed
1	Peace and Security	11,000,000	4,572,000	6,428,000
2	Governing Justly and Democratically	49,500,000	9,448,000	40,052,000
3	Investing in People	72,600,000	17,515,000	55,085,000
4	Economic Growth	52,500,000	5,855,000	46,645,000
5	Humanitarian Assistance	811,000	811,000	0
6	Program Development and Program Administrative Costs	18,589,000	2,519,292	16,069,708
<b>Total</b>		<b>205,000,000</b>	<b>40,720,292</b>	<b>164,279,708</b>

NOTE:

1. USAID may adjust the Objective budgets provided that the total USAID contribution is not exceeded. Such changes will be documented in an Implementation Letter.
2. The amount in the column entitled "Balance to be Contributed" is subject to the availability of funds and the other criteria in Section 3.1(b) of the Agreement.

## Illustrative Financial Plan

**Assistance Agreement**  
**USAID Agreement No. 3670182.00**

**USAID Foreign Assistance Programs**  
**(Grantee Contribution)**

(in US \$)

Program Objective	Program Objective Name	Total Estimated Grantee Contribution	Current Contribution Amount	Balance to be Contributed
1	Peace and Security			
2	Governing Justly and Democratically			
3	Investing in People			
4	Economic Growth			
5	Humanitarian Assistance			
6	Program Development and Program Administrative Costs			
<b>Total</b>		<b>0</b>	<b>0</b>	<b>0</b>

NOTE:

1. Government of Nepal contributions will be determined in accordance with Section 3.2 of the agreement as activities and workplans are approved.

# **ANNEX 2**

## **Standard Provisions**

## Annex 2 to Assistance Agreement

### Standard Provisions

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## Annex 2 to Assistance Agreement

### Standard Provisions

#### Article A: Definitions and Implementation Letters.

Section A.1. Definitions. As used in this Annex, the "Agreement" refers to the Assistance Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

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

#### Article B: General Covenants.

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

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

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

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

Section B.3. Utilization of Goods and Services. Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be

devoted to the Agreement until the completion or termination of the Agreement, and thereafter (as well as during any period of suspension of the Agreement) will be used to further the Objectives of the Agreement or as USAID may direct in Implementation Letters.

#### Section B.4. Taxation.

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

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

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

(1) Exemption 1. Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for the personal use of non-national individuals or their family members; provided however that any duty-free goods imported into Nepal under this Agreement may be subject to sales or other taxes if sold to those without duty-free privileges. Exemption 1 includes, but is not limited to, all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo.

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

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

which the goods or services were purchased for use in the activities financed by USAID under this Agreement.

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

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

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

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

(b) **Grantee Agreement Books and Records.** The Grantee shall maintain accounting books, records, documents and other evidence relating to the Agreement, adequate to show, without limitation, all costs incurred directly by the Grantee under the Agreement, the receipt and use of goods and services acquired by the Grantee under the Agreement, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Grantee, the basis of award of contracts and orders made directly by the Grantee, and the overall progress of the Agreement toward completion ("Agreement books and records"). The Grantee shall maintain Agreement books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the Grantee's option, with approval by USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) prevailing in the country of the Grantee. Agreement books and records shall be maintained for at least three (3) years after the date of last disbursement by USAID or for such longer period, if any, required to resolve any litigation, claims or audit findings. For the avoidance of doubt, this Section B.5(b) applies solely to Grant funds expended directly by the Grantee.

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

(1) The Grantee shall use the Office of the Auditor General in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General ("Guidelines"), and the audits shall be performed in accordance with the Guidelines; and

(2) The audit shall determine whether the receipt and expenditure of the funds provided under the Agreement are presented in accordance with generally accepted accounting principles agreed to in subsection (b) above and whether the Grantee has complied with the terms of the Agreement. Each audit shall be completed no later than nine (9) months after the close of the Grantee's year under audit.

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

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

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

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

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

(e) Audit Reports. The Grantee shall furnish or cause to be furnished to USAID an audit report for each audit arranged for by the Grantee in accordance with this Section within thirty (30) days after completion of the audit and no later than nine (9) months after the end of the period under audit.

(f) Other Covered Sub-recipients. For "covered" sub-recipients who receive funds under the Agreement pursuant to direct contracts or agreements with USAID, USAID will include appropriate audit requirements in such contracts or agreements and will, on behalf of the Grantee, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

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

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

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

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

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

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

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

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

Section B.8. Information and Marking. The Grantee will give appropriate publicity to the Agreement as a program to which the United States has contributed. Identify Agreement activity sites, and mark goods financed by USAID, as described in Implementation Letters.

Article C: Procurement Provisions.

Section C.1. Source and Origin.

(a) Except as noted herein, or in a sub-agreement issued by USAID, Grant funds will be used to finance the cost of goods and services having their source and origin, and with respect to suppliers of goods and services, their nationality, in the United States. Exceptions to this requirement include local procurement transactions in accordance with USAID policy or procurements made after obtaining source, origin, and nationality waivers from USAID in writing.

Additionally:

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

(2) The country of the Grantee is an eligible source for foreign exchange cost for marine insurance, if otherwise eligible under Section C.7(a).

(3) Any motor vehicles financed under the Agreement will be of United States manufacture, except as USAID may otherwise agree in writing.

(b) Local Currency Costs. Disbursements for local currency costs will be used exclusively to finance the costs of goods and services required for the Agreement which meet the requirements of USAID's local procurement policy which will be provided in an Implementation Letter.

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

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

(e) Transportation by air of property or persons financed under this Agreement will be on carriers holding United States certification, to the extent service by

such carriers is available under the Fly America Act. This requirement may be further described by USAID in Implementation Letters.

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

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

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

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation between the Grantee and third parties, relating to goods or services to be financed under the Agreement, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished USAID on preparation; and

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

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

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

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

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

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

Section C.6. Transportation.

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

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

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

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

Section C.7. Insurance.

(a) Marine insurance on goods financed by USAID which are to be transported to the territory of the Grantee may be financed as a foreign exchange cost under this Agreement provided

(1) such insurance is placed at the most advantageous competitive rate;

(2) such insurance is placed in a country which is authorized under Section C.1(a); and

(3) claims thereunder are payable in U.S. dollars or any freely convertible currency unless USAID agrees otherwise in writing.

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

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

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

Article D: Disbursements.

Section D.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of conditions precedent, if any, the Grantee may obtain disbursements of funds under the Agreement for the foreign exchange costs of goods or services required for the Agreement in accordance with its terms, by such of the following methods as may be mutually agreed upon:

(1) by submitting to USAID, with necessary supporting documentation as prescribed in Implementation Letters (A) requests for reimbursement for such goods or services; or (B) requests for USAID to procure commodities or services in Grantee's behalf for the Agreement; or

(2) by requesting USAID to issue letters of commitment for specified amounts directly to one or more contractors or suppliers, committing USAID to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by the Grantee in connection with letters of commitment will be financed under the Agreement unless the Grantee instructs USAID to the contrary. Such other charges as the Parties may agree to may also be financed under the Agreement.

#### Section D.2. Disbursement for Local Currency Costs.

(a) After satisfaction of conditions precedent, if any, the Grantee may obtain disbursements of funds under the Agreement for local currency costs required for the Agreement in accordance with terms of this Agreement, by submitting to USAID, with necessary supporting documentation as prescribed in Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursements may be purchased by USAID with U.S. Dollars. The U.S. Dollar equivalent of the local currency made available hereunder will be the amount of U.S. Dollars required by USAID to obtain the local currency.

Section D.3. Other Forms of Disbursement. Disbursements may also be made through such other means as the Parties may agree to in writing.

Section D.4. Rate of Exchange. If funds provided under the Agreement are introduced into the country of the Grantee by USAID or any public or private agency for purposes of carrying out obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee to any person for any purpose.

### Article E: Termination; Remedies.

#### Section E.1. Suspension and Termination.

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

(b) Except for payment which the Parties are committed to make pursuant to non-cancellable commitments entered into with third parties prior to such suspension or

termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to the Agreement, or to the suspended or terminated portion of the Agreement, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.

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

#### Section E.2. Refunds.

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, USAID, notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.

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

(c) The right under subsections (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

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

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

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

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

Article F: Miscellaneous.

Section F.1. Investment Promotion.

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

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

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

Section F.2. Voluntary Family Planning.

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

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

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

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

(d) The requirements of this Section are fully described below.

(1) Voluntary Participation and Family Planning Methods

(A) The Grantee shall take any steps necessary to ensure that USAID funds made available under this Agreement will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the Grantee shall conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(B) Activities which provide family planning services or information to individuals, financed in whole or in part under this Agreement, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

(2) Requirements for Voluntary Family Planning Projects

(A) A family planning "project" must comply with the requirements of this paragraph.

(B) A "project" is a discrete activity through which a governmental or nongovernmental organization or public international organization provides family planning services to people and for which funds obligated under this award, or goods or services financed with such funds, are provided under this Agreement, except funds solely for the participation of personnel in short-term, widely-attended training conferences or programs.

(C) Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.

(D) The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor; or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.

(E) No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.

(F) The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.

(G) The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.

(H) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no sub-agreement under paragraph (5), the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.

(I) (i) The Grantee shall notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (C), (D), (E) or (F) of this paragraph; (ii) the Grantee shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (F) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project; and

(iii) the Grantee shall provide USAID such additional information about violations as USAID may request.

(3) Additional Requirements for Voluntary Sterilization Programs

(A) None of the funds provided under this Agreement shall 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.

(B) The Grantee shall ensure that any surgical sterilization procedures supported in whole or in part by this Agreement are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed; the attendant discomforts and risks; the benefits to be expected; the availability of alternative methods of family planning; the purpose of the operation and its irreversibility; and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

(C) Further, the Grantee shall document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately, a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient and that the patient thereafter consented to the performance of the operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.

(D) The Grantee must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after performance of the sterilization procedure.

(4) Abortion restrictions

(A) None of the USAID funds provided under this Agreement shall 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 women 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, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

(B) None of the USAID funds provided under this Agreement shall 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.

(5) Requirement for Sub-agreements

The Grantee shall insert these requirements in all sub-agreements involving family planning or population activities which will be supported in whole or in part with USAID funds under the Agreement.

Section F.3. Prohibition on Assistance to Drug Traffickers.

(a) USAID reserves the right to terminate this Agreement or take other appropriate measures if the Grantee or a key individual of the Grantee is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

(b) USAID reserves the right to terminate assistance to, or take or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

(c) For any loan over \$1000 made under this Agreement, the Grantee shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the Grantee if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

(d) Upon notice by USAID of a determination under section (c) and at USAID's option, the Grantee agrees to immediately cancel, accelerate or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.

(e) The Grantee agrees not to disburse, or sign documents committing the Grantee to disburse, funds to a sub-recipient designated by USAID ("Designated Sub-recipient") until advised by USAID that: (1) any United States Government review of the Designated Sub-recipient and its key individuals has been completed; (2) any related certifications have been obtained; and (3) the assistance to the Designated Sub-recipient has been approved.

(1) The Grantee shall insert the following clause, or its substance, in its agreement with the Designated Sub-recipient:

(2) The Grantee reserves the right to terminate this Agreement or take other appropriate measures if the [Sub-recipient] or a key individual of the [Sub-recipient] is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140."

#### Section F.4. Workers' Rights.

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

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

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

Section F.5 Terrorist Financing. The Grantee is reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism and specially designated nationals and blocked persons identified by the U.S. Department of Treasury (Office of Foreign Assets Control). It is the legal responsibility of the Grantee under this Agreement to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts or subawards issued under this Agreement.

Section F.6 Prohibition on Funding Foreign Government Delegations to International Conferences. Except as USAID may otherwise agree in writing, funds obligated under this Agreement which are provided by USAID from the Foreign Operations, Export Financing, and Related Programs Appropriations Act for any U.S. Government fiscal year after fiscal year 1999 may not be used to finance the travel, per

diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a public international organization. This restriction may be further described by USAID in Implementation Letters.