



USAID
FROM THE AMERICAN PEOPLE

Regional Development Objective Agreement for Public International Organizations

A Mandatory Reference for ADS Chapter 308

Partial Revision Date: 08/15/2019
Responsible Office: GC/A&A and PPL/DC
File Name: 308mah_081519

Regional Development Objective Agreement

USAID Agreement No. _____

REGIONAL DEVELOPMENT OBJECTIVE AGREEMENT

BETWEEN THE

UNITED STATES OF AMERICA

AND

[NAME OF PUBLIC INTERNATIONAL ORGANIZATION]

FOR

[]

Dated:

Pre-decisional document, deliberative process and attorney-client privileged

Regional Development Objective Agreement

Table of Contents

Article 1: Purpose

Article 2: Development Objective and Results

- Section 2.1. The Development Objective
- Section 2.2. Results
- Section 2.3. Annex 1, Amplified Description

Article 3: Contributions of the Parties

- Section 3.1. USAID Contribution
- Section 3.2. Recipient Contribution

Article 4: Completion Date

Article 5: Conditions Precedent to Disbursement.

- Section 5.1. First Disbursement
- Section 5.2. Additional Disbursement
- Section 5.3. Notification
- Section 5.4. Terminal Dates for Conditions Precedent

Article 6: Special Covenants

Article 7: Miscellaneous

- Section 7.1. Communications
- Section 7.2. Representatives
- Section 7.3. Standard Provisions Annex.
- Section 7.4. Language of Agreement

REGIONAL DEVELOPMENT OBJECTIVE AGREEMENT

Dated:

between

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

and

[Name of Organization] (hereinafter referred to as the "Recipient")

Article 1: Purpose.

The purpose of this Regional Development Objective Agreement ("Agreement") is to set out the understanding of the parties named above (the "Parties") relating to the Development Objective described below.

Article 2: Development Objective and Results.

Section 2.1. Development Objective. The Development Objective is: [state objective]¹.

Section 2.2. Results. In order to achieve that Objective, the Parties agree to work together to achieve the following Results: [state Results]. Within the limits of the definition of the Objective(s) in Section 2.1, this Section 2.2 [insert "may" or "may not"] be changed by written agreement of the authorized representatives of the Parties without formal amendment to the Agreement.

Section 2.3. Annex 1, Amplified Description. Annex 1, attached, amplifies the above Objective and Results. Within the limits of the above definitions of the Objective in Section 2.1 and the Results in Section 2.2, 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 Agreement. To help achieve the Objective set forth in this Agreement,

¹ Use plural of "Objective" throughout as appropriate if more than one Development Objective is covered under the Agreement.

USAID, pursuant to the Foreign Assistance Act of 1961, as amended, and its "other transaction" authority, hereby enters into an agreement with the Recipient under the terms of the Agreement not to exceed _____ United States (U.S.) Dollars (\$_____) (the "Agreement").

[If incrementally funded, insert the following paragraph (b)]

(b) Total Estimated USAID Contribution. USAID's total estimated contribution to achievement of the Objective will be U.S. \$_____, which will be provided in increments. Subsequent increments will be subject to the availability of funds to USAID for this purpose [Insert one of the following:² "and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed" OR "and may be provided by USAID upon written notice to the Recipient"]. The Parties agree that each such incremental contribution provided, if any, shall cumulatively increase the total amount of the Agreement set forth in Section 3.1(a) and consequently may increase the Recipient's contribution under Section 3.2. [In the case of unilateral incremental funding, insert the following: "The Recipient further agrees to acknowledge by written notice to USAID each such incremental contribution, if any."]

(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 Objective(s) or Results or activities during the current or next U.S. fiscal year, USAID may, upon written notice to the Recipient, withdraw the excess amount, thereby reducing the amount of the Agreement as set forth in Section 3.1(a). [If incrementally funded, insert the following: "Actions taken pursuant to this subsection will not revise USAID's total estimated contribution set forth in 3.1(b)."] If NOT incrementally funded, insert the following: "Actions taken pursuant to this subsection will not revise USAID's total estimated contribution below that set forth in 3.1(a), 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."]

Section 3.2. Recipient Contribution.

[OPTION 1 (no defined Recipient contribution required): The Recipient agrees to make a best faith effort to ensure that appropriate counterpart contributions from member states, either individually or through the Recipient, are provided to complete, on or before the Completion Date, all activities necessary to achieve the results. Details of the counterpart contribution process, where appropriate,

² In the case of incremental funding that will be mutually agreed upon by both parties, use the first option. In the case of unilateral incremental funding by USAID, use the second option.

will be discussed and agreed to by USAID and the Recipient and the resulting agreement described in an Implementation Letter.]

[OPTION 2 (Recipient contribution required): “(a) The Recipient 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 Objective.

(b) The Recipient’s contribution, based on USAID’s contribution in Section 3.1(a), will not be less than the equivalent of ___ of the portion of the Agreement that is used to support activities that directly benefit the Recipient or includes the direct and substantial administrative involvement of the Recipient, provided that such amount may be reduced with the written consent of USAID. The Recipient’s contribution may include either cash or in-kind contribution.

Article 4: Completion Date.

(a) The Completion Date, which is [insert date], or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objective and Results will be completed.

(b) Except as USAID may otherwise agree to in writing, USAID will not issue or approve documentation that would authorize disbursement of the Agreement 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, at any time, USAID may give notice in writing to the Recipient and reduce the amount of the Agreement 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.

(d) The Completion Date may be extended by mutual agreement in an Amendment to this Agreement or in Implementation Letters signed by the Parties.

Article 5: Conditions Precedent to Disbursement.

Section 5.1. First Disbursement. Prior to the first disbursement under the Agreement, or to the issuance by USAID of documentation pursuant to which disbursement will be made, the Recipient will, except as the Parties may otherwise

agree in writing, furnish to USAID in form and substance satisfactory to USAID:

[Insert conditions precedent to first disbursement, such as:

"**(a)** An opinion of counsel acceptable to USAID that: (i) this Agreement has been duly authorized and executed on behalf of the Recipient; and (ii) constitutes a valid and legally binding obligation of the Recipient 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 Recipient; and

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

(c) [Additional conditions as determined by the Operating Unit]]

[If there are conditions precedent to additional disbursement, insert the following:]

Section 5.2. Additional Disbursement. Prior to additional disbursement under the Agreement, or to the issuance by USAID of documentation pursuant to which additional disbursement will be made, the Recipient will, unless waived in writing by USAID, furnish to USAID, in form and substance satisfactory to USAID:

[Insert conditions precedent to additional disbursement.]

Section 5.3. Notification. USAID will promptly notify the Recipient when USAID has determined that a condition precedent has been met.

Section 5.4. Terminal Dates for Conditions Precedent.

(a) The terminal date for meeting the conditions specified in **Section 5.1** is [] 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 Recipient.

[If there is a terminal date(s) for conditions precedent to additional disbursement, insert the following:]

(b) The terminal date for meeting the conditions specified in **Section 5.2** is [] 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 5.2** have not been met by the above terminal date, USAID, at any time, may cancel the undisbursed balance of the Agreement, to the extent not

irrevocably committed to third parties, and terminate this Agreement by written notice to the Recipient.

Article 6: Special Covenants.

(a) Recognizing that the [Regional Organization] represents the interests of the [NAME] region and member states who will benefit from this Agreement, the Recipient agrees to take all necessary steps to inform the appropriate member countries of the provisions of this Agreement. In particular, and consistent with Standard Provision B.4., the Recipient agrees to take all reasonable steps to ensure that the assistance provided under this Agreement will not be subject to taxation in any [Regional Organization] member states.

(b) The Recipient further agrees to work with its member states to facilitate the issuance, renewal and/or extension free of charge and in a timely manner of 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: (i) employees and consultants of any contractors, Recipients and other organizations carrying out activities financed by USAID under this Agreement; and (ii) members of such employees' and consultants' households.

[Use this space to add additional subparagraphs to include provisions of special applicability as necessary, such as waivers, authorized local cost financing, title to property, special domestic preferencing requirements, and any alterations to the Standard Provisions that have been approved as deviations.]

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 ("email"), and will be deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address:

Alternate address for cables:

Telefax:

Email:

To the Recipient:

Mail Address:

Alternate address for cables:

Telefax:

Email:

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 Recipient will be represented by the individual holding or acting in the Office of [], and USAID will be represented by the individual holding or acting in the Office of [], each of whom, by written notice, may designate additional representatives for [insert "all purposes" or specific purposes and any conditions governing actions of additional representatives, e.g. other than signing formal amendments to the Agreement or exercising the power under **Sections 2.2** or **2.3** to revise the Results or Annex 1]. The names and titles of the additional representatives of the Recipient 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 subsequent 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. A "Standard Provisions Annex" (Annex 2) is attached to and forms a part of this Agreement. In the event of a conflict, discrepancy, or ambiguity between the terms of this part of the Agreement and the Standard Provisions Annex, the language in this part shall govern.

Section 7.4. Language of Agreement. This Agreement is prepared in both English and [French, Spanish, etc.]. In the event of ambiguity or conflict between the two versions, the English language version will control.

IN WITNESS WHEREOF, the United States of America and the Recipient, 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.

UNITED STATES OF AMERICA³

[NAME OF RECIPIENT]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

³ Note that if it is desired that the Ambassador sign this Agreement: (a) his/her signature should be *in addition to* the authorized USAID representative, and a corresponding Grantee representative signature block should be included as well; or (b) a delegation of authority to the Ambassador must be made, to ensure that the signatory official has delegated authority to obligate funds

Annex 1
Regional Development Objective Agreement (RDOAG)
Amplified Description

I. Introduction.

This Annex describes the activities to be undertaken and the results to be achieved with the funds obligated under this RDOAG for [*state objective from **Section 2.1***]. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

II. Background.

[*Concise description of the problem(s) being addressed at the macro, sectoral, or sub-sectoral level.*]

III. Funding.

Financial Plan. The financial plan for the Program is set forth in the attached table.

[*Suggested language on the discretion to amend the Financial Plan: "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 Recipient's contribution to be less than the amount specified in Section 3.2 of the Agreement."*]

IV. Results to Be Achieved/Results Framework.

[*Using the results framework, list the essential or significant results here or in the Agreement.*]

V. Indicators.

[*State interim and final measurable indicators by which achievement of results will be measured.*]

VI. Activities/Activity Selection.

[*Either state the specific activities to be financed under the RDOAG or, if specific activities are not yet identified, the objective criteria and procedures for selection of actual activities.*]

VII. Roles and Responsibilities of the Parties.

Pre-decisional document, deliberative process and attorney-client privileged

[Discussion of involvement of other partners and customers should be included.]

VIII. Environment. *[Discussion of RDOAG-specific environmental requirements from the IEE, as identified prior to initial and incremental obligations.]*

IX. Monitoring and Evaluation.

X. Other Implementation Issues.

*[For example, with respect to the audit provisions of **B.5** of the Standard Provisions Annex, there could be provisions on the methodology, funding and timing of audits of host country contractors and other sub-recipients receiving funds directly from the Recipient and agreement that for sub-recipients receiving funds directly from USAID that in lieu of an audit plan, their agreements and contracts will contain the necessary audit provisions.]*

Annex 2
Standard Provisions

Table of Contents

Article A: Definitions and Implementation Letters.

- Section A.1. Definitions
- Section A.2. Implementation Letters

Article B: General Covenants

- Section B.1. Consultation
- Section B.2. Execution of Agreement
- Section B.3. Utilization of Goods and Services
- Section B.4. Taxation
- Section B.5. Reports and Information, Agreement Books and Records, Audits, and Inspections
- Section B.6. Completeness of Information
- Section B.7. Other Payments
- Section B.8. Information and Marking

Article C: Procurement Provisions

- Section C.1. Source and Nationality
- Section C.2. Eligibility Date
- Section C.3. Plans, Specifications and Contracts
- Section C.4. Reasonable Price
- Section C.5. Notification to Potential Suppliers
- Section C.6. Transportation
- Section C.7. Insurance
- Section C.8. U.S. Government-Owned Excess Property
- Section C.9. Procurement and Disbursement of Funds

Article D: Amendment

Article E: Termination; Remedies

- Section E.1. Suspension and Termination
- Section E.2. Refunds
- Section E.3. Non-Waiver of Remedies
- Section E.4. Assignment

Article F: Title to Property

Article G: Allowable Costs

Article H: Non-liability

Article I: Financial Management, Procurement, and Evaluation

Article J: Dispute Resolution

Article K: USAID Disability Policy and UN Convention on the Rights of Persons with Disabilities Assistance

Article L: Terrorist Financing Clause

Article M: **Trafficking in Persons**

Article N: **Prohibition on Federal Contracting With and Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements**

Standard Provisions

Article A: Definitions and Implementation Letters

Section A.1. Definitions. As used in this Annex, "Agreement" refers to the Regional Development Objective Grant 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 Recipient in the implementation of the Agreement, USAID, from time to time, will issue 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 that are permitted by the Agreement. Non-sub-obligating Implementation Letters may also be used to notify the RDOAG signatory/recipient of USAID's intent to sub-obligate RDOAG funds to an entity other than the RDOAG signatory/recipient.

Article B: General Covenants

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

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

- a. Carry out the Agreement and the activities required to be undertaken directly (or caused to be undertaken) by the Recipient, 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 assure the continuing and successful achievement of the Objective and

Results of 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 Objective of the Agreement and as USAID may direct in Implementation Letters.

Section B.4. Taxation

- a. No Taxation of Assistance.** The Recipient and any third parties conducting activities under this Agreement shall not pay taxes on the assistance provided under this Agreement. This Subsection applies to, but is not limited to: (1) any activity, contract, agreement 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, recipient, or other organization carrying out activities financed by USAID under this Agreement; (4) any employee of such organizations; and (5) any individual contractor or recipient carrying out activities financed by USAID under this Agreement.
- b.** The Recipient enjoys immunity from taxation within the territory of its member states and does not pay taxes on its activities.
- c.** The Recipient shall promptly report to USAID any instances where a member state is seeking to impose tax on activities funded by USAID under this Agreement. In any such instance, whether it be reported by the Recipient, USAID, or third-party implementing partners, the Recipient shall work with USAID and applicable member state(s) to secure an exemption from taxation.
- d.** Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to, the following taxes:
- 1) Exemption 1.** Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for the personal use of non-national individuals or their family members.
- Exemption 1 includes, but is not limited to; all charges based on the value of such imported goods, but do 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 recipients. 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.
 - 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.
 - 4) For purposes of this Agreement, the term "national" refers only to organizations established under the laws of the member state and citizens of the member state, other than permanent resident aliens in the United States, when implementing activities under this Agreement in the applicable member state. All other individuals are considered non-nationals. U.S. permanent resident aliens shall be considered non-nationals in all cases.
- e. If a tax has been levied and paid contrary to the provisions of an exemption, USAID may, in its discretion: (1) require the Recipient 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.
 - f. 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 Recipient's member states.

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

- a. **Reports and Information.** The Recipient shall furnish USAID accounting records and such other information and reports relating to the Agreement as USAID may reasonably request.
- b. **Recipient Agreement Books and Records.** The Recipient must maintain accounting books, records, documents, and other evidence relating to the

- Agreement, adequate to show, without limitation, all costs incurred by the Recipient under the Agreement, the receipt and use of goods and services acquired under the Agreement by the Recipient, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Recipient, the basis of agreement of Recipient contracts, and the overall progress of the Agreement toward completion ("Agreement Books and Records"). The Recipient must maintain Agreement books and records in reasonable detail to accurately and fairly reflect the Recipient's transactions. Agreement books and records shall be maintained for at least three years after the date of last disbursement by USAID or for such longer period, if any, required to resolve any litigation, claims, or audit findings. For the avoidance of doubt, this **Section B.5(b)** applies solely to funds expended directly by the Recipient.
- c. Sub-Recipients Subject to Audit.** For 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 Recipient, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.
- d. Cost of Audits.** Subject to USAID approval in writing, allowable, allocable and reasonable costs of audits performed in accordance with the terms of this Section may be charged to the Agreement.
- e. Audit by USAID.** USAID retains the right to perform audits on behalf of the Recipient 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.
- f. Opportunity to Audit or Inspect.** The Recipient 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.
- g. Allowable Costs.**
- 1) The Recipient will be reimbursed for costs incurred in carrying out the purposes of this Agreement in accordance with the terms of this Agreement and the applicable cost principles in effect on the date of this Agreement, including:
 - [2 CFR Part 200, Subpart E, Cost Principles](#),

- [48 CFR Subpart 31.2. Federal Acquisition Regulations \(FAR\)](#), and
- [48 CFR Subpart 731.2 USAID Acquisition Regulations \(AIDAR\)](#).

Cost Principles for Commercial Organizations. USAID may issue Implementation Letters that more fully describe the requirements of this paragraph.

- 2) It is the Recipient and any Sub-Recipient's responsibility to ensure that costs incurred are in accordance with the applicable cost principles, meaning the costs are (i) reasonable: costs which are generally recognized as ordinary and necessary and would be incurred by a prudent person in the conduct of normal business; (ii) allocable: incurred specifically for this Agreement; and (iii) allowable: conform to any limitations in this Agreement. The Recipient and any Sub-Recipient must obtain any prior written approvals from USAID that are required by the applicable cost principles. The Recipient and any Sub-Recipient may obtain USAID's written determination on whether specific costs not clearly addressed in the applicable cost principles are allowable or allocable. USAID reserves the right to make a final determination on the allowability of costs.
- 3) USAID will not pay any profit or fee to the Recipient or any Sub-Recipients.
- 4) This provision must be incorporated into all sub-agreements and contracts, which are paid on a cost reimbursement basis.

Section B.6. Completeness of Information. The Recipient 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. Recipient affirms that no payments have been or will be received by any official of the Recipient in connection with the procurement of goods or services financed under the Agreement, except fees, taxes, or similar payments legally established in the Recipient's member states.

Section B.8. Information and Marking. The Recipient 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 Nationality

- a. All goods financed under the Agreement shall have their source, and the suppliers of all goods and services financed under the Agreement shall have their nationality, in countries included in Geographic Code [937 or 935⁴], except as USAID may otherwise agree in writing. Given that this Agreement is a regional program, Code 937 includes all the countries receiving assistance under this Agreement. Additionally, as follows:
- 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) Any motor vehicles financed under the Agreement will be of United States manufacture, except as USAID may otherwise agree in writing.
- b. The nationality of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.
- c. Provisions concerning restricted and ineligible goods and services may be provided in an Implementation Letter.
- d. Transportation by air of property or persons financed under this Agreement will be on carriers holding United States certification; to the extent service by such carriers is available under the Fly America Act. This requirement may be further described by USAID in Implementation Letters.

Section C.2. Eligibility Date. No goods or services may be financed under the Agreement which are procured pursuant to orders or contracts firmly placed or

⁴ 937 is default unless waiver applicable to entire RDOAG is approved before signing RDOAG.

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 Recipient will furnish to USAID upon preparation:
 - 1) Any plans, specifications, procurement, or construction schedules, contracts, or other documentation between the Recipient 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 to 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, construction, and other such 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 Recipient 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 Recipient 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. Insurance

a. Marine insurance on goods financed by USAID which are to be transported to the territory of the Recipient may be financed [as a Foreign Exchange Cost] under this Agreement, provided as follows:

- Such insurance is placed at the most advantageous competitive rate;
- Such insurance is placed in a country which is authorized under Section C.1(a); and
- Claims thereunder are payable in U.S. dollars or any freely convertible currency unless USAID agrees otherwise in writing.

If the Recipient (or government of the Recipient), 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 Recipient 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 Recipient 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 Recipient 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 Recipient for the replacement or repair of such goods. Any such replacement will be of source and nationality 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.6. U.S. Government-Owned Excess Property. The Recipient 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.

Section C.7. Procurement and Disbursement of Funds. The Recipient agrees

that with respect to implementation of activities set forth in Annex 1, funds under the Agreement may be contracted or otherwise committed and disbursed directly by USAID to third parties in accordance with USAID's normal regulations and procedures, unless otherwise agreed to by USAID in writing. USAID undertakes to provide periodic reports to the Recipient as to the status of USAID direct contracts and agreements to third parties made with funds under the Agreement no more frequently than quarterly or as the Parties may otherwise agree in writing.

Article D: Amendment

The Parties may amend the Agreement, in writing, by mutual consent, either by formal amendment to the Agreement, or by an exchange of letters between the Representatives designated in Section 7.2 of the Agreement.

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 ninety (90) days' written notice. USAID also may terminate this Agreement in part by giving the Recipient ninety (90) days' written notice, and suspend this Agreement in whole or in part upon giving the Recipient written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving the Recipient written notice, if: (i) the Recipient fails to comply with any provision of this Agreement; (ii) an event occurs that USAID determines makes it improbable that the Objective or Results of the Agreement or the assistance program will be attained or that the Recipient 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 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 direct disbursement to the Recipient 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 Recipient to refund the amount of such disbursement in U.S. Dollars to USAID within thirty (30) days after receipt of a request thereof.
- b. If the failure of the Recipient 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 Recipient 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 thirty (30) days after receipt of a request therefore.
- c. The right under subsections (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.
- d. (1) Any refunds under subsections (a) or (b), or (2) any refund to USAID from a contractor, supplier, bank or other third-party with respect to goods or services financed under the Agreement, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (1) be made available first for the Agreement, to the extent justified, and (2) the remainder, if any, will be subtracted from the amount of the Agreement.
- e. Any interest or other earnings on funds disbursed by USAID to the Recipient 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 Recipient, 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 Recipient agrees, upon request, to execute an

assignment to USAID of any cause of action which may accrue to the Recipient 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 has financed in whole or in part out of funds contributed by USAID under this Agreement.

Article F: Title to and Disposition of Property

Ownership of equipment, supplies, and other property purchased with funds under the agreement will vest in the Recipient during the life of the agreement. Disposition of excess property financed under the agreement will be made in consultation with USAID and, where applicable, the host government of the country in which the activities financed under the agreement take place or other Sub-Recipient organizations.

Article G: Allowable Costs (April 2011)

- a. The Recipient must use funds provided under the Agreement for costs incurred in carrying out the purposes of the Agreement which are reasonable, allocable, and allowable.
 - 1) "Reasonable" means the costs do not exceed those that would ordinarily be incurred by a prudent person in the conduct of normal business.
 - 2) "Allocable" means the costs are necessary to the Agreement.
 - 3) "Allowable" means the costs are reasonable and allocable, and conform to any limitations set forth in the Agreement.
- b. The Recipient is encouraged to obtain the Agreement Officer's written determination in advance whenever the Recipient is uncertain as to whether a cost will be allowable.

Article H: Non-liability (April 2011)

USAID does not assume liability for any third-party claims for damages arising out of the Agreement.

Article I: Financial Management, Procurement, and Evaluation (April 2011)

To the extent not inconsistent with other provisions of the agreement, USAID and the Recipient understand that funds made available to the Recipient must be administered in accordance with the Recipient's own financial rules and regulations, and that the Recipient will follow its own procurement and evaluation policies and procedures.

Article J: Dispute Resolution (April 2011)

USAID and the Recipient will use their best efforts to amicably settle any dispute, controversy, or claim that results from, or relates to, the Agreement.

Article K: USAID Disability Policy and UN Convention on the Rights of Persons with Disabilities Assistance (April 2011)

- a. USAID requires that the Recipient not discriminate against persons with disabilities in the implementation of USAID-funded programs and make every effort to respect the principles of the Convention on the Rights of Persons with Disabilities in performing the program under the agreement. One of the objectives of USAID's Disability Policy is 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. 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.

Article L: Terrorist Financing Clause (Standard) (April 2011)

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. It is the responsibility of the Recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all contracts or sub-agreements issued under the Agreement.

Article M: Trafficking in Persons

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) represents a significant human-rights concern to the United States and the international community. The recipient agrees not to engage in trafficking in persons during the performance of this agreement.

Article N: Prohibition on Federal Contracting With and Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements (August 2018)

The Recipient must not require employees, subrecipients, or contractors to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees, subrecipients, or contractors from lawfully reporting such waste, fraud, or

abuse to the Recipient's investigatory body. If USAID determines that Recipient is not in compliance with this requirement, USAID may seek remedies under this Agreement, including disallowing otherwise allowable costs.

[RDOAG cost-type funding ILs must also include here any applicable Required as Applicable standard provisions from [ADS 308mab](#), or the appropriate template based on agreement type.]