

## **PARTICIPANT AGREEMENT TEMPLATE**

### **GUIDANCE**

All of Sustaining Technical and Analytic Resources (STAR)'s Collaboration Laboratory awardees will need to sign a participant agreement, which will resemble the below document.

This agreement will be sent out with all award letters, along with the Partnership Memorandum of Understanding (MOU) template, but in order to prepare institutions for what will be expected of them, the Consortium of Universities for Global Health (CUGH) and the STAR Project wanted to provide this guidance with the Request for Applications (RfA).

**By September 11, 2019**, all pairings and pre-partnered institutions will need to return a signed participant agreement to CUGH. For single institution applicants paired by STAR, the agreement will be due to CUGH by **September 26, 2019**. The institutions themselves can determine who is best placed to sign the agreement. This individual is likely to differ from the person, who submitted the grant application, on behalf of the institution.

**\*\*Due to the short time period to return this agreement to CUGH, it is strongly advised that each institution have their legal and/or other necessary departments review this contractual template during the application process (July & August 2019).**

**FIXED AMOUNT SUBAWARD AGREEMENT TEMPLATE**

**AGREEMENT NUMBER:** XXXXXXXX

**PAYMENT TYPE:** Fixed Price Sub Award

**PERIOD OF PERFORMANCE:** XX,XX,XXXX through XX,XX,XXXX

**TOTAL AMOUNT:** Fixed Price of \$XXX

**PRIME AWARD RECITALS**

**PRIME AWARD FUNDING AGENCY:** XXX

**PRIME AWARD NUMBER:** XXX

**PROGRAM NAME:** Sustaining Technical and Analytic Resources (STAR) Collaboration Laboratory

**RECIPIENT INFORMATION**

**RECIPIENT NAME**

Street Address:  
City/State/Country/Zip:  
Tel:

**AUTHORIZED REPRESENTATIVE**

Name, Title  
Email:  
Tel:

**PRIME RECIPIENT INFORMATION**

**CONSORTIUM OF UNIVERSITIES FOR  
GLOBAL HEALTH**

1608 Rhode Island Avenue, NW, Suite 240  
Washington, DC 20036  
Tel: 202-974-6363

**AUTHORIZED REPRESENTATIVE**

Name, Title  
Email:  
Tel:

**PROGRAM REPRESENTATIVE**

Name, Title  
Email:  
Tel:

**ADMINISTRATIVE REPRESENTATIVE FOR  
FINANCIAL REPORTING**

Name, Title  
Email:  
Tel:

The Consortium of Universities for Global Health (CUGH) hereby enters into this award as outlined within the attached clauses and exhibits. CUGH is hereafter referred to as "CUGH" and XXX is hereafter referred to as "Recipient." The Recipient agrees to perform the services and submit required deliverables according to the terms and subject to the conditions outlined within this Award.

**RECIPIENT SIGNATURE**

\_\_\_\_\_  
Name Date  
Title

**CONSORTIUM OF UNIVERSITIES FOR  
GLOBAL HEALTH**

\_\_\_\_\_  
Name Date  
Title

**FIXED AMOUNT SUBAWARD OF FINANCIAL ASSISTANCE AGREEMENT  
BETWEEN  
CONSORTIUM OF UNIVERSITIES FOR GLOBAL HEALTH  
AND  
XXX**

**RECITALS:** On May 1, 2018, the Public Health Institute (PHI) was awarded a five-year \$94 million cooperative agreement from the United States Agency for International Development (USAID) under Agreement No. 7200AA18CA00001, entitled Sustaining Technical and Analytic Resources (STAR). The Consortium of Universities for Global Health (CUGH) is a partner of PHI, and this is a Fixed Price Sub-Award of Financial Assistance under that award.

1. **PERIOD OF PERFORMANCE:** The period of performance for work outlined in this Award is expected to start and end as follows unless amended by both parties:
  - Start Date: Month, Day, Year
  - End Date: Month, Day, Year
2. **PURPOSE OF AWARD:** The Sub-Recipient, hereafter, referred to as the Recipient, will implement the activities and complete the reporting requirements outlined in Exhibit A (Statement of Objectives).
3. **TOTAL AMOUNT:** The maximum amount payable under this Award is for the fixed price amount of [AMOUNT] to be paid in accordance with Exhibit B (Payment Schedule).
4. **PAYMENT:** Recipient will invoice CUGH, under the STAR Project, for services rendered in accordance with the terms outlined in Exhibit B (Payment Schedule). Upon confirmation and approval by the STAR Academic Partnerships team that deliverables were submitted, the average time to receive payment is approximately 30 days to allow time for processing by the CUGH program and CUGH's Accounts Payable. Any funds not expended in accordance with the terms of this Award must be returned to CUGH within thirty (30) days following the end of the period of performance. Average time of payment issued within 30 days of fully executed agreement. Invoices must be submitted directly to your Program Representative listed on page 1.
5. **RECORDS RETENTION:** Recipient will preserve and retain all of its financial records supporting documentation and all other records, documents, papers and other materials pertinent to this agreement for three years from the date of final payment.
6. **AUDIT FILING COMPLIANCE:** Recipient will comply with its national and U.S. Federal Government audit requirements, if applicable, including providing a copy of its audit documents to CUGH if required. An applicant is only applicable for U.S. Federal Government Audit requirements if during its fiscal year, the entity has spent USD \$750,000 or more of USAID funds. OR Recipient will comply with the federal audit requirements of 2 CFR 200, if applicable, including providing a copy of its reporting package to CUGH if

required by the circular. Recipient will take appropriate and timely action to follow up and correct all audit findings. Recipient will cooperate with CUGH in its efforts to comply with 2 CFR 200, which requires that CUGH monitors the activities of Recipient as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

- 7. USE OF MATERIALS:** CUGH and the STAR Project shall have the right to use, reproduce, and authorize others to use and reproduce, any materials produced pursuant to this Award.
- 8. ACKNOWLEDGMENT:** Recipient will acknowledge this financial support as follows: “Funding is provided by the Sustaining Technical and Analytic Resources (STAR) Collaboration Laboratory, a project of the Public Health Institute, in collaboration with the Consortium of Universities for Global Health (CUGH), through funding from United States Agency for International Development (USAID).”
- 9. INDEPENDENT CONTRACTOR:** Recipient is an independent contractor and for no purpose will any of its officers, members, employees, volunteers, subrecipients or agents be considered an employee of CUGH, the STAR Project, or the Federal Agency.
- 10. CONFIDENTIALITY:** Recipient agrees to hold in strict confidence and not disclose or permit others to disclose to any third party, except as authorized in writing by CUGH and the STAR Project, confidential or proprietary information or materials disclosed to Recipient by CUGH and the STAR Project in the course of providing services under this Award. All CUGH and STAR Project confidential information will be clearly marked “Confidential” and will be sent to Recipient’s Authorized Representative.
- 11. INDEMNIFICATION:** Each party agrees to indemnify, defend and hold harmless the other party and its directors, officers, members, employees, contractors and agents. Neither party will be liable to the other for any indirect, incidental, special, consequential, or punitive damages, whether caused by negligence or otherwise.
- 12. LIMITATION OF LIABILITY:** Neither party will be liable to the other for any indirect, incidental, special, consequential, or punitive damages, whether caused by negligence or otherwise.
- 13. INSURANCE AND LICENSES:** Recipient will possess and maintain all necessary licenses, permits, certificates, minimum legal liability insurance coverage and credentials required by applicable law.
- 14. AUTHORIZATION:** Recipient represents and warrants that s/he is fully authorized and empowered to enter into this agreement and that the performance of his or her obligations under this agreement will not violate any agreement between Recipient and any other person, firm or organization.

- 15. EXCUSABLE DELAY:** If Recipient is delayed in the performance its obligations by reason of labor troubles, power failure, acts of government, acts of God or the public enemy, or any other reasons or causes beyond its reasonable control, performance will be excused for the period of delay and, if agreed to in writing by the parties, the Award will be extended for a period equivalent to the delay.
- 16. INTERFERING CONDITIONS:** Recipient agrees to promptly notify CUGH and the STAR Project of any condition that might interfere with this Award. Notification will not relieve Recipient of any responsibilities hereunder.
- 17. DEBARMENT CERTIFICATION:** Recipient certifies that it is not listed as debarred or suspended in [www.sam.gov](http://www.sam.gov). Recipient will incorporate the requirements of this section in all non-exempt lower tier transactions.
- 18. WHISTLEBLOWER:** Pilot Program for Enhancement of Contractor Employee Whistleblower Protections: Recipient is hereby given notice that the 48 CFR section 3.908, implementing section 828, entitled “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,” of the National Defense authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013), applies to this Award. Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sept. 2013) requires that (a) this Award and employees working on this agreement will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. (b) The Recipient will inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. (c) The Recipient will insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.
- 19. COMPLIANCE WITH LAW:** Recipient agrees to comply with all relevant state and federal statutes and regulations.
- 20. GOVERNING LAW:** The validity, construction, and effect of this Award will be governed by the laws of the United States of America and the District of Columbia.
- 21. SEVERABILITY:** If any provision of this Award is held in conflict with law, the validity of the remaining provisions will not be affected.
- 22. TERMINATION:** This sub-agreement may be terminated by CUGH and the STAR Project upon prior written notice to the Recipient if the Recipient, for any reason whatsoever, fails, refuses or is unable to perform the work in accordance with Exhibit A, or if the Recipient performs in a manner contrary to the terms set forth in this sub-agreement, or if CUGH has knowledge of or has reasonable cause to believe that the Recipient is unable to pay its obligations in the ordinary course of business. In such cases, CUGH shall give written notice to Recipient specifying deficiencies and the Recipient shall have five (5) calendar days (or as

otherwise agreed to in advance and in writing) after receipt of notice to correct said deficiencies. CUGH reserves the right to terminate this subaward, to demand a refund or take other appropriate measures for non-compliance with the terms and conditions of this subaward or other conditions which might result in the improper use of donor resources, violations of local laws, inability to achieve project objectives, or any actions that might affect the reputation and integrity of CUGH and the STAR Project.

**23. BACKGROUND AND FOLLOW-UP CHECKS:** CUGH will conduct a check of Recipient to determine their ability to receive donor funds and to comply with standards that prohibits CUGH from collaborating with or supporting organizations that support terrorists or terrorism activities. CUGH will conduct follow-up checks to ensure that Recipient continues to maintain standards that do not result in the Recipient being listed as debarred, suspended or an organization associated with terrorists or terrorism activities. If Recipient's representatives or members of its management or Board is found to have been convicted or charged with a narcotics offense, fraud, bribery or gratuity violations, trafficking in person, or terrorism activities these must be immediately reported to CUGH. CUGH may conduct follow-up risk assessments to either assess that the Recipient's risk rating continues to be the same, or if it has changed to take the appropriate steps to impose special provisions (for worsened risk ratings) or to relax special provisions (for improved risk ratings).

**24. OTHER TERMS AND CONDITIONS:**

***Relationship to USAID:*** CUGH is administering this subaward on behalf of the STAR Project and USAID. Although USAID is not directly involved in the administration of this subaward, it is understood and agreed that USAID may, at its discretion, terminate the subaward activity (activities) unilaterally in extraordinary circumstances through CUGH.

***Modification of this Subaward:*** The Recipient if required to obtain prior written authorization from CUGH for any changes to the following:

- a. The activities being supported by this Subaward;
- b. The fixed amount of this Subaward;
- c. The milestones set forth in the Partnership Memorandum of Understanding; or
- d. The subagreement completion date.

***Rights of Visitation and Inspection:*** CUGH, the STAR Project, and/or USAID may conduct monitoring of the subaward implementation. The Recipient hereby subawards CUGH, its auditor(s) and USAID, upon prior written notice of five (5) business days, the right of direct, unrestricted access to any of Recipient's relevant records directly related to the implementation of activities, which have been paid in part or in full using funds disbursed under this subagreement. It is agreed that under this fixed amount subaward the examination of records will not be conducted for the purpose of verifying the cost of the milestones or to adjust the amounts paid for the milestones.

***Marking, Branding and Publicity:*** The Recipient will obtain advance approval from CUGH and the STAR Project prior to issuance of any public communications (including reports) regarding this subaward or subsequent work related to the subaward. As a

condition of award, the Recipient agrees to mark all public communications in accordance with the Branding Strategy and Marking Plan, which will be sent separately to the Recipient. CUGH, the STAR Project, and USAID may include information relating to this subaward in public reports and make subaward information public at any time on their web sites, social media, as part of a press release, public reports, speeches, newsletters and other public documents. The Recipient will make a good faith effort to secure consent from relevant third parties for CUGH, the STAR Project, and USAID to use in its publicity or disclosure of information pertaining to the Program, such as the names and logos of vendors and commercial providers engaged in implementation of the Program. Such consent shall be required by Recipient from all subcontractors and subawardees.

- 25. DISPUTES AND ARBITRATION:** Any controversy or claim arising out of or relating to this Award, or the breach thereof, will be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. CUGH is incorporated and located in the District of Columbia, United States.
- 26. NON-ASSIGNMENT:** This Award is not assignable by Recipient without the prior written consent of CUGH and the STAR Project.
- 27. SURVIVAL OF OBLIGATIONS:** Expiration or termination of this Award will not extinguish any previously-accrued rights or obligations of the parties.
- 28. NOTICES:** Any notice given by any of the parties will be sufficient only if in writing to the CUGH Administrative Representative, the STAR Project, and by/to the Recipient's Authorized Representative named on the cover page of this agreement.
- 29. ENTIRE AGREEMENT:** This is the entire agreement between the parties. It supersedes all prior oral or written agreements or understandings and it may be amended only in writing.

## **EXHIBIT A STATEMENT OF OBJECTIVES**

### **I. Background/Objectives:**

Recipient has been awarded and selected to participate in STAR's Collaboration Laboratory experiment, which will last for 12-months, through September 30, 2020. Separate from this Agreement, there will be a Memorandum of Understanding (MOU) between the Recipient and XX that will specify the scope of work for the partnership, milestones and indicators, terms of the agreement between the partners, and delineate roles and responsibilities.

### **II. Funding Restrictions & Taxation:**

- Funds **cannot** be used to cover personnel time (no salaries or stipends can be included), funding gaps, institutional capacity/funding needs, NICRA or overhead costs, IT or Communications equipment with a per unit value of USD \$5,000 or more, or travel outside the parameters of the experiment.
- All travel costs for non-U.S. locations will adhere to U.S. Department of State regulations and U.S. locations will use GSA rates or below.
- Institutions are solely responsible for the taxation consequences and reporting requirements created by receipt of these funds.

### **III. Participant Requirements**

- As part of this Agreement, Recipient agrees to participate in three, virtual STAR facilitated knowledge sharing exchanges during the 12-month period (launch, mid-line, and end-line). These will likely last between 90 minutes to two hours and require an Internet connection.
- In addition to the three knowledge sharing exchanges, STAR staff will schedule and hold partnership calls every two months to listen to partner calls and track the work.
- As part of this Agreement, Recipient consents that STAR will be able to post on its website the intellectual property resources generated through the Collaboration Laboratory experiments.



#### IV. Reporting Requirements:

Below is the schedule that each pre-existing and pre-identified institution will adhere to during the 12-month period. This will also apply to a single institution, which is then partnered by STAR, except both this Agreement and the Partnership Memorandum of Understanding will need to be signed by September 26, 2019.

No.	Reports/Activity/Output	Timeline/Due Date
1	Return this signed Agreement	September 11, 2019
2	Return signed partnership MOU; 12-month project begins	September 26, 2019
3	Partners submit completed Partnership and Capacity Assessment toolkits (PAT and CAT) prior to first knowledge sharing exchange with STAR.	During October 2019
4	Partners submit completed PAT and Knowledge Management (KM) Plan prior to second knowledge sharing exchange with STAR. Partners must also submit proof of expenses for items over USD \$1,000.	During March 2020
5	Partners submit completed PAT, CAT, and KM Plan prior to final knowledge sharing exchange with STAR.	August/September 2020

**EXHIBIT B  
PAYMENT SCHEDULE**

The Recipient will be paid the total fixed price amount of \$XXX as follows:

No.	Deliverable/Milestone	Estimated Date	Amount
1	First disbursement of funding (50%) upon receipt of this signed Agreement and Partnership Memorandum of Understanding	By September 30, 2019	\$
2	Second disbursement of funding (25%) upon receipt and STAR Project approval of submitted Partnership and Capacity Assessment toolkits (PAT and CAT), proof of expenses for items over USD \$1,000, and completion of second knowledge sharing exchange with STAR.	Post- mid-line evaluation; ~ March 2020	\$
3	Final disbursement of funding (25%) upon receipt and STAR Project approval of submitted PAT, CAT, KM Plan, proof of expenses not previously submitted for items over USD \$1,000, and completion of final knowledge sharing exchange with STAR.	By September 30, 2020	\$
<b>Total Fixed Price Amount</b>			<b>\$</b>

**CLOSE-OUT:** On submission of the voucher for payment for the final milestone, the Recipient must certify that the subaward is completed, and the Recipient will make no further claim against the CUGH after final payment.

## EXHIBIT C: LIST OF MANDATORY STANDARD PROVISIONS FOR U.S. NON-GOVERNMENTAL ORGANIZATIONS

**First and foremost, since this is a Fixed Amount Sub Award:**

- **The Recipient must follow the mandatory requirements for Fixed Amount Awards (Standard Provisions for Fixed Amount Awards to Nongovernmental Organizations, A Mandatory Reference for ADS Chapter 303, Partial Revision Date: 05/22/2019) found at this link: <https://www.usaid.gov/sites/default/files/documents/1868/303mat.pdf>**
- **All Mandatory Requirements will be obligated to follow under this fixed amount subaward.**
- **And the following required, as applicable regulations under this fixed amount subaward:**

### **3. Nondiscrimination (June 2012)**

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

Additionally, USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination, including harassment, in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. In addition, the Agency strongly encourages its recipients and their subrecipients and vendors (at all tiers), performing both in the U.S. and overseas, to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection for all their employees on these expanded bases, subject to applicable law.

[END OF PROVISION]

### **6. Subawards and Contracts (December 2014)**

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

[END OF PROVISION]

## 8. USAID Eligibility Rules For Goods and Services (June 2012)

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

b. Ineligible and Restricted Commodities and Services:

(1) Ineligible Commodities and Services. The recipient must not, under any circumstances, procure any of the following under this award:

- (i) Military equipment,
- (ii) Surveillance equipment,
- (iii) Commodities and services for support of police or other law enforcement activities,
- (iv) Abortion equipment and services,
- (v) Luxury goods and gambling equipment, or
- (vi) Weather modification equipment.

(2) Ineligible Suppliers. Any firms or individuals that do not comply with the requirements in Standard Provision, “Debarment, Suspension and Other Responsibility Matters” and Standard Provision, “Preventing Terrorist Financing” must not be used to provide any commodities or services funded under this award.

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

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

c. Source and Nationality:

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

d. Guidance on the eligibility of specific commodities and services may be obtained from the AO. If USAID determines that the recipient has procured any commodities or services under this award contrary to the requirements of this provision, and has received payment for such purposes, the AO may require the recipient to refund the entire amount of the purchase.

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

[END OF PROVISION]

## **11. Equal Participation by Faith-Based Organizations (June 2016)**

### **a. Faith-Based Organizations Encouraged**

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

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

### **b. Explicitly Religious Activities Prohibited.**

- (1)** Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, prayer, or proselytization.
- (2)** The recipient must not engage in explicitly religious activities as part of the programs or services directly funded with financial assistance from USAID. If the recipient engages in explicitly religious activities, the activities must be offered separately, in time or location, from any programs or services directly funded by this award, and participation must be voluntary for beneficiaries of the programs or services funded with USAID assistance.
- (3)** These restrictions apply equally to religious and secular organizations. All organizations that participate in USAID programs, as recipients or

subawardees, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing USAID funded activities.

- (4) Notwithstanding the restrictions of b.(1) and (2), a religious organization that participates in USAID-funded programs or services:
- (i) May retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support or engage in any explicitly religious activities or in any other manner prohibited by law;
  - (ii) May use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols; and
  - (iii) May retain its authority over its internal governance, and may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

c. Implementation in accordance with the Establishment Clause: Nothing in this provision shall be construed as authorizing the use of USAID funds for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law.

d. Discrimination Based on Religion Prohibited: The recipient must not provide services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

e. A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1 is not forfeited when the organization receives financial assistance from USAID.

f. The Secretary of State may waive the requirements of this section in whole or in part, on a case-by- case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

g. This provision must be included in all subawards under this award.

[END OF PROVISION]

**12. Preventing Terrorist Financing -- Implementation of E.O. 13224 (August 2013)**

a. The recipient must not engage in transactions with, or provide resources or support to, individuals and organizations associated with terrorism, including those individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or the United Nations Security designation list (online at: [http://www.un.org/sc/committees/1267/aq\\_sanctions\\_list.shtml](http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml)).

b. This provision must be included in all subawards under this award.

[END OF PROVISION]

**13. Marking and Public Communications under USAID-Funded Assistance (December 2014)**

a. The USAID Identity is the official marking for USAID, comprised of the USAID logo and brand mark with the tagline "from the American people," unless amended by USAID to include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency initiative. The USAID Identity (including any required presidential initiative or related identity) is on the USAID Web site at [www.usaid.gov/branding](http://www.usaid.gov/branding). Recipients must use the USAID Identity, of a size and prominence equivalent to or greater than any other identity or logo displayed, to mark the following:

- (1) Programs, projects, activities, public communications, and commodities partially or fully funded by USAID;
- (2) Program, project, or activity sites funded by USAID, including visible infrastructure projects or other physical sites;
- (3) Technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities, promotional, informational, media, or communications products funded by USAID;
- (4) Commodities, equipment, supplies, and other materials funded by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs; and
- (5) Events financed by USAID, such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities. If the USAID Identity cannot be displayed, the recipient is encouraged to otherwise acknowledge USAID and the support of the American people.

b. The recipient must implement the requirements of this provision following the approved Marking Plan in the award.

c. The AO may require a preproduction review of program materials and "public communications " (documents and messages intended for external distribution, including but not limited to correspondence ; publications; studies; reports; audio visual productions; applications; forms; press; and promotional materials) used in connection with USAID-funded programs, projects or activities, for compliance with an approved Marking Plan.

d. The recipient is encouraged to give public notice of the receipt of this award and announce progress and accomplishments. The recipient must provide copies of notices or announcements to the Agreement Officer's Representative (AOR) and to USAID's Office of Legislative and Public Affairs in advance of release, as practicable. Press releases or other public notices must include a statement substantially as follows:

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

e. Any "public communication" in which the content has not been approved by USAID must contain the following disclaimer:

"This study/report/audio visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government. "

f. The recipient must provide the USAID AOR with two copies of all program and communications materials produced under this award.

g. The recipient may request an exception from USAID marking requirements when USAID marking requirements would:

- (1) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials;
- (2) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent;
- (3) Undercut host-country government "ownership" of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications;
- (4) Impair the functionality of an item;
- (5) Incur substantial costs or be impractical;
- (6) Offend local cultural or social norms, or be considered inappropriate; or
- (7) Conflict with international law.



h. The recipient may submit a waiver request of the marking requirements of this provision or the Marking Plan, through the AOR, when USAID-required marking would pose compelling political, safety, or security concerns, or have an adverse impact in the cooperating country.

(1) Approved waivers "flow down" to subawards and contracts unless specified otherwise. The waiver may also include the removal of USAID markings already affixed, if circumstances warrant.

(2) USAID determinations regarding waiver requests are subject to appeal by the recipient, by submitting a written request to reconsider the determination to the cognizant Assistant Administrator.

1. The recipient must include the following marking provision in any subawards entered into under this award:

"As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's, or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity."

[END OF PROVISION]

## **17. Travel and International Air Transportation (December 2014)**

### **a. TRAVEL COSTS**

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

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

## b. FLY AMERICA ACT RESTRICTIONS

(1) The recipient must use U.S. Flag Air Carriers for all international air transportation (including personal effects) funded by this award pursuant to the Fly America Act and its implementing regulations to the extent service by such carriers is available.

(2) In the event that the recipient selects a carrier other than a U.S. Flag Air Carrier for international air transportation, in order for the costs of such international air transportation to be allowable, the recipient must document such transportation in accordance with this provision and maintain such documentation pursuant to the Standard Provision, “Accounting, Audit and Records.” The documentation must use one of the following reasons or other exception under the Fly America Act:

- (i) The recipient uses a European Union (EU) flag air carrier, which is an airline operating from an EU country that has signed the US-EU “Open Skies” agreement (<http://www.state.gov/e/eb/rls/othr/ata/i/ic/170684.htm>).
- (ii) Travel to or from one of the following countries on an airline of that country when no city pair fare is in effect for that leg (see <http://apps.fas.gsa.gov/citypairs/search/>):
  - a. Australia on an Australian airline,
  - b. Switzerland on a Swiss airline, or
  - c. Japan on a Japanese airline;
- (iii) Only for a particular leg of a route on which no US Flag Air Carrier provides service on that route;
- (iv) For a trip of 3 hours or less, the use of a US Flag Air Carrier at least doubles the travel time;
- (v) If the US Flag Air Carrier offers direct service, use of the US Flag Air Carrier would increase the travel time by more than 24 hours; or
- (vi) If the US Flag Air Carrier does not offer direct service,
  - a. Use of the US Flag Air Carrier increases the number of aircraft changes by 2 or more,
  - b. Use of the US Flag Air Carrier extends travel time by 6 hours or more, or
  - c. Use of the US Flag Air Carrier requires a layover at an overseas interchange of 4 hours or more.

## c. DEFINITIONS

The terms used in this provision have the following meanings:

(1) “Travel costs” means expenses for transportation, lodging, subsistence (meals and incidentals), and related expenses incurred by employees who are on travel status on official business of the recipient for any travel outside the country in which the organization is located. “Travel costs” do not include expenses incurred by employees who are not on official business of the recipient, such as rest and recuperation (R&R) travel offered as part of an employee’s benefits package that are consistent with the recipient’s personnel and travel policies and procedures.

(2) "International air transportation" means international air travel by individuals (and their personal effects) or transportation of cargo by air between a place in the United States and a place outside thereof, or between two places both of which are outside the United States.

(3) "U.S. Flag Air Carrier" means an air carrier on the list issued by the U.S. Department of Transportation at <http://ostpxweb.dot.gov/aviation/certific/certlist.htm>. U.S. Flag Air Carrier service also includes service provided under a code share agreement with another air carrier when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number.

(4) For this provision, the term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

#### d. SUBAWARDS AND CONTRACTS

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

[END OF PROVISION]

### 18. Ocean Shipment of Goods (June 2012)

**APPLICABILITY:** This provision is applicable for awards and subawards for which the recipient contracts for ocean transportation for goods purchased or financed with USAID funds. In accordance with 22 CFR 228.21, ocean transportation shipments are subject to the provisions of 46 CFR Part 381.

#### OCEAN SHIPMENT OF GOODS (JUNE 2012)

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

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

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

### 20. Trafficking in Persons (April 2016)

a. The recipient, subawardee, or contractor, at any tier, or their employees, labor recruiters, brokers or other agents, must not engage in:

(1) Trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish

Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime) during the period of this award;

(2) Procurement of a commercial sex act during the period of this award;

(3) Use of forced labor in the performance of this award;

(4) Acts that directly support or advance trafficking in persons, including the following acts:

- i. Destroying, concealing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
- ii. Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:
  - a) exempted from the requirement to provide or pay for such return transportation by USAID under this award; or
  - b) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;
- iii. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;
- iv. Charging employees recruitment fees; or
- v. Providing or arranging housing that fails to meet the host country housing and safety standards.

b. In the event of a violation of section (a) of this provision, USAID is authorized to terminate this award, without penalty, and is also authorized to pursue any other remedial actions authorized as stated in section 1704(c) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013).

c. If the estimated value of services required to be performed under the award outside the United States exceeds \$500,000, the recipient must submit to the Agreement Officer, the annual "Certification regarding Trafficking in Persons, Implementing Title XVII of the National Defense Authorization Act for Fiscal Year 2013" as required prior to this award, and must implement a compliance plan to prevent the activities described above in section (a) of this provision. The recipient must provide a copy of the compliance plan to the Agreement Officer upon request and must post the useful and relevant contents of the plan or related materials on its website (if one is maintained) and at the workplace.

d. The recipient's compliance plan must be appropriate to the size and complexity of the award and to the nature and scope of the activities, including the number of non-United States citizens expected to be employed. The plan must include, at a minimum, the following:

- (1) An awareness program to inform employees about the trafficking related prohibitions included in this provision, the activities prohibited and the action that will be taken against the employee for violations.
  - (2) A reporting process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking, including a means to make available to all employees the Global Human Trafficking Hotline at 1-844-888-FREE and its e-mail address at help@befree.org.
  - (3) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging of recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
  - (4) A housing plan, if the recipient or any subawardee intends to provide or arrange housing. The housing plan is required to meet any host-country housing and safety standards.
  - (5) Procedures for the recipient to prevent any agents or subawardee at any tier and at any dollar value from engaging in trafficking in persons activities described in section a of this provision. The recipient must also have procedures to monitor, detect, and terminate any agents or subawardee or subawardee employees that have engaged in such activities.
- e. If the Recipient receives any credible information regarding a violation listed in section a(1)-(4) of this provision, the recipient must immediately notify the cognizant Agreement Officer and the USAID Office of the Inspector General; and must fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.
- f. The Agreement Officer may direct the Recipient to take specific steps to abate an alleged violation or enforce the requirements of a compliance plan.
- g. For purposes of this provision, "employee" means an individual who is engaged in the performance of this award as a direct employee, consultant, or volunteer of the recipient or any subrecipient.
- h. The recipient must include in all subawards and contracts a provision prohibiting the conduct described in section a(1)-(4) by the subrecipient, contractor, or any of their employees, or any agents. The recipient must also include a provision authorizing the recipient to terminate the award as described in section b of this provision.

[END OF PROVISION]

## **26. Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (May 2017)**

(a) Definitions.

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

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

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

"Subaward" has the meaning given in 2 CFR Part 200. "Subrecipient" has the meaning given in 2 CFR Part 200.

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

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

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

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

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

[END OF PROVISION]

## 27. Child Safeguarding (June 2015)

(a) Because the activities to be funded under this award may involve children, or personnel engaged in the implementation of the award may come into contact with children, these activities could raise the risk of child abuse, exploitation, or neglect within USAID-funded programs. The organization agrees to abide by the following child safeguarding core principles:

- (1) Ensure compliance with host country and local child welfare and protection legislation or international standards, whichever gives greater protection, and with U.S. law where applicable;
- (2) Prohibit all personnel from engaging in child abuse, exploitation, or neglect;
- (3) Consider child safeguarding in project planning and implementation to determine potential risks to children that are associated with project activities and operations;
- (4) Apply measures to reduce the risk of child abuse, exploitation, or neglect, including, but not limited to, limiting unsupervised interactions with children; prohibiting exposure to pornography; and complying with applicable laws, regulations, or customs regarding the photographing, filming, or other image-generating activities of children;
- (5) Promote child-safe screening procedures for personnel, particularly personnel whose work brings them in direct contact with children; and
- (6) Have a procedure for ensuring that personnel and others recognize child abuse, exploitation, or neglect; mandating that personnel and others report allegations; investigating and managing allegations; and taking appropriate action in response to such allegations, including, but not limited to, dismissal of personnel.

(b) The organization must also include in their code of conduct for all personnel implementing USAID-funded activities the child safeguarding principles in (a) (1) through (6).

(c) The following definitions apply for purposes of this provision:

(1) Child: A child or children are defined as persons who have not attained 18 years of age.

(2) Child abuse, exploitation, or neglect: Constitutes any form of physical abuse; emotional ill-treatment; sexual abuse; neglect or insufficient supervision; trafficking; or commercial, transactional, labor, or other exploitation resulting in actual or potential harm to the child's health, well-being, survival, development, or dignity. It includes but is not limited to: any act or failure to act which results in death, serious physical or emotional harm to a child, or an act or failure to act which presents an imminent risk of serious harm to a child.

- (3) Physical abuse: Constitutes acts or failures to act resulting in injury (not necessarily visible), unnecessary or unjustified pain or suffering without causing injury, harm or risk of harm to a child's health or welfare, or death. Such acts may include, but are not limited to: punching, beating, kicking, biting, shaking, throwing, stabbing, choking, or hitting (regardless of object used), or burning. These acts are considered abuse regardless of whether they were intended to hurt the child.
- (4) Sexual Abuse: Constitutes fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure, and exploitation through prostitution or the production of pornographic materials.
- (5) Emotional abuse or ill treatment: Constitutes injury to the psychological capacity or emotional stability of the child caused by acts, threats of acts, or coercive tactics. Emotional abuse may include, but is not limited to: humiliation, control, isolation, withholding of information, or any other deliberate activity that makes the child feel diminished or embarrassed.
- (6) Exploitation: Constitutes the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner. Exploitation represents a form of coercion and violence that is detrimental to the child's physical or mental health, development, education, or well-being.
- (7) Neglect: Constitutes failure to provide for a child's basic needs within USAID-funded activities that are responsible for the care of a child in the absence of the child's parent or guardian.
- (d) The recipient must insert the provisions in (a) and (b) in all sub-awards under this award.

[END OF PROVISION]

### **28. Mandatory Disclosures (July 2015)**

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

Disclosures must be sent to:  
U.S. Agency for International Development  
Office of the Inspector General  
P.O. Box 657



Washington, DC 20044-0657  
Phone: 1-800-230-6539 or 202-712-1023  
Email: [ig.hotline@usaid.gov](mailto:ig.hotline@usaid.gov)  
URL: <https://oig.usaid.gov/content/usaid-contractor-reporting-form>.

Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment (See 2 CFR 180, 2 CFR 780 and 31 U.S.C. 3321). The recipient must include this mandatory disclosure requirement in all subawards and contracts under this award.

[END OF PROVISION]

**29. Nondiscrimination against Beneficiaries (November 2016)**

(a) USAID policy requires that the recipient not discriminate against any beneficiaries in implementation of this award, such as, but not limited to, by withholding, adversely impacting, or denying equitable access to the benefits provided through this award on the basis of any factor not expressly stated in the award. This includes, for example, race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, disability, age, genetic information, marital status, parental status, political affiliation, or veteran's status.

Nothing in this provision is intended to limit the ability of the recipient to target activities toward the assistance needs of certain populations as defined in the award.

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

[END OF PROVISION]

**RAA23. PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE  
(MAY 2019)**

**APPLICABILITY:** This provision is applicable to those awards using federal funding predictably for international health activities with a primary purpose or effect of benefitting a foreign country, typically funded from the GHP, ESF, AEECA, or successor accounts, as applicable, including awards reported on under the Health category of the Foreign Assistance Standardized Program Structure, except those under program area HL.8, Water Supply and Sanitation, the American Schools and Hospitals Abroad Program, or programs funded by Food for Peace. This provision applies whenever implementation of the activity involves assistance to or implemented by foreign nongovernmental organizations.

**PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE (May 2019)**

(a) Ineligibility of Foreign Non-governmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning

This provision is in two parts: I, applicable to foreign non-governmental organizations; and II, applicable to U.S. non-governmental organizations. Both part I and part II should be included in awards.

#### I. Grants and Cooperative Agreements with Foreign Non-governmental Organizations

(1) The recipient agrees that it will not, during the term of this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph (a), a foreign non-governmental organization is a for-profit or not-for-profit non-governmental organization that is not organized under the laws of the United States, any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

(2) The recipient agrees that authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (i) inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that describe the health activities of the recipient, including reports, brochures and service statistics; (ii) observe the health activities conducted by the recipient, (iii) consult with healthcare personnel of the recipient; and (iv) obtain a copy of audited financial statements or reports of the recipient, as applicable.

(3) In the event USAID has reasonable cause to believe that the recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient must make available to USAID such books and records and other information as USAID may reasonably request to determine whether a violation of that undertaking has occurred, consistent with 2 CFR Part 200.

(4) Health assistance furnished to the recipient under this award must be terminated if the recipient violates any undertaking required by this paragraph (a), unless USAID determines, consistent with 2 CFR 200.338, that other corrective action is warranted. In the event of termination, the recipient must refund to USAID any unexpended amounts furnished to the recipient under this award, plus an amount equivalent to that used by the recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award. The amount to be refunded to USAID under this subparagraph (4) may not exceed the total amount of health assistance furnished under this award.

(5) The recipient may not furnish health assistance under this award to another foreign non-governmental organization (the sub-recipient) unless:  
(i) sub-recipient agrees, by entering into such subaward, that it will not, during the term of its subaward, perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities; and (ii) such foreign non-

governmental organization's agreement contains the same terms and conditions as described in subparagraph (6), below.

(6) Prior to entering into an agreement to furnish health assistance to a foreign non-governmental organization under this award, the recipient, consistent with 2 CFR Part 200, must ensure that such agreement with sub-recipient includes the following terms:

(i) The sub-recipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to other foreign nongovernmental organizations that conduct such activities;

(ii) The recipient and authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (A) inspect the documents and materials maintained or prepared by the sub-recipient in the usual course of its operations that describe the health activities of the sub-recipient, including reports, brochures and service statistics; (B) observe health activities conducted by the sub-recipient; (C) consult with healthcare personnel of the sub-recipient; and (D) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable;

(iii) In the event that the recipient or USAID has reasonable cause to believe that a sub-recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient will review the health program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to recipient such books and records and other information as may be reasonably requested to conduct the review. USAID may review the health program of the sub-recipient under these circumstances, and sub-recipient must provide access on a timely basis to USAID to such books and records and other information upon request, consistent with 2 CFR Part 200;

(iv) Health assistance provided to the sub-recipient under this award must be terminated if the sub-recipient violates any award terms under subparagraphs (6)(i)-(iii), above, unless USAID determines, consistent with 2 CFR 200.338, that other corrective action is warranted. In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award, up to the total amount of health assistance furnished to the sub-recipient under this award. Where USAID is not otherwise engaged in the determination to terminate a sub-recipient's award, the recipient must notify USAID of any action taken for a violation of any undertaking required under subparagraphs (6)(i)-(iii); and

(v) The sub-recipient may furnish health assistance under this award to another foreign non-governmental organization only if: (A) such foreign non-governmental organization agrees, by entering into such agreement, that it will not, during the term of its subaward,

perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities and (B) such foreign non-governmental organization's agreement contains the same terms and conditions as those provided by the sub-recipient to the recipient as described in subparagraphs (6)(i)-(iv), above.

(7) Where the terms and conditions of the award require USAID approval of subawards, the recipient must, consistent with 2 CFR Part 200, include a description of the due diligence performed by the recipient on the subrecipient before furnishing health assistance under this award.

(8) The recipient is liable to USAID for a refund for a violation by the subrecipient of any requirement of this paragraph (a) only if: (i) the recipient knowingly furnishes health assistance under this award to a sub-recipient that performs or actively promotes abortion as a method of family planning, or (ii) the sub-recipient did not abide by its award terms required by subparagraphs (6)(i)-(iii), above, and the recipient failed to make reasonable due diligence efforts prior to furnishing health assistance to the sub-recipient, or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (6)(i)-(iii), above, and the recipient fails to terminate health assistance to the sub-recipient, or fails to require the sub-recipient to terminate assistance furnished under a subaward that violates any award terms required by subparagraphs (6)(i)-(iii), above, or fails to take other appropriate corrective action consistent with subparagraph 6(iv), above.

(9) Recipient acknowledges that USAID may make independent inquiries in the community served by the recipient or a sub-recipient under this award regarding whether it performs or actively promotes abortion as a method of family planning.

(10) The following definitions apply for purposes of paragraph (a):

(i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother and abortions performed for fetal abnormalities, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest.

(ii) "To perform abortions" means to operate a facility where abortions are provided as a method of family planning. Excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(iii) "To actively promote abortion" means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following activities:

(I) Operating a service-delivery site that provides, as part of its regular program, counseling, including advice and information, regarding the benefits and/or availability of abortion as a method of family planning;

(II) Providing advice that abortion as a method of family planning is an available option or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if a woman who is already pregnant specifically asks the question, she clearly states that she has already decided to have a legal abortion, and the healthcare provider reasonably believes that the ethics of the medical profession in the host country requires a response regarding where it may be obtained safely and legally);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and

(IV) Conducting a public information campaign in foreign countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if she were to carry the fetus to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization's premises, and the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that he or she is acting on behalf of the organization.

(iv) Furnishing health assistance to a foreign non-governmental organization includes the transfer of U.S. global health assistance funds made available under this award or goods financed with such funds. Furnishing health assistance to a foreign non-governmental organization does not include the provision of technical assistance or training (including other costs for individuals directly related to such technical assistance or participation in training), unless such organization receives a subaward of U.S. global health assistance funds under this award. Furnishing health assistance to a

foreign non-governmental organization does not include the purchase of goods or services from an organization.

(v) To “control” an organization means to possess the power to direct, or cause the direction of, the management and policies of an organization.

(11) In determining whether a foreign non-governmental organization is eligible to be a recipient or sub-recipient of health assistance under this award, the action of separate non-governmental organizations shall not be imputed to the recipient or sub-recipient, unless, in the judgment of USAID, a separate non-governmental organization is being used purposefully to avoid the provisions of this paragraph (a). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request the USAID Agreement Officer’s approval to treat as separate the health activities of two or more organizations, which would not be considered separate under the preceding sentence. The recipient must provide a written justification to USAID that the health activities of the organizations are sufficiently distinct to warrant not imputing the activity of one to the other.

(12) Health assistance may be furnished under this award by a recipient or sub-recipient to a foreign government or parastatal even though the government or parastatal includes abortion in its health program, provided that no such assistance may be furnished under this award in support of the abortion activity of the government or parastatal and any funds transferred to the government or parastatal must be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government or parastatal.

(13) For the avoidance of doubt, in the event of a conflict between a term of this paragraph (a) and an affirmative duty of a healthcare provider required under local law to provide counseling about and referrals for abortion as a method of family planning, compliance with such law shall not trigger a violation of this paragraph (a).

## II. Grants and Cooperative Agreements with U.S. Non-governmental Organizations

(1) The recipient (A) agrees that it will not furnish health assistance under this award to any foreign non-governmental organization that performs or actively promotes abortion as a method of family planning in foreign countries; and (B) further agrees to require that such sub-recipients do not provide financial support to any other foreign non-governmental organization that conducts such activities. For purposes of this paragraph (a), a foreign non-governmental organization is a for-profit or not-for-profit non-governmental organization that is not organized under the laws of the United States, any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

(2) Prior to entering into an agreement to furnish health assistance to a foreign non-governmental organization (sub-recipient) under this award, recipient must ensure that such agreement with sub-recipient includes the following terms:

(i) The sub-recipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to other foreign nongovernmental organizations that conduct such activities;

(ii) The recipient, and authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (A) inspect the documents and materials maintained or prepared by the sub-recipient in the usual course of its operations that describe the health activities of the sub-recipient, including reports, brochures and service statistics; (B) observe the health activities conducted by the sub-recipient; (C) consult with healthcare personnel of the sub-recipient; and (D) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable;

(iii) In the event that the recipient or USAID has reasonable cause to believe that a sub-recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient will review the health program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to recipient such books and records and other information as may be reasonably requested to conduct the review. USAID may review the health program of the sub-recipient under these circumstances, and sub-recipient must provide access on a timely basis to USAID to such books and records and other information upon request, consistent with 2 CFR part 200;

(iv) Health assistance provided to the sub-recipient under this award must be terminated if the sub-recipient violates any award terms required by subparagraphs (2)(i)-(iii), above, unless USAID determines, consistent with 2 CFR 200.338, that other corrective action is warranted. In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award, up to the total amount of health assistance furnished to the sub-recipient under this award. Where USAID is not otherwise engaged in the determination to terminate a recipient's subaward, the recipient must notify USAID of any action taken for a violation of any undertaking required under subparagraphs (2)(i)-(iii); and

(v) The sub-recipient may furnish health assistance under this award to another foreign non-governmental organization only if: (A) such foreign non-governmental organization agrees, by entering into such agreement, that it will not, during the term of its subaward, perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities; and (B) such foreign non-governmental organization's agreement contains the same terms and conditions as those provided by

the sub-recipient to the recipient as described in subparagraphs (2)(i)-(iv), above.

(3) Where the terms and conditions of the award require USAID approval of subawards, the recipient must, consistent with 2 CFR Part 200, include a description of the due diligence performed by the recipient on the subrecipient before furnishing health assistance under this award.

(4) The recipient is liable to USAID for a refund for a violation by the subrecipient of any requirement of this paragraph (a) only if: (i) the recipient knowingly furnishes health assistance under this award to a sub-recipient that performs or actively promotes abortion as a method of family planning; or (ii) the sub-recipient did not abide by its award terms required by subparagraphs (2)(i)-(iii), above, and the recipient failed to make reasonable due diligence efforts prior to furnishing health assistance to the sub-recipient; or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (2)(i)-(iii), above, and the recipient fails to terminate health assistance to the sub-recipient, or fails to require the subrecipient to terminate assistance furnished under a subaward that violates any award terms required by subparagraphs (2)(i)-(iii), above, or fails to take other appropriate corrective action consistent with subparagraph 2(iv), above.

(5) Recipient acknowledges that USAID may make independent inquiries in the community served by a sub-recipient under this award regarding whether such sub-recipient performs or actively promotes abortion as a method of family planning.

(6) The following definitions apply for purposes of this paragraph (a):

(i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother and abortions performed for fetal abnormalities, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest.

(ii) “To perform abortions” means to operate a facility where abortions are provided as a method of family planning. Excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(iii) “To actively promote abortion” means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following activities:



(I) Operating a service-delivery site that provides, as part of its regular program, counseling, including advice and information, regarding the benefits and/or availability of abortion as a method of family planning;

(II) Providing advice that abortion as a method of family planning is an available option or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if a woman who is already pregnant specifically asks the question, she clearly states that she has already decided to have a legal abortion, and the healthcare provider reasonably believes that the ethics of the medical profession in the host country requires a response regarding where it may be obtained safely and legally);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and

(IV) Conducting a public-information campaign in foreign countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if she were to carry the fetus to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization's premises, and the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that he or she is acting on behalf of the organization.

(iv) Furnishing health assistance to a foreign non-governmental organization includes the transfer of U.S. global health assistance funds made available under this award or goods financed with such

funds. Furnishing health assistance to a foreign non-governmental organization does not include the provision of technical assistance or training (including other costs for individuals directly related to such technical assistance or participation in training), unless such organization receives a subaward of U.S. global health assistance funds under this award. Furnishing health assistance to a foreign nongovernmental organization does not include the purchase of goods or services from an organization.

(v) To “control” an organization means to possess the power to direct, or cause the direction of, the management and policies of an organization.

(7) In determining whether a foreign non-governmental organization is eligible to be a sub-recipient of health assistance under this award, the action of separate non-governmental organizations shall not be imputed to the subrecipient, unless, in the judgment of USAID, a separate non-governmental organization is being used purposefully to avoid the provisions of this paragraph (a). Separate non-governmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request the USAID Agreement Officer’s approval to treat as separate the health activities of two or more organizations, which would not be considered separate under the preceding sentence. The recipient must provide a written justification to USAID that the health activities of the organizations are sufficiently distinct to warrant not imputing the activity of one to the other.

(8) Health assistance may be furnished under this award by a recipient or sub-recipient to a foreign government or parastatal even though the government or parastatal includes abortion in its health program, provided that no such assistance may be furnished under this award in support of the abortion activity of the government or parastatal and any funds transferred to the government or parastatal must be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government or parastatal.

(9) For the avoidance of doubt, in the event of a conflict between a term of this paragraph (a) and an affirmative duty of a healthcare provider required under local law to provide counseling about and referrals for abortion as a method of family planning, compliance with such law shall not trigger a violation of this paragraph (a).

(b) This provision shall be inserted verbatim in subawards in accordance with the terms of paragraph (a).

[END OF PROVISION]

**[END OF MANDATORY PROVISIONS]**