Mandatory Reference: **303**
File Name: **303518m2\DR-CD 11**

Attachment 3

STANDARD PROVISIONS
FOR AN
ENDOWMENT WITH U.S.,
NON-GOVERNMENTAL RECIPIENT

Reference herein to the "Endowment" shall be understood to mean both the original Grant and all earnings and income generated thereon, including capital gains, prior to disbursement by the Asset Manager.

1. ACCOUNTING, AUDITS AND EVALUATIONS

a. Separate Accounts. The Recipient and the [Asset Manager] shall hold the Endowment (the original Grant and all earnings thereon) in a separate account or accounts, and shall not commingle Endowment funds with assets, funds or investments from other sources while the Endowment is invested. However, after Endowment funds are disbursed from the [Asset Manager] to the Recipient to support its operations and the program described in Attachment 2, funds so disbursed from the Endowment may be commingled with other funds and need not be held in separate accounts nor separately tracked, provided that the Recipient operates its accounting and audit systems to adequately account for the expenditure of funds from all sources and to evidence compliance with this Agreement.

b. Accounting for Investments. The Recipient and the [Asset Manager] shall maintain books, records, documents and other evidence relating to the investment of the Endowment, in accordance with the Recipient's usual accounting procedures, to sufficiently substantiate investments made, bought or sold, all earnings received, and all disbursements from separate investment accounts to or on behalf of the Recipient.

c. Accounting for Program Expenditures. The Recipient shall maintain books, records, documents, and other evidence relating to expenditures for the program supported by the Endowment and by funds from other sources, in accordance with the Recipient's usual accounting procedures, to sufficiently substantiate expenditures of the Recipient of funds from all sources for Recipient's operations and program. The recipient's financial management system shall provide for the following:

> (1) Accurate, current, and complete disclosure for each Endowment-sponsored activity in accordance with the reporting requirements of this grant. While AID requires reporting on an accrual basis, the recipient shall not be required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.
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> (2) Records that identify adequately the source and application of funds for Endowment-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.
>
> (3) Effective control over and accountability for all funds, property, and other assets. The Recipient shall adequately safeguard all such assets and shall

ensure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each grant. Financial information should be related to performance and unit-cost data whenever appropriate.

(5) Procedures to minimize the time elapsing between the transfer of funds from the Endowment and the disbursement by the recipient.

(6) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant.

(7) Accounting records that are supported by documentation that at a minimum will identify, segregate, accumulate, and record all costs incurred under a grant and which fully disclose (i) the amount and disposition by the recipient of the proceeds of such assistance, (ii) the total cost of the project or undertaking in connection with which such assistance is given or used, (iii) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (iv) such other records as will facilitate an effective audit.

(8) A systematic method to ensure timely and appropriate resolution of audit findings and recommendations.

d. Subrecipients. The Recipient shall require subrecipients to adopt the same standards in paragraph (c) above, and the Recipient shall insert a clause to this effect in all subgrants.

e. Audits.

(1) The Recipient shall require the Asset Manager to provide the Recipient a copy of its annual, audited, financial statement, or other annual financial audit, of its management of the Endowment. If the Asset Manager is a U.S. financial institution or financial services entity subject to U.S. law, a duplicate audit is not required.

(2) During the oversight period, and if the recipient is a nonprofit institution, it shall conduct audits in accordance with the requirements of OMB Circular A-1 33, "Audits of Institutions of Higher Education and Other Nonprofit Institutions".

(3) In cases of continued inability or unwillingness to have audits performed in accordance with the terms of this provision, USAID will consider appropriate sanctions which may include termination of the Endowment.

f. Audits of Subrecipients.

(1) U.S. Subrecipients. The Recipient shall ensure that U.S. nonprofit

subrecipients subject to the provisions of OMB Circular A-133 also conduct audits and submit them to the Recipient in accordance with that circular.

(2) Non-U.S. Subrecipients. The annual audit of the operations and program of the Recipient shall include reasonable review of expenditures and operations of those non-U.S. subrecipients, which are not subject to OMB Circular A-133, that receive $25,000 or more per year, unless otherwise agreed by USAID in writing. Such audit responsibilities with respect to non-U.S. subrecipients may be satisfied by relying on independent audits of the subrecipients, or on appropriate procedures performed by the internal audit or program staff of the Recipient, by expanding the scope of the independent financial audit of the Recipient to encompass testing of representative subrecipients' records, or by a combination of these procedures. The Recipient shall require each subrecipient to permit independent auditors to have access to records and financial statements as necessary to perform audits.

g. Preservation of Records. The grantee shall preserve and make available such records for examination and audit by AID and the Comptroller General of the United States, or their authorized representatives:

(1) until the expiration of three years from the date of termination of the grant; or

(2) for such longer period, if any, as is required to complete an audit to resolve all questions concerning expenditures unless written approval has been obtained from the grant officer to dispose of the records. AID follows generally accepted accounting practices in determining that there has been proper accounting and use of grant funds. The grantee agrees to make available any further information requested by AID with respect to any questions arising as a result of the audit.

h. Inspection of Records and Evaluations.

(1) During the oversight period, USAID shall retain a discretionary right to inspect the books and records of the Recipient and its subrecipients and to perform or arrange for further audits at USAID's expense. Recipient shall cooperate with USAID to allow and facilitate any such audits.

(2) During the oversight period, USAID may, at its own expense, conduct or arrange for one or more evaluations of the Recipient's programs funded in whole or in part by the Endowment, and Recipient shall cooperate with USAID to allow and facilitate any such evaluations.

2. PROHIBITED USES

a. The Recipient agrees that the Endowment will be used only for the purposes set forth in the Program Description and, in any event, that such funds will not be used:

(1) to coerce any person to practice abortion; or

(2) to pay for the performance of involuntary sterilization or to coerce or provide any financial incentive to any person to undergo sterilization; or

(3) for military or paramilitary purposes; or

(4) to attempt to influence legislation in the United States, in the host country, or elsewhere *;

* This provision is not required by USAID. However, some Recipients have been advised by independent counsel that adherence to this provision is necessary in order to be granted 501(c)(3) status by the IRS.

(5) so as to inure, directly or indirectly, to the personal benefit of private persons, or be distributable to principals of the Recipient or the Asset Manager, except as such persons or their affiliates shall be authorized and empowered to receive reasonable compensation for goods sold or services rendered to or on behalf of Recipient or its subrecipients.

b. (1) No Endowment funds may be used in a project or activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

(2) No Endowment funds may be used in a project or activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environment, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID.

(3) No Endowment funds may be used in a project or activity which contributes to the violation of internationally recognized rights of workers in the host country, including those in any designated zone or area in that country.

c. Recipient shall include the restrictions in subparagraphs a. and b. in subgrants made with Endowment funds.

3. REFUND AND TERMINATION

a. If either the Endowment or the Recipient organization are dissolved or wound up, whether during or after the period of USAID oversight, USAID retains the right to demand and receive an immediate refund of all unexpended funds of the Endowment, upon written demand to Recipient, to the [Asset Manager], or successor organizations,

b. In addition, USAID may, [during the oversight period] [during the oversight period and for a period of ten (1 0) years thereafter] [whether during or after the period of USAID oversight]*, by written notice to Recipient and the [Asset Manager], terminate the Endowment and demand and receive a refund of all unexpended funds of the Endowment in any of the following circumstances:

(1) If Recipient misuses Endowment funds or fails to comply with the provisions of this Agreement, if serious deficiencies are found in Recipient's performance in managing its program, if serious adverse audit findings are rendered against Recipient, or if USAID shall reasonably determine that other circumstances exist which will prevent the Endowment from fulfilling its purpose-, provided that in any such case the problem has not been corrected within a reasonable period of time as notified in writing by USAID;

(2) If (i) there is a fundamental change in the nature of Recipient's structure or operations, including but not limited to a cessation of activities, dissolution, bankruptcy, or liquidation, etc.; or (ii) there is a fundamental change in the purposes of the Recipient organization as expressed in its current charter documents,

(3) If Recipient shall fail to comply with the terms of its charter documents or bylaws-, or if a majority of the Board of Directors of Recipient shall request such termination in writing to USAID, or shall resign or be removed at the same time and prior to the conclusion of their respective terms of office, or

(4) If Recipient and USAID shall fail to agree on the selection of any replacement [Asset Manager] or on the terms and conditions of the [Asset Management Agreement] or modifications therein. (This provision is applicable during the oversight period only.)

* These additional termination rights may be made applicable only to the period of oversight, to the period of oversight plus a specified additional period (e.g., ten years), or in perpetuity, depending on the particular circumstances and perceived level of risk.

c. If USAID shall exercise the termination rights described above, or if the Endowment or Recipient shall be otherwise dissolved for any reason at any time, then in such event, whether before or following the oversight period, all Endowment assets held by the [Asset Manager] (both principal and income) shall revert to USAID and be returned to the U.S. Treasury as miscellaneous receipts, unless USAID otherwise agrees in writing. Recipient and the [Asset Manager] shall be required to take all necessary steps to facilitate such a turnover of funds, including an orderly liquidation of assets as shall be reasonably requested by USAID. If such assets are not turned over within 60 days of a written request therefor, then Recipient shall be directly liable to USAID for the value thereof.

4. SOURCE/ORIGIN

In recognition of the fact that the Endowment was funded initially by a Grant from the U.S. Government, during the oversight period, Recipient agrees,

a. to make a good faith effort to use U.S. flag air carriers and ocean vessels when they are available, for travel and shipping financed from the Endowment,

b. to make a good faith effort to follow USAID's policies on source, origin and nationality of goods and services financed with the Endowment. Such policies generally require that goods and services be manufactured or originated in the United States or the host country, and be purchased from suppliers located in the United States or in the host country, except in cases in which U.S. or local goods or services are not available, or the objectives of the program would be otherwise impaired.

Recipient shall include this standard provision number 4 in all subagreements during the oversight period.

[Alternative for GEF-funded endowments:

In recognition of the fact that the Endowment was funded initially by a Grant from the U.S. Government, during the oversight period, Recipient agrees to make a good faith effort to use U.S. flag air carriers and ocean vessels when they are available, for travel and shipping financed from the Endowment.]

5. PROCUREMENT POLICIES

The Recipient may use its own procurement policies and practices for the procurement of goods and services under the Endowment, provided they conform to the requirements listed below.

a. The Recipient shall maintain a code or standards of conduct that shall govern the performance of its directors, officers, employees or agents engaged in the awarding and administration of contracts, grants, loans or other benefits using Endowment funds. No director, employee, officer or agent of the Recipient shall participate in the selection, award or administration of a contract, loan, grant or other benefit or transaction funded by the Endowment, in which the individual, members of the individual's immediate family or his or her business partners, or organizations controlled by or substantially involving such persons, has or have a financial interest. Nor shall any individual director, officer, employee, or agent of the Recipient so participate in such transactions involving organizations or persons with which or whom that individual is negotiating or has any arrangement concerning prospective employment. The Recipient's directors, officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by the Recipient's directors, officers, employees or agents.

b. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, free and open competition. The Recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Awards shall be made to the bidder/offeror whose bid or offer is most advantageous to the Recipient under the criteria for selection chosen for the procurement. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order to be evaluated by the Recipient. Any and all bids/offers may be rejected when it is in the Recipient's interest to do so.

c. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition.

d. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

e. Some form of price or cost analysis should be made in connection with every procurement. This analysis may be accomplished in various ways, including the comparison of price quotations submitted, and comparison of quotations with market prices.

f. Procurement records for purchases in excess of $100,000 should be maintained and should include the following:

(1) basis for award and for contractor selection, based on cost, price, or other factors;

(2) justification for lack of competition when competitive offers are not obtained and considered.

9. The foregoing provisions shall be agreed to by subrecipients with grants in excess of $25,000 per year.

6. TITLE TO PROPERTY

Title to any property acquired with distributions from the Endowment shall vest in the Recipient, unless such acquisitions are made by subrecipients, in which case title shall vest as agreed upon by the Recipient and the subrecipients.

7. NONLIABILITY

USAID does not assume liability for any claims by third parties for damages arising out of this Agreement or of the management or expenditure of the Endowment.

8. AMENDMENT

This Agreement may be amended by formal written modification to the Agreement signed by the a USAID Agreement Officer and an appropriate official of the Recipient.