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Attachment 3

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

1. Accounting, Audits and Evaluations
2. Prohibited Uses
3. Refund and Termination
4. Source, Origin and Nationality
5. Procurement Policies
6. Title to Property
7. Nonliability
8. Amendment

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 generally accepted accounting principles formally prescribed by the U.S., the cooperating country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants).

Such accounting records and documents will, at a minimum, be adequate to show all investments made, bought or sold, all earnings received, and all disbursements from separate investment accounts to or on behalf of the Recipient. The Recipient and Asset Manager shall retain such records and documents for at least three years after the transactions to which they relate.

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 generally accepted accounting principles formally prescribed by the U.S., the cooperating country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to sufficiently substantiate expenditures of the Recipient of funds from all sources for Recipient's operations and program. Accounting records must be supported by documentation that will at a minimum be adequate to show all costs incurred, the receipt and use of goods and services acquired by the Recipient, and the overall progress of the program. The Recipient's records which pertain to such expenditures shall be retained for at least three years following the transactions in question and may be audited by USAID and/or its representatives during the oversight period.
The same requirements shall be applicable to all subrecipients, and the Recipient shall

insert a clause to this effect in all subgrants.

d. 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) The Recipient agrees that it shall have an annual audit made of the financial statements of the organization as a whole during the oversight and post-oversight periods of the agreement. The annual audit shall include a review and evaluation of the organization's internal control structure following guidance contained in the AICPA Statement on Auditing Standards (SAS). The audit shall also include a requirement to determine compliance, in all material respects, with the terms of the agreement, the conflict of interest policies of the Recipient, and applicable laws and regulations, following guidance contained in the AICPA SAS.

During the oversight period, the audit shall be performed in accordance with either generally accepted auditing standards of the American Institute of Certified Public Accountants (AICPA) or the International Auditing Guidelines prescribed by the International Auditing Practices Committee of the International Federation of Accountants (IFAC), and the Recipient shall select an independent auditor which is on USAID's list of approved audit firms, which can be obtained from USAID. The audit report shall be submitted to USAID within 30 days after the completion of the audit, but the audit shall be completed and the report submitted not later than six (6) months after the close of the Recipient's fiscal year, unless USAID agrees otherwise in writing.*

*** Annual recipient audit reports produced during the oversight period will be reviewed by the office of the Inspector General under the provisions of the USAID Recipient-Contracted Audit Program.**

(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.

e. Audits of Subrecipients. The annual audit of the operations and program of the Recipient shall include reasonable review of expenditures and operations of subrecipients that receive $25,000 or more per year, unless otherwise agreed by USAID in writing. Such audit responsibilities with respect to 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.

f. 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 (IO) 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:

i. If Recipient misuses Endowment funds or fails to comply with the provisions of this Agreement, if material deficiencies are found in Recipient's performance in managing its program, if material 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;

ii. 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;

iii. 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

iv. 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 follow USAID's Fly America and Cargo Preference policies, insofar as expenditures of the Endowment are concerned. Such policies require that U.S. flag carriers, when available, be given preference for air travel and ocean shipping contracts and booking;

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 follow USAID's Fly America and Cargo Preference policies, insofar as expenditures of the Endowment are concerned. Such policies require that U.S. flag carriers, when available, be given preference for air travel and ocean shipping contracts or bookings. Recipient shall include this standard provision number 4 in all subgrants during the oversight period.]

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 $10,000 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.

g. 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.

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