

Assistance Agreement

USAID Assistance Agreement No. 169-AA-10-DG/001

ASSISTANCE AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
AND
THE REPUBLIC OF SERBIA
FOR
GOVERNMENT OPERATIONS IMPROVED

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ASSISTANCE AGREEMENT

Dated: September 23, 2010

Between

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

and

The Republic of Serbia (hereinafter referred to as the "Beneficiary")

Article 1: Purpose.

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

Article 2: Functional Objectives and Results.

Section 2.1. Functional Objective. The functional objective ("Objective") is **Government Operations Improved**. The Parties hereto agree to work together to achieve this Objective.

This section 2.1 may not be changed except by formal written amendment to this Agreement by the Authorized Representatives, as defined in Section 7.2.

Section 2.2. Results. In order to achieve the Objective, the Parties hereto agree to work together to achieve the following results (each a "Result" and collectively, the "Results"):

1. Efficient, Transparent and Accountable Provision of Government Services Enhanced; and
2. Checks and Balances Strengthened.

This section 2.2 may be changed by written amendment to this Agreement by the Authorized Representatives, as defined in Section 7.2.

Section 2.3. Amplified Description. Annex 1, attached hereto, forms part of this Agreement and describes the Indicators that will be used to measure the progress and achievement towards the Objective. Within the limits of the above definition of the Objective in Section 2.1, Annex 1 may be changed by written agreement of the Authorized Representatives, without formal amendment of this Agreement.

Article 3: Contributions of the Parties.

Section 3.1. USAID Contribution.

- (a) *The Grant*. To help achieve the Objective set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Beneficiary under the terms of the Agreement an amount not to exceed ten million United States ("U.S.") Dollars (\$10,000,000) (the "Grant").

(b) *Total Estimated USAID Contribution.* USAID's total estimated contribution to achievement of the Objective will be determined at a later date by USAID, which will notify the Beneficiary of this determination in writing. Subsequent increments will be subject to the availability of funds to USAID for this purpose and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed. The Parties agree that each such incremental contribution provided, if any, shall cumulatively increase the total amount of the Grant set forth in Section 3.1(a).

(c) No disbursements of funds to the Beneficiary are contemplated under this Agreement. Funds will be disbursed as sub-obligations to competitively selected implementing partners, as described in Annex 1, Section V, Roles and Responsibilities.

(d) If at any time USAID determines that its contribution under Section 3.1(a) exceeds the amount which reasonably can be committed for achieving the Objective during the current or next U.S. fiscal year, USAID may, upon written notice to the Beneficiary, withdraw the excess amount, thereby reducing the amount of the Grant as set forth in Section 3.1(a).

Section 3.2. **Beneficiary Contribution.** In addition to those funds provided by USAID and any other donor identified in Annex 1, the Beneficiary agrees to make its best efforts to provide, or cause to be provided, support, technical cooperation and other in-kind assistance required to complete all activities necessary to achieve the Objective.

Article 4: Completion Date.

(a) The Completion Date, which is December 31, 2015, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objective will be completed.

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

Article 5: Conditions Precedent to Disbursement.

Section 5.1. **First Disbursement.** Prior to the first disbursement under the Grant, or to the issuance by USAID of documentation pursuant to which disbursement will be made, the Beneficiary will, except as the Parties may otherwise agree in writing, furnish to USAID in form and substance satisfactory to USAID:

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

(b) A signed statement in the name of the person holding or acting in the office of the Beneficiary specified in Section 7.2, which designates by name and title any

additional representatives each of whom may act pursuant to Section 7.2, together with a specimen signature.

Section 5.2. Notification. USAID will promptly notify the Beneficiary when USAID has determined that a condition precedent has been met.

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

Article 6: Special Covenants.

The Beneficiary agrees that this Agreement and the assistance provided hereunder are pursuant to the Agreement Between the Government of the United States of America and the Government of the Federal Republic of Yugoslavia Concerning Economic, Technical and Related Assistance, dated May 10, 2001 (the “Framework Bilateral Agreement”). All provisions of the Framework Bilateral Agreement, including but not limited to exemptions from taxes, duties, customs and visa fees, apply to the funds disbursed in connection with this Agreement. In the event of ambiguity, the Framework Bilateral Agreement shall govern.

Article 7: Miscellaneous.

Section 7.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing, and will be deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address:

Mission Director
United States Agency for International Development/ Serbia & Montenegro
Embassy of the United States of America
Kneza Milosa 50
Belgrade, Serbia

To the Beneficiary:

Mail Address:

Deputy Prime Minister
Government of the Republic of Serbia
11 Nemanjina Street
11000 Belgrade, Serbia

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

Section 7.2. Representatives. For all purposes relevant to this Agreement, the Beneficiary will be represented by the individual holding or acting in the Office of Deputy Prime Minister for EU Integrations of the Republic of Serbia, and USAID will be represented by the individual holding

or acting in the Office of the Mission Director, USAID/Serbia & Montenegro, each of whom, by written notice, may designate additional representatives for all purposes other than signing this Agreement or signing formal amendments to the Agreement.

The names and titles of the additional representatives of the Beneficiary with specimen signatures will be provided pursuant to Section 5.1(b) to USAID, which may accept as duly authorized any instrument signed by such additional representatives (or any individuals subsequently holding or acting in the office of such representatives) in accordance with this Section 7.2, until receipt of written notice of revocation of their authority.

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

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

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

UNITED STATES OF AMERICA

By: _____

Name: Susan Fritz

Title: Mission Director, USAID/Serbia & Montenegro

REPUBLIC OF SERBIA

By: _____

Name: Božidar Đelić

Title: Deputy Prime, Government of the Republic of Serbia

Annex 1 to Assistance Agreement
Amplified Description

I. Introduction.

This annex describes the activities to be undertaken and the progress and achievements to be made with the funds obligated under this Agreement. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

II. Background.

Serbia's democratic, economic, and social development is central to the future prosperity and political stability of Southeast Europe. The U.S. seeks to engage Serbia as a constructive partner on bilateral, regional, Euro-Atlantic and global issues in order to achieve a Europe that is whole, free and at peace. As part of that effort, USAID focuses on building prosperity and increasing democratic practices, both of which are fundamental to Serbia's Euro-Atlantic integration.

Toward that end, one of USAID's Assistance Functional Objectives (Objective) for Serbia related to democracy and governance is **Government Operations Improved**. In relation to the Objective, improving Serbia's government operations will benefit both Serbia's citizens, and help Serbia institute reforms required for its accession to the European Union. The Objective focuses on improving government operations because government institutions must be transparent, professional and accountable in order to serve the people's interests, use resources efficiently, to be held in high esteem by citizens. Improvements in institutional capacity and service delivery will encompass administrative and managerial competence, as well as improving transparency and accountability of officials and reducing opportunities for corruption. Improvements will also strengthen the judicial and legislative branches to ensure the power of the executive branch of government is not absolute.

III. Funding.

Financial Plan. The financial plan is set forth in the table below. Changes may be made to the financial plan by representatives of the Parties without formal amendment to the Agreement, if such changes do not cause USAID's contribution to exceed the amount specified in Section 3.1 of the Agreement.

Financial Plan:

	Amount
Government Operations Improved	\$ 10,000,000

Total	\$ 10,000,000

IV. Illustrative Results, Activities and Indicators

Activities included under this agreement to support the Objective will be focused on the following Results:

1	Efficient, Transparent and Accountable Provision of Government Services Enhanced
2	Checks and Balances Strengthened

The majority of activities that will support expected results for the Objective will be technical assistance from international and domestic experts and international and in-country training events to increase skills in public administration; judicial independence, efficiency, transparency and accountability, and reducing opportunities for and the perception of official corruption.

Illustrative activities to support the Objective are those which enhance efficient, transparent and accountable provision of government services will focus on improving organizational strength, openness and responsiveness of government operations on all levels; promoting gender equity where it is lacking; and strengthening institutions' ability to prevent corruption. In working to strengthen checks and balances in the judiciary and parliament, USAID will build judicial capacity and independence, provide expert advice on legal and regulatory issues, and support professional associations. USAID's efforts to build capacity to reduce corruption and improve transparency and accountability will consistently emphasize improving Serbia's current and future conflict of interest, freedom of information law and whistle-blower regimes.

USAID/SM has preliminarily identified the following indicators to measure progress:

1) Efficient, Transparent and Accountable Provision of Government Services Enhanced: *Efficiency and integrity Index from USAID Serbia's Good Governance Matrix; Checks and Balances from USAID/Serbia's Good Governance Matrix; World Bank Governance Indicators (Government Effectiveness).*

2) Checks and Balances Strengthened: *FOIA-institutional capacity, staff, and procedures average from USAID/Serbia's Good Governance Matrix; Structure Oversight average from USAID/Serbia's Good Governance Matrix.*

Several broad development factors are critical to Serbia's advancement and will be integrated widely into activities. These factors are promoting transparency and accountability, gender equality, human capacity development, regional cooperation, and public-private partnerships.

This program has been designed to allow flexible selection and modification of activities over time in order to best achieve the Objective and Results identified above. The emphasis under this program will be the achievement of agreed-upon results, not simply completion of specific activities. Consequently, activities to be financed under this Agreement, such as technical assistance, training and grants, have not been specified in detail in this Amplified Description. Illustrative activities have been provided within this Section.

Although the program therefore offers significant flexibility in selecting suitable activities to be financed under this Agreement, to be eligible for financing, the activity must (1) contribute to the Objective for the program as stated above; (2) be supported by appropriate analysis and planning; and (3) likely to be completed within the time frame and budget specified.

V. ROLES AND RESPONSIBILITIES

A. BENEFICIARY

In connection with the implementation of the activities under this Agreement, the Beneficiary shall use its very best efforts to ensure that the Objective and Results are achieved, as contemplated in this Agreement.

B. USAID

USAID will work closely with the Beneficiary to achieve the Objectives and Results contemplated by this Agreement, which are based on the strategic goals shared between the Parties. USAID will coordinate with the Beneficiary regarding program implementation.

No disbursements of funds to the Beneficiary are contemplated under this Agreement. All funds under this Agreement will be disbursed as sub-obligations to competitively selected third-party implementing partners (each, an “Implementing Partner”). USAID will enter into one or more agreements with one or more Implementing Partners to implement the activities. Such agreements may include grants, cooperative agreements, and contracts. The Implementing Partners may be local, United States, international or multi-national, governmental or nongovernmental, organizations or persons. USAID will select the Implementing Partners in accordance with USAID regulations and policies.

USAID will monitor performance under such agreements and will oversee the performance of the Implementing Partners and progress toward achievement of the Results.

USAID will provide the Beneficiary with information on disbursements and Results related to this Agreement in a format and with content agreed to by both Parties.

C. IMPLEMENTING PARTNERS

USAID will select the Implementing Partners. USAID will ensure that the Implementing Partners carry out the implementation of activities in conformance with this Agreement and report directly to USAID. Each agreement between USAID and an Implementing Partner that is an organization will be consistent with this Agreement and will include a monitoring and evaluation plan, including indicators and targets.

VI. MONITORING AND EVALUATION

Benchmarks and targets for measuring the performance of the activities to be implemented under this agreement will be elaborated by USAID. Progress towards benchmarks and targets will be assessed on a year-to-year basis in consultation with the Beneficiary. The purpose of these targets is to assess momentum toward achievement of the Objective and Results and inform the Parties with regard to continuing, increasing or adjusting the activities.

USAID will work closely with the Beneficiary to ensure coordination of program implementation and to achieve the objectives and results contemplated by this Agreement.

Achievement of the Objective and Results will be measured based upon performance indicators and targets outlined under forthcoming Implementation Letters for specific activities.

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Article A: Definitions and Implementation Letters.

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

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

Article B: General Covenants.

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

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

- (a) Carry out the Agreement and the activities required to be undertaken directly (or caused to be undertaken) by the Beneficiary, or cause the Agreement and such activities to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules, or other arrangements, and with any modifications therein, approved by USAID pursuant to this Agreement; and
- (b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of activities financed under the Agreement, and, as applicable for continuing activities, cause those activities to be operated and maintained in such manner as to assure the continuing and successful achievement of the Objective and Results under the Agreement.

Section B.3. Utilization of Goods and Services. Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be devoted to the Agreement until the completion or termination of the Agreement, and thereafter (as well as during any period of suspension of the Agreement) will be used to further the Objective and Results of the Agreement or as USAID may direct in Implementation Letters.

Section B.4. Taxation.

- (a) General Exemption. The Agreement and the assistance thereunder are free from any taxes imposed under laws in effect in the territory of the Beneficiary.
- (b) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to (1) any activity, contract, grant or other

implementing agreement financed by USAID under this Agreement; (2) any transaction or supplies, equipment, materials, property or other goods (hereinafter collectively "goods") under (1) above; (3) any contractor, grantee, or other organization carrying out activities financed by USAID under this Agreement; (4) any employee of such organizations; and (5) any individual contractor or grantee carrying out activities financed by USAID under this Agreement.

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

(1) Exemption 1. Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for the personal use of non-national individuals or their family members. Exemption 1 includes, but is not limited to; all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo.

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

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

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

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

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

- (a) Reports and Information. The Beneficiary shall furnish USAID accounting records and such other information and reports relating to the Agreement as USAID may reasonably request.
- (b) Other Covered Sub-recipients. For "covered" sub-recipients who receive funds under the Agreement pursuant to direct contracts or agreements with USAID, USAID will include appropriate audit requirements in such contracts or agreements and will, on behalf of the Beneficiary, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.
- (c) Cost of Audits. Subject to USAID approval in writing, costs of audits performed in accordance with the terms of this Section may be charged to the Agreement.

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

- (a) that the facts and circumstances of which it has informed USAID, or caused USAID to be informed, in the course of reaching agreement with USAID on the Agreement, are accurate and complete, and include all facts and circumstances that might materially affect the Agreement and the discharge of responsibilities under this Agreement; and
- (b) that it will inform USAID in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Agreement or the discharge of responsibilities under this Agreement.

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

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

Article C: Procurement Provisions.

Section C.1. Source and Origin.

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

(b) Local Currency Costs. Disbursements for Local Currency Costs will be used exclusively to finance the costs of goods and services required for the Agreement which meet the

requirements of USAID's local procurement policy which will be provided in an Implementation Letter.

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

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

(e) Transportation by air of property or persons financed under this agreement will be on carriers holding United States certification, to the extent service by such carriers is available under the Fly America Act. This requirement may be further described by USAID in Implementation Letters.

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

Section C.3. Reasonable Price. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Agreement. Such items will be procured on a fair and, to the maximum extent practicable, competitive basis.

Section C.4. Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Agreement, the Beneficiary will furnish USAID such information with regard thereto, and at such times, as USAID may request in Implementation Letters.

Section C.5. Transportation

- (a) In addition to the requirements in Section C.1(a), costs of ocean or air transportation and related delivery services may not be financed under the Agreement, if the costs are for transportation under an ocean vessel or air charter which has not received prior USAID approval.
- (b) Unless USAID determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, or otherwise agrees in writing:
 - (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by USAID which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels; and
 - (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by USAID and transported to the territory of the Beneficiary on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.6. Insurance.

- (a) Marine insurance on goods financed by USAID which are to be transported to the territory of the Beneficiary may be financed as a foreign exchange cost under this Agreement provided
- (1) such insurance is placed at the most advantageous competitive rate;
 - (2) such insurance is placed in a country which is authorized under Section C.1(a); and
 - (3) claims thereunder are payable in U.S. dollars or any freely convertible currency unless USAID agrees otherwise in writing.

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

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

Section C.7. U.S. Government-Owned Excess Property. The Beneficiary agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Agreement, should be utilized. Funds under the Agreement may be used to finance the costs of obtaining such property.

Article D: Disbursements.

Section D.1. Disbursements. No disbursements of funds to the Beneficiary are contemplated under this Agreement. Should USAID desire to make disbursements to the Beneficiary in the future, the Parties agree to amend this Agreement to provide for such disbursements.

Section D.2. Rate of Exchange. If funds provided under the Agreement are introduced into the Cooperating Country by USAID or any public or private agency for purposes of carrying out obligations of USAID hereunder, the Beneficiary will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange

which, at the time the conversion is made, is not unlawful in the country of the Beneficiary to any person for any purpose.

Article E: Termination; Remedies.

Section E.1. Suspension and Termination.

- (a) Either Party may terminate this Agreement in its entirety by giving the other Party thirty (30) days written notice. USAID also may terminate this Agreement in part by giving the Beneficiary thirty (30) days written notice, and suspend this Agreement in whole or in part upon giving the Beneficiary written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving the Beneficiary written notice, if (i) the Beneficiary fails to comply with any provision of this Agreement, (ii) an event occurs that USAID determines makes it improbable that the Objective and Results of the Agreement or the assistance program will be attained or that the Beneficiary will be able to perform its obligations under this Agreement, or (iii) any disbursement or use of funds in the manner herein contemplated would be in violation of the legislation governing USAID, whether now or hereafter in effect.
- (b) Except for payment which the Parties are committed to make pursuant to non-cancellable commitments entered into with third parties prior to such suspension or termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to the Agreement, or to the suspended or terminated portion of the Agreement, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.
- (c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under the Agreement, or under the applicable portion of the Agreement, be transferred to USAID if the goods are in a deliverable state.

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

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

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

Article F: Miscellaneous.

Section F.1. Investment Promotion.

- (a) Except as specifically set forth in the Agreement or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.
- (b) In the event the Beneficiary is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the Beneficiary must notify USAID and provide a detailed description of the proposed activity. The Beneficiary must not proceed with the activity until advised by USAID that it may do so.
- (c) The Beneficiary must ensure that its employees and subcontractors and sub-recipients providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts and other sub-agreements entered into hereunder.

Section F.2. Voluntary Family Planning.

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

- (a) the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions;
- (b) the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations; or
- (c) any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a method family planning.
- (d) USAID will issue implementation letters that more fully describe the requirements of this section.

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

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

of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

Section F.4. Workers' Rights. Except as specifically set forth in the Agreement or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves workers' rights in a foreign country.

Section F.5 Prohibition on Funding Foreign Government Delegations to International Conferences. Except as USAID may otherwise agree in writing, funds obligated under this Agreement which are provided by USAID from the Foreign Operations, Export Financing, and Related Programs Appropriations Act for any U.S. Government fiscal year after fiscal year 1999 may not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a public international organization. This restriction may be further described by USAID in Implementation Letters.