

International Service Provider Contract

The Johns Hopkins Public Health in Nigeria Initiative (JHPHINI)

THIS CONTRACT is made and entered into this 1st of September 2022 between Prime and Power Media Limited (Service Provider), a company formed under the laws of Nigeria, and The Johns Hopkins Public Health in Nigeria Initiative (JHPHINI). In consideration of the mutual promises contained herein, the parties agree as follows:

The complete legal name of the Service Provider is (please attach a copy of the Certificate of Registration obtained in the country of incorporation):

Prime and Power Media Limited (Dream FM Enugu)

The Service Provider's principal place of business is located at:

No. 1 Temple Avenue, GRA Enugu.

1. Scope of Work

The Service Provider will perform the services and produce the Deliverables set forth in Exhibit A attached.

2. Ownership of Deliverables

The Service Provider understands and agrees that any and all materials and deliverables that are subject to copyright protection and are developed in connection with the performance of this Contract ("Works") shall constitute a work for hire as that term is defined in the Copyright Act of 1976, as amended. As a result, all rights, titles, and interests in and to all such Works shall belong exclusively to JHPHINI, including, without limitation, all copyrights and other intellectual property rights therein. If for any reason a Work is not deemed to be a work for hire, the Service Provider hereby grants, transfers, sells, and assigns, free of charge, exclusively to JHPHINI, all title, rights, and interest in and to said Work, including all copyrights and other intellectual property rights. The Service Provider further agrees to execute and deliver to JHPHINI a confirmatory grant and assignment of all rights in and to the Works and to execute any other proper document JHPHINI deems necessary to ensure the complete and effective transfer of all rights in the Works to JHPHINI.

3. Place of Work

The Service Provider shall perform the work described hereunder from a place of business outlined above or another place designated by JHPHINI. Upon reasonable notice, the Service Provider shall meet with representatives of JHPHINI, either at JHPHINI's campus or another designated location.

4. Payment

JHPHINI will pay the Service Provider not to exceed the annual sum of **₦7,128,000.00** following receipt of the invoice and services adequately rendered on an as-needed basis. Services will be rendered based upon the price/rate schedule in Exhibit B. JHPHINI shall only pay the Service Provider for services accepted on a work-completed basis.

5. Term

The term of this Contract shall commence on the 1st of September 2022 and shall continue through the 31st of August 2023. JHPHINI may terminate this Contract on ten (10) days' notice for the failure of the Service

Provider to comply with the terms and conditions of this Contract. In addition, JHPHINI may terminate at any time, without cause, on thirty (30) days' written notice. If terminated without cause, JHPHINI will pay a proportionate amount of the total commensurate with the deliverables tendered to and accepted by JHPHINI as of the effective date of termination. Upon the expiration of the term hereof or earlier termination of this Contract, the Service Provider shall deliver to JHPHINI all work completed to date and any records or other property belonging to JHPHINI.

6. Assignment

The Service Provider shall not assign, subcontract, or transfer all or any portion of this Contract or any of its obligations hereunder without the express, prior written permission of JHPHINI.

7. Independent Status of the Service Provider

JHPHINI and the Service Provider intend that the relationship between them shall be that of client and Independent Contractor. No agent or employee of the Service Provider shall be or shall be deemed to be an employee or agent of JHPHINI. The manner and means of conducting the work are under the sole control of the Service Provider. The Service Provider will be solely and entirely responsible for his acts and for the acts of his agents, employees, and subcontractors during the performance of this Contract. The work performed under this Contract will be performed entirely at the Service Provider's risk. The Service Provider agrees to indemnify JHPHINI for any and all liability or loss arising in any way out of the performance of this Contract.

8. JHPHINI's Right to Inspect and Audit

The Service Provider shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least seven (7) years following final payment under this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials, shall be made available, upon request, to JHPHINI, through its employees, agents, representatives, contractors, or other designees, during normal business hours at the Service Provider's office or place of business. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for JHPHINI.

9. Conflict of Interest

Authorized representatives and key participants of the Service Provider involved in this project/work agree to immediately disclose to JHPHINI any financial or fiduciary interests that they, or their immediate family members, may have with JHPHINI.

10. Debarment

The Service Provider certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any U.S. Federal department or agency.

11. Performance

The Service Provider warrants that its performance of this Contract does not violate any applicable law, rules, or regulations. The Service Provider further warrants that it shall perform this Contract in a timely and

professional manner with necessary skill and diligence and that the services provided herein meet or exceed the prevailing practices and standards of the trade from which the services are provided. To the extent that JHPHINI is held financially responsible for any deficiencies in the services performed by the Service Provider, it agrees to cure such deficiencies at the sole cost of the Service Provider.

12. Non-discrimination

The Service Provider warrants that during its performance of this Contract, neither the Service Provider nor any of its employees, agents, or subcontractors will violate any applicable discrimination laws, including, but not limited to, those based on age, sex, sexual orientation, race, color, religious belief, national origin, marital status, status as a qualified individual with a disability or handicap, or as a disabled veteran.

13. Foreign Corrupt Practices Act

The Service Provider represents and warrants to JHPHINI that it is aware of the requirements of the United States Foreign Corrupt Practices Act ("FCPA") and will not take any action that could violate the FCPA or expose JHPHINI to liability under the FCPA. Specifically, the Service Provider represents and warrants that, in connection with this Contract, the Service Provider and its owners, officers, directors, employees, representatives, or agents have not provided and will not provide, offer, or promise to provide, or authorize the provision directly or indirectly of any money, gift, loan, service, or anything of value to any government official (or any agent, employee, or family member thereof), any political party or candidate for political office, or any third party, for the purpose of influencing or inducing any act, omission, or decision of such government official or candidate, or of the government to obtain or retain business, or direct business to any person, or to secure any improper advantage.

14. Force Majeure

Neither party will be responsible or liable to the other party for non-performance or delay in performance of any terms or conditions of this Agreement due to acts or occurrences beyond the control of the nonperforming or delayed party, including, but not limited to, acts of God, acts of government, terrorism, wars, riots, strikes, or other labor disputes, shortages of labor or materials, fires, and floods, provided the nonperforming or delayed party provides to the other party written notice of the existence of and the reason for such nonperformance or delay.

15. Restricted Countries

The Service Provider may not charge under this Contract any item which has a source/origin from any restricted countries, as designated by the U.S. State Department. Restricted countries currently include, but are not necessarily limited to, Cuba, Iran, Libya, North Korea, and Syria.

16. Anti-Terrorist Compliance

The Service Provider is notified that U.S. Executive Orders and statutory law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Service Provider to ensure compliance with these Executive Orders and laws. In addition to relying on locally available resources, the Service Provider may use resources available on the internet to review established lists published by the U.S. Government. These are located at: [U.S. Treasury OFAC](#). Hiring individuals or contracting with organizations on this list is strictly prohibited under the terms of this Contract.

17. Disputes

This Contract shall be interpreted in accordance with the laws of the State of Maryland. Each of the Parties hereto agrees to venue in and submits to the exclusive jurisdiction of the state and/or federal courts located within the State of Maryland for any suit, hearing, or other legal proceeding of every nature, kind, and description whatsoever in the event of any dispute or controversy arising hereunder or relating hereto, or in the event any ruling, finding, or other legal determination is required or desired hereunder. Both parties hereto agree to waive their respective rights to a trial by jury.

However, the parties shall attempt to resolve all disputes through informal means. Each party agrees that, prior to resorting to litigation to resolve any dispute, it will confer with the other party to determine whether other procedures that are less expensive or less time-consuming can be adopted to resolve the dispute.

18. General

This Contract constitutes the entire agreement of the parties with respect to the matters addressed herein and no modifications of this Contract shall be enforceable unless in writing signed by both JHPHINI and the Service Provider. All references to the masculine gender herein shall be applicable equally to the feminine and neuter genders, and all references in the singular shall apply in the plural.

19. Use of Other Party's Name

Neither party shall use directly or by implication the names of the other party, nor any of the other party's affiliates or contractors, nor any abbreviations thereof, or of any staff member, faculty member, student, or employee of the other party in connection with any products, publicity, promotion, financing, advertising, or other public disclosure without the prior written permission of the other party.

20. Special Provisions

This Contract shall be subject to and the Service Provider shall comply with the requirements set forth in Exhibit D if attached.

21. Translation

In the event that a translation of this Contract is prepared and signed by the Parties, the English language version shall be the official version and shall govern in the event of a conflict.

In witness whereof, the JHPHINI and the Service Provider have hereby caused this Contract to be executed.

**The Johns Hopkins Public Health in Nigeria Initiative
Prime & Power Media Ltd (Dream FM)**

By: _____

Print Name: _____

Position: Project Director

Date: *11 Aug 22*

Exhibit A

Scope of Work including Deliverables

The contract period includes unit cost, deliverables, and total contract value. BA-N will run radio spots across our intervention programs.

Responsibilities of Prime & Power Media Ltd (Dream FM Enugu):

- BA-N will run radio spots for all BA-N thematic interventions including but not limited to Malaria, Tuberculosis, Family Planning, COVID, and Prioritized Diseases on Prime & Power Media Ltd.
- Review radio materials for breakage and error-free airing.
- Ensure radio materials are keyed in before the airing date.
- Ensure all radio spots are played at the allotted time on the media schedule.
- Ensure full compliance with campaign spot placements.
- Grant extra time slots for spots and other benefits as available.
- Provide campaign reports and notification of missed spots so BA-N can advise on reruns before the end of the campaign.
- Be able to meet tight deadlines.
- Certificate of Broadcast (COTs) must be included with the invoice for payment by the end of each campaign month. Delay in COT and invoice submission will result in delayed payment.
- Provision of a digital log for back check and reconciliation.

Exhibit B**Service Provider Contract Payment Schedule****Fixed Price Contract w/Deliverables**

JHPHINI shall pay the Service Provider not to exceed the sum of **₦7,128,000.00** during the period of this contract. Payments will be made using the agreed cost shown in the table below for all the services rendered during the period of this contract.

The agreed rates for the spots shown below will be used to prepare a monthly/quarterly media schedule which will be issued by BA-Nigeria. The monthly schedule will capture the actual monthly amount payable (not exceeding the maximum amount on this contract in the year).

Type of Spot	Unit Rate	Discount for BA
Peak Time		
15 secs	₦6,000.00	₦5,400.00
30 secs	₦7,500.00	₦6,750.00
45 secs	₦8,250.00	₦7,425.00
60 secs	₦9,000.00	₦8,100.00
5 mins	₦22,500.00	₦20,250.00
15 mins	₦30,000.00	₦27,000.00
30 mins	₦45,000.00	₦40,500.00
Off Peak Time		
15 secs	₦4,500.00	₦4,050.00

30 secs	₦6,000.00	₦5,400.00
45 secs	₦6,750.00	₦6,075.00
60 secs	₦7,500.00	₦6,750.00
5 mins	₦15,000.00	₦13,500.00
15 mins	₦22,500.00	₦20,250.00
30 mins	₦37,500.00	₦33,750.00
News (Specify News Time)		
15 secs	₦5,000.00	₦2,750.00
30 secs	₦6,000.00	₦22,500.00
45 secs	₦8,000.00	₦31,500.00
60 secs	₦50,000.00	₦45,000.00
Intraprogram spots (IPS)		
15 secs	₦6,000.00	₦5,400.00
30 secs	₦7,500.00	₦6,750.00
45 secs	₦8,250.00	₦7,425.00
60 secs	₦9,000.00	₦8,100.00
Live appearance	₦100,000.00	₦90,000.00

S/N	Dream FM Enugu Rate	Daily Spot	Days a Month	Months	TOTAL
1	Peak (60 seconds)	₦8,100.00	4	20	6
2	Off Peak (60 seconds)	₦6,750.00	4	20	6
TOTAL					

Terms & Conditions for Payment

- JHPHINI shall pay Prime & Power Media Ltd based on actual spots aired.
- The monthly amount payable may vary from the estimates used in the original contract.

- Monthly payments will be made within 30 days after receipt of a valid invoice, COT, and approved reconciliation of compliance. Payment to the station is based solely on compliance reports received, which will be aligned by all parties (BA-N and Prime & Power Ltd Monitoring Firm). Payment will be based on the actual spots aired.

- Compliance is measured on actual spots aired as reported by media monitoring, which will be aligned by all parties.

- Campaign is subject to compliance verification by a media monitoring agency contracted by BA-N.

Exhibit C

Fixed Price Invoice

The Service Provider shall submit invoices, stated in U.S. dollars, to JHPHINI in accordance with this sample invoice. All invoices must: (i) be sequentially numbered; (ii) indicate the date(s) of performance by the Service Provider; (iii) state the title of the project; and (iv) include the Service Provider's certification that the invoice is just and correct and that payment therefore has not been received.

Remit payment to:

Service Provider: Prime and Power Media Ltd

Bank Name: UBA

Service Provider Address 1: No. 1 Temple Avenue

Bank Address: GRA Enugu

Service Provider Address 2: #

Contact Person: Lotanna Okereke

Account #: 1016527310

SWIFT Code:

JHPHINI's Contact: Victoria Agboola

Date of invoice:

Invoice number:

Project title: Breakthrough ACTION Nigeria

Current billing period:

Amount due this invoice:

Description of milestone achieved/Deliverable:

Milestone/Deliverable payment due:

Contract Value	Funds Received to Date	Current Invoice	Total Cumulative	Remaining Total	Invoiced	Contract Balance
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If receipts are in a foreign language, an English translation must be attached.

As an authorized representative of the organization, I certify that all Deliverables and required work products due to date have been submitted, and payments requested are for appropriate purposes and in accordance with the Statement of Work and other requirements as set forth in the Subagreement.

Authorized Signature:

Date:

JHPHINI Signature of Approval: _____

Date:

EXHIBIT D - Special Conditions

In Exhibit D, wherever the terms “Agreement Officer” or “AO” are used, “JHPHINI” shall be substituted. Wherever the term “Recipient” is used, the term “Service Provider” shall be substituted.

1. Debarment and Suspension (Executive Orders 12549 and 12689)—Appendix II

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (JUNE 2012) M9

a. The recipient agrees to notify the Agreement Officer (AO) immediately upon learning that it or any of its principals:

- (1) Are presently excluded or disqualified from covered transactions by any Federal department or agency;
- (2) Have been convicted within the preceding three-year period preceding this proposal; been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
- (3) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph a.(2); and
- (4) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.

b. The recipient agrees that, unless authorized by the AO, it will not knowingly enter into any subawards or contracts under this award with a person or entity that has an active exclusion on the System for Award Management (SAM) (www.sam.gov). The recipient further agrees to include the following provision in any subawards or contracts entered into under this award:

The recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

c. The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in Subpart C of 2 CFR Section 180, as supplemented by 2 CFR 780.

2. NONDISCRIMINATION (JUNE 2012) M3

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.

3. SUBAWARDS AND CONTRACTS (DECEMBER 2014) M6

c. 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.

d. 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.

4. USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (JUNE 2012) M8

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:**

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

- (1) Military equipment,
- (2) Surveillance equipment,
- (3) Commodities and services for support of police or other law enforcement activities,
- (4) Abortion equipment and services,
- (5) Luxury goods and gambling equipment, or
- (6) Weather modification equipment.

d. **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.

e. **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:

- (1) Agricultural commodities,
- (2) Motor vehicles,
- (3) Pharmaceuticals,
- (4) Pesticides,
- (5) Used equipment,
- (6) U.S. Government-owned excess property, or
- (7) 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: [USAID Geographic Codes](#).

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.

5. PREVENTING TERRORIST FINANCING -- IMPLEMENTATION OF E.O. 13224 (AUGUST 2013) M12

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: [U.S. Treasury SDN List](#)) or the United Nations Security designation list (online at: [UN Security Sanctions List](#)).

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

6. OCEAN SHIPMENT OF GOODS (JUNE 2012) M18

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.

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

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

7. TRAFFICKING IN PERSONS (April 2016) M20 edited

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 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.

d. The Agreement Officer may direct the Recipient to take specific steps to abate an alleged violation or enforce the requirements of a compliance plan.

e. 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.

f. 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 agents. The recipient must also include a provision authorizing the recipient to terminate the award as described in section b of this provision.

8. LIMITING CONSTRUCTION ACTIVITIES (AUGUST 2013) M22

b. Construction is not eligible for reimbursement under this award unless specifically identified in paragraph d) below.

c. Construction means — construction, alteration, or repair (including dredging and excavation) of buildings, structures, or other real property and includes, without limitation, improvements, renovation, alteration, and refurbishment. The term includes, without limitation, roads, power plants, buildings, bridges, water treatment facilities, and vertical structures.

d. Agreement Officers will not approve any subawards or procurements by recipients for construction activities that are not listed in paragraph d) below. USAID will reimburse allowable costs for only the construction activities listed in this provision not to exceed the amount specified in the construction line item of the award budget. The recipient must receive prior written approval from the AO to transfer funds allotted for construction activities to other cost categories, or vice versa.

e. **Description:** Construction is not eligible for reimbursement under this award.

f. The recipient must include this provision in all subawards and procurements and make vendors providing services under this award and subrecipients aware of the restrictions of this provision.

9. PILOT PROGRAM FOR ENHANCEMENT OF GRANTEE EMPLOYEE WHISTLEBLOWER PROTECTIONS (SEPTEMBER 2014) M24

The requirement to comply with and inform all employees of the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" is retroactively effective for all assistance awards and subawards (including subcontracts) issued beginning July 1, 2013. The Grantee must:

a. Inform its employees working under this award in the predominant native language of the workforce that they are afforded the employee whistleblower rights and protections provided under 41 U.S.C. § 4712; and

b. Include such requirement in any subaward or subcontract made under this award.

41 U.S.C. § 4712 states that an employee of a Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment. Whistleblowing is defined as making a disclosure "that the employee reasonably believes" is evidence of any of the following:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of the U.S. Congress, or a representative of a U.S. Congressional Committee;
- A cognizant U.S. Inspector General;
- The U.S. Government Accountability Office;

- A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- A U.S. court or grand jury; or,
- A management official or other employee of the Grantee who has the responsibility to investigate, discover, or address misconduct.

10. PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (MAY 2017) M26

(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.

11. MANDATORY DISCLOSURES (July 2015) M28

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
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.

12. NONDISCRIMINATION AGAINST BENEFICIARIES (November 2016) M29

(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.

13. Conflict of Interest

A conflict of interest arises when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of these parties has a financial or other interest in, or a tangible personal benefit from, a subrecipient considered for a subaward. The officers, employees, and agents of the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or parties to subawards. However, recipients may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.

The recipient must disclose any conflict of interest, including organizational conflicts of interest, and the recipient's approach for resolving the conflict of interest to JHPHINI within ten (10) calendar days of the discovery of the conflict of interest. The recipient must not request payment from JHU for costs for transactions subject to the conflict of interest pending notification of JHU's determination. The recipient's failure to disclose a conflict of interest may result in cost disallowances by JHU.

14. REPORTING HOST GOVERNMENT TAXES

a. By March 30th of each year, or upon the termination of this agreement if sooner than March 30th, the recipient must submit a report to JHPHINI containing:

15. The total amount of value-added taxes and customs duties (but not sales taxes) assessed by the host government (or any entity thereof) on purchases in excess of \$500 per transaction of supplies, materials, goods, or equipment, during the 12 months ending on the preceding September 30, using funds provided under this contract/agreement.

16. Any reimbursements received by April 1 of the current year on value-added taxes and customs duties reported in (1).

17. Reports are required even if the recipient did not pay any taxes or receive any reimbursements during the reporting period.

18. Host government taxes are not allowable where the Agreement Officer provides the necessary means to the recipient to obtain an exemption or refund of such taxes, and the recipient fails to

take reasonable steps to obtain such exemption or refund. Otherwise, taxes are allowable in accordance with the Standard Provision, "Allowable Costs," and must be reported as required in this provision.

19. The recipient must include this reporting requirement in all applicable subawards and contracts.

20. USAID Disability Policy - Assistance (December 2004) RAA17

a. The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs, and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other U.S. Government agencies, host country counterparts, governments, implementing organizations, and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities.

b. USAID therefore requires that the recipient not discriminate against people with disabilities in the implementation of USAID-funded programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing the program under this grant or cooperative agreement. To that end and to the extent it can accomplish this goal within the scope of the program objectives, the recipient should demonstrate a comprehensive and consistent approach for including men, women, and children with disabilities.

21. CONTRACT PROVISION FOR DBA INSURANCE UNDER RECIPIENT PROCUREMENTS (DECEMBER 2014) RAA26

All contracts made by the recipient under this award for services to be performed overseas must contain the following provision, as applicable.

Workers' Compensation Insurance (Defense Base Act)

(a) The Contractor must--

22. Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing Defense Base Act (DBA) insurance pursuant to the terms of the contract between USAID and USAID's DBA insurance carrier unless the Contractor qualifies as a self-insurer under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) as extended by the Defense Base Act (42 U.S.C. 1651, et seq.), or has an approved retrospective rating agreement for DBA. The Contractor must continue to maintain these provisions to provide such Defense Base Act benefits until contract performance is completed.

23. If USAID or the Contractor has secured a waiver of DBA coverage in accordance with AIDAR 728.305-70(a) for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to USAID-financed contracts performed in countries listed in the DEFENSE BASE ACT (DBA) WAIVER LIST.

24. RAA11. PROHIBITION OF ASSISTANCE TO DRUG TRAFFICKERS (JUNE 1999)

a. 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 140.

(1) For any loan over \$1,000 made under this agreement, the recipient must insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall, or refund by the recipient if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR 140.

(2) Upon notice by USAID of a determination under section (1) and at USAID's option, the recipient agrees to immediately cancel, accelerate, or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.

(3) The recipient agrees not to disburse, or sign documents committing the recipient to disburse, funds to a subrecipient designated by USAID ("Designated Subrecipient") until advised by USAID that: (i) any United States Government review of the Designated Subrecipient and its key individuals has been completed; (ii) any related certifications have been obtained; and (iii) the assistance to the Designated Subrecipient has been approved. Designation means that the subrecipient has been unilaterally selected by USAID as the subrecipient. USAID approval of a subrecipient, selected by another party, or joint selection by USAID and another party is not designation.

The recipient must insert the following clause, or its substance, in its agreement with the Designated Subrecipient:

"The recipient reserves the right to terminate this [Agreement/Contract] or take other appropriate measures if the [Subrecipient] or a key individual of the [Subrecipient] is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking as defined in 22 CFR 140."

25. VOLUNTARY POPULATION PLANNING ACTIVITIES – MANDATORY REQUIREMENTS (MAY 2006) M19

Requirements for Voluntary Sterilization Programs

(1) Funds made available under this award must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

Prohibition on Abortion-Related Activities:

a. No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate," as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

b. No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent, or consequences of abortions is not precluded.

26. VOLUNTARY POPULATION PLANNING ACTIVITIES – SUPPLEMENTAL REQUIREMENTS (JANUARY 2009) RAA5

a. Voluntary Participation and Family Planning Methods:

(1) The recipient agrees to take any steps necessary to ensure that funds made available under this award will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs.

(2) Further, the recipient agrees to conduct its activities in a manner which safeguards the rights, health, and welfare of all individuals who take part in the program.

Activities which provide family planning services or information to individuals, financed in whole or in part under this agreement, must provide a broad range of family planning methods and services available in the country in which the activity is conducted or must provide information to such individuals regarding where such methods and services may be obtained.

Requirements for Voluntary Family Planning Projects

(1) A family planning project must comply with the requirements of this paragraph.

- (2) A project is a discrete activity through which a governmental, nongovernmental, or public international organization provides family planning services to people and for which funds obligated under this award, or goods or services financed with such funds, are provided under this award, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- (3) Service providers and referral agents in the project must not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates or indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, or reporting with respect to the project are not quotas or targets under this paragraph unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- (4) The project must not include the payment of incentives, bribes, gratuities, or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.
- (5) A person must not be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.
- (6) The project must provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.
- (7) The project must ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.
- (8) With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is no subaward or contract under this award, the organization implementing a project for which such assistance is provided must agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.
- (9) The recipient must notify USAID when it learns about an alleged violation in a project of the requirements of subparagraphs (3), (4), (5), or (7) of this paragraph.
- (10) The recipient must investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and must notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.
- (11) The recipient must provide USAID such additional information about violations as USAID may request.

(c) Additional Requirements for Voluntary Sterilization Programs

- (1) Funds made available under this award must not be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.
- (2) The recipient must ensure that any surgical sterilization procedures supported, in whole or in part, by funds from this award are performed only after the individual has voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the

voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent at any time prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

(3) Further, the recipient must document the patient's informed consent by (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or, (ii) when a patient is unable to read adequately, a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation, the receipt of this oral explanation must be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who speaks the same language as the patient.

(4) The recipient must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after the performance of the sterilization procedure.

Prohibition on Abortion-Related Activities:

(1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term "motivate," as it relates to family planning assistance, must not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

(2) No funds made available under this award will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent, or consequences of abortions is not precluded.

(3) The recipient must insert this provision in all subsequent subawards and contracts involving family planning or population activities that will be funded in whole or in part from funds under this award.