

Template for Outward Grant Agreement

An Additional Help for ADS Chapter 351

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**TEMPLATE FOR OUTWARD GRANT AGREEMENT TO BILATERAL DONOR**

for X Project (the “Project”) in Y Country

**[*Italicized text* = Mandatory text]**

I.  **Parties**. [A (the “Lead Donor”) [,/and] the United States Agency for International Development (“USAID”) [and B, C and D, etc. (together with USAID, each a “Co-Donor” and collectively, the “Co-Donors”),][[1]](#footnote-2). The Lead Donor and the Co-Donors together are, the “Donors”. Each Donor is a “Party” and collectively the Donors are the “Parties” to this Agreement.

II. **Purpose**. The purpose of this Co-Donor grant agreement (together with the Standard Provisions attached hereto as Annex A, the “Agreement”) is to facilitate joint support among the Donors with respect to implementation of the Project. The Project [is/shall be] described in detail in the [Project Agreement, dated \_\_\_\_\_]][[2]](#footnote-3) (any such agreement, together with any related agreements, the “Project Agreement”)] between the Government of Y Country (the “Host Government”)[[3]](#footnote-4) and the Lead Donor. This Agreement does not create a separate legal entity for the Project, and does not obligate funds for the Project except for [USAID funds as stated in paragraph IV.B below][[4]](#footnote-5).

III. **Term**. The Agreement shall remain in effect from date of signature by all Parties until one year after the completion or termination of the Project as described in the Project Agreement between the Host Government and the Lead Donor (or other document), and until the completion to the satisfaction of all Parties of all administrative and financial actions necessary to orderly closure of the Agreement, including but not limited to accounting, audit, evaluation, adjudication of claims, payments, refunds, and disposition of property or any remaining funds. The Parties shall cooperate in taking all actions required for orderly closeout of the Agreement satisfactory to all Parties, normally expected to be accomplished within one year after the end of the Project, or upon the earlier termination of the Agreement pursuant to its termination provisions.

IV. **Capital Commitments**.

A. Total Estimated Project Resources. The following table shows the estimated amounts of the capital commitments of the Lead Donor, the Co-Donors, the Host Government, and other organizations or individuals, public or private, to the Project. *All estimated capital commitments of each Donor are subject to the availability of funds under the relevant financial, legal and regulatory provisions and procedures of each Donor or the Host Government, and to the agreement of the Donor to proceed.* Total capital commitments have been estimated in [U.S. Dollars, Euros, or other currencies] for convenience, and are subject to exchange rate fluctuations.[[5]](#footnote-6)

 Capital Commitment in [US$/Euro/Other]

Lead Donor A: [ ]

Co-Donors USAID: [ ]

 B: [ ]

 C: [ ]

 Host Government [in cash or kind]: [ ]

 Others, e.g., D Corporation: [ ]

 E NGO: [ ]

 F Foundation: [ ]

 G Individual: [ ]

 Total Estimated Project Resources: [ ]

B. Grant to the Lead Donor. [USAID hereby grants to the Lead Donor the sum of US$[ ] as the initial installment of USAID’s capital commitment to the Project. Subsequent obligation and contribution of grant funds by USAID for the Project, up to the total estimated amount of USAID’s capital commitment stated above, may be made by amending this Agreement in accordance with Section XI hereof, *provided that any such subsequent obligation and contribution of grant funds shall be* *subject to the availability of funds to USAID for this purpose through financial, legal and regulatory provisions and procedures governing the availability of such funds USAID, and to USAID’s agreement to proceed*.][[6]](#footnote-7)

C. Procedures for Disbursements of Periodic Contributions by the Co-Donors to the Lead Donor.

1. Frequency and Timing of Contributions. Each Co-Donor shall make its contribution to the Lead Donor in [the total amount of its capital commitment in one advance payment] [periodic contributions every [month/quarter/year] from [the date of the initial contribution made under this Agreement]]. The Lead Donor and the Co-Donors shall periodically exchange with each other and the Host Government information on projections of the amounts and timing of anticipated incremental contributions, in order to facilitate efficient implementation of the Project.

 2. Method of Payment [EFT or other; destination account; designation of contribution, etc.]. The Lead Donor shall provide to each Co-Donor detailed instructions for the electronic transfer of funds and each Co-Donor shall make its contributions to the Lead Donor for the Project in accordance with such instructions[, or other agreed method]. Co-Donor contributions are further governed by Section 2 of the Standard Provisions (Payment) attached hereto as Annex A.

3. Confirmation of Receipt and Use of Funds. The Lead Donor shall confirm receipt of each Co-Donor’s funds and the transfer of such funds to the Lead Donor’s account for use in the Project, and shall utilize the Co-Donors’ funds, along with the Lead Donor’s funds, according to the Lead Donor’s procedures to implement the Project.

V. **Project Implementation.**

A. The Lead Donor shall implement the Project through the Project Agreement. The Lead Donor shall obligate funds contributed by the Co-Donors together with the Lead Donor’s in accordance with the terms of the Project Agreement.

B. The Lead Donor shall represent the interests of the Co-Donors and the Lead Donor with the Host Government and with other grantee organizations or contractors that receive grant funds from the Lead Donor with respect to such funds.

C. The Donors may establish a Project Advisory Committee to exchange information and views on all aspects of Project implementation, including, but not limited to progress, problems, timetables for future donor contributions, and monitoring and evaluation. The Donors shall meet at least once [annually] to discuss Project progress and financing.[[7]](#footnote-8)

[D. Technical Evaluation Committee.][[8]](#footnote-9)

VI. **Financial and Project Reports to Co-Donors**.

A. [Format, Frequency and Timing: annual, semi-annual, etc. Specify what types of reports the Lead Donor shall provide to the Co-Donors and the schedule for delivery of such reports.]

B. [Accounting Standards of the Lead Donor and Host Government. Specify the Lead Donor, Host Government, or international standards for the various components of the Project.]

VII. **Audits and Evaluations**.

A. [Responsible Parties. Annual or periodic audits by the Lead Donor, Host Government, others, e.g., Recipient-Contracted audits by NGOs or corporations. Specify which organizations will audit what components of the Project.]

B. [Auditing Standards. Specify the Lead Donor’s, Host Government’s, or other international standards that will apply to the various components of the Project.]

C. [Evaluations. The Lead Donor, Co-Donors and Host Government shall jointly conduct a final evaluation of the Project using Donor funds. The Donors and the Host Government may agree on additional periodic evaluations of all or parts of the Project.]

VIII. **Taxation of Assistance**. The Lead Donor shall maintain the policy that the Host Government should (a) not tax foreign assistance, and (b) respect bilateral agreements providing exemptions from (i) customs duties, import or export taxes on program goods or household effects, (ii) income and social taxes on the salaries of expatriate individuals (not host country nationals) employed by donors, foreign companies and organizations present in the host country to assist the Donors and Host Government to implement the Project, and (iii) taxes on the income or assets of such foreign companies and organizations related to the Project. The Lead Donor shall annually report to each Co-Donor the amount of such Co-Donor’s funds used to pay any customs duties or value-added taxes on commodities financed with such Co-Donor’s funds.

IX. **Representatives**. For all purposes under this Agreement, each Party shall be represented by the person holding or acting in the office or position below, or such person’s superior at their respective headquarters offices. Each Co-Donor may designate for itself other additional representatives by written notice to the Lead Donor:

For Lead Donor: Director, USAID/Y Country

 Street, City, Country, Postal Code

 Phone/Fax

For Co-Donor(s): Title

 Street, City, Country, Postal Code

 Phone/Fax

X. **Consultation**. The Parties shall cooperate to accomplish the purpose of this Agreement and to successfully implement the Project with the Host Government and other implementing organizations. At the request of any Party, the Parties shall consult and communicate with one another on any matter relevant to the Agreement and Project, such as implementation progress or problems and performance of respective obligations by Parties, Host Government, contractors, non-governmental grantees, consultants or suppliers. All disputes under the Agreement shall be resolved by communication and consultation among the Parties.

XI. **Amendments**. This Agreement may be amended in writing at any time by the representatives of all Parties. Each amendment shall take effect on the date that all Parties have signed such amendment.

XII. **Standard Provisions**. The Standard Provisions attached hereto as Annex A are an integral part of this Agreement. *In case of conflict between the Standard Provisions and other provisions of this Agreement, the Standard Provisions shall prevail*.

[**Signature Page Follows**]

Accepted and agreed by the Parties this \_\_\_\_day of \_\_\_\_\_\_\_, 20xx, by the authorized representatives of each Party:

[**Insert Signature Blocks**]

USAID Director A, Lead Donor

USAID/Y B, Co-Donor

C, Co-Donor

Etc.

**USAID Standard Provisions for Cost-Type Agreements**

**Granting Funds to Another Bilateral Donor**

[**Note: Standard Provisions are mandatory when applicable, but may be negotiated with GC or RLA clearance**.]

1. **Allowable Costs**: Co-Donor funds may be used for all reasonable, allocable and allowable costs incurred by the Lead Donor, the Host Government, or nongovernmental grantees or contractors, to carry out the Project. “Reasonable” means costs that do not exceed those that would ordinarily be incurred by a prudent person in the conduct of normal business. “Allocable” means costs necessary to carry out the Project. “Allowable” means reasonable and allocable costs that conform to the limitations set forth under the Agreement.

2. **Payment**: [**Note: Use lump sum distribution or one of the Payment Clauses for PIO Grants, Advances, Letters of Credit, or Cost Reimbursement in ADS 308**.]

3. **Refunds**:

[a. If interest is earned on funds contributed by USAID before the expenditure of such funds for Project purposes, the Lead Donor must remit the interest annually to USAID, except for amounts up to $250, which may be retained by the Lead Donor for administrative expenses.]

b. Any funds advanced by USAID to the Lead Donor but not expended by the Lead Donor in accordance with the terms of this Agreement before the expiration or termination of this Agreement [or termination of USAID’s involvement as a Co-Donor under this Agreement] must be refunded to USAID, except for funds committed by the Lead Donor to third parties in legally binding transactions related to the Project.

c. If during the implementation of the Project, or as the result of a final audit, it is determined that Co-Donor funds provided by this Agreement have been expended for purposes not in accordance with the terms of this Agreement, the Lead Donor shall endeavor to recover any such funds. Losses, or refunds of recovered funds, shall be shared among all Co-Donors on a *pro-rata* basis in relation to the contribution of each Donor to the Project through this Agreement.

4. **Termination and Suspension**:

 Either Party may terminate this Agreement in its entirety [if multiparty, use “Any Party may terminate its involvement in the Agreement”], or may terminate or suspend the Agreement [or its involvement in the Agreement] in part, by giving the other Party (or Parties) 30 days’ advance written notice. Except for payments which Lead Donor or the Parties are committed to make under non-cancellable commitments entered into with third parties prior to such termination or suspension, such termination or suspension shall cancel the obligation of the terminating or suspending Party to provide further financial or other resources for the Agreement (in whole or in affected part). Refunds are governed by the Standard Provision on Refunds.

5. **Audit and Records**: The Lead Donor shall maintain books, records, documents and other evidence in accordance with the Lead Donor’s usual accounting procedures to sufficiently substantiate charges to Co-Donor funds under this Agreement. The Lead Donor confirms that the Project, including Co-Donor funds, shall be subject to regular independent audits in accordance with the Lead Donor’s usual auditing procedures, and agrees to furnish copies of such audit reports to each Co-Donor, along with such other related information, records and documents supporting expenditure of Co-Donor funds, that a Co-Donor may reasonably request with respect to questions arising under the Project.

6. **Terrorist Financing**:

a. The Lead Donor and each Co-Donor undertake to use reasonable efforts to ensure that none of the funds provided under this Agreement are used to support individuals or entities actively engaged in or directly associated with terrorism.

b. U.S. Executive Orders and laws prohibit U.S. persons or organizations from engaging in transactions with, or provision of resources or support to individuals or organizations engaging in or associated with terrorism. See [www.treas.gov](http://www.treas.gov)/offices/enforcement/ofac/. The Lead Donor shall include this clause in all contracts or grants with U.S. persons or organizations.

7. **Information and Marking**: The Lead Donor shall give appropriate publicity to the Project to which the Lead Donor, Host Government and each Co-Donor have contributed, and shall appropriately mark project sites, commodities and publications, giving credit to major contributors, under the Lead Donor’s procedures.

8. **Nonliability for Third Party Claims**: No Co-Donor assumes liability for any third party claims for compensation or damages arising out of this Agreement or the Project Agreement.

9.  **USAID Procurement and Subject Matter Prohibitions and Restrictions**:

a. USAID funds may be used for worldwide procurement of goods and services from all countries, areas, persons and organizations within USAID Principal Geographic Code 935, per 22 CFR 228. [**Note: Modify if USAID has determined that complete untying is permissible under FAA 604.**]

b. *USAID funds shall not be used, under any circumstances, to procure or finance the following:*

1. *Military equipment or services;*
2. *Surveillance equipment or services;*
3. *Abortion equipment or services; or*
4. *Involuntary sterilization equipment or services.*

*c. (i) No subrecipient under this Agreement that is a private entity may, during the period of time that the award is in effect (A) engage in 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; or (B) procure any sex act on account of which anything of value is given to or received by any person.*

1. *If USAID determines that there is a reasonable basis to believe that any private party subrecipient has violated the provisions of paragraph c.(i) above or that an employee of the subrecipient has violated such a prohibition where that the employee’s conduct is associated with the performance of this award or may be imputed to the subrecipient, USAID may (A) require the Lead Donor to terminate immediately the subaward in question or (B) unilaterally terminate this Agreement in accordance with Standard Provision number 4 (Termination and Suspension) of this Agreement.*
2. *For purposes of this Section 9.c., “employee” means an individual who is engaged in the performance of the Project as a direct employee, consultant, or volunteer of any private party subrecipient.*
3. *The Lead Donor must include in all subagreements, including subawards and contracts, a provision prohibiting the conduct described in paragraph c.(i) above by private party subrecipients, contractors, or any of their employees.*

d. USAID funds shall not be used to procure or finance the following goods or services, unless USAID agrees otherwise in writing in advance, and unless an appropriate additional provision is added to the Agreement by amendment if required by USAID: [*Note: Consult GC or RLA to determine which provisions are applicable and determine whether special circumstances permit USAID to agree to finance any such costs*.]

1. Support for police or other law enforcement forces or activities. [*Note: Unless USAID determines that an exception to FAA 660(a) applies.*]
2. Agricultural commodities, unless grown in the Host Country. [*Note: See ADS 312 and SFOAA for fiscal year of funding.*]
3. Motor vehicles not manufactured in the US. [*Note: Unless USAID grants FAA 636(i) waiver.*]
4. Pharmaceuticals or contraceptives. [*Note: See ADS 312*.]
5. Pesticides. [*Note: See ADS 312*.]
6. Air travel or transport to or from the United States, unless by U.S.-flag air carrier, or other air carrier covered by current “code share” agreement with the U.S. [*Note: See Fly America guidance*.]
7. Ocean transportation of commodities. [*Note: Delete if determination of impracticality or non-availability made under ADS 315.*]
8. Travel of host country delegations to international conferences. [*Note: Delete unless DA, DFA or GHCS funding used for Agreement.*]
9. Family planning or reproductive health services, supplies, or activities, unless USAID special provisions on these topics are added to this Agreement by amendment. [*Note: Add LSGA SP-P, or Non-US NGO clauses on Voluntary Family Planning, as applicable, if any family planning or reproductive health activities will be financed under the Agreement. Consult RLA or GC/G*.]
10. HIV/AIDS services, supplies or activities, unless USAID special provisions on these topics are added to this Agreement by amendment. [*Note: Add PIO SPs or NGO clauses on HIV/AIDS, as applicable. Consult RLA or GC/G.*]
11. Drug trafficking. [*Note: Add LSGA SP-Q, if host country is covered country. See ADS 206.*]
12. Investment promotion or violation of internationally recognized workers’ rights. [*Note: Add PIO SP or LSGA SP-N, as applicable. Consult RLA and GC/G; See ADS 225.*]

 e. If any Project funds held by the Lead Donor are spent for items or activities ineligible for USAID financing under these Standard Provisions or this Agreement, then the Lead Donor and USAID shall attribute such expenditures to contributions other than USAID contributions.

[*End of Annex A Standard Provisions*.]

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1. Revise as appropriate according to the number of Co-Donors. [↑](#footnote-ref-2)
2. If not a Project Agreement, substitute the appropriate document that describes the Program. [↑](#footnote-ref-3)
3. This drafting assumes that the counterparty to the assistance agreement is a national government, but this language can be revised according to circumstances. [↑](#footnote-ref-4)
4. Consider appropriate language here and in Section IV with respect to additional Co-Donors or potential future Co-Donors. [↑](#footnote-ref-5)
5. Ensure that any such fluctuations will not violate the maximum amount of Agency funds being awarded. [↑](#footnote-ref-6)
6. Any reference to subsequent funding must contain this proviso. If there are multiple Co-Donors, include Section IV(B) obligating language in a separate grant letter and replace this language with a reference to “the amount set forth in each Co-Donor’s grant letter”. [↑](#footnote-ref-7)
7. See the DCAR NPG Template for more expansive discussion of donor coordination meetings and duties of the Lead Donor, optional. [↑](#footnote-ref-8)
8. An optional paragraph may be added if the Co-Donors request membership on the TEC that evaluates proposals for the Lead Donor’s grants and contracts with NGOs or companies for implementation of components of the Program. [↑](#footnote-ref-9)