

No. 5769

**UNITED NATIONS SPECIAL FUND
and
FEDERATION OF MALAYA**

**Agreement concerning assistance from the Special Fund.
Signed at Kuala Lumpur, on 25 July 1961**

Official text: English.

Registered ex officio on 25 July 1961.

**FONDS SPÉCIAL DES NATIONS UNIES
et
FÉDÉRATION DE MALAISIE**

**Accord relatif à une assistance du Fonds spécial. Signé à
Kuala Lumpur, le 25 juillet 1961**

Texte officiel anglais.

Enregistré d'office le 25 juillet 1961.

No. 5769. AGREEMENT¹ BETWEEN THE UNITED NATIONS SPECIAL FUND AND THE GOVERNMENT OF THE FEDERATION OF MALAYA CONCERNING ASSISTANCE FROM THE SPECIAL FUND. SIGNED AT KUALA LUMPUR, ON 25 JULY 1961

WHEREAS the Government of the Federation of Malaya (herein referred to as the "Federation Government") has requested assistance from the United Nations Special Fund (herein referred to as the "Special Fund") in accordance with resolution 1240 (XIII)² of the General Assembly of the United Nations ;

WHEREAS the Special Fund is prepared to provide the Federation Government with such assistance for the purpose of promoting social progress and better standards of life and advancing the economic, social and technical development of the Federation of Malaya ;

NOW THEREFORE the Federation Government and the Special Fund have entered into this Agreement in a spirit of friendly co-operation.

Article I

ASSISTANCE TO BE PROVIDED BY THE SPECIAL FUND

1. This Agreement embodies the conditions under which the Special Fund shall provide the Federation Government with assistance and also lays down the basic conditions under which projects will be executed.
2. A Plan of Operation for each project shall be agreed to in writing by the Federation Government, the Special Fund and the Executing Agency. The terms of this Agreement shall apply to each Plan of Operation.
3. The Special Fund undertakes to make available such sums as may be specified in each Plan of Operation for the execution of projects described therein, in accordance with the relevant and applicable resolutions and decisions of the appropriate United Nations organs, in particular resolution 1240 (XIII) of the General Assembly, and subject to the availability of funds.
4. Compliance by the Federation Government with any prior obligations specified in each Plan of Operation as necessary for the execution of a project shall be a con-

¹ Came into force on 25 July 1961, upon signature, in accordance with article X (1).

² United Nations, *Official Records of the General Assembly, Thirteenth Session, Supplement No. 18 (A/4090)*, p. 11.

dition of performance by the Special Fund and by the Executing Agency of their responsibilities under this Agreement. In case execution of a project is commenced before compliance by the Federation Government with any related prior obligations, such execution may be terminated or suspended at the discretion of the Special Fund.

Article II

EXECUTION OF PROJECT

1. The Parties hereby agree that each project shall be executed or administered on behalf of the Special Fund by an Executing Agency, to which the sums referred to in Article I above shall be disbursed by agreement between the Special Fund and such Executing Agency.
2. The Federation Government agrees that an Executing Agency, in carrying out a project, shall have the status, vis-à-vis the Special Fund, of an independent contractor. Accordingly, the Special Fund shall not be liable for the acts or omissions of the Executing Agency or of persons performing services on its behalf. The Executing Agency shall not be liable for the acts or omissions of the Special Fund or of persons performing services on behalf of the Special Fund.
3. Any agreement between the Federation Government and an Executing Agency concerning the execution of a Special Fund project shall be subject to the provisions of this Agreement and shall require the prior concurrence of the Managing Director.
4. Any equipment, materials, supplies and other property belonging to the Special Fund or an Executing Agency which may be utilized or provided by either or both in the execution of a project shall remain their property unless and until such time as title thereto may be transferred to the Federation Government on terms and conditions as may be agreed upon between the Federation Government and the Special Fund or the Executing Agency concerned.

Article III

INFORMATION CONCERNING PROJECT

1. The Federation Government shall furnish the Special Fund with such relevant documents, accounts, records, statements and other information as the Special Fund may request concerning the execution of any project or its continued feasibility and soundness, or concerning the compliance by the Federation Government with any of its responsibilities under this Agreement.
2. The Special Fund undertakes that the Federation Government will be kept currently informed of the progress of operations on projects executed under this Agreement. Either Party shall have the right, at any time, to observe the progress of any operations carried out under this Agreement.

3. The Federation Government shall, subsequent to the completion of a project, make available to the Special Fund at its request information as to benefits derived from and activities undertaken to further the purpose of that project, and will permit observation by the Special Fund for this purpose.
4. The Federation Government will also make available to the Executing Agency all information concerning a project necessary or appropriate to the execution of that project, and all information necessary or appropriate to an evaluation, after its completion, of the benefits derived from and activities undertaken to further the purpose of that project.
5. The Parties shall consult each other regarding the publication as appropriate of any information relating to any project or to benefits derived therefrom.

Article IV

PARTICIPATION AND CONTRIBUTION OF FEDERATION GOVERNMENT IN EXECUTION OF PROJECT

1. The Federation Government shall participate and co-operate in the execution of the projects covered by this Agreement. It shall, in particular, perform all the acts required of it in each Plan of Operation, including the provision of materials, equipment, supplies, labour and professional service available within the country.
2. If so provided in the Plan of Operation, the Federation Government shall pay, or arrange to have paid, to the Special Fund the sums required, to the extent specified in the Plan of Operation, for the provision of labour, materials, equipment and supplies available within the country.
3. Moneys paid to the Special Fund in accordance with the preceding paragraph shall be paid to an account designated for this purpose by the Secretary-General of the United Nations and shall be administered in accordance with the applicable financial regulations of the Special Fund.
4. Any moneys remaining to the credit of the account designated in the preceding paragraph at the time of the completion of the project in accordance with the Plan of Operation shall be repaid to the Federation Government after provision has been made for any unliquidated obligations in existence at the time of the completion of the project.
5. The Federation Government shall as appropriate display suitable signs at each project identifying such project as one assisted by the Special Fund and the Executing Agency.

Article V

LOCAL FACILITIES TO BE PROVIDED BY THE FEDERATION GOVERNMENT TO THE SPECIAL FUND AND THE EXECUTING AGENCY

1. In addition to the payment referred to in Article IV, paragraph 2, above, the Federation Government shall assist the Special Fund and the Executing Agency in any project by paying or arranging to pay for the following local facilities required to fulfil the programme of work specified in the Plan of Operations :

- (a) The local living costs of experts and other personnel assigned by the Special Fund or the Executing Agency to the country under this Agreement, as shall be specified in the Plan of Operation ;
- (b) Local administrative and clerical services, including the necessary local secretarial help, interpreter-translators, and related assistance ;
- (c) Transportation of personnel, supplies and equipment within the country ;
- (d) Postage and telecommunications for official purposes ;
- (e) Any sums which the Federation Government is required to pay under Article VIII, paragraph 5 below.

2. Moneys paid under the provisions of this Article shall be paid to the Special Fund and shall be administered in accordance with Article IV, paragraphs 3 and 4.

3. Any of the local services and facilities referred to in paragraph 1 above in respect of which payment is not made by the Federation Government to the Special Fund shall be furnished in kind by the Federation Government to the extent specified in the Plan of Operation.

4. The Federation Government also undertakes to furnish in kind the following local services and facilities :

- (a) The necessary office space and other premises ;
- (b) Appropriate medical facilities and services for international personnel engaged in the project.

5. The Federation Government undertakes to provide such assistance as it may be in a position to provide for the purpose of finding suitable housing accommodation for international personnel assigned to the country under this Agreement.

Article VI

RELATION TO ASSISTANCE FROM OTHER SOURCES

In the event that assistance towards the execution of a project is obtained by either Party from other sources, the Parties shall consult each other and the Executing

Agency with a view to effective co-ordination and utilization of assistance received by the Federation Government from all sources. The obligations of the Federation Government hereunder shall not be modified by any arrangements with other entities co-operating with the Federation Government in the execution of a project.

Article VII

USE OF ASSISTANCE

The Federation Government shall exert its best efforts to make the most effective use of the assistance provided by the Special Fund and the Executing Agency and shall use such assistance for the purpose for which it is intended. The Federation Government shall take such steps to this end as are specified in the Plan of Operation.

Article VIII

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Federation Government shall apply to the United Nations and its organs, including the Special Fund, its property, funds and assets, and to its officials, the provisions of the Convention on the Privileges and Immunities of the United Nations.¹
2. The Federation Government shall apply to each Specialized Agency acting as an Executing Agency, its property, funds and assets and to its officials, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies² including any Annex to the Convention applicable to such Specialized Agency. In case the International Atomic Energy Agency acts as an Executing Agency, the Federation Government shall apply to its property, funds and assets and to its officials, the Agreement on the Privileges and Immunities of the International Atomic Energy Agency³ or, in the absence of such Agreement, the Convention on the Privileges and Immunities of the United Nations.
3. In appropriate cases where required by the nature of the project, the Federation Government and the Special Fund may agree that immunities similar to those specified in the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies shall be granted by the Federation Government to a firm or organization, and to the Personnel of any firm or organization, which may be retained by either the Special Fund or an Executing Agency to execute or to assist in the execution of a

¹ See footnote 1, p. 150 of this volume.

² See footnote 1, p. 214 of this volume.

³ United Nations, *Treaty Series*, Vol. 374, p. 147 ; Vol. 396, and Vol. 399.

project. Such immunities shall be specified in the Plan of Operation relating to the project concerned.

4. The Federation Government shall take any measures which may be necessary to exempt the Special Fund and any Executing Agency and their officials and other persons performing services on their behalf from regulations or other legal provisions which may interfere with operations under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of projects. It shall, in particular, grant them the following rights and facilities :

- (a) the prompt issuance without cost of necessary visas, licences or permits ;
- (b) access to the site of work and all necessary rights of way ;
- (c) free movement, whether within or to or from the country, to the extent necessary for proper execution of the project ;
- (d) the most favourable legal rate of exchange ;
- (e) any permits necessary for the importation of equipment, materials and supplies in connexion with this Agreement and for their subsequent exportation ; and
- (f) any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of the Special Fund or of an Executing Agency, or other persons performing services on their behalf, and for the subsequent exportation of such property.

5. In cases where a Plan of Operation so provides the Federation Government shall either exempt from or bear the cost of any taxes, duties, fees or levies which may be imposed on any firm or organization which may be retained by an Executing Agency or by the Special Fund and the personnel of any firm or organization in respect of :

- (a) the salaries or wages earned by such personnel in the execution of the project ;
- (b) any equipment, materials and supplies brought into the country in connexion with this Agreement or which, after having been brought into the country, may be subsequently withdrawn therefrom ; and
- (c) any property brought by the firm or organization or its personnel for their personal use or consumption or which, after having been brought into the country, may subsequently be withdrawn therefrom upon departure of such personnel.

6. The Federation Government shall be responsible for dealing with any claims which may be brought by third parties against the Special Fund or an Executing Agency, against the personnel of either, or against other persons performing services

on behalf of either under this Agreement, and shall hold the Special Fund, the Executing Agency concerned and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Parties hereto and the Executing Agency that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

Article IX

SETTLEMENT OF DISPUTES

Any dispute between the Special Fund and the Federation Government arising out of or relating to this Agreement which cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as agreed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article X

GENERAL PROVISIONS

1. This Agreement shall enter into force upon signature, and shall continue in force until terminated under paragraph 3 below.
2. This Agreement may be modified by written agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.
3. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice.
4. The obligations assumed by the Parties under Articles III, IV and VII shall survive the expiration or termination of this Agreement. The obligations assumed by the Federation Government under Article VIII hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit orderly with-

drawal of personnel, funds and property of the Special Fund and of any Executing Agency, or of any firm or organization retained by either of them to assist in the execution of a project.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the Special Fund and of the Federation Government, respectively, have on behalf of the Parties signed the present Agreement at Kuala Lumpur this 25th day of July 1961.

For the Special Fund :

(Signed) H. L. SPENCE, Jr.

Regional Representative, United Nations
Technical Assistance Board on behalf
of Managing Director,
Special Fund

For the Government
of Federation of Malaya :

(Signed) Abdul Aziz

(Dato' Abdul Aziz bin Haji Abdul Majid,
PMN, DPMK, PJK)
Permanent Secretary
Prime Minister's Department