

No. 16835

**UNITED STATES OF AMERICA
and
ZAMBIA**

**Loan Agreement relating to economic assistance for
commodities and commodity-related services. Signed
at Lusaka on 3 December 1976**

Authentic text: English.

Registered by the United States of America on 10 July 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
ZAMBIE**

**Accord de prêt relatif à un prêt-programme. Signé à Lusaka
le 3 décembre 1976**

Texte authentique: anglais.

Enregistré par les États-Unis d'Amérique le 10 juillet 1978.

LOAN AGREEMENT¹ (ZAMBIA PROGRAM LOAN) BETWEEN THE REPUBLIC OF ZAMBIA AND THE UNITED STATES OF AMERICA

Dated: December 3, 1976

A.I.D. Loan No. 690-K-009

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¹ Came into force on 3 December 1976 by signature.

LOAN AGREEMENT dated the third day of December 1976 between the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT (“A.I.D.”) and the REPUBLIC OF ZAMBIA (the “Borrower”).

Article I. THE LOAN

Section 1.1. THE LOAN. A.I.D. agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed twenty million United States dollars (\$20,000,000) (the “Loan”) for the foreign exchange costs of commodities and commodity-related services, as such services are defined by A.I.D. Regulation 1, needed to assist the Borrower to alleviate balance of payment problems. Commodity-related services authorized to be financed hereunder include, but are not limited to, the services of a procurement consultant to assist the Borrower in the preparation and issuance of invitations for bid, bid analysis, execution of contracts, shipping arrangements and other procurement services. Commodities and commodity related services authorized to be financed hereunder are hereinafter referred to as “Eligible Items”, as hereinafter more fully described in Section 4.6. The aggregate amount of disbursements under the Loan is hereinafter referred to as “Principal”.

Article II. LOAN TERMS

Section 2.1. INTEREST. Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement as such date is defined in Section 5.3. and shall be computed on the basis of a 365-day year. Interest shall be due and payable semi-annually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be determined by A.I.D. after consultation with the Borrower.

Section 2.2. REPAYMENT. Borrower shall repay the Principal to A.I.D. within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9^{1/2}) years after the date on which the first interest payment is due in accordance with Section 2.1. A.I.D. shall provide Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

Section 2.3. APPLICATION, CURRENCY AND PLACE OF PAYMENT. All payments of interest and Principal hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C. 20523, U.S.A., and shall be deemed made when received by the Office of the Controller.

Section 2.4. PREPAYMENT. Upon payment of all interest and refunds then due, Borrower may repay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity or as A.I.D. may otherwise agree in writing.

Section 2.5. RENEGOTIATION OF THE TERMS OF THE LOAN. The parties agree to negotiate, at such time or times as either party may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of the Borrower, taking into consideration current and projected debt servicing and other economic development requirements of the Borrower.

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.1. CONDITIONS PRECEDENT TO DISBURSEMENT. Prior to the first disbursement or the issuance of the first Letter of Commitment under the Loan, Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- (a) An opinion of the Attorney General of Zambia that this Agreement has been duly authorized or ratified by, and executed on behalf of, Borrower and that it constitutes a valid and legally binding obligation of Borrower in accordance with all of its terms;
- (b) Evidence of the authority of the person or persons who will act as the representative or representatives of Borrower specified in Section 9.2 and a specimen signature of each such person certified as to its authenticity by either the person who renders the legal opinion or the person who executes the Agreement; and
- (c) A procurement plan including the procedures by which all procurement financed under this Agreement will be carried out, the criteria and procedures for determining importer eligibility, and the mechanism for publicizing and effecting procurements.

Section 3.2. TERMINAL DATE FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. If all the conditions specified in Section 3.1 shall not have been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may agree in writing, A.I.D., at its option, may terminate this Agreement by giving written notice to Borrower. In the event of a termination hereunder, upon the giving of such notice the Borrower shall immediately repay the Principal then outstanding and shall pay any accrued interest, and upon receipt by A.I.D. of such payments in full, this Agreement and all obligations of the parties hereunder shall terminate.

Section 3.3. NOTIFICATION OF MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Borrower upon determination by A.I.D. that the conditions precedent to disbursement specified in Section 3.1 have been met.

Article IV. PROCUREMENT

Section 4.1. A.I.D. REGULATION 1. Except as A.I.D. may otherwise specify in writing, procurement and utilization of Eligible Items financed hereunder shall be carried out in accordance with and subject to the provisions of A.I.D. Regulation 1 as in effect on the date such procurement is initiated. If any provision of A.I.D. Regulation 1 is inconsistent with this Agreement or any Implementation Letter issued hereunder, the provision of this Agreement or such Implementation Letter shall govern. The definitions contained in A.I.D. Regulation 1 shall be applicable to this Agreement.

Section 4.2. SOURCE OF PROCUREMENT. (a) Except as A.I.D. may otherwise agree in writing, all Eligible Items, except for marine insurance, ocean and air shipping, and overland transport, covered respectively in subparagraphs (b), (c), and (d) below, shall have both their source and origin in countries included in Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into therefor.

(b) Marine insurance shall qualify as an Eligible Item hereunder provided (i) such insurance is obtained on a competitive basis from firms located, except as A.I.D. may otherwise agree in writing, in areas included in Code 000 of the A.I.D. Geographic Code Book, as in effect at the time of placement, and (ii) claims thereunder are payable in freely convertible currency.

(c) Ocean and air shipping shall qualify as an Eligible Item hereunder provided the vessel or aircraft furnishing the transportation service is registered, except as A.I.D. may otherwise agree in writing, in an area included in Code 000 of the A.I.D. Geographic Code Book. No goods may be financed under the Loan which are transported on any ocean vessel (i) which A.I.D., in a notice to Borrower, has designated as ineligible to carry A.I.D.-financed goods or (ii) which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by A.I.D.

(d) The cost of overland transportation from port of discharge of commodities to point of entry in Zambia shall also qualify as an Eligible Item, if such transportation is provided under a through bill of lading or separately billed by an eligible supplier in accordance with A.I.D. Regulation 1.

Section 4.3. PUBLIC SECTOR PROCUREMENT. Except as A.I.D. may otherwise agree in writing, commodities procured by public sector agencies of the Borrower shall be eligible for financing hereunder only if procured through formal competitive bid procedures in accordance with Section 201.22 of A.I.D. Regulation 1. Arrangements for the procurement of any public sector commodity financed hereunder, including invitations for bids and contract documents, will require the prior approval of A.I.D.

Section 4.4. ELIGIBILITY DATE. Except as A.I.D. may otherwise agree in writing, no goods or services may be financed under the Loan for which any order or contract was firmly placed or entered into prior to the date of this Agreement.

Section 4.5. EXCESS PROPERTY AND STOCKPILES. Notwithstanding Section 201.11(a) of A.I.D. Regulation 1, Borrower shall avail itself of opportunities to procure U.S. Government-owned excess property in lieu of new items whenever practicable and consistent with the purposes of the Loan. Borrower shall seek assistance from A.I.D. and A.I.D. will assist Borrower in ascertaining the availability of and in obtaining such stockpile or excess property. A.I.D. will make arrangements for any necessary inspection of such property by Borrower. The costs of inspection and acquisition, and all charges incident to the transfer to Borrower of such stockpile or excess property, may be financed under the Loan.

Section 4.6. ELIGIBLE ITEMS. (a) The commodities eligible for financing under this Loan shall be limited to those specified in the A.I.D. Commodity Eligibility Listing and listed in the Implementation Letters and Commodity Procurement instructions issued to Borrower. Commodity-related services as defined in A.I.D. Regulation 1 and the services of a procurement consultant are eligible for financing under this Loan. Other items shall become eligible for

financing only with the prior written agreement of A.I.D. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purposes of the Loan or of the Foreign Assistance Act of 1961, as amended.

(b) A.I.D. reserves the right in exceptional situations to delete commodity categories or items within commodity categories described by Schedule B Codes in the Commodity Eligibility Listing. Whenever practicable, such right shall be exercised after consultation with the Borrower and with due regard to the policies and plans of the Borrower. Additionally, such right will not be exercised in regard to particular commodities after a firm order has been placed or a contract entered into for the procurement of such commodities under the Loan.

Section 4.7. EFFECTIVE USE OF COMMODITIES. Borrower shall insure that the commodities financed under this Agreement shall be effectively used for the purpose for which this Loan is made:

- (a) Such effective use shall include the prompt processing of commodity imports through customs at ports of entry in coastal States through which they transit and through points of entry in Zambia and the removal from Zambian customs of such commodities by the importers. Importers shall remove commodities from Zambian customs within ninety (90) days of their arrival, unless hindered by *force majeure* or special market or other circumstances; and
- (b) The consumption or use by the importer or the sale or transfer by the importer for consumption or use shall take place no later than one (1) year from the date of arrival of the commodities at the Zambian point of entry, unless a longer period can be justified to the satisfaction of A.I.D. by reason of *force majeure* or special market or other circumstances.

Section 4.8. MINIMUM SIZE OF TRANSACTIONS. Unless agreed to in writing by A.I.D.:

- (a) No Letter of Credit shall be in an amount less than ten thousand dollars (\$10,000).
- (b) No import license or foreign exchange allocation shall be in an amount less than ten thousand dollars (\$10,000).
- (c) No partial shipment or individual suppliers' invoices (except separate ocean freight and insurance invoices) in amounts less than ten thousand dollars (\$10,000) shall be eligible for payment.

Section 4.9. MOTOR VEHICLES. Except as A.I.D. may otherwise agree in writing, none of the proceeds of this Loan may be used to finance the purchase, sale, long-term lease, exchange or guaranty of a sale of motor vehicles unless such motor vehicles are manufactured in the United States.

Section 4.10. REASONABLE PRICE AND COMPETITIVE PROCUREMENT. No more than reasonable prices will be paid for goods or services financed, in whole or in part, by A.I.D., and such goods or services will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

Section 4.11. PROCEDURES. A.I.D. will issue binding Implementation Letters and Commodity Procurement Instructions which will prescribe the procedures applicable in connection with the implementation of this Agreement.

Article V. DISBURSEMENTS

Section 5.1. DISBURSEMENTS FOR UNITED STATES DOLLAR COSTS—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction of conditions precedent, Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, designated by the Borrower and satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for the U.S. dollar costs of Eligible Items procured for the program in accordance with the terms and conditions of this Agreement. Payment by bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and Implementation Letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of Borrower and may be financed under the Loan.

Section 5.2. OTHER FORMS OF DISBURSEMENTS. Disbursement of the Loan may also be made through such other means as Borrower and A.I.D. may agree in writing.

Section 5.3. DATE OF DISBURSEMENTS. Disbursements by A.I.D. shall be deemed to occur in the case of disbursements pursuant to Section 5.1 on the date on which A.I.D. makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment.

Section 5.4. TERMINAL DATE FOR REQUESTS FOR LETTERS OF COMMITMENT AND FOR DOCUMENTATION FOR DISBURSEMENTS. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment or amendment thereto shall be issued in response to requests received more than eighteen (18) months after the date of this Agreement, and no disbursement shall be made against documentation received more than twenty-four (24) months after the date of this Agreement.

Article VI. COVENANTS AND WARRANTIES

Section 6.1. CONTINUING CONSULTATION. The Borrower and A.I.D. shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, the Borrower and A.I.D. shall from time to time, at the request of either party, exchange views through their representatives with regard to the Borrower's economic development and its progress in achieving the objectives of its economic stabilization program, including the level of current expenditures and its foreign exchange position, and the performance by the Borrower of its obligations under this Agreement, the performance of the consultants and suppliers under the Loan, and other matters relating to this Agreement.

Section 6.2. UTILIZATION OF ELIGIBLE ITEMS. (a) Borrower shall use its best efforts to prevent the use of Eligible Items financed hereunder to promote or assist any project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Book as in effect at the time of such projected use except with the prior written consent of A.I.D.

(b) Borrower shall take all necessary steps to prevent the use of Eligible Items financed hereunder for military purposes.

Section 6.3. GENERATION AND USE OF LOCAL CURRENCY. The Borrower shall take steps to assure that amounts equal to the Zambia Kwacha generated as countervalue to the loan shall be used to support the general budget for economic development activities.

Section 6.4. NOTICE OF MATERIAL DEVELOPMENTS. Borrower represents and warrants that it has disclosed or caused to be disclosed to A.I.D. all facts and circumstances which may materially affect the utilization of this Loan and Eligible Items or the discharge of Borrower's obligations under this Agreement and covenants that it will promptly inform A.I.D. of any conditions that may hereinafter arise which interfere, or which it is reasonable to believe will interfere, with any of the foregoing.

Section 6.5. FINANCING PHYSICAL FACILITIES. Not more than one hundred thousand dollars (\$100,000) from the proceeds of the Loan shall be used by any public sector agency of the Borrower for the purchase of commodities and commodity-related services for use in the construction, expansion, equipping or alteration of a physical facility or related facilities. For purposes hereof "related physical facilities" means facilities which, considering such factors as functional interdependence, geographic proximity and ownership, in the judgment of A.I.D. constitute a single project.

A.I.D. may waive application of this Section in any case where it determines that all appropriate engineering, financial and other plans necessary for the utilization of assistance provided hereunder and a reasonably firm estimate of the cost of such physical facility have been completed.

Section 6.6. CONTINUANCE OF REPRESENTATIONS AND MATTERS FURNISHED TO SATISFY CONDITIONS PRECEDENT. Unless A.I.D. otherwise agrees in writing, Borrower shall continue in force and effect for the life of this Agreement, exactly as originally made or furnished, any representation made or opinion or agreement furnished to satisfy a Condition Precedent under Section 3.1 of this Agreement.

Section 6.7. NON-TAXATION OF AGREEMENT. This Agreement, the Loan and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under any laws in effect within Zambia. To the extent that any commodity procurement transaction financed hereunder is not exempt from identifiable taxes, tariffs, duties and other levies imposed under laws in effect within Zambia, the same shall not be paid with funds provided under the Loan.

Section 6.8. COMMISSIONS, FEES AND OTHER PAYMENTS. (a) Borrower warrants and covenants that in connection with obtaining this Loan, or taking any action under or with respect to this Agreement, it has not paid nor agreed to pay and will not pay nor agree to pay nor, to the best of its knowledge, has there been paid nor will there be paid or agreed to be paid by any other person or entity, commission, fees or other payments of any kind, except as regular compensation to Borrower's full-time officers and employees or as compensation for bona fide professional, technical or comparable service. Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has been made or is to be made on a

contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(b) The Borrower covenants that no payments have been or will be received by the Borrower, or any official of the Borrower, in connection with the procurement of goods and services financed hereunder, except fees, taxes or similar payments legally established in the country of the Borrower.

Section 6.9. SALES COMMISSIONS. Except as provided in subsection (a) or as A.I.D. may otherwise agree in writing, no payment, credit, commission or allowance of any kind, made or permitted by the supplier of any commodity or commodity-related service, the Borrower, or any importer, or any agent or any of them, in connection with the sale or purchase or any commodity or commodity-related service, shall be eligible for financing by A.I.D.

(a) Commissions payable to a bona fide agent of a supplier shall, unless specifically excluded by A.I.D. Regulation 1, be eligible for financing by A.I.D. if such agent:

- 1) Has performed services constituting a direct and substantial contribution toward securing the sale of goods and services related thereto financed by A.I.D. hereunder;
- 2) Has performed such services in the United States, Zambia or any country included in A.I.D. Geographic Code 899; and
- 3) Maintains a regular place of business in one of the above-identified countries.

A.I.D. shall finance such commissions only to an amount not in excess of the amount customarily paid by such supplier for comparable services in similar transactions or the amount customary in the trade for this type of service, whichever is less.

(b) No person shall be deemed a bona fide agent of a supplier for purposes of this Section 6.9 if such person, in the judgment of A.I.D.:

- 1) Acted as an importer in such transaction; or
- 2) Acted as a purchasing agent, or other agent or representative of the Borrower or of an importer, in such transaction, whether or not such person takes title to any commodity or represents a supplier; or
- 3) Is affiliated by ownership or management ties with the Borrower or an importer.

Article VII. RECORDS, REPORTS, INSPECTIONS AND PUBLICITY

Section 7.1. MAINTENANCE OF RECORDS. Borrower shall maintain or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books, records, and other documents pertaining to this Agreement and transactions under this Agreement. Such records shall, without limitation, be adequate to identify Eligible Items and to disclose the uses thereof and shall indicate the nature and extent of solicitations of prospective contractors, the basis for award of contracts, the cost of such Eligible Items, and the progress of the Program and utilization of the Loan. Such books, records and papers shall be audited and maintained for five years after the date of the last disbursement hereunder by A.I.D. or until all sums due A.I.D. under this Agreement have been paid, whichever shall first occur. Auditing shall be regularly

performed in a manner, for periods and at intervals consistent with sound and internationally accepted auditing and accounting standards.

Section 7.2. REPORTS. Borrower shall furnish A.I.D. with such information and reports relating to Eligible Items and this Loan as A.I.D. may reasonably request.

Section 7.3. INSPECTIONS. Authorized representatives of A.I.D. shall have the right at all reasonable times to make inspections with respect to the utilization of Eligible Items and to inspect the books, records, and documents referred to in Section 7.1 and any other documents, correspondence, memoranda, or records relating to this Loan. Borrower shall cooperate with A.I.D. to facilitate such inspection and shall afford a reasonable opportunity for authorized representatives of A.I.D. to visit any part of Zambia for any purpose related to this Loan.

Section 7.4. INFORMATION AND MARKING. Borrower shall cooperate with A.I.D. in making information concerning this Loan public and in marking Eligible Items and shall make appropriate arrangements to carry out A.I.D.'s instructions with respect thereto.

Article VIII. CANCELLATION AND SUSPENSION

Section 8.1. CANCELLATION BY THE BORROWER. The Borrower may, with the prior written consent of A.I.D., by written notice to A.I.D., cancel any part of the Loan (i) which, prior to the giving of such notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

Section 8.2. EVENTS OF DEFAULT, ACCELERATION. If any one or more of the following events ("Events of Default") shall occur:

- (a) Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;
- (b) Borrower shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the procurement and importation of Eligible Items with due diligence and efficiency; or
- (c) Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan, guaranty, or other agreement between Borrower or any of its agencies and A.I.D. or any of its predecessor agencies,

then A.I.D., at its option, may give Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within such sixty (60) days,

- (I) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately, and
- (II) the amount of any subsequent disbursements made under then outstanding Letters of Commitment or otherwise shall become due and payable as soon as made.

Section 8.3. SUSPENSION OF DISBURSEMENTS AND TRANSFER OF TITLE TO A.I.D. In the event that any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purposes of this Loan will be attained or that Borrower will be able to perform its obligations under this Agreement;
- (c) Any disbursement would be in violation of the legislation governing A.I.D.; or
- (d) Borrower shall have failed to pay when due any interest or installment of Principal or any other payment required under any other loan agreement, any guaranty agreement or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies,

then A.I.D. in addition to the remedies provided in A.I.D. Regulation 1 may, at its option:

- (i) Suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to Borrower promptly thereafter;
- (ii) Decline to make disbursements other than under outstanding commitment documents;
- (iii) Decline to issue additional commitment documents;
- (iv) At A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. if the goods are in a deliverable state and have not been offloaded in ports of entry of the country of the Borrower. Any disbursements made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

Section 8.4. CANCELLATION BY A.I.D. Following any suspension of disbursements pursuant to Section 8.2, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

Section 8.5. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursement or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

Section 8.6. REFUNDS. (a) In the event that A.I.D. receives, prior to the final disbursement hereunder, a refund from a supplier, contractor, bank, or other third party with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, to goods that did not conform to specifications, or to services that were inadequate, A.I.D. shall first make such refund available, in accordance with the provisions of this Agreement, to pay for the procurement of goods and services for the Program to the extent justified; the remainder, if any, of such refund shall be applied to the remaining installments of Principal in the inverse order of their maturity, and the amount of the Loan shall be reduced by the amount of such remainder.

(b) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation in accordance with the terms of this Agreement, is not made or used in accordance with the terms of this Agreement, or was at the time of disbursement in violation of the legislation governing A.I.D., A.I.D. at its option may, notwithstanding the availability or exercise of any other remedy provided for under this Agreement, require Borrower to refund such amount in United States dollars to A.I.D. within thirty (30) days after receipt of a request therefor. The maximum amount available for disbursement hereunder specified in Section 1.1 shall be reduced by the amount of each such refund required by A.I.D. and any other refunds received by A.I.D. subsequent to the final disbursement. Any such refund received by A.I.D. shall be applied (i) if such refund is less than ten thousand dollars (\$10,000) in amount, against the last installment of Principal, or (ii) if such refund is ten thousand dollars (\$10,000) or more in amount, against installments of Principal in accordance with a revised amortization schedule to be provided by A.I.D. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five (5) years following the date of such disbursement.

Section 8.7. EXPENSES OF COLLECTION. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 8.2 may be charged to Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

Section 8.8. NON-WAIVER OF REMEDIES. No delay in exercising or omission to exercise any right, power or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any such rights, powers, or remedies.

Section 8.9. ALTERNATIVE RIGHTS AND REMEDIES. No right or remedy specifically reserved to A.I.D. in this Agreement, and no exercise of any such right or remedy, shall in any way be construed to limit, derogate from or affect any right or remedies reserved to A.I.D. under A.I.D. Regulation 1; and all such rights and remedies under this Agreement and under A.I.D. Regulation 1 shall be deemed to be cumulative and exercisable by A.I.D. at its option without regard to any doctrine of election of remedies.

Article IX. MISCELLANEOUS

Section 9.1. PROMISSORY NOTES. Borrower agrees to deliver within thirty (30) days after the date of any request of A.I.D. therefor, promissory notes payable to or on the order of A.I.D. in such denominations and aggregate amount of unrepaid Principal and accrued interest at the time of such request and for which promissory notes shall not theretofore have been so delivered or requested. The terms of the notes shall conform to the terms of this Agreement with such modifications in form and substance as A.I.D. may reasonably request. Borrower shall also furnish A.I.D. with such legal opinion or opinions with respect to these promissory notes as A.I.D. may reasonably request. Prior to the sale or listing by A.I.D. of any such promissory notes, A.I.D. will consult with Borrower and give consideration to its views regarding such sale or listing.

Section 9.2. REPRESENTATIVES. For all purposes relative to this Agreement, Borrower will be represented by the individual holding or acting in the

office of the Minister of State for the Ministry of Economic and Technical Cooperation, and A.I.D. will be represented by the individual holding or acting in the office of Director, Regional Economic Development Services Office/East Africa (REDSO/EA), Nairobi, Kenya. Such individuals shall have the authority to designate by written notice additional representatives. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Borrower designated pursuant to this Section, it may accept the signature of any such representative or representatives as conclusive evidence that any action effected by such instrument is duly authorized.

Section 9.3. COMMUNICATIONS. Any notice, request, document or other communication given, made, or sent by Borrower or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable or radiogram and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable or radiogram at the following address:

To Borrower:

Mail Address: Ministry of Economic and Technical Cooperation
P.O. Box 3691
Lusaka, Zambia

Cable Address: MINFIN

To A.I.D.:

Mail Address: Director
REDSO/EA
P.O. Box 30261
Nairobi, Kenya

With Copy to: American Embassy
Lusaka, Zambia

Cable Address: Director
REDSO/EA
c/o American Embassy
Nairobi, Kenya

With Copy to: American Embassy
Lusaka, Zambia

Other addresses may be substituted for the above upon giving of notice as provided herein. All notices, requests, communications and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

Section 9.4. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of any successor or assignee of A.I.D. This Agreement may not be assigned nor may any obligation hereunder be delegated by Borrower without the written consent of A.I.D.

Section 9.5. TERMINATION UPON FULL PAYMENT. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of Borrower and A.I.D. hereunder shall terminate.

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

Republic of Zambia:

[*Signed*]

By: L. A. W. MONZE

Minister of State

Ministry of Economic and Technical Cooperation

United States of America:

[*Signed*]

By: STEPHEN LOW

American Ambassador to Zambia
