

**No. 17489**

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**UNITED STATES OF AMERICA  
and  
BANGLADESH**

**Project Grant Agreement for Agricultural Inputs Project III  
relating to fertilizer distribution and marketing (with  
annexes). Signed at Dacca on 31 August 1977**

*Authentic text: English.*

*Registered by the United States of America on 22 January 1979.*

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**ÉTAT-UNIS D'AMÉRIQUE  
et  
BANGLADESH**

**Accord de don concernant le Projet d'apports agricoles III  
relatif à la distribution et à la commercialisation d'en-  
grais (avec annexes). Signé à Dacca le 31 août 1977**

*Texte authentique : anglais.*

*Enregistré par les États-Unis d'Amérique le 22 janvier 1979.*

PROJECT GRANT AGREEMENT<sup>1</sup> BETWEEN THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE UNITED STATES OF AMERICA FOR AGRICULTURAL INPUTS PROJECT III

Dated: August 31, 1977

A.I.D. Project Number 388-0035

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A.I.D. PROJECT No. 388-0035

PROJECT GRANT AGREEMENT dated August 31, 1977, between the PEOPLE'S REPUBLIC OF BANGLADESH ("Grantee") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.').

*Article 1. THE AGREEMENT*

The purpose of this Agreement is to set out the understandings of the Parties named above ("Parties") with respect to the undertaking by the Grantee of the Project described herein, and with respect to the financing of the Project by the Parties.

*Article 2. THE PROJECT*

*Section 2.1. DEFINITION OF PROJECT.* The Project, which is further described in Annex 1, is directed to improvement of the Grantee's fertilizer distribution and marketing systems.

<sup>1</sup> Came into force on 31 August 1977 by signature.

Annex 1, attached, amplifies the definition of the Project contained in this Section 2.1. Within the limits of the definition of the Project in this Section 2.1, elements of the amplified description in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 8.3 without formal amendment of this Agreement.

### Article 3. FINANCING

*Section 3.1. THE GRANT.* To assist the Grantee to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee under the terms of this Agreement not to exceed twenty-seven million five hundred thousand United States (U.S.) dollars (\$27,500,000) ("Grant").

The Grant may be used to finance foreign exchange costs, as defined in Section 6.1, and local currency costs, as defined in Section 6.2, of goods and services required for the Project, except that, unless the Parties otherwise agree in writing, local currency costs financed under the Grant will not exceed the equivalent of one hundred and twenty thousand U.S. dollars (\$120,000).

*Section 3.2. GRANTEE RESOURCES FOR THE PROJECT.* (a) The Grantee agrees to provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by the Grantee for the Project will be not less than the equivalent of eighty million U.S. dollars (\$80,000,000) including costs borne on an "in-kind" basis.

*Section 3.3. PROJECT ASSISTANCE COMPLETION DATE.* (a) The "Project Assistance Completion Date" (PACD), which is twenty-four (24) months from the date of this Agreement, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Grant for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 7.1 no later than twelve (12) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Grantee, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for disbursement accompanied by necessary supporting documentation prescribed in Project Implementation Letters were not received before the expiration of said period.

### Article 4. CONDITIONS PRECEDENT TO DISBURSEMENT

*Section 4.1. FIRST DISBURSEMENT.* Prior to the first disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Grantee, and that it

constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms;

- (b) A statement of the names of the persons holding or acting in the offices of the Grantee specified in Section 8.3 and a specimen signature of each person specified in such statement;
- (c) Assurance that budgetary allocations will be established for fiscal years 1977-78 and 1978-79 in local currency for the Bangladesh Agricultural Development Corporation (B.A.D.C.) sufficient to carry out the Project for each year, including an undertaking to increase such allocations if required to meet the requirements of the Project.

*Section 4.2. ADDITIONAL DISBURSEMENT.* Prior to additional disbursement under the Grant, or to issuance by A.I.D. of documentation pursuant to which additional disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D., evidence of arrival and out-turn reports and claims concerning any fertilizer under a preceding procurement financed by this Project when such fertilizer has already arrived in Bangladesh.

*Section 4.3. NOTIFICATION.* When A.I.D. has determined that the conditions precedent specified in Sections 4.1 and 4.2 have been met, it will promptly notify the Grantee.

*Section 4.4. TERMINAL DATE FOR CONDITIONS PRECEDENT.* If all of the conditions specified in Section 4.1 have not been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

#### *Article 5. SPECIAL COVENANTS*

*Section 5.1. PROJECT EVALUATION.* The Parties agree to establish an evaluation program as an integral part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter, (a) evaluation of progress toward attainment of the objectives of the Project; (b) identification and evaluation of problem areas or constraints which may inhibit such attainment; and (c) assessment of how such information may be used to help overcome such problems in this or other projects.

*Section 5.2. IMPLEMENTATION ACTION.* (a) Except as A.I.D. may otherwise agree in writing, the Grantee will within six months from the date of this Agreement cause B.A.D.C. to take implementing actions with respect to the following: (1) increasing the incentives to fertilizer dealers, including implementation on a test basis of quantity discounts for increased fertilizer purchase; (2) permitting farmers to buy up to a stated amount of fertilizer from the B.A.D.C. thana warehouses; (3) permitting farmers to buy fertilizer from any dealer; (4) optimizing the number of dealers at union level including simplifying the dealer application process; (5) regularizing sales at local markets (hats) to permit dealers to sell at such hats within the union and distance category in which the dealer is resident; and (6) permitting dealers to purchase fertilizer from the most convenient B.A.D.C. thana warehouse even if not located in the same thana where the dealer resides.

(b) The Grantee shall make available to B.A.D.C. promptly as needed the land, funds, facilities, services, personnel and other resources, including funds for construction or acquisition of additional warehouse or storage space, which are required, in addition to the proceeds of the Grant, for carrying out the Project.

(c) The Grantee shall implement those obligations of the Government under the Loan Agreement between the Government and A.I.D. for the Ashuganj Project which affect or have relation to the implementation of this Project, including (1) those require-

ments for the efficient operation of the fertilizer plants producing fertilizer in Bangladesh; and (2) the timely furnishing of proposals to A.I.D., following completion of the fertilizer marketing and distribution study as provided under the Ashuganj Fertilizer Project, for a program to improve fertilizer marketing and distribution.

(d) The Grantee will consult with A.I.D. from time to time at the request of either with respect to basic inland transport capability and will take action to increase the efficiency of such transport as it affects the implementation of the Project.

#### Article 6. PROCUREMENT SOURCE

*Section 6.1. FOREIGN EXCHANGE COSTS.* Disbursements pursuant to Section 7.1 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in the United States (code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services) ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in Section C.1(b) of Annex 2 hereto with respect to marine insurance.

*Section 6.2. LOCAL CURRENCY COSTS.* Except as A.I.D. may otherwise agree in writing, disbursement pursuant to Section 7.2 will be used exclusively to finance the costs of goods and services for the Project having their source and origin in Bangladesh ("Local Currency Costs").

#### Article 7. DISBURSEMENT

*Section 7.1. DISBURSEMENT FOR FOREIGN EXCHANGE COSTS.* (a) After satisfaction of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

- (1) By submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or services or (B) requests for A.I.D. to procure commodities or services in the Grantee's behalf for the Project; or
- (2) By requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers, through Letters of Credit or otherwise, for such goods or services.

(b) Banking charges incurred by the Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless the Grantee instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Grant.

*Section 7.2. DISBURSEMENT FOR LOCAL CURRENCY COSTS.* (a) After satisfaction of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for local currency costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursements may be obtained through purchase of local currency by A.I.D. The U.S. dollar equivalent of the local currency made available hereunder will be the amount of U.S. dollars required by A.I.D. to obtain the local currency.

*Section 7.3. OTHER FORMS OF DISBURSEMENT.* Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

*Section 7.4. RATE OF EXCHANGE.* Except as may be more specifically provided under Section 7.2, if funds provided under the Grant are introduced into Bangladesh by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into the currency of Bangladesh at the official rate of exchange in Bangladesh at the time the conversion is made.

#### Article 8. MISCELLANEOUS

*Section 8.1. INVESTMENT GUARANTY PROJECT APPROVAL.* The Grantee agrees that the contracts to be financed under this Agreement may be insured by the Overseas Private Investment Corporation, an agency of the United States of America.

*Section 8.2. COMMUNICATIONS.* Any notice, request, document or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable and will be deemed duly given or sent when delivered to such party at the following addresses:

To the Grantee:

Mail address:

Secretary  
External Resources Division  
Ministry of Planning  
Sher-e-Bangla Nagar  
Dacca, Bangladesh

Alternate address for cables:

BAHISAMPAD

To A.I.D.:

Mail address:

U.S.A.I.D. Mission/Bangladesh  
American Embassy  
G.P.O. Box #323  
Dacca-2, Bangladesh

Alternate address for cables:

USAID

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

*Section 8.3. REPRESENTATIVES.* For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of Secretary or Joint Secretary, External Resources Division, Ministry of Planning, and A.I.D. will be represented by the individual holding or acting in the office of Director, U.S.A.I.D. Mission/Bangladesh, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex 1. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

*Section 8.4. STANDARD PROVISIONS ANNEX.* A "Project Grant Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

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

The People's Republic of Bangladesh:  
 By: [Signed — Signé]<sup>1</sup>  
 Title: Secretary, External Resources Division  
 Aug. 31, 1977

The United States of America:  
 By: [Signed — Signé]<sup>2</sup>  
 Title: Ambassador

By: [Signed — Signé]<sup>3</sup>  
 Title: Director, USAID  
 Aug. 31, 1977

## ANNEX 1

### PROJECT DESCRIPTION

The Project is directed to improvement in the Bangladesh system of fertilizer distribution and marketing, particularly to access to fertilizer at reasonable prices for all farmers. To meet these objectives the Government of the People's Republic of Bangladesh ("Grantee") will cause the Bangladesh Agricultural Development Corporation (B.A.D.C.) to take implementing action with respect to the following:

- a. Increasing incentives to fertilizer dealers including implementation on a test basis of a quantity discount for increased fertilizer purchase;
- b. Permitting farmers to buy up to a stated amount of fertilizer directly from B.A.D.C. thana warehouses;
- c. Allowing farmers to buy from any dealer whether or not in the farmer's own thana or union;
- d. Optimizing the number of dealers at union level, including simplifying the dealer application process;
- e. Regularizing sales at local markets (hats) to permit dealers to sell at such hats within the union and distance category in which the dealer is resident; and
- f. Permitting dealers to buy fertilizer from the nearest B.A.D.C. thana warehouse even if is not located in the same thana where the dealer is located.

The A.I.D. Grant will finance the costs of procurement, shipping and insurance of fertilizer, specifically TSP and urea, to assist in meeting the import requirement principally for the Grantee's fiscal years 1977-78. The Grant will also finance limited third country training and a portion of in-country training for B.A.D.C. personnel, technical assistance, materials and equipment, including office equipment, as well as such other fertilizer and other inputs and related services as A.I.D. may agree to in writing.

The Grantee will cause B.A.D.C. to implement the system changes under *a* through *f* above; issue the IFBs for fertilizer to be imported, review bids and make awards; arrange for in-country transport of fertilizer and for storage; and coordinate with other Grantee agencies as necessary as well as with A.I.D. and other donors.

The A.I.D.-financed fertilizer is essential to maintenance of adequate supply which is a basic precondition to general availability of fertilizer. The Project components are each directed to

<sup>1</sup> Signed by A. Muhith — Signé par A. Muhith.

<sup>2</sup> Signed by Edward E. Masters — Signé par Edward E. Masters.

<sup>3</sup> Signed by J. S. Toner — Signé par J. S. Toner.

increasing access of farmers to fertilizer at the point of purchase, while at the same time providing dealers with greater incentive and motivation for encouraging fertilizer sales and use. These steps should act to the benefit of all farmers in improving access to fertilizer at reasonable prices. Given the accomplishment of these activities it is assumed that fertilizer sales and use will increase and that its application to the farmer's field will have proven effect on yields.

PROJECT FINANCIAL PLAN  
(Source and application of Funding—\$ million)

As of: Date of Project Agreement  
Project No. 388-0035

<i>Project inputs</i>	<i>A.I.D. foreign exchange</i>	<i>Grant local currency</i>	<i>Total</i>	<i>Grantee local currency</i>	<i>Other foreign exchange</i>	<i>Total</i>
1. Fertilizer .....	27.000		27.000	52.080	15.822	94.902
2. Quantity discount .....				0.150		0.150
3. Training .....	0.010	0.050	0.060	0.050		0.110
4. Equipment and materials .....	0.040		0.040			0.040
5. Operating costs .....				35.500		35.500
6. Evaluation surveys .....		0.010	0.010			0.010
7. Contingency .....	0.390		0.390			0.390
TOTAL	27.440	0.060	27.500	87.780	15.822	131.102

NOTE. \$1.00 = Tk 15.00 (local currency)

## ANNEX 2

### PROJECT GRANT STANDARD PROVISIONS ANNEX

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

#### Article A. PROJECT IMPLEMENTATION LETTERS

To assist Grantee in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also use jointly agreed upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revisions of elements of the amplified description of the Project in Annex I.

#### Article B. GENERAL COVENANTS

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

*Section B.2. EXECUTION OF PROJECT.* The Grantee will:

- (a) Carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other arrangements, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and



- (b) Provide qualified and experienced management for, and train such staff as may be appropriate for, the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purpose of the Project.

*Section B.3. UTILIZATION OF GOODS AND SERVICES.* (a) Any resources financed under the Grant will, unless otherwise agreed in writing by A.I.D. be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Grant, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

*Section B.4. TAXATION.* (a) This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the territory of the Grantee.

(b) To the extent that (1) any contractor including any consulting firm and any personnel of such contractor financed under the Grant, and any property or transaction relating to such contracts and (2) any commodity procurement transaction financed under the Grant, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the territory of the Grantee will pay or reimburse the same with funds other than those provided under the Grant.

*Section B.5. REPORTS, RECORDS, INSPECTIONS, AUDIT.* The Grantee will:

- (a) Furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;
- (b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Grant; such books and records will be audited regularly in accordance with generally accepted auditing standards, and maintained for five (5) years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of respective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and
- (c) Afford authorized representatives of A.I.D. the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by the Grant, and books, records and other documents relating to the Project and the Grant.

*Section B.6. COMPLETENESS OF INFORMATION.* The Grantee confirms:

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

*Section B.7. OTHER PAYMENTS.* Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

*Section B.8. INFORMATION AND MARKING.* The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, and mark goods financed by A.I.D., as described in Project Implementation Letters.

*Article C. PROCUREMENT PROVISION*

*Section C.1. SPECIAL RULES.* (a) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) Premiums for marine insurance placed in the territory of the Grantee will be deemed an eligible foreign exchange cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicles financed under the Grant will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

(d) Transportation by air, financed under the Grant, of property or persons (and their personal effects) will be on carriers holding United States certification, to the extent service by such carriers is available. Details on this requirement will be described in a Project Implementation Letter.

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

*Section C.3. PLANS, SPECIFICATIONS AND CONTRACTS.* In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Grantee will furnish to A.I.D. upon preparation,

(1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the pre-qualification and selection of contractors and to the solicitation of bids and proposals, [as well as to the requests for proposals. All] material modifications in such documentation will likewise be furnished A.I.D. on preparation; and

(2) Such documentation relating to any goods or services which, though not financed under the Grant, are deemed by A.I.D. to be of major importance to the Project; aspects of the Project involving matters under the subsection (a) (2) will be identified in Project Implementation Letters.

(b) Documents related to the pre-qualification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements.

(c) Contracts and contractors financed under the Grant for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of any such contracts; material modification in such contracts will also be approved in writing by A.I.D. prior to execution.

(d) Consulting firms used by the Grantee for the Project but not financed under the Grant, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Grantee for the Project but not financed under the Grant, shall be acceptable to A.I.D.

*Section C.4. REASONABLE PRICE.* Any goods or services financed, in whole or in part, under the Grant will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

*Section C.5. NOTIFICATION TO POTENTIAL SUPPLIERS.* To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Grantee will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

*Section C.6. SHIPPING.* (a) Goods which are to be transported to the territory of the Grantee may not be financed under the Grant if transported either (1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. Geographic Code 935, as in effect at the time of shipment; or (2) on an ocean vessel which A.I.D., by written notice to the Grantee,

has designated ineligible; or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Cost of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Grant, if such goods or persons are carried (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under Section 6.1. of this Agreement entitled "Procurement Source Foreign Exchange Costs", without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D. by written notice to the Grantee has designated as ineligible; or (3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels; and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved both with respect to any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

*Section C.7. INSURANCE.* (a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Grantee may be financed as a foreign exchange cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Grantee by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Grant imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Except as the Parties may agree in writing, any such replacements will be of source and origin of countries listed in A.I.D. Geographic Code 000 as in effect at the time of replacement and will be otherwise subject to the provisions of the Agreement.

*Section C.8. U.S. GOVERNMENT-OWNED EXCESS PROPERTY.* The Grantee agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

#### *Article D. TERMINATION; REMEDIES*

*Section D.1. TERMINATION.* Either Party may terminate this Agreement by giving the other Party thirty (30) days' written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement except for payments which they are committed to make pursuant to non-cancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant

be transferred to A.I.D. if the goods are from a source outside Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of Grantee's country.

*Section D.2. REFUNDS.* (a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, thereupon A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt by the Grantee of a request therefor from A.I.D.

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant are not used effectively in accordance with this Agreement, A.I.D. may require the Grantee to refund all or any of the amount of the disbursements under this Agreement for such goods or services in U.S. dollars to A.I.D. within sixty (60) days after receipt by the Grantee of a request therefor from A.I.D.

(c) The right under subsection (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for five (5) years from the date of the last disbursement under this Agreement.

(d) (1) Any refund under subsection (a) or (b), or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Grant, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Grantee under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. dollars by the Grantee.

*Section D.3. NONWAIVER OF REMEDIES.* No delay in exercising any right or remedy accruing to either Party in connection with this Agreement will be construed as a waiver of such right or remedy.

*Section D.4. ASSIGNMENT.* The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance by a third party to a U.S. dollar contract financed in whole or in part out of funds granted by A.I.D. under this Agreement.

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