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Agency for International Development
Washington, D.C. 20523

Program Agreement

Public Law 480 Title III Food for Development	AID No. 675-XXX-000-0240 Program approval date: June 26, 1991
Executive Vice President Commodity Credit Corporation U.S. Department of Agriculture Washington, D.C. 20250	Program Title: Food for Development Guinea

WHEREAS it is the policy of the Government of the United States (hereinafter referred to as the United States) to enhance food security in eligible countries through the use of agricultural commodities and local currencies accruing upon their sale to combat world hunger and malnutrition and their causes; promote broad-based, equitable and sustainable development, including agricultural development; expand internal trade; develop and expand export markets for United States agricultural commodities; and foster and encourage the development of private enterprise and democratic participation in such countries; and

WHEREAS the Government of Guinea (hereinafter referred to as the Cooperating Country) has a long-term plan for broad-based, equitable and sustainable development, has demonstrated the need for and capability to use food assistance effectively and has committed itself to policies that promote food security, including policies to reduce measurably hunger and malnutrition;

NOW THEREFORE,

The Agency for International Development (A.I.D.), on behalf of the United States, and the Ministry of Plan and International Cooperation (MPCI) on behalf of the Cooperating Country (hereinafter referred to as the Parties), desiring to set forth the understandings that will govern the supply of agricultural commodities to the Cooperating Country for a Food for Development Program pursuant to Title III of the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter referred to as the Act), and the measures the Parties will take in furthering the policies stated above, have agreed as follows:

Article I- Financing Arrangements.

Section 1.1 Donation. (a) A.I.D. shall donate to the Cooperating Country the following agricultural commodity during United States fiscal year 1991:

Commodity	Approximate Quantity (Metric Tons)	Supply Period (U.S. FY)	Market Value (U.S. $)
rice	20,000	FY91	6,400,000

(b) the donation of the commodity to the Cooperating Country is made subject to the terms and conditions of this Agreement, the Plan of Operations in Annex A, the Commodity and Shipping Information and Requirements in Annex B and the Standard Provisions in Annex C, each of which is attached to and forms part of this Agreement. Within the limits of the Food for Development Program set forth in Article II of the Agreement, elements of the Plan of Operations in Annex A may be changed by written agreement of the authorized representatives of the Parties named in section 4.1 without formal amendment of this Agreement.

Section 1.2 Payment of Costs. (a) Except as otherwise provided, the United States will donate the agricultural commodity without charge and will arrange for and pay the costs of purchasing, processing, handling and transporting the commodites to United States ports of export and will arrange for and pay the costs of ocean and other transportation to port or point of entry and all surveys. The total costs paid by A.I.D. under this Agreement shall not exceed $10,000,000.

(b) After the transfer of title to the Cooperating Country, the Cooperating Country shall arrange for and pay the costs of handling, transportation and distribution of donated commodity within the Cooperating Country.

Section 1.3 Maximum Export Value. The value of the total quantity of the commodity donated under this Agreement shall not exceed the maximum export value of the commodity specified in section 1.1 and Annex B. A.I.D. may limit the total value of the commodity to be donated as prices decline or as other factors require so the quantities of such commodities donated will not substantially exceed the applicable approximate quantity specified in the Agreement.

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Section 1.4 <u>Title to the Donated Commodity</u>. Title to the donated commodity shall pass to the Cooperating Country at the time and place discharge of the commodity from ocean vessels is completed.

Section 1.5 <u>Delivery Periods</u>. The delivery of the commodity donated under this Agreement shall be made within the supply period(s) specified in the commodity table in section 1.1 and Annex B, except as A.I.D. and the Cooperating Country may otherwise agree in writing. For this purpose, delivery shall be deemed to occur as of the on-board date shown in the ocean bill of lading signed on behalf of the carrier.

Section 1.6 <u>Subject to Availability</u>. (a) The undertakings made by A.I.D. in this Agreement to donate the commodity and pay costs are subject to the availability, during the fiscal year, of funds and commodities.

Article II - <u>Food for Development Program</u>.

Section 2.1 <u>Use of the Donated Commodity</u>. In accordance with this Agreement and the Plan of Operations in Annex A, the donated commodity may be sold in the country by the Cooperating Country or its designee.

Section 2.2 <u>Country Development Plan</u>. The donated commodity or local currency proceeds shall be integrated into the overall development plans of the Cooperating Country to improve food security and agricultural development, alleviate poverty, and promote broad-based, equitable and sustainable agriculture in the manner described in Annex A.

Section 2.3 Sales Procedures and Ownership of Local Currency Proceeds. (a) The Cooperating Country shall sell donated commodities, and the sales price(s) for such commodities will be established, in the manner described in this Agreement, including the Plan of Operations in Annex A, or in Program Implementation Letters issued by A.I.D. pursuant to section C-1.2 of this Agreement.

(b) Local currency revenues generated by the sale of donated commodities (hereinafter referred to as local currency proceeds) shall be the property of the Cooperating Country.

Section 2.4 Separate Account. (a) Except as the Parties may otherwise agree in writing in a Program Implementation Letter the Cooperating Country shall deposit local currency proceeds into a separate, interest bearing account in the manner described in Annex A. Interest earned on such deposits shall be treated as local currency proceeds for all purposes of this Agreement. The Ministry of Plan and International Cooperation (MPCI) or any successor organization legally designated by the Cooperating Country and agreed upon in writing by A.I.D. in a Program Implementation Letter shall be responsible for the management of the separate account, including deposits to and disbursements from the account (hereinafter referred to as the Account Manager).

(b) The Account Manager shall maintain books, records and other documentation adequate to show deposits to the separate account and disbursements from the separate account for the purposes mutually agreed upon by the Cooperating Country and A.I.D. In addition, the Account Manager shall provide A.I.D. a quarterly report regarding deposits to, withdrawals from and disposition of local currency from the separate account and shall direct the bank at which the account is maintained to provide account statements to A.I.D., as well as to the Account Manager.

(c) The Cooperating Country shall cause the books and records of the separate account to be audited annually in accordance with generally accepted auditing standards and accounting principles that have been prescribed by the laws of the Cooperating Country, together with generally accepted international auditing standards where feasible. The audit shall be performed by a private firm, the Cooperating Country's central audit agency or other audit entity which shall be selected by the Cooperating Country and approved by A.I.D.

Section 2.5 Use of Local Currency Proceeds. (a) The Parties consider local currency proceeds to be an integral part of the overall development strategy of the Cooperating Country and A.I.D. To the extent and in the manner set forth in Annex A of this Agreement, or in local currency agreements between the Cooperating Country and A.I.D., local currency proceeds shall be used in the Cooperating Country for the following specific economic development purposes:

- the promotion of specific policy reforms to improve food security and agricultural development within the Cooperating Country and to promote broad-based, equitable, and sustainable development.

- the promotion of increased access to food supplies through the encouragement of specific policies and programs designed to increase employment and incomes within the Cooperating Country;

- the promotion of free and open markets through specific policies and programs;

- support for United States private voluntary organizations and cooperatives and encouragement of the development and utilization of indigenous nongovernmental organizations;

- the development of rural infrastructure such as roads, irrigation systems, and electrification to enhance agricultural production.

Section 2.6 Local Currency Agreements. (a) Local currency agreements executed by the Cooperating Country and A.I.D. pursuant to this Agreement may be used to identify the purposes, programs, projects or activities within the scope of section 2.5 for which the Cooperating Country and A.I.D. have agreed that local currency proceeds may be disbursed. Each local currency agreement shall be deemed to include all the terms and conditions of this Agreement, irrespective of whether such terms and conditions are repeated or are incorporated by reference in such local currency agreements, together with such other terms and conditions as A.I.D. and the Cooperating Country consider appropriate. Each local currency agreement must also be approved by A.I.D. in a Program Implementation Letter.

(b) Except as otherwise agreed in writing by the Cooperating Country and A.I.D., or as provided in this Agreement, each local currency agreement and each recipient agency agreement between the Cooperating Country and a government or other recipient agency, defined in section C-1.1, shall identify the specific, tangible results or achievements anticipated from the program, projects or activity for which the local currency proceeds will be provided (hereinafter referred to as evaluation of results). Evaluation of results should demonstrate that the purpose(s) of the use of local currency proceeds has or have been accomplished and must be described in a manner that is measurable and verifiable.

Section 2.7 Support for Indigenous Nongovernmental Organizations. Except as provided in Annex A or as A.I.D. may otherwise agree in Program Implementation Letters, not less than 10 percent of the local currency proceeds in the separate account shall be used by the Cooperating Country to support the development and utilization of indigenous nongovernmental organizations and cooperatives that are active in rural development, agricultural education, sustainable agricultural production, other measures to assist poor people, and environmental protection projects in the Cooperating Country.

Article III-Administration of the Food For Development Program.

Section 3.1 Monitoring and Auditing by the Cooperating Country. An external auditor, hired by A.I.D. (and hereinafter referred to as the Program Monitor), shall monitor and audit the programs, projects or activities financed with local currency proceeds. In this case, the Cooperating Country shall provide a counterpart (a representative of the Account Manager) to work closely with the external auditor in order to enhance the Cooperating Country's capacity for monitoring future Title III Programs. Prior to any disbursements of counterpart funds, the Cooperating Country will provide to A.I.D., in form and substance satisfactory to A.I.D., a written description of how the responsibilities will be shared by the Account Manager and the Program Monitor, including the kinds and frequency of reports that will be provided to the Account Manager about the use of local currency proceeds for the purposes agreed upon by the Cooperating Country and A.I.D. and progress made toward achieving performance indicators.

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Section 3.2 Disbursements for Specific Activities. Prior to the use of local currency proceeds for specific activities of government or other recipient agencies, the Program Monitor or any other auditor shall, on behalf of the Strategic Committee, assess the capability of the recipient agency to use and account for local currency proceeds. A report of this assessment of each activity or recipient agency must be presented to A.I.D. in written form prior to any disbursement. Prior to each disbursement, A.I.D. must approve such disbursement in writing in a Program Implementation Letter. Thereafter, the Account Manager or Program Monitor shall obtain and verify reports regarding the use of local currency proceeds by the recipient agency and conduct or arrange for audits of the recipient agency's use of local currency proceeds for the approved projects. The format and frequency of reports that will be obtained, and the format and frequency of reports that will be conducted by the Account Manager or Program Monitor shall be described in Program Implementation Letters. A.I.D. retains the authority to require that audits be conducted before and after any and all disbursements.

Article IV - Final Provisions.

Section 4.1 Representatives. For all purposes relevant to this Agreement, the Cooperating Country will be represented by the person holding or acting in the Office of the Minister of Plan and International Cooperation (MPCI), and A.I.D. will be represented by the person holding or acting in the Office of Mission Director, USAID/Guinea, each of whom, by written notice, may designate additional representatives for all purposes other than the power to revise the Plan of Operations in Annex A. The names of the representatives of the Cooperating Country, 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 or revocation of their authority.

Section 4.2 Language of Agreement. This Agreement is prepared in both English and French. In the event of any ambiguity or conflict between the two versions, the English language version shall control.

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Section 4.3 Entry Into Force. This Agreement shall enter into force upon signature.

IN WITNESS THEREOF, the respective representatives of the Parties, duly authorized for the purpose, have signed the present Agreement,

Done at Conakry, in duplicate, this 29th day of June, 1991.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Allan Reed
Acting Mission Director
USAID/Guinea

EMBASSY OF THE UNITED STATES OF AMERICA CONAKRY

Dane F. Smith, Jr.
Ambassador

EMBASSY OF THE UNITED STATES OF AMERICA CONAKRY

FOR THE GOVERNMENT OF GUINEA

Edouard Benjamin
Minister of Economy and Finance a.i. Minister of Plan and International Cooperation

R.G. Ministère Economie Finances - Le Ministre

ANNEX A
Food for Development Program
Plan for Operations

ARTICLE I -Program Strategy

Section A-1.1 Development Conditions

Since 1984 and the beginning of the Second Republic, the Government of Guinea (GOG) has implemented a series of major economic, social and political reforms geared towards the liberalization of Guinea's economy and the improvement of the living standards of the Guinean people.

In 1985, the GOG began its program of economic and financial reform (Programme de Reformes Economiques et Financieres or PREF) which, during its first phase from 1985-88, concentrated on removing the most important economic distortions impeding the functioning and growth of the private sector. The guiding principle of this reform program has been to drastically reduce the interventionist role of the state and allow the private sector to become the engine of growth.

This new economic role of the GOG dictated that the state provide the regulatory framework within which the private sector could function efficiently and equitably. Subsequently, new legislation was passed relating to various activities: commercial (1985), banking (1985), mineral exploration and exploitation (1986), investment (1987), public procurement (1988), labor conditions (1988), and accounting standards (1988). Although the passage of this legislation was significant in itself, there was not widespread dissemination of the new legislation and application of the legislation lagged considerably behind its adoption. At the same time the difficult process of reducing civil service overstaffing was begun.

In order to revive agricultural production and promote food security the GOG decided to liberalize agricultural-related markets and support the development of private enterprise in agricultural marketing and processing. Specifically, (1) forced sales of produce to state agencies were abolished, (2) state produce marketing agencies were closed, (3) fixed producer prices and internal road blocks were eliminated, and (4) the private sector was allowed to purchase and export cash crops.

The second phase of the PREF began in late 1988 and continues through the present day. It includes a much more complex process of reforming institutions and changing attitudes both within the administration and in the private sector.

The results of the PREF have been encouraging. The economy grew by an estimated 3.1 percent in real terms in 1987, 6.0 percent in 1988, 4.3 percent in 1989 and 4.3 percent in 1990. A 5.0 percent growth rate has been projected for 1991. A notable supply response in the agricultural sector has been documented: coffee plantings have been rehabilitated and the area under rice cultivation has increased. Coffee exports have increased from negligible amounts in 1985, to an estimated 6,500 MT in 1989. Exports of palm kernel have also increased from 77 MT in 1985 to 3,300 MT in 1988. A response of private investment to this liberalization has been evident. Private investment as a percentage of GDP increased from almost zero in 1985 to 10.3 percent by the end of 1990.

Section A-1.2 Program Objectives

(a) The USAID/Guinea FY91 Title III Program will provide direct support to the (GOG) and the Guinean private sector in meeting a shortfall in the supply of rice to meet domestic demand with the grant of 20,000 metric tons of rice and the costs of transport. The program will also generate local currency (LC) which will be used as counterpart funding for priority investment projects selected and implemented as part of a new counterpart fund management system that is being established. Priority in selection for funding with FY91 Title III generated local currency will be those projects directly related to the achievement of the objectives of USAID/Guinea's country program and any other programs, projects or activities consistent with the development priorities of the two Parties..

(b) The objectives of the FY91 Title III program are integrated with the development policy of the GOG and USAID country program strategy. They aim to achieve broad-based, equitable and sustainable growth. The sub-goals of the program are to contribute to the achievement of increased agricultural output for domestic and export markets, increased food production and security, an expanded role of the private sector, and increased participation of Guineans in economic and social development decision-making.

Section A-1.3 Country Development Plan

Under the FY91 Title III program, all the commodities will be sold and the proceeds in local currency will be used for specific economic development purposes as required under section 306 (A) of the 1990 Food, Agriculture, Conservation, and Trade Act. The new Counterpart Funds Management System, currently being designed under the FY91 program, will determine which programs, projects and activities will be eligible to receive counterpart funds. (For an outline of the new system, see section A-1.5 in this Annex). The system itself will be governed by the following general development goals in its effort to integrate FY91 local currency proceeds into the overall development plans of Guinea:

1. Promotion of specific policy reforms to improve food security and agricultural development in Guinea and to promote broad- based, equitable, and sustainable development;

2. Promotion of increased access to food supplies through the encouragement of specific policies and programs designed to increase Guinean employment and incomes;

3. Promotion of free and open markets through specific policies and programs;

4. Support of U.S. PVO's and cooperatives and encouragement of the development and utilization of indigenous NGO's;

5. Development of rural infrastructure such as roads, irrigation systems, and electrification to enhance agricultural production.

Section A-1.4 AID Strategy

A.I.D.'s development assistance objectives for Guinea continue to place the most emphasis on the liberalization and expansion of agricultural markets and the development of private enterprise in agricultural marketing and processing. The rationale behind this emphasis stems from A.I.D.'s long-term country strategy involving the diversification of Guinea's economy as a means to achieve a more reliable, sustainable and equitable productive framework for both the domestic and export markets.

The objectives of the FY91 Title III program are well integrated into this long-term strategy in that they:

(1) to the maximum extent possible, make use of the private trading sector for the import, storage, handling and distribution of the donated commodities; and

(2) provide food assistance in an effort to complement commercial imports in order to assure that assumption needs are met and to save foreign exchange; and

(3) provide up to 10 million dollars worth of local currency proceeds which will be used as counterpart funding for investments that are prioritized as follows:

(a) bilateral USAID/GOG or Guinean private sector projects

(b) GOG or Guinean private sector projects which meet the eligibility criteria of this Agreement

(c) multilateral or bilateral projects with GOG or Guinean private sector entities which meet the eligibility criteria of this Agreement.

Section A-1.5 Country Policy

I. Negotiations between the GOG and the IMF for a new Enhanced Structural Adjustment Facility (ESAF) are currently underway. Closely related to the outcome of these negotiations is the World Bank's continued support through a second Structural Adjustment Loan (SAL). While each of these agreements involves its own, specific policy targets, both place particular emphasis on: (1) management of the budget; (2) management of the exchange rate; and (3) the role and performance of government (in particular, continued civil service reform and privatization).

Some of the specific policy measures which the GOG is implementing in its efforts to meet these targets and which also support the objectives of this FY91 Agreement are:

(a) Macroeconomic Adjustment Policies

(1) maintenance of a flexibile exchange rate with frequent and small adjustments to ensure that the Guinean economy remains competitive
(2) maintenance of free access to foreign exchange for all current international transactions
(3) promotion of financial intermediation and the mobilization of savings
(4) deregulation of all lending rates
(5) strengthening of the financial sector through improvement of the legal framework surrounding credit activity
(6) promotion of private sector activity and investment

(b) Rural Sector Policy Reforms

(1) reduction of dependence on rice imports by instituting a total import duty of 25 percent of f.a.s. value on such imports while allowing domestic rice prices to be determined by the open market
(2) promotion of rural sector credit
(3) strengthening of national support services to the rural sector, including research and extension services
(4) development of rural infrastructure, marketing and processing activities
(5) formulation and implementation of fisheries policy and the improvement of licensing arrangements

II. To measure the effectiveness of these policies and of the GOG's efforts to meet the objectives of the FY91 Title III Program, A.I.D. has selected two performance indicators. The degree to which the GOG satisfies these performance indicators will determine whether or not A.I.D. will proceed with the program each year in accordance with section 1.6 of this Agreement. The two performance indicators are:

1) the establishment of a new, autonomous Counterpart Fund Management Unit (CFMU); and

2) the establishment, by the GOG, of legal codes which will permit individuals and/or groups to have secure access to land and other productive resources.

Through the first performance indicator, the Program supports the establishment of a new, autonomous Counterpart Fund Management Unit (CFMU) that will manage the programming, disbursement, monitoring, evaluation and audit of all local currency counterpart funds generated by key donors' assistance programs.

Since 1990, steps have been taken by A.I.D./Guinea in close cooperation with the GOG and other donors to a) set up the new CFMU and b) provide the adequate technical assistance and training to recipient agencies involved in the management. The draft management system specifies the following entities:

THE STRATEGIC COMMITTEE (SC). As the unique decision-making center of the Counterpart Fund Management Unit, the Strategic Committee would include representatives of A.I.D. and the GOG's implementing agencies (MPCI/DNIP and DNCI, MEF/DNB and DNT, MICA/DNC and Central Bank). Its main functions will be to:

1) help define, in cooperation with A.I.D., the GOG and other donors, the terms of future PL480 Title III Agreement regarding the nature, quantity, sale prices and procedures, and the date and conditions of commodities delivery;

2) approve or disapprove local currency programming proposals for projects selected by the MPCI/DNIP in collaboration with the Permanent Secretariat and reviewed and approved by the Technical Unit - proposed projects for funding with LC generated by the FY91 Title III Program will require counter-signed approval by the USAID/Guinea Mission Director;

3) approve budget programs for selected projects;

4) authorize budget commitments for funding requests;

5) review monthly and quarterly reports established by the Technical Unit and submit quarterly and annual reports to the GOG, A.I.D. and the other donors.

THE TECHNICAL UNIT (TU). As a part of the independent CFMU structure, the Technical Unit will provide analysis, monitoring, evaluation and financial control for individual donor grants to the Strategic Committee.

Regarding Sales Administration,the TU will:

1) determine the amount of counterpart funds expected from a grant program;

2) monitor the collection of counterpart funds and their deposit into the special account;

3) monitor the correct implementation of sale processes and procedures defined in transfer agreements;

4) monitor the delivery and distribution of commodities;

5) keep the exact data on delivery and marketing operations of commodities;

6) establish and submit reports required under program agreements.

Regarding the Programming of Counterpart Funds, the TU will:

1) verify compliance with eligibility criteria and analyze in detail medium and long-term plans of projects pre-selected in the PIP and in external project proposals by the MPCI and the Permanent Secretariat;

2) prepare the final budget for selected projects for review and approval by the SC;

3) prepare the proposals to be submtted to the Strategic Committee for approval - for all projects proposed for funding by LC generated by the FY91 Title III Program countersigned approval by the USAID/Guinea Mission Director is required.

Regarding Accounting/Control:

1) keep up-to-date accounting statements (deposits, disbursements, balances) for each CPF special account;

2) analyze project fund requests for the SC;

3) execute budget commitments authorized by the SC;

4) monitor implementation of debt recovery procedures;

5) determine, in a timely manner, the amount of CPF available at a global level and at the level of each donor account;

7) provide the required financial reports;

8) control the final use of funds disbursed from the special accounts for project purposes- USAID/Guinea will also implement its own independent system to audit disbursements and end-use as well as to monitor the social and economic development impacts of all projects funded by LC generated by the FY91 Title III Agreement.

THE PERMANENT SECRETARIAT (PS). Located at the MPCI, the PS will centralize all information concerning the generation of counterpart funds and will serve as the administrative link between A.I.D., the GOG, CPF-funded projects, and other donors. The PS will also:

1) work with the MPCI to pre-select the Public Investment Program (PIP) and non-PIP projects eligible for CPF funding based on the criteria established by A.I.D., the GOG and other donor organizations.

In the second performance indicator, the Program seeks the establishment, by the GOG, of legal codes which will permit individuals and/or groups to have secure access to land and other productive resources. As the second performance indicator for the FY91 Title III Program, the publication, activation and implementation of the GOG's land, forestry and environmental codes will serve as specific criteria that A.I.D. will use in deciding to proceed with a Multi-Year Title III Food for Development Commodity Grant Program.

The GOG is currently establishing a blueprint for the activation of its recently published forestry and environmental codes. These codes promote the rational and sustainable use of Guinea's resources while empowering rural communities to take control of those resources. The rural provisions of the proposed land code, which is undergoing final revisions prior to publication, formally recognize the customary land tenure systems which prevail over much of Guinea and which support local communities in their management of rights to land for sustainable and productive use.

Under the present system of nationalized land tenure, the ambiguity and uncertainty of the relationship between producers and their land serve as a disincentive to investment, productivity and development. By allowing customary land tenure systems to prevail and evolve at the same pace as community development, the rural provisions of the proposed land code will encourage producers to invest in long-term production and conservation measures that will enhance future agricultural productivity, security and sustainability.

ARTICLE II -Use of Donated Commodity

Section A-2.1 Allocation of Donated Commodity.

Under the FY91 Title III program, all of the donated commodity will be sold by auction to the Guinean private trading sector. The local currency proceeds from the sale will be used for economic development purposes as specified in Section A-1.4.

Section A-2.2 Participation of Private Sector

Guinean private sector traders (herein referred to as commodity sales agents or "Receivers") will be the principal participants involved in the import, storage, handling, and distribution of the commodity made available under the FY91 Title III Program. The private sector rice wholesalers and retailers will handle the commodity from the moment that bids are awarded until the rice is sold to end-users as described in Section A-3.1. USAID/Guinea's experience in implementing the 1986 Title II Section 206 Program revealed that the Guinean private sector was fully capable of performing the roles designated to it under that program. As the development and increased role of the private sector in the economy is also one of A.I.D.'s objectives for the FY91 Title III Program, the program will use, to the maximum extent practicable, Guinean private trade channels to distribute the program's commodity.

ARTICLE III - Sale of Donated Commodity

Section A-3.1 Sale Procedures

(a) The Ministry of Plan and International Cooperation (MPCI), consignee fo the shipment, will contract with local specialized companies for the receipt, storage and handling operations in and out of the port of Conakry prior to transferring the commodity to the warehouses of the appropriate wholesale traders. The entire shipment will be sold by public auction to Guinean private traders for resale on the domestic market only.

(b) Based on the lessons of the FY88 and FY89 auctions, responsibilities for auction design and oversight, which in those cases was ascribed to one committee, will now be separated. The first committee will be instituted to determine procedures so that the auction can accomplish its objectives. The second committee will review the auction process while underway and evaluate its achievements. Structure and responsibility of these committees are defined as follows:

1. The Auction Design Committee will be composed of representatives of the GOG's Ministries of Plan and International Cooperation (MPCI), Industry, Commerce and Artisanry (MICA), and USAID/Guinea. Its responsibilities will consist of making policy decisions before the auction starts, defining: (1) the general auction format; (2) payment terms and timing; (3) how to calculate the reserve price; and (4) eligibility criteria and specific operational procedures such as lot size. However, once the auction is properly structured to meet the policy objectives of both AID and the GOG, the role of this committee would be limited to fine-tuning the auction system.

2. <u>The Auction Oversight Committee</u> will be composed of representatives of GOG's MPCI, MICA, Ministry of Economy and Finance (MEF), Ministry of Economic and Financial Control (MCEF), Guinea Chamber of Commerce (CCIAG), and USAID/Guinea. This committee will be responsible for verifying compliance of the auction outcome with established procedures and expected results, especially equal access by all private traders and overt competition among all interested members of the private commercial community. To avoid the inevitable pressures which arose during the previous auctions, assurance must be obtained from the GOG that the oversight committee will be allowed to act autonomously, once established.

Specific measures to be implemented by the Auction Oversight Committee are:

1) increase transparency. The Oversight Committee will have to call off any auction that breaks down midway (i.e. insufficient bidders response or insufficient number of bidders who meet the eligibility criteria).

2) minimize administrative difficulties and allow bidders sufficient time to negotiate terms with banks and to gather the required documents. In order to do so, the Oversight Committee should publicly announce the exact departure and expected arrival date of the ship when it leaves the US port for Guinea. This will allow the auction to take place well in advance of the ship's arrival in Conakry.

3) increase public confidence in the auction process. An open bidding process will allow bidders to see that their bids are being processed properly. This may generate a larger pool of bidders in the future.

4) increase the transparency of the auction award procedure. An alternative list for awards will be developed subsequent to bid ranking and prior to any notification of awards. If a successful bidder fails to meet his obligations, then the next person on the alternative list, which contains the name of all eligible bidders in their rank order, will be presented the award.

The minimum bid in local currency (LC) per metric ton will be set at not less than the LC equivalent of the f.a.s. price. LC bid amounts will be calculated at the highest official exchange rate at the time of transaction. To limit unrealistically low bids, this reserve price will not be announced prior to auction implementation.

The minimum requirement for bidder eligibility will be one successful import transaction of food commodities in the last three years. Each bidder must also demonstrate an adequate storage capacity (sufficient to house their expected share of the shipment) and sufficient financial resources to cover payments. No bidders with outstanding debts to the GOG from previous auction purchases will be eligible to participate in the FY91 Title III Program until their arrears have been paid.

Successful bidders who meet the eligibility criteria will be requested to deposit 25% of the value of the commodities awarded into the separate account at the Central Bank (BCRG) at the time of the auction. The remaining 75% will be covered by bank guarantee and will be payable up to 90 days after the receipt of commodities.

Section A-3.2 Separate Account

(a) In the Memorandum Of Understanding (MOU), signed on March 11, 1991 between the GOG and USAID/Guinea, the GOG agreed to deposit the local currency proceeds generated by the FY91 Title III Agreement in a special separate account in the Central Bank (BCRG). The funds will not be commingled with any other source and the account is to be managed by the MPCI.

Except as A.I.D. may otherwise agree in writing in a Program Implementation Letter, the account will be interest-bearing and any interest earned on deposits will be treated as local currency proceeds.

(b) The Ministry of Plan and International Cooperation (MPCI) or any successor organization legally designated by the GOG and agreed upon in writing by A.I.D. in a Program Implementation Letter shall be responsible for the management of the account, including deposits to and disbursements from the account.

(c) A.I.D. will require that the Account Manager file, in a timely manner, all of the reports specified in Annex C, Article V, Section C-5.2(b) of this Agreement. All reporting requirements will be restated in a Program Implementation Letter following the signing of this Agreement.

(d) The auditor and date of annual audit of the separate account will be determined by the Counterpart Fund Management Unit and will be approved in writing by A.I.D. in a Program Implementation Letter.

ARTICLE IV -Joint Programming of Local Currency.

Section A-4.1 Detailed Plan for Local Currency Uses.

(a) As specified in section A-1.5, Part II of this Agreement, the purposes, programs, projects or activities that will be financed with local currency proceeds will be determined by the new, autonomous Counterpart Fund Management Unit (CFMU) implemented as part of this FY91 Title III Agreement. When this Unit begins operation, each project, program or activity for which financing is proposed will be evaluated and ranked for:

1. Policy compatibility
2. Managerial capacity of implementing agency
3. Development objectives
4. Financial plan and budget
5. Identification of beneficiaries
6. Definition of indicators which measure if developmental objectives are achieved
7. Explanation of monitoring and evaluation to measure indicators
8. Commitment to permit independent audit of all records.

(b) All disbursements of local currency proceeds will promote specific policy reforms to improve food security and agricultural development within Guinea and to promote broad-based, equitable and sustainable development as described in sections A-1.1 through 1.5 of this Agreement.

(c) One of the two performance indicators for the FY91 Title III Program is the establishment of the new, autonomous Counterpart Fund Management Unit (CFMU) which will be responsible for the management of all local currency proceeds in a manner consistent with the terms of this Agreement. (For a description of the proposed CFMU see section A-1.5). The Strategic Committee of the CFMU will approve or disapprove programming proposals for projects selected by the MPCI/DNIP in collaboration with the Permanent Secretariat and reviewed and approved by the Technical Unit. Projects proposed for counterpart funding generated by the FY91 Title III Program will require prior approval in a Program Implementation Letter signed by the USAID/Guinea Mission Director. All subsequent disbursements will also require prior approval by the USAID/Guinea Mission Director. The CFMU will finance annual, independent audits and will monitor and evaluate the achievement of development objectives in each financed project, program, and activity.

Section A-4.2 Additional Disbursements.

ARTICLE V - Program Budget.

A Program Budget will be developed when the Counterpart Fund Management Unit is established. The Program Budget will be approved by Program Implementation Letter signed by the USAID/Guinea Mission Director and the GOG representative.

ARTICLE VI - Indigenous NGOs

Section A-6.1 Programs for Indigenous NGOs

USAID/Guinea, to the extent practicable, will take the programming needs of indigenous non-governmental organizations and cooperatives into account as it assesses its allocation of local currency proceeds from the FY91 Title III program. However, it should be understood that these organizations are in their relatively incipient stages of development in Guinea. Proper stewardship of the local currency resources will require the mission to proceed cautiously in its encouragement of local currency programming for those organizations. At the same time, the strengthening of those organizations is likely to be a priority item in our support to Guinea through various DFA funded efforts in the future. To the extent that their management capacity is sufficiently enhanced in the future, it is likely that A.I.D. will increase their participation in the programming of counterpart fund resources.

ARTICLE VII - Monitoring and Evaluation Plan

A full evaluation of the FY91 Title III Program will be carried out before the Parties commence the FY92-94 Multi-Year Program negotiations. The sale of donated commodity will be evaluated for the degree to which the actual mechanisms used in its execution met those of the sale system design. Transparency and equitable participation will be the most important criteria to be evaluated.

The GOG's progress will be evaluated with respect to the first Program Performance Indicator. Use of local currency by the new CFMU will, thus, be evaluated on the grounds of the effectiveness and efficiency of that system. Specifically, performance will be reviewed with respect to :

1) fit between FY91 Title III Program objectives and those of supported activities; and

2) achievement of results of activities versus planned results; and

3) transparency and equitable participation in selection of activities for financing; and

4) management capability of CFMU and institutions.

The GOG's progress will also be reviewed with respect to the second Program Performance Indicator. The degree and quality of advance in implementing the land tenure, forestry and environmental codes will be evaluated.

ANNEX B

Commodity and Shipping Information and Requirements

ARTICLE I - Commodity Information and Requirements.

Section B-1.1 Consignee

The donated commodity shall be consigned to: LE MINISTERE DU PLAN ET DE LA COOPERATION INTERNATIONALE. -CONAKRY, REPUBLIQUE DE GUINEE.

Section B-1.2 Kind of Commodity.

(a) Rice 20,000 MT
(b) RIZ LONG GRAIN 20 percent broken.

Section B-1.3 Delivery Schedule.

Signing of TA:	No later than June 30
Delivery to Vessel at US Port	No later than Aug 30
Exact departure date	No later than Sept 5
Expected arrival date Port Conakry	No later than Sept.30

Section B-1.4 Usual Marketing Requirements. The Cooperating Country agrees to import a minimum of 44,600 metric tons of rice on a commercial basis during United States fiscal year 1991.

Section B-1.5 Export Limitations.(a) The export limitation period shall be United States fiscal year 1991 or any portion of a subsequent United States fiscal year during which commodities donated under this agreement are being imported or utilized. Import shall be deemed to have occured when the commodity has entered the Cooperating Country and passed through customs, if any. Utilization shall be deemed to have occured when the commodity has cleared customs and has been distributed to eligible recipients or are sold within the Cooperating Country.

(b) Rice may not be exported during the export limitation period.

Section B-1.6 Assurance of No Export of Donated Commodity.

The Cooperating Country agrees not to export rice or the same products under a different name during the United States fiscal year 1991 (FY91).

ARTICLE II -Shipping Information and Requirements.

As provided in Section 1.2 of this Agreement, A.I.D shall arrange ocean transportation, including freight, forwarding and charter booking to the discharge port in the Cooperating Country or other port of entry as agreed.

Annex C

Standard Provisions

Article I - General.

Section C-1.1 Definitions. For purposes of this Agreement,

(a) Cooperative means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership;

(b) Duty free means exempt from all customs duties, toll charges or governmental impositions levied on the act of importation;

(c) Indigenous Nongovernmental Organization means an organization that operates under the laws of the Cooperating Country, or has its principal place of activity in such country, and works at the local level to solve development problems in the Cooperating Country, except an organization that is primarily an agent or instrumentality of the Cooperating Country;

(d) Private Voluntary Organization means a not-for-profit, nongovernmental organization which, in the case of a United States organization, is exempt from Federal Income Taxes under section 501 (c) (3) of the Internal Revenue Code of 1986, receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and is engaged or is planning to engage in voluntary, charitable or development assistance activities other than religious activities;

(e) Recipients means persons who are eligible to receive commodities or local currency proceeds in accordance with the terms and conditions of this Agreement. For the purposes of this Agreement there will be two categories of recipients: direct and indirect. Direct recipients will include the GOG, private traders (defined as commodities sales agents) and public and private institutional recipients of counterpart funds. Indirect recipients will refer to any other beneficiaries of the PL480 Title III commodity transfer. These include the end-users of the commodity (in this case, rice consumers) as well as any beneficiaries of the programs, projects or other activities made possible by counterpart funding;

(f) Recipient Agencies means governmental or nongovernmental agencies or institutions which are either (1) "Receivers" of the commodity and who are private traders serving as sales agents for the commodities; or (2) "Counterpart Fund Management Agents" who are involved in the use of the local currency proceeds generated from that sale.

(g) Recipient Agency Agreement means a written agreement between either (1) a representative of the Cooperating Country and a Receiver, in which case the Agreement is a sales contract which will involve a report from the Receiver to the GOG specifying the final distribution of the commodity (as in Annex A); or (2) a representative of the Cooperating Country and a Counterpart Fund Management Agent. In the latter case, all agreements and disbursement programming will be approved by A.I.D. prior to the transfer to a recipient agency of local currency for distribution or implementation of an approved program, project or activity. In both cases, the recipient agency agreement shall describe the approved uses of commodities and local currency proceeds, establish performance indicators (only for Counterpart Fund Management Agents), specify recordkeeping and reporting requirements and incorporate by reference or otherwise the relevant terms and conditions of this Agreement, including those relating to distribution of commodities and conduct of programs without discrimination or cost (except for voluntary contributions), identification and publicity, disposition of unfit commodities, the restrictions applicable to abortion and use of local currency proceeds to finance agricultural products for export, evaluation and auditing by the Cooperating Country and by representatives of A.I.D.

(h) Food Security means access by all people at all times to sufficient food and nutrition for a healthy and productive life.

Section C-1.2 Program Implementation Letters. To assist in the implementation of this Agreement, A.I.D. will issue Program Implementation Letters from time to time that will furnish additional information about matters stated in this Agreement. The Parties also may use jointly agreed-upon Program Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Program Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions that are permitted by the Agreement, including the revisions of the Plan of Operations in Annex A.

Section C-1.3 World Trade. The Parties shall take maximum precautions to ensure that donations of agricultural commodities pursuant to this Agreement will not displace usual marketings of the United States in these commodities or normal patterns of commercial trade with other countries. In implementing this section, the Cooperating Country shall:

(a) Insure that total imports from the United States and other countries into the Cooperating Country paid for with the resources of the Cooperating Country will equal at least the quantities of agricultural commodities as may be specified in the usual marketing table set forth in Annex B during each import period specified in the table and during each subsequent comparable period in which commodities donated under this Agreement are being delivered;

(b) Take all possible measures to prevent the resale, diversion in transit or transhipment to other countries or use of the agricultural commodities donated under this Agreement for other than domestic purposes, except when such resale, diversion in transit, transhipment or use is specifically approved by A.I.D.; and

(c) Take all possible measures to prevent the export of any commodity of either domestic or foreign origin, which is defined in Annex B of this Agreement, during the export limitation period specified in the export limitation table in Annex B, except as may be specified in Annex B or when such export is otherwise specially approved by A.I.D.

Section C-1.4 Private Trade. To the maximum extent practicable, private trade channels shall be used under this Agreement. The Cooperating Country shall use the private competitive sector in the country for the storage, marketing, transportation and distribution of donated commodities in the manner described in Annex A.

Section C-1.5 Consultation. The Parties shall, upon request of either of them, consult regarding any matter arising under this Agreement, including the operation of arrangements carried out pursuant to this Agreement.

Section C-1.6 Storage and Domestic Production. Donated commodities shall not be provided under this Agreement unless A.I.D. determines, based on information and representations provided by the Cooperating Country, that:

(a) Adequate storage facilities will be available in the Cooperating Country at the time of arrival of the commodities to prevent spoilage or waste of the commodities; and

(b) Distribution of commodities in the Cooperating Country will not result in a substantial disincentive to or interference with domestic production or marketing in the Cooperating Country.

Article II - Obligations of the Cooperating Country.

Section C-2.1 Program Supervision. The Cooperating Country shall provide adequate personnel for the efficient operation of the program, including personnel to (1) plan, organize, implement, control and evaluate programs involving the sale of commodities and use of local currency proceeds, (2) make internal reviews including warehouse inspections, physical inventories, and end use checks of food or funds and (3) review books and records or recipient agencies that receive commodities or local currency proceeds.

Section C-2.2 Distribution. (a) The Cooperating Country shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities or local currency proceeds are eligible in accordance with the terms of this Agreement, the Plan of Operations, or local currency agreements. The Cooperating Country shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute the commodities are eligible.

(b) The Cooperating Country shall ensure that agricultural commodities donated under this Agreement will be distributed and that activities will be conducted with local currency proceeds without regard to the political affiliation, color, sex, geographic location, ethnic, tribal or religious identity of the recipient. Similar conditions shall be imposed on recipient agencies.

(c) Except as A.I.D. may otherwise agree in writing, agricultural commodities donated under this Agreement shall not be distributed, handled or allocated by any military forces.

Section C-2.3 Identification and Publicity. To the maximum extent practicable, adequate public recognition shall be given in the press, by radio and other media that the commodities have been furnished through the friendship of the American people as food for peace.

Section C-2.4 Markings and Packaging. (a) When the commodities that will be sold under the approved Plan of Operations are packaged for shipment from the United States, bags and other containers shall be marked as follows:

Rice (name, if any, ex: Carolina)
long grain
50 kg
20% broken
United States of America

For sale/resale

(b) The commodities will be packaged in 50 kg polyethylene bags.

Section C-2.5 Borrowed Commodities. (a) After the date this Agreement is executed by the Cooperating Country and A.I.D., but before arrival at the distribution point of the donated commodities, the Cooperating Country may obtain written approval from A.I.D. to use the same or similar commodities available from other sources (hereinafter referred to as borrowed commodities) to meet program requirements in accordance with the terms of this Agreement and the Plan of Operations in Annex A. Borrowed commodities used in this manner may be replaced with donated commodities on an equivalent value basis at the time and place the exchange occurs as determined by mutual agreement between the Cooperating Country and A.I.D. or on some other justifiable basis and agreed between the parties in writing.

(b) Borrowed commodities that are packaged shall be appropriately identified insofar as practicable in the language of the Cooperating Country as having been furnished by the American people.

(c) Suitable publicity shall be given to the exchange of commodities as provided in Section C-2.3, and containers for borrowed commodities shall be marked to the extent practicable in accordance with section C-2.4.

Section C-2.6 Disposal of Excessive Commodity Stocks. If commodities are on hand which cannot be utilized in accordance with the Plan of Operations in Annex A, the Cooperating Country shall promptly advise A.I.D. of the quantities, location, and condition of such commodities, and, where possible, shall propose an alternate use of the excess stocks. A.I.D. shall determine the most appropriate use of the excess stocks, and shall issue instructions for disposition.

Section C-2.7 Processing, Repackaging and Labeling. (a) The donated commodity will be delivered milled and ready for consumption. No processing or related repackaging will be necessary.

(b) A number of additional empty bags, approximately equal to 10% of the total number of bags used in the shipment, will be supplied by A.I.D. for repackaging any bags damaged prior to the transfer of title to the Cooperating Country.

(c) After the transfer of title, it will be the responsibility of the Cooperating Country to arrange for any repackaging deemed necessary before the sale of the commodity to private sales agents.

Section C-2.8 Abortions. Local currency proceeds may not be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

Section C-2.9 Export Production Limitation. Except as A.I.D. may otherwise agree in writing, local currency proceeds may not be used to finance the production for export of agricultural commodities, or products thereof, that would compete in the world market with similar agricultural commodities, or products thereof, produced in the United States, if such competition would cause substantial injury to the United States producers, as determined by A.I.D.

Section C-2.10 Sales Price For Donated Commodities. The sale of donated commodities by the Cooperating Country or its designee shall be at competitive market prices in the country, and the gross amount of sales revenues shall be deposited in the separate account to the extent required under section 3.1 of the Agreement. Except as A.I.D. may otherwise agree in writing, the total amount of local currency proceeds deposited in the separate account for purposes of this Agreement shall not be less than the local currency equivalent of the price usually paid on the commercial import of the same or similar commodities into the Cooperating Country using the highest rate of exchange legally obtainable in the Cooperating Country as of the date donated commodities are sold in the Cooperating Country.

Section C-2.11 Duties and Taxes. Goods or services procured by the Cooperating Country or Counterpart Fund Management Agents shall be exempt from all identifiable taxes and levies imposed under the laws in effect in the Cooperating Country, or the Cooperating Country shall deposit additional local currency into the separate account, upon request by A.I.D., in an amount equal to taxes or other levies paid on such goods and services with local currency proceeds.

Article III - Arrangements for Entry and Handling In The Cooperating Country.

Section C-3.1 Costs at Discharge Ports. (a) Except as otherwise agreed upon by A.I.D., and provided in the applicable shipping contract, the Cooperating Country shall be responsible for all costs, other than those assessed by the delivering carrier either in accordance with the applicable tariff for delivery to the discharge port, or in accordance with the applicable charter or booking contract. The Cooperating Country shall be responsible for (1) demurrage, detention, and overtime, and (2) distributing the commodity as provided in the Plan of Operations to end-users. The Cooperating Country shall also be responsible for wharfage, taxes, dues, and port charges assessed and collected by local authorities from the consignee, and for lighterage (when not a custom of the port), and lightening costs when assessed as a charge separate from the freight rate.

(b) The Cooperating Country shall provide to A.I.D. assurance that all necessary arrangements for receiving the commodities have been made, and shall assume full responsibility for storage and maintenance of the commodities from time of delivery at port of entry abroad or, when authorized, at other designated points of entry abroad, agreed upon between the Cooperating Country and A.I.D. Before approving an order of commodities, A.I.D. shall obtain, from the Cooperating Country, assurance that provision has been made for internal transportation and for storage and handling which are adequate by local commercial standards. The Cooperating Country shall be responsible for the maintenance of the commodities in good condition to Receivers or other eligible commodity sales agents.

(c) The Cooperating Country shall permit donated commodities to be discharged notwithstanding any dispute or question concerning quality, quantity, or other matters relating to the commodity itself. Any such dispute shall be resolved according to the procedures stated in this agreement or in the relevant shipping or other contract as applicable.

Section C-3.2 Surveys. (a) Unless otherwise specified in the Plan of Operation, CCC shall arrange for an independent cargo surveyor to attend the discharge of the cargo. The surveyor shall prepare a report of its findings describing the quantity and condition of the commodities discharged, the discharging method and whether cargo was discharged in accordance with post customs, as applicable, the quantity of lost or damaged cargo and the probable cause of any damage noted, and the time and place when the examination was made. Customs receipts, port authority reports, shortlanding certificates, cargo boat notes, Stevedore's tallies, etc., where applicable, shall be obtained and furnished with the report of the surveyor.

(b) Survey contracts will normally be let on a competitive bid basis. USAID or the diplomatic post may request CCC to limit its consideration to certain select surveyors and forward a list of eligible surveyors to CCC for consideration. Surveyors may be omitted from the list, for instance, based on foreign relations considerations, conflicts of interest, and/or lack of demonstrated capability to properly carry out surveying responsibilities as set forth in the requirements of CCC. If CCC is unable to find a surveyor at a port to which a shipment has been consigned, CCC may request AID/Washington to contact USAID or the diplomatic post to arrange for a survey.

(c) The Cooperating Country agrees to cooperate fully with and facilitate the work of independent surveyors contracted to attend and report on the discharge and/or delivery of the commodities. The Cooperating Country may obtain a copy of the survey report(s) from the local USAID Food for Peace Officer.

Section C-3.3 Disposition of Commodities Unfit for Authorized Use. (a) If the commodity is damaged prior to delivery to the Cooperating Country at discharge port or point of entry overseas, A.I.D. shall immediately arrange for inspection by a public health official or other competent authority. If the commodity is determined to be unfit for human consumption, the Cooperating Country shall dispose of it in accordance with the priority set forth in paragraph (b) of this section. Expenses incidental to the handling and disposition of the damaged commodity shall be paid from the sales proceeds. The net proceeds of sales shall be deposited and used in the same manner as local currency proceeds of the sale of commodities under the Agreement.

(b) If after delivery to the Cooperating Country it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Agreement, the Cooperating Country shall immediately arrange for the inspection of the commodity by a public health official or other competent authority approved by A.I.D. If no competent local authority is available, A.I.D. may determine whether the commodities are unfit for the purposes donated, and, if so, may direct disposal in accordance with paragraphs (b)(1) through (3) of this section. The Cooperating Country shall arrange for the recovery for authorized use of that part designated during the inspections as suitable for program use. If, after inspection, the commodity (or any part thereof) is determined to be unfit for authorized use, the Cooperating Country shall notify A.I.D. of the circumstances pertaining to the loss or damage as prescribed in section C-4.3. With the concurrence of A.I.D., the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(1) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated, removed or crossed out; and

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(2) By donation to a governmental or charitable organization for use as animal feed or for other nonfood use; or

(3) If the commodity is unfit for any use or if disposal in accordance with subparagraphs (b)(1) or (2) of this section is not possible, the commodity shall be destroyed under the observation of a representative of A.I.D., if practicable, in such manner as to prevent its use for any purpose. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by the Cooperating Country. Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sales proceeds and the net proceeds shall be treated as local currency proceeds. The Cooperating Country shall promptly furnish the USAID a written report of all circumstances relating to the loss and damage. The report or supplemental report shall include a certification by a public health official or other competent authority of the exact quantity of the damaged commodity disposed of because it was determined to be unfit for any use.

Article IV - Damage or Misuse.

Sections C-4.1 Liability of the Cooperating Country. If a commodity or local currency proceeds are used for a purpose not permitted under the Agreement, the approved Plan of Operations or other program documents, or if the Cooperating Country improperly distributes a commodity, causes loss or damage to a commodity or local currency proceeds through any act or omission or fails to provide proper storage, care, and handling, the Cooperating Country shall pay the value of the commodities or currency proceeds lost, damaged, or misused (or may, with prior A.I.D. approval, replace such commodities with similar commodities of equal value), unless it is determined by A.I.D. that such improper distribution or use, or such loss or damage, could not have been prevented by the proper exercise of responsibility under the terms of the Agreement. The Cooperating Country is liable for the action, omission or failure of any employee of the Government of the Cooperating Country or of recipient agencies or any agent or contractor of the Cooperating Country. In determining whether loss, damage or misuse could have been prevented by the proper exercise of responsibilities under the Agreement, consideration shall be given to the difficulties inherent in distributing agricultural commodities in less developed countries. Payment by the Cooperating Country shall be made in accordance with section C-4.4.

Section C-4.2 Claims Against Third Party. (a) Upon the occurrence of any event subsequent to the transfer of title to the Cooperating Country creating any rights against any person other than those identified in section C-4.1 for the loss of, damage to, or misuse of any commodity or for the loss or misuse of local currency proceeds, the Cooperating Country shall make every reasonable effort to pursue collection of claims against the liable party or parties for the value of the local currency proceeds and furnish a copy of the claim and related documents to A.I.D. (Claims against the United States arising from or relating to the A.I.D. contract of affreightment, including claims concerning commodity loss or damage accruing prior to the transfer of title to the Cooperating Country, will be resolved by the United States.)

(b) If the Cooperating Country fails to file or pursue such claims, the Cooperating Country shall be liable to A.I.D. for the value of the commodities or local currency proceeds lost, damaged, or misused except as A.I.D. may otherwise agree in writing: Provided, however, that the Cooperating Country may elect not to file a claim if the loss is less than $500 and such action is not detrimental to the program. The Cooperating Country may retain $150 of any amount collected on an individual claim. In addition, the Cooperating Country may, with the written approval of A.I.D., retain either special costs such as reasonable legal fees that they have incurred in the collection of a claim, or pay such legal fees with local currency proceeds. Any proposed settlement for less than the full amount of the claim must be approved by A.I.D. prior to acceptance. Amounts recovered from third parties shall be paid by the Cooperating Country in accordance with section C-4.4. When the Cooperating Country has exhausted all reasonable attempts to collect the claim, it shall request A.I.D. to provide instructions.

Section C-4.3 Reporting Losses. (a) The Cooperating Country shall promptly notify A.I.D., in writing, of the circumstances pertaining to any loss, damage, or misuse of commodities valued at $500 or more occurring within the Cooperating Country or an intermediate country. The report shall be made as soon as the Cooperating Country has adequately investigated the circumstances, but in no event more than ninety (90) days from the date the loss becomes known to the Cooperating Country. The report shall include information regarding who had possession of the commodities and who, if anyone, might be responsible for the loss, damage or misuse; the kind and qualities of commodities; size and type of containers; the time and place of misuse, loss or damage; the current location of the commodity; and the Agreement number, the CCC contract numbers, if known, or, if unknown, other identifying numbers printed on the commodity containers; the action taken by the Cooperating Country with respect to recovery or disposal; and the estimated value of the commodity. If any of the above information is not available, the Cooperating Country shall explain why it is not. Similar information also should be reported regarding any loss or misuse of local currency proceeds.

(b) The Cooperating Country shall report quarterly to A.I.D. any loss, damage or misuse of commodities valued at less than $500, provided that the Cooperating Country shall inform A.I.D. if it has reason to believe there is a pattern or trend in the loss, damage, or misuse of such commodities and submit a report on the basis described in subsection (a) of this section, together with such other information as the Cooperating Country has available to it. A.I.D. may require additional information about any commodities lost, damaged or misused if it believes such information is necessary in order to maintain the integrity of the program.

(c) If any commodity or local currency proceeds is lost or misused under circumstances which give a Cooperating Country reason to believe that the loss or misuse has occurred as a result of criminal activity, the Cooperating Country shall promptly report these circumstances to A.I.D. which shall inform the Inspector General.

Section C-4.4 Handling Claims Proceeds. Except as A.I.D. may otherwise agree in writing with respect to commodities lost, damaged or misused, ammounts paid by the Cooperating Country or third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably in U.S. dollars with instructions to credit the deposit to CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401. Local currency recovered should be treated as local currency proceeds for all purposes of this Agreement.

Article V - Record, Reporting and Audit Requirements.

Section C-5.1 Recordkeeping. The Cooperating Country shall maintain records and documents in a manner that will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale, inspection and use of commodities and pertaining to receipt and disbursements of any local currency proceeds and the operation of the program. Such records shall be retained for a period of three (3) years from the close of the U.S. fiscal year to which they pertain, or longer, upon request by A.I.D. for cause, such as in the case of litigation of a claim or an audit concerning such records. The Cooperating Country shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D.

Section C-5.2 Reports. (a) The Cooperating Country shall submit to A.I.D. the following commodity reports:

(1) A semiannual commodity logistics report covering the receipt and use of commodities donated by A.I.D. under this Agreement. The first report shall be submitted by November 15, 1991 and cover the period through September 30, 1991. Reports thereafter will cover each subsequent six-month period until all commodities provided under this Agreement are distributed or sold. The report must contain the following information:

(A) Receipts of agricultural commodities including the name of each vessel, discharge port(s), the date discharge was completed, the condition of the commodities on arrival, any significant loss or damage in transit and advice of any claim for, or reduction of freight charges due to loss or damage in transit;

(B) Quantities of agriculture commodities distributed, indicating each commodity sales agency used and the amount of commodities distributed through the sales agent;

(C) Quantities of agricultural commodities sold and the gross amount of local currency revenues generated from the sale;

(D) Estimated commodity inventory at the end of the reporting period;

(E) Quantities of commodity on order and in transit at the end of the reporting period;

(F) Status of claims for commodity losses both resolved and unresolved during the reporting period;

(G) Quantities of commodities damaged or declared unfit during the reporting period; and

(H) A description of measures taken to implement the publicity provisions of section C-2.3 of this Agreement.

(2) A report covering the supply period in Annex B containing:

(A) Statistical data on imports by country of origin to meet usual marketing requirements specified in Annex B, section B-1.4;

(B) A statement of measures taken to implement the requirements of section C-1.3 regarding resale and export of donated commodities; and

(C) Statistical data on exports by country of destination of commodities the same as or like those donated under this Agreement as set forth in Annex B, section B-1.5.

(b) The Cooperating Country shall submit to A.I.D. quarterly reports regarding local currency proceeds generated by the sale of agricultural commodities donated under this Agreement. The first shall be submitted within 45 days after the close of the first quarter during which local currency proceeds are generated. Reports thereafter will be submitted within 45 days after each subsequent quarter until local currency proceeds are used for purposes, programs, projects or activities approved under this Agreement, local currency agreements and recipient agency agreements. The report must contain the following information with respect to each reporting period and shall be stated in local currency and United States dollar equivalent:

(1) The total amount of local currency proceeds generated by the sale of donated commodities;

(2) The amount of local currency proceeds deposited into the separate account, including any interest earned;

(3) The total balance on deposit in the separate account, including interest earned; and

(4) The amount of local currency proceeds made available by the Cooperating Country for the Food for Developemt Program but not deposited to a separate account; and

(5) The amount of local currency disbursed for the Food for Development Program, indicating the amount transferred to each Counterpart Fund Management Agent and the purpose, program, project or activity financed by such disbursements.

(c) A.I.D. will issue a Program Implementation Letter to the Cooperating Country describing the documentation which must be approved to A.I.D. in order to substantiate the information set forth in reports submitted by the Cooperating Country and the documentation which should be retained by the Cooperating Country for future reference.

(d) Except as A.I.D. may otherwise agree in writing, the Cooperating Country shall perform or arrange to be performed an annual internal review to ascertain the effectiveness of the Food for Development Program for which commodities and local currency proceeds are provided under this Agreement, local currency agreements and recipient agency agreements and the effectiveness of management systems and procedures developed by the Cooperating Country to satisfy the terms and conditions of this Agreement. The internal review shall be conducted by a private firm or an agency of the Cooperating Country acceptable to A.I.D or a firm or agency contracted by A.I.D. which is acceptable to the Cooperating Country.. A copy of the internal review shall be submitted to A.I.D. each year.

Section C-5.3 Audit. (a) The Cooperating Country shall cooperate with and give reasonable assistance to representatives of A.I.D. to enable them at any reasonable time to examine activities, records and supporting documentation of the Cooperating Country, recipient agencies, processors, or others, pertaining to the receipt, storage, distribution, processing, repackaging, sale and use of commodities by direct recipients; to inspect commodities in storage, or the facilities used in the handling or storage of commodites; to inspect and audit books and records of the Cooperating Country and recipient agencies, including financial books and records and reports pertaining to storage, transportation, processing, prepackaging, distribution, sale and use of commodities and pertaining to the deposit and/or use of any local currency proceeds; to review the overall effectiveness of the program as it relates to the objectives set forth in the Agreement, Plan of Operations and local currency agreements; and to examine or audit the procedure and methods used in carrying out the requirements of this Agreement.

(b) If A.I.D. determines that a disbursement of local currency proceeds was made for a program, project, activity or purpose ineligible to receive a disbursement under this Agreement, local currency agreements or recipient agency agreements, notice of such ineligibility shall be given by A.I.D. to the Cooperating Country and the Parties shall, upon request of either, consult regarding such ineligibility. If the notice of ineligibility is not rescinded by A.I.D. within 90 days, the Cooperating Country shall make available an equivalent amount of local currency, promptly upon request by A.I.D., for use in accordance with the terms of this Agreement.

Article VI - Suspension or Termination of Program; Diversion of Commodities.

Section C-6.1 Suspension or Termination. All or any part of the assistance provided under the program, including commodities in transit, may be terminated or suspended by A.I.D. at its discretion if the Cooperating Country fails to comply with the provisions of the Agreement, or if it is determined by A.I.D. that the continuation of such assistance is no longer necessary or desirable. Under such circumstances title to commodities which have been transferred to the Cooperating

Country or local currency proceeds that have not been disbursed for the Food for Development Program shall, at the written request of A.I.D., be transferred to A.I.D. by the Cooperating Country. Any then excess commodities on hand at the time the program is terminated shall be disposed of as instructed by A.I.D. If it is determined that any commodity authorized to be supplied under the Agreement is no longer available for Food for Development programs, such authorization shall terminate with respect to any commodities, which, as of the date of such determination have not been delivered to an ocean carrier.

Section C-6.2 Diversion of Commodities. Notwithstanding transfer of title, A.I.D. reserves the right to require diversion of cargo as in the best interest of the program up to the point of completion of discharge. A.I.D. will pay the costs of such diversion, and will notify the Cooperating Country as soon as possible. Unless a determination is made to terminate (or suspend) the program, diverted cargoes will be replaced within a reasonable time. The Cooperating Country agrees to assist the Untited States Government with any diversion, including but not limited to returning any original bills of lading it might hold.

Section C-6.3 Expiration. Upon expiration of the approved program under circumstances other than those described in section C-6.1, the Cooperating Country shall deposit with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20FT401, any remaining local currency proceeds, or the Cooperating Country shall obtain A.I.D.'s approval for the use of such local currency proceeds, or real or personal property procured with such proceeds, for purposes consistent with those authorized for support from A.I.D.