

A.I.D. LOAN No. 512-H-029

ALLIANCE FOR PROGRESS

LOAN AGREEMENT

(Brazil - Air Navigation Aids)

Between the

UNITED STATES OF BRAZIL

and the

UNITED STATES OF AMERICA

Dated: September 4, 1964.

CONFORMED

BEST AVAILABLE DOCUMENT

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ALLIANCE FOR PROGRESS

LOAN AGREEMENT

AGREEMENT, in furtherance of the Alliance for Progress, dated the 4th day of September, 1964, between the UNITED STATES OF BRAZIL ("Borrower") and the UNITED STATES OF AMERICA, acting through the Agency for International Development ("A.I.D. ").

ARTICLE I

The Loan

SECTION 1.1. The Loan. A.I.D. hereby agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, up to \$2,700,000 (two million seven hundred thousand United States dollars) to assist in financing the dollar costs of United States goods and services required for the project as defined in Section 1.2. As used in this Agreement, "Eligible Items" shall mean the goods and services financed hereunder, and "Principal" shall mean the aggregate amount of dollars disbursed hereunder.

SECTION 1.2. The Project. As used in this Agreement, "Project" shall mean a project for the construction and installation of certain air navigation aids at the airports listed below, and services for training related to the use of such aids.

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- a. Airport Surveillance Radars at Brasilia and Porto Alegre;
- b. Approach Lighting Systems at Brasilia, Recife, Belém and Campinas Airport at São Paulo;
- c. Instrument landing systems at Recife, Belém and Campinas Airport at São Paulo.

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ARTICLE IITerms of Repayment; Interest

SECTION 2.1. Interest. The Borrower shall pay semi-annually to A.I.D. in dollars interest on the unrepaid Principal and on any interest due and unpaid of three quarters of one (3/4 of 1) percent per annum (computed on the basis of a 365-day year) for ten (10) years after the first disbursement and two (2) percent per annum thereafter. Interest shall accrue from the dates of the respective disbursements hereunder. The first such payment shall be due and payable no later than six (6) months after the first such disbursement on a date to be specified by A.I.D.

SECTION 2.2. Repayment. The Borrower shall repay the Principal to A.I.D. in dollars in sixty-one (61) equal semi-annual installments. The first such installment shall be due and payable nine and one-half (9 1/2) years after the first payment of interest is due.

SECTION 2.3. Application of Payments. All payments shall be applied first to the payment of any interest due and unpaid and then to the repayment of Principal.

SECTION 2.4. Prepayment. The Borrower shall have the right to prepay, without penalty, at any time, all or any part of the Principal. Any prepayment shall be applied in the order prescribed in Section 2.3 hereof, and amounts applied to the

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remaining installments of Principal shall be applied pro rata to such installments.

SECTION 2.5. Renegotiation of Terms. In the light of the undertakings of the United States of America, the Borrower and other signatories of the Act of Bogota and the Charter of Punta del Este to forge an Alliance for Progress, the Borrower agrees that at any time or times when it is requested to do so by A.I.D. pursuant to this Section, but not sooner than six (6) months before the date on which the first installment is payable under Section 2.2 of this Agreement, it will negotiate with A.I.D. concerning the acceleration of payments required pursuant to this Agreement. The Borrower and A.I.D. shall mutually determine to what extent repayment should be accelerated on the basis of the following criteria:

(a) The capacity of the Borrower to service a more rapid liquidation of its obligations in the light of the internal and external financial position of Brazil, taking into account the long term prospects of the balance of payments and principally debts owing to any agency of the United States of America or to any international organization of which the United States of America is a member.

(b) The relative capital requirements of the Borrower and of other signatories of the Act of Bogota and of the Charter of Punta del Este.

SECTION 2.6. Place of Payment. All payments to be made

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to A.I.D. shall be made to the Controller, Agency for International Development, Washington, D.C., or at such other place as may be mutually agreed upon by the Borrower and A.I.D. Such payments shall be deemed to have been paid when received by A.I.D.

ARTICLE IIIConditions PrecedentSECTION 3.1. Conditions Precedent to Initial Financing.

Prior to the first disbursement or to the issuance of the first letter of commitment under this Agreement, the Borrower shall furnish in form and substance satisfactory to A.I.D.

- (a) An opinion or opinions of legal counsel satisfactory to A.I.D. that:
 - (i) This Agreement has been duly authorized or ratified by, and executed on behalf of the Borrower, and constitutes a valid and legally binding obligation of the Borrower in accordance with its terms;
- (b) Evidence of the authority of the person or persons who will act as the representative or representatives of the Borrower pursuant to Section 3.2, together with a specimen signature of each such person certified as to its authenticity by legal counsel.
- (c) Evidence of contractual or other arrangements with the Federal Aviation Agency of the United States of America satisfactory to A.I.D. for engineering training and procurement services for the Project.
- (d) Evidence of arrangements to enable the Directorate of Air Routes of the Air Ministry of the United States

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of Brazil to carry out the Borrower's operational responsibilities hereunder.

- (e) A report of any and all commissions, fees or payments of any kind which have been made or are agreed to be made to any person, firm, or corporation (other than regular compensation to full-time officers and employees of the Borrower) for services in connection with preparing or presenting the application which has resulted in the authorization of the loan by A.I.D. or in connection with negotiations incident to obtaining the loan (indicating whether such agreements have been or are to be made on a contingent fee basis).

SECTION 3.2. Additional Conditions Precedent with Respect to Financing Other Than Engineering Services. Prior to any disbursement or the issuance of letters of commitment for Eligible Items other than for engineering services, the Borrower shall furnish A.I.D. in form and substance satisfactory to A.I.D.:

(a) A plan for the financing of the Project (the "Financing Plan"), showing evidence of the availability of the Brazilian currency and U.S. dollar requirements, the date of availability, the source for such funds, and the terms to which the Borrower must agree.

(b) A plan and schedule for the construction, installation and procurement necessary to complete the Project.

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(c) A.I.D. shall specify which of the following additional items it will require before disbursements may be made for any Eligible Item other than engineering services:

- (1) Additional plans and specifications for the Project;
- (2) Evidence that arrangements satisfactory to A.I. have been made for the necessary procurement; and
- (3) Evidence that arrangements satisfactory to A.I. have been made for construction services.

SECTION 3.3. Terminal Date for Fulfillment of Conditions Precedent. Except as A.I.D. may otherwise agree in writing, if the conditions required by Section 3.1 have not been completed by ~~November 30, 1964~~ ^{April 30, 1965} ~~or if all of the other conditions specified by A.I.D. pursuant to Section 3.2 have not been fulfilled by February 28, 1965,~~ ^{Suppl. Ltr. # 4} ~~A.I.D. may at any time thereafter terminate this Agreement by giving notice to the Borrower. Upon such termination, the Borrower shall repay the unrepaid Principal and any accrued interest, whereupon all other obligations the Borrower and A.I.D. under this Agreement shall cease.~~ ^{July 1, 1965} ~~Suppl. Ltr. # 4~~

ARTICLE IVDisbursements

SECTION 4.1. Requests for Commitment Documents. To obtain disbursements, the Borrower may from time to time request A.I.D. to issue commitment documents to one or more United States banking institutions designated by the Borrower and satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made, through letters of credit or otherwise, to the Borrower or any designee of the Borrower, pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred in connection with commitment documents and disbursements shall be for the account of the Borrower, and may not be provided out of the loan.

SECTION 4.2. Other Forms of Disbursement. Disbursements may also be made through such other means and by such other procedures as the Borrower and A.I.D. may agree in writing.

SECTION 4.3. Date of Disbursements. Disbursements hereunder shall be deemed to occur on the date on which A.I.D. makes payment either directly to the Borrower or its designee or to a banking institution pursuant to a letter of commitment.

SECTION 4.4. Terminal Dates for Disbursements. Except as A.I.D. may otherwise agree in writing, no commitment document shall be issued in response to requests received after July 31, 1969, and no disbursement shall be made against documentation received after December 31, 1969.

ARTICLE VCovenants Concerning Procurement

SECTION 5.1. Source of Procurement. All Eligible Items, including transportation services and marine insurance, shall have both their source and origin in and shall be procured from the United States. Transportation services procured from a United States-flag carrier shall be deemed to have their source and origin in the United States. Marine insurance issued in the United States by a company authorized to do a marine insurance business in any state of the United States of America shall be deemed to have its source and origin in the United States.

SECTION 5.2. Method of Procurement. No more than reasonable prices shall be paid for any Eligible Item, and all such items (except architectural, engineering, management and such other professional services as A.I.D. may specify) shall, when feasible, be procured on a fair competitive basis. Prices (except for the foregoing professional services) should normally approximate the lowest competitive prices for the Eligible Item procured, operating costs, quality, time and cost of delivery, terms of payment, and other factors considered. Prices for Eligible Items which are procured in bulk within the United States shall not exceed the market price prevailing in the United States at the time of purchase.



SECTION 5.3. Eligibility Date. No goods and services may be financed in whole or in part by the loan which arise out of orders or contracts firmly placed or entered into prior to the effective date of this Agreement.

SECTION 5.4. Transportation.

(a) At least fifty (50) percent of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by the loan, which may be transported on ocean vessels, shall be transported on privately-owned United States-flag commercial vessels. Determinations that United States-flag commercial vessels are not so available must be approved by A.I.D.

(b) All Eligible Items transported to Brazil on vessels other than privately owned United States-flag commercial vessels shall be transported on carriers owned, operated or under the control of the Borrower or other countries included in Code 399 of the A.I.D. Geographic Code Book as in effect at the time such transportation is procured; provided, however, that no Eligible Items may be transported on any ocean vessel which A.I.D. in a notice to the Borrower has designated as ineligible to carry A.I.D.-financed commodities. In accordance with Section 5.1 hereof the cost of transportation on vessels other than privately-owned United States-flag commercial vessels shall not be eligible for financing under the loan.

(c) No goods may be financed by the loan which are trans-

ported on any ocean vessel which has been chartered for the carriage of A.I.D.-financed commodities unless such charter has been approved in writing in advance by A.I.D.

SECTION 5.5. Marine Insurance. Unless A.I.D. agrees otherwise in writing, insurance on shipments of commodities financed under this Agreement shall be placed in the United States with a company or companies authorized to do a marine insurance business in any State of the United States of America.

SECTION 5.6. Small Business Notification. In order that American small business shall have the opportunity to participate in furnishing Eligible Items, the Borrower shall, at such time prior to ordering or contracting for any Eligible Item estimated to cost more than the equivalent of \$5,000 (five thousand United States dollars) as A.I.D. may specify, cause to be received by A.I.D. such information concerning Eligible Items as A.I.D. may require.

SECTION 5.7. Contracts. No Eligible Item may be financed in whole or in part by the loan which arises (a) out of contracts for engineering, procurement or construction services unless A.I.D. has given its prior approval in writing to the terms of such contracts and the firms who will provide such services; or (b) out of any contract for the performance of services outside the United States by United States citizens unless A.I.D. has approved in writing the employment of such persons.

ARTICLE VIAdditional Covenants and Warranties

SECTION 6.1. Conduct of the Project. The Borrower will:

(a) Carry out and complete the Project, with due diligence and efficiency, providing any additional resources which may be required. The Project shall be carried out in conformity with sound engineering, construction and financial practices, and with any contracts, engineering, construction or procurement arrangements, or plans, schedules and specifications approved by A.I.D. The Borrower shall obtain A.I.D. concurrence prior to any material modification or cancellation of any such contracts, arrangements, plans, schedules, or specifications. The Borrower covenants that it will use the Eligible Items in accordance with plans and procedures developed mutually with A.I.D. for that purpose.

(b) Adequately maintain and repair, in accordance with sound maintenance practices, all Eligible Items and any construction or facility resulting from their use.

SECTION 6.2. Utilization of Eligible Items. All Eligible Items shall be used exclusively for the Project. In the case of any goods financed hereunder which are not fully expended through their use for the Project, the foregoing provision shall apply until the completion of the Project or until such time as they can no longer be usefully employed for the Project, provided

that no goods financed hereunder shall be exported from Brazil without the prior approval of A.I.D.

SECTION 6.3. Information and Marking. The Borrower shall cooperate with A.I.D. in making information concerning this loan public and shall make appropriate arrangements to carry out A.I.D.'s instructions with respect to signs at the Project sites and marking of goods financed hereunder.

SECTION 6.4. Notice of Material Developments. The Borrower represents and warrants that it has disclosed to A.I.D. all circumstances which may materially affect this Project or the discharge of its obligations under this Agreement and covenants that it will inform A.I.D. of any conditions which interfere, or which it is reasonable to believe will interfere, with any of the foregoing.

SECTION 6.5. Taxation. This Agreement and the execution, delivery and registration thereof, shall be free from, and the Principal and interest shall be paid without deductions for and free from all taxes, fees, or other charges, if any, imposed under the laws of Brazil or laws in effect in its territory.

SECTION 6.6. Commissions, Fees and Other Payments.

(a) The Borrower covenants that no commissions, fees or payments of any kind in connection with presenting the application which has resulted in the authorization of the loan by A.I.D., or in connection with negotiations incident to obtaining the loan, have been or will be made to any person, firm or

corporation, other than the regular compensation to officials and full-time officers and employees of the Borrower or for bona fide professional, technical or other comparable services.

(b) The Borrower shall promptly report to A.I.D. information on any commissions, fees or payments specified in subsection 6.6(a) hereof which are made after the effective date of this Agreement.

(c) The Borrower covenants that all commissions, fees or payments determined by A.I.D. to be unreasonable shall be adjusted in a manner satisfactory to A.I.D. and that every recipient of any such commission, fee or payment shall be informed of this condition.

SECTION 6.7. Records; Reports; Inspections.

(a) The Borrower shall maintain or cause to be maintained, in accordance with sound accounting practices, books and records adequate to identify Eligible Items, to disclose the cost and use thereof in the Project, to show the nature and extent of the solicitation of prospective suppliers and the basis for the award of contracts or orders, and to indicate the progress of the Project. Such books and records shall be maintained until five years after the final disbursement pursuant to this Agreement.

(b) Such books and records shall be open at all times for examination by authorized representatives of the Borrower and A.I.D., which procedure is consistent with Article II,

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Section 5 of the agreement between the Borrower and the Government of the United States of America, signed on May 30, 1953, and subsequently approved by the Brazilian Congress. For this purpose, if the Borrower and A.I.D. mutually agree, the Borrower may maintain, within its accounting system, a segregated set of books and records for all transactions specifically related to the loan. Examination of the books and records will be carried out in practice by procedures which may include the following whenever mutually agreed to by the Borrower and A.I.D.:

- (1) Joint auditing under mutually agreed to conditions.
- (2) The use of independent auditors selected by the Borrower and acceptable to A.I.D.
- (3) The inspection outside the premises of the Borrower of certified documentation relating to the loan.

(c) The Borrower shall cooperate with, and give reasonable assistance to, and shall facilitate inspection by A.I.D. with respect to the execution of the works and the activities related to the Project in conformity with this Agreement and shall afford all reasonable opportunity for authorized representatives of A.I.D. to visit any part of the territory of Brazil for purposes related to this Agreement.

(d) The Borrower shall promptly furnish A.I.D. such financial and other reports and information relating to the loan or transaction pursuant to this Agreement and any covenants of this Agreement as A.I.D. may request.

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SECTION 6.8. Budgeting and Accounting. Borrower shall use its best efforts to establish and carry out systems of budgeting and accounting to accurately identify the costs of operating the facilities and airports connected with the Project.

ARTICLE VIIRemedies of A.I.D.

SECTION 7.1. Events of Default; Acceleration. If any of the following events ("Events of Default") occurs:

- (a) The Borrower fails to pay in full when due any installments of Principal or interest or any other payment required under this Agreement;
- (b) The Borrower fails to comply with any other provision contained herein;
- (c) Any representation or warranty made by or on behalf of the Borrower with respect to obtaining this loan or made or required to be made hereunder is determined by A.I.D. to be incorrect in any material respect;
- (d) A default occurs under any other agreement between the Borrower and the United States of America or any of its agencies;

then, A.I.D., at its option, may declare all or any part of the unrepaid Principal to be due and payable immediately, and upon any such declaration, unless the default is cured within thirty (30) days thereafter, such Principal and interest accrued thereon shall become due and payable immediately.

SECTION 7.2. Termination of Disbursements; Transfer of Undelivered Goods to A.I.D. If at any time;

- (a) An Event of Default occurs;
- (b) An event occurs which A.I.D. determines to be an extraordinary situation which makes it improbable that the purposes of this loan will be attained or that the Borrower will be able to perform its obligations hereunder; or
- (c) Any disbursement would be in violation of the law governing A.I.D.;

then, A.I.D., at its option, after giving prior detailed notice in writing to the Borrower, may (1) decline to issue further commitment documents; (2) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable letters of credit or through bank payments made other than under irrevocable letters of credit, giving notice to the Borrower promptly thereafter; (3) decline to make disbursements other than under commitment documents; and (4) at A.I.D.'s expense, direct that title to goods financed hereunder shall be transferred to A.I.D., if the goods are from a source outside Brazil, in a deliverable state and have not been offloaded in ports of entry of Brazil, it being understood that to the extent that any costs connected with the purchase and transportation of these goods have been financed by the loan, such amounts shall be deducted from Principal.

SECTION 7.3. Refunds.

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(a) If A.I.D. determines that any disbursement made by it under this Agreement for any Eligible Item is not supported by valid documentation submitted by the Borrower in accordance with the terms of this Agreement, or is not used in accordance with the terms of this Agreement, or is in violation of the law governing A.I.D. (including A.I.D. regulations applicable to the Project), A.I.D., at its option, may, notwithstanding the availability of any other remedy provided for under this Agreement or the exercise of the remedy provided for in Section 7.2, require the Borrower to refund to A.I.D. within thirty (30) days after receipt of a request therefor an amount not to exceed the amount of such disbursement. Any such refund received by A.I.D. shall be applied as provided in Section 2.3, and amounts applied to the remaining installments of Principal shall be applied in inverse order of their maturity. No request shall be made by A.I.D. pursuant to this Section later than five (5) years after the date of the final disbursement pursuant to this Agreement.

SECTION 7.4. Waivers of Default. No delay in exercising or omission to exercise any right, power or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any of such rights, powers or remedies.

SECTION 7.5. Expenses of Collection. All reasonable costs incurred by A.I.D. (other than salaries of its staff) after an Event of Default has occurred in connection with the



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collection of amounts due under this Agreement, may be charged to the Borrower and reimbursed as A.I.D. shall specify.

Handwritten mark

ARTICLE VIIIMiscellaneous

SECTION 8.1. Effective Date. This Agreement shall enter into effect as of the day and year first above written.

SECTION 8.2. Use of Representatives.

(a) All actions required or permitted to be performed or taken under this Agreement by the Borrower or A.I.D. may be performed by their respective duly authorized representatives.

(b) The Borrower hereby designates the Minister of Air as its representative with authority to designate in writing other representatives of the Borrower in its dealings with A.I.D. The Borrower's representatives designated pursuant to the preceding sentence, unless A.I.D. is given notice otherwise, shall have authority to agree on behalf of the Borrower to any modification of this Agreement which does not substantially increase the Borrower's obligations hereunder. Until receipt by A.I.D. of written notice of revocation by the Borrower of the authority of any of its representatives, A.I.D. may accept the signature of such representatives on any instrument as conclusive evidence that any action effected by such instrument is authorized by the Borrower.

SECTION 8.3. Successors to Rights of A.I.D. If, by operation of any law of the United States or by virtue of

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assignment, any corporate or other agency of the Government of the United States of America succeeds to the rights and obligations of A.I.D. under this Agreement, such agency shall be deemed to be A.I.D. for purposes of this Agreement.

SECTION 8.4. Applicable Law. This Agreement shall be deemed to be a contract made under the laws of the District of Columbia, United States of America, and shall be governed by and construed in accordance with the laws of the District of Columbia, United States of America.

SECTION 8.5. Communications. Any communication or document given, made or sent by the Borrower or A.I.D. pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered by hand or by mail, telegram, cable or radiogram to such party at the following addresses:

To the Borrower:

Mail Address:

Ministério da Fazenda
Rio de Janeiro, Brazil.

Cable Address:

MINIFAZ
Rio de Janeiro.

To A.I.D. (five copies):

Mail Address:

Office of Capital Development
A.I.D.
Embaixada dos Estados Unidos da América
Rio de Janeiro, Brazil.

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Cable Address:

A.I.D.

Embaixada dos Estados Unidos da América
Rio de Janeiro.

Other addresses may be substituted for the above upon the giving of notice as provided herein.

All communications and documents submitted to A.I.D. hereunder shall be in English, and all technical and engineering specifications therein shall be in terms of United States standards, except as A.I.D. and the Borrower may otherwise agree in writing.

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

UNITED STATES OF BRAZIL

By: Roberto de Oliveira Campos

Title: Acting Minister of Finance

By: Maj. Brig. Wanderley

Title: Minister of Aviation

UNITED STATES OF AMERICA

By: Jack B. Kubish

Title: Minister-Director
USAID/Brazil

In the presence of:

Lincoln Gordon

William Ellis

Francisco de Assis Grieco

Alberto de Mello Flôres