

CONFORMED COPY

LOAN NUMBER 3125 UNI

Cross River State Project
Agreement

(Essential Drugs Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

CROSS RIVER STATE OF NIGERIA

Dated May 7, 1990

LOAN NUMBER 3125 UNI

CROSS RIVER STATE PROJECT AGREEMENT

AGREEMENT, dated May 7, 1990, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and CROSS RIVER STATE OF NIGERIA (Cross River State).

WHEREAS (A) by the Loan Agreement of even date herewith between the Federal Republic of Nigeria (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to sixty-eight million one hundred thousand dollars (\$68,100,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Cross River State agrees to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by the Loan Agreement the Borrower has agreed to relend to Cross River State under a subsidiary loan agreement (the Cross River State Subsidiary Loan Agreement) to be entered into between the Borrower and Cross River State an amount equivalent to \$13,900,000 or such other amount as shall be allocated to Cross River State pursuant to Schedule 1 to the Loan Agreement; and

WHEREAS Cross River State, in consideration of the

Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement, the Preamble to this Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) Cross River State declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, public health and pharmaceutical practices. Cross River State shall provide, or cause to be provided, promptly as needed the funds, facilities, services and other resources required for the purpose and shall also duly perform all its obligations under the Cross River State Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, Cross River State shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Cross River State Subsidiary Loan Agreement or any provision thereof.

(b) Cross River State shall: (i) provide in its annual budget amounts sufficient to cover Cross River State's counterpart contributions to the costs of the Project; (ii) open and maintain at a commercial or merchant bank a project account (the Cross River State Project Account) to be used exclusively for expenditures relating to the Project; (iii) pay each quarter into the Cross River State Project Account an initial amount (representing 25% of Cross River State's counterpart contributions to the first year's project costs) equivalent to Naira 800,000; and (iv) thereafter pay into the Cross River State Project Account (not later than the quarter immediately following the quarter in which the Loan Agreement becomes effective) the respective counterpart contributions of Cross River State, adjusted to take account of any payments of the initial amount specified above. The Borrower, the Bank and Cross River State presently estimate the said counterpart contributions to amount to \$3,500,000 equivalent over the Project period.

(c) Cross River State shall establish and thereafter maintain for its hospitals and primary health facilities a drug revolving fund (the Cross River State Drug Revolving Fund) in accordance with procedures satisfactory to the Bank.

(d) Cross River State shall: (i) for a period of one or two years immediately following the Effective Date employ any of the eligible merchant banks selected to participate in the Project by the Borrower and Cross River State to assist it in: (A) monitoring procurement of goods and works under the Project; (B) providing advice on the management and operations of the Cross

River State Drug Revolving Fund; and (C) confirming every six months to the Borrower, the Bank and Cross River State that there is compliance with the disbursement conditions provided for in the Loan Agreement; and (ii) employ any of the said eligible merchant banks or a consulting firm to assist it with financial systems development.

Section 2.02. (a) Cross River State shall, at the request of the Borrower or the Bank, exchange views with the Borrower and the Bank with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Cross River State Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) Cross River State shall promptly inform the Borrower and the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by Cross River State of its obligations under this Agreement and under the Cross River State Subsidiary Loan Agreement.

Section 2.03. Cross River State shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition) in respect of this Agreement and the Project.

Section 2.04. Cross River State shall carry out the actions described in Schedule 1 to this Agreement to the satisfaction of the Bank.

Section 2.05. Except as the Borrower and the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 3 to this Agreement.

Section 2.06. Cross River State shall, for the purposes of the Project, open and maintain in dollars in a commercial or merchant bank a special account (the Cross River State Special Account) on terms and conditions satisfactory to the Bank. Deposits into, and payments out of, the Cross River State Special Account shall be made in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE III

Financial Covenants

Section 3.01. (a) Cross River State shall maintain or cause to be maintained separate records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures of the departments and agencies of Cross River State responsible for carrying out the Project.

(b) Cross River State shall:

- (i) have the accounts referred to in paragraph (a) of this Section (including the Cross River State Special Account) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the

Bank;

- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of its financial statements relating to the Project for such year as so audited and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Loan Account were made on behalf of Cross River State on the basis of statements of expenditure, Cross River State shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Bank's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 4.02. This Agreement and all obligations of the Bank and of Cross River State thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify Cross River State thereof.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

INTBAFRAD	440098 (ITT)
Washington, D.C.	248423 (RCA) or
	64145 (WUI)

For Cross River State:

The Honourable Commissioner for Finance
and Economic Planning
Ministry of Finance and Economic Planning
P.M.B. 1062
Calabar, Cross River, State Nigeria

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of Cross River State, may be taken or executed by the Commissioner for Finance and Economic Planning or such other person or persons as Cross River State shall designate in writing, and Cross River State shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Edward V. K. Jaycox
Regional Vice President
Africa

CROSS RIVER STATE OF NIGERIA

By /s/ Hamzat Ahmadu
Authorized Representative

SCHEDULE 1

Actions Referred to in Section 2.04 of this
Agreement

1. Cross River State shall not revise its Essential Drugs List (Cross River State Essential Drugs List) more than once every year.

2. (a) Cross River State undertakes that only drugs listed on the Cross River State Essential Drugs List shall be procured and financed out of the proceeds of the Loan relented to Cross River State or the proceeds of the Cross River State Drug Revolving Fund.

(b) Cross River State shall promptly pay into the Cross River State Drug Revolving Fund amounts adequate to cover the cost of drugs supplied by Cross River State to patients exempt from paying for such drugs.

(c) Cross River State shall: (i) no later than September 30 of 1990 and of each year thereafter furnish to FMOH and the Bank in respect of the Project its work program and budget for the Project year following the year in which the work program and budget are furnished to FMOH and the Bank; and (ii) no later than January 1, 1991 commence the following actions to assist the hospitals and primary health facilities of Cross River State and the Local Government Administrations in the effective provision of drugs: (A) expand, renovate and equip the State Central Medical Store (including installation of adequate security); (B) carry out an initial review and adaptation of the three basic procedure manuals on procurement, supplies management, and cost recovery; (C) carry out initial briefing of leadership groups on the subject of Cross River State's essential drugs program and the reasons for cost recovery and the workings of Cross River State's Drug Revolving Fund; (D) develop materials for the first phase of the public education campaign on drugs; and (E) begin in-service training of health workers in State and Local Government facilities participating in Cross River State's essential drugs program.

SCHEDULE 2

Cross River State Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1)(b), (2)(b), (3)(b) and (4)(a)(ii) set forth in the table in paragraph 1 of Schedule 1 to the Loan Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Loan allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to the Loan Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$1,000,000 to be withdrawn from the Loan Account and deposited into the Cross River State Special Account pursuant to paragraph 3 (a) of this

Schedule.

2. Payments out of the Cross River State Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Bank has received evidence satisfactory to it that the Cross River State Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Cross River State Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Cross River State Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Cross River State Special Account, the Borrower shall furnish to the Bank requests for deposits into the Cross River State Special Account at such intervals as the Bank shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Cross River State Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been made out of the Cross River State Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Bank from the Loan Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Cross River State Special Account, the Borrower shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Bank shall not be required to make further deposits into the Cross River State Special Account:

(a) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Borrower directly from the Loan Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of the Loan Agreement; or

(b) once the total unwithdrawn amount of the Loan

allocated to the eligible Categories less the amount of any outstanding special commitment entered into by the Bank pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan allocated to the eligible Categories shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Cross River State Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Bank shall have determined at any time that any payment out of the Cross River State Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; (ii) was not justified by the evidence furnished to the Bank, the Borrower shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the Cross River State Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Cross River State Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank shall have determined at any time that any amount outstanding in the Cross River State Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Borrower may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Cross River State Special Account.

(d) Refunds to the Bank made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Loan Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: International Competitive Bidding

1. Except as provided in Part C hereof, goods shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines).

2. Bidders for contracts to manufacture or supply drugs required under the Project shall be prequalified as described in paragraph 2.10 of the Guidelines.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the

procedures described in Part A.1 hereof, goods manufactured in Nigeria may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Other Procurement Procedures

1. (a) All goods (other than drugs) and all works may be procured by Cross River State under contracts awarded on the basis of competitive bidding advertised locally, in accordance with procedures satisfactory to the Bank.

(b) All drugs procured by Cross River State estimated to cost an amount equivalent to \$60,000 or more but less than \$300,000 per bid package up to an aggregate amount not to exceed \$700,000 equivalent may be procured under contracts awarded on the basis of competitive bidding advertised locally in accordance with procedures satisfactory to the Bank.

2. Drugs required in health emergencies duly declared by Federal or State authorities and items or groups of items estimated to cost an amount equivalent to less than \$60,000 up to an aggregate amount not to exceed \$500,000 equivalent may be procured by Cross River State under contracts awarded on the basis of comparison of price quotations solicited from a list of at least three local or international suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

3. The following items may be purchased by direct contracting from original suppliers or sources in accordance with paragraph 3.5 (b) and (c) of the Guidelines: (i) books, journals and other items of a proprietary nature obtainable only from one source; and (ii) additional equipment compatible with existing equipment and spare parts available from a sole source.

Part D: Review by the Bank of Procurement Decisions

1. Review of prequalification:

With respect to the prequalification of bidders as provided in Part A.2 hereof, the procedures set forth in paragraph 1 of Appendix 1 to the Guidelines shall apply.

2. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to Cross River State and goods estimated to cost per bid package: (A) \$300,000 or more equivalent for drugs; and (B) \$100,000 or more equivalent for goods (other than drugs) the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Cross River State Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to paragraph 2 (d) of said Appendix shall be furnished to the Bank prior to the making of the first payment out of the Cross River State Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding subparagraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Cross River State Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant

to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 2 to this Agreement.

(c) Notwithstanding the provisions of subparagraphs (a) and (b) above, the first bidding documents prepared by Cross River State under both local and international competitive bidding procedures shall be subject to prior review by the Bank.

(d) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Bank has authorized withdrawals from the Loan Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.01 (a) (ii) of the Loan Agreement.

3. The figure of 10% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

In order to assist Cross River State in carrying out the Project, Cross River State shall employ consultants (including an eligible merchant bank or a consulting firm referred to in Section 2.01 (d) of this Agreement) whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

