

CONFORMED COPY

GRANT NUMBER TF050698 TON

Australian Grant Agreement

(Cyclone Emergency Recovery and Management Project)

between

KINGDOM OF TONGA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

**As Administrator of Grant Funds
Provided by the COMMONWEALTH OF AUSTRALIA**

Dated June 28 , 2002

GRANT NUMBER TF050698 TON

AUSTRALIAN GRANT AGREEMENT

AGREEMENT, dated June 28, 2002, between the KINGDOM OF TONGA (the Recipient) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) acting as Administrator (the Administrator) of grant funds provided by the Commonwealth of Australia (Australia), through its Australian Agency for International Development.

WHEREAS (A) pursuant to an agreement of even date herewith, between the Recipient and the Association (the Development Credit Agreement), for purposes of financing the Cyclone Emergency Recovery and Management Project (the Project), the Association agreed to provide to the Recipient a credit in the amount of SDR4,700,000 (the Credit) under terms and conditions set forth in the Development Credit Agreement, and the Recipient declared its commitment to the objectives of the Project, as set forth in Schedule 2 to the Development Credit Agreement, and agreed to carry out the Project in accordance with the terms of the Development Credit Agreement;

(B) pursuant to a letter agreement dated June 27, 2002, between Australia, through its Australian Agency for International Development, and the Recipient, Australia has agreed to make a grant in an aggregate amount of six hundred thirty five thousand Australian dollars (AUD635,000) (the Australian Grant) to the Recipient, to assist in joint financing about 40 houses under Part A.1 of the Project as described in Schedule 2 to the Development Credit Agreement;

(C) pursuant to the Framework Agreement dated May 29, 1996, among Australia, the International Bank for Reconstruction and Development and the Association, making arrangements for the Association to process applications for withdrawal of the proceeds of the financing to be provided by Australia and the Association and regulating certain other matters of common interest in connection with such financing, and to the agreement of even date herewith, entered into between Australia and the Association (the Administration Agreement), Australia has requested the Association, and the Association has agreed, to administer on behalf of Australia the Australian Grant made available by Australia to the Recipient to joint finance about 40 houses under Part A.1 of the Project, as described in Schedule 2 to the Development Credit Agreement, under terms and conditions of this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The following provisions of the “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999), with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

- (i) Article I;
- (ii) Sections 2.01 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (13) and (14), 2.02 and 2.03;
- (iii) Section 3.01;
- (iv) Sections 4.01 and 4.05;
- (v) Article V;
- (vi) Sections 6.01, 6.02 (a), (b), (c), (d), (e), (g), (h) and (l), 6.03, 6.04 and 6.06;
- (vii) Section 8.01 (b);
- (viii) Sections 9.01, 9.03, 9.04, 9.05, 9.06, 9.07, and 9.08;
- (ix) Article X;
- (x) Article XI; and
- (xi) Sections 12.01 (b), 12.03 and 12.04.

(b) The General Conditions shall be modified as follows:

- (i) the term “Association,” wherever used in the General Conditions, other than in Section 6.02 (e) thereof, means the International Development Association acting as Administrator of the Australian Grant pursuant to the Administration Agreement referred to in Recital (C) of this Agreement, except that in Section 6.02, the term “Association” shall also include the International Development Association acting in its own capacity;
- (ii) the term “Borrower” wherever used in the General Conditions, means the Recipient;

- (iii) the term “Development Credit Agreement,” wherever used in the General Conditions, means this Agreement;
- (iv) the term “Credit,” wherever used in the General Conditions, means the Australian Grant;
- (v) the term “Credit Account,” wherever used in the General Conditions, means the Australian Grant Account, an account opened by the Administrator on its books in the name of the Recipient to which the amount of the Australian Grant is credited;
- (vi) the term “Project,” wherever used in the General Conditions, means the Activities;
- (vii) Section 4.01 shall be modified to read:

“Withdrawals from the Australian Grant Account shall be made in Australian dollars; provided, however, that if the expenditures to be financed out of the proceeds of the Australian Grant have been paid or are payable in another currency, the Administrator shall, at the request of the Recipient, purchase such currency with the proceeds of such withdrawal.”

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions, in the Recitals to this Agreement and in the Development Credit Agreement have the respective meanings therein set forth, and the term “Special Account” means the account referred to in Section 2.02 (b) of this Agreement.

ARTICLE II

The Australian Grant

Section 2.01. The Administrator agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, the Australian Grant in the amount of six hundred thirty five thousand Australian dollars (AUD635,000).

Section 2.02. (a) The amount of the Australian Grant may be withdrawn from the Australian Grant Account in accordance with the provisions of Schedule 1 to the Development Credit Agreement, as such Schedule may be amended from time to time by agreement among the Kingdom of Tonga, and the International Development Association acting on its own capacity and as the Administrator, for expenditures made (or, if the Administrator shall so agree, to be made) in respect of the reasonable cost of carrying out the Activities and to be financed out of Australian Grant.

(b) The Recipient may, for the purposes of the Activities, open and maintain in Australian dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Administrator, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 1 to this Agreement.

(c) The Administrator shall not be obliged to provide funds under the Australian Grant to the Recipient except to the extent the Administrator shall have received funds from Australia for this purpose.

Section 2.03. The Closing Date shall be August 31, 2003, or such later date as the Administrator shall establish. The Administrator shall promptly notify the Recipient of such later date.

ARTICLE III

Execution of the Activities

Section 3.01. (a) The Recipient shall carry out the Activities through its Ministry of Works with due diligence and efficiency and in conformity with sound administrative, engineering, and financial practices, and social and environment standards, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Activities.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Recipient and the Administrator shall otherwise agree, the Recipient shall carry out the Activities in accordance with the Implementation Program set forth in Schedule 4 to the Development Credit Agreement.

Section 3.02. Except as the Administrator shall otherwise agree, procurement of goods and consultants' services required for the Activities and to be financed out of the Australian Grant shall be governed by the provisions of Schedule 3 to the Development Credit Agreement.

Section 3.03. (a) The Recipient shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Activities of the departments or agencies of the Recipient responsible for carrying out the Activities or any part thereof.

(b) The Recipient shall:

(i) have the records and accounts referred to in paragraph (a) of this Section including those for the Special Account for each fiscal year audited, in accordance with appropriate auditing principles

consistently applied, by independent auditors acceptable to the Administrator;

- (ii) furnish to the Administrator as soon as available, but in any case not later than six months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Administrator shall have reasonably requested; and
- (iii) furnish to the Administrator such other information concerning said records and accounts and the audit thereof as the Administrator shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Australian Grant Account were made on the basis of statements of expenditure, the Recipient 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 Administrator has received the audit for the fiscal year in which the last withdrawal from the Australian Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Administrator'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

Section 4.01. This Agreement shall become effective upon its execution by the parties hereto or the Effective Date of the Development Credit Agreement, whichever is later.

Section 4.02. This Agreement shall continue in effect until disbursement hereunder has been fully disbursed and the parties to this Agreement have fulfilled all their obligations hereunder, provided, however, that if either the Development Credit Agreement or the Administration Agreement terminates prior to the termination of this Agreement, this Agreement shall terminate automatically and shall cease to have any further force or effect.

ARTICLE V

Representative of the Recipient; Addresses

Section 5.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 5.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

Ministry of Finance
Vuna Road, Nuku 'alofa
Kingdom of Tonga

Facsimile: 676-26-011

For the Administrator:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:
INDEVAS
Washington, D.C.

Telex:
248423 (MCI) or
64145 (MCI)

Facsimile:
(202) 477-6391

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.

KINGDOM OF TONGA

By /s/ H.E. Tu'a Taumoepeau Tupou

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION
acting as Administrator of the Australian Grant

By /s/ Mr. Jitendra Bajpai

Authorized Representative

SCHEDULE 1

Special Account

1. For the purposes of this Schedule:
 - (a) the term “eligible Categories” means Categories (1) and (4) (a) set forth in the table in paragraph 1 of Schedule 1 to the Development Credit Agreement;
 - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of services required for the Activities and to be financed out of the proceeds of the Australian Grant allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to the Development Credit Agreement; and
 - (c) the term “Authorized Allocation” means an amount equivalent to AUD200,000 to be withdrawn from the Australian Grant Account and deposited into the Special Account pursuant to paragraph 3(a) of this Schedule.
2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Administrator has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:
 - (a) For withdrawals of the Authorized Allocation, the Recipient shall furnish to the Administrator a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Administrator shall, on behalf of the Recipient, withdraw from the Australian Grant Account and deposit into the Special Account such amount or amounts as the Recipient shall have requested.
 - (b) (i) For replenishment of the Special Account, the Recipient shall furnish to the Administrator requests for deposits into the Special Account at such intervals as the Administrator shall specify.
 - (ii) Prior to or at the time of each such request, the Recipient shall furnish to the Administrator 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 Administrator shall, on behalf of the Recipient, withdraw from the Australian Grant Account and deposit into the Special Account such amount as the Recipient shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Administrator from the Australian Grant 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 Recipient out of the Special Account, the Recipient shall, at such time as the Administrator shall reasonably request, furnish to the Administrator 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 Administrator shall not be required to make further deposits into the Special Account:

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

(b) if the Recipient shall have failed to furnish to the Administrator, within the period of time specified in Section 3.03 (b)(ii) of this Agreement, any of the audit reports required to be furnished to the Administrator pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Administrator shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the Australian Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Australian Grant allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Administrator pursuant to Section 5.02 of the General Conditions with respect to the Activities, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Australian Grant Account of the remaining unwithdrawn amount of the Australian Grant allocated to the eligible Categories shall follow such

procedures as the Administrator shall specify by notice to the Recipient. Such further withdrawals shall be made only after and to the extent that the Administrator shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

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

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

(c) The Recipient may, upon notice to the Administrator, refund to the Administrator all or any portion of the funds on deposit in the Special Account.

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