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A.I.D. Loan No. 386-T-228

Project No. 386-0467 ✓

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PROJECT LOAN AGREEMENT

Between

THE PRESIDENT OF INDIA

and

THE UNITED STATES OF AMERICA

for

RAJASTHAN MEDIAN IRRIGATION ✓

(Conformed)

Dated: June 30, 1980

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A.I.D. Loan No. 386-T-228

Project No. 386-0467

Project Loan Agreement

Dated: June 30, 1980

Between

The President of India ("Borrower"),

and

The United States of America, acting through the  
Agency for International Development ("A.I.D.")

Article 1: The Agreement

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

Article 2: The Project

SECTION 2.1. Definition of Project. The Project, which is further described in Annex 1, will consist of the construction of new and modernization of existing medium irrigation projects in the State of Rajasthan. Annex 1, attached, amplifies the above definition of the Project.

Within the limits of the definition of the Project in this Section 2.1, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2 without formal amendment of this Agreement.

Article 3: Financing

SECTION 3.1. The Loan. To assist the Borrower to meet the costs of carrying out the Project, A.I.D. pursuant to the Foreign Assistance Act of 1961, as amended, agrees to lend the Borrower under the terms of this Agreement not to exceed Fifteen Million United States ("U.S.") Dollars (\$15,000,000) ("Loan"). The aggregate amount of disbursements under the Loan is referred to as "Principal".

The Loan may be used to finance foreign exchange costs, as defined in Section 7.1., and local currency costs as defined in Section 7.2, of goods and services required for the Project.

SECTION 3.2. Borrower Resources for the Project.

(a) The Borrower agrees to provide or cause to be provided for the Project all funds, in addition to the Loan, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources to be provided or caused to be provided by the Borrower for the Project are estimated to be not less than the equivalent of U.S. \$22,500,000 including costs borne on an "in-kind" basis.

SECTION 3.3. Project Assistance Completion Date

(a) The "Project Assistance Completion Date" (PACD), which is June 30, 1985, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Loan will have been performed and all goods financed under the Loan will have been furnished for the Project as contemplated in this Agreement.

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

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 8.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Borrower, may at any time or times reduce the amount of the Loan by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4: Loan Terms

Section 4.1. Interest. The Borrower will pay to A.I.D. interest which will accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement of the Loan hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance will accrue from the date (as defined in Section 8.5) of each respective disbursement, and will be computed on the basis of a 365-day year. Interest will be payable no later than six (6) months after the first

disbursement of the Loan hereunder, on a date to be specified by A.I.D.

SECTION 4.2. Repayment. The Borrower will repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement of the Loan in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9-1/2) years after the date on which the first interest payment is due in accordance with Section 4.1. A.I.D. will provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

SECTION 4.3. Application, Currency, and Place of Payment. All payments of interest and Principal hereunder will be made in U.S. Dollars and will be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington D.C. 20523, U.S.A., and will be deemed made when received by the Office of Financial Management.

SECTION 4.4. Prepayment. Upon payment of all interest and any refunds then due, the Borrower may prepay without penalty all or any part of the Principal. Unless A.I.D. otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the inverse order of their maturity.

SECTION 4.5. Renegotiation of Terms

(a) The Borrower and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the

event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of India, which enable the Borrower to repay the Loan on a shorter schedule.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 9.1 and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after the delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to Section 9.1, the name and address of the person or persons who will represent the requested Party in such negotiations.

(d) The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under sub-section (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties.

SECTION 4.6. Termination on Full Payment. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under it will cease.

Article 5: Conditions Precedent to Disbursement

SECTION 5.1. First Disbursement. Prior to the first disbursement under the Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Borrower will, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement of the names of the persons holding or acting in the office of the Borrower specified in Section 9.2 and a specimen signature of each person specified in such statement.

SECTION 5.2. Notification. When A.I.D. has determined that the conditions precedent specified in Section 5.1 have been met, it will promptly notify the Borrower.

SECTION 5.3. Terminal Dates for Conditions Precedent. If all of the conditions specified in Section 5.1 have not been met within 90 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Borrower.

Article 6: Special Covenants.

SECTION 6.1. Project Evaluation. The Borrower agrees to establish an evaluation program satisfactory to the Parties as an integral part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one point thereafter: (a) evaluation of progress toward attainment of the objectives of the Project; (b) identification and evaluation of problem areas or constraints which may inhibit such attainment; (c) assessment of how such information may be used to help overcome such problems; and (d) evaluation, to the degree feasible, of the overall development impact of the Project.

Article 7: Procurement Source

SECTION 7.1. Foreign Exchange Costs. Disbursements made pursuant to Section 8.1 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods and services ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Standard Provisions Annex, Section C.1 (a) with respect to ocean and air shipping and Section C.1 (b) with respect to marine insurance.

SECTION 7.2. Local Currency Costs. Disbursements pursuant to Section 8.2 will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in India ("Local Currency Costs"). To the extent provided for under this Agreement, "Local Currency Costs" may also include the provision of local currency resources required for the Project.

Article 8: Disbursements

SECTION 8.1. Disbursement for Foreign Exchange Costs. After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the Loan for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of the Agreement, by such of the following methods as may be mutually agreed upon:

(1) by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or services, or (B) requests for A.I.D. to procure commodities or services in the Borrower's behalf for the Project;

(2) by requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers, through Letters of Credit or otherwise, for such goods or services.

Banking charges incurred in connection with Letters of Credit or Commitment shall be for the account of the Borrower and may be financed under the Loan.

SECTION 6.2. Disbursement for Local Currency Costs.

(a) After satisfaction of conditions precedent, the Borrower may obtain disbursement of funds under the Loan for Local Currency Costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as may be reasonably prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursements hereunder shall be purchased by A.I.D. with U.S. dollars from the Reserve Bank of India. The U.S. dollar equivalent of the local currency made available hereunder will

be the amount of U.S. dollars required by A.I.D. to obtain the local currency.

SECTION 8.3. Other Forms of Disbursement. Disbursements of the Loan may also be made through such other means as the Parties may agree to in writing.

SECTION 8.4. Rate of Exchange. If funds provided under the Loan are introduced into India by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Borrower will make such arrangements as may be necessary so that such funds may be converted into currency of India at the highest rate of exchange which, at the time the conversion is made, is not unlawful in India.

SECTION 8.5. Date of Disbursement. Disbursements of the Loan by A.I.D. will be deemed to occur (A) on the date on which A.I.D. makes a disbursement to the Borrower or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment, contract or purchase order; (B) on the date on which A.I.D. disburses to the Borrower or its designee local currency acquired in accordance with Section 8.2 (b).

Article 9: Miscellaneous

SECTION 9.1. Communications. Any notice, request, document or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such Party at the following address:

To the Borrower:

Mail Address

Secretary to the Government of India  
Department of Economic Affairs  
Ministry of Finance  
New Delhi

Alternate Address  
for telegrams:

ECOFAIRS, NEW DELHI

To A.I.D.:

Mail Address:

Mission Director  
USAID  
American Embassy, West Building  
New Delhi

Alternate Address  
for telegrams:

USAID, NEW DELHI

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

SECTION 9.2. Representatives. For all purposes relevant to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Director, Department of Economic Affairs, Ministry of Finance, and A.I.D. will be represented by the individual holding or acting in the office of Mission Director, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex 1. The names of the representatives of the Borrower with specimen signatures will be provided to A.I.D. which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 9.3. Standard Provisions Annex. A "Project Loan Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

SECTION 9.4. Language of Agreement. This Agreement is prepared in both English and Hindi. In the event of ambiguity or conflict between the two versions, the English language version will be used for final interpretation.

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

THE PRESIDENT OF INDIA

THE UNITED STATES OF AMERICA

By           - / Sd. / -          

By           - / Sd. / -          

Name: S.H. Kao

Name: Archer K. Blood

Title: Director  
Department of Economic Affairs  
Ministry of Finance

Title: Charge d'Affaires

A. I. D. Loan No. 386-T-228

Project No. 386-0467

Annex 1

PROJECT DESCRIPTION

The objectives of the Rajasthan Medium Irrigation Project are to:

- (1) increase agricultural production and income of the rural poor,
- (2) increase rural employment, and (3) reduce the impact of drought in the project area. These objectives will be accomplished through the expansion and improved operation of irrigated areas in Rajasthan, thus alleviating the prime constraint to greater agricultural productivity - lack of a reliable water supply. The Project will be financed by a loan to cover 67 percent of civil works construction costs; and a grant contributing to the costs of engineering and economics training and undertaking special studies.

The Irrigation and Agriculture Departments of the Government of Rajasthan (GOR) will design individual medium irrigation projects (MIPs), that is to say MIP sub-projects. An Appraisal Committee constituted in the Central Water Commission will appraise and where appropriate approve those MIPs or MIP sub-projects having culturable command areas (CCAs) of 2,000 or more hectares (ha), and all modernization projects. A GOR Appraisal Committee will appraise and where appropriate approve those other MIPs or MIP sub-projects having CCAs of less than 2,000 ha.

The criteria to be met for sub-project approval are: (1) 50 percent or more of benefitted cultivators (Khatodars) operate four ha or less of CCA; (2) the direct rate of return on investment for irrigation works and associated watercourses, drainage and internal roads is 9 percent

or greater, or 7.5 percent or greater for sub-projects in tribal or other disadvantaged areas; (3) soils and other physical conditions are satisfactory as determined by reconnaissance level soil surveys, with semi-detailed surveys in waterlogged or threatened areas; (4) water supply is adequate for the cropping pattern as shown by a water budget taking into account crop evapotranspiration, and all losses, and a reservoir operations study based on a twenty year water yield analysis; (5) main canals are adequately designed and regulated to permit full delivery to all commanded areas with flows at 50 percent capacity; all canals are adequately protected by cross drainage structures and provided with measuring facilities so the flow can be measured at all times and with Adjustable Proportion Modules at all outlet points; (6) adequate water-courses provided with division boxes where streams are divided and gated outlets and check-structures at each turnout point are constructed and maintained down to an average of 2 hectares; (7) all channels are fully lined to outlets serving chaks of approximately 40 hectares. For channels between 40 and 8 ha, 50 percent of the cost of lining shall be provided in the financial estimate, but lining will be on a selective basis; (8) adequate provision for system drainage is made to relieve water logging and eliminate all standing water during rain or from irrigation; (9) all works meet recognized engineering design standards; (10) qualified personnel will be available when needed to undertake all supervisory and technical activities; (11) GOR design reports will include a statement of the specific agricultural support services

available, and to be made available at implementation to adequately serve the command area; and (12) for MIPs, construction will be completed within five years of its initiation or from the date of the signing of the agreement. However, for modernization projects the period of completion may be up to eight years.

The Project will finance a five year time slice of Rajasthan's program for construction of new and modernization of existing medium irrigation sub-projects. Works eligible for financing will include construction and improvement of dams and control works, canals, distributaries, watercourses (including lining), roads necessary for project operation, land drainage works, other physical improvements necessary to make the sub-project system of water storage and conveyance to farm level operate efficiently and effectively, and civil works for resettlement. On-farm land development such as contour shaping and land leveling; and off-farm facilities such as markets, warehousing and credit; and land acquisition and other compensation costs will not be eligible for reimbursement by AID. Once sub-projects have been approved according to agreed criteria, payments for such sub-projects made subsequent to the signing of the Loan Agreement will be eligible for reimbursement. Sub-projects that are AID financed in any part will be completed by GOR according to agreed criteria.

The following will be carried out under the complementary grant:

(1) Short term training will be provided for engineers responsible for design, appraisal, construction, evaluation and/or operations and

for GOR/GOI officers responsible for economic analysis, to review and study practices and/or participate in special courses in the United States. In-service training will be provided for project design officers. Development of training modules and special courses and training activities in water management for use by GOR Irrigation and Agricultural Departments will be supported.

(2) Studies will include: (a) base-line socio-economic surveys, (b) water management studies, (c) organization studies and (d) evaluation. The content and timing of studies will be mutually agreed upon between GOI/GOR and A.I.D.

Routine evaluations will occur yearly during the life of the project, with a full evaluation undertaken after thirty months of the Project's implementation and again when the Project is completed.

AID intends to make \$35.5 million available in increments to support the \$58 million five-year project: \$35 million by loan for civil works construction and \$500,000 by grant for training and studies. Of this amount, \$15 million is being provided for in this Project Agreement and the remaining \$20.5 million in additional agreements this fiscal year and in the U.S. fiscal year 1981 subject to the availability of funds for the above purposes and the mutual agreement of the Parties at the time of a subsequent increment, to proceed.

Project Loan

Standard Provisions Annex

Definition: As used in this Annex, the "Agreement" refers to the Loan Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A: Project Implementation Letters. To assist the Borrower in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters after consultation with the Borrower that will furnish additional information about matters stated in this Agreement. The Parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B: General Covenants

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

SECTION B.2. Execution of Project. The Borrower will:

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

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

SECTION B.3. Utilization of Goods and Services. (a) Any resources financed under the Loan will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

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

SECTION B.4. Taxation. (a) This Agreement and the Loan will be free from, and the Principal and Interest will be paid free from, any taxation or fees imposed under any of the Central, State (including Union Territories), City or Municipal laws in effect in India.

(b) No proceeds of the Loan shall be disbursed on account of payment of identifiable taxes, tariffs, duties or other levies imposed by or under any of the Central, State (including Union Territories), City or Municipal laws of the Borrower on goods or services or on the importation, manufacture, procurement or supply thereof. A Project Implementation Letter, jointly agreed-upon, will be issued indicating the details of the implementation of this sub-section.

SECTION B.5. Reports, Records, Inspections, Audit. The Borrower will:

(a) furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show the receipt and use of goods and services acquired under the Loan. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

(c) afford authorized representatives of A.I.D. the opportunity at all reasonable times to inspect the Project, the utilization of goods and services, and books, records and other documents relating to the Project and the Loan.

SECTION B.6. Completeness of Information. The Borrower confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or

caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Loan, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement; and

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Project or the discharge of responsibilities under this Agreement.

SECTION B.7. Other Payments. Borrower affirms that no payments have been or will be received by any official of the Borrower in connection with the procurement of goods and services financed under the Loan except fees, taxes or similar payments legally established in the country of the Borrower.

SECTION B.8. Information and Marking: The Borrower will give appropriate publicity to the Loan and the Project as a program to which the United States has contributed, identify the Project site, and as appropriate mark goods financed by A.I.D. as described in Project Implementation Letters.

Article C: Procurement Provisions

SECTION C.1. Special Rules. (a) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment. Ocean and air shipping financed under the Loan will be of United States or Indian source and origin except as A.I.D. may otherwise agree in writing. Cost of ocean and air shipping on vessels or aircraft under flag registry of the Borrower will be deemed an eligible foreign exchange cost, if otherwise eligible under Section C.6 (b).

(b) Premiums for marine insurance placed in the territory of the Borrower will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7 (a).

(c) No motor vehicles will be financed under the Loan, except as A.I.D. may otherwise agree in writing.

SECTION C.2. Eligibility Date. No goods or services may be financed under the Loan for which payments have been made prior to the date of this agreement, except as the Parties may otherwise agree in writing.

SECTION C.3. Plans, Specifications, and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Borrower will furnish to A.I.D. upon preparation any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Loan, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals as described in Project Implementation Letters. Material modifications in such documentation will likewise be furnished A.I.D. on preparation;

(b) Such documents as described in Project Implementation Letters related to the prequalification of contractors, and to the solicitation of proposals for goods and services financed under the Loan will be approved by A.I.D. in writing prior to their issuance.

(c) As specified in Project Implementation Letters, contracts and contractors financed under the Loan for engineering and other professional services, for construction services, and for such other services, equipment

or materials, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution.

SECTION C.4. Reasonable Price No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Loan. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

SECTION C.5. Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

SECTION C.6. Shipping.

(a) Goods which are to be transported to the territory of the Borrower may not be financed under the Loan if transported either: (1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment; or (2) on an ocean vessel which A.I.D., by written notice to the Borrower, has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Loan, if such goods or persons are carried: (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under Section C.1 (a)

without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to the Borrower, has designated as ineligible; or (3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

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

SECTION C.7. Insurance.

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Borrower may be financed as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Government of the Borrower, by statute,

decree, rule, regulation, or practice discriminates with respect to A.I.D. financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the borrower financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, the Borrower will insure, or cause to be insured, goods financed under the Loan imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Borrower under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the borrower for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement. To the extent the Borrower does not insure or cause to be insured goods financed under the Loan imported for the Project, the Borrower will assure that funds for any necessary repair or replacement will be available in the currency in which such goods were financed or in any freely convertible currency.

SECTION C.6. U.S. Government-Owned Excess Property. The Borrower agrees that wherever practicable United States Government-owned excess

personal property, in lieu of new items financed under the Loan, should be utilized. Funds under the Loan may be used to finance the costs of obtaining such property for the Project.

ARTICLE D: Termination; Remedies

SECTION D.1. Cancellation by Borrower. The Borrower may, by giving A.I.D. 30 days written notice, cancel any part of the Loan which has not been disbursed or committed for disbursement to third parties.

SECTION D.2. Events of Default; Acceleration. It will be an "Event of Default" if the Borrower shall have failed: (a) to pay when due any interest or installment of principal required under this Agreement, or (b) to comply with any other provisions of this Agreement, or (c) to pay when due any interest or installment of principal or other payment required under any other loan, guaranty or other agreement between the Borrower or any of its agencies and A.I.D. or any of its predecessor agencies. If an Event of Default shall have occurred, then A.I.D. may give the Borrower notice that all or any part of the unrepaid principal will be due and payable sixty (60) days thereafter, and, unless such Event of Default is cured within that time:

- (1) such unrepaid Principal and accrued interest hereunder will be due and payable immediately, and
- (2) the amount of any further disbursements made pursuant to then outstanding commitments to third parties or otherwise will become due and payable as soon as made.

SECTION D.3. Suspension. If at any time:

- (a) An Event of Default has occurred; or

(b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement; or

(c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(d) The Borrower shall have failed to pay when due any interest, installment of principal or other payment required under any other loan, guaranty, or other agreement between the Borrower or any of its agencies and the Government of the United States and any of its agencies. Then A.I.D. may:

- (1) suspend or cancel outstanding commitment documents to the extent they have not been utilized through irrevocable commitments to third parties or otherwise, giving prompt notice thereof to the Borrower.
- (2) decline to issue additional commitment documents or to make disbursements other than under existing ones; and
- (3) at A.I.D.'s expense, direct that title to goods financed under the Loan be transferred to A.I.D. if the goods are from a source outside India, are in a deliverable state and have not been offloaded in ports of entry of India. Any disbursement made under the Loan with respect to such transferred goods will be deducted from Principal.

SECTION 9.4. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 9.3,

the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Loan that is not then disbursed or irrevocably committed to third parties.

SECTION D.5. Continued Effectiveness of Agreement. Notwithstanding any cancellation, suspension of disbursements, or acceleration of repayment, the provisions of this Agreement will continue in effect until the payment in full of all Principal and accrued interest hereunder.

SECTION D.6. Refunds. (a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies provided for under this Agreement, may require the Borrower to refund the amount of such disbursement in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

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

(c) The right under subsection (a) or (b) to require such a refund of

a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

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

SECTION D.7. Nonwaiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.