

PD-AGS-671
10/55750

A.I.D. Project Number:386-0494

(Conformed Copy)

PROJECT
GRANT AGREEMENT

Between

THE INDUSTRIAL CREDIT & INVESTMENT CORPORATION OF INDIA LIMITED

And

THE UNITED STATES OF AMERICA

For

PROGRAM FOR ACCELERATION OF COMMERCIAL ENERGY RESEARCH

Dated: August 31, 1987

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A.I.D. Project No. 386-0494

Project Grant Agreement

for the

PROGRAM FOR ACCELERATION OF COMMERCIAL ENERGY RESEARCH

Dated: August 31, 1987

Between

The Industrial Credit & Investment Corporation of India Limited (ICICI) approved by the Government of India

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 ICICI of the Project described below, and with respect to the financing of the Project.

Article 2: The Project

SECTION 2.1. Definition of Project. The Project, with three inter-related components, which is further described in Annex 1, will, under the overall direction of the Department of Non-Conventional Energy Sources (DNES) of the Ministry of Energy of the Government of India support selected research and technology development proposals while seeking to create an institutional environment for relevant technology innovation in the energy sector. ICICI will disburse Grant funds received under AID Grant for financing of approved subprojects and related activities and organize secretariat for the execution of the project. Within the limits of this definition of the Project, elements of the amplified description 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, however, these changes would be vetted by the DEA in the MOF prior to their incorporation.

SECTION 2.2. Incremental Nature of the Project.

(a) A.I.D. intends to contribute a total of not to exceed Twenty Million United States ("U.S.") Dollars (\$20,000,000) for this Project as set forth in Annex 1. A.I.D.'s contribution to the Project will be provided in increments, the initial one being made available in accordance with Section 3.1 of this Agreement. Subsequent increments will be subject to the availability of funds to A.I.D. for this purpose,

and to the mutual agreement of the Parties, at the time of each subsequent increment, to proceed. All such amendatory agreements shall be entered into with the prior concurrence of the DEA in the Ministry of Finance.

(b) Within the overall Project Assistance Completion Date stated in this Agreement, A.I.D., based upon consultation with ICICI, may specify in Project Implementation Letters appropriate time periods for the utilization of funds granted by A.I.D. under an individual increment of assistance.

Article 3: Financing

SECTION 3.1. The Grant. To assist ICICI to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant ICICI under the terms of this Agreement not to exceed Five Million U.S. Dollars (\$5,000,000) ("Grant"). Attachment B to Annex 1 exhibits the illustrative summary of project costs funded with this \$5,000,000.

The Grant may be used to finance foreign exchange costs, as defined in Section 6.1, and local currency costs, as defined in Section 6.2, of goods and services required for the Project.

SECTION 3.2. Entities/ICICI Resources for the Project.

(a) Entities other than ICICI intend to provide or cause to

be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner.

(b) It is expected that ICICI will provide in-kind support sufficient to meet the purposes of the project. Recipients of subproject financing under this Project ("Subproject Participants") will contribute to this Project an amount not less than approximately forty (40) percent of the total project cost.

SECTION 3.3. Project Assistance Completion Date.

(a) The Project Assistance Completion Date (PACD), which is June 30, 1993, 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 Grant will have been performed and all goods financed under the Grant 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 neither issue nor approve documentation which would authorize disbursement of the Grant 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. 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 ICICI, may at any time or times reduce the amount of the Grant 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 the said period.

Article 3A: Non-beneficial Interest of ICICI in the Grant

ICICI neither has nor shall obtain any present or future beneficial interest, whatsoever, in either the Grant or its accretions, if any, other than reimbursement of expenses incurred that ICICI would receive from the Grant.

Article 4: Conditions Precedent to Disbursement

SECTION 4.1. First Disbursement. Prior to the first disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, ICICI will, except as the Parties may otherwise agree in writing, furnish to A.I.D. through DEA 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 for ICICI which is approved by the Government of India for the purpose of administering this grant and that it constitutes a valid and legally binding obligation of ICICI, in accordance with all of its terms;

(b) a statement of the names of the persons holding or acting in the office of ICICI, as specified in Section 9.2 of this Agreement together with a specimen signature of each person; and

(c) a copy of the agreement reached between ICICI and DNES specifying clearly the roles and authorities of the two entities in carrying out the implementation of the project.

SECTION 4.2. Disbursement for Subproject Financing. Prior to the first disbursement under the Grant for subproject financing under components one and two of the Project, or to issuance by A.I.D. of documentation pursuant to which such disbursement will be made, ICICI shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D., in form and substance acceptable to A.I.D., documentation that an Energy Research and Development Advisory Council (ERDAC) has been established to provide advice to the Government of India (GOI) Department of Non-Conventional Energy Sources (DNES) under the Ministry of Energy in the implementation of the Project. The ERDAC will consist of 10-12 members with representation from the ICICI, the industrial establishment, government the research community and energy end users such as a

utility. The functional responsibilities of the ERDAC are described in Annex 1 (Amplified Project Description) under the section "Implementation Arrangements".

SECTION 4.3. Notification. When A.I.D. has determined that the conditions precedent specified in Section 4.1. and 4.2. have been met, A.I.D. will promptly so notify ICICI, DEA and DNES.

SECTION 4.4. Terminal Date for Conditions Precedent.

If the conditions specified in Section 4.1 and 4.2 have not been met within 90 days and 120 days, respectively, 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 ICICI.

Article 5: Special Covenants

SECTION 5.1. Evaluations. An Evaluation Program satisfactory to A.I.D. will be established and financed as part of the Project. The Evaluation Program will consist of annual reviews of the various activities under the Project Components, an in-depth Mid-Term Evaluation and a Final Evaluation at the end of the Project. The Evaluation Program will include:

(a) reviews of progress toward attainment of Project objectives;

(b) the 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 of the overall results of the Project as a positive influence on the development of R&D in the Enterprise Sector. The scope and terms of reference of these evaluations and the selection of the technical experts/organizations for the evaluations of the project would be determined under arrangements that will be finalized between DNES and USAID.

Article 6: Procurement Source

SECTION 6.1. 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 the United States (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services) (foreign exchange costs), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Grant Standard Provisions Annex, Section C.1(b) with respect to marine insurance.

SECTION 6.2. 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 origin, except as A.I.D. may otherwise agree in writing, 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 7: Post Training

Section 7.1 Post Training Agreement:

Every effort shall be made to require that each person trained under this Project works in activities related to the subprojects approved for financing under this agreement in India for not less than three times the length of time of his or her training program.

Article 8: Disbursements

SECTION 8.1. Disbursements for Foreign Exchange Costs.

(a) After satisfaction of applicable conditions precedent, ICICI may obtain disbursements of funds under the Grant for the foreign exchange costs of goods or services required for the Project in accordance with the terms of this 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 Grantee's behalf for the Project; or

(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 for such goods or services.

(b) Banking charges incurred by Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless Grantee instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Grant.

SECTION 8.2. Disbursements for Local Currency Costs.

(a) After satisfaction of applicable conditions precedent, ICICI may obtain disbursements of funds under the Grant 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 prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursement 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 Grant 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 Grant 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, ICICI will make such arrangements as may be necessary so that such funds may be converted into the currency of India at the highest rate of exchange which, at the time the conversion is made, is not unlawful in India.

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 addresses:

To ICICI:

Mail Address: Chairman and Managing Director
Industrial Credit and Investment
Corporation of India Limited
163, Backbay Reclamation
Bombay - 400 020

Alternate Address for Telegrams: CREDCORP, BOMBAY

To A.I.D.:

Mail Address: Mission Director
USAID
American Embassy
New Delhi - 110 021

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, ICICI will be represented by the individual holding or acting in the office of the Chief Executive, ICICI; 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 ICICI, 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 Grant Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

SECTION 9.4. Language of Agreement. This Agreement is prepared only in English.

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

THE INDUSTRIAL CREDIT AND INVESTMENT
CORPORATION OF INDIA

THE UNITED STATES OF AMERICA

By: -/Sd./-

By: -/Sd./-

Name: S.V. Shah
Title: Dy. Managing Director
The Industrial Credit and
Investment Corporation of India
163, Backbay Reclamation
Bombay - 400 020

Name: Robert N. Bakley
Title: Director
U.S. Agency for
International
Development
New Delhi

Amplified Project Description

The Project is designed to support selected research and technology development proposals while seeking to create an institutional environment for relevant technology innovation in the energy sector. The project's purpose will be attained through providing assistance to (a) consortia organized to undertake market driven technology development, (b) a research awards program, and (c) R&TD strategy formulation, policy analyses, and information dissemination activities. The activities under the above components are summarized as follows:

Project Components

1. Market Driven Technology Development Consortia

Under this component, A.I.D. financial assistance will be provided to consortia working against specific goal oriented technology development problems. Special consideration will be given to consortia developing those technologies that can mitigate serious electricity shortages in India. Eligible consortia will involve manufacturers in collaboration with research organizations and/or end users. Consortia participants (Subproject Participants) could be all Indians or a mix of Indian and American. No single entity will be permitted to participate in more than two A.I.D. supported consortia. Except as A.I.D. may otherwise agree in writing, the A.I.D. contribution will not exceed fifty percent of the estimated cost of the venture or \$3 million, whichever is lower. The remaining costs are expected to be financed by profit making entities of the consortia. Illustrative activities that could be supported under this component include:

- analysis and design of new or improved systems;
- fabrication of experimental hardware;
- laboratory testing of experimental hardware;

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- field testing of prototype hardware.
- short term training for key personnel directly associated with the project.

2. Competitive Awards Program

This component is inter-related with component one above. Under this component, ICICI will sponsor a competitive awards program whereby the topical areas eligible for support will be defined by the areas of the proposals accepted in component one. For example, if a consortia organizes itself around a problem in fluidized bed combustion, then requests for research and technology development proposals in the area of fluidized bed combustion will be issued. However, proposals that do not directly support Component I Consortium can also be considered if deemed particularly meritorious. The participants could be individuals from Indian research institutions, manufacturers and end users or collaborations among any of the three groups.

3. Supporting Analyses and Outreach

a. R&TD Strategy Formulation

Studies and analyses related to R&TD strategy formulation will be financed to provide guidance in setting research priorities and allocating Project resources and to facilitate preparation of annual and multi-year Project operating plans. This subcomponent, carried out mostly by Indian contractors and consultants, will help ensure that strategy formulation is not done in a vacuum and is based on sound information. Ideas for these studies could come from any source. Following is an illustrative list of the types of studies and analyses that could be financed:

- the potential impact of particular technology options;
- the market potential of new technologies;

- assessments that define the status of technologies of potential interest and the potential for improvement through well focussed R&TD;
- views of industry on technology needs.

b. Policy Analyses

Technology development and utilization are often influenced by government policies that either support or hinder rational decision making. It is important that R&D under this program be consistent with growing Indian interest and government policy trends to liberalize economic activity. To bring to the fore important policy issues that will increasingly dominate the sector, this sub-component will finance policy studies and analyses. Ideas for the studies could come from any source. Following is an illustrative list of topics:

- an analysis of the impact of specific policies to the use of improved technologies (for example, low electricity tariffs in agriculture will reduce incentive to develop high efficiency pumps);
- an assessment of a broader range of technology strategy issues that could impact on R&D priorities (for example, the broad issue of how decreasing oil prices affects the rationale for developing indigenous coal based or renewable energy systems for power generation).

c. Information Dissemination and Training

Workshops, seminars and other information dissemination activities that promote the culture of technology development and of R&TD collaboration will be sponsored under this subcomponent. Ideas for information dissemination activities could come from the Government of India, A.I.D., or unsolicited proposals.

Training financed under the Project will be directly related to proposals financed under components one and two. Approval mechanisms for activities envisioned under this subclause shall be separately worked out by ICICI and USAID in consultation with DNES and DEA.

Implementation Arrangements

The project will be administered by the Department of Non-Conventional Energy Sources (DNES). The ICICI will be responsible for releasing grant funds for approved subprojects and related activities. The project will be guided by an Energy Research and Development Advisory Committee (ERDAC). The Secretary, DNES will be the ex-officio chairman of ERDAC. The ERDAC will consist of 10-12 members with representation from ICICI, the industrial establishment, the research community, and energy end users such as electric utilities.

Besides representatives of DNES, DEA and the ICICI, ERDAC may include representatives of the Central Electricity Authority (CEA), the Tata Energy Research Institute (TERI), the Confederation of Engineering Industries (CEI), National Thermal Power Corporation (NTPC), National Productivity Council (NPC), GOI departments, a private sector utility such as the Ahmedabad Electric Company, a public sector utility such as the Maharashtra State Electricity Board, and two research organisations, probably the Indian Institutes of Science and one of the Indian Institutes of Technology. The member secretary of ERDAC will be the Energy Advisor, DNES. In any case it will be ensured that the GOI administrative ministry/department which is concerned with a proposal will be represented in the ERDAC deliberations on that proposal.

The ERDAC, which will meet on an as needed basis, will have the functional responsibilities described below. These responsibilities will be executed by the committee as a whole or by sub-groups of the committee as deemed appropriate:

- Approve policies and operational procedures for the project addressing, among other things, subproject solicitation, review, and approval mechanisms; financial mechanisms; cost sharing formulas; and monitoring and evaluation procedures;
- Approve the annual operating plans and budgets for the project;
- Guide and oversee the execution of the project and the operations of the participating financial institutions.
- Review the progress under Components One and Two of the project through the peer group constituted by it for the purpose;
- Commission studies, analyses, and assessments to be financed under Component Three of the project;
- Sponsor workshops and seminars financed under Component Three of the project.

The Component One Peer Review Committee (PRC-I) will consist of representative from each of the following: a research organization, a manufacturing unit, an end-user unit, and the GOI. Component Two proposals will be reviewed by committee whose composition will be slanted more toward science interests. This Committee - the Component Two Peer Review Committee (PRC-II) - will consist of a representative of a manufacturing unit, a representative of the GOI, and two representatives of research organizations. Peer Review Committee members will be recommended to the respective departments by the Advisory Council. Committee members will be chosen for their expertise in the subject matter at hand and for their willingness to provide a thorough and timely review. A.I.D. will provide specific inputs on technology assessment, state of art in the U.S., and identification/verification of possible U.S. collaborators.

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ICICI, which is engaged in the execution of PACT and similar activities and has facilities for this purpose at its head office at Bombay, will organize the Secretariat for execution of the project. The cost of Secretariat will be met out of the Grant funds as shown in Attachments A and B to Annex 1 to this Agreement. The Secretariat will comprise specialists in engineering, management and finance. The Secretariat will work in close co-operation with the Office of the Energy Advisor, DNES as focal point at DNES for the project. As the project progresses the Advisory Committee may additionally invite Indian Renewable Energy Development Agency, Ltd. (IREDA)* to participate in the execution of the project. It is at this point the parties to the agreement may also decide to provide direct financing to IREDA for its activities considered conducive for the implementation of the project. The nature, quantum and method of financing will be decided by ERDAC. The responsibilities of the Secretariat will include:

- Ensuring that the policies and operating procedures are respected by the project participants;
- Advising potential subproject participants on the proposal submission, review and approval process;
- Development and evaluation of subprojects to be financed;
- Monitoring and reporting on the on-going progress of project financed activities;
- Organising promotional activities including workshop, study tours, seminars and other information dissemination activities;

* IREDA has been recently established under DNES with the main objective of promoting projects relating to new and renewable sources of energy and providing partial financial support on projects concerning generation and/or conservation of energy through non-conventional and renewable energy sources.

- Undertaking the staff work necessary in preparation for meetings of the ERDAC;
- Following up on the recommendations of the ERDAC;
- Acting as the liaison for the project with the Department of Economic Affairs and USAID.

Project Funding

The total Project cost is estimated at \$32.0 million. An estimated \$12 million will be contributed by the prospective subgrantees (project participants). A.I.D. intends to contribute \$20 million. A.I.D. contribution is subject to the availability of funds for this Project. The Project financial plan for the Life of the Project (LOP) and for the initial incremental funding is provided in Attachments A and B to this Annex 1.

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PROGRAM FOR ACCELERATION OF COMMERCIAL ENERGY RESEARCH (PACER)

Illustrative Summary of Project Costs through Life of Project
(\$000)

<u>C a t e g o r y</u>	<u>USAID Contri- bution</u>	<u>Subproject Participant contributions</u>	<u>TOTAL</u>
Market Driven Technology Dev. Consortia	11,000	11,000	22,000
Competitive Awards Program	4,000	1,000	5,000
Supporting Analyses and Outreach	2,700	-	2,700
U.S. Short-Term Technical Assistance (outside of Component One, Two and Three)	700	-	700
Project Administration including Secretariat	1,500	-	1,500
Project Evaluation	<u>100</u> 20,000	<u>-</u> 12,000	<u>100</u> 32,000
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PROGRAM FOR ACCELERATION OF COMMERCIAL ENERGY RESEARCH (PACER)

Illustrative Summary of Project Costs through this Initial Agreement
(\$000)

<u>C a t e g o r y</u>	<u>USAID Contri- bution</u>	<u>Subproject Participant contributions</u>	<u>TOTAL</u>
Market Driven Technology Dev. Consortia	2,750	2,750	5,500
Competitive Awards Program	1,000	250	1,250
Supporting Analyses and Outreach	675	-	675
U.S. Short-Term Technical Assistance (outside of Component One, Two and Three)	175	-	175
Project Administration including Secretariat	375	-	375
Project Evaluation	25	-	25
	<u>5,000</u>	<u>3,000</u>	<u>8,000</u>
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A.I.D. Project No. 386-0494

Project Grant Standard Provisions Annex

Definitions: As used in this Annex, the word "Agreement" refers to the Project Grant 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 Grantee in the implementation of the Project, A.I.D. from time to time will issue Project Implementation Letters 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.

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SECTION B.2. Execution of Project. Grantee 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, 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 Grant 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 and services financed under the Grant, 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 Grant will be free from any taxation or fees imposed under any of the central, state (including Union Territories), city or municipal laws in effect in India;

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(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Grant, and any property or transaction relating to such contracts and (2) any commodity procurement transaction financed under the Grant, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in India, Grantee will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Grant.

SECTION B.5. Reports, Records, Inspections, Audit. The Grantee 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, its Special Account and to this Agreement adequate to show the receipt and use of goods and services acquired under the Grant. 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 financed by A.I.D. and books, records and other documents relating to the Project, its Special Account and the Grant.



SECTION B.6. Completeness of Information. Grantee 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 Grant; 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. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant except fees, taxes, or similar payments legally established in India.

SECTION B.8. Information and Marking. The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, identify the Project site, and 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.

(b) Premiums for marine insurance placed in India will be deemed an eligible foreign exchange cost, if otherwise eligible under Section C.7.(a).

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

(d) Transportation by air, financed under the Grant, of property or persons, will be on carriers holding United States Certification, to the extent service by such carriers is available. Details of this requirement will be described in a Project Implementation Letter.

SECTION C.2. Eligibility Date. No goods or services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into 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 Grantee 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 Grant, 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 to 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 Grant 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 Grant for engineering and other professional services, for construction services, and for such other

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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 Grant. 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 Grant, the Grantee 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 India may not be financed under the Grant 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 Grantee, 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 Grant, 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 the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs", without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to the Cooperating Country, 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 India 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 India may be financed under the Grant 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 are financed or in any freely convertible currency. If the Grantee or the Government of India, 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 India 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 Grantee will insure, or cause to be insured, goods financed under the Grant imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued

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on terms and conditions consistent with sound commercial practice and will insure the full value of goods. Any indemnification received by the Grantee 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 Grantee 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 the replacement, and, except, as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

SECTION C.8. U.S. Government-owned Excess Property.

Grantee agrees that, wherever practicable, United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

Article D: Termination; Remedies

SECTION D.1. Termination by A.I.D. or Grantee

A.I.D., or Grantee may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant 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.

SECTION D.2. 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 under this Agreement, may require Grantee to refund the amount of such disbursement in the U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant are not used effectively in accordance with this Agreement, A.I.D. may require Grantee 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 therefore.

(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 Grant, 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 reduce the amount of the Grant.

SECTION D.3. 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.

SECTION D.4. Assignment. Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.

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