

CONFORMED COPY

LOAN NUMBER 4014 IN

Project Agreement

(Orissa Power Sector Restructuring Project)

among

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

GRID CORPORATION OF ORISSA LIMITED
and
ORISSA HYDRO POWER CORPORATION LIMITED

Dated July 10, 1996

LOAN NUMBER 4014 IN

PROJECT AGREEMENT

AGREEMENT, dated July 10, 1996, among INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and ORISSA HYDRO POWER CORPORATION LIMITED (OHPC) and GRID CORPORATION OF ORISSA LIMITED (GRIDCO).

WHEREAS (A) by the Loan Agreement of even date herewith between India, acting by its President (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to three hundred fifty million dollars (\$350,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that GRIDCO and OHPC agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by subsidiary loan agreements to be entered into between the State of Orissa and GRIDCO and OHPC, respectively, part of the proceeds of the loan provided for under the Loan Agreement and made available to Orissa will be relented to GRIDCO and OHPC on the terms and conditions set forth in said Subsidiary Loan Agreements; and

WHEREAS GRIDCO and OHPC, in consideration of the Bank's entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

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

ARTICLE II

Execution of the Project

Section 2.01. (a) GRIDCO and OHPC declare their commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, GRIDCO shall carry out Parts A and B and its respective activities under Part C of the Project and OHPC shall carry out its respective activities under Part C of the Project, all with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section, and except as the Bank shall otherwise agree, works to be carried out by GRIDCO under Parts A and B.2 of the Project respectively shall meet the criteria set forth or referred to in Schedule 2 to this Agreement and GRIDCO shall submit to the Bank for its approval, the works proposed to be financed out of the proceeds of the Loan including all details in respect of the criteria to be met and such other information as the Bank shall reasonably request.

(c) GRIDCO shall carry out the works approved for financing pursuant to the provision of paragraph (b) of this Section 2.01 under the following arrangements:

- (i) for activities under Parts A and B.2 of the Project, in accordance with technical specifications and standards satisfactory to the Bank; and
- (ii) for activities under Part A of the Project, in accordance with the objectives, policies, principles and time schedule of the environmental mitigation plan, the resettlement and rehabilitation plan and the materials management plan formulated pursuant to the provisions of Part I (c) of Schedule 2 to this Agreement.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

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

(b) Without limitation upon the provisions of Section 9.07 of the General Conditions, GRIDCO and OHPC shall:

- (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Bank and GRIDCO and OHPC, a plan for the future operation of the Project;
- (ii) afford the Bank a reasonable opportunity to exchange views with GRIDCO and OHPC on said plan; and

- (iii) thereafter, carry out said plan with due diligence and efficiency and in accordance with appropriate practices, taking into account the Bank's comments thereon.

Section 2.04. GRIDCO and OHPC shall duly perform all their obligations under the Subsidiary Loan Agreements. Except as the Bank shall otherwise agree, GRIDCO and OHPC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreements or any provision thereof.

Section 2.05. Without limitation upon the provisions of Section 2.01 hereof and Sections 2.01, 2.02 and 2.03 of the Orissa Agreement, GRIDCO may carry out activities under Part B.2 of the Project through End-Users under arrangements and guidelines satisfactory to the Bank, including inter alia, an implementation contract by which GRIDCO shall obtain rights adequate to protect the interests of the Bank, the Borrower, Orissa and GRIDCO, including such rights in respect of the carrying out and operation of the approved activities as shall be satisfactory to the Bank, provided, however, that prior approval of the Bank shall not be required in respect of an activity under such Part B.2 costing less than the equivalent of \$200,000.

Section 2.06. (a) GRIDCO and OHPC shall, at the request of the Bank, exchange views with the Bank with regard to progress of the Project, the performance of their respective obligations under this Agreement and under the Subsidiary Loan Agreements, and other matters relating to the purposes of the Loan.

(b) GRIDCO and OHPC shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by GRIDCO and OHPC of their obligations under this Agreement and under the Subsidiary Loan Agreements.

ARTICLE III

Management and Operations of GRIDCO and OHPC

Section 3.01. GRIDCO and OHPC shall carry on their operations and conduct their affairs in accordance with sound administrative, financial and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. GRIDCO and OHPC shall at all times operate and maintain their plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and public utility practices.

Section 3.03. GRIDCO and OHPC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.04. GRIDCO and OHPC shall:

(a) furnish their respective five-year staff transition plans to the Bank for comments no later than December 31, 1996;

(b) develop and adopt "Employee Classification, Control and Appeal" regulations and "Recruitment and Promotion" regulations by December 31, 1996; and

(c) complete the transfer of staff to their respective cadres by March 31, 1997.

Section 3.05. GRIDCO and OHPC shall take all such measures as may be necessary or required on their part to enable Orissa to fulfill its obligations under Section 3.01 of the Orissa Agreement.

Section 3.06. GRIDCO and OHPC shall list their shares on a recognized stock exchange and offer them for sale to the public in accordance with a program satisfactory to the Bank.

Section 3.07. (a) GRIDCO shall offer to Private Distribution Companies its assets used in its distribution system in the Distribution Areas for lease or sale under terms and conditions satisfactory to the Bank, without prejudice to the interests of GRIDCO, with the objective of transferring such distribution system to the private sector in accordance with a program and timetable satisfactory to the Bank;

(b) take all such measures as may be necessary or required for efficiently implementing the transactions resulting from such offer; and

(c) where no responses are received to such offers or those that are received are not deemed responsive by GRIDCO, revise the terms and conditions of such offer in a manner satisfactory to the Bank and take such other steps which shall, without prejudice to the interests of GRIDCO, be adequate in the view of the Bank, to making such offers attractive for acceptance by Private Distribution Companies.

Section 3.08. (a) GRIDCO shall ensure that any lease agreement entered into by it with a Private Distribution Company in respect of the lease of its distribution assets in any Distribution Area pursuant to the provisions of Section 3.07 hereof contain terms and conditions satisfactory to the Bank, including provisions to ensure that the obligations undertaken by GRIDCO under this Agreement in respect of distribution activities financed under Part A of the Project in such Distribution Area (transferred activities) shall be discharged on its behalf by the Private Distribution Company in a manner satisfactory to the Bank.

(b) Towards that end, GRIDCO shall provide to the Bank drafts of such lease agreement for approval prior to their execution.

(c) GRIDCO shall further ensure that if, in connection with the execution of such contract or agreement, the Bank deems it to be necessary, the Private Distribution Company shall, in respect of the transferred activities, enter into an implementation contract with Orissa referred to in Section 2.03 (a) (iv) of the Orissa Agreement, comply with the other requirements of such Section 2.03 (a), enter into a Subsidiary Loan Agreement with Orissa on terms and conditions set forth in Section 2.02 of the Orissa Agreement, and enter into such other agreements as the Bank may request.

Section 3.09. The provisions of Section 3.08 hereof shall apply, mutatis mutandis, to a sale contract entered into by GRIDCO with a Private Distribution Company in respect of the sale of its distribution assets in any Distribution Area where such Company agrees, with the approval of the Bank, to continue with the implementation of the distribution activities undertaken by GRIDCO under Part A of the Project in such Distribution Area using the proceeds of the Bank Loan and assumes the related liabilities of GRIDCO under its Subsidiary Loan Agreement with Orissa. In the absence of agreement by such a Company in these areas, GRIDCO shall take such actions as the Bank may request in respect of its related obligations under the Project Agreement and the Subsidiary Loan Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) GRIDCO and OHPC shall maintain records and accounts adequate to reflect in accordance with sound accounting practices their operations and financial condition.

(b) GRIDCO and OHPC shall:

(i) have their records, accounts and financial state-

ments (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

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

Section 4.02. (a) Except as the Bank shall otherwise agree:

- (i) OHPC shall, from time to time, take all such measures (including, without limitation, adjustments of the structure and levels of tariffs) and conduct its operations and affairs in such manner as to achieve, in Fiscal Year 1996/97, revenues from all sources related to operations and non-operating income sufficient to cover all expenses related to operations including administration, adequate maintenance, taxes, payments in lieu of taxes, adequate depreciation and other non-cash operating charges and interest and other charges on debt, and in each subsequent Fiscal Year such rate as may be permissible under applicable notifications issued by the Borrower.
- (ii) GRIDCO shall, from time to time, take all such measures (including, without limitation, adjustments of the structure and levels of tariffs) and conduct its operations and affairs in such manner as to produce: (A) in Fiscal Year 1996/97, revenues from all sources related to operations and net non-operations income sufficient to cover all expenses related to operations including administration, adequate maintenance, taxes, payments in lieu of taxes, and interest and other charges on debt; and (B) in Fiscal Year 1997/98, a rate of return on its capital base of not less than 10% and in each subsequent Fiscal Year such rate as may be permissible under the Electricity Act or prescribed by the Regulator, whichever is higher; and
- (iii) GRIDCO and OHPC shall not incur any debt, unless a reasonable forecast of the revenues and expenditures of GRIDCO and OHPC beginning with Fiscal Year 1997/98 shows that the estimated net revenues of GRIDCO and OHPC for each Fiscal Year during the term of the debt to be incurred shall be at least 1.5 times the estimated debt service requirements of GRIDCO and OHPC in such year on all debt of GRIDCO and OHPC, including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of GRIDCO and OHPC maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification

of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

- (iii) The term "net revenues" means the difference between: (A) the sum of revenues from all sources related to operations and net non-operating income; and (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between: (A) revenues from all sources other than those related to operations; and (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on debt.
- (vi) The term "reasonable forecast" means a forecast prepared by GRIDCO and OHPC not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and GRIDCO or OHPC, as the case may be accept as reasonable and as to which the Bank has notified GRIDCO or OHPC of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of GRIDCO or OHPC.
- (vii) Whenever for the purposes of this Section, it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing official rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.
- (viii) Capital base shall be calculated in the manner prescribed in paragraph XVII of the Sixth Schedule to the Electricity Act or by the Regulator.
- (ix) For the purpose of clause (ii) of paragraph (a) of this Section, the annual rate of return for any Fiscal Year shall be calculated by expressing the net income for the particular Fiscal Year as a percentage of the average of the equity base in the case of OHPC and the capital base in the case of GRIDCO at the beginning and end of such Fiscal Year.
- (x) "Net income" means total operating revenues from the sale of electricity and from other services incidental thereto; less all administration, operating and maintenance expenses, adequate provision for depreciation, and taxes (including income taxes), interest and other charges on debt.
- (xi) The term "interest and other charges on debt" means and includes all interest accrued on debt, excluding interest charges which are incurred in financing

capital expenditures during construction, if such charges are capitalized, and any other charges payable on debt.

Section 4.03. GRIDCO and OHPC shall take all steps necessary to maintain their accounts receivable at a level not exceeding an amount equivalent to the proceeds of their sales of power for the two preceding months, and accounts payable not exceeding two months of their purchases of power.

Section 4.04. GRIDCO and OHPC shall furnish to the Bank by December 31 of each Fiscal Year during the implementation of the Project commencing with Fiscal Year 1996/97: (a) their five year financial projections, including their updated Investment Plan and financing plan for review by the Bank and for comments, if any; and

(b) a report reviewing the adequacy of their tariffs to meet the requirements set forth in Section 4.02 (a) (i) and (ii) of this Agreement.

ARTICLE V

Effective Date; Termination;
Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of GRIDCO and OHPC thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify GRIDCO and OHPC thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

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

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

197688 (TRT),
248423 (RCA),
64145 (WUI) or
82987 (FTCC)

For OHPC:

Orissa Hydro Power Corporation Limited
Bhubaneswar
India

Telex:
(0675) 6215

For GRIDCO:

Grid Corporation of Orissa Limited
Bhubaneswar
India

Telex:
(0675) 6215

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of GRIDCO and OHPC, may be taken or executed by its Managing Director or such other person or persons as GRIDCO and OHPC shall designate in writing, and GRIDCO and OHPC shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

Section 6.04. Any amendment to the provisions of this Agreement as applicable to GRIDCO and OHPC may be made by an agreement between the Bank and GRIDCO or OHPC, as the case may be.

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

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Heinz Vergin
Acting Regional Vice President
South Asia

GRID CORPORATION OF ORISSA LIMITED

By /s/ N. Valluri
Authorized Representative

ORISSA HYDRO POWER CORPORATION LIMITED

By /s/ N. Valluri
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD

Loans and IDA Credits" published by the Bank in January 1995 and revised in January 1996 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B:

- (a) Preference for domestically manufactured goods and domestic contractors

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

- (b) Dispute Review Board

Each contract for works estimated to cost \$50,000,000 equivalent or more shall include the provisions for a dispute review board set forth in the standard bidding documents for works referred to in paragraph 2.12 of the Guidelines.

- (c) Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

Part C: Other Procurement Procedures

1. National Competitive Bidding

Contracts for small items estimated to cost less than the equivalent of \$250,000 per contract up to an aggregate amount not to exceed \$20,000,000 equivalent may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. National Shopping

Contracts for small items estimated to cost less than the equivalent of \$25,000 per contract up to an aggregate amount not to exceed \$5,000,000 equivalent, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for works and goods estimated to cost the equivalent of \$500,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts awarded in accordance with the provisions of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines). For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications thereto as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Bank shall be used.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Bank review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts, shall not apply to (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each or (b) contracts for the employment of individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Bank review shall not apply to (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Bank, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 2

Eligibility Criteria

The following eligibility criteria shall apply for activities to be carried out under Parts A and B.2 of the Project by GRIDCO referred to in Section 2.01 (b) of this Agreement.

Part I: Transmission and Distribution by GRIDCO Under Part A of the Project

(a) The justification (in the context of the overall transmission and distribution development plan) and technical feasibility of the proposed transmission and distribution investment shall have been established to the satisfaction of the Bank;

(b) All clearances/approvals including environmental clearances shall have been obtained from the relevant ministries, departments, agencies or other authorities of the Borrower and Orissa and documented in the project report;

(c) An environmental assessment shall have been carried out, and an environmental mitigation plan, a resettlement and rehabilitation plan, if needed based on the environment assessment report and a plan for the handling of materials to be replaced in the rehabilitation program, satisfactory to the Bank, shall have been prepared; and

(d) A procurement plan shall have been prepared in accordance with the overall procurement strategy, namely bulk procurement of main items, turnkey construction by prequalified contractors (except for these owner-supplied main items).

Part II: Demand-Side Management Activities by GRIDCO Under Part B.2 of the Project

(a) Justification and technical feasibility of the proposed activity shall have been established to the satisfaction of the Bank;

(b) Financing and procurement plans acceptable to the Bank shall have been prepared; and

(c) Activities below a threshold value of \$200,000 equivalent shall not require prior Bank approval.

