

CONFORMED COPY

OTG GRANT NUMBER 22006 MA

OZONE PROJECTS TRUST FUND
GRANT AGREEMENT

(Montreal Protocol Ozone Depleting
Substances Phase Out Investment Project)

Between

MALAYSIA

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Acting as Trustee of the Ozone Projects
Trust Fund

Dated October 23, 1995

GRANT NUMBER 22006 MA

OZONE PROJECTS TRUST FUND GRANT AGREEMENT

AGREEMENT, dated October 23, 1995, between MALAYSIA (the "Recipient") and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, acting as Trustee of grant funds provided by Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer into the Ozone Projects Trust Fund ("OTF") (the "Trustee").²²

WHEREAS: (A) The International Bank for Reconstruction and Development (the "Bank"), pursuant to Resolution No. 91-5 of March 14, 1991, of the Executive Directors of the Bank (the "Resolution"), established a Facility, including the OTF, to assist in the protection of the global environment and promote thereby environmentally sound and sustainable economic development, and whereas following the restructuring of the Global Environmental Facility (the GEF) such arrangements are continued in place on the basis set forth in Resolutions Nos. 94-2 and 94-3 of the Executive Directors dated May 24, 1994;

WHEREAS: (B) The Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention for the Protection of the Ozone Layer have established the Multilateral Fund (the "Fund") for the Implementation of the Montreal Protocol to operate under the authority of the said Parties to provide the financing of agreed incremental costs to enable the Parties operating under paragraph 1 of Article 5 of the Protocol to comply with control measures provided for in the Protocol;

WHEREAS: (C) The Executive Committee of the Fund (the "Executive Committee") and the Bank have entered into an agreement effective on July 9, 1991, pursuant to which the Executive Committee has agreed to provide funds into the OTF to be administered by the Bank as Trustee in accordance with the provisions of the said agreement and the Resolution;

WHEREAS: (D) The Recipient, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested assistance from the resources of the OTT in the financing of the Project, and the Trustee has determined that such assistance would be in accordance with the provisions of the Resolution; and

WHEREAS: (E) The Trustee has agreed, on the basis, inter alia, of the foregoing, to extend a grant (the "OTF Grant") to the Recipient upon the terms and conditions set forth in this Agreement.

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The following provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 1, 1985, with the modifications set forth in paragraph (b) of this Section (the "General Conditions") constitute an integral part of this Agreement:

- (i) Article I;
 - (ii) Sections 2.01 (1), (2), (3), (4), (6), (8), (9), (10), (11), (15), (18) and (20), 2.02 and 2.03;
 - (iii) Section 3.01;
 - (iv) Section 4.01 and the first sentence of Section 4.09;
 - (v) Article V;
 - (vi) Sections 6.01, 6.02 (c), (e), (f), (g), (i) and (k), 6.03, 6.04 and 6.06;
 - (vii) Section 8.01(b);
 - (viii) Sections 9.01 (a) and (c), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09;
 - (ix) Sections 10.01, 10.03 and 10.04;
 - (x) Article XI; and
 - (xi) Sections 12.03 and 12.04.
- (b) The General Conditions shall be modified as follows:
- (i) The term "Bank", wherever used in the General Conditions, other than in Sections 2.01 (8) and 6.02 (f) thereof and the last use of such term in Section 5.01 thereof, means the Trustee except that in Section 6.02, the term "Bank" shall also include the International Bank for Reconstruction and Development acting in its own capacity;
 - (ii) The term "Borrower", wherever used in the General Conditions, means the Recipient;
 - (iii) The term "Loan Agreement", wherever used in the General Conditions, means this Agreement;
 - (iv) The term "Loan" and "loan" wherever used in the General Conditions, means the OTF Grant; and
 - (v) The term "Loan Account" wherever used in the General

Conditions, means the OTF Grant Account; and

(vi) The second sentence of Section 5.01 is modified to read:

"Except as the Bank and the Recipient shall otherwise agree, no withdrawals shall be made:

(a) on account of expenditures in the territories of any country which is not a member of the Bank or for goods produced in, or services supplied from, such territories; or

(b) for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations."

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Recitals to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Beneficiary" means any private or public sector entity which shall carry out a Sub-project;

(b) "Country Program" means the Recipient's Country Program for the Phase Out of Ozone-Depleting Substances, as approved by the Executive Committee in February 1992;

(c) "DOE" means the Department of Environment of the Recipient;

(d) "Fiscal Year" means the twelve (12) month period corresponding to any of the Recipient's fiscal years, which period commences on January 1 and ends on December 31 in each calendar year;

(e) "CETEC" means the Centre for Environmental Technologies, a non-governmental organization established and operating under the Memorandum and Articles of Association of CETEC dated October 15, 1992;

(f) "MOA" means the Memorandum of Agreement to be entered into between DOE and CETEC referred to in Section 3.03 of this Agreement;

(g) "EPU" means Economic Planning Unit within the Office of the Prime Minister of the Recipient;

(h) "ODS" means ozone depleting substances;

(i) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(j) "Sub-grant" means a grant to be provided under a Sub-grant Agreement to finance a Sub-project;

(k) "Sub-grant Agreement" means the agreement referred to in Section 3.05 (a) of this Agreement;

(l) "Sub-project" means a project, selected and prepared in accordance with the Operating Policy Guidelines (as such term is defined in Sub-paragraph (m) herein below), and approved by the Trustee or the Executive Committee, as the case may be, consisting of investments and other activities eligible under the Protocol which result in reduction of ODS use or in the substitution of non-ozone depleting technologies for ozone depleting technologies; and

(m) "Operating Policy Guidelines" and "OPG" means the guidelines, submitted to the Trustee by the Recipient for the preparation and implementation of Sub-projects to phase out depleting substances financed under the OTF of Montreal Protocol, pursuant to the provisions of Section 3.04 of this Agreement.

ARTICLE II

The OTF Grant

Section 2.01. The Trustee agrees to make available to the Recipient, on the

terms and conditions set forth or referred to in this Agreement, the OTF Grant in an amount in various currencies not to exceed the equivalent of twenty million dollars (\$20,000,000).

Section 2.02. (a) The amount of the OTF Grant may be withdrawn from the OTF Grant Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Trustee shall so agree, to be made) in respect of the reasonable cost of goods and services required for carrying out the Project, and to be financed out of the proceeds of the OTF Grant.

(b) The Recipient shall, for the purposes of the Project, open and maintain in dollars a special deposit account in its Central Bank and on terms and conditions satisfactory to the Trustee. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 6 to this Agreement.

Section 2.03. DOE is hereby designated as representative of the Recipient for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

Section 2.04. The Closing Date shall be June 30, 1999, or such later date as the Trustee shall establish. The Trustee shall promptly notify the Recipient of such later date.

Section 2.05. The Trustee shall not be obligated to make any payment under this Agreement, except to the extent it shall have received funds for the purposes of the Project from the Executive Committee referred to in WHEREAS Clause (C) of the Preamble to this Agreement.

ARTICLE III

Execution of the Project

Section 3.01. The Recipient declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out the Project through DOE with due diligence and efficiency and in conformity with appropriate administrative, economic, engineering, and financial practices and with due regard to ecological and environmental factors, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 3.02. Except as the Trustee shall otherwise agree, procurement of goods, works and consultants' services required for the Project, and to be financed out of the proceeds of the OTT Grant, shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. For the purposes of the implementation of the Project, the Recipient shall:

(a) make the proceeds of the OTF Grant available to DOE and promptly thereafter, cause DOE to make the appropriate proceeds of the OTF Grant available to each Beneficiary to carry out its respective Sub-project, under a Sub-grant Agreement, which shall have been approved by the Trustee, to be entered into between DOE and each Beneficiary in accordance with the provisions of Section 3.05 of, and Schedule 4 to, this Agreement; and

(b) cause DOE to enter into a Memorandum of Agreement with CETEC appointing CETEC as the implementing agent for the Project, which agreement shall have been approved by the Trustee and be in accordance with the provisions of Schedule 5 to this Agreement.

Section 3.04. (a) The Recipient shall prepare, or cause to be prepared, Operating Policy Guidelines, satisfactory to the Trustee, setting forth the terms and conditions and related procedures for the conditions precedent to the effectiveness of such-projects and the contracting, processing, financing and monitoring the carrying out of Sub-projects, which Guidelines shall include, inter alia, a model Sub-grant Agreement satisfactory to the Trustee.

(b) When submitting a Sub-project to the Trustee for approval of the Trustee or the Executive Committee (as the case may be, pursuant to Sub-paragraphs 2 (b) and (c) of Schedule 1 to this Agreement), the Recipient shall furnish to the Trustee an application, in form and substance satisfactory to the Trustee, containing inter alia:

(i) an appraisal of the Sub-project, in accordance with the provisions

of OPG and description of the expenditures proposed to be financed out of the proceeds of the OTF Grant.

- (ii) a certification issued by DOE confirming that the proposed Sub-project complies with the environmental regulations of the Recipient.
- (iii) a draft sub-grant Agreement; and
- (iv) such other information as the Trustee or the Executive Committee shall reasonably request in respect of such Sub-project.

Section 3.05. (a) The Recipient shall cause DOE to enter into a Sub-grant Agreement with each Beneficiary, under terms and conditions acceptable to the Trustee, including those set forth in schedule 4 to this Agreement, providing for the transfer, on a grant basis, of the proceeds of the OTF Grant allocated to such Beneficiary's Sub-project and the obligation of the Beneficiary to carry out such Sub-project.

(b) The Recipient shall cause DOE to exercise its rights under the Sub-grant Agreement in such a manner as to protect the interests of the Recipient, DOE and the Trustee and to accomplish the purposes of the OTF Grant, and, except as the Trustee shall otherwise agree, the Recipient shall not permit DOE to assign, amend, abrogate or waive the Sub-grant Agreement or any part thereof.

Section 3.06. For each Sub-project approved by the Trustee in accordance with the provisions of this Agreement, CETEC shall be entitled to an agency fee in an amount not to exceed the equivalent of three percent (3%) of the amounts disbursed under each Sub-grant Agreement, such fee to be paid out of the proceeds of the OTF Grant as follows:

- (a) one percent (1 %) of the Sub-grant amount after approval of the Sub-project by the Trustee; and
- (b) the remaining two percent (2%), pro-rata, on the dates of disbursement of the Sub-grant proceeds under the Sub-grant Agreement.

Section 3.07. The Recipient shall, during the execution of the Project, maintain DOE's Montreal Protocol Desk, responsible for the overall management and coordination of the implementation of the Project, with qualified staff in adequate numbers and with all necessary resources.

Section 3.08. Except as the Recipient shall otherwise agree, the Recipient and DOE shall, carry out annual reviews, jointly with the Trustee, to monitor progress in Project implementation, including the need for adjustments to the MOA, the OPG, and the model Sub-grant Agreement, when such amendments shall be deemed to be necessary to achieve Project objectives. The first of such annual reviews shall be carried out by not later than six (6) months after the Effective Date.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Recipient shall:

- (i) maintain, or cause to be maintained, records and separate accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments, agencies or entities of the Recipient responsible for carrying out the Project or any part thereof; and
- (ii) cause each Beneficiary to maintain records and separate accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures of such Beneficiary in respect of its Sub-project.

(b) The Recipient shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section including those for the Special Account for each Fiscal Year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Trustee;

- (ii) furnish to the Trustee as soon as available, but in any case not later than six (6) months after the end of each such year, the report of such audit by said auditors, of such scope and in such details as the Trustee shall have reasonably requested; and
- (iii) furnish to the Trustee such other information concerning said records and accounts and the audit thereof as the Trustee shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the OTF Grant Account were made on the basis of statements of expenditure, the Recipient shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and separate accounts reflecting such expenditures;
- (ii) retain, until at least one (1) year after the Trustee has received the audit report for the Fiscal Year in which the last withdrawal from the OTF Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Trustee's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such Fiscal Year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

ARTICLE V

Remedies of the Trustee

Section 5.01. Pursuant to Section 6.02(k) of the General Conditions, the following additional events are specified, namely:

- (a) Either the Memorandum or Articles of Association of CETEC shall have been amended, suspended or abrogated aimed at the dissolution or disestablishment of CETEC, or for the suspension of its operations;
- (b) The Recipient, or any other authority, shall have taken any action, including but without limitation the enactment or issuance of legislation or regulations, which, in the opinion of the Trustee, may adversely affect, prevent or interfere with the carrying out of the Project, or any part thereof; or
- (c) DOE or CETEC shall have failed to perform any of their respective obligations under the MOA.

ARTICLE VI

Effectiveness; Termination

Section 6.01. The following events are specified as conditions to the effectiveness of this Agreement.

- (a) the MOA, satisfactory to the Trustee, shall have been duly executed by, and is legally binding upon DOE and CETEC in accordance with its terms; and
- (b) the Operating Policies Guidelines, including a standard sub-grant Agreement satisfactory to the Trustee, shall have been issued pursuant to the provisions of Section 3.04(a) of this Agreement and have been approved by the Recipient.

Section 6.02. The date one hundred twenty (120) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.03. This Agreement shall continue in effect until parties to this

Agreement have fulfilled all their obligations hereunder.

ARTICLE VII

Representative of the Recipient: Address

7.01. The Director General of the Economic Planning Unit of the Prime Minister's Office of the Recipient is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

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

For the Recipient:

Director General
Economic Planning Unit
Prime Minister's Department
Jalan Dato'Onn
50592 Kuala Lumpur
Malaysia

Cable address

Telex

ECONOMICS
Kuala Lumpur

EPU MA 30098

For the Trustee :

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

Cable address:

Telex:

INTBAFRAD
Washington

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

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.

MALAYSIA

By /s/ Dato' Ali Abul Hassan b. Sulaiman

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
as Trustee of the Ozone Projects Trust Fund

By /s/ Callisto Madavo

Regional Vice President

SCHEDULE 1

Withdrawal of the Proceeds of the OTF Grant

1. The table below sets forth the Categories of items to be financed out of the proceeds of the OTF Grant, the allocation of the amounts of the OTF Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the OTT Grant Allocated (Expressed in Dollar Equivalent)	% of Expenditures to be Financed
(1) Goods, works and services under Sub-grants	19,417,000	100% of amounts disbursed
(2) CETEC's fee Agreement	583,000	Amount due pursuant to Section 3.06 of this
TOTAL	20,000,000	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures:

(a) Prior to the date of this Agreement, except that withdrawals, in an aggregate amount not to exceed the equivalent of twenty million dollars (\$20,000,000), may be made in respect of Categories (1) and (2) on account of payments made for expenditures before that date but after August 29, 1989;

(b) Under a Sub-project estimated to cost the equivalent of \$500,000 or more, unless the Executive Committee has approved such Sub-project;

(c) Under a Sub-project estimated to cost the equivalent of less than \$500,000, unless the Trustee has approved such Sub-project;

(d) Under any Sub-project unless the respective Sub-grant Agreement has been entered into between the parties thereto; and

(e) For import tariffs, duties, value-added taxes, or other transfer taxes or fees.

3. If the Trustee shall have determined that any payment made from the OTF Grant Account was used for any expenditure not consistent with the provisions of this Agreement, the Recipient shall, promptly upon notice from the Trustee, refund to the Trustee, for deposit into the OTF Grant Account, an amount equal to the amount so used or the portion thereof as specified by the Trustee.

4. The Trustee may require withdrawals from the Grant Account to be made on the basis of statements of expenditure for expenditures under contract for.

(a) goods and works not exceeding two million dollars (\$2,000,000);

(b) the employment of consulting firms estimated to cost less than \$100,000; and

(c) the employment of individual consultants, estimated to cost less than \$50,000, under such terms and conditions as the Bank shall specify by notice to the Borrower.

SCHEDULE 2

Description of the Project

The overall objective of the Project is to assist the Recipient in carrying out

its Country Program aimed at phasing-out the use of ozone depleting substances within its territory through the implementation of cost-effective priority investments.

The Project consists of the following part, subject to such modifications thereof as the Recipient and the Trustee may agree upon from time to time to achieve such objectives:

Provision of Sub-grants for the carrying out of specific Sub-projects to reduce consumption of ozone depleting substances.

The Project is expected to be completed by December 31, 1998.

SCHEDULE 3

Procurement

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 (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 provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. Preference for Domestically Manufactured Goods

In the procurement of goods under contracts awarded in accordance with the provisions of paragraph 1 of this Part B, the provisions of paragraph 2.54 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Recipient.

Part C: Other Procurement Procedures

1. International and National Shopping

Goods estimated to cost \$2,000,000 equivalent or less per contract may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines; provided, however, that goods estimated to cost \$200,000 equivalent or less per contract 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.

2. Direct Contracting

Goods which are (a) of a proprietary nature, (b) must be purchased from the original supplier to be compatible with existing equipment, or, (c) must be procured from a particular supplier as a condition of a performance guarantee, may, with the Trustee's prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

Part D: Review by the Trustee of Procurement Decisions

1. Prior Review

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

(b) With respect to each contract for goods to be procured in accordance with the provisions set forth in Part C.2 of this Schedule (Direct Contracting), the Recipient shall obtain the prior approval of the Trustee. For this purpose the Recipient shall, either as part of the application set forth in Section 3.04 (b) of this Agreement or prior to the entering into the respective contract, furnish to the

Trustee the name of the supplier, the type, specifications and estimated cost of the goods and the justification for procuring such goods through Direct Contracting.

2. 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 4

Terms and Conditions of Sub-grants

Sub-grants shall be provided on terms whereby the Recipient shall obtain, through the Sub-grant Agreements, rights adequate to protect the interests of the Trustee and the Recipient, including but without limitation, the right to:

(a) Require the Beneficiary to carry out and operate the Sub-project with due diligence and efficiency and in accordance with sound technical, financial, managerial, environmental and ecological standards;

(b) Require that:

(i) The goods, works and services to be financed out of the proceeds of the OTF Grant shall be procured in accordance with the provisions of Schedule 3 to this Agreement; and

(ii) Such goods, works and services shall be used exclusively for the purposes and in furtherance of the objectives of the Project;

(c) Require the Beneficiary to comply with the obligations set forth in Section 4.01 of this Agreement;

(d) Inspect, by itself or jointly with representatives of the Trustee, if the Trustee shall so request, the goods and plants included in the Sub-project, the operation thereof and any relevant records and documents;

(e) Require that:

(i) The Beneficiary shall take out and maintain with responsible insurers such insurance against such risks and in such amounts, as shall be consistent with sound business practices; and

(ii) Without any limitation upon the foregoing, such insurance shall cover the hazards incident to the acquisition, transportation and

delivery of goods financed out of the proceeds of the OTF Grant to the place of use or installation, any indemnity thereunder to be made payable in a currency freely useable by the Beneficiary to replace or repair such goods.

(f) Obtain all such information as the Trustee shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Beneficiary and to the benefits derived from the Sub-project;

(g) Obtain upon demand the refund of any part of the proceeds of the OTF Grant which, in the opinion of the Recipient or the Trustee, has been misused by the Beneficiary; and

(h) Suspend or terminate the right of the Beneficiary to the use of the proceeds of the OTF Grant upon failure by the Beneficiary to perform its obligations under the Sub-grant Agreement.

SCHEDULE 5

Terms and Conditions of the MOA

The MOA shall include the following terms and conditions, subject to such modifications thereto as the Recipient and the Trustee may agree upon from time to time to achieve the objectives of the Project:

A. DOE shall require CETEC to undertake the following:

1. appraise all identified proposed Sub-projects after endorsement by DOE based on the Protocol and in accordance with the provisions of the OPG;

2. prepare and submit all proposed Sub-project appraisal summaries and reports to DOE for endorsement and submission to the Trustee for technical review and approval by the Executive Committee;

3. ensure that each proposed Sub-project complies with the Environmental Quality Act 1974 of the Recipient. A certification to that effect, to be issued by DOE, would be attached to the appraisal report;

4. ensure that each Sub-project Beneficiary provides a financing plan for the uncovered balance of the total project cost in the event that the OTF Grant does not fully cover such cost;

5. supervise implementation of each Sub-project until its completion, and review and approve the Sub-project progress reports. CETEC's responsibility for Sub-project supervision shall end after full disbursement and approval of the final Sub-project progress report acceptable to DOE and the Trustee;

6. prepare semi-annual progress reports for DOE to submit such reports to the Trustee and EPU;

7. ensure that Sub-projects follow the procurement procedures set out in Schedule 3 of the Grant Agreement;

8. verify the eligibility and the amount of the requested payment submitted by each Sub-project Beneficiary and prepare a notification to DOE endorsing the release of funds to the Sub-project Beneficiary;

9. prepare and provide applications to DOE for submission to the Trustee for the disbursement of funds directly to the Sub-projects where the amount of disbursement exceeds the threshold stipulated in the OPG;

10. provide at a minimum the following personnel

(a) a Project Manager dedicated primarily to the management of the Project and a management staff member who shall act as alternate in the absence of the said manager;

(b) a Project Officer to assist the Project Manager;

(c) a Professional Engineer with relevant industry experience or local engineering consultant with similar and relevant background and experience on an 'as need' basis;

- (d) a qualified Accountant with experience in financial analysis; and
 - (e) maintain a list of qualified experts in the field of ODS from which ad-hoc reference and expertise may be sought from time to time as situation requires.
11. inform DOE of enterprises which have expressed interest to participate in the Project.
- B. DOE shall undertake the following:
- 1. determine the eligibility of proposed Sub-projects for appraisal by CETEC;
 - 2. review each proposed Sub-project following CETEC appraisal to ensure that only cost-effective and environmentally-safe technologies will be applied in accordance with the laws and regulations of the Recipient and that all Sub-projects conform to the priorities of the Country Program;
 - 3. review and endorse proposed Sub-project appraisal summaries and reports submitted by CETEC prior to submission to the Trustee for technical review and approval by the MFEC;
 - 4. open the Special Account in its own name in the Central Bank of Malaysia for the Project and draw funds from the Special Account for payments directly to the Sub-projects;
 - 5. submit applications prepared by CETEC for replenishment of the Special Account to the Trustee, including applications for direct disbursement to Sub-project Beneficiaries for amounts exceeding the threshold stipulated in the OPG;
 - 6. supervise the progress of Sub-projects and CETEC's operations in fulfillment of its overall responsibility as implementing agency on behalf of the Recipient; and
 - 7. submit semi-annual progress reports prepared by CETEC and an annual audit report prepared by an independent auditor regarding the grant fund utilization to the Trustee, with a copy to EPU.
- C. A fee shall be paid to CETEC in accordance with the provisions of Section 3.06 of the Grant Agreement.
- D. 1. DOE and CETEC shall:
- (a) closely coordinate with and/or consult each other in the performance of their respective responsibilities set forth in the MOA; and
 - (b) formulate joint circulars and/or other issuances, when and if necessary, for the effective implementation of the Project.
2. In case of any conflict or disagreement between DOE and CETEC relating to matters affecting the implementation of the Project or the performance of their respective responsibilities, such parties shall exert their best efforts to resolve such conflict or disagreement between themselves before referring such conflict or disagreement to EPU for decision which shall be binding on such parties.
3. The MOA shall take effect upon signing by DOE and CETEC and shall remain valid and binding up to the year 1999, unless otherwise terminated by mutual consent of the parties or by any of the parties by serving a 60 calendar day notice to the other parties for breach of any of the terms of the MOA. A copy of the notification of termination of the MOA shall be sent to the Trustee promptly.
4. The MOA shall be reviewed at least once a year by DOE and CETEC to assess the relevance of any of its provisions and, with the concurrence of the Trustee, make such amendments thereto as deemed necessary in order to achieve the objectives of the Project.
5. Interest and other earnings on deposits in the Special Account shall accrue to the Project.

SCHEDULE 6

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) and (2) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

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

(c) the term "Authorized Allocation" means an amount equivalent to \$1,500,000 to be withdrawn from the Grant Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.

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

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

(a) For withdrawals of the Authorized Allocation, the Recipient shall furnish to the Trustee a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Trustee shall, on behalf of the Recipient, withdraw from the Grant Account and deposit in the Special Account such amount or amounts as the Recipient shall have requested.

(b) (i) For replenishment of the Special Account, the Recipient shall furnish to the Trustee requests for deposits into the Special Account at such intervals as the Trustee shall specify.

(ii) Prior to or at the time of each such request, the Recipient shall furnish to the Trustee the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Trustee shall, on behalf of the Recipient, withdraw from the Grant Account and deposit into the Special Account such amount as the Recipient shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Trustee from the Grant Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

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

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

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

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

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

(d) once the total unwithdrawn amount of the Grant allocated to the eligible categories, minus the total amount of all outstanding special commitments entered into

by the Trustee pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

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

6. (a) If the Trustee shall have determined at any time that any payment out of the Special Account:

(i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or

(ii) was not justified by the evidence furnished to the Trustee, the Recipient shall, promptly upon notice from the Trustee:

(A) provide such additional evidence as the Trustee may request; or

(B) deposit into the Special Account (or, if the Trustee shall so request, refund to the Trustee) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Administrator shall otherwise agree, no further deposit by the Trustee into the Special Account shall be made until the Recipient has provided such evidence or made such deposit or the case may be.

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

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

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

