

**INVESTMENT INCENTIVE
AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND
THE GOVERNMENT OF INDIA**

THE GOVERNMENT OF THE UNITED STATES OF AMERICA and THE GOVERNMENT OF INDIA
(the "Parties");

AFFIRMING their common desire to encourage economic activities in India that promote the development of the economic resources and productive capacities of India;

ACKNOWLEDGING that private sector investment can contribute to the economic goals of India;

REAFFIRMING the right of India to regulate investments in its territory in accordance with its laws and policies; and

RECOGNIZING that the United States International Development Finance Corporation, a development institution and an agency of the United States of America (the "DFC"), can be instrumental in achieving these governmental objectives through debt and equity investments, investment guaranties, investment insurance and reinsurance, feasibility studies for potential projects, grants and other special projects and programs in support of specific DFC transactions;

HAVE AGREED as follows:

ARTICLE 1

As used in this Agreement, the following terms have the following meanings:

"Issuer" refers to the DFC and any successor entity, and any agent of either;

"Investment Support" refers to, in connection with a project in the territory of India, any debt or equity investment, any investment guaranty, investment insurance or reinsurance, feasibility studies for potential projects, and grants;



"Taxes" means all taxes, levies, imposts, stamps, tariffs, duties, charges, property taxes, value-added taxes, and other taxes or fees, registration fees, or similar charges, whether direct or indirect, imposed in India and all liabilities with respect thereto.

ARTICLE 2

(a) The Parties recognize that the Issuer is a development institution and an agency, wholly-owned by the Government of the United States of America. All laws and regulations of India shall apply to the Issuer's activities in India and to projects and entities receiving Investment Support.

(b) In order to facilitate the Issuer's provision of Investment Support in India, the Issuer shall have access to all remedies of any insurance organization, financial organization or private equity fund entity, whether domestic or foreign. Nothing in this Agreement waives any immunity of the Parties.

(c) The Parties confirm that the Issuer, with respect to Taxes that may be applicable to its operations, activities or the provision of Investment Supports, and projects receiving Investment Support and investors in such projects shall be accorded tax treatment to the extent permitted under the terms of any agreement for double-tax avoidance that, as of the date of determination, is in force between the United States of America and India.

(d) If the Issuer makes a payment to any person or entity, including a payment in connection with a prior or contemporaneous purchase of securities, or exercises its rights as a creditor or subrogee, in connection with any Investment Support, India shall recognize the transfer to, or acquisition by, the Issuer of any cash, accounts, credits, instruments or other assets in connection with such payment or the exercise of such rights, as well as the succession of the Issuer to any right, title, claim, privilege or cause of action existing, or which may arise, in connection therewith.

(e) With respect to any interests transferred to the Issuer or any interests to which the Issuer succeeds under this Article, in its own right or otherwise, the Issuer shall assert no greater rights than those of the person or entity from whom such interests were received, provided that nothing in this Agreement shall limit the right of a Party to assert a claim in its sovereign capacity.

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ARTICLE 3

(a) Amounts in the currency of India, including cash, accounts, credits, instruments or otherwise, acquired by the Issuer upon making a payment, upon the sale, liquidation or disposition of securities, or upon the exercise of its rights as a creditor, in connection with any Investment Support for a project in India, shall be accorded treatment in the territory of India no less favorable as to use and conversion than the treatment to which such funds would have been entitled in the hands of the person or entity from which such amounts were acquired.

(b) Such currency and credits may be transferred to any person or entity and upon such transfer shall be freely available for use by such person or entity in the territory of India in accordance with its laws.

ARTICLE 4

(a) Any dispute arising under this Agreement between the Government of the United States of America and the Government of India, including the interpretation of this Agreement, shall be resolved, insofar as possible, through amicable settlement negotiations between the two Governments. If, twelve months following a request for negotiations hereunder, the two Governments have not resolved the dispute, the dispute shall be submitted, at the initiative of either Government, to a dispute resolution panel for resolution in accordance with paragraph (b) of this Article. Both Parties through mutual agreement may consider extending the period of amicable settlement negotiations beyond twelve months in the interest of resolution of dispute.

(b) The dispute resolution panel referred to in paragraph (a) of this Article shall be established and shall function as set forth herein.

(i) Unless the Parties agree otherwise, the dispute resolution panel shall comprise one panelist from the Government of India, one panelist from the Government of the United States, and one panelist who shall be from a third state, as referee, appointed by both the Parties within a period of 6 months from the date that the related dispute shall have been submitted to the dispute resolution panel. If by the end of the period, the necessary appointments have not been made, the Secretary-General of the Permanent Court of Arbitration shall make the necessary appointment or appointments.

(ii) For the sake of convenience of the Parties, in the absence of an

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agreement otherwise, the procedure shall be governed by the most recent version of the UNCITRAL Arbitration Rules observed to by both the Parties as of the date that a claim is submitted to a dispute resolution panel, except as modified by the Parties or this Agreement.

- (iii) The dispute resolution panel shall resolve the disputes related to this Agreement under applicable rules of international law, including disputes regarding the interpretation of this Agreement.
- (iv) The resolution of the dispute by the dispute resolution panel shall be made by at least two of its participants, be in writing, and state the reasons on which it is based.
- (v) The resolution of the dispute by the dispute resolution panel shall have no binding force except between the Parties and in respect of the particular dispute. Each Party shall abide by and implement the resolution of the dispute without delay. The resolution by such panel shall not necessarily include revision of a particular measure and may be limited to an award of compensation. Such compensation shall not be greater than an amount determined by such panel with reference to actual loss (excluding incidental, consequential and special amounts, such as future profits, as well as intangible asset losses and losses attributed to goodwill).
- (vi) Expenses incurred by the participants on the dispute resolution panel, and other costs of the proceedings, shall be paid for equally by the Parties, except as otherwise determined by the terms of the dispute resolution panel's resolution of the dispute.
- (vii) The Parties acknowledge that disputes related to taxation matters are outside the scope of the dispute resolution mechanism under this Agreement.

ARTICLE 5

Provisions equivalent to those set forth by this Agreement shall apply with respect to investment support by any development finance institution as may be established by the Government of India for investments in the United States under a program similar in substance to the investment incentives program to which this Agreement relates, upon completion of any constitutional or other legal processes of either Government that may be required and an exchange of notes to be made at the initiative of either Government.

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ARTICLE 6

(a) This Agreement shall enter into force on the date on which the Government of India notifies the Government of the United States of America that all legal requirements for entry into force of this Agreement have been fulfilled.

(b) Upon entry into force, this Agreement shall supersede the Investment Incentive Agreement, dated as of November 19, 1997, between the Government of the United States of America and the Government of India. Any matter relating to support by the DFC of projects in the territory of India prior to the entry into force of this Agreement shall be resolved under the terms of this Agreement.

(c) Either Party may terminate this Agreement at any time by providing six months written notice to the other Party. Termination shall take effect six months from the date of receipt of such notification. In such event, the provisions of this Agreement shall, with respect to Investment Support provided prior to or while this Agreement was in force, continue to apply so long as such Investment Support remains outstanding, but in no case longer than twelve years after the termination of this Agreement.

(d) Nothing in this Agreement waives any immunity of the Parties.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at Tokyo, Japan, in duplicate, this 23 day of May, 2022, in the English language. A text of this Agreement shall be prepared in the Hindi language, which shall be considered equally authentic upon an exchange of diplomatic notes between the Parties confirming its conformity with the English language text.

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:**



**FOR THE GOVERNMENT OF
INDIA:**

