

US-INDIA SCIENCE AND TECHNOLOGY ENDOWMENT FUND
TERMS AND CONDITIONS OF THE GRANT

The US-India Science & Technology Endowment Fund and its Executive Secretariat (presently the Indo-US Science and Technology Forum) are both hereinafter referred to as “**Endowment Fund**”.

These terms and conditions of the Endowment Fund grant (hereinafter referred as the “**Grant**”) would be an integral part of the letter (hereinafter referred to as “**Award Letter**”) conveying the approval of the Grant.

The project as per details given in the Award Letter for which the Grant has been made, is hereinafter referred to as “**Project**”.

Recipients of this Grant, both in the United States and India as detailed in the Award Letter, are hereinafter referred to as “**Grantees**”/ “**Grantee**” collectively/ individually.

The US and Indian entities implementing the project to which the Grantees belong, as detailed in the Award Letter are hereinafter collectively/ individually referred to as the “**Companies**”/ “**Company**”.

The Grantees would agree and abide by the following terms and conditions of the Grant and will need to submit written acceptance hereof, prior to the release of the first tranche of the Grant:

1. Responsibilities of Grantees

i. The Grantees shall:

- a.** Carry out the activities of the Project and conform to the specified objectives, outputs, milestones, and targets as detailed in the Award Letter;
- b.** Meet the expenditure on the Project activities to the extent as agreed to in the Award Letter, through its own sources;
- c.** Submit the Statement of Accounts (comprising of the Utilization Certificate and Statement of Expenditure) duly audited and certified by a Chartered Accountant/ Certified Public Accountant (CPA in US) for the expenditure incurred on the Project and for the fiscal year (ending 31st March for Indian Grantees, and 30th September/ as applicable for US Grantees) to the Endowment Fund within a

month of closure of the accounts for the respective financial year, in the format as provided as by the Endowment Fund, The US Grantee should inform the Endowment fund the ending date of their fiscal year;

d. Submit regular Milestone Completion Reports and Statement of Accounts to the Endowment Fund as per the milestones and participate in the meetings organized by the Endowment Fund to review the progress of the Project, as and when called for before the disbursement of a tranche of Grant;

e. Permit a member of the Endowment Fund or an individual or agency nominated by the Endowment Fund access to the premises, with advance notice and during regular business hours, where the Project is being/shall be carried out and provide all information and produce or make available the concerned records for inspection and monitoring of the Project activity;

f. Obtain all of the necessary requisite approvals, clearance certificates, permissions, and licenses from the Government/local authorities for conducting its operations in connection with the Project;

g. Utilize the amounts sanctioned by the Endowment Fund for the Project only for the purposes as specified in the Project and shall not entrust the implementation of the Project to any other agency (except as noted in Award Letter) or divert the Grant funds;

h. Ensure that all research involving the use of animals, humans, or plants complies with the relevant laws and regulations of the land;

i. Ensure that it has in place formal written procedures for managing the process for obtaining any necessary or appropriate ethical approval for the research funded by the Grant, and must accept full responsibility for ensuring that any such ethical approval is in place at all relevant times during the grant;

j. Repay any such amount of the Grant that is not used in accordance with the Conditions under which the Grant is awarded;

k. Have no right, power or authority to create any obligation or duty, express or implied, on behalf of the Endowment Fund; and

i. Duly acknowledge the funding support of the Endowment Fund when publishing or presenting the details of the Project at various fora including at the time of launching the product; in all electronic and print media, website materials, presentations, publications, etc.

ii. The Grantees shall warrant that:

a. They are under no contractual restrictions or legal disqualifications or other obligations which will prohibit the recipients from accepting these Conditions;

b. They have the requisite skill and expertise to carry out the obligations envisaged herein;

c. They have the requisite corporate authority to accept these Conditions; and

d. They agree that they shall be liable for any and all breaches of these Conditions, by them or by the counterpart Grantee or their Companies and that in case of such breach, the Endowment Fund may reconsider its financial support for the Project.

iii. The Grantees shall acknowledge and agree that:

a. The duties, responsibilities, and functions assigned or entrusted to them as specified in the Project documentation shall be deemed to be the duties, responsibilities, and functions assigned and entrusted under these terms and conditions and unless for reasons beyond the control under normal circumstance any undue delay, failure, or default in performance of the duties, responsibilities, and functions as specified in the Project shall be deemed to be a default under these terms and conditions;

b. They shall, at all times, indemnify and keep indemnified Endowment Fund against any infringement of any Intellectual Property Rights (IPR) while doing its responsibilities/work under the Project or any claims or suits in respect of any losses, damages or compensation payable in consequences of any accident, death or injury sustained by the employees of the Company or by any other third party resulting from or by any act, omission or operation conducted by or on its behalf;

c. They shall make no change in their status and/or shareholding of the Company, in particular where such change would impact on performance of

the obligations under the Project and these terms and conditions without prior approval of Endowment Fund. Endowment Fund shall reserve the right to reconsider further funding assistance in such circumstances of change in control;

- d.** There would be no changes in the core management or suitable replacements will be in place at each milestone. If the founders leave the company in presence of whom the Grant has been awarded & these conditions have been accepted, the Grant shall be immediately suspended and recovery procedures of the unused Grant money and any assets created from the said grant shall be initiated by Endowment Fund unless agreed by Endowment Fund otherwise;
- e.** Any corporate transaction including sale of company, dilution of shareholding, new arrangements with venture funds, sale of technology, outsourcing of major corporate functions etc., that may affect this Project would be disclosed to the Endowment Fund within 48 hours of receipt of the transaction proposal. Endowment Fund reserves the right to reevaluate continuation of funding assistance of the project following receipt of the transaction proposal;
- f.** They shall not use the Grant for any previous expenses, payables or liabilities incurred in the period before the commencement date of the project. The date of releasing the first tranche of the Grant would be treated as the Project commencement date. However, on receiving a joint written request from the Grantees within two weeks of first tranche release, the Endowment Fund may agree for any other date falling in the period from the award announcement date to the first tranche release date; and
- g.** They shall immediately provide written notice to Endowment Fund of any claims, investigations or proceedings which could reasonably be expected to result in a material adverse effect on the ability of the party to implement the project or perform any of the other obligations under these conditions. Endowment Fund shall reserve the right to reconsider further funding assistance in such circumstances.

2. Administration of the Grant & Financial Arrangements

- i.** The approved budget by the Board will be denominated in Indian rupees only. Endowment Fund is not responsible or liable to provide extra funding due to change in foreign currency exchange rates. The ‘Contingencies’ budget for the Project may however be used to meet the shortfall in other budget heads caused due the change in foreign currency exchange rate;

- ii.** Endowment Fund shall release the first tranche of Grant funds after receiving written acceptance from Grantees of these terms and conditions described in this document and also the receipt of the Intellectual Property Sharing Agreement as mentioned in Clause 7. Subsequent release of funds shall be subject to satisfactory technical and financial progress against the objectives, outputs, milestones, and targets specified in the Project as determined by Endowment Fund and on submission of Utilization Certificates and a Statement of Accounts duly audited and certified by a Chartered Accountant/ Certified Public Accountant for the expenditure incurred on the Project as provided for in Clause 1 (i) (c);

- iii.** To facilitate monitoring of the utilization of the funds, it is advised that the Grant be preferably kept in a separate bank account. However if it is not possible to do so, separate records of cash flow related to the project should be maintained. The grant utilization shall be reconciled with the cash flow statement related to the project;

- iv.** The Grantees must ensure that adequate and appropriate resources are provided to support the activities described in the awarded Project;

- v.** Endowment Fund reserves the right to determine whether or not “satisfactory progress” is being made as per the objectives, outputs, milestones, and targets specified in Award Letter. Towards this end, Endowment Fund may seek the assistance of their Project Monitoring Committee as per Clause 3;

- vi.** Each Grantee shall ensure that no financial transaction takes place without the authorization of the counterpart Grantee. The Companies and Grantees shall also ensure that the funds released under the Grant are utilized only for the expenditure related to the Project as expressly detailed in the Award Letter. Re-appropriation of funds from one budget head to another shall not be effected without the specific written approval of Endowment Fund. Addition of a new substantial expense line item (more than 5% of the project budget), not reflected in the original approved budget will require written approval of the Endowment Fund with appropriate justifications.

vii. Project Completion Report must be submitted jointly by the Grantees within one month, but not later than three months after the end of the Project describing in detail the conduct and outcome of the Project in the prescribed format;

viii. Upon completion of the Project, Grantees shall refund immediately any funds which remain unutilized along with detailed accounts of funds received, utilized, and unutilized;

ix. The Grantees must provide access to accounting and other records relating to the Grant and the activities funded under the Grant for auditors and other personnel from or appointed by the Endowment Fund at any time, if requested by the Endowment Fund. Such access must include the right to inspect any equipment or facilities acquired or funded under the Grant;

x. The Endowment Fund has the right to request from the Grantees, at any time, any financial information in respect of the Grant or the activities it funds; and/or to ask for confirmation from the external auditors; and

xi. The Endowment Fund is not obliged to make any further payments in respect of the Grant once it has settled the accounts based on the Final Utilization Certificate and Statement of Accounts and the Project Completion Report.

3. Project Monitoring Committee

i. A Project Monitoring Committee (PMC) comprising of financial, domain, and scientific experts and Endowment Fund representatives, constituted by Endowment Fund, will monitor the progress of the Project in accordance with the objectives, outputs, milestones, and targets of the Project.

ii. The functions of the PMC shall be as follows:

a. To monitor the progress of the Project in conformity with the outputs, milestones, targets and objectives as specified in the Award Letter.

b. Based on the foregoing, to assess and recommend:

- Release of funds for the next installment or tranche release thereof by Endowment Fund;
- Revision in the Project implementation schedule and financial disbursements;
- Measures for effective realization of the objectives of the Project; and
- Any other function assigned by the Endowment Fund.

4. Changes in Project

- i.** Endowment Fund must be consulted in the event of any major changes in the research and development proposed under the approved Project, particularly those affecting the achievement of Project's objectives adversely.

- ii.** If appropriate, revised proposals may be required to be submitted. The Endowment Fund reserves the right to make a new Grant in place of the existing Grant, or to revise, retain or terminate the existing Grant.

5. Employment

- i.** The Endowment Fund does not act as an employer with respect to the Grant issued, and therefore in all cases where support is provided on the Project for the employment of staff, the Grantees undertake to issue a contract of employment to such staff that is in compliance with the relevant laws and regulations.

- ii.** The provision of the Grant by Endowment Fund does not create any liability, explicit or implicit, on Endowment Fund in respect of the manpower engaged in the Project and Endowment Fund shall be kept indemnified by the award recipients in this regard.

6. Equipment

- i.** The Grantees must ensure that it has in place clearly defined procedures for the procurement of equipment and that equipment funded by the Grant is acquired by the Grantees in accordance with these procedures.

- ii.** Equipment purchased with the Grant in accordance with the agreed budget and commercialization strategy must specifically be used for the purpose of Project awarded and Endowment Fund reserves the right to recover/ take possession of any property/ assets created from the grant at its discretion in the event of any misrepresentation/default on the part of the grantee towards the grant conditions.

- iii.** Endowment Fund shall not be liable for any misuse or damage caused by malfunctioning of the equipment that is acquired by the Grantees from the Grant.

- iv.** The Grantees must ensure that equipment funded by the Grant is appropriately insured and remain functional throughout the Project period.

- v.** Any sale of the equipment purchased or output generated from the project shall be added back to the grant and shall form part of the available funds for the project.

7. Intellectual Property

i. The Endowment encourages the Grantee(s) to suitably protect any Intellectual Property generated through the R&D conducted under the project against any unauthorized infringement. For the purpose of this Grant, new intellectual property refers to intellectual property generated during the conduct of the Project by the Grantees excluding the intellectual property generated by the Grantees before execution of Project under this Award as set out in the Project details in addition to any new intellectual property generated outside the scope of this Award even during the Project duration.

ii. The basis of collaboration between the Grantees, including ownership of intellectual property and rights to exploitation, is required to be set out in a formal collaboration agreement. It is the responsibility of the Grantees to put such an agreement into place prior to the commencement of research and development. The agreement should include, but not limited to, specific roles and responsibilities of partner awardees, IP sharing/and ownership rights and licensing arrangement during the implementation of grant and post-commercialization. A copy of the signed agreement between the Grantees shall be submitted to the Endowment Fund at the time of final due diligence and prior to the release of the first tranche of Grant. The terms of such collaboration agreements must not conflict with the terms and conditions described herein.

iii. The Grantees shall inform Endowment Fund a minimum of four weeks prior to assigning or transferring the new IP to any third party directly or indirectly during the term of this Grant.

8. Project Duration

i. The commencement of the Project would be deemed to be from the receipt of the first tranche of the Grant by the Grantees. The Grantees shall complete the Project within the stipulated period as detailed in the Award Letter unless agreed by Endowment Fund otherwise.

ii. Should either the Grantees or Endowment Fund feel that it is desirable to undertake further developmental work upon the outcome of the Project, which may or may not require additional financial commitment from Endowment Fund and extension of the stipulated Project schedule, the Grantees may submit an extension request with full justification for consideration to Endowment Fund.

9. No Joint Venture

i. Nothing contained in these terms and conditions will be construed as creating a joint venture agency, partnership, or employment relationship between Endowment Fund and

the Grantees hereto, nor will any Party have the right, power, or authority to create any obligation or duty, explicit or implied, on behalf of the other Party/ Endowment Fund.

10. Confidentiality and Non-Disclosure

i. It shall be the responsibility of the Grantees to ensure maintenance of confidentiality on their behalf and on behalf of their employees, representatives and associates involved in the Project with regard to all or any part of the information and data exchanged/generated from the Project for any purpose other than in accordance with the terms and conditions of the Award.

ii. While sharing information with the Endowment Fund, any patentable ideas, trade secrets, proprietary or confidential commercial or financial information, disclosure of which may harm the applicant, must be specifically identified and marked with a legend similar to the following:

“The following contains proprietary information that (name of applicant) requests not be released to persons outside the Endowment Fund, except for purposes of review and evaluation.”

11. Effective Date and Tenure of the Award

i. These terms and conditions of the Grant shall be effective from the date release of first tranche of the Grant and shall be valid until the submission of the Project Completion Report by the Grantees and approval by Endowment Fund of the final Statement of Accounts which have been duly audited and certified by a Chartered Accountant/ Certified Public Accountant for the expenditure incurred on the complete Project. Those clauses of these terms and conditions that are intended to survive the Tenure of the Grant shall be deemed to so survive.

ii. The Grantees shall continue to provide 6-monthly brief updates on the status of their market performance related to the product/service accomplished through this grant, including further development/improvement, for upto 5 years after the closure of the Grant. They shall continue to cooperate with the Endowment Fund and share information on the status of the project to help track the overall accomplishments of the Endowment Program.

12. Force Majeure

i. The Grantees shall not be held responsible for non-fulfillment of their respective obligations in successful completion of the Project under these Conditions as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster),

war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute or strike beyond the control of the Party claiming force.

ii. If a Grantee asserts Force Majeure as a justification for failure to perform his/ her obligations and meet specified goals, the Grantee is required to provide evidence that:

- a.** Reasonable steps were taken to minimize delay or damages caused by foreseeable events;
- b.** The party Grantee fulfilled all non-excused obligations;
- c.** All counterpart Grantees were notified within one month of the likelihood or actual occurrence of an event described above.

iii. This provision is provided on the occurrence and cessation of any such event. If force majeure conditions continue beyond six months, the Grantees and Endowment Fund shall jointly decide about the future course of action on the Project. The validity of the claim of force majeure shall be determined by Endowment Fund after due enquiry and the decision of Endowment Fund in this regard shall be final.

13. Foreclosure and Termination

i. During the tenure of the Project, the Endowment Fund may foreclose the Project and/or any specific component(s) of the Project, and terminate the award, and/or restate the terms of the award as warranted in its best judgement, due to any of the following reasons:

- a.** It is found that the Project or any Project component is not likely to lead to successful completion;
- b.** The Grantees are found in breach of any of the terms of these conditions;
- c.** If, during the tenure of the Project, the Grantees dissolve their agreed partnership and collaboration.

ii. The decision of Endowment Fund shall be final in all respects.

iii. The Grantees shall immediately refund any funds unutilized, after deducting the committed expenses to third party vendors on pro-rata basis according to the quantum of

Endowment Fund's funding, to Endowment Fund, along with detailed accounts of funds received, utilized and unutilized.

iv. The entire outstanding amount as on the date of foreclosure will become due and payable immediately together with recovery of all equipment and assets bought out with grant funds. However, Endowment Fund may by specific written order, prescribe a repayment schedule for the amount outstanding.

v. In case of failure to repay, without prejudice to any other rights under this award, the amount may be recovered by initiating any procedure available in Law.

vi. If the Grantee(s) decide to continue the Project at their own cost, they would be able to do so without restrictions from the Endowment Fund after complying with these provisions.

14. Disclaimer

i. The Endowment Fund accept no liability, financial or otherwise, except as set out in these terms and conditions, or otherwise agreed in writing, for expenditure or liability arising from:

a. Any costs incurred or loss or liability suffered by the Grantees or any third party in relation to Endowment Fund or as a result of their own research and/or commercial activities;

b. Any lost expectation of profits by Grantee or any third party;

c. Any failure by Grantees or any third party to understand their rights in relation to Intellectual Property; and

d. Any other benefit the Grantees or any third party may expect to gain by participating in Endowment Fund program.

15. Notices

i. All notices and other communications required to be served on the Grantees/ Companies including for violation of these terms and conditions shall be considered to be duly served if the same shall have been delivered by registered mail to the Companies/ Grantees at their addresses in the Award letter. It shall be the responsibility of the Grantees/ Companies to communicate to Endowment Fund any change in address that may occur during the tenure of the Project.

ii. Any communication to be sent to the Endowment Fund shall be considered as duly served if the same shall have been delivered with a duly acknowledged receipt of mail by way of courier or any other means at Endowment Fund address as mentioned below:

The Executive Secretary, US-India Science and Technology Endowment Fund
C/o Indo US Science & Technology Forum
Fulbright House, 12 Hailey Road, New Delhi-110 001

16. Arbitration

i. In the event of any dispute or difference between the Grantees and Endowment Fund hereto upon or in relation to or in connection with this Grant, such dispute or difference shall be resolved amicably by mutual consultation or through the bi-lateral US-India Science and Technology Endowment Board.

ii. If such resolution is not possible, then the unresolved dispute or difference shall be referred to arbitration by a sole arbitrator to be nominated by the Executive Secretary, US-India Science & Technology Endowment Fund. The Arbitration and Conciliation Act, 1996 (No.26 of 1996) shall be applicable to the arbitration under this clause. The costs of arbitration shall be on the discretion of the arbitrator. The venue of arbitration shall be in New Delhi and the arbitration proceedings shall be conducted in English Language. The provision of this clause shall not become inoperative notwithstanding the Grant expiring or being terminated or revoked.

17. Governing Law & Jurisdiction

i. This Award shall be governed and interpreted in accordance with the laws of India. Disputes, if any, are subject to the jurisdiction in the courts of Delhi only.

ii. If any provision of these terms and conditions is found by a court or other legitimate body to be illegal, invalid or unreasonable, it will not affect the remaining terms and conditions which will continue in force.

Acceptance by the Grantees:

I have read and understood the above mentioned terms and conditions and agree to abide by them.

Signature:

Name:

Organization:

Date:

Place: