

CONFORMED COPY

LOAN NUMBER B-102-0

Indemnity Agreement

between

ISLAMIC REPUBLIC OF PAKISTAN

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated December 20, 1994

LOAN NUMBER B-102-0

INDEMNITY AGREEMENT

AGREEMENT, dated December 20, 1994 between ISLAMIC REPUBLIC OF PAKISTAN acting by its President (Pakistan) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) Pursuant to a facility agreement (the ECO Facility Agreement) dated September 30, 1994, between the Hub Power Company Limited (the Project Company), the financial institutions listed therein as arrangers, Bank of Tokyo International Limited as ECO agent (the ECO Agent) and the financial institutions listed therein as ECO lenders (the ECO Lenders), the ECO Lenders have agreed to make available to the Project Company a loan in various currencies equivalent to up to US\$240,000,000 (the ECO Loan Amount) to assist in the financing of the power project described in the ECO Facility Agreement (the Project);

(B) Pakistan has undertaken certain

obligations (including payment obligations) to the Project Company with respect to the Project under an implementation agreement (the Implementation Agreement) dated August 3, 1992 between the Project Company and Pakistan, as amended, and will also guarantee to the Project Company under a guarantee (the GOP Guarantee) the performance of certain obligations (including payment obligations) of The Pakistan Water and Power Development Authority (WAPDA), the Pakistan State Oil Company Limited (PSO) and the State Bank of Pakistan (SBP) under the power purchase agreement (the Power Purchase Agreement) dated August 3, 1992 between the Project Company and WAPDA, as amended, the fuel supply agreement (the Fuel Supply Agreement) dated August 3, 1992 between the Project Company and PSO, as amended, and the exchange risk insurance letters (the Exchange Risk Insurance Letters) issued by the SBP, respectively;

(C) At the request and with the agreement of Pakistan, the Bank has agreed to guarantee the repayment of the principal of the ECO Loan Amount on the terms and conditions set forth in the ECO Guarantee Agreement (the ECO Guarantee), dated the date hereof between the Bank and the ECO Agent, but only on condition that Pakistan agree to pay to the Bank all amounts paid by the Bank directly or indirectly in relation to or arising from the ECO Guarantee and to undertake such other obligations to the Bank as are set forth in this Agreement;

(D) In consideration of the Bank's providing the ECO Guarantee, Pakistan has agreed to undertake the obligations to the Bank set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Agreement, unless otherwise defined below or in the Preamble to this Agreement or unless the context otherwise requires, the several terms defined in the Preamble to this Agreement, the Implementation Agreement, the ECO Guarantee and the definitions agreement dated October 2, 1994, between the Project Company and Citibank International plc as inter-creditor agent (all as in force at today's date, and as amended subsequently with the written consent of Pakistan and the Bank) have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "assets" includes property, revenues and claims of any kind;

(b) "incurring of debt" includes the assumption and guarantee of debt and any renewal, extension or modification of the terms of the debt or of the assumption or guarantee thereof; and

(c) "lien" includes mortgages, pledges, charges, privileges and priorities of any kind.

ARTICLE II

Indemnity by Pakistan to the Bank

Section 2.01. In consideration of the Bank giving the ECO Guarantee, Pakistan hereby: (a) agrees to reimburse the Bank forthwith on demand or as the Bank may otherwise direct for any amount paid by the Bank under the ECO Guarantee, in the currency so paid, or if payment shall have been made in any currency which the Bank shall have purchased with another currency for the purposes of such payment, in such other currency, together with interest thereon at the rate per annum specified by the Bank in respect of such currency, which rate shall be based on the Bank's prevailing borrowing cost in such currency plus the applicable margin over such cost, from the date such payment is made by the Bank until such amount is paid; (b) agrees to indemnify the Bank on demand in respect of all actions, proceedings, liabilities, claims, losses, damages, costs and expenses suffered or incurred by the Bank directly or indirectly in relation to or arising out of the ECO Guarantee (except as otherwise provided in Section 5.02 (i) hereof); (c) irrevocably authorizes the Bank to comply with any Demand Notices served on the Bank pursuant to the ECO Guarantee and make any payments which may be due from or claimed or made upon the Bank under the ECO Guarantee (the Bank shall promptly notify Pakistan of any such demand, but failure to give such notice shall in no way affect the Bank's obligation to make payment under the ECO Guarantee or Pakistan's obligation to reimburse or indemnify the Bank pursuant to this Agreement) and agrees that it shall not be incumbent on the Bank to enquire whether or not any statements in such Demand Notice are in fact correct; and (d) agrees that any such Demand Notice shall, as between Pakistan and the Bank, be conclusive evidence that the demand is properly made and payment is properly due. Following the notification to Pakistan of the receipt by the Bank of any Demand Notice, Pakistan may investigate the validity of the statements in such Demand Notice and take such actions as Pakistan may see fit against the Project Company, the ECO Agent and the ECO Lenders in respect thereof; all without prejudice to the Bank's obligations under the ECO Guarantee to make a payment in respect of such Demand Notice (which the Bank will endeavor to make no earlier than five business days prior to the Grace Period End Date in respect of such Demand Notice (being a date approximately 60 days after the date of such Demand Notice)) and Pakistan's obligations in relation to such Demand Notice under this Agreement. The obligations of Pakistan hereunder shall apply notwithstanding that Pakistan or any other Public Sector Entity disputes the validity of any such Demand Notice or the accuracy or correctness of any fact or figures stated therein.

Section 2.02. (a) The obligations of Pakistan under this Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or action against the Project Company or any prior notice to, or demand upon, Pakistan with regard to any failure by the

Project Company to pay any amount in respect of which a Demand Notice is served on the Bank pursuant to the ECO Guarantee. Such obligations shall not be impaired by any of the following: (i) any extension of time, forbearance, concession or other indulgence given to the Bank, the Project Company, the ECO Agent, the ECO Lenders or any other person; (ii) any variation of the ECO Guarantee (except one which would materially increase the obligations of Pakistan under this Agreement), the ECO Facility Agreement, any Project Document or any other related agreement; (iii) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Project Company or in respect of any security for the ECO Loan Amount; or (iv) any other circumstances which would or might (but for this provision) constitute a discharge or defense of Pakistan.

(b) The Bank may at any time, without thereby discharging, impairing or otherwise affecting any rights, powers and remedies hereby created or conferred upon it by this Agreement, the ECO Facility Agreement, any Project Document or any other related agreement or by law: (i) offer or agree to or enter into any agreement for the extension or variation of the ECO Guarantee (except one which would materially increase the obligations of Pakistan under this Agreement), the ECO Facility Agreement, any Project Document or any other related agreement; or (ii) offer or give or agree to give any time or other indulgence to any other person or entity from whom it may seek reimbursement in respect of sums paid out by the Bank under the ECO Guarantee.

(c) Any rights conferred on the Bank by this Agreement shall be in addition to, and not in substitution for or derogation of, any other right which the Bank may at any time have to seek, from Pakistan or any other person or entity, reimbursement of or indemnification against payments made or liabilities incurred under the ECO Guarantee.

(d) The Bank shall not be obliged before taking steps to enforce any rights conferred on it by this Agreement or exercising any of the rights, powers and remedies conferred upon the Bank by this Agreement, the ECO Guarantee, the ECO Facility Agreement, any Project Document or any other related agreement or by law: (i) to take action or obtain judgment in any court against any other person (including persons from whom it may seek reimbursement in respect of sums paid out under the ECO Guarantee); or (ii) to enforce or seek to enforce any other rights it may have against Pakistan or its rights against any other person.

Section 2.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under the ECO Facility Agreement, any Project Document or any other related agreement, the ECO Guarantee or this Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or any acquiescence in such default. No action of such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any

right, power or remedy of such party in respect of any other or subsequent default.

Section 2.04. Any payment required to be made by Pakistan pursuant to the terms of this Agreement shall be:

(a) paid at such places as the Bank shall reasonably request;

(b) made in such manner, and in currencies acquired in such manner, as shall be permitted under the laws applicable to the making of such payment and effecting the deposit of such currencies to the account of the Bank with a depository designated by the Bank for this purpose;

(c) paid without any restrictions of any kind imposed by, or in the territory of, Pakistan; and

(d) applied first, to pay all interest and other charges due to the Bank and second, after such interest and other charges are paid, to pay all other amounts then due under this Agreement.

Sector 2.05. If and to the extent Pakistan makes any payment under this Agreement in respect of amounts paid by the Bank under the ECO Guarantee, Pakistan shall be entitled to the Bank's rights of subrogation set forth in the ECO Guarantee in respect of such amount, and any waiver by the Bank of such rights of subrogation (which the Bank may exercise in its sole discretion) shall be binding on Pakistan and, in the case of such waiver, the Bank accepts that in calculating the Termination Amount under the Implementation Agreement such Termination Amount is reduced by the amount of such payment by Pakistan under this Agreement.

ARTICLE III

Project-Related Covenants

Section 3.01. (a) Pakistan and the Bank shall cooperate fully to assure that the Project will be accomplished. To that end, Pakistan and the Bank shall:

(i) from time to time, at the request of the other, exchange views with regard to the progress of the Project and related facilities and the performance of their respective obligations under this Agreement, and furnish to the other party all such information as it shall reasonably request; and

(ii) promptly inform each other of any condition which interferes with the matters referred to in paragraph (i) above.

(b) Pakistan shall afford all reasonable opportunity for representatives of the Bank to visit any part of its territory for purposes related to the Project, the ECO Guarantee and this Agreement.

Section 3.02. Without limitation or restriction upon any of its other obligations under this Agreement, Pakistan hereby unconditionally undertakes to the Bank punctually to perform all of its obligations under the Implementation Agreement and the GOP Guarantee and to cause WAPDA, PSO and SBP punctually to perform all of their obligations under the Power Purchase Agreement, Fuel Supply Agreement and Exchange Risk Insurance Letters, respectively.

Section 3.03. Pakistan shall notify the Bank prior to agreeing to any amendment, waiver or other change to the Implementation Agreement or the GOP Guarantee and shall obtain the written consent of the Bank prior to agreeing to any amendment, waiver or other change to the Implementation Agreement or the GOP Guarantee which would or could materially affect the rights or obligations of the Bank under the ECO Guarantee. Without limiting the foregoing, Pakistan shall obtain the written consent of the Bank prior to giving any notice to the Project Company not to obtain insurance under Clause 17.5.5 of the Implementation Agreement.

Section 3.04. Pakistan shall not take any action which would prevent or interfere with the performance by WAPDA, PSO or SBP of any of its obligations under the Power Purchase Agreement, Fuel Supply Agreement or Exchange Risk Insurance Letters, respectively, and shall cause WAPDA, PSO and SBP to notify the Bank prior to agreeing to any amendment, waiver or other change to the Power Purchase Agreement, Fuel Supply Agreement or Exchange Risk Insurance Letters, respectively, and to obtain the written consent of the Bank prior to agreeing to any amendment, waiver or other change to the Power Purchase Agreement, Fuel Supply Agreement or Exchange Risk Insurance Letters, respectively, which would or could materially affect the rights or obligations of the Bank under the ECO Guarantee including, without limitation, any assignment, transfer, novation or other disposition of any of such entities' respective rights or obligations under the Power Purchase Agreement, Fuel Supply Agreement or Exchange Risk Insurance Letters.

Section 3.05. Pakistan shall promptly inform the Bank of any Exceptional Event, request from the Project Company for Special Temporary Funding, request from the Project Company for Deficit Funding, Company Event of Default, GOP Event of Default, Lenders' Security Event, Preliminary Termination Notice or Termination Notice from the Project Company under the Implementation Agreement and other event or circumstance which could adversely affect Pakistan's ability to perform its obligations under the Implementation Agreement or the GOP Guarantee or the ability of WAPDA, PSO or SBP to perform its obligations under the Power Purchase Agreement, Fuel Supply Agreement or Exchange Risk Insurance Letters, respectively. Upon the occurrence of a Company Event of Default, Pakistan shall, if so requested by the Bank, give a Preliminary Termination Notice to the Project Company in accordance with Clause 20.1 of the Implementation Agreement where permitted to do so under said Clause. Following the giving of any such Preliminary Termination Notice, Pakistan shall, if so

requested by the Bank, give a Termination Notice to the Project Company in accordance with Clause 20.3 of the Implementation Agreement where permitted to do so under said Clause.

Section 3.06. Pakistan shall take all actions within its power to remedy each GOP Event of Default and Lenders' Security Event under the Implementation Agreement and each Guarantee Shari'ah Event under the ECO Guarantee.

Section 3.07. Pakistan shall obtain the written consent of the Bank prior to permitting or agreeing to the conversion of the Complex to a natural gas firing power plant pursuant to Clause 23 of the Implementation Agreement.

Section 3.08. Pakistan shall approve any Nominated Company that has been appointed in accordance with Clause 16.3 of the Implementation Agreement entering into such novation as the Bank may require in respect of the Direct Agreement.

Section 3.09. Pakistan shall not create or permit to exist or occur, and shall procure that no Public Sector Entity shall create or permit to exist or occur, any Indemnified Event. If an Indemnified Event exists or occurs, Pakistan shall take all actions within its power to remedy and cure, or to procure that another Public Sector Entity remedy and cure, such Indemnified Event.

Section 3.10. Pakistan shall not attach to any Consent subsequent to its grant any terms or conditions which materially and adversely affect the enjoyment by the Bank of any of its rights or the performance by the Project Company of any of its obligations under the Security Documents.

Section 3.11. Pakistan shall notify the Bank of (and shall keep the Bank informed of) any material plans Pakistan may have to privatize any or all of WAPDA, PSO and SBP.

ARTICLE IV

Other Covenants

Section 4.01. (a) It is the policy of the Bank, in making loans to or in providing guarantees for loans to, or with the guarantee of, its members not to seek, in normal circumstances, specific security from the member concerned but to ensure that no other external debt shall have priority over its loans and guarantees in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member.

(i) To that end, if any lien shall be created on any public assets (as hereinafter defined), as security for any external debt, which will or might result in a priority for the benefit of the creditor of such external debt in the allocation, realization or distribution of foreign exchange, such lien shall, unless the Bank shall otherwise agree, ipso facto, and at no

Enforceability of this Agreement;
Arbitration

Section 5.01. The rights and obligations of Pakistan and the Bank under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any State, or political subdivision thereof to the contrary. Neither Pakistan nor the Bank shall be entitled in any proceeding under this Article to assert any claim that any provision of this Agreement is invalid or unenforceable because of any provision of the Articles of Agreement of the Bank.

Section 5.02. (a) Any controversy between the parties to this Agreement, and any claim by any such party against any other such party arising under this Agreement which has not been settled by agreement of the parties, shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be Pakistan on the one side and the Bank on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by Pakistan; a second arbitrator shall be appointed by the Bank; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by said President, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, such arbitrator shall be appointed by the Umpire. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration and the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty days after such notice, the other party shall notify to the party instituting the proceeding the name of the arbitrator appointed by such other party.

(e) If, within sixty days after the notice instituting the arbitration proceeding, the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to the provisions of this Section and except as the parties shall otherwise agree, determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(h) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to this Agreement. Each party shall abide by, and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(i) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Pakistan and the Bank shall each defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by Pakistan and the Bank. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to this Agreement or any claim by any such party against any other such party arising hereunder.

(k) If, within thirty days after counterparts of the award shall be delivered to the parties, the award shall not be complied with, any party may: (i) enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party; (ii) enforce such judgment by execution; or (iii) pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of this Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member of the Bank except as such procedure may be available otherwise than by reason of the provisions of this Section.

(l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 7.01 hereof. The parties to this Agreement waive any and all other requirements for the service of any such notice or

process.

ARTICLE VI

Effective Date

Section 6.01. This Agreement shall come into force and effect upon signature.

ARTICLE VII

Miscellaneous Provisions

Section 7.01. Any notice or request required or permitted to be given or made under 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 as specified in this Agreement or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

Section 7.02. Pakistan shall furnish to the Bank sufficient evidence of the authority of the person or persons who will, on behalf of Pakistan, take any action or execute any documents required or permitted to be taken or executed by Pakistan under this Agreement and the authenticated specimen signature of each such person.

Section 7.03. Any action required or permitted to be taken, and any documents required or permitted to be executed, pursuant to this Agreement, on behalf of Pakistan, may be taken or executed by the representative of Pakistan designated in Section 7.05 hereof for the purposes of this Section or any person thereunto authorized in writing by such representative. Any modification or amplification of the provisions of this Agreement may be agreed to on behalf of Pakistan by written instrument executed on behalf of Pakistan by the representative so designated or any person thereunto authorized in writing by such representative; provided that, in the opinion of such representative, such modification or amplification is reasonable under the circumstances and will not substantially increase the obligations of Pakistan under this Agreement. The Bank may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of this Agreement effected by such instrument is reasonable under the circumstances and will not substantially increase the obligations of Pakistan hereunder.

Section 7.04. This Agreement may be executed in several counterparts, each of which shall be an original.

Section 7.05. The Secretary to the Government of Pakistan, Economic Affairs Division, or any Additional Secretary, Joint Secretary, Deputy Secretary or Section Officer in that Division is

hereby designated as representative of Pakistan for the purposes of section 7.03 above.

Section 7.06. The following addresses are specified for the purposes of Section 7.01 above:

For Pakistan:

Economic Affairs Division
Islamabad
Pakistan

Cable address: Telex:

ECDIV-05-634
ECONOMIC
Islamabad

For the Bank:

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

Cable address: Telex:

(TRT) INTBAFRAD 197688
(RCA) Washington, D.C 248423
(WUI) 64145
82987(FTCC)

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, 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.

PAKISTAN ISLAMIC REPUBLIC OF

By /s/ Agha Ghazanfar
Authorized Representative

DEVELOPMENT INTERNATIONAL BANK FOR
RECONSTRUCTION AND

By /s/ D. Joseph Wood
Authorized Representative

