

CONFORMED COPY

LOAN NUMBER B-103-0

Indemnity Agreement

(Yangzhou Thermal Power Project)

between

PEOPLE'S REPUBLIC OF CHINA

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated May 29, 1994

INDEMNITY AGREEMENT

AGREEMENT, dated May 29, 1994 between PEOPLE'S REPUBLIC OF CHINA (China) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (IBRD or the Bank).

WHEREAS (A) The Bank has agreed to make available to China a loan, under a loan agreement to be entered into between China and the Bank (IBRD Loan Agreement), in the aggregate principal amount in various currencies equivalent to US\$350,000,000 to assist in the financing of the project (the Project) described in Schedule 2 of the IBRD Loan Agreement;

(B) Pursuant to a Loan and Guarantee Agreement (the Yen Loan Agreement) being entered into herewith between China as borrower, the Bank as partial guarantor, the financial institutions listed therein (the Yen Lenders) as lenders, and The Long-Term Credit Bank of Japan, Limited as agent, the Yen Lenders have agreed to make available to China a loan in the aggregate principal amount of three billion two hundred million Yen (¥3,200,000,000) (the Yen Loan) to assist in the financing of a portion of the Project;

(C) Pursuant to another Loan and Guarantee Agreement (the Dollar Loan Agreement) being entered into herewith between China as borrower,

the Bank as partial guarantor, BOT International (H.K.) Limited, Dresdner (South East Asia) Limited, and Morgan Guaranty Trust Company of New York as arrangers and lead managers, IBJ Asia Limited, The Korea Development Bank, The Long-Term credit Bank of Japan, Limited, and The Mitsubishi Bank, Limited as lead managers, The Sumitomo Trust and Banking Co., Ltd., The Mitsubishi Trust and Banking Corporation, and Overseas Union Bank Ltd. as managers, Banque et Caisse d'Epargne de L'Etat, Luxembourg, and Daiwa overseas Finance Limited, as co-managers, Dresdner (South East Asia) Limited as agent (the Agent), and the financial institutions listed therein (the Dollar Lenders) as lenders, the Dollar Lenders have agreed to make available to China a loan in the aggregate principal amount of ninety million Dollars (US\$90,000,000) (the Dollar Loan) to also assist in the financing of another portion of the Project;

(D) At the request and with the agreement of China, the Bank has agreed to guarantee the repayment of a portion of the principal amount of the Dollar Loan (the IBRD Dollar Guarantee) on the terms and conditions set forth in the Dollar Loan Agreement;

(E) The Bank has agreed to provide the IBRD Dollar Guarantee only on condition that China agree to undertake to make to the Bank prompt payment of all amounts paid by the Bank directly or indirectly in relation to or arising from the IBRD Dollar Guarantee and to undertake such other obligations as hereinafter provided, and

(F) in consideration of the Bank's entering into the Dollar Loan Agreement and providing the IBRD Dollar Guarantee, China has agreed to undertake certain obligations towards the Bank as hereinafter provided.

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. The Bank's General Conditions Applicable to Loan and Guarantee Agreements, dated January 1, 1985 (the General Conditions), are hereby incorporated in and constitute an integral part of this Agreement, subject, however, to the following modifications thereto:

(a) the terms "Borrower" or "Guarantor", wherever used in the General Conditions, mean China;

(b) the term "Loan", wherever used in the General Conditions, means the Dollar Loan (as said term is defined herein), except that in Sections 2.01 (12), 8.01 and 9.03, the term "Loan" shall mean the IBRD Dollar Guarantee and include any other amount payable under this Agreement.

(c) the terms "Loan Agreement" and "Guarantee Agreement", wherever used in the General Conditions, mean this Agreement, except that in Section 9.01 (a) and (b) and Section 9.07 (a) and (c), the terms "Loan Agreement" and "Guarantee Agreement" shall mean this Agreement and the Dollar Loan Agreement (as said term is defined herein);

(d) the term "Project", wherever used in the General Conditions, means the Yangzhou Thermal Power Project as described in Schedule 2 of the IBRD Loan Agreement.

(e) Sections 2.01 (3), (4), (5), (6), (7), (10), (11), (15), and (20), Article III, Article IV, Article V, Article VI, Article VII, the phrase: "but in any event not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Bank and the Borrower," in the first sentence of Section 9.07 (c), the opening phrase: "Except as provided in Section 6.07," in Section 10.02, and Article XII of the General Conditions are hereby deleted.

Section 1.02. Wherever used in this Agreement, unless otherwise defined or unless the context otherwise requires, the several terms defined in the Preamble to this Agreement and in the General Conditions (subject to the modifications noted above) have the respective meanings herein and therein set forth and the following additional terms have the following meanings:

(a) "Dollars" means dollars in the currency of the United States of America.

(b) "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 proceeds of the Dollar Loan.

(c) "Project Agreement" means the agreement to be entered into between the Bank and JPEPC for carrying out the Project.

(d) "Project Beneficiary" or "JPEPC" means the Jiangsu Provincial Electric Power Company, a state owned enterprise organized and existing, pursuant to its Charter dated December 19, 1988, under the laws of the People's Republic of China.

(e) "Special Deposit Account" means the account referred to in Section 3.02 (a) of this Agreement.

ARTICLE II

Indemnity by China to the Bank; Guarantee Fee

Section 2.01. In consideration of the Bank providing the IBRD Dollar Guarantee, China 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 IBRD Dollar 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 IBRD Dollar Guarantee; (c) irrevocably authorizes the Bank to comply with any demands and make any payments which may be due from or claimed or made upon the Bank under the IBRD Dollar Guarantee (the Bank shall notify China of any such demand, but failure to give any such notice shall in no way affect the Bank's obligation to make payment under the IBRD Dollar Guarantee or China'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 such demands are in fact correct or payments are in fact due or whether or not any dispute exists between China and the Agent or the Dollar Lenders; and (d) agrees that, in the absence of any manifest and material error, any such demand or payment shall, as between China and the Bank, be conclusive evidence that the demand is properly made and/or payment properly due.

Section 2.02. (a) 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 Dollar Loan Agreement, any related agreement or by law: (i) offer or agree to or enter into any agreement for the extension or variation of the IBRD Dollar Guarantee; or (ii) offer or give or agree to give any time or other indulgence to any other person from whom it may seek reimbursement in respect of sums paid out by the Bank under the IBRD Dollar Guarantee.

(b) 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 China or any other person, reimbursement of or indemnification against payments made or liabilities incurred under the IBRD Dollar Guarantee.

(c) 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 Dollar Loan Agreement, any 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 IBRD Dollar Guarantee); or (ii) to enforce or seek to enforce any other rights it may have against China or its rights against any other person.

Section 2.03. Any payment required to be made by China 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, China; 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 principal then due.

Section 2.04. In consideration of the Bank providing the IBRD Dollar Guarantee, China shall, upon execution of this Agreement, pay to the Bank a guarantee fee in an amount equivalent of six hundred thirty eight thousand two hundred and twelve Dollars (US\$638,212).

ARTICLE III

Other Covenants

Section 3.01. China declares its commitment to the objectives of the Project as set forth in Schedule 2 to the IBRD Loan Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement or the IBRD Loan Agreement, shall cause JPEPC to perform in accordance with the provisions of the Project Agreement all the obligations of JPEPC therein set forth, shall take or cause to be taken all actions, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable JPEPC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

Section 3.02. China shall ensure that: (a) the goods and consultants' services required for the Project and to be financed out of the proceeds of the Dollar Loan shall be purchased at a reasonable price, account being taken also of other relevant factors such as time of delivery and efficiency and reliability of the goods and availability of maintenance facilities and spare parts therefor, and, in the case of services, of their quality and competence of the parties rendering them; and (b) such goods and services shall be used exclusively in the carrying out of the Project.

Section 3.03. China shall: (a) have the Special Deposit Account for each fiscal year of China audited, in accordance with appropriate auditing principles consistently applied, by independent auditors

acceptable to the Bank; (b) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year: (i) certified copies of the said accounts for such year as so audited, and (ii) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and (c) furnish to the Bank such other information concerning the said account, as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 3.04. The Bank and China hereby agree that the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project shall be carried out by JPEPC pursuant to Section 2.03 of the Project Agreement.

ARTICLE IV

Remedies of the Bank

Section 4.01. If China fails to make any payments due to the Bank under this Agreement or to perform any of its obligations under this Agreement, and such failure is continuing, the Bank may, by notice to China, suspend or cancel in whole or in part the right of China to make withdrawals under: (a) the IBRD Loan Agreement; and (b) any other loan or credit agreement between China and the Bank.

ARTICLE V

Effective Date

Section 5.01. This Agreement shall come into force and effect upon signature.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. The Minister of Finance of China is hereby designated as representative of China for the purposes of Section 11.07 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 6.01 above:

For China:

Ministry of Finance
Sanlihe
Beijing 100820
People's Republic of China

Cable address:

FINAMIN
Beijing

Telex:

22486 MFPRC CN

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:

INTBAFRAD
Washington, D.C.

440098 (ITT),
248423 (RCA) or
64145 (WUI)

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

PEOPLE'S REPUBLIC OF CHINA

By /s/ Jin Renging

Authorized Representative

INTERNATIONAL BANK, FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Koji Kashiwaya

Vice President
Cofinancing and Financial
Advisory Services

