

Declaration of Karim Suratgar

Exhibit 1

(Part 1)

PROJECT NUMBER 25797

LOAN AGREEMENT

between

COASTAL GUJARAT POWER LIMITED

and

INTERNATIONAL FINANCE CORPORATION

Dated April 24, 2008

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THIS STAMP PAPER FORMS AN INTEGRAL PART OF THE IFC LOAN AGREEMENT DATED 24TH APRIL, 2008.

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S No. Coastal Rs.
 sold to 6/0 Aata Grajast Power Ltd
 S/o Services Ltd
 through
 Power of
 Sign of Multi Tower I
 Name Place
 L. No.
 Pattan

21/04/07

21 APR 2007



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THIS STAMP PAPER FORMS AN INTEGRAL PART OF THE IFC LOAN AGREEMENT DATED 24TH APRIL, 2008

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28 Coastal Gujarat Power Ltd
 do. Tata Services Ltd
 Jeevan Bhandari
 N D

Sold to
 Through
 Sign of
 L C No - 526
 Pattala House Court

21/04/08

21 APR 2008

LOAN AGREEMENT

LOAN AGREEMENT, dated April 24, 2008 (this "Agreement"), between COASTAL GUJARAT POWER LIMITED, a company organized and existing under the laws of the Republic of India (the "Borrower"); and INTERNATIONAL FINANCE CORPORATION, an international organization established by Articles of Agreement among its member countries including India ("IFC").

RECITALS

The Borrower is undertaking the development, construction, ownership, operation and maintenance of the Project (as defined in Section 1 of the Common Terms Schedule);

The Borrower has requested IFC to provide the loans described in this Agreement to finance Project Costs (as defined in the Common Terms Schedule); and

IFC is willing to provide those loans upon the terms and conditions set forth in this Agreement.

ARTICLE I

Definitions and Interpretation

Section 1.01. *Definitions.* Capitalized terms used herein have the meanings set forth in the Common Terms Schedule. In addition, wherever used in this Agreement, the following terms have the meanings opposite them:

- "Amortization Schedule" with respect to any Disbursement for any Tranche, a schedule corresponding to the repayment schedule of the respective Tranche as set out in Section 3.06 (*Repayment*);
- "CAO" Compliance Advisor Ombudsman, the independent accountability mechanism for IFC that impartially responds to environmental and social concerns of affected communities and aims to enhance outcomes;
- "CAO's Role"
- (i) to respond to complaints by persons who have been or are likely to be directly affected by the social or environmental impacts of IFC projects; and
 - (ii) to oversee audits of IFC's social and environmental performance, particularly in relation to sensitive projects, and to ensure



compliance with IFC's social and environmental policies, guidelines, procedures and systems;

"Common Terms Schedule" or "CTS"

Schedule I to this Agreement, as the same may be updated or revised from time to time in the manner expressly set forth therein;

"Country"

India;

"Increased Costs"

the amount certified in an Increased Costs Certificate to be the net incremental costs of, or reduction in return to, IFC in connection with the making or maintaining of the Loan that result from:

- (i) any change in any applicable law or regulation or directive (whether or not having the force of law) or in its interpretation or application by any Authority charged with its administration; or
- (ii) compliance with any request from, or requirement of, any central bank or other monetary or other Authority;

which, in either case, after the date of this Agreement:

- (A) imposes, modifies or makes applicable any reserve, special deposit or similar requirements against assets held by, or deposits with or for the account of, or loans made by, IFC;
- (B) imposes a cost on IFC as a result of IFC having made the Loan or reduces the rate of return on the overall capital of IFC that it would have achieved, had IFC not made the Loan;
- (C) changes the basis of taxation on payments received by IFC in respect of the Loan (otherwise than by a change in taxation of the overall net income of IFC imposed by the



jurisdiction of its incorporation or in any political subdivision of any such jurisdiction); or

- (D) imposes on IFC any other condition regarding the making or maintaining of the Loan;

“Increased Costs Certificate”

a certificate provided from time to time by IFC certifying:

- (i) the circumstances giving rise to the Increased Costs;
- (ii) that the costs of IFC have increased or its rate of return has been reduced;
- (iii) that IFC has, in its opinion, exercised reasonable efforts to minimize or eliminate the relevant increase or reduction, as the case may be; and
- (iv) the amount of Increased Costs;

“Interest Determination Date”

except as otherwise provided in Section 3.03 (d) (ii) (*Interest*), the second Senior Lender Business Day before the beginning of each Interest Period;

“Interest Payment Date”

January 15 and July 15 in any year or, in the case of any Interest Period of less than six (6) months, pursuant to Section 3.04 (*Change in Interest Period*), any day that is the 15th day of the month in which the relevant Interest Period ends;

“Interest Period”

each period of six (6) months or, in the circumstances referred to in Section 3.04 (*Change in Interest Period*), each period of three (3) months or one (1) month determined pursuant to that Section, in each case commencing on an Interest Payment Date (or, for the first period applicable to a Disbursement, the period commencing on the date of that Disbursement) and ending on the day immediately before the second Interest Payment Date following such commencement date;

“Interest Rate”

for any Interest Period, the rate at which interest is payable on the Loan during that Interest Period.



determined in accordance with Section 3.03 (*Interest*) and, if applicable, Section 3.04 (*Change in Interest Period*);

"LIBOR"

the British Bankers' Association ("BBA") interbank offered rates for deposits in the Loan Currency which appear on the relevant page of the Reuters Service (currently page LIBOR 01) or, if not available, on the relevant pages of any other service (such as Bloomberg Financial Markets Service) that displays such BBA rates; provided that if BBA for any reason ceases (whether permanently or temporarily) to publish interbank offered rates for deposits in the Loan Currency, "LIBOR" shall mean the rate determined pursuant to Section 3.03 (d) (*Interest*);

"Loan"

the loan specified in Section 3.01 (a) (*The Loan; Tranches*) or, as the context requires, its principal amount from time to time outstanding;

"Loan Currency"

Dollars;

"Senior Lender Business Day"

a day when banks are open for business in New York, New York or, solely for the purpose of determining the applicable Interest Rate other than pursuant to Section 3.03 (d) (ii) (*Interest*), London, England;

"Special LC Disbursement"

A Disbursement of the Loan, in IFC's pro rata share of fifty million Dollars (\$50,000,000) (calculated on a pro rata basis with ADB and IIFCL, based on the original commitments under the ADB Loan Agreement, the IIFCL Loan Agreement and this Agreement);

"Spread"

(i) two percent (2.0%) per annum until the Project Financial Completion Date, (ii) one and eighty-five one-hundredths percent (1.85%) per annum from the Project Financial Completion Date until the fourth anniversary thereof, (iii) two and five one-hundredths percent (2.05%) per annum from the fourth anniversary of the Project Financial Completion Date until the eighth anniversary of the Project Financial Completion Date and (iv) two and fifteen one-hundredths percent (2.15%) per annum after the eighth anniversary of the Project Financial



	Completion Date;
"Tranche"	has the meaning given to such term in Section 3.01 (a) (<i>The Loan; Tranches</i>) hereof;
"Unit 1 Tranche"	has the meaning given to such term in Section 3.01 (a) (<i>The Loan; Tranches</i>) hereof;
"Unit 2 Tranche"	has the meaning given to such term in Section 3.01 (a) (<i>The Loan; Tranches</i>) hereof;
"Unit 3 Tranche"	has the meaning given to such term in Section 3.01 (a) (<i>The Loan; Tranches</i>) hereof;
"Unit 4 Tranche"	has the meaning given to such term in Section 3.01 (a) (<i>The Loan; Tranches</i>) hereof;
"Unit 5 Tranche"	has the meaning given to such term in Section 3.01 (a) (<i>The Loan; Tranches</i>) hereof;

Section 1.02. Interpretation. In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to an Annex, Article, party, Schedule or Section is a reference to that Article or Section of, or that Annex, party or Schedule to, this Agreement;
- (d) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document but disregarding any amendment, supplement, replacement or novation made in breach of this Agreement;
- (e) a reference to a party to any document includes that party's successors and permitted assigns; and
- (f) the rules of interpretation provided in Section 1.4 (*Interpretation*) of the Common Terms Schedule shall also apply to this Agreement.

Section 1.03. Business Day Adjustment. (a) When an Interest Payment Date is not a Senior Lender Business Day, then such Interest Payment Date shall be automatically changed to the next Senior Lender Business Day in that calendar month (if there is one) or the preceding Senior Lender Business Day (if there is not).



(b) When the day on or by which a payment (other than a payment of principal or interest) is due to be made is not a Senior Lender Business Day, that payment shall be made on or by the next Senior Lender Business Day in that calendar month (if there is one) or the preceding Senior Lender Business Day (if there is not).

Section 1.04. Common Terms Schedule. The Common Terms Schedule forms an integral part of this Agreement.

ARTICLE II

The Project, Project Cost and Financial Plan

Section 2.01. The Project. The Project to be financed is described in Section 2.1 (The Project) of the Common Terms Schedule.

Section 2.02. Project Cost and Financial Plan. (a) The total estimated cost of the Project is set forth in Section 2.2 (a) (Project Cost and Financial Plan) of the Common Terms Schedule.

(b) The proposed sources of financing for the Project are set forth in Section 2.2 (b) (Project Cost and Financial Plan) of the Common Terms Schedule.

(c) The use of proceeds of the Loan is set forth in Section 2.3 (Purpose of the Senior Loans) of the Common Terms Schedule. The Borrower agrees that it shall apply the proceeds of each Disbursement of each Tranche only towards the Project Costs of the Unit to which such Tranche relates and to Project Costs of Common Facilities.

ARTICLE III

The Loan

Section 3.01. The Loan; Tranches. (a) Subject to the provisions of this Agreement, IFC agrees to lend, and the Borrower agrees to borrow, the Loan, in the amount of four hundred fifty million Dollars (\$450,000,000), of which, subject to the provisions of this Agreement, (i) ninety million Dollars (\$90,000,000) shall be allocated to, and available for Disbursement for, the payment of the Project Costs for Unit 1 and for Common Facilities, (the "Unit 1 Tranche") (ii) an amount not less than seventy-five million Dollars (\$75,000,000) and not to exceed ninety million Dollars (\$90,000,000) shall be allocated to, and available for Disbursement for, the payment of Project Costs for Unit 2 and for Common Facilities (the "Unit 2 Tranche"), (iii) an amount not less than seventy-five million Dollars (\$75,000,000) and not to exceed ninety million Dollars (\$90,000,000) shall be allocated to, and available for Disbursement for, the payment of Project Costs for Unit 3 and for Common Facilities (the "Unit 3 Tranche"), (iv) an amount not less than seventy-five million Dollars

(\$75,000,000) and not to exceed ninety million Dollars (\$90,000,000) shall be allocated to, and available for Disbursement for, the payment of Project Costs for Unit 4 and for Common Facilities (the "Unit 4 Tranche"), and (v) ninety million Dollars (\$90,000,000), plus any unutilized amounts available for Disbursement under the Unit 2 Tranche, the Unit 3 Tranche or the Unit 4 Tranche in accordance with Section 3.14 (*Reallocation to Unit 5 Tranche*), shall be allocated to, and available for Disbursement for, the payment of Project Costs for Unit 5 and for Common Facilities (each such allocation, a "Tranche").

(b) Any portion of the Loan that is prepaid, repaid or cancelled may not be re-borrowed.

(c) Subject to Section 3.14 (*Reallocation of Tranches*), each Tranche shall only be available for Disbursement to pay for Project Costs for the Unit to which such Tranche relates plus Project Costs for Common Facilities.

Section 3.02. *Disbursement Procedure.* (a) The Borrower may request Disbursements by delivering to IFC a Disbursement Request, substantially in the form of Schedule 2, in accordance with Section 2.4 of the Common Terms Schedule.

(b) Notwithstanding anything to the contrary in this Agreement (including Section 4.2 of the Common Terms Schedule), the conditions in Sections 4.2 (h) (iii) (*Conditions of All Disbursements – Independent Engineer's Certificate*) and 4.2 (t) (*Conditions of All Disbursements – Release of Liens*) of the Common Terms Schedule shall not be required to be satisfied with respect to the amount of the Special LC Disbursement as a condition to the Special LC Disbursement.

(c) Each Disbursement (other than the Special LC Disbursement) shall be made by IFC into the Dollar Disbursement Account under the terms of the Offshore Accounts Agreement, as specified by the Borrower in the relevant Disbursement Request.

(d) The Special LC Disbursement shall be made by IFC into the Project LC Reserve Account under the terms of the Offshore Accounts Agreement, as specified by the Borrower in the Disbursement Request for the initial Disbursement of the Loan.

(e) Each Disbursement (other than the Special LC Disbursement and the last Disbursement) shall be made in an amount of not less than ten million Dollars (\$10,000,000) and in integral multiples of one million Dollars (\$1,000,000).

(f) The Special LC Disbursement shall be in the amount specified in the definition of Special LC Disbursement. The amount of the Special LC Disbursement shall be allocated pro rata across the Tranches for Units 2 through 5. If all or any part of the amount of the Special LC Disbursement shall not have

been withdrawn from the Project LC Reserve Account at the time of the Borrower's final Disbursement Request, the Borrower shall be required first to apply the amount of the Special LC Disbursement remaining in the Project LC Reserve Account toward Project Costs before requesting a Disbursement in that amount.

(g) The Borrower may not request more than one Special LC Disbursement. The Borrower shall submit only one Disbursement Request every two calendar months and shall not request more than one Disbursement per Tranche in any Disbursement Request.

(h) The Borrower shall deliver to IFC a receipt, substantially in the form of Schedule 3, within five (5) Senior Lender Business Days following each Disbursement.

(i) The Borrower may not request Disbursements of any Tranche after the Commercial Operation Date for the Unit in respect of such Tranche has occurred.

Section 3.03. *Interest*. Subject to the provisions of Section 3.05 (*Default Rate Interest*), the Borrower shall pay interest on the Loan in accordance with this Section 3.03:

(a) During each Interest Period, the Loan (or, with respect to the first Interest Period for each Disbursement, the amount of that Disbursement) shall bear interest at the applicable Interest Rate for that Interest Period.

(b) Interest on the Loan shall accrue from day to day, be prorated on the basis of a 360-day year for the actual number of days in the relevant Interest Period and be payable in arrears on each Interest Payment Date; provided that with respect to any Disbursement made less than fifteen (15) days before an Interest Payment Date, interest on that Disbursement shall be payable commencing on the second Interest Payment Date following the date of that Disbursement.

(c) Subject to Section 3.04 (*Change in Interest Period*), the Interest Rate for any Interest Period shall be the rate which is the sum of:

- (i) the Spread; and
- (ii) LIBOR on the Interest Determination Date for that Interest Period for six (6) months (or, in the case of the first Interest Period for any Disbursement, for one (1) month, two (2) months, three (3) months or six (6) months, whichever period is closest to the duration of the relevant Interest Period (or, if two periods are equally close, the longer one)) rounded upward to the nearest three decimal places.



(d) If, for any Interest Period, IFC cannot determine LIBOR by reference to the Reuters Service or any other service that displays BBA rates, IFC shall notify the Borrower and shall instead determine LIBOR:

- (i) on the second Senior Lender Business Day before the beginning of the relevant Interest Period by calculating the arithmetic mean (rounded upward to the nearest three decimal places) of the offered rates advised to IFC on or around 11:00 a.m., London time, for deposits in the Loan Currency and otherwise in accordance with Section 3.03 (c) (ii), by any four (4) major banks active in the Loan Currency in the London interbank market, selected by IFC; provided that if less than four quotations are received, IFC may rely on the quotations so received if not less than two (2); or
- (ii) if less than two (2) quotations are received from the banks in London in accordance with subsection (i) above, on the first day of the relevant Interest Period, by calculating the arithmetic mean (rounded upward to the nearest three decimal places) of the offered rates advised to IFC on or around 11:00 a.m., New York time, for loans in the Loan Currency and otherwise in accordance with Section 3.03 (c) (ii), by a major bank or banks in New York, New York selected by IFC.

(e) On each Interest Determination Date for any Interest Period, IFC shall determine the Interest Rate applicable to that Interest Period and promptly notify the Borrower of those rates.

(f) The determination by IFC, from time to time, of the applicable Interest Rate shall be final and conclusive and bind the Borrower (unless the Borrower shows to IFC's satisfaction that the determination involves manifest error).

Section 3.04. Change in Interest Period. Without prejudice to the provisions of Section 3.05 (Default Rate Interest), if at any time the Borrower fails to pay any amount of principal of, or interest on, the Loan when due (whether at stated maturity or upon acceleration), and any part of that amount remains unpaid on the third Senior Lender Business Day immediately preceding any Interest Payment Date falling after that amount became due, then:

(a) IFC may elect that the duration of the Interest Period commencing on that Interest Payment Date and, subject to Section 3.04 (c), any subsequent Interest Period shall be either three (3) months or one (1) month and shall notify the Borrower of that election in the notice referred to in Section 3.03 (c) (Interest);



(b) the Interest Rates applicable to any Interest Period which is three (3) months or one (1) month shall be determined in accordance with Section 3.03 (*Interest*) in all respects, except that any reference in Section 3.03 (c) (ii) to six (6) months shall be deemed to be a reference to three (3) months or, as the case may be, one (1) month; and

(c) unless an Event of Default or Potential Event of Default has occurred and is continuing, IFC shall reinstate Interest Periods of six (6) months as of the first Interest Payment Date falling at least three (3) Senior Lender Business Days after the payment default is remedied in full and shall inform the Borrower of that reinstatement in the notice referred to in Section 3.03 (c) (*Interest*).


Section 3.05. *Default Rate Interest.* (a) Without limiting the remedies available to IFC under this Agreement or otherwise (and to the maximum extent permitted by applicable law), if the Borrower fails to make any payment of principal or interest (including interest payable pursuant to this Section) or any other payment provided for in Section 3.08 (*Fees*) when due as specified in this Agreement (whether at stated maturity or upon acceleration), the Borrower shall pay interest on the amount of that payment due and unpaid at the rate which shall be the sum of one per cent (1.0%) per annum (or such higher rate being charged by any other Senior Lender, but not exceeding two per cent 2.5% per annum) and the Interest Rate in effect from time to time.

(b) Interest at the rate referred to in Section 3.05 (a) shall accrue from the date on which payment of the relevant overdue amount became due until the date of actual payment of that amount (as well after as before judgment), and shall be payable on demand or, if not demanded, on each Interest Payment Date falling after any such overdue amount became due.

Section 3.06. *Repayment.* (a) Subject to Section 1.03 (*Business Day Adjustment*) and to the provisions of paragraph (c) below, the Borrower shall repay each Tranche on the Interest Payment Dates and in the amounts set forth in Annex A (*Repayment Schedules for Each Tranche*).

(b) Upon each Disbursement of any Tranche, the amount disbursed shall be allocated for repayment on each of the respective Interest Payment Dates for repayment of principal set out in the respective table in Annex A for that Tranche in amounts equal to the percentage of such amount disbursed in respect of such Tranche shown opposite those dates in that table (with IFC adjusting those allocations as necessary so as to achieve whole numbers in each case).

Section 3.07. *Prepayment.* Without prejudice to Article 7 (*Taxes*) of the Common Terms Schedule and Section 5.3 (a) (*Insurance*) of the Common Terms Schedule:



(a) The events and circumstances in which the Borrower shall mandatorily, and the conditions under which the Borrower may voluntarily, prepay the Loan are set forth in Section 2.5 of the Common Terms Schedule, provided, that:

- (i) the Borrower pays, simultaneously with any prepayment:
 - (A) all accrued interest and Increased Costs (if any) on the amount of the Loan to be prepaid, together with all other amounts then due and payable under this Agreement, including the amount payable under Section 3.12 (*Unwinding Costs*), if the prepayment is not made on an Interest Payment Date;
 - (B) the prepayment premium specified in Section 3.07 (b), if applicable; and
 - (C) redeployment costs, if any.
- (ii) the Borrower delivers to IFC, prior to the date of prepayment, evidence satisfactory to IFC that all necessary Authorizations with respect to the prepayment have been obtained; and

(b) On the date of any voluntary prepayment of the Loan pursuant to Section 2.5 (a) of the Common Terms Schedule, or any mandatory prepayment of the Loan pursuant to Section 2.5 (b) (iii) of the Common Terms Schedule, the Borrower shall pay a prepayment premium equal to (i) one and one-half of one per cent (1.5%) of the amount of the Loan to be prepaid for any such prepayment occurring prior to December 31, 2017; (ii) one per cent (1%) for any such prepayment occurring between January 1, 2018 and December 31, 2020; (iii) one half of one per cent (0.5%) of any such prepayment occurring between January 1, 2021 and December 31, 2023; and (iv) zero per cent (0%) for any such prepayment occurring at any time thereafter. The determination by IFC of the amount of the prepayment premium shall be final and conclusive and bind the Borrower (unless the Borrower shows, to the satisfaction of IFC, that such determination involved manifest error).

(c) Any prepayment shall be applied:

- (i) first, to all costs, fees and other amounts due to IFC (other than those specified in paragraphs (ii) and (iii) below under the Financing Documents in respect of the Loan);
- (ii) second, to all accrued interest on the amount of the Loan to be prepaid, together with any amount payable under Section 3.12 (*Unwinding Costs*); and



(iii) third, pro-rata to each Tranche of the Loan and then to the remaining repayment installments of principal of each Tranche of the Loan (except as provided otherwise in Section 2.5 (c) of the Common Terms Schedule) in inverse order of maturity or;

(d) Upon delivery of a notice in accordance with Section 2.5 (a) (*Voluntary Prepayments*) of the Common Terms Schedule, and satisfaction (which shall be determined in IFC's sole discretion) of the above conditions, the Borrower shall make the prepayment in accordance with the terms of that notice and such conditions.

(e) In the case of any partial voluntary prepayment, the prepayment must be in an amount not less than twenty five million Dollars (\$25,000,000).

(f) Any principal amount of the Loan prepaid under this Agreement may not be re-borrowed.

Section 3.08. *Fee*. (a) The Borrower shall pay to IFC a commitment fee at the rate of one-half of one per cent (1/2%) per annum on that part of the Loan that from time to time has not been disbursed or canceled. The commitment fee shall:

- (i) begin to accrue on the date of this Agreement;
- (ii) be pro rated on the basis of a 360-day year for the actual number of days elapsed; and
- (iii) be payable quarterly, in arrears, on each Interest Payment Date.

(b) The Borrower shall also pay to IFC a front-end fee of one per cent (1%) on the Loan (i.e., four million five hundred thousand Dollars (\$4,500,000)), to be paid upon the earlier of (x) the date which is thirty (30) days after the date of this Agreement and (y) the date immediately preceding the date of the first Disbursement of the Loan.

(c) The Borrower shall also pay to IFC all actual expenses incurred by IFC in connection with portfolio supervision, in arrears, on the first Interest Payment Date following receipt of written notice from IFC to the Borrower of any such expense.

Handwritten initials and a signature in blue ink, located in the bottom right corner of the page.

Section 3.09. Currency and Place of Payments. (a) The Borrower shall make all payments of principal, interest, fees, and any other amount due to IFC under this Agreement in the Loan Currency, in same day funds, to the account of IFC at Citibank N.A., 111 Wall Street, New York, New York, U.S.A., ABA #021000089, for credit to IFC's account number 36085579, or at such other bank or account in New York as IFC from time to time designates. Payments must be received in IFC's designated account no later than 1:00 p.m. New York time.

(b) The tender or payment of any amount payable under this Agreement (whether or not by recovery under a judgment) in any currency other than the Loan Currency shall not novate, discharge or satisfy the obligation of the Borrower to pay in the Loan Currency all amounts payable under this Agreement except to the extent that (and as of the date when) IFC actually receives funds in the Loan Currency in the account specified in, or pursuant to, Section 3.09 (a).

(c) The Borrower shall indemnify IFC against any losses resulting from a payment being received or an order or judgment being given under this Agreement in any currency other than the Loan Currency or any place other than the account specified in, or pursuant to, Section 3.09 (a). The Borrower shall, as a separate obligation, pay such additional amount as is necessary to enable IFC to receive, after conversion to the Loan currency at a market rate and transfer to that account, the full amount due to IFC under this Agreement in the Loan Currency and in the account specified in, or pursuant to, Section 3.09 (a).

(d) Notwithstanding the provisions of Section 3.09 (a) and Section 3.09 (b), IFC may require the Borrower to pay (or reimburse IFC) for any Taxes, fees, costs, expenses and other amounts payable under Article 7 (*Taxes*) and Section 8.4 (*Expenses and Indemnity*) of the Common Terms Schedule in the currency in which they are payable, if other than the Loan Currency.

Section 3.10. Allocation of Partial Payments. Subject to Section 3.07 (*Prepayment*), if at any time IFC receives less than the full amount then due and payable to it under this Agreement, IFC may allocate and apply the amount received in any way or manner and for such purpose or purposes under this Agreement as IFC in its sole discretion determines, notwithstanding any instruction that the Borrower may give to the contrary.

Section 3.11. Increased Costs. On each Interest Payment Date, the Borrower shall pay, in addition to interest, the amount which IFC from time to time notifies to the Borrower in an Increased Costs Certificate as being the aggregate Increased Costs of IFC accrued and unpaid prior to that Interest Payment Date.

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Section 3.12. Unwinding Costs. (a) If IFC incurs any cost, expense or loss as a result of the Borrower:

- (i) failing to borrow in accordance with request for Disbursement made pursuant to Section 3.02 (*Disbursement Procedure*) (other than as a result of an Unsatisfied CP Notice delivered by or to IFC no later than ten (10) Financial Business Days before the Requested Disbursement Date);
- (ii) failing to prepay in accordance with a notice of prepayment delivered in accordance with Section 2.5 (a) (*Voluntary Prepayments*) of the Common Terms Schedule;
- (iii) prepaying all or any portion of the Loan on a date other than an Interest Payment Date; or
- (iv) after acceleration of the Loan, paying all or a portion of the Loan on a date other than an Interest Payment Date;

then the Borrower shall immediately pay to IFC the amount that IFC from time to time notifies to the Borrower as being the amount of those costs, expenses and losses incurred.

(b) For the purposes of this Section 3.12, "costs, expenses or losses" include any premium, penalty or expense incurred to liquidate or obtain third party deposits, borrowings, hedges or swaps in order to make, maintain or fund all or any part of any Disbursement or prepayment of the Loan, or any payment of all or part of the Loan upon acceleration.

Section 3.13. Suspension or Cancellation by IFC. (a) IFC may, by written notice to the Borrower, suspend the right of the Borrower to any Disbursement or cancel, in whole or in part, the undisbursed portion of the Loan:

- (i) if the first Disbursement of the Loan has not been made by March 31, 2009;
- (ii) if any Event of Default is continuing (including, without limitation, under Section 6.1(u) (*Material Adverse Effect*) of the Common Terms Schedule);
- (iii) if the Country shall have been suspended from membership in or ceased to be a member of the World Bank or IFC or shall have delivered a notice to withdraw from the World Bank or IFC; or
- (iv) if the last Disbursement of the Loan has not been made on or before March 31, 2013.



(b) Upon the giving of any such notice under Section 3.13 (a), the right of the Borrower to any further Disbursement of the Loan, shall be suspended or canceled, as the case may be.

(c) The exercise by IFC of its right of suspension shall not preclude IFC from exercising its right of cancellation, either for the same or any other reason specified in this paragraph.

(d) Upon any cancellation, the Borrower shall, subject to paragraph (e) of this Section 3.13, pay to IFC all fees and other amounts accrued (whether or not then due and payable) under this Agreement up to the date of that cancellation. A suspension shall not limit any other provision of this Agreement.

(e) In the case of partial cancellation of the Loan pursuant to paragraph (a) of this Section 3.13, interest on the amount then outstanding of the Loan remains payable as provided in Section 3.03 (*Interest*).

Section 3.14. Reallocation to Unit 5 Tranche. If the Commercial Operation Date for a Unit has occurred and a portion of the relevant Tranche for such Unit (other than the Unit 1 Tranche) remains undisbursed, then such undisbursed portion shall be allocated to the Unit 5 Tranche.

ARTICLE IV

Representations and Warranties

Section 4.01. Representations and Warranties. The representations and warranties of the Borrower are set forth in Section 3 of the Common Terms Schedule.

Section 4.02. IFC Reliance. The Borrower acknowledges that it makes the representations and warranties in Section 3 of the Common Terms Schedule with the intention of inducing IFC to enter into this Agreement and that IFC enters into this Agreement on the basis of, and in full reliance on, each of such representations and warranties.

ARTICLE V

Conditions of Disbursement

Section 5.01. Conditions of First Disbursement. The obligation of IFC to make the first Disbursement of the Loan is subject to the fulfillment (or waiver), prior to or concurrently with the making of the first Disbursement, of the conditions set forth in Section 4.1 of the Common Terms Schedule.

Section 5.02. Conditions of All Disbursements. The obligation of IFC to make each Disbursement of the Loan (including the first Disbursement) shall be subject to the fulfillment (or waiver), prior to or concurrently with the making of



each such Disbursement, of the conditions set forth in Section 4.2 of the Common Terms Schedule (other than, in the case of the Special LC Disbursement, the satisfaction of the conditions in Sections 4.2 (h) (iii) (*Conditions of All Disbursements – Independent Engineer’s Certificate*) and 4.2 (t) (*Conditions of All Disbursements – Release of Liens*) with respect only to the amount of the Special LC Disbursement).

Section 5.03. *Pro Rata Disbursements Between the IFC Loan, ADB Tranche 1 Loan and IIFCL Loan.* Each Disbursement (including the Special LC Disbursement) of the IFC Loan, the Tranche 1 Loan (as defined in the ADB Loan Agreement) and the IIFCL Loan shall be simultaneously disbursed on a pro rata basis.

Section 5.04. *Conditions for IFC Benefit.* The conditions for Disbursement set forth in Sections 4.1 and 4.2 of the Common Terms Schedule are for the benefit of IFC and may be waived by IFC in its sole discretion.

ARTICLE VI

Particular Covenants

Unless IFC otherwise agrees, the Borrower shall comply with the covenants set forth in Sections 5.1 through 5.5 of the Common Terms Schedule.

ARTICLE VII

Events of Default

Section 7.01. *Events of Default.* The Events of Default are set forth in Section 6.1 of the Common Terms Schedule.

Section 7.02. *Rights Upon Default.* Various of IFC’s rights and remedies upon the occurrence and during the continuance of an Event of Default and Potential Event of Default are set forth in the Common Terms Schedule, including Sections 6.2 through 6.4 thereof. The rights and remedies provided herein, including in the Common Terms Schedule, are cumulative and additional to, and not exclusive of or in substitution for, any rights or remedies arising by operation of law or otherwise.

ARTICLE VIII

Miscellaneous

Section 8.01. *Miscellaneous Provisions.* All of the provisions set forth in Sections 7 (*Taxes*) and 8 (*Miscellaneous*) of the Common Terms Schedule shall form a part of this Agreement.



Section 8.02. Applicable Law and Jurisdiction.

(a) This Agreement is governed by and shall be construed in accordance with the laws of England.

- (i) For the exclusive benefit of IFC, the Borrower irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be brought in the High Court of Justice of England. By the execution of this Agreement, the Borrower irrevocably submits to the non-exclusive jurisdiction of the High Court of Justice of England in any such action, suit or proceeding. Final judgment against the Borrower in any such action, suit or proceeding shall, unless stayed pending appeal, be conclusive and may be enforced in any other jurisdiction, including the Country, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by applicable law.
- (ii) The Borrower hereby irrevocably agrees to designate, appoint and empower Law Debenture Corporate Services Limited, Fifth Floor, 100 Wood Street, London EC2V 7EX as its authorized agent solely to receive for and on its behalf service of the writ of summons or other legal process in any action, suit or proceeding IFC may bring in the High Court of Justice of England.
- (iii) Nothing in this Agreement shall affect the right of IFC to commence legal proceedings or otherwise sue the Borrower in the Country or any other appropriate jurisdiction, or concurrently in more than one jurisdiction, or to serve process, pleadings and other papers upon the Borrower in any manner authorized by the laws of any such jurisdiction.
- (iv) So long as this Agreement remains in force, the Borrower shall maintain a duly appointed agent (satisfactory to IFC) to receive on its behalf the service of the writ of summons or other legal process in any action, suit or proceeding brought by IFC in the High Court of Justice of England with respect to this Agreement. The Borrower shall keep IFC advised of the identity and location of such agent.
- (v) The Borrower irrevocably waives:
 - (A) any objection which it may have now or in the future to the laying of the venue of any such action,

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suit or proceeding in any court referred to in this Section 8.02; and

- (B) any claim that any such action, suit or proceeding has been brought in an inconvenient forum.
- (vi) To the extent that the Borrower may be entitled in any jurisdiction to claim for itself or its assets immunity in respect of its obligations under this Agreement from any suit, execution, attachment (whether provisional or final, in aid of execution, before judgment or otherwise) or other legal process or to the extent that in any jurisdiction such immunity (whether or not claimed) may be attributed to it or its assets, the Borrower irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- (vii) The Borrower also consents generally in respect of any proceedings arising out of or in connection with this Agreement to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.
- (viii) To the extent that the Borrower may, in any suit, action or proceeding brought in the High Court of Justice of England or a court of the Country or elsewhere arising out of or in connection with this Agreement, be entitled to the benefit of any provision of law requiring IFC in such suit, action or proceeding to post security for the costs of the Borrower (*cautio judicatum solvi*), or to post a bond or to take similar action, the Borrower hereby irrevocably waives such benefit, in each case to the fullest extent now or in the future permitted under the laws of the Country or, as the case may be, the jurisdiction in which such court is located.
- (ix) The Borrower also irrevocably consents, if for any reason the Borrower's authorized agent for service of process of summons, complaint and other legal process in any such action, suit or proceeding is not present in England, to service of such papers being made out of those courts by mailing copies of the papers by registered air mail, postage prepaid, to the Borrower at its address specified in Section 8.2 (*Notices*) of the Common Terms Schedule. In



such a case, IFC shall also send by facsimile, or have sent by facsimile, a copy of the papers to the Borrower.

Section 8.03. Termination of Agreement. This Agreement shall continue in force until all monies payable under the Financing Documents have been fully paid in accordance with their respective provisions.

A handwritten signature in blue ink, consisting of stylized initials and a surname, located in the bottom right corner of the page.

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

COASTAL GUJARAT POWER LIMITED

By: 
Name: SHRUTI K. SHARMA
Title: DIRECTOR

INTERNATIONAL FINANCE CORPORATION
By: 
Name: Paolo Massimo Martelli
Title: Director South Asia

ANNEX A

REPAYMENT SCHEDULES FOR EACH TRANCHE

	Unit 1 Tranche	Unit 2 Tranche	Unit 3 Tranche	Unit 4 Tranche	Unit 5 Tranche
Date Payment Due	Principal Amount Due (% of amount disbursed)	Principal Amount Due (% of amount disbursed)	Principal Amount Due (% of amount disbursed)	Principal Amount Due (% of amount disbursed)	Principal Amount Due (% of amount disbursed)
15-Jul-12	4.17%	0.0%	0.0%	0.0%	0.0%
15-Jan-13	4.17%	2.0%	0.0%	0.0%	0.0%
15-Jul-13	4.17%	2.0%	2.0%	2.0%	2.0%
15-Jan-14	4.17%	3.0%	2.0%	2.0%	2.0%
15-Jul-14	4.17%	3.0%	3.0%	3.0%	3.0%
15-Jan-15	4.17%	3.0%	3.0%	3.0%	3.0%
15-Jul-15	4.17%	3.0%	3.0%	3.0%	3.0%
15-Jan-16	4.17%	3.5%	3.0%	3.0%	3.0%
15-Jul-16	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-17	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jul-17	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-18	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jul-18	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-19	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jul-19	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-20	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jul-20	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-21	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jul-21	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-22	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jul-22	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-23	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jul-23	4.17%	3.5%	3.5%	3.5%	3.5%
15-Jan-24	4.09%	3.5%	3.5%	3.5%	3.5%
15-Jul-24	0.00%	3.5%	3.5%	3.5%	3.5%
15-Jan-25	0.00%	3.5%	3.5%	3.5%	3.5%
15-Jul-25	0.00%	3.5%	3.5%	3.5%	3.5%
15-Jan-26	0.00%	3.5%	3.5%	3.5%	3.5%
15-Jul-26	0.00%	3.5%	3.5%	3.5%	3.5%
15-Jan-27	0.00%	3.5%	3.5%	3.5%	3.5%
15-Jul-27	0.00%	3.5%	3.5%	3.5%	3.5%
15-Jan-28	0.00%	0.0%	3.5%	3.5%	3.5%
15-Jul-28	0.00%	0.0%	0.0%	0.0%	0.0%
TOTAL	100.00%	100.0%	100.0%	100.0%	100.0%

SCHEDULE 1

COMMON TERMS SCHEDULE

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Sub-Schedule 3.1(e)	Project Documents (other than Construction Contracts)
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EXHIBITS

Exhibit 2.4(e)	Form of Satisfied CP Notice
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Exhibit 8.7(b)	Form of Transfer Certificate

1. Definitions and Interpretation

1.1 General Definitions

Wherever used in this Schedule, capitalized terms not otherwise defined in this Schedule shall have the same meanings assigned to them in the Senior Loan Agreement of which this Schedule forms a part and, unless the context otherwise requires, the following terms shall have the respective meanings assigned to them:

"Acceptable DSR Guarantee Bank" means (x) in the case of Rupee amounts, any bank that is listed as a "Scheduled Bank" in accordance with the Reserve Bank of India Act, 1934, that has a domestic long-term debt rating of at least "AAA" by CRISIL Limited or ICRA Limited or (y) in the case of Dollar amounts, an offshore commercial bank having a long-term unsecured and unguaranteed debt rating of at least "A" by Standard & Poor's Rating Services or at least "A2" by Moody's Investors Service Inc.;

"Accounting Principles" means Indian GAAP;

"Accounts Security Assignment" means the agreement among the Borrower, the Offshore Accounts Bank, and the Security Trustee, providing for an assignment by way of security of the Dollar Disbursement Account, the Dollar Debt Payment Account and the Dollar Debt Service Reserve Account established under the Offshore Accounts Agreement;

"ADB" means the Asian Development Bank, an international financial institution organized and existing under the Agreement Establishing the Asian Development Bank;

"ADB Loan" means the loans to be made by ADB to the Borrower for Project Costs pursuant to the ADB Loan Agreement;

"ADB Loan Agreement" means the loan agreement between ADB and the Borrower providing for the ADB Loan;

"ADB Tranche 2 Loan" means the Tranche 2 Loan to be made by ADB to the Borrower for Project Costs pursuant to the ADB Loan Agreement;

"ADB's Public Communications Policy" means the ADB Public Communication Policy (2005), as amended, supplemented or replaced from time to time;

"Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with any other Person (for the purpose of this definition "control" means the power to direct the management or policies of

an entity, directly or indirectly, whether through the ownership of securities, by contract or otherwise, provided that the direct or indirect ownership of twenty-six per cent (26%) or more of the outstanding ownership interests of a Person is deemed to constitute control of that Person and "controlling" and "controlled" have corresponding meanings); provided that no Senior Lender shall be considered an "Affiliate" of any of the Sponsor, the Borrower or the Project Subsidiary solely as a result of such Senior Lender making its Senior Loan or owning any Share Capital of the Borrower or the Project Subsidiary;

"After Acquired Assets" means such part of the Project Site comprising forest land and private land identified in the certificate delivered by the Borrower to the Senior Lender pursuant to Section 4.1(q)(i) (Title and Land Use Rights), to be acquired by the Borrower after the date of the first Disbursement of any Senior Loan;

"ASME PTC" means the American Society of Mechanical Engineers Performance Test Code, as may be amended from time to time;

"Annual Budget" means the most recent annual operating budget prepared by the Borrower and delivered to, and approved by, the Senior Lender pursuant to Section 5.5(c)(iii) (Annual Budget);

"Annual Environment and Social Performance Report" means a report prepared by the Borrower, in form and substance satisfactory to the Senior Lender, on Environmental and Social Matters arising in relation to any of the Borrower, the Project Subsidiary or the Project (and such report shall be subject to public disclosure by ADB pursuant to the policy set forth in ADB's Public Communications Policy), including:

- (a) information on compliance by the Borrower and the Project Subsidiary with Environmental and Social Laws, including the status of any Environmental Approvals or any other Authorizations related to Environmental and Social Matters required for the Project, the results of any inspection carried out by any Authority, any violation of Applicable Law or Environmental and Social Requirements and any remedial action or punitive actions relating to such violation;
- (b) information on implementation of the Environmental Management Plan and the Social Management Plan, as applicable, including any proposed changes to actions, schedules or costs;
- (c) a summary of any material notice, report and other communication on Environmental and Social Matters submitted by the Borrower or the Project Subsidiary to any Authority;
- (d) information on the health and safety record of the Project, including

the rate of accidents and any initiatives in relation to health and safety matters which have been implemented or planned by the Borrower or the Project Subsidiary;

- (e) information on overall workplace and employment conditions, including any violation of Applicable Law relating to labor, and any remedial action or punitive action relating to such violation;
- (f) information on any instances in which the Borrower or the Project Subsidiary has added value to a project with respect to environmental or social risks and opportunities;
- (g) a summary of any change in Environmental and Social Laws which may have a material effect on the Project;
- (h) copies of any material information on Environmental and Social Matters periodically submitted by the Borrower to its shareholders and any information on Environmental and Social Matters periodically submitted by the Borrower to the general public; and
- (i) copies of any Authority certifications of compliance related to Environmental and Social Laws, where appropriate;

"Applicable Law" means any law (including any customary or constitutional law), statute, regulation (including any rule, official directive or guideline), resolution, rule, ordinance, order, decree, directive, requirement or restriction and any interpretation of any of the foregoing by any Authority having the force of law, now or at any time in effect in any applicable jurisdiction;

"Assignment of Subordinated Loan Agreement" means the Assignment of Subordinated Loan Agreement among the Sponsor (or any other Person making a Subordinated Loan, if permitted by the terms of the Sponsor Support Agreement), the Borrower and the Security Trustee;

"Auditors" means a chartered accounting firm of internationally recognized external accountants acceptable to the Senior Lender, which are presently Deloitte Haskins & Sells and any successor appointed in accordance with Section 5.1(d) (Auditors) (the determination by the Senior Lender as to acceptability of any successor Auditors not to be unreasonably withheld or delayed);

"Authority" means each of GoI, GoG, MoF, RBI, CEA, CERC, SERC, any state government and any other national, supranational, regional, local or municipal government or governmental, administrative, regulatory, fiscal, judicial, legislative or government-owned body, department, political subdivision, commission, authority, tribunal, agency, ministry, court,

instrumentality, entity or central bank (or any Person, whether or not government owned and howsoever constituted or called, that exercises the functions of a central bank);

"Authorizations" means all consents (including exchange control consents), registrations, filings, agreements, undertakings, notarizations, certificates, licenses, approvals, permits, authorities or exemptions from, by or with any Authority, whether given by express action or which are, under express terms deemed given by failure to act within any specified time period, including the Authorizations listed in Sub-Schedule 3,1(q) (Authorizations) and all corporate, creditors' and shareholders' approvals or consents;

"Authorized Representative" means any natural person who is duly authorized by a Person to act on its behalf for the purposes specified in, and whose name and a specimen of whose signature appear on, the certificate of incumbency and authority most recently delivered by such Person to the Senior Lender;

"Base Case Financial Projections" means the financial projections for the Borrower delivered by the Borrower to the Senior Lender pursuant to Section 4.1(r) (Base Case Financial Projections) as the same may be updated from time to time by the Borrower with the approval of the Senior Lenders pursuant to Section 5.5(c)(iv) (Revised Base Case Financial Projections);

"Base Equity" means the amount of equity that the Sponsor is required to contribute to the Borrower pursuant to Section 4.2(l) (Conditions of All Disbursements - Sponsor Equity);

"Borrower" means Coastal Gujarat Power Limited, a company organized and existing under the laws of India whose registered office is at c/o Tata Services Limited, Jeevan Bharati, Tower 1, 10th Floor, Connaught Place, New Delhi 110001, India;

"Bullet Repayment" means, with respect to each of the five tranches of the Rupee Facility Loan, the final principal payment of each such tranche;

"Bulk Power Transmission Agreement" means the Bulk Power Transmission Agreement, dated June 24, 1996, among PGCIL and Madhya Pradesh Electricity Board, Gujarat Electricity Board, Maharashtra State Electricity Board, Electricity Department, Government of Goa, Electricity Department, Administration of Daman & Diu; Electricity Department, Administration of Dadra & Nagar Haveli U.T. and Western Regional Electricity Board for the transmission infrastructure required for the Project;

"Buy-Down Amount" has the meaning given to such term in the Sponsor Support Agreement;

"CAO" means Compliance Advisor Ombudsman, the independent accountability mechanism for IFC that impartially responds to environmental and social concerns of affected communities and aims to enhance outcomes;

"CAO's Role" means

- (a) to respond to complaints by persons who have been or are likely to be directly affected by the social or environmental impacts of IFC projects; and
- (b) to oversee audits of IFC's social and environmental performance, particularly in relation to sensitive projects, and to ensure compliance with IFC's social and environmental policies, guidelines, procedures and systems;

"CEA" means the Central Electricity Authority of India;

"CERC" means the Central Electricity Regulatory Commission of India;

"Coal Suppliers" means each of the suppliers of coal under the Required Coal Supply Agreements;

"Coal Supply and Transportation Agreements Completion Date" means the date on which the Senior Lender gives written notice to the Borrower that the Senior Lender is satisfied that each of the following conditions has been fulfilled:

- (a) the Senior Lender shall have received certified copies of the executed Required Coal Supply Agreements;
- (b) the Senior Lender shall have received certified copies of the executed Required Coal Transport Agreements;
- (c) the Senior Lender shall have received certified copies, and the Security Trustee shall have received originals, of the executed Coal Supply Direct Agreements and the Coal Transport Direct Agreements;
- (d) the Senior Lender shall have received legal opinions, from counsel acceptable to it and in form and substance satisfactory to it, with respect to the enforceability, due authorization and valid execution of the Required Coal Supply Agreements, the Required Coal Transport Agreements, the Coal Supply Direct Agreements and the Coal Transport Direct Agreements; and
- (e) the Senior Lender shall have received a report, in form and substance satisfactory to it, from the Independent Engineer confirming that (i) the



technical requirements under the Required Coal Supply Agreements and Required Coal Transport Agreements are consistent with the Coal Supply and Transportation Plan and the operational parameters and requirements of the Project, including quantity, quality and compliance with the covenants related to the Environmental and Social Requirements and (ii) the price of coal and coal transportation is consistent with the assumptions in the Base Case Financial Projections or, if not consistent, identifying the deviations;

provided, however, that the Senior Lender shall notify the Borrower within sixty (60) days following receipt of all of the agreements and documents specified in sub-sections (a) through (e) either (i) that the Coal Supply and Transportation Agreements Completion Date has been achieved, in which case the Coal Supply and Transportation Agreements Completion Date shall be the date of the last such notice from the Senior Lenders, or (ii) that such agreements and/or documents are incomplete or deficient, which notice shall set forth the basis for its determination;

“Coal Supply and Transportation Plan” means a detailed plan, in form and substance satisfactory to the Senior Lender, prepared by the Borrower, describing the Borrower’s plan and timetable for meeting all of the Project’s coal supply and transportation requirements and including, without limitation, pricing assumptions and coal specifications, quantities by source/location, shipping arrangements (including vessels used, their size, whether they are owned or leased, and the terms of such shipping arrangements);

“Coal Supply Direct Agreements” means direct agreements, in form and substance satisfactory to the Senior Lender, to be entered into by the Security Trustee (on behalf of the Senior Lenders) with each of the Coal Suppliers;

“Coal Transport Direct Agreements” means direct agreements, in form and substance satisfactory to the Senior Lender, to be entered into by the Security Trustee (on behalf of the Senior Lenders) with each of the Coal Transporters;

“Coal Transporters” means each of the coal transporters under the Required Coal Transport Agreements;

“Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or its property, to influence improperly the actions of a party;

“Collateral Agents” means the Security Trustee, the Onshore Accounts Bank and the Offshore Accounts Bank;

“Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly



the actions of another party;

“**Commercial Operation Date**” has the meaning given to such term in the Power Purchase Agreement;

“**Common Facilities**” means the Project facilities that will be shared among the five Units;

“**Common Facility Agent**” means the common facility agent in respect of the KEXIM Loan, the ADB Tranche 2 Loan and the KEIC Covered Facility Loan;

“**Common Facility Agent Agreement**” means the agreement among KEXIM, the KEIC Covered Facility Agent, ADB, the Borrower and the Common Facility Agent pursuant to which the Common Facility Agent is appointed;

“**Constitutional Documents**” means the memorandum and articles of association or incorporation and bylaws or such other equivalent constitutive documentation of any Person that evidences the incorporation and regulation of that Person;

“**Construction Budget**” means the budget for the Project’s construction, delivered by the Borrower to the Senior Lender pursuant to Section 4.1(b)(iii) (Construction Schedule, Plan, Budget; Disbursement Schedule) and approved by the Independent Engineer, as amended from time to time with the approval of the Senior Lender pursuant to Section 5.5(b)(ii) (Revised Construction Plan and Budget), reflecting the scope of work and contract prices and setting forth the timing and amount of all projected costs and expenses for the Project’s construction;

“**Construction Contracts**” means all of the agreements entered into or to be entered into by or on behalf of the Borrower for the engineering, procurement, design or construction of the Project, including, without limitation, the Material Construction Contracts;

“**Construction Contractor**” means any party to a Construction Contract other than the Borrower;

“**Construction Contracts Direct Agreements**” means the following documents:

- (a) the Doosan Direct Agreement;
- (b) the Toshiba Direct Agreement;
- (c) the DPI Direct Agreement; and
- (d) the direct agreement among each Major Construction Contractor (other

than Doosan, Toshiba and DPI), the Borrower and the Security Trustee relating to each Material Construction Contract to which such Major Construction Contractor is a party;

“Construction Plan” means the detailed plan for the Project’s construction, prepared by the Borrower and approved by the Independent Engineer, and in form and substance satisfactory to the Senior Lender, specifying, without limitation, the timetable, sequencing, critical path schedule and milestones applicable thereto, the Borrower’s organizational chart and staffing plans and a list of Major Construction Contractors and their schedules, labor plans and a description of roles and responsibilities, delivered by the Borrower to the Senior Lenders pursuant to Section 4.1(b) (Construction Schedule, Plan, Budget, Disbursement Schedule), as amended from time to time in accordance with Section 5.5(b)(ii) (Revised Construction Plan and Budget);

“Construction Progress Report” means a construction progress report, prepared monthly by the Borrower, and delivered in accordance with Section 5.5(c)(i) (Reporting Requirements - Other Reporting Requirements - Construction Progress Report), and including, without limitation, (i) an executive summary and discussion of key Project work activities and critical path items, (ii) the status of the Construction Budget and any change orders that (A) are material or (B) would increase, on an aggregate basis, the payment obligations of the Borrower under any single Construction Contract by more than one million Dollars (\$1,000,000) or by more than five percent (5%) of the original contract price for such Construction Contract, whichever is less, (iii) the status of procurement and construction contracts, (iv) an overall integrated Project schedule including critical path method analysis, commissioning and startup status as applicable, (v) progress of the construction of off-site infrastructure, including the port facilities under the Port Services Agreement (such reporting relating to the port facilities to begin three (3) months after the NTP (as defined in the Port Services Agreement) is issued by the Borrower to the Port Operator under the Port Services Agreement) and the transmission facilities in accordance with the Transmission Plan, and (vi) any factors that have or could reasonably be expected to have a Material Adverse Effect;

“Construction Schedule” means a construction schedule for the Project prepared and delivered by the Borrower and approved by the Independent Engineer, including critical path method analysis and showing major equipment suppliers and Construction Contractors, and otherwise in form and substance satisfactory to the Senior Lender, as revised from time to time in accordance with Section 5.5(b)(ii) (Revised Construction Plan and Budget);

“Consultants” means the Independent Engineer, the Senior Lenders’ Local Counsel, the Senior Lenders’ International Counsel, the Insurance Consultant,



the Environmental and Social Consultant and any other advisor or consultant of the Senior Lenders appointed or replaced from time to time pursuant to Section 8.15 (Advisors);

"Contingency" means the line item designated "contingency" in the Construction Budget;

"Conveyor Land Lease" means the agreement to be entered into by the Borrower granting to the Borrower a lease of, or right to use, the land required for the coal conveyor facility for the Project;

"Corrupt Practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

"Debt Service Reserve Accounts" means, collectively, the Dollar Debt Service Reserve Account and the Rupee Debt Service Reserve Account;

"Debt Service Reserve Guarantee" means a bank guarantee or guarantees, or a letter of credit or letters of credit, covering all or any portion of the Debt Service Reserve Requirement and meeting all of the Debt Service Reserve Guarantee Requirements;

"Debt Service Reserve Guarantee Requirements" means an unconditional, irrevocable, bank guarantee or letter of credit in favor of the Onshore Accounts Bank or the Offshore Accounts Bank, as the case may be (and in each case for the benefit of the Senior Lenders), issued by a Acceptable DSR Guarantee Bank and payable on demand in Dollars (if covering any part of the Debt Service Reserve Requirement for a Senior Loan repayable in Dollars) or payable on demand in Rupees (if covering any part of the Debt Service Reserve Requirement for a Senior Loan repayable in Rupees) into the applicable Debt Service Reserve Account, meeting each of the following requirements and otherwise in form and substance satisfactory to the Senior Lender in its sole discretion:

- (i) the initial expiration date shall be at least 12 months beyond the date of issuance, and shall be renewed upon its expiration (which renewal period shall be for at least 12 months) unless, at least 45 days prior to any such expiration, the issuer shall provide the Onshore Accounts Bank or the Offshore Accounts Bank, as applicable, with a notice of non-renewal of such bank guarantee or letter of credit;
- (ii) Upon any failure to renew such Debt Service Reserve Guarantee at least 30 days prior to such expiration date, or immediately if the issuer of such Debt Service Reserve



Guarantee ceases to be a Acceptable DSR Guarantee Bank, the entire face amount thereof shall be drawable by the Onshore Accounts Bank or the Offshore Accounts Bank, as applicable, (unless the Onshore Accounts Bank or the Offshore Accounts Bank, as applicable, shall have received a replacement bank guarantee or letter of credit meeting the conditions herein imposed, or amounts shall have been deposited in the applicable Debt Service Reserve Account such that the amount on deposit therein, when aggregated with the face amount available to be drawn under any applicable Debt Service Reserve Guarantee then outstanding (other than such Debt Service Reserve Guarantee that is not to be renewed) is equal to the amount required to be on deposit in such Debt Service Reserve Account);

- (iii) the obligation to reimburse the issuer of such bank guarantee or letter of credit after any drawing under such bank guarantee or letter of credit shall be for the account of the Sponsor, and the issuer shall have no recourse to the Borrower for reimbursement, fees or other amounts; and
- (iv) there shall be no conditions to any drawing under the Debt Service Reserve Guarantee other than the submission of a drawing request substantially in the form attached to such Debt Service Reserve Guarantee;

"Debt Service Reserve Requirement" means an amount equal to one hundred percent (100%) of the Peak Debt Service Requirement;

"Default Escrow Agreements" means, collectively, each of the Default Escrow Agreements referenced in Section 11.4.2 of the Power Purchase Agreement entered into between a Procurer and the Borrower;

"Derivative Transaction" means any swap agreement, cap agreement, collar agreement, futures contract, forward contract or similar arrangement with respect to interest rates, currencies or commodity prices;

"Direct Agreements" means the following documents:

- (a) Coal Supply Direct Agreements;
- (b) Coal Transport Direct Agreements;
- (c) Construction Contracts Direct Agreements;
- (d) PPA Direct Agreement;

- (e) PSA Direct Agreement;
- (f) GoG Direct Agreement;
- (g) TCE Direct Agreement;
- (h) KOPEC Direct Agreement;
- (i) KPC Direct Agreement; and
- (j) any additional direct agreement entered into with any other counterparty to any other Project Document;

"Disbursement" means any disbursement of any of the Senior Loans;

"Disbursement Request" means a request for a Disbursement made by the Borrower in accordance with the provisions of the Senior Loan Agreement;

"Disbursement Schedule" means the schedule, detailing the expected dates and amounts of proposed Disbursements to fund Project Costs, prepared by the Borrower and confirmed by the Independent Engineer, in form and substance satisfactory to the Senior Lender, delivered by the Borrower to the Senior Lender pursuant to Section 4.1(b)(vii) (Construction Schedule, Plan, Budget, Disbursement Schedule), as amended from time to time in accordance with Section 5.1(a)(iv) (Conduct, Existence, Use of Proceeds);

"Dollar Debt Prepayment Reserve Account" has the meaning given to such term in the Trust and Retention Accounts Agreement;

"Dollar Debt Service Payment Account" has the meaning given to such term in the Offshore Accounts Agreement;

"Dollar Debt Service Reserve Account" has the meaning given to such term in the Offshore Accounts Agreement;

"Dollar Disbursement Account" has the meaning given to such term in the Offshore Accounts Agreement;

"Dollars" and the sign "\$" means the lawful currency of the United States of America;

"Doosan" means Doosan Heavy Industries & Construction Co. Ltd., a company organized and existing under the laws of Korea;

"Doosan Construction Contracts" means (i) the Umbrella Agreement, dated May 15, 2007, among Doosan, DPI and the Borrower, (ii) the Offshore Equipment Supply Contract, dated May 15, 2007, between Doosan and the

Borrower, (iii) the Onshore Equipment Supply Contract, dated May 15, 2007, between DPI and the Borrower, (iv) the Onshore Services Contract, dated May 15, 2007, between DPI and the Borrower, and (v) the Onshore Civil Works Contract, dated May 15, 2007, between DPI and the Borrower;

"Doosan Direct Agreement" means the Direct Agreement among Doosan, the Borrower, and the Security Trustee relating to the Doosan Construction Contracts;

"Doosan Letter of Credit" means the letter of credit issued by SBI (in its capacity as Issuing Bank under the Rupee Facility Loan Agreement) in the face amount of one hundred million Dollars (\$100,000,000) in favor of Doosan;

"DPI" means Doosan Projects India Private Limited (formerly INKOR Engineering Private Ltd.), a company organized and existing under the laws of India;

"DPI Direct Agreement" means the Direct Agreement among DPI, the Borrower and the Security Trustee relating to the Doosan Construction Contracts;

"Drawstop Notice" has the meaning given to such term in Section 2.4(g) (Disbursement Procedures);

"Engineering Consultancy Services Agreement" means the Engineering Consultancy Services Agreement, dated September 18, 2007, between the Borrower and TCE;

"Environmental and Social Consultant" means any person from time to time appointed by the Senior Lender pursuant to Section 8.15 (Advisors) to act as the environmental health and safety advisor and social advisor in relation to the Project;

"Environmental and Social Laws" means all Applicable Laws relating to Environmental and Social Matters, Hazardous Substance, human health or safety or laws relating to social issues, including minimum labor standards and laws prohibiting forced labor or harmful child labor;

"Environmental and Social Matters" means any of the following:

- (a) any emission, release, entry or introduction into the air of any Hazardous Substance including the air within buildings and other natural or man-made structures above or below ground;
- (b) any discharge, release, entry or introduction into water of any

Hazardous Substance including into any river, watercourse, lake or pond (whether natural or artificial, above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;

- (c) any deposit, release, keeping or disposal in land or on land, whether or not covered by water, of any Hazardous Substance;
- (d) any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;
- (e) nuisance, noise, defective premises, health and safety at work, preservation or protection of the natural environment or of man or any living organisms supported by the environment;
- (f) impact of the Project on persons of resettlement or land acquisition;
- (g) impact of the Project on indigenous peoples and other vulnerable groups;
- (h) public consultation and disclosure with respect to the Project; and
- (i) any matters that are the subject of or addressed in the Environmental and Social Requirements, Environmental Impact Assessment, Summary Environmental Impact Assessment, Environmental Management Plan, or Annual Environment and Social Performance Report;

"Environmental and Social Requirements" means:

- (a) the ESPS;
- (b) all requirements and mitigating or monitoring measures specified in the Summary Environmental Impact Assessment;
- (c) all Environmental and Social Laws;
- (d) any Environmental Approval issued by any Authority or otherwise under any Environmental and Social Law;
- (e) the Senior Lender Environmental and Social Requirements;



- (f) ADB's Environment Policy (2002);
- (g) ADB's Involuntary Resettlement Policy (1995);
- (h) ADB's Indigenous People's Policy (1998);
- (i) the following World Bank and IFC environmental and social policies and guidelines, copies of which have been delivered to, and receipt of which has been acknowledged by, the Borrower by letter dated November 27, 2007:
 - (i) IFC Performance Standards on Social and Environmental Sustainability (April 30, 2006);
 - (ii) IFC Environmental Health & Safety Guidelines: (A) IFC and the World Bank Group Environmental, Health and Safety General Guidelines dated April 30, 2007; (B) The World Bank Group Thermal Power – Guidelines for New Plants dated July 1998; and (C) IFC and the World Bank Group Environmental, Health and Safety Guidelines for Electric Power Transmission and Distribution dated April 30, 2007;
 - (iii) all requirements and mitigation or monitoring measures specified in (A) Environmental and Social Action Plan (ESAP) prepared by CGPL and dated November 2007, (B) IFC Environmental and Social Review Summary (ESRS) approved by CGPL and disclosed on November 27, 2007, and to be amended from time to time, and (C) environmental and social assessment documents prepared for the Project and listed in the IFC ESRS;
 - (iv) Environmental Management Plan; and
 - (v) Social Management Plan;
- (j) the Equator Principles;

"Environmental Approvals" means any permits, certificates and other Authorizations (including any conditions which attach to the foregoing) required under Environmental and Social Laws;

"Environmental Impact Assessment" means the comprehensive environmental impact assessment dated August 2007, including the Rapid Marine Environmental Impact Assessment, dated January 2007, and the Supplemental Environmental Impact Assessment, dated November 2007, prepared by the Borrower in relation to the Project and all supplements,

modifications and amendments to it, including but not limited to the Modeling Study for Intake and Outfall Channel and Dredge Soil Disposal Plan to be completed by the Borrower, as the Senior Lender may agree;

“Environmental Management Plan” means the plan or plans to be developed by the Borrower covering the Project’s construction and operation phases which may be amended or updated from time to time, and shall, at a minimum, include:

- (a) a detailed description of all necessary environmental mitigation measures and monitoring activities, which are, at a minimum, those measures and monitoring activities defined in each Authorization issued by any Authority, or otherwise, under any applicable Environmental and Social Law;
- (b) a statement of the estimated cost, time schedule and assignment of responsibility for implementing each mitigation measure and monitoring activity;
- (c) a description of the specific Project supervision methods to be implemented to ensure that all measures and programs are completely and properly implemented by all responsible parties;
- (d) a description of steps to be taken to ensure adequate information disclosure and consultation with the local population affected by the Project; and
- (e) any other mitigation, monitoring and management plans developed or to be developed so as to comply with Environmental and Social Requirements including, but not limited to: (i) Chapter VIII (Environmental Management Plan) of the Comprehensive Environmental Impact Assessment Study Report dated August 2007, to be updated as appropriate, from time to time, and in line with the timeline presented in the ESAP (#14), (ii) Management Plan to be developed based on the result and findings of the “Modeling Study for Intake and Outfall Channel” as per MoEF Environmental Clearance Condition and as listed as #3 of the ESAP, (iii) Dredge Soil Disposal Plan to be developed and as listed as #4 of the ESAP, (iv) Environment, Occupational Health and Safety Monitoring, Reporting and Internal and External Audit Programs for both construction and operational phases, to be developed and as specified as #9 and #10 of the ESAP, (v) Emergency Preparedness and Response Plan both for offsite and onsite emergencies, to be developed and specified as #11 of the ESAP, and (vi) Preparation and Disclosure of CGPL’s social, environmental, occupational health and safety performance through annual Corporate Sustainability Report, as

specified as #13 of the ESAP;

“Environmental or Social Claim” means, with respect to the Borrower or the Project Subsidiary, any administrative, regulatory or judicial action or any written notice, claim, suit, Lien, judgment or demand by any Authority, which alleges the Borrower’s or the Project Subsidiary’s liability for, or any judgment or order in favor of any Person for, costs of investigation, cleanup costs, consultants’ fees, governmental response costs, damage to natural resources (including wetlands, wildlife, aquatic and terrestrial species and vegetation) or other property, including costs of land acquisition, income restoration, and resettlement components for Persons affected by the Project, personal injuries, fines or penalties or any other damages in connection with:

- (a) the presence or release of any Hazardous Substance at any location, whether or not owned by such Person; or
- (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental and Social Law or any Authorization pursuant to any Environmental and Social Law;

“Equator Principles” means those principles so entitled and described in “A financial industry benchmark for determining, assessing and managing social and environmental risk in project financing” dated July 2006 and adopted by various banks and financial institutions as at the date of this Senior Loan Agreement;

“Equity Rights” means, in respect of a Person (other than a natural person), any options, warrants, commitments, preemptive rights or agreements of any kind (including any shareholders’ or voting trust agreements) for the issuance, sale, registration or voting of, or subscriptions for or securities convertible into, any Share Capital of such Person;

“ESPS” means the environmental and social policy and standards promulgated and set out in or referred to under:

- (a) OECD Revised Council Recommendation on Common Approaches on Environment and Officially Supported Credits (TAD/ECG (2007) 9) dated 12 June 2007;
- (b) Environment Protection Act, 1986 (as amended from time to time);
- (c) Water (Prevention and Control of Pollution) Act, 1974 (as amended from time to time); and
- (d) Air (Prevention and Control of Pollution) Act, 1981 (as amended from time to time);

provided that in the event of any ambiguity or conflict between any of the foregoing standards, the most stringent requirement of such conflicting or ambiguous standards shall apply;

"Event of Default" means any of those events specified in Section 6.1 (Events of Default);

"Excess Cash Prepayments" means prepayments of the Rupee Facility Loan, in accordance with the Rupee Facility Loan Agreement, from excess cash flow for any year when the Historical Debt Service Coverage Ratio exceeds 1.3;

"Facility Agent" means (i) with respect to the KEIC Covered Facility Loan, the KEIC Covered Facility Agent, (ii) with respect to the Rupee Facility, the Rupee Facility Agent, (iii) with respect to the IIFCL Loan, the IIFCL Loan Facility Agent, and (iv) collectively with respect to the KEXIM Loan, the KEIC Covered Facility Loan and the ADB Tranche 2 Loan, the Common Facility Agent;

"Final ECB Approval" means the final approval to be issued by the RBI to the Borrower, permitting the Borrower to borrow the IFC Loan, the ADB Loan, the KEXIM Loan and the KEIC Covered Facility Loan, the IIFCL Loan and other external commercial borrowings up to an amount of \$1,800,000,000 (One Billion Eight Hundred Million Dollars) or such amount as may be permitted by RBI, as such approval may be amended or modified from time to time;

"Financial Business Day" means any day when banks are open for business in Seoul, Manila, London, Singapore, New York, Mumbai, Paris and Washington, D.C.;

"Financial Plan" means the proposed sources of financing for the Project set out in Section 2.2(b) (Project Cost and Financial Plan);

"Financing Documents" means:

- (a) the Senior Loan Agreements;
- (b) the Sponsor Support Agreement;
- (c) the Share Retention Agreement;
- (d) the Security Trustee Agreement;
- (e) the Subordination Agreement;
- (f) the Security Documents;

- (g) the KEIC Insurance;
- (h) the Subordinated Loan Agreements;
- (i) the Common Facility Agent Agreement;
- (j) the IIFCL Facility Agent Agreement;
- (k) the Project Subsidiary Guarantee;
- (l) the Working Capital Loan Agreements;
- (m) the Hedging Agreements; and

any other agreement designated as a "Financing Document" by the Senior Lender after the date of this Agreement;

"Financing of Terrorism" means the act of providing or collecting funds with the intention that they be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

"Forest Land Lease Agreement" means the agreement, if any, executed between GoG and the Borrower granting to the Borrower a lease of, or permission to use, the forest land at the Project Site;

"Fraudulent Practice" means an act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

"GoG" means the government of the State of Gujarat;

"GoG Direct Agreement" means the letter of undertaking issued by the GoG in favor of the Security Trustee recognizing rights of the Senior Lenders with respect to the forest land forming part of the Project Site;

"GoI" means the Government of India;

"Hazardous Substance" means any hazardous or toxic substance, material or waste (whether in a solid or liquid form or in the form of a gas or vapor and whether alone or in combination with any other substance) defined, listed, classified or regulated as such in or under any applicable Environmental and Social Laws or which is capable of causing harm to persons or any other living organism supported by the environment, or damaging the environment or public health;

"Hedge Providers" means any counterparty to the Borrower under a Hedging Agreement;

"Hedging Agreement" means each Derivative Transaction entered into between the Borrower and any other party relating to (i) the hedging of any interest under any Senior Loan, or (ii) the hedging of any currency in which any contractual payment is due under any Transaction Document;

"Hedging Plan" means the plan prepared by the Borrower, in form and substance satisfactory to the Senior Lender, specifying the Borrower's plans for hedging the Borrower's interest rate and currency risks, including the amounts to be hedged and the timetable for putting the hedges into place, delivered by the Borrower to the Senior Lender pursuant to Section 4.1(f) (Hedging Plan);

"Hypothecation Agreements" means, collectively, each Agreement to Hypothecate cum Deed of Hypothecation referenced in Section 11.4.2 of the Power Purchase Agreement between a Procurer and the Borrower;

"IFC" means International Finance Corporation, an international organization established by Articles of Agreement among its member countries, including India;

"IFC Loan" means the loan to be made by IFC to the Borrower for Project Costs pursuant to the IFC Loan Agreement;

"IFC Loan Agreement" means the agreement between IFC and the Borrower providing for the IFC Loan;

"IFC Performance Standards" means IFC's Performance Standards on Social & Environmental Sustainability, dated April 30, 2006, copies of which have been delivered to and receipt of which has been acknowledged by the Borrower;

"IIFCL" means India Infrastructure Finance Company (UK) Ltd., a company organized and existing under the laws of England;

"IIFCL Facility Agreement" means the agreement among IIFCL, the IIFCL Facility Agent and the Borrower pursuant to which the IIFCL Facility Agent is appointed;

"IIFCL Loan" means the loan to be made in Dollars by IIFCL to the Borrower for Project Costs pursuant to the IIFCL Loan Agreement;

"IIFCL Loan Agreement" means the agreement between IIFCL and the Borrower providing for the IIFCL Loan;

"IIFCL Loan Facility Agent" means SBI, acting in its capacity as Facility Agent for IIFCL;

"Indemnification Agreement" means the agreement dated November 20, 2007 between PGCIL and Gujarat Urja Vikas Nigam Limited;

"Indenture of Mortgage" means the indenture of mortgage to be executed by the Borrower in favor of the Security Trustee (on behalf of the Secured Parties) and/or the documents of title to be delivered by the Borrower to the Security Trustee (on behalf of the Secured Parties), together with all ancillary documentation, all in form and substance satisfactory to the Senior Lenders;

"Independent Engineer" means Black & Veatch Consulting Private Limited, or any successor thereto selected by the Senior Lenders;

"Independent Engineer's Monitoring Agreement" means the agreement between the Independent Engineer, the Borrower and the Senior Lenders covering the Independent Engineer's scope of work and responsibilities for the construction and operation phases of the Project;

"India" means the Republic of India;

"Indian GAAP" means generally accepted accounting principles in India applied on a consistent basis;

"Indocoal" means Indocoal Resources (Cayman) Limited, a corporation organized and existing under the laws of the Cayman Islands;

"Initial Assets" means (a) all the present and future, tangible and intangible movable property and assets of the Borrower and (b) the immovable property and assets of the Borrower with respect to which the Borrower has acquired clear and marketable title, free of encumbrances, as of the date of the first Disbursement under any Senior Loan, details of which are specified in the certificate delivered by the Borrower to the Senior Lender pursuant to Section 4.1(q)(i) (Title and Land Use Rights);

"Initial Coal Transport Agreements" means, together, (a) the Maxpente Time Charter and (b) the Continuous Voyage Charter (CVC) between Tata NYK Shipping PTE. LTD, a corporation organized and existing under the laws of Singapore and having its registered office at 22 Tanjong Kling Rd, Singapore 628048 and the Project Subsidiary, dated February 27, 2008, each relating to the shipment of coal to the Project and evidencing together, at a minimum, an ability to transport approximately 5.85 MMT per annum of coal from Indonesia to the Project;

"Initial Transaction Documents" means:

- (a) the Senior Loan Agreements;

- (b) the Sponsor Support Agreement;
- (c) the Share Retention Agreement;
- (d) the Security Trustee Agreement;
- (e) the Subordination Agreement;
- (f) the KEIC Insurance;
- (g) the Common Facility Agent Agreement;
- (h) the IIFCL Facility Agent Agreement;
- (i) the Project Subsidiary Guarantee;
- (j) the Project Coal Sales Agreement;
- (k) the Initial Coal Transport Agreements;
- (l) the Doosan Construction Contracts;
- (m) the Toshiba Contract;
- (n) the Power Purchase Agreement;
- (o) the Default Escrow Agreements;
- (p) the Hypothecation Agreements;
- (q) the Port Services Agreement;
- (r) the KPC Guarantee;
- (s) the Engineering Consultancy Services Agreement;
- (t) the KOPEC Agreement;
- (u) the Services Agreement;
- (v) the Maxpente Guarantee;
- (w) the Doosan Direct Agreement;
- (x) the Toshiba Direct Agreement;
- (y) the DPI Direct Agreement;



- (z) the direct agreement with Indocoal relating to the Project Coal Sales Agreement;
- (aa) the KPC Direct Agreement;
- (bb) the Coal Transport Direct Agreements with the Coal Transporters party to the Initial Coal Transport Agreements;
- (cc) the PPA Direct Agreement;
- (dd) the PSA Direct Agreement;
- (ee) the TCE Direct Agreement;
- (ff) the KOPEC Direct Agreement;
- (gg) the Trust and Retention Accounts Agreement;
- (hh) the Offshore Accounts Agreement;
- (ii) the Accounts Security Assignment;
- (jj) the Indenture of Mortgage (except with respect to the After Acquired Assets);
- (kk) the Assignment of Subordinated Loan Agreement;
- (ll) the Share Pledge Agreement;
- (mm) the Powers of Attorney;
- (nn) the Project Subsidiary Pledge Agreement;
- (oo) the Project Subsidiary Security Agreement;

"In-Principle ECB Approval" means the in-principle approval, dated February 27, 2008, issued by RBI, permitting the Borrower to borrow up to an amount of \$1,800,000,000 (One Billion Eight Hundred Million Dollars);

"Insurance Consultant" means Marsh India Private Limited or any successor thereto selected by the Senior Lenders;

"Insurance Monitoring Agreement" means the agreement between the Insurance Consultant, the Borrower and the Senior Lenders covering the Insurance Consultant's scope of work and responsibilities for the construction and operation phases of the Project;



"Intake Outfall Land Lease Agreement" means the agreement to be entered into for the lease of or right to use land for the water intake and outfall channel between the Borrower, the Port Operator and Adani Power Limited;

"Intercreditor Agent" means the Intercreditor Agent appointed pursuant to the Intercreditor Agreement;

"Intercreditor Agreement" means the Intercreditor Agreement to be entered into among the Senior Lenders, KEIC, the Facility Agents, the Working Capital Lenders, the Security Trustee, the Intercreditor Agent and, if approved in accordance with the Hedging Plan, the Hedge Providers;

"Interest Payment Date" means each date for the payment of interest on the Senior Lender's Senior Loan under this Senior Loan Agreement;

"Issuing Bank" means SBI, in its capacity as issuing bank with respect to the Permitted Construction Letters of Credit under the Rupee Facility Loan Agreement;

"Japanese Yen" means the lawful currency of Japan;

"KEIC" means the Korea Export Insurance Corporation, a statutory juridical Export Credit Agency (ECA) established in the Republic of Korea under The Export Insurance Act of 1968, as amended;

"KEIC Covered Facility Agent" means BNP Paribas, a banking institution organized and existing under the laws of France, acting in its capacity as Facility Agent under the KEIC Covered Facility Loan Agreement;

"KEIC Covered Facility Loan Agreement" means the agreement among the Borrower, the KEIC Covered Facility Agent and the KEIC Covered Facility Lenders providing for the KEIC Covered Facility Loan;

"KEIC Covered Facility Lenders" means the lenders party to the KEIC Covered Facility Loan Agreement;

"KEIC Covered Facility Loan" means the loan to be made by the KEIC Covered Facility Lenders to the Borrower for Project Costs pursuant to the KEIC Covered Facility Loan Agreement;

"KEIC Insurance" means the KEIC Export Insurance Policy to be issued by KEIC in favor of the KEIC Covered Facility Agent (acting on behalf of the KEIC Covered Facility Lenders);

"KEXIM" means The Export-Import Bank of Korea, a statutory juridical entity established in the Republic of Korea under The Export-Import Bank of

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Korea Act of 1969, as amended;

"KEXIM Loan" means the loan to be made by KEXIM to the Borrower for Project Costs pursuant to the KEXIM Loan Agreement;

"KEXIM Loan Agreement" means the agreement between KEXIM and the Borrower providing for the KEXIM Loan;

"KOPEC" means the Korea Power Engineering Company, a company organized and existing under the laws of Korea;

"KOPEC Agreement" means the Review Engineering Consulting Services Agreement For Ultra Mega Power Plant (UMPP) Mundra, dated as of October 1, 2007, between KOPEC and the Borrower;

"KOPEC Direct Agreement" means the Direct Agreement among KOPEC, the Borrower and the Security Trustee relating to the KOPEC Agreement;

"KPC" means P.T. Kaltim Prima Coal, a company organized and existing under the laws of the Republic of Indonesia;

"KPC Concession" means the Agreement between Perusahaan Negara Tambang Batubara and KPC, dated April 8, 1982, with respect to rights to the mine from which the coal to be supplied under the Project Coal Sales Agreement is expected to be sourced;

"KPC Direct Agreement" means the Direct Agreement among KPC, the Borrower and the Security Trustee relating to the KPC Guarantee;

"KPC Guarantee" means the guarantee by KPC of Indocoal's obligations under the Project Coal Sales Agreement;

"Land Use Rights" means all approvals, certificates, licenses, permits, registrations, authorizations, orders, decrees or resolutions evidencing land use rights required for the Project, including without limitation, all rights of way, easements, wayleaves, usufructs and surface rights;

"Lien" means any mortgage, pledge, charge, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, right of set-off, counterclaim or bankers lien, privilege or priority of any kind or any other arrangement having the effect of security, any designation of loss payees or beneficiaries or any similar arrangement under or in respect of any insurance or reinsurance policy or any preference of one creditor over another arising by operation of law;

"Local Business Day" means a day on which commercial banks and foreign



exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in Mumbai, India;

“Major Construction Contractors” means Doosan, DPI, Toshiba, and each Construction Contractor that is a party to a Material Construction Contract;

“Major Project Documents” means the following documents:

- (a) the Power Purchase Agreement;
- (b) the Default Escrow Agreements;
- (c) the Hypothecation Agreements;
- (d) the Port Services Agreement;
- (e) the Material Construction Contracts;
- (f) the Required Coal Supply Agreements;
- (g) the KPC Guarantee;
- (h) the Required Coal Transport Agreements;
- (i) the Engineering Consultancy Services Agreement;
- (j) the KOPEC Agreement;
- (k) the Conveyor Land Lease;

and any other agreement designated as a “Major Project Document” by the Senior Lender in consultation with the Borrower after the date of this Senior Loan Agreement;

“Material Adverse Effect” means a material adverse effect on:

- (a) the Borrower or its assets or properties;
- (b) the financial condition or business prospects of the Borrower;
- (c) the implementation of the Project, the Financial Plan or the carrying on of the Borrower’s business or operations;
- (d) the ability of the Borrower, the Sponsor, or any Material Project Participant to perform any of its respective material obligations under any of the Transaction Documents to which it is a party;

- (e) the validity or priority of the security interest of any of the Secured Parties under any of the Security Documents; or
- (f) the rights or remedies of any of the Secured Parties under the Financing Documents;

"Material Construction Contracts" means the Doosan Construction Contracts, the Toshiba Contract, and each Construction Contract under which the aggregate payment obligations and liabilities of the Borrower exceed Rupees three hundred crores (Rs. 300,00,00,000) or the equivalent thereof, as well as all letters of credit or bank guarantees issued by or for the account of such contractors under any of such contracts;

"Material Project Participants" means the Borrower, the Project Subsidiary, the Sponsor, each of the Major Construction Contractors, each of the Procurers, each of the Coal Suppliers, each of the Coal Transporters, the Port Operator and each other party to a Major Project Document, for so long as such Person continues to have any obligations under any Transaction Document to which such Person is a party;

"Maxpente Time Charter" means the Time Charter between Maxpente Shipping Corporation, Liberia, owners of good Cyprus flag hull number 1075, to be built at Jingsu Rongsheng Heavy Industries Co Ltd, China, TBN "KANARIS", and the Project Subsidiary, dated February 6, 2008.

"Maxpente Guarantee" means the Guarantee to be entered into by the Borrower in favor of Maxpente Shipping Corporation guaranteeing the obligations of the Project Subsidiary under the Maxpente Time Charter;

"Minimum Hedging Strategy" means the entry by the Borrower into one or more Hedging Agreements for implementing the Hedging Plan;

"MoF" means the Ministry of Finance, Gol;

"Money Laundering" means:

- (a) the conversion or transfer of property, knowing it is derived from a criminal offense, for the purpose of concealing or disguising its illegal origin or of assisting any Person who is involved in the commission of the crime to evade the legal consequences of its actions;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property knowing that it is derived from a criminal offense; or
- (c) the acquisition, possession or use of property knowing at the time of its

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receipt that it is derived from a criminal offense;

"Obligations" means:

- (a) the unpaid principal of and interest on the Senior Loans (including interest accruing at the then applicable rates provided in the Senior Loan Agreements after the maturity of the Senior Loans and interest accruing at the then applicable rates provided in the Senior Loan Agreements after the filing of any petition in bankruptcy, or the commencement of any bankruptcy proceeding relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding); and
- (b) all other obligations and liabilities of the Borrower to any of the Secured Parties under any of the Senior Loan Agreements or any other Financing Document, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of or in connection with any of the Senior Loan Agreements or the other Financing Documents or any other document made, delivered or given in connection herewith or therewith, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, charges, expenses or otherwise (including, without limitation, all fees and expenses that are required to be paid by the Borrower pursuant to the terms of any of the Senior Loan Agreements or any other Financing Document, and any costs, fees or expenses incurred in connection with the enforcement or preservation of any of the rights of any of the Secured Parties under any Financing Document);

including, with respect to each of (a) and (b) above:

- (i) any refinancing or novation of any of those liabilities; and
- (ii) liability of the Borrower to any Secured Party in connection with any recovery by or on behalf of the Borrower of a payment or discharge on grounds of preference or otherwise;

"Obstructive Practice" means (i) deliberately destroying, falsifying, altering or concealing evidence material to an investigation, or making false statements to investigators, in order to materially impede an investigation by the Senior Lender or any of its representatives into allegations of a Coercive Practice, Collusive Practice, Corrupt Practice or Fraudulent Practice; and threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an investigation or from pursuing an investigation, or (ii) acts intended to materially impede the exercise of the Senior Lender's contractual rights or access to information agreed to be provided under the

Financing Documents;

"Official" means any officer or member of a political party or candidate for political office in India or any officer or employee (i) of any Authority or (ii) of a public international organization;

"Offshore Accounts Agreement" means the Offshore Accounts Agreement to be entered into among the Offshore Accounts Bank, the Borrower and the Security Trustee providing, subject to RBI approval, for the establishment and operation of and creation of a security interest in, the Dollar Disbursement Account, the Dollar Debt Payment Account, the Dollar Debt Service Reserve Account, the Project LC Reserve Account and any other accounts or sub-accounts identified therein;

"Offshore Accounts Bank" means a financial institution acceptable to the Senior Lenders with whom the Dollar Disbursement Account, the Dollar Debt Payment Account, the Dollar Debt Service Reserve Account, and any other accounts or sub-accounts identified in the Offshore Accounts Agreement are maintained;

"Offshore Permitted Investments" has the meaning given to such term in the Offshore Accounts Agreement;

"Onshore Accounts Bank" means a financial institution acceptable to the Senior Lenders with whom the Trust Accounts are maintained;

"Onshore Permitted Investments" shall have the meaning given to such term in the Trust and Retention Accounts Agreement;

"Operating and Maintenance Plan" means the plan for the Project's operation and maintenance, prepared by the Borrower and approved by the Independent Engineer, including staffing plans, plan for ash management, management of coal supply and transportation contracts, plans for major maintenance and spares, and plans for sourcing other commodities needed for operation (such as fuel oil and chemicals), and otherwise in form and substance satisfactory to the Senior Lenders;

"Peak Debt Service Requirement" means, as of any date of calculation, the highest aggregate amount, in any two consecutive Financial Quarters during the term of any of the Senior Loans after the date of such calculation, of all scheduled payments falling due on account of Long-term Debt and interest and other charges on all Financial Debt, but shall exclude, until the date that is two years before the first Bullet Repayment is scheduled to be made, the Bullet Repayments;

"Permitted Charter Party Guarantees" means (a) the Maxpente Guarantee



and (b) any other guarantee entered into by the Borrower pursuant to which the Borrower guarantees the Project Subsidiary's performance under any other Coal Transport Agreement (other than a Coal Transport Agreement with an Affiliate of the Borrower), provided that such guarantee is substantially in the form of the Maxpente Guarantee or otherwise in form and substance satisfactory to the Senior Lender;

"Permitted Construction Letters of Credit" means, collectively, (a) the Toshiba Letter of Credit and (b) any additional letters of credit issued by SBI (in its capacity as Issuing Bank under the Rupee Facility Loan Agreement) pursuant to the terms of a Project Document that has been approved by the Senior Lenders (which it is understood shall include a Borrower suspension right substantially identical to the Borrower suspension right provided for under Section 23 of the Special Conditions of the Toshiba Contract or otherwise satisfactory to the Senior Lender); *provided* that the aggregate total face amount of all such outstanding letters of credit under this clause (b) shall not exceed, at any one time, three hundred eleven million Dollars (\$311,000,000) (or the equivalent thereof in any other currency);

"Permitted Indebtedness" means Financial Debt identified in Section 5.2(d) (Permitted Indebtedness);

"Permitted Liens" means:

- (a) any Lien created pursuant to the Security Documents;
- (b) any Lien arising from any tax, assessment or other governmental charge or other Lien arising by operation of law (including, without limitation, carriers', vendors', warehousemen's and mechanics' Liens), if the obligation underlying any such Lien is not yet due or, if due, is being contested in good faith by appropriate proceedings so long as:
 - (i) those proceedings do not involve in the reasonable opinion of the Senior Lender any substantial danger of the sale, forfeiture or loss of any part of the Project, title thereto or any interest therein, nor interfere in any material respect with the use or disposition thereof or the implementation of the Project or the carrying on of the business of the Borrower; and
 - (ii) the Borrower has set aside adequate reserves sufficient to promptly pay in full any amounts that the Borrower may be ordered to pay on final determination of any such proceedings;
- (c) the naming of the Secured Parties as loss payee/beneficiary/additional insured under the Borrower's insurance policies; and



(d) the naming of Persons as additional insureds under the Borrower's insurance policies in the ordinary course of business;

"Person" means any natural person, corporation, company, partnership (whether or not having separate legal personality), firm, voluntary association, joint venture, trust, unincorporated organization, Authority or any other entity whether acting in an individual, fiduciary or other capacity;

"PGCIL" means Power Grid Corporation of India Limited, a public limited company organized and existing under the laws of India;

"Port Operator" means Mundra Port and Special Economic Zone Ltd., a company organized and existing under the laws of India;

"Port Services Agreement" means the Port Services Agreement, dated April 22, 2007, between the Borrower and the Port Operator;

"Port Services Progress Report" means monthly progress reports to be provided to the Borrower by the Port Operator pursuant to Clause 4.4.4 of the Port Services Agreement;

"Potential Event of Default" means any event or circumstance that would, with notice, lapse of time, the making of a determination or any combination thereof, become an Event of Default;

"Powers of Attorney" means, collectively, the powers of attorney granted by the Sponsor in favor of the Security Trustee with respect to the Shares pledged under the Share Pledge Agreement;

"Power Purchase Agreement" or **"PPA"** means the Power Purchase Agreement, dated April 22, 2007, between the Procurers and the Borrower, as Seller;

"PPA Direct Agreement" means the Direct Agreement among the Procurers, the Borrower and the Security Trustee relating to the Power Purchase Agreement;

"Procurer Letter of Credit" means any letter of credit posted by a Procurer to secure its obligations under the Power Purchase Agreement;

"Procurers" means, collectively, the Persons set forth in Schedule 1 to the Power Purchase Agreement;

"Prohibited Payments" means any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly, to or for the use or benefit of any Official (including to or for the

use or benefit of any other Person if the Borrower or any Shareholder knows, or has reasonable grounds for believing, that the other Person would use such offer, gift, payment, promise or authorization of payment for the benefit of any such Official), for the purpose of influencing any act or decision or omission of any Official in order to obtain, retain or direct business to, or to secure any improper benefit or advantage for, the Borrower, its Affiliates or any other Person; provided that any such offer, gift, payment, promise or authorization of payment shall not be considered a Prohibited Payment if it is lawful under Applicable Law and regulations;

"Project" means the project described in Section 2.1 (The Project);

"Project Coal Sales Agreement" means the Coal Sales Agreement, to be entered into between the Borrower, as buyer, and Indocoal, as supplier, providing for the supply of 5.85 MMT (plus or minus 20%) of coal per annum to the Borrower;

"Project Costs" means the costs associated with the design, engineering, construction and start-up of the Project as set forth in the Construction Budget, and includes without duplication:

- (a) costs and expenses incurred in respect of the acquisition and preservation of Land Use Rights or real property constituting the Project Site;
- (b) liabilities, costs and expenses incurred under the Construction Contracts and other costs incurred by the Borrower, directly and indirectly, relating to the design, engineering, construction and start-up of the Project;
- (c) fees and expenses incurred by or on behalf of the Borrower in connection with the development of the Project and the consummation of the transactions contemplated by the Transaction Documents, including financial, accounting, legal, surveying and consulting fees; and
- (d) interest payable under the Financing Documents with respect to any Unit prior to the Commercial Operation Date for such Unit;

"Project Documents" means all contracts necessary for or material to the construction and operation of the Project, including the following documents:

- (a) the Major Project Documents;
- (b) the Construction Contracts;



- (c) the Services Agreement;
- (d) the Maxpente Guarantee;
- (e) the Forest Land Lease Agreement;
- (f) the Intake Outfall Land Lease Agreement; and
- (g) any other agreement designated as a "Project Document" by the Senior Lender in consultation with the Borrower, after the date of this Senior Loan Agreement;

"Project Financial Completion Date" means the last day of the month in which the following requirements have each been satisfied:

- (a) no Event of Default or Potential Event of Default has occurred and is continuing;
- (b) the last Unit of the Project has been operating for six (6) consecutive months;
- (c) the Borrower has billed the Procurers for all charges under the Power Purchase Agreement in the manner, in amounts and otherwise in accordance with the Power Purchase Agreement and has been paid in full by the Procurers for at least ninety percent (90%) of all such charges within seven (7) days of the time allowed for payment of such bills under the Power Purchase Agreement; and
- (d) at least one (1) semi-annual repayment of principal with respect to each tranche under each Senior Loan Agreement that prescribes a semi-annual repayment schedule, and at least two (2) quarterly repayments of principal with respect to each tranche under each Senior Loan Agreement that prescribes a quarterly repayment schedule, shall have been made after the Project Physical Completion Date; and
- (e) the Borrower has delivered to the Senior Lender unqualified, audited Financial Statements prepared in accordance with the Accounting Principles for the most recent four (4) consecutive Financial Quarters following the Project Physical Completion Date, confirming that:
 - (i) the Historical Debt Service Coverage Ratio was equal to or greater than 1.1;
 - (ii) the Debt to Equity Ratio as at the last day of such period was equal to or less than 3.0;
 - (iii) the Long-term Debt to Equity Ratio as at the last day of such



period was equal to or less than 3.0; and

- (iv) the Current Ratio as at the last day of such period was equal to or greater than 1.1;
- (f) the Annual Budget most recently approved by the Senior Lender as of the relevant date of calculation or, if an Annual Budget for the relevant period or part thereof has not been approved by the Senior Lender as of such date, projections approved by the Senior Lender, in either case confirms that the Projected DSCR as of the proposed Project Financial Completion Date for the four (4) Financial Quarters immediately succeeding the proposed Project Financial Completion Date is equal to or greater than 1.1;
- (g) the amount on deposit in the Debt Service Reserve Accounts, when aggregated with the face amount of all Debt Service Reserve Guarantees issued and outstanding, is at least equal (in the required currencies) to the greater of (x) seventy-five percent (75%) of the Debt Service Reserve Requirement and (y) in the event that any amounts have been transferred or withdrawn from any Debt Service Reserve Account on or before the Project Financial Completion Date, the amount that would have been on deposit in the Debt Service Reserve Accounts as of the Project Financial Completion Date if such transfers or withdrawals had not been made (such amount not to exceed the Debt Service Reserve Requirement);
- (h) no fines or penalties are outstanding against the Borrower under the Power Purchase Agreement (other than fines or penalties that are being contested in good faith and with respect to which the Borrower has made adequate reserves);
- (i) the Senior Lender has received:
 - (i) a report from the Auditors in form and substance satisfactory to the Senior Lender to the effect that the requirements set forth in paragraphs (c), (e) and (g) above have been satisfied; and
 - (ii) a certificate of an Authorized Representative of the Borrower certifying that, as of the date of the Financial Statements delivered under paragraph (e) above, the Borrower was not in breach of any of its obligations under the Power Purchase Agreement and no fines or penalties were outstanding against the Borrower under the Power Purchase Agreement (other than fines or penalties that are being contested in good faith and with respect to which the Borrower has made adequate reserves);



- (j) the Borrower has paid all Obligations then due and payable, and all other obligations then due and payable under the Transaction Documents;
- (k) the Security has been duly created and perfected as a first-priority Lien over all of the property and assets of the Borrower and the Project Subsidiary pursuant to the Security Documents; and
- (l) the Borrower shall have delivered to the Senior Lender a notice, signed by an Authorized Representative, certifying that the requirements set forth in paragraphs (a) through (k) above have been fulfilled or satisfied, and the Senior Lender has notified the Borrower that it has accepted the certifications in such notice;

"Project LC Reserve Account" has the meaning provided in the Offshore Accounts Agreement;

"Project Physical Completion Date" means the last day of the month in which the following requirements have been fully satisfied:

- (a) no Event of Default or Potential Event of Default has occurred and is continuing;
- (b) the plants, facilities and equipment included in the Project have been constructed and completed in accordance with the Construction Contracts and have been accepted by the Borrower;
- (c) there are no outstanding claims by any contractor or supplier in respect of the plants, facilities and equipment included in the Project (other than claims being contested in good faith and with respect to which the Borrower has made adequate reserves);
- (d) all Authorizations required for the normal operation of the Project and the performance by the Borrower of its obligations under the Transaction Documents have been obtained and remain in full force and effect and are final, there are no legal proceedings regarding the effectiveness or validity of any of the Authorizations that have been obtained for the Project other than any such proceedings that are, in the opinion of the Senior Lender, frivolous, and evidence to that effect in form and substance satisfactory to the Senior Lender shall have been delivered to the Senior Lender;
- (e) each Unit comprising the Project has successfully completed the Commissioning Test (as defined in the Power Purchase Agreement) and the Performance Test (as defined in the Power Purchase Agreement), and a Final Test Certificate (as defined in the Power



- Purchase Agreement) has been issued by the Independent Engineer in respect of each such Unit;
- (f) the Project has successfully completed the performance tests under the Doosan Construction Contracts and has achieved Provisional Acceptance (as defined in the Doosan Construction Contracts);
 - (g) the Project has successfully completed the performance tests under the Toshiba Contract, including the Purchaser's Acceptance Test and the Initial Operation and Trial Operation Tests (in each case as defined in the Toshiba Contract), and has achieved Provisional Acceptance (as defined in the Toshiba Contract);
 - (h) simultaneously with or after fulfilling the conditions in paragraphs (f) and (g) above, the Project has successfully completed a plant level performance test in accordance with Article 8.1.9 of the Power Purchase Agreement and ASME PTC-46 to ensure that the Project meets the minimum performance criteria for capacity, heat rate, auxiliary consumption and other assumptions in the Base Case Financial Projections, or, if such tests demonstrate performance criteria below the assumptions in the Base Case Financial Projections, the Sponsor has paid any required Buy-Down Amount in accordance with the Sponsor Support Agreement;
 - (i) simultaneously with or after fulfilling the conditions in paragraphs (f) and (g) above, the Project has successfully completed tests, with all Units operating simultaneously, demonstrating noise and emissions levels that are in compliance with the Environmental and Social Requirements and Applicable Law in all respects;
 - (j) the Independent Engineer has certified that (i) the port facilities have been constructed and completed in accordance with the Port Services Agreement, (ii) the transmission facilities are in place and the Project is able to evacuate power in accordance with the Transmission Plan and the Bulk Power Transmission Agreement, (iii) the desalination plant, coal conveyor facility, ash disposal facility, and other systems required for long-term sustained operation of the Project have been constructed and completed; and (iv) the Borrower has satisfied the requirements contemplated in paragraphs (b), (c), (e), (f), (g), (h) and (i) above;
 - (k) the Senior Lender has received from the Environmental and Social Consultant the following, each in form and substance satisfactory to the Senior Lender:
 - (i) a report that states whether in relation to the Project and the



Borrower there are any (1) past or existing adverse risks or impacts relating to the Environmental and Social Requirements that have not been adequately mitigated or compensated, (2) known or threatened Environmental or Social Claims, or (3) past or existing material complaints relating to the Environmental and Social Requirements;

- (ii) a certificate stating that (A) the Project was constructed in compliance with all Environmental and Social Requirements and Applicable Law in all respects; and (B) the Project and the Borrower are in compliance with all Environmental and Social Requirements;
- (l) the Senior Lender has received from the Environmental and Social Consultant a certificate that implementation of the Social Management Plan has been completed in full;
- (m) the Borrower is current on submission of the Quarterly Environment and Social Monitoring Report and Annual Environmental and Social Performance Report, which have been prepared to the satisfaction of the Senior Lender;
- (n) the Senior Lender has received, in form and substance satisfactory to the Senior Lender, the relevant Environmental Management Plan for the Project's operational phase and the relevant Social Management Plan for the Project's operational phase;
- (o) the Coal Supply and Transportation Agreements Completion Date shall have been achieved;
- (p) the Borrower has delivered to the Senior Lender a notice, signed by an Authorized Representative, certifying that the requirements set out in paragraphs (a) through (m) above have been fulfilled or satisfied, and the Senior Lenders have notified the Borrower that they have accepted such notice;

"Project Site" means the land on which the Project is to be built;

"Project Subsidiary" means Energy Eastern Pte. Ltd., a limited private company organized and existing under the laws of Singapore whose registered office is at 5 Shenton Way, #14-09, VIC Building, Singapore (068808);

"Project Subsidiary Guarantee" means the Guarantee, in form and substance satisfactory to the Senior Lender, to be made by the Project Subsidiary in favor of the Senior Lenders;



"Project Subsidiary Pledge Agreement" means the Share Pledge Agreement to be entered into between the Borrower and the Security Trustee, with respect to the Share Capital of the Project Subsidiary, to secure the Obligations;

"Project Subsidiary Security Agreement" means the Security Agreement to be entered into between the Project Subsidiary and the Security Trustee, with respect to the assets of the Project Subsidiary, to secure the Obligations;

"PSA Direct Agreement" means the Direct Agreement among the Port Operator, the Borrower and the Security Trustee relating to the Port Services Agreement;

"Quarterly Environmental and Social Monitoring Report" means a report prepared by the Borrower incorporating:

- (a) a brief overview of the Project including the progress against schedule;
- (b) details of any alignment, routing or design changes to the Project adopted during the reporting period and their reasons;
- (c) details of any environmental and social issues arising during the reporting period;
- (d) details of any rehabilitation and resettlement;
- (e) details of any crop or land compensation claimed and paid to affected persons;
- (f) details of any unresolved social and environmental issues; and
- (g) details of compliance with Environmental and Social Requirements and details of any instances of non-compliance;

"RBI" means the Reserve Bank of India;

"Requested Disbursement Date" has the meaning given to such term in Section 2.4(a) (Disbursement Procedures);

"Required Coal Supply Agreements" means the Project Coal Sales Agreement and such other agreements, in form and substance satisfactory to the Senior Lenders (the terms of which shall include, for the avoidance of doubt, a fixed price escalation methodology that can be calculated for the full contract period on an up-front basis or pricing based on the same market index as that assumed under the Power Purchase Agreement), collectively meeting all of the Project's coal supply requirements;

"Required Coal Transport Agreements" means the Initial Coal Transport

Agreements and such other agreements, in form and substance satisfactory to the Senior Lenders, collectively meeting all of the Project's requirements for the transportation of coal for the Project;

"Required Minority Shareholder Amendment" means an amendment to the Borrower's Constitutional Documents to provide that any purchaser of Shares (other than as a result of exercise of remedies by the Secured Parties under the Share Pledge Agreement) from the Sponsor shall not be granted any: (i) veto rights in excess of those available to any ordinary shareholder under the Companies Act, 1956; or (ii) differential voting rights;

"Resettlement Plan" means an action plan, incorporating a budget and time-based milestones, setting out the resettlement strategy, objectives, resettlement steps to be taken, responsibilities for the resettlement plan, all in accordance with ADB's Involuntary Resettlement Policy (1995), and in form and substance satisfactory to ADB;

"Restricted Payment" means (a) all distributions (whether in cash, property or obligations) on, other payments on account of, the setting apart of money for a sinking or other fund for, the purchase, redemption, retirement or other acquisition of any portion of, the Borrower's Share Capital or any Equity Rights in respect of the Borrower; (b) any payment on, purchase, retirement or other acquisition of, any Subordinated Loans, and (c) any other payment to an Affiliate of the Borrower, other than a payment made pursuant to the terms of a Project Document that has been approved by the Senior Lender;

"Restricted Payment Account" has the meaning given to such term in the Trust and Retention Accounts Agreement;

"Restricted Payment Conditions" means, collectively, the following conditions:

- (a) the Project Financial Completion Date has occurred;
- (b) such Restricted Payment or Restricted Payments are made not more than once per Financial Year, on a date that is within fifteen (15) days following July 15th of each Financial Year (provided, however, that if July 15th is not a Financial Business Day, then the next Financial Business Day), only from amounts on deposit in or standing to the credit of the Restricted Payment Account and in compliance with the Trust and Retention Accounts Agreement and Applicable Law;
- (c) before and after giving effect to each such Restricted Payment, no Event of Default or Potential Event of Default shall have occurred and be continuing;



- (d) before and after giving effect to each such Restricted Payment, the Historical Debt Service Coverage Ratio, and the Projected DSCR for the one year period beginning on the day after the most recent Financial Quarter for which Financial Statements are then available, are at least 1.2 and 1.2, respectively;
- (e) before and after giving effect to each such Restricted Payment, the Liabilities to Tangible Net Worth Ratio is less than or equal to 3.5 and the Debt to Equity Ratio is less than or equal to 3.0;
- (f) before and after giving effect to each such Restricted Payment, the Long-term Debt to Equity Ratio is less than or equal to 3.0;
- (g) the Current Ratio (after giving effect to each such Restricted Payment) is greater than or equal to 1.1;
- (h) the Prospective Debt Service Coverage Ratio is not less than 1.2;
- (i) each of the Debt Service Reserve Accounts or the Debt Service Reserve Guarantees in lieu thereof and the Debt Service Payment Accounts have been established and fully funded, and, before and after giving effect to each such Restricted Payment, the cash balance in each of the Debt Service Reserve Accounts, when aggregated with the face amount of all Debt Service Reserve Guarantees issued and outstanding and to the credit of the respective Debt Service Reserve Accounts, shall equal or exceed the then required Debt Service Reserve Requirement required to be on deposit in each such Debt Service Reserve Account;
- (j) the retained earnings out of which any Restricted Payment is made does not include any amount resulting from the revaluation of any of the Borrower's assets;
- (k) no drawing has occurred under any Procurer Letter of Credit that has not been reinstated in full by the amount of such drawing; and
- (l) the Borrower, no earlier than sixty (60) days nor later than seven (7) days prior to making the proposed Restricted Payment; provides the Senior Lender with a certificate regarding the above requirements in form and substance acceptable to the Senior Lender;

provided, however, that if a drawing has occurred under a Procurer Letter of Credit less than seven (7) days prior to the last day on which a Restricted Payment would be able to be made pursuant to clause (b) immediately above and all of the Restricted Payment Conditions other than clause (k), are satisfied, then if (A) all Restricted Payment Conditions other than clause (k)



have been satisfied as of the last such day on which a Restricted Payment would be able to be made, (B) each such Procurer Letter of Credit is reinstated in full by the amount of such drawing within thirty (30) days after the last such day on which a Restricted Payment would be able to be made, (C) no other Procurer Letter of Credit has subsequently been drawn, and (D) no Potential Event of Default or Event of Default has occurred and is continuing, then the Borrower may, within two (2) Local Business Days following the reinstatement of each such Procurer Letter of Credit, make a Restricted Payment;

“**Rupees**” or “**Rs**” means the lawful currency of India;

“**Rupee Debt Service Payment Account**” has the meaning given to such term in the Trust and Retention Accounts Agreement;

“**Rupee Debt Service Reserve Account**” has the meaning given to such term in the Trust and Retention Accounts Agreement;

“**Rupee Facility Agent**” means SBI, acting in its capacity as Facility Agent under the Rupee Facility Loan Agreement;

“**Rupee Facility Lenders**” means the lenders party to the Rupee Facility Loan Agreement;

“**Rupee Facility Loan**” means the loan to be made by the Rupee Facility Lenders to the Borrower for Project Costs pursuant to the terms and conditions of the Rupee Facility Loan Agreement;

“**Rupee Facility Loan Agreement**” means the loan agreement among the Borrower, the Rupee Facility Agent and the Rupee Facility Lenders providing for the Rupee Facility Loan;

“**Satisfied CP Notice**” has the meaning given to such term in Section 2.4(b) (Disbursement Procedures);

“**Sanctionable Practice**” means any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice or Obstructive Practice, as those terms are defined herein and interpreted in accordance with Exhibit 3.1(x) (Anti-Corruption Guidelines);

“**SBI**” means the State Bank of India, a banking corporation constituted under the State Bank of India Act 1955, of India;

“**Scheduled COD**” has the meaning given to such term in the Power Purchase Agreement; provided, however, that if the Scheduled COD is preponed in accordance with Article 3.1.2(iv) of the Power Purchase Agreement, then the

term "Scheduled COD" shall have the meaning given to the term "Revised Scheduled COD" in the Power Purchase Agreement;

"**Secured Parties**" means the Senior Lenders, KEIC, the Facility Agents, the Collateral Agents, the Working Capital Lenders, the Issuing Bank, and, if approved in accordance with the Hedging Plan, the Hedge Providers;

"**Security**" means the security created by or pursuant to the Security Documents to secure the Obligations;

"**Security Documents**" means the following documents:

- (a) the Trust and Retention Accounts Agreement;
- (b) the Offshore Accounts Agreement;
- (c) the Accounts Security Assignment;
- (d) each Indenture of Mortgage;
- (e) the Assignment of Subordinated Loan Agreement;
- (f) the Share Pledge Agreement;
- (g) the Powers of Attorney;
- (h) the Direct Agreements;
- (i) the Project Subsidiary Pledge Agreement;
- (j) the Project Subsidiary Security Agreement;
- (k) any other documents creating a Lien in respect of the obligations of the Borrower or the Sponsor under or pursuant to the Financing Documents; and
- (l) any other document designated by the Security Trustee as a "Security Document" after the date of this Agreement;

"**Security Trustee**" means the security trustee appointed by the Senior Lenders under the Security Trustee Agreement, or any successor thereto selected by the Senior Lenders;

"**Security Trustee Agreement**" means the Security Trustee Agreement between the Borrower, the Senior Lenders and the Security Trustee;

"**Senior Lender**" means the Senior Lender under the Senior Loan Agreement



to which this Schedule is attached;

"Senior Lender Business Day" has the meaning given to such term in the Senior Loan Agreement;

"Senior Lender Environmental and Social Requirements" has the meaning given to such term (if any) in the Senior Loan Agreement;

"Senior Lenders" means, ADB, IFC, KEXIM, the KEIC Covered Facility Lenders, IIFCL and the Rupee Facility Lenders;

"Senior Lenders' International Counsel" means Chadbourne & Parke LLP, or any successor thereto selected by the Senior Lenders;

"Senior Lenders' Local Counsel" means Amarchand Mangaldas & Suresh A Shroff & Co, or any successor thereto selected by the Senior Lenders;

"Senior Loan Agreements" means the ADB Loan Agreement, the KEXIM Loan Agreement, the IFC Loan Agreement, the Rupee Facility Loan Agreement, the IIFCL Loan Agreement and the KEIC Covered Facility Loan Agreement;

"Senior Loans" means the ADB Loan, the KEXIM Loan, the IFC Loan, the Rupee Facility Loan, the IIFCL Loan and the KEIC Covered Facility Loan;

"SERC" refers to the respective state electricity regulatory commissions of each of the Procurers' states;

"Services Agreement" means the Services Agreement, between the Sponsor and the Borrower, which shall be in form and substance satisfactory to the Senior Lender;

"Share Capital" means, with respect to any Person, any of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination, in each such case including all voting rights and economic rights related thereto;



"Shareholders" means Tata Power and any Person to whom shares of stock of the Borrower have been issued or transferred;

"Share Pledge Agreement" means the Share Pledge Agreement to be entered into between the Sponsor, the Borrower and the Security Trustee to secure the Obligations;

"Share Retention Agreement" means the Share Retention Agreement to be entered into among the Borrower, the Sponsor and the Security Trustee for the benefit of the Secured Parties;

"Shares" means ordinary shares of par value ten Rupees (Rs. 10) each in the Share Capital of the Borrower;

"Social Management Plan" means the plan or plans to be developed by the Borrower covering the Project's construction and operation phases, which plan or plans shall include:

- (a) a detailed description of all necessary mitigation measures and monitoring activities, which are, at a minimum, those measures and monitoring activities defined in each Authorization with respect to any health and safety or social issues issued by any Authority, or otherwise, under any applicable Environmental and Social Law;
- (b) a statement of the estimated cost, time schedule and assignment of responsibility for implementing each mitigation measure and monitoring activity;
- (c) a description of the specific Project supervision methods to be implemented to ensure that all measures and programs are completely and properly implemented by all responsible parties;
- (d) a description of steps to be taken to ensure adequate information disclosure and consultation with the local population affected by the Project; and
- (e) any other mitigation, monitoring and management plans developed or to be developed so as to comply with Environmental and Social Requirements including, but not limited to, (i) Section 9 - Actions Committed to by CGPL in "Report on Baseline Social Impact Assessment" prepared by SAVE for CGPL and dated November 2007, (ii) Stakeholder Engagement Framework, prepared by CGPL and attached to IFC ESRS in January 2008, (iii) Compensation Management Framework, prepared by CGPL and attached to IFC ESRS in January 2008, (iv) Livelihood Restoration Plan, to be developed and as specified as #2 of the ESAP, (v) Community



Development Plan to be developed and as specified as #2 of the ESAP, (vi) Security Personnel Procedure to be developed and as specified as #5 of the ESAP, (vii) Labor Influx Management Plan to be developed and as specified as #6 of the ESAP and (viii) Local Hiring and Procurement Plan dated April 2008;

"Sponsor" means Tata Power;

"Sponsor Support Agreement" means the Sponsor Support Agreement to be entered into between the Borrower, the Sponsor and the Security Trustee in relation to the Senior Loans;

"Sponsor Support Payment" has the meaning given to such term in the Sponsor Support Agreement;

"Subordinated Loan Agreement" means each Subordinated Loan Agreement between the Borrower and the Sponsor or any other entity providing for Subordinated Loans subject to the Subordination Agreement and otherwise on terms and conditions satisfactory to the Senior Lender;

"Subordinated Loans" means the loans to be provided by the Sponsor (or any other Person if permitted under the Sponsor Support Agreement) to the Borrower from time to time, if permitted by the Senior Lender, pursuant to the Sponsor Support Agreement and the Subordinated Loan Agreements;

"Subordination Agreement" has the meaning given to such term in the Sponsor Support Agreement;

"Subsidiary" means, with respect to any Person, any entity:

- (a) over fifty percent (50%) of whose Share Capital is owned, directly or indirectly, by that Person; or
- (b) for which that Person may nominate or appoint a majority of the members of the board of directors or such other body performing similar functions; or
- (c) which is otherwise effectively controlled by that Person;

"Summary Environmental Impact Assessment" means the summary of the Environmental Impact Assessment (EIA) prepared by the Borrower and submitted to the Senior Lender in fulfillment of the requirements under ADB's Environment Policy (2002);

"Tata Power" means The Tata Power Company Limited, a public limited company organized and existing under the laws of India whose registered

office is at Bombay House, 24, Homi Mody Street, Mumbai – 400001;

"Taxes" means all present and future taxes, levies, rates, imposts, duties, deductions, fees, charges and withholdings whatsoever imposed by any Authority having power to tax and all penalties, fines, surcharges, interest or other payments on or in respect thereof and **"Tax"** and **"Taxation"** shall be construed accordingly;

"Tax Returns" means all returns, declarations, reports, estimates, information returns, statements and other documents of, relating to or required to be filed with, any Authority in respect of Taxes;

"TCE" means TCE Consulting Engineers Limited, a company organized and existing under the laws of India;

"TCE Direct Agreement" means the direct agreement among TCE, the Borrower, and the Security Trustee, relating to the Engineering Consultancy Services Agreement;

"Toshiba" means Toshiba Corporation, a corporation organized and existing under the laws of Japan;

"Toshiba Contract" means the Offshore Equipment Supply Contract Agreement, dated August 10, 2007, between Toshiba and the Borrower;

"Toshiba Direct Agreement" means the direct agreement among Toshiba, the Borrower and the Security Trustee relating to the Toshiba Contract;

"Toshiba Letter of Credit" means the letter of credit issued by SBI (in its capacity as Issuing Bank under the Rupee Facility Loan Agreement) in the face amount of thirty one billion two hundred eighteen million seven hundred fifty thousand Japanese Yen (Japanese Yen 31,218,750,000) in favor of Toshiba;

"Total Funding Available" means the aggregate of all committed and available but undrawn funds under the Senior Loan Agreements and all unused Base Equity commitments under the Sponsor Support Agreement;

"Transaction Documents" means, collectively:

- (a) the Financing Documents; and
- (b) the Project Documents;

"Transmission Plan" means a plan, in form and substance satisfactory to the Senior Lender, describing the plan and timetable for the necessary transmission arrangements for the Project;



“**Trust Accounts**” has the meaning given to such term in the Trust and Retention Accounts Agreement;

“**Trust and Retention Accounts Agreement**” means the Trust and Retention Accounts Agreement to be entered into among the Onshore Accounts Bank, the Borrower and the Security Trustee in relation to the Senior Loans;

“**Unit**” has the meaning given to such term in Section 2.1 (The Project);

“**Unit 1**” means the Unit whose Scheduled COD is first in time;

“**Unit 2**” means the Unit whose Scheduled COD is second in time;

“**Unit 3**” means the Unit whose Scheduled COD is third in time;

“**Unit 4**” means the Unit whose Scheduled COD is fourth in time;

“**Unit 5**” means the Unit whose Scheduled COD is fifth in time;

“**Unsatisfied CP Notice**” has the meaning given to such term in Section 2.4(b) (Disbursement Procedures);

“**Working Capital Lenders**” means the lenders party to the Working Capital Loan Agreements;

“**Working Capital Loans**” means the loans to be made by the Working Capital Lenders to the Borrower for its working capital requirements for the Project pursuant to the Working Capital Loan Agreements;

“**Working Capital Loan Agreements**” means the agreements, in form and substance satisfactory to the Senior Lender, between the Borrower and any bank(s) or other financial institution(s) providing for the Working Capital Loans; and

“**World Bank**” means the International Bank for Reconstruction and Development, established by Articles of Agreement amongst its member countries.

1.2 Financial Definitions

In addition, unless the context otherwise requires, the following financial terms have the respective meanings assigned to them:

“**Current Assets**” means the aggregate of the Borrower’s cash, inventories, investments classified as “held for trading”, investments classified as “available for sale”, trade and other receivables realizable within one year, and prepaid expenses which are to be charged to income within one year;

"Current Liabilities" means the aggregate of all liabilities of the Borrower falling due on demand or within one year (including the portion of Long-term Debt falling due within one year);

"Current Ratio" means the result obtained by dividing Current Assets (less prepaid expenses) by Current Liabilities;

"Debt to Equity Ratio" means, as of any calculation date, the ratio obtained by dividing (i) all outstanding Financial Debt of the Borrower, other than Subordinated Loans, by (ii) the sum of Equity plus the outstanding principal amount of Subordinated Loans;

"Equity" means the aggregate (as of the date for calculation) of:

- (a) the amount subscribed for and paid in as Share Capital of the Borrower by the Shareholders; and
- (b) the amount credited to the reserves of the Borrower (including without limitation, any share premium account, capital redemption reserve funds and any credit balance on the Borrower's profit and loss account);

less the following:

- (i) any amounts set aside by the Borrower for the payment of dividends or taxes (including deferred taxes or amounts attributable to capitalized items, such as goodwill, trademarks, deferred charges, licenses, patents or other intangible assets);
- (ii) any debit balance on the profit and loss account or any impairment of the issued Share Capital of the Borrower (except to the extent that deduction in respect of such debit balance or impairment has already been made); and
- (iii) any amounts created as a result of a revaluation of the Borrower's assets;

"Financial Debt" means any indebtedness of the Borrower for or in respect of:

- (a) borrowed money;
- (b) the outstanding principal amount of any bonds, debentures, notes, loan stock, commercial paper, acceptance credits, bills or promissory notes drawn, accepted, endorsed or issued by the Borrower;
- (c) the deferred purchase price of assets or services (except trade accounts

incurred and payable in the ordinary course of business to trade creditors within 90 (or, for coal supply letters of credit, 180) days of the date they are incurred and which are not overdue);

- (d) non-contingent obligations of the Borrower to reimburse any other person for amounts paid by that person under a letter of credit or similar instrument (excluding any letter of credit or similar instrument issued for the account of the Borrower with respect to trade accounts incurred and payable in the ordinary course of business to trade creditors within 90 (or, for coal supply letters of credit, 180) days of the date they are incurred and which are not overdue);
- (e) the amount of any obligation in respect of any Financial Lease;
- (f) amounts raised under any other transaction having the financial effect of a borrowing and which would be classified as a borrowing (and not as an off-balance sheet financing) under the Accounting Principles;
- (g) the amount of the Borrower's obligations under Derivative Transactions entered into in connection with the protection against or benefit from fluctuation in any rate or price (but only the net amount owing by the Borrower after marking the relevant Derivative Transactions to market);
- (h) any premium payable on a mandatory redemption or replacement of any of the foregoing items; and
- (i) without double counting, the amount of any obligation in respect of any guarantee or indemnity for any of the foregoing items incurred by any other person;

"Financial Lease" means any lease or hire purchase contract which would, under the Accounting Principles, be treated as a finance or capital lease;

"Financial Quarter" means each of the following periods of three months in the Financial Year: (a) April 1 through June 30; (b) July 1 through September 30; (c) October 1 through December 31; and (d) January 1 through March 31;

"Financial Statements" means, as of the relevant date and for the relevant period, the Borrower's balance sheet, profit and loss account, income statement, cash flow statement and statement showing changes in equity and any related exhibits and notes, all prepared on a consolidated basis to include the Project Subsidiary and in accordance with the Accounting Principles and, in the case of Financial Statements prepared in respect of a Financial Year, audited by the Auditors;



"Financial Year" means the accounting year of the Borrower commencing each year on April 1 and ending on the succeeding March 31;

"Historical Debt Service Coverage Ratio" means, for any calculation period, the ratio obtained by dividing (i) the aggregate of (A) Net Income for such calculation period, (B) Non-Cash Items and (C) the amount of all payments made during such calculation period on account of interest and other charges on Financial Debt (to the extent deducted from Net Income) by (ii) the aggregate of (A) all payments of principal on Long-term Debt and interest and other charges on all Financial Debt made during such calculation period and (B) without double counting any payment already counted in the preceding sub-clause (A), any payment made to any debt service account during such calculation period under the terms of any agreement providing for Financial Debt. The Historical Debt Service Coverage Ratio shall cover the 12 month period ending on the last day of the most recent Financial Quarter for which Financial Statements are then available;

"Liabilities" means the aggregate of all obligations (actual or contingent) of the Borrower to pay or repay money, including, without limitation:

- (a) Financial Debt;
- (b) the amount of all liabilities of the Borrower under any conditional sale or a transfer with recourse or obligation to repurchase, including, without limitation, by way of discount or factoring of book debts or receivables;
- (c) taxes (included deferred taxes);
- (d) trade accounts incurred and payable in the ordinary course of business to trade creditors within 90 (or, for coal supply letters of credit, 180) days of the date they are incurred and which are not overdue (including letters of credit or similar instruments issued for the account of the Borrower with respect to such trade accounts);
- (e) accrued expenses, including wages and other amounts due to employees and other services providers;
- (f) the amount of all liabilities of the Borrower howsoever arising to redeem any of its shares; and
- (g) to the extent (if any) not included in the definition of Financial Debt, the amount of all liabilities of any person to the extent the Borrower guarantees them or otherwise obligates itself to pay them;

"Liabilities to Tangible Net Worth Ratio" means the result obtained by



dividing Liabilities (other than Subordinated Loans) by Tangible Net Worth plus the outstanding principal amount of Subordinated Loans;

“Long-term Debt” means Financial Debt (other than Subordinated Loans) whose final maturity falls due more than one year after the date it is incurred (including the current maturities thereof);

“Long-term Debt to Equity Ratio” means, as of any calculation date, the ratio of (i) Long-term Debt to (ii) Equity plus the amount of principal outstanding under the Subordinated Loans;

“Net Income” means, for any calculation period, the excess (if any) of gross income over total expenses (provided that income taxes shall be treated as part of total expenses) appearing in (i) for backward-looking calculations, the most recent Financial Statements or (ii) for forward-looking calculations, the then-current Base Case Financial Projections, in each case for such calculation period;

“Non-Cash Items” means, for any calculation period, the net aggregate amount (which may be a positive or negative number) of all non-cash “income” (as a negative item) and non-cash “expense” (as a positive item) items which (under accrual accounting) were added or subtracted in determining Net Income. “Non-Cash Items” include equity earnings in subsidiaries, asset revaluations, depreciation, amortization, deferred taxes, and provisions for severance pay of staff and workers;

“Projected DSCR” means, for any relevant calculation period (and in each case calculated for only those Units whose Scheduled COD has occurred as of the last day of such calculation period), the ratio obtained by dividing (i) the aggregate of (A) projected Net Income for such calculation period, (B) projected Non-Cash Items and (C) the projected amount of all payments that are scheduled to become due during such calculation period on account of interest and other charges on Financial Debt (to the extent deducted from Net Income) by (ii) the aggregate of (A) all principal payments on Long-term Debt and interest and other charges on all Financial Debt (other than Subordinated Loans) scheduled to be made during such calculation period and (B) without double counting any payment already counted in the preceding sub-clause (A), any payment required to be made to any debt service account during such calculation period under the terms of any agreement providing for Financial Debt (other than Subordinated Loans);

“Prospective Debt Service Coverage Ratio” means the ratio (calculated only for those Units whose Commercial Operation Date has occurred during or before the Financial Year most recently ended) obtained by dividing

- (i) the aggregate, for the Financial Year most recently ended prior



to the relevant date of calculation for which audited Financial Statements are available, of (A) Net Income for that Financial Year, (B) Non-Cash Items and (C) the amount of all payments that were due during that Financial Year on account of interest and other charges on Financial Debt (other than Subordinated Loans) (to the extent deducted from Net Income);

by

- (ii) the aggregate of (A) all scheduled payments (including balloon payments, if any) that fall due during the Financial Year in which the relevant date of calculation falls on account of principal of Long-term Debt and interest and other charges on all Financial Debt (other than Subordinated Loans) and (B) without double counting any payment already counted in the preceding sub-clause (A), any payment made or required to be made to any debt service account under the terms of any agreement providing for Financial Debt but excluding voluntary prepayments;

where, for the purposes of clause (ii) above:

- (x) subject to sub-clause (y) below, for the computation of interest payable during any period for which the applicable rate is not yet determined, that interest shall be computed at the rate in effect at the time of the relevant date of calculation; and
- (y) interest on Short-term Debt payable in the Financial Year in which the relevant date of calculation falls shall be computed by reference to the aggregate amount of interest thereon paid during that financial year up to the end of the period covered by the latest quarterly Financial Statements prepared by the Borrower multiplied by a factor of 4, 2 or 4/3 depending on whether the computation is made by reference to the Financial Statements for the first quarter, the first two quarters or the first three quarters, respectively;

“Required Average Projected DSCR” means a Projected DSCR of not less than 1.15 over all Financial Years, commencing with the Financial Year in which such calculation is made through the final Financial Year of the Senior Loan with the longest tenor at any point in time. Each such Projected DSCR calculation shall be based on the then-effective Base Case Financial Projections;

“Required Minimum Projected DSCR” means a Projected DSCR of not less than 1.1 for each Financial Year commencing with the Financial Year in



which such calculation is made through the final Financial Year of the Senior Loan with the longest tenor at any point in time. Each such Projected DSCR calculation shall be based on the then-effective Base Case Financial Projections;

"Short-term Debt" means all Financial Debt other than Long-term Debt; and

"Tangible Net Worth" means the aggregate of:

- (i) (A) the amount paid up or credited as paid up on the Share Capital of the Borrower; and
- (B) the amount standing to the credit of the reserves of the Borrower (excluding asset revaluation reserves and including, without limitation, any share premium account, capital redemption reserve funds and any credit balance on the accumulated profit and loss account);

after deducting from the amounts in (A) and (B):

- (y) any debit balance on the profit and loss account or impairment of the issued share capital of the Borrower (except to the extent that deduction with respect to that debit balance or impairment has already been made); and
- (z) amounts attributable to capitalized items such as goodwill, trademarks, deferred charges, deferred taxation assets, licenses, patents and other intangible assets;

and

- (ii) if applicable, that part of the net results of operations and the net assets of any subsidiary of the Borrower attributable to interests that are not owned, directly or indirectly, by the Borrower.

1.3 Financial Calculations

- (a) All financial calculations to be made under, or for the purposes of, the Senior Loan Agreement and any other Financing Document shall be determined in accordance with the Accounting Principles and, except as otherwise required to conform to any provision of the Senior Loan Agreement, shall be calculated from the then most recently issued quarterly Financial Statements that the Borrower is obligated to furnish



under Section 5.5(b) (Quarterly Financial Statements and Reports).

- (b) Where quarterly Financial Statements are used for the purpose of making certain financial calculations and those statements are with respect to the last Financial Quarter of a Financial Year then, at the Senior Lender's option, those calculations may instead be made from the audited Financial Statements for the relevant Financial Year.
- (c) If any material adverse change in the financial condition of the Borrower has occurred after the end of the period covered by the Financial Statements used to make the relevant financial calculations, that material adverse change shall also be taken into account in calculating the relevant figures.
- (d) Without prejudice to Section 1.3(a), for purposes of converting Dollars to Rupees in calculating financial ratios, Dollars in respect of which the Borrower has entered into a Hedging Agreement shall be converted at the applicable rate under such Hedging Agreement, and Dollars in respect of which the Borrower has not entered into any Hedging Agreement shall be converted at the State Bank of India buying or selling T.T. rate in effect on the date of such calculation.

1.4 Interpretation

In this Schedule, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Schedule;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to this Schedule includes all Sub-Schedules and Exhibits hereto;
- (d) a reference to a Section, party, Sub-Schedule or Exhibit is a reference to that Section of, or that party, Sub-Schedule or Exhibit to, this Schedule;
- (e) a reference to the Senior Loan Agreement, the Senior Lender or Senior Loan in this Schedule is a reference to the Senior Loan Agreement to which this Schedule forms a part and the Senior Lender and Senior Loan described therein, provided, however, that, with respect to any Senior Loan Agreement as to which a Facility Agent is a party, any reference to a Senior Lender is a reference to such Facility Agent (on behalf of such Senior Lender);

- (f) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document but disregarding any amendment, supplement, replacement or novation made in breach of the Senior Loan Agreement;
- (g) a reference to a party to any document includes that party's successors and permitted assigns;
- (h) a reference to any provision of Applicable Law is a reference to that provision as it may be amended or reenacted;
- (i) a reference to "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (j) the terms "including," "include" or "includes" shall be deemed to be followed by the phrase "but not limited to";
- (k) the terms "hereof," "hereunder" and "hereto" refer to this Schedule in its entirety;
- (l) any consent, approval, determination, waiver or finding to be given or made by any of the Secured Parties or the Facility Agent shall be made or given by such Secured Party or the Facility Agent in their sole discretion;
- (m) any consent required to be provided by the Secured Parties or the Facility Agent shall mean the prior written consent of each of the Secured Parties or the Facility Agent;
- (n) any determination of occurrence or likelihood of occurrence of a Material Adverse Effect or of the materiality of any event shall be made by the Senior Lender in its sole discretion; and
- (o) a "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000).

2. The Project, Project Cost, Financial Plan, Disbursement Procedures and Prepayment

2.1 The Project

The project to be financed consists of the development, construction, ownership, operation and maintenance of an ultra mega imported-coal-based thermal power project with an anticipated nominal capacity of four thousand megawatts (4,000 MW), comprised of five (5) units each with an anticipated



nominal capacity of eight hundred megawatts (800 MW) (each, a "Unit"), each incorporating supercritical technology and including all ancillary assets and property, to be implemented in Mundra in the state of Gujarat in India (the "Project").

2.2 Project Cost and Financial Plan

(a) The estimated amount of Project Costs is as follows:

(Reference rate: 1 US\$ = Rs. 40)

<u>Project Cost</u>	<u>Rs.</u> <u>(Crores)</u>	<u>US\$</u> <u>(Million)</u>	<u>Percent</u>
Land and Site Development	52	13	0.31%
Boiler & Auxiliaries	5136	1,284	30.17%
Turbine & Auxiliaries	1392	348	8.18%
Turbine - Balance of Plant	1720	430	10.10%
Mechanical Systems	1232	308	7.24%
Electrical & other systems	1000	250	5.87%
Civil Works (Except for Boiler)	1276	319	7.50%
Outside Plant Facilities	784	196	4.60%
Capital Costs	12592	3,148	73.97%
Capital Spares	476	119	2.80%
Preoperative Expenses	536	134	3.15%
Contingencies	1364	341	8.01%
Escation	400	100	2.35%
Financing Charges & WC Margin	404	101	2.37%

(Reference rate: 1 US\$ = Rs. 40)

<u>Project Cost</u>	<u>Rs.</u> <u>(Crores)</u>	<u>US\$</u> <u>(Million)</u>	<u>Percent</u>
Interest During Construction	1252	313	7.35%
<u>Total Project Cost</u>	<u>17024</u>	<u>4,256</u>	<u>100%</u>

(b) The proposed sources of financing for the Project are as follows:

(Reference rate: 1 US\$ = Rs. 40)

<u>Financial Plan</u>	<u>Rs.</u> <u>(Crores)</u>	<u>US\$</u> <u>(Million)</u>	<u>Percent</u>
<u>Equity:</u>			
Tata Power	4256	1,064	25.00%
<i>Total Equity</i>	<i>4256</i>	<i>1,064</i>	<i>25.00%</i>
<u>Debt:</u>			
IFC	1800	450	10.57%
ADB Tranche 1	1000	250	5.87%
ADB Tranche 2	800	200	4.70%
KEIC Covered Facility Loan	1306.64	326.66	7.68%
KEXIM	2000	500	11.75%
IIFCL Loan	400	100	2.35%
SBI and other Rupee Facility Lenders	5461.36	1,365.34	32.08%

(Reference rate: 1 US\$ = Rs. 40)

<u>Financial Plan</u>	<u>Rs.</u> <u>(Crores)</u>	<u>US\$</u> <u>(Million)</u>	<u>Percent</u>
<i>Total Debt</i>	12768	3,192	75.00%
<u>Total Financing</u>	<u>17024</u>	<u>4,256.00</u>	<u>100%</u>

2.3 Purpose of the Senior Loans

The proceeds of any Disbursement are intended to be and shall be utilized for the financing of Project Costs, and the Borrower shall ensure that such proceeds are applied as specified herein and in the Senior Loan Agreement, but no Senior Lender is under any obligation to monitor the use of proceeds of any Disbursement.

2.4 Disbursement Procedures

- (a) The Borrower may request a Disbursement of any Senior Loan by delivering a Disbursement Request (in the form attached to such Senior Loan Agreement) appropriately completed to the Senior Lender and, in the case of any request for a Disbursement of the KEXIM Loan, the KEIC Covered Facility Loan and the ADB Tranche 2 Loan, to the Common Facility Agent, no earlier than twenty-five (25) Financial Business Days prior to the date of the requested Disbursement (the "Requested Disbursement Date") and no later than twenty (20) Financial Business Days prior to the Requested Disbursement Date. Each Disbursement Request shall be accompanied by all of the certificates and documentation required as conditions precedent to such Disbursement, including a signed undated Disbursement receipt for such Disbursement (together with the Borrower's authorization to date the Disbursement receipt the date of the Disbursement). The Borrower shall, at the time of delivery of a Disbursement Request to any Senior Lender requesting a Disbursement of such Senior Lender's Senior Loan, deliver a copy of such Disbursement Request to each of the other Senior Lenders and to the Offshore Accounts Bank and the Onshore Accounts Bank.
- (b) Each Disbursement Request shall specify:
- (i) the amount of the Disbursement requested under the Senior Loan Agreement, which shall be in the minimum amount and increments required under the Senior Loan Agreement; and

- (ii) the Requested Disbursement Date.
- (c) Promptly after receipt of a Disbursement Request relating to the KEXIM Loan, the KEIC Covered Facility Loan, and the ADB Tranche 2 Loan, the Common Facility Agent shall review such Disbursement Request, together with all certifications and documentation submitted together with such Disbursement Request, to determine whether all certificates and documentation required as conditions precedent to such requested Disbursement under the relevant Senior Loan Agreements have been delivered to it. At such time as the Common Facility Agent shall have determined that it has received all such certificates and documentation, it shall promptly so notify KEXIM, the KEIC Covered Facility Agent, ADB and the Borrower.
- (d) With the exception of Disbursement Requests for the KEXIM Loan, the KEIC Covered Facility Loan and the ADB Tranche 2 Loan being administered by the Common Facility Agent, promptly after receipt of a Disbursement Request, each Senior Lender from which a Disbursement is requested shall review the Disbursement Request, together with all certificates and documentation submitted together with such Disbursement Request, to determine whether all certificates and documentation required as conditions precedent to such requested Disbursement under its Senior Loan Agreement have been delivered to it.
- (e) At such time as each Senior Lender from which a Disbursement is requested has determined that all certificates and documentation required as conditions precedent to such Disbursement under its Senior Loan Agreement have been provided (or that such requirement has been waived), but in any event no later than ten (10) Financial Business Days prior to the Requested Disbursement Date, it (or in the case of the KEXIM Loan, the KEIC Covered Facility Loan or the ADB Tranche 2 Loan, the Common Facility Agent acting on its behalf and on its instruction) shall promptly deliver a notice, in the form attached hereto as Exhibit 2.4(c) (Form of Satisfied CP Notice), to the Borrower, the Offshore Accounts Bank, the Onshore Accounts Bank, the Common Facility Agent and the other Senior Lenders indicating that the conditions precedent to the requested Disbursement of its Senior Loan have been satisfied or waived (any such notice, a "Satisfied CP Notice").
- (f) If any Senior Lender from which a Disbursement is requested believes that any required certificate or document has not been provided or that any condition precedent to the requested Disbursement has not been satisfied or waived, such Senior Lender (or the Common Facility



Agent acting on behalf of and at the instruction of KEXIM, the KEIC Covered Facility Agent, or ADB, as the case may be), shall promptly, but in any event no later than ten (10) Financial Business Days prior to the Requested Disbursement Date, deliver a notice, in the form attached hereto as Exhibit 2.4(f) (Form of Unsatisfied CP Notice), to the Borrower, the Offshore Accounts Bank, the Onshore Accounts Bank, and the other Senior Lenders indicating that such Senior Lender has determined that a condition to Disbursement under such Senior Lender's Senior Loan Agreement has not been satisfied or no longer remains satisfied (any such notice, an "Unsatisfied CP Notice"). If all such unsatisfied conditions applicable to the Senior Lender delivering an Unsatisfied CP Notice are not satisfied by the Borrower to such Senior Lender's satisfaction or waived by such Senior Lender at least five (5) Financial Business Days prior to the Requested Disbursement Date, in either case evidenced by a notice from such Senior Lender to the Borrower, the Offshore Accounts Bank, the Onshore Accounts Bank, the Common Facility Agent and the other Senior Lenders, then none of the Senior Lenders shall have any obligation to make any Disbursement on the Requested Disbursement Date. No Senior Lender shall have any liability to the Borrower, the Offshore Accounts Bank, the Onshore Accounts Bank, the Common Facility Agent or any Senior Lender for any Satisfied CP Notice or Unsatisfied CP Notice issued under this Section 2.4.

- (g) In addition to the ability to issue an Unsatisfied CP Notice pursuant to Section 2.4(f), any Senior Lender (or the Common Facility Agent on behalf of and at the instruction of KEXIM, the KEIC Covered Facility Agent, or ADB, as the case may be) may at any time when a Disbursement Request is outstanding, on the occurrence of an Event of Default or a Potential Event of Default, issue a notice to the Borrower with a copy to each of the other Senior Lenders, the Offshore Accounts Bank, the Common Facility Agent and the Onshore Accounts Bank, notifying the Borrower that no Disbursement shall be made under its Disbursement Request (a "Drawstop Notice"). A Drawstop Notice issued pursuant to this Section 2.4(g) shall remain in full force and effect until:
- (i) the Potential Event of Default or Event of Default which led to the issuance of such Drawstop Notice has been remedied by the Borrower to the satisfaction of the Senior Lender that issued the Drawstop Notice or waived by such Senior Lender (or, in the case of a Drawstop Notice issued by the Common Facility Agent, the Common Facility Agent, acting at instruction of KEXIM, the KEIC Covered Facility Agent and ADB); or

- (ii) the Senior Lender (or, in the case of a Drawstop Notice issued by the Common Facility Agent, the Common Facility Agent, acting at instruction of KEXIM, the KEIC Covered Facility Agent and ADB) that issued such Drawstop Notice revokes such Drawstop Notice by sending notice of such revocation to the Borrower, each of the other Senior Lenders, the Offshore Accounts Bank, the Common Facility Agent and the Onshore Accounts Bank (which notice shall specify in reasonable detail the basis for such revocation and shall have attached thereto copies of relevant documentation supporting such revocation).

Upon the occurrence of any of the foregoing, such Drawstop Notice shall be deemed to be revoked and the Senior Lender (or, in the case of a Drawstop Notice issued by the Common Facility Agent, the Common Facility Agent, acting at instruction of KEXIM, the KEIC Covered Facility Agent and ADB) shall promptly notify the Borrower, each of the other Senior Lenders, the Offshore Accounts Bank, the Common Facility Agent and the Onshore Accounts Bank thereof, whereupon the applicable Senior Lenders shall, if such Drawstop Notice is deemed revoked in accordance with Section 2.4(g)(i) or (ii) prior to the Requested Disbursement Date, make the requested Disbursement as soon as practicable thereafter (and in any event no later than five (5) Financial Business Days thereafter), unless more than fifteen (15) Financial Business Days have elapsed, or there has been a material change in circumstances, since the delivery of the Disbursement Request for such requested Disbursement, in which case a new Disbursement Request must be submitted.

- (h) The Borrower is aware that the schedule for Disbursements under the Senior Loan Agreements (other than the Rupee Facility Loan Agreement) is required to match the schedule for payments by the Borrower under the Construction Contracts for the import of capital goods.

2.5 Prepayment of the Senior Loans

- (a) Voluntary Prepayments. Except for any prepayment permitted in accordance with Section 5.2(s)(i) (Prepayment of Long-term Debt), the Borrower may not voluntarily prepay the Senior Loan prior to the Project Physical Completion Date. Subject to any provisions in the Senior Loan Agreement on unwinding costs, prepayment premiums, if any, and Sections 5.2(s) (Prepayment of Long-term Debt) and 5.3(c) (Insurance - Application of Proceeds), after the Project Physical Completion Date, the Borrower may prepay, on any Interest Payment Date, all or any part of the Senior Loan then outstanding, on not less

than thirty (30) days' prior written notice to the Senior Lender, and in amounts not less than the minimum amounts as set forth in the Senior Loan Agreement. Any voluntary prepayment of the Senior Loan is required to be offered to all other Senior Lenders as a mandatory prepayment in accordance with Section 2.5(b)(iii). Any amounts prepaid pursuant to this Section 2.5(a) shall be applied to the applicable Senior Loan(s) in accordance with the applicable Senior Loan Agreement(s).

- (b) Mandatory Prepayments. Upon the occurrence of any of the following events, the Borrower shall, subject to statutory approvals, prepay (if the relevant statutory approvals have been obtained) or pay into the Dollar Debt Prepayment Reserve Account (if such statutory approvals have not been obtained), in accordance with the Trust and Retention Accounts Agreement, a portion of the Senior Loan equal to such Senior Lender's pro rata share (based on the total principal amount outstanding of all Senior Loans) of the amount of the proceeds received from any such event, if such event involves the receipt of proceeds, or, in the case of paragraph (iii) below, a portion of the Senior Loan equivalent on a pro rata basis to the amount of such other Long-term Debt being prepaid or repurchased:
- (i) the receipt by or on behalf of the Borrower of any liquidated damages paid under any of the Project Documents to the extent (A) not applied to pay penalties payable by the Borrower under any Project Document or to pay for the completion of the work contemplated by such Project Document that was not completed because of the circumstances giving rise to such payment of liquidated damages or (B) in the case of delay liquidated damages under the Construction Contracts, not applied to pay interest on the Senior Loans, or delay liquidated damages to the Procurers under the Power Purchase Agreement;
 - (ii) the receipt by or on behalf of the Borrower of proceeds in connection with a breach of warranty or guarantee under any Project Document to the extent not applied to repair or replace the defective component or deficient service that is the subject of such warranty or guarantee;
 - (iii) the prepayment (whether voluntary or mandatory) or repurchase by the Borrower of any other Long-term Debt other than (A) in connection with any refinancing permitted pursuant to Section 5.2(s)(i) (Prepayment of Long-term Debt), (B) Excess Cash Prepayments of the Rupee Facility Loan, and

(C) prepayments of a Senior Lender's Senior Loan as a result of illegality affecting such Senior Lender's ability to make such Senior Loan and (D) any prepayment to ADB or IIFCL of funds in the Project LC Reserve Account in accordance with the Offshore Accounts Agreement; provided that the Senior Lender may, at its discretion, choose not to be prepaid pursuant to this paragraph (iii);

- (iv) the receipt by any Person of insurance proceeds described in, and in accordance with, Section 5.3(c)(ii) (Insurance – Application of Proceeds);
 - (v) the receipt by or on behalf of the Borrower of proceeds resulting from the expiration, termination or revocation of any Authorization or any Project Document;
 - (vi) the receipt by or on behalf of the Borrower of any proceeds from the expropriation or other taking by any Authority of assets or Share Capital of the Borrower;
 - (vii) the receipt by or on behalf of the Borrower of proceeds resulting from an arbitral or judicial award in connection with any of the Project Documents; and
 - (viii) as and when required pursuant to the Sponsor Support Agreement.
- (c) Any amounts prepaid under Section 2.5(b) above shall be applied (i) pro rata amongst the Senior Loans then outstanding, and (ii) to the remaining installments of principal in inverse order of maturity; provided, however, that any prepayment under Section 2.5(b)(iii) shall be applied by each Senior Lender in accordance with its Senior Loan Agreement.

2.6 Cancellation

- (a) Cancellation of Senior Loan. The Borrower may not cancel all or any part of the Senior Loan, unless:
 - (i) the Senior Loan is being replaced by Long-term Debt meeting all of the requirements of Section 5.2(s)(i) (Prepayment of Long-term Debt);
 - (ii) the Senior Lenders, in consultation with the Independent Engineer, shall be satisfied that (A) no event has occurred or is reasonably expected to occur to cause the Construction

Schedule or Construction Plan to be delayed (unless the costs associated with such delay can be met notwithstanding the cancellation), (B) the proposed cancellation will not cause an Event of Default or Potential Event of Default, and (C) after taking into account the proposed cancellation, the Total Funding Available equals or exceeds the amount of Project Costs projected to be incurred through the Project Financial Completion Date; or

- (iii) it is required to do so pursuant to the Sponsor Support Agreement.

3. Representations and Warranties

3.1 Representations and Warranties of the Borrower

The Borrower represents and warrants to the Senior Lender that:

- (a) Organization and Authority. It is a company limited by shares duly incorporated and validly existing under the laws of India and has the corporate power, capacity and authority to own its assets, conduct its business as presently conducted and to enter into, deliver, observe and perform its obligations and exercise its rights under the Transaction Documents to which it is or will be a party;
- (b) Validity. Each Transaction Document to which it is a party has been, or with respect to each Transaction Document to which it will be a party, will be, duly authorized and executed by the Borrower, and each such Transaction Document constitutes, or will, when executed, constitute, valid and legally binding obligations of the Borrower, enforceable in accordance with its terms (subject to the provisions of applicable insolvency and debt recovery laws and to the discretionary nature of equitable remedies);
- (c) No Conflict. Neither the Borrower's execution or delivery of any Transaction Document to which it is or will be a party nor its compliance with the terms of any Transaction Document, including its exercise of any rights under any such Transaction Documents, will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, or result in the creation or imposition of any Lien (except any Permitted Lien) as a result of, any agreement or other instrument to which it is a party or by which it or its property is bound, or violate any of the terms or provisions of any Authorization or its Constitutional Documents or any Applicable Law;

- (d) Material Construction Contracts. Part A of Sub-Schedule 3.1(d) (Material Construction Contracts) hereto sets forth all of the Material Construction Contracts to which the Borrower is a party as of the date of this Senior Loan Agreement, and Part B of Sub-Schedule 3.1(d) (Material Construction Contracts) hereto set forth all of the additional Material Construction Contracts to be entered into in connection with the Project and the date by which each such contract is expected to be entered into;
- (e) Project Documents. Part A of Sub-Schedule 3.1(e) (Project Documents (other than Construction Contracts)) hereto sets forth all of the Project Documents to which the Borrower and/or the Project Subsidiary is a party as of the date of this Senior Loan Agreement (other than the Construction Contracts), and Part B of Sub-Schedule 3.1(e) (Project Documents (other than Construction Contracts)) hereto set forth all of the additional Project Documents expected to be entered into in connection with the Project and the date by which each such contract is expected to be entered into;
- (f) No Amendments to Project Documents. Except for the termination of any Project Document upon the expiration of its term all Project Documents that the Borrower has entered into prior to making this representation are in full force and effect. Except for amendments and waivers approved by the Senior Lender or otherwise permitted under this Senior Loan Agreement, there has been no amendment or termination of any of the Project Documents that the Borrower has entered into prior to making this representation, and there has been no waiver of any provision of any such Project Document;
- (g) No Amendments to Constitutional Documents. Subject to Section 4.1(j) (Constitutional Documents), the Borrower's Constitutional Documents have not been amended since August 7, 2007, other than the Required Minority Shareholder Amendment and the Borrower has provided a complete and current copy of its Constitutional Documents to the Senior Lender;
- (h) No Immunity. Neither the Borrower nor any Material Project Participant enjoys any right of immunity (sovereign or otherwise) from suit, execution, attachment or other legal process in respect of its assets or its obligations under any Transaction Document or from the jurisdiction of any court;
- (i) Title to Assets and Permitted Liens. (i) Except for the After Acquired Assets the Borrower has obtained all Initial Assets and all Land Use Rights in respect thereof which includes all moveable and immovable

property and assets, in each case that the Borrower uses in its business or that are necessary for the Project; (ii) there is no outstanding Lien on any of the Initial Assets and the Land Use Rights in respect thereof, or on the Borrower's Share Capital, other than Permitted Liens; (iii) no contracts or arrangements, conditional or unconditional, exist for the creation of any Lien on any of the Initial Assets or the Land Use Rights in respect thereof, or on the Borrower's Share Capital other than as permitted hereunder;

(j) Security Documents. Each Security Document confers, or will confer when executed and, if required, filed or recorded, a valid and enforceable first priority Lien or other first priority interest or right of the kind it purports to create over all of the property to which such Security Document relates or purports to relate, and the products and proceeds thereof, and the Borrower has not received any notice of any adverse claim by any Person in respect of its (or the Sponsor's or the Project Subsidiary's, as the case may be) ownership of, or other right to use, the property subject to the Security;

(k) Taxes. All Tax Returns of the Borrower required by Applicable Law to be filed have been duly and timely filed, and all Taxes upon the Borrower or its properties, income or assets that are due and payable or to be withheld, as applicable, have been paid (except for those Taxes contested in good faith and for which adequate reserves have been made in accordance with the Accounting Principles, which are listed in Sub-Schedule 3.1(k) (Contested Taxes), as updated from time to time by written notice to the Senior Lender) or withheld, as applicable, other than those presently payable without penalty or interest; the Borrower has not received notice of any pending audits, examinations, investigations, proceedings or claims with respect to any Taxes nor are any such actions threatened, and the Borrower has not received notice of any Lien with respect to Taxes that has been filed against any of the Borrower's property or assets or Share Capital nor has any such Lien been threatened;

(l) Litigation.

(i) The Borrower is not engaged in, nor is it threatened by, any litigation, arbitration, mediation or other form of dispute resolution proceeding or any administrative proceeding (A) for an amount in the aggregate exceeding (1) Rupees three crores (Rs. 3,00,00,000), or its equivalent in any other currency, for any single claim (or series of related claims) or (2) Rupees ten crores (Rs. 10,00,00,000), or its equivalent in any other currency, for all such claims at any one time outstanding or



- (B) the outcome (if adversely determined) of which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect; and
- (ii) Neither the Borrower nor the Project Subsidiary nor the Sponsor, nor, to the best of the Borrower's knowledge, any Material Project Participant (excluding the Borrower, the Project Subsidiary and the Sponsor), is engaged in or is threatened with any litigation, arbitration, mediation or other form of dispute resolution proceeding or any administrative proceeding that has had or could reasonably be expected to have a Material Adverse Effect;
- (m) Compliance with Law. (i) Neither the Borrower nor any aspect of the Project is in violation of any Applicable Law and (ii) no judgment, decree or order has been issued against the Borrower or its property that has had or could reasonably be expected to have a Material Adverse Effect;
- (n) Financial Statements. The Borrower's most recent Financial Statements delivered pursuant to Section 4.1(d) (Financial Statements) or Section 5.5 (Reporting Requirements), as applicable, (i) have been prepared in accordance with the Accounting Principles from the books and records of the Borrower, (ii) give a true and fair view of the financial position and results of operations of the Borrower as at the dates and for the periods in respect of which they were prepared and (iii) disclose all liabilities (contingent or otherwise) of the Borrower, and the reserves, if any, for such liabilities; and since the date of such Financial Statements, the Borrower (A) has not suffered any material adverse change in its business prospects, operations or assets or any other Material Adverse Effect, (B) has not incurred any substantial loss or any substantial or unusual liability except for the liabilities incurred under, or as permitted by, the Transaction Documents and (C) has not undertaken or agreed to undertake any substantial obligation other than the obligations undertaken pursuant to the Transaction Documents;
- (o) Intellectual Property. The Borrower has the right to use all concessions, trade names, trade marks, patents, franchises, formulas, licenses and other intellectual property that it currently uses or that are necessary for the Project;
- (p) No Defaults. No Event of Default or Potential Event of Default has occurred and is continuing;

(q) Authorizations.

- (i) The Authorizations set forth in Sub-Schedule 3.1(q) (Authorizations) (as the same shall be updated prior to the first Disbursement to include information regarding the Project Subsidiary) are all of the Authorizations necessary or advisable for or in connection with: (A) the Senior Loans and the financing by the Senior Lenders under the Senior Loan Agreements; (B) the business of each of the Borrower and (from and after the date of the initial Disbursement Request under any Senior Loan Agreement) the Project Subsidiary as it is presently carried on and as it is contemplated to be carried on; (C) the execution of the Project and implementation of the Financial Plan; (D) the due execution and delivery of, validity and enforceability of, and performance by each of the Borrower, the Sponsor and the Project Subsidiary of its obligations, and exercise of its rights, under the Transaction Documents to which it is a party and/or any documents necessary or advisable for the implementation of the Transaction Documents, and to ensure the admissibility into evidence in India and other appropriate jurisdictions of each Transaction Document; (E) the perfection and first-priority of the Liens granted or purported to be granted pursuant to the Security Documents; and (F) the remittance to the Senior Lenders in Dollars or Rupees, as the case may be, of all monies payable in respect of the Senior Loans and the Transaction Documents;
- (ii) each of the Authorizations identified on Part A of Sub-Schedule 3.1(q) (Authorizations), and each of the Authorizations identified in Part B of Sub-Schedule 3.1(q) (Authorizations) that are required to be obtained prior to the date this representation is being made, has been obtained and is in full force and effect and final, and there are no legal proceedings regarding the effectiveness or validity of any such Authorization other than any such proceedings that, in the opinion of the Senior Lender, are frivolous;
- (iii) the Borrower or the Project Subsidiary, as applicable, has applied for (or will make arrangements to apply for) all Authorizations set forth in Part B of Sub-Schedule 3.1(q) (Authorizations) that are required to be obtained after the date this representation is being made, and the Borrower has no reason to believe that it will not obtain those Authorizations prior to the date specified for each such Authorization in Sub-



Schedule 3.1(q) (Authorizations):

- (iv) no Authorization set forth in Sub-Schedule 3.1(q) (Authorizations) is subject to any administrative action or proceeding, appeal or judicial or other review by any Authority; and
 - (v) the Borrower has no reason to believe that any of the Authorizations specified in Sub-Schedule 3.1(q) (Authorizations) that requires renewal will not be renewed as and when required under Applicable Law without the imposition of any additional restrictions or conditions (other than those that are non-discriminatory or are generally applicable) or that any of the Authorizations specified in Sub-Schedule 3.1(q) (Authorizations) has been or will be withdrawn, suspended, cancelled, varied, surrendered or revoked;
- (r) Share Capital. As of the date of this Senior Loan Agreement:
- (i) the amount subscribed for and paid in as Share Capital of the Borrower was Rupees four hundred crores (Rs. 400,00,00,000), represented by forty crores (40,00,00,000) Shares;
 - (ii) all of the Shares referred to in paragraph (i) above are legally and beneficially owned by the Sponsor in the following proportions, and each such Share (A) entitles its Shareholder to one vote with respect to matters requiring a vote by Shareholders under Applicable Law or under the Borrower's Constitutional Documents and (B) has been duly authorized, validly issued and is fully paid for:

	<u>No. of Shares</u>	<u>Percentage</u>
Tata Power	40,00,00,000	100%

- (iii) except for the transactions contemplated by the Financing Documents, there are no agreements or arrangements in force that provide for the present or future issue, allotment or transfer of, or grant to any Person of, the right (whether conditional or otherwise) to call for the issue, allotment or transfer of any Share Capital and no Person has any Equity Rights in respect of the Borrower;

(s) Environmental and Social Matters.

- (i) The Borrower and its agents, contractors and subcontractors and the Project are currently in compliance with, and, in the case of the Borrower and the Project, have not in the past breached (other than any such breach for which the Senior Lender has provided a waiver), the Environmental and Social Requirements, and, once it has been adopted pursuant to Section 4.1(i) (Conditions of the First Disbursement – Environmental and Social Management), each of them is and will be in compliance with the Environmental Management Plan and the Social Management Plan;
- (ii) no Hazardous Substances have at any time been generated, used, treated, recycled, stored on, transported to or from or released at, on, under or from the Project other than in compliance with the Environmental and Social Laws, and there is no evidence of soil or groundwater contamination associated with any part of the Project;
- (iii) the Borrower has not received, nor is it aware of, any past, pending or threatened Environmental or Social Claims or material complaints relating to Environmental and Social Matters with respect to the Borrower's compliance with Environmental and Social Laws, including air emissions, discharge to surface water or ground water, noise emissions, solid or liquid waste disposal, or the use, generation, storage, transportation or disposal of Hazardous Substances;
- (iv) there are no facts, circumstances, conditions or occurrences regarding the Project that could reasonably be expected to: (A) cause the Project to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental and Social Law; or (B) require any Authorization or disclosure of documents under any Environmental and Social Law, except those Authorizations or disclosures that have already been made, or those that are not yet required to be made, in compliance with such Environmental and Social Law; and
- (v) the Summary Environmental Impact Assessment was true, complete and accurate in all material respects at the time of submission, and did not omit any information the omission of which would have made the Summary Environmental Impact Assessment misleading in any material respect;



- (t) No Other Business. The Borrower is not currently engaged in, nor has it agreed to engage in, any business other than the Project;
- (u) No Proceedings. The Borrower has not taken any corporate action nor have any other legal steps been taken or legal proceedings been commenced or, to the best of the Borrower's knowledge, threatened against the Borrower seeking a reorganization, moratorium, arrangement, adjustment or composition of the Borrower or for the appointment of a receiver, official liquidator, assignee, sequestrator (or similar official) in relation to the Borrower or any part of its property, or for the winding up, dissolution or re-organization of the Borrower or of any or all of the Borrower's property or Share Capital;
- (v) Subsidiaries. The Borrower has no Subsidiaries other than the Project Subsidiary. The Project Subsidiary is not engaged in any activities other than those set forth in Sub-Schedule 3.1(v) (Project Subsidiary Activities). The Project Subsidiary has no Subsidiaries.
- (w) Reasonableness of Assumptions.
 - (i) the Construction Budget and the Annual Budget (if any) most recently delivered to the Senior Lender pursuant hereto, and the Coal Supply and Transportation Plan, Transmission Plan, Environmental Management Plan, Financial Plan, Construction Plan and Base Case Financial Projections, have been prepared by the Borrower in good faith and on reasonable assumptions, and the Borrower has no reason to believe those assumptions are incorrect or misleading in any material respect;
 - (ii) the Construction Plan and the Construction Budget specify in summary form the work that the Construction Contractors propose to do through the Project Physical Completion Date;
 - (iii) the Construction Plan and the Construction Budget represent the Borrower's good faith estimate of all costs and expenses anticipated by the Borrower to be incurred to construct the Project in the manner contemplated by the Transaction Documents;
- (x) Prohibited Payments and Practices. Neither the Borrower nor its Affiliates, nor any Person acting on the behalf of any of the foregoing, (i) has made or proposes to make, with respect to the Project or any transaction contemplated by the Transaction Documents, any Prohibited Payments, or (ii) has committed or been engaged in (A) any Sanctionable Practice in connection with the Project or any transaction contemplated by the Transaction Documents, (E) any Money

Laundering or acted in breach of any Applicable Law relating to Money Laundering, or (C) the Financing of Terrorism;

- (y) Project Documents. The services to be performed, the materials to be supplied and the rights to be granted to the Borrower and the Project Subsidiary pursuant to the Project Documents, together with the real property owned or leased by the Borrower that forms part of the Project Site, comprise all of the services, materials, property, easements, wayleaves and other rights and interests necessary or advisable for or in connection with the Project, in each case free from Liens (other than Permitted Liens) and free from any restrictions or covenants that could reasonably be expected to have a Material Adverse Effect, and provide the Borrower with adequate access to all resources required for any reasonable purpose in connection with the Project;
- (z) Priority. The obligations of the Borrower under the Senior Loan Agreement rank and will rank at least *pari passu* in priority of payment and in all other respects with all other obligations of the Borrower outstanding at any time (including under the other Senior Loan Agreements), except for those obligations that are mandatorily preferred by law applying to companies generally;
- (aa) Transaction Documents. The Transaction Documents are, or when duly executed and delivered will be, in proper legal form under the laws of India for enforcement under such laws and admissible into evidence in the courts of India; all formalities required in India for the validity and enforceability of the Financing Documents (including any necessary payment of stamp duty, registration, recording or filing with any court or other Authority in India) have been or will be accomplished prior to the date of the first Disbursement, and, except with respect to the Powers of Attorney, no notarization is required for their validity and enforceability;
- (bb) Choice of Law. The choice of English law as the governing law of the Financing Documents that are governed by English law is valid, binding and will be recognized and be given effect to in India. The choice of Singapore law as the governing law of the Financing Documents that are governed by Singapore law is valid, binding and will be recognized and be given effect to in India. The consent of the Borrower and the Sponsor to the jurisdiction of the courts of England and Singapore in the applicable Financing Documents to which they are parties is valid and binding and not subject to revocation, and any judgment obtained in England or Singapore in relation to a Financing Document, subject to the provisions of Sections 13 and 44A of the

(Indian) Code of Civil Procedure, 1908, will be recognized and enforced in India;

- (cc) No Deduction or Withholding. The Borrower is not required under the laws of India to make any deduction or withholding for or on account of any Tax for or on account of any payment the Borrower may make under any Financing Document except for the ten percent (10%) withholding tax in connection with the KEIC Covered Facility Loan Agreement;
- (dd) Foreign Exchange Controls. Other than as set forth in Schedule 3.1(q) (Authorizations), no foreign exchange control approvals or other Authorizations are required to ensure the availability of Rupees or Dollars to enable the Borrower, the Sponsor or the Project Subsidiary to perform all of its obligations under each Transaction Document to which it is a party in accordance with its respective terms, and there are no restrictions or requirements that limit the availability or transfer of foreign exchange for the purpose of the performance by the Borrower of its obligations under the Senior Loan Agreements or any other Transaction Document to which it is a party, except to the extent that the GoI may, pursuant to Section 40 of the Foreign Exchange Management Act, 1999 ("FEMA") suspend indefinitely or for such period as is notified under all or any of the provisions of FEMA, thus restricting the availability or transfer of foreign exchange, or the RBI, in anticipation of or during a foreign exchange crisis or in times of national emergency, may temporarily suspend or restrict sales of foreign currency or subject all transactions in foreign currency to licensing by the RBI or require surrender of all foreign currency obtained by any Person to the RBI or as designated by the RBI;
- (ee) No Force Majeure Event. No event of force majeure as defined in or contemplated by any Project Document has occurred and is continuing;
- (ff) Remaining Funds. The Total Funding Available to the Borrower is sufficient to pay all Project Costs;
- (gg) Accuracy of Information.
 - (i) All factual information supplied in writing by or at the direction of the Borrower to insurers in connection with any insurance policies and contracts procured or to be procured by or for the benefit of the Borrower, as updated from time to time, is true and accurate in all material respects and there are no facts or circumstances that have not been disclosed to the insurers that could reasonably be expected, if so disclosed, to adversely affect the nature or extent of the cover to be provided under



such insurance policies;

- (ii) All factual information supplied in writing by or at the direction of the Borrower to the Consultants in connection with their investigations and reports with respect to the transactions contemplated by the Transaction Documents, as updated from time to time, is true and accurate in all material respects, and there are no facts or circumstances that have not been disclosed to those Consultants that would result in such information being untrue or misleading in any respect;
- (iii) The Information Memorandum dated June 2007 relating to the Borrower and the Project, as at such date, was true and accurate (other than for projections and other forward-looking statements contained in that Information Memorandum which the Borrower believed were reasonable as at such date) and did not contain any information that was misleading in any material respect nor did it omit any information the omission of which made the information contained in it misleading in any material respect;
- (iv) Any factual information provided by the Borrower to (i) any Authority in connection with any Authorization or (ii) the Senior Lenders was true and accurate in all material respects as at the date it was provided, and nothing has occurred or been omitted from such factual information, and no information has been provided or withheld, that would result in such information being untrue or misleading in any material respect; and
- (v) None of the representations and warranties in this Section 3.1 (Representations and Warranties of the Borrower) omits any matter the omission of which makes any of such representations and warranties misleading in any material respect.

3.2 Senior Lender Reliance

The Borrower acknowledges that it makes the representations and warranties in Section 3.1 (Representations and Warranties of the Borrower) with the intention of inducing the Senior Lender to enter into the Senior Loan Agreement and that the Senior Lender enters into the Senior Loan Agreement on the basis of, and in full reliance on, each such representation and warranty.

3.3 Repetition of Representations

The representations and warranties made by the Borrower in Section 3.1 (Representations and Warranties of the Borrower) shall be deemed to be repeated by the Borrower on each date upon which:

- (a) any request is made for a Disbursement;
- (b) any Disbursement is made under the Senior Loan Agreement; and
- (c) the Project Financial Completion Date occurs;

with reference to the facts and circumstances then existing, except to the extent any such representation is expressly related to a specific date, in which case such representation and warranty will continue to relate to such specific date.

4. Conditions of Disbursement

4.1 Conditions of the First Disbursement

The obligation of the Senior Lender to make the first Disbursement of the Senior Loan is subject to the fulfillment to the satisfaction of the Senior Lender of the following conditions:

- (a) Initial Transaction Documents. (i) the Senior Loan Agreements, in each case in form and substance acceptable to the Senior Lender, shall have been executed and have become fully effective in accordance with their respective terms, (ii) the Initial Transaction Documents, in form and substance acceptable to the Senior Lender, shall have been executed and have become fully effective in accordance with their respective terms, (iii) all of the conditions subsequent set forth in Article 3.1 of the Power Purchase Agreement, other than (A) the achievement of "Financial Closure" (as defined in the Power Purchase Agreement), and (B) Article 3.1.2(ii) of the Power Purchase Agreement, and (C) Article 3.1.2A(I)(i) of the Power Purchase Agreement shall have been fulfilled and (iv) the Senior Lender shall have received an original of the Senior Loan Agreement and each Initial Transaction Document to which it is a party and a copy, certified as a true and complete copy by the Borrower, of each Initial Transaction Document to which it is not a party;
- (b) Construction Schedule, Plan, Budget; Disbursement Schedule. The Senior Lender shall have received the following documents in each case in form and substance satisfactory to it: (i) the Construction Schedule, (ii) the Construction Plan, (iii) the Construction Budget,

Declaration of Karim Suratgar

Exhibit 1

(Part 2)

- (iv) each payment schedule, if any, agreed between the Borrower and any Construction Contractor, (v) any notices to proceed that have been issued under the Construction Contracts, (vi) the Borrower's construction organizational chart and (vii) the Disbursement Schedule;
- (c) Financial Statements. The Senior Lender shall have received either: (i) audited Financial Statements for the Financial Year ending on March 31, 2008 and unaudited Financial Statements for all completed Financial Quarters following the end of such completed Financial Year, if the Borrower requests the first Disbursement after July 29, 2008 (or such earlier date on which the Borrower's audited Financial Statements for Financial Year ending on March 31, 2008 are available); or (ii) if the Borrower requests the first Disbursement on or before July 29, 2008, unaudited Financial Statements for all completed Financial Quarters occurring since the Borrower's last audited Financial Statements;
- (d) Financial Systems and Control. Arrangements reasonably satisfactory to the Senior Lender shall have been made for the installation and operation by the Borrower of an accounting and cost control system and a management information system that truly and fairly reflect the financial condition of the Borrower and the results of its operations, and the chief financial officer of the Borrower shall have confirmed in writing that such systems have been put in place at least fifteen (15) days prior to the date of the first Disbursement, such confirmation to include a brief description of the systems and records in place, all of which shall be reasonably satisfactory to the Senior Lender;
- (e) Auditors. The Borrower shall have appointed the Auditors, shall have irrevocably authorized the Auditors (in the form set forth in Exhibit 4.1(e) (Form of Letter to Auditors)) to communicate directly with the Senior Lender at any time regarding the Borrower's accounts and operations and shall have provided the Senior Lender with a copy of that authorization; provided, that such authorization to the Auditors shall provide that (i) the Borrower shall have the right to receive copies of any written communications between the Senior Lender and the Auditors and (ii) the Borrower shall have the right to attend any meeting between the Senior Lender and the Auditors with respect to the Borrower and/or the Project;
- (f) Certificate of Incumbency and Authority. The Senior Lender shall have received (i) evidence, substantially in the form set forth in Exhibit 4.1(f) (Form of Certificate of Incumbency and Authority), of the authority of each Person who has or will, on behalf of each of the Borrower, the Project Subsidiary and the Sponsor, sign any Financing



Document or any request or certification provided for in the Senior Loan Agreement or any other Financing Document or execute any other document required or permitted to be executed by the Borrower, the Project Subsidiary or the Sponsor under the Senior Loan Agreement or any other Financing Document and (ii) the authenticated specimen signature of each such Person;

- (g) Sponsor's Equity. The Sponsor shall have subscribed to and shall have paid for at least fifteen percent (15%) of the amount required to be contributed by it as Equity in accordance with the Financial Plan;
- (h) Insurance. The Borrower shall have its assets, properties and business, and the assets, properties and business of the Project Subsidiary, insured in accordance with Section 5.3 (Insurance) and Exhibit 5.3 (Insurance Requirements) and shall have provided to the Senior Lender copies of all insurance policies required to be obtained pursuant thereto together with a certificate of the insurers confirming that such insurance policies are in full force and effect, that all premiums then due and payable under those policies have been paid and that (i) the Security Trustee on behalf of the Secured Parties has been named as primary loss payee and additional insured under each of such insurance policies (other than third party liability policies), and (ii) the Senior Lender has been named as additional named insured on all liability policies, and the Senior Lender shall have received a satisfactory report from the Insurance Consultant confirming the same;
- (i) Environmental and Social Management. (i) The Borrower shall have adopted the Environmental Management Plan and the Social Management Plan, each in form and substance satisfactory to the Senior Lender; (ii) the Borrower shall have employed a suitably qualified individual whose primary responsibility is to ensure the Borrower's compliance with the Environmental and Social Requirements, and shall have established other staff and procedural capacity to implement and ensure compliance with the Environmental Management Plan and Social Management Plan, in each case in a manner acceptable to the Senior Lender; and (iii) the Borrower shall have finalized the Resettlement Plan in form and substance acceptable to the Senior Lender and consistent with the Environmental and Social Requirements.
- (j) Constitutional Documents. The Borrower shall have amended its Constitutional Documents to provide that any purchaser of Shares (that are not pledged by the Sponsor) from the Sponsor shall not be granted any: (i) veto rights in excess of those available to any ordinary shareholder under the Companies Act, 1956; or (ii) differential voting



rights. The Senior Lender shall have received a copy, certified as a true and complete copy by an Authorized Representative, of the Constitutional Documents of each of the Borrower, the Project Subsidiary and the Sponsor, in form and substance satisfactory to the Senior Lender, and each of the Borrower, the Project Subsidiary and the Sponsor shall have certified to the Senior Lender that no amendment has been made to its respective Constitutional Documents except as may be required under the Financing Documents, since the date of this Senior Loan Agreement other than, in the case of the Borrower, the Required Minority Shareholder Amendment, or, if any such document has been amended, then such amendments shall have been in form and substance satisfactory to the Senior Lender;

- (k) Resolutions. Each of the Borrower and, in the case of (ii) and (iii) below, the Sponsor and the Project Subsidiary, shall have passed resolutions (in form and substance satisfactory to the Senior Lenders) of its board of directors, or its shareholders (if required) and shall have done, fulfilled and performed all other acts, conditions and things required to be done, fulfilled and performed in order to authorize, as applicable:
- (i) the carrying out of the Project and implementation of the Financial Plan;
 - (ii) the due execution and delivery of, and performance of its obligations under, and exercise of its rights under, all Transaction Documents to which it is or will be a party and the express authorization of specified persons to sign each such Transaction Document on its behalf; and
 - (iii) the remittance to the Senior Lender of all monies payable in respect of the Obligations (or, in the case of (x) the Sponsor, pursuant to the Sponsor Support Agreement and (y) the Project Subsidiary, the Project Subsidiary Guarantee), in each case in accordance with the provisions of the Transaction Documents;

and the Senior Lender has received a copy of each such resolution or other relevant documents, certified as a true and complete copy by an Authorized Representative;

- (l) Creation of Initial Security. If the first Disbursement is requested within sixty (60) days after the date of this Senior Loan Agreement, the Security Documents with respect to the Initial Assets shall have been executed and the Security created thereunder shall have been perfected and registered or recorded to the extent necessary to create, perfect and protect the Rupee Facility Lenders' and the Issuing Bank's

first priority and *pari passu* security interest therein, with respect to the Initial Assets. If the first Disbursement is requested after sixty (60) days following the date of this Senior Loan Agreement, the Security Documents shall have been executed and the Security created thereunder shall have been perfected and registered or recorded to the extent necessary to create, perfect and protect the Senior Lenders' first priority and *pari passu* security interest therein, with respect to the Initial Assets;

- (m) Copies of Authorizations. (i) The Borrower shall have delivered an updated version of Sub-Schedule 3.1(q) (Authorizations), including information relating to the Project Subsidiary, which shall be satisfactory to the Senior Lender. (ii) The Borrower shall have obtained and provided to the Senior Lender copies of all Authorizations listed in Part A of Sub-Schedule 3.1(q) (Authorizations) and all Authorizations listed in Part B of Sub-Schedule 3.1(q) (Authorizations) that are required to be obtained prior to the date of the first Disbursement, and all such Authorizations shall be in full force and effect and final, and there are no legal proceedings regarding the effectiveness or validity of any of such Authorizations other than any such proceedings that are, in the opinion of the Senior Lender, frivolous;
- (n) Opinions of Counsel. The Senior Lender shall have received legal opinions, in form and substance satisfactory to it, from:
- (i) Senior Lenders' Local Counsel and concurred in by counsel for the Borrower with respect to those matters described in Exhibit 4.1(n) (Matters to be Covered in Local Counsel's Legal Opinion) and any other matters relating to the transactions contemplated by the Senior Loan Agreement and the other Transaction Documents to which the Borrower is a party as the Senior Lender may reasonably request;
 - (ii) Senior Lenders' International Counsel, with regard to English law aspects of the Transaction Documents and such other matters as the Senior Lender may reasonably request;
 - (iii) J. Sagar Associates, counsel to the Sponsor;
 - (iv) Singapore counsel (acceptable to the Senior Lender) to the Borrower and the Project Subsidiary;
 - (v) Indonesian counsel to the Senior Lenders;
 - (vi) Cayman Islands counsel to the Senior Lenders;

- (vii) counsel to Doosan acceptable to the Senior Lender; and
- (viii) counsel to Toshiba acceptable to the Senior Lender;
- (o) Transmission Plan and Indemnification Agreement. The Senior Lender shall have received (i) a copy of the Transmission Plan and the Bulk Power Transmission Agreement, and (ii) a copy of the Indemnification Agreement certified by the Borrower as a true and complete copy;
- (p) Coal Supply and Transportation. The Senior Lender shall have received, in each case in form and substance satisfactory to it, (i) a copy of the Coal Supply and Transportation Plan, (ii) certified copies of the Project Coal Sales Agreement and the Initial Coal Transport Agreements, and (iii) evidence, of (A) the rights of Indocoal to the coal being sold under the Project Coal Sales Agreement, (B) evidence of Indocoal's ability to meet its financial obligations under the Project Coal Supply Agreement, (which may be in the form of the KPC Guarantee) and (C) evidence confirming when the "Commencement Date" (as defined in the KPC Concession) occurred;
- (q) Title and Land Use Rights. The Senior Lender shall have received (i) a certification from an Authorized Representative of the Borrower, in form and substance satisfactory to the Senior Lender, designating and accurately identifying the assets to be included as Initial Assets and the assets to be included as After Acquired Assets, together with (A) a map identifying the locations of the After Acquired Assets, and (B) evidence that the acquisition of the After Acquired Assets after the date of first Disbursement will not delay the Construction Schedule, such certification, designation of assets, map and evidence, in each case being in form and substance satisfactory to the Senior Lender, (ii) evidence, in form and substance satisfactory to it, of the Borrower's ownership of unencumbered title, except for the After Acquired Assets, of the land constituting the Project Site as is necessary for the construction and operation of the Project, (iii) a title opinion from counsel acceptable to the Senior Lender, confirming, without limitation, that the Borrower has free, clear and marketable title, free from all Liens, other than Permitted Liens, and that all levies, cesses, duties and charges payable by the Borrower in respect of the land constituting the Project Site (other than the After Acquired Assets) have been paid, and (iv) evidence, in form and substance satisfactory to it, of Land Use Rights as necessary for the construction and operation of the Project;
- (r) Base Case Financial Projections. The Senior Lender shall have

received from the Borrower a hard copy of, and compact disk containing, the Base Case Financial Projections for the Project, together with the underlying models and assumptions, in each case containing projections of revenue expenses and cash flows with respect to the Project over a period ending no earlier than the date that is one year after the final maturity date of the Senior Loans, which Base Case Financial Projections, and supporting assumptions and explanations thereto, shall be in form and substance satisfactory to the Senior Lender and the Independent Engineer;

- (s) Appointment of Process Agents. The Senior Lender shall have received evidence of each process agents' acceptance of its appointment by the Borrower, the Project Subsidiary or the Sponsor, as applicable, until six months after the final scheduled maturity date of the Senior Loans under each Transaction Document pursuant to which such appointment is required, together with evidence of the prepayment in full of the fees of each such agent;
- (t) Water Supply. The Senior Lender shall have received evidence, in form and substance satisfactory to it and approved by the Independent Engineer, that the Borrower has made adequate arrangements for the supply of water required for the Project;
- (u) Independent Engineer's Reports. The Senior Lender shall have received one or more reports, in form and substance satisfactory to the Senior Lender, from the Independent Engineer, with respect to the feasibility of the Project, which shall address such matters as the Senior Lender may reasonably request, including (i) implementation arrangements in relation to supply and construction contract packages, the technical feasibility, the operation and maintenance plans including cost estimates, the transmission and interconnection plans, the coal supply and transportation plans (including the design for receiving coal from the port), the appropriateness of the technology/configuration for the Project taking into account the likely source and quality of the coal being procured for the Project and the basic design and design criteria for the Project, (ii) the design specifications and milestones, the performance tests and completion undertakings and the performance guarantees for the Project, (iii) the reasonableness of the technical inputs reflected in the Base Case Financial Projections, the Construction Budget, the Construction Plan, the Construction Schedule, the Disbursement Schedule, and the Coal Supply and Transportation Plan, each as in effect on the date of the first Disbursement, (iv) the status and adequacy of the Authorizations that have been obtained by the Borrower and the Project Subsidiary and (v) the status and adequacy of the Project Documents. All issues

raised in the Independent Engineer report(s) shall have been addressed by the Borrower to the satisfaction of the Senior Lender (in consultation with the Independent Engineer);

- (v) Approval for CDM benefits. The Borrower shall have initiated the process, to the satisfaction of the Senior Lender, to obtain approvals from the appropriate Authority for trading in carbon credits pursuant to the completion of the requisite study and receipt of report by Ernst & Young or any other reputed agency to the satisfaction of the Senior Lender as required under Applicable Law;
- (w) Competency of Contractors. The Borrower shall have provided evidence satisfactory to the Senior Lender with regard to the competency and capability of KOPEC, Doosan, DPI and Toshiba for handling their respective responsibilities in connection with the construction of the Project; and the scope of work specified in the KOPEC Agreement shall be adequate to the satisfaction of the Senior Lender (in consultation with the Consultants);
- (x) Project Management Committee. The Borrower shall have agreed that it shall constitute and maintain at all times a project management committee, comprised of appropriate directors and executives of the Borrower satisfactory to the Senior Lender, for the purpose of supervising and monitoring the progress of implementation (including both the construction and operating phases) of the Project. The responsibilities of such committee shall be satisfactory to the Senior Lender and shall include, without limitation, management of the Project during construction, civil engineering, placement of orders and oversight of operation and maintenance of the Project. The Senior Lender shall have the option to appoint a nominee who shall be a permanent invitee to the project management committee;
- (y) Award of Contracts. The Senior Lenders shall have received satisfactory evidence that the Borrower has identified the outstanding contract packages in relation to the Project and has taken steps to invite bids/tenders or has invited bids/tenders in order to award contracts for the same;
- (z) Counsel Reports. The Senior Lender shall have received reports, in form and substance satisfactory to the Senior Lender, from the Senior Lenders' Local Counsel and the Senior Lenders' International Counsel, with respect to the legal risk analysis for the Project, which shall include: (i) review of such Transaction Documents as may be executed before the date of the first Disbursement, (ii) review of the Authorizations that have been obtained in relation to the Project,

(iii) review of the applicable regulatory regime in relation to the electricity sector of the respective jurisdictions of the Procurers. All issues raised in these report(s) shall have been addressed by the Borrower to the satisfaction of the Senior Lenders, the Senior Lenders' Local Counsel and the Senior Lenders' International Counsel;

- (aa) Auditors' Report on Development Costs. The Senior Lender shall have received either (i) a report, in form and substance satisfactory to it, from the Auditors with respect to pre-operating, preliminary and development costs and expenses incurred by the Borrower prior to the first Disbursement, or (ii) the audited Financial Statements for the Borrower for the Financial Year ending on March 31, 2008, together with a certificate of the chief financial officer of the Borrower, in form and substance satisfactory to the Senior Lender, certifying with respect to the pre-operating, preliminary and development costs and expenses incurred by the Borrower from March 31, 2008 until the date of the first Disbursement;
- (bb) Intercreditor Agreement. The Intercreditor Agreement shall have been executed by each of the Senior Lenders, and the Senior Lender shall be received an original executed copy of the Intercreditor Agreement;
- (cc) Hedging Plan. The Senior Lender shall have received the Hedging Plan;
- (dd) Monitoring Agreements. The Senior Lenders shall have entered into the Independent Engineer's Monitoring Agreement and the Insurance Monitoring Agreement; and
- (ee) Debt Payoff. Simultaneously with the making of the first Disbursement of any of the Senior Loans (other than any Disbursement resulting from the issuance of a letter of credit under the Rupee Facility Loan), the Senior Lenders shall have received satisfactory evidence of the repayment in full of the Permitted Indebtedness identified in Section 5.2(d)(v) (Negative Covenants - Permitted Indebtedness) (which it has been agreed may be accomplished with proceeds of a disbursement of the Rupee Facility Loan).
- (ff) Doosan Fundings. With respect only to Disbursements under the KEIC Covered Facility Loan Agreement, the KEXIM Loan Agreement and the ADB Tranche 2 Loan, the Common Facility Agent shall have received satisfactory evidence of the authority of the persons executing the Imported Costs Confirmation Certificates and Local Costs Confirmation Certificates (each as defined in the KEIC Covered Facility Loan Agreement and the KEXIM Loan Agreement) to execute such certificates on behalf of Doosan and/or DPI, as applicable.

4.2 Conditions of All Disbursements

The obligation of the Senior Lender to make any Disbursement of the Senior Loan pursuant to the Senior Loan Agreement, including the first Disbursement, shall be subject to the fulfillment to the satisfaction of the Senior Lender of the following conditions:

- (a) Disbursement Request and Receipt. The Senior Lender shall have received a Disbursement Request (in the form specified in the Senior Loan Agreement), and a receipt, substantially in the form specified in the Senior Loan Agreement, for such Disbursement, and the Senior Lender shall not have issued or received an Unsatisfied CP Notice or Drawstop Notice with respect to the requested Disbursement that has not been withdrawn or revoked;
- (b) No Default. No Event of Default and no Potential Event of Default shall have occurred and be continuing;
- (c) Performance of Obligations. The Borrower, the Sponsor and the Project Subsidiary shall have performed all of their respective obligations due to be performed under the Financing Documents to which they are parties, and each of the parties to the Project Documents shall have performed in all material respects all of its obligations under each Project Document to which it is party that are due to be performed on or prior to the date of such Disbursement;
- (d) Trust Accounts. All Trust Accounts shall have been established and funded to the extent required under the Trust and Retention Accounts Agreement and all accounts shall have been established and funded to the extent required under the Offshore Accounts Agreement;
- (e) Sponsor Support. Prior to the date of such Disbursement, all Sponsor Support Payments and Subordinated Loans, if any, required under the Sponsor Support Agreement shall have been made;
- (f) Authorizations. The Borrower shall have obtained and provided to the Senior Lender copies of all Authorizations listed in Sub-Schedule 3.1(q) (Authorizations) that have been obtained or that are required to be obtained by the Borrower or the Project Subsidiary before the date of such Disbursement pursuant to Sub-Schedule 3.1(q) (Authorizations), and all such Authorizations shall be in full force and effect and final, and there shall be no legal proceedings regarding the effectiveness or validity of any of such Authorizations other than any such proceedings that are, in the opinion of the Senior Lender, frivolous, and the Borrower or the Project Subsidiary, as applicable, shall not be in default under or have breached any of the terms of any

such Authorizations where such breach or default could reasonably be expected to have a Material Adverse Effect;

(g) Construction Progress Report. The Senior Lender shall have received from the Borrower:

(i) the most recent Construction Progress Report required to be provided pursuant to Section 5.5(c)(i) (Construction Progress Report), indicating that:

(A) construction of the Project is proceeding in accordance with the Construction Schedule, the Construction Plan and the Construction Budget, or if construction is not proceeding in accordance with the Construction Schedule, the Construction Plan and the Construction Budget, then the Construction Progress Report shall describe any variances and state with supporting evidence that the variances could not reasonably be expected to have a Material Adverse Effect;

(B) construction of the port facilities under the Port Services Agreement is proceeding in accordance with the implementation plan and the most recent status report, in each case delivered by the Port Operator to the Borrower pursuant to Clause 4.4.4 of the Port Services Agreement;

(C) construction of the transmission facilities is proceeding in accordance with the Transmission Plan; and

(D) the Total Funding Available is sufficient to pay all remaining Project Costs; and

(ii) a certification from an Authorized Representative of the Borrower as of the date of the Disbursement that (A) the Construction Progress Report is true, accurate and complete, and (B) nothing has occurred since the date of such Construction Progress Report that could prevent construction of the Project in accordance with the Construction Plan and the Construction Budget;

- (h) Independent Engineer's Certificate. The Senior Lender shall have received a certificate from the Independent Engineer, in form and substance satisfactory to it, certifying that:
- (i) the most recent Construction Progress Report required to be provided pursuant to Section 5.5(c)(i) (Construction Progress Report) is, in the opinion of the Independent Engineer, true, complete and correct in all material respects;
 - (ii) progress has been achieved according to the Construction Schedule or, if not, that the Borrower and the Construction Contractors have developed a revised plan satisfactory to the Independent Engineer, in either case in order for the Project Physical Completion Date to occur as scheduled in accordance with the Construction Plan;
 - (iii) the expenditures reflected in the Disbursement Request which are to be paid with the proceeds of such Disbursement have been properly incurred or will be properly incurred under the Construction Contracts and are consistent with the Construction Budget and the Disbursement Schedule, and the Independent Engineer shall have received details with respect to any such expenditures in excess (on an individual basis) of Rupees forty crores (Rs 40,00,00,000); and
 - (iv) the Disbursement Schedule represents a reasonable estimate of the timing and amounts of Disbursements required in connection with the construction and financing of the Project in accordance with the Construction Plan and the Construction Budget;
- (i) Disbursement Schedule. The amount of the requested Disbursement is consistent with the Disbursement Schedule;
- (j) Representations and Warranties. The representations and warranties made or deemed to be repeated or made pursuant to Section 3.3 (Repetition of Representations) shall be true and correct in all respects on and as of the date of the Disbursement Request and the date of the Disbursement with the same effect as though such representations and warranties had been made on and as of such dates;
- (k) No Violation. The making of such Disbursement shall not cause the Borrower to be in violation of its Constitutional Documents or cause the Borrower to be in violation or breach of, or default under, as applicable, any provision contained in any agreement, instrument or document to which the Borrower is a party or by which the Borrower

or its property is bound, or any Authorization or Applicable Law;

- (l) Sponsor Equity. The Senior Lender shall have received evidence that the Sponsor shall have subscribed to and shall have paid for Equity, as is set forth in the Financial Plan, on a basis at least pro rata with the Disbursement (provided that, with respect to the first Disbursement, the Shareholders' Equity contributions shall not be less than the amount described in Section 4.1(g) (Sponsor's Equity)), and that such amount has been paid into the Construction Account (as defined in the Trust and Retention Accounts Agreement); provided further, that if such Equity funding requirements are ever increased in accordance with the Sponsor Support Agreement, it shall be a condition to each Disbursement that such increased amounts have been paid into such Construction Account;
- (m) Debt to Equity Ratio; Liabilities to Tangible Net Worth Ratio. After taking into account the amount of the requested Disbursement, any related Equity contribution and any other Senior Loan Disbursement being made in accordance with the Disbursement Schedule, the Debt to Equity Ratio would not exceed 3.0 (or any such lower ratio required pursuant to the Sponsor Support Agreement) and the Liabilities to Tangible Net Worth Ratio would not exceed 3.5 (or any such lower ratio required pursuant to the Sponsor Support Agreement);
- (n) Fees and Expenses. Each of the Consultants and the Senior Lender shall have received from the Borrower all fees and expenses, and all reimbursed costs and expenses, required to be paid or reimbursed to it before the date of such Disbursement pursuant to the Financing Documents;
- (o) No Material Loss or Liability. Since the date of the latest Financial Statements delivered pursuant to Section 4.1(d) (Conditions of the First Disbursement - Financial Statements), the Borrower has not incurred any material loss or liability except those permitted to be incurred pursuant to the Transaction Documents;
- (p) No Material Adverse Effect. Nothing has occurred that has had or could reasonably be expected to have a Material Adverse Effect;
- (q) Environmental and Social Matters. The Senior Lender shall have received a certification from each of the Borrower and the Environmental and Social Consultant in respect of (i) the compliance by the Borrower, the Project Subsidiary and their employees, agents, contractors and subcontractors with the Environmental and Social Requirements and, once adopted pursuant to Section 4.1(j), (Conditions of the First Disbursement - Environmental and Social

Management), the Environmental Management Plan and the Social Management Plan and (ii) the status of any Environmental or Social Claims (if any), all in form and substance satisfactory to the Senior Lender;

- (r) World Bank/ADB Member Country. The proceeds of (i) that Disbursement of the IFC Loan are not in reimbursement of, or to be used for, expenditures in the territories of any country that is not a member of the World Bank and IFC or for goods produced in or services supplied from any such country, and (ii) that Disbursement of the ADB Loan are not in reimbursement of, or to be used for, expenditures in the territories of any country that is not a member of the ADB or for goods produced in or services supplied from any such country;
- (s) Taxes. The Borrower has paid all stamp, registration or similar Taxes to be paid on or in relation to the Transaction Documents executed before the date of the Disbursement or the transactions contemplated thereby;
- (t) Release of Liens. In connection with any Disbursement to be applied to the payment or reimbursement of Project Costs under the Construction Contracts (other than for Project Costs representing materials or equipment in India), the relevant Construction Contractors or sub-contractors shall have irrevocably waived and released all Liens, statutory or otherwise, that any of them may have or acquire on the Project or the Security, and the Senior Lender shall have received evidence of the same;
- (u) Opinions of Counsel. The Senior Lender shall have received additional legal opinions, if requested by the Senior Lender, with respect to any matter relating to such Disbursement, in form and substance satisfactory to such Senior Lender;
- (v) Coal Transport and Supply. No Disbursement of an amount greater than thirty percent (30%) of the Senior Lender's Senior Loan (or, in the case of the Rupee Facility Loan, fifty percent (50%)) shall be made until such time as the Coal Supply and Transportation Agreements Completion Date shall have been achieved; and
- (w) Utilization of Previous Disbursement. The Senior Lender shall have received a certificate from the Independent Engineer certifying utilization of funds by the Borrower under the previous Disbursement.

5. Covenants

5.1 Affirmative Covenants

Unless the Senior Lender shall otherwise agree in writing, until all Obligations to the Senior Lender are paid in full, the Borrower shall:

- (a) Conduct; Existence; Use of Proceeds.
- (i) Carry out the Project and conduct its business with due diligence and efficiency, in accordance with sound engineering, administrative, financial and business practices and with prudent industry practice;
 - (ii) Maintain its existence as a company limited by shares duly incorporated and existing under the laws of India;
 - (iii) Apply the proceeds of the financing in the Financial Plan and all revenues exclusively to the Project and in accordance with the Transaction Documents, the Construction Plan and the Construction Budget and, after the Scheduled COD for the first Unit, the Annual Budget; and
 - (iv) Request Disbursements in accordance with the Disbursement Schedule; provided, however, that (A) from time to time prior to the Project Financial Completion Date the Borrower may, with the prior written approval of the Senior Lender, revise the Disbursement Schedule to reflect any changes in the schedule of expected Disbursements and contingencies incurred and other changes affecting the expected uses of the Senior Loan, and (B) any revised Disbursement Schedule shall first be submitted to the Senior Lender for review and approval by the Senior Lender, in consultation with the Independent Engineer, such approval not to be unreasonably withheld or delayed;
- (b) Accounting and Financial Management. Maintain the accounting, cost control and management information systems referred to in Section 4.1(d) (*Conditions of the First Disbursement - Financial Systems and Control*) and the books of account and other records so that they reflect truly and fairly the financial condition of the Borrower and the results of its operations in conformity with the Accounting Principles;
- (c) Records. Retain, until at least one year after the Project Financial Completion Date, all records (including payroll records, invoices, bills and receipts) evidencing material expenditure by or on behalf of the



Borrower on account of the Project;

- (d) Auditors. Maintain internationally reputed and independent public accountants acceptable to the Senior Lender as its Auditors, irrevocably authorize the Auditors in writing in the form set forth in Exhibit 4.1(c) (Form of Letter to Auditors) to communicate directly with the Senior Lender at any time regarding the Borrower's accounts and operations, at the cost and expense of the Borrower, promptly provide the Senior Lender with a copy of that written authorization, and no later than thirty (30) days after any change in Auditors, issue a similar authorization to the new Auditors and promptly provide a copy thereof to the Senior Lender; provided, that such authorization shall provide that (i) the Borrower shall have the right to receive copies of any written communications between the Senior Lender and the Auditors and (ii) the Borrower shall have the right to attend any meeting between the Senior Lender and the Auditors with respect to the Borrower and/or the Project;
- (e) Authorizations; Land Use Rights.
- (i) Obtain all Authorizations in compliance herewith and maintain in full force and effect (or where appropriate, promptly renew) all such Authorizations and all material rights, privileges and franchises necessary for the execution of the Project, the carrying out of the Borrower's business and operations or the compliance by the Borrower with its obligations under the Transaction Documents;
- (ii) Without limiting the foregoing, obtain and maintain all Land Use Rights necessary for the construction and operation of the Project provided that the Borrower shall (A) obtain the Land Use Rights in relation to the After Acquired Assets, (B) provide to the Senior Lender a title opinion from counsel acceptable to the Senior Lender confirming, without limitation, that the Borrower has free, clear and marketable title to the land constituting the After Acquired Assets, free from all Liens, other than Permitted Liens, and that all levies, cesses, duties and charges payable by the Borrower in respect of such land have been paid, and (C) deliver the GOG Direct Agreement, in the case of each of clauses (A), (B) and (C), within six (6) months of the first Disbursement; and
- (iii) Perform and observe all the conditions and restrictions contained in, or imposed on the Borrower by, the Authorizations;



- (f) Access.
- (i) During normal business hours and upon reasonable advance notice (except if any Event of Default or Potential Event of Default is continuing or if special circumstances so require, in which case at all times without advance notice to the Borrower) (A) permit designated representative(s) of the Senior Lender, the CAO and any of the Consultants, to (1) visit any of the sites and premises where the business of the Borrower is conducted, (2) inspect any of the Borrower's sites, facilities, plants and equipment, (3) have access to the Borrower's books of account and records, and (4) have access to those employees, agents and Consultants of the Borrower who have or may have knowledge of matters with respect to which the Senior Lender seeks information, and (B) make reasonable efforts to allow each such representative, CAO and Consultant to have access to its contractors and subcontractors who have or may have knowledge of matters with respect to which the Senior Lender seeks information; provided that, in the case of the CAO, such access shall be for the purpose of carrying out the CAO's Role; and
- (ii) the Borrower shall pay (A) so long as no Potential Event of Default or Event of Default has occurred and is continuing, all reasonable expenses incurred by, and (B) after the occurrence and during the continuation of a Potential Event of Default or Event of Default, all expenses incurred by, and in each such case shall cause its employees and agents to provide full cooperation and assistance to, each such designated representative and Consultant and CAO in connection with exercising the rights specified in paragraph (i) above;
- (g) Applicable Law; Taxes. Carry on its undertaking in accordance with Applicable Law, including without limitation, the prompt payment of all Taxes when due and payable by the Borrower and the filing of all Tax Returns when due;
- (h) Security; Further Assurances.
- (i) Within sixty (60) days after the date of this Senior Loan Agreement obtain RBI approval for (x) the creation and perfection of Security under the Indenture of Mortgage with respect to the Initial Assets and (y) creation of pledge over Share Capital of the Borrower under the Share Pledge Agreement;

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- (ii) within ninety (90) days after the date of this Senior Loan Agreement, cause the Security over the Initial Assets created under the Indenture of Mortgage to be perfected and registered or recorded to the extent necessary to create, perfect and protect the Senior Lenders' first priority *pari passu* ranking security interest therein;
 - (iii) within six (6) months after the date of the first Disbursement of any Senior Loan, cause all After Acquired Assets to become subject to the lien created under the Indenture of Mortgage, and cause such Security to be perfected and registered or recorded to the extent necessary to create, perfect and protect the Senior Lenders' first priority *pari passu* ranking security interest therein;
 - (iv) from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further instruments and documents as may reasonably be requested by the Senior Lender for perfecting or maintaining in full force and effect and as first priority the Security, for including all property subsequently acquired by the Borrower within the Security and perfecting the Senior Lender's *pari passu* first priority security interest in all such after-acquired property, for re-registering the Security or otherwise, for enabling the Borrower to comply with its obligations under, and for preserving and protecting the Senior Lender's rights under, the Transaction Documents; and
 - (v) Pay or cause to be paid all stamp duty, registration fees or similar duties and taxes which may be due on or in relation to any Transaction Documents or the transactions contemplated thereby;
- (i) Environmental and Social Compliance.
- (i) Through its employees, agents, contractors and subcontractors, design, construct, operate, maintain and monitor all of its sites, plants, equipment and facilities in accordance with the Environmental and Social Requirements;
 - (ii) Upon the reasonable request of the Senior Lender, permit the Senior Lender, or the Environmental and Social Consultant, at the expense of the Borrower, to perform an independent audit with respect to Environmental and Social Matters in relation to the Project and the Borrower to:



- (A) confirm compliance with the Environmental and Social Requirements and to identify any adverse impacts, risks or liabilities with respect to Environmental and Social Matters that have not been adequately mitigated or compensated; and
 - (B) if necessary, prepare a corrective action plan, in form and substance satisfactory to the Senior Lender, to correct any identified non-compliance or deficiency, whereupon the Borrower shall implement such corrective action plan;
- (iii) Implement the Project and conduct all its activities required under the Environmental and Social Requirements (including the implementation of adequate ongoing information disclosure and public consultation activities with the local population, and requirements to meet any unforeseen events that may trigger the Environmental and Social Requirements) in a manner consistent with all Environmental and Social Requirements; and
 - (iv) Take any additional environmental assessment necessary arising from site-specific works and activities that were not finalized or were unforeseen at the time of preparation and submission of the Summary Environmental Impact Assessment;
- (j) Environmental and Social Management Plan. Maintain in force and diligently implement (i) the Environmental Management Plan set out in the Summary Environmental Impact Assessment and (ii) the Social Management Plan;
 - (k) Compliance with Transaction Documents. Comply with all its obligations under the Transaction Documents and comply in all material respects with the Borrower's obligations under each contractual obligation to which it is a party or by which its property is bound;
 - (l) Physical Assets. Keep its physical assets in good repair and condition, ordinary wear and tear excepted;
 - (m) Employment. (i) At least one year before the Commercial Operation Date for Unit 1, ensure that arrangements are in place, including employment of suitably qualified and experienced staff in adequate numbers, and (ii) obtain such technical, financial and other advice as may be necessary from time to time, and in all cases (x) to ensure the



efficient operation and maintenance of the Project, and (y) in a manner satisfactory to the Senior Lender (in consultation with the Independent Engineer);

- (n) Filing. Ensure that the Transaction Documents are filed, recorded and notarized as may be necessary for the documents to be given full force and effect;
- (o) Trust Accounts. Ensure (i) that the balance standing to the credit of each Trust Account from time to time is in compliance with the Trust and Retention Accounts Agreement and (ii) that the balance standing to the credit of each account under the Offshore Accounts Agreement is in compliance therewith;
- (p) Coal Supply and Transportation. Cause the Coal Supply and Transportation Agreements Completion Date to occur no later than one year after the date of the first Disbursement of any Senior Loan. On achievement of the Coal Supply and Transportation Agreements Completion Date, a review of the Base Case Financial Projections, as revised as necessary with the approval of the Senior Lenders to reflect the actual pricing obtained for coal supply and transportation, would be carried out. The Senior Lenders shall be entitled to impose additional conditions and covenants in the Financing Documents in consultation with the Borrower as a result of such review;
- (q) Construction and Coal Plans. Implement the Construction Plan and the Coal Supply and Transportation Plan in accordance with their terms;
- (r) Hedging Arrangements. Maintain in effect at all times the Minimum Hedging Strategy;
- (s) Force Majeure Events. In the event of any force majeure event affecting the Borrower, notify the relevant Material Project Participants within the time period required therefor under the Project Documents;
- (t) Operating and Maintenance Plan. Deliver the Operating and Maintenance Plan to the Senior Lender no later than six (6) months before the Commercial Operation Date for Unit 1, and maintain and implement it in accordance with its terms at all times thereafter;
- (u) Notice to Proceed to Port Operator. No later than thirty (30) days after the first Disbursement of the Senior Loan, deliver to the Senior Lender a copy of the notice to proceed from the Borrower to the Port Operator under the Port Services Agreement specifying a commissioning date of no later than thirty-three (33) months following the date of such notice



to proceed;

- (v) Joint Review Mechanism. Within six months after the first Disbursement, the Borrower shall have provided the Senior Lender with evidence satisfactory to the Senior Lender that a joint review mechanism between the Gujarat Urja Vikas Nigan Limited/Procurers and the Borrower has been established to review the status of power evacuation arrangements for the Project and the review process of such mechanism has been initiated;
- (w) Management.
 - (i) From time to time the Borrower shall reconstitute its board of directors to induct qualified and experienced professionals to the satisfaction of the Senior Lenders.
 - (ii) To the satisfaction of the Senior Lenders, appoint and/or change top-level technical, financial and executive personnel (including auditors and/or management personnel) of proper qualifications and experience and ensure that its organizational set-up is adequate enough to ensure smooth implementation and operation of the Project;
 - (iii) Constitute and maintain at all times a project management committee, comprised of appropriate directors of the Borrower to the satisfaction of the Senior Lenders, as well as, at the option of the Senior Lender, to appoint a nominee to such Committee, for the purpose of supervising and monitoring the progress of the Project. The responsibilities of such committee shall be satisfactory to the Senior Lender and may include, without limitation, management of the Project during construction, civil engineering, placement of orders and oversight of operation and maintenance of the Project;
 - (iv) Constitute and maintain at all times a committee of directors responsible for audit and corporate governance related matters of the Borrower; and
 - (v) Ensure that the terms and conditions for appointment of the managing director of the Borrower or any other Person holding substantial powers of management shall be in accordance with good industry practices and in compliance with the provisions of the Companies Act, 1956;
- (x) Constitutional Documents. The Borrower shall amend its Constitutional Documents and such amendments shall be in form and

substance satisfactory to the Senior Lender including without limitation for (i) enhancing the authorized capital and borrowing power of the Borrower as required under the Financing Plan, (ii) providing that any purchaser of Shares (that are not pledged by the Sponsor) from the Sponsor shall not be granted (A) voting rights other than rights available to any ordinary shareholder under the Companies Act, 1956 or (B) differential voting rights, and (iii) for providing for the Senior Lenders' and the Security Trustee's right in case of an Event of Default to attend meetings of the shareholders and vote at such meetings;

- (y) Closure of Escrow Accounts. Promptly notify the Senior Lenders in the event that any Procurer indicates its intention to close the escrow accounts under the Default Escrow Agreements. No such escrow accounts may be permitted to be closed without the prior written consent of the Senior Lender;
- (z) Extension of KPC Concession or Alternate Coal Arrangements. No later than one year prior to the expiration date of the KPC Concession, either (i) provide evidence to the satisfaction of the Senior Lender that the KPC Concession and the Project Coal Sales Agreement shall have been extended through at least one (1) year beyond the maturity of the Senior Loans, or (ii) enter into alternative coal supply contractual arrangements in form and substance satisfactory to the Senior Lender;
- (aa) Coal Stock Pile. Maintain an adequate coal stock pile at the Project Site and at the port sufficient to cover the Project's Coal Supply needs for thirty (30) days while operating at the plant load factors assumed in the Base Case Financial Projections;
- (bb) Material Contracts. Enter into (i) the Material Construction Contracts listed at Part B of Sub-Schedule 3.1(d) (Material Construction Contracts) by the dates set forth in that Sub-Schedule, and (ii) the Project Documents listed at Part B of Sub-Schedule 3.1(e) (Project Documents) by the dates set forth in that Sub-Schedule, in all cases in form and substance satisfactory to the Senior Lender; provided that (A) if the "General Conditions of Contract" of any Material Construction Contract are identical to the "General Conditions of Contract" in either the Toshiba Contract or the Doosan Construction Contracts, such "General Conditions of Contract" shall be deemed to be satisfactory to the Senior Lender, and (B) the Senior Lender will respond to the Borrower's request for approval of any such contract within ten (10) Senior Lender Business Days of the Senior Lender's receipt thereof;
- (cc) Conditions Subsequent Under PPA. Fulfill the conditions subsequent

set forth in Article 3.1.2(ii) and Article 3.1.2A(l)(i) of the Power Purchase Agreement within six (6) months after the first Disbursement of any Senior Loan;

- (dd) Coal Insurance. Procure that all coal for the Project is adequately insured from the time it passes over the vessel's railing at the loading port;
- (ee) Working Capital Loan Agreements. On or before the date that is two (2) months prior to the Scheduled COD for Unit 1, enter into Working Capital Loan Agreements in form and substance satisfactory to the Senior Lender; and
- (ff) Escrow Capacity. Within ninety (90) days of the first Disbursement, (i) the Borrower shall have appointed an advisor / consultant which advisor / consultant shall be acceptable to the Senior Lenders to study the escrowable capacity of the Procurers and (ii) such advisor / consultant shall provide a report to the Senior Lenders (with which the Senior Lenders are satisfied) that demonstrates that the escrowable capacity of the Procurers exceeds the payment obligations of the Procurers under the PPA.
- (gg) Additional Agreements. Within thirty (30) days of any consent granted by the Senior Lenders to the Borrower's entry into an additional agreement under Section 5.2(cc) (Other Agreements), (i) ensure that a direct agreement with the counterparty to any such agreement that is a Major Project Document is entered into with the Borrower and the Security Trustee (on behalf of the Senior Lender), and (ii) deliver an opinion of counsel (acceptable to Senior Lender) with respect to such additional agreement and direct agreement to the Senior Lender, and each such direct agreement and opinion shall be in form and substance satisfactory to the Senior Lender;
- (hh) Revised Configuration. No later than the commencement of installation of Unit 5 (but excluding the related Common Facilities), the Borrower shall provide evidence satisfactory to the Senior Lender that the Borrower has obtained all such revised Authorizations relating to Environmental and Social Laws as may be necessary for the Project configured as a 5 X 830 MW gross capacity coal based power project;
- (ii) Doosan Letter of Credit. On or before September 30, 2008 (or, if earlier, the date of expiry of the Doosan Letter of Credit that is outstanding on the date of this Agreement), the Senior Lender shall have received satisfactory evidence of the cancellation of the Doosan Letter of Credit (and that the issuing bank has no further liability thereunder) and that the Doosan Construction Contracts do not require

the issuance of any additional letters of credit thereunder.

- (jj) Port Services Agreement. On or before the date that is three (3) months following delivery of notice to proceed by the Borrower to the Port Operator under the Port Services Agreement, the Borrower shall deliver to the Senior Lender duly completed copies of each of Schedule 1 (*Details of Coal Stack Yard*) and Schedule 3 (*Details of Terminal*) to the Port Services Agreement, together with evidence that such completed Schedules have been duly adopted by each of the Borrower and the Port Operator, and each of which shall be in form and substance satisfactory to the Senior Lender and the Independent Engineer;
- (kk) Increase in Project Costs. If the Independent Engineer's report delivered as a condition of the first Disbursement pursuant to Section 4.1(u) (*Independent Engineer's Reports*) shows an increase in total Project Costs, then the Senior Lender's Senior Loan shall be reduced by an amount necessary to restore the projected financial ratios to the levels assumed in the Base Case Financial Projections; and
- (ll) Rupee Loan Facility. The use of the Rupee Facility Loan will be limited to the amount set forth in the Financial Plan, unless otherwise agreed by the Senior Lenders.

5.2 Negative Covenants

Unless otherwise agreed by the Senior Lender, until all Obligations to the Senior Lender are paid in full, the Borrower shall not:

- (a) Restricted Payments. Make any Restricted Payment unless (i) the Restricted Payment is made out of retained earnings, and (ii) the Restricted Payment Conditions have been satisfied; provided, that the Borrower shall not make any Restricted Payment during the period (A) commencing from the date beginning two years prior to the first bullet repayment of the Rupee Facility Loan and ending on the date when the last bullet repayment of the Rupee Facility Loan has been made, unless the Rupee Facility Loan has been refinanced in accordance with Section 5.2(s) (*Prepayment of Long-term Debt*), and (B) commencing on the date that is two years prior to the expiration date of the KPC Concession and ending on the date on which the Borrower satisfies the covenant at Section 5.1(z) (*Extension of KPC Concession or Alternate Coal Arrangements*);
- (b) Capital Expenditures. Incur expenditures or commitments for expenditures for fixed or other non-current assets, other than emergency expenditures as may be mutually agreed between the

Borrower and the Senior Lender, or those required for carrying out the Project or for repairs, replacements or maintenance of satisfactory operating conditions that are essential to the Borrower's business or operations and represented in the Annual Budget or the Construction Budget, as applicable;

- (c) Aggregate Expenditures. During any Financial Year, make or incur any obligation to make any expenditure, other than emergency expenditures, if after giving effect thereto, the aggregate expenditures for such Financial Year would exceed 105% of the aggregate amount of expenditures stated in the applicable Annual Budget;
- (d) Permitted Indebtedness. Incur, assume or permit to exist any Financial Debt except:
 - (i) as provided under the Financial Plan;
 - (ii) the Working Capital Loans not to exceed the amount provided for working capital in the line item therefor in the Annual Budget;
 - (iii) Short-term Debt incurred in the ordinary course of business that when aggregated with contingent liabilities arising from the discounting of trade receivables, would not result in the Current Ratio falling below 1.1 and, in any case, not exceeding an aggregate amount at any one time of Rupees five crores (Rs. 5,00,00,000);
 - (iv) Long-term Debt or Short-term Debt obtained to replace any existing Long-term Debt or, as the case may be, any Short-term Debt component of then outstanding Liabilities, but then only to the extent that such new Short-term Debt or Long-term Debt is on terms and conditions (as to interest rate, other costs and tenor) at least as favorable to the Borrower as those of the Short-term Debt or Long-term Debt being replaced;
 - (v) Financial Debt pursuant to the Subordinated Loans;
 - (iv) the Permitted Charter Party Guarantees; and
 - (v) until the date of the first Disbursement of any of the Senior Loans, a bridge loan facility, not to exceed Rupees one thousand crores (Rs. 1,000,00,00,000).
- (e) Guarantees and Other Obligations. Assume any obligation of any other Person or guarantee or enter into any agreement to assume or



guarantee or, in any way or under any condition, become obligated for all or any part of any financial or other obligation of another Person except for the Permitted Charter Party Guarantees;

- (f) Derivative Transactions. Enter into (i) any Derivative Transaction or assume the obligations of any party to any Derivative Transaction, except for the Hedging Agreements pursuant to the Minimum Hedging Strategy, and (ii) any Hedging Agreement unless such agreement contains express provision that settlement will be made on a net payment basis;
- (g) Permitted Liens. Create or permit to exist any Lien on any property, revenues or other assets or Share Capital, present or future, of the Borrower, except Permitted Liens;
- (h) Arm's Length Transactions. Enter into any transaction except in the ordinary course of business and on the basis of arms-length arrangements (including any transaction whereby the Borrower might pay more than the ordinary commercial price for any purchase or might receive less than the full ex-works commercial price (subject to normal trade discounts) for goods and services) and that are within the Construction Budget or the Annual Budget, as applicable;
- (i) Profit Sharing Arrangements. Enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other Person; or enter into any management agreement, management contract or similar arrangement whereby its business or operations are managed by any other Person;
- (j) Purchasing or Sales Agency. Establish any sole and exclusive purchasing or sales agency;
- (k) Amendments of, Notices under and Termination of Transaction Documents. Other than to correct minor or technical errors that do not change any Person's rights or obligations, or with the prior written consent of the Senior Lender:
 - (A) Directly or indirectly agree to any amendment, modification, termination, supplement, consent or waiver, or waive any right to consent to any amendment, modification, termination, supplement or waiver of any right with respect to, or assign any of the respective duties or obligations under:
 - (i) any Project Document, except for change orders



under Construction Contracts meeting the following requirements: (w) the aggregate price of any Construction Contract following such change order does not exceed 110% of the base price for such Construction Contract, (x) such change order, when aggregated with all previous change orders, does not cause the aggregate price of all Construction Contracts to exceed 105% of the base price for all of the Construction Contracts, (y) there is no adverse impact on the compliance by the Borrower or any of the Construction Contractors with the Environmental and Social Requirements, and (z) such change order does not change the Construction Budget or Construction Plan (except as explicitly permitted pursuant to Section 5.5 (b)(ii) (Revised Construction Plan and Budget)), the Project specifications, delay any Scheduled COD or the Project Physical Completion Date, and does not have a Material Adverse Effect; provided, that the Borrower shall give the Senior Lender and the Independent Engineer prompt written notice of such change orders;

- (ii) any Authorization, the effect of which could have a Material Adverse Effect;
 - (iii) any Financing Document; and
 - (iv) any Constitutional Document of the Borrower or the Project Subsidiary;
- (B) enter into any agreement (other than any Financing Document) restricting its ability to amend or otherwise modify any of the Transaction Documents; or
- (C) compromise or settle any material claim against any counterparty to any Project Document.
- (I) Permitted Investments. Make or permit to exist loans or advances to, or deposits (except commercial bank deposits and ordinary trade credit in the ordinary course of business) with, other Persons or investments in any Person or enterprise, other than Offshore Permitted Investments and Onshore Permitted Investments;



- (m) Constitutional Documents. Change its Constitutional Documents in any manner that would be inconsistent with, or adversely affect its ability to perform its obligations under, any Transaction Document;
- (n) Financial Year. Change its Financial Year unless required to do so under Applicable Law;
- (o) Auditors. Change the Auditors unless replacement Auditors from an independent public accounting firm acceptable to the Senior Lender are appointed, provided that the Borrower shall deliver the authorization described in Section 5.1(d) (Affirmative Covenants - Auditors) to that replacement Auditor and provide a copy of that authorization to the Senior Lender in accordance with Section 5.1(d) (Affirmative Covenants - Auditors); provided, that such authorization to the Auditors shall provide that (i) the Borrower shall have the right to receive copies of any written communications between the Senior Lender and the Auditors and (ii) the Borrower shall have the right to attend any meeting between the Senior Lender and the Auditors with respect to the Borrower and/or the Project;
- (p) Abandonment. Abandon or modify the nature or scope of the Project or carry on any business activity other than the Project and such activities as are directly related thereto;
- (q) Other Business; Subsidiaries. (i) Engage in or agree to engage in any business other than the Project, or (ii) create any Subsidiary other than the Project Subsidiary or permit or cause the Project Subsidiary to engage in any activities other than those set forth on Sub-Schedule 3.1(v) (Project Subsidiary Activities);
- (r) Disposal of Assets. Sell, transfer, lease or otherwise dispose of its assets (whether in a single transaction or in a series of transactions, related or otherwise) unless the disposal of such assets does not materially affect the Project and the market value thereof is not in excess of Rupees ten crores (Rs. 10,00,00,000) individually and Rupees fifty crores (Rs. 50,00,00,000) in the aggregate in any Financial Year;
- (s) Prepayment of Long-term Debt. Except as otherwise provided in Section 2.5 (Prepayment of the Senior Loans), make any prepayment (whether voluntarily or involuntarily) of Long-term Debt (other than prepayments of any Senior Loan as a result of illegality affecting the relevant Senior Lender that is committed to make, or makes, available such Senior Loan, and other than Excess Cash Prepayments of the Rupee Facility Loan, and other than any prepayment to ADB or IIFCL of funds in the Project LC Reserve Account in accordance with the



Offshore Accounts Agreement), or repurchase of any Long-term Debt, or make any repayment of any such Long-term Debt pursuant to any provision of any agreement or note which provides directly or indirectly for acceleration of repayment in time or amount, unless:

- (i) (A) that Long-term Debt is refinanced (i) using new Long-term Debt on terms and conditions (as to interest rate, other costs and tenor) at least as favorable to the Borrower as those of the Long-term Debt being refinanced, (ii) with providers of such Long-term Debt who are acceptable to the Senior Lender (unless such Senior Lender is the provider of the debt that is being refinanced) and, (B) if such Long-term Debt is proposed to be secured, the new lender shall have become bound by the Security Documents, and shall have entered into intercreditor arrangements in each case in a manner satisfactory to the Senior Lender; or
- (ii) the Borrower gives the Senior Lender at least thirty (30) days' advance notice of its intention to make the proposed prepayment and, if the Senior Lender so requires, the Borrower contemporaneously prepays a proportion of its Senior Loan equivalent to the proportion of the part of the Long-term Debt being prepaid including any prepayment premium, such prepayment to be made in accordance with the Senior Loan Agreement, except that there shall be no minimum amount or advance notice period for that prepayment;

Notwithstanding the foregoing, the Borrower may prepay a Subordinated Loan but only with funds that would otherwise be available for distribution in accordance with the terms of Section 5.2(a) (Negative Covenants - Restricted Payments);

- (t) Leases. Enter into any agreement or arrangement to lease any property or equipment of any kind except (i) Financial Leases, and then only to the extent permitted under the provisions of this Section 5.2 (Negative Covenants), (ii) otherwise only to the extent the aggregate payments under all such agreements or arrangements do not exceed Rupees twenty crores (Rs. 20,00,00,000) in any Financial Year, (iii) the Forest Land Lease Agreement, (iv) the Intake Outfall Lease Agreement, (v) the Conveyor Land Lease Agreement, and (vi) employee housing and office leases as permitted under the Annual Budget;
- (u) Merger, Consolidation, Etc. Undertake or permit to take place (i) any amalgamation, merger or consolidation of the business or assets of the Borrower with the business or assets of any other Person, (ii) the sale,

transfer, lease or other disposition of all or a substantial part of its assets (whether in a single transaction or in a series of transactions, related or otherwise), or (iii) any other fundamental change which has a substantially similar effect;

(v) Prohibited Payments and Practices.

- (i) Make (or authorize or permit any Affiliate or any other Person acting on its behalf to make), with respect to the Project or any transaction contemplated by the Senior Loan Agreement or any other Transaction Document, any Prohibited Payment; or
- (ii) Engage in (or authorize or permit any Affiliate or any other Person acting on its behalf to engage in) (A) any Sanctionable Practice in connection with the Project or any transaction contemplated by the Transaction Documents, including the procurement or the execution of any contract for goods or works relating to the Project, (B) Money Laundering, or act in breach of any Applicable Law relating to Money Laundering, or (C) the Financing of Terrorism; and the Borrower shall institute, maintain and comply with internal procedures and controls following international best practice standards for the purpose of preventing any action in breach of the provisions of this paragraph (v)(ii);

provided that if any Senior Lender notifies the Borrower of its concerns that there has been a violation of the provisions of this Section 5.2(v) (Prohibited Payments and Practices) or that the representation and warranty in Section 3.1(x) (Prohibited Payments and Practices) is not true and correct in all respects when made or deemed to be repeated or made, the Borrower shall cooperate in good faith with the Senior Lender and its representatives in determining whether such a violation has occurred, and shall respond to any such notice promptly and in reasonable detail to all Senior Lenders, and shall furnish documentary support for such response upon any Senior Lender's request;

- (w) Bank Accounts. Open or maintain any bank account other than the Trust Accounts, the Dollar Disbursement Account, the Dollar Debt Payment Account and the Dollar Debt Service Reserve Account and such other accounts as may be permitted pursuant to the Trust and Retention Accounts Agreement, the Offshore Accounts Agreement, the Hypothecation Agreements or the Default Escrow Agreements;
- (x) World Bank/ADB Member Country. Use the proceeds of any Disbursement of (i) the IFC Loan in the territories of any country that

is not a member of the World Bank and the IFC or for reimbursements of expenditures in those territories or for goods produced in or services supplied from any such country or (ii) the ADB Loan in the territories of any country that is not a member of the ADB or for reimbursements of expenditures in those territories or for goods produced in or services supplied from any such country;

- (y) Share Capital. Change its authorized or issued Share Capital, including by any increase or reduction in the issued Share Capital, except as is contemplated in the Financial Plan or pursuant to the Sponsor Support Agreement;
- (z) Environmental and Social Matters. Take any direct or indirect action, or permit any Person to take any direct or indirect action:
 - (i) associated with the Project which may result, directly or indirectly, in the resettlement or indemnification of any Person or the loss of productive assets, including land, income and livelihood (whether permanent or temporary), unless:
 - (A) the Borrower has submitted to the Senior Lender the Resettlement Plan, in form and substance satisfactory to the Senior Lender, which fully complies with the Environmental and Social Requirements; and
 - (B) any action to be taken by the Borrower fully complies with the Environmental and Social Requirements; or
 - (ii) which would cause a material change or modification to any plan prepared in accordance with the Environmental and Social Requirements; or
 - (iii) which would cause material change or modification to the Environmental Management Plan without the consent of the Senior Lender;
- (aa) Environmental Management Plan. Make any material change or modification to the Environmental Management Plan or the Social Management Plan without the consent of the Senior Lender;
- (bb) Notice under Power Purchase Agreement. Without the consent of the Senior Lender, send any notice to the Procurers establishing a Revised Scheduled COD under Article 3.1.2(iv) of the Power Purchase Agreement;
- (cc) Other Agreements. Without the consent of the Senior Lenders, enter



into or become party to any agreement, contract or commitment other than (i) the Initial Transaction Documents and (ii) any Construction Contract under which the aggregate payment obligations and liability of the Borrower do not exceed Rupees three hundred crores (Rs. 300,00,00,000) during the term thereof;

- (dd) Sale of Capacity or Energy. Without the consent of the Senior Lenders, (i) sell any capacity from the Project or (ii) sell any energy from the Project other than in accordance with the terms of the PPA;
- (ee) CERC Filing. Make any filing or registration with CERC;
- (ff) Construction Costs. Amend, modify or supplement any of the provisions of the Construction Plan or Construction Budget, reallocate or permit or consent to the reallocation of any of the line items in the Construction Plan or the Construction Budget, except that the Borrower may apply cost-savings from any completed line item (which completion has been confirmed by the Independent Engineer) to one or more other line items;
- (gg) Contingency. Utilize the Contingency without the consent of the Senior Lenders;
- (hh) IPO/ECB. Proceed with an Initial Public Offering of its Share Capital or for availing of any external commercial borrowing except for the IFC Loan, the ADB Loan, the KEXIM Loan, the KEIC Covered Facility Loan, the IIFCL Loan and any refinancing permitted in accordance with Section 5.2(s)(i) (Prepayment of Long-term Debt);
- (ii) Improper Use. Use, maintain, operate, occupy or grant any rights in respect of the use, maintenance, operation or occupancy of any portion of the Project Site or Project for any purpose which:
 - (i) may be dangerous, unless safeguarded as required by Applicable Law;
 - (ii) violates any legal requirements in any respect which may constitute a public or private nuisance or which could be expected to have Material Adverse Effect;
 - (iii) make voidable or cancelable, or increase the premium of, any insurance then in force with respect to any part of the Project Site or Project; or
 - (iv) other than for the intended purpose thereof in the construction, operation and maintenance of the Project;

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- (j) Commission. Pay any commission to the Sponsor, directors, managers or other Affiliates in connection with any such Person furnishing any guarantee, counter-guarantee or indemnity on behalf of the Borrower or for any liability relating to or for purposes of the Project;
- (kk) Disputes. Agree, authorize or otherwise consent to any proposed settlement, resolution or compromise of any litigation, arbitration or other dispute with any Person (including any dispute under any Project Document) if such proposed settlement, resolution or compromise could reasonably be expected to constitute a Material Adverse Effect; or
- (ll) Miscellaneous.
 - (i) Pay any Persons exercising substantial powers of management (A) any commission or (B) any compensation in the event of loss of their offices for any reason whatsoever on the occurrence of a Potential Event of Default or Event of Default or until such time that all amounts payable to the Secured Parties have been satisfactorily paid by the Borrower as determined by the Senior Lenders; or
 - (ii) Change its accounting policies without providing notice of the same to the Senior Lenders.

5.3 Insurance

- (a) Insurance Requirements and Borrower's Undertakings. Unless the Senior Lender otherwise agrees in writing, the Borrower shall:
 - (i) insure and keep insured with financially sound and reputable insurers acceptable to the Senior Lender, all of the Borrower's assets and business against all insurable losses to include the insurances specified in Exhibit 5.3 (Insurance Requirements) and any additional insurance required by Applicable Law;
 - (ii) punctually pay any premium, including taxes and any other amounts necessary for effecting and maintaining in force each of the aforementioned insurance policies;
 - (iii) promptly notify each insurer of any claim by the Borrower under any policy written by that insurer and diligently pursue the claim;
 - (iv) comply with all warranties under each of the aforementioned insurance policies;

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- (v) not do or omit to do, or permit to be done or not done, anything that might prejudice the Borrower's or, where any Secured Party is a loss payee or an additional named insured, the Secured Party's right to claim or recover under any of the aforementioned insurance policies; and
- (vi) not vary, rescind, terminate, cancel or cause a material change to any of the Borrower's insurance policies or permit any of the foregoing;

provided always that, if at any time and for any reason insurance required to be maintained hereunder is not in full force and effect, then the Senior Lender shall thereupon or at any time while the same is continuing have the right (but not the obligation) on its own behalf to procure such insurance at the expense of the Borrower and to take all steps to minimize hazard as the Senior Lender may consider necessary or advisable;

(b) Policy Provisions. Each insurance policy required to be obtained pursuant to this Section shall be on terms and conditions acceptable to the Senior Lender and shall contain provisions to the effect that:

- (i) the policy cannot expire nor can it be cancelled or suspended by the Borrower or the insurer for any reason (including failure to renew the policy or to pay the premium or any other amount) unless (A) in the case of any such cancellation, the Security Trustee has consented to such cancellation and (B) in the case of expiration or in the case of cancellation or suspension that is initiated by the insurer, the Borrower and the Security Trustee receive at least forty-five (45) days' advance written notice (or such lesser period as the Security Trustee may agree in respect of cancellation, suspension or termination in the event of peril) prior to the effective date of such expiration, termination, cancellation or suspension;
- (ii) the Senior Lender, the other Senior Lenders, the Security Trustee and the Construction Contractors (so long as such contractors are working at the Project Site) are named as additional named insureds on the CAR, Marine Cargo and Third Party/Public/Products Liability policies;
- (iii) where relevant, all its provisions (except those relating to limits of liability) shall operate as if they were a separate policy covering each insured party;
- (iv) on every insurance policy on the Borrower's assets that are the

subject of the Security, the Security Trustee (on behalf of the Secured Party) is named as loss payee for any claim, or series of claims arising with respect to the same event;

- (v) the insurer waives any rights that it may have or acquire to be subrogated to the rights of any Secured Party or Security Trustee upon payment of any insurance proceeds; and
- (vi) the policies contain the following additional clauses:
 - Non Vitiating Clause;
 - Waiver of Subrogation;
 - Multiple Insured's clause;
 - Non Contribution clause; and
 - Cancellation or changes in cover clause.

(c) Application of Proceeds.

- (i) Any insurance proceeds (other than business interruption insurance proceeds) received by or on behalf of the Borrower in amounts less than or equal to (A) the equivalent of Rupees two hundred crores (Rs. 200,00,00,000) arising from any one claim or any series of claims relating to the same occurrence at a single Unit or (B) the equivalent of Rupees five hundred crores (Rs. 500,00,00,000) arising from any one claim or any series of claims relating to the same occurrence affecting the Project as whole shall be paid into the appropriate Trust Account (as specified in the Trust and Retention Accounts Agreement) and shall be applied by the Borrower to repair or replace the damaged or lost asset(s).
- (ii) Upon the occurrence of any loss, event, damage or other circumstance giving rise to receipt by or on behalf of the Borrower of insurance proceeds in amounts (A) greater than the equivalent of Rupees two hundred crores (Rs. 200,00,00,000 crores) arising from any one claim or any series of claims relating to the same occurrence at a single Unit or (B) greater than the equivalent of Rupees five hundred crores (Rs. 500,00,00,000 crores) arising from any one claim or any series of claims relating to the same occurrence affecting the Project as a whole, then the Borrower shall within fifteen (15) days of such loss, event, damage or other circumstance, notify the

Senior Lender in writing, (I) giving details of the same, (II) stating whether, in the Borrower's reasonable opinion, it would be able to make all payments under the Senior Lender's Senior Loan Agreement, and under all other Senior Loan Agreements, as originally scheduled during and following the period of such repair or restoration, (III) providing a bona fide assessment (from a contractor acceptable to the Independent Engineer) of the estimated cost and time needed to restore or replace such Unit or the Project, as the case may be, to substantially the same value and general performance capability as prior to such loss or damage, (IV) providing satisfactory evidence that such insurance proceeds are sufficient to cover the cost of the necessary restorations or repairs, (V) providing satisfactory evidence that neither the loss or damage nor the repair or restoration (including the passage of time resulting from such repair or restoration) will result in the termination or adverse modification of any Authorizations from any Authority or any Major Project Document, and that any additional Authorizations required to be obtained in connection with the repair or restoration will be obtained without any undue delay or expense, and (VI) a written confirmation from the Independent Engineer concurring in the Borrower's analysis of such repair or restoration. The Senior Lender shall determine, within ten (10) days of receipt of such notice from the Borrower, whether it agrees with the Borrower's assessment and shall consult with the other Senior Lenders for a further period often (10) days on the same. If the Senior Lender (x) together with the other Senior Lenders, agrees with the Borrower's assessment, all insurance proceeds paid in respect of such loss, event, damage or other circumstance shall be applied towards repair, replacement and reinstatement of the damaged or lost asset(s); or (y) disagrees with the Borrower's assessment, the Senior Lender together with the other Senior Lenders and the Borrower shall consult for a period of twenty (20) days. If no agreement is reached at the end of such twenty (20) day period, the Senior Lender may require that all insurance proceeds paid in respect of such loss, event, damage or other circumstance should be applied towards any amount payable to it under its Senior Loan Agreement, including to repay or prepay all or any part of its Senior Loan; provided that there shall be no minimum amount or notice period or prepayment premium for any such prepayment.

- (iii) Upon the occurrence of the total loss of a single Unit or the Project as a whole that gives rise to receipt by or on behalf of

the Borrower of insurance proceeds, all such insurance proceeds shall be applied towards a prepayment of a pro rata portion of the Senior Loan equal to the Senior Lender's pro rata share (based on the total principal amount outstanding of all Senior Loans) of such insurance proceeds; provided that there shall be no minimum amount or notice period or prepayment premium for any such prepayment.

- (d) Reporting Requirements. Unless the Senior Lender otherwise agrees in writing the Borrower shall provide to the Senior Lender the following:
- (i) as soon as possible after its occurrence, notice of any event that entitles the Borrower to claim for an aggregate amount exceeding the equivalent of Rupees five crores (Rs. 5,00,00,000) under any one or more insurance policies;
 - (ii) within thirty (30) days after any insurance policy is issued to the Borrower, a copy of that policy incorporating any loss payee and additional named insured provisions required under Section 5.3(b)(ii) and (iv) (Insurance - Policy Provisions) (unless that policy has already been provided to the Senior Lender pursuant to Section 4.1(h) (Insurance));
 - (iii) not less than ten (10) days prior to the expiry date of any insurance policy (or, for insurance with multiple renewal dates, not less than ten (10) days prior to the expiry date of the policy on the principal asset), a certificate of renewal from the insurer, insurance broker or agent confirming the renewal of that policy and the renewal period, the premium, the amounts insured for each asset or item and any changes in terms or conditions from the policy's issue date or last renewal, and confirmation from the insurer that provisions naming the Senior Lender as loss payee and/or additional named insured, as applicable, remain in effect; and
 - (iv) an annual certificate from insurers summarizing the insurance in place, an annual insurance report prepared by the Insurance Consultant, and other relevant information from time to time requested by the Senior Lender.

5.4 Financial Covenants

- (a) The Borrower shall maintain at all times a Liabilities to Tangible Net Worth Ratio of no more than 3.5;

- (b) The Borrower shall maintain at all times a Debt to Equity Ratio of no more than 3.0;
- (c) The Borrower shall maintain at all times a Long-term Debt to Equity Ratio of no more than 3.0;
- (d) The Borrower shall maintain at all times the Required Minimum Projected DSCR;
- (e) The Borrower shall maintain at all times the Required Average Projected DSCR.
- (f) From and after the Project Physical Completion Date, the Borrower shall maintain at all times an Historical Debt Service Coverage Ratio of no less than 1.1; and
- (g) From the first full year of operations commencing from April 2013, any adverse deviation by more than twenty percent (20%) from the levels specified in respect of any two of the following items (except item (iv)) shall result in an additional interest of one percent (1%) being levied on the Obligations for the period of non-adherence, as against the levels accepted in the Base Case Financial Projections, subject to a minimum period of one Financial Quarter. In case of item (v), penalty interest is to be levied only for the period of such default.
 - (i) Current Ratio of 1.33
 - (ii) Liabilities to Tangible Net Worth Ratio of 3.0
 - (iii) Security Margin $(1 - (\text{loan outstanding} / \text{net fixed assets})) = 21\%$
 - (iv) Historical Debt Service Coverage Ratio of 1.1, but not below 1.06
 - (v) default in payments of any principal or interest amount of the Senior Loan on the respective due dates.

5.5 Reporting Requirements

- (a) Annual Financial Statements and Reports. As soon as available but, in any event, within ninety (90) days after the end of each Financial Year, the Borrower shall deliver to the Senior Lender:
 - (i) two (2) copies of the complete and audited Financial Statements of the Borrower for such Financial Year (which are in agreement with its books of account and prepared in accordance with the Accounting Principles), together with the

Auditor's audit report thereon, including a certificate stating that based on the Financial Statements the Borrower is in compliance with the financial covenants contained in the Senior Loan Agreement, all in form satisfactory to the Senior Lender;

- (ii) a copy of the management letter of the Auditors and any correspondence from the Auditors commenting, with respect to that Financial Year, on, among other things, the adequacy of the Borrower's financial control procedures, accounting systems and management information system;
 - (iii) a report, in form and substance satisfactory to the Senior Lender, signed by the Borrower's chief financial officer, concerning compliance (or, as the case may be, detailing any non-compliance) with the financial covenants in Section 5.4 (Financial Covenants) and Section 5.2(a) (Restricted Payments) (including a clear description of the methodology used in the respective calculations which shall be subject to review by the Senior Lender) as of the end of such Financial Year;
 - (iv) a report by the Borrower on its operations during that Financial Year, in the form of, and addressing the topics listed in, Exhibit 5.5(a)(iv) (Information to be Included in Annual Review of Operations); and
 - (v) a statement by the Borrower of all transactions during that Financial Year between the Borrower and each of its Affiliates, if any, and a certification by the Borrower's chief financial officer that those transactions were on the basis of arm's-length arrangements;
- (b) Quarterly Financial Statements and Reports. As soon as available but in any event within forty-five (45) days after the end of each Financial Quarter, the Borrower shall deliver to the Senior Lender:
- (i) Quarterly Financial Statements. Two (2) copies of the Borrower's complete unaudited Financial Statements for such Financial Quarter prepared in accordance with the Accounting Principles, certified by the Borrower's chief financial officer;
 - (ii) Revised Construction Plan and Budget. Until the Project Physical Completion Date, a revised, updated Construction Plan, Construction Schedule and Construction Budget (explaining any material change in projected construction costs or schedule, or contingencies incurred or expected to be

incurred), in each case approved by the Senior Lender in consultation with the Independent Engineer (such approval not to be unreasonably withheld);

- (iii) Quarterly Operations Report. After the Commercial Operation Completion Date for Unit 1 has occurred, a report by the Borrower in its operations during that Financial Quarter, in form and substance satisfactory to the Senior Lender, providing a breakdown of revenue, costs and net cash flow for the period, and addressing any factors that have or could reasonably be expected to have a Material Adverse Effect; and
 - (iv) CFO's Quarterly Report. A report, in form and substance satisfactory to the Senior Lender, signed by the Borrower's chief financial officer, concerning compliance (or, as the case may be, detailing any non-compliance) with the financial covenants in Section 5.4 (Financial Covenants) and Section 5.2(a) (Restricted Payments) (including a clear description of the methodology used in the respective calculations, which shall be subject to review by the Senior Lender) as of the end of the relevant Financial Quarter;
- (c) Other Reporting Requirements. The Borrower shall:
- (i) Monthly Construction Progress Report. Until the Project Physical Completion Date, provide to the Senior Lender the Borrower's monthly Construction Progress Report, promptly but in no event later than the tenth (10th) day after each month end;
 - (ii) Annual Review. Provide to the Senior Lender the Borrower's annual construction and operations review as prepared for the Borrower's management promptly, but in no event later than the sixtieth (60) day, after each Financial Year end;
 - (iii) Annual Budget. Within sixty (60) days prior to the end of each Financial Year beginning after the Scheduled COD for Unit 1, deliver to the Senior Lender an Annual Budget for the immediately succeeding Financial Year, in form and substance acceptable to the Senior Lender, which shall be deemed to be in form and substance acceptable to the Senior Lender if the Senior Lender does not communicate any objection to the Borrower within thirty (30) days of its receipt of such Annual Budget;
 - (iv) Revised Base Case Financial Projections. Semi-annually,

within thirty (30) days after the end of (i) the second Financial Quarter of each Financial Year, and (ii) the Financial Year, provide to the Senior Lender revised Base Case Financial Projections, approved by the Senior Lender, in consultation with the Independent Engineer;

- (v) Environmental and Social Monitoring. As applicable:
 - (A) for each whole or partial calendar quarter prior to the Project Physical Completion Date, provide to the Senior Lender, for its review and recommendation, two copies of the Quarterly Environmental and Social Monitoring Report in respect of that calendar quarter or part thereof, in each case no later than thirty (30) days after the end of such period; or
 - (B) within sixty (60) days after the end of each Financial Year, deliver to the Senior Lender an Annual Environmental and Social Performance Report in the form of Exhibit 5.5(c)(v)(B) (Form of Annual Environmental and Social Performance Report)

and in each case to the extent not previously reported to the Senior Lender pursuant to paragraph (vi) below, each such Quarterly Environmental and Social Monitoring Report or Annual Environmental and Social Performance Report to include details regarding:

- (w) any material adverse impact relating to any environmental or social matter, including any deaths or significant injuries or accidents, release of Hazardous Substances, explosions or fires,
- (x) any material written communication with any Authority relating to any environmental or social matter; or
- (y) any Environmental or Social Claim;

and to include a reasonable description of the event detailing the extent, magnitude, impact and cause of such event together with corrective or remedial actions taken or proposed to be taken with respect such event and, as necessary, a corrective action plan in form and substance satisfactory to the Senior Lender;

- (vi) Material Incidents. As soon as possible but no later than three

(3) days after its occurrence, notify the Senior Lender of any incident or accident which has had or could reasonably be expected to have an adverse effect on the environment, health or safety at the Project or of employees or consultants working at the Project Site, including, without limitation, release of a Hazardous Substance, explosions, spills or workplace accidents which result in death, serious or multiple injury or major pollution, specifying, in each case, the nature of the incident or accident, the on-site and off-site impacts arising or likely to arise therefrom and the measures the Borrower is taking or plans to take to address those impacts; and keep the Senior Lender informed of the on-going implementation of those measures;

- (vii) Material Change or Event. Promptly notify the Senior Lender of any proposed change in the nature, scope or estimated cost of the Project or the business or operations of the Borrower and of any event or condition that has had or could reasonably be expected to have a Material Adverse Effect;
- (viii) Material Claims. As soon as it becomes aware of any litigation or administrative proceedings or threat of litigation or administrative proceedings before any Authority or arbitral body which has had or could reasonably be expected to have a Material Adverse Effect, promptly notify the Senior Lender by facsimile of that event specifying the nature of that litigation or those proceedings and the steps the Borrower is taking or proposes to take with respect thereto;
- (ix) Default. Immediately upon becoming aware of any Event of Default or Potential Event of Default, notify the Senior Lender by facsimile specifying the nature of that Event of Default or Potential Event of Default and any steps the Borrower is taking or considering taking to mitigate or remedy it;
- (x) Auditors' Communications. Promptly following receipt thereof, deliver to the Senior Lender a copy of any management letter or other communication sent by the Auditors (or any other accountants retained by the Borrower) to the Borrower or its management in relation to the Borrower's financial, accounting or other systems, management or accounts, if not provided pursuant to Section 5.5(a)(iii) (Reporting Requirements - Annual Financial Statements and Report);
- (xi) Summary of Shareholders' and Directors' Meetings. Deliver to

the Senior Lender a summary of any meeting of its shareholders or directors within forty-five (45) days after such meeting and, following any request from the Senior Lender, such additional information as the Senior Lender requests in connection with such meeting and the matters addressed at such meeting;

- (xii) Insurance Policies. Provide to the Senior Lender in a timely manner copies of the insurance policies and other information referred to in Section 5.3 (Insurance);
- (xiii) Authorizations; Construction Contracts. Promptly provide to the Senior Lender as they are obtained (A) a copy of the Authorizations listed in Sub-Schedule 3.1(q) (Authorizations) and (B) a copy of each Construction Contract as it is entered into, in each case certified as a true, complete and correct copy by the Borrower;
- (xiv) Taxes. Promptly provide to the Senior Lender upon its request any certificates, statements or other documents evidencing the payment by the Borrower of any Taxes or the filing by the Borrower of any Tax Returns;
- (xv) Material Reports and Notices. Promptly upon receipt thereof, provide copies of all material notices or reports received by the Borrower under any Project Document (including any Port Services Progress Report and the implementation plan under Section 4.4.4 of the Port Services Agreement) and notice of all material events, and any loss of permits;
- (xvi) Drawing under Procurer Letter of Credit. Promptly notify the Senior Lender of any drawing under any Procurer Letter of Credit;
- (xvii) Prohibited Payments and Practices. Promptly notify the Senior Lender if it should at any time obtain information in relation to any violation or potential violation of the provisions of Section 5.2(v) (Prohibited Payments and Practices);
- (xviii) Material Construction Events. Promptly notify the Senior Lender of any event that may delay completion of the Project, material work stoppages or material design charges under the Construction Contracts or any event that permits, or, with the passage of time, would permit the Borrower or any other party to claim relief on account of force majeure;



- (xix) Force Majeure Events. Promptly notify the Senior Lender of any event of force majeure affecting, or which either the Borrower or any other Material Project Participant claims would affect, the performance by such Person of any obligation under any Transaction Document, together with copies of all notices, calculations, data and other correspondence between such Material Project Participant and the Borrower in respect of any such event, circumstance or condition;
- (xx) Contracts and Agreements. Promptly after entering into any contract or agreement (or any amendment or written modification to any agreement), provide to the Senior Lender and the Independent Engineer a true, correct and complete copy of each such contract, agreement, amendment or written modification other than (in the case of the Senior Lender only) any Construction Contracts that are not Material Construction Contracts;
- (xxi) Construction Invoices. Promptly after receipt thereof, deliver to the Independent Engineer a true, correct and complete copy of each invoice received by the Borrower with respect to any expenditures, paid or to be paid with the proceeds of any Disbursement, in excess (on an individual basis) of forty crores (Rs. 40,00,00,000); and
- (xxii) Other Information Requested by Senior Lender. Promptly provide to the Senior Lender upon its request any additional documents or information which the Senior Lender may reasonably request about the Borrower and its assets and the Project.

6. Events of Default

6.1 Events of Default

Each of the following events, unless remedied within the relevant grace period (if any) or waived in writing by the Senior Lender, shall constitute an Event of Default (whether or not caused by any reason whatsoever outside the control of the Borrower):

- (a) Failure to Pay. The Borrower fails to pay on the due date for making payment (or within five (5) days thereafter):
 - (i) any amount due in respect of principal or interest on the Senior Loan;

- (ii) the front end fee or commitment fees payable in respect of the Senior Loan; or
 - (iii) any other amounts falling due under the Financing Documents;
 - (b) Failure to Perform Obligations under Financing Document.
 - (i) The Borrower fails to observe or perform any of its obligations under any Financing Document (other than any obligation of the type referred to in paragraph (a) above) and, unless such failure has had or could reasonably be expected to have a Material Adverse Effect, such failure continues for a period of thirty (30) days after the date of that failure; or
 - (ii) Any party to any Financing Document (other than a Senior Lender, the Collateral Agents or the Borrower) fails to observe or perform any of its obligations thereunder and either: (A) such failure has had or could reasonably be expected to have a Material Adverse Effect or (B) such failure does not have and could not reasonably be expected to have an immediate and irreversible Material Adverse Effect and continues for a period of thirty (30) days after the date of such failure;
 - (c) Failure to Perform Obligations under Project Document.
 - (i) The Borrower or the Project Subsidiary fails to observe or perform any of its material obligations under any Project Document; or
 - (ii) Any party to any Project Document (other than the Borrower or the Project Subsidiary) fails to observe or perform any of its obligations thereunder and such failure could reasonably be expected to have a Material Adverse Effect;
- and in each case, such failure continues unremedied beyond any applicable cure period therein;
- (d) Misrepresentation. Any representation or warranty made by the Borrower or any other Material Project Participant under any Transaction Document to which it is a party shall be found to have been incorrect or misleading in any material respect when made or deemed made and in the case of any Material Project Participant other than the Borrower, the Sponsor or the Project Subsidiary, such misrepresentation could reasonably be expected to have a Material Adverse Effect;

- (e) Expropriation or Nationalization. Any Authority shall nationalize or otherwise expropriate all or any part of the property or other assets of the Borrower or the Project Subsidiary, or the Borrower's or the Project Subsidiary's Share Capital;
- (f) Seizure or Other Actions. Any Authority shall condemn, seize or attach all or any material part of the property or other material assets of the Borrower or the Project Subsidiary, or the Borrower's or the Project Subsidiary's Share Capital, or shall assume custody or control of such property or other assets or of the business or operations of the Borrower or the Project Subsidiary, or of the Borrower's or the Project Subsidiary's Share Capital, or shall take any action for the liquidation, dissolution or disestablishment of the Borrower or the Project Subsidiary or any other action that would prevent the Borrower or the Project Subsidiary or its respective officers from carrying on all or part of its respective business or operations;
- (g) Action in Respect of Sponsor. Any Authority shall have, prior to the Project Financial Completion Date, taken any of the actions specified in the foregoing paragraphs (e) or (f) with respect to the Sponsor or all or a material part of its property, assets, business or operations and such action could prevent the Sponsor from performing its obligations under any of the Financing Documents to which it is a party;
- (h) Voluntary Insolvency. The Borrower or any other Material Project Participant:
 - (i) takes any step (including petition, giving notice to convene or convening a meeting) for the purpose of making, or proposes or enters into, any arrangement, assignment or composition with or for the benefit of its creditors or for rescheduling of any of its debt, except rescheduling in accordance with the terms of a Subordinated Loan Agreement;
 - (ii) ceases or threatens to cease to carry on its business or any substantial part thereof for sixty (60) continuous days; or
 - (iii) requests suspension or suspends payments of its debt or is unable to pay its debts as they fall due or admits in writing its inability to pay its debts as they fall due or otherwise becomes insolvent or a moratorium is declared in respect of any of its debt;

; provided, however, that such event shall not be an Event of Default for a period of thirty (30) days if such event affects a Procurer or Procurers collectively procuring (based on their commitments under

the Power Purchase Agreement) in the aggregate less than 150 MW of electricity; provided further, however, that such event shall be an Event of Default unless, at the end of said thirty (30) day period (and each thirty (30) day period thereafter), the Borrower demonstrates to the Senior Lender's satisfaction that the Borrower has sold the electricity that otherwise would have been sold to the affected Procurer(s) to other Procurer(s) or to a third party or parties in accordance with the Power Purchase Agreement and received at least as much revenue as assumed to be received from such affected Procurer(s) in the Base Case Financial Projections;

- (i) Appointment of Liquidator; Attachment. Any encumbrancer lawfully takes possession or a liquidator, judicial custodian, receiver, administrative receiver or trustee or any analogous officer is appointed, of the whole or any material part of the undertaking or assets of the Borrower or any Material Project Participant or an attachment, sequestration, distress or execution (or analogous process) is levied or enforced upon or issued against any of the assets or property of the Borrower or any Material Project Participant which have an aggregate value in excess of Rupees fifty lakh (Rs. 50,00,000) and the same is not released, discharged, withdrawn or discontinued within forty-five (45) days of the date of possession, appointment or levy thereof; provided, however, that such event shall not be an Event of Default for a period of thirty (30) days if such event affects a Procurer or Procurers collectively procuring (based on their commitments under the Power Purchase Agreement) in the aggregate less than 150 MW of electricity; provided further, however, that such event shall be an Event of Default unless, at the end of said thirty (30) day period (and each thirty (30) day period thereafter), the Borrower demonstrates to the Senior Lender's satisfaction that the Borrower has sold the electricity that otherwise would have been sold to the affected Procurer(s) to other Procurer(s) or to a third party or parties in accordance with the Power Purchase Agreement and received at least as much revenue as assumed to be received from such affected Procurer(s) in the Base Case Financial Projections;
- (j) Involuntary Proceedings. An order is made or an effective resolution passed or analogous proceedings taken for the winding up, bankruptcy or dissolution of the Borrower or any Material Project Participant, or a petition is presented or analogous proceeding taken for the winding up or dissolution of the Borrower or any Material Project Participant and any such petition or analogous proceeding (i) is not, in the opinion of the Senior Lenders, frivolous, (ii) is being contested in good faith and (iii) is not discharged, stayed, withdrawn or dismissed (A) within thirty (30) days of the date of initiation thereof in the case of the Borrower or

the Sponsor or (B) within forty-five (45) days of the date of initiation thereof in the case of any other Material Project Participant; provided, however, that such event shall not be an Event of Default for a period of thirty (30) days if such event affects a Procurer or Procurers collectively procuring (based on their commitments under the Power Purchase Agreement) in the aggregate less than 150 MW of electricity; provided further, however, that such event shall be an Event of Default unless, at the end of said thirty (30) day period (and each thirty (30) day period thereafter), the Borrower demonstrates to the Senior Lender's satisfaction that the Borrower has sold the electricity that otherwise would have been sold to the affected Procurer(s) to other Procurer(s) or to a third party or parties in accordance with the Power Purchase Agreement and received at least as much revenue as assumed to be received from such affected Procurer(s) in the Base Case Financial Projections;

- (k) Analogous Events to Bankruptcy. Any other event occurs which would under any Applicable Law have a substantially similar effect to any of the events (but subject to the stated exceptions) listed in sub-sections (h), (i) or (j), above;
- (l) Cross-Default. The Borrower fails to pay any of its debts in excess of one million Dollars (\$1,000,000) (or the equivalent thereof) on an aggregate basis at any point in time (other than pursuant to the Financing Documents) when due or to perform any of its obligations under any agreement pursuant to which there is outstanding debt in excess of such amount, and any such failure continues for more than any applicable period of grace or any such debt becomes prematurely due and payable or is placed on demand;
- (m) Termination, Etc., of Security Documents. Any Security Document or any provision of any Security Document (i) is revoked, terminated or ceases to be in full force and effect or ceases or fails to provide the first priority security intended to be created thereby, without, in each case, the prior written consent of the Senior Lenders, (ii) becomes unlawful or is declared to be void or (iii) is repudiated or its validity or enforceability at any time is challenged by any person;
- (n) Termination, Etc., of Other Transaction Documents. Any Transaction Document (other than a Security Document) or any material provision thereof (i) is invalidated, repudiated, revoked, terminated or ceases to be in full force and effect or becomes unenforceable without, in each case, the prior written consent of the Senior Lenders, or (ii) becomes unlawful or is declared to be void;

- (o) Failure to Obtain or Maintain Authorizations. (i) Any Authorization necessary for the Borrower to perform and observe its obligations under any Transaction Document or to implement the Project is not obtained when required or is rescinded or terminated or lapses or otherwise ceases to be in full force and effect, or its terms are no longer respected either by the Authority that issued the Authorization or by any other relevant Authority, and such circumstance has or could reasonably be expected to have a Material Adverse Effect or (ii) any Authorization necessary in respect of the remittance to the Senior Lender or its assignees, in Dollars or Rupees, of any amounts payable under any Financing Document is not obtained when required or is rescinded or terminated or lapses or otherwise ceases to be in full force and effect, or its terms are no longer respected either by the Authority that issued the Authorization or by any other relevant Authority;
- (p) Failure to Achieve Scheduled COD. The Borrower fails to achieve the Commercial Operation Date for any Unit within one (1) year after the following dates: (i) for Unit 1, March 11, 2011, (ii) for Unit 2, July 1, 2011, (iii) for Unit 3, November 1, 2011, (iv) for Unit 4, March 1, 2012, or (v) for Unit 5, July 1, 2012;
- (q) Failure to Achieve Completion Dates. The Borrower fails to achieve the Project Physical Completion Date by July 1, 2013 or the Project Financial Completion Date fails to occur within two (2) years after the Project Physical Completion Date;
- (r) Suspension of Construction. Prior to the Project Physical Completion Date, construction of the Project shall be suspended (i) for a period of ninety (90) or more consecutive days, or (ii) for a period of three hundred sixty-five (365) or more days in the aggregate;
- (s) Cessation of Operations. Either (i) after the Commercial Operation Date for Unit 1, the Project ceases to be operated for a period in excess of ninety (90) consecutive days or any period in the aggregate in excess of one hundred twenty (120) days during any twelve (12) consecutive months, or (ii) the Borrower shall cease to have the right to possess and use the Project Site for the purpose of owning, constructing, maintaining and operating the Project in the manner contemplated by the Transaction Documents, or the Borrower sells or otherwise disposes of its interest in the Project Site or the Project;
- (t) Coal Supply and Transportation Agreements Completion Date. The Borrower fails to achieve the Coal Supply and Transportation Agreements Completion Date within one year of the date of the first Disbursement of any Senior Loan;



- (u) Material Adverse Effect. Any event or circumstance exists or is occurring that, in the reasonable opinion of the Senior Lender, has had or could reasonably be expected to have a Material Adverse Effect;
- (v) Judgment Against Borrower. Any judgment, order or award is rendered against the Borrower and such judgment, order or award is not vacated, discharged or stayed or covered by the setting aside of adequate reserves pending appeal for a period of thirty (30) consecutive days and the aggregate amount of all such judgments, orders and awards outstanding at any time against the Borrower exceeds the Rupee equivalent of one million Dollars (US \$1,000,000);
- (w) Share Retention. At any time the Sponsor owns less than fifty-one percent (51%) of the Share Capital of the Borrower;
- (x) Environmental and Social Fabric. The Borrower seriously and repeatedly breaches its undertaking in Section 5.1(i) (Environmental and Social Compliance) and the Borrower has not remedied such non-compliance or breach within thirty (30) days of receiving notice in writing from the Senior Lender to do so;
- (y) Security. If, within six (6) months after the first Disbursement of any Senior Loan, all or any portion of the Security is not perfected and registered or recorded to the extent necessary to create, perfect and protect the Senior Lenders' first priority Security Interest therein;
- (z) Permitted Construction Letters of Credit.
 - (i) If a draw has been made by the beneficiary under any Permitted Construction Letter of Credit or, prior to its cancellation under Section 5.1(ii) (Doosan Letter of Credit), the Doosan Letter of Credit, unless, within ten (10) days following such draw, one of the following has occurred: (A) the Issuing Bank under such Permitted Construction Letter of Credit or Doosan Letter of Credit has been reimbursed in full for the amount of such draw with funds provided by the Sponsor (other than Base Equity funds) or (B) the Borrower has suspended all further work of the beneficiary under the Project Document pursuant to which such Permitted Construction Letter of Credit or Doosan Letter of Credit was required to be issued and in accordance with the terms of such Project Document (which, in the case of a draw under the Toshiba Letter of Credit, shall be the provisions of Section 23 of the Special Conditions of the Toshiba Contract) and in any such case, any such suspension continues to be effective until the later to occur of (x) the date when each Unsatisfied CP Notice or Draw Stop Notice that was effective



on the date of the draw on such Permitted Construction Letter of Credit or Doosan Letter of Credit has been revoked or withdrawn and (y) there is no Potential Event of Default or Event of Default that has occurred and is continuing;

- (ii) If a draw has been made by the beneficiary under any Permitted Construction Letter of Credit or, prior to its cancellation under Section 5.1(ii) (Doosan Letter of Credit), the Doosan Letter of Credit, and such draw has been fully paid by the Issuing Bank unless (A) within fifteen (15) days following such draw, the Issuing Bank under such Permitted Construction Letter of Credit or Doosan Letter of Credit has been reimbursed in full for the amount of such draw with funds provided by the Sponsor (other than Base Equity funds) or (B) within sixty (60) days following such draw, the Borrower has successfully arranged for additional indebtedness, satisfactory to the Senior Lender, on terms that are the same as, or more favorable to the Borrower than, the terms of the Rupee Facility Loan, to fill any gap in the availability of the Senior Loans under the Financial Plan resulting from such letter of credit draw; and

- (aa) Failure to Comply with Consultants' Observations. The Borrower fails to take reasonable steps to comply with observations of the Consultants within 90 days of notice thereof.

6.2 Bankruptcy

If the Borrower becomes voluntarily or involuntarily dissolved or liquidated, or is declared bankrupt (however such bankruptcy may be evidenced), or winding up or any other analogous proceedings are initiated against it (and in the case of any involuntary proceeding, such involuntary proceeding is not released, withdrawn or dismissed within forty-five (45) days of the date of initiation thereof) or any other event in Section 6.1(h) (Voluntary Insolvency), (i) (Appointment of Liquidator: Attachment), (j) (Involuntary Proceedings), or (k) (Analogous Events to Bankruptcy) in respect of the Borrower, the principal of, and all accrued interest on, the Senior Loan (together with any amounts accrued or payable under the Senior Loan Agreement) shall thereupon become immediately due and payable (notwithstanding anything in the Senior Loan Agreement to the contrary) without any presentment, demand, protest, declaration or notice of any kind, all of which are hereby expressly waived by the Borrower.

6.3 Acceleration after Default

If an Event of Default occurs and is continuing (whether it is voluntary or involuntary, or results from the operation of any law or pursuant to or as a

result of any act or failure to act by any Authority or otherwise), the Senior Lender may, by notice to the Borrower, take any or all of the following actions:

- (a) Acceleration. Declare the Senior Loan or any part thereof to be, and the same shall thereupon become, immediately due and payable, whereupon the Borrower shall forthwith repay the same together with all interest accrued thereon and all other amounts payable under the Financing Documents without any further notice and without any presentment, demand or protest of any kind, all of which are hereby waived by the Borrower;
- (b) Payment on Demand. Declare the Senior Loan or any part of the foregoing to be due and payable on demand, whereupon the Senior Loan or any part of the foregoing and all interest accrued thereon and all other amounts payable under the Financing Documents shall at all times after such declaration be due and payable forthwith on demand;
- (c) Terminate Disbursements. Cancel Senior Loans or commitments to provide Senior Loans and terminate the obligation of the Senior Lender to make Disbursements of the Senior Loan whereupon such obligation shall immediately terminate;
- (d) Enforce Security. Enforce or require the Security Trustee to enforce all or any part of the Security or take any other action under any Transaction Document;
- (e) Accelerate Sponsor Equity. Call on the undrawn and unsubscribed portion of the Equity under the Sponsor Support Agreement; and
- (f) Further Terms. Impose any additional terms and conditions upon the Borrower as the Senior Lenders may deem fit and shall have the right to appoint up to two additional directors on the board of directors of the Borrower, upon giving a notice of thirty (30) days after the occurrence of the Event of Default;

7. Taxes

7.1 No Set-off or Withholding

All payments to be made by the Borrower under the Senior Loan Agreement, including of principal, interest and fees, shall be made:

- (i) without set-off or counterclaim; and
- (ii) free and clear of and without deduction or withholding for or



on account of Taxes, unless the Borrower is compelled by law to make payment subject to such deduction or withholding.

7.2 Payment of Taxes

The Borrower shall pay or cause to be paid all Taxes (other than taxes, if any, payable on the overall income of the Senior Lender) on or in connection with the payment of any and all amounts due under the Senior Loan Agreement that are now or in the future levied or imposed by any Authority of India.

7.3 Evidence of Payment of Tax

If Section 7.2 (Payment of Taxes) applies, the Borrower shall deliver to the Senior Lender official Tax receipts evidencing payment (or certified copies of them) within thirty (30) days of the date of that payment.

7.4 Document Taxes

The Borrower shall pay all Taxes (including stamp taxes) or other charges payable on or in connection with the execution, issue, delivery, registration or notarization of any Transaction Document and any other documents related thereto and shall, upon notice from the Senior Lender, reimburse the Senior Lender for any such Taxes or other charges paid by the Senior Lender.

8. Miscellaneous

8.1 Saving of Rights; Remedies and Waivers

- (a) No Prejudice. The rights and remedies of the Senior Lender in relation to any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of the Senior Lender into the affairs of the Borrower, by the execution or the performance of the Financing Documents or by any other act or thing which may be done by or on behalf of the Senior Lender in connection with the Financing Documents and which might, apart from this Section, prejudice such rights or remedies.
- (b) No Impairment. No course of dealing or waiver by the Senior Lender in connection with any condition of Disbursement under the Senior Loan Agreement shall impair any right, power or remedy of the Senior Lender with respect to any other condition of Disbursement or be construed to be a waiver thereof; nor shall the action of the Senior Lender with respect to any Disbursement affect or impair any right, power or remedy of the Senior Lender with respect to any other Disbursement.



- (c) Right to Require Compliance. Unless otherwise notified to the Borrower by the Senior Lender and without prejudice to the generality of Section 8.1(b) (*No Impairment*), the right of the Senior Lender to require compliance with any condition under the Senior Loan Agreement, which condition may be waived by the Senior Lender with respect to any Disbursement, is expressly preserved for the purposes of any subsequent Disbursement.
- (d) No Waiver. No course of dealing and no failure or delay by the Senior Lender in exercising, in whole or in part, any power, remedy, discretion, authority or other rights under the Senior Loan Agreement or any other agreement shall waive or impair, or be construed to be a waiver of or an acquiescence in, such or any other power, remedy, discretion, authority or right under the Senior Loan Agreement or in any manner preclude its additional or future exercise; nor shall the action of the Senior Lender with respect to any default, or any acquiescence by it therein, affect or impair any right, power or remedy of the Senior Lender or any other Senior Lender with respect to any other default.
- (e) Rights and Remedies Cumulative. The rights and remedies provided for herein are cumulative and additional to and not exclusive of or in substitution for any rights or remedies arising by operation of law.

8.2 Notices

- (a) Method of Delivery. Any notice, demand, request or other communication to be given or made under any Financing Document shall be in writing. Subject to the provisions of Section 5.4(c)(viii) (*Reporting Requirements - Other Reporting Requirements*) and the provisions of the Senior Loan Agreement, such notice, demand, request or other communication shall be deemed to have been duly given or made when it shall be delivered by hand, prepaid airmail, established courier service or facsimile transmission (and, in the case of facsimile transmission, when received in legible form (with a copy by airmail to follow, receipt of which shall not be required to effect notice)) to the party to which it is required or permitted to be given or made at such party's address or facsimile number specified below or at such other address or facsimile number as such party shall have designated by written notice (complying with the provisions of this Section 8.2 (*Notices*)) to the party giving or making such notice, demand, request or other communication.

For the Borrower:

Coastal Gujarat Power Limited
Tata Power Backbay Receiving Station
148, Lt Gen J Bhonsle Marg, Nariman Point
Mumbai – 400 021
India
Facsimile: +91 22 6610 0863
Attention: Mr. Ramesh Subramanyam
Email: rameshsubramanyam@tpc.co.in

For ADB:

Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550
Metro Manila
Philippines
Facsimile: +63-2-636-2348
Attention: Director
Infrastructure Finance Division 1
Private Sector Operations Department

For IFC:

International Finance Corporation
2121 Pennsylvania Avenue, N.W.
Washington, D.C. 20433
United States of America
Facsimile: +1-202-974-4309
Attention: Director, Infrastructure Department

with a copy (in the case of communications relating to payments) to:

Facsimile: +1-202-974-4371
Attention: Director, Department of Financial Operations

and, without in any way prejudicing, affecting or modifying the above,
a copy of any notice given or made to IFC pursuant to the foregoing
provisions shall also be sent by courier and facsimile to:



International Finance Corporation
South Asia Department
Gate No. 3, Niti Marg, 50-M, Shantipath, Chanakyapuri
New Delhi – 110021
India
Facsimile: (91-11) 4111-1001, 4111-1002, 2611 1281

For KEIC:

Korea Export Insurance Corporation
Plant Underwriting Division, Team2
136, Seorin-dong, Jongno-gu
Seoul, Korea
Facsimile: +82-2-399-6577
Attention: Director of Team 2 in Plant Underwriting Division

For KEXIM:

The Export-Import Bank of Korea
16-1, Yeouido-dong
Yeongdeungpo-gu
Seoul, 150-996
Republic of Korea
Facsimile: +82-2-3779-6747
Attention: Director of PF Team 2, Project Financing Department

For State Bank of India:

Project Finance SBU
3rd Floor
Corporate Centre
State Bank Bhavan,
Madam Cama Road
Mumbai – 400 021
India
Facsimile: +91-22-2288-3021
Attention: Deputy General Manager, Project Finance

- (b) Receipt. A notice, demand, request or other communication received on a day other than a Senior Lender Business Day, in the case of communications delivered to the Senior Lender, or a Local Business Day, in the case of communications delivered to the Borrower, or after business hours, in the place of receipt shall be deemed to be given on the next following business day in such place.

8.3 English Language

All documents to be furnished or communications to be given or made under the Financing Documents shall be in the English language or, if in any other language, shall be accompanied by a translation into English certified by a representative of the Person furnishing such document, (i) in the case of any Transaction Document, any communication from any Authority or any Authorization, a certified, official English translator thereof prepared by (A) a translator identified as an approved translator for the high court of any State of India or (B) any other translator reasonably acceptable to the Senior Lender and (ii) in the case of any other document, an English translation thereof, certified by an Authorized Representative of the Person furnishing such document as complete and accurate in all respects, which English translation shall be the governing version (except in the case of an English translation of an Authorization in which case such translation shall be the governing version only to the extent permitted by Applicable Law).

8.4 Expenses and Indemnity

(a) Fees and Expenses.

- (i) The Borrower shall pay to the Senior Lender or as the Senior Lender may direct the fees and expenses of the Senior Lender's International Counsel, KEXIM's special counsel and Senior Lender's Local Counsel, incurred in connection with:
 - (1) the preparation, execution and, where appropriate, registration of the Senior Loan Agreement, any other Transaction Document or any other document related thereto including any stamp duty, transaction or documentary tax;
 - (2) the giving of any legal opinions required under the Transaction Documents;
 - (3) the preparation and/or review of the Transaction Documents; and
 - (4) the registration (where appropriate) and the delivery of evidence of indebtedness relating to the Senior Loan and its disbursement.

- (ii) The Borrower shall pay to the Senior Lender or as the Senior Lender may direct, all costs and expenses (including Consultants' fees and expenses) arising out of or in connection with:
 - (1) any amendment of or modification to, or waiver under, any of the Transaction Documents;
 - (2) the occurrence of an Event of Default or Potential Event of Default;
 - (3) any payment of principal in respect of a Senior Loan being received other than on the last day of the relevant Interest Period for that Senior Loan or a Disbursement not being made after the Borrower has delivered a Disbursement Request, other than as the sole and direct result of gross negligence and/or willful misconduct of the Senior Lender;
 - (4) the enforcement, preservation or protection or attempted enforcement, preservation or protection of its rights or performance of, and any transaction contemplated under, the Senior Loan Agreement or any other Transaction Document; and
 - (5) any failure by the Project or the Borrower to comply with any Environmental and Social Requirements.
- (iii) The Borrower shall also pay to the Senior Lender, or as the Senior Lender may direct the fees and expenses of the Agents, the Consultants and any other agent or consultant appointed in accordance with Section 8.15 (Advisers).
- (iv) If any amount payable under any Financing Document is collected through any process of law or is placed in the hands of attorneys for collection, the Borrower shall pay (in addition to all monies then due in respect of the Senior Loan or otherwise payable under the Senior Loan Agreement) attorneys' and other fees and expenses incurred by the Senior Lender in respect of such collection.
- (v) If the Senior Lender receives an amount in respect of the Borrower's liability under the Financing Documents or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency in which the amount is due or is expressed to be payable under the relevant Financing

Document (the "Contractual Currency"), then:

- (1) the Borrower shall indemnify the Senior Lender as an independent obligation against any loss or liability arising out of or as a result of the conversion;
- (2) if the amount received by the Senior Lender, when converted into the Contractual Currency at a market rate in the usual course of its business is less than the amount owed in the Contractual Currency, the Borrower shall forthwith on demand pay to the Senior Lender an amount in the Contractual Currency equal to the deficit; and
- (3) the Borrower shall forthwith on demand pay to the Senior Lender any exchange costs and taxes payable in connection with any such conversion.

The Borrower waives any right it may have in any jurisdiction to pay any amount under the Financing Documents in a currency other than that in which it is expressed to be payable.

- (b) Indemnification by the Borrower. The Borrower shall (i) indemnify and hold harmless the Senior Lender, its governors, directors, employees, agents, advisors, Consultants and legal counsel (each, for purposes of this Section 8.4(b), an "Indemnified Person") against any loss, claim, damage or liability, including, without limitation, compensation, damages and punitive claims and penalties (for purposes of this Section 8.4(b), "Loss") to which such Indemnified Person may become subject to in connection with or arising from any Indemnified Person's activities as contemplated under the Senior Loan Agreement or the other Transaction Documents, including as a result of the occurrence of an Event of Default or Potential Event of Default or the exercising of any of the Senior Lender's rights or remedies or performing any of Senior Lender's obligations thereunder, in connection with the Project or any transaction contemplated by any of the foregoing and (ii) reimburse such Indemnified Person for all expenses, including any legal expenses (on a full indemnity basis), incurred by such Indemnified Person in connection therewith or with the investigation or defense thereof; provided, however, that the Borrower shall not be liable in respect of any Loss to the extent that such Loss resulted from such Indemnified Person's gross negligence or willful misconduct.
- (c) Rights in Addition. The rights granted under this Section 8.4 are in addition to the rights granted under any other provision of the Senior

Loan Agreements, under any other Financing Document or otherwise.

- (d) Survival. This Section 8.4 and all indemnification provisions set forth in the other Transaction Documents shall survive repayment of the Obligations, to the maximum extent permissible by law.
- (e) Maximum Permitted. To the extent this Section 8.4 may be unenforceable because it violates any Applicable Law, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under Applicable Law and hereunder.
- (f) Payment. The Borrower shall pay amounts payable to any Indemnified Person under this Section 8.4 within 30 days after receipt by the Borrower from such Indemnified Person of an invoice therefor.

8.5 Survival of Obligations

The obligations of the Borrower under this Section 8 shall survive the repayment of the Senior Loan and the payment of all other sums payable under the Financing Documents, to the maximum extent permissible by Applicable law.

8.6 Disclosure of Information

- (a) By Senior Lender. The Senior Lender shall keep confidential all Project Documents and all information furnished to it by or on behalf of the Borrower or any Affiliates of the Borrower or the Sponsor pursuant to or in connection with the transactions contemplated by the Financing Documents that is proprietary in nature and that is clearly marked or labeled or otherwise identified when received as being confidential information of the Borrower or such Affiliate; provided, that the Senior Lender may disclose such information (a) as requested by any Authority or any insurer or guarantor of the Borrower's obligations in relation to any Senior Loan, (b) to its attorneys, auditors, rating agencies, insurance and reinsurance brokers, insurers and reinsurers, financial institutions, institutional, special purpose securitization vehicles and their managements and all investors, agents, arrangers, dealers who are or might be involved in securitization schemes, (c) any other Person as the Senior Lender may deem appropriate in connection with any proposed sale, transfer, assignment or other disposition of the Senior Lender's rights under the Senior Loan Agreement or any other Transaction Document or risk participation or sub-participation relating to the same or otherwise for the purpose of exercising any power, remedy, right authority, or discretion relevant to the Senior Loan Agreement or any other Transaction Document, so long as such Person covenants in writing to

uphold this confidentiality provision, (d) to any Person to whom disclosure is required by any Applicable Law, (e) to any banking or other regulatory or examining authorities (whether governmental or otherwise) pursuant to and in accordance with whose instructions it or other multilaterals or banks customarily comply, (f) to subsidiaries, branches and representative offices or Affiliates of the Senior Lender, or to any other Secured Party or Affiliate thereof, provided, with respect to such Affiliate that it has a bona fide need for such information and provided that such Person covenants in writing to uphold this confidentiality provision, (g) that was in the public domain at the time of the Senior Lender's disclosure, (h) that subsequently comes into the public domain through no fault of the Senior Lender, (i) that is disclosed to the Senior Lender by a third Person who is not, to the Senior Lender's knowledge, under any obligation to any other Person to keep such information confidential, (j) in connection with any subpoena or other legal process, or the defense of any litigation or transactions contemplated by the Financing Documents to the extent necessary; provided that, to the extent practicable under the circumstances, the Senior Lender notifies the Borrower in advance of such disclosure, and (k) in connection with the enforcement of the rights and remedies of the Senior Lender under any Financing Documents to the extent necessary.

- (b) Borrower Acknowledgments. The Borrower acknowledges and agrees that:
- (i) notwithstanding the terms of any other agreement between the Borrower and the Senior Lender, a disclosure of information by the Senior Lender in the circumstances contemplated by Section 8.6(a) does not violate any duty owed to the Borrower under the Senior Loan Agreement or under any such other agreement; and
 - (ii) notwithstanding any other provision of this Agreement or any confidentiality undertaking executed between the Borrower and the Senior Lender, the Borrower acknowledges that the Senior Lender may disclose to any person providing a guarantee to the Senior Lender in respect of the Borrower's obligations under the Financing Documents and to any competent national or international authority any information obtained by the Senior Lender in relation to any violation of any of the provisions of Section 5.2(v) (Prohibited Payments and Practices).

8.7 Successors and Assigns

- (a) Assignment. The Senior Loan Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Borrower may not assign, delegate or otherwise transfer all or any part of its rights or obligations under the Senior Loan Agreement without the prior written consent of the Senior Lender, and any purported assignment made in violation of the provisions of the Senior Loan Agreement shall be void.
- (b) Transfer by Senior Lender. If the Senior Lender wishes to transfer all or any of its rights and/or obligations hereunder and under the other Financing Documents, then such transfer may be effected by a duly completed transfer certificate (in the form set out in Exhibit 8.7(b) (Form of Transfer Certificate)) executed by the Senior Lender and the relevant transferee, with notice to the Borrower, in which event, on the transfer date specified in such transfer certificate:
- (i) to the extent that in such transfer certificate the Senior Lender seeks to transfer by novation its rights, benefits and obligations hereunder and under the other Financing Documents, the Borrower and the Senior Lender shall be released from further obligations towards one another hereunder and under the other Financing Documents, and their respective rights against one another shall be cancelled (such rights and obligations being referred to in this Section 8.7 as "**discharged rights and obligations**"); and
 - (ii) the Borrower and the transferee party thereto shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar as such transferee has assumed and/or acquired the same in place of the Senior Lender; and
 - (iii) such transferee shall become a party hereto as a "**Senior Lender**".

8.8 Partial Invalidity

- (a) Severability. Any provision in the Senior Loan Agreement that is or may become prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Senior Loan Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

- (b) Waiver. Where provisions of any Applicable Law resulting in such prohibition or unenforceability may be waived, they are waived by the parties to the full extent permitted by law so that the Senior Loan Agreements shall be deemed valid, binding agreements, enforceable in accordance with their terms.

8.9 Amendment and Waivers

Any amendment to or waiver of or consent given under any provision of this Senior Loan Agreement shall be in writing and signed by all of the parties hereto.

8.10 Third Party Rights

A Person who is not a party to the Senior Loan Agreement has no rights, including under the Contract (Rights of Third Parties) Act 1999 under English Law, to enforce any term of the Senior Loan Agreement.

8.11 Counterparts

The Senior Loan Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

8.12 Payment Obligation Absolute

The obligation of the Borrower to pay punctually all moneys from time to time falling due by it in accordance with the provisions of the Senior Loan Agreement are absolute and shall be in no way impaired or affected by reason of any failure or delay on the part of the Senior Lender to assert or enforce any of its rights or by reason of failure of the purpose of the Senior Loan Agreement or of impossibility to carry out the Project or any part thereof or for any other reason.

8.13 Set-Off

In addition to any other rights and remedies of the Senior Lender provided hereunder or by Applicable Law, the Senior Lender shall have the right, without prior presentment, demand, protest or notice to the Borrower, any such presentment, demand, protest or notice being expressly waived by the Borrower to the extent permitted by Applicable Law, upon any obligation under the Senior Loan Agreement becoming due and payable by the Borrower (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims in any currency, in each case whether direct or

indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Senior Lender to or for the credit of the Borrower. The Senior Lender shall promptly notify the Borrower after it makes any such set-off and application; provided that failure to give such notice shall not affect the validity of such set-off and application.

8.14 Evidence and Calculations

- (a) Accounts Prima Facie Evidence. Accounts maintained by the Senior Lender in connection with the Financing Documents are prima facie evidence of the matters to which they relate in the absence of manifest error.
- (b) Calculations. Any certification or determination by the Senior Lender of a rate or amount under the Financing Documents is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

8.15 Advisers

Following consultation with the Borrower, the Senior Lender may:

- (i) appoint consultants or advisers to act on behalf of the Senior Lender in relation to the Project;
- (ii) if the relevant consultant or advisor resigns on or its appointment otherwise ceases or is terminated, appoint a new adviser or consultant to perform such role.

The terms of any such appointment (including the scope of work and the terms for payment) shall be set out in an engagement letter approved by the Borrower (acting reasonably) unless the appointment is made when an Event of Default or Potential Event of Default is continuing (in which case no such approval is required and the terms shall be such reasonable terms as the Senior Lender sees fit).

8.16 Beneficial Terms

If the terms and conditions stipulated by any Senior Lender in its Senior Loan Agreement is more favorable than the terms and conditions stipulated by the other Senior Lender, except rate of interest, upfront fee, commitment fee, prepayment fee, cancellation charge, redeployment cost and repayment terms stipulated by any foreign currency lender, such favorable terms and conditions shall apply mutatis-mutandis to all the Senior Lenders under all of the Senior Loan Agreements.

EXECUTION VERSION

SUB-SCHEDULE 3.1(d)**Material Construction Contracts****Part A - Material Construction Contracts Already Entered Into**

1. Doosan Construction Contracts
2. Toshiba Contract

Part B - Material Construction Contracts Yet to be Entered Into

Sr. No	Agreement	Estimated Date of Execution
1.	Agreement for High Pressure Piping	LOI Issued, contract to be signed within two (2) months after the date of the Senior Loan Agreement
2.	Contract for TG and station Building civil works and Piling and Foundation works for the entire plant. (with Simplex Infrastructure Ltd.)	LOI Issued, contract to be signed within three (3) months after the date of the Senior Loan Agreement
3.	Supply Erection and Commissioning contract for Condenser, HP-LP Heaters and De-Aerator	LOI Issued, contract to be signed within three (3) months after the date of the Senior Loan Agreement
4.	Boiler Feed Pumps, Condensate Extraction Pumps and Cooling Water Pumps	Within six (6) months after the date of the Senior Loan Agreement
5.	400 KV Switch Yard and transformers	Within six (6) months after the date of the Senior Loan Agreement
6.	Internal and External Coal Handling Systems	Within six (6) months after the date of the Senior Loan Agreement

SUB-SCHEDULE 3.1(e)**Project Documents (other than Construction Contracts)****Part A – Project Documents Already Entered Into**

Sr. No	Agreement	Date of Execution
1.	Power Purchase Agreement	22-04-2007
2.	Default Escrow Agreements	22-04-2007
3.	Hypothecation Agreements	22-04-2007
4.	Port Services Agreement	22-04-2007
5.	Engineering Consultancy Services Agreement	18-09-2007
6.	KOPEC Agreement	01-10-2007
7.	Continuous Voyage Charter Agreement with Tata NYK Shipping Pte Ltd executed with Energy Eastern Pte Ltd	27-02-2008
8.	Maxpente Time Charter	06-02-2008

Part B – Project Documents Yet to Be Entered Into

S.No	Agreement	Date of Execution
9.	Project Coal Sales Agreement	Prior to the date of the first Disbursement
10.	Coal transport agreement with Project Subsidiary	Prior to the date of the first Disbursement
11.	Maxpente Guarantee	Prior to the date of the first Disbursement
12.	Services Agreement	Prior to the date of the first Disbursement

13.	Forest Land Lease Agreement	Within six (6) months after the date of the first Disbursement
14.	Intake Outfall Land Lease Agreement	Within six (6) months after the date of the first Disbursement
15.	Conveyor Land Lease	Within six (6) months after the date of the first Disbursement
16.	Required Coal Supply Agreements (other than the Project Coal Sales Agreement)	Within one (1) year after the date of the first Disbursement
17.	Required Coal Transport Agreement (other than the Initial Coal Transport Agreements)	Within one (1) year after the date of the first Disbursement

SUB-SCHEDULE 3.1(k)

Contested Taxes

None.

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SUB-SCHEDULE 3.1(q)

Authorizations

Part A - Authorizations Already Obtained

1. Approval/ No-Objection Certificate for Mega Power Project Status.
2. State Support Letter from the Government of Gujarat.
3. Environmental Clearance(s) from the Ministry of Environment and Forests, Government of India for the setting up and operation of the Project (including intake channel).
4. Clearance in connection with the height of the chimney(s) from the Airports Authority of India.
5. Ministry of Defence Clearance.
6. No Objection Certificate from Air Traffic Services, Indian Air Force.
7. Coastal Regulation Zone Permission/ Confirmation of Waiver from the Government of Gujarat for the Project.
8. Permission/ linkage required for use of water from Sea water; and conformation of water charges from Gujarat Maritime Board.
9. Long Term Open Access Agreement with Power Grid Corporation of India Limited.
10. Permission under Section 281 of the Income Tax Act for Sponsor for creation of pledge under the Share Pledge Agreement.
11. In-Principle ECB Approval.
12. Registration from the Provident Fund Commissioner.
13. Registration under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970.
14. Import licenses from the Director General of Foreign Trade for automatic clearance for the import of capital goods and raw materials.
15. Sales Tax Registration, Government of Gujarat.



Part B - Authorizations Yet to be Obtained

I. Authorizations to be obtained prior to first Disbursement

1. Final ECB Approval.
2. Permission under Section 281 of the Income Tax Act for Borrower for creation of and charge under the Indenture of Mortgage for Initial Assets.
3. Permission from local authorities, if any required, for the mortgage to be created vide the Indenture of Mortgage for Initial Assets.
4. The Loan Registration Number in relation to the Senior Loan Agreements (other than the Rupee Facility Loan Agreement).

II. Authorizations to be obtained within sixty (60) days after the date of this Senior Loan Agreement

5. Permission from Reserve Bank of India for creation of pledge by Sponsor over shares held in the Borrower, for the benefit of the ECB Facility Lenders.
6. Permission from Reserve Bank of India for creation of mortgage over immovable property.

III. Authorizations to be obtained within six (6) months after the date of the first Disbursement

7. Permission under Section 281 of the Income Tax Act for Borrower for creation of mortgage and charge under the Indenture of Mortgage for After Acquired Assets.
8. Permission from local authorities, if any required, for the mortgage to be created vide the Indenture of Mortgage for After Acquired Assets.

IV. Authorizations to be obtained for construction or during the construction period of the Project and, in any event, no later than the Project Physical Completion Date

9. Insurance policy under the Public Liability Insurance Act, 1991.
10. Applicable town planning/ local authority approval for construction, if required.
11. Rights of Way for project roads, access roads, water intake/outlet and the coal conveyor belt from the concerned private parties.
12. Approval of the Labour Commissioner under the Employees State Insurance Act, 1948, if applicable.



13. Pollution Control Board approvals with respect to air and water pollution for commencement of construction and for operation.
14. Consent of Chief Controller of Explosives, Nagpur and Home Department, Government of Gujarat/District Magistrate for the storage, possession and use of explosives, and also for fuel and flammable gas if required.
15. Approval for communications facilities (wireless) from the Department of Telecommunications, Ministry of Communication and Information Technology, Government of India, if required.
16. Authorization to collect, treat, store and dispose of waste (including fly ash).
17. Permissions from the appropriate fire authorities, if applicable.
18. All necessary requisite approval/s under Factories Act, 1948 and from Chief Inspector of Factories including in relation to fire fighting.
19. Approvals from the Electrical Inspectorate or other relevant authorities in respect of equipment.
20. Approval for diversion of forest land and right to use for the Project from Ministry of Environment and Forests after first Disbursement (to be obtained within six months after the first Disbursement).
21. CRZ clearance for intake, discharge and laying of pipelines from Government of Gujarat to be provided by the Port Operator.

Handwritten initials 'SR' and a signature in blue ink.

SUB-SCHEDULE 3.1(v)

Project Subsidiary Activities

The Project Subsidiary is party to the Initial Coal Transport Agreements and may enter into other shipping transportation arrangements, in form and substance satisfactory to the Senior Lenders, to meet the Project's coal and coal transportation requirements, and may engage in any other activity with the prior written consent of the Senior Lenders.

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EXHIBIT 2.4(e)

Form of Satisfied CP Notice

To: Coastal Gujarat Power Limited
[Offshore Accounts Bank]
[Onshore Account Bank]
[other Senior Lenders]

Satisfied CP Notice

Ladies and Gentlemen:

This notice is issued pursuant to Section 2.4 (e) (*Disbursement Procedures*) of Schedule [●] (*Common Terms Schedule*) to the [insert name of relevant Senior Loan Agreement] dated _____ (the "**Loan Agreement**"), in connection with the Disbursement Request of the Borrower dated _____, 20__.

We hereby state that as of the date hereof, all of the conditions to Disbursement have been satisfied or waived.

For and on behalf of [], as Senior Lender

Name:
Designation:
Date:



EXHIBIT 2.4(f)

Form of Unsatisfied CP Notice

To: Coastal Gujarat Power Limited
[Offshore Accounts Bank]
[Onshore Account Bank]
[other Senior Lenders]

Unsatisfied CP Notice

Ladies and Gentlemen:

This notice is issued pursuant to Section 2.4 (f) (*Disbursement Procedures*) of Schedule [●] (*Common Terms Schedule*) to the [insert name of relevant Senior Loan Agreement] dated _____ (the "**Loan Agreement**"), in connection with the Disbursement Request of the Borrower dated _____, 20__.

We hereby state that as of the date hereof, the following condition(s) to Disbursement remain(s) unsatisfied/ or no longer remain(s) satisfied [*Note: Please choose the relevant option*]:

- (a) _____;
- (b) _____;
- (c) _____.

For and on behalf of [], as Senior Lender

Name:
Designation:
Date:

EXHIBIT 3.1(x)

Anti-Corruption Guidelines

The purpose of these guidelines is to clarify the meaning of the terms "Corrupt Practices", "Fraudulent Practices", "Coercive Practices", "Collusive Practices" and "Obstructive Practices".

I. CORRUPT PRACTICES

INTERPRETATION

- A. Corrupt Practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.
- B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.
- C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.
- D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.
- E. The Senior Lenders do not condone facilitation payments. For the purposes of implementation, the interpretation of "Corrupt Practices" relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.



2. FRAUDULENT PRACTICES

INTERPRETATION

- A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice" for purposes of this Agreement.
- B. Fraudulent Practices are intended to cover actions or omissions that are directed to or against any country that is a member of the World Bank, IFC or ADB. It also covers Fraudulent Practices directed to or against any country that is a member of the World Bank, IFC or ADB in connection with the award or implementation of a government contract or concession in a project financed by the World Bank, IFC or ADB. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC operations. Similarly, other illegal behavior is not condoned, but will not be considered as a Fraudulent Practice for purposes of this Agreement.

3. COERCIVE PRACTICES

INTERPRETATION

- A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
- B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

4. COLLUSIVE PRACTICES

INTERPRETATION

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.



5. OBSTRUCTIVE PRACTICES

INTERPRETATION

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

GENERAL INTERPRETATION

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.

Handwritten initials and a signature in blue ink, located at the bottom right of the page. The initials appear to be 'JR' and the signature is a stylized name.

EXHIBIT 4.1(e)

Form of Letter to Auditors

[LETTERHEAD OF THE COMPANY]

[Address]

[Date]

[____ Auditors]

[Address]

Dear Sirs:

We hereby authorize and request you to give to [name of Senior Lender] or their authorized representatives (the "Senior Lender"), all such information as they may reasonably request with regard to the business, operations, assets, prospects and financial condition and the financial statements of the Borrower, both audited and unaudited, which we have agreed to supply under the terms of the Loan Agreement between the undersigned Borrower and the Senior Lender (the "Senior Loan Agreement"). For your information, we enclose a copy of the Senior Loan Agreement. Capitalised terms not otherwise defined herein shall have the same meaning as defined in the Senior Loan Agreement.

We authorize you to send the audited accounts of the Borrower to the Senior Lender to enable us to satisfy our obligation to the Senior Lender under Section 4.1(e) (*Auditors*) of Schedule [●] (Common Terms Schedule) to the Senior Loan Agreement; when submitting the same to the Senior Lender you are also requested to send to the Senior Lender, at the same time, a copy of your full auditors' report to the Borrower on the audited accounts, in a form acceptable to the Senior Lender.

Please note that under Section 5.5 of Schedule [●] (Common Terms Schedule) to the Senior Loan Agreement, we have undertaken to provide the Senior Lender with, inter alia, (i) a report by the Auditors certifying that, based on the Financial Statements, the Borrower was in compliance with the financial covenants contained in the Senior Loan Agreement as of the end of the relevant Financial Year or, as the case may be, detailing any non-compliance, (ii) a copy of the management letter of the auditors (i.e., any correspondence containing a summary assessment of the auditors' findings in relation to the Borrower's financial control procedures, accounting and other systems, management and information systems), (iii) a "no default" certificate from the auditors confirming compliance with the financial covenants contained in the Senior Loan Agreement; (iv) a certificate stating that the borrowing or availing of the Facility under the Senior Loan Agreement would not cause any borrowing limit

binding on the Borrower to be exceeded; and (v) any such other information as the Senior Lender may reasonably request. You are accordingly hereby also requested to submit such letter, communications, report and information to the Senior Lender with the audited accounts.

For our records, please ensure that you send to us a copy of every letter which you receive from the Senior Lender immediately upon receipt and a copy of each reply made by you immediately upon the issue thereof.

Yours faithfully,

By

Authorized Representative

cc: [Name of Senior Lender]

[On Copy]:

We, [Auditors], acknowledge our acceptance of the authorization and instruction contained in the letter of which this is a copy and further acknowledge that such acceptance is irrevocable until the earlier of: (a) the date on which we are notified by the Senior Lender that the obligations of the Borrower under the Senior Loan Agreement have been terminated; and (b) the date on which we shall cease to be the auditors of the Borrower.

[Auditors]



EXHIBIT 4.1(f)

Form of Certificate of Incumbency and Authority

[LETTERHEAD OF THE COMPANY]

[Name of Senior Lender]

[Address]

[date]

Dear Sirs:

Certificate of Incumbency and Authority

With reference to the Loan Agreement signed between us dated _____, [as amended] (the "**Senior Loan Agreement**"), I the undersigned [Chairman] [Director] of _____ (the "**Borrower**") with the authority of my Board of Directors, hereby certify that the following are the names, titles and true specimen signatures of the persons each of whom will, and shall continue to be (until you receive authorized written notice from the Borrower that they, or any of them, no longer continue to be) authorized:

- (a) to sign on behalf of the Borrower the Disbursement Request provided for in the Senior Loan Agreement;
- (b) to sign the certificate provided for in the Senior Loan Agreement or otherwise in relation to the Senior Loan Agreement; and
- (c) to sign and execute any Financing Documents; and
- (d) to take any other action required or permitted to be taken, done, signed or executed under the Senior Loan Agreement.

Name:

Office:

Specimen Signature:

Yours faithfully,

By

[Chairman] [Director]

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EXHIBIT 4.1(n)

Matters to be Covered in Local Counsel's Legal Opinion

The legal opinion of Senior Lenders' Local Counsel should cover the following matters:

- (a) the organization, existence and operations of the Borrower, its authority and its authorized and subscribed Share Capital;
- (b) the matters referred to in sub-sections (a) (Initial Transaction Documents), (k) (Resolutions) and (l) (Creation of Initial Security) of Section 4.1 (Conditions of the First Disbursement) and sub-sections (a) (Organization and Authority), (h) (No Immunity), (q)(i) (Authorizations), (r) (Share Capital), (z) (Priority) and (bb) (Choice of Law) of Section 3.1 (Representations and Warranties) of the Common Terms Schedule;
- (c) the due authorization, execution, delivery, validity and enforceability of the Senior Loan Agreement, each of the other Initial Transaction Documents and any other documents necessary or desirable to the implementation of any of those agreements or documents (other than those Authorizations which are not required to be obtained prior to the first Disbursement);
- (d) the priorities or privileges, if any, that creditors of the Borrower, other than Senior Lender, may have by reason of law;
- (e) the Senior Lender's repatriation rights in respect of the Senior Loan and the Security; and
- (f) such other matters relating to the transactions contemplated by the Senior Loan Agreement as the Senior Lender reasonably requests.

EXHIBIT 5.3

Insurance Requirements

The Security Trustee to be named as (i) a loss payee on policies insuring assets forming part of the Security and on business interruption policies and (ii) an additional named insured on liability policies.

CONSTRUCTION INSURANCE

PRINCIPAL'S INSURANCE DURING THE CONSTRUCTION PERIOD

1. **Marine Cargo Insurance** covering imports (and returns if applicable) of plant, equipment, machinery and materials to the Project Site;

Cover is to be on the basis of Institute Cargo Clauses (A) plus War, plus Strike, Riot and Civil Commotion and should include a minimum of 60 days of intermediate storage cover.

- Sum Insured* : No less than the value of all plant, equipment and supplies, plus insurance and freight (CIF).
- Deductibles* : Not to exceed \$25,000 each loss.
- Insured* : The Borrower, contractors, subcontractors and the Security Trustee (on behalf of the Senior Lenders).
- General* : Cover to include 50/50 Clause. Rest of terms to be agreed. Lenders clauses to be included.

2. **Marine Delay in Start-Up ("MDSU")**

- Cover* : Standing charges following delay in start of commercial operation of each Unit, as a direct result of physical loss or damage covered under the Marine Cargo insurance (see above).
- Sum Insured* : Gross estimated profits or an amount at least equal to the estimated debt service and fixed expenses during the Indemnity Period.
- Indemnity Period* : 12 months from the anticipated Commercial Operation Date for each Unit.
- Deductibles* : No more than 45 days each and every loss.

Insured : The Borrower, the Senior Lenders and the Security Trustee.

3. **Construction "All Risks" ("CAR")**

Cover : The contract works executed and in the course of execution, materials and temporary works, while on the Project Site in India, against "all risks" of physical loss or damage.

Sum Insured : An amount sufficient to pay claims on a reinstatement basis and not less than the estimated contract value minus all one off expenses.

Deductibles : In respect of any one occurrence, arising during the construction and testing period:

- \$500,000 each and every Occurrence of Damage caused by Earthquake/Testing & Commissioning/Defective Design/Maintenance

- \$100,000 each and every Occurrence of Damage caused by all other activities or perils.

Period of Cover : From the first notice to proceed under any Construction Contract and during the design, engineering, procurement, site preparation, construction, testing and commissioning and start-up and until the Project Financial Completion Date, plus 24 months warranty period of the Construction Contractor.

Insured : The Borrower, contractors, subcontractors, the Security Trustee and the Senior Lenders.

General : Cover to include a third party liability section with a minimum limit of \$6,000,000; a 50/50 Clause; rest of wordings to be agreed. Lenders clauses to be included.

4. **Advance Loss of Profits ("ALOP")**

Cover : Standing charges following delay in start of commercial operation of each unit as a direct result of physical loss or damage covered under the Marine Cargo insurance (see above).



<i>Sum Insured</i>	:	Gross estimated profits or an amount at least equal to the estimated debt service and fixed expenses during the Indemnity Period.
<i>Indemnity Period</i>	:	12 months from the anticipated Commercial Operation Date for each Unit.
<i>Insured</i>	:	The Borrower and the Security Trustee (on behalf of the Senior Lenders).
<i>Deductible</i>	:	No more than 45 days.
<i>General</i>	:	Cover to include denial of access; customers' and suppliers' extensions as applicable. Lenders clauses to be included.

5. **Miscellaneous**

Other insurance as is customary, desirable or necessary to comply with local or other requirements, such as contractual insuring responsibility, Workers' Compensation and Employers' Liability insurance in relation to all workmen employed in the construction of the Project, and motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in India in connection with the Project.

[CONSTRUCTION CONTRACTORS' INSURANCE DURING THE CONSTRUCTION PERIOD

Without limiting the Construction Contractors' obligations, responsibilities and liabilities under the Construction Contracts, each Construction Contractor shall effect and maintain at its own expense for the benefit of and in the joint names of the Borrower, the Construction Contractor and sub-contractor and such other persons as the Borrower may elect, the following insurances (as defined in the Construction Contracts):

1. **Construction Equipment**

Insurance against all loss or damage from whatsoever cause arising in respect of construction equipment brought onto or destined for the Project Site for use in the execution of the works to the full replacement value of such equipment.

2. **Insurance against Accidents to Workmen**

The Construction Contractor shall insure its liability as specified in the Construction Contracts during the whole time that any persons are employed by it on the Project Site in connection with the works.

3. **Motor and Marine Insurances**

The Construction Contractor shall at all material times keep in force the following additional insurances in as far as they may be applicable:

- a) Policies of motor insurance in respect of all mechanically propelled vehicles used on public highways or in any circumstances such as to be liable for compulsory motor insurance in accordance with the laws of India
- b) Marine Policies in respect of all floating craft and plant or marine platforms covering loss of or to such items and liability arising out of their use, to include not only the hull value thereof but also the cost of removing the same in the event of sinking, whether or not the same is declared a total loss, and including protection and indemnity and third party liability cover to an amount equal to the hull value and estimated cost of removal in the event of sinking or \$5,000,000 whichever be the greater.

4. **Contractor's Other Insurance**

In addition to the insurances referred to above the Construction Contractor shall maintain policies of insurance to the satisfaction of and in the format approved by the Borrower to be maintained for such periods as the Borrower may require, to indemnify the Construction Contractor against loss or damage to the works, and to the works in course of manufacture off-site, and effects therefrom resulting from defects in the design of the Construction Contractor.

5. **Indemnity to Borrower**

All insurances referred to in this clause as being kept in force by the Construction Contractor shall be endorsed to the effect that the Borrower, and such other persons as the Borrower may specify in writing shall be included as named insureds thereon and fully indemnify him in respect of claims that may be made against him arising out of the execution of the works or in connection with the Construction Contract.

6. **Sub-Contractors Insurance**

In respect of any sub-contractor or in respect of the use by a sub-contractor of construction equipment, the Construction Contractor's obligation to insure itself shall be satisfied by the sub-contractor having effected such insurances endorsed as required, by the Construction Contracts but the Construction Contractor shall require such sub-contractor to provide to the Borrower or the Borrower's representative when required all such policies and receipts for payment of the premium or satisfactory evidence of insurance cover.

OPERATIONAL INSURANCE

From the Commercial Operation Date for each Unit but no later than the expiry of the construction policy:

1. **"All Risks" Insurance**

- Cover* : All assets of every kind and description, including but not limited to buildings and their contents, machinery, stock, fixtures, fittings and all other personal property, against "all risks" of physical loss or damage, including fire, lightning, explosion, natural hazards (flood, earthquake, etc.), terrorism & sabotage, strike, riot & civil commotion, and machinery breakdown.
- Sum Insured* : Reinstatement value of the property insured or 125% of the Maximum Probable Loss (MPL) amount as determined by an MPL study prepared every three years (or more frequently as Senior Lenders deem necessary) by professional risk control consultants of international standing acceptable to Senior Lenders.
- Deductibles* : To be agreed with the Senior Lenders.
- Insured* : The Borrower and the Security Trustee (on behalf of the Senior Lenders).
- General* : To be agreed. To include a waiver of subrogation in favor of each party insured hereunder from the insurers and the reinsurers. Lenders clauses to be included

2. **Business Interruption**

- Cover* : Loss of revenue as a direct consequence of loss of or damage to the Project or any Unit insured under Clause 1 above.
- Sum Insured* : Gross profit corresponding to the Indemnity Period.
- Indemnity Period* : 18 months.
- Deductibles* : No more than 45 days each and every loss.
- Insured* : The Borrower and the Security Trustee (on behalf of the Senior Lenders).
- General* : To include a waiver of subrogation in favor of each party insured hereunder from the insurers and the reinsurers.



Supplier and customer extensions, as appropriate.

3. **Third Party/Public/Products Liability**

- Cover* : Legal liability of the Insured parties for death or bodily injury to third parties or loss or damage to their property arising out of the ownership, operation, use or maintenance of the Project or any Unit.
- Limit of Indemnity* : To be agreed with the Lenders but no less than \$10,000,000 each occurrence (in the aggregate in respect of Products Liability and Pollution Risks). Adequacy of limit to be reviewed annually.
- Deductibles* : To be agreed with the Senior Lenders.
- Insured* : The Borrower, the Security Trustee and the Senior Lenders.
- General* : To include:
- a waiver of subrogation in favor of each party insured hereunder from the insurers and the reinsurers;
 - a cross liability clause;
 - worldwide jurisdiction clause;
 - sudden and accidental seepage, pollution and contamination, and the costs incurred of cleaning up
- Territorial Limit* : Anywhere in India.

4. **Miscellaneous**

Other insurance which,

- a) is customary or necessary to comply with local or other requirements, such as contractual insuring responsibility, Workers' Compensation and Employers' Liability insurances in relation to all workmen employed in the Project or in connection with its operation; motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in India in connection with the Project;
- b) is considered by the Borrower to be desirable or prudent, or required by the Senior Lenders, such as Directors' and Officers' insurance; or
- c) are required by local legislation.

GENERAL

- a) The Borrower shall procure that each policy effected pursuant to this Exhibit shall provide:
 - i) Notice of assignment of the policies to the Security Trustee (on behalf of the Senior Lenders);
 - ii) cut-through clauses/assignment of reinsurance proceeds;
 - iii) that policies are not to be canceled, lapsed, suspended or changed in any material respect without prior written notice (at least 45 days) to Senior Lenders and their agreement obtained, or such lesser period as may be specified from time to time in respect of war and kindred perils;
 - iv) that the protection which is granted to Senior Lenders under the policies is not to be invalidated by any act or failure to act on the part of the Borrower or its Construction Contractors or subcontractors, to the extent that such protection is agreed by the Insurance Consultant as being reasonably available;
 - v) that Senior Lenders are not responsible to the insurers or reinsurers for the payment of insurance premiums or any other obligations of the Borrower;
 - vi) Loss payee clause in favor of the Security Trustee; and
 - vii) Other Senior Lenders' clauses.
- b) The Borrower shall procure and provide to Senior Lenders, letters of undertaking from their insurer(s) and broker, in a form and substance satisfactory to Senior Lenders, which addresses, inter alia, notification to the Senior Lenders in the event that the insurers and brokers become aware of any fact which may affect the coverage under the policy, premium payment confirmation, and any changes in the cover, placement or carriers.
- c) Each policy effected pursuant to this Exhibit:
 - i) shall be maintained with such reputable insurers and reinsurers as may be approved by Senior Lenders;
 - ii) shall be in such form and substance as is consistent with the obligations of the Borrower under this Annex, as may be approved by Senior Lenders, and
 - iii) shall not include any provision for self-insurance, or any self-insurance retention except to the extent of the deductibles as specified in this Annex A.
- d) The Borrower shall provide to Senior Lenders such information (including without limitation original policy documents and evidence of premium payment) as may be reasonably required.



- e) If at any time and for any reason any insurance required to be maintained under this Exhibit is not in full force and effect, then, without prejudice to the rights of Senior Lenders, the Senior Lenders shall be entitled thereupon, or at any time whilst the same is continuing, to procure such insurance at the expense of the Borrower.
- f) If the Senior Lenders reasonably consider that, as a result of a material change in the identified risk exposure, any of the terms, conditions, amounts and deductibles of insurances procured pursuant to this Exhibit are inadequate or inappropriate, Senior Lenders may require that the Borrower procure such amended and/or additional insurances as may be reasonably required to cover such material change.

EXHIBIT 5.5(a)(iv)

Information to be Included in Annual Review of Operations

- (1) Sponsor and Shareholdings. Information on significant changes in share ownership of the Borrower, the reasons for such changes, and the identity of new shareholders.
- (2) Country Conditions and Government Policy. Report on any material changes in local conditions, including government policy changes and regulatory changes, that directly affect the Borrower (e.g. changes in government transmission policy, taxation, foreign exchange availability and other areas of regulations).
- (3) Management and Corporate Strategy. Information on significant changes in the Borrower's senior management or organizational structure and description of any changes to the Borrower's corporate or operational strategy.
- (4) Operating Performance. Discussion of major factors affecting the year's financial results (sales by value and volume, operating and financial costs, tariff details, billing and collection details, profit margins, capacity utilization, reliability factors, capital expenditures, etc.).
- (5) Financial Condition. Key financial ratios for previous Financial Year, compared with those for the present Financial Year.

EXHIBIT 5.5(c)(v)(B)

[Form of Annual Environmental and Social Performance Report]

**ANNUAL ENVIRONMENTAL AND SOCIAL PERFORMANCE
REPORT
(ESPR)**

Reporting Period: (month/year) through (month/year)
ESPR Completion Date: (month/day/year)

Handwritten initials 'SR' and a signature in blue ink.

I. INTRODUCTION

1. Description of Project

2. The purpose of the ESPR is to report on the Borrower's compliance with the Environmental and Social Requirements (including implementation of the Environmental Management Plan and the Social Management Plan) and, if required, any corrective actions implemented/proposed in the event that compliance has not been achieved. The annual ESPR encompasses implementation by (name of Borrower) of all phases of the Project. It includes:

- Contact information for responsible individuals
- Compliance by (Borrower) with environmental and social requirements for the Project
- Environmental and social aspects of the Project under implementation
- Occupational health and safety performance and significant incidents
- Sustainable development initiatives and community relations.

II. ENVIRONMENTAL AND SOCIAL MANAGEMENT

A. ESPR Preparer

Report prepared by: (name and title)
Telephone: E-mail:
Signature: Report Date:

B. Environmental and Social Responsibility¹

3. The individual(s) below hold responsibility for environmental/social and safety performance in the organizational structure of (Borrower) and at the Project Site:

Senior Manager(s) with responsibility for environment and social matters
(name and title)
Environmental/Safety Manager(s) (name and title)

¹ An Organizational Chart indicating the Social, Environmental, Occupational Health and Safety (SEHS) Organization may be provided in the first ESPR and any changes in the SEHS organization may be highlighted in subsequent ESPRs.

C. Environmental Management Plan (EMP) / Social Management Plan (SMP) Implementation

4. [Confirm the continuous assignment of a suitably qualified individual (s) whose sole responsibility is to implement the EMP and SMP]
5. [Describe the current assignment and deployment of staff and procedural capacity to implement the EMP and SMP and to ensure Project compliance with the Environmental and Social Requirements]

III. COMPLIANCE BY (BORROWER) WITH THE ENVIRONMENTAL AND SOCIAL REQUIREMENTS

A. Compliance with Country Requirements

6. [Describe how Project operations are in compliance with applicable national and local environmental, social, labor, occupational health and safety laws and regulations including the conditions included in the relevant permit / clearance documents issued by Ministry of Environment and Forests, Gujarat Pollution Control Board, and any other Authority dealing with Environmental and Social Matters.]
7. [Describe any instance of inspection or review of (Borrower) environmental and safety compliance provisions for the Project, and occasions of non-compliance in which significant fines have been imposed, operations closed down, or other actions related to Project performance]
8. [Highlight any new or emerging environmental issues, such as pending regulations, that could affect the environmental, social or safety performance of Project operations]

B. Compliance with Safeguards Requirements including the Environmental Management Plan and the Social Management Plan

9. [Describe how Project is currently in compliance with (i) environmental and social policies and guidelines required by Senior Lenders and listed in the definition of the Environmental and Social Requirements, (ii) Environmental Management Plan and (iii) Social Management Plan. Key performance indicators should include, but not limited to, (a) Energy efficiency (HHV-Gross, HHV-Net, LHV-Gross, LHV-Net), (b) Electricity Generation (Gross and Net), (c) Coal consumption (ton per year, average calorific value – LHV and HHV, heat input – LHV and HHV), (d) CO₂ Emissions Intensity (gCO₂/kWh – Gross, and gCO₂/kWh – Net), (e) SO₂ emissions (average and maximum sulfur content of coal, ton SO₂ emissions per day (daily maximum, 95th percentile of daily average), (f) NO_x and PM emissions (mg/Nm³ at 6%O₂ – hourly maximum, daily maximum, 95th percentile of hourly average), (g) Heavy metals emissions and ambient monitoring results, (h) Continuous ambient air quality monitoring results (SO₂, NO₂, PM₁₀) compared with relevant ambient air quality standards, (i) Employment creation – construction phase and operational phase

including number of members of affected communities benefiting from employment opportunities, (j) status of implementation and outcome of compensation and livelihood restoration measures implemented as per the Resettlement Plan/Compensation Management Framework including other impact mitigation programs agreed with communities dependent on livestock grazing and other livelihood sources; (k) status of the implementation and outcome of the local hiring and purchase/procurement plan; (l) status of the implementation and outcomes of stakeholder engagement framework; and (m) status of implementation and outcome of implementation of any other mitigation measures developed based on the findings of the social impact assessment. Details and specific format of the information to be provided should be agreed by Senior Lenders prior to disbursement of the loan and updated as appropriate satisfactory to Senior Lenders]

III. ENVIRONMENTAL AND SOCIAL PROGRESS OF PROJECT UNDERWAY

10. [Provide a summary of the progress of implementation of the Project, including description, status, and completion timetable for environment, health and safety, and social-related items. Describe the status of permits and approvals. Summary information should include:

- Overview of the Project including progress against schedule
- Design changes to the Project adopted during the reporting period and reasons for those changes
- Environmental and social issues arising during the reporting period
- Information on any unanticipated environmental or social impacts, and remedial actions that have been taken
- Update on any land acquisition and resettlement issues, as applicable
- Any unresolved social and environmental issues
- Status of compliance with Environmental and Social Requirements or instances of non-compliance including measures being implemented and/or proposed to be implemented so as to comply with environmental and social requirements.

IV. SUMMARY OF SAFETY PERFORMANCE AND ANY CORRECTIVE ACTIONS

11. [Provide a summary for the overall Project of the following:

- Worker Health and Occupational Safety - Describe status of worker health and safety programs and training, any work-related accidents at the Project Site, actions taken to reduce accidents.
- Accidents, Fires, and Other Emergencies - Provide a summary of any significant accidents, fires, or explosions, or major accidental releases to the environment. Include response measures taken and any improvements made to equipment or procedures as a result]

IV. SUSTAINABLE DEVELOPMENT INITIATIVES AND COMMUNITY RELATIONS.

12. [Describe any initiatives undertaken to improve (Borrower's) environmental and social performance. Describe (Borrower's) progress in formulating and implementing a community development plan (CDP), status of implementation of the CDP, other sustainable development initiatives in its operations. Describe any outreach or cooperative programs with the community, NGOs, etc. in the Project area]



EXHIBIT 8.7(b)

Form of Transfer Certificate

To: [Security Trustee] as Security Trustee

From: [Existing Senior Lender] and [New Senior Lender]

Date: []

Transfer Certificate

We refer to the Senior Loan Agreement signed between [], inter alia, [Existing Senior Lender] and the Borrower dated _____, [as amended] (the "Senior Loan Agreement"). Capitalised terms not defined in this Transfer Certificate bear the meanings given to them in the Senior Loan Agreement.

1. We [] (the "Existing Senior Lender") and [] (the "New Senior Lender") agree to the Existing Senior Lender and the New Senior Lender novating such of the Existing Senior Lender's rights and obligations as is specified in the Schedule below in accordance with Section 8.7 (Successors and Assigns) of Schedule 1 (Common Terms Schedule) to the Senior Loan Agreement.
2. The transfer date for the purposes of Section 8.7(b) of Schedule 1 to the Senior Loan Agreement is the date ("Effective Date") on which this Transfer Certificate has been executed by both the Existing Senior Lender and the New Senior Lender.
3. The address, telex number (if any) and facsimile number of the New Senior Lender for the purposes of Section 8.2 (Notices) of Schedule 1 (Common Terms Schedule) to the Senior Loan Agreement are: []
4. The New Senior Lender agrees that with effect from the Effective Date, it shall be bound as a Senior Lender by the terms of the Financing Documents relating to the rights and obligations novated pursuant to this Transfer Certificate, as if it had been an original party to those agreements.
5. The New Senior Lender confirms to the Existing Senior Lender and the other parties to the Financing Documents that it:
 - (i) has received a copy of all the relevant Financing Documents and all other relevant information and that it has not relied and will not hereafter rely on the Existing Senior Lender to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such documents or information and further agrees



that it has not relied and will not rely on the Existing Senior Lender to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of any party who has any obligations under the Financing Documents (each an "Obligor");

- (ii) has made its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities (where applicable) in connection with its participation in the relevant Financing Documents and has not relied exclusively on any information provided to it by the Existing Senior Lender in connection with any Financing Document;
 - (iii) if not already a Senior Lender, appoints each agent to act as its agent as provided in the Senior Loan Agreement, the Financing Documents and the Security Documents and agrees to be bound by such Senior Loan Agreement thereto; and
 - (iv) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities (where applicable) while any amount is outstanding under the Financing Documents or any commitment under Financing Documents by any Senior Lender is in force.
6. The Existing Senior Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Financing Documents and assumes no responsibility for the financial condition of any Obligor or for the performance and observance by Obligor of any of its obligations under the Financing Documents and any all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.
7. The Existing Senior Lender hereby confirms and acknowledges to the New Senior Lender that the New Senior Lender shall not be required to assume any greater liability than was provided for under the relevant Financing Documents by reason of the novation constituted by this Transfer Certificate than would have been the case had no such novation taken place.
8. The New Senior Lender hereby confirms to the Existing Senior Lender that the Existing Senior Lender has no obligation under this Transfer Certificate or otherwise, to (i) accept a re-transfer from the New Senior Lender of the whole or any part of its rights or obligations assigned or novated under this Transfer Certificate; or (ii) support any losses directly or indirectly incurred by the New Senior Lender for any reason.



9. Any party to any Financing Document (and any third party who is expressly stated therein to benefit from any specific provisions hereunder) may rely on this Transfer Certificate and enforce its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.
10. This Transfer Certificate is governed by and shall be construed in accordance with [Indian/English] law. [Note: to be governed by the governing law of the Senior Loan Agreement under which it is issued.]



THE SCHEDULE

Rights and obligations to be novated

[Insert relevant details of the relevant Financing Documents]

Signatories:

[Existing Senior Lender]

[New Senior Lender]

By:

By:

Title:

Title:

Date:

Date:

SR
d

SCHEDULE 2

FORM OF REQUEST FOR DISBURSEMENT

[Borrower's Letterhead]

[Date]

International Finance Corporation
2121 Pennsylvania Avenue, N.W.
Washington, D.C. 20433
United States of America

Attention: Director, Infrastructure Department

Ladies and Gentlemen:

Investment No. _____
Request Disbursement No. [1]¹

1. Please refer to the Loan Agreement (the "**Loan Agreement**") dated April 24, 2008, between Coastal Gujarat Power Limited (the "**Borrower**"), and International Finance Corporation ("**IFC**"). Terms defined in the Loan Agreement have their defined meanings whenever used in this request.
2. The Borrower irrevocably requests a disbursement of the Loan (the "**Disbursement**") in accordance with the provisions of Section 3.02 (*Disbursement Procedure*) of the Loan Agreement in the following amounts:²
 - (a) _____ Dollars (\$ _____) as the Special LC Disbursement;
 - (b) _____ Dollars (\$ _____) under the Unit 1 Tranche of the Loan;
 - (c) _____ Dollars (\$ _____) under the Unit 2 Tranche of the Loan;
 - (d) _____ Dollars (\$ _____) under the Unit 3 Tranche of the Loan;

¹ To be numbered in series.

² Borrower to include only the lines below that are applicable to the Disbursement being requested.

(e) _____ Dollars (\$) under the Unit 4 Tranche of the Loan; and

(f) _____ Dollars (\$) under the Unit 5 Tranche of the Loan.

You are requested to pay such amount to the Dollar Disbursement Account under the Offshore Accounts Agreement, Account No. _____ at [Name and Address of Bank] in Singapore.

4. For the purpose of Section 3.02 (a) of the Loan Agreement, the Borrower certifies as follows:

(a) no Event of Default and no Potential Event of Default has occurred and is continuing;

(b) the Borrower, the Sponsor and the Project Subsidiary have performed all of their respective obligations due to be performed under the Financing Documents to which they are parties and each of the parties to the Project Documents have performed in all material respects all of their respective obligations under the Project Documents to which they are parties, in each case due to be performed by them on or before the date of the Disbursement;

(c) all Trust Accounts have been established and funded to the extent required under the Trust and Retention Accounts Agreement and all accounts have been established and funded to the extent required under the Offshore Accounts Agreement;

(d) on or prior to the date of the Disbursement, all Sponsor Support payment and Subordinated Loans, if any, required under the Sponsor Support Agreement have been made;

(e) all of the Authorizations required to be obtained on or prior to the Disbursement have been obtained and are in full force and effect and final, and there are no legal proceedings regarding the effectiveness or validity of any of such Authorizations other than any such proceedings that are frivolous, and the Borrower is not in default thereunder and has not breached any of the terms of any such Authorization where such breach or default could reasonably be expected to have a Material Adverse Effect;

(f) as of the date of the Disbursement, the most recent Construction Progress Report required to be provided pursuant to Section 5.5 (c) (i) (*Construction Progress Report*) of the Common Terms Schedule is true, accurate and complete, and includes the information required under Section 4.2(g)(i) of the Common Terms Schedule, and nothing has occurred since the date of such

Construction Progress Report that could prevent construction of the Project in accordance with the Construction Plan and the Construction Budget;

- (g) attached hereto is the certificate of the Independent Engineer required under Section 4.2(h) of the Common Terms Schedule;
- (h) the amount of the requested Disbursement is consistent with the Disbursement Schedule;
- (i) the representations and warranties made or deemed to be made or repeated by the Borrower in the Loan Agreement are true and correct on and as of the date of this request and will be true on and as of the date of Disbursement with the same effect as if such representations and warranties had been made on and as of each such date;
- (j) the making of the Disbursement will not cause the Borrower to be in violation of its Constitutional Documents or cause the Borrower to be in violation or breach of, or default under, as applicable, any provision contained in any agreement, instrument or document to which the Borrower is a party or by which the Borrower or its property is bound, or any Authorization or Applicable Law;
- (k) after taking into account the amount of the Disbursement, any pro rata Equity disbursement and any other Senior Loan disbursement being made in accordance with the Disbursement Schedule, the Debt to Equity Ratio will not exceed 3.0 and the Liabilities to Tangible Net Worth Ratio will not exceed 3.5;
- (l) as of the date of the Disbursement, each of the Consultants and IFC have received from the Borrower all fees and expenses, and all reimbursed costs and expenses, required to be paid or reimbursed to it before the date of the Disbursement pursuant to the Financing Documents;
- (m) since the date of the latest Financial Statements delivered pursuant to Section 4.1 (d) (*Financial Statements*) of the Common Terms Schedule, the Borrower has not incurred any material loss or liability except those permitted to be incurred pursuant to the Transaction Documents;
- (n) nothing has occurred which has or could reasonably be expected to have a Material Adverse Effect;
- (o) the Borrower and its employees, agents, contractors and subcontractors are in compliance with the Environmental and Social Requirements and, once adopted pursuant to Section 4.1(i)

of the Common Terms Schedule, the Environmental Management Plan and the Social Management Plan, and there are no Environmental or Social Claims;

- (p) the proceeds of the Disbursement are not in reimbursement of, or to be used for, expenditures in the territories of any country that is not a member of the World Bank and IFC or for goods produced in or services supplied from any such country;
- (q) the Borrower has paid all stamp, registration or similar taxes to be paid or in relation to the Transaction Documents executed before the date of the Disbursement or the transactions contemplated thereby;
- (r) [each of the Construction Contractors and sub-contractors to be paid or reimbursed for Project Costs (other than Project Costs representing materials or equipment in India) with the proceeds of this Disbursement have irrevocably waived and released all Liens, statutory or otherwise, that any of them may have or acquire on the Project or the Security, and attached hereto is evidence of the same;] **[Note: to be included only if the Disbursement is to be applied to the payment or reimbursement of Project Costs under the Construction Contracts (other than for Project Costs representing materials or equipment in India).]**
- (s) the proceeds of the Disbursement will be applied only towards the Project Costs of the Unit to which the Tranche being disbursed relates and to Project Costs of Common Facilities.
- (t) [the amount of the requested Disbursement hereunder, when aggregated with all the previous Disbursements under the Loan, does not exceed thirty percent (30%) of the Loan;] **[Note: to be included only for Disbursements prior to the Coal Supply and Transportation Agreements Completion Date.]**
- (u) attached hereto is a certificate of the Independent Engineer certifying the utilization of funds under the last Disbursement of the Loan;
- (v) in connection with the Disbursement being requested hereunder, the Borrower has requested pro rata disbursements of the ADB Tranche 1 Loan (as defined in the ADB Loan Agreement) and the IIFCL Loan; and
- (w) all requirements for the Disbursement provided in the Loan Agreement and in the Common Terms Schedule (including, without limitations, Sections 4.1 and 4.2 thereof) have been and remain fully satisfied.



The above certifications are effective as of the date of this request for Disbursement and shall continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Borrower undertakes to immediately notify IFC.

Yours truly,

Coastal Gujarat Power Limited

By _____
[Authorized Representative]

Copy to Manager, Financial Operations Unit
International Finance Corporation

Handwritten signature and initials in blue ink, located in the bottom right corner of the page.

SCHEDULE 3

FORM OF LOAN DISBURSEMENT RECEIPT

[Borrower's Letterhead]

International Finance Corporation
2121 Pennsylvania Avenue, N.W.
Washington, D.C. 20433
United States of America

Attention: Director, Infrastructure Department

Ladies and Gentlemen:

Investment No. _____
Receipt for Disbursement Request No. []*

We, Coastal Gujarat Power Limited (the "**Borrower**"), hereby acknowledge receipt on the date hereof of the sum of _____ Dollars (\$ _____) disbursed to us by International Finance Corporation ("**IFC**") under the Loan provided for in the Loan Agreement dated [____], 2008, between the Borrower and IFC.

Yours truly,

Coastal Gujarat Power Limited

By _____
[Authorized Representative]

Copy to: Manager, Financial Operations Unit
International Finance Corporation

* To correspond with the number of the Disbursement request.

