

EXECUTION VERSION

NUMBER NG-G2300

INDEMNITY AGREEMENT
(Nigeria - Azura-Edo Independent Power Project)

between

FEDERAL REPUBLIC OF NIGERIA

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

in respect of the IBRD Guaranteed Loans

Dated: August 21, 2015

INDEMNITY AGREEMENT

INDEMNITY AGREEMENT (the "**Indemnity Agreement**"), dated August 21, 2015 between **FEDERAL REPUBLIC OF NIGERIA** ("**Nigeria**") and the **INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT** (the "**Bank**").

WHEREAS:

- (A) pursuant to that certain IBRD Covered Loan Agreement dated November 25, 2014 (the "**IBRD Covered Loan Agreement**") among Azura Power West Africa Limited, as borrower (the "**Company**"), FirstRand Bank Limited (acting through its Rand Merchant Bank Division), Siemens Bank GmbH, London Branch, The Standard Bank of South Africa Limited and Standard Chartered Bank, as lenders (the "**IBRD Guaranteed Lenders**"), and Standard Chartered Bank, as facility agent for the IBRD Guaranteed Lenders (the "**Agent**"), the IBRD Guaranteed Lenders have agreed to make available to the Company loans in the aggregate of up to one hundred seventeen million United States Dollars (US\$117,000,000) (the "**IBRD Guaranteed Loans**") to develop, design, build, own and operate the Azura-Edo Independent Power Project, a 450 MW open cycle gas turbine power plant, located in Edo State, Nigeria (as further described in Annex 3 (*Project Description*) of the IBRD Project Agreement, the "**Project**");
- (B) the Nigerian Bulk Electricity Trading plc ("**NBET**"), a Nigerian state-owned company, has undertaken certain obligations (including payment obligations) to the Company with respect to the Project pursuant to the Power Purchase Agreement ("**PPA**") between NBET and the Company dated April 22, 2013 (as amended from time to time);
- (C) pursuant to a gas supply and purchase agreement, Seplat Petroleum Development Company PLC will deliver gas to the Company under the terms and conditions thereof;
- (D) pursuant to a gas transportation agreement, the Nigeria Gas Company, a Nigerian state-owned company, will ensure transportation of gas to the Company under the terms and conditions thereof;
- (E) the Transmission Company of Nigeria, a Nigerian state-owned company, will ensure transmission of the power produced by the Company;
- (F) Nigeria and NBET have undertaken certain obligations (including the obligation to pay agreed purchase prices in exchange for the transfer of the plant or the shares in the Company) to the Company and the shareholders thereof with respect to the PPA pursuant the Put/Call Option Agreement ("**PCOA**") among NBET, Nigeria, Azura-Edo Limited and the Company dated October 22, 2014;
- (G) at the request, and with the agreement, of Nigeria, pursuant to a guarantee agreement entered into or to be entered into between the Bank and the Agent (the "**IBRD Guarantee Agreement**"), the Bank agrees to guarantee (the "**IBRD Guarantee**") to the Agent, on behalf of the IBRD Guaranteed Lenders and on terms set forth therein, the repayment of the IBRD Guaranteed Loans plus accrued interest, but only on the condition that Nigeria agree to reimburse to the Bank all amounts paid by

the Bank directly or indirectly in relation to or arising from the IBRD Guarantee and to undertake such other obligations to the Bank as are set forth in this Indemnity Agreement; and

- (H) in consideration of the Bank agreeing to provide the IBRD Guarantee, Nigeria has agreed unconditionally and irrevocably to undertake the obligations to the Bank set forth in this Indemnity Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I

Incorporation of General Conditions and Modifications

Section 1.01. (a) The following provisions of the International Bank for Reconstruction and Development “*General Conditions for Loans*”, dated March 12, 2012, with the modifications set forth in paragraph (b) of this Section (hereinafter the “*General Conditions*”), constitute an integral part of this Indemnity Agreement:

- (i) Article I (*Introductory Provisions*);
 - (ii) Section 2.06 (*Financing Taxes*);
 - (iii) Section 3.06 (*Loan Terms; Place of Payment*), Section 3.07 (*Loan Terms; Currency of Payment*), Section 3.09 (*Loan Terms; Valuation of Currencies*) and Section 3.10 (*Loan Terms; Manner of Payment*);
 - (iv) Section 5.10 (*Project Execution; Cooperation and Consultation*), and Section 5.11(a) (*Project Execution; Visits*);
 - (v) Section 6.01 (*Financial and Economic Data*), and Section 6.02(a) and 6.02(c) (*Negative Pledge*) as modified below.
 - (vi) Section 8.01 (*Enforceability*), Section 8.03 (*Failure to Exercise Rights*) and Section 8.04 (*Arbitration*);
 - (vii) Section 9.02 (*Legal Opinions or Certificates*) as modified below.
 - (viii) Section 9.05 (*Termination of Legal Agreements on Full Payment*) as modified below.
 - (ix) Article X (*Miscellaneous Provisions*) as modified below.
- (b) The General Conditions, unless the context otherwise requires, shall be modified as follows:
- (i) the terms “**Borrower**”, “**Loan Party**”, “**Loan Parties**” and “**Member Country**” wherever used in the General Conditions, mean Nigeria;
 - (ii) the term “**Effective Date**” wherever used in the General Conditions, means the date specified in Article V of this Indemnity Agreement;

- (iii) the terms “*Loan*” and “*Loan Payments*” wherever used in the General Conditions, mean the amounts payable by Nigeria under this Indemnity Agreement;
- (iv) the terms “*Loan Agreement*” and “*Loan Agreements*” wherever used in the General Conditions, mean this Indemnity Agreement; and
- (v) the term “*Project*” wherever used in the General Conditions, means the Project as defined in the Preamble to this Indemnity Agreement.

- (vi) Section 6.02 (a) is modified to read as follows: “(a) It is the policy of the Bank, in making loans to, or in providing guarantees for loans to, its members not to seek, in normal circumstances, special security from the member concerned but to ensure that no other External Debt shall have priority over its loans and amounts due to the Bank from the member concerned in consequence of such guarantees in the allocation, realization, or distribution of foreign exchange held under the control or for benefit of such member. To that end, if any Lien is created on any Public Assets as security for any External Debt, which will or might result in a priority for the benefit of the creditor of such External Debt in the allocation, realization, or distribution of foreign exchange, such Lien shall, unless the Bank shall otherwise agree, *ipso facto* and at no cost to the Bank, equally and ratably secure the amounts payable by Nigeria under this Indemnity Agreement, which, for purposes of this Section only, shall be deemed to be equal to the Maximum IBRD Liability (as defined in the Indemnity Agreement) and Nigeria, in creating or permitting the creation of such Lien, shall make express provision to that effect; provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on assets of any of its political or administrative subdivisions, Nigeria shall promptly and at no cost to the Bank secure the amounts payable by Nigeria under this Indemnity Agreement by an equivalent Lien on other Public Assets satisfactory to the Bank.”
- (vii) Section 9.02 is modified to read as follows: “Nigeria shall furnish to the Bank an opinion or opinions satisfactory to the Bank given by the Attorney-General of the Federation and Minister of Justice of Nigeria (or counsel acceptable to the Bank) or, if the Bank so requests, a certificate satisfactory to the Bank of a competent official of Nigeria showing (A) that this Indemnity Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, Nigeria and is legally binding upon Nigeria in accordance with its terms; and (B) any other matter specified in this Indemnity Agreement or reasonably requested by the Bank in connection with this Indemnity Agreement for the purpose of this Section (“*Additional Legal Matter*”).”
- (viii) Section 9.05 is modified to read as follows: “The Legal Agreements and all obligations of the parties under the Legal Agreements shall forthwith terminate upon full payment of all Loan Payments due.”
- (ix) Section 10.01 is modified by deleting at the beginning of the second sentence the words “Except as otherwise provided in Section 9.03(a).”

Section 1.02. Unless the context otherwise requires:

- (a) the several terms defined in the General Conditions, as such terms may be modified pursuant to Section 1.01(b) above, and in the Preamble to this Indemnity Agreement, when used in this Indemnity Agreement, shall have the respective meanings therein set forth;
- (b) the following additional terms shall have the following meanings:
 - (i) “**Agent**” has the meaning given to it in the preamble to this Indemnity Agreement;
 - (ii) “**Applicable Law**” means all applicable statutes, laws, ordinances, decrees, rules and regulations, including but not limited to, any license, permit or other Government Authorization of any Public Sector Entity, in each case as in effect from time to time, and any regulation, rule, official directive, request or guideline of any governmental, intergovernmental or supranational body, agency, local government, court, department or regulatory, self-regulatory or other authority or organisation;
 - (iii) “**Applicable E&S Law**” means all Applicable Laws of Nigeria setting standards concerning environmental, social, labour, health and safety or security risks of the type contemplated by the Performance Standards or imposing liability for the breach thereof;
 - (iv) “**Bank**” means the International Bank for Reconstruction and Development;
 - (v) “**Company**” has the meaning given to it in the preamble to this Indemnity Agreement;
 - (vi) “**CTA**” means the Common Terms Agreement entered into among the Company, the Guaranteed Lenders, the Agent and assorted other lenders, arrangers and agents dated November 27, 2014 in respect of the Project and IBRD Covered Loan Agreement;
 - (vii) “**Demand**” means a demand on the Bank for payment under the IBRD Guarantee Agreement, made by means of a Demand Notice;
 - (viii) “**Demand Notice**” means a demand presented to the Bank by the Agent in accordance with the IBRD Guarantee Agreement;
 - (ix) “**ESAP**” means the environmental and social action plans developed by and in consultation with, among others, the Bank and in agreement with the Company setting out the environmental and social measures to be undertaken by the Company to supplement the ESMP and to enable the Project to be constructed, equipped and operated in compliance with the Performance Standards, as such action plan may be amended or supplemented from time to time with the consent of the Bank;
 - (x) “**ESIA**” means the social and environmental assessments entitled (a) the Resettlement Action Plan for the Azura-Edo Independent Power Project dated February 2012; (b) the Azura Power West Africa Limited, Addendum to the Resettlement Action Plan for the Azura-Edo Independent Power Plant dated 31 May 2013; (c) Azura-Edo Independent Power Project Environmental Impact Assessment Volume I Final EIA Report dated January 2013; (d) Azura-Edo Independent Power Project Environmental Impact Assessment Volume II: Annexes dated January 2013; and (e) Azura Power West Africa Limited, ESIA addendum (including Air Modelling and Impact Assessment Update) for the Azura-Edo Independent Power Plant dated July 2013, in each case, undertaken by

Environmental Resources Management on behalf of the Company in accordance with the Performance Standards;

- (xi) “**ESMP**” means the environmental and social management plan developed by the Company and forming part of the ESIA, setting out the specific social and environmental measures to be undertaken by the Company to enable the Project to be constructed, equipped and operated in compliance with all Applicable E&S Law and the Performance Standards, as such environmental and social management plan may be amended or supplemented from time to time with the consent of the Bank;
- (xii) “**Environmental and Social Permits**” means all and any Government Authorizations required by Applicable E&S Law or by any provision of law that deals with, or relates (in whole or in part) to, matters addressed in the Performance Standards;
- (xiii) “**Event of Default**” has the meaning given to it in the CTA;
- (xiv) “**Government Authorization**” means any consent, registration, filing, agreement, notarisation, certificate, license, approval, permit, authority or exemption from, by or with any Public Sector Entity, whether given by express action or deemed given by failure to act within any specified time period and all corporate, creditors', stockholders', shareholders' and board of directors' approvals or consents;
- (xv) “**IBRD Agreements**” means the IBRD Covered Loan Agreement, the IBRD Guarantee Agreement, the IBRD Project Agreement, the IBRD Cooperation Agreement, and this Indemnity Agreement;
- (xvi) “**IBRD Cooperation Agreement**” means the Cooperation Agreement entered into or to be entered into between IBRD and NBET in relation to Project;
- (xvii) “**IBRD Covered Loan Agreement**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xviii) “**IBRD Guarantee**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xix) “**IBRD Guarantee Agreement**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xx) “**IBRD Guaranteed Lenders**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xxi) “**IBRD Guaranteed Loans**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xxii) “**IBRD Project Agreement**” means the project agreement entered into or to be entered into between IBRD and the Company on or about the date hereof relating to the IBRD Guarantee;
- (xxiii) “**Maximum IBRD Liability**” has the meaning given to it in the IBRD Guarantee Agreement;

- (xxiv) “**NBET**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xxv) “**PCOA**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xxvi) “**Performance Standards**” means the World Bank Performance Standards for Private Sector Activities as approved by the IBRD’s Board of Executive Directors on June 26, 2012;
- (xxvii) “**PPA**” has the meaning given to it in the preamble to this Indemnity Agreement;
- (xxviii) “**Public Sector Entity**” means:
- (a) NBET;
 - (b) the Government of Nigeria, the Parliament of Nigeria, any governmental department or ministry, agency, body, (including any state-owned company or other state-owned entity) instrumentality or public authority, whether national, state, regional or local (or any subdivision thereof), or any other entity subject to the overall control or direction as to matters of policy of Nigeria or which is otherwise controlled by Nigeria;
 - (c) any court in Nigeria with jurisdiction over the Company or the Project or any part thereof; or
 - (d) any person having or asserting authority to issue a license, approval or consent required or necessary in Nigeria for the Project, or otherwise having jurisdiction over any aspect of the Project, including the Transmission Company of Nigeria and the Nigeria Gas Company;
- (xxix) “**Sanctionable Practice**” means any Coercive Practice, Corrupt Practice, Collusive Practice, Obstructive Practice and Fraudulent Practice, in any way connected to the Project and as those terms are defined and interpreted in accordance with the “*Anti-Corruption Guidelines for World Bank Guarantee and Carbon Finance Transactions*” attached as Schedule I;
- (xxx) “**Transaction Documents**” means the IBRD Agreements, the PPA, the PCOA and any other document related to the Project and to which Nigeria or a Public Sector Entity is a party; and
- (xxxi) “**United States Dollars**” or “**\$**” or “**Dollars**” means the lawful currency of the United States of America.

Section 1.03. References in this Indemnity Agreement to any document are references to such document as originally executed and, if amended, supplemented or replaced, to such document as amended, supplemented or replaced from time to time (*provided* that where consent is required to amend, supplement or replace, such consent has been obtained), and shall include any document that amends, supplements or replaces it.

ARTICLE II

Indemnity by Member Country to the Bank

Section 2.01. In consideration of the Bank providing the IBRD Guarantee on the terms and conditions set out in the IBRD Guarantee Agreement, Nigeria hereby irrevocably and unconditionally agrees:

(a) to reimburse the Bank immediately on demand or as the Bank may otherwise direct in writing for any amount paid by the Bank under the IBRD Guarantee Agreement in Dollars together with interest thereon at the rate per annum determined by the Bank and notified to Nigeria (which rate shall not exceed the Bank's prevailing lending rate for Variable-Spread Loans denominated in Dollars, as shown from time to time on the Bank's external website) from the date such payment is made by the Bank until such amount is paid in full;

(b) to indemnify the Bank on demand and hold the Bank harmless against all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Bank directly or indirectly in relation to or arising out of or in connection with the IBRD Guarantee Agreement (except as otherwise provided in Section 8.04(i) of the General Conditions);

(c) that (i) the Bank is irrevocably authorized to comply with any Demand Notice(s) (that is supported by the documentation required under Clause 5 (*Filing of Demands*) of the IBRD Guarantee Agreement) served on the Bank pursuant to the IBRD Guarantee Agreement and make any payments which may be due from or claimed or made upon the Bank under the IBRD Guarantee (the Bank shall promptly notify Nigeria of any such demand, but failure to give such notice shall in no way affect the Bank's obligation to make payment under the IBRD Guarantee Agreement or Nigeria's obligation to reimburse or indemnify the Bank pursuant to this Indemnity Agreement); and (ii) it shall not be incumbent on the Bank to inquire whether or not any statements in such Demand Notice are in fact correct or whether payments are in fact due or whether or not any dispute exists between Nigeria, NBET and the Company and/or the Agent or the IBRD Guaranteed Lenders;

(d) that any such Demand Notice (that is supported by the documentation required under Clause 5 (*Filing of Demands*) of the IBRD Guarantee Agreement) served on the Bank pursuant to the IBRD Guarantee Agreement shall, as between Nigeria and the Bank, be conclusive evidence that the demand is properly made and payment is due. Following the notification to Nigeria of the receipt by the Bank of any Demand Notice, Nigeria may investigate the validity of the statements in such Demand Notice and take such actions as Nigeria may see fit against the Company or the Agent and/or the IBRD Guaranteed Lenders, in respect thereof; all without prejudice to the Bank's obligations under the IBRD Guarantee Agreement to make a payment in respect of such Demand Notice and to Nigeria's obligations under this Indemnity Agreement in relation to its indemnity and payment obligations to the Bank. The obligations of Nigeria hereunder shall apply notwithstanding that Nigeria disputes the validity of any such Demand Notice or the accuracy or correctness of any documentation, fact or figures relied upon or stated therein; and

(e) in the event that the Bank receives funds from Nigeria pursuant to Section 2.01(a) and, in respect of the same amounts, the Bank receives a refund of funds from the Agent pursuant to Clause 6 of the IBRD Guarantee Agreement (the "**Double Payment**"), then the Bank shall promptly refund to Nigeria the amount of the Double Payment.

Section 2.02. (a) The obligations of Nigeria under this Indemnity Agreement are irrevocable, absolute and unconditional irrespective of the value, genuineness, validity, regularity or enforceability of any of Nigeria's or Public Sector Entity's obligations under the relevant Transaction Documents to which either

is a party, and shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or action against the Company, the Agent, the IBRD Guaranteed Lenders or any other person, or any prior notice to, demand upon or action against Nigeria or Public Sector Entity with regard to any failure by NBET or Nigeria to pay any amount in respect of which a Demand Notice is served on the Bank pursuant to the IBRD Guarantee Agreement. Such obligations shall not be impaired by any of the following: (i) any extension of time, forbearance, concession or other indulgence given to the Bank, Nigeria, NBET, the Company, the Agent, the IBRD Guaranteed Lenders or any other person; (ii) any variation of this Indemnity Agreement, the IBRD Guarantee Agreement, the IBRD Project Agreement, the IBRD Covered Loan Agreement, the IBRD Cooperation Agreement or any other Transaction Document or any other related agreement; (iii) any assertion of, or failure to assert, or delay in asserting, by any party to a Transaction Document, any right, power or remedy against Nigeria, NBET, the Company or any other person, or in respect of any security created or purported to be created for the IBRD Guaranteed Loans (or any part thereof or interest thereon); or (iv) any other circumstances which would or might (but for this provision) constitute a release, discharge, defense or waiver for Nigeria.

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

(c) Any rights conferred on the Bank by this Indemnity Agreement shall be in addition to, and not in substitution for or derogation of, any other right that the Bank may have at any time to seek from Nigeria, NBET or any other person or entity, reimbursement of or indemnification against payments made or liabilities incurred by the Bank in relation to, arising out of or in connection with the IBRD Guarantee Agreement.

(d) The Bank shall not be obliged before or after taking steps to enforce any rights conferred on it under this Indemnity Agreement or exercising any of the rights, powers and remedies conferred upon the Bank under the IBRD Agreements or any other Transaction Document, or any other related agreement or by law: (i) to take action or obtain judgment or award in any court or tribunal of competent jurisdiction against any other person (including persons from whom it may seek reimbursement in respect of sums paid out or liabilities incurred pursuant to the IBRD Guarantee Agreement or the IBRD Covered Loan Agreement); or (ii) to enforce or seek to enforce any other rights it may have against Nigeria or its rights against, or security given by, any other person to the Bank.

Section 2.03. Any payment required to be made by Nigeria pursuant to the terms of this Indemnity Agreement shall be applied first, to pay all interest and other charges due to the Bank and second, after such interest and other charges are paid, to pay all other amounts then due to the Bank under this Indemnity Agreement.

ARTICLE III

Project-Related Covenants

Section 3.01. Without limitation or restriction upon any of its other obligations under this Indemnity Agreement, Nigeria hereby unconditionally undertakes to the Bank to punctually perform all of its obligations under this Indemnity Agreement and the Transaction Documents to which it is a party and to cause each relevant Public Sector Entity to punctually perform all of its obligations under the relevant Transaction Documents to which it is a party.

Section 3.02. Nigeria shall not take, or permit any other Public Sector Entity to take, any action which would prevent or interfere with the performance by the Company of any of its obligations under the IBRD Covered Loan Agreement, CTA, the PPA, the PCOA or any other related agreement in connection with the Project to which the Company is a party, or which would have the effect of materially reversing the objectives of the Project or any action taken under the Project. Nigeria shall notify the Bank prior to it (or any Public Sector Entity) agreeing to any material amendment, waiver, termination or other change to any Transaction Document to which it is a party, and shall obtain the written consent of the Bank prior to it (or any Public Sector Entity) agreeing to any such material amendment, waiver, termination or other change to such agreement which would or could in the opinion of the Bank materially affect the rights or obligations of the Bank under the IBRD Agreements or any other Transaction Document (including any assignment, transfer, novation, abrogation, granting of security over or other disposition of any rights or obligations under such agreements).

Section 3.03. Nigeria shall, and shall cause each Public Sector Entity performing obligations under or related to the Transaction Documents to which it is a party or related agreements or undertakings under the Project to, promptly: (i) notify and provide to the Bank copies of any notices, claims, demands, reimbursements or recoveries under the Transaction Documents to which it is a party that could result or relate to actions to enforce the payment of the IBRD Guaranteed Loans, or any other notices issued or received by a Public Sector Entity under any Transaction Documents to which it is a party; and (ii) notify the Bank of any event or circumstance, Event of Default, termination event which would or could adversely affect the Company's ability to perform its obligations or exercise its rights under the IBRD Covered Loan Agreement, CTA, the PPA, the PCOA or any other related agreement in connection with the Project.

Section 3.04. Nigeria shall take all lawful actions within its power to remedy and cure any of the events referred to in Sections 3.02 and 3.03 or any Event of Default within Nigeria's or a Public Sector Entity's control or responsibility, that would or could result in the breach or termination of any relevant Transaction Document.

Section 3.05. Nigeria shall not create or permit to exist or occur, and shall ensure that any Public Sector Entity shall not create or permit to exist or occur, any circumstance or change in the laws or regulations in effect in Nigeria after the date of this Indemnity Agreement that would render any material obligations under any Transaction Document, the IBRD Covered Loan Agreement, the CTA, the PPA, the PCOA or any other related agreement in connection with the Project, illegal, invalid, unenforceable, ineffective or void in whole or in part, unless with respect to the PPA only, such illegality, invalidity, unenforceability, or ineffectiveness is promptly remedied in accordance with the provisions of the PPA related thereto. If such circumstance or change exists or occurs, Nigeria shall take all lawful actions within its power to remedy and cure, or to procure that the appropriate Public Sector Entity remedies and cures the adverse effect on the Project, the relevant Transaction Document, the IBRD Covered Loan Agreement, the CTA, the PPA, the PCOA or any other related agreement in connection with the Project, of such circumstance or change in law or regulation.

Section 3.06. Nigeria shall:

- (a) take all actions that shall be necessary on its part or procure actions on the part of any Public Sector Entity to enable the Company or the relevant Public Sector Entity: (i) to obtain any Government Authorization for the Project required under the relevant Transaction Documents; and (ii) to perform all of its obligations under the relevant Transaction Documents;
- (b) carry out promptly, or cause to be carried out promptly, or as may otherwise be agreed between Nigeria and the Bank, any action required to be performed by it, any Public Sector Entity (as the case may be), to comply with the Applicable E&S Laws and obtain and comply with all Environmental and Social Permits required in relation to the Project; and
- (c) at least 30 days prior to it delivering a Buy-Out Notice (as defined in the PCOA) (i) notify the Bank in writing of its intent to exercise the Call Option (as defined in the PCOA), specifying the date on which it proposes to exercise the Call Option under the PCOA and the reasons and, (ii) upon delivery of such notice, shall promptly consult, in good faith, with the Bank regarding the same and afford the IBRD with reasonable time to exchange views with it, prior to delivery of the Buy-Out Notice.

Section 3.07. Nigeria: (i) affirms to the Bank that no Sanctionable Practices have been engaged in by any official or representative of Nigeria or any Public Sector Entity; and (ii) covenants that neither it nor any Public Sector Entity shall engage in Sanctionable Practices; during and with respect to the performance of any contract or activity related to the Project.

Section 3.08. Without prejudice to Sections 5.10 (*Cooperation and Consultation*) and 6.01 (*Financial and Economic Data*) of the General Conditions, Nigeria shall, upon request, promptly provide the Bank all information necessary, in the reasonable opinion of the Bank, for the Bank's review of Nigeria's performance of its covenants under this Article III (*Project-related Covenants*) and of any relevant mechanisms and indicators.

ARTICLE IV**Remedies of the Bank**

Section 4.01. In the event that: (i) Nigeria fails to make any payment to or to indemnify the Bank as required pursuant to Section 2.01 of this Indemnity Agreement; (ii) Nigeria fails to perform any of its obligations hereunder, or NBET fails to perform any of its obligations under the IBRD Cooperation Agreement, and such failure or default continues and remains uncured in the opinion of the Bank for sixty (60) days or more after notice thereof shall have been given to Nigeria by the Bank; or (iii) any representation made by Nigeria in or pursuant to this Indemnity Agreement, or any statement furnished in connection with this Indemnity Agreement and intended to be relied on by the Bank in providing the IBRD Guarantee, shall in the opinion of the Bank have been incorrect in any material respect; the Bank shall be entitled, in addition to any other rights and remedies it may have, to suspend or cancel in whole or in part Nigeria's right to make withdrawals under any financing (including any loan, grant or guarantee) made by the Bank to Nigeria or any financing (including any loan, grant or guarantee) made by the International Development Association to Nigeria, or to declare the outstanding principal and interest of any such financing due and payable immediately.

ARTICLE V

Effective Date

Section 5.01. This Indemnity Agreement shall come into force and effect upon signature by the parties.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. The Federal Minister at the time responsible for finance for Nigeria is hereby designated as representative of Nigeria for the purposes of Section 10.02 (*Action on Behalf of the Loan Parties and the Project Implementing Entity*) of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 10.01 (*Notices and Requests*) of the General Conditions:

For Nigeria:

Address: The Honorable Minister
Federal Ministry of Finance
Ahmadu Bello Way
Central Business District
Abuja, Nigeria

Facsimile: +234 9 6273609

For the Bank:

Address: The World Bank
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Attention: Vice President, Africa Region
Facsimile: + 1 202 614 0915

with a copy to:

Address: The World Bank
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Attention: Senior Director, Energy and Extractives Global Practice
Facsimile: + 1 202 522 3436

and

Address: The World Bank
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Attention: Practice Manager, Guarantees (Financial Solutions)
Energy and Extractives Global Practice


Facsimile: +1 202 522 0761

E-mail: guarantees@worldbank.org

EXECUTION VERSION

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

FEDERAL REPUBLIC OF NIGERIA


By: 

Authorized Representative

Name: Mrs. Anastasia Mabi Daniel-Nwaobia

Title: Permanent Secretary, Federal Ministry of Finance

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

By: 

Authorized Representative

Name: Mrs. Indira Konjhodzic

Title: Acting Country Director for Nigeria

SCHEDULE 1**ANTI-CORRUPTION GUIDELINES
FOR
WORLD BANK GUARANTEE AND CARBON FINANCE TRANSACTIONS**

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practice”, “Fraudulent Practice”, “Coercive Practice”, “Collusive Practice”, and “Obstructive Practice” in the context of World Bank project-based guarantees (partial risk guarantee and partial credit guarantee) projects; and carbon finance transactions, where the World Bank, as trustee of a carbon fund, purchases emission reductions under an emission reductions purchase agreement.

1. CORRUPT PRACTICES

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

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 Practices 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 World Bank Group does 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

A “Fraudulent Practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

INTERPRETATION

- A. An act, 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 World Bank Group sanctions.
- B. Fraudulent Practices are intended to cover acts or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in World Bank guarantee projects or carbon finance operations. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to World Bank guarantee projects or carbon finance operations.

3. COERCIVE PRACTICES

A “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

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

A “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

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

An “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) an act intended to materially impede the exercise of the World Bank’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

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.