

**DECRET N° 2005-063 DU 14 FEVRIER 2005**

Portant ratification de l'Accord de facilité de garantie relatif au projet de développement du marché financier de l'Union Economique Monétaire Ouest Africaine signé le 24 avril 2004 à Washington D.C.

**LE PRESIDENT DE LA REPUBLIQUE,  
CHEF DE ETAT,  
CHEF DU GOUVERNEMENT,**

- Vu** la loi n° 90-032 du 11 décembre 1990 portant Constitution de la République du Bénin ;
- Vu** la loi n° 2005-09 du 1<sup>er</sup> février 2005 portant autorisation de ratification de l'Accord de facilité de garantie relatif au projet de développement du marché financier de l'Union Economique Monétaire Ouest Africaine signé le 24 avril 2004 à Washington DC ;
- Vu** la Proclamation le 03 avril 2001 par la Cour Constitutionnelle des résultats définitifs de l'élection présidentielle du 22 mars 2001 ;
- Vu** le décret n° 2005-052 du 02 février 2005 portant composition du Gouvernement ;

**D E C R E T E :**

**Article 1<sup>er</sup>** : Est ratifié, l'Accord de facilité de garantie d'un montant global de deux cent dix millions (210.000.000) de Dollars US, soit environ cent quatorze milliards deux cent quarante millions (114.240.000.000) de francs CFA relatif au projet de développement du marché financier de l'Union Economique Monétaire Ouest Africaine signé le 24 avril 2004 à Washington D.C et dont le texte se trouve ci-joint.

**Article 2** : Le présent décret sera publié au Journal Officiel.

Fait à Cotonou, le 14 Février 2005

Par le Président de la République,  
Chef de l'Etat, Chef du Gouvernement,



**Mathieu KEREKOU.-**

Le Ministre des Finances  
et de l'Economie,



**Cosme SEHLIN.-**

**AMPLIATIONS** : PR 6 AN 4 CS 2 CC 2 CES 2 HAAC 2 4 MFE 4  
AUTRES MINISTERS 20 SGG 4 DGBM-DCF-DGTCP-DGID-DGDDI  
5 BN-DAN-DLC 3 GCONB-DCCT-INSAE 3 BCP-CSM-IGAA 3 UAC-  
ENAM-FADESP 3 UNIPAR-FDSP 2 JO1.

# Guarantee Facility Agreement

(West African Economic and Monetary Union Capital Market Development Project)

among

REPUBLIC OF BENIN,

BURKINA-FASO,

REPUBLIC OF COTE D'IVOIRE,

REPUBLIC OF GUINEA-BISSAU,

REPUBLIC OF MALI,

REPUBLIC OF NIGER,

REPUBLIC OF SENEGAL,

TOGOLESE REPUBLIC,

BANQUE OUEST AFRICAINE DE DEVELOPPEMENT,

AGENCE FRANCAISE DE DEVELOPPEMENT,

MULTILATERAL INVESTMENT GUARANTEE AGENCY,

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated APRIL 24, , 2004

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and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated APRIL 24, , 2004

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## GUARANTEE FACILITY AGREEMENT

AGREEMENT, dated APRIL 24, 2004, among REPUBLIC OF BENIN (Benin), BURKINA-FASO (Burkina), REPUBLIC OF COTE D'IVOIRE (Côte d'Ivoire), REPUBLIC OF GUINEA-BISSAU (Guinea), REPUBLIC OF MALI (Mali), REPUBLIC OF NIGER (Niger), REPUBLIC OF SENEGAL (Senegal), TOGOLESE REPUBLIC (Togo) (Benin, Burkina, Côte d'Ivoire, Guinea, Mali, Niger, Senegal, and Togo are collectively referred to herein as the Participating States and each individually as a Participating State), BANQUE OUEST AFRICAINE DE DEVELOPPEMENT (BOAD), AGENCE FRANCAISE DE DEVELOPPEMENT (AFD), MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA, or the Agency) and INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA, or the Association) (IDA, MIGA and AFD are sometimes hereinafter collectively referred to as the "Guarantors", and, individually as a "Guarantor").

WHEREAS (A) by a development credit agreement of even date herewith (the Development Credit Agreement) the Association has agreed, on the terms and conditions set forth or referred to therein, to make available to BOAD an amount in various currencies equivalent to sixty-seven million Special Drawing Rights (SDR 67,000,000) (the Credit) to assist in the financing of a part of the project therein described (as such description may be amended from time to time by agreement between BOAD and the Association, the Project), but only on condition that BOAD, the Participating States, MIGA and AFD agree to enter into this Agreement;

(B) the Project includes a Guarantee Facility (as hereinafter defined) made available by the Guarantors on a several basis, which Guarantee Facility will be implemented with BOAD's assistance and participation;

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the conditions and promises herein contained, the parties hereto hereby agree as follows:

## ARTICLE I

### Definitions, Interpretation and Construction

Section 1.01. Wherever used in this Guarantee Facility Agreement, except as otherwise expressly provided or unless the context otherwise requires, the several terms defined in the Preamble to this Guarantee Facility Agreement and the General Conditions (as that expression is defined below) have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "AFD Eligible Risks" means risks, determined by AFD on a case-by-case basis for each Eligible Sub-project, limited to losses:

(x) in the case of partial risk guarantees, due to debt service default resulting from the non-fulfillment by a Participating State of its payment

obligations under Sub-project documentation and which arise from:  
(i) changes in law; (ii) government payment obligations; (iii) currency inconvertibility and transfer restriction; (iv) expropriation; (v) political force majeure; or (vi) interference in arbitration process; and

(y) in the case of comprehensive guarantees, due to all risks related to the Sub-project;

(b) "AFD Guarantee" means a non-accelerable partial risk guarantee agreement, or a comprehensive guarantee agreement, as the case may be, provided or to be provided by AFD in favor of a private lender providing financing to an Eligible Sub-project, against AFD Eligible Risks, as such partial risk guarantee agreement or comprehensive guarantee agreement may be amended from time to time by agreement between AFD and the private party;

(c) "AFD Guarantee Facility" means the facility for the provision of AFD Guarantees, in a maximum amount up to seventy million Euro (€70,000,000), referred to and described, and made available by AFD on the terms and conditions, and for the purposes, set forth in this Agreement and in the Guarantee Facility Guidebook;

(d) "Applicable Environmental Guidelines" means the Environmental Guidelines of the World Bank as contained in the World Bank publication entitled "*Pollution Prevention and Abatement Handbook of July 1998*" (PPAH), and the interim guidelines used by MIGA and the International Finance Corporation for industrial sectors not yet included in the PPAH;

(e) "Applicable Safeguard Policies" means, collectively: (i) the Environmental Assessment policy of MIGA as approved by MIGA's Board in July 1999; and (ii) MIGA's issue-specific Safeguard Policies as approved by MIGA's Board in May 2002 (namely, Natural Habitats; Forestry; Pest Management; Projects on International Waterways; Involuntary Resettlement; Indigenous Peoples; Cultural Property; and Dam Safety);

(f) "BOAD Fees Agreement" means the agreement to be entered into between BOAD and the Guarantors with respect to the fees to be paid to BOAD in consideration of the services to be rendered by BOAD in connection with the implementation and operation of the Guarantee Facility, as such agreement may be amended from time to time by agreement between BOAD and the Guarantors;

(g) "Closing Date" means the date referred to in Section 3.01(a)(viii);

(h) "Corrupt Practices" means the offering, promising, giving, receiving, or soliciting of any thing of value or other advantage, whether directly or through intermediaries, to or by any official or representative of any Participating State or Government Body (as hereinafter defined), or to or by any director, officer or employee of BOAD, for that official, representative, director, officer, or employee or for a third party, to influence the official, representative, director, officer, or employee to act or to refrain from acting in relation to the performance of an official or professional duty, which offer, promise, gift, receipt, or solicitation could reasonably be expected to result in the obtaining or retaining by the offeror, promisor,



donor, or Person (as hereinafter defined) being solicited of any commercial or any other improper advantage;

(i) "Dangerous Substance" means any radioactive emissions and any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor and whether alone or in combination with any other substance) capable of causing harm to man or any other living organism or damaging the environment or public health or welfare including, but not limited to, any controlled, special, hazardous, toxic, radioactive or dangerous waste;

(j) "Dollars" and the sign "\$" mean dollars in the currency of the United States of America;

(k) "Eligible State" means, at the relevant date, any State which is a member of The West African Economic and Monetary Union - Union Économique et Monétaire Ouest Africaine and which:

(x) for the purposes of the Association and the IDA Guarantee Facility:  
(i) is also a member in good standing of the Association and the International Monetary Fund; and (ii) the Association or IBRD, as the case may be, has not suspended disbursements to such State or placed such State in non-accrual status;

(y) for the purposes of the Agency and the MIGA Guarantee Facility, is also a member of MIGA; and

(z) for the purposes of AFD and the AFD Guarantee Facility, is not in arrears on any of its debt service or other payment obligations to AFD, and to which AFD has not suspended disbursements or placed in non-accrual status.

(l) "Eligible Sub-project" means, at the relevant date, a project which: (i) is within the territory of a Participating State and which, for purposes of a proposed IDA Guarantee and a proposed AFD Guarantee, has provided to the Association the written request and undertaking stipulated in paragraph (b) of Section 3.01 hereof; (ii) is in the infrastructure sector, unless agreed otherwise by the relevant Guarantor(s); (iii) is consistent with the relevant Eligible State's Poverty Reduction Strategy Paper or Interim Poverty Reduction Strategy Paper, as the case may be, endorsed by the Boards of Executive Directors of the Association and the International Monetary Fund, respectively, and Country Assistance Strategy, approved by the Boards of Executive Directors of the Association and the International Monetary Fund, respectively; (iv) unless the Guarantors otherwise agree, has a total project cost, including contingencies, which shall not exceed the equivalent of Fifty Million Dollars (\$50,000,000); (v) unless the Guarantors otherwise agree, the aggregate amount of guarantees to be provided by the Guarantors, respectively, in support of the proposed Sub-project shall not exceed the equivalent of Thirty Million Dollars (\$30,000,000), with the IDA Guarantee in an amount up to the equivalent of Fifteen Million Dollars (\$15,000,000), the MIGA Guarantee in an amount up to the equivalent of Fifteen Million Dollars (\$15,000,000) (excluding CUP or co-insurance with private or public insurers), and the AFD Guarantee in an amount up to the equivalent of Fifteen Million Dollars (\$15,000,000); and (vi) complies with the Applicable Environmental Guidelines and the Applicable Safeguard Policies, as well as any other applicable policies and requirements of each

of the Guarantors, if it is proposed that the Sub-project benefit from support from all of IDA, MIGA and AFD, otherwise the Applicable Environmental Guidelines and the Applicable Safeguard Policies and any other applicable policies and requirements of the relevant Guarantor(s), as the case may be, including technical, economic, financial, information disclosure, underwriting and eligibility policies;

(m) "Environmental Law" means any national law or regulation of any Participating State concerning the protection of human health or the environment or concerning Dangerous Substances;

(n) "Environmental License" means any authorization required by any Environmental Law;

(o) "Environmental Management Plan" means the action plan satisfactory to the relevant Guarantor(s) to be implemented by a Sub-project Entity pursuant to the terms of an environmental impact assessment prepared by or on behalf of the Sub-project Entity and delivered to and approved by the relevant Participating State or Government Body, as such action plan may be amended from time to time with the prior approval of the relevant Guarantor(s);

(p) "Euro" means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty on European Union;

(q) "Fraudulent Practice" means a misrepresentation of facts in order to influence a process or the execution of a contract to the detriment of a Participating State or Government Body, or BOAD, as the case may be;

(r) "General Conditions" means, collectively, the "General Conditions Applicable to Development Credit Agreements" of the International Development Association, dated January 1, 1985 (as amended through October 6, 1999) and MIGA's General Conditions of Guarantee for Equity, Shareholder and Non-Shareholder Loans, as may be amended by IDA and MIGA, as the case may be, for the purpose of coverage for a specific Eligible Sub-project;

(s) "Government Body" means the Government of a Participating State and any ministry, authorized department, political subdivision, agency or authority of the Government of a Participating State, State authority of a Participating State, or any equivalent local or provincial body or authority;

(t) "Guarantee" means an IDA Guarantee, a MIGA Guarantee, or an AFD Guarantee, as the context may require;

(u) "Guarantee Facility" means, collectively, the IDA Guarantee Facility, the MIGA Guarantee Facility and the AFD Guarantee Facility;

(v) "Guarantee Facility Guidebook" means the manual, dated February 4, 2004, approved by BOAD and the Guarantors which sets out the operating policies and procedures



which shall be applied and observed by BOAD in connection with the implementation of the Guarantee Facility and related matters, as such manual may be amended from time to time with the prior approval of the Guarantors;

(w) "Guarantors Cooperation Agreement" means the agreement to be entered into among the Guarantors with respect to the implementation and operation of certain aspects of the Guarantee Facility, as such agreement may be amended from time to time by agreement among the Guarantors;

(x) "IBRD" means the International Bank for Reconstruction and Development;

(y) "IDA Eligible Risks" means risks, determined by IDA on a case-by-case basis for each Eligible Sub-project, limited to losses arising from: (i) changes in law; (ii) government payment obligations; (iii) currency inconvertibility and transfer restriction; (iv) expropriation; (v) political force majeure; and (vi) interference in arbitration process;

(z) "IDA Guarantee" means a non-accelerable partial risk guarantee agreement provided or to be provided by IDA in favor of a private lender providing financing to an Eligible Sub-project, against debt service default resulting from the non-fulfillment by a Participating State of its payment obligations under Sub-project documentation and which arise from IDA Eligible Risks, as such partial risk guarantee agreement may be amended from time to time by agreement between IDA and the private lender;

(aa) "IDA Guarantee Facility" means the facility for the provision of IDA Guarantees, in a maximum amount up to Special Drawing Rights forty-eight million seven hundred thousand (SDR 48,700,000), referred to and described, and made available by IDA on the terms and conditions, and for the purposes, set forth in this Agreement and in the Guarantee Facility Guidebook;

(bb) "IDA Project Agreement" means a project agreement signed or to be signed between IDA and a Sub-project Entity, as such project agreement may be amended from time to time with the prior approval of IDA;

(cc) "Indemnity Agreement" means an indemnity agreement, substantially in the form thereof attached hereto as Schedule 1, signed or to be signed by a Participating State in favor of the Association or AFD, as the case may be, in respect of payments made and liabilities, costs, and expenses incurred by the Association or by AFD relating to or arising from an IDA Guarantee or an AFD Guarantee provided or to be provided by the Association or AFD in support of a Sub-project;

(dd) "MIGA Convention" means the Convention Establishing the Multilateral Investment Guarantee Agency;

(ee) "MIGA Eligible Risks" means risks, determined by MIGA on a case-by-case basis for each Eligible Sub-project, related to losses arising from: (i) currency inconvertibility and transfer restriction; (ii) expropriation; (iii) breach of contract; and (iv) war and civil disturbance;

(ff) "MIGA Guarantee" means a contract of guarantee provided or to be provided by MIGA in favor of a private sponsor of or a private lender to an Eligible Sub-project against MIGA Eligible Risks related to the Sub-project, and includes all schedules, addenda, annexes, and attachments thereto, and as such contract of guarantee may be amended from time to time by agreement between MIGA and the sponsor or lender, as the case may be. A MIGA Guarantee also includes the Rules of Arbitration for Disputes under Contracts of Guarantee of the Multilateral Investment Guarantee Agency (the MIGA Arbitration Rules);

(gg) "MIGA Guarantee Facility" means the facility for the provision of MIGA Guarantees, in a maximum amount up to Seventy Million Dollars (\$70,000,000), referred to and described, and made available by MIGA on the terms and conditions, and for the purposes, set forth in this Agreement and in the Guarantee Facility Guidebook;

(hh) "Person" means any person, firm, company, corporation, government, state or agency of a state, or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing, or a Government Body;

(ii) "Project Documents" means, collectively, the Development Credit Agreement, this Guarantee Facility Agreement, the Guarantee Facility Guidebook, the Guarantees, the Indemnity Agreements, the agreements concluded between MIGA and each relevant Participating State in relation to a Sub-project (MIGA Host Country Agreements), and the BOAD Fees Agreement;

(jj) "Project Objectives" means assistance to Participating States in attracting foreign private investments in small- and medium-sized infrastructure projects, and projects in other sectors agreed with the Guarantors, by mitigating government-related risks;

(kk) "Resettlement Action Plan" means the policy framework for resettlement and/or compensation, required in the course of implementing a Sub-project, including the obligations of the relevant Participating State and Sub-project Entity to prepare a resettlement action plan, satisfactory to the relevant Guarantor(s), prepared by or on behalf of the Sub-project Entity and agreed with the Participating State or Government Body, as such policy framework may be amended from time to time with the prior agreement of the relevant Guarantor(s);

(ll) "Special Drawing Rights" and the symbol "SDR" mean special drawing rights as valued by the International Monetary Fund in accordance with its Articles of Agreement;

(mm) "Statement of Policy" means the Statement of Lending and Investment Policy approved on September 24, 1974 by the Ministerial Committee responsible for the reform of the *Union Monétaire Ouest Africaine*, as amended to the date of this Agreement;

(nn) "Statutes" means the Statutes of BOAD approved on December 4, 1973, as amended from time to time;

(oo) "Sub-project" means an infrastructure or other project supported or to be supported by a Guarantee issued or to be issued under the Guarantee Facility;



(pp) "Sub-project Agreements" means, collectively, all the agreements relating to a Sub-project, including the Guarantee Agreement, the Indemnity Agreement, the IDA Project Agreement, the equity, quasi-equity, loan or credit agreements with the private sponsor(s) or the private lender(s) to the Sub-project and all related collateral security and other agreements, as the case may be;

(qq) "Sub-project Entity" means the Person responsible for the implementation and operation of an Eligible Sub-project; and

(rr) "WAEMU" means The West African Economic and Monetary Union - *Union Économique et Monétaire Ouest Africaine*.

Section 1.02. For all purposes of this Guarantee Facility Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the Article headings herein are for convenience only and shall not affect the construction or interpretation hereof;

(b) references to Articles, Sections, paragraphs, clauses, or Schedules, without further identification of the document to which the reference is made, are references to provisions and parts of this Guarantee Facility Agreement;

(c) the words "herein", "hereof", "hereto", "hereunder", "this Agreement" and other words of similar import when used in this Guarantee Facility Agreement refer to this Guarantee Facility Agreement as a whole and not to any particular Article, Section, paragraph, clause or individual part of this Guarantee Facility Agreement, unless otherwise expressly provided herein;

(d) the word "including" is without limitation;

(e) the singular includes the plural and vice versa, and words importing a gender include every gender;

(f) the Preamble and the Schedules to this Guarantee Facility Agreement form an integral part hereof as if recited herein at length; and

(g) whenever it shall be necessary for the purposes of this Guarantee Facility Agreement to determine the value of one currency in terms of another, such value shall be as reasonably determined by the relevant Guarantor.

## ARTICLE II

### The Project

Section 2.01. (a) The Participating States each acknowledge and confirm having taken cognizance of the Development Credit Agreement, the MIGA Convention, the General Conditions, and the Guarantee Facility Guidebook, and declare their respective commitment to the Project Objectives.

(b) The Participating States each shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Guarantee Facility.

Section 2.02. (a) BOAD declares its commitment to the Project Objectives and, to this end, shall carry out the Project, including its responsibilities in relation to the Guarantee Facility, with due diligence and efficiency, and in conformity with appropriate administrative, financial, environmental, and social safeguard practices, and with the Statutes and the Statement of Policy, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Guarantee Facility.

(b) Without limitation upon the provisions of paragraph (a) of this Section 2.02, and except as the Guarantors shall otherwise agree, BOAD shall duly and punctually perform all its obligations under the Guarantee Facility Guidebook.

Section 2.03. (a) The Participating States each acknowledge and confirm that BOAD has and shall have full right, power and authority to carry out the Project, including its responsibilities in relation to the Guarantee Facility, in accordance with, and subject to the terms and conditions of, the Development Credit Agreement, this Guarantee Facility Agreement, the Guarantee Facility Guidebook and the other Project Documents to which BOAD is a party or by which it is bound.

(b) The Participating States each acknowledge and confirm that the role and responsibilities of BOAD contemplated under the Guarantee Facility Guidebook include:

- (i) marketing and promoting the Guarantee Facility, including the preparation of a marketing plan to retail Guarantees in WAEMU countries and responding to inquiries from private sponsors;
- (ii) identifying and screening Eligible Sub-projects, including identifying investment projects that might benefit from mitigation against political risks, and, in some cases, also commercial risks, assisting prospective Guarantee holders to complete Guarantee applications, screening investment proposals for consistency with the relevant Participating State's Poverty Reduction Strategy Paper or Interim Poverty Reduction Strategy Paper, as the case may be, and Country Assistance Strategy, preparing a preliminary environmental screening, and reviewing Guarantee applications to ensure compliance by Eligible Sub-projects with the Applicable Environmental Guidelines and the Applicable



Safeguard Policies, as well as any other specific financial, legal, and fiduciary requirements stipulated in the Guarantee Facility Guidebook;

- (iii) assisting in the processing of proposed Sub-projects, including seeking delivery to IDA and AFD, as the case may be, of the written request and undertaking stipulated under Section 3.01(b) hereof; and
- (iv) the supervision of Sub-projects, including the preparation of periodic reports.

(c) Each Participating State shall take all action which shall be necessary on its part or on the part of any Government Body to enable BOAD to perform all its obligations under the Project Documents to which BOAD is a party or by which it is bound, and shall not take or permit to be taken by any Government Body any action which would prevent or interfere with the performance by BOAD of such obligations.

### ARTICLE III

#### The Guarantee Facility

Section 3.01. (a) The Participating States and BOAD each acknowledge, confirm and agree that:

- (i) the obligations of each Guarantor are several and the failure by a Guarantor to perform its obligations under this Agreement or any other Project Document shall not affect the obligations of any Participating State or BOAD towards any other party hereto, nor shall any other party be liable for the failure by such Guarantor to perform its obligations under this Agreement or any other Project Document;
- (ii) the rights of each Participating State and BOAD are several and any debt or other obligation arising under this Agreement or any other Project Document at any time from any Participating State or BOAD to any Guarantor shall be a separate and distinct debt and obligation. Each Guarantor shall be entitled to protect and enforce its individual rights arising out of this Agreement or any other Project Document independently of any other Guarantor (including so that it shall not be necessary for any Guarantor to be joined as an additional party in any proceedings for this purpose);
- (iii) none of the Guarantors shall be under any obligation to issue a Guarantee in respect of any Eligible Sub-project or shall have any liability to any Person in the event that it does not issue a Guarantee under the Guarantee Facility at any time prior to the termination or cancellation hereof or in respect of any particular Eligible Sub-project;

- (iv) the decision to approve the issuance of a Guarantee in support of any particular Eligible Sub-project is in the sole and absolute discretion of the Association's Regional Vice President, Africa in the case of IDA Guarantees, the Agency's Executive Vice President in the case of MIGA Guarantees, and AFD's Board of Directors in the case of AFD Guarantees, as at the relevant date, and that such decision may be taken only if: (i) the relevant Guarantor(s) first shall have determined that an Eligible Sub-project complies with the Applicable Environmental Guidelines and the Applicable Safeguard Policies, and any other applicable policies relating to technical, economic, financial, and information disclosure criteria; and (ii) the relevant Sub-project Agreements shall have been agreed in a form and substance satisfactory to the relevant Guarantor(s);
- (v) in the case of Eligible Sub-projects located in Participating States which take part in the Highly Indebted Poor Countries (HIPC) Initiative, IDA will take a case-by-case decision with respect to the availability of an IDA Guarantee;
- (vi) in the context of any particular Sub-project, the decision as to which, if any, or which combination, of Guarantees to deploy shall be taken by the Guarantors, whose decision shall be final and binding;
- (vii) Guarantees shall be made available on a first-come, first-served basis; and
- (viii) no Guarantees shall be issued under the Guarantee Facility after September 30, 2009 or such later date as the Guarantors shall establish. The Guarantors shall promptly notify each of the Participating States and BOAD of such later date.

(b) In all cases, the Association's and AFD's receipt from the relevant Participating State of a written request that a particular Eligible Sub-project be supported by an IDA Guarantee and an AFD partial risk Guarantee, as the case may be, together with a written undertaking from the Participating State that it shall provide an Indemnity Agreement in respect of the Eligible Sub-project, shall be a prerequisite for further processing of the IDA Guarantee by the Association and of the AFD partial risk Guarantee by AFD.

Section 3.02. The Participating States and BOAD each shall cooperate fully with the Guarantors to assure that the purposes of the Guarantee Facility and the Project Objectives will be accomplished. To that end, the Participating States and BOAD each shall:

- (a) at the request of the Guarantors or any one thereof, exchange views with the Guarantor(s) with regard to progress of the Guarantee Facility, the performance of its obligations under the Project Documents to which it is a party or by which it is bound, and furnish to the Guarantor(s) all such information related thereto and to the Sub-projects as it or they shall reasonably request; and



(b) promptly inform the Guarantors of any condition which interferes or threatens to interfere with any of the matters referred to in paragraph (a) above or the accomplishment of the purposes of the Guarantee Facility or the Project Objectives.

Section 3.03. The Participating States each shall afford all reasonable opportunity for representatives of the Guarantors and each one thereof to visit any part of its territories for purposes related to the Guarantee Facility.

Section 3.04. The Participating States each declare their commitment to enforce their respective laws against fraud, corruption, and bribery during the execution of any contract or procurement process to be financed with the support of any Guarantee or otherwise directly or indirectly connected to any Sub-project.

Section 3.05. The Participating States and BOAD each covenant to the Guarantors that it shall not, and shall use all reasonable endeavors to ensure that its officials, representatives, directors, officers, employees, or agents shall not, engage in Corrupt Practices or Fraudulent Practices during the execution of any contract or procurement process to be financed with the support of any Guarantee or otherwise directly or indirectly connected to any Sub-project.

Section 3.06. The Participating States and BOAD each covenant to the Guarantors:

(a) within the limit of its abilities, to ensure that each Sub-project Entity's business in the relevant Participating State and each Sub-project are carried out, operated and maintained for the term of the relevant Guarantee in compliance with all applicable Environmental Laws and any Environmental License and pursuant to the relevant Environmental Management Plan and the Resettlement Policy Framework, if applicable, as approved by the relevant Guarantor(s), and the mitigation and monitoring measures provided therein in accordance with the Applicable Environmental Guidelines and the Applicable Safeguard Policies; and

(b) to notify the relevant Guarantor(s) in writing and in advance of the nature and purpose of all proposed changes and amendments to each Environmental Management Plan and each Resettlement Policy Framework. Changes and amendments will be deemed to be accepted unless BOAD is notified to the contrary in writing by at least one of the Guarantors within thirty (30) days of the Guarantors' receipt of the proposed change.

Section 3.07. Without the prior written consent of the Guarantors, BOAD shall not take or concur in any action which would have the effect of amending, abrogating, or waiving the Guarantee Facility Guidebook, or the Statement of Policy, or any part of any thereof, or if it could reasonably be expected to have a material adverse effect on the accomplishment of the purposes of the Guarantee Facility or the Project Objectives or that BOAD would be able to perform its obligations under the Project Documents to which it is a party or by which it is bound, the Statutes.

## ARTICLE IV

### Events of Default

Section 4.01. (a) If any of the following events shall occur, then, and in addition to any other rights any of them may have, the Guarantors or any of them may, by written notice to the relevant Participating State (with a copy to BOAD and the other Guarantors), suspend or cancel, in whole or in part, the further issuance of Guarantees under the Guarantee Facility in support of Eligible Sub-projects on the territory of such Participating State:

- (i) a Participating State: (i) shall have been suspended from membership in or ceased to be a member of the Association or MIGA; or (ii) shall have ceased to be a member of the International Monetary Fund or the WAEMU;
- (ii) any representation or warranty of a Participating State set forth in a Project Document, or any statement furnished in connection with a Project Document, and intended to be relied upon by the Guarantors or any of them in providing this Guarantee Facility Agreement or a Guarantee, is found to be, or to have been, incorrect in any material respect as and when made;
- (iii) a Guarantor shall have made payment pursuant to a Guarantee provided in support of a Sub-project on the territory of a Participating State;
- (iv) a Participating State or any other authority having jurisdiction, including a Government Body, shall have taken any action for the dissolution or the disestablishment of BOAD or for the suspension or termination of its operations; or
- (v) a Guarantor shall have determined at any time that (a) Corrupt Practice(s) or (b) Fraudulent Practice(s) (was) were engaged in by any official or representative of a Participating State or of a Government Body.

(b) If any of the following events shall occur, then, and in addition to any other rights or remedies either of them may have, the Association or AFD, as the case may be, may, by written notice to the relevant Participating State (with a copy to BOAD and the other Guarantor(s)), suspend or cancel, in whole or in part, the further issuance of IDA Guarantees under the IDA Guarantee Facility and the further issuance of AFD Guarantees under the AFD Guarantee Facility, as the case may be, in support of Eligible Sub-projects on the territory of such Participating State:

- (i) any of the events specified in Section 4.01 of an Indemnity Agreement shall occur and is not remedied within any grace period provided thereunder, if any;



- (ii) a default shall occur in the payment by a Participating State of principal or interest or any other amount due to the Association or AFD, as the case may be: (i) under any credit, loan, guarantee or indemnity agreement between the Association, IBRD, or AFD, as the case may be, and the relevant Participating State; or (ii) in consequence of any guarantee or other financial obligation of any kind extended by the Association, IBRD, or AFD, as the case may be, to any third party with the agreement of the relevant Participating State, and such default is not remedied within any grace period provided thereunder, if any;
- (iii) the Association, IBRD, or AFD, as the case may be, shall have suspended in whole or in part the right of a Participating State to make withdrawals under or pursuant to any credit, loan or guarantee agreement between the Association, IBRD, or AFD, as the case may be, and the relevant Participating State, because of a payment default mentioned under Section 4.01(b)(ii) above or because of a failure by the relevant Participating State to perform any of its obligations under such agreement with the Association, IBRD, or AFD, as the case may be; or
- (iv) the Association, IBRD, or AFD, as the case may be, shall have placed a Participating State in non-accrual status.

(c) If any of the following events shall occur, then, and in addition to any other rights any of them may have (including the rights of the Association under or pursuant to the Development Credit Agreement), the Guarantors or any of them may, by written notice to BOAD and to each of the Participating States (with a copy to the other Guarantor(s)), suspend or cancel, in whole or in part, the further issuance of Guarantees under the Guarantee Facility:

- (i) the Statutes or the Statement of Policy shall have been amended, suspended, abrogated, repealed or waived so as to materially and adversely affect the ability of BOAD to perform any of its obligations under any of the Project Documents to which it is a party or by which it is bound;
- (ii) in the reasonable opinion of the Guarantors, the legal character, ownership or control of BOAD shall have changed from that prevailing as of the date of this Agreement so as to materially and adversely affect the ability of BOAD to perform any of its obligations under any of the Project Documents to which it is a party or by which it is bound;
- (iii) a default shall occur in the payment by BOAD of principal or interest or any other amount due to the Association, IBRD, or AFD, as the case may be: (i) under any credit, loan, guarantee or indemnity agreement between the Association, IBRD, or AFD, as the case may be, and BOAD, including under the Development Credit Agreement; or (ii) in consequence of any guarantee or other financial obligation of any kind

extended by the Association, IBRD, or AFD, as the case may be, to any third party with the agreement of BOAD;

- (iv) the Association, IBRD, or AFD, as the case may be, shall have suspended in whole or in part the right of BOAD to make withdrawals under or pursuant to any credit, loan or guarantee agreement between the Association, IBRD, or AFD, as the case may be, and BOAD, because of a payment default mentioned under Section 4.01(c)(iii) above or because of a failure by BOAD to perform any of its obligations under such agreement with the Association or AFD, as the case may be;
- (v) BOAD shall have failed to perform any of its obligations under any of the Project Documents to which it is a party or by which it is bound and such default is not remedied within any grace period provided thereunder, if any;
- (vi) a Guarantor shall have determined at any time that (a) Corrupt Practice(s) or (a) Fraudulent Practice(s) (was) were engaged in by any director, officer or employee of BOAD in relation to a Sub-project; or
- (vii) as a result of an event(s) which has (have) occurred after the date of this Agreement, an extraordinary situation has arisen which shall make it improbable that the Project Objectives can be achieved, or that BOAD will be able to perform its obligations under the Project Documents to which it is a party or by which it is bound.

Section 4.02. Notwithstanding any notice of suspension or cancellation in accordance with Section 4.01 hereof, the obligations of the respective Guarantors pursuant to any Guarantee issued prior to the date of any such notice shall continue in full force and effect in accordance with the terms thereof.

## ARTICLE V

### Effective Date; Termination

Section 5.01. This Guarantee Facility Agreement shall not enter into effect until evidence satisfactory to the Guarantors shall have been furnished to the Guarantors that:

- (i) the Association has declared the Development Credit Agreement effective;
- (ii) the Guarantee Facility Guidebook, in form and substance satisfactory to the Guarantors, has been duly adopted by BOAD;
- (iii) the execution and delivery of this Agreement by no less than four (4) WAEMU member States and BOAD, respectively, on behalf of such



parties hereto has been duly authorized or ratified by all necessary action on the part of such parties;

- (iv) the execution and delivery of the BOAD Fees Agreement and the Guarantors Cooperation Agreement, respectively, on behalf of the respective parties thereto has been duly authorized or ratified by all necessary action on the part of such parties; and
- (v) the execution and delivery of this Guarantee Facility Agreement on behalf of each of the Participating States and BOAD, respectively, have been duly authorized or ratified by all necessary governmental and corporate action, as the case may be.

Section 5.02. As part of the evidence to be furnished pursuant to Section 5.01:

- (i) each Participating State shall furnish to the Guarantors an opinion or opinions satisfactory to the Guarantors of counsel acceptable to the Guarantors showing that this Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, such Participating State and is legally binding upon such Participating State in accordance with its terms; and
- (ii) BOAD shall furnish to the Guarantors an opinion or opinions satisfactory to the Guarantors of counsel acceptable to the Guarantors showing that this Agreement and the BOAD Fees Agreement have been duly authorized or ratified by, and executed and delivered on behalf of, BOAD and are legally binding upon BOAD in accordance with their respective terms.

Section 5.03. (a) This Guarantee Facility Agreement and all obligations of the Participating States and of BOAD hereunder shall terminate on the earlier of the following dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms;
- (ii) on the Closing Date, if no Guarantee has been issued under the Guarantee Facility on or prior to such date;
- (iii) on the date after the Closing Date when the last outstanding Guarantee issued under the Guarantee Facility expires or terminates in accordance with its terms; or
- (iv) the date being the twentieth (20<sup>th</sup>) anniversary of the date of execution hereof.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a)(iv) of this Section 5.03, BOAD shall promptly notify each of the Participating States of this event.

## ARTICLE VI

### Enforceability of Guarantee Facility Agreement; Failure to Exercise Rights; Arbitration

Section 6.01. The rights and obligations of the Participating States and BOAD under this Guarantee Facility Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any State, or any political subdivision thereof, to the contrary. Neither the Participating States (or any one thereof) nor BOAD shall be entitled in any arbitration proceeding pursuant to this Guarantee Facility Agreement to assert any claim that any provision hereof is invalid or unenforceable because of any provision of the law of any State, or any political subdivision thereof, or of the Statutes.

Section 6.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under this Guarantee Facility Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action of any such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 6.03. (a) Any dispute arising out of or relating to this Agreement, shall, to the extent possible, be amicably settled.

(b) Any such dispute which has not been settled amicably by the parties concerned, shall, at the request of any party, be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration involving International Organizations and States, as in effect on the date of this Agreement, except as modified by this Section 6.03.

(c) The arbitral tribunal shall consist of three arbitrators appointed by the appointing authority who shall also designate an arbitrator to be the presiding arbitrator of the tribunal. Before making the appointments and designation, the appointing authority shall consult with the disputing parties as far as possible.

(d) The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration.

(e) The provisions for arbitration set forth in this Section 6.03 shall be in lieu of any other procedure for the settlement of disputes among or between the parties to this Agreement.

(f) Service of any notice or process in connection with any proceeding under this Section 6.03 or in connection with any proceeding to enforce any award rendered pursuant to



this Section 6.03 may be made in the manner provided in Section 7.08 hereof. The parties to this Agreement waive any and all other requirements for the service of any such notice or process.

## ARTICLE VII

### Miscellaneous Provisions

Section 7.01. The Participating States and BOAD each shall furnish to the Guarantors evidence of the authority of the person or persons who will, on behalf of the Participating State or BOAD, as the case may be, take any action or execute any documents required or permitted to be taken or executed by the Participating State or BOAD under this Guarantee Facility Agreement, and the authenticated specimen signature of each such person.

Section 7.02. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Guarantee Facility Agreement on behalf of the Participating States, BOAD, AFD or MIGA may be taken or executed by the representative of the Participating State, BOAD, AFD or MIGA designated in Section 7.03 of this Agreement or any person thereunto authorized in writing by such representative. Any modification or amplification of the provisions of this Guarantee Facility Agreement may be agreed to on behalf of the Participating State, BOAD, AFD or MIGA, as the case may be, by written instrument executed on behalf of the Participating State, BOAD, AFD or MIGA by the representative so designated or any person thereunto authorized in writing by such representative, provided that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the relevant Participating State, BOAD, AFD or MIGA under this Guarantee Facility Agreement. The parties hereto other than the relevant signatory may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of this Guarantee Facility Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the relevant Participating State, BOAD, AFD or MIGA, as the case may be, hereunder.

Section 7.03. (a) The Minister of Finance and Economy of Benin is hereby designated as representative of the Republic of Benin for the purposes of Section 7.02 above.

(b) The Minister of Finance and Budget of Burkina-Faso is hereby designated as representative of the Republic of Burkina-Faso for the purposes of Section 7.02 above.

(c) The Minister of Economy and Finance of Côte d'Ivoire is hereby designated as representative of the Republic of Côte d'Ivoire for the purposes of Section 7.02 above.

(d) The Minister of Economy and Finance of Guinea-Bissau is hereby designated as representative of the Republic of Guinea-Bissau for the purposes of Section 7.02 above.

(e) The Minister of Economy and Finance of Mali is hereby designated as representative of the Republic of Mali for the purposes of Section 7.02 above.

(f) The Minister of Economy and Finance of Niger is hereby designated as representative of the Republic of Niger for the purposes of Section 7.02 above.

(g) The Minister of Economy and Finance of Senegal is hereby designated as representative of the Republic of Senegal for the purposes of Section 7.02 above.

(h) The Minister of Economy, Finance and Privatizations of Togo is hereby designated as representative of the Republic of Togo for the purposes of Section 7.02 above.

(i) The President of BOAD is hereby designated as representative of BOAD for the purposes of Section 7.02 above.

(i) The Chief Executive Officer of AFD is hereby designated as representative of AFD for the purposes of Section 7.02 above.

(i) The Executive Vice President of MIGA is hereby designated as representative of MIGA for the purposes of Section 7.02 above.

Section 7.04. This Guarantee Facility Agreement may be executed in several counterparts, each of which shall be an original and all collectively but one instrument.

Section 7.05. This Guarantee Facility Agreement and the Guarantee Facility Guidebook represent the entire understanding between the parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the parties in respect of the operation of the Guarantee Facility, whether oral or written. In the event of any inconsistency between the provisions of this Guarantee Facility Agreement and the Guarantee Facility Guidebook, the provisions of this Guarantee Facility Agreement shall prevail.

Section 7.06. All additions, amendments or variations to this Guarantee Facility Agreement shall be binding only if in writing and signed by the duly authorized representatives of all the parties hereto.

Section 7.07. Any notice or request required or permitted to be given or made under this Guarantee Facility Agreement and any agreement between the parties contemplated by this Guarantee Facility Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or facsimile to the party to which it is required or permitted to be given or made at such party's address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:



For Benin:

Ministry of Finance and Economy  
P.O. Box 302  
Cotonou  
Republic of Benin

Attention: The Minister of Finance and Economy

Cable address:	Telex:	Facsimile:
MINFINANCES COTONOU	5009 or 5289MINFIN	(229) 30 18 51 (229) 31 53 56

For Burkina-Faso:

Ministry of Finance and Budget  
03 P.O. Box 7008  
Ouagadougou 03  
Burkina Faso

Attention: The Minister of Finance and Budget

Cable address:	Telex:	Facsimile:
SEGEBOUV	5555	(226) 31 27 15 (226) 31 54 09

For Côte d'Ivoire:

Ministry of Economy and Finance  
P.O. Box V 163  
Abidjan  
Côte d'Ivoire

Attention: The Minister of Economy and Finance

Cable address:	Telex:	Facsimile:
MINFIN Abidjan	23747 MINFIN	(225) 20 21 16 90

For Guinea-Bissau:

Ministry of Economy and Finance  
P.O. Box 67  
Bissau  
Guinea-Bissau

Attention: The Minister of Economy and Finance

Cable address:	Facsimile:
MEF	245-201626

For Mali:

Ministry of Economy and Finance  
P.O. Box 234  
Bamako  
Mali

Attention: The Minister of Economy and Finance

Cable address:	Facsimile:
2559 MJ	(223) 22 8853

For Niger:

Ministry of Economy and Finance  
P.O. Box 389  
Niamey  
Niger

Attention: The Minister of Economy and Finance

Facsimile:  
(227) 73 59 34

For Senegal:

Ministry of Economy and Finance  
Rue Charles Lainé  
P.O. Box 4017



Dakar  
Senegal

Attention: The Minister of Economy and Finance

Cable address:            Telex:

Minifinances            61203 G  
Dakar

For Togo:

Ministry of Economy, Finance and Privatizations  
P.O. Box 387  
Lomé  
Togolese Republic

Attention: The Minister of Economy, Finance and Privatizations

Cable address:            Telex:

MINFIE            5286

For BOAD:

Banque Ouest Africaine de Développement  
P.O. Box 1172  
Lomé  
Togolese Republic

Attention: The President

Facsimile:

(228) 21-52-67  
(228) 21-79-69

For AFD:

5, rue Roland Barthes  
75598 Paris Cedex 12  
France

Attention: The Chief Executive Officer

Facsimile:  
(33-1) 44-87-99-39

For the Agency:

Multilateral Investment Guarantee Agency  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Attention: Executive Vice President

With a copy to: Vice President, Guarantee Operations

Facsimile:  
(1-202) 522-2620  
(1-202) 522-2630

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Attention: Regional Vice President, Africa

With a copy to: Director, Infrastructure Economics and Finance Department

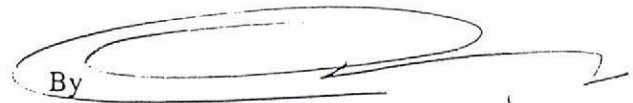
Cable address:	Telex:	Facsimile:
INDEVAS	248423 (MCI)	(1-202) 477-0380
Washington, D.C.	64145 (MCI)	(1-202) 477-0218

Section 7.08. A Person who is not a party to this Agreement has no right to enforce or to enjoy the benefit of any term of this Agreement.




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


REPUBLIC OF BENIN

By  Authorized Representative

BURKINA-FASO

By  Authorized Representative

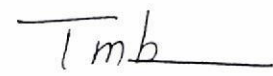
REPUBLIC OF COTE D'IVOIRE

By  Authorized Representative


REPUBLIC OF GUINEA-BISSAU

By  Authorized Representative

REPUBLIC OF MALI

By  Authorized Representative

REPUBLIC OF NIGER

By  Authorized Representative

REPUBLIC OF SENEGAL

By 

Authorized Representative

TOGOLESE REPUBLIC

By 

Authorized Representative

BANQUE OUEST AFRICAINE  
DE DEVELOPPEMENT

By 

Authorized Representative

AGENCE FRANCAISE DE DEVELOPPEMENT

By 

Authorized Representative

MULTILATERAL INVESTMENT  
GUARANTEE AGENCY

By 

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By 

Authorized Representative



Schedule 1

Model Form Indemnity Agreement

NUMBER [XXX]

**Indemnity Agreement<sup>1</sup>**

(West African Capital Market Development Project  
/ [Insert name of Sub-project])

between

[INSERT NAME OF MEMBER COUNTRY]

and

INTERNATIONAL DEVELOPMENT ASSOCIATION<sup>2</sup>

Dated [Insert Date]

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<sup>1</sup> This is a sample of an Indemnity Agreement which has been prepared solely for informational purposes to illustrate the general form of an Indemnity Agreement that could be signed between a member country and IDA in respect of a particular Eligible Sub-project. Modifications to this sample would be required in order to tailor the Indemnity Agreement to the specific circumstances of each individual Sub-project.

<sup>2</sup> Agence Française de Développement (AFD) will also require Participating States to sign and deliver in AFD's favor a separate Indemnity Agreement in substantial conformity with this sample form in connection with partial risk guarantees which AFD may issue under the AFD Guarantee Facility in support of Eligible Sub-projects. Accordingly, for the purposes of an Indemnity Agreement in favor of AFD, all references in this sample form to "the International Development Association", "the Association", or "IDA" should be read as "Agence Française de Développement", "the Agency", or "AFD".

NUMBER [XXX]

## INDEMNITY AGREEMENT

AGREEMENT, dated [Insert date], between [Insert name of member country] ([Member]) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) Pursuant to a Loan Agreement (the IDA Guaranteed Facility Agreement) dated on or about the date hereof, between [Insert name of project company] (the Company), [Insert name of lead bank], acting through its [XXX] Branch as agent (the Agent) and the financial institutions named therein as lenders (the IDA Guaranteed Lenders), the IDA Guaranteed Lenders have agreed to make available to the Company a loan of up to [Insert relevant loan amount and currency in words] ([Insert relevant loan amount and currency in figures]) (the Loan Amount) to support a portion of the financing of the [Insert name of particular sub-project] Project (the Project) as defined in the [Implementation Agreement], dated [Insert date] (the [Implementation Agreement]), between [Insert name of member country] and the Company;

(B) [Insert name of member country] has undertaken certain obligations (including payment obligations) to the Company with respect to the Project pursuant to the [Implementation Agreement] and the guarantee dated [Insert date] (the Government Guarantee), which guarantees [Insert general description of nature of guarantees] for the Project as set out in the Government Guarantee, and the responsibilities and obligations (including financial commitments) of [Insert names of relevant state-owned or state-controlled enterprises] (together, the Relevant Project Counterparties) under the [Power] Purchase Agreement dated [Insert date] (the PPA), the Agreement for [XXX] dated [Insert date] (the GSA), and the [XXX] Supply Agreement dated [Insert date] (the [XXX] Supply Agreement), respectively (together, the Relevant Project Agreements);

(C) At the request and with the agreement of [Insert name of member country], the Association has agreed to guarantee (the IDA Guarantee) the payment of interest and the repayment of the principal of the Loan Amount on the terms and conditions set forth in the IDA Guarantee Agreement, but only on condition that [Insert name of member country] agree to reimburse to the Association all amounts paid by the Association in relation to or arising from the IDA Guarantee and to undertake such other obligations to the Association as are set forth in this Agreement; and

(D) In consideration of the Association providing the IDA Guarantee pursuant to the IDA Guarantee Agreement, [Insert name of member country] has undertaken the obligations to the Association set forth in this 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 "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985 (as amended through October 6, 1999) (hereinafter the General Conditions), with the modifications set forth in paragraph (b) of this Section constitute an integral part of this Agreement:

- (i) Article I;
  - (ii) Section 2.01(1), (2), (3) and (4) as modified below, (7), (8), (9), (10) and (12) all as modified below and (14), 2.02 and 2.03;
  - (iii) Section 3.04(c) and 3.05;
  - (iv) Sections 4.05 and 4.06;
  - (v) Section 8.01;
  - (vi) Sections 9.01 and 9.02 both as modified below;
  - (vii) Section 9.08;
  - (viii) Sections 10.01, 10.02 both as modified below and Section 10.03;
  - (ix) Article XI; and
  - (x) Section 12.02.
- (b) The General Conditions shall be modified as follows:
- (i) the term "Borrower," wherever used in the General Conditions, means *[Insert name of member country]*;
  - (ii) the term "Credit," wherever used in the General Conditions, means the amounts payable by *[Insert name of member country]* under this Agreement, save as used in Section 9.01 where it shall mean the Project;
  - (iii) the term "Development Credit Agreement," wherever used in the General Conditions, means this Agreement;

- (iv) the term "Effective Date," wherever used in the General Conditions, means the date stated in Article V of this Agreement;
- (v) the term "Project," wherever used in the General Conditions, means the *[Insert name of the particular sub-project]* Project as defined in the Preamble to this Agreement; and
- (vi) In Section 10.02 the phrase "the IDA Guarantee Agreement, the IDA Guaranteed Facility Agreement, the Transaction Documents or any other related document" is added immediately after the phrase "the Development Credit Agreement."

Section 1.02. Unless the context otherwise requires,

(a) the several terms defined in the General Conditions and the Preamble to this Agreement have the respective meanings therein set forth;

(b) the following terms shall have their respective meanings set forth in the *[Implementation Agreement]* and the Relevant Project Agreements: "Company Event of Default," "Buyer Event of Default," "Change in Laws of *[Insert name of member country]*," "Event of Default," "Transaction Documents," "Force Majeure," "Force Majeure-Natural," "Foreign Political Events," "Government Body," "Government Events," "Laws of *[Insert name of member country]*," "Project Agreements," "Seller Event of Default," and "*[Insert name of member country]* Political Events";

(c) the following additional terms shall have the following meanings:

- (i) "Agent" means the IDA Guaranteed Facility Agent under the IDA Guaranteed Facility Agreement as agent for the IDA Guaranteed Lenders;
- (ii) "Corrupt Practices" means the offering, promising, giving, receiving, or soliciting of any thing of value or other advantage, whether directly or through intermediaries, to or by any official or representative of any Participating State or Government Body, or to or by any director, officer, or employee of BOAD, for that official, representative, director, officer, or employee or for a third party, to influence the official, representative, director, officer, or employee to act or to refrain from acting in relation to the performance of an official or professional duty, which offer, promise, gift, receipt, or solicitation could reasonably be expected to result in the obtaining or retaining by the offeror, promisor, donor, or person being solicited of any commercial or any other improper advantage;



- (iii) "Demand Notice" means a demand presented to the Association by the Agent in accordance with Clause [XX] of the IDA Guarantee Agreement and substantially in the form of Schedule [1] thereto;
- (iv) "Environmental Management Plan" shall mean the environmental management plan, setting out the actions, measures, monitoring arrangements and other activities to be undertaken by [*Insert name of member country*] or the Company to mitigate adverse environmental and social impacts of the implementation of the Project, as set out in the Environmental Impact Assessment (including the resettlement action plan) prepared for and submitted by the Sponsors on behalf of the Company and dated [*Insert date*], as approved by [*Insert name of member country*] and the Association, as such plan may be amended from time to time with the prior agreement of the Association;
- (v) "Fraudulent Practice" means a misrepresentation of facts in order to influence a process or the execution of a contract to the detriment of a Participating State or Government Body, or BOAD, as the case may be;
- (vi) "Government Body" means the Government of [*Insert name of member country*] and any ministry, authorized department, political subdivision, agency or authority of the Government of [*Insert name of member country*], State authority of [*Insert name of member country*], or any equivalent local or [provincial] body or authority;
- (vii) "IDA Guarantee Agreement" shall mean the agreement dated on or about the date hereof between the Association and the Agent;
- (viii) "IDA Project Agreement" shall mean the agreement dated on or about the date hereof between the Association and the Company;
- (ix) "Resettlement Action Plan" means the policy framework for resettlement, and/or compensation, and rehabilitation required in the course of implementing the Project, including the obligations of the Member and the Company to prepare a resettlement action plan, satisfactory to IDA, prepared by or on behalf of the Company and agreed with the Member or Government Body, as such policy framework may be amended from time to time with the prior agreement of IDA;

- (x) "Sponsors" shall mean [XXX], [XXX] and [XXX]; and
- (xi) "Transaction Documents" shall mean all or any of the Transaction Documents and the Project Agreements, collectively or individually as the context may require.

## ARTICLE II

### Indemnity by *[Insert name of member country]* to the Association

Section 2.01. In consideration of the Association providing the IDA Guarantee on the terms and conditions set out in the IDA Guarantee Agreement, *[Insert name of member country]* hereby irrevocably and unconditionally agrees:

(a) to reimburse the Association immediately upon written demand or as the Association may otherwise direct in writing for any amount paid by the Association under the IDA Guarantee Agreement in [United States Dollars] together with interest thereon at the rate per annum determined by the Association (which rate shall not exceed the Bank's prevailing lending rate in Dollars) from the date such payment is made by the Association until such amount is paid in full;

(b) to indemnify the Association on demand in respect of all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Association in relation to or arising out of the IDA Guarantee Agreement (except as otherwise provided in Section 10.03(i) of the General Conditions);

(c) that (i) the Association is authorized to comply with any Demand Notices served on the Association pursuant to the IDA Guarantee Agreement and make any payments which may be due or claimed from the Association under the IDA Guarantee (the Association shall promptly notify *[Insert name of member country]* of any such demand, but failure to give such notice shall in no way affect the Association's obligation to make payment under the IDA Guarantee or *[Insert name of member country]*'s obligation to reimburse or indemnify the Association pursuant to this Agreement), and (ii) it shall not be incumbent on the Association to inquire whether or not any statements in any such Demand Notice are in fact correct; and

(d) that any such Demand Notice shall, as between *[Insert name of member country]* and the Association, be conclusive evidence that the demand is properly made and payment is properly due. Following the notification to *[Insert name of member country]* of the receipt by the Association of any Demand Notice, *[Insert name of member country]* may investigate the validity of the statements in such Demand Notice and take such actions as *[Insert name of member country]* may see fit against the Company, the Agent and the Lenders in respect thereof, all without prejudice to the Association's obligations under the IDA Guarantee Agreement to make a payment in respect of such Demand Notice and to



[*Insert name of member country*]'s obligations under this Agreement in relation to such payment by the Association. The obligations of [*Insert name of member country*] hereunder shall apply notwithstanding that [*Insert name of member country*] or any Government Body disputes the validity of any such Demand Notice or the accuracy or correctness of any documentation, fact or figures relied upon or stated therein.

Section 2.02. (a) The obligations of [*Insert name of member country*] under this Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or action against the Company, the Agent, the IDA Guaranteed Lenders or any other person or any prior notice to, demand upon, [*Insert name of member country*] with regard to any failure by the Company to pay any amount in respect of which a Demand Notice is served on the Association pursuant to the IDA 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 Association, the Company, the Agent, the IDA Guaranteed Lenders or any other person; (ii) any variation of the IDA Guarantee Agreement, the IDA Guaranteed Facility Agreement, any Transaction Documents or any other related agreement; (iii) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against [*Insert name of member country*], the Company or other person or in respect of any security for the Loan Amount (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 [*Insert name of member country*].

(b) The Association may at any time, without thereby discharging, impairing or otherwise affecting any rights, powers and remedies hereby created or conferred upon it by this Agreement, the IDA Guaranteed Facility Agreement, the IDA Guarantee Agreement, the IDA Project Agreement, the Transaction Documents 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 IDA Guarantee Agreement (except one which would materially increase the obligations of [*Insert name of member country*] under this Agreement), the IDA Guaranteed Facility Agreement, any Transaction Document or any other related agreement; and (ii) offer or give or agree to give any time or other indulgence to any other person or entity from whom it may seek reimbursement (at law or otherwise) in respect of sums paid out or liabilities incurred by the Association under the IDA Guarantee Agreement.

(c) Any rights conferred on the Association by this Agreement shall be in addition to, and not in substitution for or derogation of, any other right which the Association may at any time have to seek, from [*Insert name of member country*], the Company or any other person or entity, reimbursement of or indemnification against payments made or liabilities arising from or in connection with the IDA Guarantee Agreement.

(d) The Association shall not be obliged before or after taking steps to enforce any rights conferred on it by this Agreement or exercising any of the rights, powers and remedies conferred upon the Association by this Agreement, the IDA Guarantee

Agreement, the IDA Project Agreement, the IDA Guaranteed Facility Agreement, any 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 IDA Guarantee Agreement); or (ii) to enforce or seek to enforce any other rights it may have against *[Insert name of member country]* or its rights against or security given by any other person including, but not limited to, security provided by the IDA Guaranteed Lenders to the Association.

Section 2.03. Any payment required to be made by *[Insert name of member country]* pursuant to the terms of this Agreement shall be applied first, to pay all interest and other charges due to the Association and second, after such interest and other charges are paid, to pay all other amounts then due to the Association under this Agreement.

### ARTICLE III

#### Project-Related Covenants

Section 3.01. Without limitation or restriction upon any of its other obligations under this Agreement, *[Insert name of member country]* hereby unconditionally undertakes to the Association punctually to perform all of its obligations under the *[Implementation Agreement]* and the Government Guarantee and to cause each of the Relevant Project Counterparties punctually to perform all of its obligations under the Relevant Project Agreements.

Section 3.02. *[Insert name of member country]* shall notify the Association prior to agreeing to any amendment, waiver, termination or other change to the *[Implementation Agreement]*, the Government Guarantee or the Relevant Project Agreements and shall obtain the written consent of the Association prior to agreeing to any amendment, waiver, termination or other change to such agreements and undertakings which would or could in the opinion of the Association materially affect the rights or obligations of the Association under the IDA Guarantee Agreement, the IDA Project Agreement or the Transaction Documents.

Section 3.03. *[Insert name of member country]* shall not take or permit to be taken by any Governmental Body any action which would prevent or interfere with the performance by the Relevant Project Counterparties of any of their obligations under the Relevant Project Agreements and shall cause the Relevant Project Counterparties to notify the Association prior to agreeing to any amendment, waiver, termination or other change and to obtain the written consent of the Association prior to agreeing to any amendment, waiver, termination or other change to the Relevant Project Agreements which would or could in the opinion of the Association materially affect the rights or obligations of the Association (pursuant to the IDA Guarantee Agreement, the IDA Project Agreement or the Transaction Documents) including, without limitation, any assignment, transfer, novation,



abrogation, granting of security over or other disposition of any rights or obligations under such agreements.

Section 3.04. *[Insert name of member country]* shall promptly notify the Association of any BOT Company Event of Default, Buyer Event of Default, Seller Event of Default, Force Majeure, Force Majeure-Natural, *[Insert name of member country]* Political Events, Foreign Political Events, Government Events or other Event of Default, any notice of any such event, any notice of intention to terminate or notice of termination or any event or circumstance which would or could adversely affect *[Insert name of member country]*'s ability to perform its obligations or exercise its rights under the *[Implementation Agreement]* or the Government Guarantee, or the ability of any of the Relevant Project Counterparties to perform its obligations or exercise its rights under the Relevant Project Agreements.

Section 3.05. *[Insert name of member country]* shall take all actions within its power to remedy and cure each Seller Event of Default and each Force Majeure-Natural, *[Insert name of member country]* Political Event, Foreign Political Event, Government Event or other Event of Default or Force Majeure.

Section 3.06. *[Insert name of member country]* shall not create or permit to exist or occur, and shall ensure that no Government Body shall create or permit to exist or occur, any circumstances or Change in Laws of *[Insert name of member country]* which would render obligations under the *[Implementation Agreement]*, the Relevant Project Agreements or the Government Guarantee illegal, invalid, unenforceable, ineffective or void in whole or part. If such circumstances or Change in Laws of *[Insert name of member country]* exists or occurs, *[Insert name of member country]* shall take all actions within its power to remedy and cure, or to procure that the appropriate Government Body remedy and cure the adverse effect on the Project of such circumstances or Change in Laws of *[Insert name of member country]*.

Section 3.07. *[Insert name of member country]* shall:

(a) carry out promptly or cause to be carried out promptly any action required to be performed by it or by any Government Body under the Environmental Management Plan and the Resettlement Action Plan;

(b) take all action which shall be necessary on its part or on the part of any Government Body to enable the Company (i) to obtain any Required Approvals or environmental authorization for the Project required under the Environmental Management Plan and (ii) to perform all its obligations under the IDA Project Agreement and the Transaction Documents; and

(c) not take any action or to cause or permit any Government Body to take any action which would prevent or interfere with the performance by the Company of such obligations.

## ARTICLE VI

### Miscellaneous Provisions

Section 6.01. The *[Insert title of member country representative]* is hereby designated as representative of *[Insert name of member country]* for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For *[Insert name of member country]*:

*[Insert name of representative ministry]*

*[Insert address]*

*[Insert name of member country]*

Cable address:

Telex:

[       ]

[       ]

Facsimile:

[

]

Telephone:

[

]

Attention:

[

]

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Telex:

INDEVAS

248423 (MCI)

Washington, D.C.

64145 (MCI)

Facsimile:

(202) 477-0169



IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in *[Insert name of city in which Agreement is signed]*, *[Insert name of country]*, as of the day and year first above written.

*[INSERT NAME OF MEMBER COUNTRY]*

By

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative