INDEMNITY AGREEMENT

(NGONYE SCALING SOLAR ENERGY PROJECT)

between

REPUBLIC OF ZAMBIA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated 3 May, 2019
INDEMNITY AGREEMENT

AGREEMENT (this “Agreement”), dated 3 May, 2019 between THE REPUBLIC OF ZAMBIA (the “Member Country”) and the INTERNATIONAL DEVELOPMENT ASSOCIATION (the “Association”) in connection with the Guarantee Agreement (the “Guarantee Agreement”) of the same date herewith between the Association and Standard Chartered Bank (the “Beneficiary”) for the project described in Schedule 1 to this Agreement (the “Project”).

The Member Country and the Association therefore hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The provisions of the General Conditions (as defined in the Appendix to this Agreement) set forth in Section II of the Appendix to this Agreement constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in Section I of the Appendix to this Agreement.

ARTICLE II

Indemnity by Member Country to the Association; Opinion

Section 2.01. In consideration of the Association providing the Guarantee on the terms and conditions set out in the Guarantee Agreement, the Member Country hereby irrevocably and unconditionally agrees:

(a) to reimburse the Association immediately on demand or as the Association may otherwise direct in writing for any amount paid by the Association under the Guarantee Agreement together with interest thereon at the rate per annum determined by the Association and notified to the Member Country (which rate shall not exceed the Bank’s highest prevailing lending rate for loans with a fixed spread denominated in the Payment Currency, as may be shown from time to time on the Bank’s external website) from the date such payment is made by the Association until such amount is reimbursed in full;

(b) to indemnify the Association on demand and hold the Association harmless against all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Association directly or indirectly in relation to or arising out of or in connection with the Guarantee Agreement (except as otherwise provided in Section 9.03(i) of the General Conditions);
(c) that the obligations of the Member Country under this Agreement will not be affected by any act, omission, matter or thing which, but for this Section, would reduce, release or prejudice any of its obligations under this Agreement; and

(d) in the event that the Association receives funds from the Member Country pursuant to Section 2.01(a) and, in respect of the same amounts, the Association receives a refund of funds from the Beneficiary pursuant to the Guarantee Agreement or receives funds as a result of the exercise of the Association’s subrogation rights under the Guarantee Agreement (the “Double Payment”), then the Association shall promptly refund to the Member Country the amount of the Double Payment together with any interest payments received pursuant to the Guarantee Agreement by the Association from the Beneficiary in respect of such Double Payment.

Section 2.02. Any payment required to be made by the 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.

Section 2.03. The Member Country shall furnish to the Association an opinion or opinions satisfactory to the Association of counsel acceptable to the Association or, if the Association so requests, a certificate satisfactory to the Association of a competent official of the Member Country, showing the following matters: (a) that this Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Member Country and is legally binding upon the Member Country in accordance with its terms; and (B) any other matter reasonably requested by the Association in connection with this Agreement or the Project. The Member Country acknowledges that the receipt by the Association of such opinion, opinions or certificate will be a condition to the effectiveness of the Guarantee Agreement.

ARTICLE III

Project

Section 3.01. The Member Country declares its commitment to the objectives of the Project.

Section 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, the Member Country shall undertake the obligations with respect to the Project set forth in Schedule 2 to this Agreement.

ARTICLE IV

Remedies

Section 4.01. In addition to the other remedies available to the Association under development credit and financing agreements between the Association and the Member Country, in the event that: (i) the Member Country has failed to perform any of its obligations under Article II or III of this Agreement or the relevant Public Sector Entity has failed to perform any of its obligations under Relevant Project Agreement(s) and the Member Country has failed to cause such Public Sector Entity to perform such obligations and such failure has continued and remained uncured in the opinion of the Association for sixty (60) days or more after notice thereof shall have been given to the Member Country by the Association; or (ii) any representation made by the Member Country in or pursuant to this Agreement, or any representation or statement furnished by the Member Country and intended to be relied on by the Association in providing the Guarantee, shall in the opinion of the Association have been incorrect in any material respect, then the Association may
suspend or cancel in whole or in part the Member Country’s right to make withdrawals under any credit or grant under any development credit agreement or financing agreement between the Association and the Member Country, or declare the outstanding principal and interest of any such credit due and payable immediately.

ARTICLE V

Effective Date

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

ARTICLE VI

Representative; Addresses

Section 6.01. The Member Country’s Representative is its Minister of Finance.

Section 6.02. The Member Country’s Address is:

Address: Ministry of Finance
P.O. Box 50062
Lusaka, Zambia

Attention: Minister of Finance

Facsimile: (+260 211) 253494/251078

Section 6.03. The Association’s Address is:

Address: International Development Association
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
Ref: G2550

with a copy to:

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

Attention: Practice Manager, Guarantees (Financial Structuring & PPPs), Infrastructure, PPPs & Guarantees, Infrastructure Vice Presidency

Facsimile: +1 202 522 0761
E-mail: guarantees@worldbank.org
Ref: G2550
AGREED as of the day and year first above written.

REPUBLIC OF ZAMBIA

By: 
Authorized Representative

Name: Margaret D. Mwanakatwe
Title: Minister of Finance

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: 
Authorized Representative

Name (printed): 
Title: 
AGREED as of the day and year first above written.

REPUBLIC OF ZAMBIA

By: ____________________________
    Authorized Representative
Name:  Margaret D. Mwanakatwe
Title:  Minister of Finance

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: ____________________________
    Authorized Representative
Name (printed):  INA RUTHENBERG
Title:  COUNTRY MANAGER
SCHEDULE 1

Project Description

The Project's development objective is to increase solar electricity generation capacity and diversify electricity generation resources in Zambia.

The Project consists of (i) the development, financing, construction, operation, and maintenance by the Ngonye Power Company Limited of a new 28.2 MW AC (approximately 34MWp) solar PV plant located in the Lusaka South Multi-Facility Economic Zone, 20km south of Lusaka, Zambia, and (ii) the sale of the electricity generated from such plant to ZESCO.
SCHEDULE 2

Project Undertakings

1. The Member Country hereby undertakes to the Association to punctually perform all of its obligations under the Relevant Project Agreements to which it is a party and to take all lawful action within its power to cause each relevant Public Sector Entity to punctually perform all of its obligations under the Relevant Project Agreements to which it is a party.

2. The Member Country shall notify the Association prior to agreeing to any material amendment, waiver, termination or other change to Relevant Project Agreements to which it is a party, and shall obtain the written consent of the Association prior to agreeing to any amendment, waiver, termination or other change to such agreement or undertaking which would or could in the opinion of the Association materially affect the rights or obligations of the Association under the Guarantee Agreement or any other Relevant Project Agreement (including any assignment, transfer, novation, abrogation, granting of security over or other disposition of any rights or obligations under such agreements).

3. The Member Country shall promptly: (i) notify and provide to the Association copies of any notices, claims, demands, reimbursements or recoveries under the Relevant Project Agreements that could result or relate to actions to enforce the payment of the Guaranteed Amount, or any other notices issued or received by the Member Country under the Relevant Project Agreements to which it is party; and (ii) notify the Association of any event or circumstance which would or could adversely affect the Member Country’s ability to perform its obligations or exercise its rights under the Relevant Project Agreements to which it is a party.

4. The Member Country shall take all lawful actions within its power to remedy and cure any event within the Member Country’s control or responsibility that would or could result in the breach or termination of any of the Relevant Project Agreements.

5. The Member Country shall not create or permit to exist or occur and shall take all lawful actions within its power to ensure that no Public Sector Entity shall create or permit to exist or occur, any circumstance, or change in the laws or regulations in effect in the Member Country after the date of this Agreement that would render obligations under Relevant Project Agreements illegal, invalid, unenforceable, ineffective or void in whole or in part. If such circumstance or change exists or occurs, the Member Country 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 of such circumstance or change in law or regulation.

6. The Member Country shall:

   (a) take all actions that shall be necessary on its part and take all lawful actions within its power to procure that any other Public Sector Entity takes all actions necessary on its part to enable the Project Company to obtain any authorization for the Project required under Relevant Project Agreements, including any authorization required to ensure environmental and social compliance provided thereunder;

   (b) carry out promptly, and take all lawful actions within its power to cause any other Public Sector Entity to carry out promptly, or as may otherwise be agreed between the Member Country and the Association, any action required to be performed by it or such Public Sector Entity.
to enable it or the Project Company to comply with the requirements of the Relevant Project Agreements, including the Performance Standards, the Action Plan and other environmental and social compliance requirements set out thereunder;

(c) not take, and shall take all lawful actions within its power not to cause or permit any other Public Sector Entity to take, any action that would prevent or interfere with the performance by the Project Company of any of its obligations in connection with the Project or under the Relevant Project Agreements or any other agreement related to the Project; and

(d) in the case of each of ZESCO and IDC, not:

(i) dissolve, disestablish, or suspend the operations; or

(ii) change its ownership or control from that existing at the date of this Agreement (except, for the avoidance of doubt, any sale, transfer or assignment by the Member Country of any voting interest in its share capital that would not result, directly or indirectly, in the Member Country’s loss of its ability to elect or appoint a majority of its board of directors (or equivalent body), or its ability to direct the management or policies.

7. The Member Country (i) affirms to the Association that no Sanctionable Practices have been engaged in by any official or representative of the Member Country 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.

8. Without prejudice to Sections 5.10 and 6.01 of the General Conditions, the Member Country shall, upon request, promptly provide the Association all information necessary, in the reasonable opinion of the Association, for the Association’s review of the Member Country’s performance of its covenants pursuant to this Schedule.
APPENDIX

Section I. Definitions

1. “Action Plan” means the plan or plans developed by the Project Company setting out specific social and environmental measures to be undertaken by the Project Company, 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.

2. “Agreement” has the meaning ascribed in the preamble to this Agreement.


4. “Association” has the meaning ascribed in the preamble to this Agreement.

5. “Beneficiary” has the meaning ascribed in the preamble to this Agreement.

6. “Double-Payment” has the meaning ascribed in Section 2.01(d) of this Agreement.


8. “Guarantee” means the guarantee provided by the Association pursuant to the Guarantee Agreement.

9. “Guaranteed Agreement” has the meaning ascribed in the preamble to this Agreement.

10. “Guaranteed Amount” has the meaning set forth in the Guarantee Agreement.


12. “IDC” means the Industrial Development Corporation Ltd.

13. “LC” means the letter of credit to be issued by the Beneficiary in favor of the Project Company pursuant to the terms of the PPA and GSA.


16. “Project” has the meaning ascribed in the preamble to this Agreement.

17. “Project Agreement” means the Project Agreement entered into (or to be entered into) between the Association and the Project Company in respect of the Project.

19. "Public Sector Entity" means:

(i) IDC;

(ii) ZESCO;

(iii) the Government of the Member Country, the Parliament of the Member Country, any governmental department or ministry, agency, body, (including any state-owned company or other state-owned entity instrumentality or public authority, whether national, regional or local (or any subdivision thereof)), or any other entity subject to the overall control or direction as to matters of policy of the Government of the Member Country or which is otherwise controlled by the Government of the Member Country other than IDC and ZESCO;

(iv) any court in the Member Country with jurisdiction over the Project Company or the Project or any part thereof; or

(v) any other person in the Member Country having or asserting authority to issue a license, approval or consent required or necessary in connection with the Project, or otherwise having jurisdiction over any aspect of the Project.

20. "Member Country" has the meaning ascribed in the preamble to this Agreement.

21. "RCA" means the Reimbursement and Credit Agreement entered into (or to be entered into) by the Member Country and ZESCO (as obligors) and the Beneficiary (as lender) in respect of the LC.

22. "Relevant Project Agreements" means, in respect of the Project, any of, or collectively:

(i) the PPA;

(ii) the GSA;

(iii) the LC;

(iv) the RCA;

(v) the Guarantee Agreement; and

(vi) the Project Agreement.

23. "Sanctionable Practices" means any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice or Obstructive Practice, as those terms are defined and interpreted in accordance with the Anti-Corruption Guidelines.

24. "ZESCO" means ZESCO Limited.

Section II. General Conditions
The following provisions of the General Conditions, with the modifications set forth below, constitute an integral part of this Agreement:

1. Article I.


3. Sections 5.10, 5.11 and 5.12.

4. Article VI.

5. Article IX.

6. Section 11.01, modified by deleting at the beginning of the second sentence the words “Except as otherwise provided in Section 10.03(a).”

7. Section 11.02, modified by deleting the words “(and the representative designated by the Project Implementing Entity in the Project Agreement)” and “(or the Project Implementing Entity).”

8. Section 11.03, modified by deleting the words “and the Project Implementing Entity.”

9. Sections 11.04 and 11.05.

10. Paragraphs 7, 8, 11, 29, and 42 of the Appendix.

11. Paragraphs 26 and 51 of the Appendix.

12. Paragraph 56 of the Appendix, modified to read as follows:

   (i) “‘Financing’ means the amounts payable by the Member Country under this Agreement.”

13. Paragraph 58 of the Appendix, modified to read as follows:

   (i) “‘Financing Agreement’ means the indemnity agreement between the Member Country and the Association pertaining to the Guarantee, as such agreement may be amended from time to time. ‘Financing Agreement’ includes these General Conditions as applied to this Agreement, and all appendices, schedules and agreements supplemental to this Agreement.

14. Paragraph 59 of the Appendix, modified by deleting the words “including (but not limited to) any amount of the Withdrawn Credit Balance, the Service Charge, the Commitment Charge, and any refund of the Withdrawn Grant Amount payable by the Recipient.”

15. Paragraph 73 of the Appendix, modified to read as follows:

   (i) “‘Legal Agreement’ means this Agreement.”

16. Paragraph 82 of the Appendix.
17. Paragraph 88 of the Appendix, modified by deleting the words “for which the Financing is granted.”

18. Paragraph 89 of the Appendix, modified to read as follows:

(i) ""Project Agreement" refers to the agreement entitled "Cooperation Agreement" entered into on or about the date of this Agreement between the Association and ZESCO in connection with the Guarantee, as the same may be amended from time to time in accordance with its terms. "Project Agreement" includes these General Conditions as applied to the Project Agreement, and all appendices, schedules and agreements supplemental to the Project Agreement”

19. Paragraph 90 of the Appendix, modified to read as follows:

(i) ""Project Implementing Entity” means ZESCO which is a party to the Project Agreement.”

20. Paragraph 94 of the Appendix, modified by deleting the words “and to which the Financing is extended.”


Section III. 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 Practices,” "Fraudulent Practices,” “Coercive Practices,” “Collusive Practices” and “Obstructive Practices” in the context of World Bank project-based guarantee operations 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 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 action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

**INTERPRETATION**

A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a “Fraudulent Practice” for purposes of World Bank Group sanctions.

B. Fraudulent Practices are intended to cover actions 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 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 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) acts 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.