Indemnity Agreement

(Partial Risk Guarantee in support of the Kenya Private Sector Power Generation Support Project / Triumph Power Project)

between

THE REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated December 5, 2012
INDEMNITY AGREEMENT

INDEMNITY AGREEMENT, dated December 5, 2012, between the REPUBLIC OF KENYA ("Kenya") and the INTERNATIONAL DEVELOPMENT ASSOCIATION (the "Association" or "IDA").

(A) WHEREAS The Kenya Power and Lighting Company Limited ("KPLC") has entered into a power purchase agreement with Triumph Power Generating Company Limited (the "Company") dated June 14, 2012 (the "PPA"), pursuant to which KPLC have undertaken certain obligations (including payment obligations) to the Company in connection with development, construction and operation of an 83 MW diesel engine powered thermal power plant at a site located in Athi River, Kenya (the "Project");

(B) WHEREAS the Government of Kenya ("GOK") has issued to the Company a letter dated July 2, 2012 (the "GOK Support Letter"), providing certain obligations by GOK to the Company in connection with political risks in relation to the Project;

(C) WHEREAS the Company, KPLC and GOK have entered into an IDA Partial Risk Guarantee Support Agreement on or about the date hereof (the "PRG Support Agreement"), which governs, amongst other things, the relationship between the Company, KPLC and GOK in respect of the making of demands and drawings under the IDA PRG LC (as defined below);

(D) WHEREAS the IDA PRG LC Bank (as defined below) has issued or shall issue, at the request of KPLC with the acknowledgement and consent of GOK, a standby letter of credit in favor of the Company (the "IDA PRG LC"), which will establish certain rights of the Company or its permitted assignee or transferee under the terms of the IDA PRG LC (the "LC Beneficiary") to make drawings up to a maximum aggregate amount of forty-five million United States Dollars (US$45,000,000) under the IDA PRG LC for the purpose of covering certain payment failure by KPLC under the PPA or by GOK under the GOK Support Letter, as the case may be, following the occurrence of a Guaranteed Event (as defined below);

(E) WHEREAS at the request and with the agreement of Kenya, the Association and the IDA PRG LC Bank have entered into an agreement (the "IDA Guarantee Agreement") on or about the date hereof, pursuant to which the Association agrees to guarantee (the "IDA Guarantee") to the IDA PRG LC Bank, the repayment of the principal amount of loans in aggregate up to forty-five million United States Dollars (US$45,000,000) plus accrued interest (each, an "IDA PRG Loan" and the aggregate amount due from IDA at any time in respect of such IDA PRG Loan, the "IDA PRG Loan"
Amount") made by the IDA PRG LC Bank as a result of a proper drawing under the IDA PRG LC by the LC Beneficiary in accordance with the IDA PRG LC, and in the event that KPLC and/or GOK, pursuant to a Reimbursement and Credit Agreement dated on or about the date hereof between KPLC, GOK and the IDA PRG LC Bank (the "Reimbursement and Credit Agreement"), defaults in the payment of the IDA PRG Loan Amount within the repayment period required in the Reimbursement and Credit Agreement;

(F) WHEREAS, in consideration of the Association entering into the IDA Guarantee Agreement guaranteeing payment of principal and interest of any IDA PRG Loan, Kenya has undertaken the obligations to the Association set forth in this Indemnity Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I
Incorporation of General Conditions and Modifications

Section 1.01. (a) The following provisions of the "General Conditions for Credits and Grants" of the Association, dated July 31, 2010 (hereinafter the "General Conditions"), with the modifications set forth in paragraph (b) of this Section 1.01 or as otherwise modified by this Indemnity Agreement, constitute an integral part of this Indemnity Agreement:

(i) Article I (Introductory Provisions);

(ii) Section 3.05 (Financing Terms, Partial Payment), Section 3.06 (Financing Terms, Place of Payment), Section 3.07 (Financing Terms, Currency of Payment), Section 3.09 (Financing Terms, Valuation of Currencies) and Section 3.10 (Financing Terms, Manner of Payment);

(iii) Section 4.10 (Project Execution, Cooperation and Consultation), and Section 4.11 (Project Execution, Visits);

(iv) Article V (Financial and Economic Data);

(v) Article VII (Enforceability; Arbitration) as modified below;

(vi) Section 8.02 (Legal Opinions or Certificates) as modified below; and

(vii) Article IX (Miscellaneous Provisions) as modified below.
(b) The General Conditions, unless the context otherwise requires, shall be modified as follows:

(i) the term “Recipient,” wherever used in the General Conditions, means Kenya;

(ii) the term “Effective Date,” wherever used in the General Conditions, means the date specified in Article V of this Indemnity Agreement;

(iii) the term “Financing,” or “Financing Payment” wherever used in the General Conditions, means the amounts payable by Kenya under this Indemnity Agreement;

(iv) the term “Financing Agreement,” wherever used in the General Conditions, means this Indemnity Agreement;

(v) the term “Project,” wherever used in the General Conditions, has the meaning as defined in the Preamble to this Indemnity Agreement;

(vi) the term “Project Agreement” means the IDA Project Agreement, as the same may be amended from time to time in accordance with its terms;

(vii) in Section 7.02 (Enforceability; Arbitration; Failure to Exercise Rights) of the General Conditions, the phrase “, the other IDA Agreements, Transaction Documents or any other related document” is added immediately after the phrase “under any Legal Agreement;”

(viii) Section 8.02 (Legal Opinions or Certificates) of the General Conditions is modified to read, in its entirety, as follows: “Kenya shall furnish to the Association an opinion or opinions satisfactory to the Association given by the Attorney General of Kenya or, if the Association so requests, a certificate satisfactory to the Association of a competent official of Kenya showing the following matters: (A) that the Indemnity Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, Kenya and is legally binding upon Kenya in accordance with its terms; (B) that the GOK Support Letter, the PRG Support Agreement and the Reimbursement and Credit Agreement have been duly authorized by, and executed and delivered on behalf of, GOK and is legally binding upon GOK in accordance with its terms; and (C) any other matter reasonably requested by the
Association in connection with the Indemnity Agreement for the purpose of this Section (each an “Additional Legal Matter”); and

(ix) Section 9.01 (Miscellaneous Provisions; Notices and Requests) is modified by deleting at the beginning of the second sentence the words “Except as otherwise provided in Section 8.03(a).”

Section 1.02. Unless the context otherwise requires,

(a) the several terms defined in the General Conditions, as any of such terms may be modified pursuant to Section 1.01(b) above, and in the Preamble to this Indemnity Agreement, shall have the respective meanings therein set forth when used in this Indemnity Agreement;

(b) the following terms shall have their respective meanings set forth in the PPA: “Authorisation,” and “Site”;

(c) any reference to an entity includes any of its successors-in-title and assigns;

(d) any reference to “IDA Guarantee Agreement”, “IDA PRG LC” and “Reimbursement and Credit Agreement” includes any of its replacement agreement or instrument;

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

(i) “Applicable World Bank Safeguard Policies” means each of the environmental and social safeguards operational policies (OP) and bank procedures (BP), as applicable to the Project, namely the policies and procedures on Environmental Assessment (OP/BP 4.01, dated January 1999), valid and in force as at the date of this Agreement.

(ii) “Bank” means the International Bank for Reconstruction and Development;

(iii) “Demand” means a demand on the Association for payment under the IDA Guarantee Agreement, made by means of a Demand Notice;

(iv) “Demand Notice” means a demand notice presented to the Association by the IDA PRG LC Bank in accordance with Article 5 of the IDA Guarantee Agreement;
(v) "Environmental and Social Impact Assessment" means the environmental and social impact assessment, dated November 2011, prepared by the Company for the Project in respect of the Company’s activities at the Site in accordance with the Applicable World Bank Safeguard Policies and as approved by relevant governmental authorities;

(vi) "Environmental and Social Management Plans" means the environmental and social management and monitoring plans and action plans, duly prepared by the Company, dated November 2011, which set out the actions, measures, monitoring arrangements and other activities to be undertaken by Kenya or the Company to mitigate adverse environmental and social impacts of the implementation of the Project, as initially presented in the Environmental and Social Impact Assessment and subsequently approved by IDA and the relevant governmental authorities of Kenya (or as such plan may be amended from time to time with prior approval of IDA);

(vii) "GOK Guaranteed Event" has the meaning given to it in the IDA Guarantee Agreement;

(viii) "Guaranteed Event" means any of the KPLC Guaranteed Event and the GOK Guaranteed Event;

(ix) "IDA Agreements" means this Indemnity Agreement, the IDA Guarantee Agreement, the IDA Project Agreement, as they may be amended from time to time;

(x) "IDA PRG LC Bank" means JPMorgan Chase Bank N.A., London Branch, and includes any successor or replacement properly appointed from time to time in accordance with the Reimbursement and Credit Agreement and the IDA Guarantee Agreement;

(xi) "IDA Project Agreement" means the project agreement between the Association and the Company dated on or about the date hereof, as it may be amended from time to time;

(xii) "KPLC Guaranteed Event" has the meaning given to it in the IDA Guarantee Agreement;

(xiii) "Public Sector Entity" means: (a) GOK, the Parliament of Kenya, any governmental department or ministry, agency, body (including any state-owned company or other state-owned entity),
instrumentality or public authority, whether national, state, regional or local (or any subdivision thereof), or any other entity subject to the overall control or direction as to matter of policy of GOK or which is otherwise controlled by GOK; or (b) any court with jurisdiction over the Company or the Project or any part thereof; or (c) any person 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;

(xiv) "Relevant IDA PRG Project Documents" means the PPA, the GOK Support Letter, the PRG Support Agreement, the Reimbursement and Credit Agreement, and the IDA PRG LC;

(xv) "Sanctionable Practices" means any Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices or Obstructive Practices, as those terms are defined and interpreted in accordance with the "Anti-Corruption Guidelines for Guarantee and Carbon Finance Transactions" attached to this Agreement as Annex 1;

(xvi) "Transaction Documents" means the Relevant IDA PRG Project Documents and the IDA Agreements; and

(xvii) "United States Dollars" or "US$" or "US Dollars" means the lawful currency of the United States of America.

ARTICLE II
Indemnity by Kenya 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, Kenya 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 IDA Guarantee Agreement in US Dollars, together with interest thereon at the rate per annum determined by the Association and notified to Kenya (which rate shall not exceed the Association’s highest prevailing lending rate for its credits in effect at the time payment is made by the Association) from the date such payment is made by the Association until such amount is reimbursed 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 directly or indirectly in relation to or arising out of
or in connection with the IDA Guarantee Agreement (except as otherwise provided in Section 7.03 (i) (Arbitration) of the General Conditions);

(c) that: (i) the Association is irrevocably authorized to comply with any Demand Notice(s) 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; and that the Association shall promptly notify Kenya 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 Agreement or Kenya’s obligation to reimburse or indemnify the Association pursuant to this Indemnity Agreement; and (ii) it shall not be incumbent on the Association to inquire whether or not any statements in such Demand Notice are in fact correct or whether payments are in fact due or whether or not any dispute exists between any of GOK, KPLC, the IDA PRG LC Bank, the Company, or the LC Beneficiary if different from the Company; and

(d) that any such Demand Notice served on the Association pursuant to the IDA Guarantee Agreement shall, as between Kenya and the Association, be conclusive evidence that the demand is properly made and payment is due. Following the notification to Kenya of the receipt by the Association of any Demand Notice, Kenya may investigate the validity of the statements in such Demand Notice and take such actions as Kenya may see fit against the Company or the LC Beneficiary if different from the Company, or the IDA PRG LC Bank, in respect thereof, all without prejudice to the Association’s obligations under the IDA Guarantee Agreement to make a payment in respect of any such Demand Notice and to Kenya’s obligations under this Indemnity Agreement in relation to its indemnity and payment obligations to the Association. The obligations of Kenya hereunder shall apply notwithstanding that Kenya, KPLC or any Public Sector Entity disputes the validity of any such Demand Notice or the accuracy or correctness of any documentation, fact or figures relied upon or stated therein.

(e) in the event that the Association receives funds from Kenya pursuant to Section 2.01(a) and, in respect of the same amounts, the Association receives a refund of funds from the IDA PRG LC Bank pursuant to Clause 5.5(b) of the IDA Guarantee Agreement (the “Double Payment”), then the Association shall promptly refund to Kenya the amount of the Double Payment.

Section 2.02. (a) The obligations of Kenya under this Indemnity Agreement are irrevocable, absolute and unconditional irrespective of the validity, legality or enforceability of KPLC’s obligations under the PPA, the PRG Support Agreement or the Reimbursement and Credit Agreement, or GOK’s obligations under the GOK Support Letter, the PRG Support Agreement or the Reimbursement and Credit Agreement, or Kenya’s or any Public Sector Entity’s obligations under the Transaction Documents or any other related agreements, and shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or action against the Company, the LC Beneficiary if different from the
Company, the IDA PRG LC Bank or any other person, or any prior notice to, or demand upon, Kenya with regard to any failure by the GOK or KPLC 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 LC Beneficiary, the IDA PRG LC Bank or any other person; (ii) any variation of the IDA Guarantee Agreement, any IDA PRG LC, the Reimbursement and Credit Agreement or any other Transaction Document or any other related agreement; (iii) any assertion of, or failure to assert, or delay in asserting, by any party to a Transaction Document, any right, power or remedy against Kenya, KPLC, the Company, the LC Beneficiary, or any other person, or in respect of any security created or purported to be created for any IDA PRG 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 Kenya.

(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 or any other 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, any Transaction Document or any other related agreement (except one which would materially increase the obligations of Kenya under this Indemnity Agreement unless so agreed by Kenya); and (ii) offer or give or agree to give any time or other indulgence to any person or entity from whom it may seek reimbursement (at law or otherwise) in respect of sums paid out or liabilities incurred by the Association under the IDA Guarantee Agreement.

(c) Any rights conferred on the Association by this Indemnity Agreement shall be in addition to, and not in substitution for or derogation of, any other right that the Association may have at any time to seek from Kenya, KPLC or any other person or entity, reimbursement of or indemnification against payments made or liabilities incurred by the Association 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 Indemnity Agreement or exercising any of the rights, powers and remedies conferred upon the Association by the IDA Guarantee Agreement, any IDA PRG LC, the Reimbursement and Credit Agreement or any other Transaction Document, or any other related agreement or by law: (i) to take action or obtain judgment or award in any court or tribunal of competent jurisdiction against any other person (including persons from whom it may seek reimbursement in respect of sums paid out or liabilities incurred pursuant to the IDA Guarantee Agreement); or (ii) to enforce or seek to enforce any other rights it may have against Kenya or its rights against, or security given by, any other person to the Association.
Section 2.03. Any payment required to be made by Kenya pursuant to the terms of this Indemnity 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 Indemnity Agreement.

ARTICLE III
Project-Related Covenants

Section 3.01. Without limitation or restriction upon any of its other obligations under this Indemnity Agreement, Kenya hereby unconditionally undertakes to the Association to punctually perform all of its obligations under the GOK Support Letter, the PRG Support Agreement, the Reimbursement and Credit Agreement and other Relevant IDA PRG Project Documents, and to cause KPLC and any other Public Sector Entity to punctually perform all of its obligations under the relevant Transaction Documents.

Section 3.02. Kenya shall not take, or permit KPLC or any other Public Sector Entity to take, any action which would prevent or interfere with the performance by Kenya, KPLC or any such Public Sector Entity of any of its obligations under the Transaction Documents or any other related agreement in connection with the Project and in respect of which IDA has issued the IDA Guarantee Agreement.

Section 3.03. Kenya shall notify and cause KPLC and each such Public Sector Entity to notify the Association prior to agreeing to any amendment, waiver, termination or other change to any Transaction Document, and shall obtain the written consent of the Association prior to agreeing to any such amendment, waiver, termination or other change to such an agreement or undertaking which would or could in the opinion of the Association materially affect the rights or obligations of the Association under the IDA Guarantee Agreement or any other Transaction Document (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. Kenya shall, and shall cause KPLC and each other Public Sector Entity performing obligations under or related to the Transaction Documents or related agreements or undertakings, to promptly: (i) notify and provide to the Association copies of any notices, claims, demands, reimbursements or recoveries under the PRG Support Agreement or the Reimbursement and Credit Agreement that could result or relate to actions to enforce the payment of any IDA PRG Loan Amount, or any other notices issued or received by Kenya, KPLC or any other Public Sector Entity under the Transaction Documents; and (ii) notify the Association of any event or circumstance, which would or could adversely affect ability of Kenya, KPLC or any Public Sector Entity to perform its obligations or exercise its rights under the Transaction Documents.

Section 3.05. Kenya shall take all lawful actions within its power to remedy and cure any of the events referred to in Sections 3.02, 3.03 and 3.04 within control or
responsibility of Kenya, KPLC or any other Public Sector Entity, that would or could result
in the breach, default, suspension or termination of any of the relevant Transaction
Documents.

Section 3.06. Kenya shall not create or permit to exist or occur, and shall ensure
that neither KPLC nor any other Public Sector Entity shall create or permit to exist or
occur, any circumstance or change in the laws or regulations in effect in Kenya after the
date of this Indemnity Agreement that would render obligations under any relevant
Transaction Document illegal, invalid, unenforceable, ineffective or void in whole or part.
If such circumstance or change exists or occurs, Kenya shall take all lawful actions within
its power to remedy and cure, or to procure that KPLC or the appropriate Public Sector
Entity remedies and cures, the adverse effect on the Project of such circumstance or change
in the laws or regulations.

Section 3.07. Kenya shall cause KPLC to:

(a) keep records and related information pertaining to electric power capacity
and output made available to KPLC under the PPA, invoices received from the Company
under the PPA, payments made by KPLC to the Company under the PPA, defaults on
payments by KPLC under the PPA, any other notices issued or received by KPLC under
the PPA, any demands or notices received or issued by KPLC under the PRG Support
Agreement, payments made by KPLC to the IDA PRG LC Bank under the Reimbursement
and Credit Agreement, and any other demands or notices received or issued by KPLC
under the Reimbursement and Credit Agreement;

(b) furnish to the Association: (i) as soon as available, but in any case not later
than ninety (90) days after the end of each financial year, certified copies of its audited
financial statements for such year, prepared by independent auditors, and (ii) promptly
upon written request by the Association all financial, technical, environmental, social and
other information as the Association may from time to time reasonably request, including,
but not limited to, any progress or status report of the Project, KPLC's records and related
information pertaining to electric power capacity and output made available to KPLC under
the PPA, invoices received from the Company under the PPA, payments made by KPLC to
the Company under the PPA, defaults on payments by KPLC under the PPA; and

(c) upon reasonable notice and at no charge for access, afford the Association
and its representatives during normal business hours to the managers and senior staff of
KPLC, such the other staff as are designed by them as having knowledge of matters with
respect to which the Association seeks information.

Section 3.08. Kenya shall:

(a) take all actions that shall be necessary on its part or procure actions on the
part of KPLC or any other Public Sector Entity to enable the Company: (i) to obtain any
Authorisation for the Project required under the PPA; and (ii) to perform all of its obligations under the IDA Project Agreement and the relevant Transaction Documents;

(b) carry out promptly, or cause to be carried out promptly, or as may otherwise be agreed between Kenya and the Association, any action required to be performed by it, KPLC or any other Public Sector Entity (as the case may be), to enable the Company to comply with the requirements of the Environmental and Social Management Plans and the Applicable World Bank Safeguards;

(c) to promptly notify the Association of any proposed dissolution, change in control or change in the ownership structure of KPLC (except, for the avoidance of doubt, that Kenya shall not be required to notify the Association in respect of change in the ownership of a minority of the voting capital in KPLC); and

(d) not take, nor cause, nor permit KPLC or any other Public Sector Entity to take, any action that would prevent or interfere with the performance by the Company of any of its obligations in connection with the Project or under the Transaction Documents or any other agreement related to the Project.

Section 3.09. Kenya: (i) affirms to the Association that no Sanctionable Practices have been engaged in by any official or representative of Kenya, KPLC or any other Public Sector Entity; and (ii) covenants that neither it nor any Public Sector Entity shall engage in Sanctionable Practices, during and with respect to the performance of any contract or activity related to the Project.

Section 3.10. Without prejudice to Sections 4.10 (Project Execution; Cooperation and Consultation) and 5.01 (Financial and Economic Data) of the General Conditions, Kenya shall, upon request, promptly provide the Association all information necessary, in the reasonable opinion of the Association, for the Association’s review of Kenya’s performance of its covenants pursuant to Sections 3.07, 3.08 and 3.09 above and for a review of any of relevant mechanisms and indicators.

ARTICLE IV
Remedies of the Association

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

ARTICLE V
Effective Date

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

ARTICLE VI
Miscellaneous Provisions

Section 6.01. The Minister for Finance of Kenya is hereby designated as
representative of Kenya for the purposes of Section 9.02 (Miscellaneous Provisions; Action
on Behalf of the Recipient and the Project Implementing Entity) of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section
9.01 (Miscellaneous Provisions; Notices and Requests) of the General Conditions:

For Kenya:

Address: Ministry of Finance
Treasury Building
P.O Box 30007-00100
Nairobi
Republic of Kenya

Attention: The Honourable Minister

Facsimile: 254 20 330426
Cable: FINANCEnairobi
Telex: 22921 minfin-ke

For the Association:

Address: International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America
Attention: Vice President, Africa Region
Facsimile: +1 (202) 477 6391

With a copy to: Manager (Finance and Guarantees Unit)
Finance Economics and Urban Department (FEU)
Facsimile: +1 (202) 522 0761
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Indemnity Agreement to be signed in their respective names in Nairobi, Republic of Kenya as of the day and year first above written.

THE REPUBLIC OF KENYA

By: [Signature]
Authorized Representative

Name: Joseph Kimya
Title: Permanent Secretary, Ministry of Finance

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: [Signature]
Authorized Representative

Name: Johannes Zott
Title: Country Director, Kenya
ANNEX 1

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

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practices,” “Fraudulent Practices,” “Coercive Practices,” “Collusive Practices” and “Obstructive Practices” in the context of World Bank Guarantee (Partial Risk Guarantee and Partial Credit 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.