

DATED THE ____ DAY OF _____ 2022

PURCHASE UNDERTAKING DEED

BY

MINISTER OF WORKS AND HOUSING

ACTING ON BEHALF OF THE

FEDERAL GOVERNMENT OF NIGERIA

AND

THE DEBT MANAGEMENT OFFICE

IN FAVOUR OF

FGN ROADS SUKUK COMPANY 1 PLC

PREPARED BY

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THIS PURCHASE UNDERTAKING DEED dated [], 2022.

IS MADE BY

THE FEDERAL GOVERNMENT OF NIGERIA, acting through the Honourable Minister of the Federal Ministry of Works and Housing whose head office is situate at Mabushi, District, Abuja, Federal Capital Territory (hereinafter called the “**Promisor**” which expression shall where the context so admits include its successors-in-title, agents and assigns of the first part); and

THE DEBT MANAGEMENT OFFICE, an agency of the Federal Republic of Nigeria, established under the Debt Management Office (Establishment) Act, 2003, having its registered office at NDIC Building (First Floor), Plot 447/448, Constitution Avenue, Central Business District, Abuja (hereinafter called the “**Sponsor**” which expression shall where the context so admits include its successors-in-title, agents and assigns) of the second part;

ON BEHALF OF FGN ROADS SUKUK COMPANY 1 PLC, a company duly incorporated under the laws of the Federal Republic of Nigeria with RC 1424371 and having its registered office at NDIC Building (First Floor), Plot 447/448, Constitution Avenue, Central Business District, Garki, Abuja (hereinafter called the “**Promisee**” which expression shall where the context so admits include its successors-in-title, agents and assigns) of the final part.

BACKGROUND

- (A) By a Board Resolution dated _____ 2022, the Promisor authorized the raise of capital of up to N[**] (_____ Billion Naira) through the issuance of Sukuk in compliance with Shariah principles, for the construction and/or rehabilitation of roads in Nigeria.
- (B) By virtue of a Letter of Allocation dated [] from the Federal Government of Nigeria (**FGN**), the Promisee acquired lands, comprising roads designated as Federal Highways by the said Letter of Allocation.
- (C) By virtue of a Forward Ijarah Agreement dated [] between the Promisee (as Lessor) and the Promisor (as Lessee) (**Forward Ijarah (Lease) Agreement**), the Promisee leased the lands, (as defined in the Forward Ijarah (Lease) Agreement) (**Trust Assets**) to Promisor for the Lease Period subject to the terms and conditions of the Forward Ijarah (Lease) Agreement.
- (D) The Promisor wishes to bind itself to purchase the Trust Assets from the Promisee at the end of the Lease Period subject to the conditions of this Purchase Undertaking.

- (E) Further to paragraph 0 above, the Promisor wishes to execute this Purchase Undertaking in order to assure the Promisee of the obligations assumed herein.
- (F) The Parties in entering into this Purchase Undertaking now wish to be bound by the terms and conditions here below stated.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Purchase Undertaking, unless the context otherwise requires and save as specifically defined in this Purchase Undertaking, words and expressions defined in the Forward Ijarah (Lease) Agreement shall have the same meanings when used herein. In addition, the following definitions apply in this Purchase Undertaking:

Forward Ijarah (Lease) Agreement: the agreement between the Promisee and the Promisor on or about the date of this Purchase Undertaking in relation to the forward lease of the Trust Assets and includes any amendments, variations and/or supplemental made or entered into from time to time.

Trust Assets: the assets sought to be leased by the Lessee from the Lessor pursuant to the Forward Ijarah Agreement.

Ownership Expenses: has the same meaning ascribed to it under the Service Agency Agreement.

Purchase Price: the price at which the Promisor will purchase the Trust Assets, calculated as equivalent of the principal investment amount plus Ownership Expenses.

Parties: the Promisor, Promisee and the Sponsor and each a “**Party**”

Promisor Group: the Promisor and the Sponsor.

Purchase Undertaking: this Purchase Undertaking Deed.

Sale Notice: Notice to be delivered by the Promisee to the Promisor, exercising the Promisee’s option to sell the Trust Assets substantially in the form attached as Schedule 1 (*Form of Sale Notice*).

1.2 Interpretation

In this Purchase Undertaking, unless the context otherwise requires and save as specifically defined in this Purchase Undertaking, the rules of interpretation contained in the Forward Ijarah (Lease) Agreement shall apply in this Purchase Undertaking, with such modifications as the context may require.

2. UNDERTAKING TO PURCHASE TRUST ASSETS

The Promisor hereby undertakes, in favour of the Promisee, to purchase all of the Promisee's title and ownership rights in the Trust Assets at the Purchase Price:

- 2.1 on the Maturity Date; or
- 2.2 Shortly after the expiration of a Grace Period under the Forward Ijarah (Lease) Agreement; or
- 2.3 Upon early termination of the Lease under the Forward Ijarah (Lease) Agreement.

3. COMMENCEMENT AND DURATION

Subject to clause 2, this Purchase Undertaking shall come into force on the date it is signed by the last person thereto and shall terminate on the Purchase Date.

4. EXERCISE OF PURCHASE UNDERTAKING

- 4.1 Subject to the Forward Ijarah (Lease) Agreement and this Purchase Undertaking, the Promisor hereby undertakes to purchase the Trust Assets upon receipt of a Sale Notice from the Promisee in substantially the form appended as Schedule 1 to this Purchase Undertaking.
- 4.2 The Promisor undertakes to purchase the Trust Assets from the Promisee on an "as is, where is" basis, and pay the Purchase Price.
- 4.3 The Sponsor undertakes to meet the Promisor's payment obligations under this Purchase Undertaking and make due payment on behalf of the Promisor.
- 4.4 The Purchase Undertaking shall be exercised by the Promisor entering into a Sale and Purchase Agreement (substantially in the form appended as Schedule 2 to this Purchase Undertaking) with the Promisee.
- 4.5 The Purchase Date is the date which is stated in the Sale Notice as being the date the Purchase Price is due to be paid, which shall be not less than five (5) Business Days in the case of a Sale Notice issued

pursuant to clause 0 or 0, and the Maturity Date in case of a Sale Notice issued in accordance with clause 2.1.

- 4.6 If the Purchase Date is a day which is not a Business Day, the Purchase Price shall be paid on the next Business Day in the same calendar month (if there is one), or the immediately preceding Business Day (if there is not).

5. TRANSACTION COST

The Promisor Group shall bear all the costs and expenses of the transaction (inclusive of Legal costs and Taxes) and all other disbursements incurred in connection with this Purchase Undertaking or enforcement of the Promisor's obligations thereunder.

6. TAX GROSS-UP

- 6.1 The Promisor undertakes that all payments to be made by it upon exercise of this Purchase Undertaking shall be made without withholding or deduction from, or on account of, any Tax unless required by law.

- 6.2 If such deduction is required by law, the Promisor undertakes that it shall, when making the payment to which the withholding or deduction relates, pay to the Promisee such additional amounts ensuring that the Promisee receives the same total amount that it would have received if no such withholding or deduction had been required.

7. REPRESENTATIONS AND WARRANTIES OF THE PROMISOR

- 7.1 The Promisor acknowledges that it will purchase the Trust Assets from the Promisee in whatever condition it presently exists in, with all faults, whether or not immediately apparent.

- 7.2 The Promisor hereby represents and warrants that:
- (a) it has obtained the necessary approvals to give this Purchase Undertaking and will not at any time question the structure of this Purchase Undertaking in a law court, or its compliance with the Sharia before any forum or judicial body.
 - (b) it shall act with utmost good faith, confidentiality and diligence and shall use all its best endeavour for the due performance of its obligations under this Purchase Undertaking.

- 7.3 The representations and warranties shall remain in force and effect till the Purchase Date or the date of payment by the Promisor of the total

amounts due under this Purchase Undertaking, whichever is earlier.

8. SEVERANCE

If any provision (or part of a provision) of this Purchase Undertaking is or becomes invalid, illegal or unenforceable, that provision or part-provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable, and the validity and enforceability of the other provisions of this Purchase Undertaking shall not be affected. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Purchase Undertaking.

9. TRANSPARENCY AND ANTI-CORRUPTION

9.1 Each of the Promisor and the Sponsor undertakes that it will, at all times, comply with and take reasonable measures to ensure that its subcontractors, agents or other third parties, subject to its control or determining influence, comply with all Anti-Bribery Laws.

9.2 No monies paid to the Promisor or Sponsor under this Purchase Undertaking will be used, directly or indirectly, for any payments to any person including any governmental official or employee, political party, official of a political party, candidate for political office, official of any private organisation or anyone else acting in an official or other capacity in violation of any Anti-Bribery Law.

10. WAIVER OF INTEREST

10.1 Each party irrevocably agrees that no interest will be payable or receivable under or in connection with this Purchase Undertaking and in the event that it is determined that any interest is payable or receivable in connection with this Purchase Undertaking by a party, whether as a result of any judicial award or by operation of any applicable law or otherwise, such party agrees to waive any rights it may have to claim or receive such interest and agrees that if any such interest is actually received by it, it shall promptly donate the same to a registered or otherwise officially recognized charity organization.

10.2 For the avoidance of doubt, nothing in this Clause 10 (*Waiver of Interest*) shall be construed as a waiver of rights in respect of the Purchase Price or any other amounts payable by or to the Promisee pursuant to this Purchase Undertaking, howsoever such amounts may be described or re-characterized by any court or arbitral award.

11. FORCE MAJEURE

Any delays in or failure to perform any obligation hereunder caused by occurrences or circumstances beyond the affected Party's reasonable control, including but not limited to, natural disasters, fire, strikes, pandemic, epidemic or other labour disputes which do not affect solely the delayed party, riots, civil commotion, war (declared or not) sabotage, delay by governmental authorities, government regulation or any other causes, similar to those herein specified which cannot be reasonably controlled by the affected Party, shall constitute a Force Majeure Event.

The Party affected by such Force Majeure Event shall as soon as practicable inform the other Parties of the occurrence of such events and shall furnish proof or details of the occurrence and reasons for its non-performance of the whole or part of this agreement. The Parties shall consult each other to decide whether to terminate this agreement or to discharge part of the obligations of the affected party or amend its obligations on a best effort and on an arm's length basis.

12. AMENDMENTS

No amendment of this Purchase Undertaking shall be effective unless it is in writing and signed by, or on behalf of, the Promisor Group (or their respective authorised representatives).

13. FURTHER ASSURANCE

The Promisor Group shall promptly execute and deliver such documents and perform such acts as may be reasonably required from time to time to give full effect to this Purchase Undertaking.

14. ENTIRE AGREEMENT

This Purchase Undertaking constitutes the entire undertaking by the Promisor Group in relation to the purchase of the Trust Assets and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to this subject matter.

15. COUNTERPARTS

This Purchase Undertaking may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Purchase Undertaking, but all the counterparts shall together constitute the same deed. No counterpart shall be effective until each Promisor Group has

executed at least one counterpart.

16. NOTICES

16.1 Any notice, request, requirement or other document or matter to be given, issued or made under this Agreement shall be in writing and shall be signed by the person giving, issuing or making it or that person's authorised agent or representative and shall be served in accordance with Clause 16.3 below.

16.2 Any notice or other document referred to in Clause 16.1 above, shall be served by personally delivering the same by hand to the registered office or to the address of the person to be served as specified in this Agreement or previously notified for this purpose, or by sending the same by post or a reputable courier service to such address or by dispatching the same by electronic mail transmission or other means of communication in permanent written form.

16.3 The address (and the department or officer, if any, for whose attention the communication or correspondence is to be made) of each Party for any communication, correspondence or document to be made or delivered under or in connection with this Purchase Undertaking is, that identified with its name below or any substitute address or department or officer as may be notified by one Party to the other, by not less than five (5) Business Days' notice.

- (a) To the Promisor at:
The Honourable Minister
The Federal Minister of Works and Housing
Mabushi District, Federal Capital Territory,
Abuja
- (b) To the Sponsor at:
The Director-General
The Debt Management Office
NDIC Building (First Floor), Plot 447/448, Constitution Avenue,
Central Business District, Abuja
Email: poniha@dmo.gov.ng
- (c) To the Promisee at:
The Managing Director
FGN Roads Sukuk Company 1 PLC
NDIC Building (First Floor)
Plot 447/448 Constitution Avenue
Central Business District, Garki, Abuja
Nigeria.

Attention: Mr. Monday Usiade

Telephone: +234 708 885 7021

E-mail: musiade@dmo.gov.ng

with a copy to the Trustees at:

- (1) The Managing Director
Apel Capital and Trust Limited
No. 8 Alhaji Bashorun Street,
Off Norman Williams Crescent
South-West Ikoyi,
Lagos

Attention: Mrs. Omolola Iyinolakan

Telephone: +234 803 441 6890

E-mail: liyinolakan@apelasset.com

- (2) The Managing Director
FBNQuest Trustees Limited
10, Keffi Street
South West Ikoyi
Lagos
Nigeria

Attention: Mr. Adekunle Awojobi

Telephone: +234 802 312 2542

E-mail: adekunle.awojobi@fbnquest.com

16,4 If a notice is given in accordance with clause 16.1, it shall be deemed to have been received at the time the notice is delivered at the proper address for service and, if a particular department or officer is specified as part of its addressee the details provided under Clause 16.3 will suffice, if addressed to that department or officer.

16,5 This clause does not apply to the service of any proceedings or other documents in any legal action.

17. GOVERNING LAW

17.1 This Purchase Undertaking and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria and relevant Islamic commercial jurisprudence.

17.2 The Parties agree that the provisions of this agreement shall also be governed by the provisions of Islamic commercial jurisprudence and are satisfied that this Agreement complies with applicable Islamic law of commercial transactions.

17.3 Nothing in this Purchase Undertaking shall be construed as a waiver of the Promisee or the Sponsors sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Promisee or Sponsor.

18. SHARIAH COMPLIANCE

At all times, the Parties are satisfied that this Agreement and the Sukuk structure comply with applicable Islamic law of commercial transactions and each Party agrees that it will not seek to challenge the enforceability of this Agreement at any time for reasons of non-compliance with Islamic law principles or non-applicability of Islamic law.

19. ARBITRATION

19.1 The Promisor Group hereby undertake that in the event of any allegation of breach or question of interpretation or dispute or controversy relating to this Purchase Undertaking, they shall meet and negotiate in good faith with the Promisee to settle the matter amicably. If the Promisor Group is unable to settle the matter amicably with the Promisee within ten (10) Business Days of their meeting, the Promisee may refer the matter to arbitration (by arbitrators knowledgeable in Islamic commercial jurisprudence), in accordance with the Arbitration and Conciliation Act, Cap A18 LFN, 2004, which is deemed to be incorporated by reference into this clause.

19.2 The Promisor Group hereby undertake:

- (a) to submit to arbitration at the instance of the Promisee;
- (b) to appoint an arbitrator within five (5) Business Days of receiving notice of the appointment of an arbitrator by the Promisee, failing which the President, Chartered Institute of Arbitrators, Nigeria may, at the request of the Promisee, appoint an arbitrator on its behalf;
- (c) that the arbitral award shall be binding on them, including the cost of the arbitration as determined by the arbitrator;
- (d) to bear their own legal fees of the arbitration; and

- (e) to donate any penalty interest awarded in their favour, arising from any judgment or award to charity and not keep any part of such amount for their own benefit.

19.3 The Promisor Group acknowledge that where the arbitration is not concluded within thirty (30) Business Days following exchange of pleadings, the Promisee may institute claims at a competent court of law.

20. JURISDICTION

The Promisor Group irrevocably acknowledge that, save as otherwise provided in clause 18 above, the courts of Nigeria shall have jurisdiction over any dispute or claim (including non-contractual disputes or claims) that arises out of or in connection with this Purchase Undertaking or its subject matter or formation.

This Purchase Undertaking Deed has been executed as a deed and delivered as a deed by the Promisor Group on the date stated at the beginning of it.

SIGNED SEALED AND DELIVERED BY
THE HONOURABLE MINISTER OF WORKS AND HOUSING
for and on behalf of
THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

.....
BABATUNDE RAJI FASHOLA, SAN

In the Presence of:

Name

Address

Designation

Signature

SIGNED SEALED AND DELIVERED By
THE AUTHORISED REPRESENTATIVE DIRECTOR – GENERAL
DEBT MANAGEMENT OFFICE for and on behalf of
THE FEDERAL GOVERNMENT OF NIGERIA

.....
PATIENCE ONIHA

In the Presence of:

Name

Address

Designation

Signature

Schedule 1 FORM OF SALE NOTICE

(To be printed on the Promisee's Letterhead)

[Date]

[Address of the Promisor]

For the attention of [NAME/POSITION]

Dear Sir,

Purchase Undertaking Deed ("Purchase Undertaking") dated [] made by The Federal Government of Nigeria (Promisor) in favour of the FGN Roads Sukuk Company 1 PLC (Promisee) and the Debt Management Office (Sponsor)

NOTICE OF EXERCISE OF OPTION TO SELL TRUST ASSETS

FGN ROADS SUKUK COMPANY 1 PLC, in its capacity as "Promisee" under the Purchase Undertaking hereby gives notice of its intention to sell the Trust Assets under the Purchase Undertaking.

Purchase Price: [State Amount]

Purchase Date: [State Date]

Yours sincerely,

.....
FOR AND ON BEHALF OF:
FGN ROADS SUKUK COMPANY 1 PLC
[NAME]
[DESIGNATION]

CC:

- (1) The Director-General
Debt Management Office
NDIC Building (First Floor), Plot 447/448, Constitution Avenue,
Central Business District, Garki, Abuja
FCT
- (2) The Managing Director
Apel Capital and Trust Limited

No. 8 Alhaji Bashorun Street,
Off Norman Williams Crescent
South-West Ikoyi,
Lagos, Nigeria

- (3) The Managing Director
FBN Trustees Limited
16-18 Keffi Street
South West Ikoyi
Lagos, Nigeria

Schedule 2 FORM OF SALE AND PURCHASE AGREEMENT

THIS DEED OF ASSIGNMENT is made day of 2022

BETWEEN

1. **FGN ROADS SUKUK COMPANY 1 PLC**, a company duly incorporated under the laws of the Federal Republic of Nigeria with RC 1424371, and having its registered office at NDIC Building (First Floor), Plot 447/448, Constitution Avenue, Central Business District, Garki, Abuja (**Seller**); and
2. **THE FEDERAL GOVERNMENT OF NIGERIA**, acting through the Honourable Minister of Works and Housing with its headquarters at Mabushi District, Abuja, Federal Capital Territory, (**Purchaser**).

WHEREAS:

- A. By virtue of a Letter of Allocation dated [] from the Federal Government of Nigeria (**FGN**) to the Seller, the Seller became the owner of certain lands comprising roads designated as federal highways bequeathed by the said Letter of Allocation.
- B. By virtue of a Forward Ijarah Agreement dated [] between the Seller (as Lessor) and the Purchaser (as Lessee) (**Forward Ijarah (Lease) Agreement**), the Seller leased certain Roads (as defined in the Forward Ijarah (Lease) Agreement) (**Trust Assets**) to the Purchaser for the Lease Period subject to the terms and conditions of the Forward Ijarah (Lease) Agreement.
- C. By virtue of a Purchase Undertaking Deed dated [] the Purchaser undertook to purchase the Trust Assets from the Seller at the end of the Lease Period subject to the terms and conditions stated in the Purchase Undertaking.
- D. Further to paragraph 0 above, the Seller undertakes to sell the Trust Assets together with its entire rights and interest thereto and the Purchaser undertakes to buy the said Trust Assets on the terms and conditions of this Deed.

NOW THIS DEED is made between the Seller and the Purchaser and in consideration of the sum of [PURCHASE PRICE] having been paid by the Purchaser to the Seller, (the receipt of which sum, the Seller hereby acknowledges), witnesseth as follows:

1. The Seller as owner Hereby sells, all and singular, the Trust Assets together with all its rights and interest to the Trust Assets, to the Purchaser **ABSOLUTELY**.

2. The Seller warrants and represents that it has good, unencumbered title to the Trust Assets, and that other than executing this agreement, no further action is required of it in order to vest its interest in the Trust Assets in the Purchaser.
3. The Seller covenants at the Purchaser's request to sign and execute all other documents necessary or reasonably desirable effectively to vest the Trust Assets in the Purchaser and the Seller hereby irrevocably appoints the Purchaser as its legal attorney and in its name and on its behalf to execute any other document(s) or deed which may be required for doing the same.

IN WITNESS WHEREOF the parties hereto have set their hands and seal the day and year first above written.

THE COMMON SEAL OF THE within-named **SELLER**
FGN ROADS SUKUK COMPANY 1 PLC
 is hereunto affixed in the presence of

.....
DIRECTOR

.....
DIRECTOR/SECRETARY

SIGNED, SEALED AND DELIVERED by the duly authorized representative of the **FEDERAL GOVERNMENT OF NIGERIA:**

.....
NAME & DESIGNATION

In the presence of: -

Name:

Address:

Occupation:

Signature: