

**DATED**

**SALE UNDERTAKING DEED**

**BY**

**FGN ROADS SUKUK COMPANY 1 PLC**

**IN FAVOUR OF**

**FEDERAL GOVERNMENT OF NIGERIA**

**ACTING THROUGH THE**

**FEDERAL MINISTRY OF WORKS AND HOUSING**

**PREPARED BY**

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**THIS SALE UNDERTAKING DEED** dated ..... **2022**

**IS MADE BY**

**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 “**Promisor**” which expression shall where the context so admits include its successors-in-title, agents and assigns);

**IN FAVOUR OF**

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

**BACKGROUND**

- A. By a Board Resolution dated \_\_\_\_\_ **2022**, the Promisor authorized the 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.
- (A) By virtue of a Letter of Allocation dated [ ] from the Federal Government of Nigeria to the Promisor, the Promisor acquired 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 Promisor (as Lessor) and the Promisee (as Lessee) (**Forward Ijarah (Lease) Agreement**), the Promisor leased the Roads (as defined in the Forward Ijarah (Lease) Agreement) (**Trust Assets**) to the Lessor subject to the terms and conditions of the Forward Ijarah (Lease) Agreement.
- (C) The Promisor wishes to bind itself to sell the Trust Assets to the Promisee at the end of the Lease Period subject to the conditions of this Sale Undertaking.
- (D) The Promisor in entering into this Sale Undertaking and wishes to be bound by the terms and conditions here below stated.

**THIS DEED HEREBY WITNESSETH** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Sale Undertaking, unless the context otherwise requires and save as specifically defined in this Sale 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 Sale Undertaking:

**Forward Ijarah (Lease) Agreement:** the Ijarah agreement made between the Promisor and the Promisee on or about the date of this Sale 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.

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

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

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

**Sale Undertaking:** this Sale Undertaking Deed.

## 1.2 Interpretation

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

## 2. UNDERTAKING TO SELL THE TRUST ASSETS

Subject to the Promisee fulfilling its obligations under the Forward Ijarah (Lease) Agreement, the Promisor undertakes, in favour of the Promisee, to sell and assign all its title and ownership rights in the Trust Assets to the Promisee in whatever condition it exists in, with all faults, whether or not immediately apparent, free of all encumbrances created by the Promisor and exclusive of any warranties upon receipt of the Purchase Price.

## 3. COMMENCEMENT AND DURATION

Subject to clause 2, this Sale Undertaking shall come into force on the date of signature of the last person thereto and shall terminate on the Sale Date.

#### **4. EXERCISE OF SALE UNDERTAKING**

4.1 Subject to the Forward Ijarah (Lease) Agreement and this Sale Undertaking, the Promisor hereby undertakes to sell the Trust Assets upon receipt of a Purchase Notice from the Promisee in substantially the form appended as Schedule 1 to this Sale Undertaking upon the happening of any of the following events:

4.1.1 on the Maturity Date; or

4.1.2 following the expiration of a Grace Period under the Forward Ijarah (Lease) Agreement; or

4.1.3 early termination of the Lease under the Forward Ijarah (Lease) Agreement.

4.2 The Promisor undertakes to sell the Trust Assets to the Promisee on an "as is, where is" basis, on the receipt of the Purchase Price.

4.3 The Promisor's sale of the Trust Assets shall be effected by its execution of a Sale and Purchase Agreement in substantially the form attached as Schedule 1 to this Sale Undertaking with the Promisee.

4.4 The Sale Date is the date which is stated in the Purchase Notice as being the date the Purchase Price is due to be paid by the Promisee to the Promisor, which shall be not less than five (5) Business Days in the case of a Purchase Notice issued pursuant to clause 0 or 0, and the Maturity Date in case of a Purchase Notice issued in accordance with clause 4.1.

4.5 If the Sale 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 REPRESENTATIONS AND WARRANTIES OF THE PROMISOR**

5.1 The Promisor hereby represents and warrants that:

- a. it is duly incorporated, validly existing and in good standing under the laws of the Federal Republic of Nigeria and has the power to own its assets;
- b. it has obtained the necessary approvals to give this Sale Undertaking and to enable it to perform its obligations under this Sale Undertaking;
- c. it will not at any time question the structure of this Sale Undertaking in a law court or its compliance with Sha'riah law before any forum or judicial body.

- d. 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 Sale Undertaking.

5.2 The representations and warranties shall remain in force and effect till the Maturity Date or the earlier termination of the Lease Agreement.

## **6 SEVERANCE**

If any provision (or part of a provision) of this Sale 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 Sale 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 Sale Undertaking.

## **7 TRANSPARENCY AND ANTI-CORRUPTION**

7.1 The Promisor 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.

7.2 The Promisor undertakes that no part of the Purchase Price or other monies paid to the Promisor under this Sale 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.

## **8 WAIVER OF INTEREST**

8.1 Each party irrevocably agrees that no interest will be payable or receivable under or in connection with this Sale Undertaking and in the event that it is determined that any interest is payable or receivable in connection with this Sale 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.

8.2 For the avoidance of doubt, nothing in this Clause 8 (*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 Promisor pursuant to this Sale Undertaking,

howsoever such amounts may be described or re-characterized by any court or arbitral award.

## **9 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 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 of 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 extend its obligations on a best effort and on an arm's length basis.

## **10 AMENDMENTS**

No amendment of this Sale Undertaking shall be effective unless it is in writing and signed by, or on behalf of, the Promisor.

## **11 FURTHER ASSURANCE**

11.1 The Promisor shall promptly execute and deliver such documents and perform such acts as may be reasonably required from time to time for giving full effect to this Sale Undertaking.

11.2 The Promisor undertakes to the Promisee that any amount received as a penalty from the Promisee on account of the sale of the Trust Assets or the Purchase Price shall be donated to charity by the Promisor and the Promisor shall not keep any part of such amount for its own benefit.

## **12 NOTICES**

12.1 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 12.3 below,.

12.2 Any notice or other document referred to in Clause 12.1 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

**12.3** The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Sale 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.

**12.3.1** To the Promisor at:

The Directors  
FGN Roads Sukuk Company 1 PLC  
NDIC Building (First Floor)  
447/448 Constitution Avenue  
Central Business District, Abuja  
Nigeria.

**Attention:** Mr. Monday Usiade  
**Telephone:** + 234 8022236755  
**E-mail:** [musiade@dmo.gov.ng](mailto:musiade@dmo.gov.ng)

with a copy to the Trustees at:

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

**Attention: Mrs. Omolola Iyinolakan**  
Telephone: +234 803 441 6890  
E-mail: [liyinolakan@apelasset.com](mailto:liyinolakan@apelasset.com)

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

**Attention: Mr. Adekunle Awojobi**  
Telephone: + 234 1 2798300  
E-mail: [adekunle.awojobi@fbnquest.com](mailto:adekunle.awojobi@fbnquest.com)



12.3.2 To the Promisee at:  
The Honourable Minister,  
The Federal Minister of Works and Housing,  
Mabushi District, Federal Capital Territory,  
Abuja.

12.4 If a notice is given in accordance with clause 12.1, it shall be deemed to have been received at the time the notice is left at the proper address and, if a particular department or officer is specified as part of its address details provided under Clause 12.2, if addressed to that department or officer.

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

### **13 GOVERNING LAW**

13.1 This Sale 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.

13.2 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.

### **14 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.

### **15 ARBITRATION**

15.1 The Promisor hereby undertakes that in the event of any allegation of breach or question of interpretation or dispute or controversy relating to this Sale Undertaking, it shall meet and negotiate in good faith with the Promisee to settle the matter amicably. If the Promisor 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 the 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.

15.2 The Promisor hereby undertakes:

15.2.1 to submit to arbitration at the instance of the Promisee;

15.2.2 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;

15.2.3 that the arbitral award shall be binding on it, including the cost of the arbitration as determined by the arbitrator;

15.2.4 to bear its own legal fees of the arbitration; and

15.2.5 to donate any penalty interest awarded in its favour, arising from any judgment or award to charity and the Promisor shall not keep any part of such amount for its own benefit.

15.3 The Promisor acknowledges 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.

## 16 JURISDICTION

The Promisor irrevocably acknowledges that, save as otherwise provided in Clause 14 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 Sale Undertaking or its subject matter or formation.

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

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

.....  
**DIRECTOR**

.....  
**DIRECTOR/SECRETARY**

**Schedule 1 Form of Purchase Notice**

(To be printed on the Promisee's Letterhead)

{Date}

The Directors  
**FGN Roads Sukuk Company 1 PLC**  
NDIC Building (First Floor)  
Plot 447/448, Constitution Avenue  
Central Business District  
Garki, Abuja.

**Attention: Mr. Monday Usiade**

Dear Sirs,

**Sale Undertaking Deed (“Sale Undertaking”) dated [ ] made by FGN Roads Sukuk Company 1 PLC (Promisor) in favour of The Federal Government of Nigeria, acting through The Federal Ministry of Works and Housing (Promisee)**

**NOTICE OF EXERCISE OF OPTION TO PURCHASE TRUST ASSETS**

The Federal Ministry of Works and Housing, acting on behalf of the Federal Government of Nigeria, in its capacity as “Promisee” under the Sale Undertaking hereby gives notice of its intention to purchase the Trust Assets under the Sale Undertaking.

**Purchase Price:** [Amount]

**Sale Date:** [Date]

Yours sincerely,

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

## Schedule 2 Form of Sale and Purchase Agreement

THIS SALE AND PURCHASE DEED is made the ..... 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, Abuja (**Seller**); and
2. **THE FEDERAL GOVERNMENT OF NIGERIA**, acting through the Honourable Minister of the Federal Ministry of Works and Housing, Mabushi District, Abuja, Federal Capital Territory (**Purchaser**).

### WHEREAS:

- A. By virtue of a Letter of Allocation dated [ ] from the Federal Government of Nigeria 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 Sale Undertaking Deed, the Seller undertook to sell the Trust Assets from the Purchaser at the end of the Lease Period subject to the terms of the Sale Undertaking.
- D. Further to Recital 0 above, the Purchaser undertakes to buy the Trust Assets together with the Seller's entire rights and interest thereto and the Seller undertakes to sell the said Trust Assets on the terms and conditions of this Sale Undertaking.

**NOW THIS DEED** 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 to effectively 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 HONOURABLE MINISTER OF WORKS AND HOUSING  
for and on behalf of  
THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

.....

In the presence of:

Name:

Address:

Occupation:

Signature:

THE COMMON SEAL of the within named  
FGN ROADS SUKUK COMPANY 1 PLC  
is hereunto affixed in the presence of:

.....  
DIRECTOR

.....  
DIRECTOR/SECRETARY