

Indemnity Agreement

(Azito Power Project)

between

REPUBLIC OF COTE D'IVOIRE

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated December 18, 1998

INDEMNITY AGREEMENT

AGREEMENT, dated December 18, 1998, between REPUBLIC OF COTE D'IVOIRE (Côte d'Ivoire) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) Pursuant to an IDA Guaranteed Loan Agreement (the Loan Agreement) dated as of December 7, 1998, between CINERGY (the Project Company), Société Générale as agent (the Agent) and the financial institutions listed therein as lenders (the Lenders), the Lenders have agreed to make available to the Project Company a loan of up to thirty million three hundred twenty-eight thousand dollars (US\$30,328,000) (the Loan Amount) to assist in the financing of the Azito Project described in the Loan Agreement (the Project);

(B) Côte d'Ivoire has undertaken certain obligations (including payment obligations) to the Project Company with respect to the Project under (i) a concession agreement (the Concession Agreement) dated September 5, 1997 between the Project Company and Côte d'Ivoire, as amended July 15, 1998; (ii) a contract for the construction of the transmission network (the CCEM Agreement) dated July 15, 1998 between the Project Company and Côte d'Ivoire; and (iii) an addendum, Addendum No. 4 of the National Public Service Concession Agreement for the Production, Transmission, Distribution, Export and Import of Electric Power dated as of November 11, 1998 between the State and CIE (the Relevant Agreements) with respect to the performance of Compagnie Ivoirienne d'Electricité (CIE), Caisse Autonome d'Amortissement (CAA) and Fonds National de l'Energie Electrique (FNEE) (the Government Entities);

(C) At the request and with the agreement of Côte d'Ivoire, the Association has agreed to guarantee the payment of interest and the repayment of the principal of

the Loan Amount on the terms and conditions set forth in the Guarantee Agreement (the Guarantee), dated as of December , 1998 between the Association and the Agent, but only on condition that Côte d'Ivoire agree to pay to the Association all amounts paid by the Association directly or indirectly in relation to or arising from the Guarantee and to undertake such other obligations to the Association as are set forth in this Agreement;

(D) In consideration of the Association's providing the Guarantee, Côte d'Ivoire has agreed to undertake the obligations to the Association set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

#### ARTICLE I

##### General Conditions; Definitions

Section 1.01. (a) The following provisions of the "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985 (as amended through December 2, 1997), with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

- (i) Article I;
  - (ii) Section 2.01(1), (2), (3) as modified below, (4) as modified below, (7), (8) as modified below, (9), (10) as modified below, (11) (12) as modified below and (14), 2.02 and 2.03;
  - (iii) Section 3.05;
  - (iv) Sections 4.05 and 4.06;
  - (v) Section 8.01;
  - (vi) Sections 9.01 and 9.02 as modified below;
  - (vii) Sections 10.01, 10.02 as modified below and 10.03;
  - (viii) Article XI; and
  - (ix) Sections 12.01 and 12.02.
- (b) The General Conditions shall be modified as follows:
- (i) the term "Borrower," wherever used in the General Conditions, means Côte d'Ivoire;
  - (ii) the term "Credit," wherever used in the General Conditions, means the amounts payable by Côte d'Ivoire under this Agreement;
  - (iii) the term "Development Credit Agreement," wherever used in the General Conditions, means this Agreement;
  - (iv) the term "Effective Date," wherever used in the General Conditions, means the date as provided in Article VI of this Agreement;
  - (v) the term "Project," wherever used in the General Conditions, means the Azito Project as defined in the Preamble to this Agreement;
  - (vi) In Section 9.01 the word "Credit" is deleted and the word "Project" is substituted therefor; and
  - (vii) In Section 10.02 the phrase "the Guarantee, the Loan Agreement, any Transaction Document or any other related document" is added immediately after the phrase "the Development Credit

Agreement."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions, the Preamble to this Agreement and the Guarantee have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Demand Notice" means a demand presented to the Association by the Agent in accordance with the Guarantee and substantially in the form of Schedule 1 thereto;

(b) "Environmental Authorization," "Environmental Management and Monitoring Plan" and "Resettlement Action Plan" shall have the meanings set forth and defined in the Common Agreement, dated as of December 7, 1998 among the Project Company, the Agent, the financial institutions listed as lenders, and others listed therein;

(c) "Event of Default by State," "Event of Default by Project Company," "Event of Force Majeure," "Governmental Authority" and "Laws in Effect" shall have the meanings set forth and defined in the Concession Agreement or the CCEM Agreement, as applicable; and

(d) "Transaction Document(s)" means individually or collectively, as the context may require, the Project Documents and Financing Documents of the Project as defined in the Common Agreement.

## ARTICLE II

### Indemnity by Côte d'Ivoire to the Association

Section 2.01. In consideration of the Association giving the Guarantee, Côte d'Ivoire hereby:

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

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

(c) irrevocably authorizes the Association to comply with any Demand Notices served on the Association pursuant to the Guarantee and make any payments which may be due from or claimed or made upon the Association under the Guarantee (the Association shall promptly notify Côte d'Ivoire of any such demand, but failure to give such notice shall in no way affect the Association's obligation to make payment under the Guarantee or Côte d'Ivoire's obligation to reimburse or indemnify the Association pursuant to this Agreement) and agrees that it shall not be incumbent on the Association to inquire whether or not any statements in such Demand Notice are in fact correct; and

(d) agrees that any such Demand Notice shall, as between Côte d'Ivoire and the Association, be conclusive evidence that the demand is properly made and payment is properly due. Following the notification to Côte d'Ivoire of the receipt by the Association of any Demand Notice, Côte d'Ivoire may investigate the validity of the statements in such Demand Notice and take such actions as Côte d'Ivoire may see fit against the Project Company, the Agent and the Lenders in respect thereof; all without prejudice to the Association's obligations under the Guarantee to make a payment in respect of such Demand Notice and Côte d'Ivoire's obligations in relation to such Demand Notice under this Agreement. The obligations of Côte d'Ivoire hereunder shall apply notwithstanding that Côte d'Ivoire or any of the Government Entities disputes the validity of any such Demand Notice or the accuracy or correctness of any fact or figures stated therein.

Section 2.02. (a) The obligations of Côte d'Ivoire under this Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or action against the Project Company or any prior notice to, or demand upon, Côte d'Ivoire with regard to any failure by the Project Company to pay any amount in respect of which a Demand Notice is served on the Association pursuant to the Guarantee. 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 Project Company, the Agent, the Lenders or any other person; (ii) any variation of the Guarantee, the Loan Agreement, any Transaction Document or any other related agreement; (iii) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Project Company or in respect of any security for the Loan Amount; or (iv) any other circumstances which would or might (but for this provision) constitute a discharge or defense of Côte d'Ivoire.

(b) The Association may at any time, without thereby discharging, impairing or otherwise affecting any rights, powers and remedies hereby created or conferred upon it by this Agreement, the Loan Agreement, any Transaction Document 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 Guarantee (except one which would materially increase the obligations of Côte d'Ivoire under this Agreement), the Loan Agreement, any Transaction Document or any other related agreement; or (ii) offer or give or agree to give any time or other indulgence to any other person or entity from whom it may seek reimbursement in respect of sums paid out by the Association under the Guarantee.

(c) Any rights conferred on the Association by this Agreement shall be in addition to, and not in substitution for or derogation of, any other right which the Association may at any time have to seek, from Côte d'Ivoire or any other person or entity, reimbursement of or indemnification against payments made or liabilities incurred under the Guarantee.

(d) The Association shall not be obliged before taking steps to enforce any rights conferred on it by this Agreement or exercising any of the rights, powers and remedies conferred upon the Association by this Agreement, the Guarantee, the Loan Agreement, any Transaction Document or any other related agreement or by law: (i) to take action or obtain judgment in any court against any other person (including persons from whom it may seek reimbursement in respect of sums paid out under the Guarantee); or (ii) to enforce or seek to enforce any other rights it may have against Côte d'Ivoire or its rights against any other person.

Section 2.03. Any payment required to be made by Côte d'Ivoire 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 under this Agreement.

Section 2.04. Côte d'Ivoire hereby agrees that any amount due to the Association hereunder shall be deemed, for purposes of Sections 6.02(a)(iv) and 7.01(b)(iii) of the General Conditions, or any successor provision, as the case may be, of the general conditions applicable to and incorporated into other development credit agreements between the Association and Côte d'Ivoire, or between the Association and any other third party guaranteed by Côte d'Ivoire, to be an amount due in consequence of a guarantee extended by the Association to a third party with the agreement of Côte d'Ivoire.

### ARTICLE III

#### Project-Related Covenants

Section 3.01. Without limitation or restriction upon any of its other obligations under this Agreement, Côte d'Ivoire hereby unconditionally undertakes to the Association punctually to perform all of its obligations under the Concession Agreement and CCEM Agreement and to cause the Government Entities, punctually to perform all of their obligations under the Relevant Agreements.

Section 3.02. Côte d'Ivoire shall notify the Association prior to agreeing to

any amendment, waiver, termination or other change to the Concession Agreement or CCEM Agreement and shall obtain the written consent of the Association prior to agreeing to any amendment, waiver, termination or other change to the Concession Agreement or CCEM Agreement which would or could in the opinion of the Association materially affect the rights or obligations of the Association under the Guarantee.

Section 3.03. Côte d'Ivoire shall not take any action which would prevent or interfere with the performance by the Government Entities of any of their obligations under the Relevant Agreements and shall cause the Government Entities to notify the Association prior to agreeing to any amendment, waiver, termination or other change and to obtain the written consent of the Association prior to agreeing to any amendment, waiver, termination or other change to the Relevant Agreements, which would or could materially affect the rights or obligations of the Association under the Guarantee including, without limitation, any assignment, transfer, novation or other disposition of any of such entities' respective rights or obligations under the Relevant Agreements.

Section 3.04. Côte d'Ivoire shall promptly inform the Association of any Event of Default by State, any Event of Default by Project Company, any Force Majeure Event, any notice of Event of Default or Force Majeure Event, any notice of intent to terminate or termination notice or any event or circumstance which could adversely affect Côte d'Ivoire's ability to perform its obligations under the Concession Agreement or CCEM Agreement or the ability of the Government Entities to perform their obligations under the Relevant Agreements.

Section 3.05. Côte d'Ivoire shall take all actions within its power to remedy each Event of Default by State and each Event of Force Majeure under the Concession Agreement and the CCEM Agreement.

Section 3.06. Côte d'Ivoire shall not create or permit to exist or occur, and shall procure that no Governmental Authority shall create or permit to exist or occur, any change in the Laws in Effect in Côte d'Ivoire after the date of this Agreement which would make obligations under the Concession Agreement or the CCEM Agreement illegal, invalid, unenforceable or void in whole or part. If such change in the Laws in Effect in Côte d'Ivoire exists or occurs, Côte d'Ivoire shall take all actions within its power to remedy and cure, or to procure that another Governmental Authority remedy and cure, such change in the Laws in Effect in Côte d'Ivoire.

Section 3.07. Côte d'Ivoire shall:

- (a) carry out promptly any action required to be performed by it under the Environmental Management and Monitoring Plan and the Resettlement Action Plan;
- (b) take all action which shall be necessary on its part to enable the Project Company to obtain any Environmental Authorization for the Project required under such Plans and to perform all its obligations under the Project Documents;
- (c) not take any action which would prevent or interfere with the performance by the Project Company of such obligations.

Section 3.08. Côte d'Ivoire affirms that no corrupt or fraudulent practices were engaged in by any representative of Côte d'Ivoire with respect to the execution of any contract to be financed out of the Loan Amount and declares its commitment to enforce the laws of Côte d'Ivoire against fraud, corruption and bribery during the term of this Agreement.

#### ARTICLE IV

##### Remedies of the Association

Section 4.01. In the event that: (i) Côte d'Ivoire fails to make any payment to or to indemnify the Association as required pursuant to Section 2.01 of this Agreement; (ii) Côte d'Ivoire defaults in the performance of any of its obligations hereunder, and such failure or default continues and remains uncured for sixty (60) days or more; or (iii) any representation made by Côte d'Ivoire in or pursuant to this Agreement, or any statement furnished in connection with this Agreement and intended to be relied on by the Association in providing the IDA Guarantee, shall have been

incorrect in any material respect, 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 Côte d'Ivoire's right to make withdrawals under any Development Credit Agreement between the Association and Côte d'Ivoire or declare the outstanding principal and interest of any such Development Credit Agreement due and payable immediately.

ARTICLE V

Effective Date

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

ARTICLE VI

Miscellaneous Provisions

Section 6.01. The Minister of Economy and Finance is hereby designated as representative of Côte d'Ivoire for the purposes of Section 11.03 of the General Conditions.

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

For Côte d'Ivoire:

Ministry of Economy and Finance  
B.P.V 125  
Abidjan  
Republic of Côte d'Ivoire

Cable address:

MINFIN  
Abidjan

Telex:

23747 MINFIN

For the Association:

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

Cable address:

INDEVAS  
Washington, D.C.

Telex:

248423 (MCI)  
64145 (MCI)

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

REPUBLIC OF COTE D'IVOIRE

By /s/ Moïse Koumoué Koffi

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Jean-Louis Sarbib

Regional Vice President  
Africa

