

gma
138

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

**REGARDING THE SHARING, TRANSFER, REPATRIATION,
DISPOSITION, AND MANAGEMENT OF CERTAIN FORFEITED
ASSETS**

SM

SMBY

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS

ARTICLE 2 – GENERAL PRINCIPLES

ARTICLE 3 – SCOPE

ARTICLE 4 – COMPETENT AUTHORITIES

ARTICLE 5 – IMPLEMENTING AUTHORITIES

ARTICLE 6 – THE PROJECTS

ARTICLE 7 – IMPLEMENTATION OF THE PROJECTS

ARTICLE 8 – MONITORING OF THE PROJECTS

ARTICLE 9 – CIVIL SOCIETY MONITORING

ARTICLE 10 – TRANSPARENCY AND INFORMATION SHARING

ARTICLE 11 – TRANSFER OF THE FORFEITED MECOSTA/SANI ASSETS TO THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

ARTICLE 12 – DISBURSEMENT AND MANAGEMENT OF THE FORFEITED MECOSTA/SANI ASSETS BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

ARTICLE 13 – OTHER FEES

ARTICLE 14– DISCLOSURE OF THIS AGREEMENT

ARTICLE 15– ANTI-CORRUPTION

ARTICLE 16– SETTLEMENT OF DIFFERENCES

ARTICLE 17– AMENDMENT

ARTICLE 18– SUSPENSION OF EXPENDITURES

ARTICLE 19– COMMUNICATIONS AND POINTS OF CONTACT

ARTICLE 20– FINAL PROVISIONS

SCHEDULE 1A – PROJECT DESCRIPTION

SCHEDULE 2 – ALLEGED PERPETRATORS OF OR PARTICIPANTS IN OFFENCES OR RELATED CONDUCT

SCHEDULE 3A – BALANCE OF FUNDING FOR THE PROJECTS

SCHEDULE 4A – DISBURSEMENT PLAN

SCHEDULE 5A – PROJECT MANAGEMENT TEAM (MEMBERS AND ROLES)

SCHEDULE 6 – SKILLS AND EXPERIENCE OF CIVIL SOCIETY ORGANISATION (S)

SCHEDULE 7A – SELECTION OF AND TERMS OF REFERENCE FOR CIVIL SOCIETY ORGANISATION (S)

SCHEDULE 8A – SELECTION OF AND TERMS OF REFERENCE FOR NSIA DESIGNATED INDEPENDENT AUDITOR

SM
MBP

1. The Governments of the Federal Republic of Nigeria and the United States of America ('the Parties'),
2. **Welcoming** their excellent cooperation in the fight against corruption at domestic and international levels;
3. **Recalling** their long-lasting partnership and pioneering role in asset-recovery that is based on the principles of national interest, trust and mutual respect;
4. **Whereas** the Government of the United States of America was investigating allegations of money laundering in violation of the laws of the United States involving property obtained through *inter alia* criminal violations of the laws of Nigeria and the United States, and was considering initiating forfeiture (also 'confiscation') proceedings against property involved in such money laundering;
5. **Whereas** on 28th August 2012, the Attorney General of the Federation and Minister of Justice of the Federal Republic of Nigeria ('the Nigerian Attorney General') as "*competent authority under Nigerian law to request mutual assistance in penal matters*" wrote to the United States Department of Justice ('the USDOJ'), invoked the *United Nations Convention Against Corruption* (UNCAC) and requested that the U.S. authorities forfeit certain assets over which they had jurisdiction, consistent with the UNCAC;
6. **Whereas** the assets subject to the U.S. investigation and also identified by the Nigerian President and the Nigerian Attorney General included all assets held in account numbers 100130688 and 100138409, in the name of Mecosta Securities, at Standard Bank Plc in the United Kingdom, and all interest, benefits, or assets traceable thereto; and all assets held in account number 38175076, in the name of Mohammed Sani, at HSBC Bank Plc. in the United Kingdom, and all interest, benefits, or assets traceable thereto (together 'the Mecosta/Sani Assets');
7. **Whereas** in his 28th August 2012 letter, the Nigerian Attorney General requested that: "*Once the confiscation is final, the Federal Republic of Nigeria would be grateful to the United States of America to give priority consideration to returning the confiscated property to the Federal Republic of Nigeria, as requesting State Party and also as victim of the crimes...*";
8. **Whereas** on 13th November 2013, the Government of the United States of America commenced forfeiture proceedings against *inter alia* the Mecosta/Sani Assets;
9. **Whereas** on 27th June 2014, the National Crime Agency ('NCA') of the United Kingdom of Great Britain and Northern Ireland ('UK'), acting on a request from the United States to the UK, applied to the UK High Court of Justice ('UK High Court') for a Prohibition Order over the Mecosta/Sani Assets ('the Prohibition Order'), which was granted on 2nd July 2014;
10. **Whereas** on 6th August 2014, the U.S. District Court for the District of Columbia entered judgment forfeiting, *inter alia*, the Mecosta/Sani Assets (now, the 'Forfeited Mecosta/Sani Assets') and declared them to be the property of the United States of America ('the U.S. Judgment') and on 17th December 2015 the same U.S. Court declared the U.S. Judgment to be final and appealable;
11. **Whereas** on 31st October 2016, while appeals against the U.S. Judgment were pending, the Nigerian Attorney General reaffirmed and reiterated the request of the Government of the Federal Republic of Nigeria for the transfer of the Forfeited Mecosta/Sani Assets to Nigeria after the conclusion of the U.S. proceedings;

DP MBY

- 12. **Whereas** a dismissed claimant to the Forfeited Mecosta/Sani Assets filed a series of appeals from the U.S. Judgment, and on 6th February 2018, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the U.S. Judgment, dismissing the appeals;
- 13. **Whereas** the Government of the Federal Republic of Nigeria assisted the Government of the United States of America to prosecute the United States proceedings by, *inter alia*, providing documentary evidence, by serving the proceedings in Nigeria, and by sending correspondence supporting the Government of the United States of America's opposition to a claim presented by a person who falsely purported to represent Nigeria;
- 14. **Whereas** the Government of the United States of America's requested mutual legal assistance from the UK under the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters, signed at Washington, on 6 January 1994, as amended by the Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters signed 6 January 1994, signed at London, on 16 December 2004 (collectively, the '*Mutual Legal Assistance Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland*');
- 15. **Whereas** the NCA lodged a claim in the UK High Court to register and enforce the US Judgment in the United Kingdom under Part 5 of the Proceeds of Crime Act (2002) (External Requests and Orders) Order 2005/3181 (the '2005 Order');
- 16. **Whereas** on 10th September 2019 the Government of the Federal Republic of Nigeria filed an application in the UK High Court to vary or amend the Prohibition Order, on the basis that it was the original owner of the Forfeited Mecosta/Sani Assets and a victim of crime in respect of the Forfeited Mecosta/Sani Assets;
- 17. **Whereas** the Governments of the United States of America, the UK, and the Federal Republic of Nigeria shared the view that the appropriate orders for the UK High Court to make were for the U.S. Judgment to be registered and for a civil recovery order over the Forfeited Mecosta/Sani Assets to be issued ('the Orders');
- 18. **Whereas** the UK High Court granted the NCA a Registration and Recovery Order, dated 28 July 2021 and sealed by the Court on 4th August 2021;
- 19. **Whereas**, the Forfeited Mecosta/Sani assets were subsequently transferred to the NCA, which on 7th February 2022 held the sum of \$23,439,724.98 in an interest bearing account;
- 20. **Whereas** in September, October and December 2020 representatives of the Governments of the United States of America, the UK, and the Federal Republic of Nigeria signed a Declaration of Intent Concerning Certain Forfeited Assets between the Federal Republic of Nigeria, the United Kingdom of Great Britain and Northern Ireland, and the United States of America ('the 2020 Declaration of Intent'), which provided, *inter alia*, as follows:
 - 1. *That having regard to (i) Article 57 (5) of the United Nations Convention Against Corruption; (ii) Article G of the Country Statement by Nigeria at the London Anti-Corruption Summit in 2016; (iii) Commitment 8 of the Open Government Partnership Nigeria National Action Plan (2017 – 2019); and (iv)*

GH IMB

Principle 4 of the GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases[], the Federal Republic of Nigeria and the United States of America, subject to internal approvals as may be required in their respective jurisdictions, intend expeditiously to negotiate and conclude an agreement as to:

- (a) How the Assets will be repatriated to the Federal Republic of Nigeria for the benefit of the people of Nigeria;
- (b) How the Assets will be transferred and administered to ensure transparency, accountability, and proper monitoring and oversight; and
- (c) How the Assets will be audited and accounts published.¹¹

- 21. **Whereas** the 2020 Declaration of Intent memorialized the intention of the Government of the United Kingdom of Great Britain and Northern Ireland, upon registration and enforcement of the U.S. Judgment, to transfer to the Government of the United States the balance of the Forfeited Mecosta/Sani Assets after the deduction of reasonable costs and expenses incurred;
- 22. **Whereas** the Government of the Federal Republic of Nigeria and the Government of the United States of America seek to make use of the existing structures, procedures, mechanisms, and projects already defined in the Agreement among the Government of the Federal Republic of Nigeria and the Bailiwick of Jersey and the Government of the United States of America Regarding the Sharing, Transfer, Repatriation, Disposition, and Management of Certain Forfeited Assets,¹ signed at Washington, on 3rd February 2020 ('the 2020 US-FRN-Jersey Tripartite Agreement');
- 23. **Whereas** on 25th February 2018, the Nigerian President approved the establishment of the Presidential Infrastructure Development Fund ('the PIDF') which is managed by the Nigeria Sovereign Investment Authority ('the NSIA');
- 24. **Whereas** the following infrastructure projects were approved by the Nigerian National Assembly under the 2018 *Appropriation Act*, and procured and approved by the Nigerian Federal Executive Council in accordance with Nigeria's *Bureau for Public Procurement Act, 2007* ('the Projects'): (a) the Lagos to Ibadan Expressway; (b) the Abuja to Kano Road; and (c) the Second Niger Bridge;
- 25. **Whereas** the NSIA was established by the *Nigeria Sovereign Investment Authority (Establishment etc) Act 2011* as an independent investment institution governed by a board of directors and operating under transparency guidelines and a corporate governance framework that is aligned with the Santiago Principles (a voluntary set of principles and practices developed by the International Working Group of Sovereign Wealth Funds);
- 26. **Whereas** in 2018 the NSIA, through the PIDF, took over the management of the three infrastructure Projects, one for each of the North, South-South/South-East and South-West of Nigeria: the Abuja-Kano Road; the Second Niger Bridge; and the Lagos Ibadan Expressway;

¹Specifically, all assets forfeited from account number 80020796 in the name of the British Virgin Islands (BVI) company Doraville Properties Corporation, at DBIL in Jersey and all assets forfeited from account number S - 104460 in the name of Mohammed Sani at HSBC Fund Administration (Jersey) Limited in Jersey by the judgment dated 6th August 2014 in the U.S. District Court for the District of Columbia.

Handwritten initials/signature: SJB

- 27. Whereas the NSIA incorporated a wholly owned subsidiary to own and manage the Projects;
- 28. Whereas the Government of the Federal Republic of Nigeria has proposed that the Forfeited Mecosta/Sani Assets be used to fund part of the Projects,

OH

Now, therefore, agree as follows:

Imot

1204

**ARTICLE 1
DEFINITIONS**

For the purposes of this Agreement the following terms shall have the following meanings:

'the 2020 US-FRN-Jersey Tripartite Agreement' means the *Agreement among the Government of the Federal Republic of Nigeria and the Bailiwick of Jersey and the Government of the United States of America Regarding the Sharing, Transfer, Repatriation, Disposition, and Management of Certain Forfeited Assets*, signed at Washington, on 3rd February 2020;

'Competent Authority' in relation to either Party has the meaning set out in Article 4;

'CSO Reports' has the meaning set out in Article 9 (4) (c);

'CSO Final Report on the Forfeited Mecosta/Sani Assets' has the meaning set out in Article 9 (4) (d);

'Disbursement Plan' means the plan set out in **Schedule 4A**;

'Earliest Disbursement Date' has the meaning set out in Article 12 (5);

'Forfeited Mecosta/Sani Assets' means all assets forfeited from account numbers 100130688 and 100138409, in the name of Mecosta Securities, at ICBC Standard Bank Plc (formerly known as Standard Bank Plc) in the United Kingdom, and all interest, benefits, or assets traceable thereto; and all assets held in account number 38175076, in the name of Mohammed Sani, at HSBC Bank Plc. in the United Kingdom, and all interest, benefits, or assets traceable thereto by the judgment dated 6th August 2014 in the U.S. District Court for the District of Columbia;

'Implementing Authority' in relation to either Party has the meaning set out in Article 5;

'Ineligible Expenditure' means any expenditure that does not fall within Article 3 (2) (read with Articles 12 (3) and (4)), or any expenditure that would fall within Articles 3 (3) to (5) or Article 13;

'Legacy Debts' has the meaning set out in Article 3 (3);

'MT Implementation Reports' has the meaning set out in Article 8 (4)(d);

'MT Final Report' has the meaning set out in Article 8 (4)(d);

'Monitoring CSO' means the Civil Society Organisation (s) engaged under Article 9 and selected or replaced in the manner set out in **Schedule 7A** to act in accordance with Article 9 and the Terms of Reference in **Schedule 7A**;

'Monitoring Team' or 'MT' has the meaning set out in Article 8;

'NSIA' means the Nigeria Sovereign Investment Authority;

'NSIA Designated Account' has the meaning set out in Article 12 (2);

'NSIA Designated Independent Auditor' means the auditor engaged by NSIA in accordance with Article 8 (1) to act in accordance with Article 8 and the Terms of Reference in **Schedule 8A**;

125
'NSIA Final Report on the Forfeited Mecosta/Sani Assets' has the meaning set out in Article 7 (1) (d);

'NSIA Website Report' has the meaning set out in Article 10 (2);

'PIDF' means the Nigerian Presidential Infrastructure Development Fund;

'Project Management Team' or 'PMT' has the meaning set out in Article 7 (1)(c);

'Projects' means the projects set out in Article 6 (1) and further described in **Schedule 1A**;

'Technical Adviser's Reports' has the meaning set out in Article 8 (9)(a) and consists of reports of the engineering firm WSP Global under its current contracts with NSIA, or the reports of any replacement external engineering firm contracted to provide the functions currently performed by WSP Global.

ARTICLE 2 GENERAL PRINCIPLES

1. The Parties confirm their intention to maintain a fruitful co-operation based on trust and respect in order to enable a transparent and efficient repatriation to the Government of the Federal Republic of Nigeria and disposition of the Forfeited Mecosta/Sani Assets for the benefit of the people of Nigeria.
2. The implementation of this Agreement by the Parties shall be guided by the principles of ethics, mutual respect and co-operation.
3. The Parties shall maintain regular exchanges of information and engage constructively in carrying out their respective activities under this Agreement.
4. The Parties may provide information to and engage with the Government of the United Kingdom in carrying out their respective activities under this Agreement.

ARTICLE 3 SCOPE

1. This Agreement sets out the basis and mechanisms for the transfer to and disposition and management of the Forfeited Mecosta/Sani Assets by the Government of the Federal Republic of Nigeria for the benefit of the people of Nigeria.
2. The Forfeited Mecosta/Sani Assets shall be utilized by the Government of the Federal Republic of Nigeria exclusively for the purpose of financing the Projects (as set out in Article 6 and further described in **Schedule 1A**) and the payment of fees of the Monitoring CSO (s) and the NSIA Designated Independent Auditor (as provided in Article 12(3)).
3. The Forfeited Mecosta/Sani Assets shall not be used to fund any financial obligation in relation to the Projects that arose prior to the entry into force of this Agreement ('Legacy Debts').
4. None of the Forfeited Mecosta/Sani Assets may be disbursed, expended or used for the benefit of any of the alleged perpetrators of or participants in the offences or related conduct giving rise to the forfeiture as listed in **Schedule 2**; the family members, heirs, assigns, successors, privies, corporations, trusts, or legal entities of such alleged perpetrators or participants; or any person or entity barred from

contracting with either Party or any international financial institution or from otherwise undertaking projects in Nigeria.

- 5. Having regard to Principle 4 of the GFAR Principles of 2017 which states that "[t]he use of unspecified or contingent fee arrangements should be discouraged", none of the Forfeited Mecosta/Sani Assets shall be used to pay any such fees or success fees of any sort.

**ARTICLE 4
COMPETENT AUTHORITIES**

- 1. The Competent Authority for the Government of the Federal Republic of Nigeria shall be the Honorable Attorney General of the Federation and Minister of Justice or a person designated by the Attorney General of the Federation and Minister of Justice for such purpose.
- 2. The Competent Authority for the Government of the United States of America shall be the Money Laundering and Asset Recovery Section of the U.S. Department of Justice or a person or office designated by that Office for such purpose.

**ARTICLE 5
IMPLEMENTING AUTHORITIES**

- 1. The Implementing Authority for this Agreement for the Government of the Federal Republic of Nigeria shall be the NSIA.
- 2. The Implementing Authority for this Agreement for the Government of the United States of America shall be the Money Laundering and Asset Recovery Section of the U.S. Department of Justice or a person or office designated by that Office for such purpose.

**ARTICLE 6
THE PROJECTS**

- 1. The Parties agree that the Forfeited Mecosta/Sani Assets shall be used to fund segments of the following infrastructure projects, as more fully described in **Schedule 1A**, that were approved by the Nigerian National Assembly under the 2018 *Appropriation Act*, and procured and approved by the Nigerian Federal Executive Council in accordance with Nigeria's *Bureau for Public Procurement Act, 2007* ("The Projects").
 - (a) The Lagos to Ibadan Expressway;
 - (b) The Abuja to Kano Road; and
 - (c) The Second Niger Bridge.
- 2. The balance of the funding for these Projects shall be provided by the Government of the Federal Republic of Nigeria in accordance with the table in **Schedule 3A**.
- 3. The Parties agree that the 'other sources of capital' referred to in **Schedule 3A** are envisaged to be raised by the NSIA by commercial means, including by a substantial bond issue. However, in the event that the NSIA is unable to raise sufficient funds, the Government of the Federal Republic of Nigeria agrees to provide sufficient funds to ensure that the Projects are completed.

JK
JMB

- 147
4. The NSIA shall notify the Competent Authorities of each Party annually of any changes to the information set forth in **Schedule 3A** or identify where such information may be publicly available.

**ARTICLE 7
IMPLEMENTATION OF THE PROJECTS**

1. The NSIA shall:
 - (a) apply the Forfeited Mecosta/Sani Assets to the Projects in accordance with the separate Disbursement Plans for each of the Projects set out in **Schedule 4A** to this Agreement, which identifies which segments of the Projects are to be funded with the Forfeited Mecosta/Sani Assets;
 - (b) fully implement all provisions of this Agreement, including Articles 6, 8 and 15;
 - (c) maintain a Project Management Team ('the PMT') that shall be responsible for the implementation of the Projects and management of the Forfeited Mecosta/Sani Assets, such PMT to have members with at least the roles listed in **Schedule 5A**; and
 - (d) produce a final public report ('the NSIA Final Report on the Forfeited Mecosta/Sani Assets') on the expenditure of the Forfeited Mecosta/Sani Assets and implementation of the Projects within four (4) months of the final expenditure of such funds, to be based on the information in the reports enumerated in Article 8 (9) and such additional information as may be appropriate.

**ARTICLE 8
MONITORING OF THE PROJECTS**

A. THE NSIA DESIGNATED INDEPENDENT AUDITOR

1. The NSIA Designated Independent Auditor shall be the same auditor engaged by the NSIA under or in accordance with the 2020 US-FRN-Jersey Tripartite Agreement.
 - (a) Reasonable fees of the NSIA Designated Independent Auditor shall be paid out of the Forfeited Mecosta/Sani Assets, consistent with Article 12 (3) and (4);
 - (b) The NSIA Designated Independent Auditor shall have access to the reports described in Article 8 (9) and any relevant reports by the PMT to the NSIA Board; and
 - (c) Neither the engagement nor the auditing activities of the NSIA Designated Independent Auditor shall create any other financial obligations or commitments for the Parties.

B. THE MONITORING TEAM

2. The Government of the Federal Republic of Nigeria shall establish a Monitoring Team ('the MT') for the purpose of monitoring the implementation of the Projects and this Agreement.
3. The members of the MT shall include representatives of the following: (i) the Nigerian Federal Ministry of Justice; (ii) the Nigerian Federal Ministry of Finance; (iii)

the Accountant General of the Federation of Nigeria; and (iv) the Civil Society Organisation(s) described in Article 9.

- 4. The role of the MT shall include the following:
 - (a) to meet every quarter to review the quarterly Technical Adviser's Reports;
 - (b) to provide oversight functions to ensure that the NSIA has disbursed the funds as approved in the Disbursement Plan set out in **Schedule 4A**;
 - (c) to review the quarterly and annual reports by the NSIA Designated Independent Auditor; and
 - (d) to prepare and provide the Implementing Authorities with copies of implementation reports ('the MT Implementation Reports') that provide a detailed status report concerning the implementation of the Projects at the end of every financial year or upon reasonable request and a final report ('the MT Final Report') that provides a final description of the completed projects and a final accounting of the associated costs within three (3) months of the MT's receipt of the NSIA Final Report on the Forfeited Mecosta/Sani Assets.

- 5. The Government of the Federal Republic of Nigeria shall ensure that all members of the MT have access to each of the reports identified in paragraph 9 of this Article, the NSIA Final Report on the Forfeited Mecosta/Sani Assets and such additional information as may be necessary to carry out their responsibilities.

- 6. If a member of the MT raises an issue (s) about the implementation of the Projects to the Competent Authority of the Government of the Federal Republic of Nigeria, the NSIA shall respond in writing to the MT within two (2) months. The written response shall be sufficiently detailed for the MT members to form an independent judgment about any such issue raised.

- 7. In the event that a member of the MT is not satisfied with the manner in which the issue (s) has been addressed or in the absence of an adequate written response within two (2) months, the MT shall escalate the relevant issue (s) by notifying the Board of the NSIA, and shall contemporaneously notify the Competent and Implementing Authorities of both Parties.

- 8. If there is no satisfactory response from the Board of the NSIA or if the relevant issue (s) is not resolved to the satisfaction of any member of the MT, such member of the MT may request the convening of a meeting of the Parties within three (3) months from the response of the Board of the NSIA, and the Parties shall so meet within that time period to resolve the relevant issue (s). In the event that no response is received from the Board of the NSIA, the three (3) months shall run from the date of the MT member's communication to the Board of the NSIA raising the relevant issue (s).

- C. THE IMPLEMENTING AUTHORITIES FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

- 9. The NSIA shall prepare or contract to prepare and provide to the Implementing Authority for the Government of the United States of America, the following quarterly (every three (3) months) and final reports:
 - (a) quarterly Technical Adviser's Reports by WSP Global (or any replacement external engineering firm) on each of the Projects, which are a pre-requisite to NSIA's approval of payment of the contractors' invoices and which

SMBY

describe the progress being made on each Project. These reports shall be provided within fourteen (14) days of their receipt by the NSIA;

- (b) quarterly and annual reports prepared by the NSIA Designated Independent Auditor on the NSIA Designated Account and on the use of the Forfeited Mecosta/Sani Assets. These reports shall be provided within fourteen (14) days of their receipt by the NSIA;
 - (c) quarterly reports prepared by the NSIA on the anti-corruption due diligence carried out on contractors and sub-contractors within the relevant reporting period; and
 - (d) the NSIA Final Report on the Forfeited Mecosta/Sani Assets.
10. The Implementing Authority for the Government of the United States of America may disclose the reports referred to in Article 8 (9) to its own reviewers (whether internal or external).
 11. The Implementing Authority for the Government of the United States of America shall have the right to raise any issue arising from these reports with the NSIA and the Competent Authority for the Government of the Federal Republic of Nigeria.
 12. The Competent Authority for the Government of the Federal Republic of Nigeria shall respond, or ensure that the NSIA responds on its behalf, in writing, to the issues raised by the Implementing Authority of the Government of the United States of America within two (2) months of the issue being communicated. The written response shall be sufficiently detailed to enable the Implementing Authority of the Government of the United States of America to form an independent judgment about the issue (s) and whether such issue (s) has been addressed.
 13. In the event that the Implementing Authority of the Government of the United States of America is not satisfied with the manner in which the relevant issue (s) has been addressed or in the absence of an adequate written response within two (2) months, the Parties shall convene within three (3) months of the response or, where there has been no response, the expiration of the two (2) months allocated for such a response.

D. INELIGIBLE EXPENDITURES

14. If the MT or either Party (including the Implementing and Competent Authorities of either Party) concludes that any of the Forfeited Mecosta/Sani Assets have been used for Ineligible Expenditures, the MT or the relevant Party shall notify the Competent Authority of the Government of the Federal Republic of Nigeria. The Government of the Federal Republic of Nigeria shall promptly return an equivalent sum to the NSIA Designated Account, and the NSIA and / or the appropriate government agency or agencies of the Federal Republic of Nigeria shall take timely and appropriate corrective action, including to ensure that such Ineligible Expenditures do not recur.

**ARTICLE 9
CIVIL SOCIETY MONITORING**

1. The Government of the Federal Republic of Nigeria shall engage one or more Civil Society Organization(s) to provide ongoing monitoring ('the Monitoring CSO(s)') of the implementation of the Projects, which shall be the same Civil Society Organisation (s) engaged under or in accordance with the 2020 US-FRN-Jersey

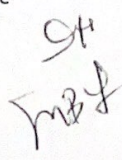
SM
SMB

Tripartite Agreement to serve as monitoring CSO(s), unless otherwise agreed by the Parties in writing.

- 2. Upon a vacancy in the Monitoring CSO (s) role with respect to the Forfeited Mecosta/Sani Assets, the Government of the Federal Republic of Nigeria shall initiate procedures for the selection or replacement of the Monitoring CSO (s) in the manner set forth in **Schedule 7A**. The selection of any Monitoring CSO shall be subject to the prior approval of all the Implementing Authorities and an applicant shall not be eligible for selection as Monitoring CSO if either Party disapproves, as set forth in **Schedule 7A**.
- 3. The Monitoring CSO (s) shall have the skills and experience listed in **Schedule 6** and the role of the Monitoring CSO (s) shall be to act in accordance with the Terms of Reference in **Schedule 7A**.
- 4. The engagement of the Monitoring CSO (s) shall be for the design and implementation of a robust and transparent Monitoring Programme that shall include:
 - (a) receiving the documents referred to in Article 8 (9);
 - (b) conducting relevant site visits (including unannounced site visits);
 - (c) compiling and publishing regular reports. Such reports shall be at least quarterly ('the CSO Reports') and shall be provided to the Competent and Implementing Authorities of the Parties; and
 - (d) compiling and publishing a final report ('the CSO Final Report on the Forfeited Mecosta/Sani Assets') within three (3) months of the NSIA Final Report on the Forfeited Mecosta/Sani Assets. Such report shall be provided to the Competent and Implementing Authorities of the Parties.
- 5. The Government of the Federal Republic of Nigeria shall ensure that any Monitoring CSO has access to the information necessary to carry out its functions as described in the Terms of Reference in **Schedule 7A**, including access to all reports referred to in this Agreement.
- 6. Neither the engagement nor the monitoring activities of the Monitoring CSO (s) shall create any other financial obligations or commitments for the Parties, save as provided in Article 3(2).

**ARTICLE 10
TRANSPARENCY AND INFORMATION SHARING**

- 1. The Parties, MT, NSIA Designated Independent Auditor, and Monitoring CSO (s) shall have access to all Project-related documents on request, in addition to those that must be provided under Article 8.
- 2. The NSIA shall publish regular reports on the Projects and the disbursement of the Forfeited Mecosta/Sani Assets on a designated public page on the website of the NSIA ('the NSIA Website Reports'). These reports shall be based on the information contained in the reports listed in Article 8 (9).
- 3. Disclosures of information not contemplated by this Agreement are subject to the Parties' laws and policies on access to information.



- 151
4. For the avoidance of doubt, the disclosure by the NSIA of the material contained in the reports referred to in Article 8 (9)(a) to (c) for the purposes of this Agreement shall not constitute a waiver of any confidentiality that would otherwise attach to that material.
 5. For the further avoidance of doubt, the following documents shall be public documents:
 - (a) the NSIA Website Reports and the NSIA Final Report on the Forfeited Mecosta/Sani Assets;
 - (b) the MT Implementation Reports and the MT Final Report on the Forfeited Mecosta/Sani Assets; and
 - (c) the reports by the Monitoring CSO (s).

ARTICLE 11

TRANSFER OF THE FORFEITED MECOSTA/SANI ASSETS TO THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

1. The Government of the Federal Republic of Nigeria, through the Central Bank of Nigeria, shall maintain a designated U.S. dollar denominated account (hereinafter the "CBN DESIGNATED DOLLAR ACCOUNT") at the Bank of International Settlements in Basel, Switzerland to receive the Forfeited Mecosta/Sani Assets from the United States Department of the Treasury. The Government of the Federal Republic of Nigeria will provide information sufficient for the Government of the United States of America to execute the transfer of the Forfeited Mecosta/Sani Assets to the CBN DESIGNATED DOLLAR ACCOUNT following entry into force of this Agreement.
2. The Government of the United States of America, through the U.S. Department of Justice ('the USDOJ'), shall deduct not more than US\$ 1 million representing the USDOJ's costs and expenses incurred in the course of the recovery of the Forfeited Mecosta/Sani Assets and transfer the balance of the funds (including actual interest earned while invested by the USDOJ (if any)) to the CBN DESIGNATED DOLLAR ACCOUNT promptly after confirming the necessary banking information received from the Government of the Federal Republic of Nigeria.

ARTICLE 12

DISBURSEMENT AND MANAGEMENT OF THE FORFEITED MECOSTA/SANI ASSETS BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

1. The Parties agree that, in accordance with the terms of this Agreement, the responsibility for the use and management of the Forfeited Mecosta/Sani Assets is with the Government of the Federal Republic of Nigeria.
2. The Government of the Federal Republic of Nigeria, through the Central Bank of Nigeria, shall transfer the Forfeited Mecosta/Sani Assets to a U.S. dollar denominated account designated by the NSIA ('the NSIA Designated Account') within thirty (30) days of receipt of the funds from the USDOJ.
3. The NSIA shall be responsible for paying the relevant fees of the Monitoring CSO (s) and the NSIA Designated Independent Auditor from the Forfeited Mecosta/Sani Assets.

- 4. Subject to paragraphs 5 to 8 of this Article, disbursements shall be made for the Projects from the NSIA Designated Account in accordance with the Disbursement Plan set out in **Schedule 4A** and, for the Monitoring CSO (s) and the NSIA Designated Independent Auditor, on receipt of appropriate invoices.
- 5. No payments shall be made from the NSIA Designated Account unless a Monitoring CSO (s) and an NSIA Designated Independent Auditor are under contract with respect to the Forfeited Mecosta/Sani Assets, the members of the MT have been appointed, and the Parties have approved the Monitoring Programme of the Monitoring CSO (s), as set forth in **Schedule 7A**. The date of the last in time of these events shall be referred to as the 'Earliest Disbursement Date'.
- 6. Twenty-one (21) days prior to the Earliest Disbursement Date, the NSIA shall send an updated **Schedule 4A** to the Competent Authorities of the Parties.
- 7. If at any time the NSIA determines that unforeseen exigencies prevent it from making disbursements or construction progress in substantial conformance with **Schedule 4A**, the NSIA shall send an updated **Schedule 4A** to the Competent Authorities of the Parties within twenty-one (21) days of making such a determination.
- 8. The Implementing Authority of the Government of the United States of America shall have twenty-one (21) days from receipt of any updated **Schedule 4A** in which to raise any objections to such updated **Schedule 4A** with the NSIA (copied to the Competent Authority for the Government of the Federal Republic of Nigeria). If no objection or request for further time to review is raised within that time period, the updated **Schedule 4A** as transmitted by NSIA shall be deemed to have replaced any previous **Schedule 4A** as a valid and operative part of this Agreement. In the case of a dispute between the Parties in relation to the content of any updated **Schedule 4A**, the dispute shall be resolved in accordance with Article 16.

**ARTICLE 13
OTHER FEES**

- 1. The Government of the Federal Republic of Nigeria shall be solely responsible for the payment of any fees it resolves that it may owe for:
 - (a) the NSIA's management of the Forfeited Mecosta/Sani Assets and the implementation of this Agreement; and
 - (b) attorney's fees.
- 2. The Forfeited Mecosta/Sani Assets shall not be applied to the payment of fees mentioned in paragraph 1.

ST

MSF

ARTICLE 14
DISCLOSURE OF THIS AGREEMENT

This Agreement shall be a public document.

ARTICLE 15
ANTI-CORRUPTION

1. The Parties agree to combine their efforts to fight against corruption in connection with the Projects and the Forfeited Mecosta/Sani Assets and warrant to each other that no offer, donation, payment, remuneration or advantage in any form whatsoever that may be considered as an illicit act or a form of corruption, has been or shall be granted to anyone, directly or indirectly, with the aim of obtaining a benefit in relation to the Projects, the Forfeited Mecosta/Sani Assets or this Agreement.
2. The Government of the Federal Republic of Nigeria agrees to inform the Government of the United States of America immediately in the event that any credible allegation or other indication of fraud or corruption in connection with the Projects, the Forfeited Mecosta/Sani Assets or this Agreement comes to its attention.
3. The Government of the Federal Republic of Nigeria shall:
 - (a) take timely and appropriate action to investigate such allegations or other indications;
 - (b) inform the Government of the United States of America on the progress of such investigations and, promptly after their conclusion, on its findings and the actions the Government of the Federal Republic of Nigeria takes in response to the findings; and
 - (c) in the event that the investigation substantiates that fraud or corruption has occurred, promptly reimburse the NSIA Designated Account in full for any funds that may have been lost, misappropriated or inappropriately disbursed, expended or used and take such other action as may be necessary or appropriate to remedy the damage caused by the fraudulent or corrupt act (s).
4. The NSIA shall include anti-corruption clauses in all contracts and sub-contracts relating to the Projects. Such clauses shall provide that in the event of any breach, the relevant contract or sub-contract shall be voidable at the absolute discretion of the NSIA.
5. The NSIA shall include an annual certification requirement in all contracts and sub-contracts relating to the Projects that the contractor and its sub-contractors acknowledge and agree not to make Ineligible Expenditures and to abide by the limitations set forth in Article 3 regarding use of the Forfeited Mecosta/Sani Assets. Such clauses shall provide that in the event of any Ineligible Expenditure or use not authorized by this Agreement, the NSIA, in its absolute discretion, may withhold payments to such contracting parties, require repayment of funds or void such contract or sub-contract.

GH

MBP

**ARTICLE 16
SETTLEMENT OF DIFFERENCES**

Differences or disagreements arising out of the interpretation, operation or implementation of this Agreement shall be settled amicably through consultations among the Parties.

**ARTICLE 17
AMENDMENT**

This Agreement may be amended by written agreement of the Parties at any time.

**ARTICLE 18
SUSPENSION OF EXPENDITURES**

1. In the event that: (i) one or more of the Projects is cancelled; (ii) the Government of the Federal Republic of Nigeria is not able to provide sufficient funds as required in accordance with Article 6 (3) and **Schedule 3A**; (iii) disbursements are not made substantially in accordance with **Schedule 4A**; (iv) there is a disagreement between the Parties as to the content of any updated **Schedule 4A** referred to in Article 12 or as to an unresolved issue as described in Article 8 (8) or 8 (13); (v) a determination that Forfeited Mecosta/Sani Assets have been used for Ineligible Expenditures has been made under Article 8 (14) and an equivalent sum has not been returned to the NSIA Designated Account within three (3) months; or (vi) there is a material change in the Nigerian Implementing Authority or its ability to carry out its responsibilities in relation to this Agreement, the following provisions shall apply:
 - (a) The Government of the Federal Republic of Nigeria shall ensure that all expenditure of the Forfeited Mecosta/Sani Assets shall be suspended immediately. No further disbursements of the Forfeited Mecosta/Sani Assets shall be made from the NSIA Designated Account or otherwise unless and until the Parties negotiate and execute an amendment to this Agreement or otherwise agree in writing that expenditures may resume;
 - (b) the Competent Authority of the Government of the Federal Republic of Nigeria shall inform the Implementing Authority for the Government of the United States of America within seven (7) days of the relevant event identified in (i) to (vi) in paragraph 1; and
 - (c) the Parties shall reconvene no later than three (3) months from the date of the notification described in paragraph 1 (b) of this Article to agree upon future action.

**ARTICLE 19
COMMUNICATIONS AND POINTS OF CONTACT**

1. Notices between the Parties under this Agreement shall be in writing and shall be communicated to the points of contact for the Competent Authorities and Implementing Authorities as set forth herein.
2. The points of contact for the Competent Authorities are:

GH

SMB

(a) For the Federal Republic of Nigeria:

Office: Honourable Attorney General and Minister of Justice
Address: Federal Ministry of Justice, Abuja, Nigeria
Email: asset.project@justice.gov.ng
Telephone: +234 805088 8806

(b) For the United States of America:

Office: Money Laundering and Asset Recovery Section
U.S. Department of Justice
Address: 1400 New York Avenue, NW, Suite 10100
Washington, D.C. 20530
United States of America
Telephone: +1 202 514-1263

With a copy to:

Office: Economic Section
United States Embassy Abuja
Address: 1075 Diplomatic Drive
Central District Area
Abuja, Nigeria
Telephone: + 234 9 461 4000

3. The points of contact for the Implementing Authorities are:

(a) For the Federal Republic of Nigeria:

Office: The Managing Director and CEO
Nigeria Sovereign Investment Authority
Address: Plot 1386A Tigris Crescent,
Maitama – Abuja, Nigeria
Email: exco@nsia.com.ng; legal@nsia.com.ng
Telephone: +234-809 046 0440

(b) For the United States of America:

Office: Money Laundering and Asset Recovery Section
U.S. Department of Justice
Address: 1400 New York Avenue, NW, Suite 10100
Washington, D.C. 20530
United States of America
Telephone: +1 202 514-1263

With a copy to:

Office: Economic Section
United States Embassy Abuja
Address: 1075 Diplomatic Drive
Central District Area
Abuja, Nigeria
Telephone: + 234 9 461 4000

OK
FMBJ

ARTICLE 20
FINAL PROVISIONS

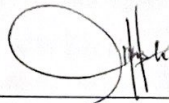
1. This Agreement shall enter into force upon signature of the Parties.
2. This Agreement shall remain in force until six (6) months after the amounts held in the NSIA Designated Account have been exhausted and the Parties have received the NSIA Final Report on the Forfeited Mecosta/Sani Assets, the MT Final Report and the CSO Final Report on the Forfeited Mecosta/Sani Assets.
3. This Agreement is intended solely for the purposes of mutual assistance, understanding and co-operation amongst the Parties. It does not give rise to any right on the part of any private person and is not intended to benefit third parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

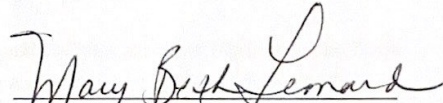
Done, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE FEDERAL
REPUBLIC OF NIGERIA:

FOR THE GOVERNMENT OF THE UNITED
STATES OF AMERICA:



Abubakar Malami, SAN
Attorney General of the Federation of the
Minister of Justice
Date:
Place:



Ambassador Mary Beth Leonard
Ambassador, Embassy of the United
States America, Abuja, Nigeria
Date:
Place:



U.S. Department of Justice

Criminal Division

Money Laundering and Asset Recovery Section

Washington, D.C. 20530

November 17, 2022

The Honorable Abubakar Malami SAN
Attorney-General of the Federation and Minister of Justice
Federal Ministry of Justice
Plot 71B, Shehu Shagari Way
Maitama, Abuja FCT
Nigeria

Attn: Mrs. Beatrice Jedy-Agba
Permanent Secretary and Solicitor General of the Federation

Re: *United States v. All Assets Held in Account Number 80020796 et al.*,
No. 1:13-cv-01832-JDB (D.D.C.)

Dear Mr. Abubakar Malami, SAN,

The United States has repatriated USD 20,637,622.27 to the Federal Republic of Nigeria (Nigeria) pursuant to the agreement executed by the Governments of the United States and Nigeria on August 23, 2022 (Agreement). As set forth in the Agreement, the funds comprise the net value of certain assets held in the United Kingdom and forfeited in the above-referenced matter ("Forfeited Mecosta/Sani Assets"). Consistent with Article 11 of the Agreement, the United States transferred the funds to a U.S. dollar denominated account designated by the Central Bank of Nigeria at the Bank of International Settlements in Basel, Switzerland. This letter provides further details regarding the final amount of that transfer.

As noted in prior discussions with the Nigerian Ministry of Justice, upon execution of the Agreement, the United States received GBP 17,810,887.97 from the United Kingdom Home Office (Home Office) on August 31, 2022. The United States converted the sum to the U.S. dollar equivalent of this amount, which totalled approximately USD 20.6 million. This amount varied from the "approximately \$23 million" anticipated and announced in the press release that accompanied the August 23, 2022 execution of the Agreement.

This difference in the amount is primarily due to the conversion of the funds into pounds sterling and then back into U.S. dollars. As discussed, the United Kingdom National Crime Agency (NCA) provided the United States the following explanation:


1. The NCA received approximately USD 23,400,000 from Standard Bank and HSBC Bank plc in accordance with the Registration and Recovery Order granted by the U.K. High Court.

2. The NCA deducted USD 116,078.20 for its costs in enforcing the U.S. order.
3. The NCA transferred USD 23,284,185.84 to the Home Office on April 12, 2022.
4. The Home Office account automatically converts any foreign currency into GBP when it enters the account. The exchange rate of GBP1:USD1.3 was applied by the Home Office account. Accordingly, an amount of GBP 17,810,887.97 was indicated as the receipted payment to the NCA.
5. The Home Office transferred GBP 17,810,887.97 to the United States Department of Justice on August 31, 2022.

In accordance with its usual practice, the United States then converted the funds from British pounds to U.S dollars for deposit into the Department of Justice's Assets Forfeiture Fund. At the applicable exchange rate, the GBP 17,810,887.97 equaled USD 20,637,622.27 which funds were then transferred to the CBN.

We are pleased to have successfully completed this aspect of the enforcement of the default judgment obtained by the Department of Justice and to have returned these additional funds to Nigeria for the benefit of the Nigerian people under the Agreement between our countries.

Very respectfully,



Brent S. Wible
Acting Chief