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IMPLEMENTATION AGREEMENT

by and between

THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE, REPRESENTED BY THE MINISTRY
OF FINANCE AND ECONOMIC DEVELOPMENT AND THE MINISTRY OF ENERGY

and

SOLAR ERA HOLDINGS

relating to the

5MW Solar Energy Generation in

Bo District, Southern Province, Sierra Leone

Dated 8th May 2015

LIAMENT LIBRA
OWER HILL FREEYO



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THIS IMPLEMENTATION AGREEMENT is made on the 8th day of May 2015 between

- (1) THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE, REPRESENTED BY THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT AND THE MINISTRY OF ENERGY (hereinafter referred to as the "Government"); and
- (2) SOLAR ERA HOLDINGS (hereinafter referred to as the "Company" which expression shall wherever the context so admits include its lawful Assigns).

WHEREAS

- A. The Company has agreed to build, own, operate and transfer a solar energy generation plant at Bo District, Southern Province, Sierra Leone (the "Project") pursuant to the provisions of this Agreement and the Power Purchase Agreement referred to in recital B.
- B. The Offtaker desires and intends to purchase the net electrical output produced by the Project pursuant to the Power Purchase Agreement executed on 8th May 2015, as authorized by the Government.
- C. To promote the implementation of the Project, and in exchange for the undertakings and agreements of the Company pursuant to this Agreement and the Power Purchase Agreement, the Government agrees to provide certain incentives and to provide certain assistance as provided in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

Capitalised terms used in this Agreement but not defined shall have the meaning given to them in the Power Purchase Agreement.

Unless the context otherwise requires, the following terms shall have the following meanings whether used in the singular or in the plural:

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|---|--|
| "Acceptable Bank" | means a bank or financial institution, which is acceptable to the Company and the Financing Parties but which should include ECO Bank, Standard Chartered Bank and Zenith Bank. |
| "Agreement" | means this Implementation Agreement, together with all Schedules attached hereto, as the same may be amended from time to time. |
| "Cause" | means with respect to the revocation of any Governmental Authorisation, a revocation on account of any default or gross negligence on the part of the Company or its contractors in complying with the material terms of a Governmental Authorisation or any applicable Law consistently applied in a non-discriminatory manner and in accordance with the spirit of this Agreement. |
| "Change of Control" | means, in relation to a person, company or entity, a change of the person, company or entity, that possesses, directly or indirectly, the power to direct or cause the direction of the management or the policies of that person, company or entity, whether through ownership, by contract or otherwise. |
| "Company Default Purchase Price" | means the price set out at paragraph 1.1 of Schedule 1. |



"Consent"	means any approval, consent or other authorisation that is required from any Governmental Instrumentality under the laws of Sierra Leone with respect to the Project.
"Direct Agreement"	means the agreement entered into, or to be entered into, between the Offtaker, the Company and a security agent or trustee on behalf of the Financing Parties and substantially in the form set out at Schedule 3.
"Dispute"	means any dispute between the Parties whether resulting from a claim in contract, in tort or based on any other legal doctrine which may arise out of, or in connection with, (whether, in each case, wholly or partially, directly or indirectly) this Agreement or the interpretation, application, implementation, validity, breach or termination of this Agreement or any related instrument, agreement or document, or any other provision hereof or thereof.
"Effective Date"	means the date this Agreement is entered into between the Parties.
"Escrow Account"	means a USD bank account with the Escrow Agent to be located in Sierra Leone.
"Escrow Agent"	means an Acceptable Bank which has agreed to open the Escrow Account and enter into the Escrow Letter.
"Escrow Amount"	means USD 650,000 (Six Hundred and Fifty Thousand US Dollars).
"Escrow Letter"	means the letter in the form set out in Schedule 2 (Form of Escrow Letter).
"Escrow Period"	means the period from and including the date that is four months after the Effective Date of the Power Purchase Agreement up until the date that is 90 days after the date of expiry or termination of the Power Purchase Agreement.
"Event of Default"	has the meaning set out in Clause 12.1.3.
"Finance Act 2013"	means the Finance Act of 2013 enacted by the President and Members of Parliament of the Republic of Sierra Leone.
"Financing Parties"	means the banks and other financial institutions and agencies party to the Financing Documents, including any security agent or trustee.
"Government Default Purchase Price"	means the price set out at paragraph 1.2 of Schedule 1.
"Leones"	means the lawful currency of Sierra Leone.
"Loss"	means any and all loss, damage, liability, payment or obligation (including, damage, liability, payment or obligation, and all expenses (including reasonable legal fees)).
"Natural Force Majeure Purchase Price"	means the price set out at paragraph 1.3 of Schedule 1.
"Offtaker"	means the Electricity and Distribution Authority, Sierra Leone and its legal successors and assigns.
"Offtaker Event of Default"	means an event referred to as such in Clause 17.2 of the Power Purchase Agreement.



"Overheads"	means any direct head office costs and management fees that can be demonstrated to be properly incurred for the specific purpose or benefit of the Company's businesses, subject to: <ul style="list-style-type: none"> i) the submission of invoices and as laid out in a detailed schedule of expenses verified by independent auditors, and ii) the approval of the board of directors of the Company. For the avoidance of doubt Overheads exclude payment for goods or services provided by a third party that is not an affiliate of the Company.
"Overheads Cap"	means for each applicable fiscal period a cap of 6% of the Company's revenue during that period (as stated in the Company's annual audited accounts).
"Party"	means the Government, or the Company, as the case may be.
"Power Purchase Agreement"	means the agreement of that name by and between the Offtaker and the Company, dated as of the date hereof, for the sale of the energy of the Project, as the same may be amended from time to time.
"PPA Payment"	means any payment contemplated pursuant to the Power Purchase Agreement and owed by the Offtaker to the Company under that same agreement.
"Project Agreements"	means, collectively, this Agreement, the Land Agreement, the EPC Contract, the O&M Agreement, the Power Purchase Agreement, the Transmission Agreement and the Financing Documents, including the Direct Agreement.
"Protected Assets"	means any property or assets of the Government protected by diplomatic or consular privileges under public international law;
"Register of Companies"	means the appropriate official at the Sierra Leone companies register.
"Sierra Leone"	means the Republic of Sierra Leone.
"Term"	The initial term of this Agreement specified in Clause 3, as it may be extended from time to time in accordance with the provisions of this Agreement.

1.2 Interpretation

The rules of interpretation set out in Section 1.2 of the Power Purchase Agreement shall apply mutatis mutandis to this Agreement.

1.3 Priority of Documents

If there is any inconsistency between any of the provisions of this Agreement, the Power Purchase Agreement and the Direct Agreement, the provisions of the documents shall take priority in the following order:

- 1.3.1 the Direct Agreement,
- 1.3.2 this Agreement; and
- 1.3.3 the Power Purchase Agreement.



2. THE PROJECT

2.1 Right to Develop

Through the Government Instrumentalities, the Government hereby grants to the Company throughout the Term the exclusive right:

2.1.1 to develop, design, finance, construct, own, operate, maintain, manage and transfer the Project; and

2.1.2 to sell to the Offtaker all the energy that the Project is capable of making available pursuant to the Power Purchase Agreement to be entered by and between the Offtaker and the Company.

2.2 Transfer of the Plant

The Government shall require the Company, and the Company hereby agrees, to transfer all the facilities of the Plant in fair operational condition at the end of the Term and to conduct all activities incidental thereto, and in accordance with the terms of this Agreement, the Power Purchase Agreement and the Land Agreement.

3. EFFECTIVE DATE AND DURATION

3.1 Effective Date

Subject to Clause 4.4, this Agreement shall enter into full force and effect from the date of its execution (the "Effective Date").

3.2 Duration of Term

The term of this Agreement shall continue until the Power Purchase Agreement has expired or been terminated earlier in accordance with the terms of that agreement and all outstanding obligations of the Offtaker under the Power Purchase Agreement have been performed.

4. GOVERNMENT SUPPORT OBLIGATIONS

4.1 Government Authorisations

Provided that the Company has complied with its obligations in Clause 7, the Government shall:

4.1.1 ensure that in a timely manner, all Government Instrumentalities grant to the Company (or its agents, representatives or contractors as may be reasonably necessary) all Government Authorisations in respect of which applications in accordance with Clause 7.1 have been made;

4.1.2 ensure that no Government Instrumentality attaches, at any time during the Term, any term or condition to the Government Authorisations which materially and adversely affects the Company or the Project or which imposes conditions on the Company that are more onerous than under the Power Purchase Agreement;

4.1.3 ensure that all Government Authorisations are, upon their expiry, renewed on substantially similar terms or on terms no less favourable than those agreed pursuant to the Power Purchase Agreement or this Agreement;

4.1.4 ensure that no Government Instrumentality revokes any Governmental Authorisation without Cause; and

4.1.5 in the event that a Government Authorisation has been revoked for Cause, procure the grant by the Government Instrumentality of a further Government Authorisation if the Company has provided to the Government Instrumentality reasonable evidence to demonstrate that the failure to comply with the Governmental Approval has been



rectified and all fines have been paid, save where such revocation for Cause is of a result of a breach or default by the Company under this Agreement and/or the Power Purchase Agreement.

4.2 Support to Obtain Consents

4.2.1 Without limiting the obligations of the Government pursuant to Clause 4.1 upon the request of the Company, the Government shall support, use and cause to be used all reasonable efforts to expedite consideration of the application for each Governmental Authorisation or renewal thereof made in the circumstances set out in Clauses 4.1.3 and 4.1.5. For the avoidance of doubt, all costs of obtaining such Government Authorisations shall be borne by the Company and the process of making any application for such Government Authorisation by the Company shall be in accordance with the Law.

4.2.2 Any request for support under this Clause 4.2 shall be accompanied with copies of the application for the Governmental Authorisation, and clear evidence that the issuance or renewal of the Governmental Authorisation was denied, deferred or was not processed in a timely manner.

4.3 Grant of Investment Incentives

The Government shall ensure that all the relevant investment incentives are granted by the Government Instrumentalities to the Company on or before the Closing Date provided that all such incentives:

4.3.1 are granted in accordance with the Finance Act 2013; and

4.3.2 shall be valid only in relation to the Project and for the duration of the Term.

4.4 Financing of the Project

The Government shall at any time and from time to time make such confirmation and execute such documents as the Financing Parties may reasonably require to enable the Company to arrange financing for the Project on a limited recourse basis including, but not limited to entering into the Direct Agreement with the Financing Parties.

4.5 Expropriation, Nationalization and Confiscation

The Government shall ensure that no Government Instrumentality expropriates, compulsorily acquires, nationalises, or confiscates all or any part of the Project, any assets, rights or other interest of the Company related to the Project, or the interest of any Shareholders.

4.6 Construction, Operation and Maintenance

Subject to the provisions of the Laws, this Agreement and the Power Purchase Agreement, the Government and the other Government Instrumentalities shall not intervene in the construction, operation and maintenance of the Project in a manner that is adverse to the Project or the Company, save as may be necessary to protect public health and safety and to perform their statutory duties.

4.7 Assurance Against Discriminatory Action

Subject to the provisions of the Laws, this Agreement and the Power Purchase Agreement neither the Government nor any other Government Instrumentality shall take any discriminatory action (which shall include the imposition of obligations, conditions or standards in relation to the Project that are unduly and materially more onerous than those relating to any similar power station project that is privately financed on a similar basis by any person other than the Government or any Government Instrumentality) that materially and adversely affects the Project, the performance of the Company's obligations or the enjoyment of its rights or the



interests of the Shareholders under this Agreement, the Power Purchase Agreement or the Land Agreement.

4.8 Expatriates

4.8.1 The Government shall expedite the issuance of visas and work permits to the qualifying directors, consultants and employees (including their immediate families) of the Company and its Contractors and sub-contractors in relation to the Project.

4.8.2 The right of such directors, consultants and employees (including their immediate families) of the Company and its Contractors and sub-contractors to bring into or import, and to export following or in anticipation of the ending of their period of residence or work personal and household effects, free of all taxes and custom duties shall be in accordance with the Laws (including the Finance Act, 2013 and its subsequent amendments)¹ and otherwise subject to the Government's usual terms and conditions being applied and without any discrimination and for the same to be processed through the point of entry or exit, including any customs procedure without delay, and

4.8.3 The Government agrees that it shall procure without delay all documents, permits and licenses required to give effect to the provisions of this Clause 4.9 in accordance with the Laws.

4.9 Import and Export of Equipment and Materials:

4.9.1 The Government agrees to procure that at all times during the Term the Company, its Contractors, and sub-contractors are entitled to import into and export from Sierra Leone without restriction all plants, equipment, machinery, spare parts, materials and supplies required for the construction, completion operation and maintenance of the Project (or any part thereof), and that each of the same will be processed through the port of entry, including any customs procedures, without delay, unless The Government considers, acting reasonably, that there is a material danger to life, property or the environment arising there from and any restriction imposed applies equally to all persons in Sierra Leone. The Government agrees that it shall procure that all relevant officials or public authorities shall deliver without delay all documents, permits and licenses required to give effect of the foregoing.

4.9.2 The Government agrees that all plant, machinery and equipment to be used for the Project shall be eligible for duty free imports for the duration of the Project.

4.10 Support to obtain Site and Transportation

The Government will use its reasonable endeavours to ensure that access to and from the Site suitable for construction and operation of the Plant is available. For the avoidance of doubt the Parties confirm that the Government will not be responsible for organising or providing any transportation services or equipment in relation to the construction or operation of the Plant.

5. GOVERNMENT PAYMENT OBLIGATIONS

5.1 PPA Payment

The Government agrees that, if, in respect of a PPA Payment:

5.1.1 the amount is due and payable by the Offtaker pursuant to the Power Purchase Agreement and has not been paid in full by the Offtaker within twenty one (21) Business Days of such amount becoming due and payable;

5.1.2 the PPA Payment amount is not in dispute; and

¹ NB: Ibrahim to confirm

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5.1.3 the Company has delivered a demand for payment of the PPA Payment to the Offtaker in accordance with the provisions of the PPA, and despite such demand, such amount is not paid,

then the Government will make payment of the PPA Payment (together with any interest accrued thereon as may be due and payable at the rate and for the period specified in the PPA or the Direct Agreement) to the Company and or Financing Parties within forty (40) Business Days on first written demand of the Company or the Financing Parties for payment, which may be issued after the lapse of the period detailed in Clause 5.1.1.

5.2 **Government Termination Payments**

The Government will ensure that any payment or payments made pursuant to Clause 12 (*Termination*) shall be made promptly. All payment pursuant to this Clause 5 (*Government Payment Obligations*) shall be made to the bank account nominated for that purpose by the Company and or the Financing Parties.

5.3 **Transfer of Government Obligations**

If the Offtaker has continuously performed all of its financial obligations pursuant to the Power Purchase Agreement and no recourse by the Company to the provisions of this Clause 5 has been made for more than 10 (ten) years from the Effective Date, the Parties (and the Offtaker) will have the right to initiate good faith negotiations on the possibility of transferring all of the Government's rights and obligations under this Agreement to EDSA. The Parties confirm that the Finance Parties' consent to such transfer will be required and that a transfer could only take place after all the Senior Debt (as such term is defined in Schedule 1 (Consequences of Termination) has been fully repaid.

6. **ESCROW ACCOUNT**

6.1 **Establishment and minimum balance**

6.1.1 The Government shall establish the Escrow Account with the Escrow Agent by no later than the commencement of the Escrow Period and shall procure that the Escrow Agent executes the Escrow Letter for the Escrow Amount.

6.1.2 The Government shall procure that at all times during the Escrow Period the balance standing to the credit of the Escrow Account is no less than the Escrow Amount, less the amount of any Letter of Credit.

6.1.3 The Parties agree that the Escrow Account shall be increased on a pro-rata basis on or before any Expansion Works entering into commercial operation.

6.2 **Letter of Credit**

6.2.1 The Government may, at any time, withdraw an amount from the Escrow Account if, by no later than 10 Business Days prior to such withdrawal, the Government procures that an irrevocable on demand letter of credit in the form acceptable to the Company, acting reasonably is issued in favour of the Company by an Acceptable Bank in an amount no less than the amount of the proposed withdrawal and valid for a term of no less than 12 months (the "**Letter of Credit**").

6.2.2 By no later than 15 Days prior to the expiry of any Letter of Credit, the Government shall:

- (a) replace the existing Letter of Credit with a new Letter of Credit;
- (b) increase the balance in the Escrow Account;

in each case in an amount necessary to ensure that, following the expiry of the existing Letter of Credit, the Government would comply with its obligations under Clause 6.1.2,

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failing which the Company may call on the existing Letter of Credit and require that all proceeds are deposited into the Escrow Account.

6.3 Use of funds

- 6.3.1 If at any time the Offtaker fails to make a payment to the Company by the due date for such payment under the Power Purchase Agreement, the Company shall be entitled to:
- (a) withdraw an amount equal to such payment and any default interest accruing thereon in accordance with the Power Purchase Agreement from the Escrow Account; and/or
 - (b) to make a claim under any Letter of Credit in an amount equal to such payment and any default interest accruing thereon in accordance with the Power Purchase Agreement.
- 6.3.2 Promptly following any withdrawal from the Escrow Account and any claim under the Letter of Credit, the Company shall notify the Government in writing of the circumstances and the amount of such withdrawal and/or claim (as applicable) and notifying the Government of its obligation to replenish the account in accordance with Clause 6.1.2.

6.4 Other provisions

- 6.4.1 The Parties agree that the Escrow Account and any Letter of Credit may be secured in favour of the Financing Parties.
- 6.4.2 Interest accruing from time to time on the balance in the Escrow Account shall be credited to the Escrow Account.
- 6.4.3 The Government shall pay the Escrow Agent's costs in respect of its duties under or in connection with this Agreement and the maintenance of the Escrow Account, as such costs may be agreed between the Government and the Escrow Agent from time to time.
- 6.4.4 All payments by the Escrow Agent under this Clause 6 shall be made gross and without deduction or withholding of any kind other than any deduction or withholding required by the laws (in which case gross-up shall apply) in accordance with the Escrow Letter.
- 6.4.5 If a payment to the Company under this Clause 6 will be or has been subject to tax, the Escrow Agent shall on demand from the Company pay to the Company from the Escrow Account, the amount (after taking into account Tax payable in respect of the amount) that will ensure that the Company receives and retains a net sum equal to the sum it would have received had the payment not been subject to Tax in accordance with the Escrow Letter.
- 6.4.6 On the date 90 days after the expiry of the Power Purchase Agreement at the end of its term, the money standing to the credit of the Escrow Account at that date (less the total of any outstanding claims made by the Company under this Clause 6) shall be transferred to another account of the Government or as it may direct. Any Letter of Credit in place at that time may be cancelled.

6.5 Disputes as to amounts

The obligations of the Government under this Clause 6 are unconditional. If the Government wishes to dispute whether an amount is due and payable under the Power Purchase Agreement or the calculation of the Escrow Amount, it shall comply with its obligation to maintain the Escrow Amount in the Escrow Account and may pursue the Dispute in accordance with Clause 12 (*Dispute resolution*).



7. OBLIGATIONS OF THE COMPANY

7.1 Application for Government Authorisations

The Company shall make (or cause to be made) and diligently pursue an application that complies with the requirements of the relevant Laws for each Governmental Authorisation necessary for the Company to design, develop, construct, finance, insure, own, operate and maintain the Project as contemplated in this Agreement and the Power Purchase Agreement.

7.2 Construction of the Project

The Company shall design, develop, construct, finance, insure, own, operate and maintain the Project in accordance with the applicable Laws and the terms of the Power Purchase Agreement, this Agreement and the Land Agreement.

7.3 Environmental Protection, Health and Safety

The Company shall comply with the applicable Laws and requirements of the Power Purchase Agreement regarding environmental protection, health and safety.

7.4 Corporate Documentation

Before the Closing Date, the Company shall deliver to the Government a copy, certified as a true copy by a duly authorised officer of the Company, of:

- 7.4.1 the articles of incorporation and the certificate of incorporation of the Company;
- 7.4.2 resolutions passed by the board of directors of the Company authorising the execution, delivery and performance by the Company of the Power Purchase Agreement, this Agreement, the Financing Documents and any other agreement or document to be executed and delivered in respect thereof; and
- 7.4.3 the EPC Contract (excluding any information of a proprietary and technical or commercially sensitive nature) and all security documents provided by the EPC Contractor pursuant to the EPC Contract, substantially in accordance with the terms of the Power Purchase Agreement.

7.5 Government Inspection Rights

The Company shall be obliged, upon receipt of not less than forty-eight (48) hours' written notice, to allow not more than four (4) Government representatives to have access to the Site at reasonable times for the purposes of viewing the Plant and verifying the Company's compliance with its obligations under this Agreement and/or the Power Purchase Agreement; provided that the Government shall ensure that its representatives shall comply with all relevant health and safety precautions and standards, and any other reasonable requirements of the Company and its Contractors, and shall not interfere with the construction or operation of the Plant.

7.6 No Improvements

Unless such works are Expansion Works or as otherwise agreed pursuant to the Power Purchase Agreement the Company shall not be entitled to construct or procure the construction of any addition to or any expansion of the Plant that is intended to or may or will result in increasing the capacity of the Plant above the agreed capacity under the Power Purchase Agreement.

7.7 Local Content

The Company shall use its reasonable endeavours to comply with the provisions of Schedule 4 (Sierra Leone Local Content Policy).

8. FINANCIAL ISSUES

8.1 Security

8.1.1 For the purpose of financing the Project and in compliance with the Laws, the Company may charge or assign by way of security, in favour of the Financing Parties, its interests in:

- (a) this Agreement;
- (b) the Power Purchase Agreement;
- (c) any other agreement or document related to the Project;
- (d) the Site;
- (e) the immovable property situated on the Site; or
- (f) the moveable property and intellectual property of the Company.

8.1.2 The Government agrees to execute and give all acknowledgements of any security or assignments created pursuant to Clause 8.1.1 as are reasonably requested by the Company to give effect to Clause 8.1.1.

8.2 Foreign Exchange and Bank Accounts

In compliance with the Laws, the Company shall have the right to open any type of foreign or local bank accounts and shall have the right to freely convert an amount in Leones or any type of foreign currency into any other currency and transfer any such amount abroad. The Government will procure the prompt delivery of any Government Authorisations necessary to effect this clause.

8.3 Tax

The Government shall ensure that subject to the provisions of the Finance Act 2013, the Company receives the benefit of all applicable tax and investment incentives.

9. REPRESENTATIONS AND WARRANTIES

9.1 Government Representations and Warranties

The Government hereby represents and warrants to the Company that:

- 9.1.1 the Offtaker has full power and authority to execute and deliver this Agreement on behalf of the Government;
- 9.1.2 the Government has full power and authority to perform its obligations under this Agreement;
- 9.1.3 the execution, delivery and performance of this Agreement by or on behalf of the Government:
 - (a) has been duly authorized by all requisite action on the part of the Government; and
 - (b) will not:
 - (i) violate the Laws or any applicable order of any Government Instrumentality; or

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- (ii) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Government is a party or by which the Government or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the properties or financial condition of the Government or on its ability to perform its obligations under this Agreement;
- 9.1.4 assuming it constitutes a legal, valid and binding obligation of the Company, this Agreement constitutes a legal, valid and binding obligation of the Government, enforceable against it in accordance with its terms, subject to general principles of equity.
- 9.1.5 to the best of its knowledge after reasonable enquiry no filing or registration with, no notice to and no permit, authorization, consent or approval of any person is required for the execution, delivery or performance of this Agreement by the Government, except for such filings, registrations and notices that have been made or given, and such permits, authorizations, consents or approvals as have been obtained and are in full force and effect.
- 9.1.6 the Government is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Agreement, the validity or enforceability of this Agreement or on the financial condition of the Government; and
- 9.1.7 there is no action, suit, proceeding or investigation pending, or to the Government's knowledge, threatened, against the Government which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement, the validity or enforceability of this Agreement or on the financial condition of the Government.

9.2 **Company Representations and Warranties**

The Company hereby represents and warrants to the Government that:

- 9.2.1 the Company is a limited liability company, duly organized, validly existing and in good standing under the Laws, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted.
- 9.2.2 the Company has full corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 9.2.3 the execution, delivery and performance of this Agreement by the Company:
 - (a) has been duly authorized by all requisite corporate action on the part of the Company, and no other proceedings on the part of the Company or any other person are necessary for such authorization; and
 - (b) will not:
 - (i) violate the Laws or any applicable order of any Government Instrumentality or any provision of the memorandum and clauses of association of the Company; or
 - (ii) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Company is a party or by which the Company

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or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Company, or on its ability to perform its obligations under this Agreement;

- 9.2.4 this Agreement has been duly executed and delivered by the Company;
- 9.2.5 assuming it constitutes a legal, valid and binding obligation of the Government, this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to:
- (a) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and
 - (b) general principles of equity;
- 9.2.6 to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no permit, authorization, consent or approval of any person is required for the execution, delivery or performance of this Agreement by the Company, except for the Consents;
- 9.2.7 the Company is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Agreement, the validity or enforceability of this Agreement or on the financial condition of the Company;
- 9.2.8 the Company is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement; and
- 9.2.9 there is no action, suit, proceeding or investigation pending or, to the Company's knowledge, threatened:
- (a) for the dissolution of the Company; or
 - (b) against the Company,

which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

10. SALE, TRANSFER, ASSIGNMENT, NOVATION AND CHANGE OF CONTROL

10.1 Assignment to Financing Parties

- 10.1.1 For the purpose of financing the Project and in compliance with the Laws, the Company may, without seeking the further consent of the Government, charge or assign by way of security, in favour of the Financing Parties, its interests in:
- (a) this Agreement;
 - (b) the Power Purchase Agreement;
 - (c) any other agreement or document related to the Project;
 - (d) the Site;
 - (e) the immovable property situated on the Site; or



(f) the moveable property and intellectual property of the Company.

10.1.2 The Government agrees to execute and give all acknowledgements of any security or assignments so created.

10.1.3 For the purposes of Public Private Partnership Act 2014, the Government acknowledges that by signing this Agreement it has given its prior written consent to any transfer or assignment contemplated by this Clause 10.1.

10.2 **Consent Required**

The Government is not permitted to sell, transfer, assign or novate its interests in this Agreement without the consent of the Company.

10.3 **Binding Agreement**

This Agreement, as it may be amended from time to time, shall be binding upon and inure to the benefit of the Parties to it and their respective successors, legal representatives, and assigns permitted under this Agreement.

11. **LIMITATION OF LIABILITY**

11.1 **Neither Party:**

11.1.1 shall have any liability to the other Party for any Loss suffered by that Party with respect to the subject matter of this Agreement except pursuant to, or for breach of, this Agreement; and

11.1.2 shall be liable to the other in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.

11.2 This Clause 11 does not constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by the Project Agreements or the Financing Documents.

12. **TERMINATION**

12.1 **Default and termination**

Termination Events

12.1.1 "Company IA Event of Default" means the termination of the Power Purchase Agreement by the Offtaker due to a Company Event of Default.

12.1.2 "Government Event of Default" means any of the following:

- (a) a breach by the Government of its obligations under Clause 5 (*Government Payment Obligations*) which has not been remedied within 30 Days of the Company notifying the Government of such breach;
- (b) a breach by the Government:
 - (i) of its obligation to maintain the relevant Escrow Amount in the Escrow Account under Clause 6 (*Escrow Account*) which has not been remedied within 30 Days of the Company notifying the Government of such breach;
 - (ii) of its obligation to maintain the Escrow Account; or
 - (iii) of any other provision of Clause 6 (*Escrow Account*) which has not been remedied within 30 Days of the Company notifying the Government of such breach;



- (c) the Power Purchase Agreement has been terminated by the Company due to an Offtaker Event of Default or by the Company or the Offtaker following a Prolonged Event of Political Force Majeure²; or
- (d) any breach of or default by the Government under any of its material obligations of this Agreement (other than any breach or default referred to in paragraphs (a) to (c) above) which is not remedied within 90 Days after notice from the Company, notifying the Government of such breach.

12.1.3 **"Event of Default"** means:

- (a) a Company IA Event of Default;
- (b) a Government Event of Default; or
- (c) a Force Majeure Event of Default,

as the context requires.

12.1.4 **"Natural Force Majeure Event of Default"** means the termination of the Power Purchase Agreement a Prolonged Event of Natural Force Majeure.

12.1.5 **"Termination upon Expiry"** means the termination of the Power Purchase Agreement upon the expiration of its term.

12.1.6 **"Termination for Non Fulfilment of Conditions Precedent"** means the termination of the Power Purchase Agreement by the Company if any condition precedent to the Closing Date has not been satisfied by 31 December 2015, unless such date has been extended by mutual agreement of the parties to the Power Purchase Agreement.

12.2 **Termination procedures**

12.2.1 If any Event of Default occurs and is continuing, the non-defaulting Party may deliver a notice to the defaulting Party which notice shall specify in reasonable detail the Event of Default and state that the non-defaulting Party intends to terminate this Agreement:

- (a) if the relevant Event of Default is a Company IA Event of Default or Natural Force Majeure Event of Default or a Government Event of Default under Clause 12.1.2(c), immediately on notice; or
- (b) if the relevant Event of Default is a Government Event of Default (not being one under Clause 12.1.2(c)), if such Event of Default is not remedied within 10 Days.

12.2.2 If Clause 12.2.1(b) applies and if the defaulting Party has not remedied the relevant Event of Default before the expiry of the remedy period, the non-defaulting Party may terminate this Agreement by delivering a notice of termination to the defaulting Party.

12.2.3 This Agreement shall terminate on the date of the relevant notice of termination served under Clauses 12.2.1(a) or 12.2.2.

12.2.4 The Government shall send to the Financing Parties a copy of any notice it may serve under Clauses 12.2.1(a) or 12.2.2 at the same time it serves such notice on the Company.

12.3 **Payment on termination**

² To be defined in PPA



- 12.3.1 If this Agreement is terminated in accordance with this Clause 12.3 following a Company IA Event of Default the Government shall be obliged to purchase the Project for the Company Default Purchase Price.
- 12.3.2 If this Agreement is terminated in accordance with this Clause 12.3 following a Government Event of Default, the Government shall be obliged to purchase the Project for the Government Default Purchase Price.
- 12.3.3 If this Agreement is terminated in accordance with this Clause 12.3 following a Natural Force Majeure Event of Default the Government shall be obliged to purchase the Project for the Force Majeure Purchase Price.
- 12.3.4 If this Agreement is terminated following a Termination for Non Fulfilment of Conditions Precedent or Termination upon Expiry neither Party shall have any liability to the other Party.
- 12.3.5 All amounts payable on termination in accordance with Schedule 2 (Compensation on termination) shall be calculated by the Company and notified to the Government in writing within 30 Days of termination of this Agreement and shall be payable by the Government to the Company (or its nominee) within 30 Days of receipt of such calculation.

12.4 **Rights on expiry and termination**

- 12.4.1 The only rights of the Parties to terminate this Agreement are as set out in this Clause 12.4 and all rights to terminate this Agreement which may be available under Law are hereby excluded.
- 12.4.2 On the expiration or termination of this Agreement and (where applicable) following receipt by the Company (or its nominees) of all payments due to it under this Clause 12.4, the Parties shall have no further obligations or liabilities hereunder except for:
- (a) any other obligations and liabilities which that arose prior to such termination; and
 - (b) any provisions of this Agreement which are specifically provided to apply after its termination or expiry.
- 12.4.3 Following the expiration or earlier termination of the Power Purchase Agreement, and provided that all payments to be made pursuant to this Clause 12 have been made, the Site and the Project will transfer to the Offtaker in accordance with the terms of the Power Purchase Agreement.

13. **DISPUTE RESOLUTION**

13.1 **Negotiation**

- 13.1.1 The Parties hereto agree to attempt to resolve any dispute, controversy, difference or claim ("**Dispute**") between them in connection with this Agreement promptly, equitably and in a good faith manner. To this end, each of the Parties shall designate in writing to the other Party from time to time a representative who shall be authorized to resolve by an agreement between them any Dispute in connection with this Agreement and, unless otherwise expressly provided herein, to exercise the authority of such Party to reach such an agreement.
- 13.1.2 If any Dispute is not resolved between the Parties pursuant to this Clause 13.1 within thirty (30) Days from the date on which one Party receives written notification from the other Party that a Dispute exists in connection with this Agreement, then such Dispute shall be settled exclusively and finally by arbitration in accordance with Clause 13.2.

13.2 **Arbitration**

- 13.2.1 It is specifically understood and agreed that any Dispute in connection with this Agreement that has not been resolved between the Parties pursuant to Clause 14.1 or 14.2 hereof may be submitted to arbitration irrespective of the amount in Dispute or whether such Dispute would otherwise be considered justiciable or ripe for resolution by any court. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.
- 13.2.2 Each arbitration between the Parties shall be held and finally settled in the City of London and shall be conducted pursuant to the Rules of Arbitration of the International Chamber of Commerce ("**ICC Rules**") in force when the arbitration commences.
- 13.2.3 The arbitration shall be conducted before an arbitral tribunal (the "**Tribunal**") composed of three (3) arbitrators. Each Party shall nominate an arbitrator, and the two Party-appointed arbitrators shall jointly nominate the third (who shall be the chairperson) within thirty (30) Days after the confirmation of the second arbitrator, failing which the chairman shall be appointed by the Secretary General of the ICC International Court of Arbitration (the "**ICC**").
- 13.2.4 Any arbitration commenced hereunder shall be completed within two hundred forty (240) Days of the appointment of the Tribunal absent agreement of the Parties to such arbitration. The Parties shall be entitled to discovery of documents only upon a finding of good cause by the Tribunal. All direct testimony shall be offered by way of affidavit. The Party submitting an affidavit shall make the affiant available for cross-examination before the Tribunal. The Parties waive any claim to any damages in the nature of punitive, exemplary or statutory damages in excess of compensatory damages, and the Tribunal is specifically divested of any power to award such damages. The award of the Tribunal shall be final and binding on the Parties (*i.e.* not subject to appeal), and the Parties agree that an arbitration award may be entered in any court having jurisdiction thereof. The Tribunal shall have the right and authority to grant injunctive, declaratory and other equitable relief.
- 13.2.5 Only Persons who are engineers, attorneys, financial advisors, former judges, managers, executives and other professionals with technical or legal experience related to the design, construction, financing, ownership, operation and/or maintenance of power generation shall be appointed as arbitrators. No arbitrator shall be a present employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party or a national of a state with which the domicile of any Party does not maintain diplomatic relations.
- 13.2.6 The arbitration shall be conducted in the English language and all documents submitted in connection with such proceeding shall be in the English language or, if in another language, accompanied by a certified English translation.
- 13.2.7 The Parties shall each pay one-half of any advance on costs set by the ICC. The Tribunal shall be entitled to allocate the costs of arbitration between the Parties, which costs shall be borne by each Party as determined in any arbitral award or awards by the Tribunal.

13.3 Sovereign Immunity

- 13.3.1 The Parties unconditionally and irrevocably agree that the execution and performance of this Agreement constitute a private and commercial act. In addition, each of the Parties unconditionally and irrevocably:
- (a) agrees that should any proceedings be brought against it or its assets in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, it will not claim immunity from such proceedings with respect to itself or its assets (other than the Protected Assets);



- (b) waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may acquire in the future whether characterised as sovereign immunity or otherwise in any jurisdiction in connection with any such proceedings including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court of tribunal and immunity from execution of a judgment;
- (c) waives any requirement under the State Proceedings Act, 2000 for a Party to give prior notice before commencing proceedings against the Government; and
- (d) consents generally in respect of the enforcement of any judgement or arbitral award against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any assets whatsoever (other than the Protected Assets) irrespective of its use or intended use).

13.3.2 The Company hereby irrevocably waives any and all rights it may have to enforce any judgement or claim against the Protected Assets with respect to any claim against the Government under this Agreement or any transaction contemplated by this Agreement.

13.4 Continued Performance

Pending resolution of a Dispute subject to Arbitration all parties will in good faith continue to perform their obligations under this Agreement.

14. MISCELLANEOUS PROVISIONS

14.1 Expenses of the Parties

Each Party shall bear all costs and expenses, including all fees and expenses of agents, representatives, counsel and accountants employed by the Parties, incurred by it in connection with entering into this Agreement, and the other Party shall have no liability in respect thereof.

14.2 Right to Specific Performance

In the event either Party fails to perform its obligations under this Agreement, the other Party shall have the right to require specific performance of the obligation not performed.

14.3 Further Assurances

If it shall be necessary and proper after the execution of this Agreement to execute any additional documents or take further action to carry out the intent of this Agreement, the Parties agree to take such action.

14.4 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with the laws of England.

14.5 Entire Agreement

This Agreement, together with the other Project Agreements and the Financing Documents, is intended by the Parties to be the final expression of their agreement with respect to the incentives and assistance to be provided by the Government in relation to the Project and is intended also to be a complete and exhaustive statement of their agreement with respect to the subject matter contained herein. As such, the terms and provisions contained in this Agreement supersede all previous communications, representations or agreements, oral or written, between the Parties with respect to the sale of electric capacity and energy from the Plant.



14.6 Amendments

This Agreement can be amended only by written agreement among the Parties.

14.7 Waiver

14.7.1 No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement:

- (a) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
- (b) shall be effective unless in writing duly executed by a duly authorized representative of such Party.

14.7.2 Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach nor as an acceptance of any variation, or as the relinquishment of any such right or any other right under this Agreement.

14.8 Confidentiality

14.8.1 Each Party and its employees, contractors, consultants and agents shall use its reasonable endeavours to keep confidential the contents of this Agreement and any documents or other form of information provided under it, including electronic communications, marked as confidential by or on behalf of the Party providing it.

14.8.2 Each Party shall use its reasonable endeavours to ensure that all information obtained by it under this Agreement shall only be made available to and used by its employees or staff having a need for such information in order to permit the Party to perform its obligations and exercise its rights under this Agreement and, except as may be required by any Law or Government Instrumentality other than the Government, shall not publish or otherwise disclose the same to third parties.

14.8.3 Either Party shall be entitled to disclose the terms and conditions of this Agreement and any data acquired by it under or pursuant to this Agreement without the prior consent of the other Party if such disclosure is made in good faith:

- (a) in the case of the Company, to any Affiliate of such Party upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in Clauses 14.8.1 and 14.8.2;
- (b) to any outside professional consultants or advisers engaged by or on behalf of such Party and acting in that capacity upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in Clauses 14.8.1 and 14.8.2;
- (c) to the Financing Parties, any security agent or trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance upon obtaining from the Financing Parties, any security agent or trustee, such bank or other institution and its advisers an undertaking or confidentiality equivalent to that contained in Clauses 14.8.1 and 14.8.2;
- (d) to the extent required by a Governmental Authorisation or binding requirement of a Government Instrumentality or the rules of a recognised stock exchange;
- (e) to the extent required by law or pursuant to any order of any court of competent jurisdiction;
- (f) to directors, employees and officers, as relevant, of such Party,



and is reasonably necessary to enable such Party to perform this Agreement or to protect or enforce its rights under this Agreement.

14.8.4 Clauses 14.8.1 and 14.8.2 shall not apply to:

- (a) any information in the public domain otherwise than by a breach of Clauses 14.8.1 or 14.8.2 by the same Party;
- (b) information in the possession of a Party before divulgence that was not obtained under an obligation of confidentiality;
- (c) information obtained from a third party that was free to divulge such information to other third parties and that was not obtained by either Party under an obligation of confidentiality; or
- (d) information contained in a document that has been reviewed and cleared for public disclosure by the Party claiming confidentiality in the information.

14.8.5 Neither Party shall issue or cause the publication of any press release or other public announcement in relation to the Plant or this Agreement without the prior approval of the other Party.

14.8.6 This Clause 14.8 shall survive for a period of 5 years from the date of termination of this Agreement.

14.9 **Counterparts**

This Agreement may be executed in any number of counterparts, all executed counterparts shall be considered one and the same Agreement and each of them shall be deemed an original.

14.10 **Severability**

14.10.1 Subject to Clause 14.10.2, if any provision of this Agreement is held by a court or other authority of competent jurisdiction to be illegal, invalid, void, unenforceable or against the public interest, the rest of this Agreement will remain in full force and effect and will in no way be adversely affected.

14.10.2 Severance will not be permitted under Clause 14.10.1 where severance of such provision would render the performance of a Party's material obligations impracticable or impossible.

14.10.3 The Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any provision held to be illegal, invalid, void, unenforceable or against the public interest, which substitute provisions are satisfactory to all relevant Government Instrumentality and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

14.11 **Relationship of the Parties**

14.11.1 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

14.11.2 Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

14.11.3 The Company shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform its obligations under this Agreement, including all local and national income, social security, payroll, and employment taxes

and statutorily mandated workers' compensation coverage. None of the persons employed by the Company shall be considered employees of the Government for any purpose; nor shall the Company represent to any person that he or she is or shall become an employee of the Government.

14.12 No Third Parties

Other than as specified in Clause 11, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, or confer any right of suit or action on any person not a Party.

14.13 Language

This Agreement shall be executed in English.

14.14 Notices

14.14.1 All notices or other communications to be given or made under this Agreement shall be in English and in writing, shall be addressed for the attention of the persons indicated below and shall be delivered personally or sent by courier. The addresses of the Parties shall be:

If to the Government:

Attn: Hon. Minister of Energy
Address: 4th Floor, Electricity House
Siaka Stevens Street
Freetown, Sierra Leone

If to the Company:

Attn: Directors
Address: Africa Growth & Energy Solutions Ltd (trading as Solar Era)
Building 3
North London Business Park
Oakleigh Road South
London N11 1GN

14.14.2 Except as otherwise expressly provided in this Agreement, all notices shall be deemed to be delivered when the notice is delivered by hand or by overnight courier.

Any notice given by facsimile shall be confirmed in writing, delivered by hand or sent by courier, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

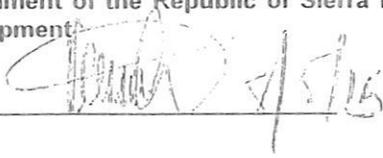
14.14.3 Any Party may by notice change the addresses, addressees and/or facsimile number to which such notices and communications to it are to be delivered or mailed.

IN WITNESS whereof this Agreement has been executed by the Parties hereto and is intended to be and is hereby delivered on the day and year first above written.



The Honourable Minister of Finance and Economic Development for and on behalf of the Government of the Republic of Sierra Leone, acting by the Ministry of Finance and Economic Development

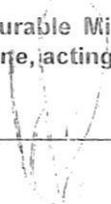
By: _____



Dr. Kaifala Marah

The Honourable Minister of Energy for and on behalf of the Government of the Republic of Sierra Leone, acting by the Ministry of Energy

By: _____



Ambassador Henry Olufumi Macauley

For and on behalf of Solar Era Holdings

By: _____



Name: Sophie Johnson
Title: Director Solar Era



SCHEDULE 1

Consequences of Termination

For the purpose of this Schedule the following capitalised terms shall have the following meanings:

"Account Balance" – The aggregate amount of cash held by the Company as of the Calculation Date, including cash on hand and the credit balance of any deposit, insurance proceeds due but not paid, money market, reserve or securities accounts maintained with any bank or other financial institution.

"Accrued Interest" – Interest accrued pursuant to the applicable Financing Documents on the Principal Outstanding as of the Calculation Date; provided, however, that the purposes of calculation of the amount payable by the Offtaker as Accrued Interest shall not include default interest unless such default interest has accrued as a result of late payment or non-payment by the Offtaker of the Price, any Limited Despatch Electrical Energy Payment or any Deemed Net Electrical Energy Payment.

"Breakage Costs" – An amount equal to the sum as of the Calculation Date of:

- (a) reasonable costs payable by the Company upon breakage of any interest period and prepayment of principal with respect to the Principal Outstanding; and
- (b) reasonable amounts payable by the Company upon breakage of any hedging arrangement with respect to interest on the Principal Outstanding,

provided that any positive payments received by the Company as a result of breakage of any hedging arrangements with to the Principal Outstanding upon termination shall be applied to reduce the relevant purchase price.

"Calculation Date" – The day as of which the applicable termination price is calculated, such day being the termination date specified in a notice issued pursuant to Clause 13.2.

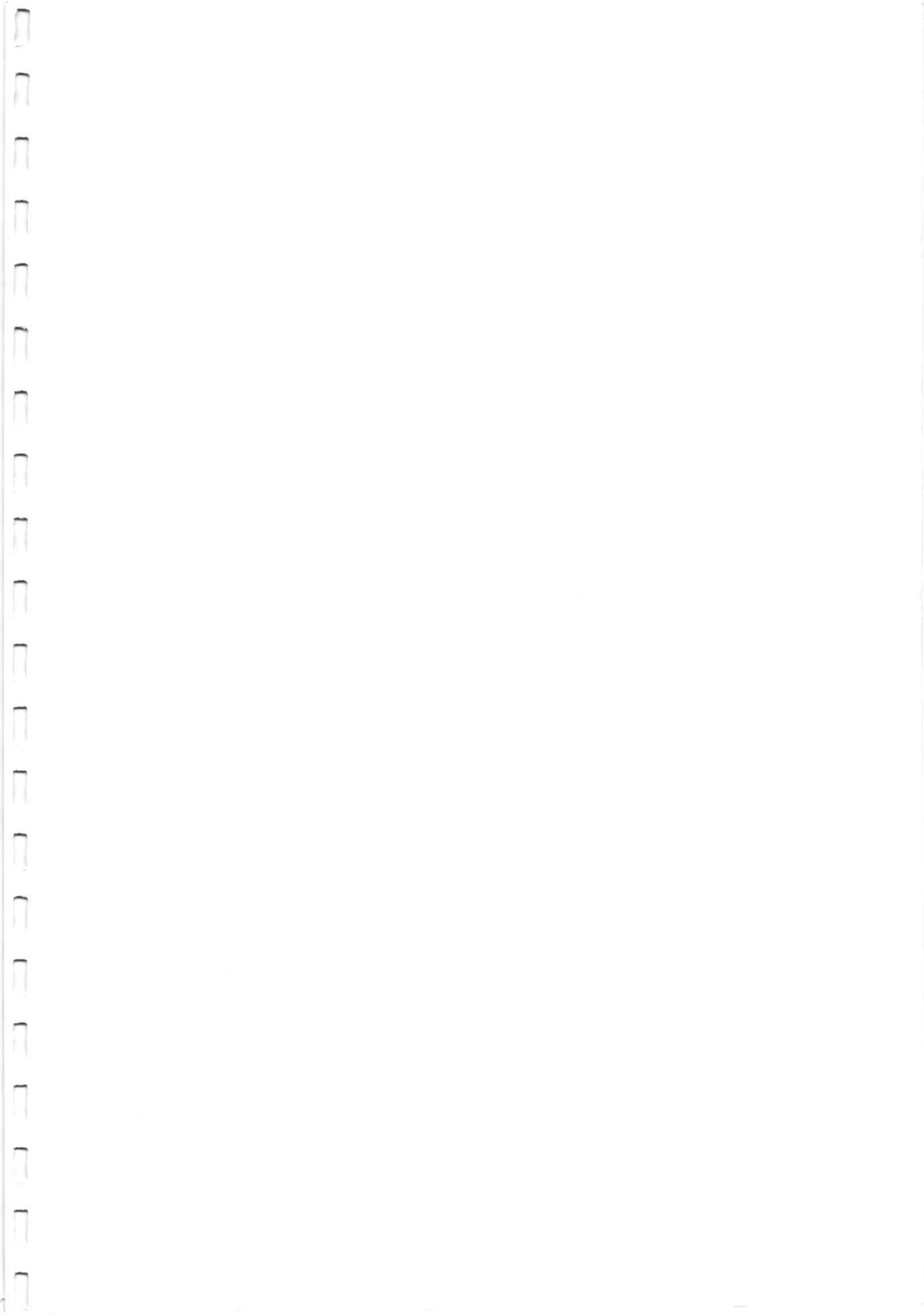
"Contractor Breakage Costs" – All amounts payable by the Company to the Contractor's in respect of:

- (a) the Contractor's termination costs for the termination of the EPC Contract and/or the O&M Contract entered into by the Contractors for the purposes of fulfilling the EPC Contract or O&M Contract capped at 10% of the EPC Contract price, or 10% of the O&M Contract Price, as the case may be; and
- (b) all amounts payable by the Company to the Contractors upon termination of the EPC Contract and/or the O&M Contract with respect to work completed by the Contractors and not yet paid for by the Company.

"Distributions" – Any amounts distributed to Shareholders either in the form of dividends, payments of interest or principal in respect of Shareholders' loans, or any other fees or commissions.

"Principal Outstanding" – The amount required to repay the principal amount of the Senior Debt outstanding at the Calculation Date to the extent such principal amount was actually applied for the purposes of financing of the Project. The principal amount shall not:

- (c) include any principal amount of the Senior Debt deferred or not timely paid by the



Company, unless such deferral or non-payment is a result of late payment or non-payment by the Offtaker of the Price, any Limited Despatch Electrical Energy Payments or any Deemed Net Electrical Energy Payments.

"Principal Termination Amount" – Means an amount equal to the sum of:

- (a) the Principal Outstanding;
- (b) Accrued Interest; and
- (c) Breakage Costs.

"Senior Debt" – All amounts required to be paid or repaid by the Company pursuant to the Financing Documents, as may be varied or amended, provided that such amendment does not increase the Principal Termination Amount the Government would have been required to pay upon termination.

1 CALCULATION OF TRANSFER PRICES

1.1 Calculation of Company Default Purchase Price

The "**Company Default Purchase Price**" shall be calculated as follows:

- (a) the Principal Termination Amount, *less*
- (b) the Account Balance, *less*
- (c) the cost (if any) of remedial action required to restore Plant to its contracted capacity (5MW in addition to any such amount of installed capacity that has been added pursuant to any Expansion Works).

1.2 Calculation of Offtaker Default Purchase Price

The "**Offtaker Default Purchase Price**" shall be calculated as follows:

- (a) the Principal Termination Amount; *plus*
- (b) the Construction Breakage Costs; *plus*
- (c) the greater of:
 - (i) the amount of Equity funded as at the Calculation Date; *less*
 - (ii) Distributions;and
 - (iii) Zero; *plus*
- (d) a return on the Equity, calculated using a return of 17% (nominal) per annum on the Equity contributed and calculated (compounded annually) with respect to each Equity



contribution from the date that such Equity contribution was contributed to the Company until the Calculation Date; *less*

- (e) the Account Balance.

1.3 Calculation of Natural Force Majeure Purchase Price

The "**Natural Force Majeure Purchase Price**" shall be calculated as follows:

- (a) the Principal Termination Amount, plus
- (b) the greater of:
 - (i) the amount of Equity funded as at the Calculation Date; *less*
 - (ii) Distributions;and
 - (iii) Zero; *plus*
- (c) the Construction Breakage Costs; *less*
- (d) the Account Balance.



SCHEDULE 2

Form of Escrow Letter

To: **[Escrow Agent's Name]**
[Escrow Agent's address]

Dear Sirs

Date: [●]

We are writing to confirm the terms on which funds deposited in the account [number] today and from time to time thereafter by the Government of the Republic of Sierra Leone, represented by the Ministry of Finance and Economic Development and the Ministry of Energy (the "**Escrow Account**") may be transferred, pursuant to the terms of the implementation agreement dated [●] made between [●] (the "**Company**") and Government of the Republic of Sierra Leone, represented by the Ministry of Finance and Economic Development and the Ministry of Energy (the "**Government**") (the "**Implementation Agreement**").

These terms are:

- 1 You shall maintain the Escrow Account as an interest bearing account numbered [●].
- 2 Subject to paragraph 4 below, you shall hold the funds in the Escrow Account (or any part of it) in the name of the Ministry of Finance and Economic Development, Sierra Leone.
- 3 If a payment is made from the Escrow Account to the Company:
 - 3.1 such payment shall be made gross;
 - 3.2 in the event that a deduction or withholding is required by law, you shall increase the sum due to the extent necessary to ensure that, after such deduction or withholding, Company receives a sum equal to the sum it would have received had no deduction or withholding been made; and
 - 3.3 in the event that such payment will be or has been subject to tax, you shall pay to the payee on request from the Escrow Account the amount (after taking into account any tax) necessary to ensure that the payee receives and retains a net sum equal to the sum it would have received had the payment not been subject to tax.
- 4 If the Company notifies you that it is entitled to a payment in accordance with the Implementation Agreement and provides a copy of a notice from a director of the Company confirming such entitlement, you shall pay or hold the amount notified to or for the Company or in the manner directed in the Company's written instructions.
- 5 You shall provide to the Company a copy of the account statement on a monthly basis.
- 6 The balance on the Escrow Account shall earn interest at such rate as may be agreed between you and the Government from time to time. Interest shall be paid monthly by you into the Escrow Account.
- 7 The Government will pay your costs in respect of your duties under or in respect of this letter and the maintenance of the Escrow Account as such costs may be agreed between you and the Government from time to time.
- 8 You acknowledge that security over the Escrow Account may be granted in favour of the Financing Parties to the Company, and the rights of such Financing Parties will prevail over any rights you may have over the Escrow Account or the funds standing to the credit of the Escrow Account.



9 This letter and any contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

Please countersign this letter to confirm your acceptance of the terms set out above.

The Honourable Minister of Finance and Economic Development for and on behalf of the Government of the Republic of Sierra Leone, acting by the Ministry of Finance and Economic Development

By: _____

The Honourable Minister of Energy for and on behalf of the Government of the Republic of Sierra Leone, acting by the Ministry of Energy

By: _____

For and on behalf of Solar Era Holdings

By: _____

Name:

Title:

We confirm our acceptance of the terms of this letter.

[Name of Escrow Agent]

Escrow Agent

By:



SCHEDULE 3

Form of Direct Agreement



DIRECT AGREEMENT

in respect of

POWER PURCHASE AGREEMENT and IMPLEMENTATION AGREEMENT

by and between

THE ELECTRICITY DISTRIBUTION AND SUPPLY AUTHORITY OF SIERRA LEONE

and

**THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE, REPRESENTED BY THE
MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT AND THE MINISTRY OF ENERGY**

and

[Security Agent]

relating to the

[] Solar Energy Generation

[], Sierra Leone

Dated [] 2015



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DATED []

PARTIES

- 1 "Offtaker" The Electricity Distribution and Supply Authority of the Government of Sierra Leone [•].
- 2 "Government" The Government of the Republic of Sierra Leone, represented by The Ministry of Finance and Economic Development and The Ministry of Energy.
- 3 "Company" Solar Era (SL) Limited of 16 Adelaide Street, Freetown in the Western Area of the Republic of Sierra Leone.
- 4 "Security Agent" [•] as Security Agent and Trustee for and on behalf of the Financing Parties.

The Offtaker, the Government, the Company and the Security Agent are referred to individually as a "Party" and collectively as the "Parties".

RECITALS

- A The Company has agreed to build, own, operate and transfer a solar energy generation plant at Bo District, Southern Province, Sierra Leone (the "Project").
- B The Offtaker intends to purchase the net electrical output produced by the Project pursuant to the power purchase agreement executed on [•], as authorized by the Government (the "Power Purchase Agreement").
- C To promote the implementation of the Project the Government agrees to provide certain incentives and assistance as set out in an implementation agreement, executed on [•] (the "Implementation Agreement").
- C In order to facilitate the Company raising finance from the Financing Parties in connection with the Power Purchase Agreement, the Government Parties have consented to enter into this direct agreement (the "Agreement") with the Security Agent (on behalf of the Financing Parties).



OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 In this Agreement:

“Additional Obligor”

means any of:

- (a) the Security Agent;
- (b) any liquidator, receiver, administrator, custodian or other similar official appointed pursuant to the Relevant Security Document; or
- (c) a company which is controlled or appointed by any of the Security Agent or any of the Financing Parties, is authorised to carry on business in Sierra Leone and which has been previously approved by Offtaker in writing (such approval not to be unreasonably withheld in accordance with the provisions of the Power Purchase Agreement and where the relevant third party is able to demonstrate to the satisfaction of Offtaker that it has the legal capacity and authority and the technical and financial resources available to it to enable it to enter into, assume and perform the obligations of the Company under the Power Purchase Agreement);

“Assumption Date”

means subject to clause 5.6, the date on which the Security Agent gives the relevant Step-in Notice;

“Business Day”

means a day on which banks and other financial institutions are open for business in [*insert place of business of the Security Agent*] and Sierra Leone;



- “Confidential Information”** has the meaning given to it in clause 14.1;
- “Default Notice”** has the meaning given to it in clause 2.1.2;
- “Effective Date”** has the meaning given to it in clause 6.2;
- “Enforcement Action”** means:
- (a) the taking of any steps to wind up the Company; or
 - (b) the taking of any steps to appoint a liquidator, receiver, administrator, custodian or other similar official of the Company or any material part of its undertaking or assets; or
 - (c) the taking of any steps by the Offtaker (in relation to the Power Purchase Agreement) or the Government (in relation to the Implementation Agreement) to terminate, cancel or to accept as repudiated the Power Purchase Agreement or the Implementation Agreement or to suspend performance of any material obligation under the Power Purchase Agreement or the Implementation Agreement;
- “Enforcement Action Notice”** has the meaning given to it in clause 2.2.4.1;
- “Facility Agreement”** means the loan agreement to be entered into between, inter alia, the Company, the Security Agent, the Financing Parties and the other finance parties listed therein;
- “Facility Agreement Event of Default”** means an event of default under the Facility Agreement (as such events are defined in that agreement);



means the period from and including the Assumption Date to and including the earlier of the Effective Date and the Step-out Date;

"Step-in Period"

means a notice from the Security Agent to the Government Parties stating that an Additional Obligor is to become a party to either the Power Purchase Agreement or the Implementation Agreement;

"Step-in Notice"

means any document granting any security interest to the Security Agent as security trustee for the Financing Parties pursuant to the Finance Documents and any direct agreement in connection therewith;

"Security Document"

has the meaning given to it in clause 7.2;

"Revival Date"

means the Security Document pursuant to which the Company assigns to the Security Agent (on behalf of the Financing Parties) by way of security the Company's interest in the Power Purchase Agreement and/or the Implementation Agreement;

"Relevant Security Document"

has the meaning given to it in clause 6.1.2;

"Novation Notice"

means the Offtaker or the Government and "Government Parties" shall mean both of them;

"Government Party"

means the third party financial institution(s) (but not any Affiliate of the Company) which will provide loans or extends credit or other financing to the Company in connection with the Power Purchase Agreement;

"Financing Parties"

means the Facility Agreement, the Security Documents and such other documents listed or otherwise defined in the Facility Agreement as "Finance Documents";

"Finance Documents"



means any third party which is authorised to carry

on business in Sierra Leone and which has been

previously approved by the Offtaker in writing

(such approval not to be unreasonably withheld in

accordance with the provisions of the Power

Purchase Agreement and where the relevant third

party is able to demonstrate to the satisfaction of

the Offtaker that it has the legal capacity and

authority and the technical and financial

resources available to it to enable it to enter into,

assume and perform the obligations of the

Company under the Power Purchase

Agreement);

means the applicable period described in clause

3.1; and

has the meaning given to it in clause 6.2.

“Substitute”

“Step-out Notice”

“Step-out Date”

has the meaning given to it in clause 6.2.

1.2 Incorporation of definitions

Words and phrases defined and construed in the Power Purchase Agreement shall have the same meaning and construction in this Agreement unless expressly modified pursuant to the terms hereof, in which event such modified meaning shall prevail.

1.3 Security Agent

Unless otherwise specified, any requirement in this Agreement for a Government Party to serve a notice, or obtain a consent from, or otherwise deal with the Financing Parties, under or in connection with this Agreement shall be complied with by the Government Party if it gives the relevant notice, or obtains the relevant consent from, or otherwise deals with, the Security Agent.

1.4 References to a Party

Any reference to a Party shall include its permitted successors, transferees and assigns.



1.5 **Notices**

All notices issued by the Security Agent to the Company or to a Government Party, or issued by a Government Party to the Security Agent or the Company, pursuant to this Agreement shall be copied to both Government Parties.

2 **Assignment**

2.1 **Notice of assignment**

The Company hereby gives notice to the Government Parties that:

- 2.1.1 pursuant to the Relevant Security Document, the Company has assigned or will assign by way of security to the Security Agent all of its rights, title and interest in and to and the benefit of, among other things, the Power Purchase Agreement and the Implementation Agreement;
- 2.1.2 pursuant to the Relevant Security Document, the Security Agent has agreed that, until such time as it has notified the Company in writing that by reason of the occurrence of a Facility Agreement Event of Default all or any of the rights of the Financing Parties under the Security Documents are enforceable (a "**Default Notice**"), the Company may exercise all of its rights and powers under the Power Purchase Agreement and the Implementation Agreement;
- 2.1.3 Each Government Party is hereby authorised and instructed to make all payments due or which may become due under or arising from (as relevant) the Power Purchase Agreement or the Implementation Agreement to the account designated by the Security Agent or to such other account (whether inside or outside of Sierra Leone) as the Security Agent may from time to time direct by notice to the Government Parties and the Company irrevocably agrees that, where the Security Agent so specifies payment to a different account, the account so specified shall be accepted by the Company as the appropriate account for payment and sums paid to such account shall be treated as sums paid in accordance with the Power Purchase Agreement or the Implementation Agreement; and
- 2.1.4 the authority and instruction contained in clause 2.1.3 above cannot be revoked or varied without the prior written consent of the Security Agent, and each Government Party shall make all payments due or which may become due from it under or arising from (as relevant) the Power Purchase Agreement or the Implementation Agreement in accordance with such authority and instruction and payments so made shall satisfy any and all obligations of the Government Parties under the



Power Purchase Agreement or the Implementation Agreement in respect of such payments.

2.2 Acknowledgement of assignment

By execution of this Agreement, the Offtaker (with respect to the Power Purchase Agreement) and the Government (with respect to the Implementation Agreement) hereby:

2.2.1 acknowledges receipt of the notice of the assignment under the Relevant Security Document provided by the Company pursuant to clause 2.1 of this Agreement and confirms that:

2.2.1.1 it has not received any other notice relating to the rights, title and interest of the Company in and to the Power Purchase Agreement or the Implementation Agreement (as the case may be);

2.2.1.2 it has not received any notice of, nor has it consented to, any previous assignment, transfer, or other lien by the Company of all or any part of its rights under the Power Purchase Agreement or the Implementation Agreement (as the case may be);

2.2.2 agrees that it will not consent to any further assignment, transfer or lien by the Company under the Power Purchase Agreement or the Implementation Agreement (as the case may be);

2.2.3 consents to the entry into and creation of the assignment under the Relevant Security Document of the Company's rights pursuant to the Power Purchase Agreement or the Implementation Agreement (as the case may be);

2.2.4 undertakes:

2.2.4.1 to notify the Security Agent and the other Government Party of its intention to take Enforcement Action and specifying the events or circumstances entitling it to do so (an "Enforcement Action Notice") including, without limitation, its intention to terminate the Power Purchase Agreement or the Implementation Agreement (as the case may be);

2.2.4.2 following receipt of a Default Notice pursuant to clause 2.1.2 or the issue of an Enforcement Action Notice, to accept as valid any notices or demands given or made by the Security Agent under, and in accordance with the terms of, the Power Purchase Agreement or the or



the Implementation Agreement (as the case may be) in place of the Company;

following receipt of a Default Notice pursuant to clause 2.1.2 or the issue of an Enforcement Action Notice, to accept performance of any of the obligations of the Company under, and in accordance with the terms of, the Power Purchase Agreement or the Implementation Agreement (as the case may be) which is procured by or on behalf of the Security Agent as performance by the Company; and

2.2.4.4 to pay any amount due from the Government Parties to the Company under the Power Purchase Agreement or the Implementation Agreement (as the case may be) in accordance with the provisions of clause 2.1.3;

2.2.4.5 save for all rights of set-off and counterclaim expressly provided for in the Power Purchase Agreement or the Implementation Agreement (as the case may be) or arising by operation of law, waives all rights of set-off or counterclaim which the Government Parties may have against the Company in respect of any payments due by the Offtaker under the Power Purchase Agreement or the Government under the Implementation Agreement (as the case may be) and agrees to make all such payments free and clear of, and without any deduction for or on account of, any such set-off or counterclaim;

2.2.4.6 save as provided in this Agreement, agrees and accepts that none of the Financing Parties or their agents or representatives shall have any obligations (whether in place of the Company or otherwise) under the Power Purchase Agreement or the Implementation Agreement (as the case may be); and

2.2.4.7 agrees not to make or agree to any material amendment to the Power Purchase Agreement or the Implementation Agreement (as the case may be) without the prior consent of the Security Agent (such consent not to be unreasonably withheld or delayed).

Suspension 3

Suspension Period 3.1

Following:



3.1.1 service by either of the Government Parties on the Security Agent of an Enforcement Action Notice pursuant to clause 2.2.4.1 and notification from the Security Agent to the relevant Government Party within five Business Days thereof that it wishes there to be a Suspension Period; and/or

3.1.2 service by the Security Agent on either of the Government Parties of a Default Notice pursuant to clause 2.1.2;

Both Government Parties undertake that, subject to clause 7, they shall not take any Enforcement Action until the expiry of a period of 90 days after the date on which the relevant Enforcement Action Notice or, as the case may be, Default Notice was served (the "**Suspension Period**").

3.2 **Enforcement Action**

The Offtaker (with respect to the Power Purchase Agreement) and the Government (with respect to the Implementation Agreement), undertakes:

3.2.1 not to take any Enforcement Action in relation to any relevant event or circumstance or breach or default at the end of the Suspension Period relating thereto:

3.2.1.1 if the relevant Government Party is satisfied that such event or circumstance no longer subsists; or

3.2.1.2 if in respect of any breach or default under the Power Purchase Agreement or Implementation Agreement (as the case may be), the relevant Government Party is satisfied that such breach or default has been remedied, provided that where such breach or default is, on the part of the Offtaker, a failure to achieve or a failure to demonstrate an ability to achieve the Commercial Operation Date pursuant to the Power Purchase Agreement within one hundred and eighty (180) Days after the Scheduled Commercial Operation Date, then such breach or default shall be deemed to have been remedied if the Commercial Operation Date has occurred by the end of the Suspension Period; or

3.2.1.3 subject as provided in clauses 5.3 and 6.2, if there has been a Step-in Notice and no Step-out Notice or there has been a Novation Notice; and

in each such case, any damages due and payable to the relevant Government Party resulting from such event or circumstance or breach or default, as the case



may be, and notified in accordance with clause 4.1 have been paid or a bank guarantee or other assurance of payment satisfactory to the relevant Government Policy, acting reasonably, has been provided in respect of any damages which may become due and payable in respect of such breach or default; and

3.2.2 During any Suspension Period:

3.2.2.1 In the case of the Offtaker to continue to comply with its obligations under the Power Purchase Agreement to purchase the Net Electrical Output in accordance with clause 2.1 (*Sale and Purchase of Electricity*) of the Power Purchase Agreement; and

3.2.2.2 In the case of the Government, to continue to guarantee the payments owed for such purchase in accordance with clause 5.1 of the Implementation Agreement

4 Outstanding obligations

4.1 Statement of outstanding obligations

Within 30 days after the date of receipt by the Security Agent of an Enforcement Action Notice or the service by the Security Agent of a Default Notice or a Novation Notice, each Government Party shall deliver to the Security Agent details of:

4.1.1 all amounts that, so far as each Government Party is aware, are due and payable to it under the Power Purchase Agreement (in the case of the Offtaker) or Implementation Agreement (in the case of the Government) as at the date of the Enforcement Action Notice, Default Notice or the Novation Notice (as applicable) but remaining unpaid on the relevant date;

4.1.2 all amounts that, so far as each Government Party is aware, are to become due and payable to that Government Party under the Power Purchase Agreement or Implementation Agreement during the remainder of the Suspension Period or from the date of the Novation Notice until the relevant Effective Date (as applicable); and

4.1.3 all outstanding claims (if any) by each Government Party of which it is aware under or pursuant to the Power Purchase Agreement (in the case of the Offtaker) or Implementation Agreement (in the case of the Government) against the Company whether arising out of or in connection with any breach or default or otherwise specifying:



- 4.1.3.1 the provisions of the Power Purchase Agreement or the Implementation Agreement (as the case may be) under or in respect of which such claim arises;
- 4.1.3.2 such information as is available to the relevant Government Party in relation to the acts or omissions of the Company giving rise to such claim;
- 4.1.3.3 in respect of any breach or default, the steps which the relevant Government Party considers are required to remedy such breach or default and the time which might reasonably be required to take such steps; and
- 4.1.3.4 the amount of any monetary claim and the basis of calculation thereof.

During such 30-day period, and without prejudice to the terms of clause 4.3, each Government Party shall co-operate with the Security Agent with a view to assessing whether there are any amounts or claims that have not been included in the details provided to the Security Agent under this clause 4.1 so that the Security Agent is better able to evaluate the potential amounts and claims that the Additional Obligor or Substitute will be responsible for following the relevant Assumption Date or, as the case may be, Effective Date.

4.2 **Adjustment**

If, following the end of any 30 day period referred to in clause 4.1 but before the relevant Assumption Date or, as the case may be, Effective Date, either Government Party becomes aware of (and notifies the Security Agent accordingly of) any amounts and/or outstanding claims which would have been notified by the relevant Government Party to the Security Agent pursuant to clause 4.1 had that Government Party been aware of the same at the relevant time, such amounts and/or outstanding claims shall be treated as having been notified by the relevant Government Party to the Security Agent during such 30 day period pursuant to clause 4.1 for the purposes of this Agreement.

4.3 **Conclusive Evidence**

Without prejudice to the rights of each Government Party to pursue any claims against the Company following the Revival Date (if any), any Additional Obligor and any Substitute shall be liable to the relevant Government Party in respect of any claims by that Government Party arising before the Assumption Date or, as the



case may be, the Effective Date which were not disclosed by a Government Party pursuant to clause 4.1 and shall be paid by the Additional Obligor or Substitute, as the case may be, to that Government Party within five days of being disclosed to the Additional Obligor or the Substitute, as the case may be.

5 Step-in and Step-out

5.1 Step-in Notice
At any time during any Suspension Period, the Security Agent may deliver a Step-in Notice to the Government Parties.

5.2 Rights and Obligations of Additional Obligor

On and from the Assumption Date:

5.2.1 the Additional Obligor shall become a party to the Power Purchase Agreement and the Implementation Agreement with all of the rights of the Company thereunder and jointly and severally liable with the Company for all of its obligations thereunder whether arising before, on or after the Assumption Date; and

5.2.2 as between the Company, each Government Party and the Additional Obligor, only the Additional Obligor shall be authorised to deal with the relevant Government Party and to exercise the rights of the Company under the Power Purchase Agreement and the Implementation Agreement and each Government Party shall only be discharged of its obligations under the Power Purchase Agreement (in the case of the Offtaker) or Implementation Agreement (in the case of the Government) to the extent that such obligations are performed in favour of the Additional Obligor.

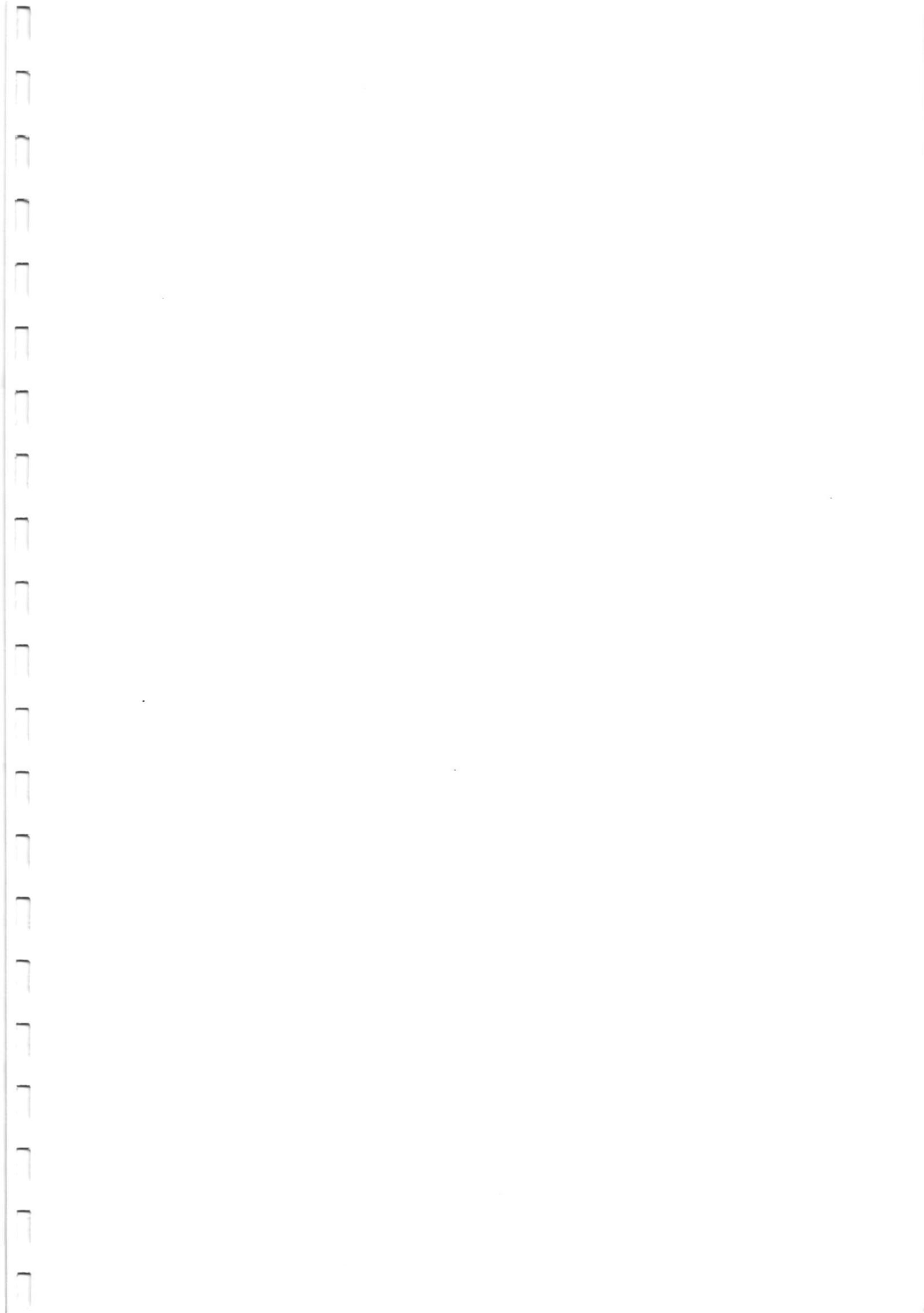
5.3 Enforcement Action during Step-in Period

Without prejudice to clause 3.1, during the Step-in Period, each Government Party shall not take any Enforcement Action in respect of events or circumstances arising:

5.3.1 before the Assumption Date; or

5.3.2 to the extent the events or circumstances are the same or substantially the same as the events or circumstances contemplated by the Facility Event of Default giving rise to a Default Notice, after the Assumption Date,

if, as soon as reasonably practicable after the Assumption Date, to the reasonable satisfaction of the Offtaker (with respect to the Power Purchase Agreement) or the Government (with respect to the Implementation Agreement):



5.3.2.1 where such breach or default is capable of remedy or cure, it is

remedied or cured and amounts (if any) notified to the Security Agent under clause 4.1 as payable to the relevant Government Party in respect thereof are paid when due; and

5.3.2.2 where such breach or default is not capable of remedy or cure, and

without prejudice to the terms of clause 5.2, all reasonable steps have been taken to mitigate its effect.

5.4 Step-out Date

The Additional Obligor may, at any time during the twelve month period following the Assumption Date, give the Government Parties notice in writing terminating (the "Step-out Notice") the Additional Obligor's obligations and rights under the Power Purchase Agreement and the Implementation Agreement as and from a date (the "Step-out Date") being a date falling not earlier than 30 days after the date of the notice provided that the Additional Obligor may not so terminate its obligations under the Power Purchase Agreement and the Implementation Agreement, and the Step-out Date shall not occur, unless it has discharged all of its obligations under the Power Purchase Agreement and the Implementation Agreement that are existing or outstanding as at the Step-out Date.

5.5 Release

On and from the earlier of the Step-out Date and the Effective Date, the Additional Obligor shall be released from all obligations under the Power Purchase Agreement and the Implementation Agreement and shall not be entitled to exercise any rights thereunder.

5.6 No effect

On or before an Assumption Date, the Additional Obligor shall pay to each Government Party all amounts and/or outstanding claims which have been notified by each Government Party pursuant to clause 4 and which have as at the date of payment been quantified. If no such payment is made on or before the relevant Assumption Date, such Assumption Date shall, notwithstanding any other provision of this Agreement, be postponed until, and shall be deemed to occur on, the date on which the Additional Obligor makes such payment.



6 **Novation**

6.1 **Proposal for novation**

At any time:

6.1.1 during any Suspension Period; or

6.1.2 during a Step-in Period,

the Security Agent may give notice (a "**Novation Notice**") to the Government Parties that the Substitute shall assume the obligations of the Company under the Power Purchase Agreement and the Implementation Agreement and specifying the date on which such assumption is to be effected.

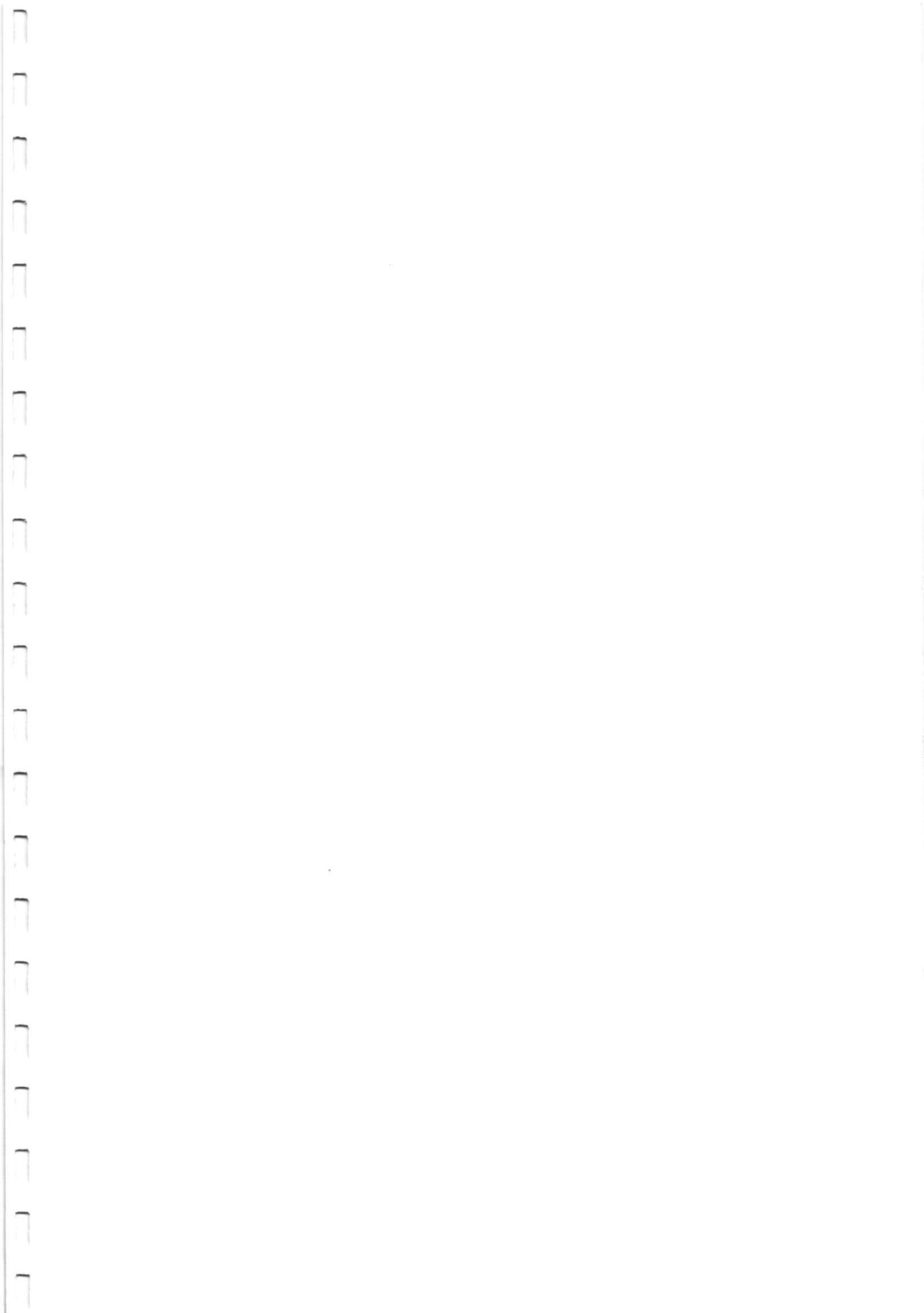
6.2 **Novation**

The novation contemplated in the Novation Notice shall be effected by the delivery to the Offtaker of a duly completed and duly executed transfer certificate in relation to the Power Purchase Agreement and to the Government of a duly completed and duly executed transfer certificate in relation to the Implementation Agreement, both substantially in the form of the Schedule hereto (the "**Transfer Certificates**"), in which event, subject to clause 6.3, on the first Business Day after the date of delivery of such Transfer Certificates to the Government Parties (the "**Effective Date**"):

6.2.1 the Company and the Offtaker shall each be released from further obligations to the other under the Power Purchase Agreement and the the Company and the Government shall each be released from further obligations to the other under Implementation Agreement and their respective rights against each other shall be cancelled (such rights and obligations being referred to in this clause 6.2 as discharged rights and obligations);

6.2.2 The Offtaker and the Substitute and the Government and the Substitute shall each assume obligations towards each other and/or acquire rights (which shall include the rights and obligations of the Company which arose prior to the Effective Date) against each other which differ from such discharged rights and obligations only insofar as each Government Party and the Substitute have assumed and/or acquired the same in place of each Government Party and the Company; and

6.2.3 Each Government Party shall not take any Enforcement Action in respect of events or circumstances arising:



- 6.2.3.1 before the Effective Date; or
- 6.2.3.2 to the extent the events or circumstances are the same or substantially the same as the events or circumstances contemplated by the Facility Agreement Event of Default giving rise to a Default Notice, after the Effective Date,

if, as soon as reasonably practicable after the Effective Date, to the reasonable satisfaction of the Offtaker (with respect to the Power Purchase Agreement) and the Government (with respect to the Implementation Agreement):

- 6.2.3.3 where such breach or default is capable of remedy or cure, it is remedied or cured and amounts (if any) notified to the Security Agent under clause 4.1 as payable to the relevant Government Party in respect thereof are paid when due; and
- 6.2.3.4 where such breach or default is not capable of remedy or cure, and without prejudice to the terms of clause 6.2.2, all reasonable steps have been taken to mitigate its effect.

6.3 **No effect**

On or before an Effective Date, the Substitute shall pay to each Government Party all amounts and/or outstanding claims notified by the relevant Government Party pursuant to clause 4. If no such payment is made on or before the relevant Effective Date, such Effective Date shall, notwithstanding any other provision of this Agreement, be postponed until, and shall be deemed to occur on, the date on which the Substitute makes such payment.

7 **Revival of remedies**

If an Enforcement Action Notice or a Default Notice has been given and:

- 7.1 either no Step-in Notice has been given or no Novation Notice has been given prior to the expiry of the Suspension Period relative to that Enforcement Action Notice or, as the case may be, Default Notice; or
- 7.2 a Step-out Date occurs prior to or upon the expiry of the Suspension Period relating to that Enforcement Action Notice or, as the case may be, Default Notice,

then the Offtaker (with respect to the Power Purchase Agreement) and the Government (with respect to the Implementation Agreement), in the case of 7.1, on



and after the expiry of the Suspension Period and, in the case of 7.2, on and after the Step-out Date (the "Revival Date") shall be entitled to:

7.2.1 act upon any and all grounds for termination in respect of breaches or defaults not remedied or waived available to it in relation to the Power Purchase Agreement or the Implementation Agreement (as the case may be);

7.2.2 pursue any and all claims and exercise any and all remedies against the Company; and

7.2.3 take any other Enforcement Action.

8 Notices

8.1 Each Party agrees that all notices to be given or made pursuant to this Agreement shall be copied to all Parties, regardless of the identity of the Party such notice is addressed to.

8.2 Addresses and addressees

Except as otherwise expressly provided in this Agreement, all notices or other communications to be given or made hereunder shall be in writing, shall be addressed for the attention of the persons indicated below and shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The addresses for service of the Parties and their respective facsimile numbers shall be:

If to the Security Agent:

Attention: [.]

Address: [.] Street

[.] 00000 (Postal Code)

[City, Country]

Telephone: [.]-[.]

Fax number: [.]-[.]

If to the Offtaker:

Attention: [.]



Address: [•] Street
 [•] 00000 (Postal Code)
 [City, Country]

Telephone: [•]-[•]

Fax number: [•]-[•]

If to the Government:

Attention: [•]

Address: [•] Street
 [•] 00000 (Postal Code)
 [City, Country]

Telephone: [•]-[•]

Fax number: [•]-[•]

If to the Company:

Attention: [•]

Address: [•] Street
 [•] 00000 (Postal Code)
 [City, Country]

Telephone: [•]-[•]

Fax number: [•]-[•]

All notices shall be deemed delivered (a) when presented personally, (b) if received on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified above and, if received on a Day that is not a Business Day for the receiving Party, on the first Business Day following the date transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one (1) Day after being delivered to a courier for overnight delivery,



addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above) or (d) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Sierra Leone, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

8.3 Changes of address

Any Party may by notice change the addressees and/or addresses to which such notices and communications to it are to be delivered or mailed.

9 Miscellaneous

9.1 Government liabilities

Except as expressly provided in this Agreement, nothing:

9.1.1 in this Agreement or in the arrangements contemplated thereby; or

9.1.2 arising as a result of the exercise by the Security Agent, the Financing Parties, any Additional Obligor and/or any Substitute of any rights given to any such party under or pursuant to this Agreement,

shall in any way:

9.1.2.1 affect any limitation or exclusion of each Government Party's liability to the Company under the Power Purchase Agreement or the Implementation Agreement (as the case may be);

9.1.2.2 increase the total amount of any liability each Government Party may have (whether to the Company, the Security Agent, the Financing Parties, any Additional Obligor and/or any Substitute above the amount of any liability it may have to the Company under the Power Purchase Agreement or the Implementation Agreement (as the case may be); or



The benefit of this Agreement (including the warranties and undertakings and any sum received by the Security Agent pursuant to this Agreement) shall be held by the Security Agent upon and subject to the terms of the Finance Documents.

9.5 Declaration of trust

This Agreement shall remain in full force and effect until the date on which all liabilities and obligations of the Company to make any payments under the Facility Agreement are discharged in full.

9.4 Continuing nature of obligations

The failure of a Party to enforce an obligation or to exercise any right under this Agreement shall not be considered to be a waiver save when the same has been expressly waived in writing. Any written waiver at any time by a Party of its rights with respect to the non-compliance of the other Party with its obligations under this Agreement or with respect to any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent non-compliance or other matter. Except as expressly provided in this Agreement, any delay in asserting or enforcing any right hereunder shall not be deemed a waiver of such right. The rights and remedies under this Agreement may be exercised as often as necessary and are cumulative and not exclusive of any rights or remedies provided by law.

9.3 No waiver

No Party hereto shall assign or transfer any part of its respective rights or obligations under this Agreement without the written consent of the other Parties, provided that the Security Agent may assign or transfer its rights and obligations to a successor Security Agent under the Finance Documents without the consent of each Government Party and the Company.

9.2 No assignment

9.1.2.3 make each Government Party liable to the Company, the Security Agent, the Financing Parties, any Additional Obligor and/or any Substitute to any greater extent or for any longer duration than such Government Party would have been liable to the Company under the Power Purchase Agreement or the Implementation Agreement (as the case may be).



9.6 **Entire agreement**

The terms and provisions contained in this Agreement constitute the entire agreement between each Government Party and the Security Agent (on behalf of the Financing Parties) on the matters addressed herein, and supersede all previous communications, representations or agreements, either verbal or written, between the Parties with respect to the subject matter hereof.

9.7 **Amendments**

No modification of this Agreement shall be valid unless it is in writing and signed by the Parties.

10 **Governing law and governing language**

10.1 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England.

10.2 **Governing language**

The governing language of this Agreement shall be the English language.

11 **Sovereign immunity**

Other than with respect to the Project Assets each Government Party waives all rights to claim sovereign immunity in relation to its obligations under this Agreement.

12 **Arbitration**

12.1 **Refer to arbitration**

In the event that the Parties, notwithstanding the use of reasonable endeavours to do so, are unable to resolve a difference or dispute between them arising out of or in connection with this Agreement (including, without limitation, any question regarding its existence, validity or termination) within 30 days of such difference or dispute arising, then any Party shall be entitled to require that such matter be referred to arbitration for resolution.



12.2 **Conduct of arbitration**

Any arbitration conducted in accordance with this clause 12 shall be conducted, mutandis mandis, in accordance with the procedure set out in the Power Purchase Agreement.

12.3 **Arbitral award**

Any arbitral award made shall be final and binding on the Parties.

13 **Severability**

The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision set forth herein.

14 **Confidentiality**

14.1 **Confidential**

Subject to clause 14.2, each Party shall, at all times during and after the continuance of this Agreement, hold confidential and not disclose to any third party and use only for the purposes of the Project and this Agreement all confidential information, reports or documents relating to the Project received by it pursuant to, or in the course of the negotiations leading to, this Agreement ("**Confidential Information**").

14.2 **Permitted disclosure**

A Party shall be permitted to disclose Confidential Information:

14.2.1 to its auditors or professional advisers;

14.2.2 if required to do so by law or if required in connection with any legal proceedings; and

14.2.3 to each of the Financing Parties (or any prospective Financing Parties) and their respective professional advisers subject to the relevant Party obtaining from the recipient of such Confidential Information an undertaking substantially in the terms of clause 14.1.

14.3 **Exceptions**

Nothing in clause 14 shall apply to any information, reports or documents which shall have come into the public domain (otherwise than in consequence of a breach



of clause 14.1). Nor shall clause 14.1 apply to any information, report or document received in good faith by a Party otherwise than from any of the Parties or a person acting on a Party's behalf.

Signed by the duly authorised representatives of the parties on the date of this agreement.



THE SCHEDULE
Form of Power Purchase Agreement Transfer Certificate

To: THE ELECTRICITY DISTRIBUTION AND SUPPLY AUTHORITY OF SIERRA LEONE,

CC: THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT AND THE MINISTRY OF ENERGY OF SIERRA LEONE.

Transfer Certificate

- 1 Relating to the Power Purchase Agreement dated [●] between the Electricity Distribution and Supply Authority (the "Offtaker"), and [Project Specific SPV], a company incorporated under the laws of Sierra Leone (the "Company").
- 2 Terms defined in the Direct Agreement dated [●] between the Offtaker, the Ministry of Finance and Economic Development and the Ministry of Energy (the "Government Parties"), the Company, and [●] ("Security Agent") (the "Direct Agreement") shall, subject to any contrary indication, have the same meaning herein.
- 3 The Security Agent requests that the Substitute accepts and procures the transfer to the Substitute of all of the rights, title and interest of and all of the obligations of the Company under the Power Purchase Agreement and the Direct Agreement by countersigning and delivering this Transfer Certificate to the Offtaker at its address for the service of notices specified in the Direct Agreement.
- 4 The Substitute hereby requests the Offtaker to accept this Transfer Certificate as being delivered to it pursuant to and for the purposes of clause 6.2 of the Direct Agreement so as to take effect in accordance with the terms thereof on the Effective Date or on such later date as may be determined in accordance with the terms thereof.
- 5 The Substitute warrants that it is has received a copy of the Power Purchase Agreement together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Security Agent to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and will not rely on the Security Agent in relation to its entering into this Transfer Certificate and the Power Purchase Agreement.
- 6 The Substitute hereby undertakes with the Offtaker that it will perform, in accordance with the terms thereof all obligations of the Company which by the



terms of the Power Purchase Agreement and the Direct Agreement will be assumed by it after delivery of this Transfer Certificate to the Offtaker.

7 The Security Agent makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Power Purchase Agreement or any document relating thereto and assumes no responsibility for the performance and observance by any party of any of its obligations under the Power Purchase Agreement or any document relating thereto and all such conditions and warranties whether expressed or implied by law or otherwise are hereby excluded.

8 The Transfer Certificate and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of England.

Signed by []
for and on behalf of the Electricity Distribution and Supply Agency of Sierra Leone

Signed by []
for and on behalf of the (Project Specific SPV)

[Signed by [The Security Agent]]
for and on behalf of the Security Agent



Form of Implementation Transfer Certificate

To: THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT AND THE MINISTRY OF ENERGY OF SIERRA LEONE,

CC: THE ELECTRICITY DISTRIBUTION AND SUPPLY AUTHORITY OF SIERRA LEONE.

Transfer Certificate

- 1 Relating to the Implementation Agreement dated [●] between the Government of the Republic of Sierra Leone, represented by the Ministry of Finance and Economic Development, the Ministry of Energy and the [Project Specific SPV] (the "Company").
- 2 Terms defined in the Direct Agreement dated [●] between the Offtaker, the Ministry of Finance and Economic Development and the Ministry of Energy (the "Government Parties"), the Company, and [●] ("Security Agent") (the "Direct Agreement") shall, subject to any contrary indication, have the same meaning herein.
- 3 The Security Agent requests that the Substitute accepts and procures the transfer to the Substitute of all of the rights, title and interest of and all of the obligations of the Company under the Implementation Agreement and the Direct Agreement by countersigning and delivering this Transfer Certificate to the Government at its address for the service of notices specified in the Direct Agreement.
- 4 The Substitute hereby requests the Government to accept this Transfer Certificate as being delivered to the Government pursuant to and for the purposes of clause 6.2 of the Direct Agreement so as to take effect in accordance with the terms thereof on the Effective Date or on such later date as may be determined in accordance with the terms thereof.
- 5 The Substitute warrants that it is has received a copy of the Implementation Agreement together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Security Agent to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and will not rely on the Security Agent in relation to its entering into this Transfer Certificate and the Implementation Agreement.
- 6 The Substitute hereby undertakes with the Government that it will perform, in accordance with the terms thereof all obligations of the Company which by the



terms of the Implementation Agreement and the Direct Agreement will be assumed by it after delivery of this Transfer Certificate to the Government.

7 The Security Agent makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Implementation Agreement or any document relating thereto and assumes no responsibility for the performance and observance by any party of its obligations under the Implementation Agreement or any document relating thereto and any and all such conditions and warranties whether expressed or implied by law or otherwise are hereby excluded.

8 The Transfer Certificate and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of England.

Signed by []
for and on behalf of The Ministry of Finance and Economic Development

Signed by []
for and on behalf of The Ministry of Energy

Signed by []
for and on behalf of the (Project Specific SPV)

[Signed by [The Security Agent]]
for and on behalf of the Security Agent



Secretary

Director

)
)
)

Executed as a deed by
[Security Agent]
in the presence of:

Secretary

Director

)
)
)

Executed as a deed by
[PROJECT SPECIFIC SPV]
in the presence of:

[]

[]

)
)
)
)
)

Executed under the common seal of
GOVERNMENT OF THE REPUBLIC OF
SIERRA LEONE, REPRESENTED BY THE
MINISTRY OF FINANCE AND ECONOMIC
DEVELOPMENT AND THE MINISTRY OF
ENERGY in the presence of:

[]

[]

)
)
)
)

Executed under the common seal of
ELECTRICITY DISTRIBUTION AND
SUPPLY AUTHORITY OF SIERRA LEONE
in the presence of:



SCHEDULE 4

Sierra Leone Local Content Policy

1. In this Schedule 5 Sierra Leonean means a citizen of Sierra Leone or a Sierra Leonean business.
2. The Company shall:
 - a. give preference to the use of equipment, materials and products manufactured or produced in Sierra Leone, or services provided by Sierra Leoneans, where they are of better, equal or comparable value to those available from other sources in Sierra Leone, taking into account price, quality, reliability, timing and availability;
 - b. within 180 days of the Effective Date, provide the Government with a detailed report on potential Sierra Leonean supply, employment or contracting opportunities in relation to the Project, including opportunities which could reasonably be created with the provision of training;
 - c. announce all upcoming local contracting opportunities relating to the Project on the website of the PPP unit of the Government and appropriate local media outlets at least 30 days before the contract is to be awarded;
 - d. within 180 days of the Effective Date, appoint an officer responsible for:
 - i. liaising with Sierra Leoneans in relation to supply and contracting opportunities in relation to the Project;
 - ii. the facilitation of supply, employment or contracting opportunities for Sierra Leoneans in relation to the Project; and
 - iii. monitoring and reporting to the Company and the Government on the Company's compliance with the obligations set out in this Schedule 10;
 - e. work with its proposed EPC Contractor prior to entering into an EPC Contract to identify Sierra Leonean supply, employment or contracting opportunities which the EPC Contractor could use to perform the EPC Contract;
 - f. give preference to the employment of Sierra Leoneans where they have the necessary skills in relation to the Project;
 - g. prepare an annual corporate social responsibility policy and report on its implementation;
 - h. ensure that:
 - i. at least 80% of the civil works relating to the Project are provided by Sierra Leoneans;
 - ii. at least 10% of total capital expenditure for the Project is spent on contracts with Sierra Leoneans; and
 - iii. at least 50% of total expenditure on the operation and maintenance of the Plant is spent on contracts with Sierra Leoneans,

in each case to the extent that they are of better, equal or comparable value to those available from other sources in Sierra Leone, taking into account price, quality, reliability, timing and availability.

i. develop and implement (to the reasonable satisfaction of the Government) a training and succession program:

- i. so that on the second anniversary of the Effective Date, at least three citizens of Sierra Leone are employed as engineers or mid-level managers of the Plant;
- ii. so that commencing from the Effective Date, at least three Sierra Leonean citizens are trained every five years as professional operation and maintenance engineers with the skills necessary to work at the Plant; and

iii. with a view to achieving the below quotas:

Positions	Target percentage of positions to be filled by citizens of Sierra Leone
From the Commercial Operation Date until the 5th anniversary of Commercial Operation Date	
Managerial positions	20%
Middle level positions	50%
From the 5th anniversary of the Commercial Operation Date until the end of the Term	
Managerial positions	60%
Middle level positions	80%

PARLIAMENT HOUSE
 FOURTH FLOOR
 NINETEEN MILL ROAD
 FREETOWN, SIERRA LEONE

PARLIAMENT LIBRARY
TOWER HILL FREETOWN