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Implementation Agreement

IMPLEMENTATION AGREEMENT

by and between

THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE

and

PLANET SOLAR ENERGY (SL) LIMITED

relating to the

50 MW Solar Energy Generation

[25 MW in Makarie Gbanti Chiefdom, Bombali District and combined 25 MW in various location Kambia, Port Loko, Kabala, Kamakwi, Kono, Mile 91, Moyamba, Pujehun, Bo, Kailahun, Bonthe]

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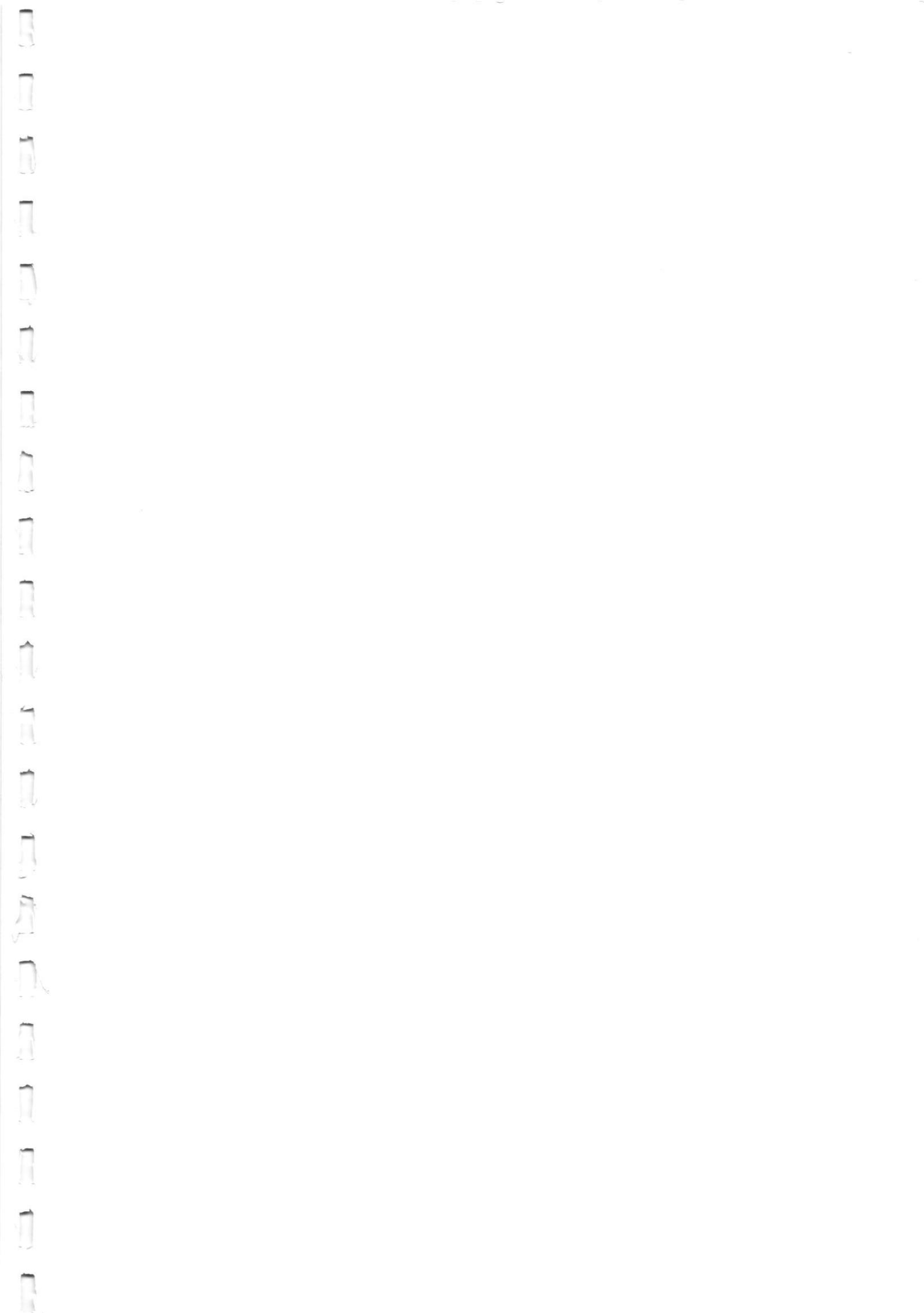
Sierra Leone

Dated as of 14 day of 08 2017



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THIS IMPLEMENTATION AGREEMENT is made on the 9th day of August 2017 between

- (1) **THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE, ACTING BY THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT AND BY THE MINISTRY OF ENERGY** (the "**Government**");
and
- (2) **PLANET SOLAR ENERGY (SL) LIMITED**, a limited liability Generator established in Sierra Leone with its registered office located in 81, Pademba Road, Freetown, Sierra Leone [and Generator number [●]] (the "**Generator**");.

WHEREAS

- A. The Government is desirous of improving on its energy generation capacity and extend access to electricity across the Country using several energy mix including renewable energy solutions such as solar energy by leveraging private sector opportunities and financing.
- B. In furtherance of that objective the Generator has agreed to build, own, operate and transfer an on-Grid solar photovoltaic power plant of 25 MW generation capacity at Makarie Gbanti Chiefdom, Bombali District, Northern Province, Sierra Leone and multiple smaller solar photovoltaic power plants of aggregate generation Capacity of 25MW (the "**Project**") pursuant to the provisions of this Agreement and the Power Purchase Agreement referred to in recital C.
- C. The Offtaker desires and intends to purchase the capacity, net electrical energy and ancillary services produced by the Project pursuant to the Power Purchase Agreement executed on 9th August 2017, as authorized by the Government.
- D. To promote the implementation of the Project, and in exchange for the undertakings and agreements of the Generator pursuant to this Agreement and the Power Purchase Agreement, the Government agrees to support the Project and to undertake certain obligations and 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**

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

"Agreement" means this Implementation Agreement, together with all Schedules attached hereto, as the same may be amended from time to time.

"Business Day" means any Day excluding Saturday and Sunday and any Day which shall be in Sierra Leone a legal holiday or a Day on which banking institutions are authorized or required by law or other governmental action to be closed.

"Cause" means with respect to the revocation of any Governmental Approval, a revocation on account of any wilful default or gross negligence on the part of the Generator or its Contractors in complying with the material terms of a Governmental Approval or any applicable Law consistently applied in a non-discriminatory manner and in accordance with the spirit of this Agreement.



“Change in Law”	means any of the following events occurring after the Effective Date as a result of any action by any Governmental Instrumentality of Sierra Leone: (i) a change in, amendment or extension or replacement or renewal or repeal of an existing Legal Requirement, (ii) an enactment, issuance, enforcement, adoption, bringing into effect or making of any new Legal Requirement, and (iii) a change in the manner in which a Legal Requirement is applied or in the application or interpretation thereof.
“Change of Control”	means, in relation to a person, Generator or entity, a change of the person, Generator or entity, that possesses, directly or indirectly, the power to direct or cause the direction of the management or the policies of that person, Generator or entity, whether through ownership, by contract or otherwise.
“Closing Date”	means the date on which the Offtaker and the Generator jointly certify that all the conditions set forth in Appendix F of the Power Purchase Agreement have been fulfilled or waived.
“Generator Event of Default”	means an event referred to in Clause 12.1.
“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.
“Contractors”	means the EPC Contractor and the O&M Contractor and any other contractors engaged by the Generator in connection with the design, engineering, procurement, supply, transportation, erection, construction, installation, testing and commissioning of the Plant and the operation and maintenance of, and supply of materials for, a Plant.
“Day”	means the 24-hour period beginning and ending at 00:00 midnight Sierra Leone time.
“Direct Agreement”	means the agreement entered into, or to be entered into, between the Offtaker and/or the Government, the Generator and the Lenders or a security agent or trustee on behalf of the Lenders under which the Lenders may step in to cure a Generator Event of Default under the Power Purchase Agreement or to assign the rights and obligations of the Generator under it to a third party capable of performing such obligations.
“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.
“Dollars” or “US\$”	means the currency that is the legal tender of the United States of America.
“EPC Contract”	means the engineering, procurement and construction contract to be entered into between the Generator and the EPC Contractor for the engineering, design, manufacture, supply, procurement,

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transportation, erection, construction, installation, testing, commissioning and warranty of the Plant.

“EPC Contractor” means the engineering, procurement and construction contractor or such other contractor employed from time to time by the Generator, for the engineering, design, manufacture, supply, procurement, transportation, erection, construction, testing, commissioning and warranty of the Plant.

“Event of Default” means a Generator Event of Default or a Government Event of Default.

“Event of Force Majeure” has the meaning set forth in Clause 11.3.

“Event of Force Majeure or Political Force Majeure” has the meaning set forth in Clause 11.1

“Event of Political Force Majeure” has the meaning set forth in 11.3.

“Financing Documents” means any and all loan agreements, notes, bonds, indentures, security agreements, direct agreements, registration or disclosure agreements, export credit agency agreements, guarantees or insurance policies, subordination agreements, mortgages, deeds of trust, credit agreements, intercreditor agreements, note or bond purchase agreements, hedging agreements, participation agreements and other documents (including, service agency agreements, lease agreements, purchase agreements and agency and asset participation agreements) entered into by the Generator relating to, among other things, the financing of the engineering, procurement, construction, ownership, operation and maintenance of the Plant, including but not limited to any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

“Governmental Approval/ Authorisations” means any acknowledgement, approval, authorization, consent, concession, exemption, licence, permit, privilege, decree, and waiver from, or filing with, or notice to, or from, any Government Instrumentality required for all or any of the Generator, the Generator’s Contractors or the Lenders, and their respective employees, agents, representatives or contractors, in relation to the Project.

“Government Event of Default” means an event referred to in Clause 12.2.

“Governmental Instrumentality” means the Government of Sierra Leone, or any ministry, department or political sub-division thereof, and any Person under the direct or indirect control of any such government exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission, or any independent regulatory authority, in each case within Sierra Leone, and any successor to or any assignee of any of the foregoing.

“Indemnified Party”	means the Party referred to as such in Clause 10.4.1.
“Indemnifying Party”	means the Party referred to as such in Clause 10.4.1.
“Land Agreement”	means (i) in reference to the On – Grid Plant, the agreement to be entered into by and between the Generator and the landowners of Makarie Gbanti Chiefdom, Bombali District, Northern Province of the Republic of Sierra Leone represented by the Paramount Chief and Chiefdom Council of the said Chiefdom for the location of the Site pursuant to which, among others, the Generator has been granted the right to use and occupy the Site and (ii) in reference to the Mini Solar Plants, the agreement to be entered into by and between the Generator and the landowners of each relevant site where the Mini Solar Plant is to be situated, pursuant to which, among others, the Generator has been granted the right to use and occupy the site.
“Law”	means in relation to this Agreement, the Laws of the Republic of Sierra Leone, and all orders, rules, regulations, executive orders, decrees, policies, judicial decisions, notifications, or other similar directives made pursuant thereto, as such laws, orders, rules, regulations, decrees, policies, judicial decisions and notifications or other similar directives may be amended from time to time.
“Lenders”	means the banks and other financial institutions and agencies party to the Financing Documents, including any security agent or trustee.
“Leones”	means the lawful currency of Sierra Leone.
“Loss”	means any and all loss, damage, liability, payment or obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including reasonable legal fees).
“MW”	means Mega Watt.
“Offtaker”	means the Electricity Distribution and Supply Authority, Sierra Leone and its legal successors and assigns.
“Offtaker Event of Default”	means an event referred to as such in Clause 18.2 of the Power Purchase Agreement.
“O&M Agreement”	means the operation and maintenance agreement to be entered into between the Generator and the O&M Contractor regarding the operation and maintenance of the Plant.
“O&M Contractor”	means the contractor employed from time to time by the Generator for the operation and maintenance of the Plant.
“Party”	means the Government, or the Generator, as the case may be.
“Plant”	means the on-Grid solar energy generating facilities as more specifically described in the Power Purchase Agreement to be built, owned, operated and transferred by the Generator on the Site or the mini – solar plants which are solar energy generating facilities to be built by the Generator in terms of the Power Purchase Agreement at

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such locations as shall be mutually agreed by the Offtaker and the Generator.

“Power Purchase Agreement”

means the agreement of that name by and between the Offtaker and the Generator, dated [insert date], for the sale of the energy generated from the Project, as the same may be amended from time to time.

“Project”

shall have the meaning ascribed thereto in the Power Purchase 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 and other relevant agreements.

“Register of Companies” means the appropriate official at the Sierra Leone companies register.

“Relevant Applicant”

means an applicant for a Governmental Approval as referred to in Clause 12.2.1(e)(ii).

“Shareholder”

means the shareholder of the Generator at the relevant time.

“Sierra Leone”

means the Republic of Sierra Leone.

“Site”

means with reference to the On-Grid Plant that certain parcel of land located at Makarie Gbanti Chiefdom, Bombali District, Northern Province, Sierra Leone, more specifically delineated in the Land Agreement on which the Plant is located attached hereto as Schedule 1 and with reference to the Mini-Solar Plants, each such location as identified jointly by the Generator and the Offtaker for setting up the Mini – Solar Plant.

“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.

“Transmission Agreement”

means the agreement setting out the rights and obligations of the Parties in relation to the Transmission System in relation to the On-Grid Plant, entered into on the 9th August 2017 or the agreement to be entered into in relation to each Mini – Solar Plant for the effective dispatch of the Net Electrical Energy generated by such Mini-Solar Plant into the Grid or the Transmission System.

“Transmission System”

means the Offtaker’s system of transmission or distribution facilities.

“Transmission System Force Majeure”

shall have the meaning given to it in the Power Purchase Agreement.

1.2 Interpretation

1.2.1 words of any gender include each other gender;

- 1.2.2 words using the singular or plural number also include the plural or singular number, respectively;
- 1.2.3 the terms “hereof,” “herein,” “hereby,” “hereto” and similar words refer to this entire Agreement and not to any particular Clause, Schedule or any other subdivision of this Agreement;
- 1.2.4 references to “Clause” and “Schedule” are to the Clauses or Schedules of this Agreement;
- 1.2.5 the words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases or words of like import;
- 1.2.6 references to “this Agreement” or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- 1.2.7 whenever this Agreement refers to a number of Days, such number shall refer to calendar Days unless Business Days are specified;
- 1.2.8 all periods of time shall be based on, and computed according to, the Gregorian calendar;
- 1.2.9 the word “approval” or “consent” shall be deemed to be followed by “(such approval not to be unreasonably withheld or delayed)” or “(such consent not to be unreasonably withheld or delayed)”, as the case may be, whether or not it is followed by such phrase or words of like import and the word “approved” shall be construed accordingly;
- 1.2.10 the phrase “best endeavours” means taking all actions necessary to achieve the objectives of the obligation to which the phrase relates, including the expenditure of funds in such amounts as shall be reasonable at the time in the light of the financial condition and resources of the Party bound by the obligation;
- 1.2.11 the phrase “reasonable endeavours” means taking such actions as may be reasonable at the time, which may or may not include the expenditure of funds, taking into account the importance of the objectives of the obligation to which the phrase relates and the damage that may be suffered by the Party in whose favour the obligation runs relative to the burdens imposed on the Party bound by the obligation in taking such actions;
- 1.2.12 the provisions of this Agreement shall apply mutatis mutandis to each Plant and where the context requires, each provision shall be applied separately in respect of each Plant; and
- 1.2.13 the capitalised terms used in this Agreement but not defined shall have the same meaning as provided thereto under the Power Purchase Agreement.

2. THE PROJECT

2.1 Right to Develop

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

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- 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 and ancillary services that the Project is capable of making available pursuant to the Power Purchase Agreement.

2.2 **Transfer of the Plant**

The Government shall require the Generator, and the Generator 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**

3.1.1 This Agreement shall enter into full force and effect from the date of its execution (the "Effective Date").

3.2 **Duration of Term**

3.2.1 The term of this Agreement shall continue until the Power Purchase Agreement has been terminated and all outstanding obligations of the Offtaker under the Power Purchase Agreement have been performed, unless terminated earlier or extended in accordance with the provisions of this Agreement other than this Clause 3.2.

3.2.2 If the Power Purchase Agreement is extended beyond its original term, then this Agreement shall be correspondingly extended on the same terms and conditions as are found herein.

4. **OBLIGATIONS OF THE GOVERNMENT**

4.1 **Government Authorisations**

Provided that the Generator has complied with its obligations in Clause 5, the Government shall:

- 4.1.1 ensure that in a timely manner, all Government Instrumentalities grant to the Generator (or its agents, representatives or contractors as may be reasonably necessary) all Government Authorisations in respect of which applications in accordance with Clause 5 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, other than the normal terms and conditions, which materially and adversely affects the Generator or the Project or which imposes conditions on the Generator 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 the then existing terms imposed on any third party;
- 4.1.4 ensure that no Government Instrumentality revokes any Governmental Authorisation without Cause; and

4.1.5 in the event that a Governmental Approval has been revoked for Cause, procure the grant by the Government Instrumentality of a further Governmental Approval if the Generator 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.

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 Generator, the Government shall support, use and cause to be used all reasonable efforts to expedite consideration of the application for each Governmental Approval or renewal thereof made in the circumstances set out in Clauses 4.1.3 and 4.1.5.

4.2.2 Any request for support under this Clause 4.2 shall be accompanied with copies of the application for the Governmental Approval, and clear evidence that the issuance or renewal of the Governmental Approval 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 as contained in the Laws are granted by the Government Instrumentalities to the Generator on or before the Closing Date.

4.4 **Financing of the Project**

The Government shall at any time and from time to time execute such further agreements or documents and do all such acts and things, as the Generator or the Lenders may reasonably require to enable the Generator to arrange financing for the Project on a limited recourse basis, including, but not limited to:

4.4.1 amending the provisions of this Agreement;

4.4.2 entering into a direct agreement with the Lenders of such form and substance as may reasonably be required by the Lenders.

4.5 **Guarantee of the Offtaker's Obligations**

The Government hereby guarantees the performance of the Offtaker's obligations under the Power Purchase Agreement, and shall, at the request of the Generator, in a timely manner take any necessary measures to ensure the Offtaker strictly complies with its obligations under the Power Purchase Agreement.

4.6 **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 Generator, or the interest of any Shareholders.

4.7 **Construction, Operation and Maintenance**

Subject to the provisions of 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

5.1 **Application for Government Authorisations**

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

5.2 **Construction of the Project**

The Generator 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.

5.3 **Environmental Protection, Health and Safety**

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

5.4 **Corporate Documentation**

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

- 5.4.1 the articles of incorporation and the certificate of incorporation of the Generator;
- 5.4.2 resolutions passed by the board of directors of the Generator authorising the execution, delivery and performance by the Generator 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
- 5.4.3 the form of the EPC Contract (excluding any information of a proprietary and technical or commercially sensitive nature).

6. **RIGHTS IN RELATION TO THE SITE**

6.1 **Acquisition of Site**

6.1.1 The Government shall use its best endeavours to facilitate the grant by the relevant landowners, with effect from the Effective Date, the right of the Generator (and if it so requires, any employee, agent, representative or contractor of the Contractor) to enter the Site in order to carry out such site investigations as the Generator may reasonably require, subject to:

- (a) the Generator giving prior notice of its intention to exercise its rights under this Clause 6.1.1 to the Offtaker;
- (b) all persons entering the Site complying with such reasonable requirements as the Offtaker may stipulate relating to the security and safety of the Site; and

6.1.2 The Government shall use its best endeavours to facilitate the grant by the relevant landowners of, the Land Agreement within 90 days after the Effective Date, to become effective at the latest on the Closing Date, so as to permit the Generator to assume vacant possession of the Site, on such terms and conditions as are set out in the Land Agreement and the Power Purchase Agreement.

6.1.3 The Government shall grant, or facilitate the grant of, all necessary rights of way,

easements and other rights, including those required to construct and maintain any fuel and power interconnections for the Plant, to enable the Generator to carry out its obligations and to exercise its rights under this Agreement, the Power Purchase Agreement and the Land Agreement throughout their respective terms.

6.2 **Support to obtain Site and Transportation**

6.2.1 The Government will use its reasonable endeavours to ensure that access and transportation to and from the Site suitable for construction and operation of the Plant is available.

6.2.2 Either Party may advise the other Party from time to time of any difficulties encountered in relation to the activities the Government is required to perform under this Clause 6.2 and if any such difficulties create (in the Generator's opinion) a significant possibility that the Generator will be prevented or materially impaired in meeting its obligations under the Project Agreements, then, upon the request of the Generator, the Government shall take such action as is reasonable under the circumstances to enable the Generator to secure the necessary services.

7. **FINANCIAL ISSUES**

7.1 **Security**

7.1.1 For the purpose of financing the Project and in compliance with the Laws, the Generator may charge or assign by way of security, in favour of the Lenders, 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 Generator, relating to the Project.

Provided however, the Generator shall send a written notification for confirmation to the Government for the charge or assignment of the assets mentioned under Clauses 7.1.1 (d) and (e) and (f) at least 30 (thirty) days in advance, and in the event that the Government fails to provide such written confirmation within 30 days, it shall be deemed that the Government has provided the confirmation in writing. Government hereby confirms that such written consent will not be unreasonably turned down or withheld.

7.1.2 The Government agrees to execute and give all acknowledgements of any security or assignments created pursuant to Clause 7.1.1 as are reasonably requested by the Generator to give effect to Clause 7.1.1.

7.2 **Foreign Exchange and Bank Accounts**

In compliance with the Laws, the Generator 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 US\$ 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.

7.3 **Tax:**

The Government shall ensure that the Generator is entitled to all tax exemptions provided under the taxation laws of Sierra Leone relating to a project of a nature similar to this Project.

For the purposes of this Agreement references to tax includes all present and future taxes, charges, duties, levies, custom duties, excise, deductions or withholdings of any kind

charges, duties, levies, custom duties, excise, deductions or withholdings of any kind whatsoever, or any other tax or any amount payable on account of or as security for any of the foregoing, by whomsoever on whomsoever and wherever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto.

8. REPRESENTATIONS AND WARRANTIES

8.1 Government Representations and Warranties

The Government hereby represents and warrants to the Generator that:

- 8.1.1 the signatories hereto have full power and authority to execute and deliver this Agreement on behalf of the Government and the execution hereof by the signatories shall effectively bind the Government;
- 8.1.2 the Government has full power and authority to perform its obligations under this Agreement;
- 8.1.3 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
 - (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;
- 8.1.4 assuming it constitutes a legal, valid and binding obligation of the Generator, 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.
- 8.1.5 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.
- 8.1.6 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
- 8.1.7 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.

8.2 **Generator Representations and Warranties**

The Generator hereby represents and warrants to the Government that:

- 8.2.1 the Generator is a limited liability Generator, 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.
- 8.2.2 the Generator has full corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.2.3 the execution, delivery and performance of this Agreement by the Generator:
 - (a) has been duly authorized by all requisite corporate action on the part of the Generator, and no other proceedings on the part of the Generator 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 Generator; 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 Generator is a party or by which the Generator 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 Generator, or on its ability to perform its obligations under this Agreement;
- 8.2.4 this Agreement has been duly executed and delivered by the Generator;
- 8.2.5 assuming it constitutes a legal, valid and binding obligation of the Government, this Agreement constitutes a legal, valid and binding obligation of the Generator, 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;
- 8.2.6 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 Generator, except for the Consents;
- 8.2.7 the Generator 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

8.2.8 there is no action, suit, proceeding or investigation pending or, to the Generator's knowledge, threatened:

- (a) for the dissolution of the Generator; or
- (b) against the Generator,

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.

9. ASSIGNMENT AND NOVATION

9.1 Consent Required

9.1.1 Subject to Clause 7.1.1, the Parties are not permitted to assign or novate their interests in this Agreement without the consent of the other Party except in accordance with the terms of this Clause.

9.1.2 Any sale, transfer, novation or assignment of any interest in the Plant or this Agreement, except for the purposes provided in Clause 7, without the consent of the Government shall be null and void. For the purposes of this Clause, a sale, transfer, or assignment shall include a sale of all or a majority interest in the stock or voting control of the Generator or the interests of the Generator in this Agreement.

Provided however, no such consent shall be required if the assignee or the transferee agrees in writing to bind it to all the terms and conditions applicable to the Generator under this Agreement and under the Project Agreements and the Generator has provided an advance written notice of at least 30 Days of the sale, transfer, novation or assignment or Change in Control of the Generator to the Government. Every Change in Control shall be subject to the provisions of the tax laws in Sierra Leone.

9.1.3 It is hereby clarified that notwithstanding anything to the contrary contained in this Agreement, the Generator shall at its discretion engage Contractors and sub-contractors for undertaking the Project or any part thereof.

9.2 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.

9.3 Change of Control

Any Change of Control of the Generator, whether voluntary or by operation of law, shall require the prior consent of the Government, unless the transferee or the person acquiring the Control of the Generator has agreed in writing to bind itself to the terms and conditions of this Agreement and the Project Agreements as applicable to the Generator and the Generator has provided an advance written notice of at least 30 Days of such Change in Control of the Generator to the Government.

9.4 Consequences of Sale, Transfer, Novation or Assignment without Consent

Any sale, transfer, novation, or assignment of any interest in the Plant made without fulfilling the requirements of Clause 9.1 or Clause 9.3 shall be null and void and shall constitute an Event



of Default.

10. LIABILITY, INDEMNIFICATION AND SOVEREIGN IMMUNITY

10.1 Limitation of Liability

10.1.1 Neither Party:

- (a) 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
- (b) 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.

10.1.2 This Clause 10 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.

10.2 Indemnification

10.2.1 Except and to the extent that the Government is indemnified pursuant to the terms of any of the Project Agreements or Financing Documents or is reimbursed for any Losses pursuant to any policy of insurance, the Generator shall:

- (a) indemnify and defend the Government, its officers and employees against; and
- (b) hold the Government, its officers and employees harmless from,

at all times after the date on which this Agreement enters into full force and effect, any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Government, its officers and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of any negligent act or omission or any intentional misconduct by the Generator in connection with this Agreement.

10.2.2 Except and to the extent that the Generator is indemnified pursuant to the terms of any of the Project Agreements or Financing Documents or is reimbursed for any Losses pursuant to any policy of insurance, the Government shall:

- (a) indemnify and defend the Generator, its officers, directors and employees against; and
- (b) hold the Generator and its officers, directors and employees harmless from,

at all times after the date on which this Agreement enters into full force and effect, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Generator, its officers, directors and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of any negligent act or omission or any intentional misconduct by the Government in connection with this Agreement.

10.2.3 Subject to the Parties otherwise agreeing, or a court of law or arbitrator appointed pursuant to this Agreement otherwise determining, in the event injury or damage results



from the joint or concurrent negligent or intentional acts or omissions of both the Generator and the Government (or the Offtaker), the Parties shall be deemed to be equally liable for such injury or damages (and indemnify and hold harmless the other Party for its share of liability for such injury or damages).

10.2.4 If the Parties agree, or a court of law or arbitrator appointed pursuant to this Agreement determines, that the Parties are not equally liable for injury or damages referred to in Clause 10.2.3, the Parties will be bound to (and indemnify each other against), liability in such portions agreed or determined.

10.2.5 Neither Party shall be liable to the other Party for special, consequential, or punitive damages or indirect costs or expenses or loss of profits.

10.2.6 The provisions of this Clause 10 shall survive for a period of 5 years following the termination or expiry of this Agreement with respect to any acts or omissions or claims for indemnification that occurred or arose prior to such termination or expiry.

10.3 **Indemnification for Fines and Penalties**

Subject to the other provisions of this Agreement, any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of another Party) for non-compliance with the Law, shall not be reimbursed by the other Party but shall be the sole responsibility of the Party not complying with the relevant Laws.

10.4 **Notice of Proceedings**

10.4.1 Each Party (the "Indemnified Party") shall promptly notify the other Party (the "Indemnifying Party") of any Loss or proceeding in respect of which such Indemnified Party is or may be entitled to indemnification pursuant to Clause 10.2, as soon as reasonably practicable after the Indemnified Party becomes aware of the Loss or proceeding and that such Loss or proceeding may give rise to an indemnification, but in any event no later than [21] days after the receipt by the Indemnified Party of notice of the commencement of any action for which indemnity may be sought.

10.4.2 The delay or failure of the Indemnified Party to provide the notice required pursuant to Clause 10.4.1 shall not release the Indemnifying Party from any indemnification obligation that it may have to the Indemnified Party except:

- (a) to the extent that such failure or delay materially and adversely affected the Indemnifying Party's ability to defend such action or increased the amount of the Loss; and
- (b) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.

10.5 **Assumption of Defence**

The Indemnifying Party may assume the defence of any proceeding of which it has received notice pursuant to Clause 11.4 with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that the Indemnified Party shall render all reasonable assistance requested by the Indemnifying Party in relation to the defence and that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to

pay such costs. The Indemnifying Party may agree a settlement with the claimant in respect of the proceeding which places non-monetary obligations upon the Indemnified Party, providing that independent counsel confirms that such obligations are reasonable in the circumstances.

10.6 **Indemnifying Party's Failure to Assume Defence**

If the Indemnifying Party fails to assume the defence of a claim meriting indemnification, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, provided that compromise, settlement or full payment of any such claim may be made only following confirmation by independent counsel that such claim is meritorious or warrants settlement. Where such consent is not obtained prior to such compromise, settlement or payment, the Indemnifying Party shall be released and discharged from all obligations in respect of that claim under Clause 10.

10.7 **Amount Owing to Indemnified Party**

Except as otherwise provided in this Clause 10, in the event that a Party is obliged to indemnify and hold the other Party and its successors and assigns harmless under this Clause 10, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

10.8 **Subrogation**

10.8.1 Upon payment of any indemnification provided by a Party pursuant to Clause 10.2, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the Indemnified Party may have relating thereto.

10.8.2 The Indemnified Party shall, at the request and expense of the Indemnifying Party, cooperate with the Indemnifying Party and give at the request (and expense) of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

10.9 **Sovereign Immunity**

The Government unconditionally and irrevocably and to the maximum extent permitted by law:

10.9.1 agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;

10.9.2 agrees that, in the event that any proceedings are brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no sovereign immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the law, be claimed by or on behalf of itself or with respect to its assets; and

10.9.3 to the maximum extent permitted by law, waives any right of sovereign immunity which it or any related entity now has or may acquire in the future.

11. **FORCE MAJEURE OR POLITICAL FORCE MAJEURE**

11.1 **Force Majeure or Political Force Majeure.**

11.1.1 An "Event of Force Majeure or Political Force Majeure" shall mean any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:



- (a) such circumstance, despite the exercise of reasonable diligence, cannot be prevented, avoided or removed by such Party;
- (b) such circumstance prevents such Party from performing its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof;
- (c) such circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under any of the Project Agreements; and
- (d) such Party has given the other Party notice in accordance with Clause 11.2.1.

11.2 Responsibilities of the Parties During Event of Force Majeure or Political Force Majeure.

11.2.1 If either Party desires to invoke an Event of Force Majeure or Political Force Majeure as a cause for delay in the performance of any obligation (other than the payment of money) hereunder, it shall advise the other Party in writing of the date of commencement of such Event of Force Majeure or Political Force Majeure, the nature and expected duration thereof and the actions to be taken in order to comply with requirements of this Clause 11 (Force Majeure or Political Force Majeure); provided, that such notice must be sent by such Party not later than ten (10) Days after the date on which such Party first had knowledge of the effect of such Event of Force Majeure or Political Force Majeure. If a Party does not deliver such notice in accordance with the terms hereof, such Party shall not be entitled to invoke the benefits of this Clause 11 (Force Majeure or Political Force Majeure).

11.2.2 The Parties:

- (a) shall make all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure or Political Force Majeure including recourse to alternate sources of services, equipment and materials and construction equipment; and
- (b) shall make all reasonable endeavours to ensure resumption of normal performance of this Agreement after the termination of any Event of Force Majeure or Political Force Majeure and shall otherwise perform their obligations as herein agreed to the maximum of their ability.

11.2.3 Within ten (10) Days following knowledge of the termination of any Event of Force Majeure or Political Force Majeure, the Party having invoked such Event of Force Majeure or Political Force Majeure as a cause for such delay shall submit to the other Party reasonable proof of the nature of such delay and its effect upon the performance of the obligations of such Party under this Agreement.

11.2.4 With respect to the Generator only, if an Event of Force Majeure or Political Force Majeure occurs that affects the Generator, such event may be invoked only with respect to any other Unit or other part of the Plant affected by such event and not with respect to any Unit or other part of the Plant not so affected.

11.3 Events of Force Majeure or Events of Political Force Majeure.

11.3.1 Events of Force Majeure or Political Force Majeure shall consist of "Events of Force Majeure" and "Events of Political Force Majeure".

11.3.2 "Events of Political Force Majeure" means:



- (a) acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy, blockade, sanction, embargo or revolution, in each case occurring within or involving Sierra Leone;
- (b) acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within Sierra Leone;
- (c) a Change in Law;
- (d) action or failure to act by a Governmental Instrumentality, including any Governmental Authorisation (i) ceasing to remain in full force and effect or (ii) not being issued or renewed upon application having been properly made by Generator; and

11.3.3 **“Events of Force Majeure”** means those Events of Force Majeure or Political Force Majeure not constituting Events of Political Force Majeure, including, but not limited to:

- (a) lightning, fire, earthquake, tsunami, unusual flood, storm, cyclone, typhoon, tornado or other natural calamity or act of God;
- (b) epidemic or plague;
- (c) strikes, works to rule or go-slows (other than by employees of the Party claiming the same as an Event of Force Majeure or of any shareholders of such Party, or by employees of any direct or indirect affiliate, parent or subsidiary of any shareholder of such Party);
- (d) accidents or explosions; and
- (e) a Transmission System Force Majeure as to which the action or inaction of a Governmental Instrumentality of Sierra Leone is not the controlling or contributing force that caused the occurrence of such event.

11.4 **Certain Delays not Excused**

11.4.1 Notwithstanding that an Event of Force Majeure or an Event of Political Force Majeure otherwise exists, the provisions of this Clause 11 (Force Majeure or Political Force Majeure) shall not excuse:

- (a) failure of either Party to make any payment of money in accordance with its obligations under this Agreement;
- (b) late delivery of equipment, machinery, plant or materials caused by negligent acts or omissions on the part of the Generator or any Contractor;
- (c) late performance by the Generator or any Contractor caused by the Generator's or such Contractor's failure to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour;
- (d) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
- (e) failure of either Party or the EPC Contractor to perform any of its obligations under this Agreement or the EPC Contract in accordance with the requirements



thereof prior to the occurrence of an Event of Force Majeure or an Event of Political Force Majeure; or

- (f) delays resulting from reasonably foreseeable unfavorable weather or reasonably foreseeable unsuitable ground or sea conditions or other similar reasonably foreseeable adverse conditions.

11.5 Event of Political Force Majeure

The Generator (but not the Government) shall not be responsible or liable for or deemed in breach hereof because of, any failure or delay in performing its obligations under or pursuant to this Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Event of Political Force Majeure or its or their effects or by any combination thereof and the periods allowed for the performance by the Generator of such obligation(s) shall be extended on a Day-for-Day basis for so long as one or more Event of Political Force Majeure continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement.

11.6 Event of Force Majeure

Neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations (other than an obligation to make a payment) under or pursuant to this Agreement which it cannot perform due solely to one or more Event of Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a Day-for-Day basis for so long as one or more Event of Force Majeure continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that no relief shall be granted to the Party claiming an Event of Force Majeure pursuant to this Clause 11.6 to the extent that such failure or delay would have nevertheless, been experienced by that Party had such Event of Force Majeure not occurred.

The Term shall be extended for a period equal to the duration of any Event of Force Majeure.

12. TERMINATION

12.1 Generator Events of Default

12.1.1 Subject to Clause 12.1.2, each of the following events shall be an event of default by the Generator (each, a "Generator Event of Default"), which, if not remedied within the time permitted (if any), shall give rise to a right on the part of the Government to terminate this Agreement pursuant to Clause 12.3:

- (a) except for the assignment or transfer or Change in Control in accordance with Clause 9 the assignment or transfer of the Generator's rights or obligations in this Agreement or interest in the Plant to any person or any Change of Control of the Generator unless:
 - (i) the prior consent of the Government has been given; or
 - (ii) the Generator's rights or obligations in this Agreement or interest in the Plant have been re-assigned or re-transferred to the Generator or the Change of Control of the Generator is reversed within 60 days of notice from the Government to achieve the same;
- (b) Generator having been wound up, been placed into receivership, had a liquidator appointed to it or been struck off the register of companies held by the Registrar of Companies;



- (c) the Generator's filing of a winding-up petition in respect of itself;
- (d) the filing of a winding up petition against the Generator as debtor that could materially impact upon the Generator's ability to perform its obligations under the Power Purchase Agreement provided, however, that the Generator does not obtain a stay or dismissal of the filing within [60] days after the date of notice from the Offtaker to the Generator and (if applicable) the Lenders' representative as provided for in the Direct Agreement;
- (e) the Generator's failure to make any payment required to be made by it under this Agreement within [30] days of the date (after the date on which that payment is due) on which the Government notifies the Generator of the failure;
- (f) any material breach by the Generator of this Agreement, in each case that is not remedied where the breach is remediable within [60] days after receipt of notice from the Government identifying the breach in question in reasonable detail, and demanding remedy thereof. This [60] day period shall be extended for any such breach that can be remedied only in more than [60] days and the Generator may have such additional time to remedy that breach as the Government reasonably estimates may be necessary if, prior to the end of the [60] day period, the Generator provides evidence to the Government's reasonable satisfaction that it has commenced and is diligently pursuing a remedy and that more than [60] days will be required in order to effect such remedy and provides a good-faith estimate of when the breach will be remedied;
- (g) any representation or warranty made by the Generator in this Agreement proving to have been false or misleading in any material respect when made or ceasing to remain true during the Term if such cessation results in a material adverse impact on the Government; or
- (h) termination by the Offtaker of the Power Purchase Agreement as a consequence of the Generator's default under the Power Purchase Agreement.

12.1.2 No such event referred to in Clause 12.1.1 shall become a Generator Event of Default if it substantially results from:

- (a) a breach by the Government of this Agreement;
- (b) an Offtaker Event of Default as described under the Power Purchase Agreement; or
- (c) the occurrence of a Events of Force Majeure or Political Force Majeure where the Generator has complied with Clause 11.3 (but only to the extent that Event of Force Majeure or Political Force Majeure affects the ability of the Generator to perform its obligations under this Agreement).

12.2 Government Events of Default

12.2.1 Subject to Clause 12.2.2, each of the following events shall be an event of default by the Government (each, a "the Government Event of Default"), which if not remedied within the time period permitted (if any), shall give rise to the right of the Generator to terminate this Agreement pursuant to Clause 12.3:

- (a) the Government's failure to make any payment required to be made by it under this Agreement or under any of the Project Agreements within [30] days of the date (after the date on which that payment is due) on which the Generator notifies the Government of the failure.



- (b) any material breach by the Government of this Agreement that is not remedied where the breach is remediable within [60] days after receipt of notice from the Generator identifying the breach in question in reasonable detail, and demanding remedy thereof. This [60] day period shall be extended for any such default that can be remedied only in more than [60] days and the Government may have such additional time to remedy that breach as the Generator reasonably estimates may be necessary if, prior to the end of the [60] day period, the Government provides evidence to the Generator's reasonable satisfaction that it has commenced and is diligently pursuing a remedy and that more than [60] days will be required in order to effect such remedy and provides a good-faith estimate of when the breach will be remedied;
- (c) any representation or warranty made by the Government in this Agreement proving to have been false or misleading in any material respect when made or ceasing to remain true during the Term if such cessation results in a material adverse impact on the Generator;
- (d) the expropriation, management takeover, compulsory acquisition, requisition or nationalisation by any Government Instrumentality of:
 - (i) any shares in the Generator or any Shareholder if the result would be for such Government Instrumentality to acquire ownership or control of a majority of the shares in the Generator or any Shareholder or the right to control or direct the composition or decisions of the board of directors or the management of the Generator; or
 - (ii) any material asset or right of the Generator relating to the Project or of any asset or right without which the Generator will be unable to comply with its obligations under the Power Purchase Agreement;
- (e) where, at any time, as a result of any Change in Law:
 - (i) the making, or receipt by the Generator, of any payment in the currency and in the manner contemplated by the Generator under any Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Government Authorisations;
 - (ii) the distribution of profits of the Generator to any Shareholder becomes illegal, invalid or materially restricted;
 - (iii) the performance of any obligation by any party to a Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Laws or Government Authorisations or any Project Agreement or Financing Document becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Government Authorisations;
 - (iv) the enforcement of rights of the Generator, any Shareholder or the Lenders in connection with the Project against assets of the Offtaker or the Government (or, in the case of the Lenders, the Generator) situated in Makari Gbanti Chiefdom, Bombali District, Northern Province, Sierra Leone or the other sites where any of the off-Grid Plants are located, becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Government Authorisations; or



- (v) the settling of Disputes by an arbitrator becomes illegal or materially restricted under the Laws or any Government Authorisations;
- (f) if:
 - (i) any Governmental Approval, is not granted upon application having been duly made pursuant to Clause 5.1;
 - (ii) any Governmental Approval, ceases to remain in full force and effect or, if granted for a limited period, is not renewed upon application having been duly made pursuant to Clause 5.1 or is renewed upon terms and conditions which result in the inability of the Generator, the Lenders, the Shareholder or the Contractors ("**Relevant Applicant**") to exercise their rights or perform their obligations under this Agreement, any Project Agreement or Financing Documents,

unless such refusal to grant or the revocation or amendment of such Governmental Approval is due to:

- (iii) the default or neglect of the Relevant Applicant; or
- (iv) a failure by the Relevant Applicant to abide by:
 - (A) any rules or requirements for the application for, or the renewal of, the Governmental Approval; or
 - (B) without limiting Clause 12.2.1(e), any applicable Law;

which, in each case, legally entitles the issuing authority to not issue, revoke, or make the relevant amendment in the terms and conditions of the Governmental Approval; or

- (g) termination by the Generator of the Power Purchase Agreement as a consequence of a Offtaker Event of Default under the Power Purchase Agreement.

12.2.2 No such event referred to in Clause 12.2.1 shall become a the Government Event of Default if it substantially results from:

- (a) a breach by the Generator of this Agreement or the Power Purchase Agreement; or
- (b) the occurrence of a Event of Force Majeure where the Government has complied with Clause 11.3 (but only to the extent that the Event of Force Majeure affects the ability of the Government to perform its obligations under this Agreement).

12.3 **Termination Due to Event of Default**

12.3.1 Upon the occurrence of an Event of Default which has not been remedied within the applicable remedy period, the non-defaulting Party shall have the right to declare a date, which shall be between [30] and [45] days after the notice thereof to the defaulting Party, upon which this Agreement shall terminate. If the Government is the non-defaulting Party, it shall (if applicable) copy its termination notice to the Lenders' representative. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described in this Clause 12 or as otherwise may be explicitly provided for in this Agreement.



12.3.2 Where the Generator or the Government is prevented from complying with its obligations or exercising its rights under this Agreement as a result of one or more Event of Force Majeure or its or their effects or by any combination thereof for a continuous period of [365] days, then either Party shall have the right to terminate this Agreement by notice to the other, effective immediately. In case of occurrence of an Event of Political Force Majeure such right to terminate shall vest only with the Generator.

12.4 Other Remedies

12.4.1 The exercise of the right of a Party to terminate this Agreement does not preclude such Party from exercising other remedies that are available to such Party under this Agreement or, subject to this Agreement, otherwise available at law.

12.4.2 Remedies available to a Party under this Agreement or at law are cumulative, save where this Agreement otherwise provides an exhaustive remedy, penalty or right in respect of a particular breach, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, the simultaneous or later exercise of other remedies by such Party.

12.4.3 In addition to the other remedies specified in this Clause 12, in the event that any Event of Default is not remedied within the applicable remedy period set forth in this Agreement, the non-defaulting Party may elect to treat this Agreement as being in full force and effect and shall have the right to seek specific performance of this Agreement by the defaulting Party in accordance with Clause 14.2.

12.5 Double Jeopardy

12.5.1 Where:

- (a) a final, non-appealable award or order has been issued by an expert or arbitrator in a proceeding initiated by the Offtaker, based upon a claim for breach by the Generator of any of its obligations under the Power Purchase Agreement;
- (b) the Offtaker settles any dispute with the Generator related to, or waives in writing any breach by the Generator of, any of its obligations under the Power Purchase Agreement; or
- (c) the Offtaker is pursuing a claim against the Generator based upon an alleged breach by the Generator of its obligations under the Power Purchase Agreement,

the Government shall be precluded from pursuing, or, in the case of Clauses 12.5.1(a) and 12.5.1(b), ever pursuing thereafter, any claim it would otherwise have against the Generator based on the same facts and acts or omissions by the Generator, for breach of substantially the same (or related) obligations which the Generator owed the Government under this Agreement.

12.5.2 Clause 12.5.1(a) shall not prevent the Government from separately proceeding to terminate this Agreement pursuant to Clause 12.3.

12.5.3 In the event that the Government pursues a claim in non-compliance with Clause 12.5.1, the Government shall reimburse the Generator for the reasonable costs and expenses that the Generator incurs in defending the claim so pursued by the Government.

12.6 Duty to Mitigate



Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimise any cost, expense, damage or loss it may incur as a result of the other Party's performance or non-performance of this 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 Recommendation by Expert

13.2.1 Any Dispute subject to this Clause 13.2 shall be referred to an expert for a recommendation in accordance with the following provisions:

13.2.2 The expert shall have demonstrated expertise in the area to which such Dispute relates and shall not be an agent, employee, or contractor or a former agent, employee, or contractor of either Party (the "**Expert**").

13.2.3 The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an expert and nominating the person it proposes to be the Expert. The other Party shall, within fifteen (15) Days of receiving such notice, notify the initiating Party whether such person is acceptable. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable, the Parties shall meet and discuss in good faith for a period of fifteen (15) Days to agree upon a person to be the Expert. If the Parties fail to meet or are unable to agree at the end of such fifteen (15) Day period, either Party may request the International Chamber of Commerce to nominate the expert, and such person so nominated shall be the Expert for the purpose of resolving the Dispute.

13.2.4 Consideration of the Dispute by an expert shall be initiated by the Party seeking consideration of the Dispute by the Expert submitting within ten (10) Business Days of the appointment of the Expert to both the Expert and the other Party written materials setting forth:

- (a) its description of the Dispute in reasonable detail;
- (b) a statement of the initiating Party's position; and
- (c) copies of records supporting the initiating Party's position.

13.2.5 Within ten (10) Business Days of the date that a Party has submitted the materials described in the preceding sentence, the other Party may submit to the Expert and to the initiating Party:

- (a) its description of the Dispute in reasonable detail;



- (b) a statement of the responding Party's position; and
- (c) copies of any records supporting the responding Party's position.

- 13.2.6 In addition to the material provided to the expert by the initiating Party, the Expert shall consider any such information submitted by any responding Party within such ten (10) Business Day period and, in the Expert's discretion, any additional information submitted by either Party to the Expert (with a copy to the other Party) at a later date.
- 13.2.7 Each Party shall designate one person knowledgeable about the issues in dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the expert.
- 13.2.8 Except as provided in Clause 14.2 of this Agreement with respect to the payment of costs, the proceedings under this Clause 14.2 shall be without prejudice to either Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings, including an arbitration proceeding under Clause 13.3 of this Agreement. The process under this Clause 13.2 shall not be regarded as an arbitration, and the laws relating to commercial arbitration shall not apply.
- 13.2.9 When consideration of the Dispute by an expert is initiated, the expert shall be requested to provide a recommendation within fifteen (15) Business Days after the expiry of the ten (10) Business Day response period provided in Clause 14.2.4. If the Expert's recommendation is given within such fifteen (15) Business Day period, or if the Expert's recommendation is given at a later time and no Party has at such time initiated any other proceeding concerning the Dispute, the Parties shall review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.
- 13.2.10 The costs of engaging an expert shall be borne equally by the Parties, and each Party shall bear its own costs in preparing materials for, and making presentations to, the Expert.

13.3 Arbitration

- 13.3.1 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.
- 13.3.2 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.
- 13.3.3 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").

13.3.4 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.

13.3.5 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.

13.3.6 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.

13.3.7 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.

13.4 **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 and Wales.

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 Generator, 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 Lenders, 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 Lenders, 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 Approval 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 Generator 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 Generator shall be considered employees of the Government for any purpose; nor shall the Generator 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 10, 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 language only and such version shall be the definitive version of this Agreement.

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 or facsimile. The addresses of the Parties and their respective facsimile numbers shall be:

If to the Government:

Permanent Secretary
Ministry of Energy
Stronge Tower, Pademba Road, Freetown

If to the Generator:

Planet Solar Energy (SL) Limited
2102, Vision Tower, Business Bay, Dubai, UAE



Attention: Director

CC: The Board of Directors

14.14.2 Except as otherwise expressly provided in this Agreement, all notices shall be deemed to be delivered:

- (a) when the notice is delivered by hand or by overnight courier; or
- (b) if received during business hours on a Business Day for the receiving Party, when the notice is transmitted by facsimile to the receiving Party's facsimile number; and
- (c) if received after business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first Business Day following the date the notice is transmitted by facsimile to the receiving Party's facsimile number.

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.

FOR AND ON BEHALF OF GOVERNMENT

By:



Name: MONODU L. KARGBO

Title: MINISTER OF FINANCE & ECONOMIC DEV.

for and on behalf of the Ministry of Finance and Economic Development

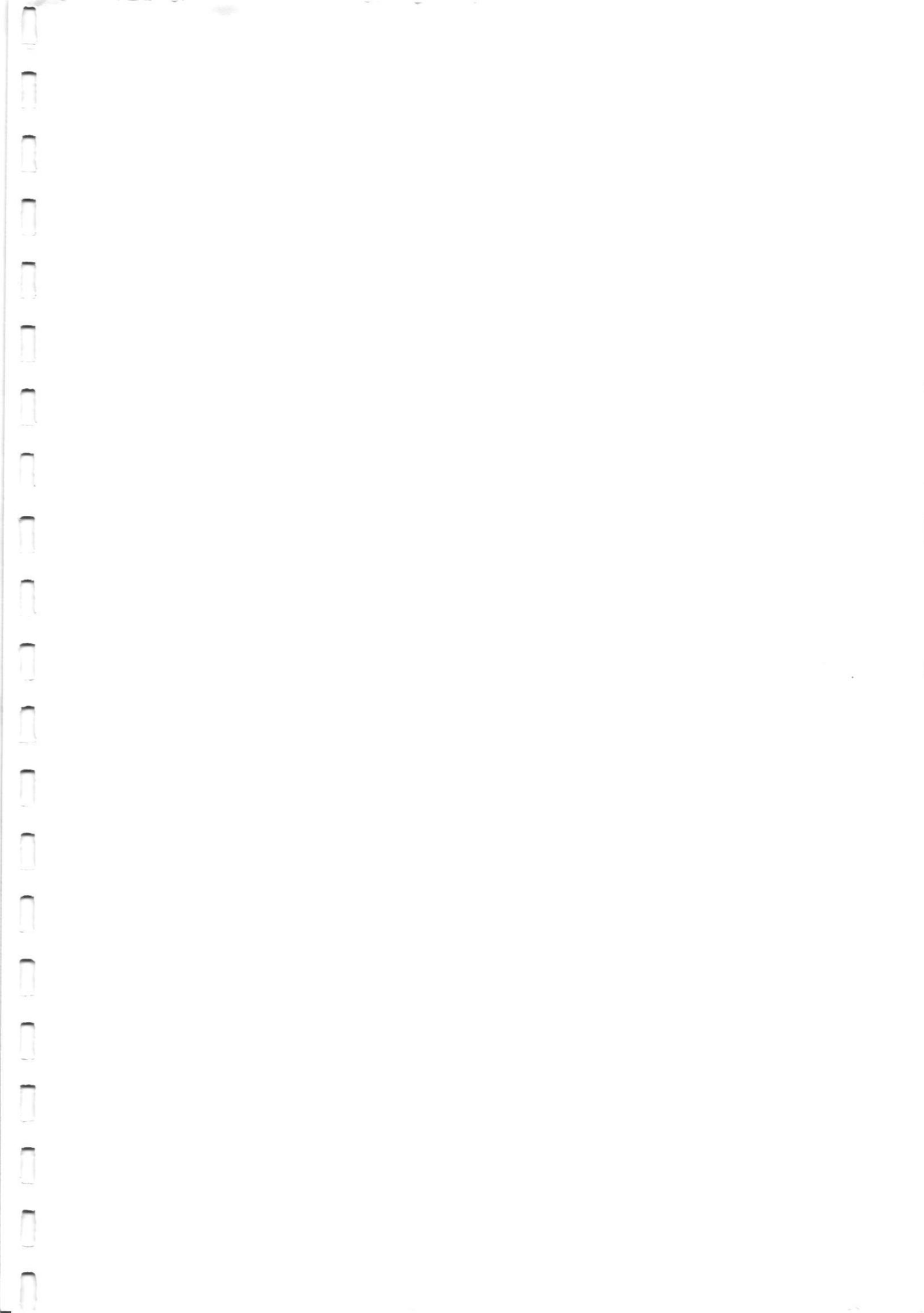
In the presence of:

Ansu S. Tucker

By:



Title: Principal Deputy Financial Secretary



THE MINISTRY OF ENERGY

By: 

Name:

Title: *W. M. O. Ouedraogo*
for and on behalf of the Ministry of Energy

In the presence of:

By: 

Name:

Koumba Monro
Deputy Secretary

FOR THE GENERATOR

By: 

Name:

Bhadra Kanari

Title:

Director

In the presence of:

By: 

Name:

Mohamed Abu Sery



