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Water Extraction Licence

Dated: 8th Sept. 2011

Government of the Republic of Sierra Leone
(GoSL)

Addax Bioenergy (SL) Limited
(Addax)

SNR Denton UK LLP
One Fleet Place
London EC4M 7WS
United Kingdom
DX 242

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Contents

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Water Extraction Licence

Dated

Between

(1) **Government of the Republic of Sierra Leone** acting by the Ministry of Energy and Water Resources (**GoSL**); and

(2) **Addax Bioenergy (SL) Limited** a company established and registered under the laws of the Republic of Sierra Leone whose registered office is located at 4 Liverpool Street, Freetown, Sierra Leone (**Addax**).

Recitals

A Addax proposes to establish and operate the Facilities.

B GoSL has agreed to grant Addax a right to (i) extract water from the River for use at the Facilities and (ii) input water from the Facilities into the River, in each case on and subject to the provisions of this Agreement.

It is agreed:

1 Definitions and interpretation

1.1 Definitions

In this Agreement, the following definitions apply:

Affiliate means in relation to any Person, a Subsidiary of that Person or a Holding Company of that Person or any other Subsidiary of that Holding Company.

Annual Statement has the meaning specified in Clause 7.2 (*Annual Statement*).

Authority means any statutory, public, local or other competent authority or a court of competent jurisdiction.

Base Rate means the British Bankers Association Interest Settlement Rate for Dollar deposits for a period equal to three (3) Months that appears on the appropriate page of the Reuters service at or about 11:00am in London on the last available Day on which banks are legally permitted to be open in London, or in the event that the Reuter's service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the British Bankers Association Interest Settlement Rate for Dollar deposits in the London inter-bank market.

Best Water Industry Practice means practices that are, at the time in question, generally accepted as being good, safe, economical, environmentally sound and efficient in monitoring the use of, managing the sustainability of, conserving, enforcing rights over, extracting and inputting water sourced from a river. They should reflect standards of regulation and technology that are appropriate to the operations in question and should be applied using standards in all matters that are no less rigorous than those which would be consistent with the Laws of Sierra Leone and any regulations, directives and other relevant instructions of the

Sierra Leone Environmental Protection Agency or other relevant bodies in the Republic of Sierra Leone.

Bumbuna Dam means the 50MW asphalt-faced rockfill hydroelectric dam located on the river Seli approximately 250km northeast of Freetown.

Concession Period means the period specified in Clause 2.2 (*Concession Period*).

Concession Price means:

(a) for Period 1, zero point zero zero zero seven five Dollars (US$0.00075) per Cubic Metre;

(b) for Period 2, zero point zero zero one Dollars (US$0.001) per Cubic Metre; and

(c) for all subsequent periods, the price calculated in accordance with the provisions of Clause 6 (*Prices*).

Concession Quantity and its abbreviation CQ means a Monthly or Fortnightly quantity of water, expressed in Cubic Metres, and as specified in Clause 5.1 (Quantity of CQ).

Concession Year means a period commencing at 06:00 hours on the first day of January in any year and ending at 06:00 hours on the first day of January in the next succeeding year except that:

(a) the first Concession Year shall commence at 06.00 hours on the Start Date and end at 06.00 hours on the next following first day of January; and

(b) the final Concession Year shall commence at 06.00 hours on the first day of January immediately preceding termination and end at 06.00 hours on the date of termination of this Agreement.

Confidential Information has the meaning specified in Clause 17.1 (*Confidential Information*).

Cubic Metre means the volume of a cube with edges one metre in length.

Day means a period of hours beginning at 06:00 hours on any day and ending at the same time on the following day. The date of any Day shall be the date of its beginning. The term **Daily** shall be construed accordingly.

Direct Agreement means the agreement to be entered into in between Addax, GoSL and Addax's lenders (or an agent and/or security trustee on their behalf) which, among other things, gives the lenders the right, in specified circumstances, to step-in and exercise all rights and perform all the obligations of Addax under this Agreement.

Dollar or **US$** means such currency of the United States of America which, as at the time of payment or determination, is legal tender therein for the payment of public or private debts.

Emergency means any event, circumstance or state of affairs which has arisen and which has resulted, or could result in, the occurrence of a Material Adverse Effect.

Extraction Point means the flange or weld or other agreed mark connecting the Facilities to the River at each location marked on the map at Schedule 4 (*Extraction Points*).

Facilities means the Buyer's proposed sugarcane plantation, ethanol distillation factory, power plant, irrigation system, residential area with community facilities, and associated facilities situated at the Site (as set out in the Memorandum of Understanding and Agreement between GoSL, Addax and Addax & Oryx Holdings BV dated 9 February 2010).

First Quarter means the month in which the Start Date occurs and the following two months.

Force Majeure has the meaning specified in Clause 11 (*Force Majeure*).

Force Majeure Notice has the meaning specified in Clause 11.6(b).

Fortnight means either (i) a period beginning at 06:00 hours of the first Day of any month from December to April and ending at the same time fifteen days later, or (ii) a period beginning at 06:00 hours on the fifteenth day of any month from December to April and ending at the same time on the first Day of the next succeeding calendar month.

GoSL's Bank Account means the account in the name of GoSL with Bank of Sierra Leone, Siaka Stevens Street, Freetown bank, account no 1100501 or any other account notified in writing by GoSL to Addax from time to time.

Holding Company means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

Input Point means the flange or weld or other work connecting the Facilities to the River as such point may be required by Addax, and notified in writing to GoSL, during the Concession Period, but which, for the avoidance of doubt, is not required by Addax as of the date of this Agreement.

ISO means the International Organisation for Standardisation.

Law means any law, act, requirement (including license and permit requirements), ordinance, code, order, rule, resolution or regulation of any governmental authority or agency (federal, national, provincial, municipal, local or other) that is at any time applicable to Addax, the Facilities, the Site, or any part thereof, and shall include the Laws of Sierra Leone and all applicable environmental standards and hazardous waste laws, as any such law, act, requirement, ordinance, rule, resolution or regulation or standard may be amended from time to time.

Laws of Sierra Leone means the national, provincial and local 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.

Material Adverse Effect means any material adverse effect on the operation of the Project including, without limitation, any increase in costs, threat to property or persons or destruction of crops.

Measuring Equipment has the meaning specified in Clause 9.2.1.

Minimum Flow Rate means a rate of flow of water in the River, as measured at the Extraction Point located at the nursery of seven (7) Cubic Metres per second.

Month means a period beginning at 06:00 hours on the first Day of any calendar month and ending at the same time on the first Day of the next succeeding calendar month.

New York Convention means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which came into force on 7 June 1959.

Off-Specification Water has the meaning specified in Clause 8.1.1.

Party means GoSL or Addax and **Parties** means GoSL and Addax. The expressions shall include their respective successors in title and permitted assigns.

Period 1 means the period from the Start Date until and including the fifth (5th) anniversary of the Commercial Operations Date (as defined in the Power Purchase Agreement).

Period 2 means the period from and including the day after the fifth (5th) anniversary of the Commercial Operations Date (as defined in the Power Purchase Agreement) until and including the tenth (10th) anniversary of the Commercial Operations Date.

Person means any person, company, firm, partnership, association or body corporate.

Power Purchase Agreement means the agreement entered into on or about the date of this Agreement between GoSL and Addax in relation to the purchase of power generated at the Facilities.

Project means the development of agricultural land and the Facilities at the Site for the production of fuel ethanol and co-generation of electric power.

Quarter means any period of three months.

Quarterly Statement has the meaning specified in Clause 7.1 (*Quarterly Statement*).

Reasonable and Prudent Operator means a Person seeking, in good faith, to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions. Any reference to the "**standard of a Reasonable and Prudent Operator**" shall be construed accordingly.

Reasonable and Prudent Utility Regulator means a Person seeking, in good faith, to perform its legally mandated function and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced utility regulator engaged in the same type of undertaking under the same or similar circumstances and conditions. Any reference to the "**standard of a Reasonable and Prudent Utility Regulator**" shall be construed accordingly.

Related Agreement has the meaning specified in Clause 14.12.1.

Right has the meaning specified in Clause 3.3(a).

River means the Rokel / Seli river located in Bombali District, the Republic of Sierra Leone.

Site means the land comprising ten thousand hectares (10,000ha) leased and under development by Addax, together with the related infrastructure, near the town of Makeni, Sierra Leone, at which Addax is developing and will operate the Project.

Specification means the standards of purity and other standards relating to the properties, condition and composition of water set out in Schedule 1 (*Specification*).

Start Date means the later of:

(a) the date of this Agreement as stated at the beginning of this Agreement; and

(b) the entry by the GoSL into the Direct Agreement.

Subsidiary means:

(a) any company in respect of which another company (directly or indirectly):

  (i) holds a majority of the voting rights;

  (ii) is a member of and has the right to appoint or remove a majority of its board; or

  (iii) is a member of and (under an agreement with other members) controls alone a majority of the voting rights in it; and

(b) any company which would be a subsidiary within (a) above, but for any security subsisting over the shares in that company from time to time,

but on the basis that a Person shall be treated as a member of a company if any shares in that company are held by that Person's nominee or any other Person acting on that Person's behalf.

Washington Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which came into force on 14 October 1966.

Water means water that complies with the Specification.

Water Rights means the rights granted to Addax referred to in Clause 3 (*Grant of Concession Rights by GoSL*).

Working Day means a Day (other than a Saturday or Sunday) on which banks are open in Freetown for the transaction of general business.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

(a) words importing the singular shall include the plural and vice versa;

(b) words importing the masculine shall include the feminine and neuter and vice versa;

(c) the list of contents and headings in this Agreement shall not be deemed part of, or be taken into consideration in the interpretation or construction of, this Agreement and are included for ease of reference only;

(d) all references to Clauses and Schedules shall, unless otherwise stated, be references to Clauses of and Schedules to this Agreement;

(e) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Reference to this Agreement shall include the Schedules.

In the event of any inconsistency between the Schedules and the Clauses, the terms of the Clauses shall take priority.

(f) all references to Persons include reference to their successors in title and permitted assigns;

(g) all references to time are references to the time prevailing at the Extraction Point;

(h) reference to any agreement, code or document is a reference to the same as amended, supplemented, novated and/or replaced from time to time; and

(i) reference to a year is a reference to a calendar year unless otherwise defined;

(j) **law** includes any legislation, any common or customary law, constitution, decree, judgment, order, ordinance, treaty or other legislative measure in any jurisdiction and any present or future directive, request, requirement, guidance or guideline (in each case, whether or not having the force of law); and

(k) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated at the date of this Agreement and to any legislation replacing it or made under it save insofar as any such amendment, modification, consolidation or replacement made after the date of this Agreement would impose any increased or new liability on any Party or otherwise adversely affect the rights of any Party.

2 Start Date and Concession Period

2.1 Duration

This Agreement shall come into force on the date of this Agreement and shall remain in force until the end of the Concession Period.

2.2 Concession Period

2.2.1 The Concession Period shall be the period commencing at 06:00 hours on the Start Date and ending at 06:00 hours on the date on which the first of the following events occurs:

(a) a water extraction licence and a waste water licence (or documents performing an equivalent function), as referred to in Clause 2.4, come into force and effect;

(b) of delivery to GoSL of written notice from Addax confirming cessation of operation of the Facilities; and

(c) the thirtieth (30th) anniversary of the Start Date.

subject to the prior termination of this Agreement in accordance with its terms.

2.2.2 If on the twenty ninth (29th) anniversary of the Start Date the Concession Period has not ended in accordance with Clause 2.2.1(a) or 2.2.1(b), the Parties shall meet to discuss, in good faith, the terms on which this Agreement may be extended.

2.3 Parties' obligations

2.3.1 GoSL shall:

(a) use best endeavours to assist in the resolution of any disputes between Addax and other users of the waters of the River;

(b) notify Addax prior to the start of any discussions it has with any industrial or commercial third party user in relation to such user extracting water from the River upstream from the Extraction Points;

(c) (if required) arrange, co-ordinate and moderate meetings among the industrial or commercial third party users of the waters of the River with the aim of preventing damage by any industrial or commercial third party entity, project or operations to any other industrial or commercial third party entity, project or operations;

(d) when preparing the water management regime for the Bumbuna Dam, take into account the impact on the operation of the Facilities, and for the avoidance of doubt, the regime shall include, during years of drought, favourably considering additional water releases so that the flow rate in the River is above the Minimum Flow Rate;

(e) give Addax reasonable advance notice of any proposed closures of the spillways of the Bumbuna Dam;

(f) (except in the case of emergency) use its reasonable endeavours to co-ordinate any closures of the spillways of the Bumbuna Dam with the operational requirements of Addax in relation to the Facility;

(g) promptly notify Addax of any sudden release of water triggered by an emergency situation; and

(h) establish a catchment management forum for the River to co-ordinate water extraction rights along the River and to minimise the impact on the River as well as on the impact on the operation of the Facility and in performing these obligations prior to the establishment of any new water regulatory regime, the Water Services Division of the Ministry of Energy and Water resources will use its best efforts to assist to that effect.

2.3.2 In performing their respective obligations under this Agreement:

(a) Addax shall act in accordance with the standard of a Reasonable and Prudent Operator;

(b) GoSL shall act in accordance with the standard of a Reasonable and Prudent Utility Regulator; and

(c) both Parties shall act in accordance with Best Water Industry Practice.

2.4 Licence under New Water Regulatory Regime

Addax agrees that if a new water regulatory regime comes into force in the Republic of Sierra Leone during the Concession Period which provides for the licensing of industrial users of water, and if required by GoSL, Addax shall:

(a) meet with GoSL to discuss the terms of any proposed water extraction licence and proposed waste water licence (or documents performing an equivalent function) under such water regulatory regime; and

(b) not unreasonably object to the substitution of this Agreement with a water extraction licence and waste water licence (or documents performing an equivalent function) under such water regulatory regime so long as such licences (or documents performing an equivalent function) provide Addax with rights and entitlements and impose on GoSL obligations that do not materially differ from those afforded to it under this Agreement.

3 Grant of Concession Rights by GoSL

3.1 GoSL hereby grants to Addax during the Concession Period:

(a) the right to extract water from the River at the Extraction Points for use solely at the Facilities in priority, subject to Clause 3.3, to rights to extract or to divert water from the River upstream of the Extraction Points which may be granted during the Concession Period to industrial and commercial third party entities, provided always that in any one Month or Fortnight (as relevant) during the Concession Period, Addax shall not be entitled to extract more than the CQ of Water from the River at the Extraction Points; and

(b) the right to input water from the Facilities into the River at the Input Points.

3.2 For the avoidance of doubt, in no circumstances shall Addax be entitled to sell, deliver or supply to a third party any water extracted from the River at the Extraction Points in accordance with the terms of this Agreement.

3.3 Upstream Extraction Rights

(a) GoSL shall not grant a right to an industrial or commercial third party entity to extract water from the River upstream from the Extraction Points (a **Right**) or vary an existing Right if it is aware, or ought reasonably to have been aware, that to do so will would have a material adverse impact on the operation of the Facility.

(b) Prior to granting a Right or varying an existing Right, GoSL shall consult with Addax on the anticipated impact of the Right or varied existing Right on Addax's ability to extract water from the River in accordance with the terms of this Agreement without causing the flow of water in the River to fall below the Minimum Flow Rate at the Extraction Points. Such consultation shall be programmed so as to provide Addax with a reasonable period, not to exceed six (6) months, in which to properly investigate the potential impacts of the granting of the Right or the varying of the Existing Right and GoSL must not grant such Right or vary such existing Right (as the case may be) during this period.

(c) Following the consultation in accordance with Clause 3.3(b), in the event that Addax notifies GoSL in writing that the volume of water that such industrial or commercial third party entity proposes to extract from the River under the Right or varied existing Right will not, when considered in conjunction with any existing upstream water extraction licences and taking into account Best Water Industry Practice, prevent Addax from extracting water from the River in accordance with the terms of this Agreement without causing the flow of water in the River to fall below the Minimum Flow Rate at the Extraction Points, then the extraction of the volume of water granted under the Right or the varied existing Right shall be excluded from Addax's right of priority referred to in Clause 3.1(a).

(d) In the event that Addax considers (acting reasonably) that the volume of water that such third party industrial or commercial entity proposes to extract from the River will, when considered in conjunction with any existing upstream water extraction licences and taking into account Best Water Industry Practice, prevent Addax from extracting water from the River in accordance with the terms of this Agreement without causing the flow of water in the River to fall below the Minimum Flow Rate at the Extraction Points, then Addax shall notify GoSL in writing and provide to GoSL such technical reports as GoSL may reasonably require in order to substantiate this position and

GoSL shall not grant the Right or vary the existing Right unless and until such time as any Dispute is agreed or determined in GoSL's favour.

(e) In the event that the Parties are unable to agree under Clauses 3.3(c) and 3.3(d), the Parties shall meet to discuss and endeavour to settle such Dispute. If within thirty (30) days after a meeting the Parties have been unable to agree, the matter shall (at the request of either Party) be referred for determination in accordance with Clause 14.3 (*Reference to arbitration*).

(f) In the event that determination under Clause 3.3(e) is given in favour of GoSL, then:

(i) Addax shall be deemed to have consented to the granting of the Right or the varying of the Existing Right; and

(ii) the extraction of the volume of water granted under the Right or the varied existing Right shall be excluded from Addax's right of priority referred to in Clause 3.1(a).

(g) In the event that:

(i) GoSL grants a Right or varies an existing Right, notwithstanding:

(aa) it is aware, or ought reasonably to have been aware, that to do so would have a material adverse impact on the operation of the Facility;

(bb) Addax has not been given a reasonable period in which to properly investigate the potential impacts of the granting of the Right or the varying of the existing Right;

(cc) it has been notified by Addax pursuant to Clause 3.3(d) that the exercise of such Right or varied existing Right will prevent Addax extracting water from the River in accordance with the terms of this Agreement without causing the flow of water in the River to fall below the Minimum Flow Rate at the Extraction Points; or

(dd) determination under Clause 3.3(e) is given in favour of Addax; or

(ii) an industrial or commercial third party entity extracts more water from the River under a Right than that notified to Addax in the consultation exercise referred to in Clause 3.3(c) and this prevents Addax from extracting water from the River in the terms of this Agreement without causing the flow of water in the River to fall below the Minimum Flow Rate at the Extraction Points,

then, subject always to Clause 11 (*Force Majeure*), GoSL will be liable to Addax for costs, claims, expenses and losses directly incurred by Addax as a result of the granting of the Right or the varying of the existing Right, the over-extraction by an industrial or commercial third party entity (as the case may be) causing Addax to be unable to extract water in accordance with the terms of this Agreement without the flow of water in the River falling below the Minimum Flow Rate at the Extraction Points, provided that GoSL shall not, in any circumstance, have any liability to Addax under this Clause 3.3(g) where GoSL has monitored and enforced the Right.

(h) For the avoidance of doubt, GoSL shall not in any circumstances have liability to Addax in connection with the Grant of a Right under this Clause 3.3 (*Upstream Extraction Rights*) where:

(i) it has been notified by Addax pursuant to Clause 3.3(c) that the exercise of such Right will not prevent Addax extracting water from the River in accordance with the terms of this Agreement without causing the flow of water in the River to fall below the Minimum Flow Rate at the Extraction Points; or

(ii) determination under Clause 3.3(e) is given in favour of GoSL.

4 Extraction Point and Minimum Flow Rate

(a) During the Concession Period, Addax shall be entitled to extract water at the Extraction Points up to an aggregate of the maximum of the CQ, other than in the circumstances set out in Clause 4(b).

(b) Addax shall not be entitled in any circumstances to extract water from the River where the flow of water in the River has fallen below the Minimum Flow Rate at the Extraction Points.

5 Quantities and nominations

5.1 Quantity of CQ

5.1.1 Subject to Clause 4 (*Extraction Point and Minimum Flow Rate*) and to Clause 5.2 (*Revision of CQ*), the maximum CQ that Addax is entitled to extract from the River during each Month or Fortnight (as relevant) of each Concession Year is set out in Schedule 2 (CQ), provided that in calculating the amount of water extracted by Addax during a Month or Fortnight (as relevant) any water returned to the River at an Input Point shall be subtracted from the amount of water extracted from the River.

5.1.2 The Parties agree that the Concession Quantity for (i) May to November is defined on a monthly basis and (ii) December to April is defined on a fortnightly basis. The Parties intend that the volume of water being extracted by Addax during December to April may be reviewed by the Parties for not less than the first six (6) months from the date of this Agreement. After the expiry of this period, but no later than the expiry of the first eighteen (18) months from the date of this Agreement, the Parties shall meet in good faith at either Party's instigation to discuss adopting a Concession Quantity on a monthly calendar basis for the whole year if either Party can reasonably demonstrate that such adoption would not hinder either Party's obligations under this Agreement.

5.2 Revision of CQ

Addax may by sufficient prior written notice to GoSL, notify GoSL that it requests a temporary or permanent increase to the CQ and GoSL shall consider any such proposed increase. In the event that GoSL (acting in accordance with the standard of a Reasonable and Prudent Utility Regulator and taking into consideration any existing downstream water extraction licences) considers that such proposed increase is acceptable, then GoSL may consent to such proposed increase on such terms as are mutually agreeable to the Parties. In the event that GoSL (acting in accordance with the standard of a Reasonable and Prudent Utility Regulator and taking into consideration any existing downstream water extraction licences) considers that such proposed increase is not acceptable, then GoSL may withhold its consent. In either case, the consent of GoSL shall not be unreasonably withheld.

5.3 Extraction above CQ

5.3.1 Subject always to Clauses 5.3.2 and 11 (*Force Majeure*), in the event that Addax extracts more water (after subtraction of water returned to the River, as calculated in accordance with Clause 5.1 (*Quantity of CQ*)) than the maximum CQ set out in Schedule 2 (*CQ*) during any Month or Fortnight (as relevant) during the Concession Period, Addax will be liable to GoSL for any costs, claims, expenses and losses directly incurred by GoSL as a result of such extraction above the maximum CQ (which shall include, without limitation, any payments GoSL is required to make to any industrial or commercial third party entities situated downstream from the Input Point that have been granted a water extraction licence by GoSL where such entities incur direct losses as a result of the extraction of water by Addax above the maximum CQ).

5.3.2 Addax shall be permitted to extract more water (after subtraction of water returned to the River, as calculated in accordance with Clause 5.1 (*Quantity of CQ*)) than the maximum CQ set out in Schedule 2 (*CQ*) during any Month or Fortnight (as relevant) during the Concession Period where such extraction is required to prevent, mitigate or remedy an Emergency. Any extraction of water in accordance with this Clause 5.3.2 shall not result in any liability for Addax under Clause 5.3.1.

6 Prices

6.1 Price of Water

Subject to Clause 7.4.2, Addax shall pay GoSL the Concession Price for all Water extracted from the River.

6.2 Review of Concession Price

6.2.1 The Concession Price shall be fixed for Period 1 and for Period 2.

6.2.2 On the tenth (10th) anniversary of the Commercial Operations Date and on each subsequent fifth (5th) anniversary of the Commercial Operations Date up to and including the twenty fifth (25th) anniversary of the Commercial Operations Date, the Concession Price shall be adjusted (the **Five Year Review**) in accordance with the formula below:

$$CP = ECP \times \frac{Y}{Z}$$

where:

CP is the revised Concession Price;

ECP is the Concession Price existing immediately prior to the carrying out of the Five Year Review;

Y is the value of the Consumer Price Index (All items) for all urban consumers (CPI-U) in the United States of America (as produced by the United States Bureau of Labor Statistics) for the month of January in the year in which the Five Year Review is being carried out; and

Z is the value of the Consumer Price Index (All items) for all urban consumers (CPI-U) in the United States of America (as produced by the United States Bureau of Labor Statistics) for the month of January in the year immediately preceding the year in which the Five Year Review is being carried out.

6.3 No Take or Pay arrangement

For the avoidance of doubt, the Parties acknowledge that Addax's obligation to pay under this Agreement is calculated on the amount of water actually extracted by it from the River (as set out in this Clause 6), and not on the amount of water it is entitled to extract under Clause 4(a).

7 Billing and payment

7.1 Quarterly Statement

Not later than the fifteenth (15th) day in the Month immediately following the end of the First Quarter and each subsequent Quarter, Addax shall render to GoSL a statement, which shall show for the preceding Quarter the information specified below:

(a) the total quantity of water, expressed in Cubic Metres:

(i) extracted from the River under this Agreement at each of the Extraction Points; and

(ii) inputted to the River under this Agreement at each of the Input Points,

on each Day in that Quarter; and

(b) the sum (expressed in Dollars) due and owing to GoSL from Addax in respect of such Quarter (calculated in accordance with this Agreement).

(c) any amount paid or payable by GoSL to Addax pursuant to Clause 8.1.5 in respect of each Quarter; and

(d) any and all sums due and owing from one Party to the other in respect of such Quarter or any previous Quarter.

7.1.2 The Quarterly Statement shall show the resultant net sum (if any) payable by Addax to GoSL at the end of the applicable Quarter after taking account of all the matters set out in this Clause 7.1 (*Quarterly Statement*).

7.2 Annual Statement

(a) Within thirty (30) days after the end of a Concession Year, Addax shall render to GoSL a statement (**Annual Statement**) showing, in relation to the preceding Concession Year:

(i) the total sum due and owing to GoSL from Addax in respect of each Quarter under Clause 7.1(b);

(ii) any amount paid or payable by GoSL to Addax in respect of each Quarter under Clause 7.1(b); and

(iii) any and all sums due and owing from one Party to the other in respect of that Concession Year or any previous Concession Year.

(b) For the avoidance of doubt, the purpose of the Annual Statement shall be for information only.

7.3 GoSL queries and invoice

If GoSL has any queries in relation to the Quarterly Statement it shall raise them with Addax within twenty-one (21) Days of receipt of the Quarterly Statement. Following resolution of any such queries, GoSL shall be entitled to issue an invoice to Addax for the amount set out in the Quarterly Statement or such other amount agreed between the Parties pursuant to this Clause 7.3 (*GoSL queries and invoice*).

7.4 Payment of amounts owing

7.4.1 Subject to Clause 7.4.2, within thirty (30) days following the receipt of the invoice referred to at Clause 7.2 (*GoSL queries and invoice*), Addax shall pay the amount due to GoSL.

7.4.2 Notwithstanding any other provision of this Agreement, Addax shall have no liability to make any payment to GoSL under or in connection with this Agreement unless and until the Direct Agreement has been executed by each of the Parties to it and has become fully effective in accordance with its terms.

7.5 Method and treatment of payments

7.5.1 Payments under this Agreement shall be made in Dollars by direct bank transfer, or equivalent instantaneous transfer of funds, to GoSL's Bank Account.

7.5.2 If the due date for a payment is not a Working Day, then the due date for such payment shall be the next following Working Day.

7.5.3 If a Party fails to make a payment to the other of any sum due under this Agreement, interest on that sum shall accrue at the Base Rate plus one half (0.5) of a percentage point (in the case of a bona fide dispute) or two (2) percentage points (in all other cases) compounded annually from the date when such payment is due until the payment is made.

7.5.4 When any sum is in dispute, any undisputed portion of the payment shall be promptly paid in accordance with this Clause 7.5 (*Method and treatment of payments*) and, after settlement or determination of the dispute, any amount agreed or adjudged to be due (together with interest calculated in accordance with this Clause 7.5 (*Method and treatment of payments*)) shall be included:

(a) in the next Quarterly Statement to be rendered under this Agreement; and

(b) in the invoice issued in the following Quarter.

7.6 Books and records

7.6.1 Each Party shall maintain accurate and complete books, records and charts which are reasonably necessary to calculate or confirm the correctness of any accounting statement, charge, computation or claim under this Agreement.

7.6.2 Any books, records and charts referred to in Clause 7.6.1 need not be preserved for longer than a period of six (6) years beginning at the end of the Concession Year to which such books, records or charts refer, unless they relate to an outstanding dispute, in which event they shall be maintained for a period of six (6) years after such dispute is resolved.

7.6.3 Either Party has the right (at reasonable hours and on reasonable prior notice) to examine and take copies of the books, records and charts of the other Party relating to this Agreement to the extent necessary to verify the accuracy of any accounting statement, charge, computation or claim made pursuant to this Agreement.

7.6.4 If any examination made under Clause 7.6.3 reveals any inaccuracy in any Quarterly Statement or invoice previously rendered resulting from fraud or deliberate concealment, the Party to whom the resulting payment or repayment is due may, within fifteen (15) days after the date that such inaccuracy is established (by agreement or adjudication), submit to the other Party a statement showing all necessary adjustments to the former Quarterly Statement or invoice and that other Party shall, within thirty (30) days after receipt of this statement, make payment or repayment (in accordance with the payment provisions set out in Clauses 7.4 (*Payment of amounts owing*) and 7.5 (*Method and treatment of payments*)) of the sum so due.

7.6.5 The right to examine under this Clause 7 (*Billing and Payment*) shall be exercised within six (6) years after the end of the year to which the books, records or charts being examined refer.

8 Specification

8.1 Non-compliance with Specification

8.1.1 If water extracted from or inputted to the River under this Agreement fails to conform to the Specification (such water to be referred to as **Off-Specification Water**), either:

(a) Addax shall give notice of such Off-Specification Water to GoSL as soon as is reasonably practicable; or

(b) GoSL shall give notice of such Off-Specification Water to Addax as soon as is reasonably practicable.

8.1.2 Upon:

(a) GoSL receiving notice from Addax; or

(b) Addax receiving notice from GoSL,

in each case in accordance with Clause 8.1.1, the Party receiving the notice may request the Party giving the notice to provide such information as the Party receiving the notice may reasonably require in order to substantiate the position and the Parties shall immediately commence an investigation in order to determine the cause of the Off-Specification Water.

8.1.3 In the event of water extracted from the River at the Extraction Points in accordance with the terms of this Agreement being Off-Specification Water that the investigation carried out in accordance with Clause 8.1.2 indicates is caused by an industrial or commercial third party upstream of the Extraction Points polluting the River, then GoSL shall use all reasonable endeavours to ensure (to the extent required of a Reasonable and Prudent Utility Regulator) that the cause of the water being Off-Specification Water is rectified as soon as practicable.

8.1.4 In the event of water inputted into the River at the Input Points being Off-Specification Water, Addax shall, as soon as is reasonably practicable, act in accordance with the standard of a Reasonable and Prudent Operator to rectify the

cause of the water being Off-Specification Water, unless the investigation referred to in Clause 8.1.2 establishes that such water was already Off-Specification Water when it was extracted from the River, in which case Clause 8.1.3 shall apply.

8.1.5 Subject always to Clause 11 (*Force Majeure*), where, in the event of water extracted from the River at the Extraction Points in accordance with the terms of this Agreement being Off-Specification Water, it is established following an investigation under Clause 8.1.2 that the cause of water being Off-Specification Water is due to an industrial or commercial third party upstream of the Extraction Points polluting the River then GoSL will be liable to Addax for costs, claims, expenses and losses directly incurred by Addax as a result of the water extracted at the Extraction Points in accordance with the terms of this Agreement being Off-Specification Water, provided that GoSL shall not in any circumstances have any liability to Addax under this Clause 8.1.5 where such pollution has occurred notwithstanding GoSL consistently monitoring, and taking action, as soon as reasonably practicable, against, such industrial or commercial third party entity in accordance with the standard of a Reasonable and Prudent Utility Regulator.

8.1.6 Subject always to Clause 11 (*Force Majeure*), where in the event of water inputted into the River at the Input Points by Addax being Off-Specification Water, Addax will be liable to GoSL for any costs, claims, expenses and losses directly incurred by GoSL as a result of the water inputted into the River at the Input Points being Off-Specification Water (which shall include, without limitation, any payments GoSL is required to make to any industrial or commercial third party entities situated downstream from the Input Point that have been granted a water extraction licence by GoSL where such entities incur direct losses as a result of the input by Addax of Off-Specification Water into the River), provided always that Addax shall have no liability under this Clause 8.1.6 where the water inputted into the River at the Input Points was already Off-Specification Water when it was extracted from the River (as established by the investigation carried out in accordance with Clause 8.1.2 or otherwise).

8.2 Disputes

The Parties shall meet to discuss and endeavour in good faith to settle any difference between them which may arise in respect of the cause of water being Off-Specification Water. If within thirty (30) days after a meeting they have been unable to agree, the matter shall (at the request of either Party) be referred for determination in accordance with Clause 14.3 (*Reference to arbitration*).

9 Measurement and testing

9.1 Measurement

9.1.1 Addax shall measure the quantity of water extracted from the River under this Agreement in Cubic Metres at each Extraction Point and analyse the properties, condition and composition of such water.

9.1.2 Addax shall measure the quantity of water inputted into the River under this Agreement in Cubic Metres at each Input Point and analyse the properties, condition and composition of such water.

9.2 Measuring Equipment

9.2.1 Addax shall at its own expense provide and, for the duration of the Concession Period, operate and maintain (all in accordance with the standard of a Reasonable and Prudent Operator) all measuring and testing equipment, housings, devices and materials together with all related equipment, appliances and buildings required at the Facilities to measure and test the water at each Extraction Point and at each Input Point as provided in Clause 9.1 (*Measurement*).

9.2.2 Addax shall, throughout the Concession Period allow GoSL, its agents, subcontractors and employees such access to the Measuring Equipment as may reasonably be necessary for inspection purposes.

9.3 Readings

9.3.1 The reading, calibration and adjustment of the Measuring Equipment shall be carried out only by Addax or its agent and Addax is responsible for the preservation of all original test data and other records and shall make copies of these available to GoSL on request.

9.3.2 GoSL has the right upon giving reasonable notice to Addax to witness the calibration of the Measuring Equipment and to inspect the Measuring Equipment (including works tests), measurements and test data of Addax.

9.3.3 The Measuring Equipment shall comply with the limits of accuracy for each component of the Measuring Equipment set out in Schedule 3 (*Limits of accuracy for Measuring Equipment*).

9.3.4 Any errors in the water metering system shall be analysed using the methods given in ISO 1438/1 for the determination of uncertainties on the measurement of standard volume flow rate and the total error in the measurement of water at each Extraction Point and each Input Point shall in all foreseeable circumstances be less than four (4) per cent of the indicated value.

9.3.5 The accuracy of the Measuring Equipment shall be verified by Addax at its expense once in each Concession Year (or at such other frequency as may be agreed) and at other times if so requested.

9.3.6 Addax shall give to GoSL sufficient written notice of the date, time and nature of verifications to enable a representative of GoSL to be present at these.

9.3.7 Without prejudice to Clause 9.6 (*Settlement of disputes*), the validity of any verification shall be binding on both Parties unless GoSL gives notice to Addax that it disputes the validity of that verification within fourteen (14) days after a verification.

9.3.8 At any verification Addax shall adjust each component of the Measuring Equipment to operate centrally and accurately in accordance with the procedures set out in Schedule 2 (*Measurement and Testing Procedures*), regardless of whether it was found to be operating within or outside the limits of accuracy referred to in Clause 9.3.3.

9.4 Defective Components

9.4.1 If at any time during the Concession Period any component of the Measuring Equipment is found to be out of service or registering outside the limits of accuracy referred to in Clause 9.3.3 Addax shall adjust it without delay to read centrally and accurately in accordance with Schedule 3 (*Limits of accuracy for Measuring Equipment*) or (if that is not possible) replace it with a serviceable component.

9.4.2 Earlier readings from a Defective Component shall be retrospectively corrected back to the date when such component became defective.

9.4.3 Where the date a Defective Component became defective cannot be established, readings back to a date mid-point between the last verification which indicated that the component was operating within the limits referred to in Clause 9.3.3 and the following verification shall be corrected.

9.4.4 No retrospective correction under this Clause shall be made in respect of any readings made in any period during which the Defective Component was registering within one point five (1.5) times the limits of accuracy agreed for such component pursuant to Clause 9.3.3.

9.5 Method of correction of readings

Readings shall be corrected for the purposes of Clause 9.4 (*Defective Components*) by applying the methods set out below in the order in which they appear:

(a) using the readings recorded by any check, measuring or testing equipment, if such equipment is registering accurately within the limits agreed under Clause 9.3.3, but if such equipment is not registering accurately or if equipment has not been installed then;

(b) correcting the error, if the percentage of error is ascertainable to the satisfaction of both Parties by calibration, test or mathematical calculation, but if the percentage of error is not ascertainable then;

(c) estimating either the quantity or quality of Water extracted by reference to a time when the Defective Component was registering accurately.

9.6 Settlement of disputes

The Parties shall meet to discuss and endeavour to settle any dispute which may arise with regard to the application of the provisions of this Clause 9 (*Measurement and testing*) or the measurement of the quantity of water to be measured under this Clause 9 (*Measurement and testing*) and, if within thirty (30) days after a meeting they have been unable to agree, the matter may be referred (at the request of either Party) for determination in accordance with Clause 14 (*Dispute Resolution*).

10 Warranties, undertakings and indemnities

10.1 GoSL's warranties

GoSL warrants to Addax on the date of this Agreement that:

(a) GoSL has or will obtain good title to all water extracted by Addax at the Extraction Point under this Agreement and that all such water will be free from all liens, charges and encumbrances and adverse interests of any and every kind;

(b) GoSL has the right, power and authority to enter into this Agreement as is necessary to enable it to perform its obligations under the Agreement; and

(c) the execution, delivery and performance of this Agreement by GoSL have been duly authorised by all necessary action of GoSL and this Agreement constitutes a valid, binding and enforceable obligation of GoSL.

10.2 Addax's warranties

Addax warrants to GoSL (i) on the date of this Agreement and (ii) on the first Day of every Concession Year, that:

(a) Addax has in place, will maintain and will comply with at all times throughout the Concession Period all the licences, permissions, consents and authorisations necessary to enable it to observe and perform its obligations under this Agreement and it shall use its reasonable endeavours to preserve these in full force and effect through the Concession Period;

(b) Addax is duly organised and existing and in good standing under the Laws of the Republic of Sierra Leone and has the right, power and authority to enter into this Agreement as is necessary to enable it to perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement by Addax has been duly authorised by all necessary corporate action of Addax and this Agreement constitutes the valid binding and enforceable obligation of Addax; and

(d) Addax shall carry out its obligations under this Agreement in accordance with all applicable Law, to the standards of a Reasonable and Prudent Operator and in compliance with Best Water Industry Practice.

11 Force Majeure

11.1 Meaning of Force Majeure

The expression **Force Majeure** means any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party which prevents, hinders or delays the performance by that Party of its obligations of the exercise by that Party of its rights under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care.

11.2 Force Majeure events

11.2.1 Without limitation to the generality of Clause 11.1 (*Meaning of Force Majeure*), events or circumstances which, to the extent that they satisfy the conditions in Clause 11.1 (*Meaning of Force Majeure*), may constitute Force Majeure include, but shall not be limited to:

(a) acts of God (including lightning, fire, earthquake, flood, storm, hurricane, cyclone, typhoon, tidal wave and tornado);

(b) epidemic or pandemic or plague (as classified or advised by the World Health Organization);

(c) explosion or chemical contamination; and

(d) drought or water shortage which causes the rate of flow of water in the River to reduce below the Minimum Flow Rate at the Extraction Points.

11.2.2 For the avoidance of doubt, Force Majeure for Addax includes events or circumstances (as provided in Clause 11.1 (*Meaning of Force Majeure*) and this Clause 11.2 (*Force Majeure events*)) which affect the Facilities.

11.2.3 For the avoidance of doubt, Force Majeure for GoSL shall not include water shortages caused by or related to mis-management of the Bumbuna Dam or the operation of the Bumbuna Dam without reasonable consideration of the Facility's water requirements.

11.3 No entitlement to claim Force Majeure

Notwithstanding anything contained in Clause 11.1 (*Meaning of Force Majeure*), neither Party shall be entitled to claim relief through Force Majeure in the event of lack of funds due to any reason, including any commercial, economic or financial reason, such as, but not limited to, a Party's inability to make a profit or achieve a satisfactory rate of return due to the provislons of this Agreement or changes in market conditions.

11.4 Failure to pay money

Notwithstanding anything contained in Clauses 11.1 (*Meaning of Force Majeure*) and 11.2 (*Force Majeure events*) (and without prejudice to the generality of these Clauses), the failure by either Party to pay money when due shall not be treated as Force Majeure or as caused by Force Majeure.

11.5 Release from liability

Subject to Clause 11.6 (*Notification of Force Majeure*) and 11.8 (*Steps to remedy failure*):

(a) GoSL shall not have any liability to Addax under this Agreement where on any Day Addax is unable to extract a volume of Water equal to the CQ due to the occurrence of an event of Force Majeure; and

(b) Addax shall have no liability to GoSL under this Agreement where it is unable to perform its obligations under this Agreement due to the occurrence of an event of Force Majeure.

11.6 Notification of Force Majeure

Relief under Clause 11.5 (*Release from liability*) shall not be given unless the Party intending to claim relief has:

(a) informed the other Party in writing of the occurrence of Force Majeure as soon as reasonably practical and in any event within forty-eight (48) hours of such occurrence;

(b) informed the other Party in writing (**Force Majeure Notice**) that it intends to claim relief. A Force Majeure Notice must:

(i) be served as soon as practicable and in any event within ten (10) Working Days of becoming aware of a failure to perform an obligation under this Agreement; and

(ii) contain such relevant information relating to a failure as is available including:

(aa) the reasons for the failure;

(bb) (if the failure was due to a physical cause) the place where the physical cause occurred;

(cc) the actions and steps being taken to remedy such failure; and

(dd) (to mitigate the effects of such failure) an estimate of the period of time required to remedy the failure;

(c) given a detailed report amplifying the information given under Clause 11.6(b)(ii) and containing such additional explanations and available factual information relating to the failure as the other Party may have reasonably requested. This report shall be given as soon as reasonably possible after the service of the Force Majeure Notice but in any event not later than seven (7) days after service;

(d) allowed, as soon as is reasonably practicable, a reasonable number of representatives of the other Party to examine the scene of the event or circumstances causing failure and/or the installation, machinery or equipment which has failed if requested to do so. The reasonable costs of transportation to the scene shall be at the expense of the Party seeking access if such event is agreed or determined to give relief from liability under this Clause 11 (*Force Majeure*) and shall otherwise be at the expense of the Party seeking relief. Any access given is at the risk of the Party seeking access; and

(e) kept the other Party informed on an ongoing basis of the actions being taken to remedy the failure and to mitigate the effects of such failure.

11.7 Disputes

If the Parties are, on the basis of the Force Majeure Notice and any supporting documentation provided in accordance with Clause 11.6 (*Notification of Force Majeure*), unable to agree as to the existence or as to the effect of a Force Majeure event by the later of sixty (60) Days after the receipt by the unaffected Party of the Force Majeure Notice and thirty (30) Days after the receipt by the unaffected Party of additional information in accordance with Clause 11.6 (*Notification of Force Majeure*), either Party shall be entitled to refer the matter for determination in accordance with Clause 14 (*Dispute Resolution*).

11.8 Steps to remedy failure

As soon as practicable after the occurrence of an event in respect of which relief under this Clause 11 (*Force Majeure*) is available, the Party affected shall take all necessary steps to mitigate and remedy the effects of such event. Relief under this Clause 11 (*Force Majeure*) shall cease to be available to a Party if it fails to take all reasonable steps to remedy and investigate the effects of such failure and mitigate the effects of such failure. However, that Party is not obliged to settle any labour dispute except in such manner as it shall in its own judgement consider fit.

12 No liability for loss of profit

Subject to Clauses 3.3(g) and 8.1.5, neither Party nor any of its officers, employees or agents shall, in any circumstances whatsoever (and whether in contract or in tort, including negligence, or otherwise howsoever arising), be liable to the other Party for any loss or deferment of profit, loss or deferment of revenue, loss of use, loss of contract and/or loss or diminution of goodwill, or for any liability or damage not arising directly out of this Agreement.

13 Assignment

13.1 Restriction on assignment etc.

Except as permitted by this Clause 13 (*Assignment*), no Party may assign, charge or otherwise encumber, create any trust over or deal in any other manner with this Agreement or any right, benefit or interest under it, nor transfer any of that Party's obligations under it.

13.2 Assignment to group companies

Addax may assign the whole but not part only of this Agreement and its rights, benefits and interests under it to any Affiliate.

13.3 Requirement for consent

A Party may not assign or transfer the whole or any part of this Agreement or any right, benefit, interest or obligation under this Agreement to any person (not being an assignee permitted by Clause 13.2 (*Assignment to group companies*)) without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

13.4 Security for performance

Addax may mortgage, charge or assign its rights, benefits and interests under this Agreement by way of security for the performance by Addax of its obligations under any deed, agreement or other instrument entered into by Addax for the purpose of financing the transactions contemplated by this Agreement, and GoSL agrees to negotiate with any such assignee, and with any person for whose benefit that assignee holds such rights, benefits and interests with a view to entering into a direct agreement with that person.

14 Dispute Resolution

14.1 Disputes

This Clause 14 (*Dispute Resolution*) applies to any claim, dispute, disagreement, controversy or difference of any kind between the Parties arising out of or in connection with this Agreement (a **Dispute**). That includes, without limitation, any question about the Agreement's existence, validity or termination.

14.2 Mutual Discussions

If any Dispute arises, the Parties shall attempt in good faith to settle such Dispute in the first instance within thirty (30) Days by mutual discussions between the Parties.

14.3 Reference to arbitration

Without prejudice to Clauses 8.2, 9.6, 11.7 and 14.2, all Disputes shall be referred to and finally resolved by arbitration in London before three arbitrators under the International Centre for Settlement of Investment Disputes Convention, Regulations and Rules from time to time in force (the **ICSID Rules**), or if the Republic of Sierra Leone has ratified the New York Convention, the Rules of Arbitration of the International Chamber of Commerce from time to time in force (the **ICC Rules**). This Clause 14 (*Dispute Resolution*) incorporates the ICSID Rules or the ICC Rules, as applicable, except where they conflict with its express terms. Rule 9(5) of the ICC Rules and Rule 39 of the ICSID Rules shall not apply.

14.4 Washington Convention

GoSL acknowledges that for the purposes of the Washington Convention:

(a) it is a Government entity; and

(b) this Agreement is a contract which concerns an investment.

14.5 Continuing obligations

Unless this Agreement is already terminated, the Parties shall continue to comply with their obligations under this Agreement regardless of the nature of the dispute and notwithstanding the referral of the dispute to arbitration pursuant to this Clause 14 (*Dispute Resolution*).

14.6 Appointing arbitrators

14.6.1 Each Party shall nominate an arbitrator in the Request for Arbitration or Answer as the case may be. In the event that there are multiple claimants and/or multiple respondents, all claimants and/or all respondents shall attempt to agree upon their respective appointment(s).

14.6.2 If such Party or multiple parties fail to nominate an arbitrator within or at the same time as serving their Request for Arbitration or Answer as the case may be, an arbitrator shall be appointed on its or their behalf by the Chairman of the ICSID Administrative Council in accordance with the ICSID Rules, or if applicable, the President of the ICC Court in accordance with the ICC Rules. In such circumstances, any existing or future nomination or confirmation of the arbitrator chosen by the party or parties on the other side of the proposed arbitration shall be unaffected.

14.6.3 The Parties must then seek to agree on and nominate a third arbitrator to act as Chairman within 14 days after confirmation of the second arbitrator's appointment. Failing agreement between the Parties the two arbitrators already appointed must within 14 days nominate the third arbitrator. If any of the Parties fail to nominate an arbitrator or the two arbitrators already appointed fail to nominate the Chairman, the appointments shall be made by the Chairman of the ICSID Administrative Council in accordance with the ICSID Rules, or if applicable, the President of the ICC Court in accordance with the ICC Rules.

14.7 Language

The proceedings shall be conducted in the English language. All documents submitted in the arbitration shall be in the English language or, if in another language, be accompanied by a certified English translation.

14.8 No appeal

None of the Parties may appeal to any court on a question of law arising out of an award made in the arbitration. The Parties irrevocably waive any rights of appeal they might otherwise have had.

14.9 Enforcement

14.9.1 The award shall be final and binding on the Parties or anyone claiming through or under them and judgment rendered on the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.

14.9.2 Addax irrevocably and unconditionally agrees it shall not be entitled to, and shall not, take any action to enforce a judgment or arbitral award against any bank account held by GoSL (including any of its diplomatic or consular missions) within a period of 45 days from the date of such judgment or award or such longer period granted to GoSL in the judgment or award to meet the same.

14.10 Waiver of immunity

GoSL unconditionally and irrevocably:

(a) acknowledges that the execution, performance and delivery by each Party of this Agreement shall constitute a private commercial transaction entered into entirely in its commercial capacity;

(b) agrees that should any other Party bring legal proceedings against it or its assets in relation to this Agreement, no immunity from such legal proceedings (which shall be deemed to include without limitation, suit, attachment prior to judgement, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of itself or with respect to its assets other than in respect of government buildings located in the Republic of Sierra Leone or buildings forming part of a diplomatic or consular mission (except to the extent necessary to effect service of legal process);

(c) waives any such right of immunity which it or its assets now has or may hereafter acquire;

(d) waives any requirement under the State Proceedings Act, 2000 for a claimant under this Agreement to give prior notice before bringing a claim against GoSL; and

(e) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

14.11 Confidential information

All information disclosed to Addax or GoSL by the other Party in connection with the arbitration proceedings shall remain confidential in accordance with Clause 17 (*Confidentiality*).

14.12 Related Disputes

14.12.1 If more than one arbitration is commenced under this Agreement and any separate agreements related to this Agreement (**Related Agreements**) and any Party contends that two or more arbitrations are substantially related and/or involve the same parties and that the issues should be heard in one proceeding, the Arbitral Tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the whole or part of the matters at issue should be consolidated before that Arbitral Tribunal upon such terms or conditions as the Arbitral Tribunal thinks fit.

14.12.2 The Related Agreements shall include (but are not limited to):

(a) this Agreement;

(b) the Direct Agreement;

(c) the Tax Incentive Agreement entered into between GoSL and Addax dated on or about the date of this Agreement; and

(d) the Power Purchase Agreement entered into between the GoSL and Addax dated on or about the date of this Agreement.

14.12.3 The Parties expressly accept that any Dispute under this Agreement may accordingly be disposed of in the same arbitration proceedings as any other dispute arising under another Related Agreement, even in the presence of parties other than the Parties to this Agreement.

14.13 Service of process

With respect to any proceedings for enforcement of an award pursuant to this Clause 14 (*Dispute Resolution*) against assets of either Party brought in the courts of the Republic of Sierra Leone, the Parties agree that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.

14.14 Expert determination

14.14.1 The Parties must ask a single expert to decide any dispute or difference arising under Schedule 1 (*Specification*). This Clause 14.14 (*Expert determination*) shall not apply to any other dispute arising under or in connection with this Agreement.

14.14.2 The expert must be qualified by education, experience, discipline and training to determine the matter in dispute.

14.14.3 The expert must act as an expert and not as an arbitrator.

14.14.4 The Arbitration Act 1996 and the law of arbitration shall not apply to the expert, to the determination procedure or to the expert's decision, provided always, however, that the expert shall resolve the dispute in accordance with the laws of Sierra Leone.

14.14.5 To start an expert determination, either Party may give notice ("Notice of Intention to Refer") to the other Party of its intention to so refer the dispute. The Party giving that notice is referred to herein as the applicant ("Applicant") and the Party to whom such notice is given is referred to herein as the respondent ("Respondent").

14.14.6 The Notice of Intention to Refer shall include:

(a) a description of the dispute;

(b) the grounds on which the Applicant relies in seeking to have the dispute determined in its favour;

(c) the name of the Applicant's proposed expert; and

(d) all written material which the Applicant proposes to submit to the expert

provided that this clause 14.14.6 shall not be construed so as to prevent the Applicant from using or producing further written material which comes into existence or comes to the Applicant's attention after the Notice of Intention to Refer is given, but, in such event, the Respondent shall be allowed a reasonable time to respond thereto.

14.14.7 The Respondent shall within 14 days after service of the Notice of Intention to Refer, give to the Applicant a notice ("Notice of Intention to Defend") of intention to defend which shall include:

(a) the grounds upon which the Respondent relies in seeking to have the question determined in its favour;

(b) either its agreement to the Applicant's proposed expert or the name of the Respondent's proposed expert; and

(c) all written material that the Respondent proposes to submit to the expert

provided that this clause 14.4.7 shall not be construed so as to prevent the Respondent from using or producing further written material which comes into existence or comes to the Respondent's attention after the Notice of Intention to Defend is given but, in such event, the Applicant shall be given a reasonable time to respond thereto.

14.14.8 The Parties must try to agree a jointly appointed expert within 14 days after the Notice of Intention to Defend.

14.14.9 After 14days, if the Parties have not agreed on a joint appointment, either Party may ask the Chairman of the ICSID Administrative Council, or if applicable, the President of the ICC Court to nominate an expert in accordance with the ICSID Rules or the ICC Rules, respectively. The expert nominated by the Chairman of the ICSID Administrative Council or the President of the ICC Court, as applicable, must be appointed by the Parties and the terms of reference of the expert's appointment shall be those set out in the Notice of Intention to Refer and the Notice of Intention to Defend.

14.14.10 Within 3 days of the appointment of the expert, the expert shall nominate a time and venue for the hearing, which must take place in London no later than 14 days from the date of the expert's appointment. At the time nominated for the hearing, each Party must appear before the expert and present its case. The Parties and expert must conduct the expert determination in English.

14.14.11 The Parties shall not be entitled to apply for discovery of documents but the expert has the authority to request that the Parties disclose to him and to

each other those documents, data and records that he considers relevant to the Dispute.

14.14.12 Once appointed, the expert must deliver a final written decision as soon as possible and no later than 1 month from the date of his appointment, or such longer or shorter period as the Parties may agree in writing. If the expert does not render a decision within 1 month of his appointment or such longer or shorter period as the Parties may agree in writing, either Party may, upon giving notice to the other, terminate such appointment and a new expert shall be appointed who shall resolve the dispute in accordance with the provisions of this clause 14.14.

14.14.13 If the dispute is not resolved by one or more experts within 3 months from the date of receipt by the Respondent of the Notice of Intention to Refer, then either Party may refer the dispute for arbitration in accordance with this Agreement.

14.14.14 The expert's final written decision must include full detailed reasons to explain the findings and justify the decision.

14.14.15 The costs of engaging an expert shall be borne equally by the Parties and each Party shall bear its own costs in taking legal or technical advice and preparing materials for and making presentations to the expert.

14.14.16 The expert's decision is final and binds the Parties unless there is manifest error by the expert or fraud.

15 Termination

15.1 Failure to pay money

15.1.1 If:

(a) a Party fails to pay any sum which is due under this Agreement and is not the subject of a bona fide dispute; and

(b) that failure to pay continues for one hundred and twenty (120) days,

then the Party to whom the sum is due and owing may, upon giving thirty (30) Working Days' notice to the other Party of its intention so to do, terminate this Agreement.

15.1.2 No termination notice under this Clause shall be effective if full payment (plus interest) is made prior to the expiry of the notice period.

15.1.3 The exercise by either Party of a right of termination under this Clause shall not constitute a waiver of, nor in any way prejudice, any other remedy available to that Party.

15.2 Addax's termination rights

In addition to the Addax's termination rights under Clause 15.1 (*Failure to pay money*), Addax may terminate this Agreement where GoSL is in persistent material breach of its obligations under this Agreement, and such breach has been notified to GoSL and GoSL has been given a reasonable period to rectify such breach but has failed to do so.

15.3 GoSL's termination rights

15.3.1 In addition to GoSL's termination rights under Clause 15.1 (*Failure to pay money*), GoSL may terminate this Agreement in the following circumstances:

(a) except for the purpose of amalgamation, reorganisation or reconstruction (provided that such amalgamation, reorganization or reconstruction does not affect the ability of the amalgamated, reorganized or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events:

(i) the passing of a resolution by the owners of Addax for the winding up of Addax;

(ii) the admission in writing by Addax of its inability generally to pay its debts as they become due;

(iii) the appointment of a provisional manager, trustee, liquidator or similar person in a winding up proceeding after notice to Addax and due hearing; or

(iv) the making by a court with competent jurisdiction over Addax of an order winding up Addax; and

(b) subject to the provisions of Clause 15.3.2, Addax is in persistent material breach of its obligations under this Agreement.

15.3.2 If Addax has materially failed to act in accordance with the standards of a Reasonable and Prudent Operator or act in compliance with Best Water Industry Practice then GoSL shall notify Addax. Addax shall provide to GoSL within fifteen (15) Working Days of such notification, a plan to remedy such breach (**Remedial Plan**). GoSL shall confirm to Addax within fifteen (15) Working Days of the submission of the Remedial Plan, whether it accepts or rejects the Remedial Plan. If GoSL does not accept the Remedial Plan, Addax shall revise the Remedial Plan having regard to any reasonable comments of GoSL. If GoSL accepts the Remedial Plan, Addax shall fully implement the Remedial Plan. If within a period of nine (9) Months from the date of GoSL's acceptance of the Remedial Plan the breach has not been remedied or (failing this) Addax has failed to implement the Remedial Plan, GoSL may immediately serve notice on Addax giving Addax a further period of three (3) Months to remedy such breach, following which GoSL will be entitled to terminate this Agreement if at the end of such further period, Addax has still failed to remedy the breach.

15.4 Antecedent rights, etc

The termination of this Agreement shall be without prejudice to any other antecedent claim, right, relief, remedy or obligation of either Party under or in connection with this Agreement.

15.5 Survival of provisions

In the event of the termination of this Agreement, Clauses 8.1.5, 12 (*No liability for loss of profit*), 14 (*Dispute Resolution*) and 15.4 (*Antecedent rights, etc*), this Clause 15.5 (*Survival of provisions*) and the provisions of this Agreement as they relate to the payment of any sum due by one Party to the other shall survive termination and continue to have effect.

16 Notices

16.1 Service of notices

16.1.1 All notices or other communications to be given under this Agreement shall be in writing and shall be addressed for the attention of the relevant person indicated below and shall either be delivered personally or sent by registered mail (postage pre-paid and return receipt requested). The address for service of the Parties is as follows:

(a) If to GoSL:

Attention:	The Permanent Secretary
Address:	Ministry of Energy and Water Resources Electricity House Siaka Stevens Street Freetown Sierra Leone
Email:	regintom@yahoo.com

(b) If to Addax:

Attention:	John Moult, General Manager
Address:	Addax Bioenergy (SL) Limited 4 Liverpool Street PO Box 610 Freetown Sierra Leone
Fax:	+232 22 293 106

16.1.2 Either Party may change its nominated address/addresses by prior notice to the other Party.

16.2 Receipt of notices

Any notice or other communication given under this Agreement shall be deemed to have been received as follows:

(a) if delivered by hand, at the time of actual delivery; or

(b) if posted, on the second Working Day in the case of inland mail or, in the case of overseas mail, the fifth Working Day following the day on which it was despatched by pre-paid registered airmail,

provided that a notice deemed to have been received on a day which is not a Working Day, or after normal business hours in the place of receipt, shall instead be deemed to have been received on the next Working Day.

17 Confidentiality

17.1 Confidential information

Subject to Clause 17.2 (*Authorised disclosure*), each Party shall hold in confidence all documents, materials and other information whether technical or commercial, supplied by or on behalf of the other Party to this Agreement (including all documents and information supplied in the course of proceedings under Clause 14) (*Dispute Resolution*) and shall not, except with the other Party's written authority, publish or otherwise disclose any such Confidential Information except as expressly provided for in this Agreement unless or until the recipient party can reasonably demonstrate that any such document, material or information is in the public domain through no fault of its own and through no breach of this Agreement, whereupon (to the extent that the recipient party has reasonably demonstrated that it is in the public domain) this obligation shall cease in respect only of the document, material or information in the public domain.

17.2 Authorised disclosure

A Party may disclose any data or information acquired by it under or pursuant to this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of any other Party if such disclosure is made in good faith:

(a) to any Affiliate of that Party, upon obtaining from the Affiliate an undertaking of confidentiality equivalent to that contained in Clause 17.1 (*Confidential information*);

(b) to any outside consultants or advisers engaged by or on behalf of that Party and acting in that capacity, upon obtaining from those consultants or advisers (other than legal advisers or auditors) an undertaking of confidentiality equivalent to that contained in Clause 17.1 (*Confidential information*);

(c) to any lenders, security trustee/agent, bank or other financial institution or other investors (and their advisers) from which that Party is seeking or obtaining finance, after obtaining from any such person an undertaking of confidentiality equivalent to that contained in Clause 17.1 (*Confidential information*) or if the information is given on a strictly confidential basis;

(d) to the extent required by law or pursuant to an order of any government authority, of a court of competent jurisdiction, under any dispute resolution procedure pursuant to Clause 14 (*Dispute Resolution*) or the rules of a recognised stock exchange;

(e) to any insurer;

(f) to directors, employees and officers of that Party, to the extent necessary to enable that Party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or

(g) to any expert or arbitrator appointed pursuant to and under the terms of this Agreement.

17.3 Survival of confidentiality obligation

This Clause 17 (*Confidentiality*) (and any other Clauses necessary to give effect to it) shall survive the termination or expiration of this Agreement, irrespective of the reason for termination, for a period of five (5) years.

18 Miscellaneous

18.1 Amendments

This Agreement may only be changed, altered, amended or varied by the written agreement of both Parties.

18.2 No waiver

No waiver or failure by a Party to insist on the strict performance of this Agreement or to act in respect of the default or defaults of the other Party and no acceptance of payment or performance during the continuance of any such default or defaults shall preclude any right, relief or remedy under or in connection with this Agreement available to the non defaulting Party and may not be relied on by the defaulting Party as a consent to that default or those defaults or its or their repetition.

18.3 Successors and assigns

This Agreement shall bind and enure to the benefit of the Parties and their respective successors in title and permitted assigns.

18.4 Discharge

Each Party shall be entitled to discharge any of its obligations under this Agreement by procuring that they are performed on its behalf by a third party but that Party shall remain responsible to the other for the due performance of such obligations and for any failure or non-performance of such third party or any operator, agents, contractors or employees of such third party as if that Party itself had failed to fulfil the relevant obligation and that Party shall only be entitled to be relieved from liability for reasons of Force Majeure to the extent that it acted to the standard of a Reasonable and Prudent Operator or the standard of a Reasonable and Prudent Utility Regulator (as applicable) in appointing the third party and the third party would have been entitled to the relief if the third party had been a Party to this Agreement.

18.5 Invalidity

If, for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any other competent authority to be invalid, illegal or unenforceable or if such competent authority:

(a) refuses or formally indicates an intention to refuse authorisation of, or exemption to, any of the provisions of or arrangements contained in this Agreement (in the case of a refusal either by way of outright refusal or by way of a requirement that this Agreement be amended or any of its provisions be deleted or that a Party give an undertaking or accept a condition as to future conduct); or

(b) formally indicates that to continue to operate any provision of this Agreement may expose the Parties to sanctions under any law, order, enactment or regulation, or requests any Party to give undertakings or to accept conditions as to future conduct in order that such Party may not be subject to such sanctions,

the Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provision; which substitute provisions are satisfactory to all relevant competent authorities and produce, as nearly as is practicable in all the circumstances, the appropriate balance of the commercial interests of

the Parties as evidenced in this Agreement. If the Parties are unable to agree such provision(s), either Party shall be entitled to refer the matter for determination in accordance with Clause 14 (*Dispute Resolution*).

18.6 No partnership

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

18.7 Further assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

18.8 Entire agreement

This Agreement constitutes the entire agreement and understanding between the Parties in relation to the extraction of water from the River and supersedes all prior representations, negotiations and undertakings between the Parties relating to the subject matter of this Agreement. Each of the Parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a Party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to it for breach of such warranties shall be for breach of contract under the terms of this Agreement. Nothing in this Clause 18.8 (*Entire agreement*) shall, however, operate to limit or exclude any liability for fraud.

18.9 Continuing obligation

Where any obligation of a Party is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Party fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against that Party by reason of that Party's failure to perform within the time limit).

18.10 Counterparts

This Agreement may be executed in any number of counterparts and by different Parties on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

18.11 No Third Party Beneficiaries

The terms and provisions of this Agreement are intended solely for the benefit of each Party to this Agreement and their respective successors or assigns, and it is not the intention of the Agreement to confer any rights on any third parties.

19 Governing Law

This Agreement, its interpretation and any non-contractual obligations arising from or in

connection with it, are governed by and construed in accordance with the laws of the Republic of Sierra Leone.

Signed by the Parties or their duly authorised representatives

The Government of the Republic of Sierra Leone acting by

The Ministry of Energy and Water Resources

By: _____

Name: Ogunlade Davidson

Title: MINISTER (MEWR)

The Ministry of Lands, Country Planning and the Environment

By: _____

Name: Momodu A. Pat-Sowe

Title: Minister (MLCPE)

ADDAX BIONENERGY (SL) LIMITED

By: _____

Name: Nikolaj Germanov

Title: Managing Director

By: _____

Name: Vincent L. Kanu

Title: Director

Schedule 1 – Specification

The Specification shall be based on the "base line" for water in the River having regard to the results of testing of the Water at the Extraction Points carried out monthly by third parties on behalf of Addax in the first year after the date of this Agreement, and shall be confirmed in writing by both Parties within 14 days after the date falling one year from the date of this Agreement.

Schedule 2 – CQ

Month	CQ (expressed in Cubic Metres)
First fortnight in January	11,530,031
Second fortnight in January	11,530,031
First fortnight in February	14,614,215
Second fortnight in February	14,614,215
First fortnight in March	14,161,532
Second fortnight in March	14,161,532
First fortnight in April	9,682,619
Second fortnight in April	9,682,619
May	2,359,722
June	198,000
July	198,000
August	96,000
September	45,000
October	999,861
November	2,423,380
First fortnight in December	8,201,242
Second fortnight in December	8,201,242

Schedule 3 – Limits of accuracy for Measuring Equipment

The accuracy of flow metres shall be within +/-4% for flow rates greater than $0.2m^3/s$.

Schedule 4 – Extraction Points

Extraction Points:

Pumping Station	East Coordinate	North Coordinate
Nursery	795983	968275
PS1	796625	969594
PS2	801743	967824
PS4	804206	963704
PS6	803299	960204
PS7	809720	954326
PS12	817220	958869