



# **GOVERNMENT OF SIERRA LEONE**

**Ministry of Lands Housing and Country Planning**

## **JOINT VENTURE AGREEMENT**

by and between

**THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE**

**REPRESENTED BY**

**THE MINISTER OF LANDS, HOUSING AND COUNTRY PLANNING**

and

**TAF AFRICA GLOBAL LIMITED**

CONFIDENTIAL

Dated 31<sup>st</sup> JANUARY 2023

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**JOINT VENTURE AGREEMENT**

by and between

**THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE REPRESENTED BY  
THE MINISTER OF LANDS, HOUSING AND COUNTRY PLANNING**

and

**TAF AFRICA GLOBAL LIMITED**

Relating to  
the Design, Build, Finance, Sale and Management of an Ultra-Modern City Development  
comprising high-quality affordable housing units plus infrastructure.

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THIS **JOINT VENTURE AGREEMENT** ("**JVA**") is dated this 31<sup>st</sup> day of JANUARY, 2023, and made **between:**

(1) **THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE, REPRESENTED BY THE MINISTER OF LANDS, HOUSING, AND COUNTRY PLANNING** of 3<sup>rd</sup> Floor, Youyi Building, Brookfields, Freetown, Sierra Leone (hereinafter referred to as "**GoSL**" or "Government" which expression may, where the context so admits, include its successors-in-office and assigns) of the first part;

AND

(2) **TAF AFRICA GLOBAL LIMITED (TAG)**, with its principal place of business at 17-19 Kaira Avenue, Madiba Mall, Brufut Gardens Estate, P.O. Box 121, The Gambia (hereinafter referred to as the "**TAG**" which expression shall where the context so admits include its legal representatives, successors-in-title and assigns) of the second part.

**WHEREAS:**

- (1) **GoSL** in furtherance of its infrastructural and developmental programme for the Country through private sector participation in the sector is desirous to meet the real estate needs of Sierra Leone.
- (2) The Government, through the Ministry of Lands, Housing, and Country Planning (MLHCP) has signed a Memorandum of Understanding (MoU) with TAG on the 24<sup>th</sup> of August, 2021 for the design, build, finance, sale and management of an ultra-modern city development comprising several housing units plus infrastructure (hereafter referred to as the "**Project**").
- (3) **TAG** is a leading real estate development company with a focus on project planning, financing and execution of infrastructural and real estate projects, and has expressed interest in collaborating with **GoSL** in executing the Project.
- (4) **TAG** represents that it has the financial capacity and technical ability to execute the Project.
- (5) In recognition of the risks associated with the Project; the economic and social importance of the Project to Sierra Leone and in exchange for the obligations of TAG pursuant to this Agreement, this Agreement contains incentives, assurances, and protections granted by the Government which are indispensable to the realisation of the Project.
- (6) Parties agree to jointly execute the Project in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE, THE PARTIES HEREBY AGREE** as follows:

**1. DEFINITIONS**

1.1 In this JVA, unless the subject or context otherwise requires, the following definitions shall apply-

**"Approvals"** mean all approvals, licenses, consents, or permits such as building permits as well as any other approvals, licenses, consents, and/or permits including employment permits for foreign employees as may be necessary for **TAG** to obtain from any relevant authority in connection with the execution of the Project;

**"Approved Design"** means the final outline and detailed construction design for the Project in accordance with the procedure specified;

**"Bankers"** mean all persons or entities granting credit facility or facilities to **TAG** pursuant to the financing agreements in connection with the financing of the Project;

**"Certificate of Commencement"** means the certificate issued by **GoSL** to **TAG** to commence the Project;

**"Completion Certificate"** means the certificate issued in accordance with this Agreement;

**"Commencement Date"** means the date of handover of the Project Site and physical possession of the Project Site by **TAG**;

**"Construction Commencement"** means the commencement of the construction works in accordance with the terms of this Agreement;

**"Construction completion"** means final completion of the construction works in accordance with this Agreement;

**"Construction works"** means the works concerning the construction and completion of the Project;

**"Country"** means the Republic of Sierra Leone;

**"Equipment"** means the tools and equipment used for the purposes of carrying out the construction works and marketing the Project;

**"Financial Closing"** means the execution and delivery of such financing agreement as may be required to evidence the consummation of all transactions necessary for obtaining financing for the Project, together with the receipt of such equity commitments and contributions as may be required by the financing agreements;

**"Financing Agreements"** mean such agreements as may be entered into between **TAG** and its bankers in respect of credit facility or facilities granted to **TAG** for the implementation of the Project;

**"Government"** means the Government of the Republic of Sierra Leone;

**"Materials"** mean all materials and machinery that are to be incorporated into the Project whether by way of construction or repair;

**"Relevant Authorities"** mean any ministry, department, agency, directorate, public authority, body, or other person having jurisdiction in Sierra Leone with respect to the development of the Project;

**"Right to Use"** means the right to use the site for the purposes of this Agreement without undue interference by any other person or entity;

**"Right of Way"** means the rights of passage over or under and of access and egress to and from, the site and any part or parts thereof for the purposes of constructing and completing the Project;

**"Special Purpose Vehicle (SPV)"** means a limited liability company to be incorporated with a registered office in Sierra Leone on terms provided herein as by **GoSL** and **TAG** for the purpose of undertaking the construction and completion of the Project as well as the sale and the management of the Project upon completion; and

**"Utilities"** means water, sewerage, electricity, gas, and telecommunications.

- 1.2 The recitals and the annexures to this Agreement shall form an integral part hereof and references to annexures shall be annexures to this Agreement unless otherwise agreed by the Parties.
- 1.3 The headings to clauses to this Agreement are inserted for convenience or reference only and shall not in any way affect the interpretation of this Agreement.
- 1.4 References to any party or person referred to in this JVA include references to its respective successors and permitted assigns.

## 2. DOCUMENTS

The following attached documents shall be read and construed as forming part of this JVA-

- (a) Feasibility Report
- (b) Specifications/Technical Drawings;
- (c) Scope of Works – Roads and Services;
- (d) Scope of Works - Waste Management Facility;
- (e) Scope of Works – Electrical Distribution and Reticulation;
- (f) Scope of Works – Sewage Management;
- (g) Work Programme;
- (h) Quality Plan;
- (i) Health, Safety, and Environmental Management Plan;
- (j) Business Plan; and
- (k) Environmental and Social Impact Assessment (ESIA) Report.

## 3. SCOPE OF THE PROJECT

The Scope of this Project shall be for the development, building, and management of an an ultra-modern city development comprising several housing units at John Obey, Off Peninsula Road, Western Rural District as well as the development and delivery of Utilities in the Project to be called **(NAME TO BE DETERMINED)**.

## 4. COMMENCEMENT AND TERM

- 4.1 **TAG** undertakes to complete the project in not more than 5 (five) years from the Commencement Date of the Project or sod-turning ceremony as shall be set forth in the Works Agreement wherein the first year shall be deemed pre-construction period. This Agreement shall commence upon the effective date upon the Parties executing this Agreement (the "Effective Date") and shall continue in force for the five-year construction period or until Completion Certificate is issued ("Initial Term") unless extended or terminated as provided herein. ("Term").
- 4.2 Notwithstanding the provisions of sub-clause 4.1, the term may be renewed upon terms and conditions to be mutually agreed upon by the Parties.
- 4.3 Upon written request by one Party made within thirty (30) days prior to the end of the Term, where the other party is desirous of extending this JVA, both Parties shall negotiate and mutually agree upon the terms and conditions for the renewal of this JVA following the expiration of the Initial Term.
- 4.4 The Project shall commence upon-
- 4.4.1 The submission, approval, and provision by both Parties of the following-
- (a) outline of Contract Drawings;
  - (b) feasibility report which shall include-
    - (i) environmental and social impact analysis;
    - (ii) business plan and commercial viability analysis; demand studies and
    - (iii) value for money analysis;
  - (c) project finance model;
  - (d) training and capacity-building plan;
  - (e) local content and employment plan;
  - (f) consents, permits, and approvals required; and
  - (g) schematic work program.
- 4.4.2 Securing the necessary approvals from the Government.
- 4.4.3 Acquisition and valuation of the land for the Project.
- 4.4.4 Incorporation of the SPV and the signing of the Shareholders' Agreement.
- 4.5 The Parties shall comply with clauses 4.4.1 to 4.4.4 of this JVA within thirty (30) days from the execution of this JVA.
- 4.6 Where the reports as listed in clause 4.4.1 show that the Project is not viable, the Parties shall terminate this JVA.
- 4.7 Where the reports as listed in clause 4.4.1 show that the Project is viable, the Project shall commence upon the occurrence of the Financial Closing where there is sufficient debt financing and equity to complete the Project.

**5. COMPLETION OF PROJECT**

**TAG** shall complete the Project within five (5) years from the Commencement Date.

**6. COST OF PROJECT**

6.1 The cost estimate (in Sierra Leonean Leones) for the Project shall be determined and agreed to by the Parties.

6.2 **TAG** shall use its best endeavour to maximize the financial, geological, and design criteria to obtain a minimum cost per unit of each unit of development that is commensurate with the design and quality that shall be agreed by Parties.

**7. PROVISION OF LAND FOR PROJECT**

**GoSL** shall provide land measuring approximately 200 acres at John Obey, Off Peninsula Road, Western Rural District for the execution of the Project ('Project Site').

**8. INCORPORATION OF A SPECIAL PURPOSE VEHICLE (SPV)**

8.1 Parties shall within thirty (30) days after the execution of this JVA, incorporate a limited liability company to serve as a Special Purpose Vehicle (SPV) for the execution of the Project.

8.2 **TAG** shall be the operator of the SPV with oversight from the Board of Directors which shall be made up of representatives from **TAG** and **GoSL**.

8.3 The relationship between the Parties with respect to the SPV shall be guided by a Shareholders' Agreement between the Parties to be executed upon the incorporation of the SPV.

8.4 **GoSL** shall be responsible for such equity contribution as is required to register the SPV with the relevant authorities.

8.5 The authorized share capital of the SPV shall be the minimum required by law.

8.6 The shareholding of each Party in the SPV shall be as follows-

<b>GoSL</b>	-	<b>20%</b>
<b>TAG</b>	-	<b>80%</b>
<b>Total</b>	-	<b>100%</b>

**9. BOARD OF DIRECTORS AND MANAGERS**

9.1 The Board of Directors shall consist of seven (7) Directors, four (4) of whom shall be appointed by **TAG** and three (3) by **GoSL**.

9.2 The Chairman of the Board shall be appointed by **TAG**. The Chairman shall have a casting vote in case of a deadlock.

9.3 The Managing Director of the SPV shall be appointed by **TAG** while the Secretary shall be appointed by the Board of Directors.

- 9.4 The constitutional documents of the SPV and the Shareholders' Agreement shall govern all the procedural requirements in relation to the management of the SPV including but not limited to the procedure of appointment and removal of Directors, the convention, and quorum of the meeting of the shareholders and Board of Directors and the resolution of a deadlock.
- 9.5 The Parties shall ensure that meetings of the SPV and the Board of Directors are held as may be necessary to-
- (a) authorize the directors of the SPV to issue and allot ordinary shares to the Parties as agreed upon;
  - (b) approve any pre-incorporation contracts or matters executed or arranged in furtherance of the Project by any of the Parties with the prior consent of the other Party; and
  - (c) appoint additional directors and auditors of the SPV (if necessary).

## 10. CONDITIONS PRECEDENT

- 10.1 The completion of this JVA is conditional upon the satisfaction of the following conditions-
- (a) **GoSL** shall use all reasonable endeavours to facilitate and satisfy the following conditions precedent prior to the implementation of the JVA –
    - i. Provide the Project Site which is unencumbered and deliver physical possession of the Project Site to TAG;
    - ii. Facilitate the provisions and or submission of approvals and other correspondence from relevant government institutions authorizing/confirming the partnership between the GoSL and TAG; and
    - iii. In collaboration with the relevant government institutions and the private partner as required ensure the provision of an access road, water, and electricity to the Project Site for the successful execution of the Project.
  - (b) **TAG** shall use all reasonable endeavours to satisfy or procure the satisfaction of the following conditions precedent prior to the implementation of the JVA –
    - i. Provision of its incorporation documents to **GoSL** confirming that it is properly incorporated in its country of operation;
    - ii. delivery of the Performance Bond for Phase I; and
    - iii. Financial Closing for Phase I

## 10.2 Satisfaction of Conditions Precedent and Cause for Termination

- 10.2.1 Parties shall use their best endeavours to procure the satisfaction of the conditions precedent specified in clause 10.1 as soon as practicable and in any event not later than three (3) months after the date of execution of this JVA.

- 10.2.2 Where the conditions specified in clause 10.1 are not fulfilled by mutual agreement of the Parties within six (6) months from the date of execution of this JVA, each Party may terminate this Agreement and neither party hereto shall be liable to the other for any damages or losses in respect thereof, save that if one Party has purposefully failed to fulfil any of these conditions, such Party shall be liable to the other Party for any damages or losses in respect thereof.
- 10.2.3 In the event that **TAG** is unable to mobilize to the site within ninety (90) days of the handover of physical possession of the Project Site by **GoSL**, the **GoSL** reserves the right to terminate this JVA after the expiration of the issuance of a sixty (60) day notice to **TAG** to mobilize to the site or have the JVA terminated.
- 10.2.4 Within seven (7) days of the satisfaction of the conditions precedent specified in clause 10.1, **GoSL** shall issue the Certificate of Commencement to **TAG**.
- 10.2.5 The following agreements shall be executed in the agreed form-
- (a) the **Turn-key-based Engineering, Procurement and Construction ("EPC")** Agreement between the SPV and **TAG** for the Project. The **EPC** shall expressly specify the types, materials, costs, and quality of units to be constructed under this Agreement where **TAG** shall be awarded the **EPC** Agreement as an exclusive, main contractor. This Agreement between **TAG** and the SPV shall be a separate contract which shall be a turn-key agreement.
- 10.2.6 Parties shall use their best endeavours to ensure that the Agreements listed in clauses 10.2.5 (a) to (b) are executed not later than sixty (60) days from the date of completion of the incorporation of the SPV. Unless mutually agreed to the contrary, this JVA shall extend automatically.
- 10.2.7 Where both Parties agree to terminate this JVA due to non-execution of the Agreements listed in clause 10.2.5 (a) to (b), the Parties shall bear their own costs and expenses which have been incurred thus far and any balance in equity shall be disbursed to the Parties in proportion to their respective cash injection.

## 11. CONTRACT CURRENCY

The Parties agree that all payments and receipts under this JVA shall be done in Sierra Leonean Leone (SLL).

## 12. RE-POSSESSION OF SITE

### RE-POSSESSION OF PROJECT SITE

**GoSL** reserves the right to repossess the allocated land and the Project Site in the event that **TAG** is unable to finance the Project after eighteen (18) months following the physical possession of the Project Site, creation of the SPV, and the issuance of title documents over the Project Site

and the **GoSL** shall engage another developer to either take over the allocated land or complete the execution of the Project.

### 13. STATUS OF JVA

- 13.1 Each Party shall act in good faith and exercise all voting rights and powers conferred on them in relation to the SPV so as to ensure that at all times, the provisions of this JVA are duly and promptly observed and given full force and effect according to its spirit and intention.
- 13.2 Where any of the provisions of the regulations of the SPV or the Shareholders' Agreement between the Parties at any time conflict with any provisions of this JVA, this JVA shall prevail and the Parties shall whenever necessary, exercise all voting and other rights and powers available to them to ensure the amendment, waiver or suspension of the relevant provisions of the regulations and the Shareholders' Agreement to the extent necessary to permit the SPV and its affairs to be administered as provided in this JVA.

### 14. PROFIT SHARING

- 14.1 The profits from the Project be shared in the ratio of-
- (a) eighty percent (80%) to **TAG**; and
  - (b) twenty percent (20%) to **GoSL**.

### 15. OBLIGATIONS OF PARTIES

#### 15.1 **GoSL's Obligations**

**GoSL** shall –

- (a) provide and handover physical possession of the Project Site free from all encumbrances, claims, and disputes of any nature for the Project at no cost to **TAG**, within 2 months of the execution of this Agreement, and fully indemnify **TAG** in the event of any interference with or successful challenge of the title of the Project Site;
- (b) value the land referred to in sub-clause 15.1 (a) which shall constitute part of **GoSL's** equity contribution to the Project;
- (c) issue title documents to the SPV in respect of the Project Site within a period not more than three (3) months after the incorporation of the SPV;
- (d) provide the infrastructure necessary for **TAG** to freely access the land which infrastructure shall be valued as part of **GoSL's** equity contribution to the Project;
- (e) secure the cooperation of all government entities and manage all socio-political/communal issues arising from the implementation of the Project including stakeholders' consultations;
- (f) guarantee non-interference in the management and operations of the Project by the SPV unless otherwise agreed by the Parties;



- (g) Facilitate and use its best endeavour to ensure that TAG obtains all permits, approvals, licenses, and consents from any governmental authorities required by regulatory bodies in the Country for the execution of the Project including but not limited to building and zoning permits, importation of project equipment, and work permit for expatriates of TAG necessary for the execution of the Project; and waive all or any fees connected thereto.
- (h) make rules and regulations (where appropriate) to ensure that an appropriate legal and regulatory framework is created for the implementation of the Project;
- (i) provide an enabling environment for the security of lives of persons, equipment, and property of persons on the Project Site throughout the implementation of this JVA; and
- (j) handle necessary immigration issues as it affects TAG as well as other parties deemed necessary for the execution of the Project.

15.2 TAG'S Obligations:

TAG shall-

- (a) provide financing for the Project;
- (b) accept the agreed Project Site provided by GoSL to implement the Project if adjudged suitable for the Project by TAG;
- (c) plan, design, implement and execute the Project;
- (d) establish, manage and operate the construction of the Project from the date of the receipt of the Certificate of Commencement;
- (e) secure funding for the execution of the Project.;
- (f) use its best endeavour to maximise the financial, geographical, and design criteria to obtain a minimum cost per unit of development that is commensurate with the design and quality that shall meet the agreed requirement needs of the Project;
- (g) prepare and submit a feasibility report indicating technical and operational practicability, financial and economic analysis, commercial viability, and breakdown costs of the Project;
- (h) prepare as part of the feasibility studies, Environmental and Social Impact Assessments;
- (i) upon the execution of this JVA, execute definitive agreements with GoSL and the SPV for the implementation of the Project;
- (j) establish, manage and operate the construction of the Project for the duration of the Project on an Engineering, Procurement, and Construction basis;

- (k) upon the execution of a JVA, execute a Shareholders' Agreement, EPC, and Operations and Management Agreements with relevant parties and incorporate an SPV for the implementation of the Project
- (l) employ and use local resources, reasonably, for the Project and train the locally-hired labour force so that they can be equipped with necessary technical and professional skills in accordance with the Local Content Act; and
- (m) employ relevant skilled and unskilled citizens of Sierra Leone in the execution of the Project.

### 15.3 General Obligations of the Parties

#### 15.3.1 Compliance with laws and regulations

Parties shall at all times observe and comply with all relevant laws and regulations of the Government in the performance of their obligations under this JVA.

#### 15.3.2 Co-operation

Parties shall cooperate with each other and with the local and governmental authorities, including the police, firefighters, and other public agencies in the performance of their respective obligations under this JVA.

#### 15.3.3 No Interruption by GoSL

Subject to the provisions of this JVA-

- (a) **GoSL** undertakes not to do anything which would materially prevent or adversely affect the Project; and
- (b) where any operation, action, or interruption by **GoSL** delays the completion of the Project, **TAG** shall notify **GoSL** within fourteen (14) days and **GoSL** shall take appropriate steps to shorten the delay, and the target construction completion period shall be extended by a period not less than the exact period of time the delays lasted for, or such other period as may be mutually agreed upon by the Parties.

#### 15.3.4 Environmental Protection

In the performance of their obligations under this JVA-

- (a) **TAG** shall take all reasonable steps to ensure that appropriate pollution control and other environmental protection measures are taken in accordance with the applicable laws or regulations; and
- (b) **GoSL** shall grant environmental permits and approvals as required for the execution of the Project.

#### 15.3.5 GoSL may enter the site



**GoSL** or any designated representative thereof may from time to time enter any part of the site in order to-

- (a) ascertain whether the construction works are liable to become unsafe or dangerous; or
- (b) observe tests of materials, equipment or plant carried out under the supervision of **TAG**.

#### 15.3.6 Safety and Security on site

To ensure safety and security on the Project site, **TAG** shall-

- (a) ensure that its operations on the Project Site comply with applicable health and safety standards and practices; and
- (b) ensure that all necessary security measures on-site, including measures to exclude unauthorized access to the construction works, are undertaken.

#### 15.3.7 Taxes

Except otherwise agreed by Parties and as incentives for the execution of this Project, **TAG** shall be granted exemptions from corporate income and import duty on plant machinery, equipment and other inputs throughout the life of the project, excluding petroleum products as contained in Section 23 of the Finance Act, 2011.

**TAG** is only obliged to pay PAYE, withholding taxes on contract services, dividend, management fees, and payroll taxes.

#### 15.3.8 Approvals

**GoSL** shall offer all reasonable assistance to **TAG** and shall ensure that necessary approvals are not withheld or withdrawn by any relevant authority in the Government except where **TAG** is in default of terms of the issuance of such approval. The costs of such approvals shall be borne by **TAG**.

### 16. CONFIDENTIALITY

16.1 Each Party shall at all times use its best endeavours to keep confidential (and to ensure that its employees, agents, subsidiaries, and the employees and agents of such subsidiaries keep confidential), any confidential information that it may acquire in relation to the SPV and its subsidiaries (if any) or related to any Party to this JVA and shall not use or disclose any such information except-

- (a) to another member of **TAG** or to a Party's professional advisers where such disclosure is for a purpose related to the operation of this JV;
- (b) with the written consent of such member of the SPV or the Party that the information may relate to;

- (c) as may be required by law or by the rules or governmental or other regulatory body, when the Party concerned shall (if applicable), supply a copy of the required disclosure to the other Party before it is disclosed and incorporate any amendments or additions reasonably requested by the other Party;
  - (d) where it relates to the SPV or any of its subsidiaries (if any) *bona fide* for the advancement of the business of the SPV or its subsidiaries; or
  - (e) where it has come into the public domain otherwise than by the breach of this clause.
- 16.2 Parties shall use their best endeavours to ensure that the SPV and their officers, employees, and agents observe a corresponding obligation of confidence in respect of information about the Parties themselves.
- 16.3 The obligations of each of the Parties in this Clause 16 shall continue without limit in time and notwithstanding the termination of this JVA.

## 17. MATERIALLY ADVERSE GOVERNMENT ACTION, FORCE MAJEURE, AND HARDSHIP

### 17.1 Materially Adverse Government Action

17.1.1 Upon the execution of this JVA, a Materially Adverse Government Action shall be any act or omission by **GoSL** or any relevant authority which causes a materially adverse effect on the Project or otherwise on the economic position of **TAG** or its sub-contractors.

17.1.2 Materially Adverse Government Action shall include but shall not be limited to-

- (a) the expropriation, requisition, confiscation, or nationalization of the Project or any part thereof;
- (b) the imposition of any blockade, embargo, rationing, or allocation;
- (c) the introduction or application of any law, decree, or regulation (including any tax, environmental, or import regulation), the grant of any subsidies to other competing means which would affect **TAG**, the principal effect of which is directly or indirectly borne by **TAG** or by its sub-contractors and only incidentally by other persons;
- (d) The unilateral termination of this Agreement by the **GoSL** prior to the completion of the Project; save for clause 12 in this agreement and
- (e) the unreasonable refusal to grant or the withdrawal of any approval necessary for **TAG** or its sub-contractors to complete the Project.

17.1.3 In the event that any Materially Adverse Government Action occurs, **TAG** shall as soon as practicable after becoming aware of the same, give notice to **GoSL** specifying the action complained of and the likely consequences to its partners or its sub-contractors.

- 17.1.4 Where **TAG** has given such notice, **TAG** shall not be liable and **GoSL** shall not be entitled to terminate this JVA for any delay or failure by **TAG** in the performance of any of the obligations under this JVA to the extent that such performance is prevented by the Materially Adverse Government Action.
- 17.1.5 Within thirty (30) days of receipt of such notice, **GoSL** shall remedy the Materially Adverse Government Action and restore **TAG** or its sub-contractors to the position they would have been in had such action not occurred.
- 17.1.6 Where **GoSL** does not remedy the Materially Adverse Government Action after the expiry of the thirty (30) days period, at the invitation of **TAG**, the Parties shall consult each other in order to reach a mutually satisfactory solution to restore **TAG** or its sub-contractors to the position they would have been in had such action not occurred.
- 17.1.7 Where the Parties fail to reach a mutually satisfactory solution within ninety (90) days of the commencement of such discussions, the **TAG** may issue a Notice of Intention to Terminate and **GoSL** shall pay all costs incurred by the **TAG**, fully refund all investments already made plus damages which shall not be less than 50% of all cost incurred and investments made.

## 17.2 Force Majeure

### 17.2.1 Force Majeure Events

*Force majeure* means any event or circumstance, other than Materially Adverse Government Action, which is beyond the control of the party seeking to rely on such *force majeure*, including but not limited to-

- (a) such unforeseen events such as natural disasters, war and other hostilities (whether war to be declared or not), invasion, the act of foreign enemies, mobilization, requisition or embargo in the Government, acts of Government and the act of God;
- (b) ionizing radiation or contamination by radio-activity from any nuclear fuel or any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
- (c) rebellion, revolution, insurrection, military or usurped power and civil war; and
- (d) extreme weather conditions for more than ninety (90) days.

17.2.2 Such event which could not reasonably have been foreseen by that Party or its sub-contractors at the date of this JVA, the consequences of which could not reasonably have been avoided by that Party, and which prevents that Party from carrying out any of its obligations under this JVA.

### 17.2.3 Notice of force majeure

Any Party claiming to be affected by *force majeure* shall, as soon as practicable after becoming aware of the *force majeure*, give notice to the other Party describing in detail the effects of such *force majeure*, including the dates of commencement and estimated end.

**17.2.4 Suspension of performance due to *force majeure* and costs**

Provided that the notice procedure under clause 17.1.3 is satisfied, the Party claiming to be affected by *force majeure* shall not be liable, and subject to clauses 18.2.8 and 18.2.9 the other Party shall not be entitled to terminate this JVA for any delay or failure in the performance of any of its obligations under this JVA to the extent that such performance is prevented by *force majeure*.

**17.2.5** Save as may subsequently be agreed between the Parties pursuant to clauses 17.2.8, 17.2.9, and 17.2.10, each Party shall bear its own costs resulting from *force majeure*.

**17.2.6 Duty to mitigate and resume**

Parties in consultation with each other shall use reasonable efforts to mitigate the effects of any *force majeure* event, including the payment of reasonable sums based on the likely efficacy of such measures.

**17.2.7** The Party claiming *force majeure* shall resume the performance of its obligations under this JVA as soon as possible after the *force majeure* no longer exists.

**17.2.8 Continuing *force majeure***

Where any event of *force majeure* continues for longer than ninety (90) days, the Parties shall agree on a mutually satisfactory solution to continue the performance of this JVA.

**17.2.9** Where Parties fail to reach a mutually satisfactory solution within ninety (90) days of the commencement of the discussion contemplated in clause 18.2.8, either Party may issue a Notice of Intention to Terminate.

**17.2.10 *Force majeure* and Insurance**

To the extent that the consequences of an event of *force majeure* relied upon by the **Developer** fall within the terms of the insurance cover required, the **Developer** shall forthwith make appropriate claims thereunder and shall apply the proceeds as required in this Agreement.

**17.3 Hardship**

**17.3.1** The rights and obligations of the Parties set out in this JVA, represent the Parties' positions relative to each other on the basis of the circumstances existing at the date hereof and on the basis of the common view, the Parties have of the way those circumstances shall develop until the end of the contractual period.