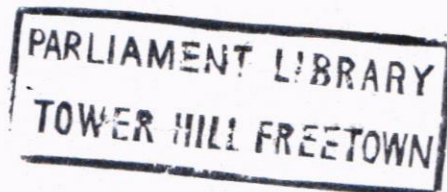


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Dated 8th Sept 2011



**BNP Paribas (Suisse) S.A**  
as Offshore Security Agent

**The Government of Sierra Leone**  
as GOSL

and

**Addax Bioenergy (SL) Limited**  
as Borrower

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**GOSL DIRECT AGREEMENT**  
in relation to the  
**MAKENI BIOETHANOL AND POWER**  
**PROJECT**

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^NORTON ROSE

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## Contents

Clause No.	Page No.
1 Interpretation.....	1
2 Consent to Security .....	5
3 GOSL undertakings .....	5
4 Notice of termination and existing liabilities.....	6
5 Representative.....	7
6 Step-In Period .....	8
7 Step-Out .....	9
8 Novation.....	9
9 Representations and warranties.....	11
10 Miscellaneous .....	11
11 Assignment .....	12
12 Governing Law and Jurisdiction .....	13
13 Waiver of sovereign immunity .....	13
14 Notices and Delivery.....	14



**BETWEEN:**

- (1) **BNP Paribas (Suisse) S.A.**, acting as offshore security agent for and on behalf of the Finance Parties or any other person notified to the GOSL as appointed as such from time to time (as defined below) (the "**Offshore Security Agent**");
- (2) **The Government of Sierra Leone** acting by each of the Ministries of Agriculture, Forestry and Food Security, Energy and Water Resources, Finance and Economic Development and Trade and Industry (represented by the Minister referred to in the execution pages of this agreement) ("**GOSL**"); and
- (3) **Addax Bioenergy (SL) Limited**, a company incorporated in Sierra Leone (with registered number C/F/576/2008) whose registered office is at 4 Liverpool Street, Freetown, Sierra Leone (the "**Borrower**");

**WHEREAS:**

- (A) The Borrower has embarked on a project for the design, construction and operation of a bioethanol plant and a co-generation renewable power plant in Makeni, Sierra Leone (the "**Project**");
- (B) It is the policy objective of GOSL to attract large-scale foreign investments to the agricultural sector of Sierra Leone and to support the establishment of independent power plants based on renewable feedstock to increase Sierra Leone's power production capacity and to alleviate its dependency on imported fossil fuels.
- (C) Further to this policy objective, the Borrower and GOSL have entered into certain agreements relating to the Project, including an MOU (as defined below) dated 9 February 2010 pursuant to which GOSL (acting through various Ministries) has agreed to provide certain tax and other investment incentives and support to the Borrower and the Finance Parties in respect of the Project and to enter into a power purchase agreement with the Borrower for the purchase of excess electricity generated by the Project;
- (D) To part-finance the development of the Project, the Borrower and African Development Bank, Deutsche Investitions – und Entwicklungsgesellschaft mbH, Emerging Africa Infrastructure Fund Limited, ICF Debt Pool LLP, Nederlandse Financierings Maatschappij voor Ontwikkelingslanden NV ("**FMO**") and Industrial Development Corporation of South Africa Limited (the "**Lenders**") have entered into on 16 June 2011 (i) various facility agreements pursuant to which an amount of Euro 116 million and Dollar 28,862,350 will be made available to the Borrower by the Lenders (the "**Facility Agreements**") and (ii) a common terms agreement setting out the common terms and conditions which apply to the Facility Agreements (the "**Common Terms Agreement**"). It is a condition precedent to the making of advances under these documents that this Agreement is entered into.
- (E) The Finance Parties have jointly appointed the Offshore Security Agent as their agent in respect of the enforcement of their rights under this Agreement.

**IT IS AGREED** as follows:

**1 Interpretation**

**1.1** In this Agreement:

"**Appointed Representative**" has the meaning given to it in clause 6.1;



**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Freetown;

**"Compensation Proceeds"** means any amounts payable to or received by, or for the account of the Borrower as compensation for any loss related to the Project;

**"Compensation Proceeds Account"** means the compensation proceeds account relating to the Project (details of which the Borrower shall provide to GOSL and the Offshore Security Agent within 30 days of the date of this Agreement) and any other replacement or substitute account or sub-accounts notified to GOSL by the Offshore Security Agent from time to time;

**"Finance Documents"** means the Facility Agreements, the Common Terms Agreement, the Security Documents and certain other documents the Borrower agrees to be Finance Documents in relation to the Project;

**"Finance Parties"** means the Lenders, FMO in its capacity as the Administrative Agent under the Finance Documents, the Offshore Security Agent and each other person for whose benefit any Security Documents are entered into from time to time and those banks with whom the Borrower has bank accounts from time to time ("**Account Banks**");


**"Enforcement Date"** means the date on which the Offshore Security Agent serves notice of the occurrence of an event of default under the relevant provisions of the Finance Documents and it will then remain the Enforcement Date until such time as the Offshore Security Agent serves notice on the Borrower that the Enforcement Date shall be treated as no longer existing;

**"GOSL Project Documents"** means each of:

- (a) the MOU;
- (b) the PPA;
- (c) the TIA; and
- (d) the WEL;

**"GOSL Termination Notice"** means a notice of termination served by or on behalf of GOSL in respect of the termination of a GOSL Project Document for a default by the Borrower;

**"Government Entity"** means:

- (a) GOSL and its ministries;
  - (b) any authority, agency or department established by GOSL;
  - (c) National Power Authority of Sierra Leone;
  - (d) the Central Bank of Sierra Leone or any entity holding all or substantially all of the foreign reserves or investments of Sierra Leone;
  - (e) any political sub-division of Sierra Leone; and
  - (f) any public corporation or other entity of which Sierra Leone has direct or indirect control and control for this purpose means the power to direct the management and the policies of the entity, whether through the ownership of share capital, contract or otherwise;
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**"Liabilities Notice"** has the meaning given to it in clause 5.2;

**"MOU"** means the memorandum of understanding entered into on 9 February 2010 between the Borrower and GOSL in respect of the Project and ratified by the Parliament of Sierra Leone on 9 November 2010;

**"Offshore Proceeds Account"** means the offshore proceeds account relating to the Project (details of which the Borrower shall provide to GOSL and the Offshore Security Agent within 30 days of the date of this Agreement) and any other replacement or substitute account or sub-accounts notified to GOSL by the Offshore Security Agent from time to time;

**"Onshore Security Agent"** means Ecobank Sierra Leone S.A. or any of its permitted transferees, assigns and successors;

**"Party"** means a party to this Agreement;

**"PPA"** means the power purchase agreement for the supply of power dated 19 August 2011 entered into between GOSL and the Borrower;

**"Representative"** means:

- (a) the Offshore Security Agent, any Finance Party and/or any of their affiliates;
- (b) an administrative receiver, receiver or receiver and manager of the Borrower appointed under the Security Documents;
- (c) an administrator of the Borrower;
- (d) a person directly or indirectly owned or controlled by any Finance Party; or
- (e) any other person approved by GOSL pursuant to clause 6.1.

**"Required Period"** means the period starting on the date of a Termination Notice and ending 120 days later;

**"Sanctionable Practice"** means any coercive practice, collusive practice, corrupt practice, fraudulent practice or obstructive practice;

**"Security Documents"** means all documents creating or evidencing any security interest in favour of the Offshore Security Agent or the Onshore Security Agent (on behalf of the Finance Parties) entered into from time to time in respect of the Borrower's obligations under the Finance Documents;

**"Step-In Date"** has the meaning given to it in clause 6.4;

**"Step-In Period"** means, in relation to any GOSL Project Document, the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;
- (b) the date of completion of any transfer under clause 9;
- (c) the date of any termination of the relevant GOSL Project Document under clause 7.2; and
- (d) the date of expiry of the relevant GOSL Project Document.



**"Step-Out Date"** means the expiry of the thirty (30) Business Day notice period in any notice given under clause 8.1;

**"Suitable Substitute"** means a person:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations and assume the liabilities of the Borrower under GOSL Project Documents; and
- (b) having, or employing persons having, the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Borrower under the GOSL Project Documents;

**"Termination Notice"** has the meaning given to it in clause 5.1;

**"TIA"** means the tax incentives agreement dated 19 August 2011 entered into between GOSL and the Borrower; and

**"WEL"** means the water extraction licence dated 19 August 2011 entered into between GOSL and the Borrower.

## 1.2 Interpretation

- (a) headings are for ease of reference only and shall not affect the construction of this Agreement.
- (b) save where the contrary is indicated, any reference in this Agreement to:
  - (i) words importing the singular shall include the plural and vice versa;
  - (ii) any person (including without limitation any Finance Party) shall be construed to include its and any subsequent successors, transferees and assigns in accordance with their respective interests;
  - (iii) this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
  - (iv) a clause shall be construed as a reference to a clause of this Agreement; and
  - (v) the "winding up", "dissolution", "administration", "insolvency" or "reorganisation" of a company or corporation and references to the "liquidator", "assignee", "administrator", "receiver", "administrative receiver", "manager" or "trustee" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such company or corporation is incorporated or constituted or any jurisdiction in which such company or corporation or, as the case may be, insolvency representative or officer carries on business including without limitation, the seeking of liquidation, winding up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors.
- (c) For the purposes of this Agreement, any notification by the Offshore Security Agent to GOSL of an Enforcement Date shall be conclusive evidence (against GOSL only) of the occurrence of the Enforcement Date.



## **2 Consideration**

- 2.1 The Borrower and GOSL has entered into this Agreement in consideration of the Lenders (whom, together with the other Finance Parties, have jointly appointed the Offshore Security Agent as their agent in respect of the enforcement of their rights under this Agreement) making advances under the Facility Agreements and the Common Terms Agreement to the Borrower to fund the development of the Project in accordance with the GOSL Project Documents.

## **3 Consent to Security**

- 3.1 GOSL acknowledges notice of, and consents to, the security interest granted by the Borrower under the Security Documents over the Borrower's rights under the GOSL Project Documents in favour of the Offshore Security Agent or the Onshore Security Agent (as applicable) on behalf of the Finance Parties.
- 3.2 GOSL confirms that it has not received notice of any other security interest granted over the Borrower's rights under the GOSL Project Documents.
- 3.3 Until the date on which all the obligations of the Borrower under the Finance Documents have been unconditionally and irrevocably discharged, the Borrower and the Offshore Security Agent hereby irrevocably authorise and instruct GOSL and GOSL hereby irrevocably and unconditionally undertakes to pay the full amount of each sum which it is obligated at any time to pay to the Borrower under or in respect of any GOSL Project Document (whether before or after termination of such agreement) to:
- (a) in the case of Compensation Proceeds, the Compensation Proceeds Account;
  - (b) in the case of any other amounts, the Offshore Proceeds Account; or
  - (c) such other account as the Offshore Security Agent may at anytime direct in writing to GOSL,
- on not less than 10 Business Days notice.
- 3.4 Each such payment shall constitute a good discharge of the obligation of GOSL to make the relevant payment to the Borrower.
- 3.5 Each of the Parties agrees that the irrevocable authority and instruction set out in clause 3.3 shall not be revoked or varied without the prior written consent of the Offshore Security Agent.

## **4 GOSL undertakings**

- 4.1 GOSL acknowledges and agrees that the Finance Parties shall have all relevant rights, entitlements, discretions or benefits of the obligations of GOSL under the MOU which are stated in the Appendix to the MOU to be for the benefit of "funders", and hereby grants such rights, entitlements, discretions and benefits directly to the Finance Parties without the requirement for the Finance Parties to be party to the MOU with GOSL. These rights include (without limitation):
- (a) an exemption to withholding tax on interest receipts, as set out in paragraph 9(b) of the Appendix to the MOU;
  - (b) no transfer pricing adjustment on amounts payable or receivable by the Finance Parties which is inconsistent with Article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines as amended from time to time;

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- (c) the right to receive and make payments in accordance with the Finance Documents, including outside of Sierra Leone in foreign currency;
  - (d) the right to convert Leones to foreign currency and remit foreign currency outside of Sierra Leone in accordance with the Exchange Control Regulations;
  - (e) the right to maintain Leones and foreign currency bank accounts inside and outside of Sierra Leone and deposit, retain and deal with Leones and foreign currency utilising such accounts;
  - (f) the benefit of any exemption or licence or other authorisation granted by GOSL necessary or desirable to ensure that the Finance Parties' interests, rights, obligations and economic return in respect of the Project are not materially adversely affected by any Change in Law (as such term is defined in the MOU); and
  - (g) the benefit of GOSL's agreement that it will not, nor attempt to, nationalise, expropriate or confiscate all or any part of the assets or rights of the Finance Parties in relation to the development, operation or funding of the Project other than on the basis of full compensation (including loss of profit) to the affected Finance Parties, including an amount not less than that required to repay all principal, interest, fees, costs and expenses and other amounts outstanding to the Finance Parties under or pursuant to the Finance Documents.
- 4.2 GOSL acknowledges and agrees that the Finance Parties shall have all relevant rights, entitlements, discretions or benefits of the obligations of GOSL under the TIA which are stated in the TIA to be for the benefit of the "Funders" (as such term is defined in the TIA), and hereby grants such rights, entitlements, discretions and benefits directly to the Finance Parties without the requirement for the Finance Parties to be party to the TIA with GOSL.
- 4.3 GOSL shall not assign or transfer any interest in or its rights and/or obligations under:
- (a) the PPA except in accordance with the terms of the PPA; or
  - (b) any other GOSL Project Document or this Agreement to any other person unless the Offshore Security Agent gives its prior written consent to such transfer or assignment.
- 4.4 GOSL shall promptly notify the Offshore Security Agent of any breach, default, potential default or any other event that may result in the termination, suspension or rescission of any GOSL Project Document by the GOSL.

## **5 Notice of termination and existing liabilities**

- 5.1 GOSL shall not terminate or suspend all or any part of any of the GOSL Project Documents or serve a GOSL Termination Notice or, following the occurrence of an event of default (which is continuing) under the relevant provisions of a Finance Document, take any other action against or in respect of the Borrower or its assets (including, without limitation, taking any step towards any receivership, administration, winding up or other insolvency, liquidation or related proceedings affecting the Borrower or any of its assets), without giving the Offshore Security Trustee prior written notice (a "Termination Notice") of a period equal in length at least to the Required Period stating:
- (a) the proposed date of termination, suspension or action (as appropriate); and
  - (b) the grounds for termination or suspension or taking such action in reasonable detail.





- 5.2 Not later than the date falling 30 days after the date of receipt by the Offshore Security Agent of a Termination Notice or, if earlier, the date falling 30 days after the date on which the Offshore Security Agent informs GOSL that an Enforcement Date has occurred, GOSL shall give to the Offshore Security Agent a notice (a "**Liabilities Notice**") containing details of any amount owed by the Borrower to GOSL and of any other existing liabilities or unperformed obligations of the Borrower to GOSL of which GOSL is aware (having made reasonable enquiry):
- (a) as at the date of the Termination Notice or the notification of an Enforcement Date; and
  - (b) which will fall due to be paid or discharged under the relevant GOSL Project Document(s) on or prior to the end of the Required Period or if no Termination Notice has been given, which will fall due to be paid or discharged under the relevant GOSL Project Document on or prior to the end of a period of days equivalent to the Required Period from the date of the Enforcement Date.
- 5.3 If GOSL becomes aware that the information contained in a Liabilities Notice is untrue, incomplete and/or inaccurate, or any information relevant to such notice has yet to be disclosed to the Offshore Security Agent, GOSL shall give the Offshore Security Agent a notice updating the Liabilities Notice as soon as reasonably practicable.
- 5.4 The Offshore Security Agent may reasonably request that GOSL verify, at the Borrower's cost, the information set out in any Liabilities Notice.
- 5.5 After receiving notifications from the Offshore Security Agent that an Enforcement Date has occurred, GOSL shall accept, as validly given by the Borrower any notices or demands given or made by the Offshore Security Agent pursuant to, and in accordance with, the relevant GOSL Project Document(s), provided such notice or demand would have been valid if given by the Borrower.

## 6 Representative

- 6.1 Without prejudice to the Offshore Security Agent's rights under the Security Documents, at any time:
- (a) after an Enforcement Date, whether or not a Termination Notice has been served; or
  - (b) during the Required Period,
- the Offshore Security Agent may give notice to GOSL that a Representative shall be appointed to administer the relevant GOSL Project Document(s) who shall have the same rights as if it had at all times been party to a contract on the same terms as the relevant GOSL Project Document(s) in place of the Borrower (the "**Appointed Representative**"). GOSL agrees to the appointment of the Appointed Representative, subject only to any challenge by GOSL in accordance with clause 5.2 below.
- 6.2 GOSL may only object to the identity of the Appointed Representative if:
- (a) the person proposed does not fall within limbs (a) to (d) of the definition of "Representative"; and
  - (b) GOSL's objection is reasonable in all the circumstances; and
  - (c) GOSL's objection is notified to the Offshore Security Agent within 15 Business Days of receipt of notice from the Offshore Security Agent under clause 6.1,



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in which case the Offshore Security Agent shall propose an alternative Appointed Representative.

- 6.3 The Offshore Security Agent shall give GOSL no less than five Business Days' prior notice of any action to be taken by pursuant to this clause 6.
- 6.4 The date on which the Appointed Representative is appointed shall be the "Step-in Date".

## **7 Step-In Period**

- 7.1 GOSL shall deal with the Appointed Representative and not the Borrower during the Step-In Period. During the Step-In Period, the Appointed Representative is entitled to exercise the rights of the Borrower under the relevant GOSL Project Document(s) and is irrevocably authorised and entitled to act on behalf of, and to bind, the Borrower under and pursuant to the relevant GOSL Project Document(s). GOSL agrees that payment to it by the Appointed Representative of any sums due under the relevant GOSL Project Document(s) or performance by the Appointed Representative of any other of the Borrower's obligations under the relevant GOSL Project Document(s) comprises good discharge of the Borrower's payment obligations and other obligations under the relevant GOSL Project Document(s).
- 7.2 Notwithstanding clause 5.1, GOSL shall be entitled to terminate the relevant GOSL Document only:
- (a) by written notice to the Borrower, the Offshore Security Agent and the Appointed Representative if any amount referred to in the Liabilities Notice issued in accordance with clause 5.2 above has not been paid to GOSL within 30 Business Days of the Step-In Date, provided that such amount has been agreed between GOSL and the Borrower or GOSL and the Offshore Security Agent to be due or has otherwise been determined to be due in accordance with the terms of the relevant GOSL Project Document(s); or
  - (b) by written notice to the Borrower, the Offshore Security Agent and the Appointed Representative if any other step (other than the payment of amounts referred to in clause 7.2(a) above) necessary to remedy any unperformed obligation referred to in the Liabilities Notice issued in accordance with clause 5.2 above has not been taken, or has not been waived, within 60 days of the Step-In Date; or
  - (c) by written notice to the Borrower, the Offshore Security Agent and the Appointed Representative if amounts which become payable under the terms of the relevant GOSL Project Document(s) in respect of obligation performed after the date referred to in clause 5.2 have not been discharged on or before the date falling 30 Business Days after the date on which the liability for these amounts is notified to the Offshore Security Agent and the Appointed Representative, provided that such amounts have been agreed between GOSL and the Borrower or GOSL and the Offshore Security Agent to be due or have otherwise been determined to be due in accordance with the terms of the relevant GOSL Project Document(s); or
  - (d) on grounds arising after the Step-In Date permitting termination under the terms of the relevant GOSL Project Document(s), and following compliance by GOSL with any procedures applicable to termination under the relevant GOSL Project Document(s), as if the Appointed Representative had been named in place of the Borrower,

provided always that for the purposes of termination under the relevant GOSL Project Document(s), GOSL may not terminate during the Step-In Period on any of the following grounds:

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- (i) on any grounds for termination that arose prior to the Step-In Date, although such grounds may be taken into account after the Step-Out Date;
- (ii) on the grounds that the Appointed Representative has not discharged any outstanding performance or payment obligations of the Borrower which have arisen or fallen due prior to the Step-In Date, unless such sums or obligations have been specified in the Liabilities Notice issued in accordance with clause 5.2;
- (iii) by reason of the Offshore Security Agent having taken any action referred to in clause 6 or having enforced any of the Security Documents; or
- (iv) on any grounds arising solely in relation to the Borrower as opposed to the Appointed Representative.

## 8 Step-Out

- 8.1 The Appointed Representative or the Offshore Security Agent may give GOSL 30 Business Days' prior written notice of the date on which the Appointed Representative will step out (the "Step-Out Date"). Upon the Step-Out Date:
- (a) all rights of the Appointed Representative against GOSL will be cancelled, other than those relating to circumstances arising prior to the Step-Out Date; and
  - (b) the Appointed Representative will be released from all obligations and liabilities to GOSL under the relevant GOSL Project Document(s) and this Agreement which may have arisen prior to the Step-Out Date, howsoever arising (including tort, misrepresentation or unjust enrichment) save in respect of obligations and liabilities under the GOSL Project Document(s) which have arisen during the Step-In Period and which are the subject of a claim by GOSL within 45 days of the Step-Out Date.
- 8.2 The Borrower shall continue to be bound by the terms of the relevant GOSL Project Document(s), notwithstanding the occurrence of the Step-Out Date, subject to clause 9.3(a) below.

## 9 Novation

- 9.1 Subject to clause 9.2, at any time:
- (a) after an Enforcement Date; or
  - (b) during the Required Period; or
  - (c) during a Step-In Period,
- the Offshore Security Agent may give written notice to GOSL and any Appointed Representative that it wishes to procure the transfer of the Borrower's rights and liabilities under the relevant GOSL Project Document(s) to a Suitable Substitute. Such written notice shall contain details of the proposed Suitable Substitute.
- 9.2 GOSL may only object to the identity of the Suitable Substitute if:
- (a) such person does not have the same or similar technical or financial capacity as the Borrower (in GOSL's reasonable opinion);
  - (b) such person
    - (i) is named on any list or lists from time to time:



- (A) promulgated by the United Nations Security Council or its committees pursuant to any resolution issued under Chapter VII of the United Nations Charter; or
  - (B) issued by any Government Entity indicating that such Government Entity should not enter into any transaction with such person, provided that any such list or lists are delivered to the Offshore Security Agent within 10 days of a written request for the same from the Offshore Security Agent to GOSL. GOSL acknowledges and agrees that it shall have no objection under this clause 9.2(b)(i)(B) if any such list or lists are not delivered to the Offshore Security Agent within such 10 day period; or
- (ii) is currently involved, or publicly threatened to be involved, in any material litigation for either:
- (A) fraud;
  - (B) misrepresentation to any public bodies, authority or any finance party, or
  - (C) criminal offences under the laws (definition to include all binding rules and regulations as well as legislation) of the country of incorporation or any country in which it is operating or any country which claims jurisdiction over its actions; or
- (iii) has engaged in a Sanctionable Practice; or

- (c) GOSL's objection to such person is reasonable in all the circumstances,

and GOSL's objection is notified to the Offshore Security Agent within 15 Business Days of the notice under clause 9.1, in which case the Offshore Security Agent shall propose an alternative Suitable Substitute.

9.3 As soon as the identity of the Suitable Substitute is determined in accordance with clauses 9.1 and 9.2 above, GOSL, the Borrower and the Offshore Security Agent shall, and the Offshore Security Agent shall procure that the Suitable Substitute shall, enter into a deed of novation within 30 days of the Offshore Security Agent's request which provides for the following:

- (a) the Borrower to be released from and the Suitable Substitute to assume:
  - (i) any obligations or liabilities of the Borrower arising on or after the date of the deed of novation under or in connection with the relevant GOSL Project Document(s); and
  - (ii) any outstanding liabilities arising prior to the date of the deed of novation which have been notified to the Offshore Security Agent in accordance with clause 5.3, provided such amounts have been agreed between GOSL and the Borrower or GOSL and the Offshore Security Agent to be due or have otherwise been determined to be due in accordance with the terms of the relevant GOSL Project Document(s);
- (b) the Suitable Substitute to have the same rights (arising on and from the date of such deed of novation) on the same terms as the relevant GOSL Project Document(s) in place of the Borrower;
- (c) any then subsisting ground for termination of the relevant GOSL Project Document(s) by GOSL to be deemed to have no effect and any subsisting Termination Notice to be automatically revoked; and





- (d) GOSL to enter into a direct agreement with the Offshore Security Agent on behalf of the Finance Parties lending to the Suitable Substitute on substantially the same terms as this Agreement.

9.4 Without limiting the application of clause 5.1, GOSL shall not take any action to terminate or suspend the relevant GOSL Project Document(s) during the period between receipt of the notice of proposed transfer in accordance with clause 9.1 and the date of the deed of novation entered into pursuant to clause 9.3.

## 10 Representations and warranties

10.1 GOSL represents and warrants the following to the Offshore Security Agent (for the benefit of each Finance Party) that on each date on which this Agreement is in full force and effect:

- (a) this Agreement is within its powers and has been duly authorised by it;
- (b) this Agreement constitutes its legally, valid and binding obligation;
- (c) this Agreement does not conflict with any law or agreement to which it is a party or its constitutional documents;
- (d) all authorisations required by it in relation to this Agreement have been obtained;
- (e) the information contained in any notice delivered pursuant to clause 5 (*Notice of termination and existing liabilities*) was true and accurate as at its date; and
- (f) the person executing this Agreement on behalf of GOSL is competent to bind GOSL in respect of the performance of its obligations under this Agreement.

## 11 Miscellaneous

11.1 GOSL and the Borrower shall, at the Borrower's expense, take whatever action the Offshore Security Agent, an Appointed Representative or a Suitable Substitute taking a transfer in accordance with clause 9.1 may reasonably require for perfecting any transfer or release under clauses 6, 8 and 9, including the execution of any transfer or assignment and the giving of any notice, order or direction and the making of any registration which, in each case, the Offshore Security Agent, Appointed Representative or Suitable Substitute reasonably requires.

11.2 Without prejudice to any accrued rights and obligations arising pursuant to this Agreement existing at the date of termination and the continuing application of clauses 5.2, 8.1 and 11.1 to amounts payable following termination, this Agreement shall remain in effect until the date on which all the obligations of the Borrower under the Finance Documents have been unconditionally and irrevocably discharged.

11.3 The Offshore Security Agent shall notify GOSL of:

- (a) any Enforcement Date; and
- (b) the date on which no further amounts are outstanding by the Borrower under the Finance Documents,

within 15 days after it occurring.

11.4 The Borrower joins in this Agreement to acknowledge and consent to the arrangements set out in it and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.



- 11.5 If there is any conflict or inconsistency between the provisions of this Agreement and the GOSL Project Documents, the provisions of this Agreement shall prevail.
- 11.6 Nothing in this Agreement or the arrangements contemplated thereby shall prejudice the rights of any of the Finance Parties under the Finance Documents or any Finance Documents, or shall be construed as obligating the Offshore Security Agent to exercise any of its rights under the Finance Documents or under this Agreement.
- 11.7 GOSL and the Borrower shall not make any material amendment, variation, supplement or novation of or to any GOSL Project Document without the prior written consent of the Offshore Security Agent.
- 11.8 The rights of the Finance Parties, exercised by the Offshore Security Agent under this Agreement:
- (a) may be exercised as often as necessary;
  - (b) are cumulative and not exclusive of their rights at law and/or equity; and
  - (c) may be waived only in writing and specifically.
- Delay in exercising or non-exercise of any such right is not a waiver of that right.
- 11.9 Save for any successor Offshore Security Agent and to the extent provided for in this Agreement in respect of the Appointed Representative and the Suitable Substitute, nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 11.10 This Agreement may be entered into in any number of counterparts and by the Parties on separate counterparts, and each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but taken together they shall constitute one and the same instrument.
- 11.11 If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
- (a) the validity or enforceability in that jurisdiction of any other provision of the Agreement; or
  - (b) the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.
- 11.12 No modification of this Agreement shall be valid unless it is in writing and signed by GOSL, the Offshore Security Agent and the Borrower.

## **12 Assignment**

- 12.1 No party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save that the Offshore Security Agent may assign its rights under this Agreement to a successor Offshore Security Agent without the consent of GOSL.
- 12.2 If clause 12.1 applies then the assignor Offshore Security Agent shall give notice to GOSL and GOSL shall enter into a direct agreement with the assignee Offshore Security Agent on substantially the same terms as this Agreement.



### 13 Governing Law and Jurisdiction

- 13.1 This Agreement and any other non-contractual obligations connected with it are governed by the laws of England.
- 13.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of, or in connection with, this Agreement or any non-contractual obligations connected with this Agreement (including a dispute regarding its existence, validity or termination) (a "Dispute").
- 13.3 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will dispute to the contrary.
- 13.4 The Offshore Security Agent irrevocably and unconditionally agrees that 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 of any of its diplomatic or consular missions) within a period of 21 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.
- 13.5 Without prejudice to any other mode of service allowed under any relevant law, GOSL:
- (a) shall within 30 days of the date of this Agreement, irrevocably appoint Law Debenture Corporate Services of 100 Wood Street, London EC2V 7EX ("Law Debenture Corporate Services") as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and notify the Offshore Security Agent of such appointment;
  - (b) agrees that if GOSL fails to appoint Law Debenture Corporate Services in accordance with paragraph (a) above then the Offshore Security Agent may irrevocably appoint Law Debenture Corporate Services as GOSL's agent for service of process on behalf of GOSL. GOSL further agrees to indemnify the Offshore Security Agent for any reasonable fees and costs incurred by the Offshore Security Agent in making such appointment on its behalf;
  - (c) agrees that failure by a process agent to notify GOSL (as applicable) of the process will not invalidate the proceedings concerned; and
  - (d) if any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, GOSL (must immediately (and in any event within 30 days of such event taking place) appoint another agent on terms acceptable to the Offshore Security Agent. Failing this, the Offshore Security Agent may appoint another agent for this purpose and GOSL agrees to indemnify the Offshore Security Agent for any reasonable fees and costs incurred by the Offshore Security Agent in making such appointment on its behalf.

### 14 Waiver of sovereign immunity

- 14.1 GoSL irrevocably and unconditionally:
- (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



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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.

## **15 Notices and Delivery**

### **Notices**

- 15.1 Any notice or other communication to a party to this Agreement must be in writing. It must be addressed for the attention of such person, and sent to such address or fax number, as that party may from time to time notify to the other parties.
- 15.2 The initial administrative details of the parties are detailed below, but any party may amend those details by notice to the Offshore Security Agent.

### **Delivery**

- 15.3 Any notice or other communication to a party to this Agreement will only be effective:
  - (a) If by way of fax, when received in legible form; or
  - (b) If by way of letter, when it has been left at the relevant address, or 5 Business Days after being deposited in the post (postage prepaid) in an envelope addressed to such party at its address as notified in accordance with this Agreement,

and any reference in this Agreement to the date of a notice shall be interpreted as the date when such notice became effective.

- 15.4 The address and fax numbers of each party to this Agreement shall be:

#### Offshore Security Agent

For the attention of: Olivier Pierrard

Address: BNP Paribas (Suisse) S.A  
Place de Hollande  
2 CP 1211 Genève 11

Fax number: +41 (0)58 212 2345

E-mail: olivier.pierrard@bnpparibas.com

#### GOSL

For matters in respect of the PPA:





For the attention of: General Manager, Joe Ben Davies

Address: National Power Authority  
Electricity House  
Freetown, Sierra Leone

Fax number: N/A

E-mail: joebendavies@hotmail.com

For matters in respect of the WEL:

For the attention of: The Permanent Secretary

Address: Ministry of Energy and Water Resources  
Electricity House  
Siaka Stevens Street  
Freetown, Sierra Leone

Fax number: N/A

E-mail: regintom@yahoo.com

For matters in respect of the TIA:

For the attention of: Financial Secretary

Address: Ministry of Finance and Economic Development  
Ministry of Finance  
George Street  
Freetown, Sierra Leone

Fax number: +23222228472

E-mail: ekoroma@mofed.gov.sl

Borrower

For the attention of: Nikolai Germann

Address: Addax Bioenergy (SL) Limited  
33 Rue de la Synagogue  
CH - 1211 Genève 12  
Switzerland

Fax number: +41 58 702 99 80

E-mail: nikolai.germann@addaxbioenergy.com



*C*

