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DATED

21 AUGUST

2011

**NATIONAL SOCIAL SECURITY AND INSURANCE TRUST**

- and -

**THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE  
REPRESENTED BY  
THE MINISTER OF TOURISM AND CULTURAL AFFAIRS**

- and -

**AFRICAN EXPORT-IMPORT BANK  
FBN BANK (UK) LIMITED**

- and -

**THE CAPE SIERRA HOTEL COMPANY LIMITED**

**DEED OF DIRECT AGREEMENT  
IN RELATION TO  
THE CAPE SIERRA HOTEL, FREETOWN**

**EXECUTION VERSION**



F3/DAL/AG/2404728.10  
V0805.00029

Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG

LIB01/F3DAL/2404728.10



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THIS DEED is made on

4 August

2011

**BETWEEN:**

- (1) **The National Social Security and Insurance Trust**, a Statutory Public Trust established under the laws of Sierra Leone by the National Social Security and Insurance Trust Act, with its principal offices at 32 Walpole Street, Freetown, Sierra Leone ("**NASSIT**");
- (2) **The Minister of Tourism and Cultural Affairs**, acting for and on behalf of the Government of the Republic of Sierra Leone ("**GoSL**");
- (3) **FBN Bank (UK) Limited**, a financial institution incorporated under the laws of England and Wales with registered number 04459383 and whose registered office is located at 28 Finsbury Circus, London EC2M 7DT ("**FBN**");
- (4) **African Export-Import Bank**, a multilateral financial institution created pursuant to the Agreement for the Establishment of the African Export-Import Bank, whose headquarters is at 72 (B) El Maahad El Eshteraky Street, Heliopolis, Cairo 11341, Egypt ("**Afreximbank**" and, together with FBN, the "**Banks**");
- (5) **Afreximbank**, acting as security agent and trustee under the Facility Agreements (in such capacity, the "**Security Agent**"); and
- (6) **Cape Sierra Hotel Company Ltd**, a private limited liability company incorporated under the laws of Sierra Leone, having its registered address at 26 Main Motor Road, Brookfields, Freetown, Sierra Leone and registered under registration number C.F.621/2010 (the "**Concessionaire**").

**WHEREAS:**

- (A) Pursuant to the Sub-Lease and Concession Agreement, NASSIT has granted to the Concessionaire the Sub-Lease and the Concessionaire has agreed to carry out the Project, in each case subject to the terms and conditions set out in the Sub-Lease and Concession Agreement.
- (B) In order to finance the Project and the payment of the Entry Fee, the Concessionaire has entered into the Facility Agreements with the Banks.
- (C) It is a condition precedent to the availability of the facilities provided by the Banks pursuant to the Facility Agreements that NASSIT, GoSL and the Concessionaire enter into this Deed.
- (D) This Deed is the GoSL Direct Agreement referred to in the Facility Agreements.
- (E) It is intended that this document shall take effect as a Deed (notwithstanding that the some of the Parties execute it under hand).

**IT IS AGREED:**



## SECTION 1

### INTERPRETATION

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Deed (including the recitals to this Deed):

**"Account Charge"** means the account charges to be dated after the date of this Deed granting Security in respect of the accounts which the Concessionaire is obliged to maintain with the Banks or their local agents pursuant to the Facility Agreements to be entered into between the Borrower and the Security Agent.

**"Afrexim Standby Letter of Credit"** means the standby letter of credit issued or to be issued by Afreximbank (as Issuing Bank) on behalf of the Concessionaire pursuant to the Relay Facility Agreement.

**"Assumed Obligations"** shall have the meaning ascribed to that term in Clause 11.1 (*Step-In Undertaking*).

**"Bank Vehicle"** a corporation incorporated in a jurisdiction of the Security Agent's choosing (acting reasonably), the entire issued share capital of which either is held by the Security Agent for the benefit of one or more of the Banks or is held by or on behalf of (and beneficially owned by) one or more of the Banks, and which is approved by NASSIT pursuant to this Deed.

**"Board"** means the board of officials of the Republic of Sierra Leone with authority to grant licences to non-citizens under the Non-Citizens Act comprising the Minister of Trade and Industry, the Minister of Lands, the Minister of Finance and Development and the Attorney-General of the Republic of Sierra Leone and/ or such other persons who may be so authorised from time to time.

**"Breach Statement"** has the meaning ascribed to that term in Clause 6 (*Proposed Termination Notice*).

**"Business Day"** means:

- (a) in relation to any day on which a payment is to be made under this Deed, a day (other than a Saturday or Sunday) on which banks are open for general business in Freetown, New York City and:
  - (i) in relation to any payment to be made to FBN under this Deed, London; and
  - (ii) in relation to any payment to be made to Afreximbank or the Security Agent under this Deed, Cairo; and
  - (iii) in relation to any payment to be made to or from any Step-in Entity and/ or any Novatee, the city which is the principal financial centre of the country in which such Step-in Entity or Novatee is based; and
- (b) in all other cases, a day (other than a Saturday or Sunday) on which banks are open for general business in Freetown, London and Cairo.



**"Certificate of Practical Completion"** means the certificate of practical completion to be issued by the Employer's Representative (as specified in the Construction Contract) under the Construction Contract in connection with practical completion of the Project.

**"Certificate of the Project Monitor"** means a certificate issued by the Project Monitor pursuant to the relevant instrument of appointment confirming, amongst other things, that:

- (a) the Certificate of Practical Completion has been issued;
- (b) the Positive Notice has been issued under (and as defined in) the Sub-Lease and Concession Agreement; and
- (c) the Hotel Operator has issued the Hotel Completion Notice under (and as defined in) the Hotel Management Agreement.

**"Concessionaire Event of Default"** has the meaning ascribed to that term in the Sub-Lease and Concession Agreement.

**"Construction Contract"** means the building contract relating to the construction of the Hotel entered into or to be entered into between the Concessionaire and the Contractor;

**"Construction Facility Agreement"** means the construction facility agreement relating to the development of the Cape Sierra Hotel, Freetown between Cape Sierra Hotel Company Ltd (as Borrower), Cape Sierra Holding Company (UK) Limited (as Guarantor), FBN Bank (UK) Ltd (as Agent), African Export-Import Bank (as Security Agent) and the financial institutions set out in Schedule 1 thereto (as Original Lenders) and dated on or about the date of this Deed.

**"Construction Phase"** means the period between the Effective Date and the date on which all amounts outstanding under the Construction Facility Agreement have been irrevocably discharged in full.

**"Contractor"** means such firm or company of building contractors as may be appointed by the Concessionaire for the purpose of construction of the Hotel (being, at the date of this Deed, Lagan Construction Limited).

**"Cure Period"** has the meaning ascribed to that term in Clause 16.2 (*Consultation and Cure Period for a Notice of Concessionaire Default pursuant to Clause 16.1*).

**"Debenture"** means a debenture created by the Concessionaire in favour of the Security Agent creating charges over all property, assets and undertakings of the Concessionaire (including a mortgage over the Site) to be dated after the date of this Deed.

**"Effective Date"** has the meaning ascribed to that term under the Sub-Lease and Concession Agreement.

**"Entry Fee"** has the meaning ascribed to that term in the Sub-Lease and Concession Agreement.

**"Facility Agreement"** means each of:

- (a) the Construction Facility Agreement; and
- (b) the Relay Facility Agreement,

and the term **"Facility Agreements"** shall be construed accordingly.





**"Finance Party"** means each Bank and the Security Agent.

**"Hotel"** means all that part of the Site which is managed by the Hotel Operator pursuant to the Hotel Management Agreement.

**"Hotel Management Agreement"** means an agreement, in form and substance satisfactory to the Banks, entered into or to be entered into between the Concessionaire and the Hotel Operator in relation to the management of the Hotel.

**"Hotel Operator"** means Hilton International Manage LLC or such other international hotel operating company as may be appointed to such role by the Concessionaire (with the prior written approval of the Banks).

**"Intentionally Undisclosed Breach"** has the meaning ascribed to that term in Clause 8.4 (*Intentionally Undisclosed Breaches*).

**"Intercreditor Deed"** means the Intercreditor Deed between the Concessionaire, FBN, Afreximbank, the Security Agent, the Lenders (as defined therein) and others and dated on or about the date of this Deed.

**"Non-Citizens Act"** means the Non-Citizens (Interest in Land) Act 1966.

**"Novatee"** has the meaning ascribed to that term in Clause 13.1 (*Novatee*).

**"Novation"** means the novation of rights and obligations and activities of the Concessionaire under the Sub-Lease and Concession Agreement as contemplated by this Deed.

**"Novation Deed"** has the meaning ascribed to that term in Clause 14.1 (*Novation Implementation*).

**"Novation Effective Date"** has the meaning ascribed to that term in Clause 14.1 (*Novation Implementation*).

**"Novation Remedial Programme"** has the meaning ascribed to that term in Clause 13.7 (*Novation Remedial Programme*).

**"Outstanding Payment Obligations"** has the meaning ascribed to that term in Clause 6 (*Proposed Termination Notice*).

**"Outstanding Performance Obligations"** has the meaning ascribed to that term in 6 (*Proposed Termination Notice*).

**"Parent"** means Cape Sierra Holding Company (UK) Limited, a limited liability company incorporated under the laws of England and Wales, having its registered address at 34A North End Road, London, United Kingdom, NW11 7PT and registered under registration number 07358414.

**"Party"** means a party to this Deed.

**"Preliminary Period"** has the meaning ascribed to that term in Clause 7.1 (*NASSIT termination rights*).

**"Project"** means the demolition, rehabilitation and redevelopment of the Hotel.

**"Project Monitor"** means AECOM Davis Langdon SA (Pty) Ltd or such other person as may be appointed to the role of monitoring the progress of the Project by the Banks.



**"Proposed Novation Date"** has the meaning ascribed to that term in Clause 13.1 (*Novatee*).

**"Proposed Novation Notice"** has the meaning ascribed to that term in Clause 13.1 (*Novatee*).

**"Proposed Termination Notice"** has the meaning ascribed to that term in Clause 6 (*Proposed Termination Notice*).

**"Proposed Termination Notice Date"** has the meaning ascribed to that term in Clause 6 (*Proposed Termination Notice*).

**"Receiver"** any receiver, manager or administrative receiver appointed under any or all of the Security Documents.

**"Relay Facility Agreement"** means the construction and tourism-linked relay facility agreement relating to the development, financing and operation of the Cape Sierra Hotel, Freetown between Cape Sierra Hotel Company Ltd (as Borrower), Cape Sierra Holding Company (UK) Limited (as Guarantor), African Export-Import Bank (as Mandated Lead Arranger, Agent, Security Agent and Issuing Bank) and the financial institutions set out in Schedule 1 thereto (as Original Lenders) and dated on or about the date of this Deed.

**"Remedial Programme"** has the meaning ascribed to that term in Clause 8.2 (*Remedial Programme*).

**"SBLC Expiry Date"** means the Expiry Date applicable to (and as defined in) the Afrexim Standby Letter of Credit.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Assignment"** means an assignment by the Concessionaire in favour of the Security Agent of all of the rights of the Concessionaire under or in respect of the Sub-Lease and Concession Agreement and other agreements relating to the Project (defined as the **"Project Documents"** in the Facility Agreements) to be dated after the date of this Deed.

**"Security Documents"** means:

- (a) each Account Charge;
- (b) the Security Assignment;
- (c) the Debenture; and
- (d) each Share Charge.

**"Share Charge"** means each of:

- (a) the charge to be dated after the date of this Deed granted by the Parent in favour of the Security Agent in respect of the entire issued share capital of the Concessionaire; and
- (b) the charge to be dated after the date of this Deed granted by the shareholders of the Parent in favour of the Security Agent in respect of the entire issued share capital of the Parent.



**"Site"** means all that messuage or buildings, offices, cellars, outhouses, chalets, swimming pools, tennis courts, garage, workshops with courtyard and appurtenances together known as Cape Sierra Hotel, Cape Road, Freetown, Sierra Leone (as more particularly described in the Sub-Lease and Concession Agreement).

**"Step-in"** the exercise of the rights and performance of the obligations and activities of the Concessionaire under the Sub-Lease and Concession Agreement as contemplated by this Deed.

**"Step-in Date"** means the date specified as such in the relevant Step-in Undertaking.

**"Step-in Entity"** has the meaning ascribed to that term in Clause 10.1 (*Step-in Entities*).

**"Step-in Intention Notice"** has the meaning ascribed to that term in Clause 8.1 (*Step-in Intention Notice*).

**"Step-in Period"** the period commencing on the Step-in Date and ending on the date determined pursuant to Clause 12.2 (*Termination or Expiry of Step-in Period*).

**"Step-in Undertaking"** has the meaning ascribed to that term in Clause 11.1 (*Step-in Undertaking*).

**"Step-out Date"** has the meaning ascribed to that term in Clause 12.1 (*Termination of Step-in*).

**"Sub-Lease"** means the sub-lease granted to the Concessionaire by NASSIT in respect of the Site pursuant to, and subject to the terms and conditions of, the Sub-Lease and Concession Agreement.

**"Sub-Lease and Concession Agreement"** means the sub-lease and concession agreement entered into by NASSIT and the Concessionaire and dated 27 October 2010.

**"Supplemental Breach Statement"** has the meaning ascribed to that term in Clause 8.3 (*Supplemental Breach Statements*).

**"Termination Event"** means any event or circumstance, the occurrence of which results in a right for NASSIT or the Concessionaire (as the case may be) to deliver a Termination Notice pursuant to the Sub-Lease and Concession Agreement, including any Concessionaire Event of Default, any NASSIT Event of Default, any Material Adverse Government Action, any Prolonged Event of Force Majeure (in each case, as defined in the Sub-Lease and Concession Agreement) and/ or the occurrence of the circumstances described in Clause 11.5 (*Uninsurability*) of the Sub-Lease and Concession Agreement.

**"Termination Notice"** has the meaning ascribed to that term in the Sub-Lease and Concession Agreement.

**"Termination Payment"** means the amount of compensation payable by NASSIT to the Concessionaire pursuant to the Sub-Lease and Concession Agreement due to the occurrence of a Termination Event which has resulted in a Termination Notice being served under the Sub-Lease and Concession Agreement as determined pursuant to Clause 14.5 (*Termination Payments*) and Annex G (*Concession Asset Value*) of the Sub-Lease and Concession Agreement and as further clarified under Clause 17.2 (*Calculation of Termination Payment*).

**"Termination Payment Date"** means the date on which NASSIT is obliged to pay any Termination Payment arising in respect of such Termination Event which, for the



avoidance of doubt, shall be not later than 5 Business Days after the date of the relevant Termination Notice delivered in respect of such Termination Event pursuant to the Sub-Lease and Concession Agreement.

**"Variation"** means any variation, amendment, novation, assignment, transfer, waiver, supplement, replacement or restatement or the giving of any waiver, release or consent having the same commercial effect.

## 1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to:
  - (i) any **"Party"** (where applicable, in any capacity) shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) any agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, varied, extended or restated from time to time;
  - (iii) the words **"including"** and **"in particular"** shall, unless the context otherwise requires, be deemed to be followed by the expression **"(but not limited to)"** or **"without limitation"** (as the context may require);
  - (iv) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (v) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (vi) a provision of law is a reference to that provision as amended or re-enacted; and
- (b) Section, Clause and Schedule headings are for ease of reference only and shall not affect the interpretation of this Deed.





## SECTION 2

### STEP-IN RIGHTS

#### 2. SECURITY INTERESTS

##### 2.1 Notice of security interests

The Security Agent hereby gives notice to NASSIT of the Security which is intended to be granted by the Concessionaire and others in favour of the Security Agent pursuant to the Security Documents.

##### 2.2 Consent to security interests

NASSIT acknowledges that it has received full details of the Security to be created by the Concessionaire and others in favour of the Security Agent pursuant to the Security Documents and approves the nature and extent of the Security to be so created for the purposes of the Sub-Lease and Concession Agreement and consents to the granting of the Security.

##### 2.3 No other notice

NASSIT confirms to the Security Agent for the benefit of the Banks that, except for the notice contained in Clause 2.1 (*Notice of security interests*), it has not received notice of or consented to any other security interests granted by the Concessionaire or any other person over any right, title, benefit or interest in and to the Sub-Lease and Concession Agreement or any of the assets to be secured pursuant to the Security Documents. NASSIT agrees to notify the Security Agent of any such security interests notified to it after the date of this Deed.

##### 2.4 Receiver

To the extent permitted by applicable law, nothing in this Deed shall prejudice the rights of the Security Agent to appoint a Receiver in respect of the Concessionaire or any other relevant person or to petition for or consent to the making of an order for the appointment of an administrator or similar insolvency officer in relation to the Concessionaire or such other relevant person.

##### 2.5 Enforcement of Security Documents

The enforcement by the Security Agent of the Security Documents shall not entitle NASSIT to terminate the Sub-Lease and Concession Agreement, provided that the manner in which the Security Documents are enforced complies with this Deed.

#### 3. STATUS OF THE SUB-LEASE AND CONCESSION AGREEMENT

##### 3.1 Obligations of the Concessionaire to continue

Except to the extent expressly provided for in this Deed, the Concessionaire shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Sub-Lease and Concession Agreement up to any relevant Novation Effective Date, notwithstanding:

- (a) the service of a Step-in Intention Notice or the issuance of a Step-in Undertaking;  
or



- (b) the service of a Proposed Novation Notice.

### 3.2 Assignment

NASSIT shall not, without the prior consent of the Security Agent, assign or otherwise dispose of the benefit or burden of all or part of the Sub-Lease and Concession Agreement except to a successor.

### 3.3 Banks' obligations under the Sub-Lease and Concession Agreement

NASSIT acknowledges that the Finance Parties shall have no obligations under the Sub-Lease and Concession Agreement, except pursuant to this Deed.

## 4. NOTICE OF POTENTIAL TERMINATION EVENT

NASSIT and the Concessionaire will notify the Finance Parties promptly upon the occurrence of any event or circumstance which would (with the expiry of any grace or cure period, the giving of notice, the making of any determination under the Sub-Lease and Concession Agreement or any combination of any of the foregoing) be a Termination Event.

## 5. NOTICE OF BANKS' ACTIONS

### 5.1 Bank acceleration notice

- (a) Each Bank undertakes to give notice to NASSIT, at the same time as notice is given to the Concessionaire (as borrower under the Facility Agreements), of the acceleration of any amounts due and owing under any Facility Agreement or of any other notice served pursuant to the relevant clauses of the Construction Facility Agreement and/or the Relay Facility Agreement addressing the acceleration of amounts outstanding thereunder, stating the grounds for that acceleration or notice.
- (b) The Security Agent undertakes to notify NASSIT promptly following receipt of instructions from any or all of the Banks pursuant to which it is obliged to enforce any of the Security Documents or, if earlier, at the same time as it gives notice to any of the Banks of its intention to enforce any of the Security Documents.

### 5.2 Notice of appointment of insolvency officer

The Security Agent undertakes to notify NASSIT at the same time as a Receiver is appointed in respect of the Concessionaire, or a petition is made, or consent is given to the making of an order, for the appointment of an administrator or similar insolvency officer in relation to the Concessionaire (in each case, to the extent that the same is relevant under applicable law).

## 6. PROPOSED TERMINATION NOTICE

- (a) NASSIT undertakes to the Finance Parties not to exercise any rights it may have to deliver a Termination Notice without first giving the Finance Parties not less than 10 Business Days' prior notice (a "**Proposed Termination Notice**") stating the grounds for the exercise by NASSIT of that right and the date on which NASSIT proposes to serve a Termination Notice in respect of such right (the "**Proposed Termination Notice Date**").



- (b) The Proposed Termination Notice shall be accompanied by (or shall include) a statement (the "**Breach Statement**") detailing:
- (i) subject to sub-paragraph (b)(ii) below, the amount of:
    - (1) any sums which NASSIT knows are, or reasonably believes to be, due and payable but unpaid by the Concessionaire pursuant to the Sub-Lease and Concession Agreement as at the date of the Proposed Termination Notice; and
    - (2) any further sums which NASSIT knows or reasonably believes shall become due and payable to NASSIT under the Sub-Lease and Concession Agreement up to and including the Proposed Termination Notice Date,(together "**Outstanding Payment Obligations**");
  - (ii) in the case of any claims for damages or payment under an indemnity, or in other circumstances where it is not reasonably practical for NASSIT to specify a precise amount, NASSIT shall instead state the nature and principal grounds for the claim and give its estimate of the quantum of the claim together with a percentage figure representing its margin of error (and, for the avoidance of doubt, the liability of any Step-in Entity for claims referred to in this sub-paragraph (b)(ii) shall not exceed the amount of NASSIT's estimate plus the margin for error so notified by him); and
  - (iii) any obligations or liabilities (other than the Outstanding Payment Obligations) which NASSIT knows or reasonably believes should have been performed or discharged by the Concessionaire but which have not been so performed or discharged as at the date of the Proposed Termination Notice (the "**Outstanding Performance Obligations**").

7. **SUSPENSION OF CERTAIN NASSIT RIGHTS**

7.1 **NASSIT termination rights**

NASSIT shall not be entitled to deliver a Termination Notice during the period from the issue of a Proposed Termination Notice until NASSIT is notified pursuant to Clause 9 (*No Step-in or Novation*) or (if earlier) the Proposed Termination Notice Date (the "**Preliminary Period**").

7.2 **Variations**

NASSIT shall not be entitled, at any time during the Preliminary Period, to initiate any Variations or to require Variations which have been so initiated but not begun to be implemented by that time (and for this purpose "**implemented**" includes NASSIT making commitments in reliance on the Variation being made) to be effected by the Concessionaire under the Sub-Lease and Concession Agreement without the consent of the Security Agent.

7.3 **Unaffected NASSIT termination rights**

For the avoidance of doubt, nothing in this Clause 7 shall affect the rights and obligations of NASSIT to deliver a Notice of Concessionaire Default and/ or a Termination Notice in the circumstances set out in Clause 16.1 (*Notice of Concessionaire Default*) and Clause 16.3 (*Consequences of a Notice of Concessionaire Default pursuant to Clause 16.1*).



8. **STEP-IN PREPARATORY ARRANGEMENTS**

8.1 **Step-in Intention Notice**

On or before the Proposed Termination Notice Date, the Security Agent shall notify NASSIT whether the Banks intend to procure a Step-in (a "**Step-in Intention Notice**"). The issuance of a Step-in Intention Notice will be made in good faith, but will not oblige the Security Agent to issue, or procure the issuance of, a Step-in Undertaking.

8.2 **Remedial Programme**

- (a) Immediately following receipt of a Step-in Intention Notice, NASSIT and the Security Agent shall seek to negotiate, in good faith, a reasonable programme (the "**Remedial Programme**") for remedying as soon as possible the breaches of the Sub-Lease and Concession Agreement described in terms of the Outstanding Performance Obligations and the Outstanding Payment Obligations.
- (b) Where the breach is irremediable, the Remedial Programme shall identify the action to be taken to place NASSIT in the same financial, commercial and technical position, and for all other practical purposes, in all material respects, as if the breach had not occurred.
- (c) The Remedial Programme shall specify in reasonable detail specific tasks to be completed and specific sums to be paid by specified dates. For the avoidance of doubt, any sums which are due and payable to NASSIT pursuant to the Sub-Lease and Concession Agreement shall be paid by the Step-in Entity in full on the Step-in Date.

8.3 **Supplemental Breach Statements**

Subject to Clause 8.4 (*Intentionally Undisclosed Breaches*), at any time before the Step-in Undertaking is delivered, NASSIT may notify the Security Agent of further Outstanding Payment Obligations and further Outstanding Performance Obligations (a "**Supplemental Breach Statement**"). NASSIT and the Security Agent will immediately seek, within the time described in Clause 8.5 (*Reactivation of NASSIT termination rights*), in good faith to revise the Remedial Programme to provide for how and when the breaches described in a Supplemental Breach Statement are to be remedied.

8.4 **Intentionally Undisclosed Breaches**

- (a) In no circumstances shall NASSIT be entitled to include in a Supplemental Breach Statement a breach of the Sub-Lease Concession Agreement which was known by it to exist at the time when the Breach Statement or a previous Supplemental Breach Statement was notified to the Security Agent and was intentionally not included in such a statement (each an "**Intentionally Undisclosed Breach**").
- (b) Except for the right described in paragraph (a) above to prevent NASSIT from including in a Supplemental Breach Statement an Intentionally Undisclosed Breach, NASSIT shall have no liability of any nature whatsoever relating to any failure to notify the Security Agent of any breach of the Sub-Lease and Concession Agreement, regardless whether the breach was known to it.

8.5 **Reactivation of NASSIT Termination Rights**

If:





- (a) the Remedial Programme is not agreed in writing; and/ or
- (b) the Step-in Undertaking is not delivered to NASSIT,

on or before noon on the date falling 15 Business Days after the date of the Step-in Intention Notice, NASSIT shall be entitled to exercise any or all of its rights to deliver a Termination Notice pursuant to the Sub-Lease and Concession Agreement without further reference to the Security Agent and free from any other restrictions under this Deed. For the avoidance of doubt and notwithstanding any other provision of this Deed, if a Step-in Intention Notice has been issued, NASSIT shall not exercise its rights to deliver such a Termination Notice before noon on the date falling 15 Business Days after the date of the Step-in Intention Notice unless it receives notification from the Security Agent pursuant to Clause 9 (*No Step-in or Novation*).

**9. NO STEP-IN OR NOVATION**

If, at any time during the Preliminary Period, it is decided that:

- (a) no Step-in Undertaking will be issued; and
- (b) no Novation will be effected pursuant to Clause 14 (*Novation*),

the Security Agent shall notify NASSIT immediately. On receipt of such notice, NASSIT may, at its discretion, but without prejudice to its obligations under Clause 16 (*Concessionaire Default*), exercise any or all of its rights to terminate the Sub-Lease and Concession Agreement.

**10. PERSONS EXERCISING STEP-IN**

**10.1 Step-in Entities**

Step-in may be effected by any of the following persons (each a "**Step-in Entity**"):

- (a) the Security Agent, as agent for one or more of the Banks (each of which shall be notified to NASSIT); or
- (b) a Bank Vehicle.

**10.2 Step-in Entity information**

At least 8 Business Days prior to the issue of a Step-in Undertaking, the Security Agent will provide the following information to NASSIT concerning the Step-in Entity:

- (a) its name and address;
- (b) where the Step-in Entity is a Bank Vehicle, its registered number, the names and addresses of its registered shareholders (and beneficial owners of the shares, if different) and the share capital owned by each of them and the names and addresses of its directors and the company secretary (or equivalent, if any);
- (c) details of its legal capacity, powers and authority to discharge the obligations and liabilities to be assumed by it;
- (d) details of the means by which it is proposed to finance the Step-in Entity (including in reasonable detail the extent to which such finance is committed and any conditions precedent as to its availability for drawing) to enable it to discharge all the obligations and liabilities to be assumed by it;



- (e) full details of the technical, commercial and other resources to be available to the Step-in Entity to enable it to discharge all the obligations and liabilities to be assumed by it; and
- (f) any further information which NASSIT may reasonably require about the Step-in Entity.

#### 10.3 NASSIT approval of Step-in Entity

- (a) The approval of NASSIT to the Step-in Entity must be obtained before Step-in. Any NASSIT approval shall be conditional on the Step-in Entity in fact possessing, when giving the Step-in Undertaking, the legal capacity, power, authority, title to property and other resources which satisfy NASSIT pursuant to this Clause 10.
- (b) NASSIT may only object to the Step-in Entity if it is not satisfied (acting reasonably) that:
  - (i) the Step-in Entity has the legal capacity, power and authorisation to become a party to and discharge its obligations and liabilities under the Step-in Undertaking; and/or
  - (ii) the financial, technical, commercial and other resources available to the Step-in Entity are sufficient to enable it to discharge its obligations and liabilities under the Step-in Undertaking.

#### 10.4 Timing of NASSIT approval

If NASSIT does not notify the Security Agent within 5 Business Days of receipt of all information required under Clause 10.2 (*Step-in Entity information*) that it objects to the proposed Step-in Entity and the grounds for that objection, NASSIT shall be deemed to have approved that Step-in Entity.

#### 10.5 Alternative Step-in Entity proposal

- (a) If NASSIT objects to a proposed Step-in Entity pursuant to Clause 10.3 (*NASSIT approval of Step-in Entity*), the Security Agent may propose no more than one alternative Step-in Entity (which may include a Step-in Entity which has previously been proposed but in relation to which the circumstances which formed the basis of the objection by NASSIT have changed).
- (b) In the circumstances described in paragraph (a) above, NASSIT and the Security Agent will hold discussions before such nomination with the intention of ensuring that a mutually suitable candidate is proposed as an alternative Step-in Entity. The Proposed Termination Notice Date shall not be extended as a result of any such objection or alternative proposal.

### 11. STEP-IN

#### 11.1 Step-in Undertaking

- (a) Following:
  - (i) service of a Proposed Termination Notice by NASSIT;
  - (ii) service of a Step-in Intention Notice by the Security Agent;



- (iii) agreement of the Remedial Programme; and
- (iv) approval by NASSIT of the Step-in Entity,

the Security Agent may, at any time up to the Proposed Termination Notice Date, deliver to NASSIT a written, legally-binding undertaking from the Step-in Entity substantially in the form set out in Schedule 2 (*Form of Step-in Undertaking*), the final form and content of which shall be approved by NASSIT (acting reasonably) (the "**Step-in Undertaking**").

- (b) The obligations assumed pursuant to a Step-in Undertaking (the "**Assumed Obligations**") are:
  - (i) to perform or discharge, or procure the performance or discharge of, all obligations (including the payment of any sums to NASSIT) which arise pursuant to the Sub-Lease and Concession Agreement from (and including) the Step-in Date;
  - (ii) to remedy Outstanding Payment Obligations and Outstanding Performance Obligations according to, and otherwise perform, the Remedial Programme; and
  - (iii) to pay a sum equal to the damages payable to NASSIT which arise pursuant to the Sub-Lease and Concession Agreement, relating to breaches disclosed in the Breach Statement or any Supplemental Breach Statement.
- (c) For the avoidance of doubt, the Assumed Obligations shall include matters notified and accepted pursuant to Clause 11.5 (*Post Step-in breach updates*) but shall exclude any amounts in respect of claims referred to in sub-paragraph (b)(ii) of Clause 6 (*Proposed Termination Notice*) in excess of NASSIT's estimate plus the margin for error referred to in that Clause.

#### 11.2 Accession and payment

Upon delivery by the Step-in Entity of the Step-in Undertaking, the Step-in Entity shall:

- (a) accede to this Deed by delivering to each of the Parties a legally binding undertaking to be bound by the provisions of this Deed (and, from such date, the Step-in Entity shall be deemed to be an additional Party to this Deed and shall be bound by and entitled to benefit from and enforce the provisions of this Deed relating to Step-in); and
- (b) pay in full all sums which are then due and payable to NASSIT pursuant to the Sub-Lease and Concession Agreement.

#### 11.3 Suspension of obligations

During the Step-in Period:

- (a) the obligations of the Concessionaire under the Sub-Lease and Concession Agreement shall be suspended and NASSIT shall not be entitled to take any action against the Concessionaire by reason of a failure by the Concessionaire to perform any of its obligations under the Sub-Lease and Concession Agreement. This suspension shall be without prejudice to any claim which NASSIT may have against the Concessionaire in respect of any failure by the Concessionaire to



perform any of its obligations under the Sub-Lease and Concession Agreement accrued prior to the Step-in Date, provided that no action may be taken by NASSIT to enforce such claim during the Step-in Period; and

- (b) the Step-in Entity shall perform the Assumed Obligations and shall have rights against NASSIT equivalent to the rights of the Concessionaire against NASSIT under the Sub-Lease and Concession Agreement as if the Step-in Entity had been a party to the Sub-Lease and Concession Agreement in place of the Concessionaire, but on the basis that the performance by the Step-in Entity of the Assumed Obligations constitutes full performance by the Concessionaire of its obligations under the Sub-Lease and Concession Agreement. The obligations so assumed by the Step-in Entity are separate from the obligations of the Concessionaire and nothing in this Deed shall constitute the Step-in Entity an agent of the Concessionaire.

#### 11.4 **Restriction of NASSIT Termination Rights during Step-in Period**

During the Step-in Period, NASSIT shall only be entitled to exercise its rights of termination under the Sub-Lease and Concession Agreement:

- (a) if the Step-in Entity fails to perform its obligations under Clause 11.2 (*Accession and payment*);
- (b) if there is a material breach of the Step-in Undertaking; or
- (c) where the right of termination arises on or after Step-in (and, for the avoidance of doubt, it is acknowledged that any grace periods permitted by the Sub-Lease and Concession Agreement in the circumstances where such right arises, shall apply).

#### 11.5 **Post Step-in Breach Updates**

- (a) Within 10 Business Days of Step-in, NASSIT shall notify the Security Agent of any further breaches of the Sub-Lease and Concession Agreement, regardless of whether the breaches occurred at any time before or during Step-in (but subject always to Clause 8.4 (*Intentionally Undisclosed Breaches*)).
- (b) NASSIT and the Step-in Entity will seek in good faith to vary the Remedial Programme to provide for how and when such further breaches are to be remedied, unless the Step-in Entity elects to Step-out pursuant to Clause 12 (*Step-out*).

#### 11.6 **Extent of liability of Step-in Entity and Banks**

For the avoidance of doubt:

- (a) NASSIT shall have no claim against the Step-in Entity except to the extent of the Assumed Obligations; and
- (b) save where the Step-in Entity is the agent of the Banks, NASSIT shall have no claim against any Bank for any Outstanding Payment Obligations, Outstanding Performance Obligations or for any other obligation under the Sub-Lease and Concession Agreement.





12. **STEP-OUT**

12.1 **Termination of Step-in**

- (a) The Step-in Entity may terminate the Step-in Period at any time by giving not less than 5 Business Days notice to NASSIT. Termination will take effect at midnight on the expiry of that notice (the date on which such termination takes effect being the "**Step-Out Date**").
- (b) If the Step-Out Date occurs prior to a Novation Effective Date, NASSIT may, at its discretion, exercise its rights to terminate the Sub-Lease and Concession Agreement in accordance with the terms thereof.

12.2 **Termination or expiry of Step-in Period**

The Step-in Period shall expire on the earliest of:

- (a) any Step-Out Date;
- (b) any Novation Effective Date; and
- (c) the date on which NASSIT exercises its rights of termination of the Sub-Lease and Concession Agreement pursuant to Clause 11.4 (*Restriction of NASSIT Termination rights during Step-in Period*).

12.3 **Effect of Step-out**

On termination or expiry of the Step-in Period, the Step-in Entity shall be automatically released from those of its obligations, liabilities and duties pursuant to the Step-in Undertaking to be performed or discharged after termination or expiry of the Step-in Period. Termination or expiry of the Step-in Period shall not affect responsibility for obligations, liabilities and duties which:

- (a) have fallen due for performance or discharge on or before the termination or expiry of the Step-in Period and which have not been fully performed or discharged (or which have not been assumed by a Novatee); or
- (b) fall due for performance or discharge after the termination or expiry of the Step-in Period, but arose or were incurred during, or by reason or in respect of, any time, or act, failure to act, event or circumstance occurring, during the Step-in Period.

13. **SUBJECT OF NOVATION**

13.1 **Novatee**

- (a) At any time:
  - (i) up to (and including) the date falling 10 Business Days prior to the Proposed Termination Notice Date (where no Step-in Undertaking has been given); or
  - (ii) during the Step-in Period, but at least 5 Business Days prior to the Step-out Date,

the Security Agent may notify (a "**Proposed Novation Notice**") NASSIT and the Concessionaire that it wishes another person (a "**Novatee**") to assume all the



rights and obligations of the Concessionaire under the Sub-Lease and Concession Agreement in substitution for the Concessionaire.

- (b) Any notice delivered pursuant to paragraph (a) above shall specify a date on which such assumption is to be effective (the "**Proposed Novation Date**"), which shall fall not later than the Proposed Termination Notice Date or the Step-out Date (as the case may be). The issuance of a Proposed Novation Notice will be made in good faith, but will not oblige the Security Agent to issue, or procure the issuance of, a Step-in Undertaking.

### 13.2 **Novatee information**

Within 8 Business Days of the date of the Proposed Novation Notice, the Security Agent will provide the following information to NASSIT concerning the Novatee:

- (a) its name and address;
- (b) if the Novatee is a corporation, its registered number, the names and addresses of its registered shareholders (and beneficial owners of the shares, if different) and the share capital owned by each of them and the names and addresses of its directors and the company secretary (or equivalent, if any) (or equivalent information if the Novatee is a partnership or other legal entity);
- (c) details of its legal capacity, powers and authority to discharge the obligations and liabilities to be assumed by it;
- (d) details of the means by which it is proposed to finance the Novatee (including in reasonable detail the extent to which such finance is committed and any conditions precedent as to its availability for drawing) to enable it to discharge all the obligations and liabilities to be assumed by it;
- (e) full details of the technical, commercial and other resources to be available to the Novatee to enable it to discharge all the obligations and liabilities to be assumed by it;
- (f) any further information which NASSIT may reasonably require about the Novatee.

### 13.3 **NASSIT approval of Novatee**

- (a) The approval of NASSIT to the Novatee must be obtained before Novation. Any NASSIT approval shall be conditional on the Novatee in fact possessing, by the time of Novation, the legal capacity, power, authority, title to property and other resources which satisfy NASSIT pursuant to this Clause 13.3.
- (b) NASSIT may only object to the Novatee if it is not satisfied (acting reasonably) that:
  - (i) the Novatee has the legal capacity, power and authorisation to become a party to and discharge its obligations and liabilities as a result of the Novation; and/or
  - (ii) the financial, technical, commercial and other resources available to the Novatee are sufficient to enable it to discharge its obligations and liabilities following the Novation.



#### 13.4 **Timing of NASSIT approval**

If NASSIT does not notify the Security Agent within 5 Business Days of receipt of all information required under Clause 13.2 (*Novatee information*) that it objects to the proposed Novatee and the grounds for that objection, NASSIT shall be deemed to have approved that Novatee.

#### 13.5 **Alternative Novatee proposal**

- (a) If NASSIT objects to a proposed Novatee pursuant to Clause 13.3 (*NASSIT approval of Novatee*), the Security Agent may propose no more than one alternative Novatee (which may include a Novatee which has previously been proposed but in relation to which the circumstances which formed the basis of the objection by NASSIT have changed).
- (b) In the circumstances described in paragraph (a) above, NASSIT and the Security Agent will hold discussions before such nomination with the intention of ensuring that a mutually suitable candidate is proposed as an alternative Novatee. The Proposed Termination Notice Date shall not be extended as a result of any such objection or alternative proposal.

#### 13.6 **Withdrawal of Proposed Novation Notice**

If, before the Proposed Novation Date, it is decided not to proceed with the Novation, the Security Agent shall promptly notify NASSIT of such decision and the Proposed Novation Notice shall be deemed to have been withdrawn and the rights and obligations of the Parties shall be construed as if the Proposed Novation Notice had not been given.

#### 13.7 **Novation Remedial Programme**

- (a) If any breaches of the Sub-Lease and Concession Agreement are then outstanding (without prejudice to the rights of NASSIT to terminate the Sub-Lease and Concession Agreement as restricted under Clause 11.4 (*Restriction of NASSIT termination rights during Step-in Period*), including the right to terminate for material breach of the Step-in Undertaking) NASSIT and the Security Agent will seek to negotiate, in good faith, a reasonable programme (the "**Novation Remedial Programme**") for remedying as soon as possible the breaches of the Sub-Lease and Concession Agreement.
- (b) The Novation Remedial Programme shall specify in reasonable detail specific tasks to be completed and specific sums to be paid by specified dates. For the avoidance of doubt, all sums which are due and payable to NASSIT pursuant to the Sub-Lease and Concession Agreement (including accrued interest) shall be paid by the Novatee in full on the Novation Effective Date.

### 14. **NOVATION**

#### 14.1 **Novation Implementation**

- (a) Following:
  - (i) service of a Proposed Termination Notice by NASSIT;
  - (ii) service of a Proposed Novation Notice by the Security Agent;
  - (iii) agreement of the Novation Remedial Programme; and



- (iv) approval by NASSIT of the Novatee,

the Novatee, the Security Agent and the Concessionaire may, at any time up to the Proposed Termination Notice Date, deliver to NASSIT a deed of novation substantially in the form set out in Schedule 3 (*Form of Novation Deed*), the final form and content of which shall be approved by NASSIT (acting reasonably) (the "**Novation Deed**") and NASSIT shall execute the Novation Deed within 5 Business Days of its receipt (the date of execution by NASSIT being the "**Novation Effective Date**").

- (b) On the Novation Effective Date, pursuant to the Novation Deed:

- (i) the Novatee shall:

- (1) be granted all of the rights and assume all of the obligations and liabilities of the Concessionaire under the Sub-Lease and Concession Agreement; and
- (2) become a party to the Sub-Lease and Concession Agreement in place of the Concessionaire,

and, from the Novation Effective Date, shall be treated as if it were named as a party to the Sub-Lease and Concession Agreement in place of the Concessionaire;

- (ii) NASSIT shall owe its obligations under the Sub-Lease and Concession Agreement arising on and after such Novation Effective Date to the Novatee and the receipt, acknowledgement or acquiescence of the Novatee shall be a good discharge; and
- (iii) the Novatee shall pay all sums which are due and payable to NASSIT pursuant to the Sub-Lease and Concession Agreement (including all accrued interest).

#### 14.2 Direct Agreement

NASSIT and the financiers of the Novatee shall execute, on or prior to the Novation Effective Date, a direct agreement substantially in the form, changed according to context, of this Deed (the final form and content to be approved by NASSIT (acting reasonably)).

#### 14.3 Novation repetition

No more than one Novation shall be effected in any 12 month period without the consent of NASSIT.

### 15. GENERAL PROVISIONS REGARDING STEP-IN/ NOVATION

#### 15.1 Co-operation

- (a) The Finance Parties and any Step-in Entity and/ or any Novatee each agree with each of NASSIT, GoSL and the Concessionaire to use all reasonable efforts to minimise disruption to the services provided from the Site when exercising rights granted to the Finance Parties under this Deed.





- (b) For the purpose of Step-in and/ or Novation, or of considering whether to Step-in or undertake Novation, NASSIT and the Concessionaire shall use reasonable efforts (so far as it is entitled to do so) to give reasonable access to the Site.

**15.2 No exoneration**

The liability of any Step-in Entity or any Novatee under this Deed or any Step-in Undertaking or any Deed of Novation shall not be affected by any act, failure to act, matter or thing which, but for this provision, might operate to release or otherwise exonerate such Step-in Entity or such Novatee from its obligations or affect such obligations, including:

- (a) any time, waiver, consent or indulgence granted to the Concessionaire, such Step-in Entity, such Novatee or any other person otherwise than as given in writing under this Deed;
- (b) any compromise or release of or refusal or neglect to perfect or enforce any rights or remedies against the Concessionaire or any other person or any Variation of this Deed or other document referred to in it;
- (c) any legal limitation, disability or incapacity relating to the Concessionaire, or any other person, or the dissolution, amalgamation, reconstruction or insolvency of the Concessionaire or any other person; or
- (d) any irregularity, unenforceability, invalidity or frustration of any obligations of the Concessionaire or any other person under this Deed or any document referred to in it.



### SECTION 3

#### TERMINATION PAYMENTS

#### 16. CONCESSIONAIRE DEFAULT

##### 16.1 Notice of Concessionaire Default

- (a) If:
  - (i) the event set out in Clause 14.2(f) (*Concessionaire Events of Default*) of the Sub-Lease and Concession Agreement occurs; and/ or
  - (ii) the issuance of the Certificate of the Project Monitor does not occur,in each case, prior to the SBLC Expiry Date, then the Security Agent may direct NASSIT (and NASSIT shall comply promptly with any such direction) to serve a Notice of Concessionaire Default under (and as defined in) the Sub-Lease and Concession Agreement on the Concessionaire.
- (b) If NASSIT does not serve a Notice of Concessionaire Default on the Concessionaire as contemplated under paragraph (a) above within 3 Business Days of being directed to do so by the Security Agent, NASSIT shall be deemed to have served that Notice of Concessionaire Default.
- (c) Subject to Clause 16.2 (*Consultation and Cure Period for a Notice of Concessionaire Default pursuant to Clause 16.1*) and Clause 16.3 (*Consequences of Notice of Concessionaire Default pursuant to Clause 16.1*), the relevant provisions of the Sub-Lease and Concession Agreement shall apply with respect to such Concessionaire Event of Default contemplated under paragraph (a) above (and, for the avoidance of doubt, the event described in sub-paragraph (a)(ii) above shall be considered a Concessionaire Event of Default for the purposes of the Sub-Lease and Concession Agreement).

##### 16.2 Consultation and Cure Period for a Notice of Concessionaire Default pursuant to Clause 16.1

- (a) Following delivery of any notice by the Security Agent pursuant to paragraph (a) of Clause 16.1 (*Notice of Concessionaire Default*) and/ or the delivery of any Notice of Concessionaire Default (as defined in the Sub-Lease and Concession Agreement) by NASSIT pursuant to paragraph (a) of Clause 16.1 (*Notice of Concessionaire Default*), each of NASSIT, the Concessionaire and the Banks shall consult with GoSL in good faith during the Cure Period (as defined in paragraph (b) below) with a view to agreeing the steps to be taken in order to remedy such Concessionaire Event of Default.
- (b) The Concessionaire shall be deemed to have cured a Concessionaire Event of Default in the circumstances contemplated under Clause 16.1 (*Notice of Concessionaire Default*) if, during the period between the date receipt of the relevant Notice of Concessionaire Default served pursuant to Clause 16.1 (*Notice of Concessionaire Default*) and the SBLC Expiry Date (such period being, the "**Cure Period**"), the Concessionaire shall have:
  - (i) procured the issuance of the Certificate of the Project Monitor;



- (ii) obtained alternative financing from a third party in replacement of the Relay Facility Agreement and the Afrexim Standby Letter of Credit (in each case on terms acceptable to FBN in its discretion) with all conditions to the availability of such alternative financing having been met;
- (iii) repaid in full all amounts outstanding under the Construction Facility Agreement, from sources acceptable to Afreximbank; or
- (iv) taken such action as agreed by all Parties in writing,

and, accordingly, the Notice of Concessionaire Default served pursuant to Clause 16.1 (*Notice of Concessionaire Default*) shall be deemed to have been withdrawn by NASSIT.

- (c) Without prejudice to paragraph (a) above, if during a Cure Period the Concessionaire obtains the written consent of Afreximbank and FBN to the extension of the SBLC Expiry Date (and Afreximbank does indeed extend the term of such letter of credit), the relevant Cure Period shall be extended for a period of time equal to the period of the extension agreed in respect of the Afrexim Standby Letter of Credit.
- (d) For the avoidance of doubt, if a Notice of Concessionaire Default served pursuant to Clause 16.1 (*Notice of Concessionaire Default*) is served on or after the SBLC Expiry Date, then no Cure Period shall be applicable.

**16.3 Consequences of a Notice of Concessionaire Default pursuant to Clause 16.1**

- (a) The Parties acknowledge that, if a Notice of Concessionaire Default is served pursuant to Clause 16.1 (*Notice of Concessionaire Default*) and such Notice of Concessionaire Default is not deemed to have been withdrawn pursuant to the operation of Clause 16.2 (*Consultation and Cure Period for a Notice of Concessionaire Default pursuant to Clause 16.1*) on or before the last day of any applicable Cure Period:
  - (i) the Security Agent may direct NASSIT (and NASSIT shall comply promptly with any such direction) to serve a Termination Notice on the Concessionaire;
  - (ii) NASSIT shall be obliged to make payment of the Termination Payment on the relevant Termination Payment Date in accordance with the terms of this Deed; and
  - (iii) accordingly, none of the provisions of Clause 14.4 (*Notification of Event of Default, Cure Period; Termination Notice*) of the Sub-Lease and Concession Agreement with regard to the delivery of any Notice of Default and the application of any Cure Period (in each case as defined in the Sub-Lease and Concession Agreement) shall apply.
- (b) If NASSIT does not serve a Termination Notice on the Concessionaire as contemplated under paragraph (a) above within 3 Business Days of being directed to do so by the Security Agent, NASSIT shall be deemed to have served that Termination Notice.



**16.4 Obligations not affected**

For the avoidance of doubt, the provisions contained in the Clauses of Section 2 (*Step-in Rights*) of this Deed shall not affect the obligations of NASSIT under this Clause 16.

**17. TERMINATION PAYMENTS**

**17.1 Termination Notice**

NASSIT and the Concessionaire will send to the Finance Parties a copy of any Termination Notice delivered (or received) by it pursuant to the Sub-Lease and Concession Agreement at the same time as it is dispatched by it (or promptly upon receipt by it, as the case may be) and shall, together with the relevant copy of such Termination Notice, notify the Finance Parties of:

- (a) the date on which the termination of the Sub-Lease and Concession Agreement shall take effect in accordance with such Termination Notice;
- (b) the relevant Termination Payment Date; and
- (c) the amount of the relevant Termination Payment.

**17.2 Calculation of Termination Payment**

- (a) For the avoidance of doubt, the Parties agree that for the purpose of Annex G (*Concession Asset Value*) of the Sub-Lease and Concession Agreement, the references to:

- (i) "a percentage of the capital employed over the 24 months construction schedule" (in the section headed "**Construction Phase**"); and
- (ii) "capital employed" (in the section headed "**Operations Phase**"),

when referring to the Concession Asset Value (CAV) shall be construed such that it shall take into account all amounts invoiced to the Concessionaire during the Construction Phase, together with all associated funding costs paid or payable by the Concessionaire to the Banks (as notified by the Security Agent to NASSIT) as at the relevant Termination Payment Date.

- (b) The construction set out in paragraph (a) above shall apply to any Termination Payment made during the construction phase of the Project and/ or the first year of operations notwithstanding that Annex G (*Concession Asset Value*) of the Sub-Lease and Concession Agreement (in relation to the construction phase of the Project) states that "capital employed will be determined by reference to the accounting records of the Concessionaire".

**17.3 Payment of Termination Payment**

Notwithstanding the proviso contained in Clause 14.4 (*Notification of Event of Default; Cure Period; Termination Notice*) of the Sub-Lease and Concession Agreement and Clause 14.5 (*Termination Payments*) of the Sub-Lease and Concession Agreement, NASSIT shall make any Termination Payment under the Sub-Lease and Concession Agreement to the Security Agent unless the Security Agent notifies NASSIT on or before the relevant Termination Payment Date that all amounts outstanding under the Facility Agreements have been irrevocably repaid in full (in which case, NASSIT shall make the





relevant Termination Payment in accordance with the terms of the Sub-Lease and Concession Agreement).

**17.4 Undertaking of GoSL**

- (a) Subject to the rest of this Clause 17.4, GoSL undertakes to indemnify the Banks on demand from and against any loss, cost, expense or liability of any kind incurred by any Bank from time to time as a result of:
  - (i) NASSIT failing to perform its obligations in respect of payment of the Termination Payment on the Termination Payment Date duly and punctually; or
  - (ii) NASSIT's obligation to make payment of any Termination Payment being or becoming void, voidable, unenforceable or ineffective against NASSIT for any reason whatsoever, whether or not known to any Bank,

save that GoSL shall have no obligation to indemnify the Banks pursuant to paragraph (a) above to the extent that NASSIT's obligation to make payment of any Termination Payment arises as a result of a Concessionaire Event of Default after the expiry of the Construction Phase.

- (b) The Parties acknowledge that the undertaking of GoSL under this Clause 17.4 is required in order to support certain insurance which is to be obtained in respect of the risk of non-payment by NASSIT of Termination Payments arising during the Construction Phase under the Sub-Lease and Concession Agreement. Accordingly, the Banks will obtain appropriate insurance in respect of such risks in form and substance reasonably satisfactory to GoSL (and, in the event that such insurance lapses or otherwise ceases to be in full force and effect, the Banks shall procure that replacement insurance is obtained in respect of such risks). For the avoidance of doubt, if any insurer in respect of such insurance policy is required to make payment pursuant to such insurance policy in respect of a failure by NASSIT and/ or GoSL to make payment in respect of Termination Payments, then such insurer shall be subrogated to the rights of the beneficiaries of that insurance policy and shall be entitled to exercise its rights under this Agreement against NASSIT and/ or GoSL accordingly.
- (c) If GoSL is liable to indemnify the Banks pursuant to paragraph (a) above, the maximum amount of such liability shall be at all times limited to a compensation amount equal to the aggregate of all sums due and owing by the Concessionaire to the Banks under the Facility Agreements at the relevant time.
- (d) Following delivery of any Termination Notice, and if GoSL so requires (and notifies the Concessionaire, the Banks and NASSIT within 5 Business Days of such notice having been served), each of the Concessionaire, the Banks, NASSIT and GoSL shall consult with each other for a period of not more than 10 Business Days (the "**Consultation Period**") in good faith with a view to agreeing the quantum of the Termination Payment. For the avoidance of doubt, if no such agreement is reached on or before the last day of the Consultation Period, then the Termination Payment shall be calculated and paid in accordance with the terms of this Agreement.



**17.5 Good discharge**

The Concessionaire agrees that the payment and application of the Termination Payment by NASSIT (or GoSL as the case may be) to the Security Agent in accordance with this Clause 17 shall constitute good discharge of the obligations of NASSIT to the Concessionaire in respect of the payment of such Termination Payment pursuant to the Sub-Lease and Concession Agreement.



SECTION 4

ACKNOWLEDGEMENTS REGARDING THE SITE

18. ENFORCEMENT AND FORECLOSURE

18.1 Acknowledgement of security and rights of foreclosure

GoSL and NASSIT acknowledge that:

- (a) certain security interests are to be granted in favour of the Security Agent to secure the obligations of the Concessionaire under the Facility Agreements (including (i) security interests to be granted by the Concessionaire over, inter alia, all of its rights, title, benefits and interests in and to the Sub-Lease and Concession Agreement (including a mortgage of the sub-lease interest in respect of the Site granted to the Concessionaire by NASSIT thereunder) and (ii) security interests to be granted by the Parent and its shareholders in respect of the entire issued share capital of the Concessionaire and the Parent respectively;

- (b) in the event of a default by the Concessionaire of its obligations under the Facility Agreements, the Banks may instruct the Security Agent to enforce any or all security granted in favour of the Security Agent in respect of the obligations of the Concessionaire under the Facility Agreements (which may include the taking of foreclosure proceedings in respect of the mortgage of the sub-lease interest referred to in paragraph (a) above and/ or the taking of enforcement proceedings in respect of the security interests granted pursuant to the Share Charges);

- (c) following completion of any foreclosure proceedings as described in paragraph (b) above, the Banks may instruct the Security Agent to sell the sub-lease interest in respect of the Site to a third party and/ or sell the shares which are subject to the security interests granted pursuant to the Share Charges so that the proceeds arising from such sale may be applied in discharge of amounts outstanding under the Facility Agreements; and

- (d) any third party described in paragraph (c) above may be a person who is a non-citizen for the purposes of the Non-Citizens Act.

18.2 Non-Citizens Act

If the circumstances described in Clause 18.1 (*Acknowledgement of security and rights of foreclosure*) occur, or in the event of any Step-in and/ or Novation as contemplated by this Deed, each of GoSL and NASSIT agrees that it shall take all steps necessary to procure that the Board promptly grants any necessary licence and/or completes any required formalities in accordance with applicable laws and regulations of the Republic of Sierra Leone to ensure that:

- (a) the holding of the sub-lease interest in respect of the Site by the Security Agent following completion of any foreclosure proceedings as described in paragraph (b) of Clause 18.1 (*Acknowledgement of security and rights of foreclosure*) (whether as a mortgagee in possession or otherwise);

- (b) the holding of the shares of the Concessionaire and/ or the Parent by the Security Agent following completion of any enforcement proceedings as described in paragraph (b) of Clause 18.1 (*Acknowledgement of security and rights of foreclosure*);



- (c) the sale of the sub-lease interest in respect of the Site and/ or the shares of the Concessionaire and/ or the Parent to a third party who is a non-citizen for the purposes of the Non-Citizens Act (and the subsequent holding of the sub-lease interest in respect of the Site by that third party); and/ or
- (d) the occurrence of any Step-in by a Step-in Entity and/ or any Novation to a Novatee in accordance with the terms of this Deed,

shall not contravene the Non-Citizens Act or any other applicable law or regulation of the Republic of Sierra Leone.

**19. GoSL DECLARATIONS**

**19.1 Declaration regarding freehold title and licence to Concessionaire**

- (a) GoSL declares that:
  - (i) freehold title to the Site is vested in the Government of the Republic of Sierra Leone;
  - (ii) the lease in respect of the Site granted by the Government of the Republic of Sierra Leone to NASSIT pursuant the lease dated 11 March 2009 (as supplemented from time to time) was granted in accordance with all applicable laws and regulations of the Republic of Sierra Leone and all formalities required to be observed in respect of the issuance of that lease have been so observed; and
  - (iii) the licence granted to the Concessionaire by the Board pursuant to Section 4 of the Non-Citizens Act in relation to the sub-lease interest in respect of the Site (granted to the Concessionaire by NASSIT pursuant to the Sub-Lease and Concession Agreement) was issued in full conformity with all applicable laws and regulations of the Republic of Sierra Leone and all formalities required to be observed in respect of the issuance of that licence have been so observed.
- (b) GoSL acknowledges that the Security Agent and the Finance Parties are relying on the declarations provided by it under paragraph (a) above.

**19.2 Indemnity for defects**

GoSL shall promptly upon demand, indemnify each Finance Party against any claims, damages, losses, liabilities, costs and expenses (including fees and disbursements of legal counsel) incurred by that Finance Party as a result of:

- (a) any declaration made by GoSL pursuant to Clause 19.1 (*Declaration regarding freehold title and licence to Concessionaire*) proving to incorrect; and/ or
- (b) any investigation, litigation or proceeding, arising out of or in connection with or relating to any challenge by any person (including GoSL itself) to any of the matters which are the subject of the declarations made by GoSL pursuant to Clause 19.1 (*Declaration regarding freehold title and licence to Concessionaire*).





**SECTION 5**

**MISCELLANEOUS**

**20. REPORTS IN RELATION TO THE PROJECT**

The Concessionaire and the Banks shall procure that NASSIT and GoSL are promptly provided with a copy of any report provided by the Project Monitor to the Banks pursuant to the Facility Agreements, together with such other information in connection with the Project as NASSIT and/ or GoSL may reasonably request.

**21. INTEREST ON UNPAID SUMS**

If any amount payable under this Deed by any of NASSIT, GoSL and/ or the Concessionaire to a Bank is not paid on the due date, NASSIT, GoSL and/ or the Concessionaire (as the case may be) shall pay interest to the relevant Bank at the rate notified by the relevant Bank from time to time (being the rate set out in the relevant clauses of the Construction Facility Agreement and/or the Relay Facility Agreement addressing the accrual of default interest) from the date on which the relevant amount falls due until, but excluding, the date of payment (after as well as before judgment). Interest accruing under this Clause 21 shall accrue on a day-to-day basis, be calculated by the relevant Bank on the basis of a 360-day year and shall be compounded in accordance with the usual practice of that Bank.

**22. CAPITAL GAINS TAX ON DISPOSAL OF CONCESSIONAIRE SHARES**

The Concessionaire shall procure that, upon the occurrence of a sale of its shares by International Development Enterprises Associates (UK) Ltd ("**IDEA UK**"), as envisaged by Clause 7.2(d) of the Sub-Lease and Concession Agreement, IDEA UK shall pay to GoSL any capital gains tax arising as a result of such disposal in accordance with the capital gains taxation rules of the Republic of Sierra Leone.

**23. PAYMENT MECHANICS**

**23.1 Payments to the Banks**

- (a) On any date on which any of NASSIT, GoSL and/ or the Concessionaire is required to make a payment under this Deed, NASSIT, GoSL and/ or the Concessionaire (as the case may be) shall make such payment to the relevant Bank for value on the due date at the time and in immediately available, freely transferable, cleared funds or such other funds specified in writing by the relevant Bank as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the relevant Bank specifies.

**23.2 Deductions from payments**

- (a) All sums payable pursuant to this Deed by a Party to any other Party (including, for the avoidance of doubt, any Termination Payment) shall be paid free and clear of all deductions or withholdings whatsoever in respect of taxation, except as may be required by law.
- (b) If a deduction or withholding is required by Law, the Party responsible for payment under this Deed shall:



- (i) ensure that the amount of the withholding or deduction does not exceed the minimum so required;
- (ii) immediately pay the Party which is to receive payment under this Deed such additional amounts as will ensure that the net amount received by it will be equal to that which would have been received had no deduction or withholding been made on the initial or additional amounts; and
- (iii) pay the amount withheld or deducted to the relevant authority according to the requirements of applicable law and provide the recipient Party with a receipt issued by the authority (or if such a receipt is not available, a certificate confirming the payment to the authority).

**23.3 Business Days**

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

**23.4 Currency of account**

US Dollars is the currency of account and payment for any sum due from any Party under this Deed.

**24. SET-OFF**

All payments to be made by NASSIT, GoSL and/ or the Concessionaire (as the case may be) under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**25. CALCULATIONS AND CERTIFICATES**

**25.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Banks are prima facie evidence of the matters to which they relate.

**25.2 Certificates and determinations**

Any certification or determination by a Bank of an applicable rate or amount due under this Deed or any Facility Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**26. NOTICES**

**26.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be in English and shall be made in writing and, unless otherwise stated, may be made by fax or letter.



## 26.2 Addresses

The addresses and fax numbers (and the departments or officers, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

- (a) in the case of each Party which is a Party on the date of this Deed, that specified against its signature on the relevant execution page of this Deed; and
- (b) in the case of any Step-in Entity or any Novatee, that specified in the relevant Step-in Undertaking or the relevant Deed of Novation (as the case may be),

or, in each case, any substitute address or fax number or department or officer as the relevant person may notify to the other Parties by not less than five (5) Business Days' notice.

## 26.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided pursuant to Clause 26.2 (*Addresses*), when it is addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Banks will be effective only when actually received by the Banks and then only if it is expressly marked for the attention of the department or officer identified with the signature of the relevant Bank below (or any substitute department or officer as that Bank shall specify for this purpose).

## 27. CONFIDENTIALITY

- (a) Subject to paragraph (b) below, each Party shall hold in confidence all documents and other information provided pursuant to this Deed (whether technical or commercial) supplied by or on behalf of the other Parties and shall not publish or otherwise disclose the same.
- (b) Notwithstanding paragraph (a) above, any Bank may disclose to any of its affiliate entities and to any other person:
  - (i) to (or through) whom the Bank assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents; and
  - (ii) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about this Deed, NASSIT, GoSL and the Concessionaire and the transactions contemplated thereby as that Bank shall consider appropriate.



**28. ASSIGNMENT AND TRANSFER**

**28.1 Assignments and transfers by the Banks**

Any Bank may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under this Deed to another person without the consent of any other Party provided that such assignment or transfer is made in connection with an assignment or transfer of the rights (or rights and obligations) of that Bank under the relevant Facility Agreement.

**28.2 Replacement of Security Agent**

The Security Agent may, without the consent of any other Party assign or transfer all (but not part) of its rights and obligations under this Deed to a successor Security Agent provided that such assignment or transfer is made pursuant to the relevant provisions of the Intercreditor Deed.

**28.3 No assignment or transfer by NASSIT, GoSL and/ or the Concessionaire**

None of NASSIT, GoSL and/ or the Concessionaire may assign any of its rights or transfer any of its rights or obligations under this Deed.

**29. AGENCY**

**29.1 No Delegation**

No provision of this Deed shall be construed as a delegation by NASSIT of any of its statutory or other authority to any Finance Party, any Step-in Entity, any Novatee or the Concessionaire.

**29.2 No agency**

Except as otherwise provided in this Agreement, none of the Finance Parties, any Step-in Entity, any Novatee or the Concessionaire shall be nor any such person be deemed to be an agent or trustee of NASSIT nor shall any such person hold itself out as having authority or power to bind NASSIT in any way or to incur any liability on its behalf.

**29.3 Independent Contractor**

NASSIT shall, at all times, be an independent contractor and nothing in this Deed shall be construed as creating any partnership or agency between NASSIT and the other Parties or any relationship of employer and employee between NASSIT and the other Parties.

**30. POWER AND AUTHORITY**

Each Party represents and warrants to each other Party that:

- (a) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and all matters contemplated herein; and
- (b) the entry into and performance by it of, and the matters contemplated by, this Agreement do not and will not conflict with any law or regulation applicable to it.





31. **PARTIAL INVALIDITY**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

32. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

33. **AMENDMENTS**

Amendments to this Deed shall be effective only if made in writing and signed by the Parties.

34. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

35. **GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed and take effect in accordance with English law.

36. **ENFORCEMENT**

36.1 **Arbitration**

(a) Subject to Clause 36.2 (*Banks' option to refer Disputes to Court*), the Parties agree that any Dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the United Nations Commission on International Trade Laws (the "**UNCITRAL Rules**", which Rules are deemed to be incorporated by reference into this Clause 36, save that no requirements of the UNCITRAL Rules as to the nationality of arbitrators shall apply). The seat of arbitration shall be London, England. The language of the arbitration shall be English. The Arbitration Tribunal shall comprise one arbitrator appointed in accordance with the UNCITRAL Rules.

(b) For the purposes of any arbitration under this Clause 36, the Parties hereby agree to exclude the application of section 45 (determination of a preliminary point of law) and section 69 (appeal on point of law) of the Arbitration Act 1996.

36.2 **Banks' option to refer Disputes to Court**

(a) Notwithstanding Clause 36.1 (*Arbitration*), the Banks (acting jointly) shall have thirty (30) days from the date upon which they receives any notice of a Dispute to notify the Party delivering such notice of a Dispute in writing that the Banks opt to have the Dispute resolved by a court in accordance with the remaining provisions of this Clause 36. In such event, all Parties irrevocably agree to the resolution of



the Dispute in such manner and that any arbitration commenced in relation to the Dispute be withdrawn forthwith.

(b) The courts of England shall have exclusive jurisdiction to settle any Dispute save that where a Dispute is the subject of proceedings commenced by the Banks, the Banks shall be entitled to bring such proceedings in any court or courts of competent jurisdiction (including the courts of England).

(c) The commencement of legal proceedings in one or more jurisdictions shall not, to the extent allowed by law, preclude the Banks from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not.

(d) To the extent allowed by law, each of NASSIT, GoSL and the Concessionaire irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal proceeding, and any claim it may now or hereafter have that any such legal proceeding has been brought in an inappropriate or inconvenient forum.

### 36.3 Service of process

(a) Without prejudice to any other mode of service allowed under any relevant law:

(i) each of NASSIT and GoSL irrevocably appoints the High Commissioner of Sierra Leone at 41 Eagle St, London WC1R 4TL; and

(ii) the Concessionaire irrevocably appoints Cape Sierra Holding Company (UK) Limited of 34A North End Road, London NW11 7PT,

as its agent for service of process relating to any proceedings before the English courts in connection with this Deed.

(b) Each of NASSIT, GoSL and the Concessionaire:

(i) agrees that failure by the process agent appointed by it pursuant to paragraph (a) above to notify it of the process will not invalidate the service of such process or any relevant proceedings or any judgment based on it;

(ii) consents to the service of process relating to any such proceedings by prepaid posting or delivery of a copy of the process to its address for the time being applying under this Clause 36.3; and

(iii) agrees that if for any reason the process agent is unable to act as such or its appointment ceases to be effective, the relevant person will promptly notify the Banks and within thirty (30) days will appoint a substitute process agent in England acceptable to the Banks (but if it fails to make such appointment within such period the Banks shall be entitled to appoint such substitute process agent by notice to NASSIT, GoSL and/ or the Concessionaire (as the case may be)).



**36.4 Waiver of immunity**

To the extent that it may claim for itself or any of its assets any immunity as referred to in this Clause 36, each of NASSIT, GoSL and the Concessionaire (to the fullest extent permitted by law) irrevocably and unconditionally:

- (a) waives any right of immunity which it or any of its assets now have or may hereafter acquire in relation to legal proceedings (which shall be deemed to include suit, attachment prior to judgment or arbitral decision, other attachment, the obtaining of judgment or arbitral decision, execution or other enforcement) brought against it or its assets in relation to this Deed by any Bank in any jurisdiction;
- (b) agrees that no immunity from any such proceedings shall be claimed by or on behalf of itself or in respect of any of its assets; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with any such proceedings, including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment or arbitral decision which may be made or given in any such proceedings.

**IN WITNESS** whereof this Deed has been signed on behalf of the Finance Parties and executed and delivered as a deed by the NASSIT, GoSL and the Concessionaire and is intended to be and is hereby delivered by them as a deed on the date first stated above



**SCHEDULE 1**

**Form of Step-in Undertaking**

From: **[\*\*\*Step-in Entity\*\*\*]** (the "Step-in Entity")

To: **National Social Security and Insurance Trust ("NASSIT")**

Dated: [*\*date\**]

Dear Sirs

**DEED OF DIRECT AGREEMENT**

**IN RELATION TO**

**THE CAPE SIERRA HOTEL, FREETOWN DATED [ \*\*\* ] 2011 (THE "DIRECT AGREEMENT")**

1. We refer to the Direct Agreement. This is a Step-in Undertaking. Terms defined in the Direct Agreement have the same meaning in this Step-in Undertaking unless given a different meaning in this Step-in Undertaking.
2. We hereby undertakes that we will assume the Assumed Obligations with effect on and from the Step-in Date.
3. The proposed Step-in Date is [*\*date\**].
4. This Step-In Undertaking shall take effect from the Step-in Date and will continue during and in respect of the Step-In Period. With effect from the end of the Step-In Period, this Step-In Undertaking will cease to apply in respect of obligations, liabilities and duties under the Sub-Lease and Concession Agreement to be performed or discharged after termination or expiry of the Step-in Period.
5. Termination or expiry of the Step-in Period shall not affect our responsibility for obligations, liabilities and duties which either:
  - (a) fall due for performance or discharge on or before the expiry of the Step-in Period and have not been fully performed or discharged (and have not been assumed by a Novatee); or
  - (b) fall due to be performed or discharged after expiry of the Step-in Period but arose or were incurred during or by reason or in respect of, any time, or any act, failure to act, event or circumstance occurring during the Step-in Period.
6. By delivery of this Step-in Undertaking we undertake to be bound by all the provisions of the Direct Agreement as if set out in full in this Step-in Undertaking (with the necessary changes being made).
7. Our address, fax number, electronic mail address and attention details for the purposes of Clause 26.2 (*Addresses*) are as follows: [*\*insert details\**]
8. This Step-In Undertaking and all non-contractual obligations arising in any way whatsoever out of or in connection with this Step-In Undertaking shall be governed by, and shall be construed and take effect in accordance with, English law.





9. The provisions of Clause 36 (*Enforcement*) of the Direct Agreement shall be incorporated into this Step-In Undertaking as if set out in full in this Step-In Undertaking with the necessary changes being made and as if references to "this Deed" or like references were references to this Step-In Undertaking. [For the purpose of Clause 36.3 (*Service of process*) of the Direct Agreement we hereby irrevocably appoint [\*name\*] of [\*address\*] to be our agent for service of process relating to any proceedings before the English courts in connection with this Step-in Undertaking].

**IN WITNESS WHEREOF** this Step-In Undertaking has been executed and delivered by the Step-in Entity as a Deed on [ \*\*\* ].

EXECUTED AS A DEED on behalf of )  
[\*Step-in Entity\*] )  
by persons who in accordance with the )  
laws of its jurisdiction of incorporation )  
are acting under the authority of that institution )

By:

Name:

Title:



**SCHEDULE 2**

**Form of Novation Deed**

**THIS DEED OF NOVATION** is made on [ \*\*\* ] 20[\*\*]

**BETWEEN:**

- (1) **The National Social Security and Insurance Trust**, a Statutory Public Trust established under the laws of Sierra Leone, with its principal offices at 32 Walpole Street, Freetown, Sierra Leone ("**NASSIT**");
- (2) **African Export-Import Bank**, a multilateral financial institution created pursuant to the Agreement for the Establishment of the African Export-Import Bank, whose headquarters is at 72 (B) El Maahad El Eshteraky Street, Heliopolis, Cairo 11341, Egypt acting as security agent and trustee under the Facility Agreements (in such capacity, the "**Security Agent**");
- (3) **Cape Sierra Hotel Company Ltd**, a private limited liability company incorporated under the laws of Sierra Leone, having its registered address at 26 Main Motor Road, Brookfields, Freetown, Sierra Leone and registered under registration number [ \*\*\* ] (the "**Concessionaire**"); and
- (4) [**\*\*\*Novatee\*\*\***] (the "**Novatee**")

**WHEREAS:**

This Deed is entered into pursuant to a Deed of Direct Agreement dated [ \*\*\* ] 2011 in relation to the Cape Sierra Hotel, Freetown (the "**Direct Agreement**").

**NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED** as follows:

1. This is a Novation Deed for the purposes of the Direct Agreement. Terms defined in the Direct Agreement have the same meaning in this Novation Deed unless given a different meaning in this Novation Deed.
2. The parties to this Novation Deed acknowledge and agree that, on and with effect from the Novation Effective Date, the Sub-Lease and Concession Agreement shall be novated such that the Novatee shall become party to the Sub-Lease and Concession Agreement in place of the Concessionaire (and the Concessionaire shall cease to be a party to the Sub-Lease and Concession Agreement) and, accordingly:
  - (a) the Concessionaire is released and discharged from all obligations whatsoever under the Sub-Lease and Concession Agreement, and from all liabilities arising out of or in connection with the Sub-Lease and Concession Agreement, whether arising prior to, on or after the Novation Effective Date;
  - (b) the Novatee shall assume and be solely responsible for the performance and discharge of all obligations of the Concessionaire under the Direct Agreement and the Sub-Lease and Concession Agreement, and for all liabilities arising out of or in connection with the Sub-Lease and Concession Agreement, and shall be bound by all the provisions of the Sub-Lease and Concession Agreement, and



entitled to all the rights, benefits and interest of the Concessionaire under the Sub-Lease and Concession Agreement, in place of the Concessionaire whether arising prior to, on or after the Novation Effective Date, as if it had been an original party to the Sub-Lease and Concession Agreement in place of the Concessionaire.

3. With effect on and from the Novation Effective Date, NASSIT shall owe the obligations, liabilities and duties on the part of NASSIT with respect to the performance of the Sub-Lease and Concession Agreement to the Novatee in place of (and shall be released by) the Concessionaire.
4. Nothing in this Novation Deed shall require any party to perform again any obligation or discharge again any liability already performed or discharged.
5. The address, fax number, electronic mail address and attention details for the purposes of Clause 26.2 (*Addresses*) are as follows: [*insert details*]
6. This Novation Deed and all non-contractual obligations arising in any way whatsoever out of or in connection with this Novation Deed shall be governed by, and shall be construed and take effect in accordance with, English law.
7. The provisions of Clause 36 (*Enforcement*) of the Direct Agreement shall be incorporated into this Novation Deed as if set out in full in this Novation Deed with the necessary changes being made and as if references to "this Deed" or like references were references to this Deed. [For the purpose of Clause 36.3 (*Service of process*) of the Direct Agreement, the Novatee hereby irrevocably appoints [*name*] of [*address*] to be its agent for service of process relating to any proceedings before the English courts in connection with this Novation Deed].

**IN WITNESS WHEREOF** this Novation Deed has been executed and delivered as a deed on the date and year first before written.

[*\*\*\*Execution blocks to be inserted\*\*\**]

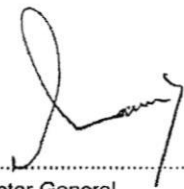


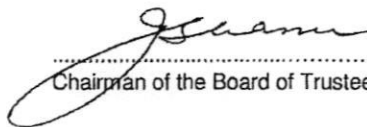
EXECUTION PAGES

NASSIT

EXECUTED AS A DEED on behalf of )  
**The National Social Security and Insurance Trust** )  
by persons who in accordance with the )  
laws of its jurisdiction of incorporation )  
are acting under the authority of that institution )

By:

 (Deputy Director General)  
for Director General

  
Chairman of the Board of Trustees

Address: 32 Walpole Street  
Freetown  
Sierra Leone

Fax No.: +232 2222 0362  
Tel No.: +232 2222 5365


Attention: Director General

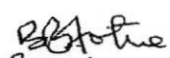




GoSL

EXECUTED AS A DEED on behalf of )  
The Government of the Republic of Sierra Leone )  
acting through the Minister of Tourism and Cultural Affairs )

  
Victoria Saidu Kamara  
Minister of Tourism and Cultural Affairs

in the presence of:  
Signature of witness:   
Name of witness: Barba Enima Fortune  
Address of witness: 28 B Kingharman Road, Freetown  
Occupation of witness: civil servant

Address: 28B Kingharman Road  
Brookfields  
Freetown  
Sierra Leone

Fax No.: +232 2223 5428  
Tel No.: +232 2224 2170

Attention: Hon. Victoria Sylvia Saidu-Kamara



**THE BANKS**

**FBN Bank (UK) Ltd**

By:



Peter S. Hinson  
Managing Director



Michael Barrett  
Head of Risk

Name:

Title:

Address: 28 Finsbury Circus  
London EC2M 7DT  
United Kingdom

Fax No.: +44 207 920 4970  
Tel No.: +44 207 826 4627

Attention: Nicolas Pitiot; Director - Head of Structured Finance

**African Export-Import Bank**

By:

Name:

Title:

Address: P.O. Box 613  
Heliopolis  
Cairo 11757  
Egypt

Fax No.: +202 2456 4110; +202 2451 5008  
Tel No.: +202 2456 4100/1/2/3; +202 2451 5201/2

Attention: Director of Banking Operations



**THE BANKS**

**FBN Bank (UK) Ltd**

By:

Name:

Title:

Address: 28 Finsbury Circus  
London EC2M 7DT  
United Kingdom

Fax No.: +44 207 920 4970  
Tel No.: +44 207 826 4627

Attention: Nicolas Pitiot; Director - Head of Structured Finance

**African Export-Import Bank**

By: 

Name: DENYS DENYA  
Title: EXECUTIVE VICE PRESIDENT

Address: P.O. Box 613  
Heliopolis  
Cairo 11757  
Egypt

Fax No.: +202 2456 4110; +202 2451 5008  
Tel No.: +202 2456 4100/1/2/3; +202 2451 5201/2

Attention: Director of Banking Operations



THE SECURITY AGENT

African Export-Import Bank

By: 

Name: DENJS DENYA

Title: EXECUTIVE VICE PRESIDENT

Address: P.O. Box 613  
Heliopolis  
Cairo 11757  
Egypt

Fax No.: +202 2456 4110; +202 2451 5008

Tel No.: +202 2456 4100/1/2/3; +202 2451 5201/2

Attention: Director of Banking Operations

