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POWER PURCHASE AGREEMENT

by and between

**THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE (ACTING BY THE MINISTRY OF
FINANCE AND ECONOMIC DEVELOPMENT AND BY THE MINISTRY OF ENERGY)**

and

THE ELECTRICITY DISTRIBUTION AND SUPPLY AUTHORITY OF SIERRA LEONE

and

SOLAR ERA HOLDINGS

relating to the

5MW Solar Energy Generation in

Bo District, Southern Province, Sierra Leone

Dated 8th May 2015

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Table of Contents

1	ARTICLE 1 - DEFINITIONS, RULES OF INTERPRETATION	2
2	ARTICLE 2 - SCOPE OF AGREEMENT; TERM	10
3	ARTICLE 3 - IMPLEMENTATION OF THE PROJECT	11
4	ARTICLE 4 - ENGINEERING, PROCUREMENT AND CONSTRUCTION OF THE PLANT	13
5	ARTICLE 5 - START-UP AND COMMERCIAL OPERATION	15
6	ARTICLE 6 - IMPLEMENTATION OF THE EXPANSION WORKS	16
7	ARTICLE 7 - OPERATION AND MAINTENANCE OF THE PLANT	16
8	ARTICLE 8 - SALE AND PURCHASE OF ELECTRICITY	17
9	ARTICLE 9 - BILLING AND PAYMENT	18
10	ARTICLE 10 - METERING	18
11	ARTICLE 11 - INTERCONNECTION	22
12	ARTICLE 12 - COVENANTS	23
13	ARTICLE 13 - MONITORING, RECORDS, REPORTS AND AUDIT	23
14	ARTICLE 14 - INSURANCES	24
15	ARTICLE 15 - INDEMNIFICATION	25
16	ARTICLE 16 - INDEMNIFICATION PROCEDURES	25
17	ARTICLE 17 - FORCE MAJEURE	27
18	ARTICLE 18 - INCREASED COSTS	30
19	ARTICLE 19 - TERMINATION	31
20	ARTICLE 20 - REPRESENTATIONS AND WARRANTIES OF THE COMPANY	35
21	ARTICLE 21 - REPRESENTATIONS AND WARRANTIES OF THE OFFTAKER	36
22	ARTICLE 22 - DISPUTE RESOLUTION	37
23	ARTICLE 23 - MISCELLANEOUS	40
	APPENDIX A PLANT DESCRIPTION, DESIGN CONDITIONS AND TECHNICAL DATA	48
	APPENDIX B PROJECT IMPLEMENTATION SCHEDULE	52
	APPENDIX C CALCULATION OF PAYMENT	53
	APPENDIX D CONDITIONS PRECEDENT TO CLOSING DATE	55
	APPENDIX E METERING	56
	APPENDIX F COMMISSIONING AND TESTING	57

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is made on the 8th day of May 2015 between:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE (ACTING BY THE MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT AND BY THE MINISTRY OF ENERGY);**

- (2) **THE ELECTRICITY DISTRIBUTION AND SUPPLY AUTHORITY** of the Government of Sierra Leone (hereinafter referred to as the "Offtaker" which expression shall wherever the context so admits include their Successor-in-Title); and

- (3) **SOLAR ERA HOLDINGS** of Sierra Leone, (hereinafter referred to as the "Company" which expression shall wherever the context so admits include its lawful assigns).

Each of the Company and the Offtaker is a "Party" and together are the "Partners".

WHEREAS:

- (1) The Company is a limited liability company established and duly registered under the Laws of Sierra Leone for the purpose of generating solar energy in Sierra Leone and seeks to build, own, operate, maintain and transfer a solar energy generation plant;

- (2) The Company shall have sole responsibility for the development and implementation of the Project and shall hold the rights and bear the obligations herein provided.

- (3) The Offtaker seeks to improve the electricity grid of Sierra Leone in its drive to transform the economy and create sustainable development for its people by relying on the private sector to invest in the energy sector; desires and intends to purchase the energy generated by the plant owned, operated and maintained by the Company pursuant to this Agreement; and

- (4) The Parties acknowledge that the electrical generation from the Plant is dependent on solar irradiation and the Plant is, accordingly, not dispatchable but must be operated as a "take or pay" plant. The Company wishes to sell to the Offtaker and the Offtaker wishes to purchase from the Company all the electricity generated from the Project on the terms and conditions contained herein.

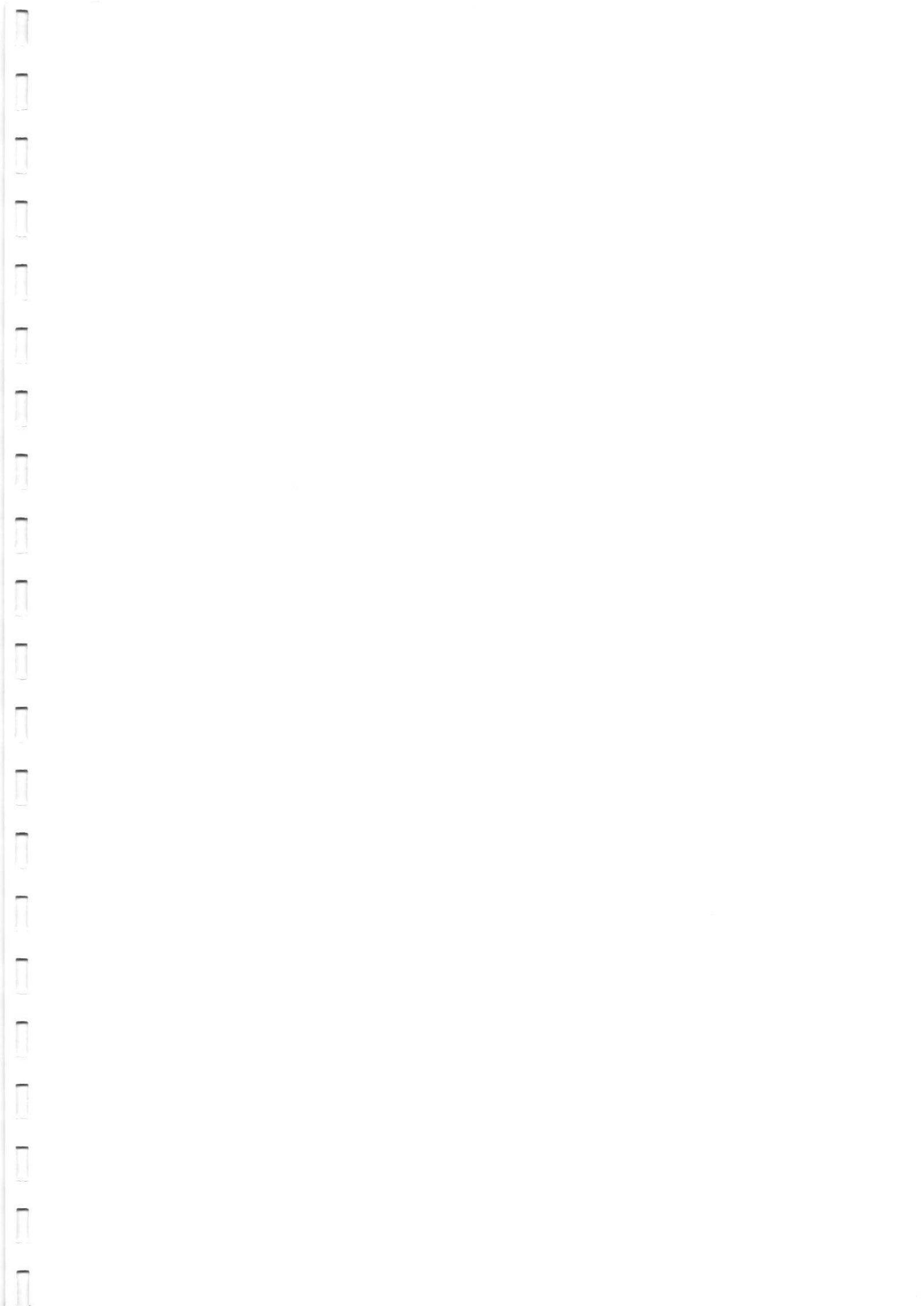
NOW, THEREFORE, in consideration of the mutual covenants and undertakings hereinafter contained, the Parties hereby agree as follows:

1 ARTICLE 1 - DEFINITIONS, RULES OF INTERPRETATION

1.1 Definitions.

For the purposes of this Agreement, the following capitalised words, terms and phrases used specifically in this Agreement, including in the recitals, appendices, schedules and attachments hereto, shall have the meanings set forth in this **Section 1**.

"**Affiliate**" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person. For purposes of this definition, "**control**" means direct or indirect ownership of more than fifty per cent (50%) of the outstanding capital stock or other equity interests having ordinary voting power or having the power (whether by voting rights, contract or otherwise) to appoint and remove the majority of the members of the board of directors of the company or otherwise control its affairs and policies;



"Agreement" means this Power Purchase Agreement, and all Exhibits, Schedules, Appendices, Attachments, Parts and Annexes hereto, as the same may be amended from time to time in accordance with the terms and conditions hereof.

"Back-Up Metering System" means all meters, metering devices and related instruments installed, owned and maintained by the Offtaker and used for back-up purposes in relation to measuring and recording the delivery and receipt of Net Electrical Energy at the Delivery Point in accordance with the provisions of **Appendix H (Metering)**.

"Billing Period" means

(a) either:

- (i) the period from the Day that the Plant achieves Commercial Operation Date; or
- (ii) subject to the provisions of **Section 8.2 (Delay in Achieving the Commercial Operation Date)** where an Event of Political Force Majeure occurs before, and delays, the Commercial Operation Date and results in a Deemed Net Electrical Energy Payment being payable, the period from the Day that the Event of Political Force Majeure first occurs,

until the last Day of that calendar month;

(b) each successive period of one calendar month thereafter; or

(c) the period from the first Day of the last month of the Term to the last Day of the Term, or, if this Agreement is terminated earlier in accordance with the terms hereof, from the first Day of the month in which this Agreement is terminated until the Day of termination.

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

"Change in Law" means any of the following events occurring after the Effective Date as a result of any action by any Governmental Instrumentality of Sierra Leone: (i) a change in or repeal of an existing Legal Requirement, (ii) an enactment or making of any new Legal Requirement, and (iii) a change in the manner in which a Legal Requirement is applied or in the application or interpretation thereof.

"Change of Control" means, in relation to a person, company or entity, a change of the person, company or entity, that possesses, directly or indirectly, the power to direct or cause the direction of the management or the policies of that person, company or entity, whether through ownership, by contract or otherwise.

"Claims" means with respect to any Person, any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands, reasonable out-of-pocket expenses of whatever kind (including reasonable attorneys' fees and expenses) and losses incurred or sustained by or against such Person but excluding any lost profits or other special, incidental, indirect, punitive or consequential damages suffered by such Person.

"Closing Date" means the date on which the Offtaker and the Company jointly certify that all the conditions set forth in **Appendix D (Conditions Precedent to Closing Date)** have been fulfilled or waived in accordance with **Section 2.3** hereof.



"Commercial Operation Date" means the Day following the date on which the Plant has successfully completed its Reliability Testing, as jointly certified by the Offtaker and the Company.

"Company Event of Default" has the meaning set forth in **Section 19.1**.

"Company Parties" has the meaning set forth in **Section 15.2** hereof.

"Confidential Information" has the meaning set forth in **Section 23.13** hereof.

"Contract" means any agreement, lease, license, evidence of indebtedness, indenture or other contract (including any design, construction, equipment or other warranty or guarantee under any of the foregoing).

"Contract Year" means (i) initially the period commencing on the Commercial Operation Date consisting of twelve (12) consecutive months (such period being "Contract Year 1") and (ii) thereafter each successive period consisting of twelve (12) consecutive months, provided that the final Contract Year shall end on the last Day of the Term.

"Contractors" means the EPC Contractor and the O&M Contractor and any other contractors engaged by the Company in connection with the design, engineering, procurement, supply, transportation, erection, construction, installation, testing and commissioning of the Plant and the operation and maintenance of, and supply of materials for, the Plant.

"Cure Period" has the meaning specified in **Section 19.4(b)**.

"Day" means the 24-hour period beginning and ending at 00:00 midnight Sierra Leone time.

"Deemed Net Electrical Energy" shall be the deemed output of the Plant calculated in accordance **Appendix C (Calculation of Payment)**.

"Deemed Net Electrical Energy Payment" has the meaning specified in **Appendix C (Calculation of Payment)**.

"Delivery Point" the physical point(s) where the Project and the Transmission System are connected as specified in **Appendix A (Plant Description, Design Conditions and Technical Data)**.

"Despatch" or **"Despatch Instructions"** the right of the Offtaker to issue instructions in accordance with Good Utility Practices, and this Agreement to schedule and control the generation of the Plant in order to commence, increase, decrease or cease the Net Electrical Energy delivered to the Transmission System.

"Direct Agreement" has the meaning given to it in the Implementation Agreement.

"Dispute" has the meaning set forth in **Section 22.1(a)** hereof.

"Dollars" or **"\$"** means the lawful currency of the United States of America.

"Due Date" means, with respect to an invoice submitted by the Company pursuant to Section 9.1, the date that is 30 Days after the date that the invoice was submitted by the Company.

"Effective Date" means the date the Agreement is entered into by the Parties.

"Environmental Law" means any applicable national, municipal or other Legal Requirement governing or relating to (i) the environment, (ii) releases or threatened releases of Hazardous Materials including, investigations, monitoring and abatement of such releases, and (iii) the



manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Materials or materials containing Hazardous Materials.

"EPC Contract" means the engineering, procurement and construction contract to be entered into on or before the Closing Date between the Company and the EPC Contractor for the engineering, design, manufacture, supply, procurement, transportation, erection, construction, installation, testing, commissioning and warranty of the Plant and the Delivery Point.

"EPC Contractor" means such contractor that is employed from time to time by the Company, for the engineering, design, manufacture, supply, procurement, transportation, erection, construction, testing, commissioning and warranty of the Plant and the Delivery Point.

"Equity" means, the capital of the Company attributable to its shareholders in respect of their investment in the Company (including indebtedness for money borrowed by the Company from a shareholder of the Company or any Affiliate of a shareholder of the Company which by its terms is subordinated to any indebtedness for borrowed money incurred by the Company under any Financing Document).

"Escrow Account" has the meaning given to that term in the Implementation Agreement.

"Escrow Letter" has the meaning given to that term in the Implementation Agreement.

"Event of Natural Force Majeure" has the meaning set forth in **Section 17.3**.

"Event of Force Majeure" has the meaning set forth in **Section 17.1**.

"Event of Political Force Majeure" has the meaning set forth in **Section 17.3**.

"Expansion Event" means the formal entry by Sierra Leone into the West African Power Pool or a similar material increase in demand in Sierra Leone for energy output.

"Expansion Notice" means a written notice from the Company to the Offtaker informing the Offtaker that the Company wishes to carry out Expansion Works.

"Expansion Works" means the works required to procure extra MW capacity at the Plant as requested by the Offtaker..

"Expert" means an expert engineer appointed to resolve technical disputes in accordance with the process set out in **Section 23.2 (Recommendation by Expert)**.

"Financial Close" means the date on which the Financing Parties confirm that all the conditions precedent to the first drawdown under the Financing Documents have been satisfied or waived.

"Final Determination" has the meaning set forth in **Section 16.1** hereof.

"Financing Documents" The loan agreements, notes, indentures, security agreements, interest rate hedging agreements, guarantees, and other documents entered or to be entered into (and as amended from time to time) relating to the construction and/or permanent financing (including financing of working capital requirements and refinancing and provision of letters of credit for construction and/or permanent financing) of the Plant or any part thereof.

"Financing Party" means any Person or Persons providing commercial debt, export credit agency-backed debt, bond or capital market financing or refinancing under the Financing Documents to the Company, and their permitted successors and assigns, including any agent or trustee for such Person or Persons but excluding any shareholder of the Company or Affiliate of a shareholder of the Company with respect to indebtedness constituting Equity.



"**Good Utility Practice**" means, at a particular time, those practices, methods and acts as are in accordance with good standards of prudence applicable to the international electricity generation industry which would have been expected to accomplish the desired result at the lowest reasonable life-time cost consistent with reliability, safety and expedition.

"**Offtaker Event of Default**" has the meaning specified in **Section 19.2**.

"**Offtaker Parties**" has the meaning set forth in **Section 15.1** hereof.

"**Governmental Authorisations**" means all authorisations, consents, decrees, permits, waivers, privileges, approvals from and filings with all Governmental Instrumentalities necessary for the realisation and operation of the Project in accordance with the Project Agreements.

"**Government Default**" means a material breach by the Government of any provision of the Implementation Agreement.

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

"**Hazardous Materials**" Any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive, or radioactive material regulated under, or subject to, any Environmental Laws.

"**ICC**" has the meaning set forth in **Section 22.3(c)** hereof.

"**ICC Rules**" has the meaning set forth in **Section 22.3(b)** hereof.

"**Implementation Agreement**" means the implementation agreement to be entered into between the Government of Sierra Leone, represented by the Ministry of Finance and Economic Development, the Ministry of Energy and the Company as a condition precedent to the Closing Date.

"**Implementation Schedule**" means the schedule for implementation of the Project set forth in **Appendix B (Project Implementation Schedule)**, as amended from time to time in accordance with the terms hereof.

"**Increased Cost**" means any cost or expense relating to the Project resulting from, or otherwise attributable to, such Event of Political Force Majeure or other event or circumstance that is stipulated under **Sections 3.4 and 5.3(b)** that is incurred or suffered by the Company and not otherwise covered by the receipt of insurance proceeds (which costs or expenses may include (i) capital costs, (ii) financing costs, (iii) costs of operation and maintenance and (iv) costs of Taxes imposed on or payable by the Company, or (v) reduction in the revenue received by the Company).

"**kV**" means kilovolts.

"**kWh**" means kilowatt-hours.

"**Land Agreement**" means the agreement to be entered into by and between the Company and the landowners of Baoma Chiefdom Bo District Southern Province of the Republic of Sierra Leone represented by the Paramount Chief and Chiefdom Council of the said Baoma



Chieftdom for the location of the Site pursuant to which, among others, the Company has been granted the right to occupy the Site.

"Late Payment Rate" means a rate of interest per annum on the date of determination equal to the lesser of (i) two per cent (2%) above the Dollar rate quoted for six (6) month London Interbank Offered Rates (LIBOR) under the caption "Money Rates" in *The Wall Street Journal* (or, if no such rate appears, the arithmetic mean of the offered quotations that appear on the relevant page (if any) on the Reuters Monitor Money Rates Service (or such other service as may replace the Reuters Monitor Money Rates Service for the purpose of displaying LIBOR)) on the due date or required date of payment in question, which rate shall be adjusted every six (6) months thereafter, or (ii) the maximum rate of interest permitted by applicable Law.

"Law" means the Laws of the Republic of Sierra Leone, and all orders, rules, regulations, executive orders, decrees, policies, judicial decisions, notifications, or other similar directives made pursuant thereto, as such laws, orders, rules, regulations, decrees, policies, judicial decisions and notifications or other similar directives may be amended from time to time.

"Legal Requirements" means all Laws, Governmental Authorisations and other licenses, permits, approvals and agreements, and any injunction or final non-appealable judgment directly applicable to the relevant Party, of any Governmental Instrumentality having jurisdiction over the matter in question.

"Letter of Credit" shall have the meaning given to it in the Implementation Agreement.

"Lien" means any mortgage, pledge, lien, security interest, option agreement, claim, charge or encumbrance of any kind.

"Limited Despatch Electrical Energy Payment" means a payment equal to the Deemed Net Electrical Energy that would have been available to the Offtaker during the period the Plant is subject to a Despatch Instruction, but for the Despatch Instruction, and which shall be calculated in accordance with the provisions of **Appendix C (Calculation of Payment)**.

"Metering System" means all meters, metering devices and related instruments of the settlement metering system installed, owned and maintained by the Company and used to measure and record the delivery and receipt of Net Electrical Energy at the Delivery Point in accordance with the provisions of **Appendix E (Metering)**.

"MW" means megawatts.

"Net Electrical Energy" means net electrical energy expressed in kWh delivered to the Delivery Point by the Company for sale to the Offtaker during the testing and operation of the Plant.

"Monthly Energy Payment Amount" has the meaning given to it in Appendix C.

"O&M Agreement" means the operation and maintenance agreement to be entered into on or before the Closing Date between the Company and the O&M Contractor regarding the operation and maintenance of the Plant.

"O&M Contractor" means the contractor employed from time to time by the Company for the operation and maintenance of the Plant.

"Offtaker Interconnection Facilities" means the facilities, equipment and power transmission lines to be constructed or installed by the Company (on behalf of the Offtaker) at the Offtaker's side of the Delivery Point for the purpose of connecting the Plant to the Transmission Facilities.

"Operating Procedures" means the procedures set forth in the Transmission Agreement.



"Parties" means, collectively, the Company and the Offtaker, and **"Party"** means either of them.

"Person" means any individual, corporation, joint stock company, limited liability company, partnership, joint venture, association, trust, unincorporated organisation, Governmental Instrumentality, or other entity.

"Plant" means the facilities as more specifically described in **Appendix A (Plant Description, Design Conditions and Technical Data)** and if applicable those facilities built as Expansion Works to be built, owned, operated and transferred by the Company on the Site.

"Price" means the terms set forth in **Appendix C (Calculation of Payment)** in accordance with which the amounts to be paid hereunder to the Company for, inter alia, the purchase of Net Electrical Energy as provided in **Appendix C (Calculation of Payment)** are calculated, including any indexation thereof and all adjustments and modifications thereto.

"Protected Assets" means any property or assets of the Government protected by diplomatic or consular privileges under public international law;

"Project" The development, design, engineering, procurement manufacture, financing, use of the Site, construction, permitting, completion, testing, commissioning, insurance, ownership, operation and maintenance of the Plant and all activities incidental thereto.

"Project Agreements" means, collectively, this Agreement, the Land Agreement, the EPC Contract, the O&M Agreement, the Implementation Agreement, the Transmission Agreement and the Financing Documents, including the direct agreement with the Financing Parties.

"Prolonged Event of Natural Force Majeure" means an Event of Natural Force Majeure which prevents either Party from performing its obligations under this agreement for a period of three hundred and sixty-five (365) days.

"Prolonged Event of Political Force Majeure" means an event of Political Force Majeure which prevents either Party from performing its obligations under this agreement for a period of three hundred and sixty-five (365) days.

"Proprietary Information" of a person means information rightfully in the possession of such person, which information derives economic value from not being generally known to and not being readily ascertainable by proper means by another person who can obtain economic value from its disclosure and use, and which is the subject of reasonable efforts to maintain its secrecy.

"Reliability Testing" has the meaning set forth in **Appendix H (Commissioning and Testing)**.

"Scheduled Commercial Operation Date" means 12 months from the Closing Date as set out in **C (Project Implementation Schedule)**, as the same may be revised from time to time in accordance with the provisions of this Agreement.

"Site" means that certain parcel of land located at Baoma Chiefdom, Bo District, Southern Province of the Republic of Sierra Leone in Sierra Leone, more specifically delineated in the Land Agreement on which the Plant is located.

"Taxes" means any tax, charge, impost, tariff, duty or fee of any kind charged, imposed or levied, directly or indirectly, by any Governmental Instrumentality, including any value-added tax, sales tax, stamp duty, import duty, withholding tax (whether on income, dividends, interest payments, fees, equipment rentals or otherwise), tax on foreign currency loans or foreign



exchange transactions, excise tax, property tax, registration fee or license, water tax or environmental, energy or fuel tax including any interest, penalties or other additions thereon.

"Term" has the meaning set forth in **Section 2.32** hereof.

"Termination Notice" has the meaning set forth in **Section 19.4(a)**.

"Threshold Loss Event" means the occurrence of an event or series of events which results in the destruction of, or irreparable damage to, 70% of the MW capacity of the Plant.

"Transmission Agreement" means the agreement setting out the rights and obligations of the Parties in relation to the Transmission System, to be entered into by the Company and the Transmission System operator on industry standard terms and in compliance with this Agreement.

"Transmission System" means the Offtaker's system of transmission or distribution facilities on the Offtaker's side of the Delivery Point, through which the Energy Output of the Project will be distributed by the Offtaker through its grid to users of electricity.

"Transmission System Force Majeure" means any disruption in the ability of the Transmission System to receive and take delivery of Net Electrical Energy at the Delivery Point, but only if and to the extent that (i) such disruption, despite the exercise of reasonable diligence by the Company, cannot be or be caused to be prevented, avoided or removed by the Company, (ii) such disruption adversely affects the ability of the Company to deliver Net Electrical Energy and the Company has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such disruption on the Company's ability to deliver Net Electrical Energy at the Delivery Point; (iii) such disruption is not the direct or indirect result of the failure of the Company to perform any of its obligations under this Agreement, and (iv) the Company has given the Offtaker prompt notice describing such disruption and its effect upon the ability of the Company to deliver Net Electrical Energy at the Delivery Point.

"Tribunal" has the meaning ascribed to such term in **Section 22.3(c)** hereof.

1.2 **Rules of Interpretation.** Unless the context of this Agreement otherwise requires:

- (a) words of any gender include each other gender;
- (b) words using the singular or plural number also include the plural or singular number, respectively;
- (c) the terms "hereof," "herein," "hereby," "hereto" and similar words refer to this entire Agreement and not to any particular Article, Section, Clause, Exhibit, Appendix or Schedule or any other subdivision of this Agreement;
- (d) references to "Article," "Section," "Appendix" or "Attachment", are to the Articles, Sections, Appendices or Attachments, respectively of this Agreement;
- (e) the words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;
- (f) references to "this Agreement" or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;



- (g) whenever this Agreement refers to a number of Days, such number shall refer to calendar Days unless Business Days are specified;
- (h) all periods of time shall be based on, and computed according to, the Gregorian calendar;
- (i) any capitalised words, terms, phrases and abbreviations used specifically in any Appendix or any Attachment to any Appendix shall have the meanings set forth in such Appendix or Attachment, as the case may be;
- (j) in the event of any inconsistency between any capitalised word, term, phrase or abbreviation set forth in **Section 1.1** and any capitalised word, term, phrase or abbreviation set forth in any Appendix or any Attachment to any Appendix, the meaning set forth in such Appendix or Attachment shall take precedence over the meaning set forth in **Section 1** unless the context of this Agreement otherwise requires;
- (k) the word "approval" or "consent" shall be deemed to be followed by "(such approval not to be unreasonably withheld or delayed)" or "(such consent not to be unreasonably withheld or delayed)", as the case may be, whether or not it is followed by such phrase or words of like import and the word "approved" shall be construed accordingly;
- (l) the phrase "best endeavours" means taking all actions necessary to achieve the objectives of the obligation to which the phrase relates, including the expenditure of funds in such amounts as shall be reasonable at the time in the light of the financial condition and resources of the Party bound by the obligation; and
- (m) the phrase "reasonable endeavours" means taking such actions as may be reasonable at the time, which may or may not include the expenditure of funds, taking into account the importance of the objectives of the obligation to which the phrase relates and the damage that may be suffered by the Party in whose favour the obligation runs relative to the burdens imposed on the Party bound by the obligation in taking such actions.

1.3 Priority of documents.

If there is any inconsistency between any of the provisions of this Agreement, the Implementation Agreement and the Direct Agreement, the provisions of the documents shall take priority in the following order:

- (a) the Direct Agreement,
- (b) the Implementation Agreement; and
- (c) this Agreement.

2 **ARTICLE 2 - SCOPE OF AGREEMENT; TERM**

2.1 Sale and Purchase of Electricity.

- (a) During the Term, and pursuant to the terms of this Agreement, the Company shall deliver to the Offtaker at the Delivery Point the Net Electrical Energy generated by the Plant, and the Offtaker shall purchase from the Company such Net Electrical Energy in consideration for the payment by the Offtaker to the Company of the Price. The Net Electrical Energy generated by the Plant is dependent on, *inter alia*, the solar irradiation at the Site at any given time and, accordingly, the Offtaker agrees that, without prejudice to Section 7.1, the Plant is not capable of and will not be providing dependable capacity to the Offtaker.



- (b) The Offtaker will take delivery at the Delivery Point of whatever quantity of the Net Electrical Energy is delivered by the Plant during the Term, and failing this (for any reason not attributable to the Company, but without prejudice to Section 17.4), the Offtaker will be obliged to pay to the Company, the Limited Despatch Electrical Energy Payment for the duration of such failure in accordance with the provisions of this Agreement.
- (c) Subject to **Section 2.1(b)**, the Plant shall be subject to Despatch Instructions.

2.2 Term of Agreement.

- (a) This Agreement shall become effective on the Effective Date. The term of this Agreement (the "**Term**") shall commence on the Effective Date and, subject to the occurrence of the Closing Date, shall expire on the date of the twentieth (20th) anniversary of the Commercial Operation Date, unless terminated earlier in accordance with the provisions hereof.
- (b) The expiry date set out in Section 2.2(a) shall be extended by one Day for each Day (or part thereof) on which the Company is affected by a Natural Force Majeure Event.

2.3 Conditions Precedent to Closing Date.

- (a) The rights and obligations of the Parties under this Agreement shall be conditional upon the occurrence of the Closing Date provided, however, that each Party shall use its best endeavours to perform those obligations required on its part to effectuate the occurrence of the Closing Date. The Offtaker and the Company shall jointly certify in writing the occurrence of the Closing Date within five (5) Business Days after the occurrence thereof.
- (b) The Company may by written notice waive any of the Conditions Precedent set out in **Appendix D (Conditions Precedent to Closing Date)**.
- (c) Notwithstanding the provisions of **Section 2.3(a)** above the Company will use its reasonable endeavours to commence:
 - (i) working towards achieving Financial Close; and
 - (ii) any preliminary construction activities that can be carried out outside of Sierra Leone.,

from the Effective Date.

3 **ARTICLE 3 - IMPLEMENTATION OF THE PROJECT**

3.1 Company's Responsibilities.

The Company shall cause and be responsible for the following:

- (a) completing the construction and installation of the Project;
- (b) the successful completion of the required test operations prescribed in **Appendix H (Commissioning and Testing)** no later than the Scheduled Commercial Operation Date. In the event that the Project does not successfully complete the required test operations prescribed in **Appendix H (Commissioning and Testing)** on or before the Scheduled Commercial Operations Date, then the Company shall request in writing and the Offtaker may accept a new Scheduled Commercial Operation Date as is necessary under the circumstances;



- (c) the application for any available and applicable tax credits, grants, loans or preferences from governmental or other institutions in accordance with the Legal Requirements. The Offtaker shall approve all such applications within its competence and in accordance with the Legal Requirements and cooperate with the Company by providing requested documentation or other confirmation relating to the Project or to this Agreement, subject to the confidentiality terms of **Section 23.13 (Confidentiality)**.
- (d) the operation and maintenance of the Plant by the Company in accordance with applicable Legal Requirements, Good Utility Practice and the provisions of this Agreement;
- (e) the timely preparation, negotiation and execution of the Project Agreements, and any other agreements necessary to be entered into by the Company and as referred to hereunder;
- (f) the due and proper application for all Governmental Authorisations, or renewals thereof, that are required to be obtained in the name of the Company, as the case may be, in connection with the transactions contemplated by this Agreement and the other Project Agreements and the diligent effort to obtain, the receipt of, and the maintenance of, all such Government Authorisations until the end of the Term;
- (g) delivery to the Offtaker with reasonable promptness after the execution thereof (and in any event on or prior to the Closing Date), true and complete copies of each of the Project Agreements and other documents and agreements specified **Appendix D (Conditions Precedent to Closing Date)** that are to be entered into by the Company on or prior to the Closing Date;

3.2 Offtaker's Responsibilities. The Offtaker shall cause and be responsible for the following:

- (a) cooperating with the Company in the identification of the applications of the Company referred to in **Section 3.1(f)** and promoting and supporting such applications, including providing reasonable assistance in the preparation thereof, so as to expedite the consideration thereof by the appropriate Governmental Instrumentality, provided that such applications are in compliance with all applicable Legal Requirements;
- (b) to enter into the Direct Agreement and other related documents with the Financing Parties, as may be reasonably required by the Financing Parties in order to secure financing for the Project;
- (c) as reasonably requested by the Company, discussing the Project with and providing publicly available and/or non-confidential information about the Offtaker to financial institutions interested in providing financing for the Project, provided, in any event, that the Offtaker shall not be required itself or on behalf of any other entity to make any representations or undertakings in connection with any such discussion or in connection with the Financing Documents;
- (d) the timely preparation, negotiation and execution by the Offtaker and each of its Affiliates of the Project Agreements to which they are a party and any other agreements necessary to be entered into by the Offtaker or its Affiliates; and
- (e) the delivery to the Company with reasonable promptness after the execution thereof (and in any event on or prior to the Closing Date) true and correct copies of each of the Project Agreements and other documents and agreements specified in **Appendix D (Conditions Precedent to Closing Date)** that are to be entered into by the Offtaker or any other Governmental Instrumentality on or prior to the Closing Date.

3.3 Offtaker Approvals.



- (a) The Company shall consult with and to the extent required in **Appendix A (Plant Description, Design Conditions and Technical Data)**, obtain the prior approval of, the Offtaker with respect to the Delivery Point and the Operating Procedures.
- (b) On a regular basis during the period prior to the Closing Date, the Company shall advise the Offtaker as to the status of the negotiations of all of the Project Agreements.
- (c) No review or approval by the Offtaker or any of its representatives of the Project Agreements or any other agreement, document, instrument, drawing, specification or design proposed by the Company concerning the Project shall relieve the Company from any liability that it would otherwise have had in respect of or under such agreement, document, instrument, drawing, specification or design or failure to comply with applicable Legal Requirements with respect thereto, except insofar as such review or approval constitutes a Governmental Authorisation pursuant to any applicable Legal Requirements of Sierra Leone, nor shall the Offtaker or any of its representatives or any of its or their advisers be liable to the Company or any other Person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design.

3.4 Delays Caused by the Offtaker.

Without prejudice to the provisions of **Section 8.2**, if because of delay or default by the Offtaker in the performance of its obligations under this Agreement which are not attributable to the Company, the EPC Contractor or any subcontractor to the EPC Contractor, achievement of the Closing Date or the implementation of the Project by the Company in accordance with the Implementation Schedule actually has been delayed, the Parties shall confer as to the effect, if any, of such delay and the date for achievement of the Closing Date and the Implementation Schedule shall be adjusted equitably, taking into account the effect which the Company demonstrates is properly attributable to such delay by the Offtaker's delay or default and the ability of the Parties to reschedule activities to minimise the overall delays resulting therefrom, and the Price shall be subject to adjustment to the extent and in the manner provided in **Section 18.2** which shall apply mutatis mutandis, with all references to Event of Political Force Majeure being deemed to be replaced by references to delays as a consequence of delay or default attributable to the Offtaker hereunder.

4 **ARTICLE 4 - ENGINEERING, PROCUREMENT AND CONSTRUCTION OF THE PLANT**

4.1 Plant Engineering, Procurement, Construction Responsibility.

- (a) The Company shall engineer, design, procure, supply, erect, construct, install, test and commission the Plant in all material respects in accordance with the design and equipment parameters set forth in **Appendix A (Plant Description, Design Conditions and Technical Data)**.
- (b) The Company shall use its best endeavours to achieve the timely implementation of the Project in accordance with the Implementation Schedule. The Company shall promptly inform the Offtaker of any material deviations from any dates stipulated in the Implementation Schedule.

4.2 Changes to Plant or Transmission System.

Without prejudice to the description of the Plant in Appendix A, the Company shall notify the Offtaker in advance of any changes to the Plant, and the Offtaker shall notify the Company in advance of any changes to the Transmission System in each case, that may affect the proper adjustment and calibration of protective relays and other similar devices between the systems.

4.3 Permits, Licenses, Etc.



The Company shall, on or before the Commercial Operation Date, deliver to the Offtaker copies of all Governmental Authorisations required by the Company to commence the sale of Net electrical Energy in accordance with this Agreement that have been issued to the Company prior to such date and not previously delivered to the Offtaker.

4.4 Technical Documentation.

The Company shall obtain and retain at the Plant Site:

- (a) for all items of equipment incorporated into the Plant and identified in **Appendix A (Plant Description, Design Conditions and Technical Data)**, copies of all operation and maintenance manuals and other technical documentation (including electronic files) for such equipment as is reasonably necessary according to Good Utility Practice);
- (b) copies of all test results for tests performed in accordance with the EPC Contract on the Plant and all items of equipment incorporated into the Plant and identified in **Appendix A (Plant Description, Design Conditions and Technical Data)**, to the extent that such items are normally retained in accordance with Good Utility Practice;
- (c) as-built drawings for the Plant; and
- (d) all detailed technical documentation (including electronic files) related to the design, engineering, construction, operation and maintenance of the Project, to the extent that such items are normally retained in accordance with Good Utility Practice.

In the event that all or any part of the Plant should be transferred to the Offtaker, all of the foregoing documentation and any other technical documentation and information (including electronic files) in the possession of the Company pertaining to the Plant or such part thereof, including Proprietary Information (subject to the provisions of **Section 23.13**), shall be delivered to the Offtaker on or not later than seven (7) Days after the date of such transfer.

4.5 Extension of Milestone Dates.

If a breach by the Offtaker of its obligations under this Agreement causes a delay in the critical path schedule that will have the effect of delaying the achievement of the Commercial Operation Date, then the corresponding Scheduled Commercial Operation Date, shall be adjusted by the Parties to take into account the effect of such delay the achievement of the Commercial Operation Date, as the case may be; provided, however, that such dates shall not be extended to the extent that such delay would have nevertheless been experienced had such event not occurred; provided further, however, that the Company shall have made all reasonable endeavours to prevent or reduce to a minimum and mitigate the effect of any delay, including recourse to alternate sources of services, equipment and materials and construction equipment.

4.6 Exclusive Remedy for Delay.

Subject to Section 4.7, the Offtaker's right to terminate this Agreement in accordance with the provisions of Article 19 (Termination), shall be the Offtaker's exclusive remedy for the Company's failure to attain the Commercial Operation Date.

4.7 Liquidated damages – Delay.

- (a) If the Company does not achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, liquidated damages shall be payable by the Company to the Offtaker at the rate of USD 2,000 per Day for each Day that the Commercial Operation Date is delayed beyond the Scheduled Commercial Operation

Date. The Parties agree that such sums represent a genuine pre-estimate of the Offtaker's loss arising from such a breach.

- (b) The maximum aggregate liability of the Company under **Section 4.7(a)** shall not exceed USD 500,000.
- (c) The Offtaker acknowledges that the payment of the liquidated damages contemplated in this **Section 4.7** is in lieu of actual damages for the delay to commencement of commercial operations and the collection of such liquidated damages is, subject to Article 18, the sole remedy available to the Offtaker relating to that delay or any related breach of this Agreement.

4.8 **Electricity and Water During Construction.**

The Company shall be responsible for the provision or procurement at its cost of all electricity and water for Company's own use during construction of the Plant.

5 **ARTICLE 5 - START-UP AND COMMERCIAL OPERATION**

5.1 **Start-up Electricity.**

The Company shall be responsible for the provision or procurement at its cost of all electricity and water for testing, commissioning and start-ups of the Plant.

5.2 **Start-up Water.**

The Company shall be responsible for the provision or procurement at its cost of all potable water for start-up, testing and commissioning of the Plant.

5.3 **Performance and Reliability Testing.**

- (a) The Company shall be responsible for the development and implementation of test procedures, testing program and estimated loading requirements during the construction, start-up and commissioning of the Plant and the Offtaker Interconnection Facilities and shall notify the Offtaker in advance of all testing as provided in **Appendix (Commissioning and Testing)**. The Offtaker and its designees shall be entitled to be present at any such testing as provided in **Appendix H (Commissioning and Testing)**. Such test procedures and testing programme shall take into account the demand supply position of the Transmission System. The Company shall notify the Offtaker three (3) Business Days in advance of the required load in connection with any test, the nature and duration of the required load. In relation to any scheduled test that is required to be rescheduled, the Company shall notify the Offtaker three (3) Business Day (or such shorter period if agreed by the Parties) in advance of the commencement of the rescheduled test.
- (b) During the testing provided for in **Appendix (Commissioning and Testing)** and in accordance with the testing procedures and testing schedule developed and implemented thereunder, upon receipt by the Offtaker of notice in accordance with **Section 5.3(b)** above, the Offtaker shall evacuate Net Electrical Energy from the Plant to allow the Company to perform the relevant tests, any test is delayed as a result of the demand position of the Transmission System at the time, and such failure or demand supply position is demonstrated by the Company to cause a delay in the critical path schedule that will have the effect of delaying the achievement of the Commercial Operation Date, the provisions of **Section 4.5** shall apply, *mutatis mutandis*, and the Price shall be subject to adjustment to the extent and in the manner provided in **Section 18.2**, which shall apply *mutatis mutandis*, with all references to delays being deemed to be replaced by reference to delays as a consequence of delay

or default attributable to the Offtaker unless such delay is due to the occurrence of an event set out in Section 17.3(b)(v).

6 ARTICLE 6 - IMPLEMENTATION OF THE EXPANSION WORKS

6.1 Expansion Notice.

- (a) Following the occurrence of an Expansion Event and the subsequent submission of an Expansion Notice, the Company is entitled to build, own, operate and maintain the Expansion Works and the Offtaker is obliged to purchase, on the terms of this Agreement all Net Electrical Energy generated by the Expanded Plant.
- (b) During the Term, the Company may issue more than one Expansion Notice provided that each Expansion Notice must be for a minimum of 5MW of capacity and up to a total maximum of 20MW of expanded capacity.
- (c) Each Expansion Notice shall set out the scope of Expansion Works proposed by the Company and, in all cases, the proposed implementation timetable for the procurement and construction of the Expansion Works.
- (d) The Parties shall in good faith agree the Price for the Net Electricity generated by each Expanded Plant which shall reflect market changes in the capital expenditure, operation and maintenance expenditure and financing costs of the Expansion Works. If the Parties are unable to agree such Price, the Parties shall refer the matter for final determination by the Expert pursuant to **Section 22.2**.

7 ARTICLE 7 - OPERATION AND MAINTENANCE OF THE PLANT

7.1 Operation, Maintenance and Repair.

- (a) The Company shall at all times during the Term operate, maintain and repair the Plant in a manner consistent with Good Utility Practice. The Company shall also operate the Plant in accordance with the Operating Procedures and Appendix A and the Transmission Agreement and shall ensure that the Net Electrical Energy is at all times within the power factor range of the Transmission System; shall maintain anti-islanding protection; and shall ensure that the voltage of the Net Electrical Energy is maintained at the level required by the Transmission System.
- (b) The Company shall employ in and at the Plant all safety devices and safety practices required by applicable Legal Requirements, the requirements of all insurance policies and Good Utility Practice and the Transmission Agreement. To the extent consistent with such requirements including Good Utility Practice, the Company shall keep accurate records of any accident or other occurrence at the Plant or Site that results in injury to persons or damage to property. The Company shall provide to the Offtaker reasonable access to these records subject to requirements of confidentiality.
- (c) The Company shall ensure that its personnel are on duty at the Plant during all daytime hours in a Day and seven (7) Days a week commencing with the Commercial Operation Date, and shall provide the Offtaker with emergency contact telephone numbers for use in emergency situations twenty-four (24) hours a Day and seven (7) Days a week. For purposes of this **Article 7**, all references to the Company shall be deemed to include the O&M Contractor where applicable.

7.2 Environmental Standards.



The Company shall construct and operate the Plant in accordance with the environmental standards and laws applicable in Sierra Leone. The obligations of the Company pursuant to this **Section 7.2** shall not derogate from its rights under **Section 18.1**.

7.3 Coordination.

The Company and the Offtaker shall each keep a daily operations log for the Plant consistent with Good Utility Practice. The Company and the Offtaker shall each have the right to review such logs at all reasonable times and upon reasonable notice.

7.4 Test Schedules.

The Company and the Offtaker shall mutually develop a test schedule for testing the Plant in accordance with the requirements of **Appendix H (Commissioning and Testing)**.

8 ARTICLE 8 - SALE AND PURCHASE OF ELECTRICITY

8.1 Sale and Purchase.

Subject to the terms and conditions of this Agreement:

- (a) During the period prior to the Commercial Operation Date, to the extent that Company may deliver Net Electrical Energy, the Offtaker shall take such Net Electrical Energy provided, however, that the Company shall not charge the Offtaker and the Offtaker shall not be obliged to pay for any Net Electrical Energy delivered prior to the Commercial Operation Date.
- (b) During the period from the Commercial Operation Date up to and including the last Day of the Term, the Company shall sell to the Offtaker, and the Offtaker shall purchase from the Company for consideration of the Price, the Net Electrical Energy of the Plant, to the extent that the same is generated by the Plant on the terms described in this Agreement including **Appendix C (Calculation of Payment)**.

8.2 Delay in Achieving the Commercial Operation Date.

Without prejudice to the Company's rights under **Section 8.1**, in the event that achievement of the Commercial Operation Date, is delayed because of a delay or default by the Offtaker in performance of its obligations under this Agreement or because of any Event of Political Force Majeure, then, on and from the date on which the Company would have been able to achieve the Commercial Operation Date, but for such delay, default or Event of Political Force Majeure until the date on which the Commercial Operation Date has been achieved, the Company shall be deemed to have achieved the Commercial Operation Date and the Offtaker shall pay to the Company, the Deemed Net Electrical Energy Payment for the Deemed Net Electrical Energy for such period; provided, however, that if the Commercial Operation Date, shall have been deemed to have been achieved pursuant to this **Section 8.2** and thereafter when tested the Company shall be in breach of its obligations to achieve the Commercial Operation Date, then the Commercial Operation Date shall cease to be deemed to have been achieved and all payments received by the Company from the Offtaker for such Deemed Net Electrical Energy in excess of the amounts the Offtaker would have had to pay if the Plant had been deemed to be providing Net Electrical Energy as so determined by the tests carried out pursuant to Section 5.3 together with interest accrued thereon at the Late Payment Rate, shall be credited against future payments to be made pursuant to **Appendix C (Calculation of Payment)** in the immediately following Billing Period or, if needed, Billing Periods.



9 ARTICLE 9 - BILLING AND PAYMENT

9.1 Billing.

- (b) The Company shall render to the Offtaker an itemised invoice for each Billing Period in US Dollars for the following:
 - (i) the Monthly Energy Payment Amount delivered in the previous Billing Period (or part of a Billing Period); plus
 - (ii) any value added tax chargeable in respect of the supply of Net Electrical Energy or other services provided by the Company to the Offtaker; plus
 - (iii) any interest (calculated in accordance with Section 9.2 payable on an amount invoiced previously, but not paid by the relevant Due Date; plus
 - (iv) any additional amounts payable as a consequence of any Increased Costs; less
 - (v) any amounts due from the Company to the Offtaker in respect of the previous Billing Period, including any liquidated damages payable under Section 4.7.
- (c) The invoice statement shall contain reasonably detailed calculations of the amounts payable under it, together with such further supporting documentation and information as the Parties may agree.
- (d) Subject to Section 9.1(e), the Offtaker shall pay to the Company the amount shown in the invoice as due on or before the Due Date.
- (e) Any invoice delivered pursuant to this Schedule 9 shall be paid in US Dollars. The Company may issue invoices in Sierra Leone Leones (SLL) or US Dollars. The invoice issued in SLL shall be calculated by converting the US Dollars amount payable under this Agreement from US Dollars into SLL at the exchange rate actually available to the Company from its Sierra Leonean bank account on the date the invoice is issued for an amount equivalent to the payment in question at the going commercial rate.
- (f) In the event the Offtaker disputes any portion of an invoice then the Offtaker shall, within 14 Days of the receipt of such invoice or payment, serve a notice on the Company indicating the amount and basis of the dispute. The Offtaker shall not be required to pay a disputed amount pending resolution of the dispute. The dispute shall be settled by mutual discussion and, if necessary, resolved pursuant to **Section 22 (Dispute Resolution)**. If it is determined that either Party owes the other an amount of money, the owing Party shall, within 7 Days after its receipt of such determination, pay such sum together with interest at a rate equal to the Late Payment Rate.
- (g) The Offtaker's obligation to pay any amount under this Agreement shall remain in full force and effect, and shall not be affected by the provisions of the Implementation Agreement, except to the extent that the Offtaker's obligation to the Company has been fully and irrevocably discharged by the Government (whether or not pursuant to the terms of the Implementation Agreement).

9.2 Late Payments.

Late payments by either Party shall bear interest at the Late Payment Rate from the date on which such payment was originally due until the date that such payment was made.

10 ARTICLE 10 – METERING

10.1 Metering System and Back-Up Metering System.

- (a) The Parties acknowledge that for the purposes of determining Net Electrical Energy of the Plant the Metering System and the Back-Up Metering System are required prior to the delivery of any Net Electrical Energy to the Delivery Point for sale hereunder.
- (b) Upon the installation of the Metering System the Company shall obtain and provide to the Offtaker copies of the instruction and operation manuals for the Metering System,

including for any component part of the Metering System.

10.2 **Installation of Metering System and Back-Up Metering System.**

The Company, at its own expense, shall procure, install, own and maintain the Metering System and the Offtaker, at its own expense, shall procure, install, own and maintain the Back-Up Metering System.

10.3 **Testing of Metering System and Back-Up Metering System.**

- (a) The Company shall initially test the accuracy of and calibrate or recalibrate, if necessary, the Metering System in accordance with **Appendix E (Metering)** by the later of fifteen (15) Days after the Metering System is installed or five (5) Days prior to the date scheduled for initial testing of the Plant to begin, and thereafter at intervals of not more than one hundred eighty (180) Days after giving the Offtaker no less than forty-eight (48) hours advance notice. The Offtaker may have a representative present during any such testing, as well as during any inspection of the Metering System or adjustment thereof.
- (b) The Company shall also test the Metering System at any other time reasonably requested by the Offtaker, such additional testing to be at the Offtaker's expense unless the test indicates that the Metering System is inaccurate by more than two-tenths of a per cent (0.2%), in which case the Company shall bear the cost of the additional test. The Offtaker shall have a representative present during any such testing, as well as during any inspection of the Metering System or adjustment thereof.
- (c) The Offtaker shall initially test the accuracy of and calibrate or recalibrate, if necessary, the Back-Up Metering System in accordance with **Appendix E (Metering)** by the later of fifteen (15) Days after the Back-Up Metering System is installed or five (5) Days prior to the date scheduled for initial testing of the Plant to begin, and thereafter at intervals of not more than one hundred eighty (180) Days after giving the Company no less than forty-eight (48) hours advance notice. The Company may have a representative present during any such testing, as well as during any inspection of the Back-Up Metering System or adjustment thereof.
- (d) The Offtaker shall also test the Back-Up Metering System at any other time reasonably requested by the Company, such additional testing to be at the Company's expense unless the test indicates that the Back-Up Metering System is inaccurate by more than two-tenths of a per cent (0.2%), in which case the Offtaker shall bear the cost of the additional test. The Company shall have a representative present during any such testing, as well as during any inspection of the Back-Up Metering System or adjustment thereof.
- (e) When on the Site, the Offtaker shall, and will procure that its representative(s), shall comply with all reasonable instructions of the Company and the Contractors and, shall not interfere with or hinder the activities of the Company or the Contractors and, notwithstanding any other provision in this Agreement to the contrary, shall indemnify and hold the Company, the Contractors, their subcontractors and each of their respective directors, officers and employees harmless from any loss or damage sustained as a result of the negligent acts or negligent omissions of the Offtaker or its representative or breaches by the Offtaker of its obligations pursuant to **Sections 10.3(a) and 10.3(b)** but only to the extent that such loss or damage is not covered by insurance obtained by the Company or the Contractors.

10.4 Electronic Data Recording; Reading of Meters for Verification.

- (a) The Company shall, in relation to the Metering System and the Offtaker, shall in relation to the Back-Up Metering System, at the respective Parties own cost and expense, provide and install electronic data recording systems capable of recording the Net Electrical Energy measured by the Metering System or the Back-Up Metering System (as the case may be) on a continuous basis, storing such recordings for not less than ninety (90) Days and transmitting this data to the Offtaker by secure wireless, mobile or other secure means of telecommunications. Subject to the provisions of **Section 9.4(d)** of this Agreement and verification of the data recording system pursuant to **Section 10.4(b)** of this Agreement, the Parties agree that the information contained in or obtained from such electronic data recording systems shall be used to determine the Net Electrical Energy of the Plant;
- (b) The information contained in the electronic data recording system shall be verified by checking that the sum of the hourly readings in the electronic data recording system over a specified period are consistent with the totalised readings for the Metering System (or, if applicable, the Back-Up Metering System) over the same period (determined by subtracting the totalised reading at the beginning of the period from the totalised reading at the end of the period) as taken by reading of the installed meters rather than in reliance upon the electronic data recording system. In connection with the verification of the information contained in the electronic data recording system the following procedures shall apply:
 - (i) the totalised readings of the Metering System and the Back-Up Metering System (taken by meter readings) shall be read on the Commercial Operation Date and thereafter monthly on the last Day of each month or such other Day as may be mutually agreed upon by the Parties;
 - (ii) the Company shall take such reading at 12:00 hours unless otherwise mutually agreed by the Parties;
 - (iii) the Offtaker shall have a representative present during any such reading;
 - (iv) such reading shall be jointly taken and recorded;
 - (v) the Company shall maintain a log of all such meter readings; and
 - (vi) the recorded measurements for each hour during the relevant period and the totalised recorded measurements shall be delivered by the Company to the Offtaker within two (2) Days after the readings are taken.
- (c) The Metering System shall be used to measure the Net Electrical Energy and other output; provided, however, that during any period when the Metering System is out of service as a result of maintenance, repairs or testing, then the best available information, which may include the Back-Up Metering System, shall be used to measure the Net Electrical Energy and other applicable outputs.
- (d) If, in any test carried out on the Metering System, the Metering System is found to be inaccurate by more than as is permitted in **Appendix E (Metering)**, or is otherwise unavailable or functioning improperly, then the correct amount of Net Electrical Energy delivered to the Offtaker for the actual period during which inaccurate measurements



were made, if any, shall be determined as follows:

- (i) the readings of the Back-Up Metering System shall be used to calculate the correct amount of Net Electrical Energy, unless a test of such Back-Up Metering System reveals that the Back-Up Metering System is inaccurate by more than as permitted in **Appendix E (Metering)** or is otherwise unavailable or functioning improperly;
- (ii) if the Back-Up Metering System is found to be inaccurate by more than as permitted in **Appendix E (Metering)** or is otherwise unavailable or functioning improperly, then the Company and the Offtaker shall jointly prepare an estimate of the correct reading on the basis of all available information and such guidelines as may have been agreed to between the Company and the Offtaker; and
- (iii) if the Offtaker and the Company fail to agree upon an estimate for the correct reading, the Company will estimate the reading and any dispute shall be referred by either Party for resolution in accordance with **Article 22 (Dispute Resolution)** of this Agreement,

and the difference between the previous payments by the Offtaker for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to the Company under this Agreement, as appropriate, with interest at the Late Payment Rate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date which is midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Metering System was last tested and found to be accurate within the amount permitted in **Appendix E (Metering)** and not otherwise functioning improperly.

10.5 **Tampering with the Metering System and the Back-Up Metering System.**

- (a) The Company shall not tamper, and shall ensure that its employees, Contractors or subcontractors of any tier do not tamper, with the Metering System or the Back-Up Metering System.
- (b) Should the Company breach the foregoing covenant, the Company shall:
 - (i) take all remediable action reasonably acceptable to the Offtaker to ensure that such tampering does not reoccur, including the development or addition of security systems; and
 - (ii) as liquidated damages, compensate the Offtaker for four (4) times the amount or reasonably estimated amount of any overpayment by the Offtaker resulting from such tampering, which for purposes of such determination shall be assumed to have occurred immediately after the last known accurate test of the Metering System or, if applicable, the Back-Up Metering System (unless the Company demonstrates to the reasonable satisfaction of the Offtaker, or the outcome of the dispute resolution process under **Article 22 (Dispute Resolution)** of this Agreement is, that the tampering did not occur until a later date, in which case such later date shall be used as the reference date for determination of such amount).



10.6 **Sealing of Metering System and the Back-Up Metering System.**

The Metering System and the Back-Up Metering System shall comply with the specification in **Appendix E (Metering)** and shall be jointly sealed. Such seals shall only be broken by employees of the Company. The Offtaker shall be given at least twenty-four (24) hours advance notice of the breaking of seals on the Metering System or the Back-Up Metering System. Such notice shall specify the time at which a meter seal will be broken by the employees of the Company, and the Offtaker shall be given an opportunity to be present when such seals are broken.

10.7 **Repair, Replacement or Recalibration of Metering System.**

When any component of the Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Company shall forthwith repair, recalibrate or replace such component at its expense. When any component of the Back-Up Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Offtaker shall forthwith repair, recalibrate or replace such component at its expense. The recalibration of the Metering System or the Back-Up Metering System, as the case may be, shall be witnessed by both the Offtaker and the Company. Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component of, the Metering System or the Back-Up Metering System, as the case may be, the Metering System or the Back-Up Metering System, as the case may be, shall be sealed.

10.8 **Protection and Communications Systems.**

The Company, at its sole cost and expense, shall provide all protection and communication systems requirements, all in accordance with **Appendix E (Metering)**.

11 **ARTICLE 11 – INTERCONNECTION**

11.1 **Transmission Facilities.**

The Company shall be responsible for the design, construction, installation and commissioning of the Offtaker Interconnection Facilities in accordance with the terms of this Agreement.

11.2 **Handover of Offtaker Interconnection Facilities.**

- (a) On the Commercial Operations Date, all risks and rewards of ownership of the Offtaker Interconnection Facilities shall pass to the Offtaker and the Company shall promptly enter into such documentation as may be reasonably required to transfer the Offtaker Interconnection Facilities to the Offtaker and pass the benefit of all warranty rights and claims (if any) to the Offtaker.
- (b) From the Commercial Operations Date, the Offtaker shall be responsible for the operation and maintenance of the Offtaker Interconnection Facilities and the Company shall have no further liability in respect of such Offtaker Interconnection Facilities.
- (c) The Offtaker shall indemnify the Company for all costs, claims, liabilities, expenses, suits, actions or proceedings whatsoever arising out of the Company's ownership of the Offtaker's Interconnection Facilities after the Commercial Operations Date, provided always that the Company is not in breach of its obligations pursuant to this Agreement.



11.3 Testing.

The Parties shall cooperate in testing the Offtaker Interconnection Facilities in accordance with the provisions of **Appendix B (Project Implementation Schedule)** and at such other times thereafter as either Party may reasonably require.

12 **ARTICLE 12 - COVENANTS**

12.1 Amendments to Project Agreements.

Promptly upon the execution and delivery thereof, the Company shall deliver to the Offtaker any material amendments, modifications or supplements to, or consents to any change of any provision of or grants of any waiver under, any of the Project Agreements, with respect to such matters as affect the obligations of the Parties hereunder.

12.2 Compliance with Laws.

The Company and the Offtaker agree that all applicable Legal Requirements shall govern their performance of this Agreement and each respectively shall comply in all material respects with and shall keep in full force and effect all Governmental Authorisations required to be in their respective names for the performance of their respective obligations under this Agreement.

13 **ARTICLE 13 - MONITORING, RECORDS, REPORTS AND AUDIT**

13.1 Monitoring Rights; Reports.

- (a) The Offtaker and its duly appointed representatives, shall have the right, with the Company's prior approval (which shall not be unreasonably withheld), to (i) monitor the Project and the Site (and construction of the Plant thereon), and (ii) review and make copies as reasonably requested by the Offtaker of all materials required to be obtained and retained by the Company pursuant to **Section 4.4 (Technical Documentation)** and all materials pertinent to the exercise of the Offtaker's audit rights pursuant to **Section 13.2**. The purpose of such monitoring and review shall be to determine, in the case of engineering, procurement and construction, whether the Plant is designed, engineered, manufactured, supplied, procured, transported, erected, constructed, installed, tested and commissioned in accordance with the design and equipment parameters set forth in **Appendix A (Plant Description, Design Conditions and Technical Data)**, and, in the case of operations, to determine whether the Plant is being operated and maintained in accordance with the terms of this Agreement. The Company shall permit the Offtaker and its duly authorised representatives to conduct such monitoring and review during normal business hours upon reasonable notice to the Company. The Offtaker shall be entitled to conduct such monitoring and review no more than once every month. Such monitoring and review shall be conducted in the presence of and through a representative of the Company designated by the Company for this purpose. The Company agrees to designate such a representative or representatives and to make such representative available for all such monitoring and review.

13.2 Books and Records; Audit.

- (a) The Company shall maintain proper books and records in accordance with Legal Requirements.



- (b) The Offtaker and its designees may at reasonable times during the Term, and at its own expense, conduct audits as to the Company pertaining to metering, billing, direct pass-through elements of the Price, adjustments of the Price, indemnity claims, termination payments, reimbursements and any other charges to the Offtaker based on the Company's costs, in all such cases for the purpose of determining whether the Company's charges to the Offtaker have been computed in accordance with the provisions of this Agreement.
- (c) Each Party shall have the right, upon reasonable prior written notice to the other Party, to examine and/or make copies of the records and data referred to in **Section 13.2(b)** at any time during normal office hours during the period such records and data are required to be maintained. All such records and data shall be maintained for a minimum of sixty (60) months after the creation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties. All such records and data so obtained shall be treated as Confidential Information.

13.3 **Disclaimer.** The Company:

- (a) understands and agrees that any receipt of any matter or review thereof conducted by the Offtaker is solely for its own information and accordingly by conducting such review the Offtaker makes no endorsement of the design or representation or warranty of the safety, durability or reliability of the Plant, or any part thereof; and
- (b) shall in no way represent to any third party that, as a result of any receipt of any matter or review thereof by the Offtaker, the Offtaker is responsible for the engineering or construction or soundness of the Plant, or any part thereof.

13.4 **Proviso.**

No exercise of any of the Offtaker's prerogatives or rights pursuant to this **Article 13 (Monitoring, Records, Reports, Audit)** or otherwise in this Agreement shall extend to proprietary pricing and cost information of the Company (except insofar as such information is subject to audit by the Offtaker pursuant to **Section 13.2**), nor be permitted to hinder or impede the design, construction, management, or operation and maintenance of the Plant by the Company.

14 **ARTICLE 14 - INSURANCES**

14.1 **Insurance undertakings**

- (a) The Company shall, at its own cost and expense take out and maintain adequate insurance cover as is customary, desirable and consistent with Good Utility Practice and the Laws in respect of the Plant and (prior to the Commercial Operations Date) the Offtaker Interconnection Facilities.
- (b) The Company shall provide to the Offtaker from time to time copies of insurance policies effecting the insurance required to be taken out and maintained by the Company under **Section 14.1(a)**. The Offtaker may request (no more frequently than annually) the Company to provide proof that all relevant premiums have been paid and that the relevant policy or policies remain in existence.



(c) The Company shall apply all proceeds of any insurance claim made due to loss or damage to the Plant or (prior to the Commercial Operations Date) the Offtaker Interconnection Facilities (other than claims under any loss of revenue policies) towards reinstatement, reconstruction, replacement, repair or renewal of such loss or damage, unless:

- (i) the Offtaker, acting reasonably, otherwise agrees; or
- (ii) a Threshold Loss Event occurs.

15 ARTICLE 15 - INDEMNIFICATION

15.1 Indemnification by the Company.

The Company shall indemnify, defend and hold harmless the Offtaker, its officers, employees and representatives and its agents, contractors or licensees and their respective directors, officers and employees (herein referred to as the "**Offtaker Parties**"), from and against all Claims made against or suffered by any Offtaker Parties for any loss of or damage to property or death or injury to persons (except for workers' compensation claims), resulting from any negligent act or negligent omission of the Company or any Company Parties that arises out of any breach of this Agreement by the Company except to the extent such loss, damage, injury or death is attributable to the negligence or misconduct of, or breach of this Agreement by, the Offtaker or any Offtaker Parties or the failure of the Offtaker or any Offtaker Parties to take reasonable steps in mitigation thereof.

15.2 Indemnification by the Offtaker.

The Offtaker shall indemnify, defend and hold harmless the Company, its shareholders, directors, officers, employees and representatives and its Affiliates, agents, contractors or licensees and their respective directors, officers and employees (the "**Company Parties**"), from and against all Claims made against or suffered by any Company Parties for any loss of or damage to property or death or injury to persons (except for workers' compensation claims), resulting from any negligent act or omission of the Offtaker or any Offtaker Parties or breach of this Agreement by the Offtaker except to the extent such loss, damage, injury or death is attributable to the negligence or misconduct of, or breach of this Agreement by, the Company or any Company Parties or the failure of the Company or any Company Parties to take reasonable steps in mitigation thereof.

16 ARTICLE 16 - INDEMNIFICATION PROCEDURES

16.1 Final Determination.

The liability of the indemnifying Party to make a payment to the indemnified Party for any Claim under **Section 15.1** or **Section 15.2** above, as the case may be, shall become fixed upon any of the following events (each a "**Final Determination**").

- (a) the settlement of the Claim with the prior written consent of the indemnifying Party;
- (b) a final decision or arbitral award with respect to the Claim by the appropriate court of competent jurisdiction or arbitral tribunal of competent jurisdiction and expiration of applicable appeal periods, unless such decision or award is appealed; or



- (c) if appealed, a final non-appealable decision of a local or appellate court of last resort with respect to the Claim.

16.2 **Payment of Claim.**

All payments required to be made in respect of a Claim shall be made to the indemnified Party within thirty (30) Days after notice to indemnifying Party of the actual payment by the indemnified Party of an amount constituting a loss in respect of such Claim, but in no event earlier than ten (10) Business Days after the Final Determination of such Claim as provided in **Section 16.1**.

16.3 **Procedures.**

- (a) Each Party shall notify the other Party in writing of any matter potentially indemnifiable under this Agreement as soon as such Party becomes aware of a potentially indemnifiable event; provided that the failure to provide timely notice shall not reduce the indemnifying Party's obligations except to the extent of any additional losses suffered by the indemnified Party as a result of the indemnified Party's failure to provide timely notice.
- (b) The indemnifying Party may, at its option and at its expense, contest, defend and control the contest and defence of any Claim with respect to which it may be liable to the indemnified Party and with respect to which it or indemnified Party is named as a party.
- (c) If the indemnified Party is also named as a party to any proceeding, the indemnified Party shall have the right to retain counsel at its own expense to advise it with respect to such contest and defence, and, unless the interests of the indemnifying Party and the indemnified Party with respect to such Claim are adverse, the indemnifying Party shall (x) keep the indemnified Party and its counsel reasonably informed as to the progress of such contest and defence, (y) to the extent reasonably practicable give the indemnified Party and its counsel the opportunity to review and comment in advance on all written submissions and filings relevant to the Claim; and (z) consider in good faith any reasonable suggestions made by the indemnified Party or its counsel or the request of the indemnified Party and its counsel to submit documentation or attend those portions of any meetings and proceedings that relate to the Claim.
- (d) Neither Party shall be indemnified by the other Party to the extent such Party has received payment for a Claim from another source, including insurance. If after receipt of payment from the indemnifying Party in respect of a Claim the indemnified Party shall later receive a payment from another source, including insurance, in respect of such Claim, the indemnified Party shall promptly pay to the indemnifying Party an amount equal to the amount of the payment received from such other source in respect of such Claim (provided, that the indemnified Party shall not be obligated to pay an amount in excess of the amount paid by the indemnifying Party to the indemnified Party).
- (e) The indemnifying Party shall pay to the indemnified Party all reasonable costs and expenses incurred by the indemnified Party in the enforcement of this **Section 16.3**, if (and only if) the indemnifying Party admits, or is adjudged, to have breached its obligation to indemnify the indemnified Party for a Claim.



17 ARTICLE 17 - FORCE MAJEURE

17.1 Force Majeure.

Subject to **Section 17.6**, An "Event of Force Majeure" shall mean any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

- (a) such circumstance, despite the exercise of reasonable diligence, cannot be prevented, avoided or removed by such Party;
- (b) such circumstance prevents such Party from performing its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof;
- (c) with respect to the Company only and in respect of the construction of the Plant only, if such circumstance occurs prior to the Commercial Operation Date, such event materially delays the critical path schedule for construction of the Plant, either (i) making it impossible for the Company to satisfy the Implementation Schedule or (ii) requiring the Company to incur material and substantial costs to satisfy the Implementation Schedule;
- (d) such circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under any of the Project Agreements; and
- (e) such Party has given the other Party notice in accordance with **Section 17.2(a)**.

17.2 Responsibilities of the Parties During Event of Force Majeure.

- (a) If either Party desires to invoke an Event of Force Majeure as a cause for delay in the performance of any obligation hereunder, it shall advise the other Party in writing of the date of commencement of such Event of Force Majeure, the nature and expected duration thereof and the actions to be taken in order to comply with requirements of this **Article 17 (Force Majeure)**; provided, that such notice must be sent by such Party not later than ten (10) Days after the date on which such Party first had knowledge of the effect of such Event of Force Majeure. If a Party does not deliver such notice in accordance with the terms hereof, such Party shall not be entitled to invoke the benefits of this **Article 17 (Force Majeure)**.
- (b) The Parties:
 - (i) shall make all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure including recourse to alternate sources of services, equipment and materials and construction equipment; and
 - (ii) shall make all reasonable endeavours to ensure resumption of normal performance of this Agreement after the termination of any Event of Force Majeure and shall otherwise perform their obligations as herein agreed to the

maximum of their ability.

- (c) Within three (3) Days following knowledge of the termination of any Event of Force Majeure, the Party having invoked such Event of Force Majeure as a cause for such delay shall submit to the other Party reasonable proof of the nature of such delay and its effect upon the performance of the obligations of such Party under this Agreement.
- (d) With respect to the Company only, if an Event of Force Majeure occurs that affects the Company, such event may be invoked only with respect to any part of the Plant affected by such event and not with respect to any other part of the Plant not so affected.

17.3 **Events of Natural Force Majeure or Events of Political Force Majeure.**

Events of Force Majeure shall consist of "Events of Natural Force Majeure" and "Events of Political Force Majeure".

(a) "Events of Political Force Majeure" means:

- (i) acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving Sierra Leone;
- (ii) acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within Sierra Leone;
- (iii) a Change in Law;
- (iv) Transmission System Force Majeure (with the exception of a Transmission System Force Majeure event pursuant to Section 17.3(b)(vi));
- (v) action or failure to act by a Governmental Instrumentality, including any Governmental Authorisation (i) ceasing to remain in full force and effect or (ii) not being issued or renewed upon application having been properly made; and
- (vi) boycott, sanction or embargo imposed directly by the government of the country from which either the solar PV panels or inverters will be supplied during the period up to and including but not after the Commercial Operation Date on Sierra Leone.

(b) "Events of Natural Force Majeure" means those Events of Force Majeure not constituting Events of Political Force Majeure, including, but not limited to:

- (i) lightning, fire, earthquake, tsunami, unusual flood, storm, cyclone, typhoon, tornado or other natural calamity or act of God;
- (ii) epidemic or plague;
- (iii) strikes, works to rule or go-slows (other than by employees of the Party



- claiming the same as an Event of Force Majeure or of any shareholders of such Party, or by employees of any direct or indirect affiliate, parent or subsidiary of any shareholder of such Party);
- (iv) accidents or explosions; and
- (v) Transmission System Force Majeure as to which the action or inaction of a Governmental Instrumentality of Sierra Leone is not the controlling or contributing force that caused the occurrence of such event.

17.4 Effect of Events of Force Majeure – Relief from liability and extensions of time.

- (a) Subject to Section 17.2, on the occurrence and during the continuance of an Event of Force Majeure:
 - (i) neither Party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Events of Force Majeure Event;
 - (ii) any time limit or deadline for the performance by the Company of its obligations under this Agreement which are affected by such Event of Force Majeure shall be extended by one Day for each Day that the Company is unable to comply, or is delayed in complying with its obligations under this Agreement as a result of such Event of Force Majeure; and
 - (iii) the obligations of the Offtaker shall be suspended to the same extent as those of the Company.

17.5 Effect of Event of Political Force Majeure - Deemed Net Electrical Energy Payment.

If the Company is prevented from or delayed in:

- (a) constructing, testing, commissioning or completing the Plant ; or
- (b) generating, or delivering Net Electrical Energy from the Plant to the Offtaker,

as a result of, or as a result of the effects of, an Event of Political Force Majeure, then for each Day that such Event of Political Force Majeure Event is continuing, the Offtaker shall pay for the Deemed Net Electrical Energy Payment in accordance with the terms of **Appendix C (Calculation of Payment)**.

17.6 Effect of Natural Force Majeure – Extension of the Term

If an Event of Natural Force Majeure occurs after the Commercial Operation Date, the Company shall be entitled to an extension to the Term of one Day for each Day that the Company is unable to comply, or is delayed in complying with its obligations under this Agreement as a result of such Event of Natural Force Majeure.

17.7 Certain Delays not Excused.

Notwithstanding that an Event of Force Majeure otherwise exists, the provisions of this Article 17 (Force Majeure) shall not excuse:

- (a) failure of either Party to make any payment of money in accordance with its obligations under this Agreement due to the lack of funds only, including any commercial, economic or financial reason, such as, but not limited to, a Party's inability to make a payment or achieve a satisfactory rate of return or changes in market conditions;
- (b) late delivery of equipment, machinery, plant or materials caused by negligent acts or omissions on the part of the Company or any Contractor;
- (c) late performance by the Company or any Contractor caused by the Company's or such Contractor's failure to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour;
- (d) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
- (e) failure of either Party or the EPC Contractor to perform any of its obligations under this Agreement or the EPC Contract in accordance with the requirements thereof prior to the occurrence of an Event of Force Majeure; or
- (f) delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground or sea conditions or other similar reasonably foreseeable adverse conditions.

18 ARTICLE 18 – INCREASED COSTS

18.1 Consequences of Event of Political Force Majeure.

If the Company believes that an Event of Political Force Majeure or other event or circumstance stipulated in **Sections 3.4 and 5.3(b)** has occurred that will result in Increased Costs, the Company shall promptly deliver to the Offtaker a notice identifying such Event of Political Force Majeure or, as the case may be, other event or circumstance, and the Increased Costs that have resulted from such Event of Political Force Majeure, or, as the case may be, other event or circumstance, subject in any event to the obligation of the Company hereunder to minimise such Increased Costs in accordance with Good Utility Practice. The Company may from time to time deliver to the Offtaker additional notices with respect to any such Event of Political Force Majeure or, as the case may be, other event or circumstance, identifying additional Increased Costs that have resulted or are reasonably expected to result from such Event of Political Force Majeure or, as the case may be, other event or circumstance; provided, that any such additional notice shall be given not later than twelve (12) months after the Company knew of or should have known of such additional Increased Costs resulting from the occurrence of such Event of Political Force Majeure or, as the case may be, other event or circumstance.

18.2 Procedure.

- (a) Within seven (7) Days following the receipt of any notice specified in **Section 18.1** or

in **Sections 3.4, or 5.3(b)**, as applicable, the Parties shall meet at the offices of the Offtaker to discuss the subject matter of such notice. If within fourteen (14) Days after the commencement of such discussions, either Party disputes any of the contents of the notice, such dispute shall be submitted to an Expert. The Parties shall use their best endeavours to cause the Expert to render his determination not later than forty-five (45) Days after being appointed.

- (b) To the extent that a claim for Increased Costs resulting from the occurrence of an Event of Political Force Majeure or, as the case may be, other event or circumstance, is not disputed or has been allowed by the Expert, the appropriate components of the Price shall be adjusted so as: (i) to ensure that the Company has the same net, after-tax economic return as if such Increased Costs had not been incurred, and (ii) to be retroactive to the date upon which such Increased Costs were.
- (c) If within forty-five (45) Days following the allowance of or agreement upon any claim for Increased Costs, the Parties are unable to agree on the adjustment of the Price, the dispute regarding such adjustment shall be referred to an Expert. The Parties shall use their best endeavours to cause the Expert to render his determination not later than forty-five (45) Days after being appointed.

18.3 **Aggregation of Claims.**

For purposes of this **Article 18 (Increased Costs)** the Company shall not be entitled to assert any claim for Increased Costs until such time as all claims of the Company under **Section 18.2** exceed the equivalent of \$300,000 (three hundred thousand US Dollars) in the aggregate during the Term, at which time all such claims of the Company may be asserted.

19 **ARTICLE 19 - TERMINATION**

19.1 **Company Event of Default.**

Each of the following events shall be a Company Event of Default:

- (a) the failure of the Company to achieve the Commercial Operation Date on or before three hundred (300) Days after the Scheduled Commercial Operation Date which default is not remedied within sixty (60) Days after notice from the Offtaker to the Company demanding remedy thereof;
- (b) the revocation, due to the act, omission or default of the Company, of the generation license or relevant environmental approval issued by a Governmental Instrumentality and required to be obtained and maintained by the Company in order that it may operate the Plant in accordance with the Laws;
- (c) the occurrence of any of the following events:
 - (i) the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding relating to the Company;
 - (ii) the appointment of a trustee, liquidator, custodian, or similar person in a proceeding referred to in **Section 19.1(c)(i)**, which appointment has not been set aside or stayed within sixty (60) Days of such appointment;



- (iii) the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of the Company, which order has not been set aside or stayed within sixty (60) Days; or
- (d) the breach by the Company of any of its material obligations under this Agreement (other than any such breach referred to in **Sections 19.1(a)** or **(b)(d)**) which is not remedied within sixty (60) Days after notice from the Offtaker to the Company stating that such a breach has occurred, identifying the breach in question in reasonable detail, and demanding remedy thereof.

provided that, in the case of any Event of Default referred to in **Sections 19.1(a)** or **(b)**, if, notwithstanding the exercise of reasonable endeavours by the Company, such default cannot be cured within sixty (60) Days after notice from the Offtaker, the Company shall be afforded a further period of sixty (60) Days within which to cure such default; provided always that the Company shall throughout such further sixty (60) Day-period, exercise reasonable continuous efforts to cure the default.

19.2 **Offtaker Events of Default.**

Each of the following events shall be an Offtaker Event of Default:

- (a) the failure by the Offtaker to make any payment of any Invoice, thirty (30) Days after it has become due and payable unless such payment is made by way of a claim under any Letter of Credit or out of the funds in the Escrow Account;
- (b) the occurrence of a Government Default;
- (c) the occurrence of any of the following events:
 - (i) the wilful alteration of or tampering by the Offtaker or its employees or agents with the Project or Transmission System without the prior written consent of the Company, except in situations where such actions are taken to prevent immediate injury, death, or property damage and the Offtaker uses its best endeavours to provide the Company with advance notice of the need for such actions;
 - (ii) any material breach by the Offtaker of any representation, warranty or covenant in this Agreement; or
 - (iii) the expropriation or compulsory acquisition of the Site (including repudiation of the Land Agreement by the lessor), the Plant, or any material portion thereof, that materially and adversely affects the operation of the Plant or any material asset of the Company, or any shares or other interest in the Company.

The Parties agree and acknowledge that the Offtaker Events of Default constitute material defaults for the purposes of Section 20 of the PPP Act 2010.



19.3 **Termination for Non-Fulfilment of Conditions Precedent to Closing Date.**

The Company or the Offtaker may terminate this Agreement by giving written notice to the other Party if any condition precedent to the Closing Date has not been satisfied by 31 December 2015 unless extended by the mutual agreement of the Parties. Upon the delivery of such notice of termination, this Agreement shall terminate on the date specified in such notice.

19.4 **Termination upon Company or Offtaker Event of Default.**

Upon the occurrence of a Company Event of Default, or an Offtaker Event of Default, the following procedure shall apply:

- (a) In respect of an Offtaker Event of Default or a Company Event of Default, the Party that is not the subject of such Event of Default, may give a notice (the "**Termination Notice**") to the other Party, specifying in reasonable detail the Company Event of Default, or the Offtaker Event of Default as the case may be, giving rise to such Termination Notice, and the date on which the Party giving such Termination Notice proposes to terminate this Agreement, which date shall not be less than thirty (30) Days after the date of such notice (or such longer period as may be provided herein).
- (b) During the period of thirty (30) Days (or such longer period as may be provided herein and set forth in the Termination Notice or as the Parties may otherwise agree) following the giving of such Termination Notice (the "**Cure Period**"), the Parties shall consult as to what steps shall be taken with a view to (i) mitigating the consequences of and (ii) curing such Company Event of Default or the Offtaker Event of Default.
- (c) At the expiry of the Cure Period, if the applicable Company Event of Default or the Offtaker Event of Default has not been cured and the Parties have not agreed to extend the Cure Period, the Party having given the Termination Notice may terminate this Agreement by giving written notice thereof to the other Party, whereupon this Agreement shall terminate on the date specified for termination in such notice or such later date as the Parties shall have agreed and **Section 19.7** shall apply.

19.5 **Termination upon Prolonged Event of Force Majeure.**

- (a) The Company or the Offtaker may terminate this Agreement on the occurrence of a Prolonged Event of Natural Force Majeure or a Prolonged Event of Political Force Majeure; provided that, if the Offtaker elects in such event to continue paying the Deemed Net Electrical Energy Payment determined in accordance with **Appendix C (Calculation of Payment)**, then the Company shall not have the right to terminate this Agreement.
- (b) If a Party has the right to terminate this Agreement pursuant to this **Section 19.5**, it may give notice to the other Party specifying the date on which the party giving such notice proposes to terminate this Agreement, which date shall not be less than sixty (60) Days after the date of such notice. Upon the occurrence of such date, subject to the satisfaction of any payment or performance obligations pursuant to the provisions hereof, this Agreement shall terminate unless the Parties have agreed to extend such date.



19.6 **Termination upon Expiration of Term.**

- (a) Unless terminated earlier in accordance with the provisions of this Agreement, this Agreement shall terminate on the last Day of the Term.
- (b) Unless the Offtaker elects in writing to the contrary the Company shall upon the last Day of the Term transfer its rights, title and interest in and to the Plant and the Site to the Offtaker (or any person nominated by the Offtaker for no additional payment in accordance with the provisions of **Section 18.9**).

19.7 **Consequences of Termination.**

- (a) In the event of termination of this Agreement for a Company Event of Default, Offtaker Event of Default, Prolonged Event of Natural Force Majeure or Prolonged Event of Political Force Majeure, the compensation provisions of the Implementation Agreement shall apply.
- (b) In the event of a termination of this Agreement due to the failure of the Closing Date to occur as specified in **Section 19.3**, neither Party shall have any liability to the other Party.

If either Party elects to terminate this Agreement as provided above, it shall do so by giving notice thereof to the other Party. The transfer (if applicable) of the Project by the Company and the purchase thereof by the Offtaker (if applicable) shall be completed within sixty (60) Days after receipt of such notice unless otherwise agreed by the Parties.

19.8 **Other Rights and Remedies.**

Article 19 (Termination) sets forth the sole and exclusive grounds upon which either Party shall be entitled to terminate this Agreement, provided that upon the breach by either Party hereto of any covenant or warranty hereunder, the Party damaged by any such default or breach may, in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with **Article 22 (Dispute Resolution)** to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy), or to seek specific performance by the other Party of such other Party's obligations under this Agreement.

19.9 **Transfer of the Plant**

If the Company's right, title and interest in the Project is required to be transferred to the Offtaker (or any person nominated by the Offtaker) pursuant to this Agreement the Company shall transfer to the Offtaker, free and clear of all Liens, all of the Company's rights, title and interests in the Project and the Site, including, insofar as they are part of or used in the Project, all of the Company's right, title and interest in:

- (a) all raw materials, consumables and spare parts;
- (b) all tangible personal property;
- (c) all intangible personal property, including patents, patent licenses, patent applications, trade names, trademarks, trademark registrations and applications therefor,



trademarks, copyrights, know-how, secret formulae and any other intellectual property rights;

- (d) all buildings and fixtures;
- (e) computerised and non-computerised copies of this Agreement, in respect of the Company's right, title and interest in the Project; and records, reports, data, files, and information;
- (f) all drawings, test results, and documents relating to the Project; all warranties of equipment, materials and work; and all contract rights and insurance policies;
- (g) all work in progress under contracts with vendors, suppliers, contractors and subcontractors; and
- (h) all rights with respect to any insurance proceeds payable to or for the account of the Company, but unpaid at the date of termination of this Agreement, in respect of the Company's right, title and interest in the Project,

Provided that, in all cases it shall not be obliged to make any such transfer until all payments owing to the Company pursuant to this Agreement or the Implementation Agreement have been made.

20 ARTICLE 20 - REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Offtaker as of the Effective Date and as of the Closing Date as follows:

20.1 Power, Authority, No Contravention.

- (a) The Company is duly organised, validly existing and in good standing under the Laws of Sierra Leone and has the right, power and authority to enter into this Agreement and to perform in all material respects its obligations hereunder.
- (b) The execution of, delivery of and performance under this Agreement by the Company have been duly authorised by all necessary corporate action of the Company, and this Agreement constitutes the valid, binding and enforceable obligation of the Company, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganisation, moratorium, other similar laws now or hereafter in effect relating to or affecting creditor's rights or the relief of debtors generally and by general principles of equity and public policy and the discretion of the court before which any proceeding therefor may be brought, whether enforceability is considered in a proceeding in law or equity.
- (c) Every consent, approval, authorisation or order of any Governmental Instrumentality or third party required with respect to the Company in connection with its execution and delivery of, and performance of its obligations under this Agreement has been obtained other than those which are not required at the time this representation is made or deemed to be repeated.



20.2 **Litigation.**

- (a) There is no pending or, to the best of the Company's knowledge, threatened, action, suit, investigation, arbitration or other proceeding that would impair the ability of the Company to perform its obligations under this Agreement.
- (b) To the best of the Company's knowledge, there are no writs, judgments, injunctions, decrees or similar orders of any Governmental Instrumentality outstanding against the Company which would materially adversely affect its occupancy, use, operation or maintenance of the Site.

20.3 **No Conflicts, Violations or Breaches.**

The execution and delivery of this Agreement by the Company and the performance by the Company of its obligations under this Agreement do not and will not violate, conflict with or result in a breach of any decree, memorandum and/or Articles of incorporation, charter, bylaw, Law, Contract or obligation to which the Company is a party or by which the Company or any of its properties are bound.

20.4 **No Agents.**

No agent, broker or finder has been engaged by the Company or any of its Affiliates in connection with the transactions contemplated by this Agreement. If any Claim for any agent's, broker's or finder's fees or commissions is asserted in connection with the negotiation, execution or consummation of this Agreement or of any of the transactions contemplated hereby through the Company, then the Company shall protect, indemnify, hold harmless and defend the Offtaker from and against such Claim.

20.5 **Continuing Warranties.**

The warranties in **Sections 20.1 to 20.4** to above shall be deemed to be repeated by the Company on and as of December 31 of each year during the Term as if made with reference to the facts and circumstances on such date. The Company shall promptly notify the Offtaker in writing if any of the warranties given by it in **Sections 20.1 to 20.4** ceases to be true in any material respect.

20.6 **No Breach.**

Section 19.7 hereof is intended only as a provision for the notification of information by the Company to the Offtaker, and any breach by the Company of its obligations under **Section 20.5** hereof shall not in any circumstances constitute a Company Event of Default pursuant to **Section 19.1** or otherwise constitute a breach by the Company of this Agreement.

21 **ARTICLE 21 - REPRESENTATIONS AND WARRANTIES OF THE OFFTAKER**

The Offtaker hereby represents and warrants to the Company as of the Effective Date and as of the Closing Date as follows:

21.1 **Power and Authority.**

- (a) The Offtaker is duly organised, validly existing and in good standing under the Laws of Sierra Leone and has the right, power and authority under the Law to enter into this



Agreement and to perform in all material respects its obligations hereunder.

- (b) The execution of, delivery of and performance under this Agreement by the Offtaker will on the Closing Date have been duly authorised by all necessary corporate action of the Offtaker, and this Agreement will on the Closing Date constitute the valid, binding and enforceable obligation of the Offtaker, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganisation, moratorium, other similar laws now or hereafter in effect relating to or affecting creditor's rights or the relief of debtors generally and by general principles of equity and public policy and the discretion of the court before which any proceeding therefor may be brought, whether enforceability is considered in a proceeding in law or equity.
- (c) Every consent, approval, authorisation or order of any Governmental Instrumentality or third party required with respect to the Offtaker in connection with its execution and delivery of, and performance of its obligations under, this Agreement will on the Closing Date have been obtained other than those which are not required at the time this representation is made or deemed to be repeated.

21.2 **No Agents.**

No agent, broker or finder has been engaged by the Offtaker in connection with the transactions contemplated by this Agreement. If any Claim for any agent's, broker's or finder's fees or commissions is asserted in connection with the negotiation, execution or consummation of this Agreement or of any of the transactions contemplated hereby through the Offtaker, then the Offtaker shall protect, indemnify, hold harmless and defend the Company from and against such Claim.

21.3 **Continuing Warranties.**

The warranties in **Sections 21.1 and 21.2** above shall be deemed to be repeated by the Offtaker on and as of December 31 of each year during the Term as if made with reference to the facts and circumstances on such date. The Offtaker shall promptly notify the Company in writing if any of the warranties given by it in **Sections 21.1 and 21.2** cease to be true in any material respect.

21.4 **No Breach.**

Section 21.3 hereof is intended only as a provision for the notification of information by the Offtaker to the Company, and any breach by the Offtaker of its obligations under **Section 21.3** hereof shall not in any circumstances constitute an Offtaker Event of Default pursuant to **Section 19.2** or otherwise constitute a breach by the Offtaker of this Agreement.

22 **ARTICLE 22 - DISPUTE RESOLUTION**

22.1 **Negotiations.**

- (a) The Parties hereto agree to attempt to resolve any dispute, controversy, difference or claim ("**Dispute**") between them in connection with this Agreement promptly, equitably and in a good faith manner. To this end, each of the Parties shall designate in writing to the other Party from time to time a representative who shall be authorised to resolve by an agreement between them any Dispute in connection with this Agreement and, unless otherwise expressly provided herein, to exercise the authority of such Party to reach such an agreement.



- (b) If any Dispute is not resolved between the Parties pursuant to this **Section 22.1** within thirty (30) Days from the date on which one Party receives written notification from the other Party that a Dispute exists in connection with this Agreement, then such Dispute shall be settled exclusively and finally by arbitration in accordance with **Section 22.2**.

22.2 Recommendation by Expert

- (a) Any Dispute subject to this **Section 22.2** shall be referred to an expert for a recommendation in accordance with the following provisions:
- (b) The expert shall have demonstrated expertise in the area to which such Dispute relates and shall not be an agent, employee, or contractor or a former agent, employee, or contractor of either Party (the "**Expert**").
- (c) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an expert and nominating the person it proposes to be the Expert. The other Party shall, within fifteen (15) Days of receiving such notice, notify the initiating Party whether such person is acceptable. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable, the Parties shall meet and discuss in good faith for a period of fifteen (15) Days to agree upon a person to be the Expert. If the Parties fail to meet or are unable to agree at the end of such fifteen (15) Day period, either Party may request the International Chamber of Commerce to nominate the expert, and such person so nominated shall be the Expert for the purpose of resolving the Dispute.
- (d) Consideration of the Dispute by an expert shall be initiated by the Party seeking consideration of the Dispute by the Expert submitting within ten (10) Business Days of the appointment of the Expert to both the Expert and the other Party written materials setting forth:
 - (i) its description of the Dispute in reasonable detail;
 - (ii) a statement of the initiating Party's position; and
 - (iii) copies of records supporting the initiating Party's position.
- (e) Within ten (10) Business Days of the date that a Party has submitted the materials described in the preceding sentence, the other Party may submit to the Expert and to the initiating Party:
 - (i) its description of the Dispute in reasonable detail;
 - (ii) a statement of the responding Party's position; and
 - (iii) copies of any records supporting the responding Party's position.
- (f) In addition to the material provided to the expert by the initiating Party, the Expert shall consider any such information submitted by any responding Party within such ten (10) Business Day period and, in the Expert's discretion, any additional information submitted by either Party to the Expert (with a copy to the other Party) at a later date.



- (g) Each Party shall designate one person knowledgeable about the issues in dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the expert.
- (h) Except as provided in **Section 22.2(i)** of this Agreement with respect to the payment of costs, the proceedings under this **Section 22.2** shall be without prejudice to either Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings, including an arbitration proceeding under **Section 22.3** of this Agreement. The process under this **Section 22.2** shall not be regarded as an arbitration, and the laws relating to commercial arbitration shall not apply.
- (i) When consideration of the Dispute by an expert is initiated, the expert shall be requested to provide a recommendation within fifteen (15) Business Days after the expiry of the ten (10) Business Day response period provided in **Section 22.2(e)**. If the Expert's recommendation is given within such fifteen (15) Business Day period, or if the Expert's recommendation is given at a later time and no Party has at such time initiated any other proceeding concerning the Dispute, the Parties shall review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.
- (j) The costs of engaging an expert shall be borne equally by the Parties, and each Party shall bear its own costs in preparing materials for, and making presentations to, the Expert.

22.3 Arbitration.

- (a) It is specifically understood and agreed that any Dispute in connection with this Agreement that has not been resolved between the Parties pursuant to **Section 22.1** or **22.2** hereof may be submitted to arbitration irrespective of the amount in Dispute or whether such Dispute would otherwise be considered justiciable or ripe for resolution by any court. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.
- (b) Each arbitration between the Parties shall be held and finally settled in the City of London, England and shall be conducted pursuant to the Rules of Arbitration of the International Chamber of Commerce ("**ICC Rules**") in force when the arbitration commences.
- (c) The arbitration shall be conducted before an arbitral tribunal (the "**Tribunal**") composed of three (3) arbitrators. Each Party shall nominate an arbitrator, and the two Party-appointed arbitrators shall jointly nominate the third (who shall be the chairperson) within thirty (30) Days after the confirmation of the second arbitrator, failing which the chairman shall be appointed by the Secretary General of the ICC International Court of Arbitration (the "**ICC**").
- (d) Any arbitration commenced hereunder shall be completed within two hundred forty (240) Days of the appointment of the Tribunal absent agreement of the Parties to such arbitration. The Parties shall be entitled to discovery of documents only upon a finding



of good cause by the Tribunal. All direct testimony shall be offered by way of affidavit. The Party submitting an affidavit shall make the affiant available for cross-examination before the Tribunal. The Parties waive any claim to any damages in the nature of punitive, exemplary or statutory damages in excess of compensatory damages, and the Tribunal is specifically divested of any power to award such damages. The award of the Tribunal shall be final and binding on the Parties (*i.e.* not subject to appeal), and the Parties agree that an arbitration award may be entered in any court having jurisdiction thereof. The Tribunal shall have the right and authority to grant injunctive, declaratory and other equitable relief.

- (e) Only Persons who are engineers, attorneys, financial advisors, former judges, managers, executives and other professionals with technical or legal experience related to the design, construction, financing, ownership, operation and/or maintenance of power generation facilities shall be appointed as arbitrators. No arbitrator shall be a present employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party or a national of a state with which the domicile of any Party does not maintain diplomatic relations.
- (f) The arbitration shall be conducted in the English language and all documents submitted in connection with such proceeding shall be in the English language or, if in another language, accompanied by a certified English translation.
- (g) The Parties shall each pay one-half of any advance on costs set by the ICC. The Tribunal shall be entitled to allocate the costs of arbitration between the Parties, which costs shall be borne by each Party as determined in any arbitral award or awards by the Tribunal.

22.4 Continued Performance

During the pendency of any arbitration (a) the Company shall continue to perform its obligations under this Agreement to, among other things, provide the Net Electrical Energy; (b) the Offtaker shall continue to pay all amounts when due, in accordance with **Article 9 (Billing and Payment)**; and (c) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute.

23 **ARTICLE 23 - MISCELLANEOUS**

23.1 Notices.

Any notice or other communication from one Party to the other Party which is required or permitted to be made under the provisions of this Agreement shall be (a) made in the English language, (b) made in writing, (c) delivered personally (by hand delivery or by courier) to the address of the other Party which is shown below or to such other address as the other Party shall by notice require and (d) marked for the attention of the person(s) designated below or to such other person(s) as the other Party shall by notice require. Any notice or other communication made by one Party to the other Party in accordance with the foregoing provisions of this **Section 23.1** shall be deemed to be received by the other Party, if delivered by hand or by courier, on the Day on which it is left at that Party's address, or if sent by facsimile transmission, on the next Business Day following the Day on which it is sent to that Party's address.

If to the Company, to:

Africa Growth & Energy Solutions Ltd (trading as Solar Era)



Building 3

North London Business Park

Oakleigh Road South

London N11 1GN

Attention: The Directors

If to the Offtaker, to:

The Ministry of Energy of Sierra Leone

4th Floor, Electricity House

Siaka Stevens Street

Freetown, Sierra Leone

Attention: Hon. Minister of Energy

23.2 **Entire Agreement.**

This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter herein and the transactions contemplated herein, and any and all previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are merged herein and are superseded hereby.

23.3 **Waiver.**

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by both Parties. The failure or delay of either Party to require performance by the other Party of any provision of this Agreement shall not affect its right to require performance of such provision unless and until such performance has been waived by such Party in writing in accordance with the terms hereof. No waiver by either Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, shall be cumulative and not alternative.

23.4 **Amendment.**

No modification or amendment of any provisions of this Agreement shall be valid unless it is in writing and signed by both Parties.

23.5 **No Third Party Beneficiary.**

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties hereto to confer third-party beneficiary rights upon any other Person.

23.6 Assignment and Sale or Transfer.

- (a) For the purpose of financing the Project and in compliance with the Laws, the Company may charge or assign by way of security, in favour of the Financing Parties, its interests in:
- (i) this Agreement;
 - (ii) the Implementation Agreement;
 - (iii) any other agreement or document related to the Project;
 - (iv) the Site;
 - (v) the immovable property situated on the Site; or
 - (vi) the moveable property and intellectual property of the Company.
- and the Offtaker acknowledges that by signing this Agreement it has given its prior written consent to any transfer or assignment contemplated by this Section 23.6 for the purposes of the Public Private Partnership Act 2014.
- (b) The Offtaker is not permitted to sell, transfer, assign or novate its interests in this Agreement without the consent of the Company.
- (c) Subject to Section 23.6(a) the Company must notify the Offtaker upon it becoming aware of any proposed sale, transfer, novation, assignment or Change in Control. The Offtaker may only object to such a proposal on the following conditions:
- (i) it does so by written notice within 30 Days of receiving the Company's proposal;
 - (ii) it reasonably believes, and can prove, that the proposed third party is an organisation prohibited by the Government of Sierra Leone from working within, or owning a company working within, Sierra Leone; and
 - (iii) it sets out the grounds for objecting in its written objection,
- together, a "Valid Objection").
- (d) For the purposes of this Agreement, any sale, transfer, novation, assignment or Change of Control, to which the Offtaker makes a Valid Objection, shall be deemed null and void and the Company shall be deemed to be in a material breach of this Agreement.
- (e) This Agreement, as it may be amended from time to time, shall be binding upon and inure to the benefit of the Parties to it and their respective successors, legal representatives, and assigns permitted under this Agreement.

23.7 **Headings.**

The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

23.8 **Invalidity.**

The invalidity or unenforceability of any provisions of this Agreement shall be determined in accordance with **Section 22** hereof. The Parties hereby agree to use good faith efforts to negotiate an equitable adjustment to any provisions of this Agreement determined to be invalid or unenforceable with a view toward effecting the purposes of this Agreement, and the validity or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

23.9 **Governing Law.**

This Agreement shall be governed by and construed in accordance with the Laws of Sierra Leone.

23.10 **Counterparts.**

The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument; and, thereafter, each counterpart shall be deemed to be an original instrument as against any Party who has signed it.

23.11 **Saturdays, Sundays and Holidays.**

Whenever the date for the performance of any term, condition, obligation, covenant, agreement or provision required or provided under this Agreement falls on a Saturday, Sunday or legal holiday in Sierra Leone, such date shall be extended to the next succeeding Business Day.

23.12 **Consequential Loss.**

Neither Party shall be liable to the other Party for special, consequential, or punitive damages or indirect costs or expenses or loss of profits except to the extent expressly provided herein.

23.13 **Confidentiality.**

Each Party shall hold, and shall use its best endeavours to cause its shareholders and Affiliates, to hold, in strict confidence from any other Person (other than any shareholder, Affiliate or Financing Party) all documents and information concerning the other Party or any of its shareholders or Affiliates furnished to it or its advisors, consultants, contractors or agents by the other Party in connection with this Agreement or the transactions contemplated hereby ("**Confidential Information**"), unless (a) required to disclose any such information by judicial or administrative process (including in connection with obtaining from Governmental Authorities the necessary approvals of this Agreement and the transactions contemplated hereby) or by other requirements of Law, (b) disclosed to Persons providing or proposing to provide financing to the Company, (c) disclosed in or pursuant to the offering statement provided to potential investors in the Company, as the case may be, (d) disclosed in an action or proceeding brought by either Party in pursuit of its rights or in the exercise of its remedies hereunder, or (e) disclosed in accordance with the requirements of any of the Project

Agreements. Notwithstanding the foregoing, this **Section 23.13** shall not apply to such documents or information that were (i) previously known by the Party receiving such documents or information, (ii) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving Party, or (iii) later acquired by such receiving Party from another source if such receiving Party is not aware that such source is under an obligation to the other Party to keep such documents and information confidential.

23.14 Required Disclosure.

Any Party required by Law or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to **Section 23.13**, may make disclosure notwithstanding the provisions of such **Section**; provided, however, that the Party making the disclosure shall give prior notice to the other Party of the requirement and the terms thereof and shall cooperate to the maximum extent practicable to minimise the disclosure of the information. The Party disclosing such information shall use reasonable endeavours, at the other Party's cost, to obtain proprietary or confidential treatment of such information by the third party to whom the information is disclosed, and to the extent such remedies are available, shall use reasonable endeavours to seek protective orders limiting the dissemination and use of the information at the other Party's cost. Moreover, this Agreement does not alter the rights of either Party to object to the Law or proceedings requiring the disclosure.

23.15 Further Assurances.

The Parties shall at all times do all such further acts and execute and deliver such further deeds and documents as shall be reasonably required in order to perform and carry out the provisions of this Agreement.

23.16 Carbon Credits

The Offtaker acknowledges and agrees that all legal title and beneficial rights relating to any certified emission reduction unit or carbon credit unit issued pursuant to Article 12 of the Kyoto Protocol (or any equivalent arrangements that come into effect after the date of this Agreement) as a result of this Agreement or the Plant shall belong exclusively to the Company and, if requested by the Company, the Offtaker shall use its best endeavours to assist the Company in the issuance or realisation of the commercial benefit of any unit as described in this **Section 23.16** which commercial benefit will be allocated equally between the Offtaker and the Company.

23.17 Language.

This Agreement is being executed in the English language only and such version shall be the definitive version of this Agreement.

23.18 Sovereign Immunity.

- (a) The Parties unconditionally and irrevocably agree that the execution and performance of this Agreement constitute a private and commercial act. In addition, each of the Parties unconditionally and irrevocably:
 - (i) agrees that should any proceedings be brought against it or its assets in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, it will not claim immunity from such proceedings with respect



to itself or its assets (other than the Protected Assets);

- (ii) waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may acquire in the future whether characterised as sovereign immunity or otherwise in any jurisdiction in connection with any such proceedings including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court of tribunal and immunity from execution of a judgment;
- (iii) waives any requirement under the State Proceedings Act, 2000 for a Party to give prior notice before commencing proceedings against the Offtaker; and
- (iv) consents generally in respect of the enforcement of any judgement or arbitral award against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any assets whatsoever (other than the Protected Assets) irrespective of its use or intended use).

- (b) The Company hereby irrevocably waives any and all rights it may have to enforce any judgement or claim against the Protected Assets with respect to any claim against the Offtaker under this Agreement or any transaction contemplated by this Agreement.

23.19 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

23.20 Publicity.

Other than as ordered or required by Law or in the course of administrative or judicial proceedings, or in accordance with the requirements of any applicable stock exchange, neither Party shall issue any press release or make any other public announcement relating to the transactions contemplated by this Agreement without the prior written approval of the other Party as to the contents and the manner of presentation and publication of such press release or public announcement.

23.21 Relationship of the Parties.

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

23.22 Survival.

The covenants and agreements of the Parties contained in **Articles 9, 12, 15, 16, 17, 19, 22, and 23** (other than **Section 23.6**) hereof shall survive, as the case may be, any termination of this Agreement that occurs prior to the Closing Date as provided in **Section 19.4** or any termination that occurs prior to the expiration of the Term, for a period of two (2) years after such termination or expiration of this Agreement; provided, however, that with respect to the


confidentiality provisions of Section 23.13, (i) either Party shall be entitled to use such information as may be reasonably required in connection with the ownership and operation of the Project by such Party or such Party's assignee or transferee and (ii) each Party shall continue to be bound by such confidentiality provisions to the extent only that disclosure of any confidential information might have a material adverse effect on the other Party's interests in the Project.

23.23 Expenses.

Each Party shall pay its own costs and expenses (including the fees and expenses of its agents, representatives, advisors, counsel and accountants) necessary for the negotiation, preparation, execution, delivery, performance of and compliance with this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorised representatives on the date first written above.

The Honourable Minister of Finance and Economic Development for and on behalf of the Government of the Republic of Sierra Leone, acting by the Ministry of Finance and Economic Development

By:  8/5/15

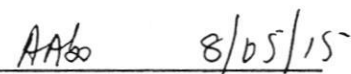
Dr. Kaifala Marah

The Honourable Minister of Energy for and on behalf of the Government of the Republic of Sierra Leone, acting by the Ministry of Energy

By: 

Ambassador Henry Olufumi Macauley

For and on behalf of the Sierra Leone Electricity Distribution and Supply Authority

By:  8/05/15

Name: Alhaji Timbo



For and on behalf of Solar Era Holdings

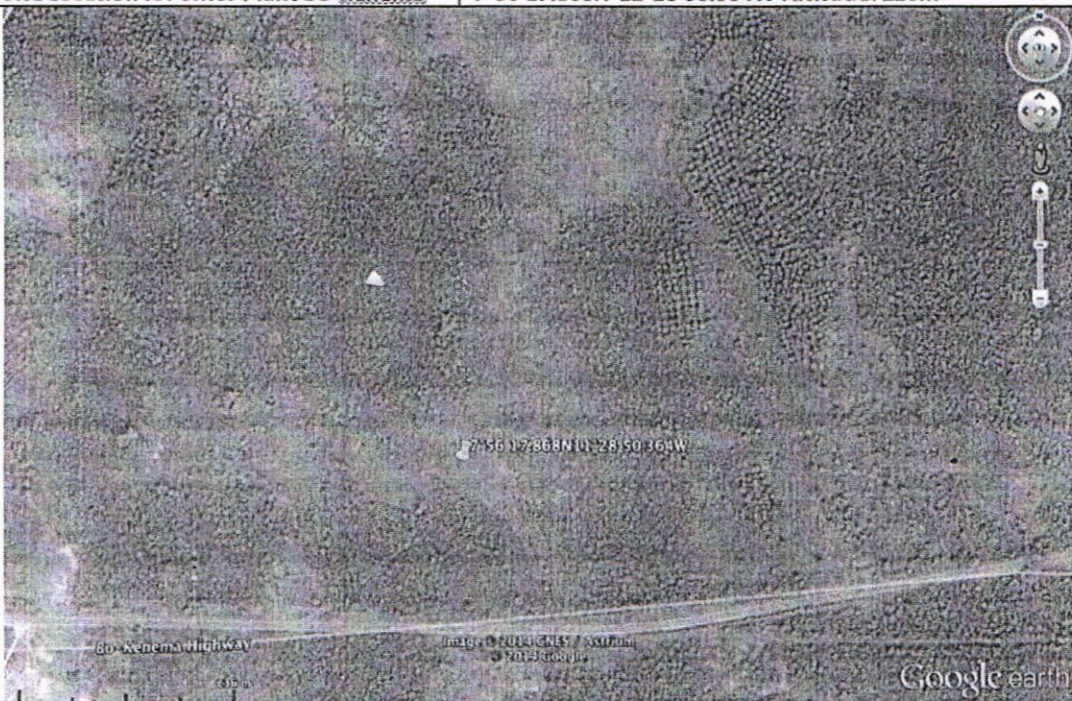
By: 

Name: Sophie Johnson

Title: Director Solar Era.

Appendix A
to
Power Purchase Agreement
by and between
the Offtaker and the Company

Plant Description, Design Conditions and Technical Data

Required Capacity	5mw
The substation / grid capacity?	5MW
Free capacity at the injection point	The line is to be empty at the generation times, although energised with 100KW
Voltage regulation system	Minimum 33kv - Maximum 34.5kv (generating at 35kv)
Voltage ride-through	Maintain throughout at 33kv
Reactive power capability	1
Minimum power factor	= Cos. 0.8
Short circuit ratio	0.85
Frequency ride-thru	49.5 - 50.5
Frequency response regulation	49.5 - 50.5
Amp rate control	10.5 volts - 11 volts
Power quality	34kv
Site Location for 5MW Plant Bo-Kenema	7°56 17.868N 11°28 50.364W Altitude: 120m
	
Control System	System will have a control system. The control system will be read in Hz, Voltages and phase currents.

Below / attached herewith (PVSYST V6.06) is the technical plant design for the 5MW solar PV plant, this is supplied for indicative purposes only and may be subject to change.



Grid-Connected System: Simulation parameters

Project : DEMO grid-connected system at Sierra Leone

Geographical Site	Sierra Leone	Country	Sierra Leone
Situation	Latitude	7.9°N	Longitude
Time defined as	Legal Time	Time zone UT+1	Altitude
	Albedo	0.20	127 m
Meteo data:	Sierra Leone	Synthetic	NASA-SSE satellite data, 1983-2005

Simulation variant : New simulation variant

Simulation date 18/11/14 09h20

Simulation parameters

Collector Plane Orientation	Tilt	15jā	Azimuth	0jā
Models used	Transposition	Perez	Diffuse	Measured
Horizon	Free Horizon			
Near Shadings	No Shadings			

PV Array Characteristics

PV module	Si-poly	Model	ET-P672300WW
	Manufacturer	ET Solar	
Number of PV modules	In series	20 modules	In parallel
Total number of PV modules	Nb. modules	18800	Unit Nom. Power
Array global power	Nominal (STC)	5640 kWp	At operating cond.
Array operating characteristics (50jāC)	U mpp	648 V	I mpp
Total area	Module area	36479 m²	Cell area
			32941 m²

Inverter

	Model	Sunny Central 1000MV-11-IT
	Manufacturer	SMA
Characteristics	Operating Voltage	450-820 V
Inverter pack	Number of Inverter	5 units
	Unit Nom. Power	1000 kW AC
	Total Power	5000 kW AC

PV Array loss factors

Thermal Loss factor	Uc (const)	29.0 W/m²K	Uv (wind)	0.0 W/m²K / m/s
=> Nominal Oper. Coll. Temp. (G=800 W/m², Tamb=20jāC, Wind=1 m/s.)			NOCT	45 jāC
Wiring Ohmic Loss	Global array res.	1.1 mOhm	Loss Fraction	1.2 % at STC
Array Soiling Losses			Loss Fraction	3.0 %
Module Quality Loss			Loss Fraction	0.0 %
Module Mismatch Losses			Loss Fraction	0.6 % at MPP
Incidence effect, ASHRAE parametrization	IAM =	1 - bo (1/cos i - 1)	bo Param.	0.05
User defined profile				

System loss factors :

AC loss, transfo to injection	Grid Voltage	23 kV	
	Wires	1000 m 3x240 mm²	Loss Fraction
External transformer	Iron loss (24H connexion)	5472 W	0.0 % at STC
	Resistive/Inductive losses	752.9 mOhm	Loss Fraction
			1.0 % at STC

User's needs : Unlimited load (grid)

PVsynd Evaluation mode



Grid-Connected System: Main results

Project : DEMO grid-connected system at Sierra Leone

Simulation variant : New simulation variant

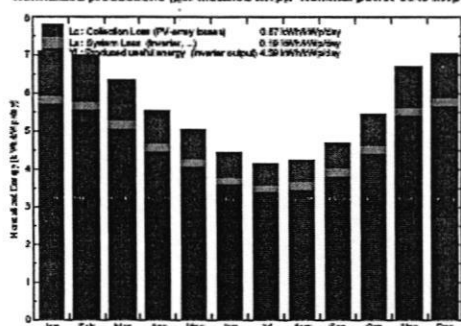
Main system parameters

PV Field Orientation	System type	Grid-Connected		
PV modules	tilt	15.5	azimuth	0.5
PV Array	Model	ET-P072300WW	Pnom	300 Wp
Inverter	Nb. of modules	18800	Pnom total	5640 kWp
Inverter pack	Model	Sunny Central 1000MV-11-IPnom		1000 kW ac
User's needs	Nb. of units	5.0	Pnom total	5000 kW ac
	Unlimited load (grid)			

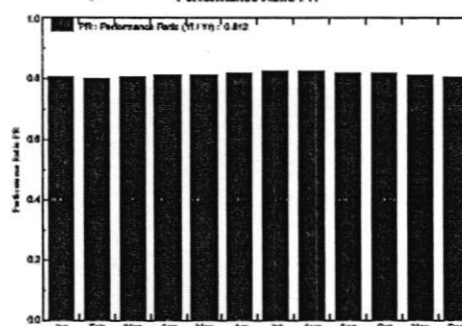
Main simulation results

System Production	Produced Energy	9441 MWh/year	Specific prod.	1674 kWh/kWp/year
	Performance Ratio PR	81.2 %		

Normalized productions (per installed kWp): Nominal power 5640 kWp



Performance Ratio PR

New simulation variant
Balances and main results

	GlobHor kWh/m2	T Amb °C	GlobInc kWh/m2	GlobEff kWh/m2	EArray MWh	E_Grid MWh	EffArrR %	EffSysR %
January	194.9	25.27	220.7	208.9	1040	1002	12.92	12.45
February	182.5	26.39	196.1	185.3	918	885	12.83	12.37
March	193.4	26.08	196.9	185.5	929	894	12.94	12.45
April	172.8	24.75	166.4	156.0	794	762	13.09	12.55
May	169.1	24.00	155.9	145.5	749	717	13.17	12.61
June	147.5	22.96	133.5	124.5	645	616	13.25	12.66
July	141.0	22.10	129.2	120.5	630	602	13.37	12.76
August	138.8	22.04	131.8	123.2	644	614	13.38	12.77
September	142.5	22.41	141.5	132.6	684	654	13.26	12.67
October	160.6	22.80	168.5	158.4	810	777	13.18	12.63
November	180.2	23.62	201.2	190.0	961	922	13.09	12.57
December	190.6	24.79	219.3	207.7	1037	997	12.96	12.46
Year	2013.9	23.92	2061.1	1938.0	9843	9441	13.09	12.56

Legends:	GlobHor	Horizontal global irradiation	EArray	Effective energy at the output of the array
	T Amb	Ambient Temperature	E_Grid	Energy injected into grid
	GlobInc	Global incident in coll. plane	EffArrR	Effic. Eout array / rough area
	GlobEff	Effective Global, corr. for IAM and shadings	EffSysR	Effic. Eout system / rough area

PVsyst Evaluation mode

Grid-Connected System: Loss diagram

Project : DEMO grid-connected system at Sierra Leone

Simulation variant : New simulation variant

Main system parameters

PV Field Orientation

PV modules

PV Array

Inverter

Inverter pack

User's needs

System type Grid-Connected

tilt 15jā

Model ET-P672300WW

Nb. of modules 18800

Model Sunny Central 1000MV-11-IPnom 1000 kW ac

Nb. of units 5.0

Unlimited load (grid)

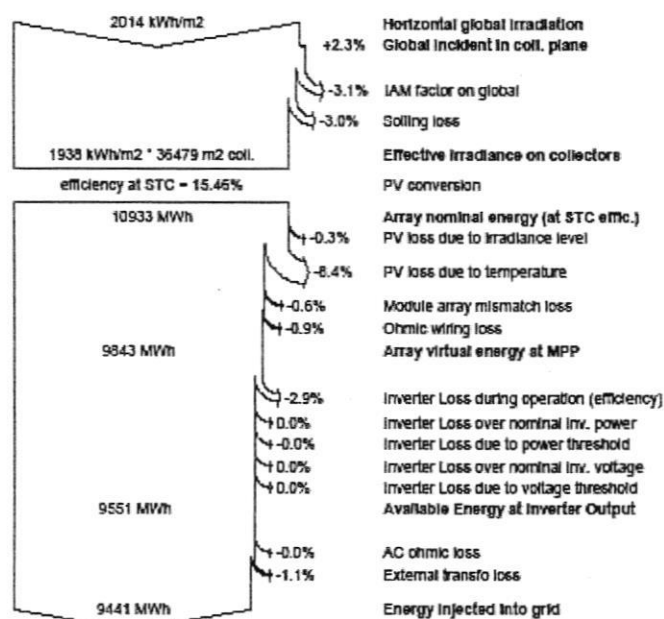
azimuth 0jā

Pnom 300 Wp

Pnom total 5640 kWp

Pnom total 5000 kW ac

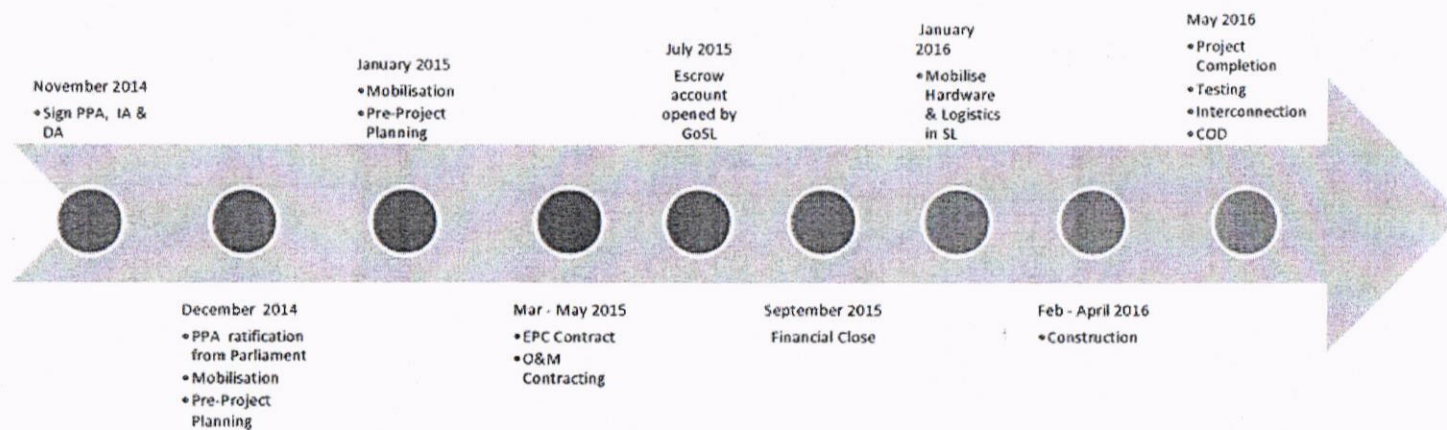
Loss diagram over the whole year



PVsyst Evaluation mode



Appendix B
to
Power Purchase Agreement
By and between
the Offtaker and the Company
Schedule 1
Project Implementation Schedule





Appendix C
to
Power Purchase Agreement
by and between
the Offtaker and the Company

Calculation of Payment

1 DEFINITIONS

"Metered Energy" means, in any Billing Period, all the Net Electrical Energy, as is recorded by the Metering System in that Billing Period.

"Deemed Net Electrical Energy" means:

- (a) before the end of the first Billing Period 786,750 kWh per calendar month; and
- (b) on and from the end of the first Billing Period:
 - (i) the average Metered Energy achieved during the immediately preceding twelve (12) Billing Periods; or
 - (ii) if less than twelve (12) months have elapsed from the Commercial Operation Date, the average Metered Energy achieved during such number of Billing Periods as there have been since the Commercial Operation Date,

provided that, where the period during which the Company would have generated and delivered Net Electrical Energy but for the occurrence of an Event of Political Force Majeure or Despatch Instruction is less than a calendar month, the amount of the Deemed Net Electrical Energy shall be pro-rated accordingly.

"Deemed Net Electrical Energy Payment" means a payment made by the Offtaker in relation to Deemed Net Electrical Energy and which shall be calculated in accordance with this Appendix C (Calculation of Payment).

2 PRICE

Subject to the provisions of this Agreement the energy charge expressed in US Dollars per kWh, exclusive of Sierra Leone general sales tax is US Dollars 0.17/kWh (the "Energy Charge")

3 DEEMED NET ELECTRICAL ENERGY

The Company shall be entitled to payment for Deemed Net Electrical Energy in accordance with Section 8.2 or 17.5, as a result of an Event of Political Force Majeure, or in accordance with Section 2.1(b) as a result of being subject to a Despatch Instruction.

4 MONTHLY ENERGY PAYMENT AMOUNT

In accordance with the provisions of Article 9, the Offtaker shall pay to the Company an amount in respect of the Metered Energy delivered by the Company to the Offtaker at the Delivery Point or the Deemed Net Electrical Energy in any Billing Period, calculated as a product of:

- 4.1 Energy Charge; and
- 4.2 the Metered Energy and/or Deemed Net Electrical Energy for that Billing Period,
(such amount being the **"Monthly Energy Payment Amount"**).

Appendix D
to
Power Purchase Agreement
by and between
the Offtaker and the Company

Conditions Precedent to Closing Date

- 1.1 the Project Agreements have been executed by the Company and the relevant counterparty and are in full force and effect;
- 1.2 the Escrow Account has been established and the Escrow Letter has been served pursuant to Clause 6 of the Implementation Agreement;
- 1.3 The receipt by the Company of valid Government Authorisations, or other permits and consents (including but not limited to a construction permit, or as required, access, work, residence and import permits and an approved environmental impact assessment) which are required by the Company to enable it to begin construction of the Plant; and
- 1.4 the outbreak of the Ebola virus disease existing in Sierra Leone at the time of the Effective Date is controlled to the reasonable satisfaction of the Company.



Appendix E
to
Power Purchase Agreement
by and between
the Offtaker and the Company
Metering

1. Provision of Tariff Metering

The metering points to record the kWh exchange between the Plant and the Transmission System shall be as shown in an appropriate diagram provided by the Company. The current and voltage transformers will measure current and voltage on the appropriate termination points. The Metering System, provided by the Company, and the Back-Up Metering System, provided by the Offtaker, will be located within the switchyard in a building housing all marshalling cubicles, control and metering panels and communication equipment. Any photographic facilities will be provided by the Company as part of the verification process for monthly meter readings.

The Metering System and the Back-Up Metering System shall be compliant to a mutually agreed international standard providing a measured accuracy of $\pm 0.2\%$, and confirming with IEEE latest version standard protocols.

2. Testing

- 2.1. The calibration of meters will be checked to ensure that the accuracy remains within the specified limits.

The method of calibration and frequency of tests will be agreed between the Company and the Offtaker based on knowledge of the performance and the design of the installed meters and the manufacturers' recommendations.

- 2.2. Compensation will be made for the errors of current and voltage transformers in the meter calibration or during the computation of records. Current and voltage transformers will be tested for ratio and phase angle errors following manufacture at an accredited testing station in the presence of representatives from the Company and the Offtaker. Test certificates issued by the testing station will be issued independently to both Parties.
- 2.3. Testing and calibration of the Metering System and the Back-Up Metering System shall be carried out in line with the agreed frequency of testing or in the event of either Party having reasonable cause to believe the meters are outside specified limits.
- 2.4. Testing and calibration of the Metering System shall be carried out by the Company, at the Company's cost, as set forth in **Section 2.3** of this **Appendix E**. During such tests and calibration the Offtaker shall have the right to have a representative present at all times.
- 2.5. Testing and calibration of the Back-Up Metering System shall be carried out by the Offtaker, at the Offtaker's cost, as set forth in **Section 2.3** of this **Appendix E**. During such tests and calibration the Company shall have the right to have a representative present at all times.
- 2.5. In case of any dispute regarding calibration; the calibration of both metering systems shall be carried out by a third party agreed upon by both the Offtaker and the Company. The cost of such work shall be born equally by the Parties.

Appendix F
to
Power Purchase Agreement
by and between
the Offtaker and the Company
Commissioning and Testing

1. Standards

Commissioning and testing will be conducted in accordance with the **IEC Standards**¹ published by the International Electrotechnical Commission of No. 3, Rue de Varembe, P.O.Box 131, CH-1211 Geneva, Switzerland, which are attached to this Agreement.

As a part of the technical standards for testing the Plant, for the purpose of demonstrating whether or not the Plant satisfies the grid connection requirements of the Offtaker, Good Utility Practices will be adopted, which means accepted international practices, standards and engineering and operational considerations, including but not limited to, manufacturers' recommendations and the exercise of reasonable skill, diligence, foresight, and prudence that would be exercised or generally followed in the operation and maintenance of facilities similar to the Plant.

2. Testing

Upon completion of construction, the Plant shall be tested by and at the expense of the company as per IEC standards. The Offtaker shall be entitled to witness testing procedures. The Parties shall meet and agree to the procedures, standards, protective settings and a program for the testing of the Plant.

Testing and calibration of meters, and any verification of meter accuracy, shall be performed pursuant to IEC standards, by either the Offtaker or by a mutually agreed upon qualified independent third party.

The metering equipment shall be tested at least annually, at the Company's expense, in accordance with prudent utility practices.

¹ IEC 62446 - Grid connected photovoltaic systems – Minimum requirements for system documentation, commissioning tests and inspection

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