

**CONCESSION AGREEMENT**

**BETWEEN**

**THE REPUBLIC OF LIBERIA**

**Acting Through the Ministry of Lands, Mines and Energy**

**AND**

**BUCHANAN RENEWABLES (MONROVIA) POWER INC.**

**RELATING TO**

**A POWER GENERATION COMPLEX NEAR MONROVIA, LIBERIA**

**MADE AT MONROVIA,**

**REPUBLIC OF LIBERIA**

**DATED 16 JANUARY 2009**

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SCHEDULE 3	DESCRIPTION OF SITE
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**EXHIBITS**

EXHIBIT A	DEFINITIONS
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This **CONCESSION AGREEMENT** (together with all Schedules and Exhibits attached hereto, this “**Agreement**”) is made at Monrovia, Liberia as of 16 January 2009;

**BETWEEN:**

- (1) THE REPUBLIC OF LIBERIA REPRESENTED BY THE MINISTER OF LANDS, MINES AND ENERGY, MINISTER OF FINANCE, CHAIRMAN OF NATIONAL INVESTMENT COMMISSION AND ATTESTED TO BY THE MINISTER OF JUSTICE (hereinafter referred to as “**GOL**”); and
- (2) BUCHANAN RENEWABLES (MONROVIA) POWER INC., a company incorporated under the laws of Liberia whose registered office is located in Monrovia, Liberia (the “**Company**”).

**WHEREAS:**

- (1) The GOL, as a matter of policy, desires to involve the private sector in the generation of electricity for sale to the Liberia Electric Corporation (“**LEC**”) via the LEC Grid System (as defined in Exhibit A).
- (2) Consistent with the GOL’s policies, the Company proposes to design, insure, finance, acquire, construct, commission, complete, own, operate and maintain an electric power plant and associated facilities in Liberia, and supply electric power to the LEC using as fuel primarily Liberian renewable, sustainable CO2 “neutral” Wood (as defined in Exhibit A).
- (3) The Company plans to design, engineer, finance, build, install, commission, and temporarily operate and maintain the Transmission Line (as defined in Exhibit A).
- (4) Simultaneously herewith, the Company is entering into a Power Purchase Agreement (as defined in Exhibit A) with LEC.
- (5) The GOL and the Company desire to enter into this Agreement in order to implement and sustain the Company’s proposal to build the Complex (as defined in Exhibit A) in a manner that reflects the close cooperation between the GOL and LEC, on the one hand, and the Company, on the other hand, in the generation of electricity for sale on the LEC Grid System.

**NOW IT IS HEREBY AGREED** as follows:

**ARTICLE I  
DEFINITIONS**

Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings assigned to such terms in Exhibit A attached to this Agreement.

## **ARTICLE II INTERPRETATION**

### **2.1 In this Agreement:**

- (a) the headings are for convenience only and shall be ignored in construing this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) references to Sections, Recitals and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules and Recitals to, this Agreement;
- (d) unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- (e) the words “include” and “including” shall be treated as “including, without limitation”;
- (f) any reference to any Person shall include its successors and permitted assigns and, in the case of any Public Sector Entity, any Person succeeding to its functions and capacities;
- (g) any reference to any provision of or term defined in the Power Purchase Agreement shall, in the event the Power Purchase Agreement terminates or expires for any reason, be treated as a reference to such provision or term as in effect immediately prior to such termination or expiration;
- (h) any definition of or reference to any agreement, instrument, document, schedule, Law of Liberia or other law or regulation shall be construed as referring to such agreement, instrument, document, schedule, Law of Liberia or other law or regulation as from time to time amended, supplemented, restated or otherwise modified; and
- (i) in carrying out their obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.

**ARTICLE III**  
**TERM; REPRESENTATIONS, WARRANTIES AND COVENANTS**

**3.1 Term.**

- (a) This Agreement shall, subject to ratification by the National Assembly of Liberia, commence and be effective on the date first written above and shall, unless terminated earlier in accordance with the terms of this Agreement, continue in full force and effect for twenty-five (25) Years from the earliest to occur of (i) the Commercial Operations Date, (ii) the date on which the Company ceases efforts to complete and Commission the second Unit and (iii) the date falling twelve (12) Months after the Initial Commercial Operations Date, plus any extension pursuant to Section 3.1(b) (the “**Term**”); provided that if at the end of the Term, OPIC is a Lender and the indebtedness incurred by the Company under the Financing Documents has not been paid in full, the Term shall be deemed to be automatically extended until such time as all amounts due to OPIC under the Financing Documents have been indefeasibly paid in full. Not later than ninety (90) Days prior to the expiration of the Term, the Company shall provide the GOL with written notice of the identity of each Lender, the total outstanding amount of indebtedness owed to the Lenders under the Financing Documents and the then remaining repayment schedule for such indebtedness.
- (b) The Term shall automatically be extended by (i) the aggregate number of Days (without duplication) that any Party is relieved from performance hereunder pursuant to Section 15.4 as the result of any Force Majeure Event and (ii) to the extent not overlapping with the Days described in clause (i), the number of Days of Restoration, each Day multiplied by one (1) minus the FM Ratio in effect on such Day of Restoration.

**3.2 Transfer of Complex at End of Term.**

It is agreed between the Parties that, at the end of the Term (other than as a result of any early termination pursuant to Articles XVII, XVIII, XX and Section 15.5), the Company will sell to the GOL, and the GOL will purchase from the Company, the Complex for a purchase price of one Liberian Dollar and the Company shall transfer the Complex to the GOL in accordance with Section 18.4.

**3.3 Representations and Warranties of the Company.**

- (a) Corporate Status. The Company represents and warrants that (i) it is duly organized and validly existing under the laws of its jurisdiction of organization and (ii) it has the power and authority to own its property and assets and to transact the business in which it is engaged or proposes to be engaged and to do all things necessary to consummate the transactions contemplated by this Agreement and the Power Purchase Agreement.
- (b) Corporate Power and Authority. The Company represents and warrants that (i) it has the corporate power to execute and deliver this Agreement and the Power



Purchase Agreement and to perform its obligations hereunder and thereunder, and has taken all necessary corporate action to authorize the execution, delivery and performance by it of this Agreement and the Power Purchase Agreement and (ii) each of this Agreement and the Power Purchase Agreement has been duly authorized, executed and delivered by the Company and constitutes, its legal, valid and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles, regardless of whether the issue of enforceability is considered in a proceeding at law or in equity.

- (c) No Violation. The Company represents and warrants that neither the execution, delivery or performance by it of this Agreement or the Power Purchase Agreement, nor compliance by it with the terms and provisions hereof, (i) will contravene any provision of any law or regulation applicable to it, (ii) will conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of its property or assets pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement, loan agreement or any other agreement, contract or instrument to which it is a party or by which it or any of its property or assets is bound or to which it may be subject or (iii) will violate any provision of its organizational documents.
- (d) Governmental Approvals. The Company represents and warrants that no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any applicable governmental or public body or authority, or any subdivision thereof (except those which have been obtained or made and are in full force and effect), is required to authorize, or is required in connection with, (i) the Company's execution, delivery and performance of this Agreement or the Power Purchase Agreement (except for those Consents that will be obtained in the normal course of developing, constructing, operating and maintaining the Complex and the Transmission Line) or (ii) the legality, validity, binding effect or enforceability against it of this Agreement or the Power Purchase Agreement, other than the issuance of a statement of no objection from the PPCC and the ratification of this Agreement by the National Assembly of Liberia.
- (e) Litigation. The Company represents and warrants that there are no actions, suits or proceedings pending or, to the best of its knowledge, threatened against it, that are reasonably likely to materially and adversely affect its ability to comply with its obligations under this Agreement or the Power Purchase Agreement.
- (f) Tax Returns and Payments. The Company represents and warrants that it has filed all Tax returns required by law to be filed by it and has paid all income Taxes payable by it which have become due pursuant to such Tax returns and all other Taxes and assessments payable by it which have become due, other than

those not yet delinquent and except for those contested in good faith and for which adequate reserves have been established.

### **3.4 Representations and Warranties of the GOL.**

- (a) Status. The GOL represents and warrants that it has the power and authority as a sovereign entity to transact the business in which it proposes to be engaged hereunder and to do all things necessary to consummate the transactions contemplated by this Agreement.
- (b) Due Authorization. The GOL represents and warrants that (i) it has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and (ii) this Agreement has been duly authorized, executed and delivered by the GOL and, subject to ratification by the National Assembly of Liberia, constitutes, its legal, valid and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles, regardless of whether the issue of enforceability is considered in a proceeding at law or in equity.
- (c) No Violation. The GOL represents and warrants that neither the execution, delivery or performance by it of this Agreement, nor compliance by it with the terms and provisions hereof, (i) will contravene any provision of any Law of Liberia or Standard applicable to it or (ii) will conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of its property or assets pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement, loan agreement or any other agreement, contract or instrument to which it is a party or by which it or any of its property or assets is bound or to which it may be subject. The GOL further specifically represents and warrants that upon obtaining an exemption from the Public Procurement and Concession Commission (“PPCC”), the award of the concession granted in this Agreement to the Company has been made by the GOL in full compliance with all applicable Laws of Liberia and all procedures for public bidding and procurement required thereunder.
- (d) Governmental Approvals. The GOL represents and warrants that no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any Public Sector Entity (except those which have been obtained or made and are in full force and effect), is required to authorize, or is required in connection with, (i) its execution, delivery and performance of this Agreement (except for those Consents that will be obtained in the normal course after the execution and delivery of this Agreement); or (ii) the legality, validity, binding effect or enforceability against it of this Agreement, other than the issuance of a statement of no objection from the PPCC and the ratification of this Agreement by the National Assembly of Liberia.

- (e) Litigation. The GOL represents and warrants that there are no actions, suits or proceedings pending or, to the best of its knowledge, threatened against it that are reasonably likely to materially and adversely affect its ability to comply with its obligations under this Agreement.
- (f) Consents. The GOL represents and warrants that all Consents are set forth in Schedule 1. The GOL shall have no obligation to update Schedule 1 after the earlier to occur of the Construction Start Date and the Tariff Agreement Date.

### **3.5 Date of Representations**

Except Section 3.4(f), the representations and warranties set forth in Sections 3.3 and 3.4 shall be deemed to have been made as of the date first written above. The representation and warranty set forth in Section 3.4(f) shall be deemed to have been made as of the date Schedule 1 is finalized which shall be the earlier to occur of the Construction Start Date and the Tariff Agreement Date.

**ARTICLE IV  
GRANT OF RIGHTS TO THE COMPANY**

**4.1 Granting of Basic Rights to the Company.**

- (a) The GOL hereby grants to the Company the exclusive right, permit and license to carry out the Project at the Site (including the right to sell all electricity generated at the Complex for its exclusive account), free from any requirement to obtain any further Consent (other than the Consents set forth in Schedule 1) from the GOL or any other Person in order to do so. The GOL hereby grants to the Company all necessary rights and privileges to lease, or otherwise acquire, all land required for the Project (including the grant of the associated rights required for the Project, easements and rights-of-way), to import equipment, to carry out installation and construction of the Complex and the Transmission Line, to operate and maintain the Complex, and for the Transmission Term, to operate and maintain the Transmission Line, to carry out all other associated functions and activities that will expedite the development, construction, and operations and maintenance of the proposed Complex and associated facilities, in all cases including the use of Contractors, consultants or any other agents in the discretion of the Company (subject to Sections 7.5 and 7.6), over its construction phase and throughout its proposed operational life, and otherwise to develop, own, and operate the Project. Without limiting the foregoing, the GOL hereby grants the Company all rights and privileges set forth herein and in the Power Purchase Agreement.
- (b) No later than Financial Closing, the GOL shall grant to the Company for use by the Company or its Contractors all necessary land, rights and privileges (including title, rights of use, rights of way, easements or other rights of ingress or egress) required for the design, development, construction, supply, start up, commissioning, testing and financing of the Transmission Line.
- (c) The GOL shall ensure, and shall cause all GOL Entities to ensure, that the Company has the full and exclusive right to operate the concession granted herein and perform its obligations as contemplated herein, and shall not interfere with the Company's implementation of the Project; provided that nothing in this Section 4.1 shall prohibit or preclude the GOL or LEC from performing any of its respective obligations or exercising any of its respective rights or remedies under this Agreement or the Power Purchase Agreement.
- (d) The GOL shall upon the request of the Company, provide such additional documentation as may be necessary to grant, or evidence the grant of, the rights described in this Article IV.

**4.2 Incidental Rights.**

Subject to the terms and conditions of this Agreement, and in furtherance of the rights granted to the Company under Section 4.1, the Company shall have:

- (a) the exclusive right to own, construct, install, operate, maintain and/or repair, at its own expense, the Complex on the Site;
- (b) the exclusive right, at its own expense, to construct and establish such infrastructure on the Site as may be necessary or appropriate in connection with the development, construction, commissioning, completion, ownership, operation and maintenance of the Complex, including (a) employee housing; (b) processing, storage and repair facilities; (c) administrative, laboratory and research facilities; (d) transportation facilities; (e) communication facilities (including telephone, telegraph, electronic mail, radio, satellite, television and telecommunications or other transmission facilities); and (f) all other movable and non-movable facilities and equipment affixed to, used as an integral part of or used in relation to or in connection with the items described in (a) through (e), inclusive, of this Section 4.2(b);
- (c) the non-exclusive right, within and outside the Site, to transport Wood, in connection with the operation of the Project; provided that, in extraordinary situations such as unavailability or prohibitive cost of Wood, and with the prior written approval of the GOL, such approval not to be unreasonably withheld, the Company may import and transport other non-Liberian wood to use as fuel for the Project;
- (d) the exclusive right, on the Site to take and use, free of charge (but not to sell to any other Person without the written approval of the GOL), such water, stones, rocks, sand, clay, and gravel having no significant commercial mineral value other than as aggregate, filler or other construction material, as the Company may consider necessary or useful for its operations under this Agreement. This activity shall not be considered to be mining for purposes of any Law of Liberia; and
- (e) the nonexclusive right to compete for concessions to develop additional wood-fired generating capacity, either at the Site or other suitable sites. For the avoidance of doubt, the scope of this Agreement does not extend to or include any future concession that may be awarded to the Company. In no circumstances will another Person other than the Company be given a concession or other rights to develop electric generating capacity, within ten (10) kilometers of the Complex, for distribution to the LEC Grid System.

#### **4.3 Communications Facilities; Utilities.**

- (a) The Company shall have the right, as licensee or assignee, to operate such communications systems as it deems necessary for internal communications and communications with its Affiliates, including radio, telecommunications, electronic mail systems, satellite networks, cellular systems, microwave devices and other communications devices and systems, and the GOL shall provide the Company and/or its Affiliates, as applicable, such Consents as may be required by

the Laws of Liberia in connection with the foregoing. Such facilities shall be operated in accordance with the Laws of Liberia.

- (b) The GOL agrees that it will make available (at generally prevailing rates) for use by the Company an adequate number of broadcast and communications frequencies for both domestic and international use, and shall grant to it such rights, licenses, registrations or permits as any of them may require in order to comply with any Laws of Liberia regarding the possession, use, importation or purchase of related equipment or of any telecommunications devices or other communication equipment. The Company and the GOL shall consult together from time to time as to the specific frequencies to be assigned consistent with international regulations and the adequacy of such frequencies under this Section 4.3(b). However, such communication systems shall be used only for the Company's internal communications and as a supplement to communications systems available to the public in general.
- (c) The GOL agrees that the Company may use public utilities on the same terms and conditions as, and at the generally applicable tariff rate charged to, other similarly situated Persons in Liberia using such public utilities.

#### **4.4 Natural Resources.**

- (a) Without prejudice to Section 4.2(d), the GOL reserves the exclusive right to explore for and develop mineral resources within the Site and to grant such exclusive rights to any other Person. If the GOL (or any other Person under grant from the GOL) intends to explore for, develop or exploit mineral resources within the Site, it shall first so advise the Company by notice, and the right of the GOL or such other Person to explore for, develop or exploit mineral resources at the Site shall be subject to the following:
  - (i) any exploration, development or mining activity to be undertaken either by the GOL or by such other Person shall not either unreasonably or materially interfere with the Project and the rights of the Company hereunder;
  - (ii) the GOL shall ensure that the exploration, development or mining entity, carrying out any exploration, development or mining activity within the Site, shall fully compensate the Company for any damage to property and assets and for any economic or other Losses, including any payments under the Security Package (including all amounts due to the Lenders under the Financing Documents) that were not made as and when due, and any lost profits that the Company may suffer by virtue of any exploration, development or mining activities conducted by the GOL or any other Person; and
  - (iii) the GOL and any such other Person shall fully indemnify and save the Company and the Lenders harmless from all claims, damages, liability,

and costs and expenses of defense (including reasonable attorney fees), arising out of or related to such exploration and/or mining activities.

- (b) If the GOL grants to any Person the right to explore for or develop mineral resources within the Site, the GOL shall require, as a condition to such grant, that such Person agree to be jointly and severally liable with the GOL for the obligations set forth in this Section 4.4 and that such Person post a bond satisfactory to the Company and the Lenders to secure performance by such Person of such obligations.
- (c) If the Company becomes aware of elements or objects of national cultural heritage, moveable or immovable, in the course of its construction activities, the Company undertakes not to move such objects and to provide prompt written notice thereof to the GOL. The GOL and the Company agree to cooperate with each other in preserving such elements or objects while not unreasonably interfering with or interrupting the Company's business and operations.

#### **4.5 Warranty of Company Rights.**

The GOL warrants the Company's title to and possession of all rights granted to it under the terms and conditions of this Agreement, and agrees that it will defend and protect these rights for the benefit of the Company.

#### **4.6 Grant for the Exclusive Benefit of the Company.**

Except as expressly set forth herein, the rights granted to the Company pursuant to this Agreement are for the benefit of the Company and shall not be enforceable by any Affiliate of the Company, any Contractor or any other Person (other than the Lenders pursuant to the Financing Documents).

**ARTICLE V**  
**ACQUISITION OF SITE, TRANSPORTATION, AND CONSENTS**

**5.1 Acquisition by the Company of Site.**

The Company has identified the Site and has entered, or will enter into, the Lease on terms satisfactory to the Company and in compliance with the Laws of Liberia. The Lease shall, pursuant to its terms and subject to the Lenders' rights under the Security Package, be assignable by the Company to the GOL (or any Public Sector Entity designated by the GOL) without the prior written consent of the lessor for the purposes of Sections 3.2 and 18.4.

**5.2 Transportation.**

The Company shall enter into arrangements on terms satisfactory to it and in compliance with the Laws of Liberia for the delivery to and receipt at port facilities in Liberia of all equipment and materials necessary to construct and complete the Complex, as well as arrangements for the transportation from the port facilities to the Site of all such equipment and materials.

**5.3 Applications by the Company for Consents.**

The Company shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Consents set forth in Schedule 1 (together with any other Consent (if any) identified by the Company which the Company reasonably believes it is required to obtain in connection with the Project) in the prescribed form and with the prescribed fee to the appropriate Public Sector Entities and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the applicable Laws of Liberia as applied to the Company in a non-discriminatory manner.



## **ARTICLE VI SUPPORT OF THE GOL**

### **6.1 Generally.**

The GOL shall, and shall cause the relevant GOL Entities to, provide the Consents set forth on Schedule 1 (together with any other Consent notified by the Company to the GOL which the Company reasonably believes it is required to obtain in connection with the Project) following application therefor by the Company in accordance with Section 5.3, in an expeditious, timely and non-discriminatory manner and in accordance with the Laws of Liberia.

### **6.2 Support to Obtain Site and Transportation.**

The Company may advise the GOL from time to time of any difficulties encountered in the activities it is required to perform under Article V. If any such difficulties create a significant possibility that the Company will be prevented or materially impaired in meeting its obligations hereunder, then, upon the request of the Company, the GOL shall take such actions as are reasonable and appropriate under the circumstances (including the exercise by the GOL of its rights of eminent domain) to enable the Company to secure the necessary property, rights or services; provided, however, that, if the Company fails to comply with its obligations under this Agreement and that such failure is the principal cause of the Company's difficulties in performing such activities, the GOL, from and after giving notice thereof to the Company, shall not be obligated to take any actions to assist the Company pursuant to this Article VI until such time as the Company has remedied such failure.

### **6.3 Support to Obtain Consents.**

- (a) Upon the reasonable request of the Company, the GOL shall support and use all reasonable efforts to expedite (to the extent permitted under the Laws of Liberia) the consideration and processing of the Company's applications for the Consents or renewals thereof filed pursuant to Section 5.3 and the timely issuance thereof or the renewal of a Consent subject to a Lapse of Consent by the relevant GOL Entities. The GOL shall use all reasonable efforts to obtain the exemption from the PPCC contemplated by Section 3.4(c) and ratification of this Agreement by the National Assembly of Liberia.
- (b) If prior to Financial Closing, despite the Company's good faith efforts and its compliance with Section 5.3, the Company is unable for any reason other than its own fault to obtain any Consent within a reasonable period of time not to exceed the later of (i) three (3) Months after the date of this Agreement and (ii) to the extent applicable under the Laws of Liberia, the last Day upon which the relevant Public Sector Entity is pursuant to the Laws of Liberia obligated to grant or deny such Consent, and the inability to obtain such Consent causes a delay in the date of Financial Closing, then the GOL shall on the expiration of the relevant time period set forth above grant to the Company a leasehold interest in real property

in Liberia with an assessed value of not more than two million US Dollars (US\$2 million), for consideration of one US Dollar (US\$1.00) per Year. On the thirtieth (30th) Day after such initial grant, the GOL shall grant a further leasehold interest in additional real property in Liberia with an assessed value of not more than two million US Dollars (US\$2 million), for consideration of one US Dollar (US\$1.00) per year, if and to the extent the Consent(s) which caused the delay in the date of Financial Closing have not been obtained by the Company for any reason other than its own fault by such thirtieth (30th) Day; provided that Financial Closing shall not have occurred. The values of the above leasehold interest in real property in Liberia, are to be equal to the actual documented losses by the Company, as a result of the Company not being able, for any reason other than its own fault, to obtain any Consent; provided that these values do not exceed the maximum assessed values set out above in this Paragraph 6.3(b).

- (c) In the event that the Company delivers a Termination Notice in respect of any GOL Event of Default under Section 17.2(b)(v) prior to Financial Closing, the leasehold interest(s) granted to the Company pursuant to Section 6.3(b) shall survive such termination. In the event that the Company delivers a Termination Notice in respect of any other GOL Event of Default, or terminates the Power Purchase Agreement, in either case prior to Financial Closing, or in the event the GOL terminates this Agreement pursuant to Section 17.1, the Company shall consider terminating the leasehold interest(s) in the real property granted to it pursuant to Section 6.3(b), and returning the leased parcels to the GOL promptly following such termination.

#### **6.4 Conditions to Consents.**

The GOL or any relevant GOL Entity may attach such non-discriminatory terms and conditions to the issuance or renewal of any of the Consents as are in accordance with the Laws of Liberia, and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the GOL provided that such attachment is without prejudice to any rights the Company has under this Agreement.

#### **6.5 Support for Obligations.**

Upon reasonable request by the Company, the GOL shall support and shall cause the GOL Entities to support the Company's performance of its obligations to design, finance, re-finance, insure, construct, commission, complete, own, operate, and maintain the Complex and the Transmission Line. By agreeing to support the Company's efforts, the GOL has not relieved, and does not relieve in any way, the Company of its obligations or potential liability under this Agreement, the Power Purchase Agreement and the other documents comprising the Security Package.

#### **6.6 Non-Discriminatory Actions.**

The use of the term "non-discriminatory" or the agreement by the GOL not to take "discriminatory actions" in this Agreement are intended to prohibit the use of

governmental authority over, for example, Consents, so as to deprive the Company of the benefits of this Agreement or the other documents in the Security Package by the application of a higher standard to the Company (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or so as to gain commercial or political advantage.

#### **6.7 Legal Opinion.**

The GOL shall deliver to the Company and the Lenders a legal opinion in form and substance satisfactory to the Company as to the matters set forth in the representations and warranties set forth above and elsewhere in this Agreement and the Power Purchase Agreement, as and when required under the terms of the Financing Documents.

#### **6.8 Transmission Line.**

The GOL represents, warrants and covenants that as of the earlier to occur of the Construction Start Date and the date of Financial Closing: (i) the GOL will, itself or through another GOL Entity, be the sole and exclusive owner of the Transmission Line Area free of any Liens (other than Permitted Liens), (ii) other than the Transmission Line Area, no land or other interests in real property of any type are required under the Laws of Liberia for the design, development, construction, supply, start up, commissioning, testing, financing, implementation, operation or maintenance of the Transmission Line, and (iii) each parcel of land, contemplated in clause (i), as well as the acquisition thereof by or on behalf of the GOL after the date of this Agreement (as the case may be), is or will be (as the case may be), in compliance with all Laws of Liberia, all Environmental Laws and the Standards.

On or before the earlier to occur of the Construction Start Date and the date of Financial Closing, the GOL shall deliver to the Company documentation evidencing such ownership.

**ARTICLE VII  
CONSTRUCTION, OPERATION AND MAINTENANCE, TRAINING AND  
EXPANSION**

**7.1 Construction, Operation, and Maintenance (O&M) of the Complex.**

The Company shall finance, insure, design, construct, install, commission, operate and maintain the Complex and the Transmission Line (operation and maintenance of the Transmission Line by the Company shall terminate at the end of the Transmission Term); provided, however, that the Company may contract with the Construction Contractor to design, construct, install, and commission the Complex and the Transmission Line and the O&M Contractor to operate and maintain the Complex and the Transmission Line; provided, further, that the appointment of the Construction Contractor and the O&M Contractor by the Company shall not relieve the Company of any of its obligations regarding the design, financing, insuring, acquisition, construction, commissioning, completion, operation, or maintenance of the Complex and the Transmission Line or any liability whatsoever hereunder.

**7.2 Alternate Contractors.**

Notwithstanding anything contained in this Article VII to the contrary, the Company shall be entitled to engage its own personnel to construct, operate and maintain the Complex and the Transmission Line or, in the case where the Construction Contract, the O&M Agreement or the O&M (Transmission) Agreement then in effect has been terminated by the Company in accordance with its terms, engage a new Contractor or some or all of the personnel of the former Contractors and construct, operate and maintain the Complex and the Transmission Line, in all cases without prior notice to the GOL.

**7.3 Construction and Environmental Laws.**

- (a) The Company confirms that it is proposing to use new equipment and well proven conventional wood-fired power plant technology for its proposed Complex and associated facilities.
- (b) The Company's obligations with respect to the environment shall be as prescribed by Environmental Laws (including the Environment Protection and Management Law), and the Standards. On or before the earlier to occur of the Tariff Agreement Date and Construction Start Date, the Company shall have filed an Environmental & Social Impact Statement ("ESIS") and submitted an Environmental & Social Management Plan ("ESMP") in respect of the Project as required by such Environmental Laws. The ESMP shall, to the extent required by Environmental Laws, include provisions for environmental audits and review of proposed modifications by the Environmental Protection Agency of Liberia.
- (c) The Company shall provide the GOL with at least thirty (30) Business Days' prior written notice of the Construction Start Date, it being understood that any covenants or obligations of the GOL that commence under this Agreement on the

Construction Start Date shall be tolled until the end of such thirty (30) Business Day notice period if the end of such period is not on or before the Construction Start Date.

#### **7.4 Clean Development Mechanism.**

- (a) The Company intends to investigate and pursue the possibility of receiving and selling Certified Emission Reductions (“**CERS**”) associated with the Complex through the Clean Development Mechanism (“**CDM**”) of the Kyoto Protocol or any successor agreement. The GOL shall use its best efforts to cooperate with the Company in order to achieve the successful verification and certification of CERS related to the Project. All such carbon credits shall be the property of the Company, as consideration for the expense of generating electric energy through the combustion of carbon-neutral Wood that is certifiably replanted as and when it is harvested. All revenues associated with the receipt and sale of CERS shall constitute income of the Company for all purposes under Section 7.7.
- (b) At the time the Company receives any revenue associated with the receipt and sale of CERS pursuant to Section 7.4(a), the Company shall first be reimbursed for its documented out-of-pocket costs associated with certifying such CERS. With respect to any revenues remaining following such reimbursement, the Company shall pay to the Environmental Protection Agency of Liberia, which administers the CDM program on behalf of the GOL, an amount equal to twenty-five percent (25%) of such remaining revenues as an administrative fee.

#### **7.5 Use of Liberian Goods and Services.**

When purchasing goods and services related to the Company’s activities, the Company shall use reasonable efforts to use goods produced in Liberia by Liberian citizens, and services provided by Liberian citizens, who are resident in Liberia, which are equal to or better than comparable goods and services obtainable from other Persons taking into account price, quality, delivery schedules, availability and other terms. In addition, the Company agrees to include in each contract or work order with its major Contractors a provision requiring such Contractors to adhere to the requirements of this Section 7.5, and to require their sub-Contractors to do so, with respect to any activities undertaken in Liberia by such major Contractors on behalf of the Company. Subject to the foregoing, the Company may freely contract with any Person.

#### **7.6 Development of Local Liberian Labor.**

- (a) Employment practices of the Company, compensation paid or provided to employees of the Company, employee benefits received by such employees, and employee working conditions shall conform to the Laws of Liberia to the extent the Laws of Liberia apply to such activities.
- (b) In furtherance of the objective stated in Section 7.5, the Company shall use reasonable efforts to use local Liberian training centers/facilities for the training of Liberian citizens in order to qualify them for the positions described in Section

7.5 and, as required by its operations under this Agreement, the Company shall also use reasonable efforts to provide on-the-job training, and undertake whatever other measures are necessary and reasonable to achieve the objectives stated in Section 7.5.

- (c) The Company covenants to the GOL that within two (2) Years of the Commercial Operations Date, of the Company's ten (10) most senior (in authority and responsibility) positions, not less than five (5) shall be Liberian citizens. Within five (5) Years of the Commercial Operations Date, of the Company's ten (10) most senior positions, not less than seven (7) of such positions shall be held by Liberian citizens. Appointment of a Liberian citizen to a particular position shall not, however, preclude subsequent employment of a non-Liberian citizen in such position as long as the overall number of Liberian citizens employed in senior positions described in the immediately preceding sentence is otherwise met.

#### **7.7 Excess Profits.**

The GOL and the Company have reached an agreement regarding the allocation of "excess profits" of the Company, as set forth in Schedule 4.

#### **7.8 Escrow Account.**

In order to support the financeability of the Project, the GOL and the Company agree to implement the escrow payment structure described in Schedule 2 pursuant to mutually agreeable, definitive agreements to be negotiated in good faith by the Parties prior to Financial Closing.

#### **7.9 Expansion.**

The GOL agrees that the Company may request authority from the GOL, subject to any limitations in the Financing Documents, to install additional wood-fired electric generating capacity on the Site (subject to appropriate arrangements regarding the subdivision of the parcel(s) relating to the Complex) or other suitable sites owned or leased by the Company. It is further agreed that any such expansion and/or development would be on a non-exclusive IPP basis. The grant of such authority and the terms and conditions for the sale and purchase of electricity therefrom shall be subject to a separate definitive written agreement between the Parties (or, in the case of the GOL, any Public Sector Entity nominated by it).

#### **7.10 Replanting Wood.**

The Company will replant, or cause its Contractors or their suppliers of Wood to replant, at least one tree for every tree harvested to supply fuel for the Project within a reasonable time period (not to exceed one (1) Year) following such harvesting.

### **7.11 Education Grants.**

From and after the Effective Date until the Year in which the Term ends, the Company shall contribute fifty thousand US Dollars (US\$50,000) per Year to a dedicated account at a Liberian bank for support of Liberian technical and engineering education. The funds in such account shall be contributed or dispensed annually at the joint direction of the Company and the Ministry of Lands, Mines, and Energy of the GOL pursuant to procedures satisfactory to the Lenders.

### **7.12 Transactions with Contractors.**

Other than transactions between the Company and the Fuel Supplier, any transaction between the Company and any Person with respect to the Project shall be on arms' length terms and conditions.

### **7.13 Issuance of License and Approval.**

Subject to the Company's compliance with Section 7.3, the GOL shall, on or before earlier to occur of the Tariff Agreement Date and Construction Start Date, issue an Environmental Impact Assessment license and an approval of the Company's EMP for the Project.

### **7.14 Distribution System**

The Company undertakes to partner with the GOL in mobilizing resources for building distribution capacity that would enable LEC to sell power to other users.

## **ARTICLE VIII LIABILITY**

### **8.1 Limitation of Liability.**

- (a) Except as otherwise expressly provided for herein (including Section 4.4(a)(ii)), neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages.
- (b) The Company shall have no Environmental Liabilities in respect of any act or omission of the Company or its agents, Contractors or employees if and to the extent such act or omission was lawful and in compliance with the Laws of Liberia and the Standards at the time such act or omission was taken or made.

### **8.2 Fines and Penalties.**

Any fines or other penalties incurred by the Company for non-compliance with applicable Laws of Liberia or other governmental actions taken pursuant thereto or any Consents shall not be reimbursed by the GOL but shall be the sole responsibility of the Company; provided that the Company is entitled to all rights and remedies, if any, hereunder with respect to such fines or other penalties.

### **8.3 Double Jeopardy.**

The settlement or waiver in writing by any Party (or, in the case of the GOL, LEC) of any dispute or breach under the Power Purchase Agreement shall be binding on such Party (or, in the case of LEC, the GOL) with respect to any identical or substantially similar issue or claim or any issue or claim based upon the identical or substantially similar facts and circumstances, as the case may be.



**ARTICLE IX**  
**IMMIGRATION CONTROLS**

**9.1 Immigration Controls and Privileges.**

The GOL shall provide the necessary visas, work permits and other privileges to allow for the efficient entry of (i) the required construction and operation and maintenance personnel of the Company and its Contractors, (ii) any actual or potential Contractors, agents, advisors, consultants, and employees identified by the Company and (iii) the Lenders' employees, officers and agents.

**ARTICLE X**  
**SECURITY PROTECTION**

**10.1 Security Protection**

The Company shall at all times provide security personnel adequate for the protection and security of the Site. From time to time, the Company may request additional security forces from the GOL to meet unusual security requirements, and the GOL shall use reasonable efforts to provide such security forces as may be requested by the Company subject only to manpower limitations arising out of other, imminent security requirements in Liberia. Any such additional security forces provided by the GOL shall remain under the exclusive control and direction of the GOL. All reasonable out-of-pocket expenses incurred by the GOL in providing such security forces shall be promptly reimbursed to the GOL by the Company, except for security services that are consistent with the GOL's normal police functions.

## **ARTICLE XI IMPORT CONTROLS**

### **11.1 Import Controls and Privileges.**

- (a) The Parties recognize that inevitably it will be necessary for equipment to be returned and re-exported to the manufacturer for repair, servicing or rehabilitation and then to be re-imported into Liberia. The GOL shall, and shall cause any GOL Entity to, provide expeditiously all Consents to the Company to allow the Company to import, re-export and/or re-import equipment and materials, in connection with the construction and the long-term operation and maintenance for the proposed Complex and associated facilities. During the first five (5) Years after the date of this Agreement, the Company will be exempt from the payment of any Customs Duties or other Taxes with respect to the import, re-export, or re-import of equipment and materials other than (i) a one and one-half percent (1.5%) customs user fee, (ii) the ECOWAS Trade Levy, and (iii) such Customs Duties as may be assessed pursuant to Section 11.2.
- (b) All Customs Duties shall be either a line item in the Reference Tariff or, if arising after the Tariff Agreement Date, a Pass-Through Item under the Power Purchase Agreement.

### **11.2 Re-Export of Construction Equipment.**

The GOL may, as provided by the Laws of Liberia, require the Company to re-export any items or equipment used in the construction of the Complex that are not reasonably required for the Company to operate and maintain the Complex, unless the Company agrees to pay promptly the Customs Duties applicable under the Laws of Liberia for those items and equipment. The Company shall be afforded a reasonable time, but not less than three (3) Months following the earlier of (i) the Final Commercial Operations Date or (ii) the permanent cessation of construction of the second Unit, to re-export any such items or equipment required to be re-exported by the GOL.

**ARTICLE XII**  
**FOREIGN CURRENCY EXCHANGE AND TRANSFER OF FUNDS**

**12.1 Foreign Currency Exchange and Transfer of Funds.**

It is recognized that currently, the GOL has not implemented foreign currency exchange controls. Should the GOL implement limits on foreign currency exchange or transfer of funds, the following provisions shall apply: Until the expiration of the Term of this Agreement and the Power Purchase Agreement, the GOL shall, and shall cause the relevant GOL Entities to, make available to the Company in Liberia upon application by the Company pursuant to Section 12.3 all foreign currency necessary to permit construction, operation and maintenance, debt service and other payments under the Financing Documents, distributions to owners of the Company, and payments to service providers or otherwise. The GOL shall make available to LEC all foreign currency, including US Dollars, necessary to satisfy LEC's obligations under the Power Purchase Agreement. The GOL shall make available to the trustee and payment agent under the Financing Documents all foreign currency, including US Dollars, necessary to convert the payments received from the IEUs and other consumers of electricity in Liberian Dollars into US Dollars. The GOL shall not, and shall cause the GOL Entities not to, impose any exchange controls or otherwise restrict the foreign transfer of funds by the Company.

**12.2 Consent to Foreign Currency Accounts.**

It is recognized that currently, the GOL has not implemented foreign currency exchange controls. Should the GOL implement limits on foreign currency exchange or transfer of funds, the following provisions shall apply: The GOL shall ensure that the Central Bank of Liberia gives the Company and its Contractors (other than the Fuel Supplier, whose rights are established in separate agreement(s)) consent for the opening, operation, and retention of earnings of foreign currency bank accounts inside Liberia (including the payment of all foreign exchange received under the Financing Documents or otherwise by the Company into such accounts and withdrawals therefrom) with respect to the Project. The GOL shall ensure, to the extent required under the Laws of Liberia, that the Central Bank of Liberia gives the Company permission (1) to maintain bank accounts outside Liberia, subject to generally applicable (A) Taxes, (B) Laws of Liberia enacted for the protection of creditors, and (C) measures described in this Section 12.2, and (2) to freely transfer funds from its accounts in Liberia to its accounts maintained outside Liberia, as necessary to implement and carry out the Project in accordance with this Agreement and the Power Purchase Agreement, including such accounts as are required under the Financing Documents, the Construction Contract, the O&M Agreement, the O&M (Transmission) Agreement and insurance policies related to the Project; provided, however, that the Company shall be subject to requirements under the Laws of Liberia to notify the Central Bank of Liberia with respect to material foreign currency transfers (as of the date of this Agreement, transfers in excess of Ten Thousand US Dollars (US\$10,000)). Nothing in this Agreement shall prevent the Company from opening, operating and retaining moneys in additional foreign currency bank accounts outside

Liberia from time to time after the date of this Agreement and to the extent that it is or becomes otherwise permitted under the Laws of Liberia.

### **12.3 Availability of Foreign Exchange.**

Upon application having been made by the Company in the prescribed form, such application having been made not less than fifteen (15) Days prior to the requested date for the foreign currency, the GOL shall, as available on a priority basis, on such requested date, make available to the Company through the Central Bank of Liberia sufficient foreign currency for the Company to purchase through normal commercial banking channels, for the Company's foreign currency payments arising with respect to the Project. In this regard, the GOL shall direct that the Central Bank of Liberia has available sufficient amounts of foreign currency for the Company to purchase so as to enable the Company to make and meet all of its foreign currency-denominated payment obligations required with respect to the Project.

### **12.4 Imposition of Foreign Exchange Controls**

If GOL imposes foreign exchange controls, it will ensure that LEC, trustee and payment agents under the Financing Agreement are granted all necessary foreign currency and that the Company will be given the necessary consents to open, operate and retain earnings in foreign currency bank accounts.

**ARTICLE XIII**  
**ASSIGNMENT AND SECURITY**

**13.1 Assignment.**

- (a) This Agreement may not be assigned by either Party other than by mutual agreement between the Parties in writing. Notwithstanding the foregoing, the Company may, upon prior written notice to the GOL, assign all or part of the Company's right, title, and interest in this Agreement to the Lenders.
  
- (b) In connection with any permitted assignment by the Company pursuant to Section 13.1(a), the GOL shall promptly execute a direct agreement, including such terms or provisions as are customary for transactions similar to the Project and/or reasonably requested by the Lenders, and such other documents, including any amendments to this Agreement, which are reasonably required by the Lenders and which are in form and substance reasonably acceptable to the Parties; provided, however, that the GOL shall have a reasonable period of time prior to the execution of such direct agreement within which to review any related Financing Documents; provided, further, that nothing in the foregoing shall be construed as a condition for the perfection of the permitted assignment set forth in Section 13.1(a). The GOL shall respond to reasonable requests by the Lenders for information regarding the GOL and this Agreement.

**ARTICLE XIV**  
**NON-DISCRIMINATORY ACTIONS AND PROHIBITED ACQUISITIONS**

**14.1 Assurance Against Discriminatory Action.**

Neither the GOL nor any GOL Entity shall take any discriminatory action which materially and adversely affects (a) the Project, (b) the performance of the Company's obligations or the enjoyment of its rights under the Security Package or (c) the rights and remedies of the Lenders under or in respect of the Security Package. Nothing in the foregoing shall apply to any actions taken by the GOL, LEC or any Public Sector Entity pursuant to their respective rights and obligations arising under this Agreement or the Power Purchase Agreement.

**14.2 Acquisition of Shares or Assets.**

The GOL shall not, and shall ensure that each of LEC and each GOL Entity will not, expropriate, compulsorily acquire (except pursuant to Section 3.2 or Article XVIII), nationalize, or otherwise compulsorily procure any Ordinary Share Capital or any other asset of the Company reasonably required for the Project or the performance of its obligations under this Agreement, the Power Purchase Agreement or the other documents comprising the Security Package.

**ARTICLE XV**  
**FORCE MAJEURE**

**15.1 Definition.**

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a Party and which, or the effects of which, on or after the date of this Agreement, materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement; provided, however, that any such event or circumstance, or combination of events or circumstances, shall not constitute a “Force Majeure Event” hereunder to the extent that it could have been prevented, overcome or remedied by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts or activities to protect a Party’s facilities or operations from a casualty event, which acts or activities are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. “Force Majeure Events” hereunder shall include each of the following events and circumstances, but only to the extent that each satisfies the above requirements:

- (a) Political events that occur inside or directly involve Liberia (“**Liberian Political Events**”), including:
  - (i) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
  - (ii) a Lapse of Consent that (A) shall itself have existed for twenty (20) consecutive Days or more, (B) together with any and all other Lapses of Consents that have occurred in the same Year, shall have existed in the aggregate for thirty (30) Days or more in such Year, or (C) together with any and all other Lapses of Consents that have occurred in the same and in the two (2) immediately preceding Years, shall have existed, in the aggregate for forty (40) Days or more;
  - (iii) radioactive contamination or ionizing radiation originating from a source in Liberia or resulting from a Liberian Political Event described in Section 15.1(a)(i) or any similar Liberian Political Event;
  - (iv) strikes, work-to-rule or go-slows that extend beyond the Complex or are widespread or nationwide, or that are of a political nature, such as, by way of example and not limitation, labor actions associated with or directed against a GOL Entity, or those that are directed against the Company (or its Contractors) as part of a broader pattern of labor actions against companies or facilities with foreign ownership or management;
  - (v) a nationwide shortage of fuel oil that prevents the Company from procuring adequate deliveries of start-up and emergency fuel oil to the Complex for more than twenty-one (21) Days as certified by the



Managing Director, Liberian Petroleum Refining Company, unless such shortage results from a global shortage of fuel oil; and

- (vi) a Change in Law.
- (b) Other events beyond the reasonable control of the affected Party (“**Other Force Majeure Events**”), including:
  - (i) uncontrollable events, including lightning, earthquake, tsunami, flood, storm, cyclone, typhoon, tornado, fire, explosion, chemical contamination, epidemic or plague;
  - (ii) radioactive contamination or ionizing radiation originating from a source outside of Liberia and not falling within Section 15.1(a)(iii); and
  - (iii) political events that occur outside Liberia and do not directly involve Liberia, including any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or strikes, works to rule or go-slows that are widespread.
- (c) Force Majeure Events shall expressly exclude the following conditions, except and to the extent that they result from a Force Majeure Event:
  - (i) late delivery to a Party of machinery, equipment, materials, spare parts or consumables (including Wood) for the Project;
  - (ii) a delay in the performance of any Contractor;
  - (iii) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment;
  - (iv) unavailability of funds; or
  - (v) economic hardship or any changes in price or market conditions.

## 15.2 Notification Obligations

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
  - (i) give the other Party notice (“**Initial Notice**”) of the Force Majeure Event(s) as soon as practicable, but in any event, not later than the later of (X) forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event(s), or (Y) six (6) hours after the resumption of any means of providing notice between the Company and the GOL; and

- (ii) give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail, including a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the Initial Notice (such second notice, together with the Initial Notice, the “**FM Notices**”). When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and effects on the affected Party’s obligations under this Agreement.
- (b) The affected Party shall also provide notice to the other Party:
  - (i) within twenty-four (24) hours of the cessation of the Force Majeure Event; and
  - (ii) as soon as possible, but in no event later than seven (7) Days, after notice of cessation of the Force Majeure as provided for in Section 15.2(b)(i), regarding the affected Party’s ability to recommence performance of its obligations under this Agreement.
- (c) Failure by the affected Party to give the FM Notices to the other Party within the periods set forth in Section 15.2(a) shall not prevent the affected Party from giving such notices at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 15.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the Initial Notice is given.

### **15.3 Duty to Mitigate.**

The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including, the payment of all reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures.

### **15.4 Performance Excused and Not Excused Due to a Force Majeure Event.**

- (a) Subject to Section 15.4(b), so long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Sections 15.2 and 15.3 and continues to so comply, then:
  - (i) the affected Party shall not be liable for any failure or delay in performing its obligations under or pursuant to this Agreement; and
  - (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended, provided, however, that no relief, including the extension of performance deadlines, shall be granted to the

affected Party pursuant to this Section 15.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred.

- (b) No Party shall be relieved of a payment obligation hereunder as a result of a Force Majeure Event.
- (c) The GOL shall not be entitled to claim for itself, and shall not be relieved of its obligations hereunder by the occurrence of, a Liberian Political Event.

#### **15.5 Termination Following Extended Force Majeure.**

Notwithstanding anything herein to the contrary, in the event that a Party is relieved from all or any substantial portion of its material performance obligations hereunder pursuant to Section 15.4 for a period of at least six (6) consecutive Months from the Initial Notice, either Party shall have the option to terminate this Agreement after such six (6) consecutive Month period by delivering a Termination Notice to the other Party; whereupon Article XVII shall apply; provided, however, in the event that the Company has been relieved from its obligations hereunder pursuant to Section 15.4 as a result of a Liberian Political Event, the GOL may not terminate this Agreement pursuant to the first sentence of this Section 15.5 unless the Company is relieved from all or any substantial portion of its material performance obligations hereunder for twelve (12) consecutive Months.

## **ARTICLE XVI TAXATION**

### **16.1 Taxation of the Company and Depreciation.**

- (a) Effective January 1 of the calendar year in which Financial Closing occurs and continuing for the Term of this Agreement, the Company shall be taxed on its net taxable income pursuant to the Laws of Liberia but at a rate not to exceed thirty percent (30%) per Year of such net taxable income. Subject to the provisions of Section 16.1(b) below, the Company's net taxable income shall be computed in accordance with the Laws of Liberia. Unless otherwise provided in this Agreement, the net taxable income of the Company shall be determined in US Dollars in accordance with generally accepted accounting principles (except as modified by the Laws of Liberia relating to Taxes).
- (b) In computing the Company's net taxable income for any calendar Year (or part thereof) during the Term, those deductions permitted by the Laws of Liberia and the following deductions, to the extent not otherwise permitted as deductions under the Laws of Liberia, shall, commencing in the Year when the Final Commercial Operations Date occurs, be allowed as an annual deduction from its gross income: an allowance for depreciation of items of plant, equipment and infrastructure comprising the Complex in an amount equal to thirty percent (30%) per Year of the remaining balance of the un-depreciated capital cost of such plant, equipment and infrastructure.
- (c) Subject to Section 16.2, the Company shall withhold from interest paid to non-resident Persons (excluding Lenders) the amount of Taxes required by the Laws of Liberia, but not to exceed ten percent (10%) of such payments.
- (d) The Company shall withhold from dividends paid to its shareholders or owners the amount of Taxes required by the Laws of Liberia to be withheld, but not to exceed ten percent (10%) of such payments.
- (e) The Company shall be subject to the ECOWAS Trade Levy on all goods from non-ECOWAS states which it imports into Liberia at the rate established by applicable law but not to exceed one percent (1.0%) of the CIF value of such goods unless such higher rate is generally applicable in all ECOWAS member states without exception.

### **16.2 Taxation of Lenders.**

During the term of this Agreement, each non-resident Lender shall be subject to Liberian Taxes with respect to its Liberian source income, unless such Lender (a) is exempted from Liberia tax pursuant to the terms of a bilateral tax treaty between the GOL and the place of domicile of such Lender and (b) has fulfilled all applicable conditions specified in such bilateral tax treaty in conjunction with the Liberian Income Tax Ordinance, as amended at the time the related Financing Documents become effective, in which event such Lender shall not be subject to taxation or withholding of tax in Liberia regarding

their income from interest, mark-up, fees, or other payments arising from loans extended to the Company for purposes of the design and construction of the Complex and the permanent financing provided to the Company for the Project pursuant to the Financing Documents. Notwithstanding the foregoing, the Parties acknowledge that OPIC is exempted from Liberian Taxes pursuant to the terms of a bilateral agreement between the GOL and the United States of America.

### **16.3 Foreign Investors.**

Foreign Investors will be governed by the bilateral tax treaties between their respective countries of residence and Liberia. If there is no bilateral tax treaty between Liberia and any Foreign Investor's country of residence, the Foreign Investor will, as between Liberia and such Foreign Investor, be taxed in accordance with the Laws of Liberia.

### **16.4 Certain Taxes Are Not Applicable.**

- (a) The GOL hereby represents and warrants that under the Laws of Liberia as of the date of this Agreement:
  - (i) Excise duty is not payable by the Company with respect to sales of electricity by the Company or loans to the Company from the foreign Lenders (or on repayment or servicing of such loans) under the Financing Documents;
  - (ii) Although the Company is subject to Corporate income tax, there are no Taxes payable by the Company on the direct sale of electricity by the Company to LEC; and
  - (iii) There are no **goods or sales taxes** payable by the Company with respect to the purchase of Wood, used directly in the generation of electricity, except to the extent the Company agrees to be liable for such Taxes.
- (b) To the extent that any such Taxes (or any substitute Taxes) become applicable and are paid by the Company, the full amount of such Taxes shall, subject to the Power Purchase Agreement, constitute Pass-Through Items.

### **16.5 Other Taxes Applicable.**

Except as otherwise provided in this Article XVI, the Company shall be subject to those Taxes that are generally applicable to it under the Laws of Liberia.

## **ARTICLE XVII TERMINATION**

### **17.1 Termination for No Financial Closing.**

In the event that Financial Closing shall not have occurred within twelve (12) Months of the date of this Agreement, which twelve (12) Month period shall be extended by the number of Days for which (1) any failure by the GOL to grant any Consents required to be granted by it pursuant to this Agreement or (2) any breach by the GOL of its material obligations hereunder delays the occurrence of Financial Closing, then either Party may terminate this Agreement by written notice to the other Party. Notwithstanding the foregoing, either Party may terminate this Agreement by written notice to the other Party in the event that for any reason Financial Closing shall not have occurred within eighteen (18) Months of the date of this Agreement.

### **17.2 Termination for Default.**

(a) Termination by the GOL:

Each of the following events shall be an event of default by the Company under this Agreement (each a “**Company Event of Default**”) which shall give rise to the right on the part of the GOL to terminate this Agreement pursuant to Section 17.3:

- (i) when the Company shall (A) voluntarily make an assignment of all or substantially all of its assets for the benefit of creditors (other than as provided in the Financing Documents), (B) file a petition or application to any tribunal for the appointment of a trustee or receiver for all or any substantial part of the assets of the Company, or (C) commence any proceedings for its bankruptcy, reorganization, arrangement or insolvency under the laws of any jurisdiction or consent to any such proceedings commenced against it; provided, however, that no event set forth in this Section 17.2(a)(i) shall be a Company Event of Default if it results from a breach by the GOL of this Agreement or the Power Purchase Agreement, or if it occurs as a result of a Force Majeure Event;
- (ii) the failure of the Company to achieve the Initial Commercial Operations Date within twelve (12) Months following the Required Initial Commercial Operations Date; or
- (iii) the failure of the Company to achieve the Construction Start Date by the first anniversary of Financial Closing.

(b) Termination by the Company:

Each of the following events shall be an event of default by the GOL (each a “**GOL Event of Default**”), which, if not cured within the time period permitted to

cure, shall give rise to the right on the part of the Company to terminate this Agreement pursuant to Section 17.3:

- (i) the expropriation, compulsory acquisition (other than pursuant to Article XVIII), or nationalization by the GOL or any GOL Entity of (A) any Ordinary Share Capital, (B) any material asset or right of the Company, or (C) any material asset or right necessary for the ownership, operation, or maintenance of the Project or performance of this Agreement;
- (ii) any procurement (other than pursuant to Article XVIII) by the GOL or any GOL Entity of (A) any Ordinary Share Capital if the result would be for the GOL and/or any GOL Entity to acquire control of the Company or its management, (B) any material asset or right of the Company, or (C) any material asset or right necessary for the ownership, operation, or maintenance of the Project or performance of this Agreement;
- (iii) the dissolution, privatization, amalgamation, reorganization or reconstruction, pursuant to law, of LEC except for:
  - (A) any partial or complete privatization of LEC;
  - (B) an amalgamation, reorganization or reconstruction of LEC where the GOL without interruption supports the performance of the succeeding entity on the same terms and conditions of the Power Purchase Agreement and this Agreement, or on such other commercial terms satisfactory to the Lenders; or
  - (C) any appointment of an external contractor to manage the operations, assets and liabilities of LEC;

*provided*, that as a result of and at all times after the occurrence of any event described in clauses (A), (B) or (C) above, (1) LEC, the private entity succeeding LEC or the contractor managing LEC, as applicable, is technically and financially capable of operating the relevant portion of LEC's assets in accordance with Prudent Electrical Practices and/or Prudent IPP Practices, as applicable, and, in the opinion of the Company and the Lenders, is financially capable of performing its obligations under the Power Purchase Agreement (to the extent applicable), (2) the Company and the Lenders are reasonably assured that the Power Purchase Agreement and this Agreement remain binding and enforceable on such successor entity thereafter, and (3) in the opinion of the Company and the Lenders, their respective rights and remedies under Security Package (including the escrow arrangements described in Schedule 2) will not be impaired by any such event;

- (iv) any failure by the GOL to make any payment due and payable by it under this Agreement when due, which failure continues for thirty (30) Days following the date such payment was due;

- (v) any other material breach by the GOL of this Agreement which is not remedied within sixty (60) Days after notice from the Company to the GOL stating that a material breach of the Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in reasonable detail, and demanding remedy thereof; provided that for so long as the GOL is diligently attempting to cure such breach, the GOL shall be granted an additional period not to exceed sixty (60) Days from the expiration of such initial cure period before the Company may exercise its rights and remedies with respect to such breach; provided, however, that this Section 17.2(b)(v) shall not be a GOL Event of Default if it results from a breach by the Company of this Agreement, or if it occurs as a result of a Force Majeure Event; and
- (vi) a Liberian Political Event that has a material adverse effect on the Project.

### **17.3 Termination Notices.**

- (a) Upon the occurrence of a GOL Event of Default or a Company Event of Default, as the case may be, that is not cured within the applicable period for cure, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a Notice of Intent to Terminate to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the Company Event of Default or the GOL Event of Default, as the case may be, giving rise to such notice.
- (b) Following the delivery of a Notice of Intent to Terminate, the Parties shall consult for a period of up to forty-five (45) Days with respect to a failure by either Party to make payments when due, and up to ninety (90) Days with respect to any other Event of Default (or such longer period as the Parties may mutually agree), as to what steps shall be taken with a view to mitigating the consequences of the relevant Event of Default taking into account all the circumstances. During the period following the delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default, and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 17.3(c), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.
- (c) Upon expiration of the consultation period described in Section 17.3(b) and unless the Parties shall have otherwise agreed or unless the Event of Default giving rise to the Notice of Intent to Terminate shall have been remedied, the Party having given the Notice of Intent to Terminate may deliver a Termination Notice to the other Party, whereupon Article XVIII shall apply.

### **17.4 Notice to the GOL of LEC Default.**

- (a) Notwithstanding anything to the contrary in this Agreement, the Company shall not seek to terminate the Power Purchase Agreement due to any default by LEC



thereunder without first giving a copy to the GOL pursuant to Article XXI of any notices required to be given to LEC under Section 4.4 of the Power Purchase Agreement. Each such notice shall include a request from the Company to the GOL to cure any such default within the same cure period provided to LEC under the Power Purchase Agreement and such cure period to commence upon delivery of such notice to the GOL.

- (b) The GOL may make, but shall be under no obligation to make, any payment or perform any act required of LEC under the Power Purchase Agreement, and the Company shall accept such payment or performance with the same effect as if the payment or performance had been made or performed by LEC, as the case may be; provided, however, that such payment or performance by the GOL shall not relieve LEC of any of its obligations or potential liability under the Power Purchase Agreement that itself is not satisfied by GOL's payment or performance.

### **17.5 Other Remedies.**

The exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude the Party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that Party.

**ARTICLE XVIII**  
**RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION**

**18.1 Compensation Upon Termination.**

- (a) Company Event of Default; Failure to Commission Second Unit; Termination of Power Purchase Agreement for Company Event of Default.
  - (i) Subject to the GOL's agreement to assume such obligations on the Transfer Payment Obligation Date pursuant to Section 18.5, in the event the GOL delivers a Termination Notice as a result of a Company Event of Default described in Section 17.2(a), the GOL or its designee shall have the right, but shall not be required, to acquire all ownership interests in the Company, by delivering to the Company written notice thereof and by paying to the Company or, at the direction of the Lenders, to the Lenders Compensation Component A. Upon payment of such compensation amount, the Company shall transfer the ownership interests in the Company to the GOL in accordance with Section 18.4 and this Agreement shall immediately terminate.
  - (ii) Subject to the GOL's agreement to assume such obligations on the Transfer Payment Obligation Date pursuant to Section 18.5, in the event the Company has failed to commission the second Unit within twelve (12) Months after the Required Final Commercial Operations Date, the GOL or its designee shall have the right, but shall not be required, to acquire all ownership interests in the Company by delivering to the Company written notice thereof and by paying to the Company or, at the direction of the Lenders, to the Lenders Compensation Component A and Compensation Component B (but not including part (ii) thereof). Upon payment of such compensation amount, the Company shall transfer the ownership interests of the Company to the GOL in accordance with Section 18.4 and this Agreement shall immediately terminate.
  - (iii) Subject to the GOL's agreement to assume such obligations on the Transfer Payment Obligation Date pursuant to Section 18.5, in the event the Power Purchase Agreement is terminated by LEC under Article IV thereof as a result of a Company Event of Default (as defined in the Power Purchase Agreement), the GOL or its designee shall have the right, but shall not be required, to acquire all ownership interests in the Company by delivering to the Company written notice thereof and by paying to the Company or, at the direction of the Lenders, to the Lenders Compensation Component A and Compensation Component B (but not including part (ii) thereof in the event the Power Purchase Agreement is so terminated prior to the Construction Start Date). Upon payment of such compensation amount, the Company shall transfer the ownership interests of the Company to the GOL in accordance with Section 18.4 and this Agreement shall immediately terminate.

- (b) GOL Event of Default, Restoration, Failure to Obtain Consents, Failure to Obtain Financing, or Termination of the Power Purchase Agreement

Subject to the GOL's agreement to assume such obligations on the Transfer Payment Obligation Date pursuant to Section 18.5, in the event that, after the date of Financial Closing, (i) the Company delivers a Termination Notice as a result of a GOL Event of Default described in Section 17.2(b), (ii) either Party delivers a Termination Notice pursuant to Section 15.5, 20.3(b)(X), 20.3(d) or 20.7, or (iii) the Power Purchase Agreement is terminated by any party for any reason other than a Company Event of Default (as defined in the Power Purchase Agreement), the Company may elect to transfer the Complex to the GOL or its designee and, simultaneously with such transfer, the GOL or its designee shall pay the Company Compensation Component A and Compensation Component B (but not including part (ii) thereof in the event such Termination Notice is so delivered, or the Power Purchase Agreement is so terminated, prior to the Construction Start Date). Upon payment of such compensation amount, the Company shall transfer the Complex to the GOL in accordance with Section 18.4 and this Agreement shall immediately terminate.

- (c) Payment

Subject to the GOL's agreement to assume such obligations on the Transfer Payment Obligation Date pursuant to Section 18.5, the transfer of the ownership interests of the Company and payment of compensation pursuant to this Article XVIII shall occur within sixty (60) Days of delivery of the Termination Notice, or in the event the GOL elects to acquire all of the ownership interests in the Company pursuant to Section 18.1(a)(ii), then within sixty (60) Days of GOL's delivery of notice pursuant to Section 18.1(a)(ii).

- (d) GOL's Rights in the Complex

If the GOL does not elect or elects not to purchase the ownership interests of the Company pursuant to Section 18.1(a), or if the GOL delivers a Termination Notice as a result of a Company Event of Default described in Section 17.2(a)(iii), then, subject to the provisions of the last sentence of Section 18.4(e), this Agreement shall immediately terminate.

## **18.2 [Intentionally Omitted.]**

## **18.3 Obligations Upon Termination.**

Subject to the GOL's agreement to assume such obligations on the Transfer Payment Obligation Date pursuant to Section 18.5, upon the expiration or valid termination of this Agreement pursuant to Article XVII and Section 18.1, this Agreement shall become wholly void and of no further force and effect without liability to any Party or any of its Affiliates, ministers, officers, directors, employees, agents, advisors or other representatives, and each of the Parties shall fully release and discharge the other Party

and its Affiliates, ministers, officers, directors, employees, agents, advisors or other representatives from any liability or obligation under or resulting from this Agreement; provided, however, that nothing in this Section 18.3 shall be deemed to release any Party from liability for any material breach of its obligations under this Agreement prior to such termination; and provided, further, that notwithstanding anything to the contrary in the Agreement, the rights and obligations of the Parties set out in Article VIII (Liability), Article XII (Foreign Currency Exchange and Transfer of Funds), Article XVI (Taxation), this Article XVIII (Rights and Obligations of the Parties upon Termination), Article XIX (Resolution of Disputes), Article XX (Payment for Certain Events), Article XXI (Notices) and Article XXII (Miscellaneous) shall survive any termination or expiration of this Agreement until all such provisions have been fully performed and all funds payable hereunder by any Party are paid in full, including proceeds from the enforcement by the Lenders of the security created by the Company under or pursuant to the Security Package, and have been transferred out of Liberia and, if the Company or the Foreign Investors so desire in the case of Liberian Dollar funds, converted by the Company or the Foreign Investors into foreign currency by the Central Bank of Liberia in accordance with the terms of this Agreement and transferred out of Liberia.

#### **18.4 Transfer of Complex.**

- (a) Subject to Section 18.5, upon receipt of the compensation payable to it and the Lenders pursuant to this Article XVIII, Section 3.2, 20.3(b)(X), 20.3(d) or 20.7, as applicable, the Company shall transfer (and shall execute such documents as may reasonably be necessary to effect such transfer), free and clear of any Liens (other than Permitted Liens) and without payment of any further compensation beyond that required pursuant to this Article XVIII, Section 3.2, 20.3(b)(X), 20.3(d) or 20.7, all of the Company's right, title and interest in and to the Complex, including the fixtures, fittings, spare parts, plant equipment and all such data, operating manuals, "as-built" and design drawings and other documentation as may be reasonably required by the GOL or its designee to enable it to take over the operation of the Complex (the date of such transfer, "**Complex Transfer Date**").
- (b) Effective upon the Complex Transfer Date, the Company shall assign to the GOL or its designee (i) the Lease and (ii) any unexpired warranties in respect of the building, plant and equipment of the Complex.
- (c) During the period from the delivery of the Termination Notice (or the notice referred to in Section 18.1(a)(ii)) until the Complex Transfer Date, the Company and the GOL will each cooperate with each other and use reasonable efforts (i) to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary, proper or advisable on its part under this Agreement, the Laws of Liberia or otherwise to consummate and make effective the transfer of the Complex in the manner contemplated by this Agreement, (ii) to obtain promptly from any Public Sector Entity any Consents required to be obtained by it in connection with the transfer of the Complex or the transactions contemplated hereby; provided that no Party shall be obligated to pay any additional

consideration or incur any additional costs to obtain any consents from third parties that may be necessary, proper or advisable to complete the transfer of the Complex as contemplated by this Agreement.

- (d) The Parties acknowledge that the Company has completed, or will prior to Financial Closing complete, at the Company's expense, a comprehensive initial environmental assessment of the Site. The Company shall deliver a true, correct and complete copy of such initial environmental assessment to the GOL following its receipt thereof. Prior to the Complex Transfer Date, the Company shall complete, at its sole expense, a comprehensive final environmental assessment of the Complex and the Site, to be conducted by an independent, reputable and competent environmental firm mutually acceptable to the Company and the GOL, using a protocol and scope mutually determined and reasonably acceptable to the Company and the GOL. The Company shall promptly deliver a true, correct and complete copy of such final environmental assessment to the GOL following its receipt thereof. If the final environmental assessment reveals the existence of an environmental condition that would pursuant to the Environmental Laws and Standards, require any action to (i) clean up, remove, treat or in any other way deal with Hazardous Materials, in the environment; (ii) prevent any Release of Hazardous Materials where such Release would violate any Environmental Laws or endanger or threaten to endanger public health or welfare or the environment; or (iii) perform remedial studies, investigations, restoration and post-remedial studies, investigations and monitoring (such action, a "**Remedial Action**"), and a comparison of the final environmental assessment and the initial environmental assessment indicates that such environmental condition was caused by the Company, its agents, Contractors or employees, then the Company shall (a) promptly perform or cause to be performed such Remedial Action(s) at its sole expense or (b) except in the event of termination as set forth in Section 18.1(b), indemnify the GOL for the costs of such Remedial Action(s), which amounts may be set off against the compensation payable to the Company pursuant to Section 18.1.
- (e) On the Complex Transfer Date, all liabilities associated with the Complex (other than any liabilities arising under the Financing Documents not otherwise satisfied by payment of Compensation Component A or any other indebtedness of the Company) shall be transferred to the GOL. Notwithstanding any provision hereof to the contrary, this Agreement shall remain in full force and effect, until such time as all amounts due to OPIC under the Financing Documents have been indefeasibly paid in full.

## **18.5 Non Binding Termination Payment Obligations; Power Purchase Agreement Tariff Supplements**

- (a) Non Binding Termination Payment Obligations

The GOL shall have no obligation under this Agreement to make the payments contemplated by Section 18.1, 18.3 and 18.4 until the date (the "**Transfer**

**Payment Obligation Date**”) that the GOL has expressly assumed such obligations in writing. In no case shall the Transfer Payment Obligation Date be earlier than ninety (90) Days after the earlier of (i) the date the GOL has achieved the “completion point” under the Heavily Indebted Poor Country (HIPC) Initiative, as determined by each of the Board of Directors of the International Monetary Fund and World Bank and (ii) the date that the GOL has ceased participation in the HIPC Initiative. If such payments are not made, then (i) the Company shall not be obligated to transfer ownership interests in the Company or to perform related obligations set forth in Sections 18.1, 18.3 and 18.4, and (ii) this Agreement shall not terminate.

(b) **Tariff Supplement in Lieu of Termination Payment Obligations**

From the Initial Commercial Operations Date until the Transfer Payment Obligation Date, the Reference Capacity Purchase Price, as set out in Schedule 6 of the Power Purchase Agreement and Annex 1 to Schedule 6, shall be increased by \$18.89 US\$/MW/Hour (the “**Reference Capacity Tariff Supplement**”). This Reference Capacity Tariff Supplement shall not be inflated over the Term and shall be paid along with the other electricity tariff components as set out in Schedule 6 and Annex 1 of the Power Purchase Agreement.

(c) Commencing on the Transfer Payment Obligation Date, the Reference Capacity Tariff Supplement shall be eliminated, and the tariff under the Power Purchase Agreement shall be calculated pursuant to the Power Purchase Agreement without reference to Section 18.5(b) above.

**ARTICLE XIX**  
**RESOLUTION OF DISPUTES**

**19.1 Governing Law.**

This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the state of New York, United States of America, excluding, however, any rules or principles of New York law that would prevent adjudication upon, or accord presumptive validity to, the transactions of sovereign states or require the application of the laws of any other jurisdiction.

**19.2 Arbitration.**

- (a) Any dispute or difference between the Parties arising out of or in connection with this Agreement (each a “**Dispute**”) shall be settled by arbitration in accordance with the ICSID Rules of the Centre established by the Convention. For purposes of consenting to the jurisdiction of the Convention, the Parties agree that the Company is a foreign controlled entity unless the amount of the voting stock in the Company held by Foreign Investors is less than twenty-six percent (26%) of the outstanding voting stock of the Company and that the Company shall be treated as a national of the United States of America for purposes of the Convention, pursuant to Article 25(2)(b) thereof.
- (b) The Parties agree that this Agreement and the Company’s operations pursuant hereto constitute an “investment” by reason of the investment of a considerable amount of money in Liberia and that for purposes of Article 25(1) of the Convention, any Dispute subject to this Article XIX is a legal dispute arising directly out of an investment. Either of the Parties to such Dispute may institute arbitration proceedings by giving notice to the other Party and notice to the Secretary-General of the Centre, including in each a statement of the issues in dispute.
- (c) The venue of the arbitration shall be Washington, D.C. The arbitration shall be conducted in the English language by a panel of three arbitrators. One arbitrator shall be appointed by the GOL, one arbitrator shall be appointed by the Company, and the third arbitrator shall be appointed by the Secretary-General of the Centre. No arbitrator appointed pursuant to this Section 19.2(c) shall be an employee, agent, contractor, competitor or former employee, agent or contractor of, or have or have had any material interest (directly or indirectly) in the business of or in any Party or any of their Affiliates.
- (d) The arbitrators shall, by majority vote, render a written award stating the reasons for their award within three (3) Months after any hearing conducted has been concluded. The arbitral award may contain such orders (including orders for specific performance, setoff, other equitable relief or monetary damages) in respect of or affecting any of the Parties (and/or any direct loss or damage suffered by any of them), as such arbitral tribunal determines to be appropriate in

the circumstances, provided that the arbitral tribunal shall not have the authority to award punitive damages. The Parties agree that any arbitral award made pursuant to this Section 19.2 may be enforced against the Parties or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction on such matters, and subject to their respective obligations contained elsewhere in this Agreement, shall take all such actions as are necessary to give full and complete effect to the award which, in accordance with its terms, shall be binding upon and enforceable against them.

- (e) The costs of the proceedings, which shall be those costs and fees incurred or imposed by the Centre and the arbitrators, shall be assessed between the Parties on such basis as the arbitral tribunal shall decide. Any procedural issues that cannot be determined under the arbitral rules of the Centre shall be determined pursuant to Laws of Liberia. Each Party shall bear its own costs and attorney fees.
- (f) Should the Centre be replaced by, or its functions be substantially conferred upon or be transferred to, any new international body of a similar type and competence, each Party shall have the right to submit any Dispute to such body for settlement by arbitration in accordance with the foregoing provisions of this Section 19.2. Should the Centre cease to exist entirely without replacement, or should the Centre fail or refuse to take jurisdiction over such Dispute, then any Party may submit any dispute arising under this Agreement to the International Chamber of Commerce for arbitration in accordance with the terms hereof and its rules of procedure, or to such other arbitrators as the Parties shall agree upon. In all circumstances, however, the right to arbitration set forth herein shall remain at all times fully binding on both Parties.
- (g) For the purpose of Article 25(3) of the Convention, the GOL hereby approves of the consent by LEC in the Power Purchase Agreement to arbitration under the ICSID Rules.

### **19.3 Commercial Acts.**

The GOL unconditionally and irrevocably agrees that the execution, delivery, and performance by it of this Agreement and those agreements included in the Security Package to which it is a party constitute private and commercial acts.



**ARTICLE XX**  
**PAYMENTS FOR CERTAIN EVENTS.**

**20.1 Liberian Political Events and Other Force Majeure Events.**

- (a) The GOL shall use all reasonable efforts to cause LEC to comply with its payment obligations under Sections 13.5(a) and 13.5(b) of the Power Purchase Agreement to the extent that LEC has available cash to apply toward such payment obligations; provided that the GOL shall have no obligation under this Agreement to make any payment in respect of such obligations.
- (b) If by the Transfer Payment Obligation Date, the GOL has not guaranteed the payment of LEC's payment obligations under Sections 13.5(a) and 13.5(b) of the Power Purchase Agreement, then the Tariff shall be increased by one half of one US cent per kilowatt-hour (US\$0.005/kWh). In the event that the GOL guarantees LEC's payment obligations under Sections 13.5(a) and 13.5(b) of the Power Purchase Agreement at any time after the Guarantee Date, the Tariff shall decrease by one half of one US cent per kilowatt-hour (US\$0.005/kWh); provided that the Tariff was previously increased by one half of one US cent per kilowatt-hour (US\$0.005/kWh) pursuant to this Section 20.1(b).
- (c) In any event, GOL's guarantee shall be for payment and not merely for collection of LEC's payment obligations under Sections 13.5(a) and 13.5(b) of the Power Purchase Agreement.

**20.2 [Intentionally Omitted.]**

**20.3 Restoration Procedures.**

- (a) If a casualty event results in material damage to the Complex or causes the Company to make a material modification or a material capital addition to the Complex (a "**Restoration**"), the Company shall, within sixty (60) Days after such casualty event, develop and deliver to the GOL a written estimate (the "**Estimate**") including (1) the projected range of cost to effect the Restoration, less any insurance proceeds available or likely to become available to the Company therefor, other than in respect of delayed start-up, business interruption or loss of profits (the "**Restoration Cost Estimate**"); and (2) a preliminary schedule for the completion of the Restoration (a "**Restoration Schedule**"). Alternatively, the Company may state that Restoration is not feasible. In either case the Engineer shall confirm the Company's findings. If the Engineer does not confirm the Company's findings, then the Company and the Engineer shall resolve any differences, before proceeding to the actions set forth in Sections 20.3(b), (c), or (d).
- (b) If the Restoration Cost Estimate will be greater than the Threshold Amount and the GOL, within fifteen (15) Days of its receipt of the Estimate, agrees with such estimate ("**Restoration Agreement Date**"), then the Company shall proceed in

good faith to try to secure financing for the cost of Restoration on terms satisfactory to the Company and the GOL. If:

- (X) the Company is unable to arrange such financing within ninety (90) Days of the Restoration Agreement Date, then, either Party may, at its option, deliver to the other Party a Termination Notice, whereupon Article XVIII shall apply; or
  - (Y) financing for the Restoration has been secured by the Company, then the Company shall proceed with the Restoration in accordance with the Restoration Schedule. In the event that the casualty event that led to such Restoration was a Liberian Political Event, upon completion of the Restoration, the Company shall be entitled to a Supplemental Tariff pursuant to the Power Purchase Agreement.
- (c) If the Restoration Cost Estimate is less than the Threshold Amount, and the GOL within fifteen (15) Days of its receipt of the Estimate, agrees with such Estimate, then the Company shall proceed with the Restoration in accordance with the Restoration Schedule.
  - (d) If (i) the Company determines pursuant to Section 20.3(a) that the Restoration is not feasible or (ii) the Parties disagree on the Estimate, then either Party may, at its option, deliver to the other Party a Termination Notice, whereupon Article XVIII shall apply.
  - (e) If the GOL does not provide written Notice of disagreement on the Restoration Cost Estimate during the fifteen (15) Day period provided for in Sections 20.3(b) and 20.3(c), then the GOL shall be deemed to have agreed to the Restoration Cost Estimate.

#### **20.4 No Obligation.**

Notwithstanding any provision of this Article XX to the contrary, the Company shall not be obligated hereunder to proceed with any Restoration unless and until the Company has received all necessary Consents therefor. The Company shall use all reasonable efforts to obtain such Consents as soon as reasonably practicable.

#### **20.5 Supplemental Tariffs Payments.**

The cost of any Restoration of the Complex (less insurance proceeds received by or on behalf of the Company in respect of the relevant Loss) shall, to the extent the relevant Loss results from a Liberian Political Event, be recovered by the Company in the form of Supplemental Tariff Payments as provided in the Power Purchase Agreement.

## **20.6 Restoration Subject to Financing Documents.**

The Parties acknowledge that the Company's obligation (if any) to proceed with and complete any Restoration of all or part of the Complex pursuant to this Article XX shall be subject to the terms of the Financing Documents

## **20.7 Failure to Obtain Consents.**

If, despite the Company's good faith efforts, the Company is unable for any reason other than its own fault to obtain any Consents within a reasonable period of time not to exceed the later of (i) six (6) Months after the date that the Company becomes obligated to proceed with any Restoration and (ii) to the extent applicable under the Laws of Liberia, the last Day upon which the relevant Public Sector Entity is pursuant to the Laws of Liberia obligated to grant or deny such Consent, then either Party may, at its option, deliver to the other Party a Termination Notice, whereupon Article XVIII shall apply.

**ARTICLE XXI**  
**NOTICES**

**21.1 Address for Notices.**

All notices, communications, or other documents (together “**Notices**”) to be given or made by one Party to the other Party pursuant to this Agreement shall be in writing, shall be addressed for the attention of the Person indicated below, and shall either be delivered personally or sent by e-mail, registered or certified mail, or facsimile. The addresses for service of the Parties and their respective facsimile numbers shall be:

- (a) To the GOL: Ministry of Lands, Mines & Energy; Republic of Liberia
- Attention: Hon. Dr. Eugene H. Shannon, PHD, Minister  
Address: P. O. Box 10-9024, 1000 Monrovia 10, Liberia, West Africa  
E-Mail Address: Eugene2006shannon@yahoo.com  
Facsimile: +231.7780.9997
- (b) To the Company: Buchanan Renewables (Monrovia) Power Inc.
- Attention: Mr. Stanley Alan Ridley, President  
Address: 8, rue Emilie-Gourd, 1206 Geneva Switzerland  
E-Mail Address: stan.ridley@buchananrenewables.com  
Facsimile: +41.22.750.9999

or such other addresses e-mail address and facsimile numbers as either Party may have notified to the other Party in accordance with this Section 21.1.

**21.2 Delivery.**

All Notices shall be deemed delivered:

- (a) When presented personally;
- (b) If received on a Business Day for the receiving Party, when transmitted by e-mail or facsimile to the receiving Party’s e-mail address or facsimile number specified above and, if received on a Day that is not Business Day for the receiving Party, on the first Business Day following the date transmitted by e-mail or facsimile to the receiving Party’s e-mail address or facsimile number specified above;
- (c) One (1) Day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by Notice delivered to the delivering Party at its address, e-mail address or facsimile number specified above); or
- (d) Five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Liberia, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or

such other address as the receiving Party may have specified by written Notice delivered to the delivering Party at its address, e-mail address or facsimile number specified above). Any notice given by e-mail or facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

**ARTICLE XXII  
MISCELLANEOUS PROVISIONS**

**22.1 Variations in Writing.**

All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties.

**22.2 Entire Agreement.**

This Agreement and the Power Purchase Agreement, together with their attached Schedules and Exhibits, incorporate the entire understanding between the Parties in relation to the Project and supersede all previous oral and written representations, agreements or arrangements between the Parties in respect of the transactions contemplated hereby.

**22.3 Waivers.**

- (a) No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement:
  - (i) shall operate or be construed as a waiver of any other or further default whether of a like or different character; or
  - (ii) shall be effective unless in writing duly executed by an authorized representative of the Party.
- (b) The failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this Agreement, or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of the breach, as acceptance of any variation, or as the relinquishment of any such right hereunder, which shall remain in full force and effect.

**22.4 Confidentiality.**

- (a) Each of the Parties shall, and shall ensure that their Contractors, subcontractors, consultants, and agents, and each of their respective permitted successors and assigns, hold in confidence all documents and other information whether technical or commercial, which is of a confidential nature, supplied to it by or on behalf of the other Party relating to the Project and shall not (save as required by law or appropriate regulatory authorities or prospective lenders to, or investors in, the Company or the respective professional advisers of the Parties or of such lenders or investors as aforesaid) publish or otherwise disclose or use the same for its own purposes, otherwise than as may be required to perform its obligations under this Agreement. The provisions of this Section 22.4 shall survive the termination of this Agreement, but shall expire and be of no further effect upon the fifth (5th) anniversary of the date of termination of this Agreement.

- (b) The provisions of Section 22.4(a) above shall not apply to:
  - (i) information in the public domain other than by breach of this Agreement;
  - (ii) information in the possession of the receiving Party thereof before disclosure that was not obtained under any obligation of confidentiality; and
  - (iii) information obtained from a third party who the receiving Party believes, after reasonable inquiry, is free to disclose the same so long as the information was not obtained by the receiving Party under any obligation of confidentiality to the third party.
- (c) Nothing herein shall preclude the use of provisions similar to those contained in this Agreement and the other agreements referred to herein in any agreements prepared and issued in connection with other projects.

#### **22.5 GOL Observation Visits.**

GOL shall have the right, on a recurring basis and upon reasonable prior notice to the Company (except that no notice shall be required during an Emergency), to have GOL's officers, employees, and representatives observe the progress of the construction of the Complex, the testing and Commissioning of the Complex in accordance with Article X of the Power Purchase Agreement, and the operation of the Complex. The Company shall comply with all reasonable requests of GOL for, and assist in arranging, any such observation visits to the Complex. All persons visiting the Complex on behalf of GOL shall comply with the reasonable instructions and directions of the Company or its Contractors. Such visits to the Complex shall not be construed as an endorsement by GOL of the design, construction or operation of the Complex nor as a warranty by GOL of the safety, durability or reliability of the Complex. The Company shall have the right to limit the number of such visits and the number of GOL's observers at such visits as not to interfere with the construction, testing, maintenance and operations of the Complex.

#### **22.6 Records and Other Documentation.**

Each Party shall comply with all reasonable requests of the other Party to make available records and other documentation in order for such requesting Party to reasonably confirm the other Party's performance hereunder.

#### **22.7 Successors and Assigns.**

This Agreement shall inure to the benefit of, and be binding upon, the permitted successors and assigns.

## **22.8 No Third Party Beneficiaries.**

This Agreement shall not confer any right of suit or action whatsoever on any third party, except for the Lenders in respect of the specific rights granted to them herein and in the Financing Documents.

## **22.9 Affirmation.**

The Company declares and affirms that the Company and its shareholders, directors, officers, employees, and agents have not paid or received, nor undertaken to pay or receive, any bribe, pay-off, kick-back, or unlawful commission and that the Company and its shareholders, directors, officers, employees, and agents have not in any other way or manner paid any sums, whether in Liberian currency or foreign currency and whether in Liberia or abroad, given or offered to give any gifts and presents in Liberia or abroad, to any person or company to procure this Agreement. The Company shall not engage in any of these or similar acts during the term of this Agreement.

## **22.10 Sovereign Immunity.**

The GOL hereby irrevocably and unconditionally agrees that:

- (a) Should any proceedings be brought against the GOL or its assets, other than its aircraft, naval vessels and other defense related assets or assets protected by the diplomatic and consular privileges under the Immunity Act of the United Kingdom or the Foreign Sovereign Immunities Act of the United States or any analogous legislation (the “**Protected Assets**”) in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of the GOL on behalf of itself or any of its assets (other than the Protected Assets);
- (b) The GOL waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
- (c) The GOL consents generally in respect of the enforcement of any judgment 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 of its assets whatsoever (other than the Protected Assets)) regardless of its use or intended use.

## **22.11 Consent to Jurisdiction.**

Each Party hereby consents to the jurisdiction of the courts of Liberia for any action filed by the other Party to enforce a judgment entered by a Liberia court of competent jurisdiction recognizing any award or decision of any arbitrator(s) or experts who were duly appointed under this Agreement to resolve any Dispute between the Parties.



**22.12 Language of Agreement.**

The language for the purpose of administering and interpreting this Agreement, including any arbitration hereunder, shall be English.

**22.13 Publication.**

Subject to Law of Liberia, this Agreement shall be made public by the GOL.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF** the Parties have executed and delivered this Concession Agreement as of the date first above written.

**FOR BUCHANAN RENEWABLES  
(MONROVIA) POWER INC.:**

**FOR THE REPUBLIC OF LIBERIA:**

By: \_\_\_\_\_  
STANLEY ALAN RIDLEY  
PRESIDENT

By: \_\_\_\_\_  
HON. EUGENE H. SHANNON  
MINISTER OF LANDS, MINES  
AND ENERGY

By: \_\_\_\_\_  
HON. AUGUSTINE K. NGAFUAN  
MINISTER OF FINANCE

By: \_\_\_\_\_  
HON. RICHARD V. TOLBERT  
CHAIRMAN OF NATIONAL  
INVESTMENT CORPORATION

ATTESTED:

\_\_\_\_\_  
MINISTER OF JUSTICE  
REPUBLIC OF LIBERIA

APPROVED ON THIS 16<sup>th</sup>. DAY OF JANUARY 2009

\_\_\_\_\_  
H. E. ELLEN JOHNSON SIRLEAF  
PRESIDENT  
REPUBLIC OF LIBERIA

## **SCHEDULES**

SCHEDULE 1	SUMMARY OF CONSENTS
SCHEDULE 2	SUMMARY TERMS OF ESCROW ARRANGEMENTS
SCHEDULE 3	DESCRIPTION OF SITE
SCHEDULE 4	ALLOCATION OF EXCESS PROFITS
SCHEDULE 5	COMPENSATION COMPONENTS

## **EXHIBITS**

EXHIBIT A	DEFINITIONS
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## **SCHEDULE 1**

### **SUMMARY OF CONSENTS**

**(This Schedule to be completed on or before the earlier to occur of the Construction Start Date and the Tariff Agreement Date)**

1. PPCC Exemption
2. Ratification of Concession Agreement by the National Assembly of Liberia
3. [FDA Permit in case of cutting down trees for commercial or non-commercial use]
4. Immigration visa to enter Liberia, change of status or adjustment of status for resident aliens as well as entry and exit visa requirement, Bureau of Immigration
5. Work permits from the Ministry of Labor for Aliens that wish to work in Liberia which has terms and conditions consistent with Labor Law
6. Construction permit from the Ministry of Public Works approving engineering drawings and designs; further, LEC in this case, may provide technical specification approval on behalf of GOL
7. Environmental impact assessment permit from the EPA for the project that is subject to annual implementation and audit
8. Transport, drivers license and License plate for Company vehicles; from time to time pursuant to the Laws of Liberia
9. Ministry of Finance – Import/Export duties, except to the extent waived under applicable Laws of Liberia
10. Ministry of Commerce – IPD/ EPD permit for goods in and out of the country
11. If the Company operates a hospital or school, permits from Health and Education ministries.

## SCHEDULE 2

### SUMMARY TERMS OF ESCROW ARRANGEMENTS

The GOL, the Company, LEC and a nominated Escrow Agent shall enter into Assignment and Escrow Agreements (together, the “**Escrow Agreement**”) for the Project establishing secured escrow or collateral accounts for the receipt of, and assigning the receivables in respect of, revenues from the sale of electric energy by LEC, on terms and conditions consistent with the following principles:

1. The parties shall establish Escrow Accounts with the Account Bank. The Escrow Agent shall have dominion and control over the Escrow Accounts and manage all debits and credits from the Escrow Accounts, as security in respect of LEC’s obligations, from time to time, under the Power Purchase Agreement and the GOL’s payment obligations, from time to time, under this Agreement for the benefit of the Company (subject to the Lien granted by the Company to the Lenders in such rights). The obligations of LEC described herein shall be binding on any and all of its successors.
2. LEC shall direct the following payments to be made to certain Escrow Accounts (the “**Collection Accounts**”) for the collection of revenues relating to the sale of electricity (which, for the avoidance of doubt, shall include wheeling charges and new customer connection charges):
  - (a) monthly advance payments for electricity delivered and sold to identified, major industrial electricity users (each, an “**IEU**”) in the following Month, not to exceed 10 MW in the aggregate;
  - (b) monthly advance payments for electricity delivered and sold to the GOL and other GOL Entities in the following Month;
  - (c) payments from all other consumers of electricity within the LEC Grid System in Liberia in respect of electricity delivered and sold by LEC (subject to paragraph 8 below); and
  - (d) any other payments to LEC by any third party other than payments (i) of interest on deposit or investment accounts, (ii) of dividends or distributions from investments, (iii) that are specifically designated by such third party and used by LEC for the development, construction, replacement or rehabilitation of a capital asset of LEC or for the review and/or improvement of LEC’s organizational, technical or administrative systems or (iv) of such other amounts as the parties may agree in the Escrow Agreements.

For the avoidance of doubt, other revenues or income of, or contributions to, LEC (howsoever earned or made) not described in this Section 2 shall not be directed to the Collection Accounts but to such other unsecured account(s) as LEC may direct.

3. Each IEU, the GOL and other GOL Entities will enter into ancillary agreements with the Escrow Agent, the Account Bank, the Company and LEC obligating the IEU to consent to the security interests granted under the Escrow Agreement and to make monthly advance payments in respect of electrical energy to be delivered and sold to it directly to the Collection Accounts. IEUs will also acknowledge that their electricity service may be terminated under certain circumstances as the result of the failure to make such payments when due.
4. Each of LEC and the Company will agree to submit all invoices and notices delivered by them under the Power Purchase Agreement to the Escrow Agent and the Account Bank. LEC will also provide the Escrow Agent and the Account Bank with copies of all invoices issued by it to the IEUs, the GOL, GOL Entities and its other customers in respect of electrical energy generated at the Complex and sold to such persons.

5. On the seventh Business Day of each Month, the Escrow Agent shall instruct the Account Bank to distribute amounts credited to the Collection Accounts during the previous Month in the following priority:

- (a) first, to pay to the Escrow Agent and the Account Bank any amounts due to them in respect of administrative fees and expenses in connection with their performance under the Escrow Agreement;
- (b) second, to pay to an Escrow Account designated for the Project (the “**Company Distribution Account**”) an amount equal to one hundred ten percent (110%) of the amounts then due and payable by LEC to the Company under the Power Purchase Agreement pursuant to invoices submitted by the Company to LEC and, if applicable, any payment due and payable by the GOL to the Company pursuant to the Concession Agreement; and
- (c) third, to pay the remainder to such other account(s) as may be designated by LEC from time to time, including any other account(s) established for the benefit of another Person or project.

6. On the seventh Business Day of each Month, the Escrow Agent shall instruct the Account Bank to distribute amounts credited to the Company Distribution Account pursuant to Section 5(b) in the following priority:

- (a) first, to pay to the Company the amounts then due and payable by LEC to the Company under the Power Purchase Agreement pursuant to invoices submitted by the Company to LEC and, if applicable, any payment due and payable by the GOL to the Company pursuant to the Concession Agreement; and
- (b) second, in the event that any amount invoiced by the Company or LEC under the Power Purchase Agreement is disputed, to pay an amount equal to such disputed amount to a separate, secured, interest-bearing reserve account, where such funds will be held pending the outcome of such dispute;
- (c) third, to pay any outstanding true-up amounts (as described below) to the appropriate parties; and
- (d) fourth, to deposit the remainder in a holding account, pending the quarterly true-up calculation described below, and after such calculation has been made and after paying any true-up amounts identified thereby to the appropriate parties, to pay the remainder to LEC or such other account(s) as may be designated by LEC.

7. On a quarterly basis, the Escrow Agent shall prepare a “true-up” calculation to ensure that the correct payments have been made and received by the appropriate Parties in respect of the delivery and sale of electrical energy during the previous quarter. If such calculation indicates a shortfall in the amounts paid to date by LEC to the Company, the Company shall have a right to include such shortfall in its subsequent invoice(s) to LEC as amounts then due and payable until such shortfall has been resolved.

8. The advance payment arrangements described in paragraph 2(a) shall remain in effect until the tenth (10<sup>th</sup>) anniversary of the Commercial Operations Date, and thereafter all amounts payable by IEUs for electricity delivered and sold shall be paid into a Collection Account in accordance with paragraph 2(c).

9. The Company shall be permitted to grant a first priority security interest in its rights in the LEC receivables and the Escrow Accounts in favor of the Lenders; provided that (i) neither the Company nor its Lenders shall have a Lien on or security interest in any account(s) described in Section 5(c) and (ii) the security interest of the Lenders in the Escrow Accounts may be subject to any intercreditor arrangements

agreed by the Lenders to the extent that other account(s) described in Section 5(c) are secured by and for the benefit of another lender (or its agent, representative or trustee) that benefits from the distribution of amounts in the Collection Account. In all respects, the provisions of this Schedule 2 are subject to the terms and conditions of the Financing Documents, including provisions in respect of the timing and the relative priority of payments made from amounts deposited from time to time in the Escrow Account. No Party shall have any liabilities hereunder if Financial Closing cannot be achieved because the escrow arrangements described in this Schedule 2 are unacceptable to the Lenders.

10. The Escrow Agreements will provide that LEC and/or the GOL may at any time and from time to time introduce additional Escrow Accounts in respect of additional generators of electrical energy who will accede to the Escrow Agreements pursuant to documentation satisfactory to the GOL, LEC, the Company, its Lenders and such additional generator (and its lenders, if any). The first priority ranking of the Company established in Section 5 will not be altered, and the Company will have no obligation to share any amounts distributed to it pro rata with the parties described in paragraph (c) thereof, unless the following shall occur:

- (a) either:
  - (i) the Company and its Lenders shall agree to such arrangements upon the reasonable request of LEC; or
  - (ii) the outstanding long-term senior unsecured debt of LEC, or any Person (including the GOL) which provides a guarantee of the payment obligations of LEC under the Agreement, is rated at least “BBB-” by Standard & Poor’s Ratings Group, Inc., “Baa3” by Moody’s Investors Service, Inc., or “BBB-” by Fitch Ratings, Ltd., or LEC shall have delivered to the Company and its Lenders a report satisfactory to the Company and its Lenders in form and substance from an independent, reputable international financial institution, that is acceptable to the GOL, the Company and the Lenders, which states on the basis of a detailed credit assessment comparable to that typically issued by the aforementioned agencies in connection with ratings issued by them that the credit quality of LEC or such Person is sufficient such that it likely would be issued one of the aforementioned ratings if LEC or such Person applied to the applicable agency therefor; and
- (b) no LEC Event of Default shall have occurred and be continuing under the Power Purchase Agreement.

11. The Escrow Agreements shall terminate with respect to the Project, the Company Distribution Account shall be closed and the security interests created in respect of the Escrow Accounts shall be released at such time as all amounts owing to OPIC under the Financing Documents, if any, have been indefeasibly paid in full; provided that at such time no LEC Event of Default shall have occurred and be continuing under the Power Purchase Agreement.

12. The Escrow Agent shall be responsible for withholding and paying all Taxes (if any) imposed with respect to the interest earned on funds standing to the credit of the Escrow Accounts.

### **Schedule 3**

#### **DESCRIPTION OF SITE**

#### **Proposed Power Plant Site at Kakata, Liberia**

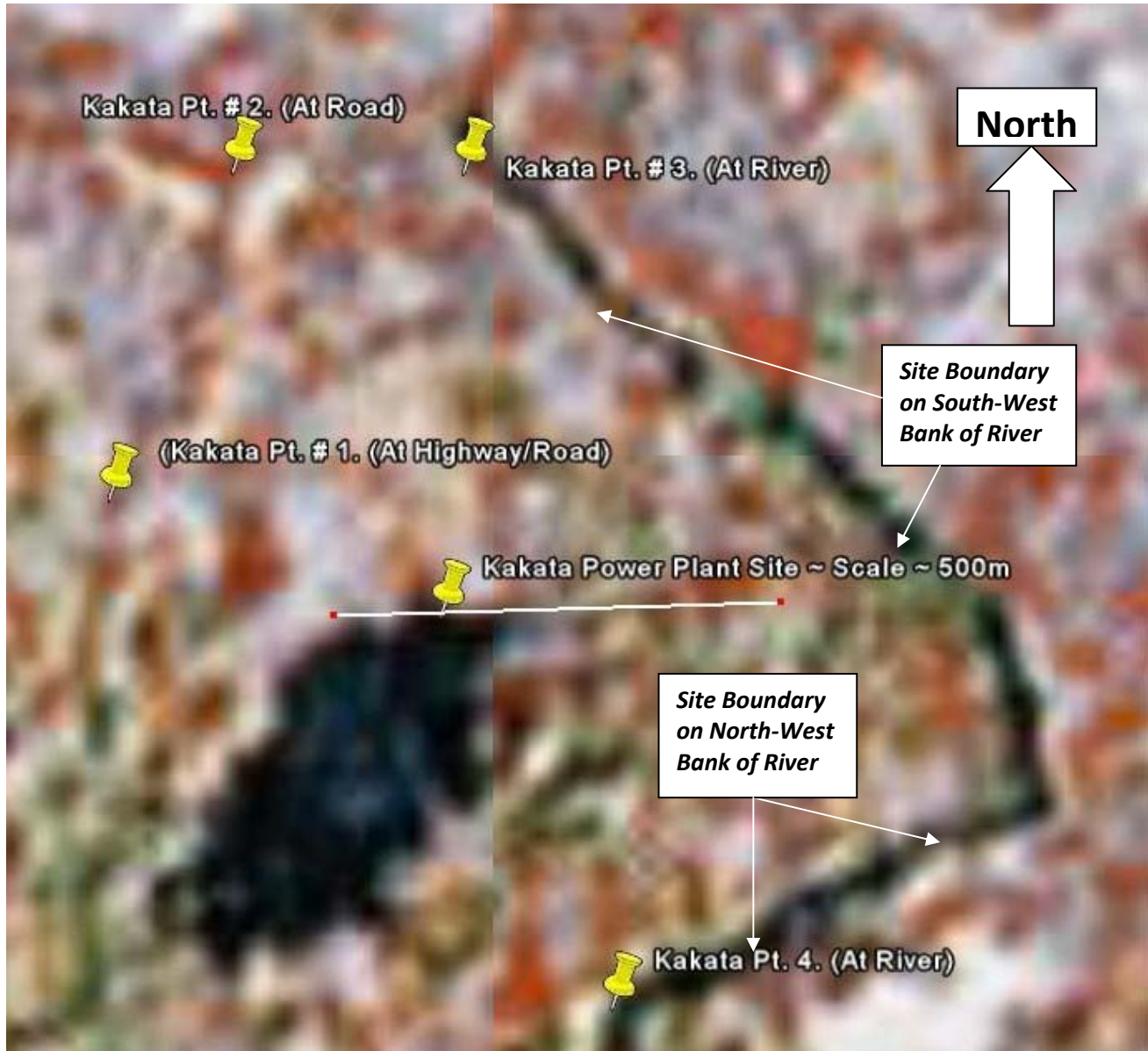
Google Earth Sketch Titled SK 18 August 2008, R 1. below, to be replaced, on or before the earlier to occur of the Construction Start Date and the Tariff Agreement Date, with a detailed Survey Map of the site of the power plant near Kakata, Liberia (such site as detailed in the replacement map, the “Site”).

#### **SK ~ 18 August 2008, R1**

#### **Approximate Corner Points & Boundaries of Power Plant Site**



*Note: Approximate coordinates of Corner Points of Power Plant Site shown on Table S1 below.*



**Table S1**  
**Approximate Coordinates of Corner Points of Proposed Kakata Power Plant Site**

<b>Corner Point No.</b>	<b>North Coordinate Deg.-Mins.-Sec.</b>	<b>West Coordinate Deg.-Mins.-Sec.</b>	<b>Notes</b>
Kakata Pt. # 1.	06 - 31 - 31.5	10 - 22 - 29.9	On East side of Highway
Kakata Pt. # 2.	06 - 31 - 43.3	10 - 22 - 25.4	On East side of Highway
Kakata Pt. # 3.	06 - 31 - 43.3	10 - 22 - 17.0	On South-West Bank of River
Kakata Pt. # 4.	06 - 31 - 13.1	10 - 22 - 11.6	On North-West Bank of River

- Note:** (1) *These coordinates are approximate and need to be adjusted on site, during the site survey, to recognize the actual Highway/Road and River locations/ boundaries.*
- (2) *With reference to the above Google Earth Sketch and Table S1, dated 18 August 2008, the area to be surveyed will be bounded and enclosed by the Highway, between Kakata Pt. # 1, and Kakata Pt. # 2.; the straight line joining Kakata Pt. # 2 and Kakata Pt. # 3; the South-West and North-West edge of the River, and the straight line joining Kakata Pt. # 4. to Kakata Pt. # 1 see above SK ~ 18 August 2008, R1..*
- (2) *Area enclosed within the above boundaries is about 49 ha. (~120 Acres), to be confirmed by proposed land/topographic survey.*

## SCHEDULE 4

### ALLOCATION OF EXCESS PROFITS

1. On the fifth (5th) anniversary of the Commercial Operations Date, the Company will prepare and submit to the GOL financial projections showing the expected 25-Year after-tax return on equity invested (“**ROE**”) in the Company, taking into account, among other things, (a) the terms of the Company’s senior debt incurred pursuant to the Financing Documents on or after Financial Closing (but assuming, for the purposes of this Schedule 4 only, a debt-to-equity ratio of 70:30), (b) the results of the business operations of the Company during the first five (5) Years of operations of the Complex and (c) the expected operating costs of the Company over the life of the Project, together with a certificate from an authorized officer of the Company certifying that, to the best of his or her knowledge and belief, such financial projections (i) represent a reasonable estimate of expenses and probable results of operations with respect to the Project over the period presented, (ii) are consistent with the Security Package and (iii) are arithmetically correct.
2. If the financial projections delivered to the GOL pursuant to paragraph 1 demonstrate that the Company is expected to achieve an after tax 25-Year ROE in excess of twenty-five percent (25%), then the aggregate amount demonstrated by the financial projections by which such after tax ROE will exceed twenty-five percent (25%) (the amount of such excess, the “**Excess Profit Amount**”) shall, subject to the terms of the Financing Documents, on each occasion that amounts are otherwise available to the Company for distribution to the equity owners of the Company, be paid by the Company in such amounts to the following recipients in the following proportion and pursuant to procedures satisfactory to the Lenders, until the aggregate amount of such payments equals the Excess Profit Amount:
  - (a) Two thirds (2/3) shall be paid to the McCall MacBain Foundation for health, education and similar developments in Liberia.
  - (b) One third (1/3) shall be paid to the equity owners of the Company or reserved by the Company for general corporate purposes.

## SCHEDULE 5

### COMPENSATION COMPONENTS

“**Compensation Component A**” shall mean the sum of:

- (i) the total amount outstanding to the Lenders under the Financing Documents, including any winding-up costs, prepayment charges or similar charges (if any) payable to the Lenders in accordance with the Financing Documents;
- (ii) the total amount outstanding under any loan agreements for capital improvements to the Complex that are required under this Agreement, as approved in writing by the GOL prior to its incurrence, taking into account all Supplemental Tariff Payments made through the Complex Transfer Date or the date of termination; and
- (iii) the total amount of any other outstanding debt incurred by the Company that was approved in writing by the GOL prior to its incurrence, less any insurance proceeds available to the Company following a Force Majeure Event and not spent for Restoration.

“**Compensation Component B**” shall mean the sum of:

- (i) the documented equity contributions to the Company from and including the date of Financial Closing until the date of Complex Transfer Date or the date of termination; and
- (ii) an amount equal to the Net Cash Flow for the lesser of: (x) five (5) Years or (y) the remainder of the Term of the Power Purchase Agreement, discounted to its present value by applying a discount rate equal to ten percent (10%) to the base case pro forma that is agreed to in writing by the Company and LEC on or prior to the Tariff Agreement Date. For purposes of this Schedule 5, the term “Net Cash Flow” shall mean the net cash profits of the Company with respect to the Complex less all operations and maintenance costs and less principal and interest repayment amounts, all as projected in such approved base case pro forma.

The calculation of each element of each of Compensation Component A and Compensation Component B as set forth in this Schedule 5 shall be subject to verification by an international accounting firm acceptable to the Parties; provided that amounts payable to the Lenders shall be made in the amounts (in the absence of manifest error) notified by Lenders to the Parties as outstanding under the Financing Documents, reflecting principal, interest, fees and other categories of amounts due, without any such requirement for or right of verification.

