

Memorandum of Understanding and Agreement

between

The Government of the Republic of Sierra Leone

Addax Bioenergy Sierra Leone Ltd

and

Addax & Oryx Holdings BV

February 9th, 2010

Memorandum of Understanding and Agreement

Dated February 9th, 2010

Between

- (1) **The Government of the Republic of Sierra Leone (GOSL)** acting by each of the Ministries of Agriculture, Forestry and Food Security, Energy and Water Resources, Finance and Economic Development and Trade and Industry;
- (2) **Addax Bioenergy Sierra Leone Limited**, a limited liability company established and registered under the laws of Sierra Leone with company number C/F/576/2008 and with its registered office at the date of this Memorandum at 4 Liverpool Street, PO Box 810, Freetown, Sierra Leone (**ABSL**); and
- (3) **Addax & Oryx Holdings BV**.

Recitals

- A ABSL, which is an affiliate of the Addax & Oryx Holdings BV, proposes to set up a large scale sugarcane plantation, ethanol distillery and power plant at Makeni in Bombali district (the **Project**);
- B ABSL intends to export the bulk of its future ethanol production to the EU market and to supply its excess power production to the National Power Authority (NPA) to be fed into the national power grid;
- C It is intended by ABSL that the Project is implemented in two phases as follows:
- | | Phase I: 2010-2013 | Phase II: 2013-2015 |
|-------------------------------|--------------------|---------------------|
| Cultivated Plantation size: | 10'000 ha | 20'000 ha |
| Distillery capacity: | 350 KLpd | 700 KLpd |
| Power co-generation capacity: | 15 MW | 30 MW |
| Estimated Investment: | 200 mio Euro | 300 mio Euro |
| Estimated Labour: | 3000 | 4000 |
- D In Phase I, ABSL proposes to guarantee a yearly availability of about 90,000 MWn of electricity to NPA and to meet all capital expenditure necessary to connect to the grid;
- E ABSL will seek to improve the livelihoods of the local population by establishing a smallholder and outgrower support scheme, building and improving social infrastructure, employing and/or contracting up to 4000 staff and training its workforce;
- F ABSL has elected to set up its Project in Sierra Leone because of its favourable agrclimatic conditions and GOSL's commitment to improve the investment climate, the track record of the Addax & Oryx Holdings BV's group of companies and their experience of doing business in Sierra Leone, the availability of land and water and duty-free access to the EU market;
- G ABSL has finalised the technical and environmental studies which confirmed the feasibility of the Project from the perspective of soil quality, climate and environmental conditions and transport and transmission logistics;

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H ABSL has negotiated land lease agreements covering the project area with the district office, chiefdom councils and landowners of Bombali district;

I The European Development Finance Institutions DEG (Germany), EAIF (United Kingdom), FMO (the Netherlands) and OeEB (Austria), as well as the African Development Bank, have declared their support for the Project and their intention to participate in the financing round in a letter to the Government of Sierra Leone dated August 2009;

and whereas,

J It is the policy objective of GOSL to attract large-scale foreign investments to the agricultural sector of Sierra Leone;

K GOSL seeks to promote the use of local raw materials and the establishment of value-adding transformation industries;

L GOSL supports the establishment of independent power plants based on renewable feedstock to increase Sierra Leone's power production capacity and to alleviate its dependency on imported fossil fuels;

M GOSL welcomes labour-intensive industries which provide stable income and training to its workforce;

N GOSL promotes the establishment of sustainable economic centres in rural areas;

Considering:

O GOSL has agreed the Project meets the policy objectives of GOSL;

P GOSL recognizes the expected benefits of the Project in terms of job creation, education, stable income, and infrastructure, as well as the positive indirect effects of a large economic centre in Bombali district;

Q GOSL wants to improve the livelihood of an impoverished rural population which still suffers from the consequences of the civil war and recognizes that the Project will contribute to this;

R GOSL recognizes the Project will be based on
(i) the provisional business plan attached to this Memorandum; and
(ii) the environmental and social sustainability criteria to be evidenced in the Environmental, Social and Health Impact Assessment (ESHIA);

S GOSL recognizes the benefits of the additional power production capacity which can be supplied into the national power grid;

T GOSL recognizes the Project represents an opportunity to enhance the renewable energy sector in Sierra Leone;

U GOSL recognizes the contribution the Project is intended to make to the agricultural and other economic sectors in Sierra Leone and that it will indirectly help attract other foreign investments into the agricultural and other economic sectors;

V GOSL recognises the letter by the Minister of Finance and Economic Development dated 24th December 2008 to ABSL confirming the support of GOSL for the Project and its

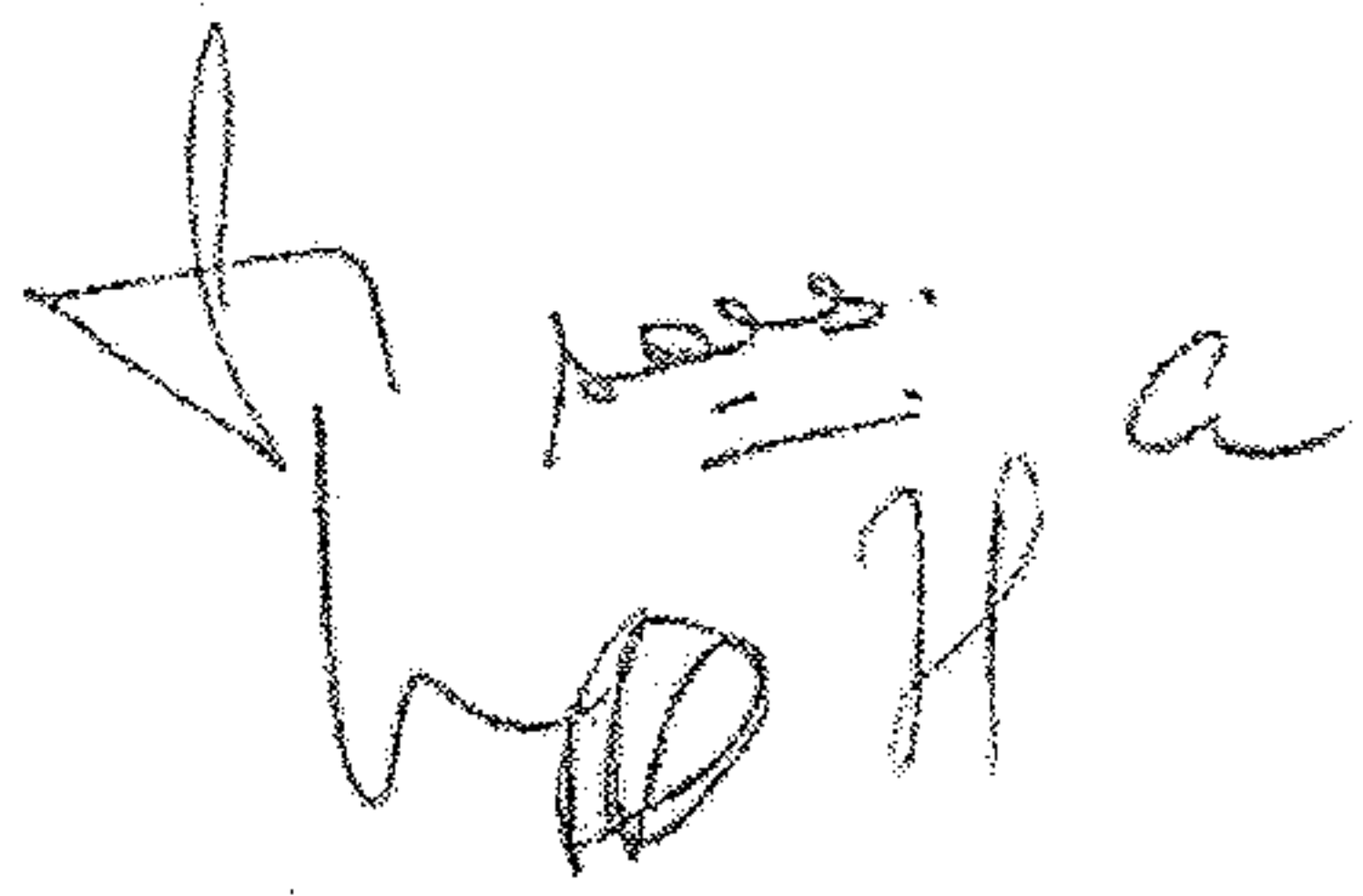
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readiness to grant investment incentives in the form of tax holidays and exemption of duties to ABSL in connection with the Project.

W GOSL and ABSL have agreed to enter into this Memorandum of Understanding and Agreement, which is intended to have legal effect.

It is agreed as follows:

- 1 GOSL in regarding the Project as a pioneer and priority investment in the agricultural, industrial and power sectors in Sierra Leone and taking into account its investment promotion policy, GOSL supports ABSL's development of the Project by:
 - 1.1 Recognising the requirement of ABSL to secure additional funding from investors and lenders; and
 - 1.2 in view of that status, to support the Project by hereby agreeing to the main incentives, exemptions and rights as set out in the Appendix below.
- 2 ABSL in consideration of the representations and agreements in this Memorandum agrees, subject to achieving financial close and final investment approval by the Addax & Oryx Holdings BV group, to implement the Project according to its Business Plan and to meet all project-related infrastructure capital costs anticipated in that Business Plan, including but not limited to land clearance, earth moving, road and rail construction, installation of pumping stations and an irrigation network and systems, factory installation and fit-out and related civil works, residential and social infrastructure as outlined, installation of an electricity sub-station and connection to the Bumbuna power line.
- 3 ABSL agrees to permit tendering by local suppliers of relevant ancillary services, such as warehousing, packaging, engineering and shipping, from time to time on such terms and conditions as ABSL shall reasonably specify.
- 4 Insofar as ABSL considers it necessary GOSL agrees this Memorandum will be given further affect to or implemented in further detail by GOSL entering into such further agreements and taking such further action as ABSL may reasonably request.
- 5 Those shareholders, their affiliates and others referred to in the Appendix as having the benefit of a right, entitlement, discretion or the benefit of an obligation by GOSL shall have direct benefit of such right, entitlement or, as the case may be, discretion and to enforce such obligation under this Memorandum.
- 6 This Memorandum is governed and shall be construed in accordance with the laws of the Republic of Sierra Leone and is intended to be legally binding on the parties.
- 7 This Clause applies to any claim, dispute or difference of any kind between the parties arising out of or in connection with this Memorandum (a *Dispute*). That includes, without limitation, any question about the Memorandum's existence, validity or termination.
 - (i) All Disputes shall be referred to and finally resolved by arbitration in London before three arbitrators under the Rules of Arbitration of the International Chamber of Commerce from time to time in force. This Clause incorporates those Rules except where they conflict with its express terms.
 - (ii) Each party shall nominate an arbitrator in the Request for Arbitration or Answer as the case may be not later than 14 days after service of a written request by either party to do so. The parties must then seek to agree on and nominate a third arbitrator to act as Chairman within 14 days after confirmation of the second arbitrator's appointment. Failing agreement between the parties the two

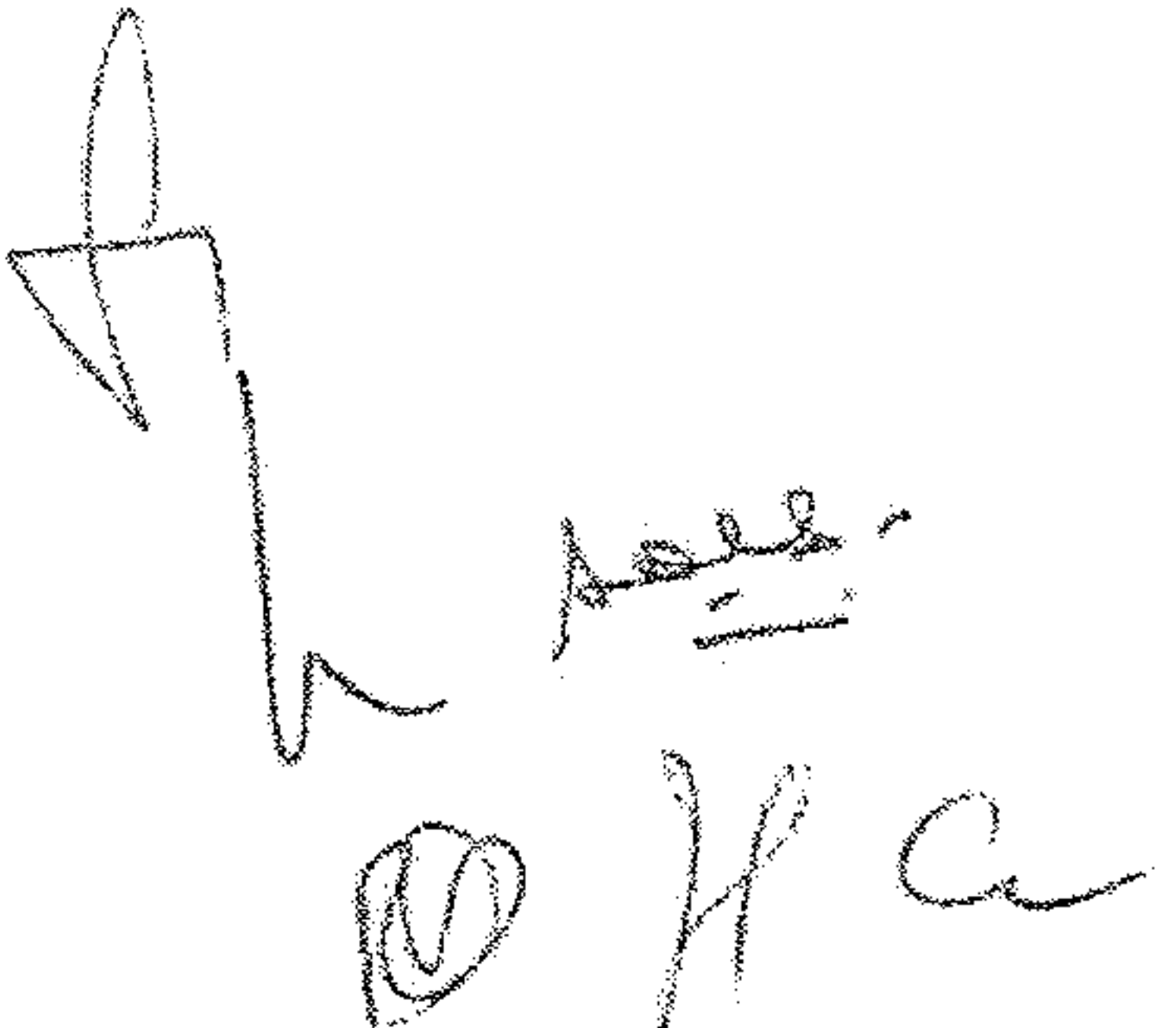


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arbitrators already appointed must within 14 days nominate the third arbitrator. If any of the parties fail to nominate an arbitrator or the two arbitrators already appointed fail to nominate the Chairman, the appointments shall be made by the ICC Court of Arbitration.

- (iii) The proceedings shall be conducted in the English language. All documents submitted in the arbitration shall be in the English language or, if in another language, be accompanied by a certified English translation.
- (iv) None of the parties may appeal to any court on a question of law arising out of an award made in the arbitration. The parties irrevocably waive any rights of appeal they might otherwise have had.
- (v) The award shall be final and binding on the parties or anyone claiming through or under them and judgment rendered on the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.
- (vi) GOSL irrevocably and unconditionally:
 - (a) acknowledges that the execution, performance and delivery by each Party of this Memorandum shall constitute a private commercial transaction entered into entirely in its commercial capacity;
 - (b) agrees that should any other party bring legal proceedings against it or its assets in relation to this Memorandum, no immunity from such legal proceedings (which shall be deemed to include without limitation, suit, attachment prior to judgement, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of itself other than in respect of government buildings located in Sierra Leone or buildings forming part of a diplomatic or consular mission (except to the extent necessary to effect service of legal process); and
 - (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings,

and ABSL irrevocably and unconditionally agrees it shall not be entitled to, and shall not, take any action to enforce a judgement or arbitral award against any bank account held by GOSL (including of any of its diplomatic or consular missions) within a period of 45 days from the date of such judgment or award or such longer period granted to GOSL in the judgment or award to meet the same.

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Appendix

A. Government Support

1.	Government support to the Project	GOSL supports the Project and agrees to provide such assistance and enter into such documents to ensure the successful implementation of the Project and its funding as ABSL, its shareholders or the funders may reasonably require from time to time.
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B. Permits

2.	Permits	GOSL confirms that ABSL will be granted all the required permits and other authorisations in connection with the Project and its funding provided that ABSL complies with all published requirements of the laws of the Republic of Sierra Leone in relation to such permits or authorisations, the details of which are generally available to the public in Sierra Leone.
3.	Further Permits	GOSL undertakes that should ABSL (or any other person taking part or participating in the Project or its funding), at any time, be required to obtain any further permit or other authorisation in connection with itself, its activities or the Project (or any part of the Project) or its funding, it shall take all necessary steps to ensure such permit or other authorisation is issued forthwith provided that ABSL or, as the case may be, such other person complies with all published requirements of the laws of the Republic of Sierra Leone in relation to such permits or authorisations, the details of which are generally available to the public in Sierra Leone.
4.	Revocation of Permits	GOSL agrees that any permit or other authorisation will only be cancelled, terminated or revoked, or amended or changed, in accordance with its terms and conditions only (which include the laws and published regulations, the details of which are generally available to the public in Sierra Leone, pursuant to which it was issued).
5.	Breach of Permits	<p>If ABSL or other person to whom it was issued fails to abide by any terms of any permit or authorisation, GOSL (or any relevant official or public authority) may exercise any power pursuant to the laws of the Republic of Sierra Leone in respect of such failure. However, GOSL agrees it will not (and will procure that no official or public authority will) exercise any such power unless ABSL and such other person(s) it shall specify for this purpose have first been given the longer of two weeks' and any minimum statutory period of notice (the Notice) of such failure and given the opportunity, and failed within a reasonable period of time after receipt of such notice, to rectify, remedy or cure such failure unless, in the opinion of GOSL acting reasonably, there is a significant risk to life or the environment. If there is a significant risk to life or the environment, GOSL shall be entitled to suspend the relevant permit or authorisation for the minimum period of time which could be anticipated as being reasonably necessary for an organisation which is competent, experienced and efficient to prevent such risk occurring.</p> <p>For the purposes of this paragraph, "reasonable period" means at a minimum period of 6 six weeks from date of delivery of the Notice.</p>
6.	Environmental and Social Assessment	The Environmental Licence for the Project will be granted to ABSL, subject to conditions only which are typical for an Environmental Licence, no later than 6 weeks after the application is lodged unless (a) withheld for one or more lawful reasons which are objectively reasonable for withholding such Environmental Licence under the relevant laws of the Republic of Sierra Leone or (b) ABSL's environmental management plan (including the ESHIA) is not being implemented

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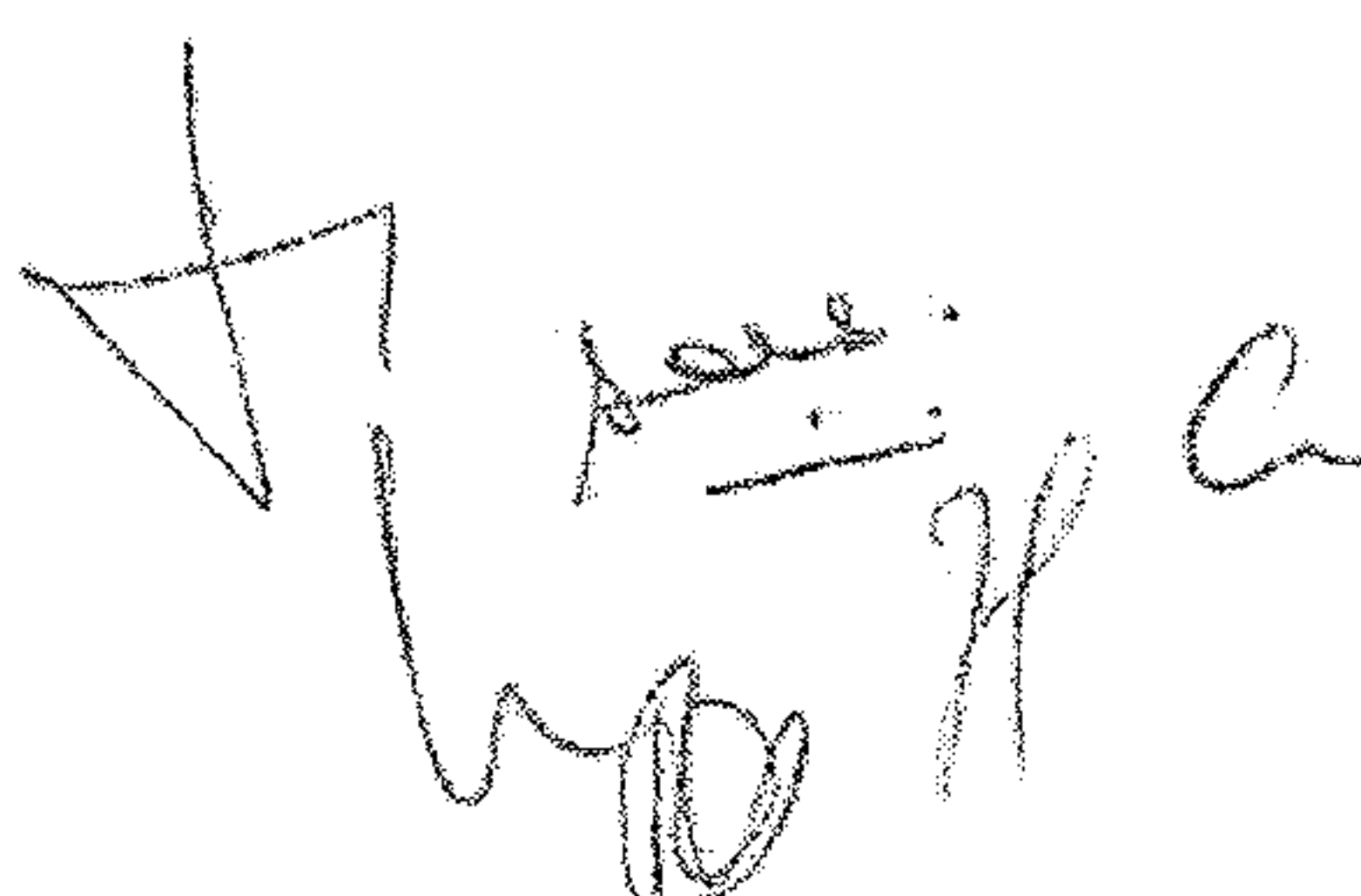
	to a material extent.
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C. Incentives, waivers and concessions

7.	Expatriates	<p>GOSL agrees that the directors, consultants and employees (including their immediate families) of ABSL and its contractors and sub-contractors, shall be entitled to:</p> <ul style="list-style-type: none"> (a) enter into, leave and reside in Sierra Leone for the purposes of the Project; (b) work in Sierra Leone (excluding immediate families who are only entitled to apply to work in relation to the same conditions that apply to other ex-patriates); (c) bring into or import, and to export following or in anticipation of the ending of their period of residence or work, such personal and household effects (including one vehicle per family), free of all taxes and all customs duties (other than any prevailing ECOWAS tax which is currently set at 0.5% of the value of the applicable goods) but otherwise subject to GOSL's usual terms and conditions being applied and without any discrimination and for the same to be processed through the port of entry or exit, including any customs procedures, without delay, and (d) subject to the applicable sales duties/tax, sell within Sierra Leone any such effects brought into or imported into Sierra Leone. <p>GOSL agrees that it shall procure that all relevant officials or public authorities shall deliver without delay all documents, permits and licences required to give effect to the foregoing.</p> <p>ABSL agrees that it will comply with all labour laws in Sierra Leone including the General Law (Business Start-Up) (Amendment) Act 2007.</p>
8.	Import and export of equipment and materials	<p>GOSL agrees to procure that at all times ABSL, its contractors, and sub-contractors are entitled to import into and export from Sierra Leone without restriction all seeds, plants, fertilizers, agricultural materials relevant to crop cultivation, plant, equipment, machinery, spare parts, materials and supplies required for the construction, completion, operation and maintenance of the Project (or any part thereof), and that each of the same will be processed through the port of entry, including any customs procedures, without delay, unless GOSL considers, acting reasonably, that there is material danger to life, property or the environment arising therefrom and any restriction imposed applies equally to all persons in Sierra Leone. GOSL agrees that it shall, and that it shall procure that all relevant officials or public authorities shall deliver without delay all documents, permits and licences required to give effect to the foregoing.</p> <p>GOSL agrees that the import of any agricultural inputs shall not be subject to any tax or duty whatsoever.</p> <p>GOSL agrees that all plant, machinery and equipment which are not agricultural inputs are eligible for duty free imports for 5 years of operations and ABSL is allowed to elect the applicable 5 years which must be</p>

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		continuous.
9.	Tax	<p>GOSL shall procure that the following tax treatment will apply to and in respect of ABSL and the other entities referred to below (but only in relation to an activity connected with the Project):</p> <p>(a) ABSL shall be entitled to claim tax deductions in respect of depreciation of its capital assets of the Project over a period of 20 years from the date of commencement of commercial operations of the Project.</p> <p>(b) African Development Bank ("AFDB") is entitled to an exemption from withholding tax on interest receipts. Insofar as not already benefiting from an exemption, GOSL will exempt from withholding tax interest payments made to other lenders at least 20 per cent of which is directly or indirectly owned by a foreign government and which has as one of its primary objectives the provision of development finance in emerging markets (Other Qualifying Lender).</p> <p>Subject to paragraph 9(d), ABSL shall otherwise deduct withholding tax at a reduced rate of 5% from interest payments.</p> <p>(c) ABSL shall be entitled to an exemption from deduction of withholding tax on 50% of any dividend paid until 2020 provided that ABSL maintains records of its financial transactions and records relevant to the cultivation during this period of sugar cane (such records to be retained by ABSL for 6 years). The remaining 50% of any dividend shall be subject to the withholding tax deduction of 10%. From 1st January 2021 all dividends shall be subject to a withholding tax of 10%.</p> <p>(d) Payments of rent by ABSL in connection with any land lease or rights shall be allowable deductions for corporate tax purposes and not subject to any withholding tax. Other bona fide business payments and expenses of ABSL shall be allowable deductions for corporate tax purposes and not subject to any withholding tax only as explicitly provided in this paragraph 9(d).</p> <p>GOSL acknowledges the off-take and marketing agreement between ABSL and Addax Energy SA and confirms that marketing fees of up to 5% of ethanol sales will be an allowable deduction for corporate tax purposes and not subject to any withholding tax. Any amount in excess of 5% will not be allowable for tax purposes and will be treated as dividend payments subject to the provisions of paragraph 9(c).</p> <p>GOSL and ABSL agree that until 31st December 2014, direct head-office costs and management fees, which for the avoidance of doubt excludes payment for goods or services provided by a third party that is not an affiliate of ABSL, (the "Overhead Allocation") that can be demonstrated to be properly incurred for the specific purpose or benefit of ABSL's business and reimbursed by ABSL will be treated as a bona fide business payment and expense representing an allowable deduction for corporate tax purposes and not subject to any withholding tax, subject to (i) the submission of invoices, and as laid out in a detailed schedule of expenses verified by independent auditors, and (ii) the approval of the board of the directors of ABSL. After 1 January 2015 any Overhead Allocation over the Overhead Cap will be subject to corporate tax and withholding tax at the applicable rate. The Overhead Cap for each</p>



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applicable fiscal period will be 6% of ABSL's revenues (as stated in the audited income statement) provided that it can be demonstrated by ABSL that each reimbursement up to the Overhead Cap was properly incurred for the specific purpose or benefit of ABSL's business, and is subject to (i) the submission of invoices, and as laid out in a detailed schedule of expenses verified by independent auditors, and (ii) the approval of the board of the directors of ABSL.

- (e) No company doing business with ABSL or ABSL's funders or any affiliate company of ABSL will be, or be deemed to be, resident, domiciled, carrying on business or otherwise subject to taxation in Sierra Leone solely due to the entering into, delivery, performance or enforcement of any document in connection with any part of the Project of its funding.
- (f) Employees of ABSL, employees of its contractors and employees of their respective sub-contractors shall be subject to tax on their locally received income only and shall be taxed on that income and at a rate no higher than the same rate applied to employees with the same tax status in Sierra Leone of other local companies or, if lower, the rate applied to employees with the same tax status in Sierra Leone of international companies, and for such purpose only shall be treated as tax resident.
- (g) ABSL shall be entitled to an exemption from corporate tax on income received or accrued prior to 31 December 2022. For the avoidance of doubt, any losses accrued during this period will not be entitled to be carried forward beyond 2022.
- (h) No amount payable or receivable by ABSL, its shareholders and their affiliated companies and the funders shall be subject to a transfer pricing adjustment or otherwise which is not consistent with the principles set out in Article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines as amended from time to time.
- (i) GOSL will not withhold or reject any clearances or consents applied for by ABSL in respect of tax or duties so long as such clearances or consents are consistent with what is agreed in this Memorandum.
- (j) Determination of the taxable basis of ABSL, which is agreed to by ABSL and GOSL, will be issued by GOSL before 31 March 2010.
- (k) Each of ABSL's shareholders shall (subject to the provisions of any double tax treaty to which that shareholder may benefit from) be subject to tax in Sierra Leone on any capital gain realised by that shareholder in relation to the Project, including the sale of all or part of the business or the shares of ABSL. For the avoidance of doubt, a transfer of shares by any person or company (for these purposes, a Seller) of any of shares in any company which owns any shares of ABSL (for these purposes, an Intermediate Company) will not be subject to capital gains tax in Sierra Leone on any capital gain realised by that Seller by reason of such transfer, provided neither the Seller or the Intermediate Company is resident in Sierra Leone for tax purposes other than solely by reason of the Seller or, as the case may be, the Intermediate Company owning shares of ABSL,

For the purpose of this Appendix references to "tax" includes all present and future taxes, charges, imposts, duties, levies, customs duties, excise, deductions or withholdings of any kind whatsoever, or any other tax or

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