



# Leasing Agricultural Land in Sierra Leone

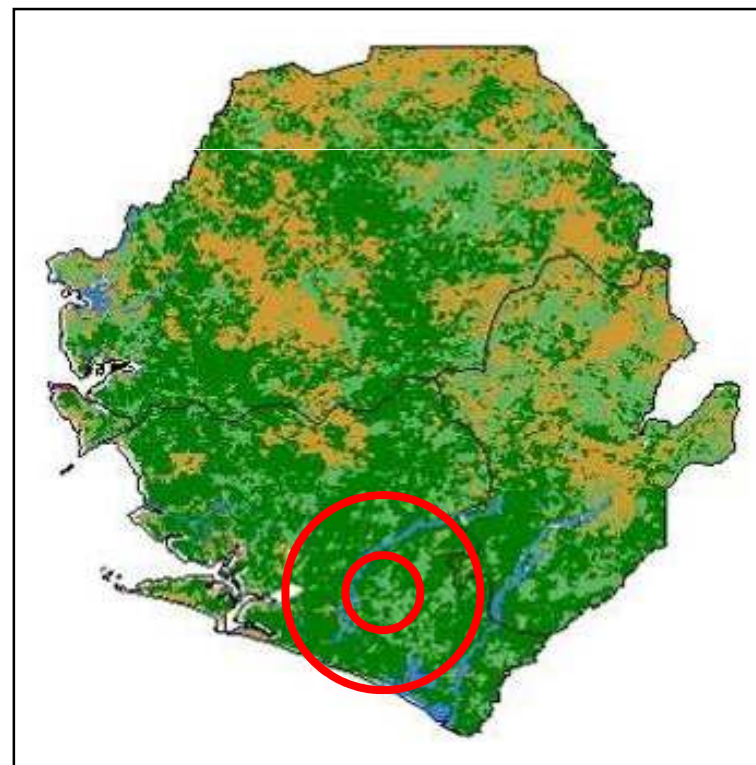
Information for Investors  
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# Introduction

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- In most countries in the world, including in developed markets, securing land for large projects is a time-consuming process which involves lengthy negotiations with affected communities.
- In addition, in countries like Sierra Leone (and most countries in Africa), the rules governing land follow traditional patterns, adding a layer of complication to external investors who are not familiar with the local customs in any given context
- The present document was developed by SLIEPA in conjunction with its partner Ministries within the Government of Sierra Leone to help new investors navigate through the land acquisition process in Sierra Leone
- It is in line with existing Sierra Leone law and applicable policies at the time of publication, and draws heavily on emerging good practice by recent agricultural investors in Sierra Leone

# Introduction[2]

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- The process outlined in this document includes the views of local communities at a potential new agricultural investment sites, expressed during a series of workshops held with Land owners, Paramount Chiefs and other stakeholders:
  - in November 2009 in Kambia District (Kasungbala and Tonko Limba chiefdoms); in Moyamba District (Kori and Dasse chiefdoms; in Pujehun District (Kpanga Kabonde, Kpanga Krim, Gallinas Perri and Kpaka chiefdoms) and in Kenema District (Nongowa and Small-Bo chiefdoms)
  - In August/September 2012: Pujehun District - Yakemo-Kpukumu Krim, Mano Sakrim Chiefdoms, Bonthe District – Bum, Yawbeko & Jong chiefdoms; Kenema District - Small Bo Chiefdom; Kailahun District – Luawa Chiefdom
- A template lease agreement and other useful documents are included in annex, in line with this recommended process

# Customary land context in Sierra Leone

- Nearly all of the estimated 5.4 million hectares of land suitable for agriculture in Sierra Leone is in the “Provinces” is managed under customary rules, comprising of:
  - Communal ownership with family (ancestral landholding families)
  - Individual rights of occupation under the supervision of lineage elders (settlers)
- The Chiefdom Council, headed by the Paramount Chief, is regarded as the custodian of the land on behalf of the entire Chiefdom but decisions regarding land are taken in consultation with heads of the various land owning families.

**Agricultural land in Sierra Leone is held under strict but clear customary rules, acknowledged by the formal statutory laws**

# Customary land context in Sierra Leone[2]

- Land is considered a heritage, to be preserved and handed down to future generations. It therefore cannot be “sold”, only transferred, and individual members of the landowning families have an inherent right to the occupation and use of any part of the family land.
- “Non-natives” are people or organizations not entitled by birth to rights to land in the Provinces, including Sierra Leoneans from the Western Area, all corporations and associations, and foreigners, but excluding the Central Government of Sierra Leone.
- This introduction focuses on the acquisition by non-natives of provincial lands under customary tenure, a situation faced by agribusiness companies in Sierra Leone.

**Agricultural land in Sierra Leone is held under strict but clear customary rules, acknowledged by the formal statutory laws**

# Legal framework for provincial land acquisition

- Two pieces of legislation govern the acquisition of provincial lands:
  1. The Concessions Act of 1931, Cap 121
    - Regulates the rights in land which natives can grant to non-natives by way of concession for mining or agricultural purposes
    - Concessions can be granted for up to 99 years and cover 1,000 acres and above
    - The Concessions Act is not currently used in practice due to the complexity of its implementation:
      - ❖ Concessions above 5,000 acres must be approved by the President and ratified by parliament
      - ❖ Concessions must be validated by a concessions court which was never set up

**The Provinces Land Act Cap 122 provides the basis for new land acquisitions**

# Legal framework for provincial land acquisition[2]

## 2. The Provinces Land Act of 1927, Cap 122

- This is the operational law for land acquisition and establishes conditions for allocation of lands to “non-natives” in the provincial areas of Sierra Leone
- It establishes that all land leases to “non-natives” must have the consent of the Chiefdom Council headed by the Paramount Chief of the area
- It fixes the maximum term of any approved lease to a non-native to 50 years, with possibility of 21 year renewal.

**The Provinces Land Act Cap 122 provides the basis for new land acquisitions**

# Main actors involved in agric land acquisition

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<b>Central Government</b>	<ul style="list-style-type: none"><li>• Under the Provinces Land Act, the President (formerly Governor) has significant powers to negotiate land lease terms (Cap 122, Section 16)</li><li>• Classifies as “native” under the Provinces Land Act and can acquire land</li><li>• Desirability of land acquisition by Government and transfer to investors is unclear</li></ul>
<b>District Councils</b>	<ul style="list-style-type: none"><li>• Decentralized level of the Central Government, they administer each of the 12 districts in the Provinces and oversee Chieftdom councils in delegated tasks</li><li>• Composed of elected councillors and the relevant Paramount Chiefs</li><li>• The Chief Administrative Officer must approve to any lease granted under Cap 122 or it remains a simple yearly tenancy</li></ul>

# Main actors involved in agric land acquisition[2]

<b>Chieftom Councils</b>	<ul style="list-style-type: none"><li>■ Highest tribal authority, Chieftom Councils govern each of the 149 Chieftoms forming the districts. They are each headed by a Paramount Chief elected for life</li><li>■ Chieftoms are divided into sections, villages, village sections, and family holdings</li><li>■ Being the custodian of the land, the Chieftom Council must consent to any lease granted under Cap 122</li></ul>
<b>Land Owners</b>	<ul style="list-style-type: none"><li>■ Landowners are the autochthones or the founders of the communities, composed of relatively few families in each chieftom</li><li>■ Not formally considered as key players under Cap 122, probably due to explicit delegation to Chieftom Councils</li><li>■ It is becoming common good practice to involve landowners throughout the process, from identification of boundaries through to negotiation of lease terms</li></ul>


# Best practice land acquisition in Sierra Leone

- Based on the context presented so far, the process used by some recent companies looking to secure large areas of agricultural land is regarded as best practice in Sierra Leone
- A generic process is distilled over the next few slides along the basic steps outlined below
  - 1. Get started: create a local presence
  - 2. Locate the land to establish your plantation
  - 3. Demarcate your land
  - 4. Conduct Environmental Impact Assessment
  - 5. Negotiate the terms of the lease with Chiefdom Councils and Landowners
- The process presented involves the careful engagement of grassroots stakeholders, paying particular attention to the role of landowners, in keep with customary rules


**Strong engagement at the Chiefdom level is key, paying special attention to land owners**

# 1. Get started: create a local presence

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- Introduce yourself to the Government via the Sierra Leone Investment and Export Promotion Agency (SLIEPA) and possibly your nation's embassy.
  - Engage with an agent, facilitator, or joint venture partner, familiar with national and local-level stakeholders, to support the land acquisition process. SLIEPA may help with the identification of such individuals depending on the profile required
  - Working through your local agent, facilitator or joint venture partner, create a local subsidiary company. Investors must take the following steps to register their businesses locally and the process takes about 3 days.
    - Check the uniqueness of the company name and get a company registration form at the Office of the Administrator and Registrar General (OARG)
    - Prepare the Company's Memorandum and Articles of Association (optional standard templates are available at OARG)
    - Submit the completed documents to the OARG officer
    - Obtain Tax clearance with the National Revenue Authority
    - Request a Business license with the relevant Municipality
    - Register with the Ministry of Labor and Social Security
    - Make a company seal

## 2. Locate the land to establish a plantation

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- Identification criteria typically include site accessibility, crop-specific biophysical requirements, water availability, competing pressures on the land, and presence of high conservation value sites.
  - Option 1: use an area pre-identified by SLIEPA
    - With a focus on key target sectors (sugar, oil palm, rice and cocoa), SLIEPA has identified zones that may accommodate large projects (10,000+ hectares)
    - A shortlist of potential sites is available and SLIEPA can help facilitate field visits
  - Option 2: identify a new area
    - A compilation of available maps and data is available at SLIEPA that can be checked against the project-specific site selection criteria mentioned above
    - Identify existing leaseholds/projects in the area that may compete for the same resources (possible sources: MAFFS, MLCPE, SL Roads Authority)
    - Conduct field visits to corroborate preliminary information and start informing and sensitizing the communities as to the proposed use of the land under the project. Primary targets should be the land owners, but relevant Paramount Chiefs and chieftdom councilors must be involved
    - Conduct preliminary soil and land use surveys


### 3. Demarcate the land identified

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- Under the guidance of the land owners trace out the boundaries of the total land to be included in the lease, i.e. the “gross area”
  - Report the area as described by the landowners to the Paramount Chief and seek joint permission (Chief and landowners) for a boundary survey
  - Commission a boundary survey using GPS equipment by which the gross area can be demarcated
  - Together with the Chief and his councilors, conduct more detailed soil and land use surveys to carve out the following from the gross area (cf. equator principles, RSPO)
    - Areas that are unsuitable for cultivation
    - Settlements
    - Subsistence food production areas (including necessary fallow lands)
    - High conservation value sites
    - Buffer zones
  - The resulting “net area” will be the object of the lease negotiation

## 4. Conduct ESH Impact Assessment

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- Engage internationally recognized independent consultants to conduct Environmental, Social and Health Impact Assessment (ESHIA)
  - Fully disclose the results to all stakeholders, especially the local communities.
  - Secure the free, prior, informed consent of affected communities, not limited to only Chiefs or other representatives
    - “free”: free of external manipulation, interference or coercion, and intimidation
    - “prior”: timely disclosure of information
    - “informed”: relevant, understandable and accessible information
  - The investor will tailor its consultation process to the language preferences of the affected communities, their decision-making processes, and the needs of disadvantaged or vulnerable groups (Equator Principles)

## 5. Negotiate the terms of the lease

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- Engage a legal counsel to prepare a draft lease agreement with the counsel representing the land owners (a model lease agreement is available in annex)
  - The policy in force<sup>1</sup> recommends a price of 12 US\$ per hectare, which the law (Cap 122) requires investors to pay directly to the District Council, then responsible for further distribution. Publication and broadcasting through local media of any payments and contributions foster accountability among communities and their leaders and representatives
  - Recent indications are that the recommended price of 12 US\$ per hectare may be too low. Investors should be prepared to negotiate fees up to US\$ 40.00 per hectare

<sup>1</sup>: “Investment Policies and Incentives for Private Sector Promotion in Agriculture in Sierra Leone” (January 2009 cabinet resolution). This also provides the currently used distribution formula: 50% landowners, 20% Chiefdom Council, 20% District Council, 10% to Central Government, replacing the earlier practice of 3 equal portions among Landowners, Chiefdom Council, and District Council.

## 5. Negotiate the terms of the lease [2]

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- Apart from the obvious contractual elements to be covered by the lease (see checklist in annex), some additional elements should be considered for inclusion:
    - *Supplementary agreement with landowners*: for cases where the land in question includes either family- or individually-owned land, additional contributions (cash or in-kind) can be addressed to land owners directly.
    - *Social investments*: corporate social contributions are expected, which will vary by the existing conditions of the locality and by the recognition by the investor of the value of both reliable infrastructure and the need for good long-term community relations. This may include a share of profit or “royalties”
    - *An option clause* may be negotiated allowing parts of the land to be surrendered within 3-5 years (and rents decreased accordingly)

# Annexes

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- The following annexes, inspired by real examples in Sierra Leone and in line with the existing legal and policy framework at the time of publication, are designed to serve as practical guidance for investors
  - *Lease agreement checklist*: lists basic elements to be captured as part of the land acquisition process for the lease document
  - *Template lease agreement*: this template reflects the model process outlined in this document, in particular with reference to the inclusion of landowners as co-lessors, and supplemental provisions described under step 5
  - *Model side agreement with land owners*: as per proposed model process, this serves to reflect a supplementary consideration to land owners, in addition to the normal rent payments
- Text versions of these annexes can be obtained from SLIEPA

## Disclaimer

The use of the documents provided by SLIEPA does not secure or guarantee in any way the successful outcome of any land acquisition process

# Lease agreement checklist

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## **The lease agreement should indicate:**

- ✓ Designated lessors including both the Chieftom Council [by law] and representatives of the landowning families concerned by the lease.
- ✓ Landowner representatives certify their entitlement and authorization to sign the lease on behalf of all beneficiary family members
- ✓ Purpose of the lease [type of economic activity] to be specified
- ✓ Chief Administrative Officer of the District Council gives approval
- ✓ Parcel[s] of land to be leased specified
- ✓ Lease term is specified [up to 50 years with an option to renew once for 21 years]
- ✓ Rent per hectare is specified; it may be:
  - on a sliding scale to reflect maturation of the trees (for perennials like oil palm),
  - on the entire area or only the part actually cultivated, and
  - must by law be subject to revision every seven years
- ✓ Some part of the land originally leased may be surrendered back to the lessors before the end of the lease term if it is not required by the lessee

# Lease agreement checklist[2]

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The lease agreement should indicate:

- ✓ Additional payments beyond the basic rent are possibly necessary and probably desirable to negotiate. These might include:
  - a supplementary per-hectare payment to landowners whose land is being cultivated or otherwise used by the investor
  - a contribution to the community's "social fund" for social infrastructure
  - direct provision of social infrastructure
  - a share of profits or of revenue ("royalty")
- ✓ There may be pledges (with or without legal guarantees) to hire local labour to the extent possible and/or to source from smallholder farmers locally (outgrowers)
- ✓ A negotiable series of landlord-tenant provisions from common or statutory law concerning
  - assignment or sublease
  - maintenance of the property
  - insurance against risks
  - peaceful and quiet possession and use
  - renewal
  - disputes and their resolution

# Template lease agreement (1)

## Draft Template Lease Agreement

**THIS DEED** is made under the provisions of the Provinces Land Act Chapter 122 of the Laws of Sierra Leone 1960 as amended ("the Act") on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord \_\_\_\_\_ **BETWEEN PARAMOUNT CHIEF** [insert name of paramount chief] of [insert name of chiefdom district and province] of the Republic of Sierra Leone together with **CHIEFDOM SPEAKER** [insert name of chiefdom speaker or other senior elder of the chiefdom] and **COUNCILLOR** \_\_\_\_\_ both also of [insert name of chiefdom district and province] as representatives of the Chiefdom Council of [insert name of chiefdom] aforesaid (hereinafter referred to as "the Grantors") which expression shall include their successors-in-office of the first part and [insert name(s) of the heads of the landowning family(ies)] also of [insert name of section, town or village] in [insert name of chiefdom] Chiefdom aforesaid on behalf of the [insert name of the landowning family(ies)] (hereinafter referred to as "the Landowners") of the second part (The Grantors and Landowners hereinafter collectively referred to as "the Lessors") and [insert name address description and place of registration of the lessee company] (hereinafter called "the Lessee" which expression shall where the context so admits include its successors and assigns) of the third part.

## WHEREAS

1. According to the preamble of the Act all land in the Provinces of Sierra Leone is vested in the Chiefdom Councils who hold such land on behalf of the native communities concerned.
2. The Landowners herein are the owners and/or persons entitled to possession of the piece or pieces of land situate lying and being at [insert name of the chiefdom district and province] more fully described in the Schedule hereunder (hereinafter referred to as "the demised pieces of land") and intended to be hereby demised and the have represented to the Lessee that they are entitled and duly authorized by all the family members beneficially entitled to share in the proceeds of this grant to make the same subject to the terms and conditions hereinafter contained.
3. The Lessees have expressed to the Paramount Chief and other members of Chiefdom Council, the competent authorities of the District Council of [insert the name of the district] and the officials of the Ministry of Agriculture Forestry and Food Security their desire to take a lease of the demised pieces of land for the purposes of establishing a plantation for the growing of oil palm/sugar on an industrial basis and for allied purposes.
4. The duly authorized representatives of the land owners have expressed their willingness and have agreed to grant a lease of the demised pieces of land to the Lessees subject to the terms and conditions hereinafter contained.
5. The Chiefdom Council of [insert the name of the chiefdom] Chiefdom aforesaid has duly given its consent for the making of the grant herein.<sup>2</sup>
6. The Chief Administrative Officer of [insert the name of the district] District Council has given his approval for the making of the grant herein.<sup>3</sup>

<sup>1</sup> See section 2 of Cap 122 ("the Act").

<sup>2</sup> This is required by section 2(1) of the Act

## NOW THIS DEED INDENTURE WITNESSETH AS FOLLOWS:-

## ARTICLE 1.

### GRANT OF LEASE

In pursuance of the said aforesaid agreement the **LESSORS HEREBY DEMISE UNTO THE LESSEE ALL THOSE PIECES OR PARCELS** of land situate lying and being at [insert the name of the chiefdom] Chiefdom aforesaid which pieces or parcels of land for greater clarity and so as not to restrict or enlarge the description hereinbefore contained is delineated on the Survey Plan dated the [day] of [month], [year] drawn and attached hereto and therein coloured **RED** described in the schedule hereto.

## ARTICLE 2.

### DURATION OF LEASE

2.1 The lease shall for a term of term of 50 (Fifty) years certain with effect from the day of 2009 with an option to renew for a further term not exceeding 21 (twenty-one) years.<sup>4</sup>

2.2 [The Lessee reserves the right to reduce the duration of the lease in respect of the whole or any part of any of the plots described in the schedule hereunder by surrendering the same to the Lessors after giving x months prior written notice of its intention so to do to the Lessors and thereupon the land so surrendered shall no longer be deemed to be part of the grant herein.]<sup>5</sup>

## ARTICLE 3.

### LEASE RENT

3.1 The rent shall be the yearly sum of US\$ /00 ( United States Dollars) per hectare to be paid to a designated account of the District Council for disbursement among those persons and entities entitled to share in the same as prescribed for the time being by the competent authorities.

<sup>3</sup> See section 3(2) of the Act. Since the enactment of the Local Government Act, No. of 2007, the Chief Administrative Officer of the District where the land is situated acts in lieu of the District Officer in consultation with the Provincial Secretary.

<sup>4</sup> See section 4 of the Act.

<sup>5</sup> This is a matter for negotiation. See also Article 3.2 below.

<sup>6</sup> See Rule 5 of the Schedule to the Act.

# Template lease agreement [2]

3.2 [During an initial period of x years when the Lessee shall be engaged in an evaluation of the demised pieces or parcel of land for the purposes of ascertaining their suitability for use for the intended purpose of the grant herein the annual rent shall be capped at US\$ x/00 per hectare.]<sup>7</sup>

3.3 The first [insert number] year(s) rent shall be paid on or before the execution of these presents and thereafter on the day of every [insert number] year(s).

3.4 The annual rent shall be subject to revision at least once in every seven years by the Chief Administrative Officer of [ ] District Council taking into account [here insert the formula to be agreed in advance by all the parties to the lease] subject to a right of appeal to the Provincial Secretary of the [insert name of province] Province.<sup>8</sup>

3.5 In revising the rent the Chief Administrative Officer shall not increase the same by reason only of improvements made on the demised pieces of land by the Lessee or its predecessor in title.

3.6 The Lessee shall not be made party to disputes regarding repartition among persons and entities entitled to the disbursements contemplated in Article 3.1. To the extent that the Lessee suffers damages as a result of such disputes, Lessee shall be indemnified by the Lessors.

## ARTICLE 4

### ADDITIONAL PAYMENTS BY THE LESSEE

There shall be further additional payments of US\$ /00 by the Lessee directly to the Landowners as [insert the consideration and purpose for any additional payments agreed with the Landowners] for every hectare of land held by the respective landowning families.

## ARTICLE 5

### OBLIGATIONS OF THE LESSEE

5.1 The lessee for itself and its assigns hereby covenants with the Chiefdom Council as follows:

- i) To pay the annual rent hereby reserved in the manner set out above;
- ii) To use the demised pieces of land hereby granted for the establishment of a plantation of oil palm/sugar and all other purposes usually related to the operations of such plantations;
- iii) Not to assign or sublet the demised pieces or parcels of land or any part thereof without the consent of the Chiefdom Council and the approval in writing

<sup>7</sup> This is a matter for negotiation if the Lessee deems it necessary to have such "grace period"

<sup>8</sup> This is required by section 3 (1) of the Act

of the Chief Administrative Officer of the [insert the name of the district] District such consent not to be unreasonably or arbitrarily withheld.<sup>9</sup>

- iv) On the determination of the term hereby granted the Lessee shall give to the Chiefdom Council one month prior notice in writing before removing any fixtures buildings or economic trees from the demised pieces of land;<sup>10</sup>
- v) To pay all taxes and rates levied upon the demised pieces of land and to pay all charges for all other utilities supplied to the demised pieces of land during the term hereby granted;
- vi) At all times during the term hereby granted to keep the interior and exterior of any buildings erected on the demised pieces of land all fixtures and appliances and all additions thereto in good and substantial repair and condition and to do all repairs and work necessary to put and keep the same in such repair and condition;
- vii) To permit the Lessors and/or their agent with or without workmen or others at all reasonable times in the day time and upon prior written notice to enter upon buildings erected on the demised pieces of land to view the condition thereof and upon notice being given by the Lessors or their agent to repair in accordance with his covenant in that regard;
- viii) To insure and keep insured any buildings erected on the demised pieces of land against loss or damage by fire and other major catastrophes and to cause all sums received in respect of such insurance to be forthwith laid out and expended in rebuilding and repairing or otherwise reinstating the same if the same be destroyed or damaged;
- ix) To yield up the demised pieces with all non-tenant's fixtures and fittings and any additions thereto in a state of tenantable repair at the end of the present tenancy;
- x) To pay all Solicitors charges relating to the preparation and registration of this agreement.

### 5.2 Corporate Social Responsibility

[In fulfilment of its corporate social responsibility to the local community in the Chiefdom where the land is situated the Lessee shall engage in such activities in as may be agreed upon with the Chiefdom Council, traditional rulers in local community relevant non-governmental agencies engaged in developmental work and other stakeholders and competent authorities in the chiefdom. Participation in community environmental and social planning with a commitment to aid in the plans' implementation is an example of an arrangement likely to satisfy all parties' interests.]

<sup>9</sup> This is required by section 9 of the Act.

<sup>10</sup> This is required by section 11(4) of the Act

# Template lease agreement [3]

## ARTICLE 6

### OBLIGATIONS OF THE LESSORS

**THE CHIEFDOM COUNCIL AND THE LANDOWNERS** hereby covenant with the Lessee to permit the Lessee on its paying the rent hereby reserved and observing and performing the several covenants and stipulations on its parts contained peaceably and quietly **TO HOLD** and **ENJOY** the demised pieces of land during the term hereby created and during any optional term without any unlawful interruption by the Chiefdom Council the Landowners or any person or authority rightfully claiming under or in trust for the Chiefdom Council and/or the Landowners. The Chiefdom Council and the Landowners hereby covenant to perform their obligations under this agreement together in good faith. Breach by one Lessor does not relieve the remaining Lessors from their obligations under this agreement.

## ARTICLE 7

### FURTHER AGREEMENTS

#### IT IS HEREBY FURTHER AGREED AS FOLLOWS:

##### 7.1 RENEWAL OF THE LEASE

That if the Lessee shall be desirous of renewing the term hereby granted and of such desire shall prior to the expiration of the term hereby granted give 12 months written notice to the Chiefdom Council, the Chief Administrative Officer of the [insert the name of the district] District Council, and the Landowners respectively. Within 60 days from the date of receipt of the Lessor's written notice by each the Chiefdom Council, Chief Administrative Officer of the [insert the name of the district], and the Landowners, the Chiefdom Council and the Landowners shall with the approval of the Chief Administrative Officer of the [insert name of the district] District Council grant to the Lessee a new Lease of the premises hereby demised for a further term of 21 (Twenty-One) years certain to commence from and after the expiration of the term hereinbefore created and with the like provisions and covenants as are herein contained at an increased rent to be agreed between the parties but provided always that any such increase shall not exceed [insert agreed percentage] percent of the rent paid for the term hereby granted.

##### 7.2 RIGHT OF RE-ENTRY BY THE CHIEFDOM COUNCIL

- i) Absent the existence of a dispute between the Lessor and Lessee that is being handled in accordance with the provisions of Article 7.5, if the rent hereby reserved or any part thereof shall be in arrears for 21 (twenty-one) days after the same shall have become due (whether formally demanded or not), then it shall be lawful for the Chiefdom Council and the Landowners with the approval of the Chief Administrative Officer of the [insert name of the district] District Council at any time thereafter to re-enter upon any part of the demised premises in the name of the whole and thereupon this demise shall determine.

- ii) Absent the existence of a dispute between the Lessor and Lessee that is being handled in accordance with the provisions of Article 7.5, if any covenant or stipulation on the Lessee's part hereinbefore contained shall not be performed or observed, then it shall be lawful for the Chiefdom Council and the Landowners with the approval of the Chief Administrative Officer of the [insert name of the district] District Council to re-enter, at any time greater than 10 days after the issuance written notice to the lessee, upon any part of the demised premises in the name of the whole and thereupon this demise shall determine.

##### 7.3 RIGHT TO TERMINATE AGREEMENT FOR LESSEE NON-PERFORMANCE

Absent the existence of a dispute between the Lessor and Lessee that is being handled in accordance with the provisions of Article 7.5, [if the Lessee shall fail to use the land for its stated purpose or fail to make improvements to the land as obligated under this agreement, then shall be lawful for the Chiefdom Council and the Landowners with the approval of the Chief Administrative Officer of the [insert name of the district] District Council to terminate the agreement, at any time greater than [insert number of months] months after the execution of this agreement and [insert number of days] days after the issuance written notice to the Lessee. Lessee may respond to Lessor's notice within [insert number of days] days of receipt by providing to Lessor, in writing, the reasonable justifications for the delay].

##### 7.4 FORCE MAJEURE

- i) The obligations of each of the Parties hereunder, other than the obligations to make payments of money due, shall be suspended during the period and to the extent that such Party is prevented or hindered from complying therewith by Force Majeure (as hereinafter defined). In such event, such Party shall give notice of suspension as soon as reasonable possible to the other Parties stating the date and extent of such suspension and the cause thereof. Any of the Parties whose obligations have been suspended as aforesaid shall resume the performance of such obligations as soon as reasonable possible after the removal of the cause and shall so notify all the other Parties.
- ii) In this Clause "Force Majeure" means any event which could not have been reasonably anticipated and avoided by the Party seeking to rely on such event and which is beyond its reasonable control including (without prejudice to the generality of the foregoing) strikes, labour disputes and compliance with any laws, orders, rules, regulations or directions of governmental agencies or bodies in or applicable to Sierra Leone. "Force Majeure" shall not include the financial inability of any Party to meet its obligations and liabilities regardless of whether such inability results from applicable currency or investment controls or restrictions.
- iii) Nothing herein shall require the Party concerned to settle strikes or labour disputes by acceding to demands deemed to be unreasonable by such Party but subject to this, the Party concerned shall use its reasonable endeavours to remove, avoid and/or mitigate the effects of such circumstances.

# Template lease agreement [4]

## 7.5 APPLICABLE LAW AND DISPUTE RESOLUTION

- i) This Deed shall be governed by and construed in accordance with Sierra Leone law excluding any provisions thereof which would require the application of any other jurisdiction. All disputes arising in connection with this Deed, including disputes as to its existence, validity and termination, shall be settled by arbitration in accordance with the provisions of the Arbitration Act Cap 25 of the Laws of Sierra Leone 1960 [or conducted at the London Court of International Arbitration under the ICC Arbitration Rules in effect on the date of this Agreement.]
- ii) The arbitration award may include compensatory damages against any of the Parties, but under no circumstances shall the arbitrators be authorized to, nor shall they, award punitive damages or multiple damages against any Party.
- iii) Each Party shall be solely responsible for its own costs and expenses incurred in connection with any arbitration proceedings under this Clause.
- iv) Any arbitration hereunder shall be final and binding upon the Parties and the Parties hereby exclude any right of application or appeal to any court, to the extent that they validly may so agree, and in particular in connection with any question of law arising during the course of the arbitration.
- v) The place of arbitration shall be [insert venue].
- vi) The arbitrations proceedings shall be conducted, and any written decision shall be rendered, in the English language.
- vii) Lessor and Lessee shall continue to perform their obligations under this agreement while resolution of the dispute is pending. Lessee shall make rental payments pursuant to the agreement into an escrow account, with the arbitration panel as authorized signer, in a bank located within the Republic of Sierra Leone.

## 7.6 NOTICES

Any notice required to be given pursuant to this Agreement shall be in writing and may be given by delivering the same by hand or by sending the same prepaid first class post to the relevant address specified below or such other address as any Party may notify to the other Parties from time to time. Any such notice given as aforesaid shall be deemed to have been given or received (i) at the time of delivery if delivered by hand and (ii) the date of actual receipt if sent by post.

## ARTICLE 8

### MISCELLANEOUS

#### 8.1 Entire Agreement

This Deed, any agreements and documents referred to in it and the Related Agreements embody the entire understanding of the Parties in respect of the matters contained or referred to herein and there are no promises, terms, conditions or obligations oral or written express or implied other than those contained in this Agreement and the surviving agreements and documents referred to in it.

#### 8.2 Successors and Assigns

Subject to the limitations on transfer contained in Article 5.3 this Deed shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

#### 8.3 Waiver

No waiver by any Party of any one or more defaults by another Party in the performance of this Deed shall operate or be construed as a waiver of any future default or defaults by the same Party, whether of a like or of a different character. Except as expressly provided in this Deed, no Party shall be deemed to have waived, released or modified any of its rights under this Deed unless such Party has expressly stated, in writing, that it does waive, release or modify such right.

#### 8.4 Severance of Invalid Provisions

If and for so long as any provision of this Deed shall be deemed to be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of this Deed except only so far as shall be necessary to give effect to the construction of such invalidity, and any such invalid provision shall be deemed severed from this Deed without affecting the validity of the remainder of this Deed.

# Template lease agreement [5]

THE SCHEDULE HEREINABOVE REFERRED TO:

PLOT NO.1

PLOT NO.2

PLOT NO.3

ETC

**IN WITNESS WHEREOF** The aforementioned Paramount Chief and Chiefdom Speaker and the Councillor as representatives of the Chiefdom Council and the aforementioned representative (s) of the Landowners have hereunto set their respective hands and seals and the Common Seal of the Lessee has been hereunto affixed the day and year first above-written.

**SIGNED SEALED AND DELIVERED**

for and on behalf of the CHIEFDOM COUNCIL

by the within-named **PARAMOUNT CHIEF**

[ ] **CHIEFDOM SPEAKER** [ ]

and **COUNCILLOR** [ ] and

by the within-named [ ]

representative (s) of the Landowners

as **LESSORS**

\_\_\_\_\_  
**PARAMOUNT CHIEF**

\_\_\_\_\_  
**CHIEFDOM SPEAKER**

\_\_\_\_\_  
**COUNCILLOR**

\_\_\_\_\_  
**LANDOWNERS  
REPRESENTATIVE(S)**

**IN THE PRESENCE OF:-**

**1<sup>st</sup> WITNESS**

**NAME:**

**ADDRESS:**

**OCCUPATION:**

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# Template lease agreement [6]

SIGNATURE:

2<sup>ND</sup> WITNESS:

NAME:

ADDRESS:

OCCUPATION:

SIGNATURE:

The Chieftom Councilors of Chieftom, District, having consented in Open Assembly held at the said Chieftom on the      day of      2009 in customary manner to this Lease, I hereby give my approval:

I HEREBY CERTIFY that this Lease was executed in my presence:

\_\_\_\_\_  
CHIEF ADMINISTRATIVE OFFICER

[      ] DISTRICT COUNCIL

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SITHE COMMON SEAL of

the within-named LESSEE

the said [      ] COMPANY LIMITED

was hereunto affixed

IN THE PRESENCE OF:-

1<sup>ST</sup> WITNESS:

NAME:

ADDRESS:

OCCUPATION: DIRECTOR OF [      ] COMPANY LIMITED

SIGNATURE:

2<sup>ND</sup> WITNESS:

NAME:

ADDRESS:

OCCUPATION: COMPANY SECRETARY OF [      ] COMPANY LIMITED

SIGNATURE:

I hereby certify that this Lease was executed for and on behalf of the Lessee in my presence:

\_\_\_\_\_  
MAGISTRATE

[      ] DISTRICT

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## Template lease agreement (7)

DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20XX

PARAMOUNT CHIEF

CHIEFDOM SPEAKER

COUNCILLOR

REPRESENTATIVE OF LANDOWNERS

AND

[ ] COMPANY LIMITED

\_\_\_\_\_  
LEASE IN RESPECT OF ALL THOSE PIECES OR  
PARCELS OF LAND SITUATE LYING AND BEING AT [ ]  
CHIEFDOM [ ] DISTRICT IN THE [ ] PROVINCE  
OF THE REPUBLIC OF SIERRA LEONE

\_\_\_\_\_  
SOLICITORS, CONVEYANCERS ETC

# Model side agreement with land owners (1)

## Model Memorandum of Understanding between an Agribusiness Company and Landowners

This **ACKNOWLEDGMENT AGREEMENT** is made this [Number] day of [Month] in the year of Our Lord [Year] BETWEEN

(1) [COMPANY] (Sierra Leone) Limited a limited liability company incorporated under the Companies Act Cap. 249 of the Laws of Sierra Leone and having its registered office at [address of registered office] in the Western Area of the Republic of Sierra Leone (hereinafter referred to as "the Company" which expression where the context so admits shall include its successors and assigns) of the one part; and

(2) the party named as the **LANDOWNER** in the Schedule (hereinafter referred to as the "Landowner") for and on behalf of the Family named in the Schedule (hereinafter referred to as the "Family"), their successors in title and assigns of the other part in respect of the Plot referred to in the Schedule (hereinafter referred to as the "Plot");

WHEREAS:

(1) The Company has entered into a Lease Agreement (the "Lease") dated the [Day] of [Month] [Year] and registered as No. [Number] or page [Number] in volume [Number] of the Book of Leases kept in the office of the Registrar-General, Freetown with the [Chiefdom Name] Chiefdom Council in respect of land (the "Lease Area") within the [Chiefdom Name] Chiefdom which includes the Plot for a term of fifty (50) years upon the terms and conditions therein stated. Under the Lease the company has the right to renew its lease for a further period of twenty-one (21) years.

(2) The Company would like to enter into a separate agreement with the Landowner in respect of the Plot to ensure that the Landowner derives additional benefit from the leasing of the Lease Area, including the Plot, by making certain payments to the Landowner as hereinafter provided.

IT IS HEREBY AGREED as follows:

### 1 PAYMENTS:

1.1 Subject to the terms and conditions set out herein, the Company hereby agrees and undertakes to pay in accordance with Clause 1.2

1.1.1 The yearly sum of US\$ [1.40] per hectare of land of the Plot to be shared amongst the Family during the period in which the Lease remains in effect; and

1.1.2 As from the date of each and every review of the annual rent per hectare of the Lease Area provided for in the Lease, the sum payable under the Clause 1.1.1 per hectare of the Plot for each year will be increased by the same percentage as the annual increase in the rent per hectare pursuant to such review.

1

1.2 On the date of this Agreement the Company shall pay the Landowner the Initial Amount specified in the Schedule to cover the period to [date]. On [date] and on each anniversary of that date within the Lease Period the Company will pay the Landowner the sum calculated in accordance with Clause 1.1.

1.3 The Company shall be entitled to pay instead of any amount due under this Agreement in US Dollars, such amount of local currency that it would have been able to obtain for the amount of US Dollars required to be paid either at any official rate or other rate of exchange as was available from a commercial bank for the purchasing of the local currency with US Dollars.

### 2 ACKNOWLEDGEMENTS & COVENANTS:

2.1 In consideration of the payments to be made hereunder by the Company, the Landowner, for himself and on behalf of the Family acknowledges that the Plot is within the Lease Area and has been validly leased to the Company by the [Name of the Chiefdom] Chiefdom as evidenced by the Lease, The Landowner, for himself and on behalf of the Family hereby warrants and covenants that –

2.2.1 They each acknowledge the Company's rights under the Lease to designate or use all or part of the Plot for the Company's cultivation or for other purposes relating to its business or operations instead of the Landowner and the Family; and

2.2.2 None of them will interfere with the Company's rights to cultivate and exercise of its rights under the Lease.

### 3 OTHERS:


3.1 This Agreement shall be governed by Sierra Leone law.

3.2 Any claim, dispute or diligence of any kind between the Company and the Landowner arising out of or in connection with this Agreement shall be subject to determination by the Courts of Sierra Leone.

2



## Model side agreement with land owners (2)

<u>SCHEDULE</u>	
<p><b><u>The Plot:</u></b> ALL THAT PIECE OR PARCEL OF LAND, HEREDITAMENTS AND PREMISES SITUATE LYING AND BEING AND KNOWN AS [NAME OF CHIEFDOM] CHIEFDOM, [Name of the District] DISTRICT, IN THE [Name of the Province] PROVINCE OF THE REPUBLIC OF SIERRA LEONE AND BOUNDED AS FOLLOWS:</p> <p>STARTING from property beacon marked [.....] which is the point of commencement thus enclosing an area of [Number of hectares] Hectares or thereabout the same as delineated in the survey plan numbered L.S. [.....] drawn and attached hereto and thereon verged RED or howsoever otherwise the same may be bounded known defined described or distinguished.</p> <p><b><u>The Landowner:</u></b> [Full Name and Details of the Landowner]</p> <p><b><u>The Family:</u></b> [Names of Family Members]</p> <p><b><u>Area of the Plot</u></b> at the date of this Agreement (in hectares): [Plot area in hectares]</p> <p><b><u>Initial Amount</u></b> payable on the date of this Agreement (US\$): [Amount in US\$]</p>	<p>IN WITNESS WHEREOF the Company has affixed its Common Seal and the Landowner has set his hand and seal on the day and year first written above.</p> <p>THE COMMON SEAL OF THE COMPANY WAS HEREUNTO AFFIXED IN THE PRESENCE OF:</p> <p>_____ DIRECTOR</p> <p>_____ SECRETARY</p> <p>SIGNED SEALED AND DELIVERED by</p> <p>The Landowner in the presence of:</p> <p><b><u>1<sup>st</sup> WITNESS:</u></b> Name: _____ Address: _____ Occupation: _____</p> <p><b><u>2<sup>nd</sup> WITNESS:</u></b> Name: _____ Address: _____ Occupation: _____</p>
 3	4

## For further information:

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### Please contact:

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