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ADDENDUM No.1

**TO THE LICENCE AGREEMENT
BULK & BREAK-BULK TERMINAL AT QUEEN ELIZABETH II QUAY
DATED 24TH JUNE 2015
("LICENCE AGREEMENT")**

By and Among

**SIERRA LEONE PORTS AUTHORITY
(SLPA)**

AND

**THE GOVERNMENT OF SIERRA LEONE : REPRESENTED BY THE MINISTRY OF
TRANSPORT AND AVIATION
(GOSL)**

AND

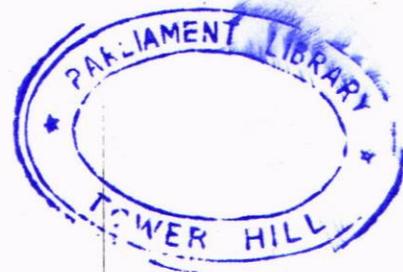
**NATIONAL COMMISSION FOR PRIVATISATION
(NCP)**

AND

**NECTAR GROUP LIMITED
(NGL)**

**NECTAR SIERRA LEONE BULK TERMINAL LTD
(NSBT)**

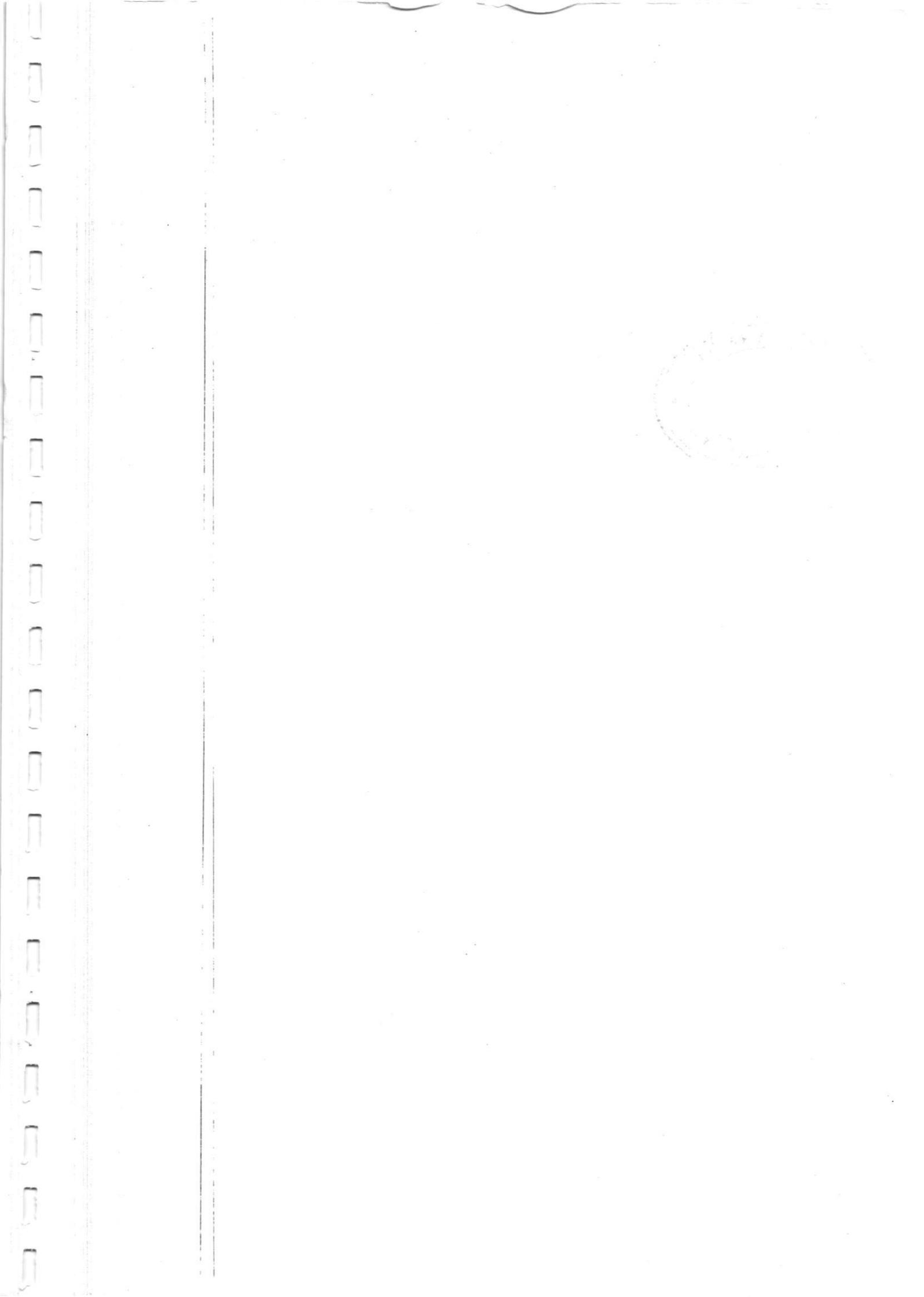
DATED 28th November 2017



AGREEMENT RELATING TO BULK & BREAK-BULK TERMINAL AT QUEEN ELIZABETH II QUAY

Delta Anchorage

Nitti Harbour



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TABLE OF CONTENTS

11	ADDITIONAL DEFINITIONS AND INTERPRETATION.....	4
10	BASIC RIGHTS & OBLIGATIONS, EFFECTIVE DATE, TERM, OPERATIONAL REVIEW AND MONITORING.....	5
9	CONCESSION PROPERTY.....	7
8	OPERATIONS.....	11
7	FEES AND PAYMENT TERMS.....	12
6	ENVIRONMENT.....	13
5	LOSS, DAMAGE AND REPAIRS TO AREA OF OPERATIONS AND FACILITIES.....	14
4	CONSTRUCTION OF AN ADDITIONAL BERTH.....	16
3	LICENCE TO OPERATE AND ISSUE OF OTHER LICENCE.....	16
2	DEFAULT AND EARLY TERMINATION.....	17
1	APPLICABLE LAW & DISPUTE RESOLUTION.....	20

This Addendum (the "**First Addendum**") is to convert the Licence Agreement made on the 24th day of June of 2015 referenced herein into a Concession Agreement between;

Sierra Leone Ports Authority (SLPA), a public authority constituted under the Ports Act, 1964 of the Republic of Sierra Leone whose principal place of business is situated at Queen Elizabeth II Quay, P.M.B. 386, Cline Town, Freetown, Sierra Leone (the "**Authority**") represented by the General Manager;

and

The Government of Sierra Leone (GOSL), represented by the Honourable Minister of Transport & Aviation of Youyi Building, Brookfields, Freetown, Sierra Leone (the "**GOSL**");

and

National Commission for Privatisation (NCP), an agency of the Government of Sierra Leone established under the National Commission for Privatisation Act, 2002, whose registered office is situated at Lotto House, OAU Drive, Tower Hill, Sierra Leone (the "**NCP**") represented by the Chairman;

and

Nectar Group Ltd (NGL), registered at 150 Aldersgate Street, London, UK, (the "**Sponsor**") represented by a Director;

and

Nectar Sierra Leone Bulk Terminal Ltd. (NSBT) registered at 45 Cline Street, Cline Town, P.O. Box 935, Freetown, Sierra Leone, a private company incorporated under the laws of Sierra Leone (the "**Concessionaire**") represented by a Director.

WHEREAS:

- (A) The Parties, the Confirming Parties and the Sponsor are parties to a Licence Agreement entered into on June 24, 2015, in relation to the Bulk and Break Bulk terminal at Queen Elizabeth II Quay, Freetown, (Sierra Leone) (the "**Licence Agreement**").
- (B) As a result of the Government of Sierra Leone's desire to promote investment and private sector participation consistent with, amongst others, the outcome of the Sierra Leone Conference on Development and Transformation and to transform Sierra Leone into a regional centre for processing, manufacturing, assembly and distribution in West Africa, it is anticipated that volumes of exports and imports handled at the Port of Freetown will increase.
- (C) In order to handle the anticipated growth in traffic resulting from such increase in volumes, the NSBT proposes to (i) design, engineer and construct a new berth at water quay of approximately 270 metres (subject to surveys, restrictions and final design parameters) with a depth of water of approximately minus 13 metres (subject to surveys, restrictions and final design parameters) which could accommodate larger vessels and on the understanding that should these dimensions not be achieved by the current design of Additional Berth, the Concessionaire will propose an alternative design to the Authority and (ii) invest in the purchase of new equipment, including cranes, other cargo handling equipment and upgrades to operating systems.

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(D) The Parties, the Confirming Parties and the Sponsor have agreed to amend the Licence Agreement inter alia to:

- a. convert the Licence Agreement into a Concession Agreement with all the rights thereto;
- b. clarify the undertakings of the Concessionaire in relation to the construction of the new berth and the provision of new equipment;
- c. amend the provisions relating to the Term and the Licence Fee;
- d. insert provisions relating to obtaining incentives in favour of the Concessionaire pursuant to the Concessionaire's additional investment;
- e. implement a redevelopment plan for the Exclusive Area and extend the Area of Operations;
- f. amend provisions relating to the basic rights and obligations of the Concessionaire, and to the review of the Licence Agreement; and
- g. insert clauses to address maintenance and improvements to the Concession Property; and to develop new handling methods and cargo handling capacity at the terminal.

(E) The Parties have agreed to enter into this First Addendum to reflect the changes outlined below to enable the Concessionaire to:

- a. be granted the right perform the Operations under a concession and implement a redevelopment plan for the Exclusive Area and extend the Area of Operations to cover the Concession Property;
- b. obtain possession of the Development Land, the Exclusive Area and the Facilities for the proposed extension of the Area of Operations;
- c. maintain and make improvements to the Concession Property; and
- d. develop new handling methods and cargo handling capacity at the Concession Property.

(F) NSBT and NGL have undertaken various studies and surveys to ascertain the condition of the existing quayside and berths and identified the need to refurbish parts of the Exclusive Area to ensure the long-term viability of the Port due to silting and a shallow draft. NSBT shall dredge the Berths and increase their capacity (Phase 1) and then extend the Exclusive Area (Phase 2).

(G) NBST and NGL hereby agrees to comply with the provisions under the Local Content Agency Act of 2016

(H) This First Addendum shall be read and construed as part of the Licence Agreement.

(I) The term of the Licence Agreement remain so far as they are not amended in this Addendum by mutual consent of the Parties

NOW, THEREFORE in consideration of the mutual promises and agreements of All the Parties herein expressed, as well as other good and valuable consideration, the receipt of which are hereby acknowledged, All the Parties legally bound hereby agree as follows:

1. **ADDITIONAL DEFINITIONS AND INTERPRETATION**

- 1.1 In this First Addendum including its recitals (unless the context otherwise requires) any capitalised terms and expressions not defined herein but whose meanings are defined in the Licence Agreement shall have the meanings set out therein.
- 1.2 The provisions of Clause 1.1 of the Licence Agreement shall extend and apply to this First Addendum as if specifically set out herein with references to "this Agreement" construed as "this First Addendum".
- 1.3 References in the Licence Agreement to "this Agreement" and in this First Addendum references to "this First Addendum" shall be construed as references to the Licence Agreement as amended by this First Addendum and known as the Concession Agreement with effect from the First Addendum Effective Date.
- 1.4 The following additional definitions are hereby inserted into Clause 1 (Definitions and Interpretation) of the Licence Agreement:

"Additional Berth" shall have the meaning given in Clause 8.

"All the Parties" shall mean the Authority, GOSL, NCP, the Sponsor and the Concessionaire.

"Authority Event of Default" has the meaning set forth in Clause 25.2.

"Concession" shall mean the rights granted by the Confirming Parties to the Concessionaire in accordance with this First Addendum and any subsequent addenda.

"Concession Agreement" shall mean the Licence Agreement as amended by this First Addendum with effect from the First Addendum Effective Date.

"Concession Fees" shall have the meaning given in Clause 5.

"Concession Property" means the revised property including the Exclusive Area and the Development Land as outlined in Annex and Annex B and outlined in [colour] in Annex C.

"Concessionaire Event of Default" has the meaning set forth in Clause 25.1.

"Defaulting Party" has the meaning set forth in Clause 25.3(c).

"Development Land" shall mean the land as outlined in [colour] in Annex B.

"Development Plan" shall mean the development plan attached in Annex D which describes the Improvements which the Concessionaire plans to carry out to the Development Land.

"Dredging Plan" shall mean the dredging plan attached in Annex E produced by SLPA which describes its obligations to maintain agreed depths of water alongside the Berths, the Additional Berth and the approach channel of the Port.

"Due Proportion" shall mean the percentage of the overall Tonnage of bulk and breakbulk cargoes handled in the Port which the Concessionaire handles in a given Operating Year.

"Event of Default" means a Concessionaire Event of Default or Authority Event of Default, as applicable.

"First Addendum" shall have the meaning given in the Preamble.

"First Addendum Effective Date" shall have the meaning given in Clause 2.2.

"Improvements" shall mean the improvements to be made to the Development Land by the Concessionaire in accordance with the provisions of the Development Plan set out in Annex D.

"Licence Agreement" has the meaning given in Recital A.

"Non-Defaulting Party" has the meaning set forth in Clause 25.3(c).

"Repairing Party" shall have the meaning given in Clause 3.7.

"Security Interests" shall mean any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar affect.

"Utilities" shall mean infrastructure, equipment or services relating to the supply of electricity (including back-up power), water, sewage and drainage, telecommunications, fibre optic network, gas, fossil and other liquid fuel;

"Waste Material" shall mean unwanted material left over from a manufacturing process or refuse from places of human or animal habitation and shall include hazardous waste being a by product of anthropogenic activities that is either ignitable, corrosive, reactive or toxic and that can pose a substantial or potential hazard to human health or the environment when improperly managed.

1.5 The following definitions in Clause 1 of the Licence Agreement shall be deleted and replaced as follows:

"Port" shall mean the Berths, berths 3, 4, 5, 6, the Additional Berth and all surrounding areas at Queen Elizabeth II Quay in Freetown, Sierra Leone.

"Confirming Parties" shall mean NCP and GOSL.

1.6 **Interpretation:**

- (a) All the Parties have participated jointly in the negotiation and drafting of this First Addendum. In the event an ambiguity or question of intent or interpretation arises, this First Addendum shall be construed as if drafted jointly by All the Parties and no presumption or burden of proof shall arise favouring or disfavouring any of All the Parties by virtue of the authorship of any of the provisions of this First Addendum.
- (b) Unless otherwise indicated, all references in this First Addendum to Recitals, Clauses, and Annexes refer to the corresponding Recitals, Clauses, and Annexes herein unless otherwise stated to the contrary.
- (c) The Annexes to this First Addendum shall form an integral part of this First Addendum and will be effective as though they were expressly set out in the body of this First Addendum.

2. **BASIC RIGHTS & OBLIGATIONS, EFFECTIVE DATE, TERM, OPERATIONAL REVIEW AND MONITORING**

2.1 **Granting of Rights for the Concessionaire to Operate**

The Authority hereby grants to the Concessionaire, who accepts, the right, subject to this First Addendum and Applicable Law, to:

- (i) develop the Exclusive Area under a revised concession agreement;
- (ii) dredge the Berths;
- (iii) extend the Exclusive Area to create a new berth and an additional shore storage facility as outlined by the drawing in Annex C;
- (iv) use, manage, operate, maintain, and improve the Concession Property; and
- (v) perform the Operations.

2.2 Effective Date

In addition to the provisions of Clause 2.1 of the Licence Agreement, the provisions in this First Addendum shall be in full force and binding on All the Parties upon the later of the execution date of this First Addendum; the date of ratification of this First Addendum by the Parliament of Sierra Leone and the date of fulfilment of the condition listed hereunder (the "**First Addendum Effective Date**"):

- (a) *Corporate Proceedings* – the Concessionaire and the Sponsor to deliver to the Authority a secretary's certificate certifying a letter of authorisation, authorising the officers of the Concessionaire and the Sponsor to execute this First Addendum.

2.3 Financing of Obligations under this First Addendum

The Concessionaire shall be responsible for financing the performance of its obligations under this First Addendum. The Concessionaire may use this First Addendum as security for obtaining such financing. For the avoidance of doubt, the Concession Property shall not however be used as security by the Concessionaire.

2.4 Term

Clause 2.2 of the Licence Agreement shall be deleted and replaced with:

- (a) "This Agreement will have a term of twenty one (21) years (the "**Initial Term**") commencing on 1 October 2015.
- (b) The Authority may extend this Agreement for a further period of seven (7) years subject to the satisfactory performance of this Agreement and mutual agreement by the Concessionaire and the Authority following the issue of a notice by the Concessionaire to the Authority requesting such extension no less than three (3) years prior to the end of the Initial Term."

2.5 Review

All the Parties have consented to review the Licence Agreement now in accordance with Clause 2.3 of the Licence Agreement and consent to this earlier review than that set out in Clause 2.3(a) of the Licence Agreement.

All the Parties have agreed to replace the words "Licence Agreement" with "Concession Agreement" in the Licence Agreement effective on the First Addendum Effective Date.

3. **CONCESSION PROPERTY**

In consideration of the covenants and agreements set forth in this First Addendum and other good and valuable consideration, the Authority demises to the Concessionaire by way of a lease hold the Concession Property free and clear of all Security Interests and the Concessionaire accepts such demise. For the avoidance of doubt the Authority shall remain the owner of the Concession Property throughout the Term.

3.1 **Transfer of the Concession Property**

Commencing on the First Addendum Effective Date, the Authority shall transfer to the Concessionaire the Concession Property except for the excluded premises referred to in Clause 3.3(e) of the Licence Agreement and provided that such excluded premises shall automatically transfer to the Concessionaire as soon as the Authority vacates such excluded premises.

3.2 **Indemnity**

In addition to Clause 26.2 of the Licence Agreement, the Authority shall indemnify, defend, and hold harmless the Concessionaire from and against, and promptly remove and discharge, any Security Interests which may be placed on the Concession Property.

3.3 **Emergency Use of Berths**

The Concessionaire shall at all times have an exclusive right to use Berths and the Additional Berth, provided that the Authority, subject to applicable port regulations, shall have the right of primary use of Berths and the Additional Berth in the case of an Emergency if:

- (a) the Concessionaire does not have Emergency response capability; and
- (b) the Authority's use of the Berths is not on a discriminatory basis; and
- (c) the Authority pays the Concessionaire the Operations Rates where Cargo or tonnage passes through the Concession Property.

If such preferential use by the Authority continues for more than five (5) consecutive days or fifteen (15) cumulative days in any calendar year, the Concessionaire shall have a right to require the Authority to pay the Concessionaire for its lost revenue due to such primary use by the Authority.

3.4 **Permitted Use of Concession Property**

The Concessionaire shall only use the Concession Property to perform the Operations, and may not use the Concession Property for any other purpose without the Authority's prior written approval, such approval not to be unreasonably withheld. The Concessionaire shall not conduct such permitted use, or allow such permitted use to be conducted, in violation of any Applicable Law or in any manner that would:

- (a) violate, invalidate or cause a loss of coverage under any insurance in force on or after the date of this First Addendum with respect to the Concession Property or other Concession Property of the Port;
- (b) cause injury or damage to the Concession Property, to the person or property of any Person on the Concession Property or to any Person or property of any Person on other Concession Property of the Port;

- (c) cause diminution in the value or usefulness of all or any portion of the Concession Property (reasonable wear and tear excepted);
- (d) disturb or unreasonably interfere with or endanger the Authority or any other operators of the Port; or
- (e) create a nuisance or waste in on or about the Concession Property which adversely affects other Concession Property of the Port.

3.5 Improvements and Alteration of the Concession Property

(a) *By the Authority*

Subject to mutual agreement by the Concessionaire and the Authority, the Authority shall have the right to alter the Concession Property provided that:

- (i) such alteration is required for technical reasons or the economic well-being of the Port;
- (ii) such alteration does not unreasonably interfere with the Concessionaire's peaceful and quiet possession and enjoyment of the Concession Property; and
- (iii) such alteration shall not have a material adverse effect on the Concessionaire in the performance of the Operations.

(b) *By the Concessionaire*

- (i) *Improvements.* The Concessionaire shall make the Improvements.
- (ii) No later than sixty (60) days prior to the proposed date for starting work on a given Improvement, the Concessionaire shall furnish to the Authority the following documents and information:
 - (A) the plans and drawings of the relevant Improvement;
 - (B) the names and addresses of the proposed contractor(s); and
 - (C) such other relevant documentation as may be requested by the Authority.
- (iii) *Amendment to the Proposed Development Plan.* The Concessionaire shall not amend the Proposed Development Plan without the Authority's prior written approval, such approval not being unreasonably withheld. Any improvements or alterations made by the Concessionaire to the Concession Property, other than the Improvement, which cannot be removed by the Concessionaire on the termination or expiry of the Concession Agreement shall be the property of the Authority without the Authority having to reimburse the Concessionaire for the value thereof.
- (iv) *Applicable Standards.* The Concessionaire shall ensure that the Improvements and any other improvements or alterations made to the Concession Property are made in full compliance with:
 - (A) Applicable Law;

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- (B) international conventions, protocols and international addenda to which Sierra Leone is a party; and
 - (C) Prudent Industry Standards.
- (v) *Right of the Authority to Monitor and Inspect.* Without limiting or reducing the Concessionaire's obligations under Clause 3.6, the Authority shall have the right to inspect and monitor the Improvements and any other improvements or alterations made to the Concession Property during their implementation and after they have been completed. Any inspection by the Authority shall be undertaken in accordance with the provisions set out in Clause 4.12(a). The Authority shall moreover be given the right to inspect and copy all records and materials of the Concessionaire relating to the Improvements and improvements or alterations and to participate in related progress meetings between the Concessionaire and the contractors implementing those Improvements and improvements or alterations.
- (vi) *Development Plan.* Annex 6 of the Licence Agreement shall be replaced by Annex D of this First Addendum.
- (vii) The Concessionaire shall have the right to construct silos, crude and palm oil tanks and storage facilities for agricultural and food products on the Concession Property.
- (viii) The Concessionaire shall have the right to import all construction equipment and materials required in connection with its rights under this First Addendum relating to the construction (civil works) of the Additional Berth in accordance with a development schedule to be notified by the Concessionaire to the Authority prior to the Concessionaire commencing construction of the Additional Berth in accordance with Clause 8, and any such equipment and materials shall be exempt from such taxes and duties in accordance with Applicable Law.

3.6

Maintenance

- (a) *The Concessionaire's Maintenance Obligations.* The Concessionaire shall maintain the Concession Property (excluding, subject to Clause 3.7, the quay wall on the Concession Property) in good condition and repair. All maintenance shall be equal or better in quality to the original material and workmanship standard. The maintenance performed by the Concessionaire shall comply with Applicable Law and Prudent Industry Standards. The Concessionaire shall inform the Authority in writing of entry into any contract for maintenance. The Concessionaire shall obtain and maintain all licences, certifications or other documents required for such maintenance in accordance with Applicable Law. The Authority shall assign to the Concessionaire on the date of this First Addendum all rights under any warranties it may receive or be entitled to for the Concession Property.
- (b) *Latent defects.* The Authority shall remedy any latent defects which materially impair the Concessionaire's use of the Concession Property and the performance of its Operations, provided the Authority is made aware of such defects by the Concessionaire within the first three (3) years of the First Addendum Effective Date.
- (c) *Notification and Repair of Damage.* In the event that any Concession Property (excluding, subject to Clause 3.7, the quay wall on the Concession Property) is damaged, the Concessionaire shall notify the Authority in writing of the same within three (3) days after the

Concessionaire became aware of such damage. The Concessionaire shall commence the process of repairing such damage within a reasonable period to be mutually agreed by the Concessionaire and the Authority and shall complete such repair to damaged Concession Property within a reasonable period to be mutually agreed by the Concessionaire and the Authority. In the event that the Concessionaire fails to commence the process of repairing within such period, then the Authority may give notice in writing to the Concessionaire requiring the Concessionaire to commence the process of repairing within thirty (30) days or any other timeframe agreed by the Concessionaire and the Authority. If the Concessionaire has failed to commence the process of repairing upon expiry of the notice by the Authority, then the Authority may offer the repair work for tender and the Concessionaire and the Authority shall agree the appointment of a contractor to perform the repair work. In such instance, the Concessionaire shall be responsible for cost of the repair and if the Authority is required to make any payment towards such repair work, the Concessionaire shall reimburse the Authority its actual costs incurred together with simple interest equal to LIBOR plus five per cent (5%) per annum.

3.7 **Quay wall on the Concession Property**

The Authority shall be responsible for maintenance, repairs, renewals and replacements of the quay wall on the Concession Property until such time as the Concessionaire shall complete the refurbishment of Berth 2. The Parties agree that the Concessionaire shall complete such refurbishment of Berth 2 within three (3) years from the First Addendum Effective Date and that the Concessionaire shall thereafter be responsible for maintenance, repairs, renewals and replacements of the quay wall on the Concession Property for the remainder of the Term provided that the Concessionaire shall have the right to set-off all of its costs associated with the refurbishment of Berth 2 against any payments of the Throughput Fee. In the event that the quay wall on the Concession Property is damaged, the Party becoming aware of such damage shall notify the other Party in writing of the same within three (3) days after becoming aware of such damage. The Authority or the Concessionaire (as applicable in accordance with this Clause 3.7) (the "**Repairing Party**") shall commence the process of repairing such damage within a reasonable period to be mutually agreed by the Concessionaire and the Authority and shall complete such repair to the quay wall on the Concession Property within a reasonable period to be mutually agreed by the Parties. In the event that the Repairing Party fails to commence the process of repairing within such period, then the other Party may give notice in writing to the Repairing Party requiring the Repairing Party to commence the process of repairing within thirty (30) days or such other time frame agreed by the Authority and the Concessionaire. If the Repairing Party has failed to commence the process of repairing upon expiry of the notice by the other Party, then the Repairing Party may offer the repair work for tender and the Parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Repairing Party shall be responsible for cost of the repair and if the other Party agrees to make any payment towards such repair work, the Repairing Party shall reimburse the other Party its actual costs incurred together with simple interest equal to LIBOR plus five per cent (5%) per annum.

3.8 **Utilities**

Subject at all times to the covenants of the Authority set out in Clause 7.1(g), the Concessionaire shall make its own arrangements and pay for the supply of Utilities to the Concession Property, including serving the vessels that call there. The Concessionaire shall notify the Authority of such arrangements at least fourteen (14) days in advance.

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In addition to Clause 9.3 of the Licence Agreement:

- (a) *By the Authority to verify compliance with the Agreement.* The Concessionaire shall permit the Authority and its designated representatives and agents during the Concessionaire's working hours to enter and inspect the Concession Property for the purpose of verifying the Concessionaire's compliance with the Agreement and any other requirements under Applicable Law provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of the Operations. The Authority shall notify the Concessionaire in writing at least three (3) days in advance of any inspection of the names of the individuals to be permitted access and the time and date of such visit.

- (b) *By the Authority in the event of Emergency.* The Concessionaire shall permit the Authority and its designated representatives and agents without prior notification to enter and inspect the Concession Property in the event of Emergency provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of the Operations.

- (c) *By the Authority to fulfill its obligations under the Agreement.* The Concessionaire shall also grant access to the Concession Property to the Authority or its designates on mutually agreed terms for the purpose of fulfilling its obligations under the Agreement provided that any such visit shall not unreasonably interfere with the Concessionaire's performance of the Operations.

- (d) *Necessary right of way.* The Authority shall have the right of access through the Concession Property to other facilities controlled by The Authority under circumstances where reasonable, alternative means of access are not available subject to the prior consent of the Concessionaire provided that any Person granted such right of way shall follow the rules concerning safety, traffic, security and other regulations relating to the Concession Property and performance of the Operations prescribed by the Concessionaire, which rules shall not be discriminatory in application.

- (e) *By Governmental Authorities.* The Concessionaire shall grant access to the Concession Property to Government Authorities for the purpose of carrying out any activities which they are legally entitled to carry out in the Concession Property pursuant to Applicable Law.

- (f) *By Shipping Agents and others.* The Concessionaire shall grant access to the Concession Property to shipping line employees and agents and the staff of any contractors employed by them, to enable them perform their work efficiently provided that they do not unreasonably interfere with the Concessionaire's performance of the Operations and provided further that the shipping line employees and agents and the staff of any contractors employed by them shall follow the rules concerning safety, traffic, security and other regulations relating to the Concession Property and performance of the Operations prescribed by the Concessionaire, which rules shall not be discriminatory in application.

OPERATIONS

Common User Bulk, Break-Bulk and Multipurpose Terminal

- (a) The Concessionaire shall perform the Operations such that the Concession Property is a common-user bulk, break-bulk and multipurpose terminal open to any and all shippers and consignees of bulk, break-bulk, liquid bulk, Project Cargo and multipurpose cargo, including but

not limited to food stuffs such as palm oil, vegetable oil, rice and cocoa shipments, cement, clinker, construction plant, steel etc. The Authority and the Confirming Parties shall ensure that any agreement executed by any of them prior to or during the Term shall not violate this provision.

- (b) In addition to Clause 3.4 of the Licence Agreement, the Concessionaire shall have the right during the Term to handle the following Cargoes within the Exclusive Area:
- a. edible and non-edible oils including palm oil and vegetable oil;
 - b. cocoa; and
 - c. any other bulk cargoes that may develop as a result of change in trade conditions (for example fertilizers) that are suitable for handling at the terminal.

5. FEES AND PAYMENT TERMS

Clause 5.3 of the Licence Agreement shall be deleted and replaced to read as follows and every reference to Annex 3 (Licence Fee) in the Licence Agreement shall be deemed to be a reference to Annex F (Concession Fees) of this First Addendum:

"5.3 Concession Fees:

- (a) Subject to Clauses 5.3(b), 5.3(c), 5.3(d) and 5.3(e), the Concessionaire will pay [NCP or GOSL] the fees contained in Annex F (the "**Concession Fees**") which will be paid after the fifth (5th) anniversary of the effective date of the Licence Agreement as stated in Clause 2.2 of this First Addendum
- (b) The Concessionaire will continue to pay the fees for Year 3 to 5 as stated in Annex F in accordance with Clause 5.3 (e) below, until clause 5.3 (a) becomes effective
- (c) All the Parties acknowledge that the amounts for Year 1 and Year 2 as set out in Annex F have been paid in full by the Concessionaire to NCP or GOSL.
- (d) Subject to Clause 5.3(d) and 5.3(e), the Concessionaire will pay NCP or GOSL a percentage equivalent to its Due Proportion of the Concession Fees for each Operating Year.
- (e) Subject to Clause 5.3(f), for the period from the commencement of construction in 2020 (Year 5 or Year 6 as set out in Annex F) until completion of construction of the Additional Berth no later than 31 December 2022 (Year 7 or Year 8 as set out in Annex 3) (the "**Construction Period**"), the Concessionaire will pay NCP or GOSL eighty per cent (80%) of the Concession Fees for each Operating Year during such period. If the Due Proportion is less than eighty per cent (80%) then the Concessionaire will pay NCP or GOSL a percentage equivalent to its Due Proportion.
- (f) Subject to Clause 5.3(f), from expiry of the Construction Period onwards (the "**Post-Construction Period**"), the Concessionaire will pay NCP or GOSL one hundred per cent (100%) of the Concession Fees for each Operating Year during such period. If the Due Proportion is less than one hundred per cent (100%) then the Concessionaire will pay NCP or GOSL a percentage equivalent to its Due Proportion.
- (g) The Authority guarantees with effect from the First Addendum Effective Date that the Due Proportion shall be at least eighty per cent (80%) and any shortfall of tonnage for the year will be

identified in the last month of the Operating Year and rectified in the first quarter of the following Operating Year.

- (h) For those Operating Years covering (i) the pre-Construction Period and the Construction Period; and (ii) the Construction Period and the Post-Construction Period, the applicable percentage of the Concession Fees payments shall be pro-rated accordingly."

6. ENVIRONMENT

6.1 Obligation to Comply with Environmental Laws

The Concessionaire shall comply with all Applicable Law concerning the protection of the environment, and shall take adequate steps to prevent and control the pollution of the air, land, water and sea by oil, chemicals, emissions, hazardous wastes, effluent solid and other wastes in the Concession Property as required by such Applicable Law. The Concessionaire shall consult with the applicable Governmental Authorities in taking such steps. The Concessionaire shall cooperate with the Authority in achieving compliance with international environmental conventions to which Sierra Leone is a party.

6.2 Waste Disposal

The Concessionaire shall arrange for the disposal of Waste Material generated from the Concession Property in accordance with Applicable Law, international agreements, conventions and protocols to which Sierra Leone is a party and Prudent Industry Standards. The Concessionaire shall not dump in the Port any substance other than rainwater without the Authority's prior written consent.

6.3 Environmental Impact Assessments

In carrying out the Development Plan, the Concessionaire shall comply with any Applicable Law requiring the preparation and approval of an environmental impact assessment. Upon submission of such environmental impact assessment to a Governmental Authority (if one is required), the Concessionaire shall submit to the Authority a copy of the same, as well as a copy of any response from such Governmental Authority regarding the same.

6.4 Spill Containment Programs

The Concessionaire, in cooperation with the Authority and the applicable Governmental Authorities, shall prepare and implement a contingency plan and a hazardous materials spill containment, removal and remediation plan for the Concession Property in accordance with Prudent Industry Standards and Applicable Law.

6.5 Obligation to Notify

In the event that pollution occurs that may affect the Concession Property and/or the Port, the Concessionaire shall:

- (a) inform the Authority immediately of the same;
- (b) take all reasonable measures required for detecting, cleaning and containing such pollution; and
- (c) provide the Authority with frequent written updates on such measures being taken or remaining to be taken by the Concessionaire.

6.6 The Concessionaire's Obligation to Remedy

In the event that Waste Material is present in the waters or in or on the bottom of the Port after the First Addendum Effective Date, which specifically have originated from the Concession Property after the First Addendum Effective Date, then the Concessionaire shall take immediate action to contain, remove and/or remedy the same in accordance with Applicable Law, international agreements, conventions and protocols to which Sierra Leone is a party and Prudent Industry Standards.

6.7 Environmental Emergencies

In the event of an environmental emergency emanating from the Concession Property and endangering life or property, the Concessionaire shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including the Concessionaire's response thereto, to the Authority. If the Concessionaire has not taken reasonable precautions for the safety of the public, its customers or the protection of the Concession Property, and such failure creates an environmental emergency requiring immediate action, then the Authority, with or without notice to the Concessionaire may, but shall be under no obligation to, provide reasonable action as required to address such emergency. The taking of any such action by the Authority, or the Authority's failure to take any action, shall not limit the Concessionaire's liability. The Concessionaire shall reimburse the Authority for the performance of any work or furnishing of any equipment in connection with any such environmental emergency in an amount equal to the reasonable costs incurred by the Authority in the performance of the work or furnishing of the equipment.

6.8 Dredging; Mooring

The Concessionaire shall take such measures, at no cost to the Concessionaire, as shall be necessary in the Authority's opinion to enable dredging and placing and removing of any mooring posts in the vicinity of the Concession Property, including without limitation allowing anchoring, mooring and dredging vessels to be installed, used and maintained by or on behalf of the Authority in the shore strip of the Concession Property provided that such measures do not have an adverse effect on the performance of the Operations. The Concessionaire shall, at its own cost and expense, perform such work to the Concession Property as shall be necessary to avoid damages which could arise from such work to be performed by or on behalf of the Authority. If, as a result of such work, the Concession Property is damaged, such damage shall be remedied at the Concessionaire's costs unless the same was attributable to the Authority's or its contractors' negligence or wilful misconduct.

7. LOSS, DAMAGE AND REPAIRS TO AREA OF OPERATIONS AND FACILITIES

7.1 The Authority's Responsibility for Repairs and Maintenance

- (a) *Cooperation.* The Authority shall cooperate with the Concessionaire as reasonably necessary to enable the Concessionaire to perform its responsibilities under this Agreement, including provision by the Authority of copies of drawings, plans, policies, papers, records, reports, data and other information directly related to the Concession Property or Port as reasonably necessary for the Concessionaire to perform the Operations and manage the Concession Property.
- (b) *Port Access.* The Authority shall, at all times, keep the Port open to shipping so that the Concession Property may be accessible by sea and by land for use by the Concessionaire for the performance of its Operations.
- (c) *Port Services; Vessel Management.* The Authority shall:

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- (i) provide and maintain maritime approaches and navigation aids within the Port;
- (ii) in accordance with Applicable Law, issue regulations and rules governing waterside safety within the Port;
- (iii) provide pilotage, towage, berthing, unberthing and shifting of vessel services required by all vessels intending to call at the Concession Property:
 - (A) in accordance with the schedule of the arrivals and the departures to be prepared pursuant to consultation between the Authority and the Concessionaire; and
 - (B) in a timely and efficient manner either directly or through the licensing of competitive suppliers of such services provided that the Authority shall at all times be responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this sub section; and
 - (C) at prices which shall not exceed the published tariffs of the Port at such time.

Failure to provide pilotage, towage, berthing, unberthing and shifting of vessel services in accordance with the provisions of this Clause 7.1(c) so as to have a material adverse effect upon the performance of the Operations of the Concessionaire shall require the Concessionaire and the Authority or the Confirming Parties (as appropriate) to meet and discuss the reduction in the Throughput Fee or Concession Fees or both to compensate the Concessionaire for any financial loss that the Concessionaire has incurred as a consequence of the Authority's acts or omissions.

- (d) *Dredging.* The Authority shall be responsible for the dredging of the channel to the Port, either directly or through the licensing of competitive suppliers of such services. The Authority shall, at all times, be solely responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Clause. The Authority shall undertake dredging in accordance with the Dredging Plan with the intention of achieving a minimum depth of water in the approach channel of at least 11.0 metres below mean low water neap tide in accordance with the Dredging Plan. Interference with the performance of the Operations by the Concessionaire shall be kept to a minimum. Although the Authority is responsible for dredging as part of this agreement the Concessionaire undertakes to carry out maintenance dredging to Berths and the Additional Berth. The Concessionaire shall have the right to set-off all of its costs associated with the maintenance dredging to the Berths and the Additional Berth against any payments of the Throughput Fee or the Concession Fees or both.
- (e) *Waste Disposal.* The Authority shall arrange for the disposal of Waste Materials generated from vessels berthed at the Port in accordance with Applicable Law, international agreements, conventions and protocols to which Sierra Leone is a party and Prudent Industry Standards.
- (f) *Access to Concession Property.* The Authority shall ensure that at all times throughout the Term, the Concessionaire, its employees, its customers and suppliers are provided with the reasonable access by road to the Concession Property in existence as of the Addendum Effective Date, subject to the security regulations governing access to the Port and other Applicable Law.
- (g) *Utilities Infrastructure; Rights of Way.* The Authority shall grant rights of way and easements through the Port outside the Concession Property for existing and future Utilities to the Concession Property. The Authority shall not take any action which is detrimental to the efficient supply of such Utilities to the Concessionaire.

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- (h) *Security.* The Authority shall be responsible for the general security of the Port outside the security fence of the Concession Property, security of all land and sea entrances to the Port and the provision and maintenance of the perimeter fencing on the boundaries of the Port.
- (i) *The Authority Obligation to Remediate.* In the event that Waste Material is present in the waters or in or on the bottom of the Port before the Addendum Effective Date, which the Concessionaire reports to the Authority, or after the Addendum Effective Date which has not originated from the Concession Property (including but not limited to Waste Material originating from vessels calling at the Port) then the Authority shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Law, international agreements, conventions and protocols to which Sierra Leone is a party and Prudent Industry Standards.
- (j) *Licenses; Permits.* The Authority shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Authority to fulfil its obligations under this Agreement and shall provide reasonable assistance to the Concessionaire in its efforts to obtain and keep in force the licenses and permits required to be obtained or maintained by the Concessionaire.

8. CONSTRUCTION OF AN ADDITIONAL BERTH

8.1 Clause 16 of the Licence Agreement shall be deleted and replaced with:

"In the event that the Concessionaire makes provision for additional berthing facilities (the "**Additional Berth**") to be constructed in the Port, the following shall occur;

- (a) the Exclusive Area shall be extended;
- (b) the License fees will become the Concession fees in accordance with this First Addendum
- (c) the Authority undertake to give their full assistance and support for the development in relation to any permits that may be required.

9. LICENCE TO OPERATE AND ISSUE OF OTHER LICENCE

9.1 Clause 17.1 of the Licence Agreement shall be deleted and replaced with:

"The Authority and GOSL hereby irrevocably undertakes that it shall not issue a third licence to another party to perform the operations similar to Operations handled by the Concessionaire during the Term unless the Tonnage handled by the Concessionaire at the Berths [and the Additional Berth] exceeds two million (2,000,000) Tonnes per annum for a period of two consecutive Operating Years."

9.2 Clause 17.2(a) of the Licence Agreement shall be amended to read as follows:

"On or after the Concessionaire handling in excess of two million (2,000,000) Tonnes per annum for a period of two consecutive Operating Years at the Berths [and the Additional Berth], the Authority shall have the right to grant another licence (the "**New Licence**") to another party, (the "**New Licensee**") to perform operations similar to the Operations handled by the Concessionaire at another berth and additional area of operations in addition to the licences granted to the Existing Licensee and to the Concessionaire. The terms and conditions of the New Licence shall be no more favourable than those contained in this Agreement."

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9.3 For the avoidance of any doubt Clauses 17.2(b) and 17.2(c) of the Licence Agreement shall remain un-amended.

10. **DEFAULT AND EARLY TERMINATION**

Clause 25 of the Licence Agreement shall be deleted and replaced with:

"25.1 **Concessionaire Event of Default**

Except if resulting from an Authority Event of Default or Force Majeure, each of the following events shall be considered to constitute a "**Concessionaire Event of Default**":

- (a) The Concessionaire becomes insolvent, or, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation.
- (b) Other than as a consequence of an Interruption, the Concessionaire fails to perform the Operations for thirty (30) consecutive days in an Operating Year or sixty (60) non-consecutive days in an Operating Year. Where the Concessionaire fails to perform the Operations after thirty (30) consecutive days the Authority shall have the right to intervene and divert traffic to other terminals for a period of seven (7) days. In such an instance, the Authority shall not be entitled to claim that there has been an Event of Default by the Concessionaire until the expiry of the further seven (7) day period where the traffic has been diverted to other terminals.
- (c) Subject to Clause 24.2, the Concessionaire fails to pay any amounts due in accordance with this Agreement.
- (d) The Concessionaire commits a breach of a material provision of this Agreement.

25.2 **Authority Event of Default**

Except if resulting from a Concessionaire Event of Default or Force Majeure, each of the following events shall be considered to constitute an "**Authority Event of Default**":

- (a) The Authority becomes insolvent or makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation.
- (b) The Concessionaire or the Concession Property (in whole or in part) is expropriated, compulsorily acquired or nationalized by a Governmental Authority.
- (c) There is a Change in Law in accordance with Clause 19.2(f);
- (d) Subject to Clause 24.2, the Authority fails to pay any amounts due in accordance with this Agreement.
- (e) The Authority commits a breach of a material provision of this Agreement.

25.3 Consequences of Default

- (a) *Insolvency.* Upon an Event of Default or insolvency described in Clause 25.1(a) or Clause 25.2(a), the Party that is not in default may immediately serve a termination notice.
- (b) *Expropriation and Change in Law.* Upon an Authority Event of Default described in Clause 25.2(b), or Clause 25.2(c), the Concessionaire or the Sponsor may immediately serve a termination notice.
- (c) *Other Events of Default.* Upon an Event of Default described in Clause 25.1(b), 25.1(c) or 25.1(d) or 25.2(d), 25.2(e) or 25.2(f) the Party that is not in default (the "**Non-Defaulting Party**") shall deliver to the Party which is in default (the "**Defaulting Party**"), a written notice describing the alleged Event of Default and granting not less than fifteen (15) days for the Defaulting Party to deliver a written response to the Non-Defaulting Party. If the Defaulting Party fails to respond to the Non-Defaulting Party within such fifteen (15) day period, then the Non-Defaulting Party may serve a Termination Notice. If, however, the Defaulting Party does respond to the Non-Defaulting Party, then, within such fifteen (15) day period of the Non-Defaulting Party's receipt of such written response, the Non-Defaulting Party shall deliver to the Defaulting Party a written notice stating whether there is such an Event of Default, and if so, granting the Defaulting Party at least thirty (30) days to remedy of such Event of Default. If such time period expires and the Defaulting Party has not remedied the Event of Default, the Non-Defaulting Party may serve a termination notice.

25.4 Termination

This Agreement may be terminated by either Party prior to the expiry of the Term in any of the following ways:

- (a) upon a Force Majeure event continuing for more than three (3) consecutive months and following the failure to reach a mutually satisfactory solution in accordance with Clause 18.5;
- (b) upon the occurrence of a Concessionaire Event of Default in accordance with Clause 25.1; or
- (c) upon the occurrence of an Authority Event of Default in accordance with Clause 25.2.

25.5 Rights accruing

Any such termination shall be without prejudice to the accrued rights and liabilities of the Parties under this Agreement as of the date of such termination.

25.6 Continuity of Operations

The Concessionaire shall ensure smooth continuation and provision of the Operations throughout the termination period.

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25.7 Compensation

The Parties shall pay to one another compensation due and payable in accordance with the following provisions:

- (a) *Compensation upon Force Majeure.* The Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of a Force Majeure.
- (b) *Compensation on termination due to Concessionaire Event of Default.* If the termination is due to a Concessionaire Event of Default, the Concessionaire shall:
 - (i) pay to the Authority any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Authority as a consequence of such termination; and
 - (ii) convey, transfer, assign and deliver to the Authority, free and clear of all liens and encumbrances, the Concessionaire's right, title and interest in and to the movable assets for nil consideration, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Authority.
- (c) *Compensation on termination due to Authority Event of Default.* If the termination is due to an Authority Event of Default, the compensation payable by the Authority to the Concessionaire shall be the aggregate of:
 - (i) any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Concessionaire as a consequence of such termination

The Concessionaire shall then convey, transfer, assign and deliver to the Authority, free and clear of all liens and encumbrances, the Concessionaire's right, title and interest in and to the movable assets for the higher of book value or fair market value, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Authority.

- (d) *Compensation upon expiry of the Term.* The Parties shall bear their respective costs upon expiry of the Term.

25.8 Delayed Payment

If for any reason the Concessionaire fails to pay the payments that are due in accordance with the provisions in this Agreement after 15 days from the due date the Concessionaire shall be liable to pay LIBOR plus 5(five) per cent compounded annually.

If for any reason, other than those attributable to the other Party, a Party fails to pay the payments that it is required to make in accordance with this Clause 25 within ninety (90) days of the date of termination, the defaulting Party shall be liable to pay interest at a rate of LIBOR plus 5 (five) per cent (5%) compounded monthly."

11. **APPLICABLE LAW & DISPUTE RESOLUTION**

Clause 21 of the Licence Agreement shall apply to this First Addendum as if set out here in full.

IN WITNESS WHEREOF THE DULY AUTHORISED REPRESENTATIVES OF ALL THE PARTIES HAVE HEREUNTO SET THEIR HANDS AND SEALS THE DAY AND YEAR FIRST ABOVE WRITTEN.

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SIGNED SEALED AND DELIVERED for and on behalf of the within named **MINISTRY OF TRANSPORT AND AVIATION ("GoSL")**

By Its Minister - **HONOURABLE LEONARD BALOGUN KOROMA**

SIGNATURE: 

DATE: 23/11/17

In The Presence Of:

NAME:

HINDOLO SHIACA

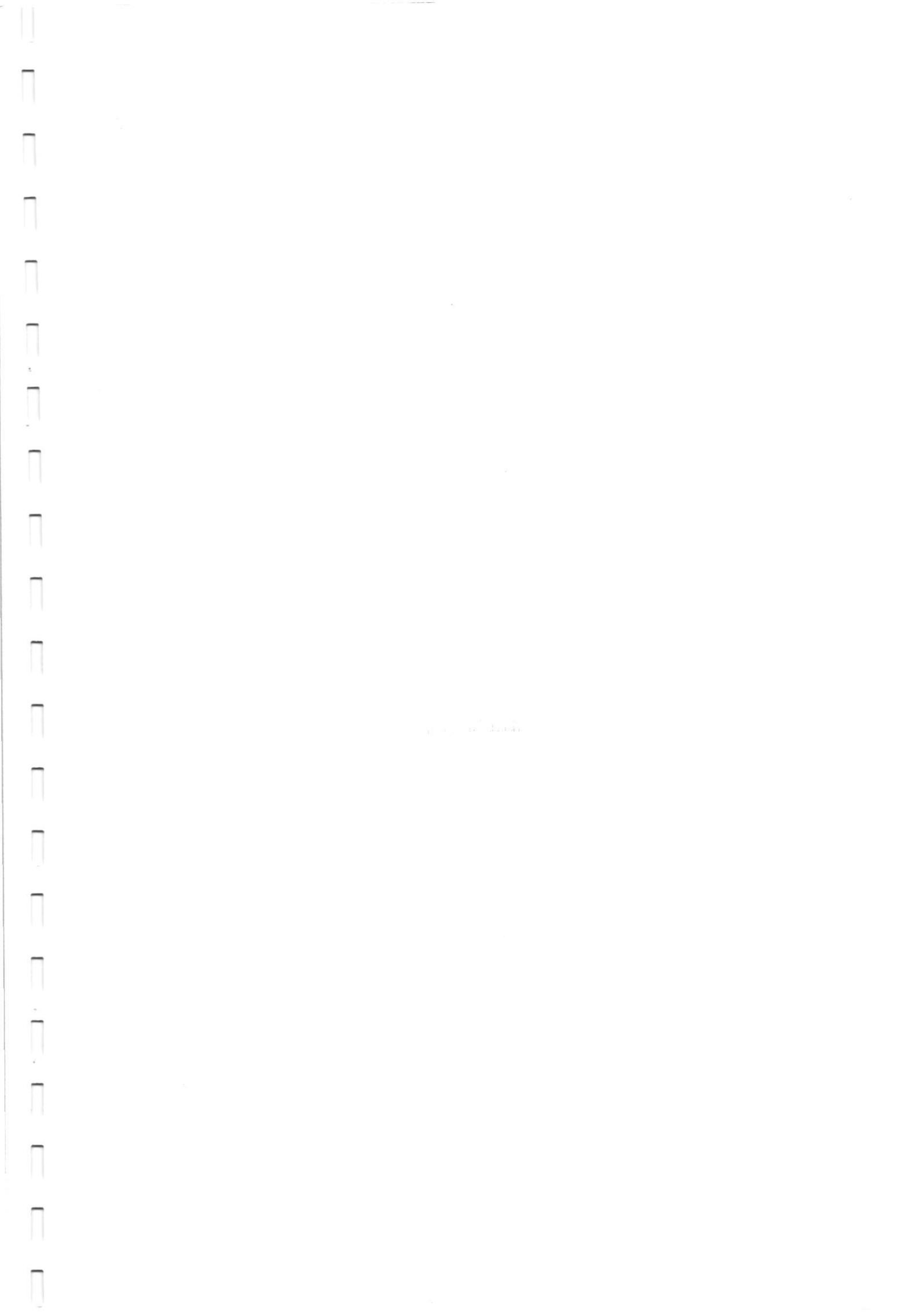
ADDRESS:

7th FLOOR, YOWI BUILDING, FREEDOM - SIERRA LEONE

OCCUPATION:

DIRECTOR - ITDU / MTA

SIGNATURE: 



SIGNED SEALED AND DELIVERED for and on behalf of the within named **NATIONAL COMMISSION FOR PRIVATISATION ("NCP")**

By Its Chairman – MR SULAIMAN KABBA KOROMA

SIGNATURE:



DATE:

28/11/17

IN THE PRESENCE OF:

NAME: Mohamed Selay

ADDRESS: NCP

OCCUPATION: As Executive Secretary

SIGNATURE:



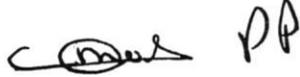
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SIGNED SEALED AND DELIVERED for and on behalf of the within named SIERRA LEONE PORTS AUTHORITY ("AUTHORITY")

By Its General Manager – MR. ABU B. BANGURA

SIGNATURE:

 PP

DATE:

28/11/17

In The Presence Of:

NAME:

Eustace Carroll - Garrick

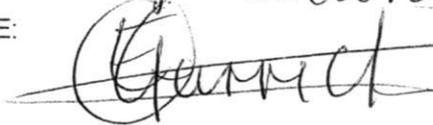
ADDRESS:

C/O SLPA

OCCUPATION:

Operations & Monitoring Manager

SIGNATURE:





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SIGNED SEALED AND DELIVERED for and on behalf of the within named **NECTAR GROUP LIMITED**
("SPONSOR")

BY ITS DIRECTOR - MR. HAN OZTURK

SIGNATURE:



DATE:

28/11/17

IN THE PRESENCE OF:

NAME:

NATALIE WILKINS

ADDRESS: NO 1 ASHTON GATE, ASHTON ROAD, HAROLD HILL, ESSEX. RM3 8J

OCCUPATION: ADMINISTRATOR

SIGNATURE:





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SIGNED SEALED AND DELIVERED for and on behalf of the within named **NECTAR SIERRA LEONE BULK TERMINAL ("CONCESSIONAIRE")**

BY ITS DIRECTOR – MR. GUY WILKES

SIGNATURE:



DATE:

28/11/12

IN THE PRESENCE OF:

NAME:

TRACY L. HARDING

ADDRESS:

1 ASHTON GATE, ASHTON ROAD, ROMFORD RM3 3UF

OCCUPATION:

SECRETARY / OFFICE MANAGER

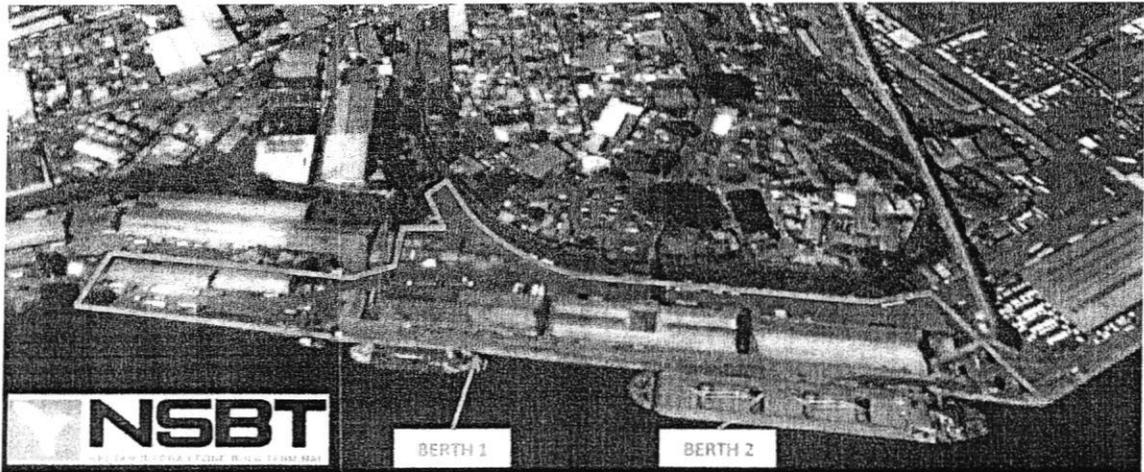
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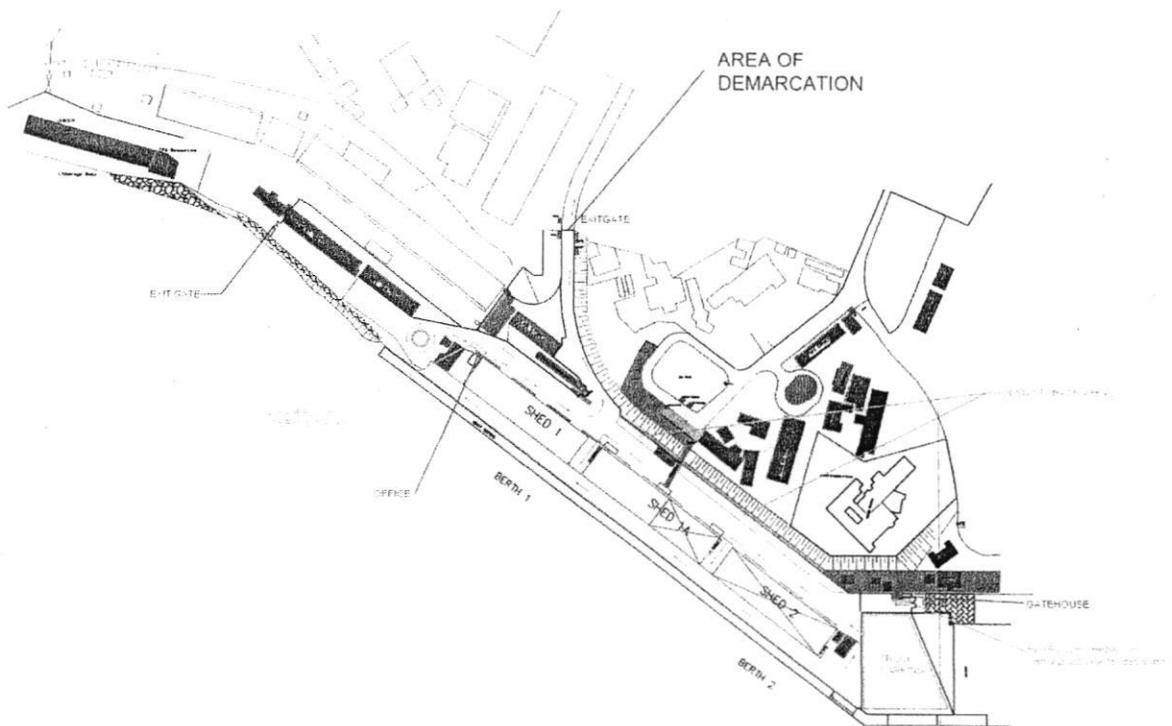
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ANNEX A Exclusive Area

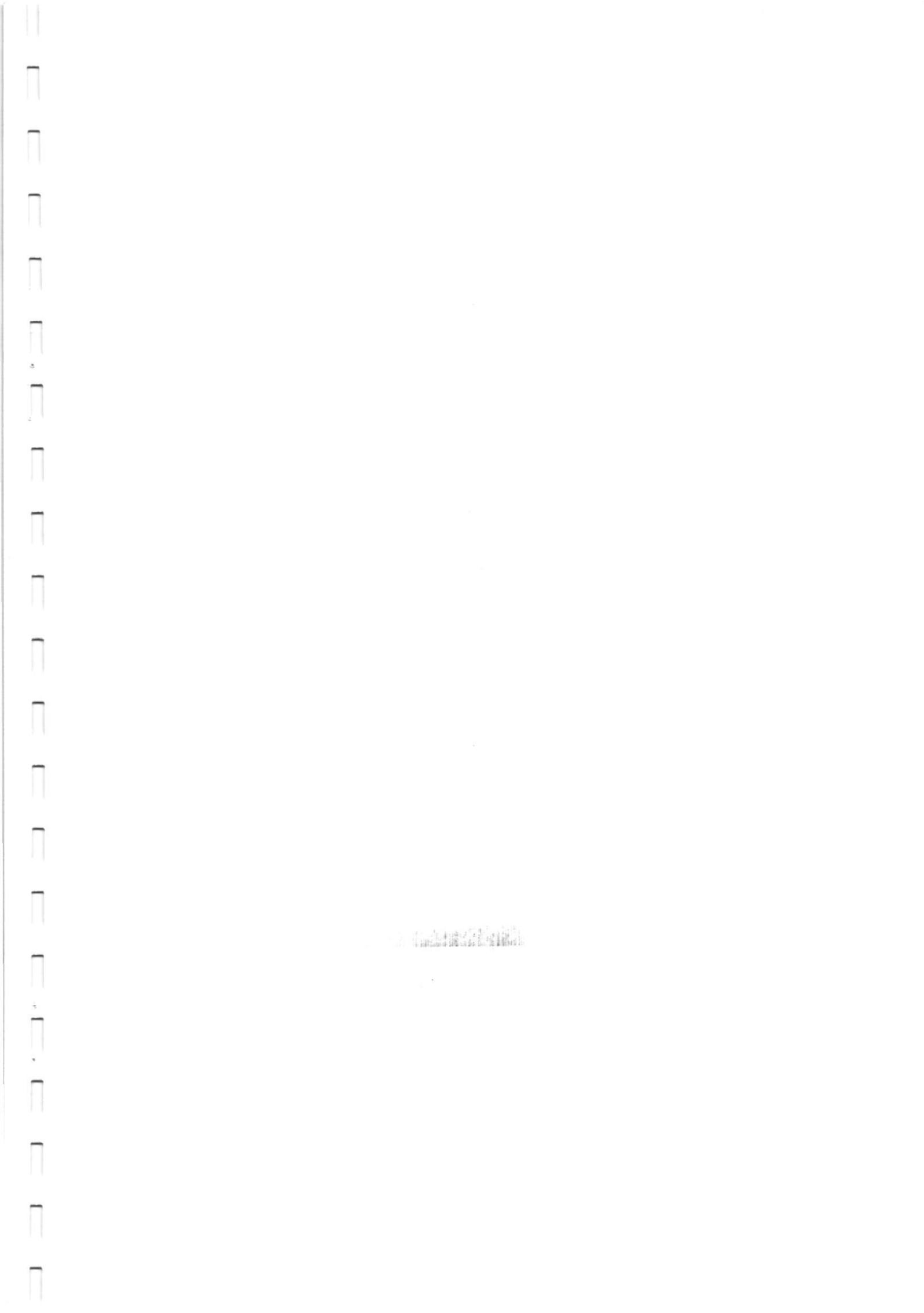


Existing Exclusive Area showing Berths 1 and 2. The Exclusive Area extends down to and including the warehouse currently known as the "Cement Shed".

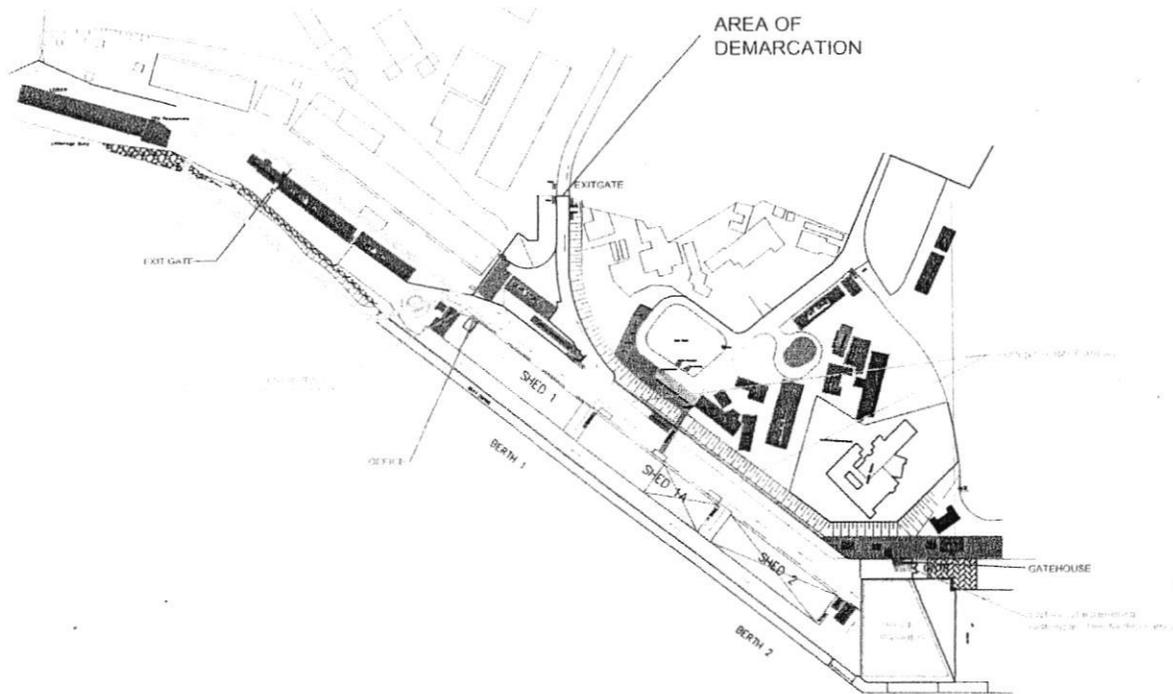


Current area of demarcation showing existing Exclusive Area and existing exit gates.

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ANNEX B Development Land



The Development Land area is situated between the "LEOCEN Gate" end of the existing NSBT terminal and the LEOCEM factory

It consists of redundant industrial land which is being eroded by the sea. The area in former years was used as a barge lighterage area but these activities stopped many years ago The land extends to the boundary of the Sierra Leone Produce Marketing Company Compound.

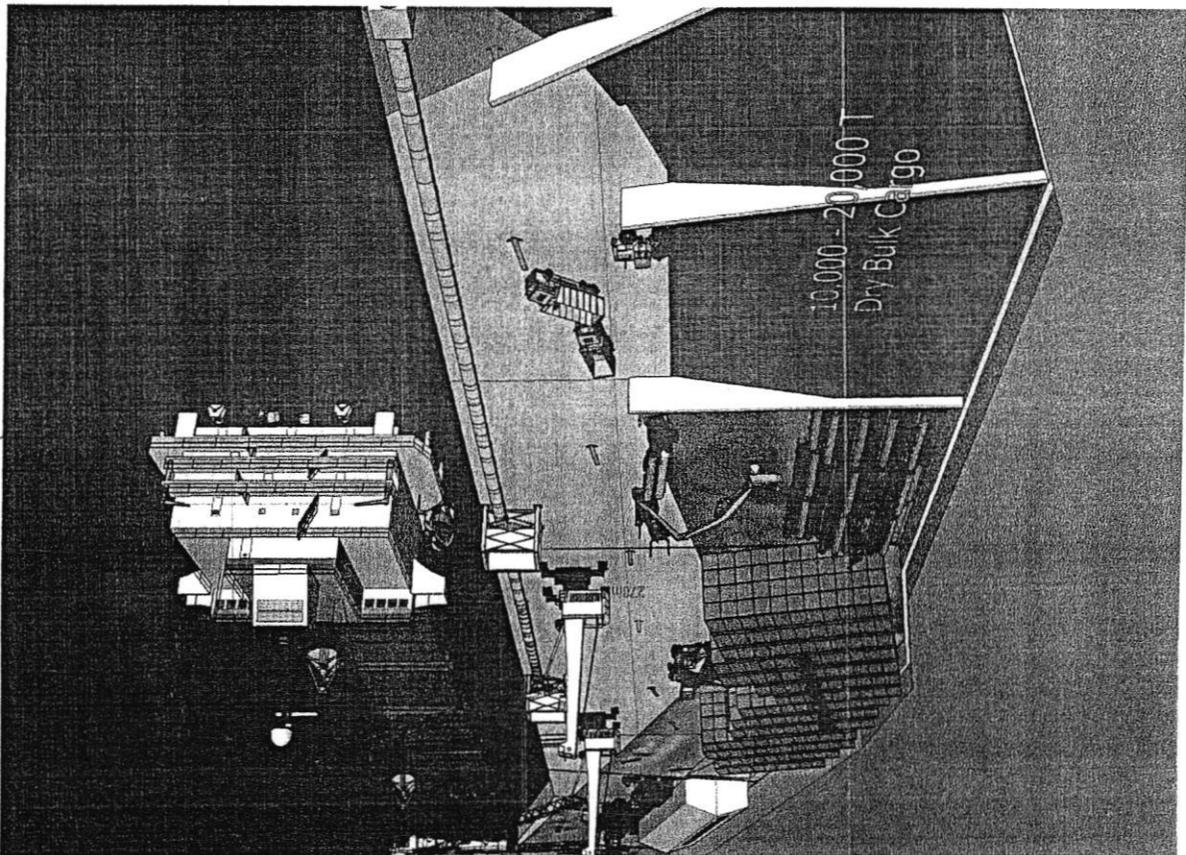
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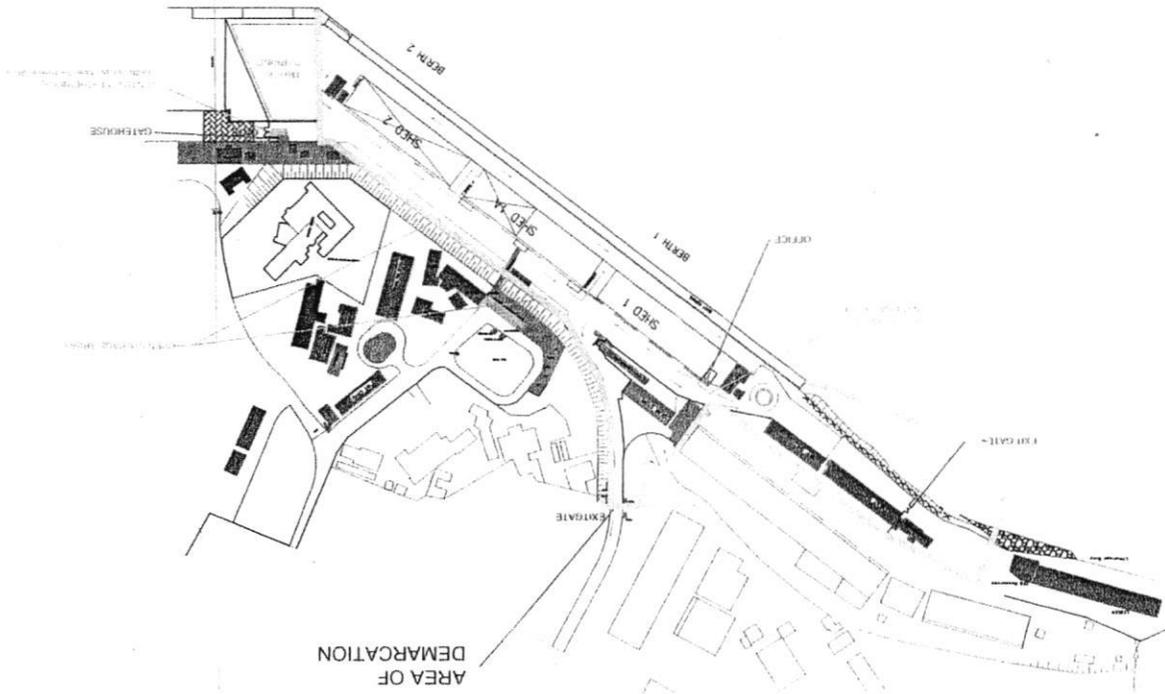
Concept drawing of the proposed Additional Berth situated on the Development Land area showing proposed reclamation and redesign of the area.





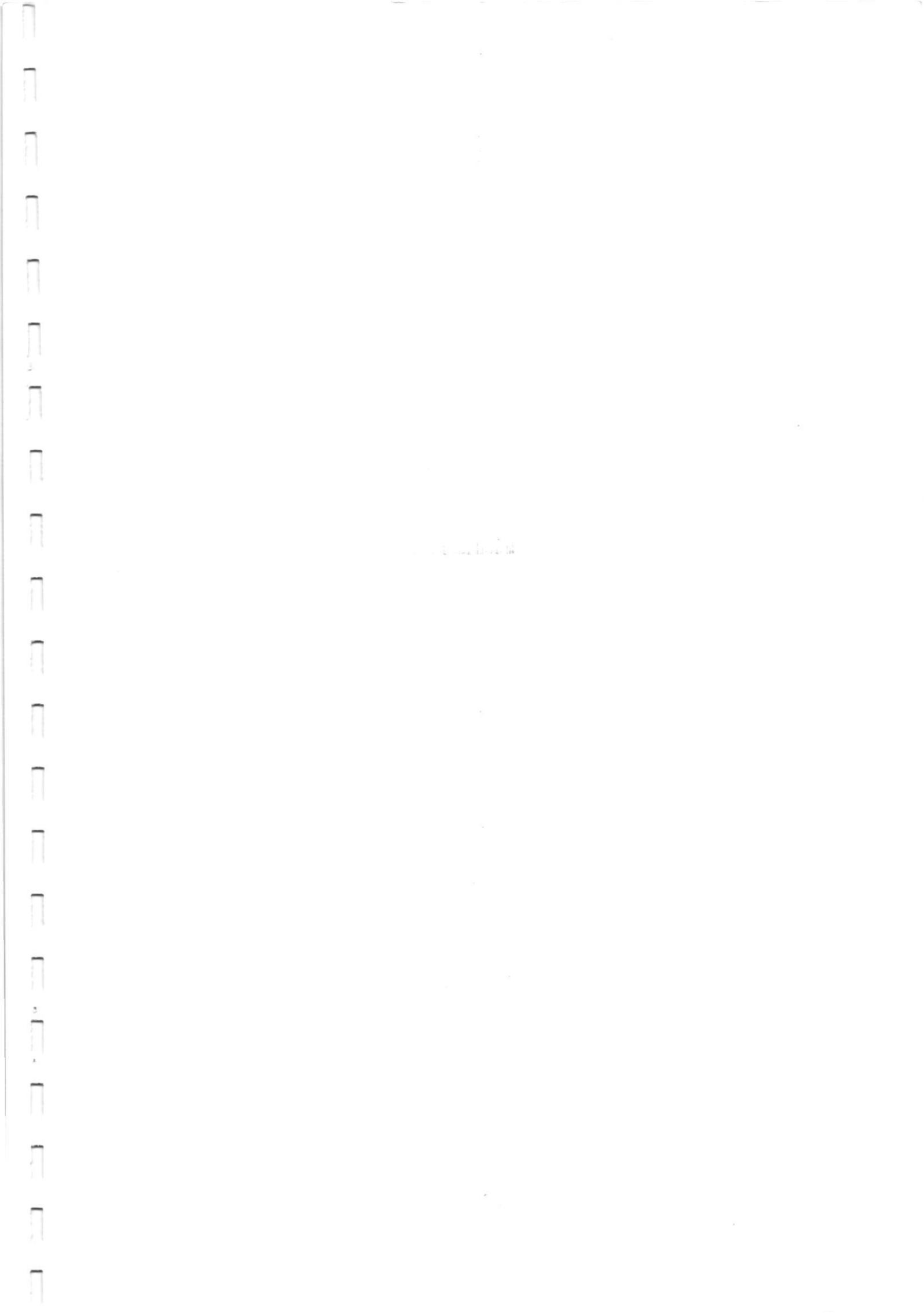
ANNEX C Revised Exclusive Area

AREA OF
DEMARICATION



Above shows revised Exclusive Area including existing Exclusive Area and proposed Development Land - together making the Concession Property.

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ANNEX D Development Plan

A summary of the Development Plan is included below for information purposes only.

Phase 1	Item	Cost	Totals
	Surveys and Investigation (to date / pre-addendum)	US\$335,451.00	
	Dredging	US\$250,000.00	
	Site surveys (GPR & Geo tech survey of dredge area)	US\$400,000.00	
	Survey – Technical Design	US\$ 16,000.00	
	Survey – Further Geo Technical	US\$ 91,978.00	
	Survey – Wrecks / Walls	US\$ 53,638.00	
			US\$1,147,067.00
Phase 2			
	Additional quay wall constructed to support cargo handling equipment and other heavy equipment		
	13 m water depth		
	Additional Quay apron for open storage	US\$12,183,540.00	
			US\$12,183,540.00
Phase 3			
	Gottwald HMK 300 Mobile Harbour Crane	US\$ 3,600,000.00	
	16 t forklifts	US\$ 188,500.00	
	CAT 950 Frontend loaders	US\$ 494,000.00	
	Loading conveyors	US\$ 250,000.00	
	Bulk Hoppers	US\$ 200,000.00	
	Conveyors – Fixed / Mobile	US\$ 300,000.00	
			US\$ 5,032,500.00
	TOTAL INVESTMENT		US\$18,363,107.00

Timeline

Time line to complete the above phases is in accordance with clause 5.3 (e) of this Addendum No.1

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ANNEX E Dredging Plan

[SLPA to insert details as referred to in Clause 7.1(iv).]

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ANNEX F Concession Fees

YEAR	Annual Total Concession Fees in USD
1	80,000
2	112,000
3	156,800
4	203,840
5	244,608
6	293,530
7	337,559
8	388,193
9	427,012
10	469,714
11	516,685
12	568,354
13	625,189
14	687,708
15	756,479
16	832,127
17	915,340
18	1,006,874
19	1,107,561
20	1,218,317
21	1,340,149

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