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DATED ~~17~~ DECEMBER 2015

- (1) GOVERNMENT OF SIERRA LEONE
- (2) FREETOWN TERMINAL HOLDING LIMITED
- (3) FREETOWN TERMINAL LIMITED

## SUBSCRIPTION AGREEMENT

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TOWER HILL FREETOWN



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THIS SUBSCRIPTION AGREEMENT is dated 27 December 2015

**BETWEEN:**

- (1) **THE GOVERNMENT OF SIERRA LEONE**, represented by the National Commission for Privatisation situated at Lotto House OAU Drive, Tower Hill, Freetown, Sierra Leone (the "**Subscriber**");
- (2) **FREETOWN TERMINAL HOLDING LIMITED**, a private company limited by shares incorporated under the laws of England whose registered office is at 5th Floor, Kinnaird House, 1 Pall Mall East, London SW1Y 5AU, United Kingdom (the "**Existing Shareholder**");
- (3) **FREETOWN TERMINAL LIMITED**, a private company incorporated under the laws of the Republic of Sierra Leone whose registered office is at Sierra Leone Shipping Agency (SLSA), Queen Elizabeth II Quay, Cline Town, Freetown, Sierra Leone (the "**Company**").

**BACKGROUND:**

- A. The Company is a company limited by shares, brief particulars of which are set out in the Schedule.
- B. The Subscriber has agreed to subscribe for shares in the capital of the Company on, and subject to, the terms of this Agreement.

**AGREED TERMS**

**1 INTERPRETATION**

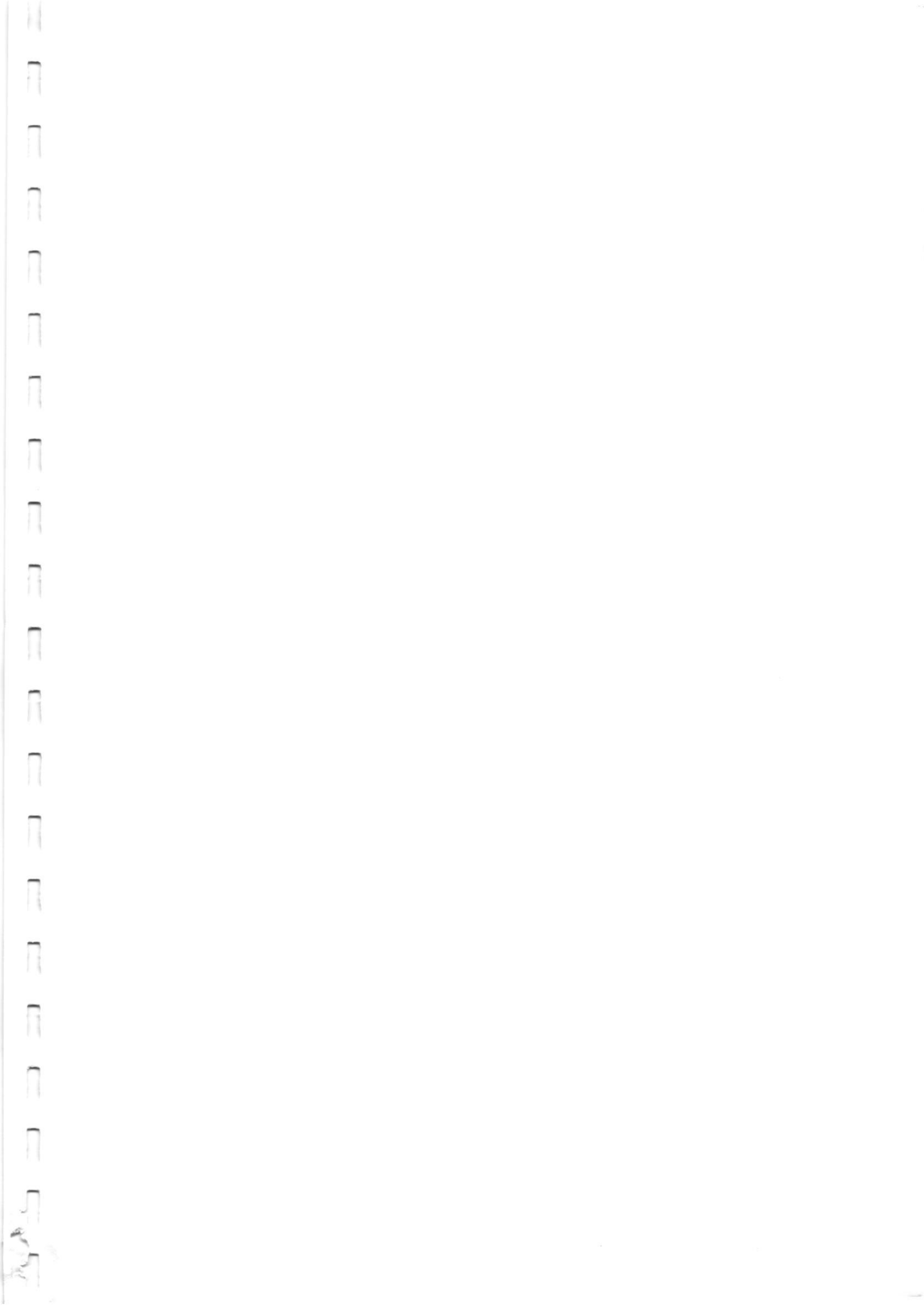
- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"**Agreement**" means this share subscription agreement, as may be amended from time to time;

"**Applicable Law**" means any law including any law, statute, order, decree, injunction, licence, permit, consent, approval, agreement or regulation of any Governmental Authority, or a final decree, judgment or order of a court which relates to the interpretation or application of this Agreement;

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**"Articles"** means the Company's amended articles of association to be adopted by the Company on or before Completion;

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when clearing banks in the United Kingdom and Sierra Leone are open for the transaction of normal banking business;

**"Completion"** means completion by the Parties of their respective obligations under clause 4;

**"Completion Date"** means the tenth Business Day after the date on which all of the Conditions have been satisfied or waived, provided that the Completion Date is no later than June 1, 2016;

**"Conditions"** means the conditions to Completion set out in clause 3;

**"Fourth Addendum"** means Addendum No 4 to the Concession Agreement between Sierra Leone Port Authority, the Subscriber, the National Commission for Privatisation, Bolloré SA and the Company, dated September 16, 2016;

**"Governmental Authority"** means any governmental ministry, bureau, authority, council, office, or other instrumentality having jurisdiction over a Party;

**"Parties"** means the Subscriber, the Existing Shareholder and the Company, and **"Party"** shall be construed accordingly;

**"Resolutions"** means the resolutions as specified in clause 3.1.3, in the agreed form, to be passed by the Company.

**"Shareholders' Agreement"** means the agreed form shareholders' agreement to be entered into between the Existing Shareholder, the Subscriber and the Company, in relation to the Company;

**"Shares"** means the ordinary shares with a nominal value of SLL 413,000 each in the capital of the Company;

**"SLL"** means Sierra Leonean Leone, the official currency of Sierra Leone;

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"**Subscription Amount**" means SLL 1,073,800,000;

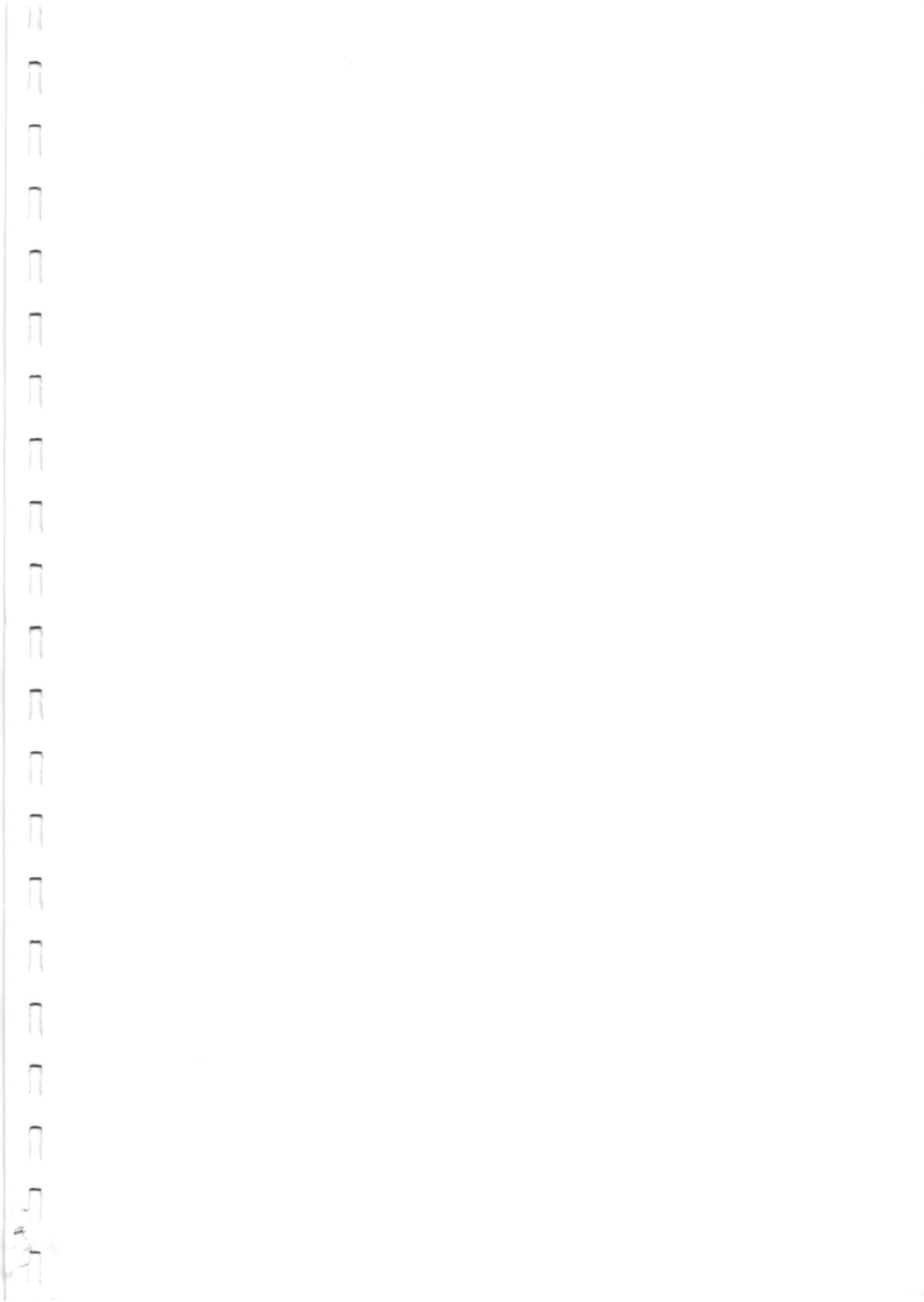
"**Subscription Shares**" means the 2,600 new Shares to be subscribed by the Subscriber pursuant to clause 2.1.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.5 A reference to a "**company**" shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts; provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.9 A reference to "**writing**" or "**written**" includes faxes but not e-mail.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 Documents in "**agreed form**" are documents in the form agreed by the Parties and initialled by or on behalf of them for identification.

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1.12 Any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.13 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

## 2 SUBSCRIPTION

2.1 Subject to clause 3, the Subscriber applies for the allotment and issue to it of the Subscription Shares for the Subscription Amount, payment for which shall be made in accordance with clause 4.2.1.

2.2 Completion of the subscription shall take place on the Completion Date.

2.3 The Company warrants to the Subscriber that, on the date of this Agreement and on the Completion Date, the Company shall, subject to passing the Resolutions, be entitled to allot the Subscription Shares to the Subscriber on the terms of this Agreement, without the consent of any other person.

2.4 Each Party to this Agreement warrants to each of the other Parties that:

2.4.1 it has the power and authority to enter into and perform its obligations under this Agreement;

2.4.2 when executed, its obligations under this Agreement will be binding on it; and

2.4.3 execution and delivery of, and performance by it of its obligations under this Agreement will not result in any breach of applicable law.

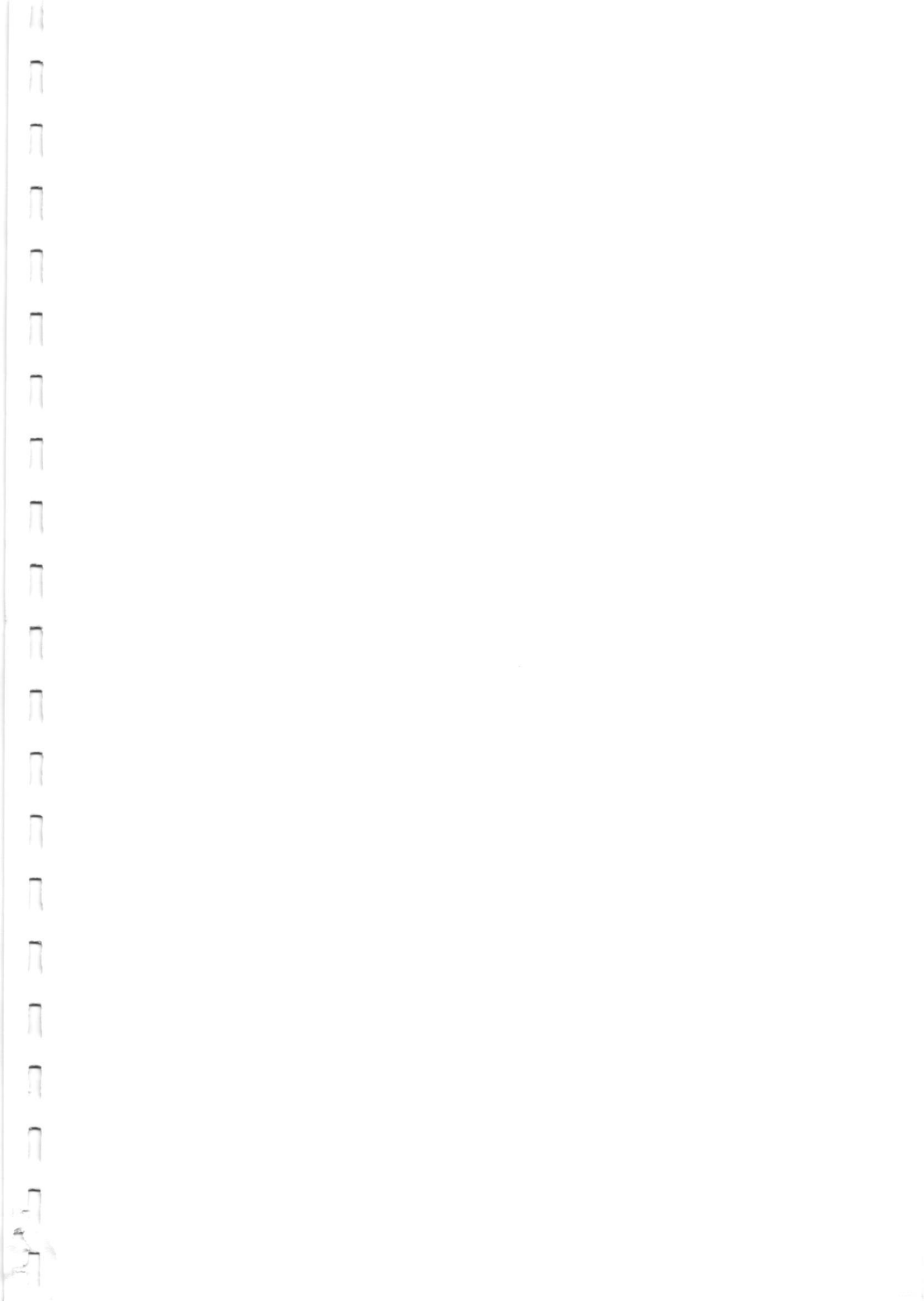
2.5 The Existing Shareholder agrees to vote in favour of the Resolutions and irrevocably waives any pre-emption rights that it or its nominees may have under the Company's articles of association or otherwise, so as to enable the issue of the Subscription Shares to proceed.

2.6 The Subscriber acknowledges and agrees that it conducted and completed a due diligence investigation of the Company and is satisfied with the results thereof, provided that it considers that:

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- (i) the Company should undertake the actuarial valuation of employee end of service benefits to get an accurate and true estimate of the liability of the Company; and
- (ii) the Company should institute a proper stock valuation method to accurately account for obsolete stocks, with obsolete stock items to be reduced to net realisable value.

The Company shall take all reasonable steps to comply with the above considerations to the extent such actions are required under Applicable Law.

### 3 CONDITIONS

#### 3.1 Completion is conditional on the following:

- 3.1.1 the satisfaction or waiver of all conditions precedent set out in Article 3 of the Fourth Addendum;
- 3.1.2 the execution and delivery of the Shareholders' Agreement;
- 3.1.3 the passing of resolutions of the Company's shareholders (after completion of the Condition set out in clause 3.1.1 above) to:
  - (a) adopt the Articles;
  - (b) approve this Agreement and the Shareholders' Agreement;
  - (c) increase the authorised share capital of the Company from SLL4 295 200 000 (divided into 10 400 Shares) to SLL 5 369 000 000 (divided into 13 000 Shares);
  - (d) grant the directors of the Company authority to allot the Subscription Shares.

#### 3.2 If the Conditions are not fulfilled on or before June 1, 2016 or such later date as the Parties may agree, all obligations of the Parties under this Agreement shall cease and determine and no Party shall otherwise have any claim against any of the others pursuant to the terms of this Agreement.

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#### 4 COMPLETION

4.1 Completion of the subscription by the Subscriber for the Subscription Shares shall, subject to the satisfaction of the Conditions on or before Completion, take place at the offices of the Subscriber on the Completion Date (or at such other time and place as the Company and the Subscriber shall agree) when the events set out in clause 4.2 below shall take place in such order as the Subscriber may require.

4.2 The following events shall occur on the Completion Date:

4.2.1 the Subscriber shall pay the Company the Subscription Amount by electronic transfer to the Company's bank account at ECOBANK Sierra Leone, 7 Light Foot Boston Street, P.O. Box 1007, Freetown, Sierra Leone, Account Number: 20014802083502, BBAN Name & Number: Freetown Terminal, BBAN 008-00200-1208-350-268 (or such other bank account as the Company may determine), or submit to the Company a promissory note in the Subscription Amount in a form and substance acceptable to the Company. Payment made in accordance with this clause 4.2.1 shall constitute a good discharge for the Subscriber of its obligations under this clause 4;

4.2.2 the Subscriber shall deliver to the Company and to the Existing Shareholder the Shareholders' Agreement, duly executed by the Subscriber;

4.2.3 the Company shall deliver to the Subscriber and the Existing Shareholder the Shareholders' Agreement, duly executed by the Company;

4.2.4 the Existing Shareholder shall deliver to the Subscriber and the Company the Shareholders' Agreement, duly executed by the Existing Shareholder;

4.2.5 a meeting of the board of directors of the Company shall be held at which the Company shall:

(a) adopt the Articles;

(b) subject to receipt of the payment referred to in clause 4.2.1, issue and allot the Subscription Shares credited as fully paid to the Subscriber and enter its name in the register of members in respect of them;

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- (c) execute and deliver to the Subscriber a share certificate for the Subscription Shares;
- (d) increase the Board of Directors to seven (7) directors, of which five (5) shall be nominated for appointment by the Existing Shareholder and two (2) directors shall be nominated for appointment by the Subscriber;
- (e) appoint the two persons to be nominated by the Subscriber in accordance with sub-clause (d) above to act as directors; and
- (f) pass any other resolutions required to carry out the Company's obligations under this Agreement.

## 5 CONFIDENTIALITY AND ANNOUNCEMENTS

5.1 Each Party agrees to hold in confidence any information supplied to such Party (the "**Receiving Party**") by any other Party (the "**Disclosing Party**") as a result of entering into or performing this Agreement, including all information which relates specifically to:

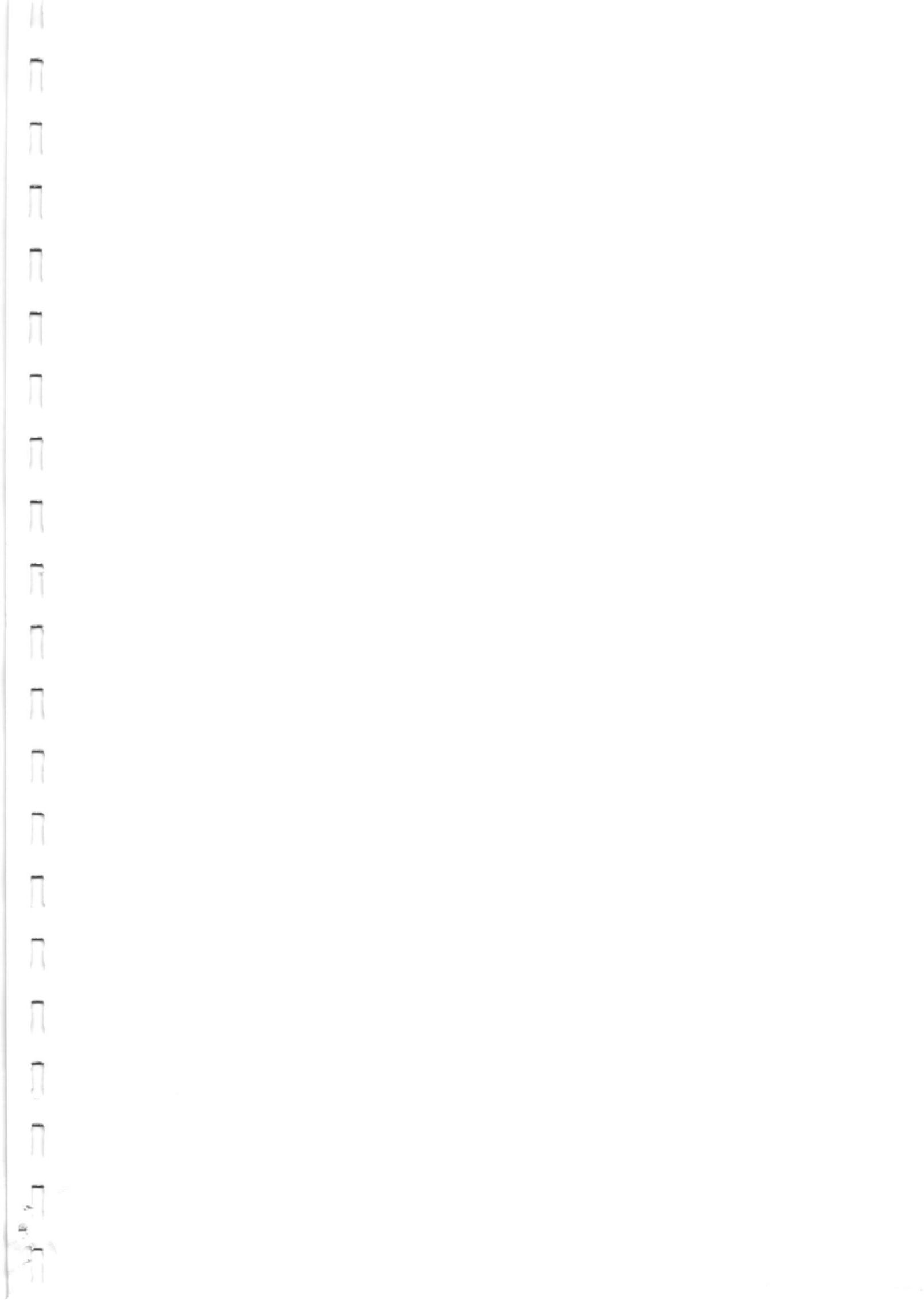
- 5.1.1 the existence, subject matter or provisions of this Agreement or any document referred to in it;
- 5.1.2 the negotiations relating to this Agreement or any of the documents contemplated in it;
- 5.1.3 the Company; and
- 5.1.4 information concerning the Subscriber.

5.2 The Receiving Party shall be entitled to disclose such information to its officers, directors, employees, external advisors and/or agents who have a need to know in order to assist the Receiving Party in the performance of its obligations hereunder; provided that the Receiving Party shall be responsible for ensuring that all such persons keep such information confidential. The provisions of this clause 5.1 shall not apply to information within any one of the following categories or any combination thereof:

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5.2.1 information that was in the public domain prior to the Receiving Party's receipt thereof from the Disclosing Party or that subsequently becomes part of the public domain by publication or otherwise except by the Receiving Party's wrongful act;

5.2.2 information that the Receiving Party can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; or

5.2.3 information received by the Receiving Party from a third party having no obligation of secrecy with respect thereto.

5.3 For the avoidance of doubt, it shall not be a breach of the obligation of confidentiality contained in this clause 5 if the Receiving Party discloses such confidential information as required by Applicable Law.

5.4 Except in accordance with clause 5.5, the Parties shall not make any public announcement or issue a press release or respond to any enquiry from the press or other media that concerns or relates to this Agreement or its subject matter (including, but limited to, the Subscriber's investment in the Company) or any ancillary matter.

5.5 Notwithstanding clause 5.4, any Party may, with the prior written approval of the other Party, make or permit to be made an announcement concerning or relating to this Agreement or its subject matter.

## 6 ASSIGNMENT

6.1 This Agreement is personal to the Parties and no Party shall:

6.1.1 assign any of its rights under this Agreement; or

6.1.2 transfer any of its obligations under this Agreement; or

6.1.3 sub-contract or delegate any of its obligations under this Agreement; or

6.1.4 charge or deal in any other manner with this Agreement or any of its rights or obligations.

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- 6.2 Any purported assignment, transfer, sub-contracting, delegation, charging or dealing in contravention of clause 6.1 shall be ineffective.

## 7 SEVERANCE

- 7.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is void, invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement (and, as the case may be, the remainder of the relevant provision) shall not be affected.
- 7.2 If any void, invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum deletion necessary to make it legal, valid and enforceable.

## 8 COSTS

All costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement, and any documents referred to in it, shall be borne by the Party that incurred the costs.

## 9 WHOLE AGREEMENT

- 9.1 This Agreement and the documents referred to or incorporated in it or executed contemporaneously with it, constitute the whole agreement between the Parties relating to the subject matter of this Agreement, and supersede any previous arrangement, understanding or agreement between them relating to the subject matter that they cover.
- 9.2 Nothing in this clause 9 operates to exclude or limit any liability for fraud.

## 10 NOTICES

- 10.1 A notice given under this agreement:

10.1.1 shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

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10.1.2 shall be sent for the attention of the person and to the address given in this clause 10 (or such other address or person as the relevant Party may notify to the other Parties); and

10.1.3 shall be:

- (a) delivered personally; or
- (b) sent by recorded delivery; or
- (c) if the notice is to be served by post outside the country from which it is sent, sent by internationally recognised courier.

10.2 The addresses for service of notice are:

**Company**

Address:

Sierra Leone Shipping Agency Building (SLSA)  
Queen Elizabeth II Quay  
Cline Town  
Freetown  
Sierra Leone

For the attention of: General Manager

**Existing Shareholder**

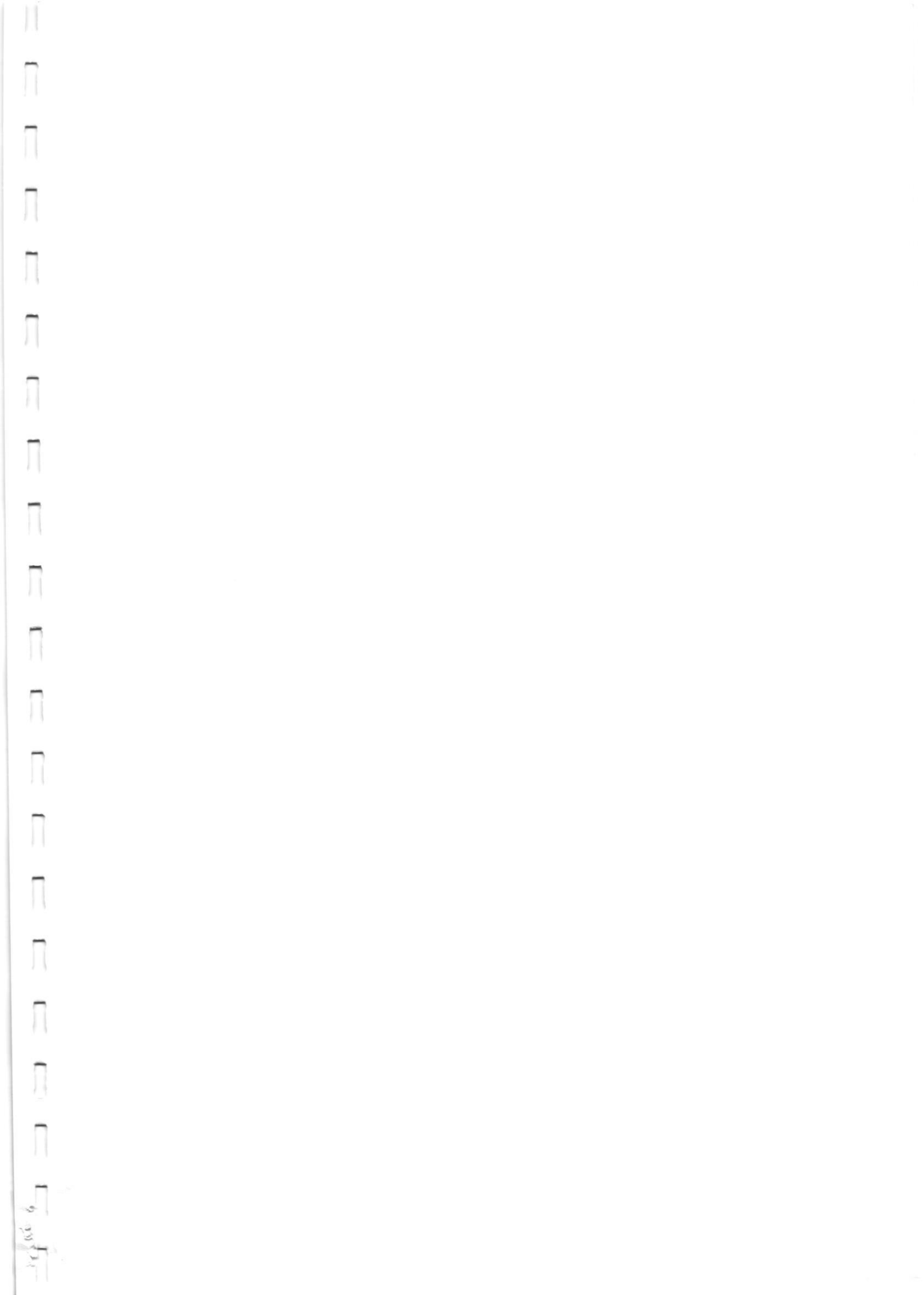
Address:

5th Floor  
Kinnaird House  
1 Pall Mall East  
London SW1Y 5AU  
United Kingdom

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For the attention of: Director

With a copy to:

Bolloré Africa Logistics  
31-32 quai de Dion Bouton  
92800 Puteaux  
France

For the attention of: General Counsel

**Subscriber**

Address:

National Commission for Privatisation  
Lotto House  
OAU Drive  
Freetown  
Sierra Leone  
For the attention of: The Chairman

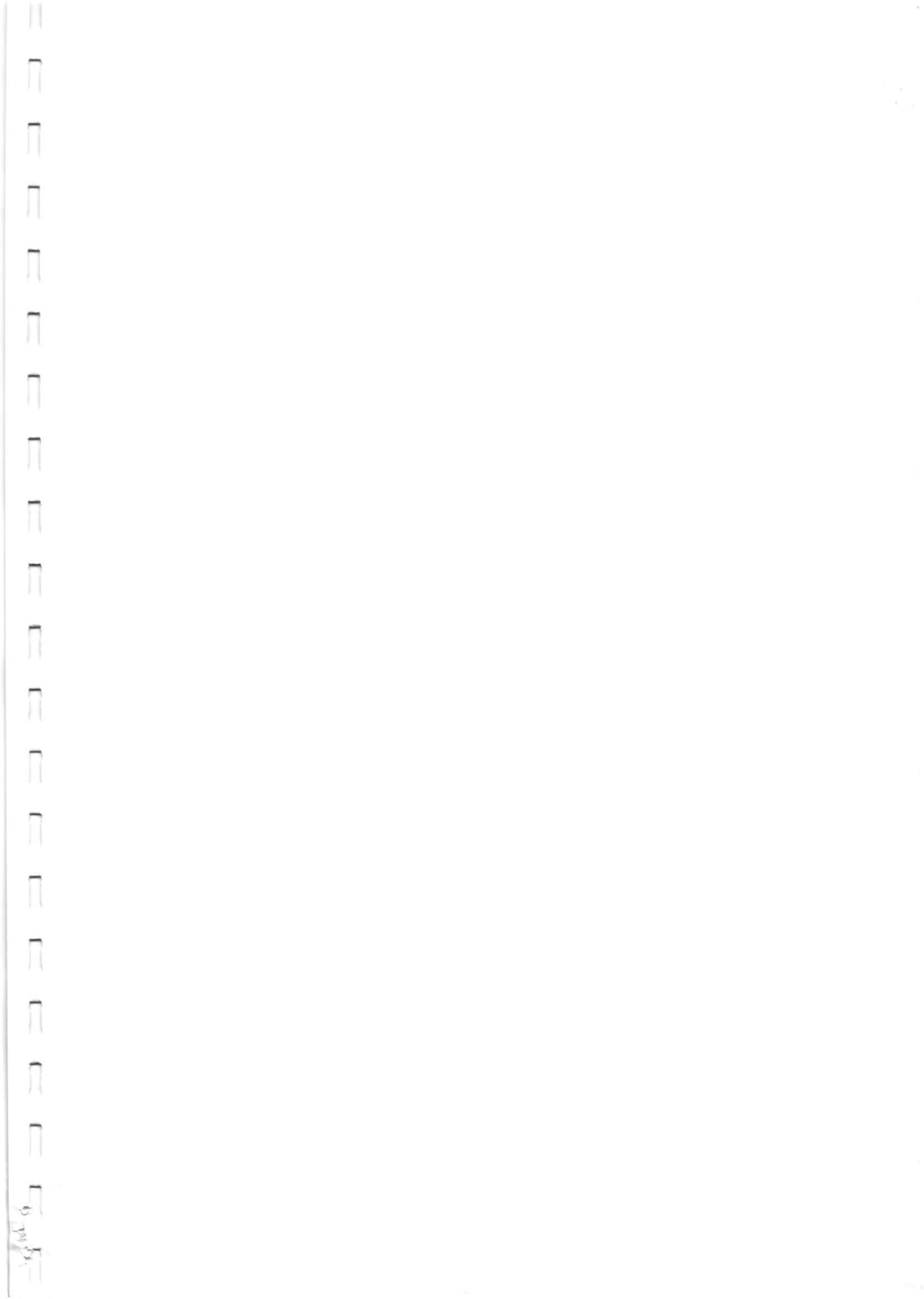
With copy to:

Minister of Transport and Aviation  
Youyi Building  
Brookfields  
Freetown  
Sierra Leone  
For the attention of: The Minister of Transport

With copy to:

Minister of Finance and Economic Development  
Treasury Building  
Judge Street

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Sierra Leone:

For the attention of: the Minister of Finance

**10.3** A notice is deemed to have been received:

**10.3.1** if delivered personally, at the time of delivery; or

**10.3.2** in the case of recorded delivery, at the actual time of delivery; or

**10.3.3** in the case of internationally recognised courier, at the actual time of delivery; or

**10.3.4** if deemed receipt under the previous paragraphs of this clause 10.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a Business Day), when business next starts in the place of deemed receipt.

**11 FURTHER ASSURANCE**

Without prejudice to clause 3, each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full force and effect to the provisions of this Agreement.

**12 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which, when executed and delivered, shall be an original and which together shall have the same effect as if each Party had executed and delivered the same document.

**13 GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Sierra Leone.

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## **14 ARBITRATION**

- 14.1** In the event that the Parties are unable to reach any amicable settlement in respect of a dispute or difference or claims of any kind within sixty (60) days, such dispute or difference or claim of any kind shall be settled under the rules of arbitration of the United Nations Commission on International Trade Law (UNCITRAL) in force at the time of the proposed arbitration. The arbitral tribunal shall consist of three members appointed as follows: the Subscriber shall appoint one arbitrator and the Company shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator. If a Party fails to appoint an arbitrator within thirty (30) days from the receipt of a request to do so from the other Party, or the two appointed arbitrators fail to agree on the third arbitrator within thirty (30) days from the date of their appointment, the appointment shall be made, upon request by a Party, by the President of the London Court of International Arbitration.
- 14.2** The place of arbitration shall be London, England or any other place mutually agreed by the Parties.
- 14.3** The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

## **15 WAIVER OF SOVEREIGN IMMUNITY**

The Subscriber hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterised as sovereign immunity or otherwise, from any legal proceedings, whether in Sierra Leone or elsewhere, to enforce any liability or obligation related to or arising from this Agreement, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby expressly and irrevocably waives any such immunity, to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings, whether in Sierra Leone or elsewhere.

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MICHAEL S. KARGBO (DR.)  
NGC  
Mohamed Aie Sesay  
~~MS~~ Fay

SAK A. L. McClain, Sr.  
A. L. McClain, Jr.

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Schedule

**THE COMPANY**

Registered number: 772/2010

Status: Private limited company

Registered office: SLSA, Deep Water Quay, Cline Town,  
Freetown, Sierra Leone

Directors: Mr. Philippe Labonne  
Mr. Olivier de Noray  
Mr. Lionel Labarre  
Mr. Eric Melet  
Mr. Stanislas de Saint Louvent

Secretary: Corporate Secretarial Services Limited  
26 Main Motor Road  
Brookfields  
Freetown  
Sierra Leone

Accounting reference date: December 31

Auditors: Leone Consultants  
71 Sir Samuel Lewis Road  
Aberdeen  
Freetown  
Sierra Leone

Authorised share capital: 4 295 200 000 SLL

Issued share capital: 4 295 200 000 SLL

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