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**MEMORANDUM OF UNDERSTANDING**

**Between**

**THE GOVERNMENT OF THE REPUBLIC OF  
SIERRA LEONE**

**And**

**COMPLANT MAGBASS SUGAR  
COMPLEX CO. LTD.**

**2013**

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## MEMORANDUM OF UNDERSTANDING

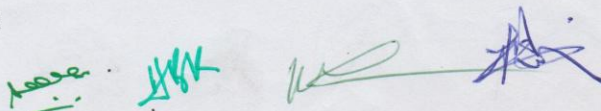
Dated \_\_\_\_\_, 2013

### Between

- (1) **The Government of the Republic of Sierra Leone** (hereinafter referred to as "**GOSL**") acting by each of the Ministries of Agriculture, Forestry and Food Security, Finance and Economic Development, Trade and Industry.
- (2) **COMPLANT Magbass Sugar Complex Co. Ltd.** (hereinafter referred to as "**Magbass Sugar**"), a limited liability company established and registered under the laws of Sierra Leone with Company Certificate of Incorporation Number C/F/104/2003 and with its registered office B28 King Harman Road, Freetown, Sierra Leone.

### Recitals

- A. In order to restore the destructed Magabass Sugar Complex after war, recommended by the Chinese Government, **GOSL** invited **China National Complete Plant Import & Export Corporation ( Group )** (hereinafter referred to as "**COMPLANT**") to invest for the rehabilitation of the project. After friendly consultation, on January 23<sup>rd</sup> 2003 **GOSL** and **COMPLANT** signed **Lease Contract on Magbass Sugar Complex of Sierra Leone** with a lease term of thirty years (April, 2003 to April, 2033) that may be renewed at the expiration of the term. And the renewed lease term should be ten years each.
- B. **MAGBASS SUGAR** is specifically registered for the aforementioned lease and engaged in large scale sugarcane cultivation, producing, sales and export of sugar and ethanol. As the first foreign invested company in Sierra Leone in agricultural and industrial sections after the turbulence, **Magbass Sugar** has made positive contribution to partly fulfill domestic market, promote employment, improve local economy and enhance relative industries, etc. by its nearly 10 years operations.
- C. **Magbass Sugar** has made land lease agreements covering the project area with **GOSL**.
- D. In consideration of **Magbass Sugar's** continues operations, it has confirmed the feasibility of the project from the perspective of





soil quality, climate and environmental conditions, and transport logistics.

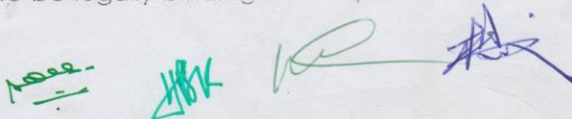
- E. **GOSL** supports the development of small farmer production and nucleus/out grower schemes.
- F. **GOSL** wants to improve the livelihood of an impoverished rural population which still suffers from the consequences of the civil war and recognized that the project will contribute to this.
- G. **GOSL** seeks to promote the expansion of local agricultural production for local and export markets.
- H. **GOSL** welcomes labour-intensive industries which provide stable income and training to its workforce.
- I. **GOSL** promotes the establishment of sustainable economic centers in rural area.

**Considering:**

- J. **GOSL** has agreed **Magbass Sugar** meets the policy objectives of **GOSL**;
- K. **GOSL** recognizes the expected benefits of **Magbass Sugar** in terms of job creation, education, stable income, and infrastructures as well as the positive effects of a large economic centre in Tonkolili;
- L. **GOSL** recognizes the contribution **Magbass Sugar** made to the agricultural and other economic sectors in Sierra Leone and that it will help attract other foreign investments into the agricultural and other economic sector;
- M. **GOSL** recognizes a readiness to grant investment incentives in the form of tax holidays and exemption of duties to **Magbass Sugar**.

**It is agreed as follows:**

1. This Memorandum is a supplement of the **Lease Contract on Magbass Sugar Complex of Sierra Leone** signed by **GOSL** and **COMPLANT** on January 23<sup>rd</sup> 2003. This Memorandum is governed and shall be construed in accordance with the laws of the Republic of Sierra Leone and is intended to be legally binding on the parties.



The "Agreement between the Government of the People's Republic of China and the Government of the Republic of Sierra Leone on the Promotion and Protection of Investments" (hereinafter referred to as "APPI" ) shall be applicable to this Memorandum.

2. **GOSL** agrees **Magbass Sugar** will be restricted on sugar export in terms of quotas and regulations, which should be not above 60% of its annual production.
3. **GOSL** agrees that **Magbass Sugar's** whole business is recognized as an agricultural enterprise and that **Magbass Sugar** will be granted benefits and incentives at least equivalent to those enjoyed by any other business operating in the agriculture, forestry or bio-energy sectors.
4. This Clause applies to any claim, dispute or difference of any kind between the parties arising out of or in connection with this memorandum (a Dispute). That includes, without limitation, any question about the memorandum's existence, validity or termination.
  - (i) All Disputes shall be referred to and finally resolved by arbitration in London before three arbitrators under the Rules of Arbitration of the International Chamber of Commerce from time to time in force. This Clause incorporates those Rules except where they conflict with its express terms.
  - (ii) Each party shall nominate an arbitrator in the Request for arbitration or Answer as the case may be not later than 14 days after service of a written request by either party to do so. The parties must then seek to agree on and nominate a third arbitrator to act as Chairman within 14 days after confirmation of the second arbitrator's appointment. Failing agreement between the parties the two arbitrators already appointed must within 14 days nominate the third arbitrator. If any of the parties fail to nominate an arbitrator or the two arbitrators already appointed fail to nominate the Chairman, the appointments shall be made by the ICC Court of Arbitration.
  - (iii) The proceedings shall be conducted in the English language. All documents submitted in the arbitration shall be in the English language or, if in another language, be accompanied by a certified English translation.

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(iv) None of the parties may appeal to any court on a question of law arising out of an award made in the arbitration. The parties irrevocably waive any rights of appeal they might otherwise have had.

(v) The award shall be final and binding on the parties or anyone claiming through or under them and judgment rendered on the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.

(vi) **GOSL irrevocably and unconditionally**

(a) acknowledges that the execution, performance and delivery by each Party of this Memorandum shall constitute a private commercial transaction entered into entirely in its commercial capacity;

(b) agrees that should any other party bring legal proceedings against it or its assets in relation to this Memorandum, no immunity from such legal proceedings (which shall be deemed to include without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of itself other than in respect of government buildings located in Sierra Leone or buildings forming part of a diplomatic or consular mission except to the extent necessary to effect service of legal process); and

(c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings, and COMPLANT irrevocably and unconditionally agrees it shall not be entitled to, and shall not, take any action to enforce a judgment or arbitral award against any bank account held by GOSL (including of any of its diplomatic or consular missions) within a period of 45



5. **Magbass Sugar** shall establish a Magbass Sugar Development Foundation and shall commit Le150,000,000 (one hundred and fifty million Leones) every year to fulfill the corporate social responsibilities.

The Trustees of the foundation shall be constituted by two nominees from **Magbass Sugar** and three by the Government of the Republic of Sierra Leone to include landowners. The Trustees would have sole responsibility for the grants of the foundation but would respond to proposals and requests from communities, within the area where **Magbass Sugar** is operating. The disbursement will be agreed with Local Committee representing the areas from which the application comes from.

The funds will be applied to promote Corporate Social Responsibilities which would include but not limited to:

- (a) **Out-grower Scheme:** Support to farmers in the form of improved inputs, agric machinery, irrigation and processing facilities, marketing, opportunities, fertilizers, etc.;
  - (b) **Social Infrastructure:** Construction/rehabilitation of educational, health, water and sanitation, recreational facilities, etc.;
  - (c) **Employment Opportunities:** Management, middle cadre and junior staff levels;
  - (d) Training facilities.
6. **Government support to Magbass Sugar**  
GOSL supports the company and agrees to provide such assistance and enter into such agreements to ensure the successful operation of **Magbass Sugar** and its funding as the company, its shareholders or the funders may reasonably require from time to time.

7. **Permits**

GOSL confirms that **Magbass Sugar** will be granted all the required permits and other authorizations in connection with the company and its funding provided that **Magbass Sugar** complies with all published requirements of the Laws of the Republic of Sierra Leone in relation to such permits or authorizations, the details of which are generally available to the public in Sierra Leone.

8. **Further Permits**

**GOSL** undertakes that should **Magbass Sugar** (or any other person taking part or participating in the company or its funding), at any time, be required to object any further permit or other authorization in connection with itself, its activities or the company (or any part of the company) or its funding, it shall take all necessary steps to ensure such permit or other authorization is issued forthwith provided that **Magbass Sugar** or, as the case may be, such other person complies with all published requirements of the laws of the Republic of Sierra Leone in relation to such permits or authorizations, the details of which are generally available to the public in Sierra Leone.

**9. Revocation of Permits**

**GOSL** agrees that any permit or other authorization will only be cancelled, terminated or revoked, or amended or changed, in accordance with its terms and conditions only (which include the laws and published regulations, the details of which are generally available to the public in Sierra Leone, pursuant to which it was issued).

**10. Breach of Permits**

If **Magbass Sugar** or other person to whom it was issued fails to abide by any terms of any permit or authorization, **GOSL** (or any relevant official or public authority) may exercise any power pursuant to the laws of the Republic of Sierra Leone in respect of such failure. However, **GOSL** agrees it will not ( and will procure that no official or public authority will) exercise any such power unless **Magbass Sugar** and such other person(s) it shall specify for this purpose have first been longer of two weeks' and any minimum statutory period of notice (The Notice) of such failure and given the opportunity, and failed within a reasonable period of time after receipt of such notice, to rectify, remedy or cure such failure unless, in the opinion of **GOSL** acting reasonably, there is a significant risk to life or the environment. If there is a significant risk to life or the environment, **GOSL** shall be entitled to suspend the relevant permit or authorization for the minimum period of time which could be anticipated as being reasonably necessary for an organization which is competent, experienced and efficient to prevent such risk occurring.

For the purposes of this paragraph, "reasonable period" means at a minimum period of six weeks from date of delivery of the notice

**11. Environmental and Social Assessment**

**Magbass Sugar** shall conduct Environmental and Social Assessment with its execution of the activities according to the relevant law of Sierra Leone as and when necessary.

**12. Fiscal Concessions for the Agricultural sector**

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**12(a) Personal Income Tax for Local Employees:**

All local employees are subject to Pay As You Earn Tax (PAYE) consistent with the provisions of the Income Tax Act 2000 as amended [Part V of the first schedule]. This includes rules relating to Benefit -in- Kind [sections 23 and 176(9)] subject to the provisions of the National Social Security and Insurance Trust Act of 2001.

**12(b) Personal Income Tax for Foreign Employees:**

Income earned from a source in Sierra Leone by foreign nationals is subject to tax at the rate of 25% [part ii of the Second Schedule]. This will be based on the requirements for residency as provided for in sections 10-13 of the Income Tax Act 2000 as amended.

**12(c) Corporation Tax**

The Chargeable Business income of agricultural activities shall be exempt from corporation tax for a period of 10 years. This includes all activities such as rice farming, tree crop farming such as cocoa, coffee, rubber, and palm oil etc. from the date of commencement of this Memorandum of Understanding.

**12(d) Dividend Tax Exemption**

50% of dividend paid during the qualifying period will be exempt from withholding and other taxes.

**12(e) Exemption from export sales**

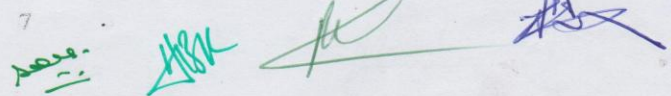
5% of total income derived from export sales will be exempt from corporation tax after the qualifying period.

**12(f) Capital Allowance**

All Fixed Assets shall be subject to capital allowance up to 40% as provided for in the Income Tax Act 2000 (as amended).

**12(g) Investment Allowance**

An additional 5% investment allowance will be given on the procurement of any new qualifying asset and investment in each year of assessment.

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#### **12(h) Customs duty**

All plants, equipments and machinery shall be imported free of any duty and taxes (except for ECOWAS levy currently at 0.5% of CIF value) for any five years selected by the taxpayer (FA 2011)

#### **12(i) Importation of Agricultural inputs**

Importation of all agricultural inputs shall not be subject to import duty for a period of five years from the date of commencement of business (FA 2013). For the purpose of this MOU, Agricultural inputs include the following:

- (i) Fertilizers;
- (ii) Pesticides;
- (iii) Insecticides;
- (iv) Seeds and seedlings;
- (v) Hybrid Tree Seeds;
- (vi) Seed Animal for feeding purpose;
- (vii) Day-old-chicks; and
- (viii) Animal semen

#### **12(j) Importation of Feed, Vaccine and Veterinary Drugs for livestock and Poultry**

Importation of Feeds, Vaccine and Veterinary Drugs for livestock and Poultry shall attract import duty free concession for a period of five years from the date of commencement of business (FA 2013).

#### **12(k) Other concessions on expenses incurred in trade.**

The following allowable deductions shall be granted in respect of the following expenses in any year of assessment:

- (i) Research and development cost – 100%
- (ii) Training expenses for local staff – 100%
- (iii) Social and development expenses – 100%
- (iv) Expenses on promoting exports – 100%
- (v) Expenses incurred in engaging disable persons including salaries – 200%

Note: Allowable deductions are only effective in a current year of assessment. Unclaimed charges for current year are disallowable in future year of assessments.

### 12(l) Trading losses.

Trading losses can be recouped for a maximum period of 10 years.

### 12(m) GST

GST shall be administered consistent with the GST Act of 2009. Chemicals used as agricultural inputs, including all forms of fertilizers, acaricides, fungicides, rematicides, growth regulators, pesticides, vetenary drugs, vaccine and animal feed unfit for human consumption shall be exempt supply for the purpose of GST.

### 13. Exchange Control

#### 13(a) Inflows and Outflows of foreign Exchange

All inflows and outflows of foreign exchange shall be done through the banking system in compliance with the Exchange Control Act, 1965 and the Anti-Money Laundering/Countering the Financing of Terrorism Act, 2012 (AMT/CFT).

#### 13(b) Export Revenue

All revenue derived from export must first be channeled through Sierra Leone Banking System before they are repatriated to any other bank of the investors' choice. This is just a way to improve the country's Balance of Payment position.

### 14. Water and Utilities

GOSL agrees to enter into a water rights agreement with **Magbass Sugar** and **Magbass Sugar** shall be charged at a fixed amount of 50,000,000 Leones (fifty million Leones) per year of water extracted from rivers and other watercourses. There will be no restriction on the volume of water extracted by **Magbass Sugar** from rivers, other watercourses, wells and boreholes.

### 15. Change in Law

If any law applied in Sierra Leone comes into effect or is amended, nullified, repealed, withdrawn or replaced (Change in Law) which has a material adverse effect on the ability of **Magbass Sugar**, its contractors, sub-contractors, any shareholder or funder to perform their respective obligations under any document relevant to the development, operation of funding of the company or the cost of or return from so doing, after taking into account the benefits associated directly and expressly with any such Change in Law,

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then **GOSL** undertakes to grant to **Magbass Sugar**, its contractors, sub-contractors, the shareholders and the funders any exemption or license or other authorization necessary or desirable to ensure that such interests, rights, obligations and economic return are not materially adversely affected.

If there is a dispute between the Parties in relation to whether the Change in Law has the effect described above, it shall be referred to the arbitration procedures as agreed and set out in this Memorandum or **APPI**, once the **APPI** is in full force and force prior to the date as set out in this Memorandum.

**16. Nationalization or Expropriation**

**GOSL** agrees that it will not, nor attempt to, nationalize, expropriate or confiscate all or any part of the assets or rights of **Magbass Sugar**, its sub-contractors or their respective contractors or any other party to the documents relevant to the development, operation and funding of the company or the share capital of **Magbass Sugar** other than on the basis of full compensation (including loss of profit) to the affected parties, including an amount not less than that required to repay all principles, interest, fees, costs and expenses amounts outstanding to the funders under or pursuant to the funding documents.

**17. Compliance with Laws**

Each Party confirms that it does not intend and will not engage in any illegal activity and **Magbass Sugar** agrees that it will comply with national standards in relation to environmental protection and health and safety as required for the type of activities carried out in general. **Magbass Sugar** agrees that it will take reasonable steps to ensure that none of its group companies will enter into without the prior written consent of **GOSL** (which shall not be unreasonably withheld) the business activity of the production in Sierra Leone of palm oil and other agricultural products outside of that outlined in this Memorandum or the Business Plan in force at the relevant time. In the event that **Magbass Sugar** or any of its shareholders, contractors, sub-contractors or funders are in breach of this Memorandum such breach shall not be grounds for suspending or terminating this Memorandum, or any obligation or provision binding on **GOSL** under this Memorandum. The penalty for any such breach shall be, insofar such breach is a criminal or civil offence in Sierra Leon the penalty imposed following the application of the applicable criminal or civil procedure and applicable damages for breach of this Memorandum.

In the event that **GOSL** is in breach of this Memorandum such breach shall not be grounds for suspending or terminating this

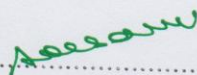
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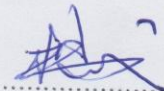



Signed on 5th December, 2013 at Freetown, Sierra Leone.

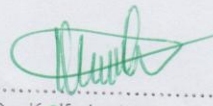
For the Government of  
Sierra Leone

For COMPLANT Magbass  
Sugar Complex Co. Ltd.

  
.....  
(Hon. Dr. Joseph Sam Sesay)  
Minister of Agriculture,  
Forestry and Food Security

  
.....  
(Mr. Yang Cheng)  
General Manager

  
.....  
(Hon. Mr. Osman Boie Kamara)  
Minister of Trade and Industry

 15/12/14  
.....  
(Hon. Dr. Kaifala Marrah)  
Minister of Finance and Economic Development