



**LEASE AGREEMENT
CONTAINER TERMINAL AT APAPA PORT**

by and among

**NIGERIAN PORTS AUTHORITY
as the Lessor.**

**BUREAU OF PUBLIC ENTERPRISES
as the Confirming Party.**

and

**APM TERMINALS APAPA LIMITED
as the Lessee.**

Dated as of 19th September 2005

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THIS LEASE AGREEMENT (this "Agreement") is made and entered into this 19th day of September 2005 ("Execution Date") by and among:

THE NIGERIAN PORTS AUTHORITY, a public authority constituted under the Nigerian Ports Authority Act No. 38 of 1999 Cap N126 Laws of the Federation of Nigeria whose registered office is situate at 26/28 Marina, Lagos, Nigeria (the "Lessor");

THE BUREAU OF PUBLIC ENTERPRISES, the Secretariat of the National Council of Privatisation ("NCP") and an agency of the Federal Government of Nigeria established under the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999 Cap P38 Laws of the Federation of Nigeria, whose registered office is situate at No.1 Osun Crescent, Maitama – Abuja, Nigeria ("BPE"), as the Confirming Party; and

APM TERMINALS APAPA LIMITED, a private company incorporated under the laws of the Federation of Nigeria whose registered office is at Plot 121 Louis Solomon Close, Victoria Island, Nigeria (the "Lessee") being a special purpose vehicle established by A P Moller Finance S.A, a company incorporated under the laws of Switzerland whose registered office is at 9 Rue de la Gabelle, PO Box 1368 Ch-1227 Carouge, Switzerland ("APMF").

The Lessor, BPE and the Lessee and their respective successors and permitted assigns are hereinafter referred to individually as a "Party" and, collectively, as the "Parties."

WHEREAS:

- A. By virtue of the Act, the Lessor is, amongst other things, charged with the responsibility of constructing, executing, carrying out, equipping, improving, working and developing ports, docks, harbours, piers, wharves, canals, water courses, embankment and jetties in Nigeria and may carry out any of these responsibilities through any other person authorised by it in that behalf.
- B. The Federal Government of Nigeria ("FGN") has embarked upon a Port Reform and Modernization Strategy in order to increase its efficiency and reduce cost to users and the FGN. As part of this strategy, the FGN has decided to transfer the management and operation of the major port terminals from the Lessor to the private sector through a series of operating leases.
- C. The NCP is the agency established by the FGN under the Public Enterprises (Privatisation and Commercialisation) Act No 28 of 1999 to formulate and approve policies on privatization and commercialization. BPE is the implementation agency of the NCP for the leasing of port terminals in Nigeria.
- D. The Lessee is:
 - (a) a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with registration number RC 632673; and
 - (b) formed as a special purpose vehicle by APMF;
- E. On 23 September 2004, BPE as Secretariat of the NCP, invited bids for fully priced technical and financial proposals for the lease from the Lessor of the container terminal forming part of Apapa Port (the "Port"). On 10 March 2005, as a result of such competitive bid process, the right to lease the container terminal at the Port from the Lessor was awarded by BPE to APMF. APMF have formed the Lessee, being a company registered in Nigeria, to enter into this Agreement.

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- F. Following the award of the right to lease the container terminal at the Port referred to in Recital E above, the Lessor has agreed to undertake a survey (the "Real Property Survey") of the real property in the Port to be leased to the Lessee (the "Premises") subject to and in accordance with this Agreement and to undertake a survey ("Dredging Survey") of the berths and the approach channel at the Premises with a view to preparing a dredging plan (the "Dredging Plan") in order to fulfil its obligations in relation to dredging as more particularly set out in this Agreement. Upon their completion, the results of the Real Property Survey confirming the parameters of the Premises and the Dredging Plan shall form an integral part of this Agreement.
- G. The Parties have agreed to enter into this Agreement to:
- (a) lease the Premises and certain immovable property affixed to the Premises as further described in Appendix B (the "Fixed Assets," and together with the Premises, the "Lease Property");
 - (b) purchase certain movable property as further described in Appendix C (the "Movable Assets");
 - (c) make certain improvements to the Lease Property as further described in the development plan attached as Appendix D (the "Development Plan"); and
 - (d) perform the operations as further described in Appendix E (the "Operations"), certain other operation, maintenance and other services with respect to the Lease Property and the Movable Assets, subject to and in accordance with the terms and conditions set out in this Agreement.

W I T N E S S E T H

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

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ARTICLE I

DEFINITIONS; INTERPRETATION.

- 1.1 Definitions The following terms shall have the meanings specified in this Article when capitalized and used in this Agreement (including the Recitals):

"Act" means the Nigerian Ports Authority Act No. 38 of 1999 Cap N126 Laws of the Federation of Nigeria or such other law governing port authorities or port operations applicable to the Port as may supersede or succeed the same from time to time.

"Additional Services" means the services, operations and activities described in Appendix E that the Lessee may perform in accordance with the terms of this Agreement.

"Agreement" means this Lease Agreement (including all Appendices attached hereto), as amended and/or supplemented from time to time.

"Annual Report" has the meaning set forth in Section 11.3.

"Applicable Law" means all Nigerian law.

"Berths" means the berths at the Premises to be properly delineated in the Real Property Survey and shall include the Quay Wall.

"BPE" has the meaning set forth in the Preamble.

"Business Days" means a day on which commercial banks in Nigeria are not authorized or required to close.

"Change in Law" means any amendment, modification, superseding act, deletion, addition or change in or to the Applicable Law that occurs and takes effect after the Execution Date and has a material adverse effect on the Lessee's performance of its obligations hereunder.

"Change of Control" means the occurrence of any of the following:

- (a) APMF or any of its affiliates ceases to Control fifty one percent (51%) or more of the issued Equity Interests in the Lessee, on a fully diluted basis; or
- (b) APMF or any of its affiliates creates, incur, assume or suffer to exist any Security Interest, covenant, condition, restriction, claim, option, right of first refusal, right of use or occupancy, or other legal or equitable encumbrance, or any preference, priority or other arrangement having materially the same effect as any of the foregoing, set out in (b).

"Commencement Fee" has the meaning set forth in Appendix F.

"Common Areas" means all areas and facilities outside the Premises and within the exterior land boundary lines of the Port (excluding the Berths) that are provided and designated by the Lessor from time to time as "common areas" for general non-exclusive use.

"Container" means a metal box of at least twenty (20) feet in length, suitable for ocean transport of cargo.

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"Control" means the possession, direct or indirect, of the power to vote fifty one percent (51%) or more of the Voting Interests of a Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Interests, by contract or otherwise. This definition shall also apply to the terms "Controlling," "Controlled by" and "under common Control with."

"Day" or "day" means a calendar day unless otherwise specified.

"Defaulting Party" has the meaning set forth in Section 13.3.

"Development Plan" has the meaning set forth in the Recitals.

"Disclosing Party" has the meaning set forth in Section 18.9.

"Dispute" has the meaning set forth in Section 17.2.

"Dollar" or "\$" means the lawful currency of the United States of America.

"Dredging Plan" has the meaning set forth in the Recitals.

"Dredging Survey" has the meaning set forth in the Recitals.

"Effective Date" has the meaning set forth in Section 2.1(b).

"Emergency" means a crisis, incident or other untoward position or threat to public, health, environment and safety as agreed by the Parties.

"Equity Interests" means, with respect to any Person,

- (a) shares of capital stock of (or other ownership or profit interests in) such Person;
- (b) warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person;
- (c) securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests); and
- (d) other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

"Event of Default" means a Lessee Event of Default or Lessor Event of Default, as applicable.

"Execution Date" means the date this Agreement is signed by the Parties.

"Expert" means any person, body or organization of international repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Parties by mutual consent, the cost of whom shall be shared equally between the Lessor and the Lessee.

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"Fixed Assets" has the meaning set forth in the Recitals.

"Force Majeure" means any act that:

- (a) either renders it impossible for or has a material adverse effect on the affected Party's ability to comply with its obligations under this Agreement;
- (b) is beyond such Party's reasonable control and not due to its fault or negligence; and
- (c) could not have been prevented or avoided by such Party through the exercise of due diligence.

Subject to the satisfaction of the foregoing conditions, Force Majeure shall include without limitation:

- (i) severe, adverse weather conditions such as storms or floods;
- (ii) earthquakes;
- (iii) wars (declared or undeclared), civil disturbances, revolts, insurrections, public disorder, riots, sabotage or terrorism;
- (iv) strikes or other labour disputes in Nigeria that are not solely due to the breach of any labour agreement by the Party claiming Force Majeure;
- (v) fires;
- (vi) actions or omissions by a Governmental Authority that were not induced or promoted voluntarily by the affected Party or were not caused by a non-compliance with its obligations under this Agreement or Applicable Law;
- (vii) the inability by the affected Party, despite its reasonable efforts, to timely and correctly obtain any permit that enables such Party to meet its obligations under this Agreement; or
- (viii) pollution that was not caused by the non-compliance of the Party claiming Force Majeure with its obligations under this Agreement or Applicable Law.

"Governmental Authority" means any Nigerian governmental ministry, bureau, authority, council, office, or other instrumentality having jurisdiction over a Party, the Port, the Lease Property or the Operations, as the case may be, including without limitation, the Lessor, the Regulator, the Utilities Charges Commission and any national or local port authority, or Affiliate of any of the foregoing.

"Improvements" means the improvements to be made to the Lease Property by the Lessee in accordance with the provisions of the Development Plan set out in Appendix D of this Agreement.

"Interruption" means a disruption to the performance of the Operations as a consequence of:



- (a) any act or omission by the Lessor, including but not limited to, the failure by the Lessor to fulfil its obligations under this Agreement;
- (b) maintenance by the Lessor in accordance with the requirements of this Agreement that exceeds the time period for such maintenance as previously agreed between the Parties;
- (c) any act or omission by a Government Authority not due to the fault or negligence of the Lessee;
- (d) an event of Force Majeure;
- (e) an Emergency;
- (f) events beyond the reasonable control of the Lessee not due to the Lessee's fault or negligence.

"Latent Defects" means those defects not identified in the Real Property Survey, and which could not reasonably be identified by the Lessee's exercise of due diligence.

"Lease Fees" has the meaning set forth in Appendix F.

"Lease Property" has the meaning set forth in the Recitals. For avoidance of doubt, Lease Property is also deemed to include any Improvements thereon made by the Lessor or the Lessee during the Term in accordance with this Agreement.

"Lessee" has the meaning set forth in the Preamble.

"Lessee Equipment" has the meaning set forth in Section 6.11.

"Lessee Event of Default" has the meaning set forth in Section 13.1.

"Lessor" has the meaning set forth in the Preamble.

"Lessor Event of Default" has the meaning set forth in Section 13.2.

"LIBOR" means the London Interbank Offered Rate for Dollar deposits, as published by The Wall Street Journal or, if not published, then by the Financial Times of London, applicable from the due date for payment and thereafter on the first day of each succeeding month.

"Maintenance" means maintenance, repairs, renewals and replacements of the Lease Property existing at the Execution Date by the Lessee but excluding the Quay Wall and navigational aids on the Premises. For the avoidance of doubt, Maintenance does not include maintenance, repairs, renewals and replacements by the Lessor, Improvements carried out by the Lessee pursuant to the Development Plan or other improvements or alterations made in accordance with the provisions of Section 4.3(b)(iii) of this Agreement;

"Month" or "month" means a calendar month.

"Movable Assets" has the meaning set forth in the Recitals.

"Movable Asset Purchase Price" has the meaning set forth in Section 5.1.

"NCP" has the meaning set forth in the Recitals.

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"Nigeria" means the Federal Republic of Nigeria.

"Non-Defaulting Party" has the meaning set forth in Section 13.3.

"Operations" has the meaning set forth in Section 6.1.

"Operations Rates" has the meaning set forth in Section 6.9(b).

"Operating Year" means a period of twelve (12) months commencing on the Effective Date or the anniversary of the Effective Date as the case maybe.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Performance Requirements" has the meaning set forth in Section 6.8(b).

"Person" means any legal or natural person, including any individual, corporation, partnership, limited liability company, joint stock company, association, joint venture, trust, governmental or international body or agency, or other entity.

"Planning and Investment Report" has the meaning set forth in Section 11.4.

"Port" has the meaning set forth in the Recitals.

"Preferential Rates" means non discriminatory concessionary rates granted by the Lessee to its customers including, but not limited to, volume discounts and discounts for transit/transshipment cargoes.

"Premises" has the meaning set forth in the Recitals.

"Prudent Industry Standards" means the generally accepted practices, methods, techniques and standards employed by the international container terminal industry in accordance with Applicable Law with respect to:

- (a) the development, operation and maintenance of container terminals;
- (b) personnel and terminal safety and environmental protection; and
- (c) optimizing the performance of the Operations.

"Quarterly Traffic Report" has the meaning set forth in Section 11.5.

"Quay Wall" means the concrete wall (including the piles) separating the water from the shore side and the quay apron forming part of the Berths to be more particularly delineated in the Real Property Survey.

"Real Property Survey" has the meaning set forth in the Recitals.

"Receiving Party" has the meaning set forth in Section 18.9.

"Regulator" means the Lessor or, if there is a change in the law such that the Lessor no longer regulates and controls the development and/or conduct of Nigeria's port industry, then the Governmental Authority of Nigeria established, assigned, chartered or commissioned to regulate and control the development and/or conduct of Nigeria's port industry.

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"Security Interest" means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

"Special Equipment" means rubber tyred equipment above sixty (60) tonnes and non rubber tyred equipment not included in the Development Plan.

"Staffing and Succession Plan" means the plan set forth in Appendix J.

"Term" has the meaning set forth in Section 2.2.

"Termination Date" means the date on which this Agreement is terminated in accordance with the terms set out herein.

"Termination Notice" means the notice given by either Party in accordance with the terms and conditions of this Agreement notifying the other party to this Agreement that this Agreement shall terminate three (3) months after the date of the Termination Notice;

"Termination Period" means the period from the service of a Termination Notice until the Termination Date or, if no Termination Notice is served during the Term, the last three (3) months of the Term.

"Termination Plan" means plan set out in Appendix O of this Agreement.

"Transition Period" means the period from the Execution Date to the Effective Date.

"Transition Plan" means plan set out in Appendix N of this Agreement.

"Twenty Foot Equivalent Unit" or "TEU" means the unit of measurement equivalent to the size of a Container, which is twenty (20) feet in length. (Containers, which exceed twenty (20) feet in length, shall be treated as multiples of twenty (20) feet per TEU.)

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

"Voting Interests" means shares of capital stock issued by a corporation, or equivalent Equity Interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"Waste Material" means 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;

1.2 Interpretation

- (a) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

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- (b) The word "including" means "including without limitation."
- (c) References in this Agreement to statutes, ordinances, regulations, instructions or any other laws made thereunder include those statutes, ordinances, regulations, instructions or any other laws as amended, modified, re-enacted or replaced from time to time.
- (d) Unless the context otherwise requires:
 - (i) words in the singular include the plural, and vice versa;
 - (ii) words importing the past tense shall include the present tense and vice versa;
 - (iii) words importing any gender include all genders; and
 - (iv) a reference to a person includes a reference to a judicial person, a body corporate, an unincorporated body of persons and a government entity.
- (e) Unless otherwise indicated, all reference in this Agreement to Articles, Sections, and Appendices refer to the corresponding Articles, Sections and Appendices of or to this Agreement.
- (f) The Article, Section and Appendix titles contained in this Agreement are for convenience of reference only, are without substantive meaning of any kind and are not a part of this Agreement.

ARTICLE II

EFFECTIVE DATE AND TERM

2.1 Effective Date

- (a) *Terms Binding on Execution Date.* The provisions of this Article, along with the provisions of Articles 12 (Representations and Warranties), 16 (Indemnities), 17 (Governing Law; Disputes) and Appendix N (Transition Plan), shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.
- (b) *Conditions Precedent.* Except as otherwise provided in Section 2.1(a), this Agreement shall become effective one hundred and eighty (180) days following the Execution Date provided that the conditions to effectiveness set forth in Article VII have been fulfilled (the "Effective Date").

2.2 Term This Agreement shall have a term (the "Term"), which commences on the Effective Date and terminates on the date that occurs on the twenty-fifth (25th) anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof. Following such twenty-fifth (25th) anniversary of the Effective Date, and unless this Agreement has otherwise been terminated, the Parties may mutually agree to renew this Agreement for an additional period; provided that either Party has notified the other Party in writing of its desire to renew this Agreement no less than five (5) years prior to such twenty-fifth (25th) anniversary of the Effective Date.



ARTICLE III

BASIC LEASE RIGHTS AND OBLIGATIONS

- 3.1 Lease In consideration of the covenants and agreements set forth in this Agreement and other good and valuable consideration, the Lessor shall lease the Lease Property to the Lessee, and the Lessee shall lease the Lease Property from the Lessor free and clear of all Security Interests, subject to the terms and conditions set forth in this Agreement.
- 3.2 Transfer of the Lease Property. Commencing on the Effective Date and continuing throughout the Transition Period in accordance with the Transition Plan, the Lessor shall transfer to the Lessee the Lease Property free and clear of Security Interests for the Term. The Lessor shall remain the owner of the Lease Property except as expressly agreed to in writing by the Lessor. Subject to the provisions of Sections 4.3(b) and 4.4, throughout the Term, the Lessee shall keep and maintain:
- (a) the Lease Property in the condition in which it is transferred to the Lessee on the Effective Date fair wear and tear excepted, and free and clear of all Security Interests arising from the performance of the Operations or any other of its obligations hereunder, and
 - (b) the Fixed Assets in good condition and working order.
- The Lessee shall indemnify, defend, and hold harmless the Lessor from and against and promptly remove and discharge any such Security Interests which may be placed on the Lease Property, except those attributable to the acts or the omissions of the Lessor.
- 3.3 Peaceful and Quiet Enjoyment To the extent that the Lessee complies with the terms and conditions of this Agreement, the Lessee shall peacefully and quietly hold, occupy and enjoy the Lease Property. In the event that any third party other than Affiliates of the Lessee conduct(s) activities or present(s) claims which interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property or the Lessee suffers any claims, causes of action, damages, or losses which may accrue and arise from the acts or omissions of other third parties having a right of use over the Premises prior to the Execution Date, the Lessor shall indemnify, defend, and hold harmless the Lessee from and against any such claims.
- 3.4 Lease Fees The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in Appendix F. Except as the Parties may otherwise agree in writing, all payments must be made in Dollars. Any amounts due but not paid thereunder shall bear interest at LIBOR plus five percent (5%) compounded monthly.
- 3.5 Common Areas. The Lessor shall grant to the Lessee for the benefit of the Lessee and its employees, contractors, customers and invitees during the Term, the non-exclusive right to use, in common with others entitled to such use (including the Lessor), the Common Areas as they exist from time to time, subject to all rights reserved by the Lessor hereunder and under the terms of all rules and regulations promulgated from time to time with respect thereto. The Lessee shall not use the Common Areas in any manner that is inconsistent with the Lessee's permitted use of the Premises nor in any manner that unreasonably interferes with the use of the Port by other occupants or users of the Port. The Lessor reserves the right from time to time, subject to the Lessor first giving the Lessee not less than twenty-one (21) days notice and provided that the performance of the Operations by the Lessee are not adversely effected to:

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- (a) make changes in or to the Common Areas;
- (b) close temporarily any of the Common Areas;
- (c) add, eliminate or change the location of any improvements in the Common Areas and/or construct additional buildings, facilities and other improvements within the Common Areas;
- (d) prohibit unauthorized Persons from using or accessing the Common Areas; or
- (e) perform such other activities and make such other changes in, to or with respect to the Common Areas as the Lessor may deem appropriate.

The provisions of this Section 3.5 shall at all times be subject to the Lessor's covenant set out in Section 9.

- 3.6 Berths Subject to the provisions of this Article, the Lessee shall at all times have an exclusive right to use the Berths. Subject to applicable Port regulations the Lessor shall have the right of primary use of the Berths in the case of an Emergency provided that:

- (a) the Lessee has the Emergency response capability;
- (b) the Lessor's use of the Berth is not on a discriminatory basis; and
- (c) the Lessor pays the Lessee the Operations Rates where TEU passes through the Premises.

If such preferential use by the Lessor continues for more than five (5) consecutive days or ten (10) cumulative dates in any calendar year, the Lessee shall have a right to require the Lessor to pay the Lessee for its lost revenue due to such preferential use by the Lessor.

- 3.7 Access to Other Property Subject to Applicable Law and the Lessor's prior written approval, such approval not to be unreasonably withheld, the Lessee shall have the right to negotiate rights of way, easements and other types of access to land and other property and Utilities near or adjacent to the Premises other than those granted to the Lessee and referred to in Section 9.10 in order to perform its obligations hereunder, including without limitation the performance of the Operations.

ARTICLE IV

USE OF LEASE PROPERTY

- 4.1 Permitted Use of Lease Property The Lessee shall only use the Lease Property to perform the Operations, and may not use the Lease Property for any other purpose without the Lessor's prior written approval, such approval not to be unreasonably withheld. The Lessee shall not conduct any activities within the Premises other than the performance of the Operations. The Lessee 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 Execution Date with respect to the Lease Property or other premises of the Port;

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- (b) cause injury or damage to the Lease Property, to the person or property of any Person on the Lease Property or to any Person or property of any Person on other premises of the Port;
- (c) cause diminution in the value or usefulness of all or any portion of the Lease Property (reasonable wear and tear excepted);
- (d) disturb or unreasonably interfere with or endanger the Lessor or any other lessees of the Port; or
- (e) create a nuisance or waste in on or about the Premises which adversely affects other premises of the Port.

4.2 Alteration of Lease Property

- (a) *By Lessor.* Subject to the mutual agreement of the Parties and in accordance with Applicable Law, the Lessor shall have the right to alter the Premises subject to the alteration of the Lease Fees payable by the Lessee in accordance with the provisions of this Agreement; provided that:
 - (i) such alteration is required for technical operations and/or economic well-being of the Port
 - (ii) such alteration does not unreasonably interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property and
 - (iii) such alteration shall not have a material adverse effect in the performance of the Operations.
- (b) *By Lessee.*
 - (i) *Development Plan.* The Lessee shall perform the Improvements to the Lease Property required under the Development Plan which has been approved by the Lessor; provided that the Lessee has furnished to the Lessor the following no later than sixty (60) days prior to the proposed date for commencement of the work implementing such Improvement:
 - (1) the plans and drawings for such Improvement;
 - (2) the names and addresses of the proposed contractor(s); and
 - (3) such other documentation as may be reasonably requested by the Lessor.
 - (ii) *Amendment to Development Plan:* The Lessee shall not amend the Development Plan without the Lessor's prior written approval, such approval not being unreasonably withheld.
 - (iii) *Other improvements.* The Lessee shall not make any other improvements or alterations to the Lease Property other than the Improvements contemplated in the Development Plan without the Lessor's prior written approval. Such approval must be given by the Lessor in writing within five (5) Business Days following the request, failure of which, the Lessor shall be deemed to have given its approval to the improvement or alternation and the Lessee may proceed to make such improvement. When requesting such approval, the Lessee

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shall furnish to the Lessor with the following no later than sixty (60) days prior to the proposed date for commencement of the work implementing such improvement or alteration:

- (1) the plans and drawings for such improvements or alterations;
- (2) the names and addresses of all proposed contractors; and
- (3) such other documentation as reasonably requested by the Lessor.

Any improvements or alterations made by the Lessee to the Lease Property during the Term which cannot be removed by the Lessee on the Termination Date shall be and shall remain the property of the Lessor without any claim for or reimbursement by the Lessee for the cost of the value thereof.

- (iv) *Applicable Standards.* The Lessee shall ensure that the Improvements made and any other improvements and/or alterations made are in compliance with

- (1) Applicable Law;
- (2) international conventions, protocols and international agreements to which Nigeria is a party; and
- (3) Prudent Industry Standards.

- (v) *Rights of Lessor to Monitor and Inspect.* Without limiting or reducing the Lessee's obligations under Section 4.3(b)(iii) or 4.4, the Lessor shall have the right to inspect the Improvements and any other improvements or alterations during performance of the same and after they have been completed, and they shall not be used by the Lessee until the Lessee has notified the Lessor in writing that they are in accordance with the plans approved by the Lessor and comply with Applicable Law. Any inspection by the Lessor shall be undertaken in accordance with the provisions set out in Section 4.10(a). The Lessor shall have the right to be present and monitor at any time during the performance of the Improvements and any other improvements or alterations and shall have access to the Premises and to all records and materials of the Lessee related to such Improvements, improvements or alternations including participation in related progress meetings.

4.3 Maintenance

- (a) *Lessee's Maintenance Obligations.* The Lessee shall be responsible for the Maintenance (but excluding Maintenance resulting from Latent Defects which shall remain the responsibility of the Lessor) so that at all times during the Term and upon the Termination Date, the Lease Property (excluding the Quay Wall and navigational aids on the Premises) shall be in the same condition as on the Effective Date, excluding normal wear and tear. The Lessee shall maintain the Lease Property (excluding the Quay Wall and navigational aids on the Premises) 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 Lessee shall comply with Applicable Law and Prudent Industry Standards. The Lessee shall inform the Lessor in writing of entry into any contract for Maintenance. The Lessee shall obtain and maintain

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all licenses, certifications or other documents required for such Maintenance in accordance with Applicable Law. The Lessor shall assign to the Lessee on the Execution Date all rights under any warranties it may receive or be entitled to for the Lease Property.

- (b) *Notification and Repair of Damage.* In the event that any Lease Property (excluding the Quay Wall and navigational aids on the Premises) is damaged, the Lessee shall notify the Lessor in writing of the same within three (3) days after the Lessee became aware of such damage. The Lessee shall commence the process of repairing such damage within seven (7) days and shall complete such repair to damaged Lease Property within a reasonable period to be mutually agreed by the Parties. In the event that the Lessee fails to commence the process of repairing within such period, then the Lessor may give notice in writing to the Lessee requiring the Lessee to commence the process of repairing within seven (7) days. If the Lessee has failed to commence the process of repairing upon expiry of the notice by the Lessor, then the Lessor 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 Lessee shall be responsible for cost of the repair and if the Lessor is required to make any payment towards such repair work, the Lessee shall reimburse the Lessor its actual costs incurred together with interest equal to LIBOR plus five per cent (5%) compounded monthly.

- 4.4 Quay Wall and navigational aids on the Premises. The Lessor shall be responsible for maintenance, repairs, renewals and replacements of the Quay Wall and navigational aids on the Premises during the Term. In the event that any of the Quay Wall or navigational aids on the Premises are 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 Lessor shall commence the process of repairing such damage within seven (7) days of the date of notification by one Party to the other of damage and shall complete such repair to Berth or navigational aids on the Premises within a reasonable period to be mutually agreed by the Parties. In the event that the Lessor fails to commence the process of repairing within such period, then the Lessee may give notice in writing to the Lessor requiring the Lessor to commence the process of repairing within seven (7) days. If the Lessor has failed commence the process of repairing upon expiry of the notice by the Lessee, then the Lessee 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 Lessor shall be responsible for cost of the repair and if the Lessee is required to make any payment towards such repair work, the Lessor shall reimburse the Lessee its actual costs incurred together with interest equal to LIBOR plus five per cent (5%) compounded monthly.
- 4.5 Utilities Subject at all times to the covenants of the Lessor set out in Section 9, the Lessee shall make its own arrangements and pay for the supply of Utilities to the Lease Property, including serving the vessels that call at the Premises.
- 4.6 Office Space. The Lessee shall provide, at its own expense, adequate office space for the Lessor and other Governmental Authorities required by the Act to have office space on the Premises including without limitation to those who have duties such as customs and immigration functions in the Premises, not exceeding a total floor-space of two hundred (200) square metres.
- 4.7 Disposal of Movable Assets The Lessee shall not sell, transfer, remove or dispose of any of the Movable Assets without offering the Lessor the right of refusal to purchase such Movable Asset from the Lessee. In the event of the Lessor's refusal to purchase such Movable Asset, the Lessee shall advise the Lessor of any subsequent transfer to a third party of such Movable Asset. Notwithstanding the foregoing, in each Annual

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Report, the Lessee shall list the Movable Assets, if any, that have been sold, transferred, removed or disposed of during the previous year and shall provide audited details of all such transactions.

4.8 Access to Lease Property

- (a) *By Lessor to verify compliance with this Agreement.* The Lessee shall permit the Lessor and its designated representatives and agents during the Lessee's working hours to enter and inspect the Lease Property for the purpose of verifying the Lessee's compliance with this Agreement and any other requirements under Applicable Law provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations. The Lessor shall notify the Lessee 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 Lessor in the event of Emergency.* The Lessee shall permit the Lessor and its designated representatives and agents without prior notification to enter and inspect the Lease Property in the event of Emergency provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
- (c) *By Lessor to fulfil its obligations under this Agreement.* The Lessee shall also grant access to the Premises to the Lessor or its designates on mutually agreed terms for the purpose of fulfilling its obligations under this Agreement provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
- (d) *Necessary right of way.* The Lessor shall have the right of access through the Premises to other facilities controlled by the Lessor under circumstances where reasonable, alternative means of access are not available subject to the prior consent of the Lessee provided that any Person granted such right of way shall follow the rules concerning safety, traffic, security and other regulations relating to the Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.
- (e) *By Governmental Authorities.* The Lessee shall grant access to the Premises to Government Authorities for the purpose of carrying out any activities which they are legally entitled to carry out in the Premises pursuant to Applicable Law.
- (f) *By Shipping Agents and others.* The Lessee shall grant access to the Premises 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 Lessee'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 Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.

ARTICLE V

MOVABLE ASSETS

- 5.1 Sale and Purchase of Movable Assets Subject to the terms and conditions of this Agreement, upon the Effective Date, the Lessor shall sell to the Lessee, and the Lessee

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shall purchase from the Lessor, the Movable Assets for an aggregate purchase price of fifteen million four hundred thousand United States Dollars (\$15,400,000) (the "Movable Assets Purchase Price").

- 5.2 Payment of Movable Assets Purchase Price. On the Effective Date, the Lessee shall pay the Lessor the Movable Asset Purchase Price by wire transfer to an account of the Lessor previously designated by the Lessor in writing.
- 5.3 Conveyance of Movable Assets On the Effective Date, and subject to its receipt of the Movable Asset Purchase Price and the satisfaction of the other conditions set forth in Article VII, the Lessor shall convey, transfer, assign and deliver to the Lessee, free and clear of all liens and encumbrances, the Lessor's right, title and interest in and to the Movable Assets, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessee.
- 5.4 Transition Period. Notwithstanding the provisions of this Section 5, in consideration of the payment of the Commencement Fee, the Lessor hereby grants to the Lessee the right to use the Movable Assets during the Transition Period in accordance with the provisions of the Transition Plan. For the avoidance of doubt, title and risk in the Movable Assets shall remain with the Lessor during the Transition Period but shall transfer to the Lessee on the Effective Date. For the avoidance of doubt any damage to the Movable Assets caused by the Lessee pursuant to the right to use granted hereunder shall be the responsibility of the Lessee.

ARTICLE VI

OPERATIONS

- 6.1 Obligation of Lessee to Perform Operations The Lessor hereby appoints the Lessee and the Lessee hereby accepts such appointment, to perform the operations and activities described in Part A of Appendix E (collectively, the "Operations") in accordance with the terms of this Agreement. The Lessor confirms that it hereby delegates to the Lessee all such powers and authority as are necessary for the Lessee to perform the Operations.
- 6.2 Common User Container Terminal. The Lessee shall perform the Operations such that the Lease Property is a common user container terminal open to any and all shippers and consignees of Container cargo, and to all Container shipping lines. The Lessee shall ensure that any agreement executed by it prior to or during the Term shall not violate this Section.
- 6.3 Performance of Additional Services. The Lessor hereby grants the Lessee the right, exercisable at the Lessee's sole discretion, to perform the Additional Services as described in Part B of Appendix E at the Premises in accordance with the terms of this Agreement. If the Lessee does commence performance of one or more of the Additional Services during the Term, reference to "Operations" in this Agreement shall be deemed to include those Additional Services being performed by the Lessee in accordance with the right set out in this Section 6.3. The Lessee shall ensure that any charges made for Additional Services shall be in accordance with Applicable Law and competitive within the Port and within competing ports of Nigeria.
- 6.4 Use of Lease Property. The Lessee shall only perform the Operations within the Premises, and shall use the Lease Property for the sole purpose of performing the Operations in accordance with this Agreement.
- 6.5 Exclusivity The Lessee shall have the exclusive right during the Term to perform the Operations within the Premises.

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- 6.6 Standards of Performance The Lessee shall perform the Operations:
- (a) in a safe, efficient, effective and economic manner;
 - (b) with due care and skill; and
 - (c) in accordance with Applicable Law and Prudent Industry Standards.
- 6.7 Duties to Cooperate. The Parties shall cooperate in good faith to ensure the smooth and effective transfer of the provision of the Operations from the Lessor to the Lessee during the Transition Period. In performing the Operations, the Lessee shall cooperate with the Lessor and, if applicable, the Regulator so as to enable the Lessor and the Regulator to perform their monitoring, supervisory and other duties relating to the Port.
- 6.8 Performance Requirements
- (a) *General Requirements.* The Lessee shall use its best efforts to:
 - (i) develop, market and promote Container throughput and Container-related business of the Lease Property in order to achieve maximum utilization thereof in a manner which is consistent with Applicable Law and Prudent Industry Standards; and
 - (ii) ensure that there is no decline in the standards of the Operations.
 - (b) *Specific Requirements.* The Lessee shall perform the Operations in such a manner as to achieve the performance requirements in the applicable years of the Term described in Appendix G (the "Performance Requirements").
 - (c) *Interruptions.* The Parties shall ensure that the Lessee's performance of the Operations shall be as continuous and without Interruptions as is reasonably practical. The Lessee shall maintain records of the number, duration, location and extent of all Interruptions. If the performance of the Operations are adversely affected by Interruptions during an Operational Year, the Performance Requirements shall be reduced by a pro rated percentage of the number of days that an Interruption prevented Operations over three hundred and sixty five days **PROVIDED** that for the purposes of this Section, any Interruption for under twenty four (24) consecutive hours shall not be taken into account when assessing whether an Interruption has occurred unless there has been Interruptions for a period of seventy two (72) cumulative hours in an Operational Year, in which case all time amounting to an Interruption shall be taken into account when assessing the Performance Requirements.
 - (d) *Tracking and Evaluation of Performance.* The Lessor shall evaluate the Lessee's performance of the Operations on an annual basis. The process of evaluation shall commence on the Effective Date and shall be conducted as follows:
 - (i) following the completion of each Operating Year, the Lessee shall provide to the Lessor a report in respect of that Operating Year which shall include, *inter alia*, a full account of its performance against the applicable Performance Requirements, an explanation of any failure to meet such Performance Requirements and any other information requested by the Lessor to enable it to make its evaluation (the "Lessee Report") within ninety (90) days after the end of each Operational Year. In the event that the Lessee fails to provide the

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Lessee Report within the period of ninety (90) days after the end of an Operational Year, the Lessor shall give the Lessee thirty (30) days written notice requiring the Lessee to produce the Lessee Report. In the event that the Lessee fails to produce the Lessee Report by the expiry of the thirty (30) day period then the provisions of Sub Section (iv) shall apply.

- (ii) The Lessor's evaluation, which shall have been ongoing during the Operating Year, shall be completed by the Lessor and the Lessor shall produce and deliver to the Lessee an evaluation report containing its own assessment of the Lessee's performance against the Performance Requirements taking into account any Interruption, and stating whether, in its opinion, the Lessee has reached the Performance Requirements. (the "Lessor Report") within thirty (30) days of the earlier of either:
 - (A) receipt of the Lessee Report; or
 - (B) in the event that the Lessee fails to provide the Lessee Report upon the expiry of the thirty (30) days referred to in Sub Section (i) above.

In the event that the Lessor fails to provide the Lessor Report within the period stated in this Sub Section, the Lessee shall give the Lessor thirty (30) days written notice requiring the Lessor to produce the Lessor Report. In the event that the Lessor fails to produce the Lessor Report by the expiry of the thirty (30) day period then the provisions of Sub Section (iv) shall apply.

- (iii) Within fourteen (14) days of submission by the Lessor of the Lessor Report to the Lessee, the Parties shall meet and agree whether the Lessor's evaluation is accepted by both Parties, whether the Lessee has reached or exceeded the Performance Requirements. Any disagreement between the Parties in respect of the Lessor Report shall be resolved pursuant to the provisions of Article 17 (Governing Law; Dispute Resolution).
- (iv) In the event that either:
 - (A) the Lessee fails to produce the Lessee Report further to thirty (30) days' written notice from the Lessor given in accordance with Sub Section (i) above, then the Lessor Report shall be binding upon both Parties and Parties shall not be required to meet and agree the Lessor's evaluation in accordance with Sub Section (iii) above;
 - (B) the Lessor fails to produce the Lessor Report further to thirty (30) days' written notice from the Lessee given in accordance with Sub Section (ii) above, then the Lessee Report shall be binding upon both Parties and the Parties shall not be required to meet and agree the Lessor's evaluation in accordance with Sub Section (iii) above.

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- (e) *Exceeding Performance Requirements.* In the event that the Lessee exceeds the Performance Requirements, there shall be an adjustment in the Lease Fees due and payable by the Lessee in accordance with the provisions set out in Appendix H.

6.9 Operations Rates

- (a) *General Parameters.* The Lessee shall ensure that the Operations Rates shall be in accordance with Applicable Laws and competitive within the Port and with other competing ports of Nigeria having facilities similar to the Lease Property.
- (b) *Specific Parameters.* The Lessee shall charge cargo dues and delivery charges for the Operations which are not greater than the rates set forth in Section A of Appendix I (the "Operations Rates") in accordance with the terms and conditions included therein. The Lessee shall not make any increases in the Operations Rates, unless agreed to in writing by the Parties and any required consents of Governmental Authorities have been obtained. Value added taxes and other taxes shall be added as required to the accounts rendered to the Lessee's customers. Income from the Operations Rates shall accrue directly to the Lessee without any collection, deduction or setoff by the Lessor or the Regulator. The Lessee shall also be allowed to charge for Additional Services, as defined in Appendix E and other services rendered but not specified in Appendix I, including but not limited to: terminal handling, inland container depot transfers, storage and for penalties for violation of applicable rules and regulations set down by the Lessee. The level of terminal handling charges and inland container depot transfer charges shall not exceed the market rates charged by the shipping agents and the Lessor respectively prior to this agreement, and any future increases shall require the consent of the relevant Governmental Authorities.
- (c) *Publication of Operations Rates.* The Lessee shall at all times publish its rates, charges and conditions of the Operations as directed by the Lessor or the Regulator, and shall make such information immediately available upon request by any Person
- (d) *No Discriminatory Pricing.* The Lessee shall afford to all who may request the Operations uniform treatment under like conditions and shall not apply discriminatory charges on any Person. For the avoidance of doubt, the provisions of this Section shall not prohibit the Lessee from granting Preferential Rates in accordance with the provisions set out in Sub Section (e) below.
- (e) *Preferential Rates.* If Preferential Rates are applied to any customers of the Lessee, the Lessee shall inform the Lessor and if applicable, the Regulator in writing of the same. If the Lessor can show to the satisfaction of the Regulator, or if the Lessor is the Regulator then an Expert, that the Preferential Rates applied by the Lessee are discriminatory, the Lessor shall have the right to instruct the Lessee to apply such rates to all other similar customers of the Lessee using the Operations and the Lease Property.
- (f) *Charging the Operations Rates.* Other than in circumstances where the Lessee charges Preferential Rates, if the Lessee is not able to charge the Operations Rates and/or other charges referred to in Subsection (b) above to its customers, the Lease Fees for the following month shall be reduced by an amount equal to fifty per cent (50%) of the loss of revenue.

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- (g) *Complaints.* In the event that the Lessor or any other Governmental Authority receives a complaint of discrimination on the part of the Lessee, and the Regulator, or if the Lessor is the Regulator then an Expert, concludes after its investigation of such complaint that there are reasonable grounds for such complaint, then the Lessee shall immediately cease and desist from such practices and pay any applicable penalties provided for under Applicable Law.

6.10 Labour.

- (a) *Qualified Personnel.* The Lessee shall select and employ sufficient, suitably skilled and qualified personnel to enable it to perform the Operations in accordance with this Agreement.
- (b) *Sources of Labour.* When sourcing personnel, the Lessee shall comply with the Staffing and Succession Plan as set out in Appendix J to the extent applicable. The Lessee shall use reasonable efforts to employ Nigerian nationals in management positions to the extent that there are Nigerian nationals who satisfy the requirements for such positions. Former employees of the Lessor who are affected by the take over, will be encouraged to apply for available positions and will be given fair and due consideration for employment by the Lessee. The Lessor shall be responsible for the retirement benefits including but not limited to all outstanding salaries and any relevant severance payments (if any) of its employees until the date on which they may be employed by the Lessee.
- (c) *Employment Contracts.* With respect to personnel employed by the Lessee under Section 6.10(b) the Lessee shall be responsible for the negotiation of the applicable employment and labour contracts which shall be made in accordance with Applicable Law. Notwithstanding the foregoing, all Lessee personnel shall remain its or its Affiliate's employees for all salary and benefit purposes and shall be compensated in accordance with the Lessee's normal policies as may be modified by the Lessee from time to time.
- (g) *Training.* The Lessee shall be responsible for the preparation and implementation of all training of all staff working at the Premises in accordance with the Staffing and Succession Plan and Applicable Law.
- (h) *Identification of Lessee Personnel.* The Lessee shall ensure that its personnel are issued the appropriate identification documentation. Such identification documentation shall be produced to any official or authorized person who has reasonable grounds to request the identification of such personnel. Upon the termination of employment of such personnel, such identity documentation shall be returned to the Lessee.

- 6.11 Lessee Equipment The Lessee may use additional equipment on the Premises other than the Movable Assets and the Fixed Assets and not included in the Development Plan ("Lessee Equipment") to satisfy its obligations hereunder, including without limitation its performance of the Operations and to meet the Performance Requirements provided that, in the case of Special Equipment the Lessee shall obtain the Lessor's prior written approval, such approval not to be unreasonably withheld. If the Lessor has not responded to the Lessee within five (5) days of receipt of the request for such from the Lessee, the Lessor shall be deemed to have given its approval. Lessee Equipment shall be and shall remain the Lessee's property notwithstanding the termination of this Agreement for any reason unless the Parties otherwise agree that the Lessor shall become owner of such Lessee Equipment on the Termination Date. The Lessee shall, at its own expense, remove Lessee Equipment from the Premises on the Termination Date in the event that the Lessor requires such

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removal or the Lessee does not agree to transfer the same to the Lessor. The Lessee shall provide the Lessor with a full list of Lessee Equipment during the Termination Period and whether it is prepared to sell such Lessee Equipment to the Lessor. The purchase price for any Lessee Equipment shall be mutually agreed between the Parties.

6.12 Spare Parts and Consumables.

- (a) *On the commencement of the Term.* Thirty (30) days prior to the Effective Date, the Lessor shall provide the Lessee with a list of its inventory of spare parts and consumable items related to the Lease Property. The Lessee shall have the option to purchase from the Lessor any or all such spare parts and consumable items at a price mutually agreeable to the Parties.
- (b) *On the termination of the Term.* Thirty (30) days prior to the Termination Date, the Lessee shall provide the Lessor with a list of its inventory of spare parts and consumable items related to the Lease Property. The Lessor shall have the option to purchase from the Lessor any or all such spare parts and consumable items at a price mutually agreeable to the Parties.

6.13 Financing of Operations The Lessee shall be responsible for the planning of the financing of its performance of the Operations. The Lessee may use this Agreement as security for obtaining finance in respect of the Operations. For the avoidance of doubt, no Lease Property shall be used as security by the Lessee.

ARTICLE VII

CONDITIONS PRECEDENT

7.1 Conditions to Obligations of Each Party. The obligations of the Lessor and the Lessee to consummate the transactions contemplated by this Agreement shall be subject to the fulfilment prior to the Effective Date of the following conditions:

- (a) *Execution and Delivery of this Agreement.* Each Party shall have duly executed and delivered to the other Party this Agreement.
- (b) *Corporate Proceedings.* Each Party shall have provided to the other corporate proceedings in connection with the transactions contemplated by this Agreement. The Lessee shall have delivered to the Lessor a secretary's certificate certifying to:
 - (i) resolutions adopted by the Lessee evidencing the authorisations described in this Section;
 - (ii) the constitutional documents of the Lessee; and
 - (iii) authority of the officers of the Lessee executing this Agreement and documents required hereunder.

The Lessor shall have delivered to the Lessee a secretary's certificate certifying to:

- (i) resolutions adopted by the Lessor evidencing the authorisations described in this Section; and
- (ii) authority of the officers of the Lessor executing this Agreement and documents required hereunder.

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- (c) *No Injunction, etc.* Consummation of the transactions contemplated by this Agreement shall not have been restrained, enjoined or otherwise prohibited in any material respect by any Applicable Law, including any order, injunction, decree or judgment of any court Authority, and there shall not have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement any Applicable Law making illegal the consummation of the transactions contemplated by this Agreement.
- (d) *Power supply.* The Parties shall be satisfied that the Lessee has access to sufficient power supply (including, but not limited to the Utilities) in order that the Lessee is able to fulfil its other obligations as set out in this Agreement.
- 7.2 Conditions to Obligations of Lessor. The obligation of the Lessor to consummate the transactions contemplated by this Agreement shall be subject to the fulfilment, prior to the Effective Date, of the following additional conditions (unless waived in writing by the Lessor):
- (a) *Representations and Warranties of Lessee.* The representations and warranties of the Lessee in Section 12.1 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessee.* The Lessee shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessee shall have delivered to the Lessor a certificate in form and substance satisfactory to the Lessor, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 7.2 (a) and (b).
- (e) *Movable Asset Purchase Price.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Movable Asset Purchase Price, in accordance with Section 5.2.
- (f) *Commencement Fee.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Commencement Fee, in accordance with Appendix F.
- (g) *Performance Bond.* Within fifteen (15) days after the Effective Date, the Lessee shall deliver to the Lessor a performance bond in favour of the Lessor in an amount not less than one million five hundred thousand United States Dollars (US\$1,500,000) and in the form set forth in Appendix K or in other form and substance reasonably acceptable to the Lessor and from a financial institution acceptable to the Lessor. Such performance bond shall remain in full force and effect until thirty (30) days after the Termination Date. Such bond shall cover the Lessee's financial obligations under this Agreement, including without limitation the payment of the Lease Fees and all other costs and financial liabilities arising from its financial obligations under this Agreement, and all financial penalties due and payable by the Lessee hereunder. All premiums or other costs associated with obtaining and maintaining such performance bond shall be paid by the Lessee.

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- (h) *Evidence of Insurance.* The Lessee shall have delivered to the Lessor certificates of insurances and other documentation reasonably requested by the Lessor evidencing that the Lessee has obtained the insurance coverage on the Premises required under Section 8.1.

7.3 Conditions to Obligations of Lessee. The obligations of the Lessee to consummate the transaction contemplated by this Agreement shall be subject to the fulfilment prior to the Effective Date, of the following additional conditions (unless waived in writing by the Lessee):

- (a) *Representations and Warranties of Lessor.* The representations and warranties of the Lessor in Section 12.2 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessor.* The Lessor shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessor shall have delivered to the Lessee a certificate in form and substance satisfactory to the Lessee, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 7.3 (a) and (b).
- (d) *Bill of Sale.* The Lessor shall have delivered to the Lessee by the Effective Date any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessee in respect of the Movable Assets in form and substance reasonably satisfactory to the Lessee as required in Section 5.3.
- (e) *Presidential Approval.* The President of the Federal Republic of Nigeria has approved this Agreement for the Term and the Lessor shall convey and BPE shall confirm the approval to the Lessee.
- (f) *Government Consents.* All consents or authorizations of Governmental Authorities that are required to lease, transfer or assign (as applicable) to the Lessee the Lease Property or Movable Assets, shall have been made or obtained.
- (g) *Stevedoring Contracts.* All stevedoring Contracts with respect to the Premises have been terminated and all stevedores shall have vacated the Premises by the Effective Date.
- (h) *Other Agreements.* All other agreements affecting the Lessor's right to transfer the Lease Property free and clear of all Security Interests have been terminated and all Persons on the Premises prior to the Execution Date shall have vacated the Premises and removed all their equipment from the Premises.
- (i) *Registration.* The Confirming Party shall have stamped and registered this Agreement with the appropriate Governmental Authorities in

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accordance with Applicable Law and shall have taken responsibility for any and all costs associated with such stamping and registration.

- (j) *Real Property Survey.* The Lessor shall have conducted the Real Property Survey which shall confirm the information provided to the Lessee regarding the Premises as set out in the bid documents provided to the Lessee by the Lessor as part of the bid process referred to in Recital E above including, but not limited to, the fact that the Premises is fit for the purpose of carrying out the Operations in accordance with the provisions of this Agreement. In the event that the survey highlights discrepancies between the bid documents and the actual structure and condition of the Premises, the Parties agree that they shall discuss, in good faith, amendments to this Agreement in order to accommodate the actual structure and condition of the Premises.
- (k) *Berth Survey.* The Lessor shall have conducted the Berth Survey and shall have prepared, provided to and agreed with the Lessee, the Dredging Plan in order to fulfil its obligations in relation to dredging as more particularly set out in this Agreement. If the survey conducted by the Lessor renders the Lessor's obligations pursuant to this Agreement impossible then Parties agree that they shall amend the provisions of this Agreement (including, but not limited to the Fixed Payment provisions) to accommodate the actual Low Low water depth of the Berths and the approach channel.

- 7.4 Satisfaction of Conditions. Each Party shall use its reasonable efforts to effectuate the satisfaction of the conditions requiring action by such Party under this Article. If such conditions have not been satisfied by such Party (or waived by the other Party) on or before the date that occurs one hundred and eighty (180) days following the Execution Date, then, unless otherwise agreed in writing by the Parties, the other Party shall have the right to terminate this Agreement following delivery of fifteen (15) days' prior written notice to the Party of whom action is required which still has not satisfied, whereupon each Party shall be excused and relieved of all obligations and liabilities under this Agreement, except as otherwise specified herein and the Lessor shall refund the Commencement Fee to the Lessee.

ARTICLE VIII

LESSEE'S COVENANTS

8.1 Insurance

- (a) *Required Insurance.* The Lessee shall obtain and maintain, at its expense, the insurance described in Appendix L on terms and conditions stated therein. The Lessee shall provide the Lessor with copies of all such insurance policies and the Lessor shall have the right to review and approve same, such approval not to be unreasonably withheld, provided that such approval must be given by the Lessor in writing within five (5) Business Days following receipt of the request, failure of which, the Lessor shall be deemed to have given its approval.
- (b) *Modifications of Insurance Coverage.* All insurance policies required by this Agreement shall provide that the same shall not be modified or terminated without at least thirty (30) days prior written notice to the Lessor. If at any time the Lessee fails to purchase and maintain in full force and effect any and all insurances required under this Agreement, the Lessor may, at its sole discretion, purchase and maintain such insurance and all amounts incurred by

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the Lessor therefore shall be reimbursed. If the Lessee fails to reimburse the Lessor within thirty (30) days of receipt of a valid invoice confirming the amounts due, the Lessee shall also pay the Lessor a penalty equal to LIBOR plus 5% compounded monthly.

8.2 Safety; Security

- (a) *Safety Procedures.* The Lessee shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of its Operations and the Lease Property in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards and the Lessor's guidelines that are applicable to all operators at the Port.
- (b) *Security System.* The Lessee shall be responsible for the preparation and implementation of a safety and security system in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards for the Lease Property and the cargo and Containers therein (including without limitation fencing off the Lease Property) which system shall be subject to the Lessor's prior written approval, such approval not to be unreasonably withheld, provided that such approval must be given by the Lessor in writing within five (5) Business Days upon receipt of the request, failure of which, the Lessor shall be deemed to have given its approval.
- (c) *Fire Control.* The Lessee shall establish procedures for installing, maintaining and operating fire fighting equipment on the Premises, which shall be in accordance with the guidelines of the Lessor in force at the Port. The Lessor shall purchase fire control equipment required pursuant to Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards which shall remain the Lessor's property throughout the Term. The Lessor shall inform the Lessee of fire fighting demonstrations to be conducted by the Lessor or fire emergency services operating in the Port, and the Lessee may witness such demonstrations. The Lessee shall prepare and implement its own staff training for fire hazards awareness and develop and maintain close relations with the fire emergency agencies in the Port.
- (d) *Traffic.* Traffic operations, vehicular traffic and all transport activities related to the Premises shall be conducted in accordance with Applicable Laws.
- (e) *Signage.* The Lessee shall be responsible for installing appropriate signs within the Port to indicate the location of and access routes to the Premises. The location, size and content of such signs, and their method of installation, shall be approved by the Lessor prior to their installation.

8.3 Environment

- (a) *Obligation to Comply with Environmental Laws.* The Lessee shall comply with all Applicable Laws 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 Premises as required by such Applicable Laws. The Lessee shall consult with the applicable Governmental Authorities in taking such steps. The Lessee shall cooperate with the Lessor in achieving compliance with international environmental conventions to which Nigeria is a party.

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- (b) *Waste Disposal.* The Lessee shall arrange for the disposal of Waste Material generated from the Premises in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards. The Lessee shall not dump in the Port any substance other than rainwater without the Lessor's prior written consent.
 - (c) *Environmental Impact Assessments.* In carrying out the Development Plan, the Lessee shall comply with all Applicable Laws relating to the environment, including laws and regulations requiring the preparation and approval of environmental impact assessments to the extent applicable. Upon submission of such environmental impact assessments to a Governmental Authority, the Lessee shall submit to the Lessor a copy of the same, as well as a copy of any response from such Governmental Authority regarding the same.
 - (d) *Spill Containment Programs.* Within sixty (60) days after the Execution Date, the Lessee, in cooperation with the Lessor and the applicable Governmental Authorities, shall prepare and implement a contingency plan and a hazardous materials spill containment, removal and remediation plan for the Premises in accordance with Prudent Industry Standards and Applicable Law.
 - (e) *Obligation to Notify.* In the event that pollution occurs that may affect the Premises, the Lessee shall:
 - (i) inform the Lessor immediately of the same;
 - (ii) take all reasonable measures required for detecting, cleaning and containing such pollution; and
 - (iii) provide the Lessor with frequent written updates on such measures being taken or remaining to be taken by the Lessee.
 - (f) *Lessee Obligation to Remediate.* In the event that Waste Material is present in the waters or in or on the bottom of the Port after the Effective Date, which has originated from the Premises, then the Lessee shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 8.4 Emergencies In the event of an environmental emergency emanating from the Premises and endangering life or property, the Lessee 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 Lessee's response thereto, to the Lessor. If the Lessee has not taken reasonable precautions for the safety of the public, its customers or the protection of the Lease Property, and such failure creates an environmental emergency requiring immediate action, then the Lessor, with or without notice to the Lessee may, but shall be under no obligation to, provide reasonable protection as required to address such emergency. The taking of any such action by the Lessor, or the Lessor's failure to take any action, shall not limit the Lessee's liability. The Lessee shall reimburse the Lessor for the performance of any such work or furnishing on the Lease Property of any such equipment in connection with any emergency in an amount equal to the reasonable costs incurred by the Lessor in such performance of work or furnishing of equipment.
- 8.5 Information; Communication Within one hundred and eighty (180) days after the Effective Date, the Lessee shall install a computerized information system for the recording and tracking of the Containers within the Premises, and shall periodically update this system to provide computerized information related to Container

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movements to the Lessee's customers, other organizations or companies involved in the transport of Containers by land or sea and Governmental Authorities. Such system shall be compatible with Electronic Data Interchange For Administration Commerce and Transport (EDIFACT).

- 8.6 Dredging; Mooring The Lessee shall take such measures as shall be necessary in the Lessor's opinion to enable dredging and placing and removing of any mooring posts in the vicinity of the Premises, including without limitation allowing anchoring, mooring and dredging vessels to be installed, used and maintained by or on behalf of the Lessor in the shore strip of the Premises provided that such measures do not have an adverse effect on the performance of the Operations by the Lessee. The Lessee shall, at its own cost and expense, perform such work to the Lease Property as shall be necessary to avoid damages which could arise from such work to be performed by or on behalf of the Lessor. If, as a result of such work, the Lease Property is damaged, such damage shall be remedied at the Lessee's costs unless the same was attributable to the Lessor's or its contractors' negligence or wilful misconduct.
- 8.7 Lessee Ownership Structure The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent.
- 8.8 Taxes The Lessee shall pay any taxes, levies, duties, withholdings, or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessee as a result of the performance of its obligations hereunder.
- 8.9 Licenses; Permits The Lessee shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessee to fulfil its obligations hereunder, including without limitation, the performance of the Operations in accordance with this Agreement.
- 8.10 Non Compliance. In the event that the Lessee fails to comply with any of its obligations set out in this Article, then the Lessor may notify the Lessee of such failure and give the Lessee thirty (30) days notice in writing to rectify its failure. If the Lessee fails to rectify its failure the Lessor may fulfil such obligation for and on behalf of the Lessee at its own cost. The Lessor shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 17 (Governing Law; Dispute Resolution).

ARTICLE IX

LESSOR'S COVENANTS

- 9.1 Cooperation The Lessor shall cooperate with the Lessee as reasonably necessary to enable the Lessee to perform its responsibilities under this Agreement, including provision by the Lessor of copies of drawings, plans, policies, papers, records, reports, data and other information directly related to the Premises or Port as reasonably necessary for the Lessee to perform the Operations and manage the Lease Property.
- 9.2 No Interference. The Lessor shall ensure that its personnel shall not delay or interfere with the performance of the obligations of the Lessee or with the Lessee's personnel in the execution of their duties.

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- 9.3 Port Access The Lessor shall, at all times possible, keep the Port open to shipping so that the Premises may be accessible by sea and by land for use by the Lessee for the performance of its Operations.
- 9.4 Berth and navigational aids within the Premises. The Lessor shall be responsible for the maintenance of the Berths and the navigational aids within the Premises.
- 9.5 Port Services; Vessel Management.
- (a) *The Lessor.* The Lessor shall:
- (i) provide and maintain maritime approaches, canals, turning circles, breakwaters and navigation aids;
 - (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 Premises:
 - (A) in accordance with the schedule of the arrivals and the departures to be prepared pursuant to consultation between the Lessor and the Lessee; and
 - (B) in a timely and efficient manner either directly or through the licensing of competitive suppliers of such services provided that the Lessor 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 Sub Section 9.5(a) so as to have a material adverse effect upon the performance of the Operations of the Lessee shall require the Parties to meet and discuss the reduction in the Throughput Fee to compensate the Lessee for any financial loss that the Lessee has incurred as a consequence of the Lessor's acts or omissions.
- (b) *The Lessee.* The Lessee shall at all times be solely responsible for the scheduling of the Berths. The Lessee shall keep the Lessor fully informed of the scheduling of the Berths and any amendments thereto.
- 9.6 Dredging. The Lessor shall be responsible for the dredging of the channel to the Port (including without limitation the face of the Berths at the Premises), either directly or through the licensing of competitive suppliers of such services. The Lessor shall, at all times, be solely responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Section. The Lessor shall undertake dredging in accordance with the Dredging Plan with the intention of achieving a depth of water at the Berths of the Premises of 13.5 meters below Low Low Water and the approach channel of at least 13.5 meters below Low Low Water in accordance with the Dredging Plan to be provided during the Transition Period, provided that interference with the performance of the Operations by the Lessee shall be kept to a minimum.

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- 9.7 Waste Disposal. The Lessor shall arrange for the disposal of waste materials generated from vessels berthed at the Ports in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 9.8 Latent Defects. The Lessor shall remedy any Latent Defects which materially impair the Lessee's use of the Lease Property and the performance of its Operations.
- 9.9 Access to Premises. The Lessor shall ensure that at all times throughout the Term the Lessee, its employees, its customers and suppliers are provided with the road and rail access to the Premises in existence as of the Effective Date, subject to the security regulations governing access to the Port and other Applicable Laws.
- 9.10 Utilities Infrastructure; Rights of Way. The Lessor shall, throughout the Term, provide all infrastructure for the provision of the Utilities to the Premises necessary to equip, operate, maintain, manage and repair the Premises. The Lessor shall grant rights of way and easements through the Port outside the Premises for existing and future Utilities to the Premises. The Lessor shall not take any action which is detrimental to the efficient supply of such Utilities to the Lessee.
- 9.11 Utilities. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 9.12 Security. The Lessor shall be responsible for the general security of the Port outside the security fence of the Premises, 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.
- 9.13 Lessor Obligation to Remediate. In the event that Waste Material is present on the Premises or in the waters or in or on the bottom of the Port before the Effective Date, which the Lessee reports to the Lessor and which have originated from the Premises, or after the Effective Date which has not originated from the Premises (including but not limited to Waste Material originating from vessels calling at the Port) then the Lessor shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 9.14 Licenses; Permits. The Lessor shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessor to fulfil its obligations hereunder and shall provide reasonable assistance to the Lessee in its efforts to obtain and keep in force the licenses and permits required to be obtained or maintained by the Lessee under Section 8.9.
- 9.15 Taxes. The Lessor shall pay any taxes, levies, duties or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessor as a result of the performance of its obligations hereunder.
- 9.16 Non Compliance. In the event that the Lessor fails to comply with any of its obligations set out in this Article, then the Lessee may notify the Lessor of such failure and give the Lessor thirty (30) days notice in writing to rectify its failure. If the Lessor fails to rectify its failure the Lessee may fulfil such obligation for and on behalf of the Lessor at its own cost. The Lessee shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall

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