



**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 19<sup>th</sup> 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.

#### **WITNESSETH**

**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.



"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:

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- (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.

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## 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



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.



- 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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be settled in accordance with the provisions of Article 17 (Governing Law; Dispute Resolution).

## ARTICLE X

### FORCE MAJEURE

- 10.1 Effect of Force Majeure. In the event that a Party can not perform its obligations hereunder due to an event of Force Majeure, such Party shall be excused from the performance of such obligations, and shall not be considered to have committed an Event of Default, from the date on which such event of Force Majeure has commenced and until a reasonable period of time after termination thereof. The Parties shall consult with each other in the event of Force Majeure and shall take all reasonable steps to minimize any losses resulting therefrom. The affected Party shall resume the performance of its obligations hereunder as soon as practicable after such event of Force Majeure has ceased.
- 10.2 Notice The Party affected by the event of Force Majeure shall as soon as practicable provide written notice to the other Party and the Regulator of the occurrence of such event of Force Majeure. Such notice shall include a detailed description of the event of Force Majeure, an estimate of the duration of such event, the reasons for which such Party is unable to perform its obligations hereunder due to such event and a plan to mitigate and remedy such event, if possible. Such Party shall provide the other Party with regular updates of the foregoing information.
- 10.3 Satisfactory Solution. If an event of Force Majeure continues for longer than three (3) months, the Lessee and the Lessor shall enter into discussions in order to agree on a mutually satisfactory solution. If the Parties fail to reach a mutually satisfactory solution within thirty (30) days of the commencement of discussions, the provisions of Article 17 shall apply.
- 10.4 Termination. Notwithstanding the provisions of Section 10.3, if the Lessee is unable to perform the Operations or otherwise substantially perform its obligations under this Agreement as a result of an Event of Force Majeure for a period exceeding six (6) months or the Lessee notifies the Lessor prior to the expiry of the six (6) months period that performance under this Agreement is not viable then either Party may terminate this Agreement by the issuance of a Termination Notice.

## ARTICLE XI

### DOCUMENTATION AND AUDITS

- 11.1 Records and Reports
- (a) *Maintenance of Books and Records.* The Lessee shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Lease Property, for providing information to the Lessor, and for informing the public and its customers of the quality and performance of its Operations.
- (b) *Accounting.* The Lessee shall maintain suitable and complete accounting and non-accounting records that summarize technical, commercial, financial and personnel information, including records relating to ship and shore services. All such information shall be retained in a form that shall permit regular audits. Financial records and accounts shall be maintained in accordance with

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- (b) *Accounting.* The Lessee shall maintain suitable and complete accounting and non-accounting records that summarize technical, commercial, financial and personnel information, including records relating to ship and shore services. All such information shall be retained in a form that shall permit regular audits. Financial records and accounts shall be maintained in accordance with



applicable international generally accepted accounting principles as agreed to by the Lessor. Technical records (including without limitation engineering designs and drawings) shall be maintained in accordance with Prudent Industry Standards.

- (c) *Lease Property.* Beginning on the Effective Date, the Lessee shall prepare and maintain current records of the Lease Property in sufficient detail as required by the Lessor, to provide a full understanding of the location and state of the Lease Property. Such records shall be comprised of physical drawings, databases and calculation sheets along with historical records relating to their constitution, repairs, and maintenance, including all works carried out as replacements, rehabilitation and maintenance. Physical plans for buildings shall clearly identify and describe the as built profiles.
- (d) *Copies of Records.* The Lessee shall provide the Lessor and the Regulator with copies of the foregoing records as requested by the Lessor on a quarterly basis.
- (e) *Disclosure.* A Party shall obtain the written approval of the other Party prior to disclosing any confidential information related to this Agreement, the Lease Property or the Operations to the public.
- (f) *Other Information.* The Lessee shall provide to the Lessor any other information as the Lessor may reasonably require, including without limitation:
  - (i) statistics on the quantity, types and weights of Containers handled in the Premises;
  - (ii) statistics on the numbers and types of ships, wagons or road trucks loaded or unloaded in the Premises;
  - (iii) average ship turn around time, cargo dwell time, truck loading/unloading time;
  - (iv) details of the claims received and payments made in relation to cargo damage;
  - (v) immediate notification of accidents within the Premises causing death or serious injury;
  - (vi) immediate notification of incidents causing oil pollution or other forms of environmental damage;
  - (vii) industrial relations;
  - (viii) public complaints;
  - (ix) notification of additions to and disposals of mechanical equipment and other significant assets; and
  - (x) statistics on the availability for use of major items of mechanical equipment such as gantry cranes and front-end loaders.

11.2 Audits Within ninety (90) days following the Effective Date, the Lessee shall, at its own cost and expense, select and contract an independent external financial auditor to perform a statutory audit. The Lessor may appoint, at its own cost and expense, an

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independent auditor to undertake the duties of an external auditor including without limitation:

- (a) verification of Operations standards and quality;
- (b) review of the performance of any statutory or contractual obligation of the Lessee; and
- (c) verification of financial records of the Lessee.

11.3 Annual Report The Lessee shall prepare an annual report which shall include, at a minimum, the following technical and financial information:

- (a) any circumstances having an impact on the financial obligations of the Lessee under this Agreement;
- (b) volume of traffic passing through the Premises;
- (c) number of vessels, inward/outward Containers and Containers stored;
- (d) numbers and categories of customers, of personnel employed, levels of Operations, performance and Operations quality compliance;
- (e) renovation works and repairs carried out or to be carried out;
- (f) exceptional events such as pollution incidents, strikes, etc.;
- (g) Emergencies;
- (h) measures, if any, taken by the Lessee during the applicable year with respect to its obligations hereunder related to the protection and preservation of the environment;
- (i) the Operations performed during the applicable year; and
- (j) an audited set of accounts prepared in accordance with generally accepted international accounting principles and practices


(the "Annual Report"). The Lessee shall submit to the Lessor and the Regulator the Annual Report within one hundred twenty (120) days after the end of each year during the Term (or such earlier date as required under Applicable Law). The Parties shall agree upon the format of the Annual Report. The Lessee shall provide any clarification of the Annual Report requested by the Lessor and the Regulator.

11.4 Planning and Investment Report The Lessee shall prepare a planning and investment report which shall include, at a minimum, the following information:

- (a) detailed five (5) year capital program which identifies areas for expansion of the Operations;
- (b) proposals for improving Operations levels;
- (c) human resource proposals; and
- (d) a benchmarking of all of the foregoing

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("Planning and Investment Report"). The Lessee shall submit to the Lessor and the Regulator the first Planning and Investment Report within one hundred twenty (120) days after the Effective Date. On or prior to the fifth (5th) anniversary of such date and each five (5) years thereafter, the Lessee shall submit to the Lessor and the Regulator the Planning and Investment Report, which includes the information, described above for such period. The Parties shall agree upon the format of the Planning and Investment Report. The Lessee shall provide any clarification of the Planning and Investment Report requested by the Lessor

11.5 Quarterly Traffic Report The Lessee shall prepare a quarterly traffic report which shall include, at a minimum, the following information:

- (a) volume of traffic passing though the Premises; and
- (b) number of vessels, inward/outward Containers and Containers stored

("Quarterly Traffic Report"). The Lessee shall submit to the Lessor and the Regulator the Quarterly Traffic Report within thirty (30) days after the end of each quarter of each year during the Term. The Parties shall agree upon the format of the Quarterly Traffic Report. The Lessee shall provide any clarification of the Quarterly Traffic Report requested by the Lessor and the Regulator.

## **ARTICLE XII**

### **REPRESENTATIONS AND WARRANTIES**

12.1 Lessee Representations and Warranties. The Lessee represents and warrants on the Execution Date and throughout the Term that:

- (a) The Lessee is:
  - (i) 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
  - (ii) formed as a special purpose vehicle by APMF;
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessee) threatened against the Lessee that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessee, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Lessee, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by







("Planning and Investment Report"). The Lessee shall submit to the Lessor and the Regulator the first Planning and Investment Report within one hundred twenty (120) days after the Effective Date. On or prior to the fifth (5th) anniversary of such date and each five (5) years thereafter, the Lessee shall submit to the Lessor and the Regulator the Planning and Investment Report, which includes the information, described above for such period. The Parties shall agree upon the format of the Planning and Investment Report. The Lessee shall provide any clarification of the Planning and Investment Report requested by the Lessor

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  - (ii) formed as a special purpose vehicle by APMF;
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessee) threatened against the Lessee that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessee, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Lessee, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by

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the Lessee of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.

- (e) It is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to perform its obligations hereunder.
- (f) It has:
  - (i) carefully examined this Agreement, together with all Appendices attached hereto, thoroughly and become familiar with all their respective terms and provisions;
  - (ii) Investigated to its satisfaction all Applicable Laws and it can perform its obligations hereunder in accordance therewith;
  - (iii) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and
  - (iv) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Lease Property.

12.2 Lessor Representations and Warranties. The Lessor represents and warrants on the Execution Date and throughout the Term that:

- (a) It is a public authority duly constituted and validly existing under the laws of Nigeria and is authorized and qualified to do business in Nigeria.
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessor) threatened against the Lessor that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessor, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under the Act, or any other Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessor of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessor and constitutes a legal, valid and binding obligation of the Lessor enforceable in accordance with its terms.
- (e) It has obtained all approvals, consents and authorizations that are required from any Governmental Authority under Applicable Law to consummate the



transactions contemplated herein, including without limitation, the Operations Rates provided in Section A of Appendix I.

- (f) As of the Effective Date it has good title to the Movable Assets and full legal right and power to transfer and deliver such Movable Assets to the Lessee in the manner contemplated by this Agreement. Upon delivery of such Movable Assets against payment therefor pursuant to the terms of this Agreement, the Lessee shall receive good title thereto, free and clear of all liens, other than the obligation to obtain any required authorizations or consents by a Governmental Authority in connection with the transfer of any such Movable Assets.

## ARTICLE XIII

### DEFAULT

13.1 Lessee Event of Default Except if resulting from a Lessor Event of Default or Force Majeure, each of the following events shall be considered to constitute a "Lessee Event of Default" :

- (a) The Lessee becomes insolvent, or, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation.
- (b) The Lessee fails to achieve a minimum average of fifty per cent (50%) of the Performance Requirements other than as a consequence of an Interruption.
- (c) Other than as a consequence of an Interruption, the Lessee fails to perform the Operations for fourteen (14) consecutive days in an Operating Year or sixty (60) non consecutive days in an Operating Year. Where the Lessee fails to perform the Operations after fourteen (14) consecutive days the Lessor shall have the right to intervene and divert traffic to other terminals for a period of seven (7) days. In such an instance, the Lessor shall not be entitled to claim that there has been an Event of Default by the Lessee until the expiry of the further seven (7) day period where the traffic has been diverted to other terminals.
- (d) Subject to Section 18.5, the Lessee fails to pay any amounts due in accordance with this Agreement.
- (e) The Lessee commits a breach of a material provision of this Agreement.

13.2 Lessor Event of Default Except if resulting from a Lessee Event of Default or Force Majeure, each of the following events shall be considered to constitute a "Lessor Event of Default":

- (a) The Lessor becomes insolvent or makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation.
- (b) The Lease Property (in whole or in part) is expropriated, compulsorily acquired or nationalized by a Governmental Authority.

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- (c) There is a Change in Law.
- (d) Subject to Section 18.5, the Lessor fails to pay any amounts due in accordance with this Agreement.
- (e) The Lessor commits a breach of a material provision of this Agreement.

### 13.3 Consequences of Default

- (a) *Insolvency.* Upon an Event of Default or insolvency described in Section 13.1(a) or 13.2(a), the Party that is not in default may immediately serve a Termination Notice.
- (b) *Expropriation and Change in Law.* Upon a Lessor Event of Default described in Section 13.2(b), or Section 13.2(c), the Lessee may immediately serve a Termination Notice.
- (c) *Other Events of Default.* Upon an Event of Default described in Section 13.1(b), (c), (d) or (e) or 13.2(d) or (e), the Party that is not in default (the "Non-Defaulting Party") shall deliver to the Party which is in default (the "Defaulting Party"), a written notice describing the alleged Event of Default and granting not less than fifteen (15) days for the Defaulting Party to deliver a written response to the Non-Defaulting Party. If the Defaulting Party fails to respond to the Non-Defaulting Party within such fifteen (15) day period, then the Non-Defaulting Party may serve a Termination Notice. If, however, the Defaulting Party does respond to the Non-Defaulting Party, then, within such fifteen (15) day period of the Non-Defaulting Party's receipt of such written response, the Non-Defaulting Party shall deliver to the Defaulting Party a written notice stating whether there is such an Event of Default, and if so, granting the Defaulting Party at least thirty (30) days to commence and continue the remedy of such Event of Default. If such time period expires and the Defaulting Party has not commenced the remedy of the Event of Default, the Non-Defaulting Party may serve a Termination Notice.

## ARTICLE XIV

### TERMINATION.

14.1 Termination. This Agreement may be terminated in any of the following ways:

- (a) the expiry of the Term;
- (b) upon the occurrence of an Event of Default in accordance with Article 13.3(c);
- (c) upon the occurrence of an event of Force Majeure in accordance with Article 10.4

14.2 Rights accruing. Any such termination shall be without prejudice to the accrued rights and liabilities of the Parties in respect hereof as at the date of such termination or which may thereafter accrue in respect of any act or omission prior to such termination and shall be without prejudice to any provisions of this Agreement which are expressed to remain in force thereafter.

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- 14.3 Action to be taken further to Termination Notice. The Parties agree that during the Termination Period, they shall follow and comply with the provisions of the Termination Plan set out in Appendix O of this Agreement.
- 14.4 Continuity of Operations. The Lessee shall ensure smooth continuation and provision of the Operations throughout the Termination Period. The Parties agree to minimize disruption of the Operations performed by the Lessee.
- 14.5 Compensation. The Parties shall pay to one another compensation due and payable in accordance with the provisions of Article 15.

## ARTICLE XV

### COMPENSATION

- 15.1 Compensation upon Force Majeure. The Parties shall bear their respective costs and neither Party shall be required to pay to the other party any costs arising out of an event of Force Majeure.
- 15.2 Compensation on termination due to Lessee Event of Default. If the termination is due to a Lessee Event of Default, the Lessee shall:
- (a) pay to the Lessor any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessor as a consequence of such termination; and
  - (b) convey, transfer, assign and deliver to the Lessor, free and clear of all liens and encumbrances, the Lessee's right, title and interest in and to the Movable Assets for nil consideration, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessor.
- 15.3 Termination due to Lessor Event of Default. If the termination is due to a Lessor Event of Default, the compensation payable by the Lessor shall be the aggregate of:
- (a) any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessee as a consequence of such termination;
  - (b) in the event that there is termination due to a Lessor Event of Default in the first Operating Year following completion of the works to be undertaken pursuant to the Development Plan:
    - (i) the Commencement Fee; and
    - (ii) any and all construction and development costs incurred by the Lessee pursuant to the conduct of the Development Plan or otherwise incurred pursuant to the development of the Premises in accordance with this Agreement;
- 15.4 Compensation upon expiry of the Term The Parties shall bear their respective costs upon expiry of the Term.
- 15.5 Delayed Payment. If for any reason, other than those attributable to the other Party, a Party fails to pay the payments that it is required to make in accordance with this Article 15 on the Termination Date, the defaulting Party shall be liable to pay interest at a rate of LIBOR plus five per cent (5%) compounded monthly.

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- 15.6 Remedies Cumulative. The exercise of the right to terminate this Agreement by either Party shall not preclude such Party from availing of other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any remedies by such Party.

## ARTICLE XVI

### INDEMNITIES; LIABILITIES.

- 16.1 Lessee Indemnity The Lessee shall indemnify, defend, and hold harmless the Lessor, from and against any and all liabilities, losses, expenses, and claims for personal injury or property damage or any penalties or fines imposed on the Lessor that arise from or out of the Lessee's negligent acts or omissions in the performance of its obligations hereunder. Without limitation to the foregoing, the Lessee shall indemnify and keep indemnified the Lessor for any breach by the Lessee of any of the terms, representations and warranties contained herein.
- 16.2 Lessor Indemnity The Lessor shall indemnify, defend, and hold harmless the Lessee, from and against any and all liabilities, losses, expenses, and claims for personal injury or property damage that arise from or out of the Lessor's negligent acts or omissions in the performance of its obligations hereunder. Without limitation to the foregoing, the Lessor shall indemnify and keep indemnified the Lessee for a breach of any of the terms, representations and warranties contained herein.

## ARTICLE XVII

### GOVERNING LAW; DISPUTE RESOLUTION.

- 17.1 Governing Law This Agreement shall be governed by, construed and enforced in accordance with the laws of Nigeria.
- 17.2 Disputes Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement and the activities carried out hereunder, including without limitation any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement (each a "Dispute"), shall be exclusively and finally settled pursuant to the dispute resolution process described in this Article.
- 17.3 Mutual Consultation If either Party believes that a Dispute exists, it may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the twenty one (21) day period following the date of the notice. Within seven (7) days after receipt of a notice pursuant to the preceding sentence, the other Party shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty one (21) day period following the date of the notice. During the remainder of such period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to use best efforts to resolve the Dispute.
- 17.4 Assistance of Expert. The Parties may, in appropriate cases agree to refer the matter to an Expert. The Parties shall agree on the period within which the Expert shall conclude the assignment. The cost of using the Expert shall be shared equally. Where either

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Party disagrees with the opinion of the Expert, the dispute may be referred to arbitration.

- 17.5 Arbitration In the event that Parties are unable to reach an amicable settlement in respect of a dispute or difference or claims of any kind within sixty (60) days, such dispute or difference or claim of any kind shall be finally settled under the rules of arbitration of the Regional Centre for International Commercial Arbitration, Lagos. Arbitrators appointed in accordance with the said Regional centre for International Commercial Arbitration, Lagos Rules as provided for in this Part XVII (Dispute Resolution).
- 17.6 Place of Arbitration The place of arbitration shall be London or any other place mutually agreed by the Parties.
- 17.7 English Language. The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.
- 17.8 Performance During Arbitration Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.
- 17.9 Waiver of Sovereign Immunity The Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in Nigeria or elsewhere, to enforce any liability or obligation related to or arising from this Agreement, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby expressly and irrevocably waives any such immunity, to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings, whether in Nigeria or elsewhere.

### ARTICLE XVIII

#### MISCELLANEOUS.

- 18.1 BPE. BPE has agreed to sign this Agreement in its capacity as a confirming party acting as Secretariat of NCP. By execution of this Agreement, BPE confirms that this Agreement is made in compliance with the Port Reform and Modernization Strategy in order to increase the Port's efficiency and reduce the costs to users and the FGN.
- 18.2 Amendments No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification shall be in writing and duly executed by the Parties hereto.
- 18.3 Assignment This Agreement may be assigned to other parties only upon the prior written consent of the non-assigning Party hereto, except the Lessor may assign this Agreement in whole or in part to any Governmental Authority. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee; any assignment not in accordance with the provisions of this Section shall be void and without force or effect.
- 18.4 Sub-Contracting The Parties may engage any contractor or sub-contractor possessing the requisite skill, expertise and capability to perform some, but not all, of its obligations under this Agreement provided that the Party engaging the sub-contractor

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shall, at all times, be solely responsible for the action and omissions of that sub-contractor and provided also that the Lessee shall not subcontract any of its core terminal Operations without a prior written consent of the Lessor.

- 18.5 Offsetting. If an obligation has arisen upon one Party (the "Debtor") to pay the other Party (the "Creditor") in accordance with the terms of this Agreement and the Debtor has defaulted in payment of the amount due, the Creditor may offset the payment due from Debtor against any future payments that the Creditor is required to make to the Debtor pursuant to the terms of this Agreement.
- 18.6 Survival All rights accrued prior to the termination of this Agreement shall survive its termination.
- 18.7 Entire Agreement The terms and provisions contained in this Agreement (including the Appendices) constitute the entire agreement between the Parties with respect to the subject matter hereof.
- 18.8 Notices Any notice, request, document, or other communication required or permitted under this Agreement may be given in any manner provided herein to the address or number provided below and shall be deemed effective as indicated:
- (a) if in writing and delivered in person or by courier, on the date it is delivered;
  - (b) if sent by electronic or facsimile transmission, on the date that the sender receives written confirmation of such receipt by the recipient, provided that a copy is sent in accordance with Section (a) above; or
  - (c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered; unless the date of such delivery or receipt, as applicable, is not a business day in the place of such delivery or receipt, or such communication is delivered or received, as applicable, after the close of business on a business day in the place of such delivery or receipt, in which case such communication shall be deemed given and effective on the next business day in the place of such delivery or receipt following such day. Notices shall be given as follows:
    - (i) For the Lessor:  
  
The Nigerian Ports Authority  
26/28 Marina, Lagos, Nigeria  
Attention: The Managing Director  
Telephone: +234 (01) 263 1574  
Facsimile: +234 (01) 2630306
    - (ii) For BPE:  
  
The Bureau of Public Enterprises  
1, Osun Crescent, Maitama District  
PMB 442, Garki – Abuja, Nigeria  
Attention: The Director General  
Telephone: +234 (09) 413 4670  
Facsimile: +234 (09) 413 4672
    - (iii) For the Lessee:  
  
APM Terminals Apapa Limited  
Plot 121 Louis Solomon Close

*(Signature)*

*(Signature)*



other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

- 18.13 Lessee Compliance with Laws; Officials Not to Benefit The Lessee shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessee represents and warrants that it has not paid, promised to pay or authorized the payment of, and agrees that it shall not pay, promise to pay or authorize the payment of, any money or anything of value, directly or indirectly to any person (whether a government official or private individual) for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.
- 18.14 Lessor Compliance with Laws; Officials Not to Benefit. The Lessor shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessor represents and warrants that it has not received, arranged or agreed to receive, and agrees that it shall not receive, arrange to receive or agree to receive payment of any money or anything of value, directly or indirectly by any person for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.

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IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THEIR RESPECTIVE COMMON SEALS TO BE AFFIXED HERETO AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

**THE COMMON SEAL OF THE WITHIN NAMED LESSOR  
THE NIGERIAN PORTS AUTHORITY**

was hereto affixed  
In the presence of:

(seal)

Dr. Abiye S.P. Sekibo  
Hon. Min. of Transport  
Chairman

Adebayo B. Sarumi  
Managing Director

Ms. Clara Etseyatse  
Secretary

**THE COMMON SEAL OF THE BUREAU OF PUBLIC ENTERPRISES  
THE WITHIN NAMED CONFIRMING PARTY**

was hereto affixed  
In the presence of:

(seal)

Mrs. Irene N. Chigbue  
Director General

Dr. Paul. O. Idornigie  
Secretary

**THE COMMON SEAL OF THE WITHIN NAMED LESSEE  
APM TERMINALS APAPA LIMITED**

was hereto affixed  
In the presence of:

(seal)

Chief (Dr.) Ernest Adegunle Oladeinde Shonekan GCFR, CBE

Chairman

Tom Gronnegaard Knudsen

Director

Adefunke Caxton-Martins Agbor & Segun  
Secretary



## **Appendix A**

### **PREMISES**

The Lessor has agreed to undertake the Real Property Survey of the real property in the Port to be leased to the Lessee subject to and in accordance with this Agreement. Parties shall ascertain the parameters of the Premises pursuant to the conduct of the Real Property Survey. The results of the Real Property Survey ascertaining the parameters of the Premises shall form an integral part of this Agreement. Parties agree that the conduct of the Real Property Survey shall be a condition precedent to this Agreement as more particularly set out in Section 7.3(j) of this Agreement.

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## APPENDIX B

### FIXED ASSETS

Those following Fixed Assets not being demolished pursuant to the Development Plan:

S/N	ID NO.*1	DESCRIPTION	AREA M2	REMARKS
1		"B" Warehouse	15372.619	
2		"C" Warehouse	9446.182	
3		Office annexed to C Warehouse	1002.563	
4		"D" Warehouse	9681.375	
5		Offices annexed to D Warehouse	256.229	
6		"E" Warehouse	9461.907	
7		Offices annexed to E Warehouse	426.014	
8		"F" Warehouse	9226.25	
9		Offices annexed to F Warehouse	313	
10		"G" Warehouse	7383.75	
11		Bungalow in plant section	284.9	
12		Plant Office single storey	562.32	
13	3	Church building	432	
14	4	Bungalow office Port health	128	
15	5	Bungalow office Port health	108	
16	6	Co-operative/Thrift bungalow	315	
17	7	Banks	720	
18	8	Nigerian Air Force (Bungalow)	300	
19	9	Nigerian Army	168	
20		Workshop P&O Nedlloyd	484.8	
21	22	Customs bungalow AD way	147	
22	23	Generator House		
23	24	CPE bungalow office	148	
24	25	Electrical Dept (single Storey)	216	



25	26	Electrical/Battery Charging Room	72	
<b>WORKSHOP</b>				
26	27	(a) Main workshop	720	
		(b) Annexes	272	
27	28	Store/vulcanizing bay	180	
28	29	Personnel Department Bungalow	44	
29	30	Personnel Department	55	
30	31	Spare parts store bungalow	138	
31	32	Spare parts bungalow	9	
32	33	Spare parts bungalow	9	
33	34	Spare parts bungalow	28	
34	35	Spare parts bungalow	66	
35	36	Spare parts bungalow	14	
36	37	Customs/NPA Operations	48	
37	38	Customs/NPA Operations	66	
38	39	Old DS Office at Bullnose	160	
<b>TRAFFIC MANAGER CT</b>				
40	46	Bungalow Office	66	
41	47	Stats/Operations office bungalow	279	
42	48	Traffic Manager Officer 2 storey	510	
43	49	Marketing/Operations bungalow	169	
44		Main Container Terminal	22,503	
45		Roro Terminal	1640	
46		AD way Container Terminal	31,944	
47		Cogefar Stacking Area	24,808	
48		Area adjoining fire service and clinic	28,541	
49		Railway marshalling yard	8,520	
50		Quay length	1,005.19	

*(Signature)*

*Any*



		Berth 15	180m	
		Berth 16	180m	
		Berth 16A	150m	
		Berth 17	150m	
		Berth 18	150m	
		Berth 18A	180m	15.19 extra*2
51		Lamp post	43 posts	
52		Dolphin	72	
53		Roro berth	44.26m	
54		Railway lines		
55		Generators/transformer houses		

- (1) \* This column denotes the number ascribed to the assets indicated on the survey plan.
- (2) \*This shows the difference between the length of the berth and individual berth lengths described under item 50 above.
- (3) The capital values of the assets shall be provided when the valuation exercise is concluded.

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Appendix C

MOVABLE ASSETS

Rail-mounted Quayside Gantry	Portainer	65T	CT65001	1979	S	OK	Fair	7000	20	-	-	-	250
Rail-mounted Quayside Gantry	Portainer	65T	CT65002	1979	US	AP	Fair	7000	20	-	-	-	250
Rail Mounted Yard Gantry	Reggione	65T	CT65003	1979	US	MR, AP	Fair	1000	20	-	-	-	10
Rubber-tyred Gantry 3X3	Valmet	35T	CT35SC001	1988	US	WIP	Fair	800	15	-	-	-	5
Rubber-tyred Gantry 3X3	Valmet	35T	CT35SC002	1988	US	WIP	Fair	800	15	-	-	-	5
Rubber-tyred Gantry 3X3	Valmet	35T	CT35SC003	1988	US	NR	RFD	800	15	-	-	-	5
Rubber-tyred Gantry 3X3	Valmet	35T	CT35SC004	1988	US	WIP	Fair	800	15	-	-	-	5
Rubber-tyred Gantry 3X3	Valmet	35T	CT35SC005	1988	US	WIP	Fair	800	15	-	-	-	5
Rubber-tyred Gantry 3X3	Valmet	37T	CT37SC007	1995	US	AP	Fair	800	15	320.0	160.0	160.0	40

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Rubber-tyred Gantry 3X3	Valmet	37T	CT37SC008	1995	US	WIP	Fair	800	15	320.0	160.0	160.0	40
Rubber-tyred Gantry 3X3	Valmet	37T	CT37SC009	1995	US	WIP	Fair	800	15	320.0	160.0	160.0	40
Rubber-tyred Gantry 3X3	Valmet	37T	CT37SC010	1995	US	AP	Fair	800	15	320.0	160.0	160.0	40
Reach Stacker	Hyster	46t	CT46HH01 <sub>3</sub>	2003	US	AP	Good	600	10	540.0	-	540.0	400
Reach Stacker	Hyster	46t	CT46HH01 <sub>4</sub>	2003	S	OK	Good	600	10	540.0	-	540.0	400
Reach Stacker	Hyster	45T	CT45HH00 <sub>3</sub>	2002	US	WIP	Good	600	10	480.0	-	480.0	440
Reach Stacker	Hyster	45T	CT45HH00 <sub>4</sub>	2002	US	WIP	Good	600	10	480.0	-	480.0	430
Reach Stacker	Hyster	45T	CT45HH00 <sub>5</sub>	2002	US	WIP	Good	600	10	480.0	-	480.0	400
Reach Stacker	Hyster	45T	CT45HH00 <sub>6</sub>	2002	US	WIP	Good	600	10	480.0	-	480.0	400
Reach Stacker	Hyster	45T	CT45HH00 <sub>7</sub>	2002	US	AP	Good	600	10	480.0	-	480.0	400

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Reach Stacker	Terex	45T	CT45TH00 1	2000	US	AP	Fair	600	10	360.0	180.0	180.0	180
Reach Stacker	Terex	45T	CT45TH00 1	2000	US	AP	Fair	600	10	360.0	180.0	180.0	180
Reach Stacker	Terex	45T	CT45TH00 1	2000	US	AP	Fair	600	10	360.0	180.0	180.0	180
Reach Stacker	Terex	45T	CT45TH00 1	2000	US	WIP	Fair	600	10	360.0	180.0	180.0	180
Reach Stacker	Kalmar	42T	CT42KH00 3	2001	US	NR	RFD	600	10	420.0	378.0	42.0	300
Reach Stacker	Kalmar	42T	CT42KH00 4	2001	S	OK	Good	600	10	420.0	-	420.0	300
Reach Stacker	Kalmar	42T	CT42KH01 9	2001	US	NR	RFD	600	10	420.0	378.0	42.0	300
Reach Stacker	Kalmar	42T	CT42KH02 0	2001	US	WIP	Good	600	10	420.0	-	420.0	300
Reach Stacker	Kalmar	42T	CT42KH02 3	2001	US	WIP	Good	600	10	420.0	-	420.0	300
Reach Stacker	Kalmar	42T	CT42KH02 4	2001	US	WIP	Good	600	10	420.0	-	420.0	300



Reach Stacker	Kalmar	42T	CT42KH02 7	2002	S	OK	Good	600	10	480.0	-	480.0	300
Reach Stacker	Kalmar	42T	CT42KH02 8	2002	S	OK	Good	600	10	480.0	-	480.0	300
Reach Stacker	Kalmar	42T	CT42KH03 0	2002	US	AP	Good	600	10	480.0	-	480.0	300
Reach Stacker	Kalmar	42T	CT42KH03 2	2002	US	AP	Good	600	10	480.0	-	480.0	300
Top Loader	Hyster	52T	CT52HH01 1	2003	US	WIP	Good	600	10	540.0	-	540.0	300
Top Loader	Hyster	52T	CT52HH01 2	2003	US	WIP	Good	600	10	540.0	-	540.0	300
Top Loader	Kalmar	42T	CT42KH00 2	1998	US	WIP	Good	550	10	220.0	-	220.0	220
Top Loader	Kalmar	42T	CT42KH01 6	1999	US	AP	Good	550	10	275.0	-	275.0	275
Top Loader	Kalmar	42T	CT42KH02 1	2000	US	AP	Good	550	10	330.0	-	330.0	300
Top Loader	Kalmar	42T	CT42KH02 2	2000	US	AP	Good	550	10	330.0	-	330.0	300

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Top Loader	Kalmar	42T	CT42KH03 3	2001	S	OK	Good	550	10	385.0	-	385.0	300
Top Loader	Kalmar	42T	CT42KH03 4	2001	S	OK	Good	550	10	385.0	-	385.0	300
Top Loader	Kalmar	42T	CT42KH03 5	2001	S	OK	Good	550	10	385.0	-	385.0	300
Top Loader	Kalmar	42T	CT42KH03 6	2001	US	AP	Good	550	10	385.0	-	385.0	300
Top Loader	Kalmar	42T	CT42KH03 7	2001	US	AP	Good	550	10	385.0	-	385.0	300
Top Loader	Kalmar	42T	CT42KH03 8	2001	S	OK	Good	550	10	385.0	-	385.0	300
Top Loader	Hyster	42T	CT42HH00 1	2001	US	WIP	Good	550	10	385.0	-	385.0	300
Top Loader	Hyster	42T	CT42HH00 2	2001	US	WIP	Good	550	10	385.0	-	385.0	300
Top Loader	Hyster	28T	CT28HH00 8	2001	S	OK	Good	320	10	224.0	-	224.0	200
Top Loader	Hyster	28T	CT42HH00 9	2001	US	WIP	Good	320	10	224.0	-	224.0	200

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Top Loader	Hyster	28T	CT42HH01 0	2001	S	OK	Good	320	10	224.0	-	224.0	200
Side Loader	Hammar	20T	CT20HL00 1	1994	US	WIP	Fair	120	10	-	-	-	5
Side Loader	Hammar	20T	CT20HL00 1	1994	S	OK	Fair	120	10	-	-	-	5
Side Loader	Hammar	20T	CT20HL00 1	1994	US	WIP	Fair	120	10	-	-	-	5
Side Loader	Hammar	20T	CT20HL00 1	1994	US	AP	Fair	120	10	-	-	-	5
Side Loader	Hammar	20T	CT20HL00 1	1994	US	AP	Fair	120	10	-	-	-	5
Side Loader	Hammar	20T	CT20HL00 1	1994	US	WIP	Fair	120	10	-	-	-	5
Fork Lift	Kalmar	28T	CT28KH00 5	1997	US	AP	Good	280	12	116.7	-	116.7	80
Fork Lift	Kalmar	28T	CT28KH00 6	1997	US	WIP	Good	280	12	116.7	-	116.7	80
Fork Lift	Kalmar	28T	CT28KH00 7	1997	US	AP	Good	280	12	116.7	-	116.7	80

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Fork Lift	Kalmar	28T	CT28KH01 1	1998	US	WIP	Good	280	12	140.0	-	140.0	100
Fork Lift	Kalmar	28T	CT28KH01 2	1998	US	AP	Good	280	12	140.0	-	140.0	100
Fork Lift	Kalmar	28T	CT28KH01 7	1999	US	WIP	Good	280	12	163.3	-	163.3	125
Fork Lift	Kalmar	28T	CT28KH01 8	1999	US	WIP	Good	280	12	163.3	-	163.3	125
Fork Lift	Kalmar	28T	CT28KH02 5	1999	S	OK	Good	280	12	163.3	-	163.3	125
Fork Lift	Kalmar	28T	CT28KH02 6	1999	US	AP	Good	280	12	163.3	-	163.3	125
Fork Lift	Kalmar	25T	CT25KFr00 8	1993	S	OK	Fair	250	12	20.8	10.4	10.4	8
Fork Lift	Kalmar	12T	CT12KFr00 2	1994	US	AP	Fair	110	10	-	-	-	5
Fork Lift	Kalmar	12T	CT12KFr00 3	1994	US	AP	Fair	110	10	-	-	-	5
Fork Lift	Hyster	6T	CT6HF001	2001	S	OK	Good	60	10	42.0	-	42.0	20
Fork Lift	Hyster	6T	CT6HF002	2001	S	OK	Good	60	10	42.0	-	42.0	20

Army



RF

Fork Lift	Hyster	6T	CT6HF003	2001	S	OK	Good	60	10	42.0	-	42.0	20
Fork Lift	Hyster	4T	CT4HF010	2001	S	OK	Good	42	10	29.4	-	29.4	12
Fork Lift	Hyster	4T	CT4HF011	2001	S	OK	Good	42	10	29.4	-	29.4	12
Fork Lift	Hyster	4T	CT4HF012	2001	S	OK	Good	42	10	29.4	-	29.4	12
Fork Lift	Hyster	4T	CT4HF013	2001	S	OK	Good	42	10	29.4	-	29.4	12
Fork Lift	Kalmar	3T	CT3KF001	1994	US	WTP	Fair	33	10	10	-	-	5
Fork Lift	Kalmar	3T	CT3KF002	1994	US	AP	Fair	33	10	10	-	-	5
Fork Lift	Kalmar	3T	CT3KF004	1993	S	OK	Fair	33	10	11	-	-	5
Fork Lift	Kalmar	3T	CT3KF005	1993	US	WTP	Fair	33	10	11	-	-	5
Fork Lift	Kalmar	3T	L 3011	1996	US	AP	Good	33	10	8	6.6	-	15
Fork Lift	Kalmar	3T	L 3013	1996	US	AP	Good	33	10	8	6.6	-	15
Fork Lift	Kalmar	4T	CT4KF003	1994	US	WTP	Fair	42	10	10	-	-	5
Fork Lift	Kalmar	4T	CT4KF003	1994	S	OK	Fair	42	10	10	-	-	5
Fork Lift	Kalmar	4T	L 4024	1994	US	AP	Good	42	10	10	-	-	20
Fork Lift	Caterpillar	4T	CT4CF009	1993	US	AP	Fair	42	10	11	-	-	20



Fork Lift	Clark	4T	CT4CF014	2001	S	OK	Good	42	10	3	29.4	-	20
Fork Lift	Clark	4T	L 4004	1983	S	OK	Fair	42	10	21	-	-	20
Fork Lift	Clark	4T	L 4009	1983	S	OK	Fair	42	10	21	-	-	20
Fork Lift	Clark	4T	L 4013	1983	S	OK	Fair	42	10	21	-	-	20
Mobile Crane	Demag	65T	CT65004	1980	US	NR	RFD	800	20	-	-	-	20
Mobile Crane	Liebherr	65T	CT65005	2002	US	OD	Good	800	20	720.0	-	720.0	720
Mobile Crane	Liebherr	65T	CT65006	2002	S	OK	Good	800	20	720.0	-	720.0	720
Truck - Flat bed	Mercedes	35T	CT35BT01 2	1998	US	WIP	Fair	90	10	36.0	18.0	18.0	10
Truck - Flat bed	Mercedes	35T	CT35BT01 3	1998	S	OK	Fair	90	10	36.0	18.0	18.0	10
Truck - Flat bed	Mercedes	35T	CT35BT01 4	1998	US	WIP	Fair	90	10	36.0	18.0	18.0	10
Truck - Flat bed	Mercedes	35T	CT35BT01 5	1998	US	AP	Fair	90	10	36.0	18.0	18.0	10
Truck - Flat bed	Mercedes	35T	CT35BT01 6	1999	S	OK	Fair	90	10	45.0	22.5	22.5	10
Truck - Flat bed	Mercedes	35T	CT35BT01	1999	S	OK	Fair	90	10	45.0	22.5	22.5	10

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Truck - Flat bed	Mercedes	35T	CT35BT01 8	1999	S	OK	Fair	90	10	45.0	22.5	22.5	10
Truck - Flat bed	Mercedes	35T	CT35BT01 9	2000	US	AP	Good	90	10	54.0	-	54.0	25
Truck - Flat bed	Mercedes	35T	CT35BT02 0	2000	US	AP	Good	90	10	54.0	-	54.0	25
Truck - Flat bed	Mercedes	35T	CT35BT02 1	2000	US	WIP	Good	90	10	54.0	-	54.0	30
Truck - Flat bed	Mercedes	35T	CT35BT02 2	2000	US	AP	Good	90	10	54.0	-	54.0	30
Truck - Flat bed	Mercedes	35T	CT35BT02 3	2000	S	OK	Good	90	10	54.0	-	54.0	30
Truck - Flat bed	Mercedes	35T	CT35BT02 4	2000	US	AP	Good	90	10	54.0	-	54.0	30
Truck - Flat bed	Mercedes	35T	CT35BT02 5	2001	S	OK	Good	90	10	63.0	-	63.0	30
Truck - Flat bed	Mercedes	35T	CT35BT02 6	2001	S	OK	Good	90	10	63.0	-	63.0	30
Truck - Tractor	Douglas	40T	CT40DT01 3	1986	US	AP	Fair	80	10	-	-	-	5



Truck - Tractor	Reliance-Mercury	40T	CT40MT01 4	1995	US	1 WIP, 1 AP	Fair	80	10	8.0	4.0	4.0	30
Truck - Tractor	Reliance-Mercury	40T	CT40MT01 5	1995	US	1 WIP, 1 AP	Fair	80	10	8.0	4.0	4.0	39
Truck - Tractor	Kalmar	40T	CT40KT01 7	1995	US	AP	Fair	80	10	8.0	4.0	4.0	4
Truck - Tractor	Mafi	40T	CT40MTL0 25	1999	US	1 WIP, 1 AP	Fair	80	10	40.0	20.0	20.0	10
Truck - Tractor	Mafi	40T	CT40MTL0 26	1999	US	1 WIP, 1 AP	Fair	80	10	40.0	20.0	20.0	10
Truck - Tractor	Sisu	40T	CT40010S	1985	US	NR	RFD	80	10	-	-	-	46
Truck - Tractor	Sisu	40T	CT40027S	2002	S	OK	Good	80	10	64.0	-	64.0	20
Truck - Tractor	Sisu	40T	CT40028S	2002	US	AP	Good	80	10	64.0	-	64.0	20
Truck - Fuel Tanker	Mercedes	35T	CT35BT02 7	2001	1 S, 0 US	OK	Fair	110	12	82.5	41.3	41.3	20
Truck - Yard Sweeper	Johnston	35T	CT35BT02 8	2003	1 S, 0 US	OK	Good	120	15	112.0	-	112.0	50
Trailer - Flat bed	Various	40T	10 Nos.	Various	7 S, 3 US	7 OK, 3 WIP	Fair	20	10	100.0	50.0	50.0	90

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Mobile Platform	Hydraulic	CT3700 1		2003	S	OK	Good	60	10	54.0	-	54.0	20	
Generator	Various	100- 1645 kVA	12 Nos.	Various	7 S, 5 US	7 OK, 3AP, 2 NR	Fair	1141	20	855.8	427.9	427.9	40	
							<b>TOTAL</b>			21822.60	2837.00	18985.60		
							<b>Discount</b>				40%	7594.20		
							<b>Reserve</b>					11391.30	15400	

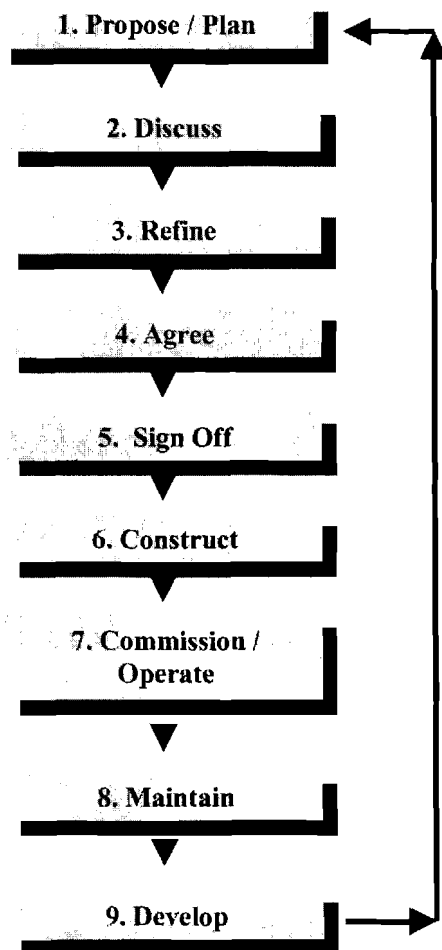


## Appendix D

### **DEVELOPMENT PLAN**

1. Based on estimated volume growth, the Lessee envisions a phased development of the facility.
  - 1.1 In the short term, container operations can be optimised by:
    - (a) Improving yard and vessel planning by implementing a state of the art IT solution
    - (b) Improving operational processes and workflow
    - (c) Investing in modern container handling equipment
    - (d) Ensuring handling equipment is maintained
    - (e) Increasing vessel productivity
    - (f) Establishing a formal Staff Training Program and educating labour and staff
    - (g) Increasing gate efficiency and reducing truck turn time by creating a "Truck Waiting Area"
    - (h) Ensure that existing rail tracks are integrated into the overall terminal/port design to effectively increase use of the Nigeria's rail system
2. The Development Plan can be grouped into several phases. It should be noted that some of these phases, such as the implementation of new Ship to Shore gantry cranes may overlap with other phases such as the development of additional stacking areas.
  - 2.1 Implementation Procedures

The terminal will be continuously developed over the first five years of the concession period and each stage of the interaction process, whether individual engineering items or complete phases of the development, will need to follow this form of approval and end-user interaction.



- (a) The need to have an operational facility whilst continuing to develop the terminal will require a staged handover of the work. All development works will be planned such that ongoing construction works will not cause undue damage or unnecessarily impact operational areas. This will ensure a world-class development is achieved.

## 2.2 Construction Works

The design works will be undertaken in a traditional form, with an engineering consultant completing the design, specification and contract drawings. The works will then be tendered to selected contractors and tenders assessed by the Lessee. Contracts would be awarded on the basis of best value, not necessarily to the lowest tender. A traditional form of contract will ensure that the quality of construction meets world-class terminal standards.

- (a) Based on the anticipated infrastructure works for the project and in order to achieve the earliest possible start for operations on site, works would be separated into specialised works packages, each of which would be tendered to contractors with the relevant experience in the given field.
- (b) The work packages that are anticipated include:
- (i) Demolition

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- (ii) Pavement Construction
- (iii) Building Works
- (iv) Electrical Installations, as required

## 2.3 Preliminary Design Criteria and Performance Specifications

The design of civil engineering elements will be undertaken by internationally recognised consulting engineers. Designs will comply with all relevant Nigerian and International design standards. In particular the designs will be undertaken to ensure that global Best Practice is followed.

- 2.4 A strong emphasis will be placed on environmental and safety considerations. Special consideration will be given to the collection, treatment and disposal of all waste products including waste oil, oil spills, fuel spills and accidental spillage of dangerous materials.

## 2.5 Proposed Structural Design Parameters - Pavement

RTG Running Strips	100mm concrete interlocking blocks over 600mm lean mix concrete. Coloured blocks will be used to differentiate the RTG track locations from container stacking areas and terminal roadways. Steel turning pads will be used at locations where the RTG's are required to cross between stacks.
Terminal Traffic Lanes	100mm concrete interlocking blocks and 20mm sand over 300mm base material and 300mm sub-base material
Container Storage Areas	As for the Terminal Traffic Lanes
Road Truck Areas and Entry Roads	100mm concrete blocks overlying 450mm base and sub-base material.
Reachstacker / Forklift Pavements	As for the RTG running strips. It is proposed to develop pavements throughout the rail siding area to allow some loading of any rake by reachstacker / forklift if desired.
Empty Container Yard Pavements	Graded gravel pavements 450mm thick. These pavements will be maintained through relevening after ongoing operations and settlement.

## 2.6 Pavement Construction

Other elements of the works to be constructed in association with the pavement construction include:

- (a) Reefer access platforms to allow inspection of the reefers
- (b) Concrete surfacing in the channelised gatehouse area
- (c) Concrete surfacing for the fuelling area and the workshop external slabs
- (d) Light tower footings
- (e) Kerb and channel
- (f) Site signage

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- (g) Line marking
- (h) Fencing and gates

## 2.7 Buildings

The buildings to be developed to support the terminal operations include a terminal administration building, canteen, staff amenities building, workshop and entrance and exit gate houses.

### (a) Administrative Building

The Terminal Administration and Amenities Building is expected to have a total floor area of approximately 3,000 square metres. The expected facilities to be provided include terminal administration, finance and personnel offices, terminal electronic data processing, customs, management, operation control, boardroom and shipping company offices. The shipping company offices will be located on the ground floor and will be accessed via a separate entrance from the main terminal building entrance.

### (b) A Canteen with a floor area of approximately 450 square metres will be provided.

### (c) A staff amenities building with a floor area of 300 square metres will be provided. Staff will enter this building from the car park / bus stop area, through turnstiles which will register their attendance at the terminal. They will then be able to exit this facility into the main terminal operating area through a different set of turnstiles on the operations side.

### (d) The Workshop and Workshop Office building will provide the following features:

- (i) Facilities for the servicing and repair of all container handling equipment.
- (ii) total floor area of approximately 1,500 square metres of which approximately 1,000 square metres will be for Workshop Area and 500 square metres for Workshop Office and Store Area.

### (e) The Workshop will contain modern facilities to allow servicing and repair of the machines and equipment used at the Terminal. Features will include:

- (i) Inspection pits
- (ii) Lubrication bays
- (iii) Machine shop, welding shop
- (iv) Battery store and charging area
- (v) Electronics workshop
- (vi) Storage systems for spare parts
- (vii) Tyre store
- (viii) Waste oil collection
- (ix) Collection of all slab wash down runoff

### (f) Terminal Entrance and Exit Gates will be constructed to handle the traffic flows to and from the terminal. A roof structure over the gates and a small office will also be

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provided. A small office facility and a roof over the gates will also be provided at this location. An Agent's Building at the Truck Queuing Area for shipping agents, a bank, a post office and toilets may also be constructed at this location.

- (g) Toilet facilities will be constructed on the wharf and also near the Workshop and Administration areas.

## 2.8 Utilities (Services)

Notwithstanding the Lessor's obligations under the Agreement, those services and utilities provided for include storm water run-off, sewerage lines, water supply, telephone and communications conduits as well as spare ducts as appropriate to allow for future expansion. Electrical supply is also provided for and the components of this supply are detailed in the following section.

## 2.9 Storm water Run-Off and Disposal

Pavement cross falls in the Container yard will be a maximum 1 in 100 to suit the RTG operations, and will fall towards slotted drains which run parallel to the RTG operations. The slotted drains will discharge to pipe drains, which will discharge into the port.

- (a) Strainers and / or collection pits will be fitted at the discharge locations to help to prevent any solids being discharged into the harbour.
- (b) The covers on box drains will be designed to support the heavy wheel loads applicable to the container handling equipment that will be present in the terminal.
- (c) In the buildings and entrance areas, the slotted drains will be supplemented by a network of pipe work and pits as required, to ensure the collection of all storm water runoff from terminal pavements.
- (d) The design rainfall return period for box drains and pipe drains will be 1 in 10 years.
- (e) The design of the storm water system will take account of international design requirements for the collection, treatment and disposal of accidental spillage on the terminal pavements. Storm water shut off gates will be provided at each discharge point such that if a spill occurs within the terminal, the gates can be closed to contain the spill within the terminal's storm water system until it can be disposed of according to the requirements for the specific type of spill.

## 2.10 Sewerage

A sewage treatment plant will be installed to ensure that all foul water from the offices, canteen and amenities areas is collected and treated to internationally accepted standards.

## 2.11 Water Supply

A connection to the existing local water supply system is envisaged.

A water tank of adequate capacity will be built within the terminal grounds as a storage and distribution point for potable water. Potable water will be provided to all buildings.

If necessary, pumps will be installed to ensure adequate water pressure is available for all fresh water and fire water supplies.

## 2.12 Telephones and Communications

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- (a) Reticulation of other cabling throughout the terminal will be required. This will cater for CCTV, communication and other general requirements including:
  - (i) ship to shore communications at the quay
  - (ii) connection of entrance and exit gates at the terminal
  - (iii) connection of entrance and exit gates
- (b) connection of workshop and store buildings
- (c) connection of reefer panels
- (d) other connections as necessary

2.13 It is also proposed to install some general conduits for communication services throughout the terminal.

#### 2.14 Waste Control Systems

- (a) The terminal will be provided with waste control systems in accordance with international standard requirements. The proposed systems include:
  - (i) A bunded hazardous container storage area
  - (ii) Waste oil collection facilities
  - (iii) A bunded fuel area and fuel spill monitoring arrangements
  - (iv) A waste water collection system to collect the washdown from the fuelling area, the equipment wash area, the workshop slab etc and to hold this in a pit from which it will be treated through an on-site oil-water separator.
- (b) Waste material will be collected and disposed of offsite by an approved contractor.

#### 2.15 Electrical and Lighting

- (a) The proposed development of the terminal includes a requirement for provision of high and low voltage electrical systems of sufficient capacity to:
  - (i) service the Ship to Shore gantry cranes
  - (ii) provide power for the illumination of the entire terminal area
  - (iii) service power outlets for the refrigerated container slots, allowing four high stacking
  - (iv) provide power and lighting to all buildings in the terminal area
  - (v) provide power to the RTG sockets throughout the container yard, and
  - (vi) service the electrical requirements for all trade waste and fuel spill monitoring systems
- (b) Yard Lighting
  - (i) Details of the electrical consumption requirements are defined below.
  - (ii) Terminal lighting will be allowed to provide an average of 20 lux intensity throughout the operating areas of the terminal.

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- (iii) High-pressure sodium fittings will be mounted on new high-level masts to provide the optimum levels of lighting.
- (c) Other electrical works to be undertaken as part of the terminal redevelopment works include provision of:
  - (i) an emergency generator to service some of the reefer requirements in the event of power failure
  - (ii) A small sub-station to service the buildings area including switchgear and cabling
  - (iii) An emergency generator to cater for the essential building requirements

## 2.16 Energy Consumption - Power Load and Demand

The proposed new container terminal development will contain all the features of a modern first class terminal, and as such will require a reliable power supply system. This includes requirements for harmonic filtering and power factor correction banks and the benefits of power savings and low harmonic emissions obtained through the use of sinusoidal regenerative power drives with local dynamic power factor control for the cranes. The following energy requirements have been considered when defining the electrical supply requirements.

### (a) Terminal Power Demand

The estimated phased power demand for the new container terminal development is shown in the following table.

#### 2.15.2 Power Demand for Container Terminal

Description	Power Demand after Year 1		Power Demand after Year 5	
	(Minimum Equipment)		(Full Equipment)	
	Connected Load (kVA)	Maximum Demand with Diversity (kVA)	Connected Load (kVA)	Maximum Demand with Diversity (kVA)
<b>Wharf and Container Yard</b>				
STS Gantry Cranes: 1500 kVA per Crane	<u>6@1500</u> kVA = 9,000	5,400	<u>8@1500</u> kVA = 12,000	7,200
RTG Yard Sockets: 15 kVA per RTG	<u>18@15k</u> VA= 270	270	<u>30@15</u> kVA = 450	450

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Description	Year 2		Year 3	
	Power Demand after (Minimum Equipment)		Power Demand after (Full Equipment)	
	Connected Load (kVA)	Maximum Demand with Diversity (kVA)	Connected Load (kVA)	Maximum Demand with Diversity (kVA)
Reefer Points: 15kVA per socket	504@10 kVA= 5,040	2,520	504@10 kVA= 5,040	2,520
Light Towers + Field Sockets: 25 kVA per tower	30@25k VA= 750	750	30@25k VA= 750	750
<b>Terminal Buildings</b>				
Administration and Amenities Building	500	400	500	400
Canteen	150	120	150	120
Workshop	300	210	300	210
<b>Total Load</b>	<b>17,010</b>	<b>10,370</b>	<b>20,690</b>	<b>12,700</b>
<b>Adopted Maximum Demand</b>		<b>11 MVA</b>		<b>13 MVA</b>

(b) Notes

- (i) Loads from miscellaneous smaller buildings, fire pump house, lighting, trade waste systems and such existing services are considered minor and do not influence the determination of the Maximum Power Demand.
- (ii) In the longer term additional QCs and additional services (e.g. reefer points) may be utilised upon which the Maximum Demand could be revised upwards.
- (iii) The anticipated maximum power demand of 13MVA is substantially more than may be realistically available. APMT anticipates that this additional power will be made available by the Lessor, failing which further discussions should take place to find a mutually agreeable solution.

2.17 Back Up Systems

It is furthermore proposed to install two generators at the site to cater for possible power outages. One generator will be provided to supply the essential power demands for the reefer

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area. The second generator will provide emergency back up supply to the essential power requirements in the administration building.

### 3. Construction Technology

#### 3.1 Pavements

Pavement works will include construction of pavements and installation of drainage and service conduits.

3.2 The preliminary designs, which have been considered, allow the sub grade level for the pavements to be constant. Pavements would be built up in layers, with all layers subject to specified compaction requirements. On-site testing will ensure these compaction requirements are achieved.

3.3 The terminal roadways and container stacking areas are proposed to be constructed using sub-base and base layers with an interlocking block pavement surfacing. The RTG tracks will be constructed either using interlocking blocks overlying lean mix concrete or a sub-base beneath an un-reinforced concrete beam. The selected profile will be confirmed during the detailed design phase. Different colours of interlocking blocks will be used to differentiate between the different pavement types. It is anticipated that the interlocking blocks will be hand laid using skilled or trained local labour.

3.4 Drainage systems will be installed in pre-formed trenches with appropriate bedding sand placed before the pipework is installed. Heavy-duty reinforced concrete pipes will be installed between reinforced concrete pits and to provide connections between the reinforced concrete box drains. The drainage for the terminal area will consist primarily of reinforced concrete box drains that will be cast in place, with heavy-duty slotted lids designed to cater for loading by the terminal's equipment. Appropriate cover to the reinforced concrete pipes will be specified to ensure that damage to pipes is not caused by the operation of the terminal's equipment above the pipe locations.

3.5 Waste water pipes will utilise high-density polyethylene (HDPE) pipework or similar technology.

3.6 The general services conduits throughout the yard will be heavy-duty PVC pipes or similar technology.

#### 3.7 Buildings

The workshop building will have large access doors along its main sides, to allow through access for vehicles entering and leaving the equipment service bays. This building is anticipated to be steel framed structure, with roller doors installed to allow these equipment service bays to be secured. It is also proposed that the workshop will be fitted out with an overhead crane to allow for handling of engines to and from equipment as well as for handling of other heavy machinery. The workshop floor will be fitted with a minimum of two service pits, to allow safe access beneath the terminal's equipment during maintenance works.

3.8 The administration building, canteen and amenities building are proposed to be reinforced concrete structures which will be fitted out in accordance with the expected standard for a world class container terminal. Ducted air-conditioning will be provided throughout the administration building.

### 4. Supervision

In order to ensure the quality of the construction works, the Lessee plans to have a site supervision team resident in Apapa whose responsibility would include management and



supervision of the works. The site supervision team would be supported by local staff with visits from international specialists as and when required.

- (a) Frequent meetings between the construction companies and the site supervision team would be held to monitor the works and to ensure that the construction programs are being met.
- (b) All works would be scheduled to suit the proposed start of operations with programs amended where necessary to ensure that the required areas of site are completed in accordance with the terminal's operational needs.
- (c) Engineering inputs into the project implementation will come from:
  - (i) Lessee's engineering staff,
  - (ii) consulting engineers
  - (iii) Locally employed engineering staff
  - (iv) Specialist sub-consultants, such as environmental specialists
  - (v) Other sub-consultants as required
- (d) The team will have an established track record in planning, design and implementation of container terminal developments and upgrades.

#### 5. Construction Contractors

The required construction works would be separated into key packages, each of which would be competitively tendered to selected local and international construction companies with the relevant experience.

- 5.1 Where possible, consideration will be given to suitably qualified local Nigerian companies.

#### 6. Development Phasing

Further optimisation of the terminal will necessarily involve substantial investments in infrastructure and superstructure. The phased approach to development of Apapa container terminal allows for the requirement for existing operations to be impacted as little as possible.

##### 6.1 Phase I: Convert to Rubber Tired Gantry (RTGs) and improve superstructure

Converting the existing yard operation into a dedicated RTG operation (common practice in modern terminal design) as well as constructing the necessary terminal buildings and superstructure will substantially increase the terminal's capacity and efficiency.

- (a) Implement RTG operation and additional yard handling equipment in existing stacking areas to meet volume demand
- (b) Implement an advanced IT terminal system
- (c) Improve gate and road congestion by incorporating a "Truck Waiting Area" immediately outside the gate complex. Trucks will no longer block the roads adjacent to the terminal when waiting to pick-up and deliver containers
- (d) Provide a dedicated area for customs examination
- (e) Demolition for new stacking area of approximately 20 hectares



- (f) Pave and provide drainage and lighting to refurbished Premises
- (g) Construct new Maintenance and Repair Shed
- (h) Improve terminal security by providing high quality fencing for the terminal
- (i) Construct new gate complex. Design will be further considered, but could likely have 2 separate gates (1 x in and 1 x out) in order to reduce congestion

6.2 Phase II: Invest in further construction of Terminal buildings

- (a) The Lessee envisions improving the working environment for government officials and employees by construction of a new administration building, which also accommodates customs officials

6.3 Phase III: Invest in new Ship to Shore (STS) Gantry cranes

- (a) In order to efficiently handle increased volume, the Lessee envisions investing in up to 10 new STS cranes over the concession period

6.4 The project implementation has been designed to meet all of the time, equipment and facility requirements in the Request for Proposals. The Lessee has reviewed the existing facility, drawn on our extensive development and implementation experience from developments of other global container terminals, and contracted consulting engineers to review designs for the conversion of the existing area to take maximum advantage of the site.

7. Equipment

7.1 Based on the envisaged volume development, equipment investments are planned as follows:

Year of Acquisition	Type of Equipment	Number to be Acquired
1	Refurbish Existing STS Gantry Cranes	2
1	Refurbish existing Liebherr mobile cranes	2
1	RTG	6
1	Terminal Tractor	26
2	RTG	10
3	STS Crane	4
3	RTG	4
3	Reachstacker	3
3	Terminal Tractor	4
4	STS Crane	4
4	RTG	12
4	Terminal Tractor	18
5	-	-
6	Empty Handler	14
6	Terminal Tractor	26
7	Empty Handler	2
7	Terminal Tractor	4
8	STS Crane	2
8	Terminal Tractor	4
8	RTG	8
9	STS Crane	2
10	Reachstacker	3
11	Terminal Tractor	26

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12	Terminal Tractor	4
13	RTG	6
14	RTG	10
15	RTG	4
16	RTG	12
17	STS Crane	2
17	Terminal Tractor	26
17	Reachstacker	3
18	STS Crane	4
18	Terminal Tractor	4
19	-	-
20	-	-
21	Terminal Tractor	26
22	Terminal Tractor	4
23	Reachstacker	3
24	-	-
25	-	-

7.2 Equipment Capacity is measured in Hours Per Year for Reachstackers, Empty Handlers and Terminal Tractors. Capacity is measured in Moves per Year for STS Cranes and RTGs.

#### 8. Summary

8.1 The main objectives of the Development Plan to be adopted for Premises will be:

- (a) to handle the projected containerized volume moving through Apapa using the existing (and subsequently expanded) facility
- (b) to make substantial investments in new handling equipment
- (c) To operate the terminal with world class efficiency for all terminal users
- (d) To be a profitable enterprise for both the operator and owners, contributing to growth in Nigerian trade as well as the local economy, including employment
- (e) To be a safe, secure enterprise conforming to Nigerian and international standards, rules and regulations on Health and Safety, security and environmental aspects.

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## **Appendix E**

### **OPERATIONS**

#### **A. OPERATIONS**

During the Term, the Lessee shall perform the following Operations on the Premises, utilizing the Fixed Assets, the Movable Assets, and such other assets to be added to the Lease Property pursuant to the Development Plan:

1. the handling and delivery services for the Containers and cargo contained therein, including without limitation stevedoring, loading and unloading of vessels, transporting, sorting, storage and the procurement, operation and maintenance of equipment for the foregoing;
2. the repair and maintenance of the Fixed Assets and the Movable Assets.

#### **B. ADDITIONAL SERVICES**

During the Term the Lessee may, at its sole discretion, also perform additional services on the Premises, utilizing the Fixed Assets, the Movable Assets and such other assets to be added to the Lease Property pursuant to the Development Plan (the "Additional Services") including, but not limited to:

1. warehousing, stuffing and stripping/unstuffing, cleaning and fumigating, and consolidation, and the procurement, operation and maintenance of equipment for the foregoing;
2. ship shore handling of supplies for vessels
3. project and oversized cargo handling services;
4. terminal handling;
5. inland depot transfers; and
6. all other activities necessary to conduct Operations.



## Appendix F

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### **MECHANISM FOR THE COLLECTION OF THROUGHPUT FEES**

The Lessor and the Lessee shall hold a monthly voyage meeting (the "Voyage Meeting") not later than five (5) Business Days following the end of each calendar month, at which the Parties shall reconcile and agree the total number of Containers discharged by vessels who have used the Premises in the preceding calendar month. Within five (5) Business Days of the meeting, the Lessor shall raise an invoice for the Throughput Fee based upon the number of Containers discharged by vessels who have used the Premises as agreed between the Parties in the Voyage Meeting.

### **DELAY IN PAYMENT**

Subject to the provisions of Section 18.5 of the Agreement, the Lessee shall make payment to the Lessor by telegraphic transfer within thirty (30) days of the date of the relevant invoice. If any agreed sum is not paid within such period, the Lessee shall pay the Lessor interest at a rate equal to LIBOR plus five per cent (5%) on the unpaid amount, until the date of actual payment.

### **CHANGE TO PROJECTED VOLUMES**

Each Party shall use its reasonable efforts to effectuate the achievement of the Projected Volumes by the Lessee under this Appendix. At the end of an Operating Year, in the event that the actual volume throughput for that Operating Year varies by more than +/- ten percent (10%) of the Projected Volumes (as specified in the table above), the Fixed Payments for that Operating Year shall be adjusted by an equivalent percentage.

In the event that the Projected Volumes are:

- (a) less than the actual volume throughput for that Operating Year, the Lessee shall pay the Lessor the additional Fixed Payments for that Operating Year within thirty (30) days of the end of that Operating Year;
- (b) more than the actual volume throughput for that Operating Year, the Lessor shall deduct the reduction in Fixed Payments for that Operating Year from the first Fixed Payments due to the Lessor in the following Operating Year from 1 January until fully deducted.

### **BANK ACCOUNT DETAILS**

NOTE: Unless otherwise directed by the Confirming Party, irrespective of the provisions in any section of this Agreement relating to payment of fees, all fees payable by the Lessee to the Lessor shall be payable to the Federal Government of Nigeria through an account designated by the Confirming Party as stated below:

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## **Appendix G**

### **BERTHS**

The Lessor has agreed to undertake the Real Property Survey of the real property in the port to be leased to the Lessee subject to and in accordance with this Agreement. Parties shall ascertain the parameters of the Berths pursuant to the conduct of the Real Property Survey. The results of the Real Property Survey ascertaining the parameters of the Berths shall form an integral part of this Agreement. Parties agree that the conduct of the Real Property Survey shall be a condition precedent to this Agreement as more particularly set out in Section 7.3(j) of this Agreement.

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## APPENDIX H

### PERFORMANCE REQUIREMENTS

#### A. PERFORMANCE REQUIREMENTS

##### 1. Crane Production Rates

- 1.1 For the purposes of this Schedule, "Crane Production Rate" shall mean the total number of Container moves (including all shifting moves) or (gross) moves per crane on any vessel divided by the number of hours from the time of commencement of the first Container move until the time of completion of the final Container move in respect of that vessel.
- 1.2 The Lessee shall be required to obtain the following minimum Crane Production Rates during the Term:

Ship to shore ("STS") Crane	
	20
Mobile	
	13
Vessel	
	8
STS Crane	
	22
Mobile	
	14
Vessel	
	8
STS Crane	
	26
Mobile	
	15
Vessel	
	8

\*if two or more different types of crane are used to perform crane moves, the Crane Production Rate in respect of that vessel shall be the weighted average of the Crane Production Rates to be achieved by the types of crane being used.

##### 2. Annual TEU Throughput

- 2.1 The Lessee shall be required to obtain the following annual TEU throughput per STS Crane during the Term:

Operating Year 1	
	75,000

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Operating Year 2	85,000
Operating Year 3	98,000

**B. EXCEEDING PERFORMANCE REQUIREMENTS**

1. If in an Operating Year:

- (a) the average Crane Production Rate for each type of Vessel is between ten per (10%) and twenty per cent (20%) greater than the stipulated Crane Production Rate for such Operating Year for such year;
- (b) the average dwell time for each category of TEU at the Premises is between eighty per cent (80%) and ninety per cent (90%) of the stipulated dwell time; and
- (c) the annual throughput per STS Crane is between ten per (10%) and twenty per cent (20%) greater than the stipulated annual TEU throughput

then the Fixed Payment due and payable by the Lessee to the Lessor for such Operating Year shall be reduced by two and a half per cent (2.5%).

2. If in an Operating Year:

- (a) the average Crane Production Rate for each type of Vessel is more than twenty point one per cent (20.1%) of the stipulated Crane Production Rate for such Operating Year for such year;
- (b) the average dwell time for each category of TEU at the Premises is less than seventy nine point nine per cent (79.9%) of the stipulated dwell time; and
- (c) the annual throughput per STS Crane is more than twenty point one per cent (20.1%) of the stipulated annual TEU throughput

then the Fixed Payment due and payable by the Lessee to the Lessor for such Operating Year shall be reduced by five per cent (5%).



## Appendix I

### OPERATIONS RATES

#### A. OPERATIONS RATES

The Lessee shall charge from the Effective Date until the date that occurs on the first (1st) anniversary thereof rates for the handling of Containers between a ship and another ship, road vehicle or rail wagon which are not greater than the rates set forth below:

#### *Maximum Tariffs for the Cargo Dues and Delivery Charges of Containers*

Category		Cargo Dues USD	Delivery Charges Naira	Remarks
Laden IMP	20'	90	5,015	1. The charge is paid by the consignee. 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. For Flat Containers, the max. delivery charge is N 5,186 and for Open Tops, the max. delivery charge is N 7,073 4. For Reefers, there is an additional delivery charge of N 1,750 5. For handling during the weekend, the consignee is charged with an additional N 294 6. For Unstuffing, the consignee is charged with an additional N 714 7. For Direct Delivery, the consignee is charged with an additional N 168
	40'	130	6,268	1. The charge is paid by consignee 2. For Flat Containers, the max. delivery charge is N 6,707 and for Open Tops, the max. delivery charge is N 9,531. 3. For Reefers, there is an additional delivery charge of N 2,625 4. For handling during the weekend, the consignee is charged with an additional N 378 5. For Unstuffing, the consignee is charged with an additional N 903 6. For Direct Delivery, the consignee is charged with an additional N 210
Laden EXP	20'	70	3,687	The charge is paid by the line
	40'	100	5,567	The charge is paid by the line
Empty IMP	20'	20	5,015	The charges are paid by the line
	40'	40	6,268	The charges are paid by the line
Empty EXP	20'	20	1,264	The charges are paid by the line
	40'	40	1,896	The charges are paid by the line
Local Laden IMP (TWA /Coastal)	20'	70	5,015	Please refer to the section on Laden IMP for 20' containers for Local Laden IMP.
	40'	100	6,268	Please refer to the section on Laden IMP for 40' containers for Local Laden IMP
Local Laden EXP (TWA /Coastal)	20'	70	3,687	The charges are paid by the line
	40'	100	5,567	The charges are paid by the line
Local Empty IMP	20'	16	5,015	The charges are paid by the line

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Category		Cargo Dues USD	Delivery Charges Naira	Remarks
(TWA /Coastal)				
	40'	28	6,268	The charges are paid by the line
Local Empty EXP (TWA /Coastal)	20'	20	3,687	
	40'	40	5,567	The charges are paid by the line
<b>Explanatory Notes</b>				
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic.				
Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S				

Note: Maximum tariff service means the single movement of an inbound Container, transferring it from its stowage position in the ship to the dock apron at the vessel's side, sorting it once in accordance with instructions received from the vessel and stacking it in the container yard in readiness for subsequent repositioning back to a ship for transshipment, or to the ICD, or placement onto a inland vehicle, or for internal movement to the Customs examination area. The reverse of the above movements applies for outbound containers.

The Operation Rates shall also be adjusted throughout the Term on an annual basis in accordance with the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 during the previous year.

#### **B. FREE STORAGE TIME**

Unless agreed otherwise with the Lessor and the Regulator, the Lessee shall provide three (3) days free storage time for import Containers, one (1) day free storage time for export Containers, three (3) days free storage time for Containers in transit to neighbouring countries, and three (3) days free storage time for empty Containers which have moved from one ship to another without crossing the property boundary of the Premises. The Lessee shall be permitted to determine its own storage charges for Containers after the expiration of the foregoing time periods, subject to the approval of the Regulator or any Governmental Authority charged with carrying out such regulation.

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## Appendix J

### **STAFFING AND SUCCESSION PLAN**

#### **1. FOREWORD**

- 1.1 A basic requirement for achieving effective and efficient Operations is the availability of a dedicated and well-trained workforce. A development framework therefore is to be established, including training plans and programs.

#### **2. THREE PHASES**

- 2.1 Three phases in human resource development and training requirement can be distinguished:

- (a) **In the short term**, it has to be ensured that the management and the key operational staff required be adequately trained for the jobs they have to perform, and that the Lessee commences Operations smoothly and efficiently. During this period the emphasis will be familiarization programs conducted at advanced container terminals, comprehensive technical training programs organized by equipment manufacturers and practical job related training conducted on site.
- (b) **In the medium term**, when the Premises advance as a container handling facility and is expected to undergo a strong growth, the emphasis will be placed on improving the skills of the (then) current staff as well as organizing the training of new recruits. There will be less dependence on overseas training and on manufacturer's technical training. The Premises will be increasingly dependent on its own in-house resources and on other training resources within Nigeria.
- (c) **In the longer term** when the Premises have matured to an established facility, the emphasis of training will increasingly tend towards sustained development of personnel, for example by multi-functionality and by specialist training (safety, marketing, etc.).

- 2.2 During the early years of employment and prior to reaching this longer term multi-functional stage, personnel will be trained in one specific function in order to achieve a certain degree of experience in this function. After this initial period, training for a second and subsequently a third function is implemented, after which job rotation would be introduced in accordance with pre-defined schedules that guarantee the personnel maintain the skills they obtained by training.

#### **3. OBJECTIVES**

- 3.1 The Lessee's objectives are:

- (a) improving the work environment;
- (b) providing fair and equal opportunities to all;
- (c) increasing competitiveness of the business through customer focus, safety, efficiency, and flexibility;
- (d) encouraging employee participation in the business; and
- (e) recognizing employees' contributions and family responsibilities.

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- 3.2 In recognition of the Lessee's commitment to its employees, it is expected that the employee will demonstrate his/her own commitment through good work ethics, safe work habits, fidelity and customer focus.

#### **4. EMPLOYMENT**

- 4.1 The Lessee shall hire employees on the basis of its needs in accordance with its annual manpower budget. Vacancies shall be filled with candidates who possess the academic qualifications, work experience and exemplary safety and performance record specified by the Lessee in line with job requirements.
- 4.2 Employees seconded to the Lessee shall be appointed either by contracts of secondment or according to the Staffing Plan. The decision to hire a secondee must be taken by the Board of Directors.
- 4.3 Applicants for employment with the Lessee must submit their applications on the Lessee's "Application for Employment" form and attach to the application all certificates and documentary evidence. Applicants will be asked to appear for an interview and to pass any tests which the Lessee deems necessary in order to evaluate their suitability.
- 4.4 Non-locals must be in possession of valid official documents permitting international travel. Their employment shall be contingent upon obtaining prior approval from the competent local authorities. They shall be responsible for maintaining the validity of their official documents throughout their employment with the Lessee.

#### **5. HOURS OF WORK AND HOLIDAYS**

- 5.1 The Lessee's business operation runs for twenty-four (24) hours per day, seven (7) days a week. In order to staff for continuous Operations, several shifts and work schedules are required. It is the Lessee's policy to establish regular working hours for all employees, and employees are duly notified of their work schedules through their immediate supervisors. Employees are expected to report to work promptly at the start of their work shift, to take the breaks and meal periods provided for each work schedule, and to work efficiently during the workday. Employees are required to report and to obtain approval for absences, late reporting and early leaving from their immediate supervisor or person in charge.
- 5.2 The General Manager establishes weekly working hours, while the daily working hours are established by the Departmental Managers who must consult with the Human Resources Development and Training department.

#### **6. PRO FORMA SHIFT SCHEDULE**

- 6.1 In an effort to improve the working conditions of the work force, the Lessee shall aim to implement a twenty four (24) hour a day shift system.
- 6.2 There will be a fixed shift pattern. When a shift works five (5) day shifts in a row, the shift will have two (2) fixed days off. When the shift works five (5) night shifts in a row, the shift will have three (3) days off in a row. This works out to twenty (20) days working and ten (10) days off in a thirty (30) day month.
- 6.3 Normal working hours for employees are two hundred and eight (208) hours a month (forty eight (48) hours a week x four point three three (4.33) weeks a month).
- 6.4 The normal working days would be as follows:
- (a) **Thirty (30) day month**

All shifts will work an even twenty (20) days in a thirty (30) day month, which means that they have ten (10) days off. That means that each and every shift will work

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thirty two (32) hours overtime (twenty (20) days x twelve (12) hours each day = two hundred and forty (240) hours per month. The total amount of work hours allowed is two hundred and eight (208) hours. Thus, two hundred and forty (240) less two hundred and eight (208) = thirty two (32) hours).

The shifts has to be scheduled for ten (10) hours and twenty four (24) minutes to accrue the correct overtime per month (thirty two (32) hours / twenty (20) days = one point six (1.6) hours per day).

(b) **Thirty one (31) day month**

Two (2) shifts will work twenty one (21) days in a thirty one (31) day month, which means that they have ten (10) days off, and one shift will work twenty (20) hours with eleven (11) days off. That means that the shifts that work twenty one (21) days will work forty four (44) hours overtime (twenty one (21) days x twelve (12) hours each day = two hundred and fifty two (252) hours per month. The total amount of work hours allowed is two hundred and eight (208) hours. Thus, two hundred and fifty two (252) less two hundred and eight (208) = forty four (44) hours). One shift will still only work thirty two (32) hours overtime.

6.5 The actual new twelve (12) hour shifts will run as follows:

Day Shift: 07:45 → 20:15

Actual Scheduling would be from 07:45 → 18:39

The overtime per shift would be 1 hour and 36 minutes

Night Shift: 19:45 → 08:15

Actual Scheduling would be from 19:45 → 06:39

The overtime per shift would be 1 hour and 36 minutes

7. **OVERTIME**

- 7.1 The Lessee may, within the limitations of the labour law, request employees to work after the established working hours and on holidays. Such additional work is considered overtime work.
- 7.2 Department Managers and Assistant Managers shall ensure the effective utilization of the employees' working time and establish the necessary controls for the minimum use of overtime.
- 7.3 Overtime work should not be undertaken unless the employee concerned has been specifically instructed to do so by his Manager. If the overtime to be worked exceeds four (4) hours a day, the approval of the Department Manager concerned must be obtained.
- 7.4 The necessary approval for overtime work may be obtained retroactively only in exceptional cases.
- 7.5 All Managers concerned are required to control and report weekly on the use of authorized overtime work.
- 7.6 Only non-management employees are eligible for overtime pay or for compensatory time off, equivalent to the number of overtime hours worked. Compensatory time off is to be taken only with prior Lessee approval.
- 7.7 Overtime pay shall be calculated as follows:



Regular Hourly Rate =

$\frac{12 \times (\text{Monthly Basic Salary})}{365 \text{ days} \times \text{Basic Daily Working Hours}}$

7.8 Overtime Hourly Rate during Normal Working Days =

Regular Hourly Rate x 125%

7.9 Overtime Hourly Rate during Weekly Rest Periods or during Lessee Recognized

Holidays = Regular Hourly Rate x 150%.

## 8. **SALARIES AND INCREASES**

8.1 A new employee shall normally be hired at the minimum of the salary range established for his job subject to market forces.

8.2 New employees whose qualifications and experience exceed the minimum requirements of the job may be engaged at a basic salary above the minimum of the grade range established for the job.

8.3 Trainees whose academic qualifications and/or work experience are below the minimum requirements of the job, or who are placed on trainee status, may be employed at a basic salary below the salary range established for their respective full jobs only with the approval of the Human Resources Development and Training department. The period of training for such trainees shall be specified at the time of employment by the recruiting or appointing manager who shall be guided by the training programs established by the Human Resources Development and Training department.

8.4 Appropriate action shall be taken to adjust the status and salaries of employees hired below the grade range established for the job to the minimum of the range in the light of their ability and productivity demonstrated on the job during the period of their training.

8.5 Salaries shall be paid monthly by way of cash, check, bank transfer or a combination of these methods (whichever is determined by the Lessee).

## 9. **INCENTIVES**

9.1 One of the key objectives of the Lessee is to increase vessel productivity. Vessel productivity is accomplished by joint efforts of all shift workers on the Premises and is measured in Moves per Gross Crane Hour. Factors that affect vessel productivity are truck turn around time that can be measured from the time a truck enters the gate until it exit the gate and equipment downtime that can that can be measured in two different ways for preventative and breakdown periods respectively. As vessel productivity increases, the variable cost associated with the operations decreases while customer satisfaction increases.

9.2 The Lessee shall develop a productivity bonus scheme to provide a monetary incentive to all shift workers for achieving increases in vessel productivity. The incentive amount paid should be reduced by cost to repair terminal operating equipment damaged by shift workers due to negligence.

### 9.3 **Operational employees**

(a) Eligible Operational employees shall include:

(i) vessel operations;

(ii) yard operations;

Am

File



- (iii) weighbridge operations;
  - (iv) CFS operations;
  - (v) LCL operations;
  - (vi) gate operations; and
  - (vii) planning operations.
- (b) All full time shift workers listed above that have passed their probation period shall be eligible. The productivity bonus scheme is based on the Moves per Gross Crane Hour average for all vessels that call in a calendar month. The incentives will be based on the productivity scales below for all vessels that call in a calendar month. The benchmarks for Moves per Cross Crane Hour will be amended as productivity increases and the bar should ideally be raised accordingly.

Target MGPH per month	Immediate Incentive
20.00 to 21.99	12%
22.00 to 23.99	14%
24.00 to 25.99	16%
25.00 to 26.99	18%
26.00 & above	20%

- (c) The incentive payment for equipment operators will be reduced each month by twenty five per cent (25%) for reported equipment or container damage and by one hundred per cent (100%) for equipment or container damage due to negligence.
- (d) The incentive payment for the whole operations group will be reduced each month by twenty five per cent (25%) for reported workers injury that is of a serious nature and by fifty per cent (50%) for reported worker injury that is of a serious nature due to negligence.
- (e) Payment of the productivity bonus scheme will be within fifteen (15) working days after completion of the calendar month in which the required incentive level was attained.
- (f) Employees on extended leave of absence will only be eligible for a prorated bonus portion of the incentive payment.

#### 9.4 Maintenance employees

- (a) All Maintenance employees shall be eligible.
- (b) All full time shift workers that have passed their probation period are eligible.
- (c) The productivity bonus scheme is based on the average equipment availability over a calendar month taking into consideration the combined downtime for both preventative and breakdown maintenance.
- (d) The benchmarks for availability of equipment will be amended as productivity increases and the bar should ideally be raised accordingly.

Type of Equipment	Availability	Immediate Incentive
Quay Crane	80.00% to 80.99%	12%
Quay Crane	81.00% to 81.99%	14%

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Quay Crane	82.00% to 82.99%	16%
Quay Crane	83.00% to 83.99%	18%
Quay Crane	84.00% & above	20%

Type of Equipment	Availability	Immediate Incentive
Straddle Carrier	55.00% to 56.99%	12%
Straddle Carrier	57.00% to 58.99%	14%
Straddle Carrier	59.00% to 60.99%	16%
Straddle Carrier	61.00% to 62.99%	18%
Straddle Carrier	63.00% & above	20%

Type of Equipment	Availability	Immediate Incentive
Tractor, Reach Stacker, Empty Handler, Forklift	50.00% to 51.99%	12%
Tractor, Reach Stacker, Empty Handler, Forklift	52.00% to 53.99%	14%
Tractor, Reach Stacker, Empty Handler, Forklift	54.00% to 55.99%	16%
Tractor, Reach Stacker, Empty Handler, Forklift	56.00% to 57.99%	18%
Tractor, Reach Stacker, Empty Handler, Forklift	58.00% & above	20%

- (e) The incentive payment for the whole operations group will be reduced each month by twenty five per cent (25%) for reported workers injury that is of a serious nature and by fifty per cent (50%) for reported worker injury that is of a serious nature due to negligence.
- (f) Payment of the productivity bonus scheme will be within fifteen (15) working days after completion of the calendar month in which the required incentive level was attained.
- (g) Employees on extended leave of absence will only be eligible for a prorated bonus portion of the incentive payment.

#### 9.5 Non operational or non-technical maintenance employees

- (a) In respect of all other non-operational or non-technical maintenance employees all full time administrative workers listed above that have passed their probation period are eligible.
- (b) The productivity bonus scheme is based on the individual performance of each individual over a six-month period.
- (c) The appraisal of an employee's performance is intended to evaluate the employee's performance, identify the strengths and weaknesses in his job performance, identify his training needs, recommend necessary action to enable him to improve his ability, safety and productivity in his work, identify his potential for advancement and development and for shouldering greater responsibility and his ability to hold a higher level job.

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Performance Rating	Immediate Incentive
Poor	0%
Below Average	0%
Average	6%
Above Average	14%
Outstanding	20%

- (d) Payment of the productivity bonus scheme will be within fifteen (15) working days after completion of every six (6) month period in which the specific performance rating was attained.

#### 10. **PROMOTIONAL INCREASE**

- 10.1 Promotional increases shall be granted to employees whose jobs have been upgraded through re evaluation or who have been promoted to higher-grade jobs by Department Managers or Assistant Managers.
- 10.2 The effective date of a promotional increase shall be the date specified in the promotion decision.
- 10.3 The temporary assignment of an employee to a job in a higher grade, whether on a trial basis or to relieve a regularly assigned employee, shall not be considered a promotion or entitle the employee concerned to a promotional increase.

#### 11. **PERFORMANCE APPRAISALS**

- 11.1 An annual increase will be granted to an employee in recognition of good work performance on the basis of a performance appraisal report.
- 11.2 In the process of appraising the performance of employees, the following points should be taken into consideration:
- (i) a performance appraisal report on each employee shall be submitted once a year;
  - (ii) the appraisal of an employee's performance is intended to evaluate the employee's performance, identify the strengths and weaknesses in his job performance, identify his training needs, recommend necessary action to enable him to improve his ability, safety and productivity in his work, identify his potential for advancement and development and for shouldering greater responsibility and his ability to hold a higher level job;
  - (iii) the appraiser should take into consideration the employee's accomplishments and safe work performance, the extent to which he properly and safely discharges the functions of his job, and his conduct and the way he deals with his managers, his fellow employees and his subordinates;
  - (iv) the appraised performance of an employee shall be rated as "Outstanding", "Above Average", "Average", "Below Average", or "Poor".
  - (v) if the rating of an employee's performance is below "Above Average " the employee's supervisor will, when advising him of the appraisal results, point out his weaknesses and the means through which he may improve his performance.
- 11.3 The following points should be taken into consideration in awarding salary increases:

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- (a) a merit increase will be granted to an employee whose performance rating is not less than "Average" and who is not at the top of his range.
- (b) the employee must have completed a period of not less than twelve (12) months of service with the Lessee and has not received a written warning during the previous year to be eligible for a merit increase.

## **12. LEAVE**

- 12.1 Employees are entitled to annual leave with pay. Annual leave is credited for a period of one (1) year starting on the first of January of each year following the date of service, with a pro rata leave credited for the period from the time of work is started to the beginning of the following year.
- 12.2 Employees are eligible for annual leave with pay after completion of at least six (6) months of continuous service inclusive of the probationary period.
- 12.3 The Lessee may, in exceptional cases, grant an annual leave for a shorter period on a pro rata basis.
- 12.4 An Employee shall be entitled to twenty (20) days fully paid holiday every calendar.
- 12.5 Employees are given their leave in the light of the Lessee's operating requirements. Annual leaves must be used, but in exceptional cases annual leave credits may be accumulated with the approval of their manager for a maximum period of two (2) years.
- 12.6 Applications for annual leave must be submitted at least seven (7) days in advance. An employee may not take his leave before receiving approval from their Manager.

## **13. HEALTH AND SAFETY**

- 13.1 The Lessee recognizes that good health is an important ingredient in a productive and efficient workplace. It expects that employees will work together with the Lessee to ensure that injury prevention and health protection programs contribute to having a high standard of health and safety amongst the workforce.
- 13.2 The promotion of good health and safety practices is preferable to dealing with illness and accidents.
- 13.3 The Lessee's obligations include:
  - (a) provide and maintain a safe work environment;
  - (b) provide appropriate first aid emergency kits kept in convenient places for use in the event of accidents;
  - (c) provide the necessary safety equipment which reduces the likelihood of injury, accident or illness while working;
  - (d) comply with the provisions of all safety legislation applicable to its Operations; and
  - (e) provide emergency procedures for the workplace.
- 13.4 The employees' obligations include:
  - (a) take care of their own safety and that of others who may be affected by what they do or do not do;
  - (b) wear all safety equipment provided for the task they are undertaking;

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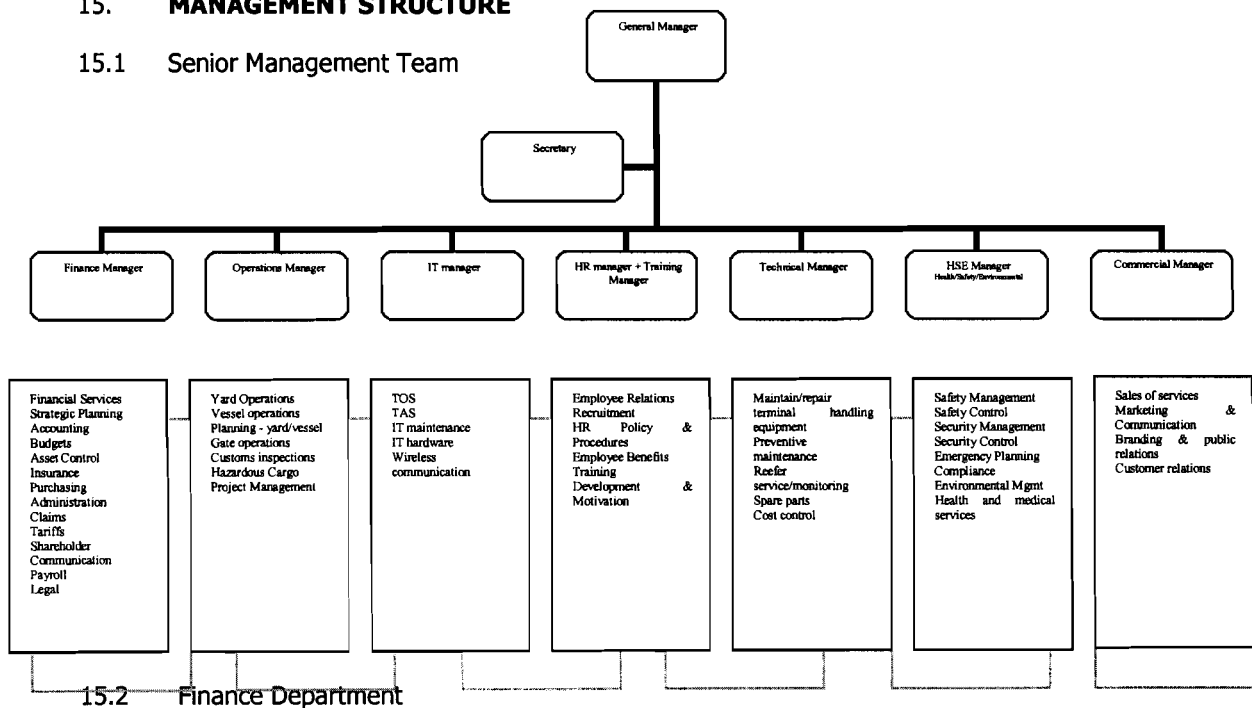
- (c) cooperate with the Lessee on all health and safety matters;
- (d) be aware of emergency procedures of the area in which they are working;
- (e) report any accidents, hazards, unsafe work practices or sub-standard conditions arising in the workplace to their supervisor or manager;
- (f) report any injury suffered in the workplace whether medical treatment is required or not.

#### 14. PENALTIES

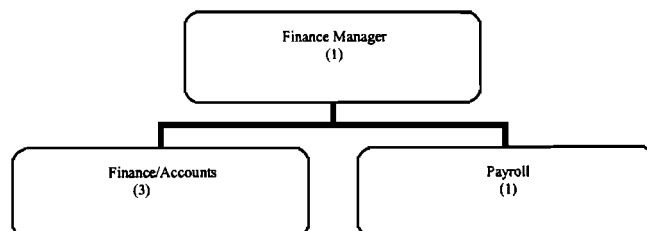
- 14.1 A period of not less than twenty four (24) hours must elapse between any warning and the next warning.
- 14.2 A written warning remains in effect for a period of twelve (12) months, after which it shall be considered void unless the employee has received another warning.
- 14.3 If an employee has, during a period of twelve (12) months, received three warnings which have not lapsed, even if they have been given for three different offences, he shall be liable for summary dismissal if he commits a fourth offence (even if it is a different offence) of a class that entails written warning.

#### 15. MANAGEMENT STRUCTURE

##### 15.1 Senior Management Team

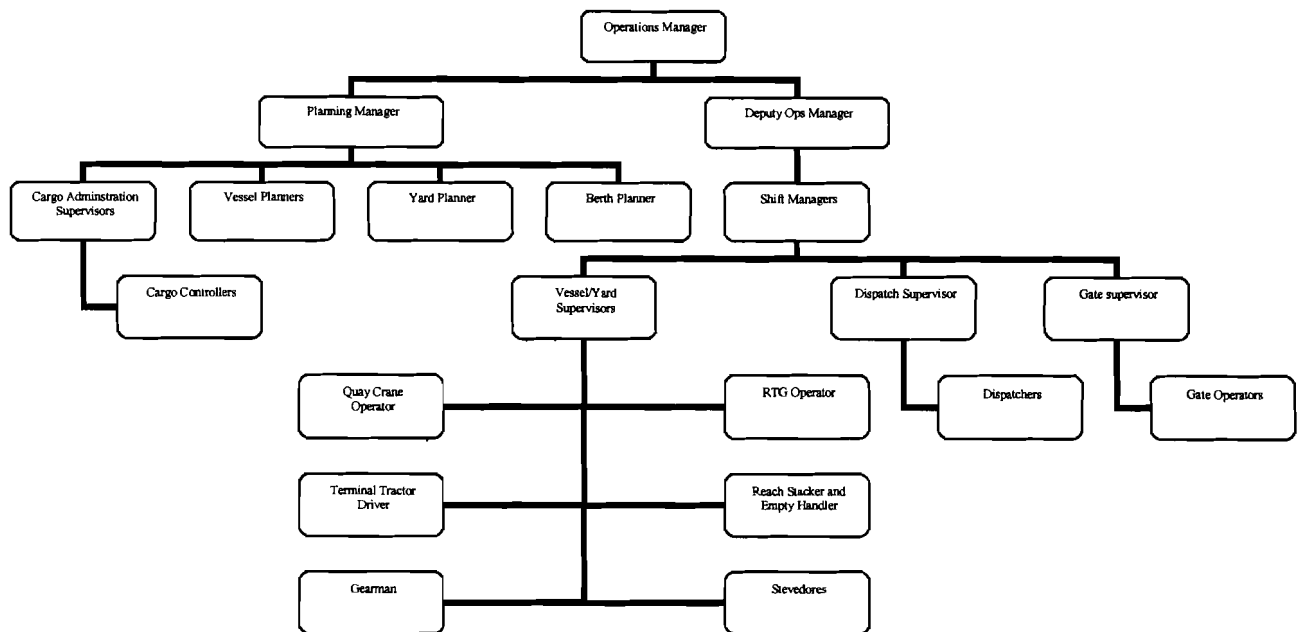


##### 15.2 Finance Department

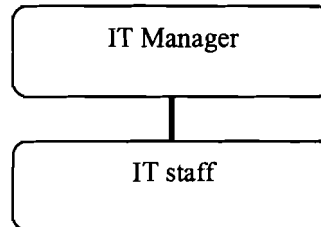




### 15.3 Operation Department



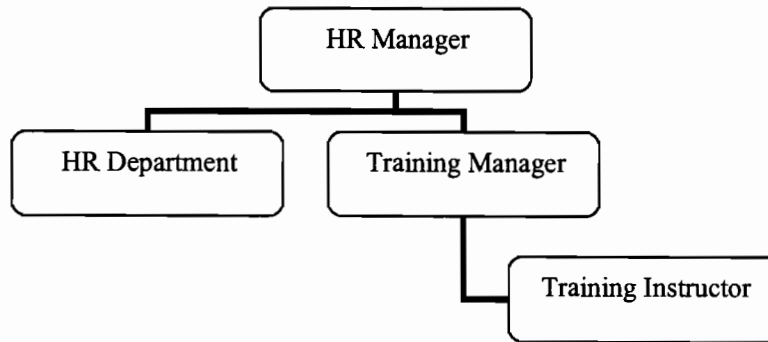
### 15.4 IT Department



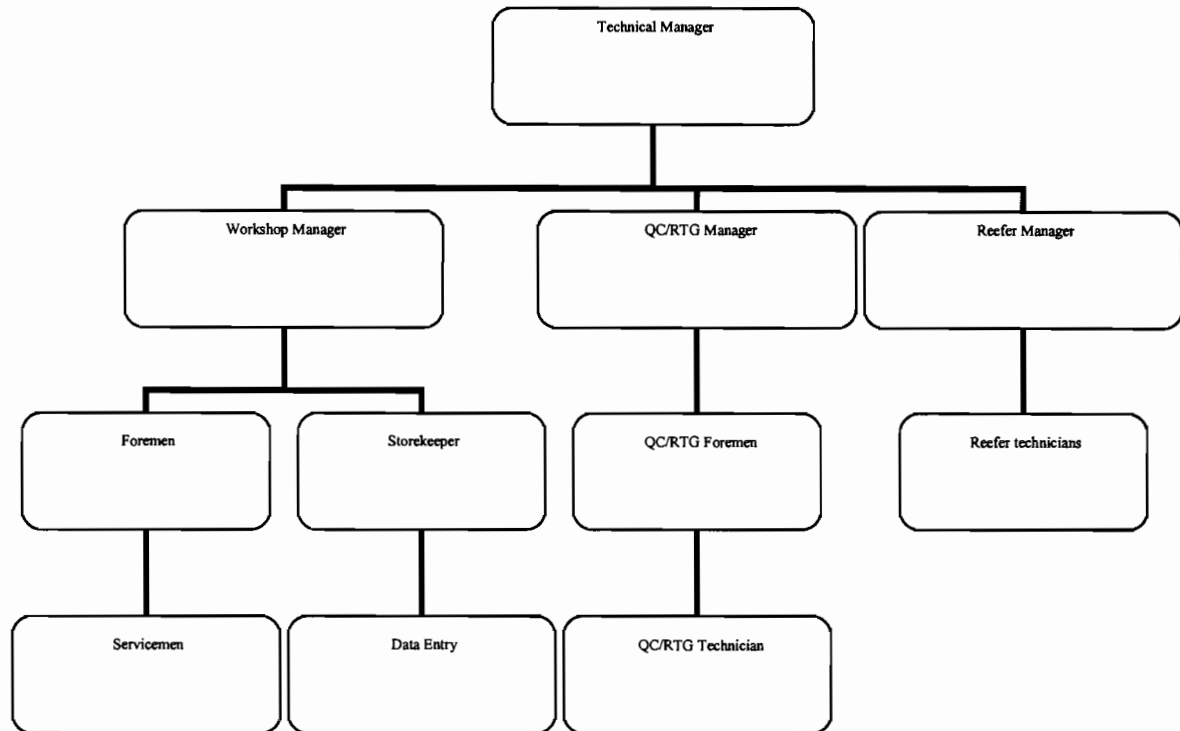
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### 15.5 Human Resource & Training Department



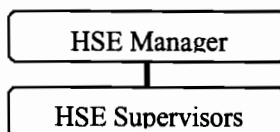
### 15.6 Technical Department



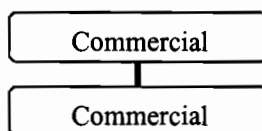
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## 15.7 Health, Safety and Environment Department



## 15.8 Commercial Department



## 16. NUMBER OF EMPLOYEES

- 16.1 The following table provides an estimate of the number of while collar and blue collar employees expected to be employed in the first, fifth and tenth year of Operations.
- 16.2 In the initial years of Operation, given the specific nature of the Operations, the senior management is expected to comprise individuals sourced from the Lessee group's global portfolio of container terminals, who are experts within their functions. This is in order to enable the resultant high productivity and service levels make it a terminal of high calibre and international standards. As the Operations grow in scope and scale, there will be concurrent economic and employment opportunities, for all local and foreign staff as well as the community at large.

While Collar	Year 1	Year 5	Year 10
General Manager	1	1	1
Secretary	1	1	1
Receptionist	2	2	2
HR Manager	1	1	1
HR Department	4	4	4
Training Manager	1	1	1
Trainers/Instructors	4	4	4



HSE Manager	1	1	1
HSE Department (guards)	8	8	8
HSE Supervisors	4	8	8
Company Secretary	1	1	1
Finance Manager	1	1	1
Finance/Accounting/Payroll Department	4	4	4
IT Manager	1	1	1
IT Department	2	2	2
Commercial Manager	1	1	1
Commercial Department	2	2	2
Technical Manager	1	1	1
M&R Manager	1	1	1
Operations Manager	1	1	1
Planners	12	14	16
Vessel Supervisor	36	42	48
<b>TOTAL</b>	<b>90</b>	<b>102</b>	<b>110</b>
<b>BERGHEIM</b>			
Quay crane drivers	24	34	42
RTG Drivers	66	92	102
Terminal Tractor drivers	80	180	198
Side Loader and RS Operators	15	18	19
Twist-lock handlers	66	87	96
Lashers	66	87	96
Checkers	16	22	24
Gearman	5	5	5
Shiftmanagers	5	5	5



Gate Supervisor	6	8	8
Gate Operators	23	27	27
Workshop manager	1	1	1
Workshop Foreman	4	4	4
Workshop Serviceman	6	8	8
Storekeeper	4	4	4
Data entry	6	6	6
Civil Engineer	1	1	1
Crane Manager	1	1	1
Crane Foreman	1	1	1
Crane Technician	2	2	2
Reefer Manager	1	1	1
Reefer Technician	2	2	2
<b>TOTAL</b>	<b>401</b>	<b>596</b>	<b>653</b>

## 17. TRAINING AND DEVELOPMENT

- 17.1 In order to operate efficiently and competitively the competence of the workforce is paramount. Whilst in certain areas of the Operations, a degree of compatibility exists with other industries the majority of the work is highly specialised.
- 17.2 The transfer of knowledge is achieved by seconding experienced terminal management staff who has been involved in similar terminal developments in the past.
- 17.3 Where necessary key staff recruited for the Operations will be given the opportunity to spend time at one of the world class terminals currently operated by other companies within the Lessee group. This period will help each new employee to understand exactly how an efficient terminal is operated. Moreover the new employee will gain insights into the key functions and how they integrate and support the overall business objectives. The objectives and achievable learning outcomes of this period are agreed in advance, in line with the requirements of the particular job(s).

## 18. DEVELOPMENT FOR THE MEDIUM TO LONG-TERM

### 18.1 Management Development

As part of an ongoing process of further development, the Lessee will implement a management and supervisory development programme on the Premises. This programme will be designed to ensure that those employees who have responsibility for supervising others have the necessary tools to undertake this task. The units covered will be relevant to general management development skills and be part of a measured approach to creating a balanced



and understanding workforce. Both staff currently holding management positions and those being considered for advancement will be eligible.

## 18.2 **Secondment**

As part of the programme to develop rounded and well informed individuals the Lessee will, in certain cases, offer secondment opportunities to those staff it considers would benefit. This would entail a period of time being spent working within the normal shift pattern of another terminal run by a company within the Lessee group. The idea being that the employee has the benefit of a wider range of knowledge and greater experience to draw on when making decisions that may affect the Operations.

Further, to ensure the appropriate corporate culture is developed and to foster a belief and pride in the workforce, the Lessee will offer to the employees international training programmes offered to employees of other companies within the Lessee group, namely:

- (a) **MISE** - a unique international shipping education, conducted over a period of two (2) years. Young graduates are developed into business professionals.
- (b) **Magnum** - a management development programme conducted over two (2) years with the target audience being those managers who have the potential to take up senior positions in the short to medium term. All of this training is designed to be applicable immediately.
- (c) **Magnet** - an entry level management development programme, designed to identify the managers of tomorrow. Being a two (2) year programme, Magnet offers potential terminal managers the opportunity to gain skills and knowledge applicable all over the world.

## 18.3 **The Training Team**

Training and development will be overseen by experienced staff. However, as part of that transfer of knowledge mentioned earlier we will ensure that a local training team is employed and developed. This team will be involved in all of the key decisions involving training and development and at the suitable time be in a position to take over the running of the department and continue with the initiatives that had thus far been introduced.

## 19. **SUCCESSION PLAN**

- 19.1 The Lessee is committed to systematically train and develop its local workforce. Development of the local workforce is a carefully planned and implemented solution that will increase the human capital in the country through skill and knowledge enrichment. Locals are hereby given responsibility, accountability, and the authority to act within the scope of their positions. The development of the local workforce will not only benefit the Lessee but also the entire community and country.

- 19.2 The Lessee shall use various training and development methods in its total solution:

### (a) **Operator Training program**

The Port Equipment Operator training program has been hugely successful in other terminals operated by companies within the Lessee group. On the first instance a group of experienced equipment operator trainers would be used to train, assess and certify equipment operators.

### (b) **Train the Trainer**

The second step is to identify highly capable local operators and assess their ability to instruct. These local equipment operators will be enrolled in an internationally

BTse



recognized Train the Trainer program. The ones who successfully pass this course will be used to execute equipment operator training in the future. Hereby the Lessee gives a carefully selected group of local employees the tools to develop others. This forms an integral part of new and existing local staff development.

(c) **Language Training programs**

English language training normally forms part of the training solution, recognizing the need to improve on what are normally fairly basic English language skills.

(d) **On-the-job training roles**

On-the-job training opportunities are normally provided in all departments to a greater or lesser degree. This is achieved by taking the initiative and creating fit for purpose training that meets the needs of the trainee and the Lessee. If any experienced expatriate employees are appointed in the Lessee, a part of their responsibility is to accept a developmental role for others.

(e) **Management Development program**

The Lessee group performs extensive management development programs intended to give supervisors and managers the tools that they needed to perform the important but challenging tasks of managing others. These programs, namely MISE, MAGNUM and MAGNET, have been described previously in the document.

(f) **Internship Program**

Internship programs have been used in other terminals with great success. The Internship Program aims at acquainting university or college students with different work environments, which will help them when they enter employment after graduation. It gives the employer an opportunity to observe potential future employees. This emerges from the Lessee's policy to develop national human resources and to engage the community and the country.



## Appendix K

### **PERFORMANCE BOND**

[Insert letterhead and address of first class international financial institution]

[Date]

The Nigerian Ports Authority 26/28 Marina  
Lagos, Nigeria

#### **Re: Performance Bond**

Ladies and Gentlemen:

We refer to that certain Lease Agreement dated \_\_\_\_\_, 2005 (the "Lease Agreement") between the Nigerian Ports Authority (the "Lessor") and [insert the Lessee's name] (the "Lessee"). This Performance Bond is being submitted to you pursuant to the instructions received from the Lessee.

The undersigned, [name of financial institution], a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, hereby unconditionally and irrevocably guarantees to pay to you on first demand the Lessee's full and timely performance of the Guaranteed Obligations (as defined below) up to the total aggregate of the Guaranteed Amount (as defined below). This Performance Bond is subject to the terms and conditions set forth in this letter:

1. Guaranteed Obligations. The obligations of the Lessee to pay the due and payable Fixed Payment and all financial penalties due and payable following an arbitration award by the Lessee thereunder are hereby guaranteed (collectively, the "Guaranteed Obligations").
2. Guaranteed Amount. The undersigned's total aggregate liability from the date hereof until the final annual renewal of this Performance Bond shall not exceed the amount of one million, five hundred thousand U.S. dollars (\$1,500,000) (the "Guaranteed Amount") notwithstanding that the Performance Bond is renewed annually.
3. Required Documents. The undersigned shall pay the amounts due under this Performance Bond to the Lessor upon the delivery to the undersigned of all of the following documentation:
  - 3.1 A signed draft to the undersigned executed by an officer of the Lessor demanding payment under this Performance Bond, referencing this Performance Bond and specifying the Default Amount (as defined below) and the account information of the Lessor for purposes of payments due to the Lessor hereunder (the "Draft").
  - 3.2 A notarized certificate executed by an officer of the Lessor stating
    - (a) that the Lessee is in default of any of the Guaranteed Obligations, specifying the amount of the default (the "Default Amount");
    - (ii) that the amount in the Draft is due and payable to remedy a default of the Lessee under the Lease Agreement; (iii) that a demand (the "Lessee Demand") was sent to the Lessee requesting payment of the Default Amount and designating the account number; and (iv) that the Lessee Demand was delivered to the Lessee at least thirty (30) days prior to issuing such Draft; and (v) that the Lessor has not received such payment.

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3.3. A copy of the Lessee Demand.

3.4. A copy of the final arbitral award in favour of the Lessor in relation to default by the Lessee under the Lease Agreement.

All Drafts drawn under and in compliance with the terms of this Performance Bond shall be duly honoured by us upon delivery of documents specified above. Except for the documents specified herein, no other documents or other action shall be required notwithstanding any applicable law.

4. Full Force and Effect. This Performance Bond is effective as of the date hereof and shall be in full force and effect until thirty (30) days after the first anniversary of the date hereof. If fifteen (15) days before the annual anniversary date of the performance bond it is not renewed for another year, such non-renewal of the performance bond shall be an event of default of the Lessee, and the Lessor shall have the right to call on the performance bond provided that Lessor provides five (5) days written notice effective upon receipt by Lessee. Such notice to include the Draft and a copy of the Lessee Demand. This Performance Bond shall be returned to us immediately upon the Expiry Date, but shall expire on the Expiry Date whether returned or not, and no claim may be made hereunder after such Expiry Date or after the aggregate of all sums paid by us to you shall equal the Guaranteed Amount whichever is earlier.
6. Independent Obligations. For the avoidance of doubt, our liability under this Performance Bond is legally and totalling independent from the obligations arising under the Lease Agreement.
7. Notices. All notices to be given hereunder shall be given by registered post to the addressee at the address herein set out herein unless such party has provided thirty (30) days written notice of an alternative address.
8. No Discharge. No action, event or condition which by any applicable law should operate to discharge us from our liability hereunder shall have effect and we hereby waive any right we may have to apply such law so that in all respect our liability hereunder shall be irrevocable and except as stated herein unconditional in all respect.
9. No Set-Off. Any payments under this Performance Bond shall be made without any right of set-off or counterclaim and without any deduction of whatsoever nature.
10. Charges and Commissions. All bank charges and commissions incurred with this Performance Bond are for our account.
11. Severability. In case any of the provisions of this Performance Bond is or should become invalid or unenforceable this will not affect the validity or enforceability of the remaining provisions hereof.
12. Governing Law. This Performance Bond shall be governed and construed in accordance with the substantive laws of England.

[NAME OF FINANCIAL INSTITUTION ISSUING GUARANTY]

\_\_\_\_\_  
Name:

Title:

*Office*



## **Appendix L**

### **INSURANCE**

1. The Lessee shall purchase and maintain, at its expense, insurance for cover against the following.
  - (1) the Lessee's general liability arising out of this Agreement to a level not less than US\$40 million;
  - (2) loss, damage or destruction of all commodities moving through the Premises under the responsibility of the Lessee;
  - (3) accidents injury or death occasioned to persons lawfully within the Premises arising out of its operations or any such other liabilities that may be occasioned to such persons as a result of the Lessee carrying out and/or performing such services as provided for in this Agreement;
  - (4) liability to all parties making lawful use of the Premises, and their properties;
  - (5) risks arising from deficiencies or failure to dispose of waste materials including those relating to leaking containers, damage to Containers and other property or hazards;
  - (6) Loss, damage or destruction to the permanent structures, buildings, equipment, improvements and other such fixtures owned by the Lessor and found within the Premises;
  - (7) Any other risks compulsorily provided for by the laws of Nigeria or the rules and regulations governing the Lessor.
2. The proceeds from such property insurance cover shall be utilized to repair or reconstruct the installations damaged or destroyed with the end view of having them restored to their condition immediately prior to the event which occasioned the loss or damage. In no case shall the insured amount limit the responsibilities of the Lessee under this Agreement.

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## **Appendix M**

### **DREDGING PLAN**

The Lessor has agreed to undertake the Dredging Survey with a view to preparing the Dredging Plan in order to fulfil its obligations in relation to dredging as more particularly set out in this Agreement. The Dredging Plan shall form an integral part of this Agreement. Parties agree that the conduct of the Dredging Survey and the preparation of the Dredging Plan shall be a condition precedent to this Agreement as more particularly set out in Section 7.3(k) of this Agreement.

*Chase*



## APPENDIX N

### TRANSITION PLAN

#### 1. DEFINITIONS

- 1.1 The following additional terms shall have the meanings specified in this Sub Section when capitalized and used in this Appendix:

"**CY**" means the Container yard to be more particularly delineated on the Real Property Survey;

"**Condemned Assets**" means the assets, buildings and infrastructure on the Premises at the Execution Date not being Fixed Assets which shall be demolished by the Lessee during the Term in accordance with the Development Plan;

"**Demolition Works**" means the demolition of the Condemned Assets;

"**Development Plan Equipment**" means the equipment to be purchased and installed on the Premises by the Lessee in accordance with the provisions of the Development Plan;

"**ISPS Code**" means the International Ship and Port Facility Security Code;

"**Lessor Operations**" means the operations performed by the Lessor at the Premises utilizing the Fixed Assets and the Movable Assets prior to the Execution Date;

"**Long Sitters**" means overtime Containers on the Premises at the Execution Date;

"**Redundant Assets**" means any and all assets, equipment and other materials on the Premises not forming part of

- (a) the Fixed Assets;
- (b) the Movable Assets;
- (c) the spare parts and consumables to be purchased by the Lessee from the Lessor in accordance with the provisions of the Agreement; or
- (d) the Condemned Assets;

"**TOS**" means an advanced Terminal Operating System;

#### 2. INTRODUCTION

- 2.1 This Transition Plan sets out the rights and obligations of the Lessor and the Lessee during the Transition Period.
- 2.2 The Transition Period is critical for a successful transfer of the Premises and the subsequent commencement of Operations. The Transition Committee shall ensure that during the Transition Period, the Parties shall follow and comply with the provisions of this Appendix.
- 2.3 It is important that the Lessor and Lessee work closely together towards the common goal of a successful transfer of the Premises from Lessor to Lessee in accordance with the provisions of this Agreement and the commencement of the Operations by the Lessee on the Effective Date.

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### 3. **TRANSITION COMMITTEE**

- 3.1 The Lessor and the Lessee shall each appoint four (4) representatives to form a Transition Committee who shall be responsible for overseeing the implementation of the provisions of the Transition Plan during the Transition Period. The Transition Committee shall consult with the relevant Government Authorities where necessary in order to comply with Applicable Law and the provisions set out in the Agreement.

### 4. **THE LESSOR OPERATIONS**

- 4.1 Throughout the Transition Period:

- (a) the Lessor shall continue the Lessor Operations subject to the provisions of this Transition Plan;
- (b) the Parties shall ensure smooth continuation and performance of the Lessor Operations provided by the Lessor to its customers; and
- (c) the Parties also agree to minimize disruption of the Lessor Operations.

### 5. **USER RIGHT**

- 5.1 From the Execution Date and throughout the Transition Period in consideration of the payment of the Commencement Fee, the Lessor shall grant to the Lessee and its employees, contractors, customer and invitees:

- (a) the non exclusive right to use, in common with others entitled to use (including the Lessor), the Premises, subject to all rights reserved by the Lessor under the terms of all rules and regulations promulgated from time to time with respect thereto. The Lessee shall not use the Premises in any manner which is inconsistent with the Agreement or in any manner that unreasonably interferes with the use of the Premises by other occupants or users of the Premises.
- (b) subject to the requirements of the Lessor in respect of the performance of the Lessor Operations, the Lessee shall have the right of use of the Movable Assets during the Transition Period. 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;

### 6. **INSURANCE**

- 6.1 The Lessor shall maintain, at its expense, during the Transition Period insurance cover against the following:

- (a) the Lessor's general liability to a level not less than US\$40 million;
- (b) loss, damage or destruction of all commodities moving through the Premises under the responsibility of the Lessor;
- (c) accidents injury or death occasioned to persons lawfully within the Premises arising out of the Lessor Operations or any such other liabilities that may be occasioned to such persons as a result of the Lessor carrying out and/or performing the Lessor Operations;
- (d) liability to all parties making lawful use of the Premises, and their properties;
- (e) risks arising from deficiencies or failure to dispose of waste materials including those relating to leaking Containers, damage to Containers and other property or hazards;

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- (f) loss, damage or destruction to the permanent structures, buildings, equipment, improvements and other such fixtures owned by the Lessor and found within the Premises;
  - (g) any other risks compulsorily provided for by the laws of Nigeria or the rules and regulations governing the Lessor.
- 6.2 The proceeds from such property insurance cover shall be utilized to repair or reconstruct the installations damaged or destroyed with the end view of having them restored to their condition immediately prior to the event which occasioned the loss or damage. In no case shall the insured amount limit the responsibilities of the Lessor under this Transition Plan.
- 6.3 Notwithstanding the provisions of Sub Section 6.1 above, the Lessee shall maintain, at its expense, during the Transition Period insurance cover against the following:
- (a) the Lessee's general liability to a level of not less than US\$40 million;
  - (b) accidents, injury or death occasioned to persons lawfully within the Premises arising out of its acts or omissions or such other liabilities that may be occasioned to such persons as a result of the Lessee carrying out and/or performing in accordance with the provisions of this Transition Plan;
  - (c) loss, damage or destruction to the Development Plan Equipment and any Improvements found within the Premises; and
  - (d) all other risks compulsorily provided for by the laws of Nigeria or the rules and regulations governing the Lessee.
- 6.4 The Parties shall provide each other with copies of all such insurance policies and shall have the right to review and approve the same, such approval not to be unreasonably withheld.
- 7. SURVEYS**
- 7.1 As soon as possible following the Execution Date, the Parties shall appoint an Expert to conduct a condition survey of the Premises (paying particular attention to the condition of the quay and approach bridges), the Fixed Assets, the Movable Assets and the spare parts and consumables. If, as a result of such condition survey, the Expert reports that the Premises, the Fixed Assets and/or the Movable Assets or any part thereof either do not comply with the provisions of the Agreement or are not present upon the Premises notwithstanding the provisions of the Agreement then, in respect of:
- (a) the Premises and the Fixed Assets, the Lessor shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition before the Effective Date; and
  - (b) the Movable Assets then the Movable Asset Purchase Price shall be reduced by the actual cost of the Movable Asset that does not comply with the provisions of the Agreement or is not present upon the Premises, the purchase price for which is as set out in Appendix B of the Agreement.
- 7.2 During the Transition Period, the Lessor and the Lessee shall perform civil engineering investigations of the infrastructure of the Premises including:
- (a) confirmation of the load carrying capacity of the decks supporting piles so as to obtain assurance that the load carrying capacity has not been impaired through overloading and structural deterioration, particularly the underside of the deck;

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- (b) verification of the load carrying capacity of the existing yard paving by reference to the recent design to ensure that it is suitable for use by rubber tyred gantry cranes and other CY equipment being deployed pursuant to the Development Plan;
  - (c) provision of present depths, the siltation and maintenance deeding history of the Berths and the approach channel.
- 7.3 The Lessor and the Lessee shall also perform the following investigations during the Transition Period so as to ascertain the condition of the Premises:
- (a) a geotechnical investigation;
  - (b) a topographical survey;
  - (c) a survey or existing fire pumps and associated infrastructure;
  - (d) a survey of the existing sub stations and electrical equipment.
- 7.4 As soon as possible after the Execution Date the Lessee shall undertake the environmental impact assessments required for the purposes of Applicable Law in order to allow the Lessee to progress with Improvements in accordance with the Development Plan. The Lessor shall provide the Lessee with all assistance possible in order to allow the Lessee to obtain the environmental impact permits required in order to develop the Premises in accordance with the Development Plan and to perform the Operations.
8. **CONDITIONS PRECEDENTS**
- 8.1 Each Party shall use its best efforts to effectuate the satisfaction of the conditions precedent requiring action by such Party as set out in Article 7 of the Agreement during the Transition Period.
- 8.2 In respect of the conditions precedent to be fulfilled by the Lessee, the Lessee shall ensure that:
- (a) the condition survey referred to in Sub Section 7.2 above is completed diligently and punctually so as to ensure that the Transition Committee are able to agree to any adjustment to the Movable Asset Purchase Price to be paid by the Lessee to the Lessor on the Effective Date; and
  - (b) in addition to the insurance cover required pursuant to the provisions of Sub Section 6.3 above, it shall also provide the insurance cover required pursuant to the provisions of Appendix J in place by the Effective Date.
- 8.3 In respect of the conditions precedent to be fulfilled by the Lessor, the Lessor shall ensure that:
- (a) it has provided the President of the Federal Republic of Nigeria with a copy of the Agreement and that the approval of the President has been properly obtained and thereafter conveyed to the Lessee in the manner set out in Section 7.3 of the Agreement;
  - (b) it has dealt with any and all matters arising from the termination of the stevedoring contracts arising and that it has used its existing security system and personnel operating at the Premises to remove all stevedores from the Premises;
  - (c) all existing lessees having rights over any part of the Premises are removed and have been made aware that the Lessee is in no way responsible for the termination of the existing leases and shall not be held responsible by an existing lessee for the termination of their relevant right to use the Premises.

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## **9. CONDEMNED ASSETS**

- 9.1 The Lessee shall be entitled to commence the Improvements contemplated in the Development Plan. As part of the Improvements, the Lessor and the Lessee shall cooperate so that the Lessee may commence the Demolition Works.
- 9.2 The building materials resulting from the Demolition Works shall be the property of the Lessee and the Lessee shall encourage the resale of such materials for reuse in or around the Port.

## **10. PREMISES**

- 10.1 Within ninety (90) days of the Execution Date, the Lessor shall install fencing on the north side of the Premises in order to ring fence the operations of the Dangote Group in accordance with the provisions of their existing lease agreement with the Lessor pending the vacation of the Premises by the Dangote Group. This provision in no way limits or waives the Lessor's requirements set out in Section 7.3(h) of the Agreement.
- 10.2 Within ninety (90) days of the Execution Date, the Lessor shall rebuild the existing road and upgrade the existing road surface to provide adequate access to the warehouses and the control tower on the north side of the Premises.
- 10.3 Immediately upon completion of the rebuild and upgrade of the road referred to in Sub Section 10.2, the Lessor shall close of the road running from east to west through the middle of the Premises in order to implement proper security of the Premises.
- 10.4 From the Effective Date, the Lessee shall, with the cooperation of the Lessor, establish an arrival and departure gate operation at the west end of the Premises for the purposes of implementing control and security of the Premises.
- 10.5 The Lessee shall commence the Improvements together with the construction of the new buildings and infrastructure on the Premises as contemplated in the Development Plan as soon as is reasonable practicable.
- 10.6 The Lessee shall prepare and offer a public tender for a comprehensive security package for the Premises and shall award such contract which shall be in compliance with the ISPS Code for security services to commence upon the Effective Date. The security requirements shall include, but not be limited to control at access points, internal patrols and perimeter patrols/surveillance.

## **11. CONTRACTS AND AGREEMENTS AFFECTING THE PREMISES**

- 11.1 Within sixty (60) days of the Effective Date, the Lessor shall identify and provide the Lessee with copies of all existing and current agreements affecting the Premises and/or the Fixed Assets including, but not limited to, maintenance and service agreements affecting the Premises.
- 11.2 The Lessor shall transfer or cause to be transferred to the Lessee any agreements relating to the Premises and/or the Fixed Assets which are:
- (a) valid and subsisting;
  - (b) capable of being transferred to the Lessee; and
  - (c) that the Lessee has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Lessee; and
  - (d) execute such documents and deeds as the Lessee may require to confirm or give effect to this Sub Section.

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**12. DREDGING**

- 12.1 The Lessor shall commence dredging in accordance with the Dredging Plan to be prepared by the Lessor prior to the Effective Date with a view to complying with its obligations relating to dredging as set out in the Agreement.

**13. CUSTOMS**

- 13.1 The Lessor and the Lessee will work together during the Transition Period with Customs to reform the current hours of operation of Customs, and to simplify their procedures for the Operations with a view to improving the efficiency of Customs.

**14. SPARE PARTS, CONSUMABLES AND MOVABLE ASSETS**

- 14.1 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 Transition Committee.
- 14.2 Pursuant to the right granted in Sub Section 5.1(b) of this Appendix and the condition survey conducted in accordance with Sub Section 7.1, the Lessee shall commence the Improvements upon the Movable Assets in accordance with the Development Plan so that it is able to commence Operations on the Effective Date.
- 14.3 Notwithstanding the provisions of Section 14.2, the Lessee shall be entitled to commence Improvements on the two (2) rail mounted quayside gantry cranes as soon as is practical for them to do so after the Execution Date.

**15. REDUNDANT ASSETS.**

- 15.1 The Lessor shall, at its own cost and expense, remove any Redundant Assets on the Premises at the Effective Date.

**16. DEVELOPMENT PLAN EQUIPMENT**

- 16.1 The Lessor shall allow the Lessee to take delivery of and install a TOS, that will be implemented in order to allow the Lessee to track Containers, control planning and optimize equipment utilization from the Effective Date.
- 16.2 The Lessee to receive and store without cost Container handling equipment that will be ordered. The Lessee shall provide adequate security and assume all risks associated with such equipment.
- 16.3 The Lessee shall map the terminal handling equipment requirements of the Premises taking into account the Movable Assets, spare parts and consumables and the Development Plan Equipment.

**17. CONTAINERS AT THE PREMISES ON THE EFFECTIVE DATE**

- 17.1 The Transition Committee shall prepare a detailed inventory of Long Sitters and other uncleared cargo on a vessel by vessel basis throughout the Transition Period.
- 17.2 The Lessor shall remove the Long Sitters and uncleared cargo identified in the inventory from the Premises which shall include requesting Customs to assist with the removal of the Long Sitters and uncleared cargo from the Premises.
- 17.3 Long Sitters and uncleared cargo shall be consolidated in a location outside of the Premises and the Lessor shall list the same for disposal through Customs. This will increase the

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working area within the CY and minimize the cargo stored within the Premises which will assist to:

- (a) limit/eliminate liability for the collection of past fiscal and other dues;
- (b) limit/eliminate liability originating from any possible cargo claims;

17.4 Any Containers or other cargo belonging to the customers of the Lessor on the Premises at the Effective Date shall become the responsibility of the Lessee. The Transition Committee shall prepare a list of Containers and cargo at the Premises three (3) days prior to the Effective Date. Any Operations provided by the Lessor to those customers in respect of their Containers on or before the Effective Date will be invoiced by the Lessor to the Lessee. The Lessor shall then invoice the customer for the Operations provided by the Lessee and for any services provided by the Lessor.

17.5 The Parties agree that the Lessor shall place an advertisement in the local media as soon as possible after the Execution Date to inform customers of the Lessor of the transition of the Premises to the Lessee and requesting the customers of the Lessor to take delivery of their Containers and other cargo within thirty (30) days (in the first instance) after which an extension may be granted to as to ensure that as many Containers and other cargo are removed from the Premises as is possible prior to the Effective Date.

#### 18. **CUSTOMER CONTRACTS**

18.1 The Lessor shall terminate any and all existing customer contracts and agreements relating to the performance of the Operations by the Lessee for and on behalf of their customers at the Premises.

#### 19. **OPERATIONS**

19.1 The Parties shall seek to expand the hours of operation of the main gate to permit movement of Containers in and out of the Port twenty four (24) hours a day and seven (7) days a week.

19.2 The Parties shall work to ensure that the transition between Lessor Operations and the Operations is such so as to minimize disruption at the end of the Transition Period.

19.3 The Parties agree that the Transition Committee shall be responsible for the manning of the Premises for the period ninety (90) days prior to the Effective Date. Notwithstanding the provisions of this Sub Section, the Lessor shall ensure that all of its employees have vacated the Premises before or on the Effective Date.

19.4 Within sixty (60) days of the Execution Date, a CY plan should be implemented that regulates the discharge of Containers and or cargo to a carefully defined area on the Premises, thereby facilitating easier identification and inventory checking with minimum operational impact.

19.5 Further to the completion of the condition survey referred to in Section 7.1 of this Appendix, the Lessee shall commence a full overall review of the Premises and the Operations and the Lessor shall cooperate with the Lessee in respect of the provision of information and assistance in relation to such review, which shall include a review in the following areas:

- (a) Personnel organization;
- (b) CY planning and operations;
- (c) planning and operations on the Premises outside the CY;
- (d) gate procedures and operations;
- (e) IT hardware and systems;

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- (f) Documentation produced as part of the Operations;
- (g) billing and finance functions;
- (h) Customs procedures;
- (i) statistics;
- (j) safety procedures;
- (k) security procedures;
- (l) future and anticipated processes;

19.6 The Lessee shall commence the implementation of the Staffing and Succession Plan as set out in Appendix H of the Agreement and shall develop a comprehensive training program for employees in order for full takeover readiness.

## 20. **CONTRACTORS**

20.1 The Lessee may engage any contractor possessing the requisite skill, expertise and capability to perform some, but not all, of its obligations under this Transition Plan and the Agreement provided that the Lessee shall, at all times, be solely responsible for the actions and omissions of that contractor.

## 21. **THE EFFECTIVE DATE**

21.1 On the Effective Date the Lessor shall:

### **Premises and Transferring Fixed Assets**

- (a) vacate the Premises which shall include the redeployment of all Lessor employees;
- (b) surrender peaceful possession of the Fixed Assets in a good working condition in accordance with the Agreement and Prudent Industry Standards (excluding reasonable wear and tear) to the Lessee;
- (c) cease Lessor Operations;
- (d) hand over to the Lessee all documents including as built drawings, manuals and records relating to operation and maintenance of the Premises and the Fixed Assets;

### **Movable Assets**

- (e) subject to receipt of the Movable Asset Purchase Price by the Lessee convey, transfer, assign and deliver to the Lessor, free and clear of liens and encumbrances, the Lessor's right, title and interest in and to the Movable Assets, spare parts and consumables that the Lessor has agreed to sell and transfer to the Lessee in accordance with the procedure set out in the Agreement accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessee;

### **Customer Contracts and Agreements**

- (f) terminate any and all existing customer contracts and agreements relating to the performance of the current operations by the Lessor for and on behalf of their customers at the Premises; and

### **Tracking and Evaluation**

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- (g) commence the tracking and evaluation process as more particularly described in Section 6.9 of the Agreement.

21.2 On the Effective Date the Lessee shall:

- (a) pay to the Lessor the Movable Asset Purchase Price as adjusted in accordance with the provisions of this Transition Plan;
- (b) pay the amount agreed between the Lessor and the Lessee for the purchase of spare parts and consumables; and
- (c) commence Operations.

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## Appendix O

### **TERMINATION PLAN**

#### **1. DEFINITIONS**

- 1.1 The following additional terms shall have the meanings specified in this Sub Section when capitalized and used in this Appendix:

**"Intellectual Property Rights"** means:

- (a) patents, trademarks, service marks, rights in design, trade dress, trade secrets, trade names, and copyrights that are not the property of the Lessee but which are licensed to the Lessee by a third party and which relate to the Premises or the performance of the Operations;
- (b) applications for registration to any of the items contained in subsection (a) of this definition, to the extent that such application under Applicable Law provides protection for such items;
- (c) rights under licenses and consents in relation to any of the items contained in subsection (a) of this definition; and
- (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may exist anywhere in Nigeria;

**"Inventories"** shall have the meaning set out in Article 4.1 below;

**"Lessee Movable Assets"** means the moveable property of the Lessee used by the Lessee for the purposes of performing the Operations at the Premises on the Termination Period Start Date, including but not limited to, the Movable Assets (or any replacement of the Movable Assets made during the Term whether pursuant to the Development Plan or otherwise) and the Lessee Equipment;

**"Purchase Price"** means the total purchase price to be paid by the Lessor to the Lessee before on the Termination Date for the Transferring Lessee Movable Assets. The Purchase Price shall be calculated by reference to the purchase prices set out in the Inventories;

**"Termination Period Start Date"** means the date of commencement of the Termination Period;

**"Transferring Lessee Movable Assets"** means the Lessee Movable Assets that the Lessee agrees to sell and transfer to the Lessor subject to the payment of the Purchase Price in accordance with the provisions set out in Section 4;

**"Transferring Fixed Assets"** means the immovable property affixed to the Premises as at the Termination Period Start Date including the Fixed Assets;

#### **2. THE TERMINATION PLAN**

- 2.1 The Parties agree that the Termination Plan shall apply during the Termination Period.
- 2.2 Notwithstanding Section 2.1, the Lessee shall ensure smooth continuation and provision of the Operations throughout the Termination Period. The Parties agree to minimize disruption of the Operations performed by the Lessee.

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### 3. **CONDITION SURVEY**

- 3.1 As soon as possible following the Termination Period Start Date, the Parties shall appoint an Expert to conduct a condition survey of the Premises and the Transferring Fixed Assets. If, as a result of such condition survey, the Expert reports that the Premises or the Transferring Fixed Assets or any part thereof has not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) the Lessee shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition before the Termination Date.

### 4. **LESSEE MOVEABLE ASSETS**

- 4.1 Not later than thirty (30) days after the Termination Period Start Date, the Lessee shall provide the Lessor with inventories of:

- (a) the Lessee Movable Assets; and
- (b) spare parts and consumables

which it is prepared to sell and transfer to the Lessor on the Termination Date (the "**Inventories**"). The Lessee shall include a purchase price for each of the Lessee Movable Assets, spare parts and consumables in the Inventories.

- 4.2 Not later than thirty (30) days prior to the Termination Date, the Lessor shall advise the Lessee in writing which of the Lessee Movable Assets, spare parts and consumables it wishes to purchase at the Purchase Price.

### 5. **INTELLECTUAL PROPERTY**

- 5.1 The Lessee shall make all reasonable efforts to procure an assignment or novation of any licenses for Intellectual Property Rights granted to the Lessee and under terms that will permit the reproduction, translation, use and lease of such license by the Lessor. The Parties shall take all steps that may reasonably be necessary or desirable to fully effectuate the provisions of this Section.

### 6. **TERMINATION DATE**

- 6.1 Prior to the Termination Date during the Termination Period or upon the Termination Date the Lessee shall:

#### **Premises and Transferring Fixed Assets**

- (a) vacate the Premises;
- (b) surrender peaceful possession of the Transferring Fixed Assets in a good working condition in accordance with Prudent Industry Standards (excluding reasonable wear and tear) to the Lessor;
- (c) hand over to the Lessor all documents including as built drawings, manuals and records relating to operation and maintenance of the Premises and the Transferring Fixed Assets;
- (d) transfer or cause to be transferred to the Lessor any agreements relating to the Premises and/or the Transferring Fixed Assets which are:
  - (i) valid and subsisting;
  - (ii) capable of being transferred to the Lessor; and

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- (iii) that the Lessor has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Lessor; and
- (iv) execute such documents and deeds as the Lessor may require to confirm or give effect to this Sub Section;

#### **Transferring Movable Assets**

- (e) subject to receipt of the purchase price by the Lessee convey, transfer, assign and deliver to the Lessor, free and clear of liens and encumbrances, the Lessee's right, title and interest in and to the Lessee Movable Assets, spare parts and consumables that the Lessee has agreed to sell and transfer to the Lessor in accordance with the procedure set out in Section 4 above accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessor.

#### **Customer Contracts and Agreements**

- (f) the Lessee shall terminate any and all existing customer contracts and agreements relating to the performance of the Operations by the Lessee for and on behalf of their customers at the Premises.

### **7. CONTAINERS ON THE PREMISES AT THE TERMINATION DATE**

- 7.1 Any Containers belonging to the customers of the Lessee on the Premises at the Termination Date shall become the responsibility of the Lessor. The Lessee shall provide the Lessor with a list of Containers at the Premises on the Termination Date. Any Operations provided by the Lessee to those customers in respect of their Containers on or before the Termination Date will be invoiced by the Lessee to the Lessor. The Lessor shall then invoice the customer for the Operations provided by the Lessee and for any services provided by the Lessor.

### **8. COOPERATION**

- 8.1 The Lessee shall use its best efforts and act in good faith to cooperate with the Lessor or any new lessee that the Lessor may notify the Lessee of in writing on or before the Termination Period Start Date to take over responsibility from the Lessee to perform the Operations on or after the Termination Date. Such cooperation required of the Lessee shall include, without limitation, the provision of all relevant documentation and information held or used by the Lessee relating to the Premises, the Transferring Fixed Assets and the Operations (including manuals, records, data, etc.).

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