



LEASE AGREEMENT FOR CALABAR Old Port

by and among

NIGERIAN PORTS AUTHORITY as the Lessor.

BUREAU OF PUBLIC ENTERPRISES as the Confirming Party.

and

* ADDAX LOGISTICS NIGERIA LIMITED as the Lessee

Dated as of Gay of Oct, 2006





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THIS LEASE AGREEMENT (this "Agreement") is made and entered into this day of 2006 ("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 2004, 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

ADDAX LOGISTICS NIGERIA LIMITED, a private company incorporated under the laws of the Federation of Nigeria whose registered office is at (address) (the "Lessee") being a special purpose vehicle formed by ADDAX PETROLEUM DEVELOPMENT (NIGERIA) LIMITED, a private company incorporated under the laws of the Federation of Nigeria whose registered office is at 10 Bishop Aboyade Cole Street, Victoria Island, Lagos (APDNL).

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. The Lessor and APDNL had executed a lease Agreement as contained in <u>Appendix E</u> ("Subsisting Leases").
- B. Further to the ongoing Ports Reform process, the NCP in accordance with the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999, gave approval to its Secretariat BPE on 28th December 2004, to invite bids from the APDNL.
- C. Pursuant to the said NCP approval, BPE, on 6th December 2005, invited bids from APDNL for a right to enter into an agreement with the Lessor to (i) lease the real property in the Old Calabar Port (the "Port") to be described and delineated in Appendix A (the "Premises") and certain immovable property affixed to the Premises as shall be further described in Appendix B (the "Fixed Assets," and together with the Premises, the ("Lease Property"); (ii) make certain improvements to the Lease Property as further described in the development plan attached as Appendix C (the "Development Plan") and (iii) perform certain other operation, maintenance and other services with respect to the Lease Property. Parties agree that within the Transition period, the parameters for Appendix A and Appendix B shall be provided and shall constitute an integral part of this Agreement.

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, NO, 661872 and
- (b) formed as a special purpose vehicle by APDNL
- E. On 27th February 2006, APDNL submitted its bids and following an evaluation process conducted by the BPE, the right to enter into such agreement was awarded to APDNL. APDNL has formed the Lessee as a special purpose vehicle, to enter into this Agreement.





F. The Parties desire to set forth the terms and conditions of such agreement, and all of their respective rights and obligations related thereto.

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 <u>Definitions</u>. The following terms have the meanings specified in this Article when capitalized and used in this Agreement. The meanings specified are applicable to both the singular and plural.

"Act" means the Nigerian Ports Authority Act No. 38 1999, 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.

"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 10.3.

"Applicable Law" means any law, statute, order, decree, injunction, license, permit, consent, approval, agreement or regulation of any Governmental Authority having jurisdiction over the matter in question, or other legislative or administrative action of a Governmental Authority, or a final decree, judgment or order of a court which relates to the Port, the Lease Property, the Operations or the interpretation or application of this Agreement, as the case may be, including without limitation the Act. In the event of an inconsistency or conflict between any of the Applicable Laws, the law most specific to the subject matter shall apply.

"Berths" means quay structures including quay wall, fendering system, bollards and service gallery.

"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, superceding act, deletion, addition or change in or to the Applicable Laws that occurs and takes effect after the Execution Date and demonstrably and adversely affects a Party's performance of its obligations hereunder.

"Change of Control" means the occurrence of any of the following: (a) the Lessee ceases to control fifty one percent (51%) or more of the issued and outstanding Equity Interests in the Lessee, on a fully diluted basis, or (b) the Lessee creates, incurs, assumes or suffers to exist any mortgage, lien, encumbrance, pledge, security interest, covenant, condition, restriction, claim, charge, 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, and any other matter affecting title on the Equity Interests in the Lessee controlled by it.

"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 nonexclusive use.



"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.

"Defaulting Party" has the meaning set forth in Section 12.3.

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

"Disclosing Party" has the meaning set forth in Section 17.9.

"Dispute" has the meaning set forth in Section 16.2.

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

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

"Execution Date" has the meaning set forth in the Preamble.

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

"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.

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

"Force Majeure" shall mean any act that (a) renders it impossible for the affected Party 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 or sabotage; (iv) strikes or other labour disputes in Nigeria that are not 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.

"Intellectual Property Rights" means (a) patents, trademarks, rights in design, trade dress, trade secrets, trade names, and copyrights; (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.

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

- a. Any act or omission by the Lessor, including but not limited to, the failure by the Lessor to fulfil its obligations under this Agreement;
- b. Maintenance by the Lessor in accordance with the requirements of this Agreement that exceeds the time period for such maintenance as previously agreed between the parties;
- c. Any act or omission by Governmental Authority not due to the fault of or negligence of the Lessee;
- d. An act 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 survey conducted jointly by the Parties prior to the Execution Date and included in Appendix B or in the Development Plan, 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 shall also be deemed to include any improvements thereon made by the Lessor or the Lessee during the Lease Term in accordance with this Agreement.

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

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

"Lessee Event of Default" has the meaning set forth in Section 12.1.

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

"Lessor Event of Default" has the meaning set forth in Section 12.2.



"Routine 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(a) of this Agreement;

"Security Interest" means any encumbrance such as mortgage, pledge, lien, charge, assignment, hypothecation, 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 I.

"Throughput Fee" shall mean fee stipulated by the Lessor for cargo passing through the Concession Area payable by the Lessee in accordance with Appendix F

"Termination Date" has the meaning set forth in Section 2.2.

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

"<u>Voting Interests</u>" 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.

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.
- (b) The word "including" means "including without limitation."
- (c) Unless otherwise indicated, all reference in this Agreement to Articles, Sections, and Appendices shall refer to the corresponding Articles, Sections and Appendices of or to this Agreement.
- (d) 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.

NCP/BPE, NPA & ADDAX (LEASE AGREEMENT FOR CALABAR OLD TERMINAL)

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ARTICLE II

EFFECTIVE DATE AND TERM

2.1 Effective Date

- Terms Binding on Execution Date. The provisions of this Article, along with the provisions of Articles 11 (Representations and Warranties), 15 (Indemnities), 16 (Governing Law; Disputes), shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.
- Conditions Precedent. Except as otherwise provided in Section 2.1(a), this (b) Agreement shall become effective thirty (30) days following the Execution Date provided that the conditions to effectiveness set forth in Article VI have been fulfilled (the "Effective Date").
- Term This Agreement shall have a term (the "Term"), which commences on the 2.2 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 upon terms and conditions to be mutually agreed by the Parties, no less than five (5) years prior to such twenty-fifth (25th) anniversary of the Effective Date.

ARTICLE III

BASIC LEASE RIGHTS AND OBLIGATIONS

- 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.
- Transfer of the Lease Property. Commencing on the Effective Date and continuing 3.2 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:
 - the Lease Property in the condition in which it is transferred to the Lessee on (a) 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
 - the Fixed Assets in good condition and working order, reasonable fair wear and (b) tear excepted.

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.

- 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 <u>Lease Fees</u> The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in <u>Appendix F</u>. 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 reasonable notice and provided that the performance of the Operations by the Lessee are not adversely affected to:
 - (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 8.

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

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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.

Access to Other Property Subject to Applicable Law and the Lessor's prior written 3.7 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 8.10 in order to perform its obligations hereunder, including without limitation the performance of the Operations.

ARTICLE IV

USE OF LEASE PROPERTY

- Permitted Use of Lease Property The Lessee shall only use the Lease Property to 4.1 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:
 - violate, invalidate or cause a loss of coverage under any insurance in force on (a) or after the Execution Date with respect to the Lease Property or other premises of the Port;
 - cause injury or damage to the Lease Property, to the person or property of any (b) Person on the Lease Property or to any Person or property of any Person on other premises of the Port;
 - cause diminution in the value or usefulness of all or any portion of the Lease Property (reasonable wear and tear excepted);
 - unreasonably disturb or interfere with or endanger the Lessor or any other (d) lessees of the Port; or
 - create a nuisance or waste in on or about the Premises which adversely affects (e) other premises of the Port.

Alteration of Lease Property 4.2

- 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:
 - such alteration is required for technical operations and/or economic well-being of the Port;
 - such alteration does not unreasonably interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property; and

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(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.

The Lessor shall within the said sixty days communicate its respond to the Lessee.

- (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. When requesting such approval, the Lessee 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:
 - 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.

Where the Lessee has furnished the required information, the Lessor shall within the said sixty days respond to the Lessee's request, failure of which, the Lessor shall be deemed to have given its approval to the improvement or alteration and the Lessee may proceed to make such improvement.

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

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- (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) 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 4.8(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 alterations including participation in related progress meetings.

4.3 Maintenance

- Lessee's Maintenance Obligations. The Lessee shall be responsible for the (a) Maintenance of the Lease Property in good condition (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. 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 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.
- Notification and Repair of Damage. In the event that any Lease Property (b) (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 to 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.
- Utilities Subject at all times to the covenants of the Lessor set out in Section 8, the 4.5 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.
- Office Space. The Lessee shall provide, at its own expense, adequate office space for 4.6 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.
- Disposal of Movable Assets The Lessee shall not sell, transfer, remove or dispose of 4.7 any of the Movable Assets without offering the Lessor the right of refusal to purchase such Movable Asset from the Lessee. If no response is received within two (2) weeks of receipt of the offer, the Lessor shall lose the right to purchase the Movable Assets and any subsequent transfer to a third party of such Movable Asset, shall be notified to the Lessor. Notwithstanding the foregoing, in each Annual 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

- 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.
- By Lessor in the event of Emergency. The Lessee shall permit the Lessor and (b) 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.

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- By Lessor to fulfil its obligations under this Agreement. The Lessee shall also (C) 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.
- Necessary right of way. The Lessor shall have the right of access through the (d) 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.
- By Governmental Authorities. The Lessee shall grant access to the Premises to (e) 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.
- By Shipping Agents and others. The Lessee shall grant access to the Premises (f) 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

OPERATIONS

- Obligation of Lessee to Perform Operations The Lessor hereby appoints the Lessee and 5.1 the Lessee hereby accepts such appointment, to perform the operations and activities described in Part A of Appendix D (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.
- Common User Terminal. The Lessee shall perform the Operations such that the Lease 5.2 Property is a common user terminal open to any and all shippers and consignees of cargo, and to all shipping lines. The Lessee shall ensure that any agreement executed by it prior to or during the Term shall not violate this Section.
- Performance of other services. The Lessor hereby grants the Lessee the right, 5.3 exercisable at the Lessee's sole discretion, to perform the other services in accordance with the terms of this Agreement. If the Lessee does commence performance of one or more of other services during the Term, reference to "Operations" in this Agreement shall be deemed to include those other services being performed by the Lessee in accordance with the right set out in this Section 5.3. The Lessee shall ensure that any charges made for other services shall be in accordance with Applicable Law and competitive within the Port and within competing ports of Nigeria.

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- 5.4 <u>Use of Lease Property</u>. 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.
- 5.5 <u>Exclusivity</u> The Lessee shall have the exclusive right during the Term to perform the Operations within the Premises.
- 5.6 <u>Standards of Performance</u> 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.
- 5.7 <u>Duties to Cooperate</u>. 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.
- 5.8 <u>Performance Requirement</u>
 - (a) General Requirements. The Lessee shall use its best efforts to:
 - develop, market and promote Cargo throughput and Cargo-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 Guaranteed Minimum Tonnage in the applicable years of the Term (the "Guaranteed Minimum Tonnage" Appendix L).
 - (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 Guaranteed Minimum Tonnage 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 Guaranteed Minimum Tonnage.
 - (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:
 - following the completion of each Operating Year, the Lessee shall provide to the Lessor a report in respect of that Operating Year which

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shall include, *inter alia*, a full account of its performance against the applicable Guaranteed Minimum Tonnage, an explanation of any failure to meet such Guaranteed Minimum Tonnage 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 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 Guaranteed Minimum Tonnage taking into account any Interruption, and stating whether, in its opinion, the Lessee has reached the Guaranteed Minimum Tonnage. (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's 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 Guaranteed Minimum Tonnage. Any disagreement between the Parties in respect of the Lessor's 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's Report further to thirty (30) days' written notice from the Lessor given in accordance with Sub Section (i) above, then the Lessor's 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's Report further to thirty (30) days' written notice from the Lessee given in accordance with Sub Section (ii) above, then the Lessee's Report shall be binding upon both Parties and the Parties shall not be required

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to meet and agree the Lessor's evaluation in accordance with Sub Section (iii) above.

(e) Exceeding Guaranteed Minimum Tonnage. In the event that the Lessee exceeds the guaranteed minimum tonnage, there shall be an adjustment in the Throughput Fees due and payable by the Lessee in accordance with the provisions set out in Appendix L.

5.9 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 H (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 other services rendered but not specified in Appendix H, 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 bonded terminal 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 Lessee shall refer the matter to the Regulator for determination of the rates chargeable.

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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.

5.10 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 I 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 5.10(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.
- Lessee Equipment The Lessee may use additional equipment on the Premises 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 Guaranteed Minimum Tonnages 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 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.

5.12 Spare Parts and Consumables.

- 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.
- On the termination of the Term. Thirty (30) days prior to the Termination (b) 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 Lessee any or all such spare parts and consumable items at a price mutually agreeable to the Parties.
- 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 VI

CONDITIONS PRECEDENT

- Conditions to Obligations of Each Party. The obligations of the Lessor and the Lessee 6.1 to consummate the transactions contemplated by this Agreement shall be subject to the fulfilment prior to the Effective Date of the following conditions:
 - Execution and Delivery of this Agreement. Each Party shall have duly executed and delivered to the other Party this Agreement,
 - Corporate Proceedings. Each Party shall have provided to the other corporate (b) proceedings in connection with the transactions contemplated by this Agreement. The Lessee shall have delivered to the Lessor a secretary's certificate certifying to:
 - resolutions adopted by the Lessee evidencing the authorisations (i) described in this Section;
 - the constitutional documents of the Lessee; and (ii)
 - 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

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.
- (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.
- 6.2 <u>Conditions to Obligations of Lessor</u>. 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 11.1 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 6.2 (a) and (b).
 - (d) Commencement Fee. The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Commencement Fee, in accordance with Appendix F.
 - (e) 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 three hundred and fifty thousand United States Dollars (US\$350,000) and in the form set forth in Appendix J 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.
 - (f) 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 7.1.

- 6.3 <u>Conditions to Obligations of Lessee.</u> 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 11.2 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 6.3 (a) and (b).
 - (d) 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.
 - (e) 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, shall have been made or obtained.
 - (f) Stevedoring Contracts. All stevedoring Contracts with the Lessor, with respect to the Premises have been terminated and all stevedores shall have vacated the Premises by the Effective Date.
 - (g) Other Agreements. All other agreements affecting the Lessor's right to transfer the Lease Property and all pre-existing leases affecting the lease property have been terminated; and the Lease Property is free and clear of all Security Interests and all Persons on the Premises prior to the Execution Date shall have vacated the Premises and removed all their equipment from the Premises.
 - (h) Registration. The Confirming Party shall have stamped and registered this Agreement with the appropriate Governmental Authorities in accordance with Applicable Law and shall have taken responsibility for any and all costs associated with such stamping and registration.
 - 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 thirty (30) 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

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the Party of whom action is required which still has not satisfied, whereupon each <u>Party</u> 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 VII

LESSEE'S COVENANTS

7.1 Insurance

- (a) Required Insurance. The Lessee shall obtain and maintain, at its expense, the insurance described in Appendix K 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 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.

7.2 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.
- 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

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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.

7.3 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.
- (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:
 - 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.

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- (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.
- 7.4 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.
- 7.5 <u>Information; Communication</u> Within one hundred <u>and eighty</u> (180) days after the Effective Date, the Lessee shall install a computerized information system for the recording of Import/ Export of Cargo within the Premises, and shall periodically update this system to provide computerized information related to Cargo delivery.
- 7.6 <u>Dredging</u>; <u>Mooring</u> 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 <u>and</u> 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 <u>Lessee</u>'s costs unless the same was attributable to the <u>Lessor's or its contractors'</u> negligence or wilful misconduct.
- 7.7 <u>Lessee Ownership Structure</u> The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent.
- 7.8 <u>Taxes</u> 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.
- 7.9 <u>Licenses; Permits</u> 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.
- 7.10 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 within a reasonable time, 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

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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 16 (Governing Law; Dispute Resolution).

ARTICLE VIII

LESSOR'S COVENANTS

- 8.1 <u>Cooperation</u> 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.
- 8.2 <u>No Interference</u>. The Lessor shall ensure that its personnel shall not delay or interfere with the performance of <u>the</u> obligations of the Lessee or with the Lessee's personnel in the execution of their duties.
- 8.3 <u>Port Access</u> 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.
- 8.4 <u>Berth and navigational aids within the Premises</u>. The Lessor shall be responsible for the maintenance of the Berths and the navigational aids within the Premises.
- 8.5 Port Services; Vessel Management.
 - (a) The Lessor. The Lessor shall:
 - 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:
 - 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 8.5(a) so as to have a material adverse effect upon the performance of

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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.
- 8.6 <u>Dredging</u>. 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 and maintaining a depth of water at the Berths of the Premises of 9.0 meters below Low Low Water and the approach channel of at least 9.0 meters below 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.
- 8.7 <u>Waste Disposal</u>. 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.
- 8.8 <u>Latent Defects</u> The Lessor shall remedy any Latent Defects which materially impair the Lessee's use of the Lease Property and the performance of its Operations.
- 8.9 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.
- 8.10 <u>Utilities Infrastructure</u>; <u>Rights of Way.</u> 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.
- 8.11 <u>Utilities</u>. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 8.12 <u>Security</u> 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.
- 8.13 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.

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- 8.14 <u>Licenses; Permits</u> 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 7.9.
- 8.15 <u>Taxes</u>. 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.
- 8.16 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 be settled in accordance with the provisions of Article 16 (Governing Law; Dispute Resolution).

ARTICLE IX

FORCE MAJEURE

- 9.1 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.
- 9.2 <u>Notice</u> 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.
- 9.3 <u>Satisfactory Solution</u>. 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 16 shall apply.
- 9.4 <u>Termination.</u> Notwithstanding the provisions of Section 9.3, 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.

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ARTICLE X

DOCUMENTATION AND AUDITS

10.1 Records and Reports

- 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 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.
- Lease Property. Beginning on the Effective Date, the Lessee shall prepare and (c) 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.
- 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:
 - accurate statistics on the quantity, types and weights of Cargo handled in the Premises;
 - accurate 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;
 - accurate details of the claims received and payments made in relation (iv) to cargo damage;

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- 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
- accurate statistics on the availability for use of major items of mechanical equipment such as gantry cranes and front-end loaders.
- 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 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.
- 10.3 <u>Annual Report</u> 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 Cargo and Cargo 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

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(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.

- 10.4 <u>Planning and Investment Report</u> 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

("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

- 10.5 <u>Quarterly Traffic Report</u> 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 Cargo and Cargo 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 XI

REPRESENTATIONS AND WARRANTIES

- 11.1 <u>Lessee Representations and Warranties</u>. The Lessee represents and warrants on the Execution Date and throughout the Term that:
 - (a) The Lessee is:
 - a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with registration number RC 661872,
 - (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

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- (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 H.
- (f) It has good title to the Lease Property and full legal right and power to transfer and deliver such Lease property to the Lessee in the manner contemplated by this Agreement. Upon delivery of such Lease Property against payment therefor pursuant to the terms of this Agreement, the Lessee shall receive good title thereto with vacant possession, 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 Lease Property.

ARTICLE XII

DEFAULT

- 12.1 <u>Lessee Event of Default</u> Except if resulting from a Lessor Event of Default or Force Majeure, each of the following events shall be considered to constitute a "<u>Lessee Event of Default</u>":
 - (a) The Lessee becomes insolvent, or, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal and such court or tribunal makes an order 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 and an order is made in respect thereof by a court of competent jurisdiction.
 - (b) 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.
 - (c) Subject to Section 17.5, the Lessee fails to pay any amounts due in accordance with this Agreement.

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- (d) The Lessee commits a breach of a material provision of this Agreement.
- 12.2 <u>Lessor Event of Default</u> 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 and such court or tribunal makes an order 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 and an order is made in respect thereof by a court of competent jurisdiction.
 - (b) The Lease Property (in whole or in part) is expropriated, compulsorily acquired or nationalized by a Governmental Authority.
 - (c) There is a Change in Law.
 - (d) Subject to Section 17.5, 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.

12.3 Consequences of Default

- (a) Insolvency. Upon an Event of Default described in Section 12.1(a) or 12.2(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 12.2(b), or Section 12.2(c), the Lessee may immediately serve a Termination Notice.
- Other Events of Default. Upon an Event of Default described in Section (C) 12.1(b), (c) or (d) or 12.2(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.

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TERMINATION.

- Termination. This Agreement may be terminated in any of the following ways: 13.1
 - (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 9.4
- 13.2 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.
- Continuity of Operations. The Lessee shall ensure smooth continuation and provision 13.3 of the Operations throughout the Termination Period. The Parties agree to minimize disruption of the Operations performed by the Lessee.
- Compensation. The Parties shall pay to one another compensation due and payable in 13.4 accordance with the provisions of Article 14.

ARTICLE XIV

COMPENSATION

- 14.1 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.
- 14.2 Compensation on termination due to Lessee Event of Default. If the termination is due to a Lessee Event of Default, the Lessee shall:
 - pay to the Lessor any and all actual costs, expenses, charges, and/or penalties incurred (a) or sustained by the Lessor as a consequence of such termination; and
 - convey, transfer, assign and deliver to the Lessor, free and clear of all liens and (b) 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.
- Termination due to Lessor Event of Default. If the termination is due to a Lessor Event of 14.3 Default, the compensation payable by the Lessor shall be the aggregate of:
 - any and all actual costs, expenses, charges, and/or penalties incurred or sustained by (a) the Lessee as a consequence of such termination;
 - in the event that there is termination due to a Lessor Event of Default in the first (b) Operating Year following completion of the works to be undertaken pursuant to the Development Plan:
 - the Commencement Fee; and



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.

- 16.4 Arbitration If the Parties cannot resolve the Dispute in accordance with the procedure specified in Section 16.3, then any Party may submit such Dispute to arbitration by notice to the other Party. Such arbitration shall be governed by the Rules of Arbitration of the International Chamber of Commerce, as in effect on the date of such notice. The arbitral tribunal shall consist of three (3) arbitrators. The Party initiating the arbitration shall provide written notice to the other Party of the arbitrator that it nominates. Within fourteen (14) Days of the receipt of such notice, the other Party shall provide to the initiating party a written notice identifying the name of the second nominated arbitrator, with the understanding that if such nomination is not made within such fourteen (14) Day period, then the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court") shall make such appointment. Within ten (10) Days of the date of the appointment of the second arbitrator, the two arbitrators shall appoint the third arbitrator, with the understanding that if the two arbitrators are not able to agree on third arbitrator within such ten (10) Day period, then the third arbitrator shall be appointed by the ICC Court. All three of the arbitrators shall be experienced in the port industry as well as contracts of a similar nature to this Agreement, and all three individuals shall also be proficient in the written and spoken forms of the English language. The arbitration proceedings shall be conducted and all related communications shall be in the English language. Any decision of the arbitral tribunal shall be final and binding upon the Parties. The Parties hereby waive, to the extent permitted by Applicable Law, any right to appeal or to review of such an award by any court or tribunal. Any award of the arbitral tribunal may be entered in any court having jurisdiction for purposes of enforcement. The arbitral tribunal shall presumptively award legal fees and arbitral costs to the winning party, but the arbitral tribunal shall retain the right to make such other equitable allocation with regard to such fees and costs as it may determine.
- 16.5 <u>Place of Arbitration</u> The place of arbitration shall be London or any other place mutually agreed by the Parties.
- 16.6 <u>English Language</u>. 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.
- 16.7 <u>Performance During Arbitration</u> 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.
- 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.

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ARTICLE XVII

MISCELLANEOUS.

- 17.1 <u>BPE</u>. 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.
- 17.2 <u>Amendments</u> 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.
- 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.
- 17.4 <u>Sub-Contracting_</u>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 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.
- 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, by mutual consent of the Parties, 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.
- 17.6 <u>Survival</u> All rights accrued prior to the termination of this Agreement shall survive its termination.
- 17.7 <u>Entire Agreement</u> 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.
- <u>Notices</u> 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, <u>provided</u> 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

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N. C.



Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

- 17.11 <u>Severability</u> The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- 17.12 <u>Further Assurances</u> The Parties agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations 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.
- 17.13 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.
- 17.14 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.
- 17.15 <u>Transitional Period</u>. Transitional period shall be the period between the Execution Date and the Effective date, not exceeding thirty (30) days from the Execution date.

OP.



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)

Hon. Min. of Transport Chairman

Adebayo B. Sarumi Managing Director Sotonye Inveinengi Etomi

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. Lelornigie General Counsel.

THE COMMON SEAL OF THE WITHIN NAMED LESSEE

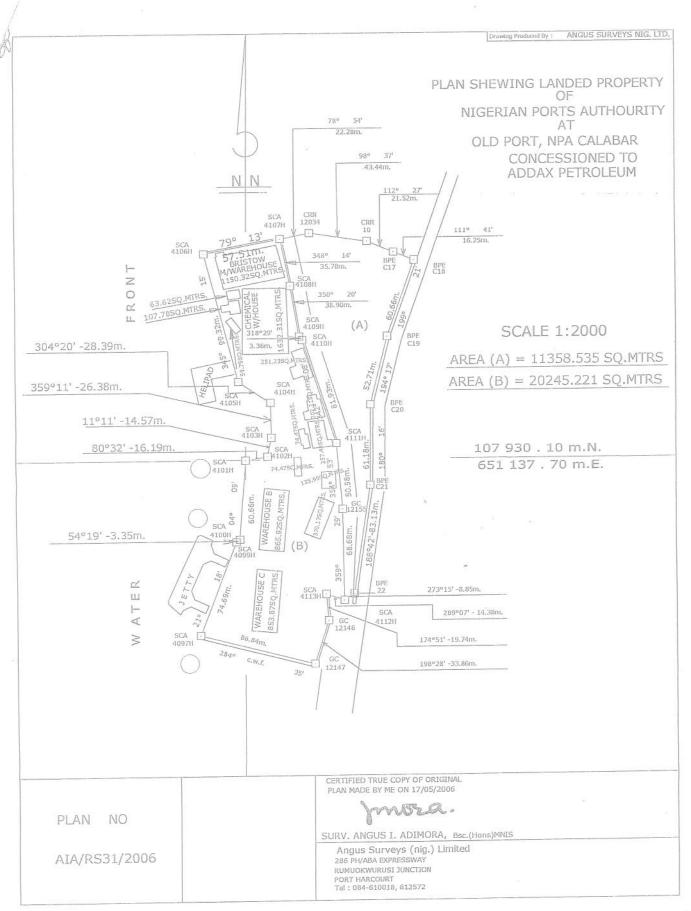
ADDAX LOGISTICS NIGERIA LIMITED

was hereto affixed In the presence of: (seal)

Mr. Martin Eldon

Managing Director

Mrs. Adenil Secretary





NCP/BPE, NPA & ADDAX (LEASE AGREEMENT FOR CALABAR OLD TERMINAL)

mr.

A.



APPENDIX B FIXED ASSETS

S/NO	FACILITY	AREA
1.	'A' Warehouse	823.36 sqm
2.	'B' Warehouse	852.36 sqm
3.	`C' Warehouse	361.62 sqm
4.	Former Fire Station Building	134.95 sqm
5.	Temporary Store	38.63 sqm
6.	Jackson Wharf Office a storey building converted to office chemical laboratory for the ground floor space and 1st floor space	589.05 sqm
7.	Jackson Wharf Warehouse converted to Helicopter Hanger and mini warehouse	841.50 sqm
8.	Former produce office	63.41 sqm
9.	Former Nigerian National Shipping Line (NNSL)	136.43 sqm
10.	Former Engineer Office	70.30 sqm
11.	Former Estate Office	247.07 sqm
12.	Former NPA Canteen	214.63 sqm
13.	Former Police Station as storey building with identical floor	598.77 sqm
14.	Milerio Wharf Jetty	716.40 sqm
15.	Milerio Wharf Walkway	220.04 sqm
16.	Jackson Wharf Jetty converted to Helipad	550.60 sgm
17.	Basement of Oil fluid storage tanks (Bitumen Felf) betment 'A' Warehouse and water front	296.70 sqm
18.	Paved stacking Area between the warehouse and the edge of water front at Milerio Wharf	1,003.00 sqm
19.	Jackson Paved stacking area	3,814.57 sqm
20.	Paved stacking area beside Helicopter Hanger Workshop	341.94 sqm
21.	Water storage tank base within the Jackson stacking area	50.23 sgm
22.	Jet fuel storage Platform	279.00 sqm
23.	Open storage chemical shed under construction by Brown Rocks Nig. Ltd.	508.08 sqm
24.	Built open shed being used as Bristow Car Park	75.40 sqm
25.	Triangular Communication Tower Base	3.90 sqm
26.	Satelite Communication Platform	4.00 sqm
27.	Generator House partly roofed	54.20 sqm
28.	AGO/PMS Fuel Dump	52.47 sqm
29.	Surface Lub. Oil Tank farm platform	351.18 sgm
30.	Prefab storey office attached to 'A' Warehouse basement floor and ground floor	229.00 sqm
31.	Main Entrance Gate for Security	18.125 sqm
32.	Paved stacking area behind 'A' Warehouse	1,763.20 sqm
33.	Paved stacking area in front of former Fire Service Station presently used as Car Park	489.95 sqm

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The proposed Development Plan to be carried out in the first 10 years of the lease is estimated at \$14,259,000. The handling plant and equipment amounts to \$794,000. detailed in the attached table as A: — Plant & Equipment. The civil and other major upgrade work is estimated at \$13,465,000. shown as B: — Civil & Other Capital Works. Some existing handling equipment will be refurbished to improve their operational efficiency and enhance productivity at the port.

Considerable upgrading has been carried out, by strengthening and improving the berthing facility, repairing the sheet piling of the quay shore walls, replacing the collapsed south mooring dolphin, constructing new warehousing, upgrading offices & living accommodation, and converting part of the area for helicopter operations.

The berthing facility, known as the Millerio Wharf was in a poor state with repair. Work is presently ongoing to stabilise the position but with the increase in offshore activity, and the compressed nature of the base, plans are being formalised for a new quay, long lasting repairs of the Millerio Wharf, additions and a general upgrade of the Calabar Old Port facilities, laydown and apron areas.

The proposed expansion will permit the Old Port to have two operating quays -allowing for a three-berthing facility (using mooring dolphins), a self contained heliport, offices, warehouse, workshops, living accommodation and storages areas. An upgrade of the services will commence in 2006 with a revamp of the electrical distribution and installation of a new 500KVA generator, to be followed in 2007 with the purchase and installation of a second unit.

In the first year of operations the sum of \$885,000. has been allocated for the repair and refurbishment of the Millerio Wharf to uplift the state of the wharf to ensure that it does not collapse. Plant and equipment will be increased with the addition of 2 new cranes and a forklift to the tune of \$123,000. It is also planned to commit the sum of \$20,000. for the computerisation of the port for effective billings and pilotage, while the sum of \$115,000. will be spent on the acquisition of other equipment, generator, furniture and vehicles.

In the second year of operations, the major construction of the new wharf is planned. The sum of \$5 million had been earmarked for the take off of the project, while additional plant at a cost of \$73,000. will be procured. In addition, the helideck, hanger and reception areas will be repaired and refurbished; a sum of \$380,000. has been allocated for this work.

In the third year, completion of construction of the new wharf is planned at an estimated cost of \$1,909,500. Similarly, further refurbishment will continue on other sections of the wharf, particularly the Millerio Wharf. Further computerisation and procurement of office equipment is estimated at \$117,000.

In years four and five, the refurbishment of the port — reconstruction and addition to heavy duty paving and further repairs to the terminal facilities - will continue to attract attention with the sum of \$1,660,000. and \$1,290,000. respectively planned.

In years 6 and 7, more reconstruction and repair work is planned for other parts of the wharf, including shore protection works and extensions to the laydown areas.

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Development Plan - A: Plant & Equipment

YEAR			
Of LEASE	DESCRIPTION	No.	Redacted
1	40 T HYDRAULIC CRANE	1	
	50 T HYDRAULIC CRANE	1	
	10 T FORKLIFT	1	
	MOTOR VEHICLES	3	
	FURNITURE EQUIPMENT & PARTITIONING		
	COMPUTERISATION OF THE TERMINAL		
	GENERATOR, INSTALL & HOOK UP	1	
2	2 3 T FORKLIFT	1	
	MAN LIFT	1	
	FURNITURE, OFFICE EQUIPMENT & PARTITIONING		
	COMPUTERISATION OF THE TERMINAL		
	4 MOTOR VEHICLES	3	

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	FURNITURE, OFFICE EQUIPMENT & PARTITIONING	Redacted
5	FURNITURE, OFFICE EQUIPMENT &	
	PARTITIONING	
	TOTAL 'A' PLANT & EQUIPMENT	

Development Plan - B: Civil & Other Capital Works

DESCRIPTION	Redacted
DESIGN & SITE EXPLORATION FOR NEW WHARF	
REPAIR OF THE MILLERIO WHARF	
REPAIR OF THE HELIPAD & HANGER/ RECEPTION	
CONSTR. OF NEW WHARF (YEAR 2)	
I	
	DESIGN & SITE EXPLORATION FOR NEW WHARF REPAIR OF THE MILLERIO WHARF REPAIR OF THE HELIPAD & HANGER/ RECEPTION CONSTR. OF NEW WHARF (YEAR 2)

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		$D \sim 1$	001	1
3	CONSTR. OF NEW WHARF (YEAR 3)	Red	aci	
	REPAIR OF THE MILLERIO WHARF			
	RECONSTRUCTION OF OFFICES _ REPAIR & REFURBISHMENT			
4	PROVISION OF HEAVY DUTY PAVING & STACKING AREAS 2500m2 (YEAR 4)			
	REPAIR & RECONSTRUCTION OF BUILDINGS			
5	PROVISION OF HEAVY DUTY PAVING & STACKING AREAS 2000m2 (YEAR 5)			
	REPAIR OF TERMINAL FACILITIES			
6	PROVISION OF HEAVY DUTY PAVING TO INTERNAL ROADS & APRON AREAS 1000m2 (YEAR 6)			
	SHORE LINE PROTECTION & EXTENSION OF LAYDOWN AREA			
	×			

NOTAL CALL



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A. OPERATIONS

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

- the handling and delivery services for the cargoes, 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.

B Other services:

- 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
- oversized cargo handling services;
- 4. terminal handling;
- 5. inland depot transfers; and
- 6. all other activities necessary to conduct Operations.

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(c) The Lessee shall pay the following throughput fees to Nigerian Port Authority from the Effective Date:



The throughput fee is payable in arrears at the end of each monthly period beginning on the first day of the first month after the Effective Date (the "Throughput Fee") and, together with the Lease Fee, the "Lease Fees").

The Throughput Fee shall be assessed on empty and laden Containers, Import/Export Cargoes and shall be paid to the Lessor within five (5) business days after the last day of the applicable period. The Throughput Fee shall be adjusted 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 applicable annual period.

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 volume of Cargo handled on vessels that 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 volume of Cargo handled on vessels that have used the Premises as agreed between the Parties in the Voyage Meeting.

DELAY IN PAYMENT

Subject to the provisions of Section 17.5 of the Agreement, the Lessee shall make payment to the Lessor by telegraphic transfer within five (5) Business 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.

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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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BERTH NO	MAXIMUM BERTH LENGTH
Jackson Wharf	27m
Millerio Wharf	61m

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Appendix H **OPERATIONS RATES**

A. The Stevedoring Services tariff

Type of Operation	Redacted
General Cargo including all Bagged cargo/ton/WM	
Dry Bulk Cargo/Ton	
Liquid Bulk Cargo/Ton	
Vehicle/Unit	
Up to 15 cbm	
From 16 to 25 cbm	
Above 25 cbm	
Trailer/Mafi	
Shifting Cargo	
Within the same hatches	
Hatch to hatch onboard vessel	
Hatch to hatch through quay/barge	
Stevedoring charges for Containers	
Full	
Empty	

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 Cargoes, one (1) day free storage time for export Cargoes, three (3) days free storage time for Cargoes in transit to neighbouring countries, and three (3) days free storage time for transhipment cargoes. The Lessee shall be permitted to determine its own storage charges 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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STAFFING PLAN

A basic requirement for achieving effective and efficient operations at the Calabar Old Port is the availability of a dedicated and well-trained workforce. Addax's plan for the effective management of the port will involve the appointment of some key personnel from our Port Operations in the Abidjan and Cotonou working with our Head of Operations in Calabar. They are to train local staff on the effective management and efficient running of the port. We in Addax believe that the standard and quality of human resources of any company affects the level of success that can be achieved by that Organization. Thus, we are poised to enhance the productive capacity of our human resources to make the management of Calabar Old Port a success.

(a) Proposed Management structure

The following are the different approaches to be adopted by Addax in the staffing of its management structure:

- Deployment at the outset of a strong core team of key management personnel consisting of the Port Manager and Heads of Engineering, Information Technology, Operations & Finance;
- Deployment as and when required of a team of highly qualified Project Support personnel who will be on short-term or medium-term assignments in specialized areas for the execution and introduction of the desired change
- Identifying the Head of HR and other key functional Managers from the local market to be integrated into the overall management team, providing support in implementing structural changes and introduction of new operation system.

The organization chart at the end of this appendix outlines the proposed management structure, including the reporting lines and relationships.

EMPLOYMENT

Addax's main resource is its skilled staff. To ensure that the company strengthens and improves on its place in a competitive market, it is important to sustain and develop the company's work force.

Company's objectives shall include among others, to:

- Improving the work environment
- Providing fair and equal opportunities to all
- Increasing competitiveness of the business through customer focus, safety, efficiency and flexibility
- Encouraging employee participation in the business
- Recognizing employees' contributions and family responsibilities

In recognition of the Company'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.

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As earlier indicated, various project teams will be deployed as and when required to support management in quickly introducing and executing desired changes.

(a) Labour deployment policies

Standards regarding working hours, weekly rest, holidays with pay and other issues alike will follow what is permissible under the Labour Act, as well as what is generally practiced in other industrial undertakings.

Generally, the port will operate non-stop seven days a week. Deployment of port workers will be in 3 shifts. As much as possible, no single worker will be placed on consecutive shifts, except within limits established by law or collective agreement. Specific rostering will vary depending on the job and operational demand.

Work organization and training will be designed to enable port workers to carry out several selected tasks. Equipment operators, for example, will be trained to operate more than one kind of equipment. This will allow for flexibility in the development of resources in meeting operational needs.

(b) Training plan

Addax would ensure regular training of personnel ranging from technical, operational, even including cross cultural or inter- departmental training using the group facilities all over the world. We will ensure that port workers are adequately trained in safety techniques and modern work practices. They will also be trained in general safety standards in terminals. The nature and the length of training to be given will depend on the job.

No worker will be allowed to handle any equipment without the basic 4 weeks training to meet specific performance requirements. Besides, they will also be required to attend a refresher course within 5 years. Multi- skills and versatility will be encouraged as it enhances the level of competence in operations and equipment handling.

Trainers from project support teams will facilitate trade-related training until suitable local employees are selected and trained. On a regular basis, selected managers and supervisors will be given the opportunity to attend training either locally or overseas.

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(c) Core management team

The following is a brief description of the role and accountabilities of the key management personnel:

General Manager

He is charged with the development, execution and achievement of strategic business plans for revenue and profitability objectives.

- Has responsibility for business performance and reports regularly to the Board of Directors.
- Develops tactical strategies and action plans in the achievement of established business goals and targets.
- Ensures systems and procedures are monitored to enable effective integration and alignment across functions.

Port Manager

Develops and implements the operations plan for the effective and efficient deployment of equipment and resources that will ensure maximum utilization of resources.

- Ensures that day-to-day work within own operating unit complies with operating guidelines, work procedures and safety standards.
- Reviews operating procedures and work processes within Calabar Old Port and makes recommendations for improvement.
- Directs the efforts to establish good and efficient business practices through automation of work processes as well as resources deployment or organization.
- Monitors and reinforces quality standard in terminal operations through team work and service providers performance, if applicable.
- Implements the operations and resource deployment plan in accordance with the work schedule and within operating budget.

Head of Engineering

Direct the engineering services and activities to ensure that equipments & capital assets perform at optimal operating levels within agreed cost.

- Leads the maintenance team to refurbish, upgrade or replace existing equipment, which is either maintenance intensive or operating below potential.
- Improves the overall efficiency and cost effectiveness of the maintenance function and the availability of the equipment fleet
- Identifies training needs and organizes appropriate training
- Reviews and implements planned maintenance procedures and schedules as specified by equipment manufacturers.

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Reviews, develops and maintains a stores inventory control system for monitoring spare parts and materials availability.

Provides leadership needed to enable successful transfer of technical and

Information Technology Technician

Develops the information technology plans for the company in line with its strategic business needs and execute them within agreed standards.

 Closely liaises with other functions to provide information technology related support, understands and identifies the business requirements to formulate and recommend the service proposal.

• Identifies solutions and provides recommendations for improvement initiatives in all businesses and operations related applications.

• Implements systems and procedures to ensure that the use of information technology complies with Addax's policies and standards.

 Participates in design, development and implementation of complex applications, often using new technologies or integrated solutions for improving

 Monitors the performance of consultants to ensure the service standards are met with maximum utilization of project resources.

Accounts Officer

Will develop and implement the financial plans that will ensure Calabar Old Port financial resources are utilized efficiently and profitably within acceptable risks. This will be achieved through implementation and monitoring of accounting and financial policies, systems and controls in accordance with corporate and regulatory standards.

- Leads and coordinates with other functions to gather and compile information required for financial reporting, cash management, projections and analysis
- Implements systems and procedures to ensure that internal controls are maintained at the highest standard, and financial data/reports are prepared in accordance with both local and international accounting standards
- Identifies solutions & provides recommendations for improvement initiatives
- Arranges and coordinates externally for any financing activities to cope with operational and capital expenditure needs
- Maintains suitable banking relationship

SUCCESSION PLAN

ADDAX hopes to localise the operation within the shortest possible time. This explains the reasons for our use of temporary project teams instead of permanent expatriate staff. Where there are expatriate Managers, they are expected to identify and groom their successors. Attempt shall be made to localize key management positions like Head of

For the other positions, Officers who have be identified and selected as successors will be placed on Addax global leadership development programs. Their needs will be identified and attempt will be made to meet these needs in the course of their training. They will be made to attend executive training programs anchored by experienced facilitators and resources

NCP/BPE, NPA & ADDAX (LEASE AGREEMENT FOR CALABAR OLD TERMINAL)

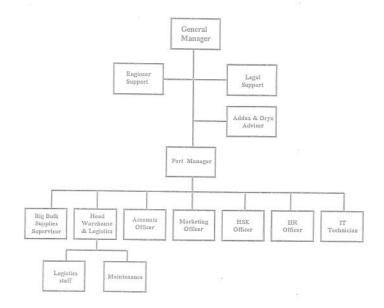
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personnel. They will also participate in regional and global projects to gain working experience in various cultures to become competent in running a successful container port business.

The value placed on international exposure by Addax is very high. Thus, senior management staff would be made to go on international assignment on rotational bases to gain experience by exposing them to various practices in the business.

The available expert group consists of trained professionals employed in Addax & Oryx, Addax Petroleum (terminal operations & logistics).



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[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 ce	ertain Lease A	Agreement da	ated	- 2006 (the	"Lease	Agreeme	nt") b	etween the	Nigerian
Ports Authority (the	e " <u>Lessor"</u>) ai	nd Addax Lo	gistics Nige	eria Limited	(the "L	essee").	This F	Performance	Bond is
being submitted to	you pursuant	to the instru	actions rece	eived from	the Less	see.			

The undersigned, [name of financial institution], a _____ organized under the laws of ____, hereby unconditionally and irrevocably guarantees to pay to you 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. <u>Guaranteed Obligations</u>. The performance 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. (collectively, the "Guaranteed Obligations").
- 2. <u>Guaranteed Amount</u>. 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 three hundred and fifty thousand U.S. dollars (\$350,000) (the "<u>Guaranteed Amount</u>") notwithstanding that the Performance Bond is renewed annually.
- 3. <u>Required Documents</u>. 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:
 - 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
 - that the Lessee is in default of any of the Guaranteed Obligations, specifying the amount of the default (the "<u>Default Amount</u>");
 - (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.
 - 3.3. A copy of the Lessee Demand.

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3.4. A copy of the final arbitrational 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.

- Full Force and Effect. This Performance Bond is effective as of the date hereof and shall be in full force and effect until the anniversary of the date hereof and shall be renewed for another year on the eve of the anniversary date. Failure to renew this Performance Bond by the Lessee on that date shall be considered a breach of material provision of this Agreement, and the Lessor shall have the right to call on the performance bond at any time. 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.
- 5. 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.
- 6. 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.
- 7. 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.
- 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.
- 9. Charges and Commissions. All bank charges and commissions incurred with this Performance Bond are for our account.
- 10. 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.
- 11. Governing Law. This Performance Bond shall be governed and construed in accordance with the substantive laws of Nigeria.

[NAME OF FINANCIAL INSTITUTION ISSUING GUARANTY]

NCP/BPE, NPA & ADDAX (LEASE AGREEMENT FOR CALABAR OLD TERMINAL)

Name:		
Title:		

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- 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 Lease to a level not less than US\$10 million. The Lessor shall have the right to review and approve all policies required. The Lessee shall by certificates and, deposit of copies of insurance policies provide proof of compliance;
 - (2) loss, damage or destruction of all commodities moving through the Designated Area under the responsibility of the Lessee;
 - (3) accidents injury or death occasioned to persons lawfully within the Designated Area 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 Lease;
 - (4) liability to all parties making lawful use of the Designated Area, 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) Any other risks compulsorily provided for by the laws of Nigeria or the rules and regulations governing the Lessor.
 - The Lessee shall purchase and maintain, at its expense, insurance for cover against Loss, damage or destruction arising from fire and other extraneous perils to the permanent structures, buildings, equipment, improvements and other such fixtures owned by the Lessor and found within the Premises. The Lessee shall take out the Insurance under this clause in the names of the Lessee and the Lessor.
- 3. 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 Lease.
- 4. During the continuance of this Lease, the Lessee shall be liable for any (and all) claims, losses, damages, and liabilities relating to the Lessor's Assets, within the Designated Area and the Services, and shall keep the Lessor fully indemnified against any (and all) claims and other legal actions for damages arising therefrom: provided, however that nothing in this Lease shall impose any liability upon the Lessee in respect of any proceedings or claims arising from the acts of a third party or the Lessor, its employees or agents, except if such acts arise, directly or indirectly from the Lessee's negligence.

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