

# Redacted

Execution Copy

## CONCESSION AGREEMENT

between

**NIGERIAN PORTS AUTHORITY**

(the "Grantor")

and

**WEST AFRICA CONTAINER TERMINAL NIGERIA LIMITED**

(the "Concessionaire")

*Handwritten signature*

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made on this the 7<sup>TH</sup> day of February 2005.

BETWEEN:

1. **NIGERIAN PORTS AUTHORITY**, having its head office at 26-28 Marina, Lagos, Federal Republic of Nigeria (the "**Grantor**" which expression shall include its successors –in-title and assigns);

AND

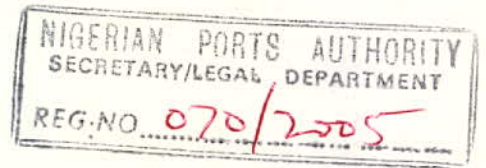
2. **WEST AFRICA CONTAINER TERMINAL NIGERIA LIMITED**, a company registered under the Companies and Allied Matters Act 1990, and having its registered office at Federal Ocean Terminal, Onne, River State in the Federal Republic of Nigeria (the "**Concessionaire**" which expression shall include its successors-in-title and assigns).

WHEREAS:

- A. By virtue of its enabling statute (Nigerian Ports Authority Act 1999 No. 38), the Grantor is charged with the responsibility of constructing, executing, carrying out, equipping, improving, working and developing ports, docks, harbours, piers, wharves, canals, water courses, embankment and jetties in Nigeria and may carry out any of these responsibilities through any other person authorised by it in that behalf.
- B. The Government is desirous of promoting private sector investment and participation in the development and operation of public utilities and infrastructures and to consolidate the existing relationship between the Parties established pursuant to the construction and development of the Concession Area.
- C. The Concessionaire, a private company limited by shares incorporated and registered in the Federal Republic of Nigeria under the Companies and Allied Matters Act 1990 with company number RC386655, is a reputable port developer and manager and has financial and technical capabilities and competence in operation and management of port facilities and infrastructure.
- D. By proposal reference No. INL/GM/006/0016A/04 dated 10 June 2004 addressed to the Honourable Minister of Transport, the Concessionaire expressed the desire to consolidate the existing relationship between the parties established pursuant to the construction and development of the Concession Area.
- E. By a letter dated 26 July 2004 (reference T.0160/S.95/C.2Vol.1/222) from the Ministry of Transport, the Concessionaire was advised that the President of the Federal Republic of Nigeria had approved a lease over the Concession Area in favour of the Concessionaire for a period of twenty five (25) years in the first instance (on mutually agreed terms) and renewable for a further period of twenty five (25) years in line with Government policy on port concessioning.
- F. Pursuant to the letter referred to in Recital E above, the Grantor has agreed to:
  - (1) lease to the Concessionaire the Concession Area for a Concession Period and the Concessionaire has agreed to accept the lease of the Concession Area; and
  - (2) grant the Concession to the Concessionaire and the Concessionaire has agreed to accept the grant of the Concession

subject to and in accordance with the terms and conditions set forth in this Agreement.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:



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**PART I**  
**DEFINITIONS AND INTERPRETATION**



**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

**"Accounting Year"** means the financial year commencing on 1 January and ending on 31 December and the first Accounting Year shall be from the Effective Date and until 31 December following the Effective Date;

**"Additional Facilities"** shall mean any new facilities created or existing facilities expanded or augmented at the Port on or after the Effective Date, such that the overall capacity to handle container traffic at the Port is increased from existing levels as a direct result of such creation, expansion or augmentation. For the avoidance of doubt, additional facilities shall be deemed to have been created only upon the increase in dimensions of existing berths or the creation of new berths at the Port such that the overall capacity to handle container traffic is increased, and shall not include the enhancement or replacement of any moveable assets and Equipment or making available additional storage capacity which may enable additional traffic to be handled at the existing berths;

**"Agreement"** means this concession agreement as of the date hereof, including the Schedules attached hereto, as may be amended, supplemented or modified from time to time in accordance with the provisions hereof;

**"Agreement Date"** means the date of signature of this Agreement;

**"Applicable Laws"** means any statute, law, regulation, ordinance, rule, judgement, order, decree, bye-law, approval, directive, guideline, policy or other governmental regulation or restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government authority having jurisdiction over the matter in question, whether in effect as of the Agreement Date or thereafter;

**"Applicable Permits"** means any and all permissions, clearances, licenses, authorisations, consents, sanctions, no-objections, approvals of or from any Government authority required in connection with the Concession and for undertaking, performing or discharging the obligations contemplated by this Agreement;

**"Banking Day"** means a day when the banks are open for business in Lagos and New York;

**"Berths"** means the two (2) berths of two hundred and eight five (285) metres each adjacent to the Concession Area;

**"Cargo"** means goods or articles of any kind whatsoever, transported or to be transported in a Container, Non-standard Container or Out of Gauge Container and includes Non-containerised Cargo carried on a Container Ship;

**"Change in Law"** means any event which has a material adverse effect on the Concession including but not limited to:

- (a) adoption, promulgation, modification, reinterpretation or repeal after the Effective Date by any Government authority of any statute, rule, regulation, order, treaty, convention, directive, guidelines, policies; or

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- (b) the imposition by any Government authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the Effective Date which renders the performance by the Concessionaire of any of the terms of this Agreement impossible or unviable; or
- (c) any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.

**"Concession"** means the right granted by the Grantor to the Concessionaire exclusively to equip, operate, maintain, manage and repair the Concession Area and to provide the Facilities and Services at the Concession Area subject to and in accordance with the terms and conditions set out in this Agreement;

**"Concession Area"** means the parcel of land situate at the Federal Ocean Terminal within the Onne Oil and Gas Free Zone, Onne, Rivers State of Nigeria as outlined in red on the Master Plan that is attached hereto as Schedule 1 and, pursuant to this Agreement, on which the Concessionaire is authorised to develop and operate the Facilities and Services as set forth in this Agreement;

**"Concession Period"** means the period of the Concession specified in Clause 3 of this Agreement;

**"Concessionaire Event of Default"** shall have the meaning ascribed to it in Clause 35;

**"Concessionaire's Assets"** means the Movable Assets, the Immovable Assets and any and all infrastructure assets, buildings, structures, berths, wharves, Equipment and other immovable and movable assets on the Concession Area belonging to or used by the Concessionaire as part of the Concession during the Concession Period;

**"Container"** means any container 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height or any other container developed for use in liner shipping at any time and including, but not limited to flat-racks, platforms, reefers and tanks, with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers) plates, and which can be handled by means of a spreader;

**"Container Freight Stations"** means the land and premises used by the Concessionaire within the Concession Area where, amongst other things, Cargo is packed, unpacked and cleared;

**"Container Yard"** means the land and premises used by the Concessionaire within the Concession Area where, amongst other things, Containers are stored, received and delivered;

**"Container Ship"** means a ship fitted for the carriage of Containers including but not limited to Non-standard Containers, Out of Gauge Containers, rolling Cargo and Non-containerised Cargo;

**"Container Terminal"** means the operational part of the Concession Area and including the Berths, Container Yard, Container Freight Stations, Moveable Assets, Immovable Assets and all other Equipment and buildings at the Concession Area together with any additional land, berths, Equipment, buildings, Container Yard and Container Freight Stations to be installed or developed in connection with any further developments thereto for the purpose of providing Facilities and Services;



**"Control"** means the holding of power to direct or cause the direction of management, policies and decisions of a company, corporation, partnership or other entity including, without limitation, through control by direct or indirect means of not less than fifty per cent (50%) of the voting rights in such company, corporation, partnership or other entity;

**"Customers"** means any and all customers utilising the Facilities and Services at the Container Terminal including, but not limited to shipping lines, ship owners, shippers, consignees of Cargo and ship agents;

**"Data"** means any and all information, documents, agreements, know-how and data (which shall include, but is not necessarily limited to, commercial, contractual, financial and legal information, geological and geophysical data, maps, models and interpretations) in any medium (whether written, computer readable or otherwise) which is either directly or indirectly related to the Concession;

**"Effective Date"** means 1 September 2007, being a date following the completion of the construction, development and testing of the Concession Area;

**"Equipment"** means any and all Movable Assets, plant and machinery, cranes, office equipment, furniture and fittings, computers (hardware and software) motor vehicles and any other equipment used in connection at the Concession Area whether used, leased or owned by the Concessionaire, on order or to be installed at any time during the Concession Period;

**"Environmental Law"** means any statute, rule, regulation, ordinance, code, guideline or policy having the force of law, in each case, applicable to the Concession now or hereafter in effect and any applicable judicial or administrative interpretation, pronouncement, order, decree or judgement, relating to the environment, health and safety;

**"Expert"** means any person, body or organisation of repute with recognised professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Parties by mutual consent;

**"Facilities and Services"** means the facilities and services as set out in Schedule 2 hereto to be provided by the Concessionaire during the Concession Period in accordance with this Agreement;

**"Financial Closing Date"** means the date upon which a financial closing certificate is issued by an independent Expert confirming the repayment of any and all development fees payable by the Grantor for the development of the Concession Area and, for the avoidance of doubt, less an amount equal to the commitment fee referred to in Clause 5.1 contributed to the development by the Concessionaire and not recoverable from the fees payable pursuant to Part IV (Payments);

**"Force Majeure Event"** means an exceptional event or circumstance:

- (d) which is beyond a Party's control;
- (e) which such Party could not reasonably have provided against before entering into this Agreement which, having arisen, such Party could not reasonably have avoided or overcome, and which is not substantially attributable to the other Party.

A Force Majeure Event shall be, without limitation, any act of God, act of public enemies, war, restraint of governments, princes or peoples of any nation, riots, Change in Law, insurrections, civil commotion, floods, fire, general strikes, terrorist acts, restrictions due to quarantines, epidemics, storms but shall not include Governmental Action;



"**Government**" means the Government of Federal Republic of Nigeria;

"**Governmental Action**" means any action by the Government or governmental authority:

- (a) which in any way prevents the Concessionaire from performing the day to day operations of the Container Terminal;
- (b) which in any way prevents the Concessionaire from claiming any of its rights or performing any of its other obligations under this Agreement;
- (c) so that this Agreement is frustrated or rendered illegal or impossible of being performed in accordance with the provisions hereof;

"**Good Industry Practice**" means the exercise of a degree of skill, diligence and prudence and practices, methods, specifications and standards of Equipment, safety and performance, as may change from time to time, which would reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in operation and maintenance of facilities, Equipment or systems of the type and size similar to the Concession Area;

"**Grantor Event of Default**" shall have the meaning ascribed to it in Clause 36;

"**Immovable Assets**" means those Concessionaire's Assets which cannot be removed from the Concession Area upon termination of this Agreement;

"**IMO**" means the International Maritime Organisation;

"**Lease**" means the lease to be entered into between the Grantor and the Concessionaire, whereby the Grantor shall lease to the Concessionaire the Concession Area for the Concession Period;

"**Lease Fee**" has the meaning ascribed to it in Clause 5.1(b);

"**LIBOR**" means the rate per annum that appears on Telerate Page 3750 or on Reuters Page 2180 at or about 11am (London time) two banking days before the date of calculation of interest due;

"**Maintenance Bond**" shall have the meaning ascribed to it in Clause 8.1;

"**Master Plan**" means the master plan attached hereto as Schedule 1;

"**Movable Assets**" means those Concessionaire's Assets that are not Immovable Assets;

"**Naira**" or "**NGN**" means the lawful currency of the Federal Republic of Nigeria;

"**Non-containerised Cargo**" means Cargo accepted for transport or carriage on a Container Ship which cannot be handled by means of normal use of container spreader, even with attachments;

"**Non-standard Container**" means a Container accepted for transport or carriage on a Container Ship which cannot be handled by means of normal use of container spreader, even with special attachments;

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

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"**Operating Year**" means each period of twelve (12) consecutive months, such that the first Operating Year commences from the Effective Date and each subsequent Operating Year commences on the anniversary thereof;

"**Out of Gauge Container**" means a Container that must be handled with the use of special attachments to the spreader;

"**Party**" means either the Grantor or the Concessionaire as the context may require or admit and "**Parties**" means both Grantor and Concessionaire;

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

"**Port**" means the Onne Port Complex, Rivers State of Nigeria;

"**Tariffs**" means the prices charged by the Concessionaire in respect of Facilities and Services rendered by the Concessionaire to its Customers including, but not limited to, cargo dues subject to and in accordance with this Agreement and Applicable Law;

"**Taxes**" means any Nigerian taxes on corporate income, sales tax, excise duties, customs duties and local taxes and any impost of like nature (whether Central, State or local) charged, levied or imposed on the goods, materials, Equipment and services incorporated in and forming part of the Concession, on the operation and maintenance thereof and on the Facilities and Services, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

"**Termination Date**" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Notice of Termination;

"**Variable Fee**" has the meaning ascribed to it in Clause 5.1(d);

1.2 This Agreement constitutes the entire understanding between the Parties regarding the Concession and supersedes all previous written and/or oral representations and/or arrangements regarding the Concession.

1.3 In this Agreement unless the context otherwise requires:

- (a) words importing the singular shall mean the plural and vice-versa;
- (b) "**Clause**", "**Part**" and "**Schedule**" shall refer, respectively to Clauses of and any Schedule to this Agreement. The Schedules to this Agreement shall form part and parcel of this Agreement;
- (c) a reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the Effective Date, from time to time be amended, supplemented or re-enacted;
- (d) references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or novated;
- (e) any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement;
- (f) any reference to day shall mean a reference to a calendar day; and

- (g) any reference to month shall mean a reference to a calendar month, any reference to any period commencing "from" a specified day or date and "until" a specified day or date shall include both such days or dates.

## **PART II THE CONCESSION**

### **2. THE CONCESSION**

- 2.1 The Grantor hereby grants to the Concessionaire, and the Concessionaire hereby accepts, the Concession for the Concession Period subject to and in accordance with the terms and conditions set out in this Agreement.

### **3. CONCESSION PERIOD**

- 3.1 The Concession is granted to the Concessionaire by the Grantor from the Effective Date and shall continue for a period of twenty five (25) years from the Effective Date unless terminated earlier in accordance with the provisions of this Agreement (the "**Concession Period**").
- 3.2 The Concessionaire shall notify the Grantor in writing not less than twelve (12) months prior to the expiry of the Concession Period if it wishes to extend the Concession Period for a further period of up to twenty five (25) years and such extension of the Concession Period shall be granted to the Concessionaire in line with Government policy on port concessioning and any reference to "Concession Period" shall include an extension of the Concession Period made in accordance with this Clause 3.2.

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**PART III  
CONDITIONS PRECEDENT**



**4. CONDITIONS PRECEDENT**

4.1 Save and except as provided in this Clause, the rights and obligations of the Parties under this Agreement are subject to the satisfaction in full of the following conditions precedent:

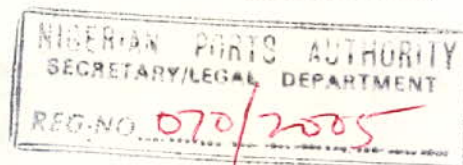
- (a) by the Concessionaire unless any such condition has been waived as provided in Clause 4.2 on or before the Effective Date:
  - (i) all of the representations and warranties of the Concessionaire set forth in Part XVIII (Representations and Warranties) are true and correct;
  - (ii) the Grantor shall have received copies (certified as true copies by a Director of the Concessionaire) of all resolutions adopted by the board of directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of this Agreement; and
  - (iii) the Concessionaire shall have obtained all such Applicable Permits required unconditionally and the Applicable Permits shall be in full force and effect for the relevant period during the subsistence of this Agreement; and
  - (iv) the Concessionaire shall have delivered to the Grantor the Maintenance Bond.
- (b) by the Grantor unless any such condition has been waived as provided in Clause 4.2 before or on the Effective Date:
  - (i) all of the representations and warranties of the Grantor set forth in Part XVIII (Representations and Warranties) are true and correct;
  - (ii) the Grantor has sought and obtained, through the Federal Ministry of Transport, requisite approvals to the grant of the Concession and the Lease from the President of the Federal Republic of Nigeria;
- (c) the Grantor and the Concessionaire shall have entered into the Lease and the Lease shall have been duly registered as required by Applicable Law with the Federal Land Registry.

4.2 Any of the conditions precedent set forth in Clause 4.1, may be waived fully or partially subject to agreement between the Parties.

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**PART IV  
PAYMENTS**



**5. PAYMENT TO THE GRANTOR**

- 5.1 In consideration of the grant of the Concession referred to in Clause 2 above, the Concessionaire shall pay to the Grantor the following amounts:

**COMMENCEMENT FEE**

- (a) a commencement fee in the amount of five million United States Dollars (US\$5,000,000) to be paid within three (3) Banking Days of the Effective Date by credit to the bank account indicated by and in the name of the Grantor;

**LEASE FEE**

- (b) the Lease Fee being:
- (i) from the Effective Date to the Financial Closing Date, seven hundred Niara (NGN700) per square metre per annum;
  - (ii) from the Financial Closing Date until the Termination Date, the then current market rate per square metre per annum for developed land at the Port;

such amounts to be subject to review by the Grantor, the first review to be completed on the fifth anniversary of the Effective Date, the second review to be completed on the tenth anniversary of the Effective Date and thereafter every three (3) years throughout the Concession Period. The Grantor covenants that any increase in the Lease Fee made at the time of the said reviews shall, in any event, be no more than the current market rate charged by the Grantor for developed land at the Port.

- (c) The Concessionaire shall pay the Lease Fee in advance. The Grantor shall invoice the Concessionaire on the Effective Date for the Lease Fee for the proceeding year and the Concessionaire shall, unless the amount or any part of the amount is disputed, pay such Lease Fee in full by credit to the bank account indicated by and in the name of the Grantor as stipulated in the invoice.

**VARIABLE FEE**

- (d) the Variable Fee being:
- (i) from the Effective Date to the Financial Closing Date, as follows:

	Rate US\$		Grantor US\$		Concessionaire US\$		Remark
Container	20'	40'	20'	40'	20'	40'	
Cargo Dues	107.00	202.00	13.40	26.80	93.60	175.20	Import
	82.00	152.00	9.95	19.90	72.05	132.10	Export

- (ii) from the Financial Closing Date until the Termination Date, shall be thirty per cent (30%) of revenues received by the Concessionaire from cargo dues.

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- (e) The Concessionaire shall pay the Variable Fee monthly in arrears. The Grantor shall invoice the Concessionaire on a monthly basis, the first invoice to be sent one (1) month following the Effective Date for the Variable Fee for the preceding month and the Concessionaire shall, unless the amount or any part of the amount is disputed, pay such Variable Fee in full by credit to the bank account indicated by and in the name of the Grantor as stipulated in the invoice.

PROVIDED and it is hereby agreed that the fees payable by the Concessionaire under Clause 5.1 (a), (b), (c), (d) and (e) may, at the option of the Concessionaire be set off against any amount recoverable by the Concessionaire from the Grantor as construction and development costs.

- 5.2 For the avoidance of doubt, each Party shall pay respective taxes, levies, imposts, fees levied by the Government or bodies whatsoever that are by law payable by each Party.

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**PART V  
GRANTOR'S ASSETS**



**6. THE CONCESSION AREA**

- 6.1 The Grantor, as landlord represents and warrants that at the Effective Date the Concession Area will be leased to the Concessionaire with vacant possession and all appurtenances thereto to the Concessionaire together with all rights and easements thereto belonging to the Grantor subject to and in accordance with the terms and conditions of this Agreement.

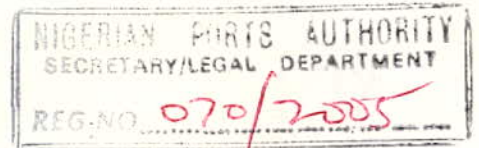
**7. PEACEFUL POSSESSION**

- 7.1 The Grantor warrants that the Concessionaire shall, subject to compliance with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Concession Area during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Concession Area or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Concession Area or any part thereof, the Grantor shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

*Signature*



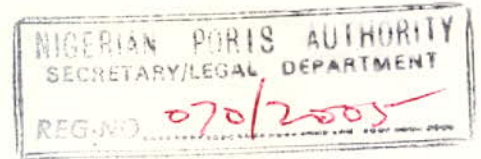
**PART VI  
MAINTENANCE BOND**



**8. MAINTENANCE BOND**

- 8.1 Before or on the Effective Date the Concessionaire shall provide the Grantor with a maintenance bond (the "**Maintenance Bond**") in favour of the Grantor in an amount equal to two million United States Dollars (US\$2,000,000) in the form set out in Schedule 5 or in such other form and substance reasonably acceptable to the Grantor and from a financial institution reasonably acceptable to the Grantor. Such Maintenance Bond shall remain in full force and effect from the Effective Date until thirty (30) days after the Termination Date.
- 8.2 The Maintenance Bond shall secure the performance of all of the Concessionaire's obligations under this Agreement relating to the maintenance of the Concession Area as leased to the Concessionaire by the Grantor pursuant to the provisions of the Lease.
- 8.3 In the event that any draw has been made on the Maintenance Bond during the Concession Period, the Concessionaire shall ensure that the amount of the Maintenance Bond is restored to two million United States Dollars (US\$2,000,000).
- 8.4 If the Concessionaire fails to maintain the Concession Area in accordance with this Agreement other than as a consequence of a Grantor Event of Default the Grantor may give written notice thereof to the Concessionaire supported by evidence from an independent Expert that the Concessionaire has failed to maintain the Concession Area in accordance with the provisions set out in this Agreement. Upon receipt of such written notice, the Concessionaire shall either perform the necessary corrective maintenance or may notify the Grantor that it disputes the content of the notice from the Grantor. In the case of dispute, the dispute shall be resolved in accordance with Part XVII (Dispute Resolution).
- 8.5 If the arbitrators rule that the Concessionaire has failed to maintain the Concession Area in accordance with the provisions set out in this Agreement and the Concessionaire fails to complete the necessary works at the Concession Area within thirty (30) days of the ruling by the Arbitrators, the Grantor may perform the necessary works for and on behalf of the Concessionaire and may thereafter draw upon the Maintenance Bond in respect of any substantive costs incurred by it.

**PART VII  
CONCESSION**



**9. CONCESSION**

9.1 The Concessionaire shall, during the Concession Period, equip, manage, operate, maintain and repair the Container Terminal and provide the Facilities and Services, entirely at its own cost, charge, expense and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Part VI (Concession) shall include but shall not be limited to the following:

- (a) promptly commence operations upon the Effective Date;
- (b) execute the Facilities and Services in accordance with Good Industry Practice;
- (c) collect vessel related charges from its Customers for and on behalf of the Grantor and make payments to the Grantor of such vessel related charges and keep records of such collections in accordance with Schedule 3;
- (d) make payments to the Grantor in accordance with the provisions of this Agreement;
- (e) maintain the Applicable Permits at all times during the Concession Period;
- (f) stevedoring, loading and unloading of vessels, shore work, storage, customs inspection delivery and reception of Containers to and from Customer;
- (g) develop and manage programs for the advancement of the skills and competence of persons employed directly by the Concessionaire within the Concession Area;
- (h) promote community relation through funding of local educational initiatives via a suitable form including representatives from relevant community and port stakeholders;
- (i) promote customer relations including the execution of contracts with Customers;
- (j) operate and manage the Concession Area in an efficient, effective and economic manner;
- (k) comply with all provisions of the law relating to the performance of its obligations under this Agreement, including those relating to occupational health and safety of employees;
- (l) where possible, employ competent Nigerian labour in order to perform its obligations as set out in this Agreement;
- (m) take charge of Cargo and Containers discharged from Container Ships and give necessary receipts for the same;
- (n) store Cargo and Containers so discharged at its own cost, charge, expense and risk subject at all times to the right to charge the Customer for such storage;
- (o) deliver Cargo and Containers and receive or recover Tariffs and other charges due and payable by the Customers and keep records of such collections in accordance with Schedule 3;

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- (p) make efforts to maximise Cargo handled and revenue so as to achieve optimal utilisation of the Facilities and Services;
- (q) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Facilities and Services in a timely manner;
- (r) manage and operate the Facilities and Services on a common-user basis, open to any and all Customers, and refrain from indulging in any unfair or discriminatory practice against any Customer or potential Customer thereof PROVIDED THAT this restriction shall not prevent Concessionaire from engaging in Tariff discounting or rebating in order to optimise the Concessionaire's sustainable profitability in accordance with Good Industry Practice;
- (s) ensure maintenance of proper and accurate Data relating to operations of the Facilities and Services and the revenue earned therefrom;
- (t) comply with all Applicable Laws including those relating but not limited to dock side safety, health, Environmental Laws and labour;
- (u) keep the Concession Area and the surrounding environment free and clear of environmental contamination attributable to the operation and maintenance of the Concession Area and the provision of the Facilities and Services in compliance with all Environmental Laws;
- (v) maintain the Concession Area in accordance with the Good Industry Practice with the objective of providing adequate service standards and ensuring that the Concession Area when transferred to the Grantor upon the Termination Date shall also be in accordance with Good Industry Practice (except normal wear and tear);
- (w) upon prior intimation by the Grantor, provide the authorised representatives of the Grantor access to the Concession Area for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement;
- (x) employ qualified and skilled personnel required to provide the Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall bear all cost, charge and expense in this regard. All employees shall remain the Concessionaire's responsibility;
- (y) throughout the Concession Period, pay in a timely manner all Taxes, in respect of the Facilities and Services and accruing at any time during the Concession Period;
- (z) scheduling entry, berthing and sailing of Container Ships on a non-discriminatory basis;
- (aa) unless to be provided and maintained by the Grantor under this Agreement, the provision and maintenance of all general port infrastructure, required for the Concession;
- (bb) ensure waterside safety and safety of navigation which shall remain the sole responsibility of the Concessionaire;
- (cc) co-ordinate and oversee the dock side safety and implementation of all orders and directions of the regulatory authorities;

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10. **GENERAL OBLIGATIONS OF THE GRANTOR**

10.1 In addition to any of its other obligations in this Agreement, the Grantor shall arrange for and provide the following;

- (a) obtain customs notification for the Concession Area to be used in accordance with the terms and conditions of this Agreement;
- (b) grant any approvals and/or consents sought by the Concessionaire as required under this Agreement promptly provided that the Concessionaire has complied with the conditions and requirements of Applicable Law in respect of the such approvals and/or consents;
- (c) maintenance of the dredged draft alongside the Berths and in respect of the turning basin and the approach channel in accordance with Clause 18;
- (d) maintain or procure the maintenance of the common user infrastructure within the Port;
- (e) assist the Concessionaire in securing the assistance of security forces or the relevant Government authority as may be necessary;
- (f) pilotage and towage on a non-discriminatory basis;
- (g) grant access permits within the Port to all the Concessionaire's personnel and its contractors in a timely manner; and
- (h) ensure that no part of the Concession Area has suffered or will suffer any environmental pollution or damage and to indemnify and hold harmless the Concessionaire against any and all claims costs and expense made against the Concessionaire by any third party in respect of any act or omission by the Grantor in connection with any such environmental pollution or damage.
- (i) ensure that no part of the Concession Area has suffered or will suffer any damage arising out of any act or omission of the Grantor or third parties (other than Customers) and to indemnify and hold harmless the Concessionaire against any and all claims costs and expenses incurred by the Concessionaire in respect of any act or omission by the Grantor or a third parties (other than Customers) in connection with any such damage.

11. **ASSISTANCE IN OBTAINING APPROVALS, PERMITS AND LICENSES**

11.1 The Grantor agrees to, at the request of the Concessionaire, to issue recommendatory letters and use its best endeavours to assist the Concessionaire in obtaining all the Applicable Permits including but not limited to renewals thereof PROVIDED THAT nothing contained in this Clause shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Concession Period.

11.2 In appropriate circumstances, the Grantor may, at the request of the Concessionaire and at the sole discretion of the Grantor, issue recommendatory or supporting letters to any Government authority recommending the proposals of Concessionaire.

12. **PUBLIC SAFETY**

12.1 If the Concession Area or any part thereof breaches the Applicable Laws relating to safety in full force and effect in Nigeria, the Grantor may give written notice to the Concessionaire



requiring the Concessionaire to rectify such breach. If the Concessionaire fails to remedy such a breach within thirty (30) days of receipt of written notice from the Grantor, the Grantor reserves the right to restrict access to the Concession Area until the Concession Area is safe. Unless the breach is as a consequence of a Grantor Event of Default, the Concessionaire shall not be entitled to claim compensation from the grantor for such restriction of access or operations.

### 13. UTILITIES AND SERVICES

- 13.1 The Grantor shall, throughout the Concession Period, provide all infrastructure facilities and utilities to the Concession Area including, but not limited to, water, electricity and telecommunication facilities necessary to equip, operate, maintain, manage and repair the Concession Area at rates and on terms no less favourable to the Concessionaire than those generally available to other Port users availing substantially equivalent facilities and utilities.
- 13.2 In the event that the Grantor fails to provide the utilities and services, then the Concessionaire reserves the right to provide them at its own cost and to debit the Grantor from any revenue collected by the Concessionaire on behalf of the Grantor for such substantiated costs.

### 14. ACCOUNTS, AUDIT AND FINANCIAL STATEMENTS

- 14.1 The Concessionaire shall maintain full accounts of all revenue including other revenues derived/collected by it from and on account of use of the Facilities and Services and shall provide certified copies of the accounts and annual report published by the Concessionaire under the applicable laws within one hundred twenty (120) days of the end of each Accounting Year to which they pertain, throughout the Concession Period.
- 14.2 The Concessionaire shall ensure the production of necessary books and accounts, connected vouchers and other documents for scrutiny and verification by the Grantor or any authorised representative including any professionals authorised by the Grantor. Any data provided will be treated as Confidential Information in accordance with Part XI (Confidentiality) hereof.
- 14.3 The Concessionaire shall carry on its business and affairs with due diligence and efficiency and in accordance with sound financial and commercial standards and practises and shall fully account for all aspects of its business by preparing financial statements and delivering them to the Grantor as follows:
- (a) annual audited financial statements consisting of a balance sheet, a profit and loss account and a statement of cash flow drawn up in accordance with generally accepted international accounting principles and any applicable provisions of the corporate laws of the Federal Republic of Nigeria and certified by a qualified independent auditor;
  - (b) a quarterly statement of the Concessionaire's cash receipts and disbursements; and
  - (c) such other information on the financial position of the Concessionaire as the grantor may from time to time reasonably request to monitor compliance with the provisions of Applicable Law and this Agreement.

### 15. CONTRACTORS

- 15.1 The Concessionaire may engage any contractor or sub-contractor possessing the requisite skill, expertise and capability to perform some, but not all, of its obligations including, but not limited to the appointment of any party as manager of any aspect of the Concession Area provided that the Concessionaire shall, at all times, be solely responsible for the action and omissions of that contractor.



**16. ADDITIONAL FACILITIES**

- 16.1 The Grantor warrants that it has the right to plan, design, redesign, engineer, construct, equip, operate, maintain, manage and repair Additional Facilities outside the Concession Area.
- 16.2 Where the Grantor decides to develop plan, design, redesign, engineer, construct, equip, operate, maintain, manage and/or repair Additional Facilities, the Grantor shall notify the Concessionaire in writing of the details of the Additional Facilities to be developed. Within ninety (90) days of receipt of such notice the Concessionaire shall notify the Grantor in writing whether or not the Concessionaire or its nominee is interested in planning, designing, redesigning, engineering, constructing, equipping, operating, maintaining, managing and repairing such Additional Facilities. Thereafter the Parties shall negotiate, in good faith, with a view to concluding a binding agreement upon such terms and conditions as the Parties may agree. In the event that the Parties fail to reach such agreement within three (3) months from the date of the original notice from the Concessionaire, the Grantor shall be free to submit an offer to develop plan, design, redesign, engineer, construct, equip, operate, maintain, manage and/or repair Additional Facilities to third parties.
- 16.3 In the event of contemplated congestion at the Port, the Concessionaire may submit a financial and technical proposal to the Grantor in order to develop plan, design, redesign, engineer, construct, equip, operate, maintain, manage and/or repair the Additional Facilities. In case such proposal is accepted by the Grantor, such Additional Facilities shall be performed by the Concessionaire or by third parties under the direction of the Concessionaire, and the Concession Period shall be extended for a period to be determined by agreement between the Parties.

**17. MAINTENANCE AND REPLACEMENT OF FACILITIES AND SERVICES**

- 17.1 The Concessionaire shall be solely responsible for keeping the Concession Area in good order and condition from the Effective Date and throughout the Concession Period.
- 17.2 The Concessionaire shall deploy adequate Equipment for meeting the traffic requirements in the Container Terminal. The Concessionaire shall lease, hire or rent new Equipment from time to time.
- 17.3 The Concessionaire shall, at all times during the Concession Period, at its own cost, charge, expense and risk, perform and pay for maintenance repairs, renewals and replacements of all Equipment on the Concession Area or any parts thereof, whether due to use and operations or due to deterioration of materials, so that on the Termination Date, the same shall, except, normal wear and tear, be in as good condition as at the commencement of the Agreement.

**18. DREDGING**

- 18.1 The Grantor shall be responsible for dredging of the channel to the Port (including, without limitation, the face of the Berths at the Concession Area), either directly or through the licensing of competitive suppliers of such services. The Grantor shall maintain (or cause to be maintained) a depth of water at the Berths of twelve (12) metres below low low water and the approach channel of at least twelve (12) metres below low low water at all times.
- 18.2 The consequences of any damage arising from the performance of such dredging or any failure to perform and/or the annual maintenance dredging shall be borne by the Grantor.
- 18.3 The Grantor shall not at any time during the Concession Period charge or impose Taxes, a levy or fee in respect of the provision of the dredging services.

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- 18.4 In the event that the Grantor fails to perform the dredging, then the Concessionaire shall serve the Grantor with written notice requiring the Grantor to perform the dredging within thirty (30) days of the date of the written notice. If the Grantor fails to perform the dredging upon the expiry of the said thirty (30) days, the Concessionaire reserves the right to perform the dredging at the prevailing market cost agreed with the Grantor which the Concessionaire shall debit the Grantor from any revenue collected by the Concessionaire on behalf of the Grantor for such substantiated costs.

19. **ACCESS FOR INSPECTION**

- 19.1 The Concessionaire shall at all reasonable times during the Concession Period permit the Grantor to enter upon and inspect the Concession Agreement to enable the Grantor to ascertain whether the Concessionaire is complying with the terms and conditions of this Agreement and whether or not the Concessionaire is complying with its other contractual and statutory obligations under any Applicable Law for the time being in force subject to reasonable prior notice.

20. **REPORTING REQUIREMENTS**

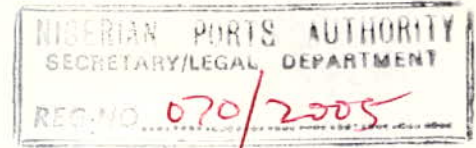
- 20.1 The Concessionaire shall within fourteen (14) days of the end of each calendar month, at its own cost, charge and expense submit to the Grantor such statistical reports and information on Container and Cargo traffic, gross output rates per Container Ship per hour at Berth, daily output rates per Container Ship at Berth, effective working time to Berth time and any other information pertaining to the immediately previous month which the Grantor may reasonably require for monitoring performance and Concessionaire's obligations under this Agreement as described in Schedule 3.

21. **SECURITY ARRANGEMENTS**

- 21.1 The Concessionaire shall ensure national security considerations are observed at the Concession Area. The Concessionaire shall also adhere to the International Ship and Port Facility (ISPS) Code currently in force and any amendment or revision made thereto or such other requirements as stipulated by Government Authorities or IMO from time to time to the extent that the same are applicable to the Facilities and Services.
- 21.2 The Concessionaire shall abide by all security regulations and procedures as stipulated by the Grantor from time to time in accordance with Applicable Law. The Concessionaire shall at its own cost, charge and expense employ provide security services and can make additional security arrangements, if so required.

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**PART VIII  
PERSONNEL**



**22. PERSONNEL RELATED OBLIGATIONS OF THE CONCESSIONAIRE**

22.1 The Concessionaire shall be free to employ any personnel currently employed by the Grantor. The Concessionaire shall indicate to the Grantor which of the Grantor's personnel it wishes to employ in connection with any aspect of the Concession within sixty (60) days of the Effective Date. In the event that the Concessionaire wishes to employ any member of the Grantor's personnel, the contracts to be entered between the Concessionaire and such personnel shall offer terms and conditions of employment that are no less favourable than those which the Grantor provided to its staff as at the Effective Date. The Parties agree that the Concessionaire shall assume no liability for any claims arising from the employment by the Grantor or rights attributable to the Grantor's personnel, including but not limited to pensions and/or severance pay, whether relating to any period prior to or after the Effective Date and the Grantor shall indemnify and hold the Concessionaire harmless against any such claims or any costs or expenses (including any legal fees) incurred in connection therewith.

22.2 It shall be the sole responsibility and liability of the Concessionaire to pay salaries and other amounts payable to its employees employed by it.

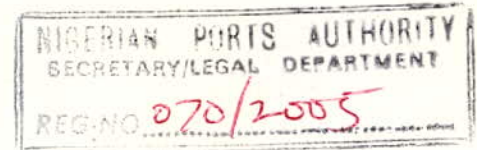
**23. RESPONSIBILITY OF THE CONCESSIONAIRE'S EMPLOYEES UPON EXPIRY OF CONCESSION PERIOD**

23.1 On expiry of Concession Period all the employees of the Concessionaire shall remain Concessionaire's liability, in all respects, including payment of retrenchment compensation payable to them under the law for the time being in force. The Concessionaire agrees to indemnify the Grantor against any claim made by the Concessionaire's employees against the Grantor in respect of or as a consequence of the termination of their services by the Concessionaire.

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**PART IX  
TARIFF**



**24. LEVY AND RECOVERY OF THE TARIFF**

- 24.1 The Concessionaire shall, during the Concession Period, be entitled to levy and recover the Tariffs and such other charges from Customers as set by a authorised economic regulatory body to be established by the Government prior to the Effective Date, who shall be responsible for setting and regulating Tariffs in the Federal Republic of Nigeria. The Grantor shall procure that the authorised economic regulatory body shall always consult with the Concessionaire when setting Tariffs for the Federal Republic of Nigeria and any revision of the Tariffs by the authorised economic regulatory body shall be made following due consultation with the Concessionaire in respect of a proposed change.
- 24.2 The Tariffs levied by the Concessionaire shall be recovered directly by the Concessionaire from the Customers.
- 24.3 The Concessionaire shall be free to discount the cargo dues or to charge Customers amounts higher than the cargo dues in respect of the Facilities and Services provided that the cargo dues charged shall at all times remain within the range as set by the authorised economic regulatory body.
- 24.4 All ship dues will accrue to the Grantor but shall be recovered by the Concessionaire from the Customers.
- 24.5 Value Added Tax or equivalent service tax shall be added as required by law.

**25. FINANCIAL EQUILIBRIUM**

- 25.1 This Agreement is entered into on the basis of the terms and conditions herein contained. In the event that the occurrence of any event of any kind whatsoever has a material adverse effect on the financial equilibrium of the Concessionaire pursuant to this Agreement, the Parties shall consult to define the appropriate measures to be taken in order to restore such financial equilibrium, including without limitation Tariffs adjustments.

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**PART X  
INSURANCE**



**26. CONCESSIONAIRE'S INSURANCE**

- 26.1 The Concessionaire shall obtain and maintain, at its expense, the insurance prescribed in Schedule 4 on the terms and conditions stated therein. Other than policies relating to the Moveable Assets, insurance policies shall be in the names of the Concessionaire and the Grantor. In no event shall the insured amount limit the Concessionaire's responsibilities and liabilities under this Agreement.

**27. EVIDENCE OF INSURANCE**

- 27.1 All insurance obtained by the Concessionaire in accordance with this Part X (Insurance) shall be maintained with insurers or reinsurers, and on terms consistent with Good Industry Practice. Within thirty (30) days of obtaining any insurance cover, the Concessionaire shall furnish to the Grantor, copies of the certificates of insurance, signed by an authorised representative of the insurer.
- 27.2 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 Grantor. In the event that the Concessionaire fails at any time to secure and maintain in full force and effect any and all of the insurance required under this Agreement, the Grantor may procure or renew such insurance, and all costs incurred by the Grantor in connection herewith shall be paid by the Concessionaire within thirty (30) days after the Grantor has sent the Concessionaire an invoice for such payment.

**28. WAIVER OF SUBROGATION**

- 28.1 All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the other Party and any right of any set-off or counterclaim or any other deduction of the insurers, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

**29. APPLICATION OF INSURANCE PROCEEDS**

- 29.1 All moneys received under insurance policies shall be promptly applied by the Party receiving such payment towards repair or renovation or restoration or substitution of the Facilities and Services or any part thereof which may have been damaged or destroyed. The Party receiving such payment shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

**30. INSURANCE COMPANIES**

- 30.1 The Parties shall obtain all insurances through first class international insurance companies or, if not possible, then otherwise in accordance with Applicable Laws.

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**PART XI  
ASSIGNMENT**



**31. ASSIGNMENT BY THE GRANTOR**

- 31.1 The Grantor shall not assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Concessionaire.
- 31.2 Notwithstanding the provisions of Clause 31.1 above, the Grantor shall not be prevented from merging or consolidating with any other governmental ministry, parastatal, department, authority or agency of the Federal Republic of Nigeria or any administrative subdivision of the Federal Republic of Nigeria provided that such surviving entity:
- (a) is demonstrably of equal financial strength; and
  - (b) has the capability and authority to assume all rights, obligations and responsibilities assumed by the Grantor; and
  - (c) assumes and becomes fully liable to perform the Grantor's obligations under this Agreement.

**32. ASSIGNMENT BY THE CONCESSIONAIRE**

- 32.1 The Concessionaire shall not, without the prior written consent of the Grantor, transfer all, or any of its obligations under this Agreement.

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**PART XII  
CONFIDENTIALITY**



**33. CONFIDENTIAL INFORMATION**

33.1 Each of the Parties hereby agree:

- (a) to keep strictly secret and confidential and not to use for its own benefit or disclose to any outside Party any Data or any technical, economic or financial information acquired from the other Party or any entity directly or indirectly affiliated with the other Party (save that it may disclose information to its employees whose duties cannot be performed without such information);
- (b) to cause all written materials relating to or containing such information, including all sketches, drawings, correspondences, reports and notes, and all copies, reproductions, reprints and translations thereof, to be plainly marked to indicate the secret and confidential nature thereof and to prevent the unauthorised use of reproduction thereof;
- (c) to ensure that its employees abide with this confidentiality undertakings contained in this Part XII (Confidentiality) prohibiting disclosure of information disclosed to such employees; and
- (d) that the covenants and obligations of this Clause shall survive the termination of this Agreement, unless and until either of the Parties can reasonably demonstrate to the other that the matter referred to in Clause 33.1(a) above has entered the public domain and that it shall continue to observe them regardless of whether its rights hereunder should be terminated.

33.2 Neither Party shall without the prior consent of the other use or disclose to any outside party such Data or information in any way or manner for any purposes other than the common benefit except for such information:

- (a) which is publicly known or known to the Party, at the time when such information is disclosed to that Party; or
- (b) which is publicly known without any fault of the Party;
- (c) which is legally acquired from third party or parties being the lawful owners of such information by the Party.

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**PART XIII  
FORCE MAJEURE**



**34. FORCE MAJEURE EVENT**

34.1 The Parties shall be excused from performing part or all of their obligations under this Agreement and shall not be liable for the imposition of any penalties or be liable for damages (except for any penalties or damages then due and owing) if, and to the extent that, they are unable to perform or are prevented from performing their respective obligations by reason of a Force Majeure Event.

34.2 Notwithstanding the foregoing, the Parties shall:

- (a) make all reasonable efforts to prevent minimise and thereafter mitigate any delays or costs occasioned by any Force Majeure Event, including recourse to alternative acceptable sources of services, equipment and materials;
- (b) use all reasonable efforts to ensure resumption of normal performance of this Agreement after the occurrence of any Force Majeure Event and perform their obligations hereunder to the maximum extent practicable. Notwithstanding the foregoing, the Performance Targets shall not take into account the period during which a Force Majeure Event occurred;
- (c) Notwithstanding the provisions of Clause 34.1, no relief shall be granted to a Party pursuant to this Part XVII (Dispute Resolution) to the extent that such failure or delay would have nevertheless been experienced by such Party had the relevant Force Majeure Event or its effects not occurred;
- (d) the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of a Force Majeure Event; and
- (e) Notwithstanding the provisions of this Part XIII (Force Majeure) it is agreed that neither Party shall be entitled to collect any damages or proceed to exercise its rights to serve a notice of an Event of Default or suspend performance while the applicability, nature or effect of Force Majeure Event notice is disputed by the Parties hereunder.

34.3 If the Force Majeure Event continues for longer than three (3) calendar months, the Concessionaire and the Grantor 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 Part XVII (Dispute Resolution).

34.4 Notwithstanding the provisions of Clause 34.3, if the Concessionaire is unable to operate and execute the Concession or the Concession Area or otherwise substantively perform its obligations under this Agreement as a result of a Force Majeure Event, for a period exceeding one (1) calendar year or the Concessionaire notifies the Grantor prior to the expiry of the one (1) calendar year period that performance under this Agreement is not viable then the Parties may agree to terminate this Agreement. Upon agreement being reached by the Parties, the Grantor shall issue to the Concessionaire a Notice of Termination.

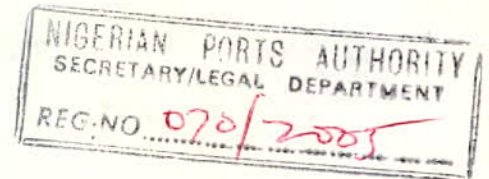
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- 34.5 In the event of the termination of this Agreement as a consequence of a Force Majeure Event, each of the Parties shall be responsible for any costs and expenses incurred by it upon such termination and shall not be responsible in respect of any costs or expenses incurred by the other Party.

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**PART XIV  
EVENTS OF DEFAULT**



**35. CONCESSIONAIRE EVENT OF DEFAULT**

35.1 Except if resulting from a Grantor Event of Default or Force Majeure Event, each of the following events shall be considered to constitute a "**Concessionaire Event of Default**":

- (a) the Concessionaire becomes insolvent, declares, bankruptcy or is declared bankrupt, makes an appointment for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of this property or commences or has commenced against it any legal proceedings for its reorganisation, readjustment or debt, dissolution or liquidation.
- (b) the Concessionaire fails to perform the Facilities and Services for a ninety (90) day consecutive period in an Operating Year or one hundred and twenty (120) non consecutive days in an Operating Year;
- (c) the Concessionaire fails to pay the Lease Fee in accordance with the provisions of this Agreement; or
- (d) the Concessionaire commits a material breach of this Agreement.

**36. GRANTOR EVENT OF DEFAULT**

36.1 Except if resulting from a Concessionaire Event of Default or Force Majeure Event, each of the following events shall be considered to constitute a "**Grantor Event of Default**":

- (a) the Grantor becomes insolvent, declares bankruptcy or is declared bankrupt, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganisation, readjustment of debt, dissolution or liquidation;
- (b) any Governmental Action;
- (c) expropriation, compulsorily acquisition or nationalisation of the Concession Area; or
- (d) the Grantor commits a material breach of this Agreement.

**37. PARTIES RIGHTS**

37.1 Upon an Event of Default described in Clauses 35.1(a), 36.1(a), 36.1(b) or 36.1(c), the non defaulting Party shall have a right of termination whereby the non-defaulting Party may serve a Notice of Termination on the defaulting Party.

37.2 In respect of the other Events of Default not referred to in Clause 37.1, the party not in default (for the purposes of this Part XIV (Events of Default) the "**Non-Defaulting Party**") shall personally deliver to the Party in default (for the purposes of this Part XIV (Events of 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 Notice of Termination on the defaulting Party. 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

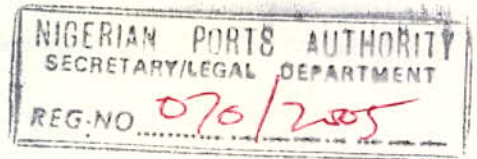
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Party a written notice stating whether there is such an Event of Default, and if so, granting the Defaulting Party a reasonable period of time (not to exceed thirty (30) days) to remedy such Event of Default. If such time period expires and the Defaulting Party has not cured the Event of Default, the Non-Defaulting Party may serve a Notice of Termination on the defaulting Party.

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**PART XV  
TERMINATION**



**38. TERMINATION**

38.1 This Agreement may be terminated in any of the following ways:

- (a) the expiry of the Concession Period;
- (b) upon the occurrence of an Event of Default in accordance with Clause 37;
- (c) upon the occurrence of a Force Majeure Event in accordance with Clause 34.4; or

and the provisions set out in Part XVI (Compensation) shall apply.

38.2 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.

**39. CONDITION SURVEY**

39.1 Upon Notice of Termination, a condition survey by an independent engineer appointed jointly by the Concessionaire and the Grantor of the Concession Area and Immovable Assets shall be conducted to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of all of Immovable Assets at the Concession Area.

39.2 If, as a result of the condition survey, it is found that the Concession Area and/or the Immovable Assets have not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its sole cost, charge and expense, take all necessary steps to put the same in good working condition prior to the Termination Date.

**40. TRANSFER OF IMMOVABLE ASSETS**

40.1 On the Termination Date, the Concessionaire shall, subject to the provisions of this Agreement:

- (a) vacate the Concession Area subject at all times to the terms and conditions contained in this Agreement;
  - (i) transfer to the Grantor all its rights, title and interest in or over the Immovable Assets for which a transfer of ownership to the Grantor is agreed between the Parties and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- (b) hand over to the Grantor all documents including as built drawings, manuals and records relating to operation and maintenance of the Facilities and Services;
- (c) execute such documents and deeds as the Grantor may require to confirm or give effect to this Clause.

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- 40.2 On the Termination Date the Parties shall, ~~subject to the provision of this Agreement~~, pay such payment (whichever is relevant) as determined in accordance with Part XVI (Compensation).
- 40.3 The Grantor and the Concessionaire shall, at least three (3) months prior to the expiry of the Concession Period or immediately upon service of a Notice of Termination, start to take all necessary steps to complete the aforesaid process of vacation of the Concession Area on the Termination Date and payment by the relevant Party or Parties in accordance with the provisions of Part XVI (Compensation).
41. **APPLICABLE PERMITS**
- 41.1 The Concessionaire shall, at its own cost, charge and expense transfer to the Grantor all such Applicable Permits which the Grantor will require and which can be legally transferred PROVIDED THAT if termination of this Agreement is on account of an Event of Default or Force Majeure where the Grantor is the defaulting Party, the cost of the transfer of the Applicable Permits shall be borne by the Grantor.

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**PART XVI  
COMPENSATION**

**42. TERMINATION DUE TO EVENT OF DEFAULT**

In the event of the termination of this Agreement as a consequence of a Grantor Event of Default, the Grantor shall be responsible for any costs and expenses incurred by the Concessionaire in respect of any and all construction and development costs incurred by the Concessionaire and not recovered by the Concessionaire, and shall also pay to the Concessionaire compensation equal to two times the total revenue received by the Concessionaire in respect of the Concession for the full Operating Year ending immediately preceding the Grantor Event of Default.

- 42.1 In the event of the termination of this Agreement as a consequence of a Concessionaire Event of Default, the Concessionaire shall be responsible for any costs and expenses incurred by the Grantor upon such termination and shall pay to the Grantor compensation equal to two times the total revenue received by the Concessionaire in respect of the Concession for the full Operating Year ending immediately preceding the Concessionaire Event of Default.

**43. EXPIRY OF CONCESSION PERIOD**

- 43.1 Upon expiry of the Concession Period, each of the Parties shall be responsible for any costs and expenses incurred by it upon such termination and shall not be responsible in respect of any costs or expenses incurred by the other Party. No compensation shall be payable by either Party to the other upon expiry of the Concession Period.

**44. DELAYED PAYMENT**

- 44.1 All payments to be made by one Party to the other in accordance with this Part XVI (Compensation) shall be made upon the Termination Date. If a Party fails to pay the payments that it is required to make in accordance with this Part XVI (Compensation) on the Termination Date, the defaulting Party shall be liable to pay interest at the rate of two per cent (2%) above LIBOR per annum for the period of the delay until payment thereof.

**45. REMEDIES CUMULATIVE**

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



**PART XVII**  
**DISPUTE RESOLUTION**

**46. AMICABLE SETTLEMENT**

- 46.1 If any dispute or difference or claims of any kind arises between the Grantor and the Concessionaire in connection with or arising out of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

**47. ASSISTANCE OF EXPERT**

- 47.1 The Parties may, in appropriate cases agree to refer the matter to an Expert appointed by them. The Parties agree to abide by the decision of the Expert. The cost of using the Expert shall be shared equally.

**48. ARBITRATION**

- 48.1 In the event that Parties are unable to reach an amicable settlement in respect of a dispute or difference or claims of any kind within ninety (90) days, such dispute or difference or claim of any kind shall be finally settled under the rules of arbitration of the Regional Centre for International Commercial Arbitration, Lagos. Arbitrators appointed in accordance with the said Regional centre for International Commercial Arbitration, Lagos Rules as provided for in this Part XVII (Dispute Resolution).

**49. PLACE OF ARBITRATION**

- 49.1 The place of arbitration shall be London or any country mutually agreed by the Parties.

**50. ENGLISH LANGUAGE**

- 50.1 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.

**51. PROCEDURE**

- 51.1 The procedure to be followed within the arbitration, including appointment of arbitrator, the rules of evidence which are to apply shall be in accordance with the rules of arbitration of the Regional Centre for International Commercial Arbitration, Lagos.

**52. ENFORCEMENT OF AWARD**

- 52.1 Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction thereof.

**53. FEES AND EXPENSES**

- 53.1 The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of



its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by Party.

54. **PERFORMANCE DURING ARBITRATION**

- 54.1 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.

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**PART XVIII**  
**REPRESENTATIONS AND WARRANTIES**

**55. MUTUAL REPRESENTATIONS AND WARRANTIES**

- 55.1 Each Party represents and warrants to the other Party upon the Agreement Date and throughout the Concession Period that:
- (a) it is duly organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
  - (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
  - (ii) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
  - (iii) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof;
  - (iv) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

**56. GRANTOR WARRANTIES AND REPRESENTATIONS**

- 56.1 The Grantor also warrants and represents upon the Agreement Date and throughout the Concession Period that:
- (a) has the right title and interest in and to the Concession Area and is able to grant the Concession to the Concessionaire in accordance with the terms and conditions as set out in the Lease;
  - (b) the Grantor represents and warrants that the Concession Area is not mortgaged, charged, hypothecated, assigned or encumbered in any manner whatsoever on the Effective Date;
  - (c) neither it nor its representatives have solicited or received any unlawful consideration or commission (in the form of a bribe or kick-back) nor has it or its representatives exerted or utilised any unlawful influence in connection with entry into this Agreement; and
  - (d) the Grantor shall not knowingly permit any work related to this Agreement to be contracted to any of its officials or employees or any member of the immediate family (spouse, parent child or sibling) of any such official or employee who is directly or indirectly involved in contract awards or supervision of the Concession or to any company or enterprise in which any of such persons is an executive officer or substantial owner without the prior written consent of the Grantor after full disclosure of the relevant facts.

**57. CONCESSIONAIRE WARRANTIES AND REPRESENTATIONS**

- 57.1 The Concessionaire also warrants upon the Agreement Date and throughout the Concession Period that:



- (a) it has obtained sufficient funds adequate to allow it to carry out its obligations under this Agreement as they occur;
- (b) neither it nor its representatives have offered any government official or official or employee of the Grantor any unlawful consideration or commission (in the form of a bribe or a kick back) for this Agreement nor has it or its representatives exerted or utilised any unlawful influence to secure or solicit this Agreement;
- (c) it shall not contract or allow any of its contractors to sub contract any portion of the work for the Concession to any person known by it to be an official or employee of the Grantor or a member of the immediate family (spouse, parent, child or sibling) of any such official or employee who is directly or indirectly involved in contract awards or supervision of the Concession or to any company or enterprise in which any or such persons is an executive or officer or substantial owner without the prior written consent of the Grantor after full disclosure of the relevant facts;
- (d) if any commission has been or will be paid by the Concessionaire to any person, company or enterprise, whether resident in Nigeria or outside Nigeria in connection with soliciting or securing this Agreement, the Concessionaire shall disclose to the Grantor the identity of the payee, the amount and the nature of the services rendered;
- (e) it shall not, without the prior written consent of the Grantor (such consent not to be unreasonably withheld) allow a change in Control of the Concessionaire;
- (f) it shall not create or allow to be created any other security interest, lien, mortgage or encumbrance in respect of its rights and interest under this Agreement without the prior written consent of the Grantor;
- (g) if the Concessionaire wishes to enter into a financing arrangement in relation to the Concession Area, it shall use its best efforts to include the following provisions in a loan or financing agreement with its lender:
  - (i) a binding commitment from its lender to the Grantor in a manner legally enforceable by the Grantor that, so long as this Agreement is in effect and so long as no Grantor Event of Default has occurred or is continuing, the lender will take no action (except pursuant to rights granted to the Concessionaire under this Agreement) to disturb, affect or impair the rights of the Grantor under this Agreement;
  - (ii) a binding commitment by its lender:
    - (A) to give notice to the Grantor of any default by the Concessionaire under the loan or financing agreement;
    - (B) to afford the Grantor the right to cure any such default within ninety (90) days after it receives such notice of default;
    - (C) to forbear from exercising any right or remedy available to the lender in respect of such default during such cure period; and
    - (D) not to withhold unreasonably any consent or approval required to be obtained from a lender pursuant to this Agreement.

## 58. WAIVER OF SOVEREIGN IMMUNITY

58.1 Each Party hereto unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts;
- (b) The Grantor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterised as sovereign immunity or otherwise, from any legal proceedings, whether in Nigeria or elsewhere, to enforce any liability or obligation related to or arising from this Agreement, including, without limitation, immunity from services of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgement 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.

59. **CONSEQUENTIAL AND INDIRECT LOSSES**

- 59.1 Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages and neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement Provided that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement.





**PART XIX  
MISCELLANEOUS**

**60. SURVIVAL OF OBLIGATIONS**

- 60.1 Any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the Concession Period as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the Concession Period shall survive the termination of this Agreement.

**61. ARTICLES TO SURVIVE TERMINATION**

- 61.1 The provisions of Part XII (Confidentiality), Part XVI (Compensation), Part XVII (Dispute Resolution) and Clause 68 (Governing Law) shall survive the termination of this Agreement.

**62. SEVERAL OBLIGATIONS**

- 62.1 Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement.

**63. SEPARABILITY**

- 63.1 If for any reason whatsoever any provision or any part of this Agreement is held or shall be declared to be void or illegal or invalid under present or future laws or regulations effective and applicable during the Concession Period, by any competent authority, arbitral tribunal or court, such provisions shall be fully separable and this Agreement shall be constructed as if such provision or such part of this Agreement never comprised part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such void or illegal or invalid provision or by its severance from this Agreement. The parties undertake to negotiate the terms of a new provision replacing the one so found void or invalid or illegal so as to achieve the same economical and legal effects.

**64. NOTICES**

- 64.1 Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any Concession Period or related or breach of any Concession Period of this Agreement shall be in writing and shall be given by hand delivery, recognised international courier or first class mail and delivered to the Parties at their respective addresses set forth below:

**Grantor**

Nigerian Port Authority  
26-28 Marina  
Lagos  
Federal Republic of Nigeria

For the attention of the Managing Director

**Concessionaire**

West Africa Container Terminal Nigeria Limited



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Onne Port Complex  
Federal Ocean Terminal  
Onne  
River State  
Federal Republic of Nigeria

For the attention of the Managing Director

Copy to

Maersk Nigeria Limited  
Maersk House  
121 Louis Solomon Close  
Victoria Island  
Lagos  
Federal Republic of Nigeria

For the attention of the Managing Director

or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- (a) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address; and
- (b) in the case of any communication made by facsimile, when transmitted properly addressed to such telex number or facsimile number provided that a copy of the facsimile is sent by courier within three (3) working days of the facsimile transmission.

65. **WAIVER**

- 65.1 No waiver of any Concession Period or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Clauses 64.1 and 66.1 of this Agreement. A waiver by any Party of any Concession Period or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such Concession Period or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

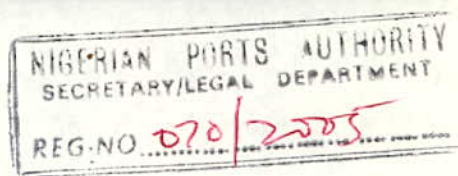
66. **AMENDMENTS AND MODIFICATIONS**

- 66.1 No amendments, modifications or alterations of or any additions to the terms and conditions of this Agreement shall be valid unless the same be in writing and agreed to by the Parties.

67. **NO AGENCY**

- 67.1 Neither Party shall and each shall procure that its directors, officers and employees in that capacity, shall not, represent itself or otherwise hold itself out as an agent or other representative of the other Party or otherwise hold itself out as having any authority to bind of the other of them unless such person is validly authorised to do so.





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68. **GOVERNING LAW**

- 68.1 This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria.

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### **SCHEDULE 1**

### **MASTER PLAN (See Attached)**

#### **Concession Area**

All that parcel of land situate at the Federal Ocean Terminal within the Onne Oil and Gas Free Zone, Onne, Rivers State of Nigeria as outlined in red on the Master Plan and more particularly delineated and shown on Survey Plan No. A/A/RS32/2003 dated 22<sup>nd</sup> September, 2003 drawn by Surveyor Angus I. Adimora (Registered Surveyor) and demarcated by survey beacon Nos. RE6870, RE6871, RE6872, RE6873, RE6875, RE6876, RE6877, RE6878, RE6879, RE6880, RE6881 and RE6882, and measuring an area of 318,812.91 Sqm or 31.88 Hectares.

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## SCHEDULE 2

### FACILITIES AND SERVICES

From the Effective Date, and with due consideration to the Port generally, the Concessionaire shall provide the following all encompassing gate-to-gate facilities and services (the "**Facilities and Services**") in the Concession Area in an efficient and prudent manner in accordance with the Concession Agreement and such additional facilities and services as required by Customers calling at and using the Concession Area from time to time:

#### 1. STEVEDORING

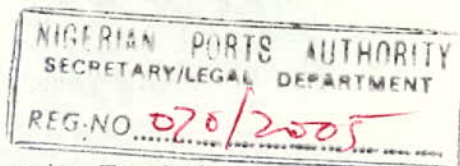
1.1 The loading and/or discharging of Containers or Cargo or rolling equipment from/to Container Ships and shall include, but not be limited to:

- (a) movement of Containers from Container Ships cell/deck to wharf and vice versa, including seal checks;
- (b) movements of Containers from wharf to stacking area and vice versa;
- (c) opening and closing of hatches including unsecuring, securing and movement of hatch covers from bay to bay or to wharf and vice versa;
- (d) visual checking of Containers. Checking the correctness of seal numbers and Containers numbers. Assurance of correct stow location whilst loading. Completing stowage plan immediately after completion of operating and reporting;
- (e) prompt recording of Container activities in and out of Container Ships;
- (f) prompt recording of damage to Containers whilst loading, discharging and whilst on the Container Terminal;
- (g) lashing or unlashng of deck Containers (materials will be furnished by the Container Ship);
- (h) attaching and/or detaching of electrical plugs for reefer and other special Containers as well as coupling/de-coupling of conair Containers to/from Container Ship's installation at the respective stow location on board the Container Ship, if applicable;
- (i) in accordance with Container Ship requirements:
  - (i) stowage planning; and
  - (ii) completing stowage plans, preparing information and reporting;

1.2 In accordance with the Tariffs set out in Schedule 5:

- (a) Stevedoring Container in – discharging (full or empty):
  - (i) unlashng Container;
  - (ii) discharging Container (via gantry crane or ship's crane or Container Ship's ramp) from a Container Ship;
  - (iii) transfer (carrying) to stacking area;

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- (iv) stacking on the Container Terminal; and
- (v) all related checking (interchange, damages, seals, etc.) and documentation (tally sheet, discharge list, etc.);
- (b) Stevedoring Container out – loading (full or empty):
  - (i) moving Container from terminal stack and transferring to shipside;
  - (ii) loading Container to Container Ship;
  - (iii) lashing Container (twist lock and bars) under Container Ship crew responsibility; and
  - (iv) all related checking (interchange, damages, seals) and documentation;
- (c) Stevedoring Cargo and rolling equipment in – discharging from Container Ship:
  - (i) unlash Cargo and rolling equipment;
  - (ii) unloading Cargo and rolling equipment;
  - (iii) transfer (carrying) to storage area; and
  - (iv) all related checking (interchange, damages, seals, etc.) and documentation (tally sheet, discharge list);
- (d) Stevedoring Cargo and rolling equipment out – loading to Container Ship:
  - (i) loading from storage area and transferring to Container Ship;
  - (ii) loading Cargo and rolling equipment to Container Ship; and
  - (iii) all related checking (interchange, damages, seals, etc.) and documentation.

## 2. SHIFTING

2.1 Extra moves of Containers during a Container Ship call requested by the Container Ship or necessitated for stevedoring operations, which may be within the same bay of the Container Ship or from Container Ship cell/deck to quay and restowing in Container Ship cell/deck including, but not limited to:

- (a) Shifting on board:
  - (i) unlash Container;
  - (ii) shifting from hatch to same hatch;
  - (iii) lashing Container; and
  - (iv) all related checking and documentation (loading list, letter plan, etc.);
- (b) Shifting via quay:
  - (i) unlash Container;
  - (ii) unloading Container from hatch to under tackle;



- (iii) loading container on quay;
- (iv) loading Container on to designated bay;
- (v) lashing Container; and
- (vi) all related checking and documentation.

3. **TRANSHIPMENT**

3.1 Stevedoring in from a first Container Ship and stevedoring out on to second Container Ship excluding shore handling operations including, but not limited to:

- (a) unlash Container;
- (b) unloading Container;
- (c) transfer (carrying) to designated stacking area;
- (d) all related checking (interchange, damages, seals, etc.) and documentation;
- (e) loading from terminal stack and transfer to second Container Ship;
- (f) loading Container;
- (g) lashing Container (twist lock and bars) under Container Ship crew responsibility; and
- (h) all related checking (interchange, damages, seals, destination, weight, etc.) and documentation.

4. **SHORE HANDLING**

4.1 Receiving and delivering of Containers including, but not limited to:

- (a) physical inspection of Containers and ascertaining any damage to Containers but excluding inspection of the contents of the Container;
- (b) prompt reporting of Containers activities on the Container Terminal when entering or leaving the Container Terminal;
- (c) moving Containers off chassis from receiving to stacking area or loading Container onto chassis, and transport to delivery area.;

4.2 In accordance with Tariffs as set out in Schedule 5:

- (a) Shore handling out – import/transit delivery (full or empty):
  - (i) storage on terminal stack;
  - (ii) loading onto Customer truck; and
  - (iii) all related checking (interchange, damages, seals, etc.) and documentation;
- (b) Shore handling In – export delivery (full or empty):
  - (i) unloading from Customer truck;
  - (ii) storage on terminal stack; and

- (iii) all related checking (interchange, damages, seals, etc.) and documentation;
- (c) Shore handling transshipment (full or empty):
  - (i) unloading from yard chassis;
  - (ii) storage on terminal stack;
  - (iii) loading onto yard chassis; and
  - (iv) all related checking (interchange, damages, seals, etc.) and documentation

5. **STORAGE**

- 5.1 Storage on terminal stack.

6. **REEFER MONITORING**

- 6.1 Checking and control temperature and humidity control settings of reefer Containers on a regular basis including records and reports. Consumables and spare parts shall be provided by a Customer at its own costs.

7. **REEFER POWER SUPPLY**

- 7.1 Plugging in and plugging out.
- 7.2 Power supply including emergency power supply.

8. **EXTRA MOVES**

- 8.1 Any additional moves on terminal stack above that required for standard stevedoring and shore handling requested by Customer and/or other authority (inspection, sorting, etc.)

9. **OTHER SERVICES**

- 9.1 Interchange of import and transit Cargo and rolling equipment:

- (a) The Cargo and rolling equipment discharged from Container Ships by the Concessionaire will be immediately transferred to the storage area and stacked using Concessionaire Equipment;
- (b) the Concessionaire and the Cargo stevedore shall issue an interchange receipt for the cargo;
- (c) the Concessionaire will invoice the full stevedoring to the Customers;
- (d) the Cargo stevedore will invoice the full shore handling and storage charges to the Customers.

- 9.2 Interchange of export Cargo and rolling equipment

- (a) The Cargo and rolling equipment to be loaded to Container Ships by the Concessionaire will be delivered to the stacking area;
- (b) The Concessionaire and the Cargo stevedore shall issue an interchange receipt for the Cargo;





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- (c) The Concessionaire will invoice the full shore handling and storage charges to the Customers.

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### SCHEDULE 3

#### RECORDS AND REPORTS

##### 10. MAINTENANCE OF BOOKS AND RECORDS

- 10.1 The Concessionaire 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 Concession Area, for providing information to the Grantor, and for informing the public and its customers of the quality and performance of its operations.

##### 11. ACCOUNTING

- 11.1 The Concessionaire shall maintain suitable and complete accounting and non-accounting records that summarise 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 Grantor. Technical records (including without limitation engineering designs and drawings) shall be maintained in accordance with Good Industry Practice.

##### 12. CONCESSION AREA

- 12.1 Beginning on the Effective Date, the Concessionaire shall prepare and maintain current records of the Concession Area in sufficient detail as required by the Grantor to provide a full understanding of the location and state of the Concession Area. 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.

##### 13. COPIES OF RECORDS

- 13.1 The Concessionaire shall provide the Grantor with copies of the foregoing records as requested by the Grantor from time to time.

##### 14. RETAINING REQUIREMENTS

- 14.1 The Concessionaire shall retain all records, reports and other documentation required to be prepared and maintained by the Concessionaire hereunder for at least three (3) years after the Termination Date.

##### 15. OTHER INFORMATION

- 15.1 The Concessionaire shall provide to the Grantor any other information as the Grantor may reasonably require in accordance with Good Industry Practise, including:

- (a) statistics on the quantity and types of Containers handled in the Container Terminal;
- (b) statistics on the numbers and types of Container Ships, wagons or road trucks loaded or unloaded in the Container Terminal;
- (c) details of the claims received in relation to Cargo damage;



- (d) immediate notification of accidents within the Container Terminal causing death or serious injury;
- (e) immediate notification of incidents causing oil pollution or other forms of environmental damage;
- (f) industrial relations;
- (g) public complaints;
- (h) notification of additions to and disposals of mechanical equipment and other significant assets; and
- (i) statistics on the availability for use of major items of mechanical Equipment such as gantry cranes and front-end loaders.

## 16. ANNUAL REPORT

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

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

## 17. PLANNING AND INVESTMENT REPORT

The Concessionaire 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; and
- (c) human resources proposals ("**Planning and Investment Report**"); and
- (d) a benchmarking of all of the foregoing against the Development Plan.

The Concessionaire shall submit to the Grantor 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 (5<sup>th</sup>) anniversary of such date and each five (5) years thereafter, the Concessionaire shall submit to the Grantor 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 Concessionaire shall provide any clarification of the Planning and Investment Report requested by the Grantor.

18. **QUARTERLY TRAFFIC REPORT**

18.1 The Concessionaire shall prepare a quarterly traffic report which shall include, at a minimum, the following information:

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

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

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**SCHEDULE 4**

**INSURANCES**

19. The Concessionaire shall purchase and maintain, at its expense, insurance for cover against the following:
- (a) Concessionaire's general liability arising out of this Agreement;
  - (b) loss, damage or destruction of all commodities moving through the Concessionaire Area under the responsibility of the Concessionaire;
  - (c) accidents, injury or death occasioned to persons lawfully within the Concession Area arising out of its operations or any such other liabilities that may be occasioned to such persons as a result of the Concessionaire carrying out and/or performing the Facilities and Services as provided for in this Agreement;
  - (d) liability to all parties making lawful use of the Concession Area;
  - (e) risks arising from deficiencies or failure to dispose of waste materials including those relating to leaking Containers, damage to Containers and other property or hazards;
  - (f) loss damage or destruction to the permanent structures, buildings, Immovable Property and any improvements thereto and other such fixtures owned by the Grantor and found on the Concession Area;
  - (g) any other risks compulsorily provided for by the laws of Nigeria.
20. The proceeds from such insurance cover shall be utilised 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 Concessionaire under this Agreement.
21. During the continuance of this Agreement, the Concessionaire shall be liable for any and all claims, losses, damages and liabilities relating to the Concession Area and the provision of the Facilities and Services, and shall keep the grantor fully indemnified against any and all claims and other legal actions for damages arising therefrom; provided however that nothing in this Agreement shall impose any liability upon the Concessionaire in respect of any proceedings or claims arising from the acts of third parties or the Grantor, its employees or agents, except if such acts arise, directly or indirectly from the Concessionaire's negligence.

*Handwritten signature/initials*

**SCHEDULE 5**

**MAINTENANCE BOND**

Brief description of Contract: the Concession Agreement dated • (the "Concession Agreement") and made between the NIGERIAN PORTS AUTHORITY (the "Grantor") as grantor and WEST AFRICAN CONTAINER TERMINAL NIGERIA LIMITED (the "Concessionaire") as concessionaire whereby the Grantor has granted the right to the Concessionaire to exclusively equip, operate, maintain, manage and repair the Concession Area subject to and in accordance with the terms and conditions contained in the Concession Agreement

Name and address of beneficiary: NIGERIAN PORTS AUTHORITY.

BY THIS BOND We • whose office is at • as Guarantor are irrevocably and firmly bound to the Beneficiary in the total amount of two million United States Dollars (US\$2,000,000) (the "Bond Amount") for the due performance of the Concessionaire's obligation under the Concession Agreement to maintain the Concession Area in accordance with Good Industry Practice (as defined in Clause 1.1 of the Concession Agreement) with the objective of providing adequate service standards and ensuring that the Concession Area when transferred to the Grantor upon the Termination Date (as defined in Clause 1.1 of the Concession Agreement) shall also be in accordance with Good Industry Practice (fair wear and tear excepted).

The Bond shall become effective on the Effective Date (as defined in Clause 1.1 of the Concession Agreement) and shall remain in full force and effect until thirty (30) days after the Termination Date (as defined in Clause 1.1 of the Concession Agreement).

We hereby undertake to pay you any sum or sums not exceeding in aggregate two million United States Dollars (US\$2,000,000) on written receipt by us in this office of:

1. a certified true copy of the decision of the arbitrators appointed in accordance with the provisions of Part XVIII (Dispute Resolution) ruling that the Concessionaire has failed substantially to maintain the Concession Area in accordance with the provisions of the Concession Agreement in any material aspect; and
2. a statement signed by a Director of the Grantor confirming that the Concessionaire has failed substantially to complete the necessary material works at the Concession Area within thirty (30) days of the ruling of the arbitrators; and
3. an invoice or such other documentary evidence confirming the amount due in respect of the maintenance works performed by the Grantor as a consequence of the Concessionaire's substantial failure to maintain the Concession Area in accordance with the Concession Agreement in any material aspects.

In the event that any draw has been made on the Maintenance Bond during the Concession Period, the Concessionaire shall ensure that the amount of the Maintenance Bond is restored to the Bond Amount. However, the total accumulated liability of the Guarantor in any one Operating Year shall not exceed the Bond Amount.

Only claims, that arise before expiry of this Maintenance Bond, may be made by the Grantor under this Bond and any claim under this Bond must be received by the Guarantor on or before thirty (30) days after the Termination Date when this Bond shall expire and shall be returned to the Guarantor but whether or not it is returned it will expire in accordance with the above terms.





Execution Copy

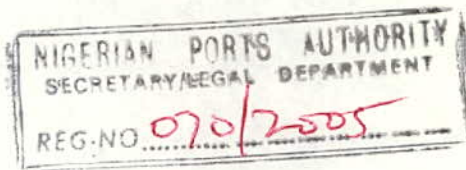
The benefit of this Bond may be assigned subject to the provisions for assignment to a lawful assignee of the Concession Agreement and subject to prior written consent of the Guarantor, such consent not to be unreasonably withheld.

This Bond shall be governed by the law of the Federal Republic of Nigeria.

Wherefore this Bond has been issued by the Guarantor on •

The Common Seal of the within named.

*DATE*



Execution Copy

IN WITNESS WHEREOF, the Parties, have caused their respective common seals to be affixed hereto as of the day and year first written above:

**THE COMMON SEAL OF  
THE NIGERIAN PORTS AUTHORITY**

Was hereto affixed

In the presence of:

Minister of Transport  
(Board Chairman)

Managing Director

Secretary

**THE COMMON SEAL OF  
WEST AFRICA CONTAINER TERMINAL NIGERIA LIMITED**

Was hereto affixed

In the presence of:

Authorised attorney

Adebayo Martins, Agbor & Segun  
AGBOR & SEGUN  
Solicitors & Attorneys  
1st Floor, Nicholas House Lagos

Secretary