



**LEASE AGREEMENT
FOR TINCAN ISLAND TERMINAL B**

by and among

**NIGERIAN PORTS AUTHORITY
as the Lessor.**

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

and

**TIN-CAN ISLAND CONTAINER TERMINAL LIMITED
as the Lessee.**

Dated as of 11th day of May, 2006



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THIS LEASE AGREEMENT (this "Agreement") is made and entered into this 11th day of May 2006 ("Execution Date") by and among:

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

THE BUREAU OF PUBLIC ENTERPRISES, the Secretariat of the National Council of Privatisation ("NCP") and an agency of the Federal Government of Nigeria established under the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999 Cap P38 Laws of the Federation of Nigeria, whose registered office is situate at No.11, Osun Crescent, Maitama, Abuja, Nigeria ("BPE"), as the Confirming Party; and

TINCAN ISLAND CONTAINER TERMINAL LIMITED, a private company incorporated under the laws of the Federation of Nigeria whose registered office is at 4, Creek Road, Apapa, Lagos, Nigeria (the "Lessee"),

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

WHEREAS:

- A. By virtue of the Act, the Lessor is, amongst other things, charged with the responsibility of constructing, executing, carrying out, equipping, improving, working and developing ports, docks, harbours, piers, wharves, canals, water courses, embankment and jetties in Nigeria and may carry out any of these responsibilities through any other person authorised by it in that behalf.
- B. The Federal Government of Nigeria ("FGN") has embarked upon a Port Reform and Modernization Strategy in order to increase its efficiency and reduce cost to users and the FGN. As part of this strategy, the FGN has decided to transfer the management and operation of the major port terminals from the Lessor to the private sector through a series of operating leases.
- C. The NCP is the agency established by the FGN under the Public Enterprises (Privatisation and Commercialisation) Act No 28 of 1999 to formulate and approve policies on privatization and commercialization. BPE is the implementation agency of the NCP for the leasing of port terminals in Nigeria.
- D. The Lessee is a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 on the 22nd day of January, 2004 with registration number RC 502974
- E. On 8th day of July 2005, BPE as Secretariat of the NCP, invited bids for fully priced technical and financial proposals for the lease from the Lessor of the terminal forming part of Tincan Island Port (the "Port"). On 2nd day of September 2005, as a result of such competitive bid process, the right to lease Terminal B at the Port from the Lessor was awarded by BPE to the Lessee.
- F. Following the award of the right to lease Terminal B at the Port referred to in Recital E above, the Lessor has agreed to undertake a survey (the "Real Property Survey") of the real property in the Port to be leased to the Lessee (the "Premises") subject to and in accordance with this Agreement and to undertake a survey ("Dredging Survey") of the berths and the approach channel at the Premises with a view to preparing a dredging plan (the "Dredging Plan") in order to fulfil its obligations in relation to dredging as more particularly set out in this Agreement. Upon their completion, the results of the Real Property Survey confirming the parameters of the Premises and the Dredging Plan shall form an integral part of this Agreement.
- G. The Parties have agreed to enter into this Agreement to:
 - (a) lease the Premises and certain immovable property affixed to the Premises as further described in Appendix B (the "Fixed Assets," and together with the Premises, the "Lease Property");
 - (b) purchase certain movable property as further described in Appendix C (the "Movable Assets");



- (c) make certain improvements to the Lease Property as further described in the development plan attached as Appendix D (the "Development Plan"); and
- (d) perform the operations as further described in Appendix E (the "Operations"), certain other operation, maintenance and other services with respect to the Lease Property, subject to and in accordance with the terms and conditions set out in this Agreement.

WITNESSETH

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



ARTICLE I

DEFINITIONS; INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

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

"Day" or "day" means a calendar day.

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

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

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

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

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

"Dredging Plan" has the meaning set forth in Appendix M

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



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

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

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

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

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

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

"Force Majeure" shall mean any act that (a) renders it impossible for the affected Party to comply with its obligations under this Agreement, (b) is beyond such Party's reasonable control and not due to its fault or negligence and (c) could not have been prevented or avoided by such Party through the exercise of due diligence. Subject to the satisfaction of the foregoing conditions, Force Majeure shall include without limitation: (i) severe, adverse weather conditions such as storms or floods; (ii) earthquakes; (iii) wars (declared or undeclared), civil disturbances, revolts, insurrections, public disorder, riots or sabotage or acts of terrorism; (iv) strikes or other labour disputes in Nigeria that are not due to the breach of any labour agreement by the Party claiming Force Majeure; (v) fires; (vi) actions or omissions by a Governmental Authority that were not induced or promoted voluntarily by the affected Party or were not caused by a non-compliance with its obligations under this Agreement or Applicable Law; (vii) the inability by the affected Party, despite its reasonable efforts, to timely and correctly obtain any permit that enables such Party to meet its obligations under this Agreement; or (viii) pollution that was not caused by the non-compliance of the Party claiming Force Majeure with its obligations under this Agreement or Applicable Law.

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

"Intellectual Property Rights" means (a) patents, trademarks, rights in design, trade dress, trade secrets, trade names, and copyrights; (b) applications for registration to any of the items contained in subsection (a) of this definition, to the extent that such application under Applicable Law provides protection for such items; (c) rights under licenses and consents in relation to any of the items contained in subsection (a) of this definition; and (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may exist anywhere in Nigeria.

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

- a. Any act or omission by the Lessor, including but not limited to, the failure by the Lessor to fulfil its obligations under this Agreement;
- b. Maintenance by the Lessor in accordance with the requirements of this Agreement that exceeds the time period for such maintenance as previously agreed between the parties;
- c. Any act or omission by Governmental Authority not due to the fault of or negligence of the Lessee;



- d. An act of Force Majeure;
- e. An emergency;
- f. Events beyond the reasonable control of the Lessee not due to the Lessee's fault or negligence.

"Latent Defects" means those defects not identified in the survey conducted jointly by the Parties prior to the Execution Date and included in Appendix B or in the Development Plan, and which could not reasonably be identified by the Lessee's exercise of due diligence.

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

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

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

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

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

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

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

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

"Material Adverse Effect of Lessee" shall mean any change or circumstance that, individually or in the aggregate with all other changes or circumstances has or is reasonably likely to have a materially adverse effect on (a) the Lessee's assets, properties, or business in a manner relating to the transactions contemplated hereby (including for the avoidance of doubt significant foreign exchange movements in the U.S. Consumer Price Index used to calculate Throughput Fee) or (b) the Lessee's ability to perform its material obligations under this Agreement.

"Material Adverse Effect of Lessor" shall mean any change or circumstance that, individually or in the aggregate with all other changes or circumstances has or is reasonably likely to have a materially adverse effect on (a) the Lessor's assets, properties, or business in a manner relating to the transactions contemplated hereby or (b) the Lessor's ability to perform its material obligations under this Agreement.

"Month" means a calendar month.

"Nigeria" means the Federal Republic of Nigeria.

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

"Normal Charges" means any applicable published tariff the Lessee would collect for its services at any particular point in time.

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

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

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

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



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

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

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

"Prudent Industry Standards" means the generally accepted practices, methods, techniques and standards employed by the international Container terminal industry in accordance with Applicable Law with respect to: (a) the development, operation and maintenance of Container terminals; (b) personnel and terminal safety and environmental protection; and (c) optimizing the performance of the Operations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Voting Interests" means shares of capital stock issued by a corporation, or equivalent Equity Interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for



the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"Waste Material" means unwanted material left over from a manufacturing process or refuse from places of human or animal habitation and shall include hazardous waste being a by product of anthropogenic activities that is either ignitable, corrosive, reactive or toxic and that can pose a substantial or potential hazard to human health or the environment when improperly managed;

1.2 Interpretation.

- (a) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.
- (b) The word "including" means "including without limitation."
- (c) Unless otherwise indicated, all reference in this Agreement to Articles, Sections, and Appendices shall refer to the corresponding Articles, Sections and Appendices of or to this Agreement.
- (d) The Article, Section and Appendix titles contained in this Agreement are for convenience of reference only, are without substantive meaning of any kind and are not a part of this Agreement.

ARTICLE II

EFFECTIVE DATE AND LEASE TERM

2.1 Effective Date

- (a) *Terms Binding on Execution Date.* The provisions of this Article, along with the provisions of Articles 12 (Representations and Warranties), 16 (Indemnities), 17 (Governing Law; Disputes), shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.
- (b) *Conditions Precedent.* Except as otherwise provided in Section 2.1(a), this Agreement shall become effective no later ninety (90) days following the Execution Date provided that the conditions to effectiveness set forth in Article VII have been fulfilled (the "Effective Date").

- 2.2 Lease Term This Agreement shall have a term (the "Term"), which commences on the Effective Date and terminates on the date that occurs on the fifteenth (15th) anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof. Following such fifteenth (15th) anniversary of the Effective Date, and unless this Agreement has otherwise been terminated, the Parties may mutually agree to renew this Agreement for an additional period; provided that either Party has notified the other Party in writing of its desire to renew this Agreement no less than three (3) years prior to such fifteenth (15th) anniversary of the Effective Date.

ARTICLE III

BASIC LEASE RIGHTS AND OBLIGATIONS

- 3.1 Lease In consideration of the covenants and agreements set forth in this Agreement and other good and valuable consideration, the Lessor shall lease the Lease Property to the Lessee, and the Lessee shall lease the Lease Property from the Lessor free and clear of all Security Interests, subject to the terms and conditions set forth in this Agreement.



3.2 Transfer of the Lease Property. Commencing on the Effective Date and continuing throughout the Transition Period in accordance with the Transition Plan, the Lessor shall transfer to the Lessee the Lease Property free and clear of Security Interests for the Term. The Lessor shall remain the owner of the Lease Property except as expressly agreed to in writing by the Lessor. Subject to the provisions of Sections 4.3(b) and 4.4, throughout the Term, the Lessee shall keep and maintain:

- (a) the Lease Property in the condition in which it is transferred to the Lessee on the Effective Date fair wear and tear excepted, and free and clear of all Security Interests arising from the performance of the Operations or any other of its obligations hereunder, and
- (b) the Fixed Assets in good condition and working order.

The Lessee shall indemnify, defend, and hold harmless the Lessor from and against and promptly remove and discharge any such Security Interests which may be placed on the Lease Property, except those attributable to the acts or the omissions of the Lessor.

3.3 Peaceful and Quiet Enjoyment To the extent that the Lessee complies with the terms and conditions of this Agreement, the Lessee shall peacefully and quietly hold, occupy and enjoy the Lease Property. In the event that any third party other than Affiliates of the Lessee conduct(s) activities or present(s) claims which interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property or the Lessee suffers any claims, causes of action, damages, or losses which may accrue and arise from the acts or omissions of other third parties having a right of use over the Premises prior to the Execution Date, the Lessor shall indemnify, defend, and hold harmless the Lessee from and against any such claims.

3.4 Lease Fees The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in Appendix F. Except as the Parties may otherwise agree in writing, all payments must be made in Dollars. Any amounts due but not paid thereunder shall bear interest at LIBOR plus five percent (5%) compounded monthly.

3.5 Common Areas. The Lessor shall grant to the Lessee for the benefit of the Lessee and its employees, contractors, customers and invitees during the Term, the non-exclusive right to use, in common with others entitled to such use (including the Lessor), the Common Areas as they exist from time to time, subject to all rights reserved by the Lessor hereunder and under the terms of all rules and regulations promulgated from time to time with respect thereto. The Lessee shall not use the Common Areas in any manner that is inconsistent with the Lessee's permitted use of the Premises nor in any manner that unreasonably interferes with the use of the Port by other occupants or users of the Port. The Lessor reserves the right from time to time, subject to the Lessor first giving the Lessee reasonable notice and provided that the performance of the Operations by the Lessee are not adversely affected to:

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

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

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

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



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

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

ARTICLE IV

USE OF LEASE PROPERTY

- 4.1 Permitted Use of Lease Property The Lessee shall only use the Lease Property to perform the Operations, and may not use the Lease Property for any other purpose without the Lessor's prior written approval, such approval not to be unreasonably withheld. The Lessee shall not conduct any activities within the Premises other than the performance of the Operations. The Lessee shall not conduct such permitted use, or allow such permitted use to be conducted, in violation of any Applicable Law or in any manner that would:

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

- 4.2 Alteration of Lease Property

- (a) *By Lessor.* Subject to the mutual agreement of the Parties and in accordance with Applicable Law, the Lessor shall have the right to alter the Premises subject to the alteration of the Lease Fees payable by the Lessee in accordance with the provisions of this Agreement; provided that:
 - (i) such alteration is required for technical operations and/or economic well-being of the Port
 - (ii) such alteration does not unreasonably interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property and
 - (iii) such alteration shall not have a material adverse effect in the performance of the Operations.
- (b) *By Lessee.*
 - (i) *Development Plan.* The Lessee shall perform the Improvements to the Lease Property required under the Development Plan which has been approved by the Lessor; provided that the Lessee has furnished to the Lessor the following no later than sixty (60) days prior to the proposed date for commencement of the work implementing such Improvement:



- (1) the plans and drawings for such Improvement;
 - (2) the names and addresses of the proposed contractor(s); and
 - (3) such other documentation as may be reasonably requested by the Lessor.
The Lessor shall within the thirty (30) days of receipt of the above from the Lessor, communicate its response to the Lessee failure of which, the Lessor shall be deemed to have given its approval to the improvement and the Lessee may proceed to make such improvement.
- (ii) *Amendment to Development Plan:* The Lessee shall not amend the Development Plan without the Lessor's prior written approval, such approval not being unreasonably withheld.
- (iii) *Other improvements.* The Lessee shall not make any other improvements or alterations to the Lease Property other than the Improvements contemplated in the Development Plan without the Lessor's prior written approval. When requesting such approval, the Lessee shall furnish to the Lessor with the following no later than sixty (60) days prior to the proposed date for commencement of the work implementing such improvement or alteration:
- (1) the plans and drawings for such improvements or alterations;
 - (2) the names and addresses of all proposed contractors; and
 - (3) such other documentation as reasonably requested by the Lessor.
- Where the Lessee has furnished the required information, the Lessor shall within the said sixty days respond to the Lessee's request, failure of which, the Lessor shall be deemed to have given its approval to the improvement or alternation and the Lessee may proceed to make such improvement.
- Any improvements or alterations on the fixed assets made by the Lessee to the Lease Property during the Term shall be and shall remain the property of the Lessor without any claim for or reimbursement by the Lessee for the cost of the value thereof.
- (iv) *Applicable Standards.* The Lessee shall ensure that the Improvements made and any other improvements and/or alterations made are in compliance with
- (1) Applicable Law;
 - (2) international conventions, protocols and international agreements to which Nigeria is a party; and
 - (3) Prudent Industry Standards.
- (v) *Rights of Lessor to Monitor and Inspect.* Without limiting or reducing the Lessee's obligations under Section 4.3(b) or 4.4, the Lessor shall have the right to inspect the Improvements and any other improvements or alterations during performance of the same and after they have been completed, and they shall not be used by the Lessee until the Lessor has confirmed to the Lessee in writing that they are in accordance with the plans approved by the Lessor and comply with Applicable Law. Such confirmation shall be given within fourteen (14) days of the Lessee's notification of the completion of such improvement, failure of which the improvement shall be deemed approved. Any inspection by the Lessor shall be undertaken in accordance with the provisions set out in Section 4.8(a). The Lessor shall have the right to be present and monitor at any time during the performance of the Improvements and any other improvements or alterations and shall have access to the Premises and to all records and materials of



the Lessee related to such Improvements, improvements or alterations including participation in related progress meetings.

4.3 Maintenance

- (a) *Lessee's Maintenance Obligations.* The Lessee shall be responsible for the Maintenance (but excluding Maintenance resulting from Latent Defects which shall remain the responsibility of the Lessor) so that at all times during the Term and upon the Termination Date, the Lease Property (excluding the Quay Wall and navigational aids on the Premises) shall be in the same or better condition as on the Effective Date, excluding normal wear and tear. The Lessee shall maintain the Lease Property (excluding the Quay Wall and navigational aids on the Premises) in good condition and repair. All Maintenance shall be equal or better in quality to the original material and workmanship standard. The Maintenance performed by the Lessee shall comply with Applicable Law and Prudent Industry Standards. The Lessee shall inform the Lessor in writing of entry into any contract for Maintenance. The Lessee shall obtain and maintain all licenses, certifications or other documents required for such Maintenance in accordance with Applicable Law. The Lessor shall assign to the Lessee on the Execution Date all rights under any warranties it may receive or be entitled to for the Lease Property.
- (b) *Notification and Repair of Damage.* In the event that any Lease Property (excluding the Quay Wall and navigational aids on the Premises) is damaged, the Lessee shall notify the Lessor in writing of the same within three (3) days after the Lessee became aware of such damage. The Lessee shall commence the process of repairing such damage within seven (7) days and shall complete such repair to damaged Lease Property within a reasonable period to be mutually agreed by the Parties. In the event that the Lessee fails to commence the process of repairing within such period, then the Lessor may give notice in writing to the Lessee requiring the Lessee to commence the process of repairing within seven (7) days. If the Lessee has failed to commence the process of repairing upon expiry of the notice by the Lessor, then the Lessor may offer the repair work for tender and the Parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Lessee shall be responsible for cost of the repair and if the Lessor is required to make any payment towards such repair work, the Lessee shall reimburse the Lessor its actual costs incurred together with interest equal to LIBOR plus five per cent (5%) compounded monthly.

- 4.4 Quay Wall and navigational aids on the Premises. The Lessor shall be responsible for maintenance, repairs, renewals, replacements and rehabilitation of the Quay Wall and navigational aids on the Premises during the Term. The Lessor shall commence the rehabilitation of the quay wall within eight (8) months from the Effective Date and complete same within a period of eighteen (18) months. In the event that any of the Quay Wall or navigational aids on the Premises are damaged, the Party becoming aware of such damage shall notify the other Party in writing of the same within three (3) days after becoming aware of such damage. The Lessor shall commence the process of repairing such damage within seven (7) days of the date of notification by one Party to the other of damage and shall complete such repair to Berth or navigational aids on the Premises within a reasonable period to be mutually agreed by the Parties. In the event that the Lessor fails to commence the process of repairing or rehabilitation within such period, then the Lessee may give notice in writing to the Lessor requiring the Lessor to commence the process of repairing within seven (7) days. If the Lessor has failed to commence the process of rehabilitation or repairing upon expiry of the notice by the Lessee, then the Lessee may offer the repair or rehabilitation work for tender and the Parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Lessor shall be responsible for cost of the repair and if the Lessee is required to make any payment towards such repair work, the Lessor shall reimburse the Lessee its actual costs incurred together with interest equal to LIBOR plus five per cent (5%) compounded monthly.

- 4.5 Utilities Subject at all times to the covenants of the Lessor set out in Section 8, the Lessee shall make its own arrangements and pay for the supply of Utilities to the Lease Property, including serving the vessels that call at the Premises.

- 4.6 Office Space. The Lessee shall provide, at its own expense, adequate office space for the Lessor and other Governmental Authorities required by the Act to have office space on the Premises including without



limitation to those who have duties such as customs and immigration functions in the Premises, not exceeding a total floor-space of two hundred (200) square metres.

- 4.7 Disposal of Movable Assets The Lessee shall not sell, transfer, remove or dispose of any of the Movable Assets without offering the Lessor the right of refusal to purchase such Movable Asset from the Lessee. In the event of the Lessor's refusal to purchase such Movable Asset, the Lessee shall advise the Lessor of any subsequent transfer to a third party of such Movable Asset. Notwithstanding the foregoing, in each Annual Report, the Lessee shall list the Movable Assets, if any, that have been sold, transferred, removed or disposed of during the previous year and shall provide audited details of all such transactions.

4.8 Access to Lease Property

- (a) *By Lessor to verify compliance with this Agreement.* The Lessee shall permit the Lessor and its designated representatives and agents during the Lessee's working hours to enter and inspect the Lease Property for the purpose of verifying the Lessee's compliance with this Agreement and any other requirements under Applicable Law provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations. The Lessor shall notify the Lessee in writing at least three (3) days in advance of any inspection of the names of the individuals to be permitted access and the time and date of such visit.
- (b) *By Lessor in the event of Emergency.* The Lessee shall permit the Lessor and its designated representatives and agents without prior notification to enter and inspect the Lease Property in the event of Emergency provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
- (c) *By Lessor to fulfil its obligations under this Agreement.* The Lessee shall also grant access to the Premises to the Lessor or its designates on mutually agreed terms for the purpose of fulfilling its obligations under this Agreement provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
- (d) *Necessary right of way.* The Lessor shall have the right of access through the Premises to other facilities controlled by the Lessor under circumstances where reasonable, alternative means of access are not available subject to the prior consent of the Lessee provided that any Person granted such right of way shall follow the rules concerning safety, traffic, security and other regulations relating to the Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.
- (e) *By Governmental Authorities.* The Lessee shall grant access to the Premises to Government Authorities for the purpose of carrying out any activities which they are legally entitled to carry out in the Premises pursuant to Applicable Law.
- (f) *By Shipping Agents and others.* The Lessee shall grant access to the Premises to shipping line employees and agents and the staff of any contractors employed by them, to enable them perform their work efficiently provided that they do not unreasonably interfere with the Lessee's performance of the Operations and provided further that the shipping line employees and agents and the staff of any contractors employed by them shall follow the rules concerning safety, traffic, security and other regulations relating to the Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.

ARTICLE V

MOVABLE ASSETS

- 5.1 Sale and Purchase of Movable Assets. Subject to the terms and conditions of this Agreement, upon the Effective Date, the Lessor shall sell to the Lessee, and the Lessee shall purchase from the Lessor, the Movable Assets for an aggregate purchase price of Six Million, three hundred and sixty one thousand, one hundred US Dollars (\$6, 361,100). (the "Movable Assets Purchase Price")



- 5.2 Payment of Movable Assets Purchase Price. On the Effective Date, the Lessee shall pay the Lessor the Movable Asset Purchase Price by wire transfer to an account of the Lessor previously designated by the Lessor in writing.
- 5.3 Conveyance of Movable Assets. On the Effective Date, and subject to its receipt of the Movable Asset Purchase Price and the satisfaction of the other conditions set forth in Article VII, the Lessor shall convey, transfer, assign and deliver to the Lessee, free and clear of all liens and encumbrances, the Lessor's right, title and interest in and to the Movable Assets, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessee.

ARTICLE VI

OPERATIONS

- 6.1 Obligation of Lessee to Perform Operations The Lessor hereby appoints the Lessee and the Lessee hereby accepts such appointment, to perform the operations and activities described in Part A of Appendix E (collectively, the "Operations") in accordance with the terms of this Agreement. The Lessor confirms that it hereby delegates to the Lessee all such powers and authority as are necessary for the Lessee to perform the Operations.
- 6.2 Common User Terminal. The Lessee shall perform the Operations such that the Lease Property is a common user terminal open to any and all shippers and consignees of cargo, and to all shipping lines. The Lessee shall ensure that any agreement executed by it prior to or during the Term shall not violate this Section.
- 6.3 Performance of other services. The Lessor hereby grants the Lessee the right, exercisable at the Lessee's sole discretion, to perform the other services in accordance with the terms of this Agreement. If the Lessee does commence performance of one or more of other services during the Term, reference to "Operations" in this Agreement shall be deemed to include those other services being performed by the Lessee in accordance with the right set out in this Section 6.3. The Lessee shall ensure that any charges made for other services shall be in accordance with Applicable Law and competitive within the Port and within competing ports of Nigeria.
- 6.4 Use of Lease Property. The Lessee shall only perform the Operations within the Premises, and shall use the Lease Property for the sole purpose of performing the Operations in accordance with this Agreement.
- 6.5 Exclusivity The Lessee shall have the exclusive right during the Term to perform the Operations within the Premises.
- 6.6 Standards of Performance The Lessee shall perform the Operations:
- (a) in a safe, efficient, effective and economic manner;
 - (b) with due care and skill; and
 - (c) in accordance with Applicable Law and Prudent Industry Standards.
- 6.7 Duties to Cooperate. The Parties shall cooperate in good faith to ensure the smooth and effective transfer of the provision of the Operations from the Lessor to the Lessee during the Transition Period. In performing the Operations, the Lessee shall cooperate with the Lessor and, if applicable, the Regulator so as to enable the Lessor and the Regulator to perform their monitoring, supervisory and other duties relating to the Port.
- 6.8 Performance Requirements
- (a) General Requirements. The Lessee shall use its best efforts to:



- (i) develop, market and promote Cargo throughput and Cargo-related business of the Lease Property in order to achieve maximum utilization thereof in a manner which is consistent with Applicable Law and Prudent Industry Standards; and
 - (ii) ensure that there is no decline in the standards of the Operations.
- (b) *Specific Requirements.* The Lessee shall perform the Operations in such a manner as to achieve the performance requirements in the applicable years of the Term described in Appendix L (the "Performance Requirements").
- (c) *Interruptions.* The Parties shall ensure that the Lessee's performance of the Operations shall be as continuous and without Interruptions as is reasonably practical. The Lessee shall maintain records of the number, duration, location and extent of all Interruptions. If the performance of the Operations are adversely affected by Interruptions during an Operational Year, the Performance Requirements shall be reduced by a pro rated percentage of the number of days that an Interruption prevented Operations over three hundred and sixty five days **PROVIDED** that for the purposes of this Section, any Interruption for under twenty four (24) consecutive hours shall not be taken into account when assessing whether an Interruption has occurred unless there has been Interruptions for a period of seventy two (72) cumulative hours in an Operational Year, in which case all time amounting to an Interruption shall be taken into account when assessing the Performance Requirements.
- (d) *Tracking and Evaluation of Performance.* The Lessor shall evaluate the Lessee's performance of the Operations on an annual basis. The process of evaluation shall commence on the Effective Date and shall be conducted as follows:
- (i) following the completion of each Operating Year, the Lessee shall provide to the Lessor a report in respect of that Operating Year which shall include, *inter alia*, a full account of its performance against the applicable Performance Requirements, an explanation of any failure to meet such Performance Requirements and any other information requested by the Lessor to enable it to make its evaluation (the "Lessee Report") within ninety (90) days after the end of each Operational Year. In the event that the Lessee fails to provide the Lessee Report within the period of ninety (90) days after the end of an Operational Year, the Lessor shall give the Lessee thirty (30) days written notice requiring the Lessee to produce the Lessee Report. In the event that the Lessee fails to produce the Lessee Report by the expiry of the thirty (30) day period then the provisions of Sub Section (iv) shall apply.
 - (ii) The Lessor's evaluation, which shall have been ongoing during the Operating Year, shall be completed by the Lessor and the Lessor shall produce and deliver to the Lessee an evaluation report containing its own assessment of the Lessee's performance against the Performance Requirements taking into account any Interruption, and stating whether, in its opinion, the Lessee has reached the Performance Requirements. (the "Lessor Report") within thirty (30) days of the earlier of either:
 - (A) receipt of the Lessee Report; or
 - (B) in the event that the Lessee fails to provide the Lessee Report upon the expiry of the thirty (30) days referred to in Sub Section (i) above.
- In the event that the Lessor fails to provide the Lessor Report within the period stated in this Sub Section, the Lessee shall give the Lessor thirty (30) days written notice requiring the Lessor to produce the Lessor Report. In the event that the Lessor fails to produce the Lessor Report by the expiry of the thirty (30) day period then the provisions of Sub Section (iv) shall apply.
- (iii) Within fourteen (14) days of submission by the Lessor of the Lessor Report to the Lessee, the Parties shall meet and agree whether the Lessor's evaluation is accepted by both Parties, whether the Lessee has reached or exceeded the Performance



Requirements. Any disagreement between the Parties in respect of the Lessor Report shall be resolved pursuant to the provisions of Article 18 (Governing Law; Dispute Resolution).

(iv) In the event that either:

- (A) the Lessee fails to produce the Lessee Report further to thirty (30) days' written notice from the Lessor given in accordance with Sub Section (i) above, then the Lessor Report shall be binding upon both Parties and Parties shall not be required to meet and agree the Lessor's evaluation in accordance with Sub Section (iii) above;
- (B) the Lessor fails to produce the Lessor Report further to thirty (30) days' written notice from the Lessee given in accordance with Sub Section (ii) above, then the Lessee Report shall be binding upon both Parties and the Parties shall not be required to meet and agree the Lessor's evaluation in accordance with Sub Section (iii) above.

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

6.9 Operations Rates

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



- (f) *Charging the Operations Rates.* Other than in circumstances where the Lessee charges Preferential Rates, if the Lessee is not able to charge the Operations Rates and/or other charges referred to in Subsection (b) above to its customers, the Lessee shall refer the matter to the Regulator for determination of the rates chargeable.
- (g) *Complaints.* In the event that the Lessor or any other Governmental Authority receives a complaint of discrimination on the part of the Lessee, and the Regulator, or if the Lessor is the Regulator then an Expert, concludes after its investigation of such complaint that there are reasonable grounds for such complaint, then the Lessee shall immediately cease and desist from such practices and pay any applicable penalties provided for under Applicable Law.

6.10 Labour.

- (a) *Qualified Personnel.* The Lessee shall select and employ sufficient, suitably skilled and qualified personnel to enable it to perform the Operations in accordance with this Agreement.
- (b) *Sources of Labour.* When sourcing personnel, the Lessee shall comply with the Staffing and Succession Plan as set out in Appendix 1 to the extent applicable. The Lessee shall use reasonable efforts to employ Nigerian nationals in management positions to the extent that there are Nigerian nationals who satisfy the requirements for such positions. Former employees of the Lessor who are affected by the take over, will be encouraged to apply for available positions and will be given fair and due consideration for employment by the Lessee. The Lessor shall be responsible for the retirement benefits including but not limited to all outstanding salaries and any relevant severance payments (if any) of its employees until the date on which they may be employed by the Lessee.
- (c) *Employment Contracts.* With respect to personnel employed by the Lessee under Section 6.10(b) the Lessee shall be responsible for the negotiation of the applicable employment and labour contracts which shall be made in accordance with Applicable Law. Notwithstanding the foregoing, all Lessee personnel shall remain its or its Affiliate's employees for all salary and benefit purposes and shall be compensated in accordance with the Lessee's normal policies as may be modified by the Lessee from time to time.
- (g) *Training.* The Lessee shall be responsible for the preparation and implementation of all training of all staff working at the Premises in accordance with the Staffing and Succession Plan and Applicable Law.
- (h) *Identification of Lessee Personnel.* The Lessee shall ensure that its personnel are issued the appropriate identification documentation. Such identification documentation shall be produced to any official or authorized person who has reasonable grounds to request the identification of such personnel. Upon the termination of employment of such personnel, such identity documentation shall be returned to the Lessee.

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



6.12 Spare Parts and Consumables.

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

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

ARTICLE VII

CONDITIONS PRECEDENT

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

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

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

- (i) resolutions adopted by the Lessor evidencing the authorisations described in this Section; and
- (ii) authority of the officers of the Lessor executing this Agreement and documents required hereunder.
- (c) *No Injunction, etc.* Consummation of the transactions contemplated by this Agreement shall not have been restrained, enjoined or otherwise prohibited in any material respect by any Applicable Law, including any order, injunction, decree or judgment of any court Authority, and there shall not have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement any Applicable Law making illegal the consummation of the transactions contemplated by this Agreement.
- (d) *Power supply.* The Parties shall be satisfied that the Lessee has access to sufficient power supply (including, but not limited to the Utilities) in order that the Lessee is able to fulfil its other obligations as set out in this Agreement.



7.2 Conditions to Obligations of Lessor. The obligation of the Lessor to consummate the transactions contemplated by this Agreement shall be subject to the fulfilment, prior to the Effective Date, of the following additional conditions (unless waived in writing by the Lessor):

- (a) *Representations and Warranties of Lessee.* The representations and warranties of the Lessee in Section 12.1 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessee.* The Lessee shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessee shall have delivered to the Lessor a certificate in form and substance satisfactory to the Lessor, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 7.2 (a) and (b).
- (d) *Movable Asset Purchase Price.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Movable Asset Purchase Price, in accordance with Section 5.2.
- (e) *Commencement Fee.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Commencement Fee, in accordance with Appendix F.
- (e) *Performance Bond.* Within fifteen (15) days after the Effective Date, the Lessee shall deliver to the Lessor a performance bond in favour of the Lessor in an amount not less than three hundred and fifty thousand United States Dollars (US\$350,000) and in the form set forth in Appendix J or in other form and substance reasonably acceptable to the Lessor and from a financial institution acceptable to the Lessor. Such performance bond shall remain in full force and effect until thirty (30) days after the Termination Date. Such bond shall cover the Lessee's financial obligations under this Agreement, including without limitation the payment of the Lease Fees and all other costs and financial liabilities arising from its financial obligations under this Agreement, and all financial penalties due and payable by the Lessee hereunder. All premiums or other costs associated with obtaining and maintaining such performance bond shall be paid by the Lessee.
- (f) *Evidence of Insurance.* The Lessee shall have delivered to the Lessor certificates of insurances and other documentation reasonably requested by the Lessor evidencing that the Lessee has obtained the insurance coverage on the Premises required under Section 8.1.

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

- (a) *Representations and Warranties of Lessor.* The representations and warranties of the Lessor in Section 12.2 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessor.* The Lessor shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessor shall have delivered to the Lessee a certificate in form and substance satisfactory to the Lessee, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 7.3 (a) and (b).



- (d) *Presidential Approval.* The President of the Federal Republic of Nigeria has approved this Agreement for the Term and the Lessor shall convey and Confirming Party shall confirm the approval to the Lessee.
- (e) *Government Consents.* All consents or authorizations of Governmental Authorities that are required to lease, transfer or assign (as applicable) to the Lessee the Lease Property or Movable Assets, shall have been made or obtained.
- (f) *Stevedoring Contracts.* All stevedoring Contracts with respect to the Premises have been terminated and all stevedores shall have vacated the Premises by the Effective Date.
- (g) *Other Agreements.* All other agreements affecting the Lessor's right to transfer the Lease Property and all pre-existing leases affecting the lease property have been terminated; and the Lease Property is free and clear of all Security Interests and all Persons on the Premises prior to the Execution Date shall have vacated the Premises and removed all their equipment from the Premises.
- (h) *Registration.* The Confirming Party shall have stamped and registered this Agreement with the appropriate Governmental Authorities in accordance with Applicable Law and shall have taken responsibility for any and all costs associated with such stamping and registration.

7.4 Satisfaction of Conditions. Each Party shall use its reasonable efforts to effectuate the satisfaction of the conditions requiring action by such Party under this Article. If such conditions have not been satisfied by such Party (or waived by the other Party) on or before the date that occurs thirty (30) days following the Execution Date, then, unless otherwise agreed in writing by the Parties, the other Party shall have the right to terminate this Agreement following delivery of fifteen (15) days' prior written notice to the Party of whom action is required which still has not satisfied, whereupon each Party shall be excused and relieved of all obligations and liabilities under this Agreement, except as otherwise specified herein and the Lessor shall refund the Commencement Fee to the Lessee.

ARTICLE VIII

LESSEE'S COVENANTS

8.1 Insurance

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

8.2 Safety; Security

- (a) *Safety Procedures.* The Lessee shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of its Operations and the Lease Property in accordance with Applicable Laws, international conventions,



protocols, international agreements to which Nigeria is a party and Prudent Industry Standards and the Lessor's guidelines that are applicable to all operators at the Port.

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

8.3 Environment

- (a) *Obligation to Comply with Environmental Laws.* The Lessee shall comply with all Applicable Laws concerning the protection of the environment, and shall take adequate steps to prevent and control the pollution of the air, land, water and sea by oil, chemicals, emissions, hazardous wastes, effluent solid and other wastes in the Premises as required by such Applicable Laws. The Lessee shall consult with the applicable Governmental Authorities in taking such steps. The Lessee shall cooperate with the Lessor in achieving compliance with international environmental conventions to which Nigeria is a party.
- (b) *Waste Disposal.* The Lessee shall arrange for the disposal of Waste Material generated from the Premises in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards. The Lessee shall not dump in the Port any substance other than rainwater without the Lessor's prior written consent.
- (c) *Environmental Impact Assessments.* In carrying out the Development Plan, the Lessee shall comply with all Applicable Laws relating to the environment, including laws and regulations requiring the preparation and approval of environmental impact assessments to the extent applicable. Upon submission of such environmental impact assessments to a Governmental Authority, the Lessee shall submit to the Lessor a copy of the same, as well as a copy of any response from such Governmental Authority regarding the same.
- (d) *Spill Containment Programs.* Within sixty (60) days after the Execution Date, the Lessee, in cooperation with the Lessor and the applicable Governmental Authorities, shall prepare and implement a contingency plan and a hazardous materials spill containment, removal and remediation plan for the Premises in accordance with Prudent Industry Standards and Applicable Law.
- (e) *Obligation to Notify.* In the event that pollution occurs that may affect the Premises, the Lessee shall:



- (i) inform the Lessor immediately of the same;
 - (ii) take all reasonable measures required for detecting, cleaning and containing such pollution; and
 - (iii) provide the Lessor with frequent written updates on such measures being taken or remaining to be taken by the Lessee.
- (f) *Lessee Obligation to Remediate.* In the event that Waste Material is present in the waters or in or on the bottom of the Port after the Effective Date, which has originated from the Premises, then the Lessee shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 8.4 **Emergencies** In the event of an environmental emergency emanating from the Premises and endangering life or property, the Lessee shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including the Lessee's response thereto, to the Lessor. If the Lessee has not taken reasonable precautions for the safety of the public, its customers or the protection of the Lease Property, and such failure creates an environmental emergency requiring immediate action, then the Lessor, with or without notice to the Lessee may, but shall be under no obligation to, provide reasonable protection as required to address such emergency. The taking of any such action by the Lessor, or the Lessor's failure to take any action, shall not limit the Lessee's liability. The Lessee shall reimburse the Lessor for the performance of any such work or furnishing on the Lease Property of any such equipment in connection with any emergency in an amount equal to the reasonable costs incurred by the Lessor in such performance of work or furnishing of equipment.
- 8.5 **Information; Communication** Within one hundred and eighty (180) days after the Effective Date, the Lessee shall install a computerized information system for the recording and tracking of the Cargos within the Premises, and shall periodically update this system to provide computerized information related to Cargos movements to the Lessee's customers, other organizations or companies involved in the transport of Cargos by land or sea and Governmental Authorities. Such system shall be compatible with Electronic Data Interchange For Administration Commerce and Transport (EDIFACT).
- 8.6 **Dredging; Mooring** The Lessee shall take such measures as shall be necessary in the Lessor's opinion to enable dredging and placing and removing of any mooring posts in the vicinity of the Premises, including without limitation allowing anchoring, mooring and dredging vessels to be installed, used and maintained by or on behalf of the Lessor in the shore strip of the Premises provided that such measures do not have an adverse effect on the performance of the Operations by the Lessee. The Lessee shall, at its own cost and expense, perform such work to the Lease Property as shall be necessary to avoid damages which could arise from such work to be performed by or on behalf of the Lessor. If, as a result of such work, the Lease Property is damaged, such damage shall be remedied at the Lessee's costs unless the same was attributable to the Lessor's or its contractors' negligence or wilful misconduct.
- 8.7 **Lessee Ownership Structure** The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent.
- 8.8 **Taxes** The Lessee shall pay any taxes, levies, duties, withholdings, or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessee as a result of the performance of its obligations hereunder.
- 8.9 **Licenses; Permits** The Lessee shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessee to fulfil its obligations hereunder, including without limitation, the performance of the Operations in accordance with this Agreement.
- 8.10 **Non Compliance.** In the event that the Lessee fails to comply with any of its obligations set out in this Article, then the Lessor may notify the Lessee of such failure and give the Lessee thirty (30) days notice in writing to rectify its failure. If the Lessee fails to rectify its failure the Lessor may fulfil such obligation for and on behalf of the Lessee at its own cost. The Lessor shall be entitled to recover such costs provided



that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 17 (Governing Law; Dispute Resolution).

ARTICLE IX

LESSOR'S COVENANTS

- 9.1 Cooperation The Lessor shall cooperate with the Lessee as reasonably necessary to enable the Lessee to perform its responsibilities under this Agreement, including provision by the Lessor of copies of drawings, plans, policies, papers, records, reports, data and other information directly related to the Premises or Port as reasonably necessary for the Lessee to perform the Operations and manage the Lease Property.
- 9.2 No Interference. The Lessor shall ensure that its personnel shall not delay or interfere with the performance of the obligations of the Lessee or with the Lessee's personnel in the execution of their duties.
- 9.3 Port Access The Lessor shall, at all times possible, keep the Port open to shipping so that the Premises may be accessible by sea and by land for use by the Lessee for the performance of its Operations.
- 9.4 Berth and navigational aids within the Premises. The Lessor shall be responsible for the maintenance of the Berths and the navigational aids within the Premises.
- 9.5 Port Services; Vessel Management.
- (a) *The Lessor*. The Lessor shall:
- (i) provide and maintain maritime approaches, canals, turning circles, breakwaters and navigation aids;
 - (ii) in accordance with Applicable Law, issue regulations and rules governing waterside safety within the Port;
 - (iii) provide pilotage, towage, berthing, unberthing and shifting of vessel services required by all vessels intending to call at the Premises:
 - (A) in accordance with the schedule of the arrivals and the departures to be prepared pursuant to consultation between the Lessor and the Lessee; and
 - (B) in a timely and efficient manner either directly or through the licensing of competitive suppliers of such services provided that the Lessor shall at all times be responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Sub Section; and
 - (C) at prices which shall not exceed the published tariffs of the Port at such time;
- Failure to provide pilotage, towage, berthing, unberthing and shifting of vessel services in accordance with the provisions of Sub Section 9.5(a) so as to have a material adverse effect upon the performance of the Operations of the Lessee shall require the Parties to meet and discuss the reduction in the Throughput Fee to compensate the Lessee for any financial loss that the Lessee has incurred as a consequence of the Lessor's acts or omissions.
- (b) *The Lessee*. The Lessee shall at all times be solely responsible for the scheduling of the Berths on non discriminatory basis. The Lessee shall keep the Lessor fully informed of the scheduling of the Berths and any amendments thereto.



- 9.6 Dredging. The Lessor shall be responsible for the dredging of the channel to the Port (including without limitation the face of the Berths at the Premises), either directly or through the licensing of competitive suppliers of such services. The Lessor shall, at all times, be solely responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Section. The Lessor shall undertake dredging in accordance with the Dredging Plan with the intention of achieving and maintaining a depth of water at the Berths of the Premises of 13.5 meters below Low Low Water and the approach channel of at least 13.5 meters below Low Low Water in accordance with the Dredging Plan to be provided during the Transition Period, provided that interference with the performance of the Operations by the Lessee shall be kept to a minimum.
- 9.7 Waste Disposal. The Lessor shall arrange for the disposal of waste materials generated from vessels berthed at the Ports in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 9.8 Latent Defects The Lessor shall remedy any Latent Defects which materially impair the Lessee's use of the Lease Property and the performance of its Operations.
- 9.9 Access to Premises The Lessor shall ensure that at all times throughout the Term the Lessee, its employees, its customers and suppliers are provided with the road and rail access to the Premises in existence as of the Effective Date, subject to the security regulations governing access to the Port and other Applicable Laws.
- 9.10 Utilities Infrastructure; Rights of Way. The Lessor shall, throughout the Term, provide all infrastructure for the provision of the Utilities to the Premises necessary to equip, operate, maintain, manage and repair the Premises. The Lessor shall grant rights of way and easements through the Port outside the Premises for existing and future Utilities to the Premises. The Lessor shall not take any action which is detrimental to the efficient supply of such Utilities to the Lessee.
- 9.11 Utilities. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 9.12 Security The Lessor shall be responsible for the general security of the Port outside the security fence of the Premises, security of all land and sea entrances to the Port and the provision and maintenance of the perimeter fencing on the boundaries of the Port.
- 9.13 Lessor Obligation to Remediate. In the event that Waste Material is present on the Premises or in the waters or in or on the bottom of the Port before the Effective Date, which the Lessee reports to the Lessor and which have originated from the Premises, or after the Effective Date which has not originated from the Premises (including but not limited to Waste Material originating from vessels calling at the Port) then the Lessor shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 9.14 Licenses; Permits The Lessor shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessor to fulfil its obligations hereunder and shall provide reasonable assistance to the Lessee in its efforts to obtain and keep in force the licenses and permits required to be obtained or maintained by the Lessee under Section 8.9.
- 9.15 Taxes. The Lessor shall pay any taxes, levies, duties or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessor as a result of the performance of its obligations hereunder.
- 9.16 Non Compliance. In the event that the Lessor fails to comply with any of its obligations set out in this Article, then the Lessee may notify the Lessor of such failure and give the Lessor thirty (30) days notice in writing to rectify its failure. If the Lessor fails to rectify its failure the Lessee may fulfil such obligation for and on behalf of the Lessor at its own cost. The Lessee shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this



has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 17 (Governing Law; Dispute Resolution).

ARTICLE X

FORCE MAJEURE

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

ARTICLE XI

DOCUMENTATION AND AUDITS

- 11.1 Records and Reports
- (a) Maintenance of Books and Records. The Lessee shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Lease Property, for providing information to the Lessor, and for informing the public and its customers of the quality and performance of its Operations.
- (b) Accounting. The Lessee shall maintain suitable and complete accounting and non-accounting records that summarize technical, commercial, financial and personnel information, including records relating to ship and shore services. All such information shall be retained in a form that shall permit regular audits. Financial records and accounts shall be maintained in accordance with applicable international generally accepted accounting principles as agreed to by the Lessor. Technical records (including without limitation engineering designs and drawings) shall be maintained in accordance with Prudent Industry Standards.
- (c) Lease Property. Beginning on the Effective Date, the Lessee shall prepare and maintain current records of the Lease Property in sufficient detail as required by the Lessor, to provide a full understanding of the location and state of the Lease Property. Such records shall be comprised of physical drawings, databases and calculation sheets along with historical records relating to their constitution, repairs, and maintenance, including all works carried out as replacements,



rehabilitation and maintenance. Physical plans for buildings shall clearly identify and describe the as built profiles.

- (d) *Copies of Records.* The Lessee shall provide the Lessor and the Regulator with copies of the foregoing records as requested by the Lessor on a quarterly basis.
- (e) *Disclosure.* A Party shall obtain the written approval of the other Party prior to disclosing any confidential information related to this Agreement, the Lease Property or the Operations to the public.
- (f) *Other Information.* The Lessee shall provide to the Lessor any other information as the Lessor may reasonably require, including without limitation:
 - (i) accurate data on the quantity, types and weights of Cargos handled in the Premises;
 - (ii) accurate data on the numbers and types of ships, wagons or road trucks loaded or unloaded in the Premises;
 - (iii) average ship turn around time, cargo dwell time, truck loading/unloading time;
 - (iv) accurate details of the claims received and payments made in relation to cargo damage;
 - (v) immediate notification of accidents within the Premises causing death or serious injury;
 - (vi) immediate notification of incidents causing oil pollution or other forms of environmental damage;
 - (vii) industrial relations;
 - (viii) public complaints;
 - (ix) notification of additions to and disposals of mechanical equipment and other significant assets; and
 - (x) accurate data on the availability for use of major items of mechanical equipment such as gantry cranes and front-end loaders.

11.2 Audits Within ninety (90) days following the Effective Date, the Lessee shall, at its own cost and expense, select and contract an independent external financial auditor to perform a statutory audit. The Lessor may appoint, at its own cost and expense, an independent auditor to undertake the duties of an external auditor including without limitation:

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

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

- (a) any circumstances having an impact on the financial obligations of the Lessee under this Agreement;
- (b) volume of traffic passing through the Premises;
- (c) number of vessels, inward/outward Cargos and Cargos stored;



- (d) numbers and categories of customers, of personnel employed, levels of Operations, performance and Operations quality compliance;
- (e) renovation works and repairs carried out or to be carried out;
- (f) exceptional events such as pollution incidents, strikes, etc.;
- (g) Emergencies;
- (h) measures, if any, taken by the Lessee during the applicable year with respect to its obligations hereunder related to the protection and preservation of the environment;
- (i) the Operations performed during the applicable year; and
- (j) an audited set of accounts prepared in accordance with generally accepted international accounting principles and practices

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

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

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

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

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

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

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



ARTICLE XII

REPRESENTATIONS AND WARRANTIES

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

- (a) The Lessee is:
 - (i) a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with registration number RC 502974,
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessee) threatened against the Lessee that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessee, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Lessee, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessee of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.
- (e) It is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to perform its obligations hereunder.
- (f) It has:
 - (i) carefully examined this Agreement, together with all Appendices attached hereto, thoroughly and become familiar with all their respective terms and provisions;
 - (ii) Investigated to its satisfaction all Applicable Laws and it can perform its obligations hereunder in accordance therewith;
 - (iii) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and
 - (iv) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Lease Property.

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

- (a) It is a public authority duly constituted and validly existing under the laws of Nigeria and is authorized and qualified to do business in Nigeria.



- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessor) threatened against the Lessor that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessor, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under the Act, or any other Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessor of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessor and constitutes a legal, valid and binding obligation of the Lessor enforceable in accordance with its terms.
- (e) It has obtained all approvals, consents and authorizations that are required from any Governmental Authority under Applicable Law to consummate the transactions contemplated herein, including without limitation, the Operations Rates provided in Section A of Appendix H.
- (f) As of the Effective Date it has good title to the Movable Assets and full legal right and power to transfer and deliver such Movable Assets to the Lessee in the manner contemplated by this Agreement. Upon delivery of such Movable Assets against payment therefor pursuant to the terms of this Agreement, the Lessee shall receive good title thereto, free and clear of all liens, other than the obligation to obtain any required authorizations or consents by a Governmental Authority in connection with the transfer of any such Movable Assets.

ARTICLE XIII

DEFAULT

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

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



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

- (a) The Lessor becomes insolvent or makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal and such court or tribunal makes an order for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation and an order is made in respect thereof by a court of competent jurisdiction.
- (b) The Lease Property (in whole or in part) is expropriated, compulsorily acquired or nationalized by a Governmental Authority.
- (c) There is a Change in Law.
- (d) Subject to Section 18.5, the Lessor fails to pay any amounts due in accordance with this Agreement.
- (e) The Lessor commits a breach of a material provision of this Agreement.

13.3 Consequences of Default

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

ARTICLE XIV

TERMINATION.

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

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

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



- 14.3 Continuity of Operations. The Lessee shall ensure smooth continuation and provision of the Operations throughout the Termination Period. The Parties agree to minimize disruption of the Operations performed by the Lessee.
- 14.4 Compensation. The Parties shall pay to one another compensation due and payable in accordance with the provisions of Article 15.

ARTICLE XV

COMPENSATION

- 15.1 Compensation upon Force Majeure. The Parties shall bear their respective costs and neither Party shall be required to pay to the other party any costs arising out of an event of Force Majeure except in the event that there is a termination within two years from the effective date due to actions or omissions by a Governmental Authority that were not induced or promoted voluntarily by the affected Party. Under this exception, the Lessor shall pay to the Lessee the book value as at date, of all infrastructure constructed and developed by the Lessee as defined in the Development Plan (Appendix D).
- 15.2 Compensation on termination due to Lessee Event of Default. If the termination is due to a Lessee Event of Default, the Lessee shall:
- (a) pay to the Lessor any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessor as a consequence of such termination; and
 - (b) convey, transfer, assign and deliver to the Lessor, free and clear of all liens and encumbrances, the Lessee's right, title and interest in and to the Movable Assets for nil consideration, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessor.
- 15.3 Termination due to Lessor Event of Default. The compensation payable by the Lessor shall be the aggregate of:
- (a) any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessee as a consequence of such termination;
 - (b) the commencement fee, in the event that there is termination due to a Lessor Event of Default in the first Operating Year, and
 - (c) any and all construction and development costs incurred by the Lessee in respect of fixed assets pursuant to the conduct of the Development Plan or otherwise incurred pursuant to the development of the Premises in accordance with this Agreement, in the event that there is termination within two years from the Effective Date due to a Lessor Event of Default.
- 15.4 Compensation upon expiry of the Term The Parties shall bear their respective costs upon expiry of the Term.
- 15.5 Delayed Payment. If for any reason, other than those attributable to the other Party, a Party fails to pay the payments that it is required to make in accordance with this Article 15 on the Termination Date, the defaulting Party shall be liable to pay interest at a rate of LIBOR plus five per cent (5%) compounded monthly.
- 15.6 Remedies Cumulative. The exercise of the right to terminate this Agreement by either Party shall not preclude such Party from availing of other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any remedies by such Party.



ARTICLE XVI

INDEMNITIES; LIABILITIES.

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

ARTICLE XVII

GOVERNING LAW; DISPUTE RESOLUTION.

- 17.1 Governing Law This Agreement shall be governed by, construed and enforced in accordance with the laws of Nigeria.
- 17.2 Disputes Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement and the activities carried out hereunder, including without limitation any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement (each a "Dispute"), shall be exclusively and finally settled pursuant to the dispute resolution process described in this Article.
- 17.3 Mutual Consultation If either Party believes that a Dispute exists, it may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the twenty one (21) day period following the date of the notice. Within seven (7) days after receipt of a notice pursuant to the preceding sentence, the other Party shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty one (21) day period following the date of the notice. During the remainder of such period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to use best efforts to resolve the Dispute.
- 17.4 Assistance of Expert. The Parties may, in appropriate cases agree to refer the matter to an Expert. The Parties shall agree on the period within which the Expert shall conclude the assignment. The cost of using the Expert shall be shared equally. Where either Party disagrees with the opinion of the Expert, the dispute may be referred to arbitration.
- 17.5 Arbitration If the Parties cannot resolve the Dispute in accordance with the procedure specified in Section 17.3, then any Party may submit such Dispute to arbitration by notice to the other Party. Such arbitration shall be governed by the Rules of Arbitration of the International Chamber of Commerce, as in effect on the date of such notice. The arbitral tribunal shall consist of three (3) arbitrators. The Party initiating the arbitration shall provide written notice to the other Party of the arbitrator that it nominates. Within fourteen (14) Days of the receipt of such notice, the other Party shall provide to the initiating party a written notice identifying the name of the second nominated arbitrator, with the understanding that if such nomination is not made within such fourteen (14) Day period, then the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court") shall make such appointment. Within ten (10) Days of the date of the appointment of the second arbitrator, the two arbitrators shall appoint the third arbitrator, with the understanding that if the two arbitrators are not able to agree on third arbitrator within such ten (10) Day period, then the third arbitrator shall be appointed by the ICC Court. All three of the arbitrators shall be experienced in the port industry as well as contracts of a similar nature to this Agreement, and all three individuals shall also be proficient in the written and spoken forms of the English language. The



arbitration proceedings shall be conducted and all related communications shall be in the English language. Any decision of the arbitral tribunal shall be final and binding upon the Parties. The Parties hereby waive, to the extent permitted by Applicable Law, any right to appeal or to review of such an award by any court or tribunal. Any award of the arbitral tribunal may be entered in any court having jurisdiction for purposes of enforcement. The arbitral tribunal shall presumptively award legal fees and arbitral costs to the winning party, but the arbitral tribunal shall retain the right to make such other equitable allocation with regard to such fees and costs as it may determine.

- 17.6 Place of Arbitration The place of arbitration shall be London or any other place mutually agreed by the Parties.
- 17.7 English Language The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.
- 17.8 Performance During Arbitration Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.
- 17.9 Waiver of Sovereign Immunity The Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in Nigeria or elsewhere, to enforce any liability or obligation related to or arising from this Agreement, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby expressly and irrevocably waives any such immunity, to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings, whether in Nigeria or elsewhere.

ARTICLE XVIII

MISCELLANEOUS.

- 18.1 BPE BPE has agreed to sign this Agreement in its capacity as a confirming party acting as Secretariat of NCP. By execution of this Agreement, BPE confirms that this Agreement is made in compliance with the Port Reform and Modernization Strategy in order to increase the Port's efficiency and reduce the costs to users and the FGN.
- 18.2 Amendments No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification shall be in writing and duly executed by the Parties hereto.
- 18.3 Assignment This Agreement may be assigned to other parties only upon the prior written consent of the non-assigning Party hereto, except the Lessor may assign this Agreement in whole or in part to any Governmental Authority. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee; any assignment not in accordance with the provisions of this Section shall be void and without force or effect.
- 18.4 Sub-Contracting The Parties may engage any contractor or sub-contractor possessing the requisite skill, expertise and capability to perform some, but not all, of its obligations under this Agreement provided that the Party engaging the sub-contractor shall, at all times, be solely responsible for the action and omissions of that sub-contractor and provided also that the Lessee shall not subcontract any of its core terminal Operations without a prior written consent of the Lessor.
- 18.5 Offsetting If an obligation has arisen upon one Party (the "Debtor") to pay the other Party (the "Creditor") in accordance with the terms of this Agreement and the Debtor has defaulted in payment of the amount due, the Creditor may, by mutual consent of the Parties, offset the payment due from Debtor against any future payments that the Creditor is required to make to the Debtor pursuant to the terms of this Agreement.



- 18.6 Survival All rights accrued prior to the termination of this Agreement shall survive its termination.
- 18.7 Entire Agreement The terms and provisions contained in this Agreement (including the Appendices) constitute the entire agreement between the Parties with respect to the subject matter hereof.
- 18.8 Notices Any notice, request, document, or other communication required or permitted under this Agreement may be given in any manner provided herein to the address or number provided below and shall be deemed effective as indicated:
- (a) if in writing and delivered in person or by courier, on the date it is delivered;
 - (b) if sent by electronic or facsimile transmission, on the date that the sender receives written confirmation of such receipt by the recipient, provided that a copy is sent in accordance with Section (a) above; or
 - (c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered; unless the date of such delivery or receipt, as applicable, is not a business day in the place of such delivery or receipt, or such communication is delivered or received, as applicable, after the close of business on a business day in the place of such delivery or receipt, in which case such communication shall be deemed given and effective on the next business day in the place of such delivery or receipt following such day. Notices shall be given as follows:
 - (i) For the Lessor:

The Nigerian Ports Authority
26/28 Marina, Lagos, Nigeria
Attention: The Managing Director
Telephone: +234 (01) 263 1574
Facsimile: +234 (01) 2630306
 - (ii) For BPE:

The Bureau of Public Enterprises
11, Osun Crescent, Maitama District
PMB 442, Garki – Abuja, Nigeria
Attention: The Director General
Telephone: +234 (09) 413 4670
Facsimile: +234 (09) 413 4672
 - (iii) For the Lessee:

TIN-CAN ISLAND CONTAINER TERMINAL LIMITED
4, Creek Road, Apapa, Lagos
Attention: The Chief Executive Officer
Telephone: 01 5873075; 5803930
Facsimile: 01 2713893

18.9 Confidentiality Each Party agrees to hold in confidence during the Term and for a period of five (5) years following the termination of this Agreement, any information supplied to such Party (the "Receiving Party") by the other Party (the "Disclosing Party") and related to the Lease Property, the Movable Assets, the Operations or this Agreement. The Receiving Party shall be entitled to disclose such information to its officers, directors, employees, external advisors and/or agents who have a need to know in order to assist the Receiving Party in the performance of its obligations hereunder; provided that the Receiving Party shall be responsible for ensuring that all such persons keep such information confidential. The provisions of this Section shall not apply to information within any one of the following categories or any combination thereof:




- (a) information that was in the public domain prior to the Receiving Party's receipt thereof from the Disclosing Party or that subsequently becomes part of the public domain by publication or otherwise except by the Receiving Party's wrongful act;
 - (b) information that the Receiving Party can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; or
 - (c) information received by the Receiving Party from a third party having no obligation of secrecy with respect thereto. It shall not be a breach of the obligation of confidentiality contained herein if the Receiving Party discloses such confidential information as required by Applicable Law.
- 18.10 No Waiver Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.
- 18.11 Severability The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- 18.12 Further Assurances The Parties agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.
- 18.13 Lessee Compliance with Laws; Officials Not to Benefit The Lessee shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessee represents and warrants that it has not paid, promised to pay or authorized the payment of, and agrees that it shall not pay, promise to pay or authorize the payment of, any money or anything of value, directly or indirectly to any person (whether a government official or private individual) for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.
- 18.14 Lessor Compliance with Laws; Officials Not to Benefit The Lessor shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessor represents and warrants that it has not received, arranged or agreed to receive, and agrees that it shall not receive, arrange to receive or agree to receive payment of any money or anything of value, directly or indirectly by any person for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.
- 18.15 Transition Period Transitional period shall be the period between the Execution Date and the Effective date, not exceeding ninety (90) days from the Execution date.



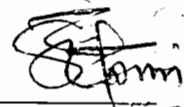
IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THEIR RESPECTIVE COMMON SEALS TO BE AFFIXED HERETO AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

THE COMMON SEAL OF THE WITHIN NAMED LESSOR
THE NIGERIAN PORTS AUTHORITY
was hereto affixed
In the presence of:

(seal)


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

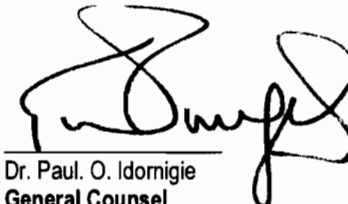

Adebayo B. Sarumi
Managing Director


SOTONYE INYEINENGU-EIOMI
Secretary

THE COMMON SEAL OF THE BUREAU OF PUBLIC ENTERPRISES
THE WITHIN NAMED CONFIRMING PARTY
was hereto affixed
In the presence of:


(seal)



Mrs. Irene N. Chigbue
Director General



Dr. Paul O. Idornigie
General Counsel

THE COMMON SEAL OF THE WITHIN NAMED LESSEE
TIN-CAN ISLAND CONTAINER TERMINAL LIMITED
was hereto affixed
In the presence of:

(seal)


Mr. Yehuda Kotik
Chairman


Mr. Paul Finley
Chief Executive Officer


Mr. L. Chidi Iliogu
Secretary



Appendix A

PREMISES

A handwritten signature in black ink, consisting of a stylized 'B' and 'S'.

A handwritten signature in black ink, appearing to be 'Chen'.



APPENDIX B

FIXED ASSETS

INVENTORY OF ASSETS IN TERMINAL 'B'

S/NO	DESCRIPTION	AREA M ²	REMARKS
1.	SHED 2	6000	
2.	QUAY APRON	31156	
3.	PLANT SECTION	625.65	
4.	OFFICES ANNEXED TO SHED 2	172.18	
5.	EAVE OF SHED 2	1207.5	
6.	LABOUR TOILET ADJONING SHED 2	156.78	
7.	GOVERNMENT W/HOUSE	7017.500	
8.	OFFICESS ANNEXED TO GOVERNMENT W/HOUSE	168.4	
9.	TOILETS ADJOINING GOVERNMENT W/HOUSE	14.64	
10.	EAVES OF GOVERNMENT W/HOUSE	1207.50	
11.	SECURITY OFFICE (2 ND GATE)	95.7	
12.	GATE HOUSE	154.37	
13.	PORT MAIN GATE	392.4	
14.	STACKING AREA	204,659.492	
15.	PETROL STATION	152.48	
16.	CENTRAL PLANT OFFICE	224.31	
17.	GEAR STORE	406.56	
18.	SHED 3	6000	
19.	PLANT SECTION	625.65	
20.	OFFICES ANNEXED TO SHED 3	334.20	
21.	EAVES OF SHED 3	1207.5	
22.	TOILETS ANNEXED TO SHED 3	156.78	
23.	SUBSTATION	67.8	
24.	LAMP POST	74POSTS	
25.	POWER STATION	575.8	
26.	'A' WAREHOUSE	6000	
27.	PLANT SECTION	625.65	
28.	OFFICES ANNEXED TO 'A' WAREHOUSE	334.20	
29.	EAVES OF 'A' W/HOUSE	1505.544	
30.	BERTH 3	185M	
31.	BERTH 4	180M	
32.	BERTH 4A	180M	
33.	BERTH 5	165M	



Appendix C

MOVABLE ASSETS

Type	Make	Capacity	Asset No.	Date Acquired/ Manufacture	Serviceable/ Unserviceable	Status	Overall Condition	Replacement cost (\$,000)	Expected Years of Service	Age	Depreciated Value (\$,000)	Discount for Condition (\$,000)	Adj. Replacement Value (\$,000)
Top Loader	Hyster	28T	RR 28 HH 001	2001	S	OK	Good	320	10	4	192.0	-	220.0
Top Loader	Hyster	28T	RR 28 HH 002	2001	S	OK	Good	320	10	4	192.0	-	220.0
Top Loader	Kalmar	28T	RR 28 KH 006	1993	US	WIP	Fair	320	10	12			20.0
Top Loader	Kalmar	28T	RR 28 KH 007	1997	S	OK	Good	320	10	8	64.0		80.0
Top Loader	Kalmar	28T	RR 28 KH 009	1999	S	OK	Good	320	10	6	128.0		140.0
Reach Stacker	Hyster	46T	RR 46 HH 001	2003	S	OK	Good	600	10	2	480.0	-	400.0
Reach Stacker	Hyster	45T	TC 45001	2002	US	AP	Good	600	10	3	420.0	-	420.0
Reach Stacker	Hyster	45T	TC 45002	2002	S	OK	Good	600	10	3	420.0	-	360.0
Reach Stacker	Hyster	45T	RR 45 HH 002	2000	US	AP	Good	600	10	5	300.0	-	300.0
Reach Stacker	Hyster	45T	RR 45 HH 003	2000	S	OK	Good	600	10	5	300.0	-	300.0
Freight Lifter	Hyster	28T	TC 28009	2003	S	OK	Good	320	10	2	256.0	-	270.0
Freight Lifter	Hyster	28T	TC 28010	2003	S	OK	Good	320	10	2	256.0	-	256.0
Freight Lifter	Kalmar	25T	TC 25009	1993	US	AP	Good	320	10	12	-	-	10.0
Freight Lifter	Kalmar	28T	TC 28003	1993	US	MR	Fair	320	10	12	-	-	10.0
Freight Lifter	Kalmar	28T	TC 28004	1993	US	MR	Fair	320	10	12	-	-	10.0

Ensign



Type	Make	Capacity	Asset No.	Date Acquired/ Manufacture	Serviceable/ Unserviceable	Status	Overall Condition	Replacement cost (\$,000)	Expected Years of Service	Age	Depreciated Value (\$,000)	Discount for Condition (\$,000)	Adj. Replacement Value (\$,000)
Freight Lifter	Kalmar	28T	TC 28005	1993	US	MR	Fair	320	10	12	-	-	10.0
Freight Lifter	Kalmar	28T	TC 28006	1993	S	OK	Good	320	10	12	-	-	10.0
Freight Lifter	Kalmar	28T	TC 28007	1993	US	MR	Good	320	10	12	-	-	10.0
Freight Lifter	Kalmar	28T	TC 28008	1999	US	MR	Good	320	10	6	128.0	-	50.5
Terminal Tractor	Kalmar	36T	TC 36001	1999	US	AP	Good	70	10	6	28.0	-	35.0
Terminal Tractor	Mercedes	40T	TC 40001	2000	US	AP	Good	80	10	5	40.0	-	35.0
Terminal Tractor	Mercedes	40T	TC 40002	2000	S	OK	Good	80	10	5	40.0	-	35.0
Terminal Tractor	Mercedes	40T	TC 40003	2000	S	OK	Good	80	10	5	40.0	-	35.0
Terminal Tractor	Mercedes	40T	RR 40 M T T 001	1998	US	AP	Good	80	10	7	24.0	-	35.0



Type	Make	Capacity	Asset No.	Date Acquired/ Manufactured	Serviceable/ Unserviceable	Status	Overall Condition	Replacement cost (\$,000)	Expected Years of Service	Age	Depreciate d Valu	Discount for Condition (\$,000)	Adj. Replacement Value (\$,000)
Fork Lift	Lancer-Boss	15T	TC 15001	1993	US	MR	Fair	150	10	12	-	-	13.0
Fork Lift	Kalmar	12T	TC 12003	1995	US	MR	Good	110	10	10	-	-	13.0
Fork Lift	Hyster	4T	TC 4019	2003	S	OK	Good	42	10	2	33.6	-	14.0
Fork Lift	Hyster	2.5T	TC 2501	2001	S	OK	Good	28	10	4	16.8	-	14.0
Fork Lift	Hyster	2.5T	TC 2502	2001	S	OK	Good	28	10	4	16.8	-	14.0
Fork Lift	Kalmar	5T	TC 5001	1994	S	OK	Good	51	10	11	-	-	15.0
Fork Lift	Kalmar	5T	TC 5002	1994	US	AP	Good	51	10	11	-	-	15.0
Fork Lift	Kalmar	5T	TC 5003	1994	US	WIP	Good	51	10	11	-	-	15.3
Fork Lift	Kalmar	5T	TC 5004	1994	US	MR	Good	51	10	11	-	-	15.0
Fork Lift	Kalmar	5T	TC 5005	1994	US	AP	Good	51	10	11	-	-	15.0
Fork Lift	Kalmar	3T	TC 3019	1994	US	MR	Good	33	10	11	-	-	15.0
Fork Lift	Kalmar	3T	TC 3020	1994	S	OK	Good	33	10	11	-	-	1.7
Fork Lift	Kalmar	3T	TC 3025	1996	S	OK	Good	33	10	9	3.3	-	3.3
Fork Lift	Kalmar	3T	TC 3026	1996	S	OK	Good	33	10	9	3.3	-	14.9
Fork Lift	Kalmar	3T	TC 3027	1996	US	WIP	Good	33	10	9	3.3	-	16.5
Fork Lift	Caterpillar	4T	TC 4001	1980	S	OK	Fair	42	10	25	-	-	5.0
Fork Lift	Caterpillar	4T	TC 4002	1980	S	OK	Fair	42	10	25	-	-	5.0
Fork Lift	Caterpillar	4T	TC 4003	1980	S	OK	Fair	42	10	25	-	-	5.0
Fork Lift	Caterpillar	4T	TC 4013	1980	US	WIP	Fair	42	10	25	-	-	5.0
Fork Lift	Caterpillar	4T	TC 4014	1980	US	AP	Fair	42	10	25	-	-	5.0
Fork Lift	Caterpillar	4T	TC 4015	1980	S	OK	Fair	42	10	25	-	-	5.0
Fork Lift	Caterpillar	4T	TC 4016	1980	S	OK	Fair	42	10	25	..	-	5.0



Type	Make	Capacity	Asset No.	Date Acquired/ Manufactured	Serviceable/ Unserviceable	Status	Overall Condition	Replacement cost (\$,000)	Expected Years of Service	Age	Depreciate d Valu	Discount for Condition Replacement (\$,000) Value (\$,000)
Fork Lift	Caterpillar	4T	TC 4017	1980	US	WIP	Fair	42	10	25	-	5.0
Fork Lift	Caterpillar	4T	TC 4018	1980	US	AP	Fair	42	10	25	-	5.0
Top Loader	Kalmar	42T	TC 2001	1994	US	AP	Good	550	10	11	-	5.0
Top Loader	Kalmar	42T	TC42002	1999	US	WIP	Good	550	10	6	220.0	200.0
Top Loader	Hyster	40T	RR 40 HH 003	2000	US	AP	Good	550	10	5	275.0	280.0
Terminal Tractor	Mercedes	40T	RR 40 MTT 002	1998	S	OK	Good	80	10	7	24.0	30.0
Terminal Tractor	Mercedes	40T	RR 40 MTT 003	1998	US	AP	Good	80	10	7	24.0	30.0
Terminal Tractor	Mercedes	40T	RR 40 MTT 004	1998	US	AP	Good	80	10	7	24.0	30.0
Terminal Tractor	Mercedes	40T	RR 40 MTT 005	1998	S	OK	Good	80	10	7	24.0	30.0
Mobile Crane	Terex	90T	TC 90001	2003	S	OK	Good	1000	20	2	900.0	800.0
Mobile Crane	Liebherr	62T	TC 62001	2003	US	AP	Good	800	20	2	720.0	700.0
Mobile Crane	Liebherr	62T	TC 62002	2003	S	OK	Good	800	20	2	720.0	700.0
RESERVE PRICE											6.316.1	6.316.1

KeyWIP = Work in Progress

NR = Not Repairable

AP = Awaiting Parts

MR = Major Repairs

RFD = Recommended for Disposal

OD = Operational Damage

US = Unserviceable

S = Serviceable



Appendix D

DEVELOPMENT PLAN

1 ANNUAL SCHEDULE OF INVESTMENT

This Table shows the number and type of equipment that the Lessee will be using on the terminal during the Lease Agreement duration:

Table 1: Annual Schedule of Investment

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
	2006	2007	2008	2009	2010	2015	2020
Reachstacker	10	10	10	10	10	14	18
Empty handler	4	4	4	4	5	6	8
Forklift 7t	1	1	1	1	1	1	1
Forklift 4t	1	1	1	1	1	1	1
Yard tractor	20	20	20	20	20	24	30
Chassis	24	24	24	24	24	28	34
Spreader 20'	4	4	4	4	4	5	6
Spreader 40'	3	3	3	3	3	4	5
Bus	3	3	3	3	3	4	5
Utility vehicle	7	7	7	7	7	10	12
Light vehicle	4	4	4	4	4	5	6

2 HANDLING EQUIPMENT INVESTMENT

2.1 Terminal Equipment

One of the most important "mission statements" for the Lessee will be to ensure that the productivity, efficiency, and the service level on the terminal will be as high as possible. This will require that the terminal handling equipment being used will be:

- Of a high technical standard;
- Flexible, so that various operational tasks can be performed with the same machine/equipment; and
- Homogeneous, in the sense that equipment of similar type should tentatively be of the same brand/model in order to achieve economies of scale in maintenance and repair and procurement leverage, unless other economic reasons justify another option.

2.2 Equipment Requirements

Procurement strategies for the required terminal equipment were laid down, which basically states that the supply contracts of the various types of equipment will be given to those equipment suppliers who will be able to:

- Meet the Lessee's technical specifications;
- Adhere to delivery time requirements specified by the Lessee; and
- Provide most favourable cost benefits to the Lessee.

2.3 Basic assumptions

The average lifetime for the equipment has been estimated to be five (5) years for the handling equipment and rolling stock. On this basis, the total fleet will grow from seventy seven (77) units in year one (1) to one hundred and twenty (120) at the end of the lease, taking into account the renewals during the concession period. (Excluding the generators)

2.4 Terminal Equipment Description

Below is listed the different types of terminal stevedoring equipment that will be part of the Lessee.

2.4.1 Equipment Type: Reachstacker (Container Lifting Equipment)

**Characteristics:**

Type: TEREX/PPM Reachstackers or similar.
Lift Capacity: Forty two – forty five (42 – 45) Tons
Stacking Capacity: Five-Six (5-6) high
Reach Capacity: Up to three (3) rows
Power: Diesel powered machines

Description:

Reachstackers have been selected as the appropriate type of container lifting equipment in order to expand the terminal's capacity to cater for the expected volume growth for export and transshipment. The Reachstackers are advanced, but at the same time "driver-friendly" machines with a high performance and with low operation and consumption costs, and that is why many terminals in the world today are using Reachstackers. A Reachstacker is able to handle the middle row in a "3-wide" stack from both sides, since the extendable boom will reach over the outer rows.

2.4.2 Equipment Type: Empty handler

Characteristics:

Type: SVETRUCK, KALMAR Empty handler or similar.
Lift Capacity: Sixteen (16) Tons
Stacking Capacity: Five to eight (5-8) high
Power: Diesel powered machines

Description:

Due to the high number and fast turn-around of empty Cargos being moved around (empty Cargos shall only stay on terminal for a very limited period of time) on the terminal, the Lessee shall use special Empty Handling Equipment for that specific task. The machines shall be able to perform at precise, fast, and high level positioning, which is a must. The Lessee would use machines that are especially suited for high-level block stacking.

2.4.3 Equipment Type: Forklifts – various types

Characteristics:

Type: HYSTER Forklifts or similar.
Lift Capacity: Four to twelve (4-12) Tons
Extra Equipment: Forklift clamps
Power: Diesel powered machines

Description:

The fleet of Forklifts will be large and diversified in order to handle the different kinds of services that will be offered to the customers. All the Forklifts will be efficient, stable and very manoeuvrable, ensuring low operational cost and high performance.

2.4.4 Equipment Type: Terminal Truck –Yard Tractor

Characteristics:

Type: TERBERG Trucks or similar.
Pull Capacity: Thirty two – Thirty six (32-36) Tons
Power: Diesel powered machines

Description:

The fleet of Terminal Trucks, better known as Tug masters, the Lessee will utilise will be large and diversified, and they will be used to haul container to/from vessel side and around the terminal yard. The fleet will consist of 4x2 wheel drives. The 4x2 Tug masters will be used for the yard operation and for the container vessel operations.

2.4.5 Equipment Type: Chassis

Characteristics:

Type: Terminal Chassis



Load Capacity: Fifty – Sixty (50-60) Tons

Description:

The Lessee will utilise special Terminal Chassis for haulage of Cargos. The Chassis will be special ones with "guide rails" mounted around the side of the Chassis, which will ensure rapid and accurate loading of Cargos on the Chassis.

2.4.6 Equipment Type: Container Spreader

Characteristics:

Type: Manual Container Spreaders – 20' and 40'

Load Capacity: Thirty five – forty (35-40) Tons

Description:

Special Manual Container Spreaders will also be acquired by the Lessee. The Manual Container Spreaders will be used for vessel operations in case the vessel does not have its own Manual Container Spreader(s) onboard, which is very often the case.

2.4.7 Equipment Type: Terminal Vehicles

Characteristics:

Type: Mini Buses, Cars, and Pick-ups

Description:

The Lessee will use a fleet of various terminal vehicles. The Mini Buses will be used for transporting terminal employees around or outside the terminal; the administrative employees will mainly use the Cars when transport is needed on or outside the terminal for various purposes and finally, the Pick-ups will mainly be at the disposal of the Maintenance Team.

2.5 Summary

All in all the Lessee will utilise a very large and diversified fleet of terminal equipment with the purpose of being able to deliver the best and fastest service level possible to customers and to give the employees of the terminal the correct equipment needed to carry out the different job tasks in the best possible way.

3 INFRASTRUCTURES AND FACILITIES

3.1 Introduction

Premises consists of the following main areas:

- A 730 m long quay deck and apron which includes Berths 3, 4 and 5;
- Two transit sheds (Sheds 2 and 3);
- The open storage areas to the sides and behind Sheds 2 and 3, as well as the open area between these sheds, the interior connector road between the TCIP Workshop and the eastern TCIP gate, and the areas of car parks and buildings north of the connector road back to the boundary wall of TCIP.
- The existing Luxury Bus Park area behind Berth 2; and
- Warehouse A, the Government Warehouse, the fuelling station, gear store, plant office, and the weighbridge behind Berth 4.

Civil work in **Tin-Can Island Container Terminal B**, to be realised by the Lessee in accordance with occupancy forecast, mainly consists of:

3.2 Demolition works

The demolition work will consist of:

- Demolition of three (3) warehouses (Warehouse A, Shed 2 and Shed 3)
- Demolition of Government Warehouse after phase 1
- Demolition of other operators buildings existing on the site (to be identified in the layout to be provided in Appendix A – Premises and to be listed in Appendix B – Fixed Assets), workshop excluded;
- Demolition of existing walls around operators terminals; (To itemise the affected buildings)
- Cleaning of debris and buried items; and
- Excavation, adjustment of formation levels and surface preparation for new pavements at formation level.



3.3 Paving works

The top layer consists of eighty-one hundred and twenty millimetre (80 – 120 mm) interlocking concrete paving blocks on a forty millimetre (40 mm) layer of sand-bed with the supposition that base course below the sand consists of three hundred and fifty millimetre (350 mm) of cement stabilised crushed rock on a two hundred and fifty millimetre (250 mm) sub-layer of graded material.

3.4 Drainage Works

Surface drainage from gutters at front and the rear of the main cargo storage Area will be through pipes with outlet to the sea. The paved area will be arranged with slopes.
Buried piping and inspection wells have to be inserted.

3.5 Water and Sewage

Provision of water to buildings in existing **Tin-Can Island Container Terminal B** will be made through connections to the existing mains and sewage from buildings carried to local septic tanks.

3.6 Electrical Works

The electrical works will consist of upgrading the substation and supplying network.
The following systems will be installed:

- Emergency generators (1 x 250 kVA);
- Reefer rack / plugs;
- Flood lights including cables, light poles for storage area; and
- Electrical and data cables to buildings.

3.7 Buildings

The following buildings will be refurbished:

- Personnel facilities;
- Workshops and Offices around workshop (to be identified in the layout to be provided in Appendix A – Premises and to be listed in Appendix B – Fixed Assets);
- Storage of spare parts;
- Fuel station, two fuel tanks placed in a concrete containment structure; and
- Gate complexes; creation of new entry gate dedicated to Terminal B incoming cargo, at the former pedestrian gate behind the workshop; and refurbishing and splitting the existing eastern TCIP gate between Terminal A and Terminal B (to be clearly defined in the layout part of Appendix A, so as to comply with ISPS code and related security requirements.

3.8 Fencing

The new system of fencing and barriers on terminal existing and extension in eastern and western part of **Tin-Can Island Container Terminal B** will be implemented and will comply with international rules (ISPS Code Part B Paragraph 16.17).

3.9 Power back up

Since it is the terminal's responsibility to guarantee the constant supply of power to the reefer Containers during their stay at the terminal, and constant lighting for security and safety during operations, the Lessee has decided to acquire a generator to provide alternative continuous power supply to the reefer plugs on the terminal in case of a power failure of the public network.

Night work on a terminal requires adequate lighting of the operational area. This is essential for safe and speedy night operations. the Lessee will renovate the existing floodlights mast and install new ones. Similarly, generators will ensure continued power-supply to the lighting system in case of power failure.

4 DETAILED INVESTMENT THROUGHOUT PERIOD OF LEASE

THE LESSEE provides two (2) annual schedules: one for the civil works and another for equipment investments. The schedule for civil works includes the annual investments for improving and rehabilitating stacking yard and other necessary infrastructure and superstructure development.



Table 2: Detailed Investment Throughout Period of Lease – Civil Works

Year of Acquisition	Type of Civil Works	Type of Investment (e.g. Improvement or Rehabilitation)	Total Cost (US\$)
1	Preliminary- Consultancy	Improvement	30,000
	Mob – Demob	Improvement	50,000
	Demolish existing buildings & warehouses	Improvement	420,000
	Paving	Rehabilitation	650,000
	Lighting Mast	Improvement	420,000
	Fencing	Improvement	280,000
	Office Building	Rehabilitation	300,000
	Gates	Improvement	56,000
	Cabling	Improvement	126,000
	Resurfacing - Refurbishing	Rehabilitation	360,000
	Contingencies	Improvement	50,000
6	Demolish existing buildings & warehouses	Improvement	190,077
	Paving	Rehabilitation	294,166
Total Investment Throughout Period of Lease			3,226,243

It has to be noted that an additional provision for infrastructure maintenance (paving, fencing, buildings) is forecast as an operational expense for an annual amount in excess of twenty thousand United States dollar (20,000 USD) per year.



The schedule for equipment investments includes investments needed for handling equipment, storage facilities and the berth, and the rationale for the investment.

Table 3: Detailed Investment Throughout Period of Lease – Equipment Investments

Year of Acquisition	Type of Equipment	Capacity	Number to be Acquired	Unit Cost (US\$)	Total Cost (US\$)
1	Reachstacker	45	10	350,000	3,500,000
	Empty Handler	16	4	200,000	800,000
	Forklift 7t	7	1	25,000	25,000
	Forklift 4t	4	1	25,000	25,000
	Yard Tractor 4x2		20	50,000	1,000,000
	Chassis	45	24	15,000	360,000
	Spreader 20'	25	4	5,000	20,000
	Spreader 40'	45	3	7,000	21,000
	Bus		3	44 444	133,333
	Utility Vehicle		7	23 704	165,926
	Workshop Tools		1	35,000	35,000
	Office Furniture		20	1,000	20,000
	Desktop		20	1,259	25,185
	Laptop		5	1,704	8,519
	Portable Data Terminal (Wireless)		20	1,000	20,000
	System (Hardware & Software)		1	70,000	70,000
	Communication (PABX, HF, Network)		1	50,000	50,000
	Emergency Generator		1	100,000	100,000
	UPS		1	37,778	37,778
	Handling (Wire, Ropes, Hooks)		1	12,000	12,000
	Copier (Large)		1	12,593	12,593
	Copier (Small)		5	7,407	37,037
	HF Radio		20	2 815	56,296
	Air Conditioner		20	630	12,593
	Commencement Fee		1	3,500,000	3,500,000



Year of Acquisition	Type of Equipment	Capacity	Number to be Acquired	Unit Cost (US\$)	Total Cost (US\$)
6	Reachstacker	Renewal	10	395,993	3,959,929
	Reachstacker	Extension	4	395,993	1,583,971
	Empty Handler	Renewal	4	226,282	905,127
	Empty Handler	Extension	2	226,282	452,564
	Yard Tractor 4x2	Renewal	20	56,570	1,131,408
	Yard Tractor 4x2	Extension	4	56,570	226,282
	Chassis	Extension	4	16,971	67,884
	Spreader 20'	Renewal	4	5,657	22,628
	Spreader 20'	Extension	1	5,657	5,657
	Spreader 40'	Renewal	3	7,920	23,760
	Spreader 40'	Extension	1	7,920	7,920
	Bus	Renewal	3	50,285	150,854
	Bus	Extension	1	50,285	50,285
	Utility Vehicle	Renewal	7	26,819	187,730
	Utility Vehicle	Extension	3	26,819	80,456
	Desktop	Renewal	20	1,425	28,495
	Laptop	Renewal	5	1,928	9,638
	Portable Data Terminal (Wireless)	Renewal	20	1,131	22,628
	Handling (Wire, Ropes, Hooks)	Renewal	1	13,577	13,577
	Copier (Large)	Renewal	1	14,247	14,247
	Copier (Small)	Renewal	5	8,381	41,904
	HF Radio	Renewal	20	3,185	63,694
	Air Conditioner	Renewal	20	712	14,247



Year of Acquisition	Type of Equipment	Capacity	Number to be Acquired	Unit Cost (US\$)	Total Cost (US\$)
11	Reachstacker	Renewal	14	448,030	6,272,414
	Reachstacker	Extension	4	448,030	1,792,118
	Empty Handler	Renewal	6	256,017	1,536,101
	Empty Handler	Extension	2	256,017	512,034
	Forklift 7 ton	Renewal	1	32,002	32,002
	Forklift 4 ton	Renewal	1	32,002	32,002
	Yard Tractor 4x2	Renewal	24	64,004	1,536,101
	Yard Tractor 4x2	Extension	6	64,004	384,025
	Chassis	Renewal	30	19,201	576,038
	Chassis	Extension	4	19,201	76,805
	Spreader 20'	Renewal	5	6,400	32,002
	Spreader 20'	Extension	1	6,400	6,400
	Spreader 40'	Renewal	4	8,961	35,842
	Spreader 40'	Extension	1	8,961	8,961
	Bus	Renewal	4	56,893	227,571
	Bus	Extension	1	56,893	56,893
	Utility Vehicle	Renewal	10	30,343	303,427
	Utility Vehicle	Extension	2	30,343	60,685
	Desktop	Renewal	20	1,612	32,239
	Laptop	Renewal	5	2,181	10,904
	Portable Data Terminal (Wireless)	Renewal	20	1,280	25,602
	Handling (Wire, Ropes, Hooks)	Renewal	1	15,361	15,361
	Copier (Large)	Renewal	1	16,120	16,120
	Copier (Small)	Renewal	5	9,482	47,411
	HF Radio	Renewal	20	3,603	72,064
	Air Conditioner	Renewal	20	806	16,120
Total Investment Throughout Period of Lease					32,829,388

Summary

Total Civil Work Investment Throughout Period of Lease	3,226,243
Total Equipment Investment Throughout Period of Lease	32,829,388
Total Investment Throughout Period of Lease	36,055,630



5 SECURITY

5.1 Introduction

The Lessee **Safeguards & Security program** shall be designed:

- to exclude unauthorized outsiders from Premises, specific areas within Premises;
- to deter and detect authorized insider (employees and sub-Contractors) from conducting unauthorized activities; and
- To control traffic at Premises.

The Lessee's security measures shall conform to, and be consistent with the **ISPS Code 2003 Edition**.

The objective of the Lessee's **Safeguards & Security Program** is to achieve zero recordable unresolved security related accidents/incidents and an acceptable level of property loss.

5.2 General Policy

The Policy of the Lessee is that **Safeguards & Security** is an essential part of the Concession and shall receive high priority and early consideration in the design, construction, and operation of the **Tin-Can Island Container Terminal B** and associated support facilities.

The implementation of these requirements shall assure protection of **Tin-Can Island Container Terminal B** interests from theft or diversion of property or materials, industrial sabotage, and other hostile acts which could cause unacceptable adverse impacts on the **Tin-Can Island Container Terminal B**. Measures shall therefore include property and personnel control systems and material accountability systems for detecting unauthorized movements of materials from within a facility or removal from a facility, and the protection of Terminal personnel.

5.3 Access to sensitive Areas

5.3.1 Isolation Zones

A clearance shall be maintained of at least five (5) meters (fifteen (15) ft.) in width outside adjacent areas to avoid concealment.

5.3.2 Perimeter Barrier

Clearly defined physical barriers, such as fences, kerbs, bollards, walls and doors, shall be used to control, impede or deny unauthorized access to the facility protected area. Where fences are used, fence barriers shall be constructed so as to direct the flow of pedestrian and vehicle traffic through designated portals. The barrier shall also aid in deterring the introduction of prohibited items into the Lessee facility and the unauthorized removal of property. Man-made or natural barriers shall be used to further deter or prevent penetration into the protected area by motorized vehicles.

5.3.3 Protection Officer's Guardhouse

When guardhouses are required, the Protection Officer guardhouse shall be placed at the primary vehicle and personnel entry points inside the fence line.

5.3.4 Illumination

Illumination used as a part of the physical protection shall be provided to permit detection and assessment of adversaries, reveal unauthorized persons, and permit examination of credentials and vehicles at pedestrian and vehicle entrances. Isolation zones and all exterior areas within the protected area shall be continuously illuminated to allow for sufficient monitoring and observation. Safeguards & Security lighting systems used for this illumination shall have a backup electrical power system.

5.3.5 Power System

The normal electric power source shall supply the security lighting system. Backup shall be furnished by one or more emergency generators equipped to start automatically in case of normal supply failure.

5.3.6 Intrusion – Detection

In identified critical asset areas, a reliable and continuous **intrusion detection alarm system (IDS)** and use of Protection Officers shall be provided.



5.3.7 Assessment – Surveillance

The protected area perimeter shall have an effective means to assess alarms and intrusion activities under day and night conditions and shall provide assurance that activities of intruders can be determined so that a security response can be directed; and false and nuisance alarms can be rapidly assessed so that the response activities are not degraded.

5.3.8 Patrols

Surveillance patrols shall be used to deter the introduction of prohibited articles or removal of property from protected areas. The protected area perimeter barrier and adjacent isolation zones shall be patrolled at random.

5.3.9 Access Controls

Entry to protected areas of the Lessee facilities shall be limited to personnel possessing appropriate status or to escorted individuals who require admittance to perform official duties. Verification of the identity of persons authorized access shall be administered by protection officers at protected area portals.

5.3.10 Sensitive Equipment

Sensitive equipment shall be formally evaluated for the best countermeasures against industrial sabotage and that evaluation shall appear in the associated system design description.

5.3.11 Computer Security

THE LESSEE shall ensure the security of information in computing systems. Information systems shall be therefore protected from unauthorized access, alteration, disclosure, destruction, penetration, denial of service, submission of security measures, or improper use.

6 ENVIRONMENT

6.1 Introduction

The Lessee environmental management program shall protect the Premises and surround areas from unacceptable impacts. This program shall include the Lessee waste management facilities and services; soil preservation; air, noise, and water pollution prevention measures; and environmental monitoring program.

6.2 Management of Chemicals and Wastes

The Lessee shall comply with relevant Government regulations and NPA guidelines regarding safe handling, storage and transport of toxic materials and hazardous chemicals.

6.2.1 General Wastes

The Lessee shall:

- Provide domestic waste water collection and treatment systems for the **Tin-Can Island Container Terminal B**;
- Manage and dispose and segregate its wastes, and delivering its non-recyclable hazardous wastes (e.g., batteries) to **NPA** approved facilities for treatment/disposal;
- Provide sufficient covered garbage Containers at appropriate locations to ensure adequate storage capacity and prevent litter from accumulating; and
- Authorize waste oils collection by third parties in accordance with **NPA** Waste regulations.

6.2.2 Handling and Disposal of Hazardous Materials

The Lessee shall:

- Ensure that refuelling or refilling activities, storage and maintenance activities involving hazardous materials occur in the same areas whenever possible;



- Store all hazardous (reactive, flammable, radioactive, corrosive and toxic) materials in appropriate and clearly labelled Containers. Storage shall be in lined storage areas large enough to contain the inventory in the event of a spill;
- Store and handle all hazardous materials in a manner appropriate to their hazard characteristics; and
- Provide sufficient fire protection systems for storage facilities to control fires and/or the release of hazardous materials to the environment.

6.2.3 Spill Prevention and Response

The Lessee shall:

- Ensure that all storage tanks and pumps are located within properly bermed areas with impervious liners to ensure that no fuel, oil, solvents, lubricants, chemical additives, or other potentially harmful substances can migrate into surface or ground water resources at any time;
- Ensure that proper precautions are followed in the special cases where mobile equipment is required to operate and refuel within twenty (20) meters of a water-body or wetland in order to minimize the risk of fuel spills into the water-body; and
- Ensure that fuel and service vehicles carry at least ten (10) kg of suitable commercial absorbent material for spill response so that spill containment and recovery operations can begin immediately after any release of hazardous liquids.

6.2.4 Air Pollution Mitigation

The Lessee shall ensure that all equipment is in good condition, well maintained, and equipped with suitable mufflers to prevent excessive generation of air pollutants and noise.

6.2.5 Water Pollution Prevention

The Lessee shall prevent flow of spoil from the Tin-Can Island Container Terminal B into water-bodies or wetlands.



Appendix E

OPERATIONS

A. OPERATIONS

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

1. the handling and delivery services for the Cargoes/Containers, including without limitation stevedoring (loading and offloading) of vessels, transporting, sorting, storage and the procurement, operation and maintenance of equipment for the foregoing;
2. the repair and maintenance of the Fixed Assets and Movable Assets.

B Other services:

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



APPENDIX F

LEASE FEES

The Lessee shall pay the following fees to the Lessor in consideration of this Agreement and the right to perform the Operations:

- (a) an initial payment of three million, five hundred United States dollars (\$3,500,000) to be paid within fifteen (15) days after the Execution Date (the "Commencement Fee");
- (b) a fixed annual payment of a sum as specified in the schedule below to be paid in twelve (12) equal instalments in each Operating Year, the first instalment to be paid on the first day first month after the Effective Date and then, on the same date of every month thereafter (the "Lease Fee")

Redacted

- (c) a throughput fee calculated on the basis of sixteen United States dollars (U.S. \$16) per TEU handled in the Premises, payable in arrears at the end of each monthly period beginning on the first day of the first month after the Effective Date (the "Throughput Fee" and, together with the Commencement Fee and the Fixed Payment, the "Lease Fees").

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

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The Throughput Fee shall be assessed on empty and laden Containers, Import/Export Cargoes and shall be paid to the Lessor within five (5) business days after the last day of the applicable period. The Throughput Fee shall be adjusted on an annual basis in accordance with the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 during the applicable annual period.

MECHANISM FOR THE COLLECTION OF THROUGHPUT FEES

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

DELAY IN PAYMENT

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

BANK ACCOUNT DETAILS

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

Redacted



Appendix G

BERTHS

BERTH 3	185M
BERTH 4	180M
BERTH 4A	180M
BERTH 5	165M

A handwritten signature in black ink, consisting of a stylized 'D' followed by a flourish.

A handwritten signature in black ink, appearing to be 'Chia'.



Appendix H

OPERATIONS RATES

A. OPERATIONS RATES

The Lessee shall charge from the Effective Date until the date that occurs on the first (1st) anniversary thereof rates for cargo dues and delivery charges which are not greater than the rates set forth below:

Maximum Tariffs for the Cargo Dues and Delivery Charges of General Cargo

Category	Cargo Dues USD	Delivery Charges Naira	Remarks
IMP per Ton	6.1	89	1. The charge is paid by the consignee. 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
EXP per Ton	4	168	1. The charge is paid by the line 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
IMP per Ton (TWA Coastal)	3	89	Please refer to the section for IMP per Ton
EXP per Ton (TWA Coastal)	3	89	Please refer to the section for EXP per Ton
Explanatory Notes			
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic. Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S			

Note: Maximum tariff service means the single movement of one ton of inbound General Cargo, transferring it from its stowage position in the ship to the dock apron at the vessel's side, sorting it once in accordance with instructions received from the vessel and stacking it in the yard, or placement onto a inland vehicle, or for internal movement to the Customs examination area. The reverse of the above movements applies for outbound general Cargo.



Maximum Tariffs for the Cargo Dues and Delivery Charges of Bulk Cargo

Category	Cargo Dues USD	Delivery Charges Naira	Remarks
IMP per Ton	4	49	<ol style="list-style-type: none">1. The charge is paid by the consignee.2. The Cargo dues is paid in USD and the delivery charges are paid in Naira.3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
EXP per Ton	2.5	168	<ol style="list-style-type: none">1. The charge is paid by the line2. The Cargo dues is paid in USD and the delivery charges are paid in Naira.3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
IMP per Ton (TWA Coastal)	2	49	Please refer to the section for IMP per Ton
EXP per Ton (TWA Coastal)	2	168	Please refer to the section for EXP per Ton
Explanatory Notes			
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic. Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S			

Maximum tariff service means the single movement of one ton of inbound Bulk Cargo, transferring it from its stowage position in the ship to the dock apron at the vessel's side, sorting it once in accordance with instructions received from the vessel and stacking it in the yard, or placement onto a inland vehicle, or for internal movement to the Customs examination area. The reverse of the above movements applies for outbound dry Cargo.



Maximum Tariffs for the Cargo Dues and Delivery Charges of Cargos

Category		Cargo Dues USD	Delivery Charges Naira	Remarks
Laden IMP	20'	90	5,015	<ol style="list-style-type: none"> The charge is paid by the consignee. The Cargo dues is paid in USD and the delivery charges are paid in Naira. For Flat Containers, the max. delivery charge is N 5,186 and for Open Tops, the max. delivery charge is N 7,073 For Reefers, there is an additional delivery charge of N 1,750 For handling during the weekend, the consignee is charged with an additional N 294 For Unstuffing, the consignee is charged with an additional N 714 For Direct Delivery, the consignee is charged with an additional N 168
	40'	130	6,268	<ol style="list-style-type: none"> The charge is paid by consignee For Flat Containers, the max. delivery charge is N 6,707 and for Open Tops, the max. delivery charge is N 9,531. For Reefers, there is an additional delivery charge of N 2,625 For handling during the weekend, the consignee is charged with an additional N 378 For Unstuffing, the consignee is charged with an additional N 903 For Direct Delivery, the consignee is charged with an additional N 210
Laden EXP	20'	70	3,687	The charge is paid by the line
	40'	100	5,567	The charge is paid by the line
Empty IMP	20'	20	5,015	The charges are paid by the line
	40'	40	6,268	The charges are paid by the line
Empty EXP	20'	25	1,264	The charges are paid by the line
	40'	40	1,896	The charges are paid by the line
Local Laden IMP (TWA /Coastal)	20'	70	5,015	Please refer to the section on Laden IMP for 20' Containers for Local Laden IMP.
	40'	100	6,268	Please refer to the section on Laden IMP for 40' Containers for Local Laden IMP
Local Laden EXP (TWA /Coastal)	20'	70	3,687	The charges are paid by the line
	40'	100	5,567	The charges are paid by the line
Local Empty IMP (TWA /Coastal)	20'	25	5,015	The charges are paid by the line
	40'	40	6,268	The charges are paid by the line
Local Empty EXP (TWA /Coastal)	20'	25	3,687	
	40'	40	5,567	The charges are paid by the line
Explanatory Notes				
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic.				
Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S				

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



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

Maximum Tariffs for the Cargo Dues of Vehicles

Category	Vehicle Type	Cargo Dues USD	Remarks
IMP per Vehicle	Upto 15 cbm ¹	14.3	<div>1. The charge is paid by the consignee.</div> <div>2. The Cargo dues is paid in USD</div> <div>3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.</div> <div>4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.</div>
	16 to 25 cbm	25.8	
	Over 25 cbm	55.8	
	Trailer/ Mafiwagon	110.8	
EXP per vehicle	Upto 15 cbm	13.3	<div>1. The charge is paid by the line</div> <div>2. The Cargo dues is paid in USD</div> <div>3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.</div> <div>4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.</div>
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
IMP per Ton (TWA Coastal)	Upto 15 cbm	13.3	Please refer to the section for IMP per vehicle
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
EXP per Ton (TWA Coastal)	Upto 15 cbm	13.3	Please refer to the section for EXP per vehicle
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
Explanatory Notes			
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic. Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S			

¹ cbm = Cubic meters



Maximum Tariffs for the Cargo Dues of Vehicles (in Naira)

	Car Upto 5cbm	Bus 16-25cbm	Truck Over 5cbm	Tracked Vehicles	Trailers Over 140cbm
Direct	2,497	2,775	3,539	4,157	3,876
Indirect	2,583	2,907	3,971	5,180	4,149
VAT	5%	5%	5%	5%	5%

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

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

B. FREE STORAGE TIME

Unless agreed otherwise with the Lessor and the Regulator, the Lessee shall provide three (3) days free storage time for import Containers, one (1) day free storage time for export Containers, three (3) days free storage time for Containers in transit to neighbouring countries, and three (3) days free storage time for empty Containers for transshipment. The Lessee shall be permitted to determine its own storage charges after the expiration of the foregoing time periods, subject to the approval of the Regulator or any Governmental Authority charged with carrying out such regulation.



Appendix I

STAFFING AND SUCCESSION PLAN

MANAGEMENT STRUCTURE

The Lessee Management Structure is organised around a **Management Team** of seven (7) Managers named:

- Managing Director,
- Operations Manager,
- Finance and Administrative Manager,
- Engineering Manager,
- Accounting Manager,
- Human Resources Manager, and
- HSE Manager (Health, Safety and Environment)

From inception, this team will be made up of four (4) expatriates and three (3) Nigerian Managers (Accounting Manager, Human Resources Manager and HSE Manager)

During the first two (2) years, this **Management Team** shall be ably assisted by four (4) additional experts: Operations Assistant Manager, IT Manager, Training Supervisor and Procurement Supervisor.

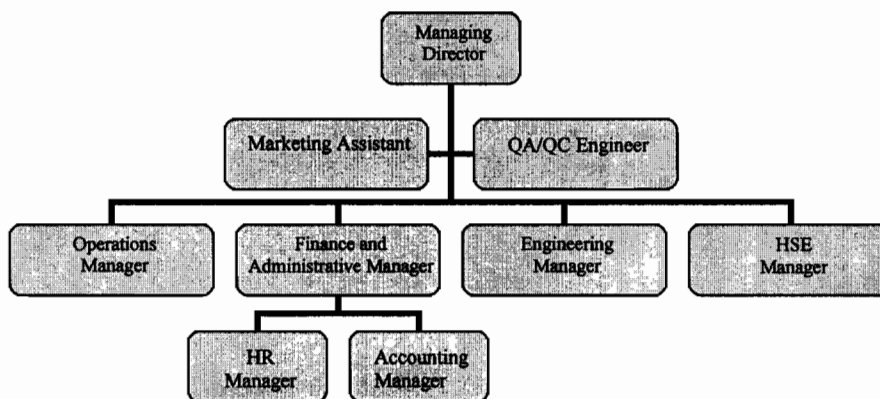
Each Department (Operations, Administration and Finance, Engineering, HSE) will be split into dedicated sub department for each activity.

Main hierarchical levels are: Manager, Superintendent, Supervisor, and Coordinator.

Physical Operations such as vessel stevedoring shall be contracted to **Stevedoring companies** which employ directly **JOMALIC** dockworkers. Nevertheless, these workers will be considered as the Lessee employees with regard to training, personal protective equipment, safety and medical treatment.

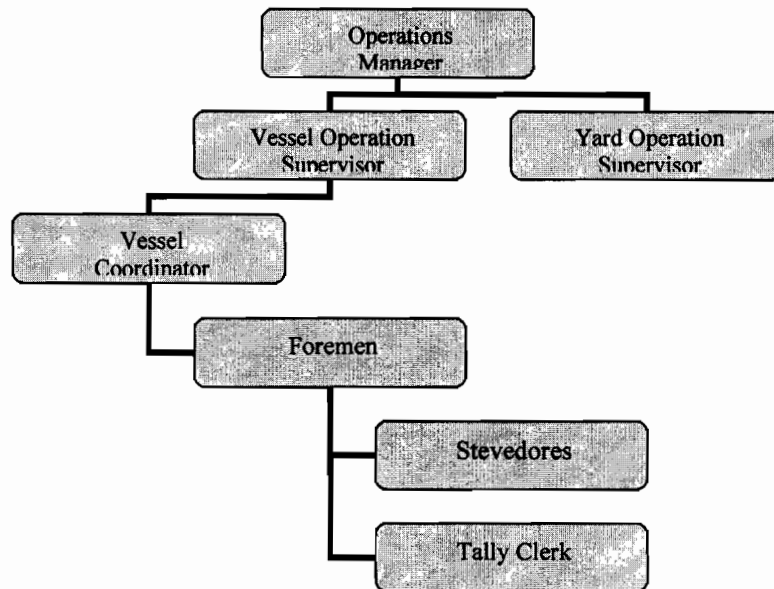
Organisation charts for the main department are provided below.

Management
Team

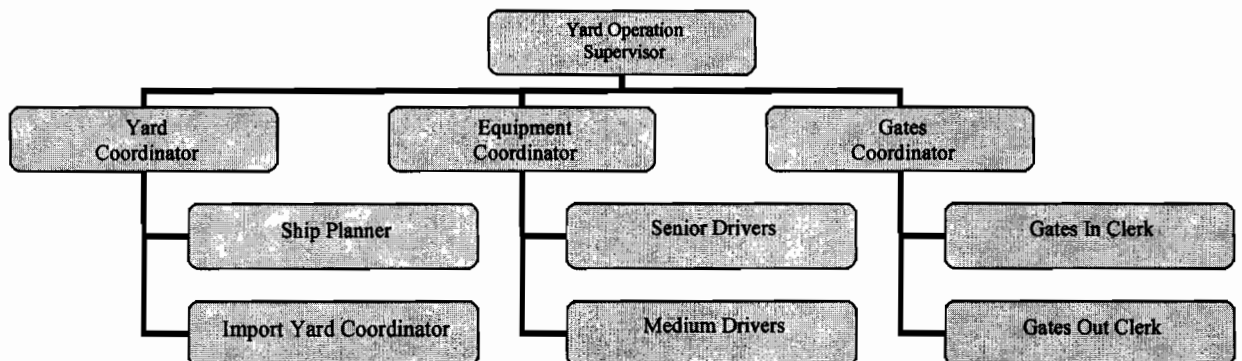




Operations Department

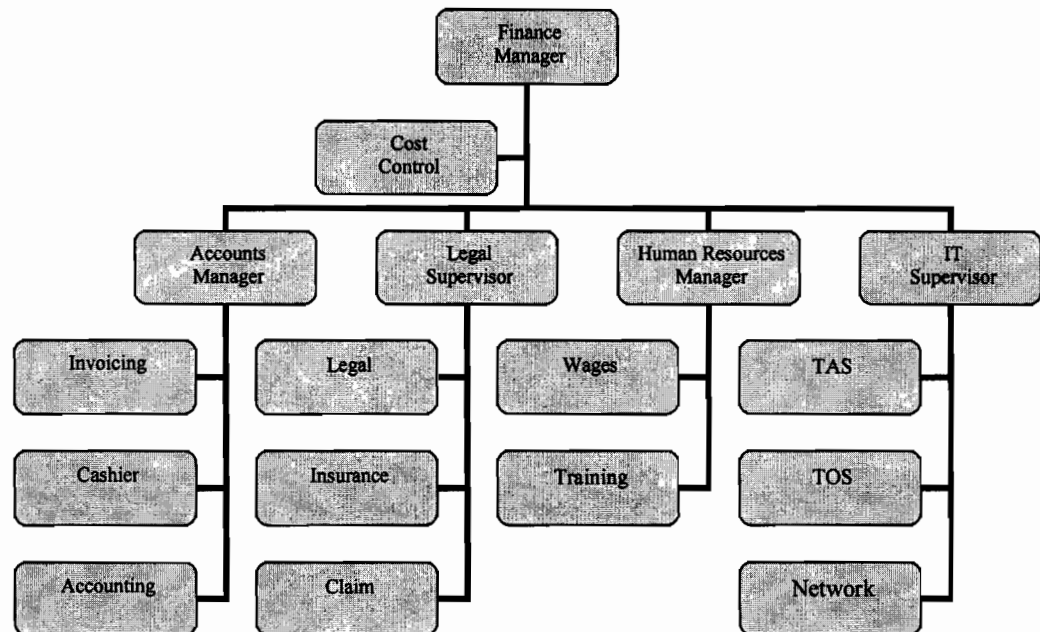


Yard Operations Sub Department

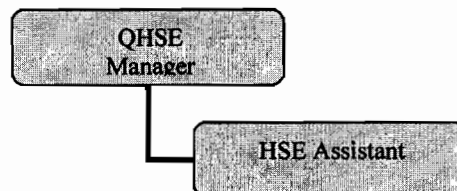




Finance and Administrative Department



Quality, Health, Safety, and Environment Department

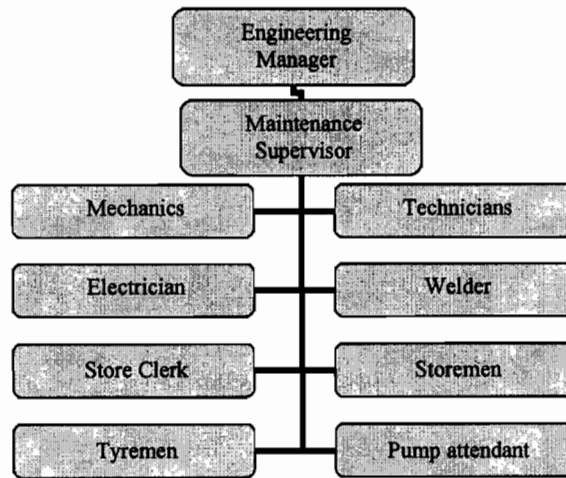


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Engineering Department





INITIAL STAFF REQUIREMENTS

Estimate of the initial staff requirements should be:

Table 4: Initial Staff Requirements

Categories	Full-time	Part-time	Foreign	Local	TICT	Contractor
Management	12		4	8	12	
Finance and Administration	18			18	18	
Equipment operators	211	30		241	211	30
Engineering Services / Engineering Technicians	21	2		23	23	
Other Operation	9			9	9	
Security	36	36		72		72
Total	307	68	4	371	273	102
Grand Total	375		375		375	

Part-time staff is estimated on the following basis:

- peak activity as fifteen percent (15 %) including seasonality; and
- Replacement of unforeseen absentees.

Management Team Mobilisation

The Lessee's **Management Team** will consist of the **Managing Director**, **Finance and Administrative Manager**, **Operations Manager**, **Engineering Manager**, **Accounting Manager**, and **Human Resource Manager**. During the mobilisation phase however, this Management Team will be assisted by an Operations Assistant Manager, an IT Manager, a Training Supervisor and a Procurement Supervisor.

The **Management Team** will be provided by the **Technical Services Providers** and appointed by the Board of the Lessee. The process of replacement of part of the **Management Team** by local staff within the first two (2) years of operation is more particularly described in the **Succession Plan** in Clause 0



Senior Staff Recruitment Phase

The **Human Resources Manager** shall undertake the recruitment of senior staff of the Lessee in accordance with the appropriate job descriptions and under the **Managing Director's** control and approval. Advertisements for these positions will be placed in local newspapers, and recruitment procedure will consist of candidate selection by CV, interviews, contract signature, initial training and orientation.

Priority will however be given to **NPA** staff whose skills and experience meet the required job profile. Recruitment procedures for filling senior staff positions are described in more detail in Clause 0.

Junior Staff Recruitment Phase

The Lessee's junior staff recruitment will be split in two categories:

- The Lessee's employees such as crane operators, drivers, tally clerk, workshop technicians etc; and
- **Contract Staff & Stevedoring Companies.**

The recruitment and selection of the first category will follow the same procedure as for the senior staff. Recruitment procedures for filling junior staff positions are described in more detail in Clause 0.

Contract Staff and Stevedoring Companies Recruitment Phase

While the recruitment of those in the second category shall be in accordance with the procedure laid down by **JOMALIC**, the Lessee reserves the right to scrutinize the selection process and will enforce compliance with the Lessee's standards on Health, Safety and Environment as well as training standard.

Initial Training

Initial Training commitments are developed in Clause 0.

STAFF DEPLOYMENT PLAN

In order to serve the projected traffic on a twenty four (24) hours a day, seven (7) days per week, three hundred and sixty five (365) days per year basis, the Lessee has developed a rotation system allowing a permanent staff availability linked to a strict respect of human needs such as day of rest and week-end off.

The main principle is a cycle of fifty six (56) days by four (4) people to serve three (3) postings.

First employee works six (6) days and has two (2) days off, second employee same but two (2) days shifted, and so for the third and the fourth employee.

Inside this cycle of eight (8) weeks (six (6) days in plus two (2) days off equal eight (8) days time seven (7) = fifty six (56) days or eight (8) weeks), a rotation system is installed to cover the three shifts (day shift from 07:30 to 15:30, evening shift from 15:30 to 23:30, and night shift from 23:30 to 07:30).

Even if the current local habit is to work in two shifts of twelve hours, which is an unsafe practice, the Lessee proposes to develop a three shift organisation, subject to negotiations with unions, authorities, and other workers representatives.

To explain this principle, a table is set out below.



Table 5: Shift Cycle

Cycle	Week	Day	Date	Employee 1	Employee 2	Employee 3	Employee 4
1	1	1	Monday	Day Shift	Evening Shift	Night Shift	Day Shift
		2	Tuesday				
		3	Wednesday				
		4	Thursday				
		5	Friday				
		6					
		7					
2	2	8	Monday	Evening Shift	Night Shift	Day Shift	Evening Shift
		9	Tuesday				
		10	Wednesday				
		11	Thursday				
		12	Friday				
		13					
		14					
3	3	15	Monday	Night Shift	Day Shift	Evening Shift	Night Shift
		16	Tuesday				
		17	Wednesday				
		18	Thursday				
		19	Friday				
		20					
		21					
4	4	22	Monday	Day Shift	Evening Shift	Night Shift	Day Shift
		23	Tuesday				
		24	Wednesday				
		25	Thursday				
		26	Friday				
		27					
		28					
5	5	29	Monday	Evening Shift	Night Shift	Day Shift	Evening Shift
		30	Tuesday				
		31	Wednesday				
		32	Thursday				
		33	Friday				
		34					
		35					
6	6	36	Monday	Night Shift	Day Shift	Evening Shift	Night Shift
		37	Tuesday				
		38	Wednesday				
		39	Thursday				
		40	Friday				
		41					
		42					
7	7	43	Monday	Day Shift	Evening Shift	Night Shift	Day Shift
		44	Tuesday				
		45	Wednesday				
		46	Thursday				
		47	Friday				
		48					
		49					
8	8	50	Monday	Evening Shift	Night Shift	Day Shift	Evening Shift
		51	Tuesday				
		52	Wednesday				
		53	Thursday				
		54	Friday				
		55					
		56					

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It has to be noticed that each employee will have a full week-end off per cycle.

Staff requirements are calculated with a shift factor for each posting.

- To have a posting available on a seven (7) day basis, it is necessary to employ one point four (1.4) people (seven (7) days divided by five (5) days).
- To have a posting available on a three hundred and sixty five (365) days a year, it is needed to employ one point zero nine (1.09) people (thirty (30) days vacations plus three (3) holidays divided by three hundred and sixty five (365) days).
- To have a posting available despite of illnesses and absences, it is needed to employ one point zero two (1.02) people (five (5) days illness and three (3) days absences average divided by three hundred and sixty five (365) days).
- In conclusion, to have a posting fully available seven (7) days a week, three hundred and sixty five (365) day a year without any interruption, the employment of one point fifty six (1.56) people (one point forty (1.40) time one point zero nine (1.09) time one point zero two (1.02)) is necessary.

The Lessee staff deployment plan forecasts full replacement shift factor of one point fifty six (1.56) and three (3) shifts per day for vessel operation related staff such as vessel gangs, crane operator, yard tractor drivers, ship and shore tally clerks, gate clerks and related management such as dispatchers.

All other operational posting are based on one point four (1.4) shift factor and two (2) or three (3) shifts per day depending on workable hours, which means that operations will be handled seven (7) days a week.

This organisation shall be implemented in relation with **Stevedoring companies** and **JOMALIC** representatives, in order to maintain a conducive social climate in **Tin-Can Island Container Terminal B**.



Labour deployment policy

As described in Clause 0, shift patterns will be organised by a rotation cycle system, which allows each employee to have a clear work schedule and a normal social and family life.

This rotation system will be applied in every operation department, and under it, worked hours per employee would be in accordance with Nigerian labour laws. The Lessee's **Human Resources policy** is designed to develop:

- employment by a fair working hours repartition, knowing that overtime is always subject to impartiality risk and safety risks;
- multiskilling training, allowing a majority of employees to be transferable from one posting to another one. The constant technology evolution implying that training and skills improvement has to be a constant commitment of the Lessee.

A dedicated Training Department depending on Human Resources Department will be implemented by the Lessee to cover all training needs. This department will cover the internal training courses, such as safety at work, internal procedures, the Lessee's policy, etc.

Local and international Training companies will be contracted to cover specific training needs, such as crane operation, cargo tracing, accounting procedures, etc.

Training Plan is detailed in Clause 0.

The Lessee strategy regarding socioeconomic matters

The Lessee's main objectives in respect of socioeconomic matters are:

- Ensure that **Nigerian** citizens have access to all employment opportunities within TICT, in accordance with their qualifications, competence and experience.
- Ensure equitable distribution of employment opportunities with priority to communities located in the area of the concession.
- Stimulate and facilitate the involvement of entrepreneurs and businesses by recognizing qualified and competitive local and national businesses and fostering national businesses that will be able to supply needed high quality goods and services while not adversely affecting local economic conditions.
- Identify and respond to socioeconomic issues that are of concern to local/regional communities, government agencies and other organizations.

The Lessee policy to achieve the above objectives regarding socioeconomic matters is:

- Implement a consultation process to inform communities of labour and business opportunities.
- Define transparent recruiting and hiring systems, with regards to Nigerian laws and regulations and to the requirements of the Lease Agreement.
- Develop appropriate training programs which will enable employees to develop skills in SHE matters, will provide employees with craft skills and will facilitate promotion.
- Offer job contract terms and salaries in line with Labour Conventions governing the concession.

The Lessee's Hiring and Recruiting Policy

The Lessee's employment process will be carried out in order to:

- Make every effort to maximize the use of local and regional resources.
- Respect cultural values of national workers.
- Consult with responsible authorities to avoid or mitigate potential conflicts over cultural or religious issues.

The Human Resources Manager will consult with **NPA** and **CONFIRMING PARTY** representatives in order to equitably distribute job opportunities to local nationals.

Unions

The Lessee will organize labour relations in conformance with the **Nigerian** laws. National workers will be administrated in accordance with the **Nigerian Labour Act**.



Personnel Representatives

Personnel representatives will be elected as per **Nigerian Labour Legislation**. They will hold a personnel grievance book that will be presented monthly to the Lessee's Management. Discussions will be held in order to resolve any issue in a timely manner. Minutes of these meetings will be kept.

Compliance with National Labour Regulations

The Lessee's will work in compliance with **National Labour Regulations**. Legal work hours and work hour exemptions shall be determined as in accordance with Nigerian Labour Laws

Each selected worker will be provided with a copy of the work contract in compliance with the applicable laws and regulations and the **Nigerian Labour Act**.

Work hour restrictions and exemptions will be determined in accordance with the **Nigerian Labour Act**, the Lessee's requirements and with work to be carried out. This will be decided by:

- The Supervisors at each Work site (Vessel operation, Yard, Workshop).
- The Operations Manager, regarding maximum driving hours between two rest periods.

As per **Nigerian** legislation, for Supervisory Positions, a lump sum premium will be negotiated for overtime on a case by case basis between the **Human Resources Manager** and the employee.

Method of Employee Payment

The wages paid to the workers will be consistent with Nigerian Labour Laws

For employees salary will be processed according to the instructions received from the employee (payment in cash, payment to a bank account, to a designated member of the family).

For local workers, salaries shall be paid according to the following schedule:

- On the fifteenth (15th) of the month, a two weeks advance payment, maximum fifty percent (50%) of the net monthly wages.
- At months end the balance of the wages.

The Lessee will encourage bank wires for as many employees as possible. These payments will be issued at the latest on the twenty seventh (27th) of each month.

Procedures for Recruiting Skilled Positions

A job opportunities presentation shall be held in **Nigeria** by The Lessee during the Transition Period and shall cover:

- the recruiting criteria;
- the number of planned skilled and semi-skilled positions;
- the proposed training; and
- initial places where applications could be submitted.

Such presentation will take place at least once; The Lessee may decide, with **NPA's** support, to hold another presentation if the **Labour Availability Survey** does not bring sufficient results. Other media, such as television, radio, and newspapers will be used to inform other potential candidates.

Recruiting will start as soon as a concession mobilization date has been confirmed, the **Socioeconomic Action Plan** and the **Training Plan** have been approved, and the **Labour Availability Survey** is complete. The survey will take place within a reasonable time after the mobilization date has been confirmed.

The Lessee's **Human Resources Department** will help Operational Organizations in defining workforce profiles required on each site. The results will be incorporated in the **Labour Availability Survey** and presented to local communities.

The **Lessee's Human Resources Department** will:

- Develop and steward the media program.



- Ensure wide distribution of employment information in **Nigeria**.
- Provide counselling on how to apply for employment.

Terminal workers will be interviewed and recruited in Lagos. Pre-selection will go through the following existing structures, by order of priority:

- Use of **NPA's** Employment Data Base.
- Use of the Employment Data Base from the Lessee partners companies in **Nigeria**.
- Use of the Lessee subcontracted local human resources company for pre-screening of Supervisory Positions to be filled.

The Lessee Operations Manager, coordinating with the Human Resources Department, will select their personnel from this list of potential candidates, and follow the selection / hiring process as described hereafter.

The Operations Manager will be in charge of final screening, upon submission of applications received by the Human Resources Manager.

Successful candidates will be informed by telephone, mail, through family relations, and/or other appropriate means.

A medical examination will determine a candidate's fitness for work; the medical examination will be performed by the Lessee's appointed doctors (approved by the **Nigerian Ministry of Health/ Medical Department**).



Procedures for Recruiting Unskilled Positions

Unskilled positions do not require a high level of education or previous training and will not assume operational responsibilities. While the Lessee prefers experienced personnel, the job profiles and descriptions will focus on general capabilities of candidates such as seriousness, ability to learn, etc...

Training Plans have been prepared for unskilled positions, enabling these personnel to develop their craft skills. Promotion will be encouraged throughout the concession through evaluation forms.

The procedure for recruiting for unskilled positions will closely follow the procedure for recruiting locally for skilled workers:

- Recruitment from the town quarter where the concession is located.
- When practical, the provision of technical training to unskilled employees to raise their capabilities to the semi-skilled level.

Each job applicant will provide the following information:

- Name of candidate.
- Age and residence.
- Mother language.
- Any skill that could be helpful in the project : technical skill, previous work experience
- Job application.

TRAINING PLAN

Introduction

A basic requirement for achieving effective and efficient operations at the **Tin-Can Island Container Terminal B** is the availability of a dedicated and well-trained workforce. The Lessee shall therefore establish an efficient and dynamic framework to include training plan and other manpower development programs.

In addition to training in technical skills and knowledge to operate and maintain new equipment and systems, the Lessee's human resource development strategies and plans shall be directed towards the creation of an effective management team and a corporate identity, to achieve a high performance standard.

To this end, the Lessee shall constantly source staff from the local community.

Human resource development and training requirement

The Lessee human resource development and training requirement shall be implemented in three (3) phases:

- In the short term, the Lessee shall ensure that the management and the key operational staff are adequately trained for the jobs they have to perform, and that the terminal commences operations smoothly and efficiently. During this period the emphasis shall be on familiarization programs conducted at advanced container terminals, comprehensive technical training programs organized by equipment manufacturer and practical job related training conducted on site;
- In the medium term, as the **Tin-Can Island Container Terminal B** operation expands, emphasis shall be placed on improving the skills of current staff as well as organizing training of new recruits. Consequently, there will be less dependence on overseas training and on manufacturer's technical training. The Lessee shall therefore be increasingly dependent on its own in-house resources and on other training resources within **Nigeria**; and
- In the long term, as **Tin-Can Island Container Terminal B** attains the expected projections, the emphasis of training shall increasingly tend towards sustained development of personnel, for example by multi-functionality and by specialist training (safety, marketing, etc.).

The concept of multi-functional jobs has proven to be successful at the Lessee's other partners' container terminals. During the early years of employment and prior to achieving this multi-functional stage, the Lessee's personnel shall be trained in one specific function in order to achieve a certain degree of experience in this function. After this initial period, training for a second and subsequently a third function shall be implemented, after which job rotation shall be introduced in accordance with pre-defined schedules that guarantee the personnel maintain the skills they obtained by training.



Training program for Terminal Operating System

The scope of the short term training shall be a special training program of the Lessee cargo tracking system knowledge, as part of the short term phase discussed above. During these programs, trainees shall be sent to the Lessee's partners' container terminal outside **Nigeria** to understudy the system under experienced training experts. In a second stage an experienced training expert shall perform the training for the Lessee. The selection of the trainees for these training programs shall take into consideration the required skills to train colleagues in subsequent stages; accordingly the initial trainees shall become the instructors for the future. The training expert shall assist in the selection of trainees to become instructors.

Training programs for operational and maintenance personnel

The Lessee's Operations and Maintenance Supervisors shall be guided by external experts in manpower, equipment planning, deployment, general operations, and maintenance supervision.

Training experts of the equipment manufacturers shall provide theoretical and practical training of personnel for equipment operations and maintenance. During these training programs external training expert shall check and guide the training in relation to the overall operational system to be implemented and maintained. The Lessee instructors shall be selected from the trainees to guarantee a follow-up of these training programs for new personnel. The training programs shall include specific training for technicians in electronics in view of the high degree of complexity of modern cargo handling equipment. The scope of manufacturer's training programs shall be included in the procurement orders for the equipment.

Experienced operational planners shall train a team of planners. The program shall include a course in computerized ship and yard planning.

General training and knowledge building

The Lessee recruitment strategy is critical to the successful implementation of the recommended training plans. The intensity of the actual training programs compared to the intended ones, shall be evaluated, updated, fine-tuned and adjusted after recruitment to reflect the qualifications and experience of those recruited.

The longer-term strategy requires the establishment of an effective local training unit with the capability of meeting the on-going training needs of the Lessee container terminal. This unit shall have adequate resources of staff, facilities and training aids.

In addition to the operational training, the Lessee considers it essential that the employees' general business skills are continuously upgraded. Throughout **Africa**, Asia and Europe, the Lessee's partners invest considerable resources in meeting this objective, through:

- Formal education at universities, courses and seminars;
- Knowledge and best practice sharing through participation in cross-organizational meetings and conferences;
- Networking, with more than thirty three thousand (33,000) colleagues throughout the organization of the Lessee's partners; and
- Job rotation, within the company and in the Lessee's partners organisation abroad.

Workforce

The Lessee shall build a workforce, at all levels, to ensure that **Tin-Can Island Container Terminal B** becomes a world class container terminal. This shall entail training and retraining of staff. The Lessee is confident that a majority of the existing staff in **NPA** and other port operators shall be able to meet the Lessee's requirement. Confidence in utilizing existing **NPA** and contractors staff is borne out of the experience the Lessee's partners have operating terminals around the world particularly in **Africa**.

HEALTH & SAFETY

Definition

This section sets out the Lessee's commitments in respect of **Health and Safety** within the Premises.



Health

Introduction

This section sets out the Lessee commitments for the implementation of a **health program** and provision of the required medical and sanitation facilities and services within the Premises.

Medical Facilities

The Lessee's **health program** shall provide medical and sanitation facilities within the premises as provided below.

First Aid

The Lessee shall provide first aid equipment for each independent zone location and manned by personnel who are trained in basic level first aid. Each work unit that is geographically isolated and working under one supervisor shall have an individual trained in basic first aid. Kits and first aid equipment shall be consistent with the approved specification and supplied in sufficient quantities to provide immediate access to medical care.

Medical Treatment

This shall include provision and delivery of routine day-to-day medical care and assessment, triage and treatment of urgent and emergency care.

Prevention, control, and treatment of work-related injuries and illnesses are achieved by coordinating industrial hygiene and occupational medicine programs.

Occupational and industrial risks come from the nature of the Operations and include workplace accidents, motor vehicle accident-related injuries, and adverse exposures (e.g., noise, dust, heat, fumes).

Prophylaxis and inoculations

The Lessee's **Infectious Diseases Prevention Program** shall be in compliance with applicable Health Laws, Regulation, Policies and Programs of the Federal Government of Nigeria and at a minimum consist of the following:

- Development and implementation of a workplace tuberculosis management program that features pre-employment testing for prospective workers, treatment of workers under direct medical supervision, and regular health surveillance;
- Provision of infectious and vector control programs, as well as, close coordination with other medical and safety activities.

Emergency Medical Evacuation

Medical evacuation shall be implemented as needed, using portable medical units and stretchers placed on board existing vehicles, which can be converted for medical service. Patients shall be brought to the nearest treatment site, where the decision shall be made to evacuate to a local facility.

Sanitation

Food Services

The Lessee principal duties at the **Tin-Can Island Container Terminal B** with respect to food services shall include:

- Ensuring that food services workers if any, are medically certified for food handling and preparation; and
- Prohibiting the possession and/or consumption of alcoholic beverages. Such possession and/or consumption may constitute grounds for dismissal.

Food handling

the Lessee shall:

- Ensure food handling to be done according to acceptable and approved sanitary and hygienic standards developed by international standards;
- Enforce hygiene and cleanliness standards for all food services personnel, ensuring that they wash their hands before handling food; and
- Make available the procedures manual for the cleaning and disinfecting of utensils, dinnerware, silverware, tables and hot tables, freezers, etc., to be utilized in the canteen.



Contagious Diseases

The Lessee shall evaluate those persons with detected contagious diseases and shall take necessary actions to prevent the spread of epidemics amongst the work force. These persons shall be returned to work only after receiving proper medical clearance. In the event of any outbreak of illness of an epidemic nature, The Lessee shall comply with and carry out such requirements as may be directed by the Government and/or the local medical or sanitary authorities.

Cleaning and housekeeping

The Lessee shall clean, tidy up and disinfect all facilities under its care and in so doing bear the responsibility of upholding the highest standards of cleanliness, neatness and hygiene.

Disease prevention and surveillance program

The Lessee shall develop disease prevention and surveillance programs for utilization at the **Tin-Can Island Container Terminal B**. The prevention programs shall include regularly scheduled treatments to prevent the breeding of insects and vermin, particularly those associated with vector-borne diseases.

Potable water

The Lessee shall provide sufficient potable water for all site personnel, including the Lessee and **NPA** employees and authorized visitors.

Waste Management

The Lessee shall dispose of all wastes, including domestic waste water, in conformance with Government Requirements.

Work Practices

Health Education Training Program

The Lessee shall develop individual commitment to program principles of personal protection through a dedicated program.

Industrial Hygiene Procedure

The Lessee shall develop and implement a **Work Site Hazard Communication Program (HAZCOM)**. It shall address exposure to and handling of potentially toxic and hazardous materials. It shall also include provisions for container labelling, collection and availability of **Material Safety Data Sheets**, and appropriate training programs to ensure that all employees are informed of **Tin-Can Island Container Terminal B** hazards. Provisions for maintaining up-to-date **Material Safety Data Sheets (MSDS)** for chemicals brought on site during the Lease Term shall also be included.

Safety

Introduction

The Lessee's **Safety Plan** shall cover its moral, contractual, and legal accident prevention responsibilities, in such a manner as to ensure safe and efficient operation.

Objectives

The Lessee shall develop and maintain a safe working environment and institute a safety program aimed at eliminating accidents, injuries and property damage at the **Tin-Can Island Container Terminal B**.

Safety Instruction and Training program

The Lessee shall with respect to **Safety Instruction and Training Program** instructs each employee on the **Tin-Can Island Container Terminal B** in the recognition and avoidance of unsafe acts and/or conditions applicable to the work environment to control or eliminate injury and/or illness. **TICT** shall enforce the statutory safety rules with its employees.

Personal Protective Equipment

TICT shall provide and insist on the use of appropriate personal protective equipment and clothing in all operations where there is an exposure to potentially hazardous conditions or materials; and identify the quantity and types of personnel protective and safety equipment needed.



Hazardous Communication Program

The Lessee shall:

- Develop a system that will ensure that information on potential hazards of materials involved in operations is kept current and, based on assessed risk to personnel, exposures are monitored, proper protection measures are communicated, and pertinent health data are recorded and reviewed;
- Develop and maintain documentation for handling, storage and disposal of hazardous materials;
- Develop a system that will ensure that hazardous materials are not accepted from vessels and shippers without associated **Material Safety Data Sheets (M.S.D.S.)**;
- Ensure that all personnel are provided with information about the potential hazards of the materials they are exposed to in their work;
- Ensure that exposure limits to hazardous materials are set. Based on assessed risk, personnel exposure is monitored, recorded, and subject to periodic review;
- Ensure that information on potential hazards associated with products and guidance to enable proper handling, use, and disposal is documented and communicated, if there are potential hazards of products produced in operations;
- Identify processes and chemicals that may expose employees to potentially hazardous conditions either in routine work or in emergency conditions;
- Make current documentation is available and on location of each **Material Safety Data Sheets (MSDS)** on all chemicals and hazardous materials to which employees may be exposed and ensure that a system is in place and that it is updated from time to time; and
- Develop a procedure to inventory every hazardous material and ensure that it is regularly reviewed.

Work Standards and Safety Rules

The Lessee shall develop, publish and enforce appropriate work standards and safety rules for the **Tin-Can Island Container Terminal B**, including an **Alcohol and Drug Use Policy**.

Safety Manual

The Lessee shall:

- Prepare and maintain a detailed, site specific safety manual for the **Tin-Can Island Container Terminal B**;
- Develop and conduct safety indoctrination and training programs, instruct the work force to maintain safe working conditions, follow safe practices and improve their safety awareness; and
- Conduct accident and incident investigations and analyses; issue reports of the investigations and analyses to the Parties.

Tools and Equipment

The Lessee shall ensure that:

- All hand and power tools, whether furnished by TICT or not will be maintained in a safe condition;
- Contractors shall not issue nor permit the use of unsafe hand or power tools;
- All electrical power tools and portable welding machines are grounded / earthed or double insulated with proper assured equipment grounding inspections or Ground Fault Circuit Interrupter protection provided; and
- Pneumatic power tools shall be secured to the hose or whip by some positive means. Safety pins shall be used in all connections.



Safe Driving Enforcement

Drivers of motor vehicles shall have valid driver's license and be instructed to exercise judgment as well as observe posted speed limits. Much slower speeds are necessary in congested areas. TICT shall provide special education regarding safe vehicular, equipment to those workers required to operate such equipment and shall develop and implement a random vehicular safety inspection program.

Job Safety Analysis

JSA is a simple procedure used to review a specific work plan in order to uncover hazards and then eliminate or remove them before the work is started. A JSA is performed by a unit of workers, supervisors and inspectors assigned to a specific work activity, every time new work is started or a work plan changes.

The Lessee shall implement a JSA procedure.

Emergency and Site Evacuation Plan

The Lessee shall provide an **Emergency Preparedness, Response and Contingency Management Plan** for evacuation of the work area in the event of a natural disaster and/or major emergency and shall advise its employees of the emergency signals and primary evacuation route.

Work Harassment Policy

The Lessee, its employees, agents and contractors shall be subject to the standards of conduct policy while performing services for or communicating with Lessee employees, agents, customers and other contractors. A summary of the Lessee's policy is included in a memorandum attached below. The Lessee shall inform each of its employees, agents, and contractors who perform, or will perform services for the Lessee of these expectations and provide each with a copy of that memorandum. Contractor will promptly notify the Lessee's contact for the applicable services of any report or complaint of harassment or of any violation of the standards of conduct. Contractor will cooperate with the Lessee in any investigation the Lessee may make, including making Contractor employees, agents and subcontractors available for questioning by the Lessee's designated investigators. Contractor agrees not to retaliate against anyone who reports an incident of harassment or who cooperates in any investigation of such incidents.

Memorandum on Harassment Policy and Complaint Resolution Process

Below is the memorandum form which shall be handed over to any employee, contractor, contractor's employee, agent and subcontractor of the Lessee.

As an employee, contractor, contractor's employee, agent, and subcontractor for the Lessee, you need to understand the Lessee's expectations regarding the subject matter:

Contractor's employees, agents, and subcontractors are prohibited from engaging in any act of harassment toward Lessee's employees, suppliers, customers, or other contractor employees.

The Lessee's employees, agents, and contractors are prohibited from engaging in any act of harassment toward other the Lessee employees, suppliers, customers, or contractor employees.

The Lessee's **Harassment in the Workplace Policy** prohibits all forms of unlawful harassment based on race, colour, sex, religion, national origin, citizenship, age, or disability. In addition, the Lessee's policy prohibits all other forms of harassment, which, while not unlawful, are considered inappropriate in a business setting. The Lessee will not tolerate harassment in the workplace, whether committed by or directed at employees, contractors, suppliers, or customers. Contractors who violate the policy are subject to removal from the Lessee work assignments.

Examples of behaviours prohibited by the Lessee's policy include:

- Racial or ethnic jokes, slurs, epithets, cartoons or graffiti;
- Sexually graphic comments, epithets, pictures, cartoons, gestures or graffiti;
- Taunting on the basis of actual or perceived sexual orientation;
- Repeated use of demeaning or degrading comments based on individual characteristics;
- Repeated use of offensive profanity or intimidating behaviours like yelling or throwing objects;
- Threats of harm, violence, or assault;
- Unwanted sexual flirtations or unwelcome, unnecessary touching; and
- Requesting sexual favours in return for a tangible employment action.

If you are the victim of harassment in the workplace or if you witness any incident of harassment, you should immediately report the incident to a supervisor or management representative of your employer and to the Lessee



representative for whom you are performing services as appropriate. The Lessee will collaborate with a management representative of your employer to investigate the reported policy violation and initiate action needed to appropriately address the complaint. Neither the Lessee nor your employer will retaliate against anyone who reports an incident of harassment or who cooperates in any investigation of such incidents.

A copy of this letter has been provided to a management representative of your employer so that he/she is knowledgeable of the standard of conduct expected on the Lessee's premises or while performing work for the Lessee. You are encouraged to become familiar with the provisions of this letter and the complaint reporting procedures of both your employer and the Lessee.

If you have any questions about this letter, please contact your employer, the Lessee representative for whom you perform work or a representative of the the Lessee's Human Resources Department.

SUCCESSION PLAN

There are two aspects of the Lessee's **Succession Plan**. The first is an education and training program as in Clause 0 to Clause 0, and the second is the program for the replacement of a number of expatriate staff with qualified Nigerian staff as in Clause 0.

Purpose

This document sets forth the company guidelines and philosophy for its education and training programs.

Definitions

- "**Training Need**" means an identified training requirement, determined through the staff appraisal process, job analysis or as a result of the introduction of new equipment/technology;
- "**Training Provider**" means a reputable provider of training and education services;
- "**Course**" and/or "**Program**" means an education or training program designed to improve the performance or level of understanding in a given area or field; and
- "**Training Budget**" means the sum set aside each year by the company for the provision of external training and education for company employees.

Policy

It is the Lessee's policy to develop its employees to ensure the continued growth and success of the organisation and to promote the development and personal growth of its employees on an individual basis. Most training occurs on-the-job, by a supervisor, manager, or senior co-worker. However, the Lessee also recognizes that there are occasions when formal training, development and education are necessary. There is a special emphasis on the development of local nationals in order to help the organization achieve its goals and for the development of the nation's human resources. Training and/or education Programs may be recommended to improve existing performance or to prepare an employee for future promotion. Typically, a Course of education or development must be a program that is directly related to a vocation or profession available in the Lessee Company. It is not the policy of the company to guarantee an employee a Course/Program of his/her choice; however, considerations for Course approval will include such factors as cost, Training Budget, quality of course, availability and applicability.



General Education & Training Programs

The education and development Programs are grouped into six major categories:

1. **Management Development:** a Course of study that provides the basic tools for supervisory personnel and leadership skills for middle and upper management.
2. **Port Equipment Operator Training:** these are internally certified Programs that provide specific training to employees of the company on port equipment.
3. **Internal Education and Training:** these are Programs, which are developed and delivered in-house utilizing existing staff. Typical examples would be training on equipment, maintenance and crafts.
4. **External Education and Training:** covers all Programs delivered by a third party, on behalf of the company. Typical examples would be language Courses, or Courses of a specialist nature that cannot be delivered internally by using existing Terminal staff. An external Course may however be delivered within Terminal premises.
5. **Computer Skills Training:** recognizing that computer skills are needed by a high percentage of the workforce, continuous training and development is needed in computer skills so as to ensure optimum use of software systems used in various operations of the company, and to enhance basic Microsoft Office capabilities.

Assessment

A **Training Need** is identified either by the concerned staff member after consulting with his/her department head, the HR Supervisor or the **Managing Director**. A **Training Need** is not determined by the employee alone.

Following this identification, the department head will request the HR Department to perform a needs analysis. The HR Department will assess whether this is, indeed, a **Training Need**, or if some other remedy is more appropriate.

A review of the **Training Need** will be conducted by the HR Supervisor and/or his subordinate in consultation with the concerned department head, following the sequence given below:

1. What type of **Training Need** exists?
2. Can the Program be conducted internally? If yes, assist in devising a suitable Program.
3. Is it more appropriate to conduct the Program externally, by a local Training Provider? If yes, wherever possible, three quotations will be obtained, and the most appropriate option will be selected, in consultation with the affected department head.
4. Is the training available in **Nigeria**? If yes, the same procedure will be followed as above.
5. If the training is not available in **Nigeria**, and it is a critical knowledge or skill factor for the organization, international sources will be reviewed.

Once the Course dates have been confirmed the Head of Department will nominate the individual(s) and the HR Department will then confirm the dates and notify individual candidates accordingly.

Course Curriculum and Progress during Enrolment

The Course curriculum will be clearly defined, with goals of the Course measurable and achievable.

Each external Training Provider will be required to supply on a continuous basis, attendance and progress reports, relating to those employees in attendance.

The HR Department will record the information in a training database and forward the original report to the HR records for the employee's Master Personnel File and a copy to the department head.

Conclusion of the Course/Program

Within an agreed timeframe the Training Provider shall provide to the company an end of Course report. This report will detail the achievement and commitment of the employee(s) in attendance. Once received, the results will be entered onto a training database. The original report will be forwarded to HR records for the employee's Master Personnel File and a copy to the department head.

In order to ensure that the Course achieves its objectives and an improvement in performance occurs, the Head of Department should note in the individual's end of year performance review what training took place and whether this has resulted in improved performance.

Quality Control

To ensure that all Courses are delivered in a consistent and cost-effective manner, with quality being maintained, a Quality Control system is implemented by the HR Department. This system involves a physical review of the training being conducted, through the method of delivery, quality of materials, involvement of the students, etc.

Copies of all reviews are maintained centrally in the HR Department.



Changes, Additions, Deletions

The Lessee reserves the right to make changes, additions, revisions, or deletions to this Policy at any time and for any reason.

Exceptions to this policy require the concurrence and approval of the **Managing Director**.

Succession Plan

As described in Clause 0 during the mobilisation phase, the **Management Team** which consists of seven Managers (four expatriates and three locals) shall be ably assisted by four additional expatriates (Operations Assistant Manager, IT Manager, Training Supervisor and Procurement Supervisor).

During this mobilisation phase, senior local staff shall be trained and sponsored by this additional expatriate staff to be able to replace the expatriate within the first two years of operations.

From eight expatriates out of eleven Managers at inception, the Lessee **Management Team** shall be composed by four expatriates only and seven Nigerian senior staff after three years.

The Lessee may also employ from time to time during the first three years of Lease some expatriates Operations Superintendent to implement the best operating policies and to train local senior staff.

The Lessee objective is to employ less than one percent of expatriates out of the total staff over the period of Lease.

The Lessee is committed to:

- Maximizing the hiring of Nigerian nationals.
- Providing **Nigerian** nationals with full and fair employment opportunities in compliance with all the applicable laws and regulations and for which they qualify.
- Distributing wages, vacations, allowances indemnities and miscellaneous welfare, retirement and medical care as per the **Nigerian Labour Act** and other applicable Nigerian Laws and Regulations.
- Maximizing opportunities for skills development of all levels of the workforce.
- Training unskilled employees to provide them with an opportunity to have access to semi-skilled and skilled positions.

The Lessee is committed to conducting its logistics activities in a way that provides local, regional and national labour with significant opportunities for participation and promotion.



Appendix J

PERFORMANCE BOND

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

[Date]

The Nigerian Ports Authority 26/28 Marina
Lagos, Nigeria

Re: Performance Bond

Ladies and Gentlemen:

We refer to that certain Lease Agreement dated — 2006 (the "Lease Agreement") between the Nigerian Ports Authority (the "Lessor") and [insert the Lessee's name] (the "Lessee"). This Performance Bond is being submitted to you pursuant to the instructions received from the Lessee.

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

1. Guaranteed Obligations. The obligations of the Lessee to pay the due and payable Fixed Payment and all financial penalties due and payable following an arbitration award by the Lessee thereunder are hereby guaranteed (collectively, the "Guaranteed Obligations").
2. Guaranteed Amount. The undersigned's total aggregate liability from the date hereof until the final annual renewal of this Performance Bond shall not exceed the amount of three hundred and fifty thousand U.S. dollars (\$350,000) (the "Guaranteed Amount") notwithstanding that the Performance Bond is renewed annually.
3. Required Documents. The undersigned shall pay the amounts due under this Performance Bond to the Lessor upon the delivery to the undersigned of all of the following documentation:
 - 3.1 A signed draft to the undersigned executed by an officer of the Lessor demanding payment under this Performance Bond, referencing this Performance Bond and specifying the Default Amount (as defined below) and the account information of the Lessor for purposes of payments due to the Lessor hereunder (the "Draft").
 - 3.2 A notarized certificate executed by an officer of the Lessor stating
 - (i) that the Lessee is in default of any of the Guaranteed Obligations, specifying the amount of the default (the "Default Amount");
 - (ii) that the amount in the Draft is due and payable to remedy a default of the Lessee under the Lease Agreement;
 - (iii) that a demand (the "Lessee Demand") was sent to the Lessee requesting payment of the Default Amount and designating the account number; and
 - (iv) that the Lessee Demand was delivered to the Lessee at least thirty (30) days prior to issuing such Draft; and (v) that the Lessor has not received such payment.
 - 3.3 A copy of the Lessee Demand.
 - 3.4 A copy of the final arbitral award in favour of the Lessor in relation to default by the Lessee under the Lease Agreement.



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

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

[NAME OF FINANCIAL INSTITUTION ISSUING GUARANTY]

Name:
Title:



Appendix K

INSURANCE

1. The Lessee shall purchase and maintain, at its expense, insurance for cover against the following.
 - (1) the Lessee's general liability arising out of this Lease to a level not less than US\$10 million. The Lessor shall have the right to review and approve all policies required. The Lessee shall by certificates and, deposit of copies of insurance policies provide proof of compliance;
 - (2) loss, damage or destruction of all commodities moving through the Designated Area under the responsibility of the Lessee;
 - (3) accidents injury or death occasioned to persons lawfully within the Designated Area arising out of its operations or any such other liabilities that may be occasioned to such persons as a result of the Lessee carrying out and/or performing such services as provided for in this Lease;
 - (4) liability to all parties making lawful use of the Designated Area, and their properties;
 - (5) risks arising from deficiencies or failure to dispose of waste materials including those relating to leaking Containers, damage to Containers and other property or hazards;
 - (6) Any other risks compulsorily provided for by the laws of Nigeria or the rules and regulations governing the Lessor.
2. The Lessee shall purchase and maintain, at its expense, insurance for cover against Loss, damage or destruction arising from fire and other extraneous perils to the permanent structures, buildings, equipment, improvements and other such fixtures owned by the Lessor and found within the Premises. The Lessee shall take out the Insurance under this clause in the names of the Lessee and the Lessor.
3. The proceeds from such property insurance cover shall be utilized to repair or reconstruct the installations damaged or destroyed with the end view of having them restored to their condition immediately prior to the event, which occasioned the loss or damage. In no case shall the insured amount limit the responsibilities of the Lessee under this Lease.
4. During the continuance of this Lease, the Lessee shall be liable for any (and all) claims, losses, damages, and liabilities relating to the Lessor's Assets, within the Designated Area and the Services, and shall keep the Lessor fully indemnified against any (and all) claims and other legal actions for damages arising therefrom: provided, however that nothing in this Lease shall impose any liability upon the Lessee in respect of any proceedings or claims arising from the acts of a third party or the Lessor, its employees or agents, except if such acts arise, directly or indirectly from the Lessee's negligence.



Appendix L

GUARANTEED MINIMUM TONNAGE

The Lessee is required to achieve ninety per cent (90%) of forecasted volume as contained in their Technical Proposal.

The Lessee guarantees to handle at least ninety per cent (90%) of projected cargo throughput as provided in its technical proposal and hereby attached.

If Lessee fails to achieve at least ninety per cent (90%) of such throughput, the Lessee shall pay the Lessor the throughput fees of the difference between the throughput handled and the guaranteed volume of ninety per cent (90%).

However, if the Lessee achieves between ninety percent (90%) and one hundred percent (100%), the excess throughput fee shall be discounted by ten (10%) per cent.

Any achievement above one hundred per cent (100%) shall attract a discount of twenty (20%) per cent on the excess.

Reconciliation in respect of the guaranteed tonnage shall be conducted not later than four (4) weeks from the end of the operational year.

This guaranteed minimum tonnage requirement shall be applicable twelve (12) months from the Effective Date and shall be subject to review every two (2) years.

PROJECTED CARGO THROUGHPUT AS PROPOSED BY THE LESSEE

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
Volumes	2,006	2,007	2,008	2,009	2,010	2,015	2,020
TEU	105,266	112,635	120,519	128,956	137,983	193,527	221,569



Appendix M

Dredging Plan

A handwritten signature in black ink, appearing to be a stylized 'R' or 'B'.

A handwritten signature in black ink, appearing to be 'Adekunle'.

Lagos Channel Management

ID	Task Name												
		Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1
1	Laying/positioning of Bous												
2	Bymmetric Surveying of the Channels												
3	Dredging Berths 1 to 14 to advertised draft of 8.3												
4	Dredging Berths 15 to 20 APAPA to advertised draft of 10.5m												
5	Dredging of approach channel-commodor channel 10.5m												
6	Dredging of badagry channel 10.5m												
7	Soil Investigation (bottom of channels)												
8	Dredging Berths 1 to 14 to draft of 9.6m												
9	Dredging Berths 15 to 20 to draft of 11.5m												
10	Dredging of approach channel-commodor channel 12.5m												
11	Dredging of badagry channel 12.5m												
12	Dredging of badagry Turning bay 12.5m												
13	Dredging Berths 15 to 20 APAPA to draft of 11.5m												

Project: LAGOS CHANNEL MNG
Date: Wed 5/17/06

Task

Split

Progress

Milestone

Summary

Project Summary

External Tasks

External Milestone

Deadline

Lagos Channel Management

ID	Task Name	Qtr 2	Qtr 3	Qtr 4	2006	Qtr 1	Qtr 2	Qtr 3	Qtr 4	2007	Qtr 1	Qtr 2	Qtr 3	Qtr 4	2008	Qtr 1	Qtr 2	Qtr 3	Qtr 4	2009	Qtr 1	Qtr 2	Qtr 3	Qtr 4	2010
14	Dredging Berths 1 to 8 & RORO Berths 9&10 to draft of 105m																								
15	Dredging Berths 1 to 8 & RORO Berths 9&10 to draft of 11.5m																								
16	Capital Dredging of all the berths and channels in Lagos Area																								

Project: LAGOS CHANNEL MNG
Date: Wed 5/17/06

Task	Milestone	External Tasks
Split	Summary	External Milestone
Progress	Project Summary	Deadline



Appendix N

Transition Plan

1. INTRODUCTION

The Transition Plan sets forth the obligations of the Parties during the period starting at the Execution Date and ending at the Effective Date, subject to the fulfilment of the Conditions Precedent as described in Clause 7.1, 7.2, 7.3 and 7.4. of the Lease Agreement.

The Transition Plan mainly consists of:

- Establishment of the Management Program,
- Operations Control Takeover Program,
- Right of Use and Non Exclusive Operations, and
- Planning, Scheduling and Steering.

2. ESTABLISHMENT OF THE MANAGEMENT PROGRAM

2.1 Lessee Administrative set up

Upon Execution Date, The Lessee will undertake the following:

- Register with various government bodies such as NIPC, Federal Inland Revenue Service, NMA;
- Increase the share capital if required;
- Appoint Management Team;
- Sign Technical Services Agreement;
- Implement funding requirements; and
- Open bank accounts.

2.2 Management Team Mobilisation

The Lessee's Management Team will consist of the Managing Director, Finance and Administrative Manager, Operations Manager, Engineering Manager, Accounting Manager, and Human Resource Manager. During the Transition Period however, this Management Team will be assisted by an Operations Assistant Manager, an IT Manager, Training Supervisor and a Procurement Supervisor.

The Management Team will be provided by the Technical Services Providers and appointed by the Board of the Lessee.

The process of selection, recruitment and mobilisation of the Management Team will be held during Transition Period.

The Lessor and BPE shall assist the Lessee in obtaining all required visas and residence permits.

2.3 Senior Staff Recruitment Phase

The Human Resources Manager shall undertake the recruitment of senior staff of the Lessee in accordance with the appropriate job descriptions and under the Managing Director's control and approval. Advertisements for these positions will be placed in local newspapers, and recruitment procedure will consist of candidate selection by CV, interviews, contract signature, initial training and orientation.

Priority will however be given to the Lessee's partners staff and to the Lessor staff whose skills and experience meet the required job profile. Recruitment procedures for filling senior staff positions are described in more detail in Appendix J.

During Transition period, the Lessor will provide the Lessee with detailed staff lists..

For the avoidance of doubt, the Lessee is free to employ its own staff and implement its own working conditions and compensation grid.

2.4 Junior Staff Recruitment Phase

The Lessee's junior staff recruitment will be split in two categories:

- The Lessee's employees such as crane operators, drivers, tally clerk, workshop technicians etc; and
- Contract Staff & Stevedoring Companies.

The recruitment and selection of the first category will follow the same procedure as for the senior staff. Recruitment procedures for filling junior staff positions are described in more detail in Appendix J.

For the avoidance of doubt, the Lessee is free to employ its own staff and implement its own working conditions and compensation grid.



2.5 Contract Staff and Stevedoring Companies Recruitment Phase

While the recruitment of those in the second category shall be in accordance with the procedure laid down by JOMALIC, the Lessee reserves the right to scrutinize the selection process and will enforce compliance with the Lessee's standards on Health, Safety and Environment as well as training standard.

2.6 Initial Training

Initial Training commitments are developed in Appendix J, including Familiarisation Program, Technical Training, Drivers Training, Basic HSE Training and Practical Job Related Training.

3 OPERATION CONTROL TAKEOVER PROGRAM

3.1 Premises Handover

Prior to the Execution Date, the Lessor will provide the Lessee with a topographical survey to determine precisely the Premises coordinates and Fixed Assets. An inventory of encumbrances will be jointly executed between the Lessor and the Lessee in order to update land availability forecast, including buildings and offices rented by third parties. A census of areas already operated by the Lessee partners shall be assessed.

The Lessor commits to provide the Lessee with a free and peaceful access and use to the Premises at any given time during the Transition Period.

The Lessor will grant with gate stickers and entrance permits for all and any the Lessee employees, contractors and their vehicles. The Lessee will provide the Lessor with list of employees and vehicles who request access to the Premises including schedule of access.

3.2 Inventory and Handover of Contractors agreement

The Lessee's Finance and Administrative Manager will liaise with the Lessor's Administrative Department in order to verify all agreements between the Lessor and its various Contractors such as Nigeria Electrical Power Authority (NEPA), Water Corporation, etc. whose utilities will be transferred from the Lessor to the Lessee.

Particular attention will be paid to contracts with stevedoring companies in order to ensure compliance with the Lessee's performance requirements on Health, Safety, Environment commitments, and training standards.

3.3 Container Handover at the end of the Transition Period

3.3.1 Container handover

Any Cargos belonging to Customers of the Lessor or to other Operator in the Premises at the Effective Date will become the responsibility of the Lessee, the Lessor or the Operator shall provide the Lessee with a list of Cargos on the Premises on the Effective Date. Any services provided by the Lessor to those Customers in respect of their Cargos on or before the Effective Date will be invoiced by the Lessor to the Lessee. The Lessee will then invoice the Customers for the services provided by the Lessor or the Operator and for the Operations provided by The Lessee in accordance with the Tariffs.

3.3.2 Overtime Cargo

All overtime cargo which is remaining on the Premises for more than ninety (90) days as at the Effective Date shall not be the responsibility of the Lessee. This cargo shall be dealt with by the Lessor in manner consistent with Customs procedures.

3.3.3 Empty Cargos

Damaged and unclaimed empty Cargos, as well as scrap empty Cargos shall be evacuated from the Premises by the Lessor the Effective Date..

3.3.4 General Cargo

The Lessor undertakes that all general cargo remaining on the Premises at the Effective Date shall be consolidated in one place for a period of time not exceeding one hundred and twenty (120) days from the Effective Date. Such cargo shall remain the responsibility of the Lessor. Upon expiry of the aforementioned period, this cargo may be dealt with by the Lessee on behalf of the Lessor in a manner consistent with Custom's procedures. All related costs and expenses shall be for the Lessor's account.



3.4 IT System implementation

The IT System including Terminal Operation System "TOS" and Terminal Administrative System "TAS" is fundamental to the operation. The establishment of an IT system will therefore be a top priority in the Lessee's program for taking over operational control of the port.

A dedicated team supplied by the Technical Services provider will operate from Execution Date to set up the full IT system as described here below.

The Dedicated team shall:

- deal with the acquisition or the licensing of the use of all IT Equipment required and evaluate the requirement for all IT Equipment at the Tin-Can Island Container Terminal B, the upgrading of the IT Equipment and the implementation of any operating system design;
- Manage the existing tendering process policy for the acquisition or licence of any IT Equipment;
- Deal with the acquisition or the licensing of the use of all IT Equipment necessary for the construction and operation of the Tin-Can Island Container Terminal B;
- Oversee the installation and acceptance testing of, and thereafter maintain, any and all IT Equipment approved as aforesaid and maintain and, where necessary, upgrade all IT systems used at the Tin-Can Island Container Terminal B; and
- Ensure that all IT Equipment, systems and processes are used in order that employees and customers have access to on-line and real time information and to support the productivity and the smooth operation of the Tin-Can Island Container Terminal B.

4 Quay Wall, Fixed Assets, Movable Assets Survey and Transfer

The Parties agree that a major damage on the quay does exist and therefore a major substructure repair shall be done to guarantee a long term availability of the quay throughout the Lease Term.

A Quay Wall survey shall be carried out by an international expert in quay structures approved by both Parties. Technical advice and Repair schedule and costs and expenses shall be provided by the expert. The Lessor commits to complete such rehabilitation at its own costs in accordance with Clause 4.4 of this Agreement, in order to provide the Lessee with a state of the art Quay Wall structure throughout the Lease Term.

Lack of full repair or rehabilitation as at the Date agreed in Clause 4.4 of this Agreement shall entitle the Parties to review the throughput projections consistent with the time lost due to delay.

Fixed Assets survey shall be carried out by the Parties to determine the Transferable Assets : Fixed Assets which will remain throughout the Lease Term and shall be maintained by the Lessee wear and tear excepted, and the Redundant Assets : Fixed Assets which will be demolished by the Lessee on behalf and with written approval of the Lessor.

The Lessor shall authorise the Lessee to open a new western gate in accordance with Terminal Layout attached to this Appendix, and shall organise all the relevant steps with customs and other government bodies to allow the Lessee to operate this new western gate.

The Parties agree to meet with the Terminal A Lessee in order to organise an efficient, secured and safe access system to the eastern gate of the Port of Tincan.

A detailed inventory of Movable Assets will be carried out and Transfer Instruments will be issued. The same process will be carried out for spare parts and others tools and equipment to be transferred.

5 PLANNING, SCHEDULING AND STEERING

5.1 Planning and Scheduling

The Parties undertake to achieve the following steps during the Transition Period.

The following Project and Construction Schedules has been settled in accordance with the Lease Agreement definitions and dates.

Nevertheless, these schedules are supplied for information only, considering the fact that all the dates are linked and depend especially on the Quay Wall repair commissioning date.

The Schedules hereunder are based on known information on the Execution Date and are subject to change by mutual agreement between the Parties.



- a. **Terminal Layout**
 - a. Concession Area Perimeter – Coordinates and Utilities Location
 - b. Operation Layout Design
 - c. Outer Offices Design & Specs
 - d. Office Space Requirements (Customs, Gov. Bodies)
 - e. Gates Design
 - f. Land Use Allocation Phases
- b. **Equipment Survey**
 - a. Lessor Fixed Assets Survey
 - b. Lessor Movable Assets Survey
 - c. Lessor Quay Wall Survey
 - d. Lessor Spare Parts Survey
 - e. Lessor Workshop Tools & Equipment Survey
 - f. Lessor Offices Fixtures & Fittings Survey
- c. **Staff Survey**
 - a. Lessee Organisation Chart Final
 - b. Lessor Staff Survey
- d. **Financing Project**
 - a. Business Plan Review & Validation
 - b. Cash Flow Statement
- e. **Construction & Development**
 - a. Terminal Works Design
 - b. Customs Government Warehouse Status
 - c. Engineering Contract Agreement
 - d. Design, Build & Turnkey Contract Agreement
 - e. Civil Work
 - f. Quay Wall Repair
 - g. Scrap removal
 - h. Third party cargo and equipment moving
- f. **Container & Cargo Handover**
 - a. Container & Cargo Inventory Procedure
 - b. Container & Cargo Inventory
 - c. Services Evaluation
 - d. Claims & Damages Inventory
 - e. Lessor Turnover Notice
- g. **Management Team**
 - a. Expatriate Manager Selection
 - b. Local Management Staff Selection
 - c. Management Team Mobilisation
- h. **Operating Procedures**
 - a. Vessel Planning
 - b. Yard Planning
 - c. Cargo Handling
 - d. Preventive Maintenance & Repair
 - e. Tracking
 - f. Vessel Operation
 - g. Transshipment
 - h. Job Description
 - i. Records & Reports
 - j. Accounts & Admin
 - k. HSE
- i. **Training**
 - a. Familiarization Program
 - b. Technical Training
 - c. Drivers Training
 - d. Basic HSE Training
 - e. Practical Job Related Training
- j. **Staff Recruitment**
 - a. Working Conditions & Compensations
 - b. Contract Form Validation



- c. Job Opportunities List
- d. Job Opportunities Awareness
- e. Selection & Recruitment Procedure
- f. Selection Process
- g. Recruitment Phase
- k. Contractors Handover**
 - a. Existing Contracts Census
 - b. Contractor Policy
 - c. Stevedores Contracts Negotiation
 - d. Utilities Contracts Negotiation
 - e. Other Contracts Negotiation
- l. IT System Implementation**
 - a. TOS Specifications
 - b. TOS Implementation
 - c. TAS Specifications
 - d. TAS Implementation
 - e. Hardware Specifications
 - f. Hardware Implementation
 - g. Network Specifications
 - h. Network Implementation
- m. Legal & Fiscal**
 - a. Various Registration
 - b. Opening Bank Accounts
 - c. Signing of Contracts Agreement
 - d. Existing Pledge-Lien Checking
 - e. Existing Litigation Checking
 - f. Various Tax Advise
- n. Insurances**
 - a. Public Liability
 - b. Operations
 - c. Buildings
 - d. Others
- o. QA/QC & HSE**
 - a. Quality Control Plan
 - b. HSE Plan
 - c. Interface with the Lessor
 - d. Interface with Contractors
 - e. Interface with Procurement Companies
- p. Sales & Marketing**
 - a. Rates Validation & Publishing
 - b. Operating Policy
 - c. Relationship with Other Terminal Operator
 - d. Shipping Lines Contracts
 - e. Customers Contracts
 - f. General Terms and Conditions of Sale
- q. Procurement**
 - a. Detailed Development Plan
 - b. Handling Equipment Procurement
 - c. Fixtures and Fittings Procurement
 - d. Office Furniture Procurement
 - e. Housing Furniture & Equipment
 - f. Tools Procurement
 - g. IT Hardware, Network, Various IT Equipment
 - h. Spare Parts Kit
 - i. Consumables, Stationery
 - j. Equipment Surplus Sale
- r. Commercial Initiatives**
 - a. Meetings with Customs
 - b. Meetings with the Lessor
 - c. Meetings with Other Gov. Bodies



5.2 Steering Committee

The Parties agree to appoint representatives to form a Steering Committee during Transition Period who shall ensure the follow-up and overseeing of the implementation of the Transition Plan.

The Steering Committee will meet on request, and at a minimum on a monthly basis.

6 MISCELLANEOUS

6.1 Sales and Marketing

During Transition period, the Lessee shall:

- establish a sales and marketing department to promote, market and develop the services of the Tin-Can Island Container Terminal B to parties including carriers, shippers, consignees, forwarders and any other potential users of the Container Terminal;
- promote the Tin-Can Island Container Terminal B with carriers, shippers, consignees, forwarders and other users or potential users of the Tin-Can Island Container Terminal B.

In order to achieve these objectives:

- A customers' web site will be established for Terminal B which will list its activities and provide:
 - For consignee and freight forwarders: direct access to container tracking and invoicing status; and
 - For shipping lines and agents: empty Cargos tracking, transshipment follow-up, reefer monitoring.

6.2 Business Development and Operations

During Transition period, the Lessee shall:

- establish the Management Team to ensure the planning, execution and implementation of the Business Plan on time and in accordance with budgets;
- implement a policy for reviewing any proposed development projects at the Container Terminal; and
- Market the present and future facilities, and project development with the Tin-Can Island Container Terminal B to ensure optimal utilization of resources, contract negotiations with contractors, vendors, suppliers, stevedores and customers, revenue, cost management and profit optimization.

6.3 Insurances

During Transition period, the Lessee shall arrange any and all appropriate insurances for the Tin-Can Island Container Terminal B;

6.4 Commercial Initiatives

The main parameter for improving the performance of the Tin-Can Island Container Terminal B shall be the steady flow of traffic, which is directly linked to the Customs and Excise procedure, and checking procedures for other Government agencies.

The Lessee propose to put in place a Special Committee including the Lessor, Customs, and other Government Agencies representatives in order to find the best local practices to improve and ease the way on container flow.

For this purpose, the Lessee partners would bring to bear their international experience and expertise on "unique desk implementation system", supported with community software which shall interface all marine related agency operation.

The main commercial initiatives of the Lessee in order to improve performance and Tin-Can Island Container Terminal B efficiency shall include:

6.4.1 With Customs

- Simplification of Tariff and clearance procedures and substantial increase in Customs staff;
- If Pre-shipment Inspection System to continue, the entire process needs to be redefined to reduce delays in CRI documentation, which is critical to the clearing process; and
- If destination inspection introduced, sufficient scanning machines to be supplied. This system will also require sensible identification of established importers whose traffic requires only random spot checks, not scanning every container.

6.4.2 With Port Authority

- Proper system for identification of long staying Cargos and provision for systematic auction process; and
- Rationalisation of the various Government Agencies currently involved in the clearance of Cargos before they are allowed to leave the port.



6.4.3 With Terminals outside the Port.

- Development of dry ports in strategic areas, allowing Bills of Lading to be issued showing final destination such as Ibadan;
- Interim continuation of use of existing terminals close to the port, including Lilypond; and
- The above would require substantial improvement in present infrastructure, especially roads near the port.



Appendix O **Termination Plan**

1. DEFINITIONS

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

"Intellectual Property Rights" means:

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

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

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

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

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

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

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

2. THE TERMINATION PLAN

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

3. CONDITION SURVEY

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



4. LESSEE MOVEABLE ASSETS

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

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

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

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

5. INTELLECTUAL PROPERTY

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

6. TERMINATION DATE

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

Premises and Transferring Fixed Assets

- (a) vacate the Premises;
- (b) surrender peaceful possession of the Transferring Fixed Assets in a good working condition in accordance with Prudent Industry Standards (excluding reasonable wear and tear) to the Lessor;
- (c) hand over to the Lessor all documents including as built drawings, manuals and records relating to operation and maintenance of the Premises and the Transferring Fixed Assets;
- (d) transfer or cause to be transferred to the Lessor any agreements relating to the Premises and/or the Transferring Fixed Assets which are:
 - (i) valid and subsisting;
 - (ii) capable of being transferred to the Lessor; and
 - (iii) that the Lessor has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Lessor; and
 - (iv) execute such documents and deeds as the Lessor may require to confirm or give effect to this Sub Section;

Transferring Movable Assets

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



Customer Contracts and Agreements

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

7. CONTAINERS ON THE PREMISES AT THE TERMINATION DATE

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

8. COOPERATION

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