

**Project Summary of  
Tincan Island Container Terminal Limited**

**A Public Private Partnership**

**Between**

**Nigerian Ports Authority**

**And**

**Tincan Island Container Terminal Limited**

**May,2006**

**Disclaimer:**

This summary should not be relied on as a complete description of the right and obligation of the parties to the project and not intended for use as a substitute for the contract.

## **LIST OF ABBREVIATION AND ACRONYMS**

BPE	Bureau for Public Enterprises
EDIFACT	Electronic Interchange For Administration Commerce and Transport
FGN	Federal Government of Nigeria
ICC	International Chamber of Commerce
LIBOR	London Inter Bank Offered Rate
NCP	National Council for Privatization
RFP	Report For Proposal
TCIPT	Tin Can Island Port Terminal

## **INTRODUCTION**

The project is a lease agreement signed between Nigerian Port Authority as the Contracting Authority in collaboration with Bureau for Public Enterprise as a confirming authority in the transaction process for the provision of: constructing, executing, carrying out, equipping , improving, working and developing the ports, docks, harbours, piers, wharves, canals, water course, embankments and jetties in some part of Tin Can Island Port, Terminal B, real property at port premises; some immovable assets fixed to the premises; together with the premises; purchase certain movable properties in the premises; makes certain improvement on the lease properties and performs certain maintenance operations and services with respect to the lease property and movable assets at Tin Can Island Port Terminal B to Tin Can Island Container Terminal Limited as the contracting party.

This summary is in four parts; Part I contains basic project information, Part II contains specific contract information, Part III contains information on actual performance of the project, Part IV contains information on contract variation (if any).

## **PART ONE: PROJECT INFORMATION**

**Project Name:** TCIP Terminal B.

**Status:** The project is currently in operation.

**Name of Contracting Authority:** Nigerian Port Authority.

**Name of Concessionaires:** Tin Can Island Container Terminal Limited

**Construction period:** 15 YEARS initially Contract Term (extension of 5years).

**Scope of the project:** The Project covers the construction and upgrading the status of the Port Terminal B facilities Movable and unmovable, real property at port premises; some immovable assets fixed to the premises; together with the premises; purchase certain movable properties in the premises; makes certain improvement on the lease properties and performs certain maintenance operations and services with respect to the lease property and movable assets in other to developed a modern standard port and enhance increase performance efficiency and reduce cost to the users.

**Total Project Value (Concession fee/ Lease Fee):** ( \$168, 152, 579.).

**Bidding Brief:** On 8<sup>th</sup> of July 2005, BPE as Secretariat of NCP invite a bid for fully priced technical and financial proposals for the lease from the lessor of the Terminal forming part of Tin Can Island Port (the “Port”). On the 2<sup>nd</sup> September, 2005, as a result of such competitive process, the right to lease Terminal B at port from the lessor by the BPE to the lessee.

**Date of Approval by FEC:** 2<sup>nd</sup> September, 2005.

**Date of Issue of Letter of Award (LOA):**

**Approval Structure:**

## **PART 2: CONTRACT INFORMATION**

**Basic contract information:**

**Contract milestones:**

**Date of the execution of Concession agreement:** 11<sup>th</sup> May, 2006.

## The Concession contract and the Parties to the contract with contact details

<b>Public Authority:</b>  <b>Nigeria Port Authority</b>  No. 26/28 Marina,Lagos, Nigeria.  <b>Supervising Authority:</b>  Bureau of Public Enterprise No 11, Osun Crescent Maitama District FCT Abuja.  <b>Infrastructure Concession Regulatory Commission</b>  Plot 1270, Ayangba Street, Off FCDA Secretariat, Area 11, Garki, FCT, Abuja.	<b>Private Party:</b>  Tin Can Island Container Terminal Limited  No. 4 Creek Road, Apapa, Lagos.
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### Provision for equity transfers:

**Land and Access Transfer to Concessionaires:** 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 interest for the term. The lessor shall remain the owner of the lease property except as expressly agreed to in writing by lessor.

### Revenues:

#### Right to collection of user charges:

**Publication of operations rates:** The lessee shall at all times publish its rates, charges and condition of the operations as directed by the lessor or the regulator, and shall make such information immediately available upon request by any person.

**Rate setting:** The lessee shall ensure that the operations rates shall be in accordance with applicable laws and competitive within the Port and with other competing Port of Nigeria having facilities similar to the lease property.

**Risk Allocation:**

<b>Risk Category</b>	<b>Concessionaire</b>	<b>Grantor</b>
Risk associated with project preparation.	X	
Permit/approval Risk		X
Provision of utilities Risk	X	
Construction Risk	X	
Completion Risk	X	
Cost overrun Risk		X
Technical Risk	X	
Force major Risk	X	X
Operational Risk	X	
Financial Risk	X	
Demand Risk		X
Environmental Risk		
Termination Risk	X	X

**Expected Performance Monitoring:**

**Tracking and Evaluation of Performance.** The lessor shall evaluate the lessee's performance of the operations on an annual basis. The process of evaluation shall commence on the effective date and shall be conducted as follows:

Following the completion of each operating year, the lessee shall provide to the lessor a report in respect of that operating year which shall include, inter alia, a full account of its performance against the applicable performance requirements, an explanation or failure to meet such performance requirement and any other information requested by the lessor to enable it to make its evaluation (the lessee report) within ninety days (90) days after the end of each operating year. In the event that the lessee fails to provide the lessee report within the period of ninety (90) days after the end of each 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.

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 requirement taking into account any interruption, and stating whether, in its opinion, the lessee has reached the performance requirement (the "lessor report") within thirty (30) days of the earlier of either:

Receipt of the lessee report; or

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)

**General Requirements:**

The lessee shall use its best effort to:

To develop, market and promote cargo throughput and cargo related business of the lease property in order to achieve maximum utilization thereof in a manner which is consist with applicable law and prudent industry standard; and

Ensure that there is no decline in the standards of operations

**Specific Requirements:**

The lessee shall perform the operations in such a manner as to achieve the requirements in the applicable years of the term described in appendix L (the “performance requirements”).

**Expected Level of Performance:**

Minimum Expected Performance Criteria	Agreed Correction Period for Failure

**Reporting and Performance Monitoring:****Penalties/ Incentives:****Penalties:**

Failure/Description of higher level of performance	Penalties/Incentive

**Dispute Resolution:**

Disputes: Any dispute, controversy or claim arising out of 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.

**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.

#### **Events of Default and Termination:**

##### **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”:

The lessee becomes insolvent, or makes an arrangement for the benefit of its creditors, petitions or applies of 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 commence against it any legal proceedings for its recognition, readjustment of debt, dissolution or liquidation and an order is made in respect thereof by a court of competent jurisdiction

Other than as a consequent of an interruption, the lessee fails to perform the operations for fourteen (14) consecutive days in operating year or sixty (60) non-consecutive days in an operating year. Where the lessee fails to perform the operation after a fourteen consecutive days the lessor shall have right to intervene and divert traffic to other terminals for a period of seven days. In such an instance, the lessor shall not be entitle to claim that there has been an event of default by the lessee until the expiry of the further seven days period where the traffic has been diverted to other terminals.

Subject to section 18.5, the lessee fails to pay any amounts due in accordance with this agreement.

The lessee commits a breach of a material provision of this agreement.

##### **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”:

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 in 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.

The lease property (in whole or in part) is expropriated, compulsory acquired or nationalized by a government authority.  
There is change in law.

Subject to section 18.5, the lessor fails to pay any amount due with this agreement.

The lessor commits a breach of material provision of this agreement.

#### **Procedure for Termination:**

Notwithstanding the provision 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 period that the performance under this agreement is not viable then either party may terminate by issuance of a termination notice.

#### **Events of default and termination**

Main events of default	Defaulting party	Procedure for termination.	Termination Payments.

#### **Termination:**



This agreement may be terminated in any of the following ways:

At the expiry of the term.

Upon the occurrence of the event of default in accordance with article 13.3©

Upon the occurrence of the event of force majeure in accordance with article 10.4.

**Termination Payments:**

Party and Events of default	Termination payment

**Transfer Clauses at Expiry of Contract:** N/A

**Conditions of assets:**

**Responsibility for defects and liabilities:**

**Lessee Indemnity:** The lessee shall identify, defend and hold harmless the lessor, from and against any and all liabilities, losses, expenses, and claims for person 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 omission in the performance of its obligations hereunder. Without limitation to the foregoing, the lessee shall imdenify and keeps indenified the lessor for any breach by any of the terms, representation and warranties contained herein.

**Lessor Indemnity:** The lessor shall identify, defend and hold hamless the lessee, from and against any and all liabilities, losses, expenses, and claims for person injury or property damage or any penalties or fines imposed on the lessee that arise from or out of the lessor's negligent acts or omission in the performance of its obligations hereunder. Without limitation to the foregoing, the lessor shall indemnify and keep indemnified the lessee for any breach of any of the terms, representation and warranties contained herein.

**Redactions:**

**Confidentiality:** Each party agrees to hold in confidence during the terms and for a period 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 recovering 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 recovering party in the performance of its obligations hereunder, provided that the receiving party shall be responsible for ensuring that all such person 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 breach of the obligation of confidentiality contained herein if the receiving party discloses such confidential information as required by applicable law.

Clause no.	Element redacted	Applicable FOI Act 2005 clause	Reason for redaction
N/A	N/A	N/A	N/A

### Part 3: Implementation Information

#### Actual Project Performance

Use of lease property. The lessee shall only perform the operation within the premises, and shall use the lease property for the sole purpose of performing the operations in accordance with this agreement.

Construction Phase				
Performance Indicators	Year 1		Year n	
	target		target	achievement
Operational Phase				
Performance Indicators	Year 1		Year n	
	target	achievement	target	achievement

**Performance Failure:**

Yr	Description of failure of breach	No. of events	Penalty (Amount in Naira)	Penalty paid Yes/No.

**Part 4: Contract Variation**

Contract Clause No.	Description of Variation	Date Variation came into effect

**Process followed for validation of disclosed information**

	Yes/No	Date
Review and Sign-off by the ICRC		

