



LEASE AGREEMENT

by and among

**NIGERIAN PORTS AUTHORITY
as the Lessor.**

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

and

**INTELS NIGERIA LIMITED
as the Lessee**

FOR CALABAR TERMINAL A.

Dated as of 24th day of October, 2005

A. Afelumo

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TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS; INTERPRETATION.....	7
1.1 Definitions.....	7
1.2 Interpretation.....	11
ARTICLE II EFFECTIVE DATE AND TERM	12
2.1 Effective Date.....	12
2.2 Term.....	12
ARTICLE III BASIC LEASE RIGHTS AND OBLIGATIONS.....	12
3.1 Lease.....	12
3.2 Transfer of the Lease Property.....	12
3.3 Peaceful and Quiet Enjoyment.....	13
3.4 Lease Fees.....	13
3.5 Common Areas.....	13
3.6 Berths.....	13
3.7 Access to Other Property.....	14
ARTICLE IV USE OF LEASE PROPERTY.....	14
4.1 Permitted Use of Lease Property.....	14
4.2 Alteration of Lease Property.....	14
4.3 Maintenance.....	16
4.4 Quay Walls and navigational aids on the Premises.....	16
4.5 Utilities.....	17
4.6 Office Space.....	17
4.7 Disposal of Movable Assets.....	17
4.8 Access to Lease Property.....	17
ARTICLE V OPERATIONS	18
5.1 Obligation of Lessee to Perform Operations.....	18
5.2 Common User Terminal.....	18
5.3 Performance of Additional Services	18
5.4 Use of Lease Property.....	18
5.5 Exclusivity.....	19
5.6 Standards of Performance.....	19
5.7 Duties to Cooperate.....	19
5.8 Performance Requirements.....	19
5.9 Operations Rates.....	21
5.10 Labour.....	22
5.11 Lessee Equipment.....	22
5.12 Spare Parts and Consumables.....	23
5.13 Financing of Operations.....	23
ARTICLE VI CONDITIONS PRECEDENT.....	23
6.1 Conditions to Obligations of Each Party	23
6.2 Conditions to Obligations of Lessor	24
6.3 Conditions to Obligations of Lessee.....	24
6.4 Satisfaction of Conditions	25
ARTICLE VII LESSEE'S COVENANTS.....	26
7.1 Insurance.....	26
7.2 Safety; Security.....	26
7.3 Environment.....	27
7.4 Emergencies.....	28
7.5 Information; Communication.....	28
7.6 Dredging; Mooring.....	28
7.7 Lessee Ownership Structure.....	28
7.8 Taxes.....	28
7.9 Licenses; Permits.....	28
7.10 Non Compliance.....	28

A. Afelumo

Obase



ARTICLE VIII LESSOR'S COVENANTS	29
8.1 Cooperation	29
8.2 No Interference	29
8.3 Port Access	29
8.4 Berth and navigational assets within the Premises	29
8.5 Port Services; Vessel Management	29
8.6 Dredging	30
8.7 Waste Disposal	30
8.8 Latent Defects	30
8.9 Access to Premises	30
8.10 Utilities Infrastructure; Rights of Way	30
8.11 Utilities	30
8.12 Security	30
8.13 Lessor Obligation to Remediate	30
8.14 Licenses; Permits	30
8.15 Taxes	31
8.16 Non Compliance	31
ARTICLE IX FORCE MAJEURE	31
9.1 Effect of Force Majeure	31
9.2 Notice	31
9.3 Satisfactory Solution	31
9.4 Termination	31
ARTICLE X DOCUMENTATION AND AUDITS	32
10.1 Records and Reports	32
10.2 Audits	33
10.3 Annual Report	33
10.4 Planning and Investment Report	34
10.5 Quarterly Traffic Report	34
ARTICLE XI REPRESENTATIONS AND WARRANTIES	34
11.1 Lessee Representations and Warranties	34
11.2 Lessor Representations and Warranties	35
ARTICLE XII DEFAULT	36
12.1 Lessee Event of Default	36
12.2 Lessor Event of Default	37
12.3 Consequences of Default	37
ARTICLE XIII TERMINATION	38
13.1 Termination	38
13.2 Rights accruing	38
13.3 Continuity of Operations	38
13.4 Compensation	38
ARTICLE XIV COMPENSATION	38
14.1 Compensation upon Force Majeure	38
14.2 Compensation On Termination Due to Lessee Event of Default	38
14.3 Compensation On Termination Due to Lessor Event of Default	38
14.4 Compensation on expiry of the Term	39
14.5 Delayed Payment	39
14.6 Remedies Cumulative	39
ARTICLE XV INDEMNITIES; LIABILITIES	39
15.1 Lessee Indemnity	39
15.2 Lessor Indemnity	39
ARTICLE XVI GOVERNING LAW; DISPUTE RESOLUTION	39
16.1 Governing Law	39
16.2 Disputes	39
16.3 Mutual Consultation	39
16.4 Arbitration	40
16.5 Place of Arbitration	40
16.6 English Language	40

A. Afelumo

Chase



16.7	Performance during Arbitration.	40
16.8	Waiver of Sovereign Immunity.	40
ARTICLE XVII MISCELLANEOUS		41
17.1	BPE.....	41
17.2	Amendments.	41
17.3	Assignment.....	41
17.4	Sub-Contracting.	41
17.5	Offsetting.	41
17.6	Survival.	41
17.7	Entire Agreement.	41
17.8	Notices.	41
17.9	Confidentiality.....	42
17.10	No Waiver.	42
17.11	Severability.....	43
17.12	Further Assurances.	43
17.13	Lessee Compliance with Laws; Officials Not to Benefit.	43
17.14	Lessor Compliance with Laws; Officials Not to Benefit.	43
17.15	Transitional Period.....	43

A. Afelumo

Else



LIST OF APPENDICES

Appendix A	Premises
Appendix B	Fixed Assets
Appendix C	Development Plan
Appendix D	Operations
Appendix E	Subsisting Leases
Appendix F	Lease Fees
Appendix G	Berths
Appendix H	Operations Rates
Appendix I	Staffing and Succession Plan
Appendix J	Performance Bond
Appendix K	Insurance
Appendix L	Guaranteed Minimum Tonnage
Appendix M	Dredging Plan

A. Afelumo

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THIS LEASE AGREEMENT (this "Agreement") is made and entered into this 24th day of October 2005 ("Execution Date") by and among:

THE NIGERIAN PORTS AUTHORITY, a public authority constituted under the Nigerian Ports Authority Act No. 38 of 1999 Cap N126 Laws of the Federation of Nigeria whose registered office is situate at 26/28 Marina, Lagos, Nigeria (the "Lessor");

THE BUREAU OF PUBLIC ENTERPRISES, the Secretariat of the National Council of Privatisation ("NCP") and an agency of the Federal Government of Nigeria established under the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999 Cap P38 Laws of the Federation of Nigeria, whose registered office is situate at No.1 Osun Crescent, Maitama – Abuja, Nigeria ("BPE"), as the Confirming Party; and

INTELS NIGERIA LIMITED, a private company incorporated under the laws of the Federation of Nigeria whose registered office is at KM 16 Port Harcourt Aba Express Way, Port Harcourt, 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. The Lessor and the Lessee had executed a lease Agreement as contained in Appendix E ("Subsisting Leases").
- B. Further to the ongoing Ports Reform process, the NCP in accordance with the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999, gave approval to its Secretariat BPE on 28th December 2004, to invite bids from the Lessee.
- C. The Lessee is a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with registration number RC 278792.
- D. Pursuant to the said NCP approval, BPE, on 27th January, 2005 invited bids from the Lessee for a right to enter into an agreement with the Lessor to (i) lease the real property in the port of Calabar Terminal A (the "Port") to be described and delineated in Appendix A (the "Premises") and certain immovable property affixed to the Premises as shall be further described in Appendix B (the "Fixed Assets," and together with the Premises, the "Lease Property"); (ii) make certain improvements to the Lease Property as further described in the development plan attached as Appendix C (the "Development Plan") and (iii) perform certain other operation, maintenance and other services with respect to the Lease Property. Parties agree that within the Transition period, the parameters for Appendix A and Appendix B shall be provided and shall constitute an integral part of this Agreement.
- E. On 15th June 2005, the Lessee submitted its bids and following an evaluation process conducted by the BPE, the right to enter into such agreement was awarded to the Lessee.
- F. The Parties desire to set forth the terms and conditions of such agreement, and all of their respective rights and obligations related thereto.

WITNESSETH

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

A. Afelumo

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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 10.3.

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

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

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

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

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

"**Change of Control**" means the occurrence of any of the following: (a) the Lessee ceases to control fifty one percent (51%) or more of the issued and outstanding Equity Interests in the Lessee, on a fully diluted basis, or (b) the Lessee creates, incurs, assumes or suffers to exist any mortgage, lien, encumbrance, pledge, security interest, covenant, condition, restriction, claim, charge, option, right of first refusal, right of use or occupancy, or other legal or equitable encumbrance, or any preference, priority or other arrangement having materially the same effect as any of the foregoing, and any other matter affecting title on the Equity Interests in the Lessee controlled by it.

"**Commencement Fee**" has the meaning set forth in Appendix F.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. Any act or omission by the Lessor, including but not limited to, the failure by the Lessor to fulfil its obligations under this Agreement;
- b. Maintenance by the Lessor in accordance with the requirements of this Agreement that exceeds the time period for such maintenance as previously agreed between the parties;
- c. Any act or omission by Governmental Authority not due to the fault of or negligence of the Lessee;
- d. An act of Force Majeure;
- e. An emergency;
- f. Events beyond the reasonable control of the Lessee not due to the Lessee's fault or negligence.

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

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

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

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

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

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

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

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

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"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 12.3.

"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 5.1.

"Operations Rates" has the meaning set forth in Section 5.9(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 10.4.

"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 multipurpose terminal industry in accordance with Applicable Law with respect to: (a) the development, operation and maintenance of multipurpose 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 10.5.

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

"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

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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;

"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.

"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.

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.

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ARTICLE II

EFFECTIVE DATE AND TERM

2.1 Effective Date

- (a) *Terms Binding on Execution Date.* The provisions of this Article, along with the provisions of Articles 11 (Representations and Warranties), 15 (Indemnities), 16 (Governing Law; Disputes), shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.
- (b) *Conditions Precedent.* Except as otherwise provided in Section 2.1(a), this Agreement shall become effective thirty (30) days following the Execution Date provided that the conditions to effectiveness set forth in Article VI have been fulfilled (the "Effective Date").

- 2.2 Term This Agreement shall have a term (the "Term"), which commences on the Effective Date and terminates on the date that occurs on the Twenty Fifth (25th) anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof. Following such Twenty Fifth (25th) anniversary of the Effective Date, and unless this Agreement has otherwise been terminated, the Parties may mutually agree to renew this Agreement for an additional period; provided that either Party has notified the other Party in writing of its desire to renew this Agreement no less than five (5) years prior to such Twenty Fifth (25th) anniversary of the Effective Date.

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.

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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 8.

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

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

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

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- 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 8.10 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.

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(b) *By Lessee.*

(i) *Development Plan.* The Lessee shall perform the Improvements to the Lease Property required under the Development Plan which has been approved by the Lessor; provided that the Lessee has furnished to the Lessor the following no later than sixty (60) days prior to the proposed date for commencement of the work implementing such Improvement:

- (1) the plans and drawings for such Improvement;
- (2) the names and addresses of the proposed contractor(s); and
- (3) such other documentation as may be reasonably requested by the Lessor.

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

(ii) *Amendment to Development Plan:* The Lessee shall not amend the Development Plan without the Lessor's prior written approval, such approval not being unreasonably withheld.

(iii) *Other improvements.* The Lessee shall not make any other improvements or alterations to the Lease Property other than the Improvements contemplated in the Development Plan without the Lessor's prior written approval. When requesting such approval, the Lessee shall furnish to the Lessor with the following no later than sixty (60) days prior to the proposed date for commencement of the work implementing such improvement or alteration:

- (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 alteration and the Lessee may proceed to make such improvement.

Any improvements or alterations made by the Lessee to the Lease Property during the Term which cannot be removed by the Lessee on the Termination Date shall be and shall remain the property of the Lessor without any claim for or reimbursement by the Lessee for the cost of the value thereof.

(iv) *Applicable Standards.* The Lessee shall ensure that the Improvements made and any other improvements and/or alterations made are in compliance with

- (1) Applicable Law;
- (2) international conventions, protocols and international agreements to which Nigeria is a party; and

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(3) Prudent Industry Standards.

- (v) *Rights of Lessor to Monitor and Inspect.* Without limiting or reducing the Lessee's obligations under Section 4.3(b) or 4.4, the Lessor shall have the right to inspect the Improvements and any other improvements or alterations during performance of the same and after they have been completed, and they shall not be used by the Lessee until the Lessee has notified the Lessor in writing that they are in accordance with the plans approved by the Lessor and comply with Applicable Law. Any inspection by the Lessor shall be undertaken in accordance with the provisions set out in Section 4.8(a). The Lessor shall have the right to be present and monitor at any time during the performance of the Improvements and any other improvements or alterations and shall have access to the Premises and to all records and materials of the Lessee related to such Improvements, improvements or alterations including participation in related progress meetings.

4.3 Maintenance

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

- 4.4 Quay Wall and navigational aids on the Premises. The Lessor shall be responsible for maintenance, repairs, renewals and replacements of the Quay Wall and navigational aids on the Premises during the Term. In the event that any of the Quay Wall or

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

- 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

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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

OPERATIONS

- 5.1 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 D (collectively, the "Operations") in accordance with the terms of this Agreement. The Lessor confirms that it hereby delegates to the Lessee all such powers and authority as are necessary for the Lessee to perform the Operations.
- 5.2 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.
- 5.3 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 5.3. The Lessee shall ensure that any charges made for other services shall be in accordance with Applicable Law and competitive within the Port and within competing ports of Nigeria.
- 5.4 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.

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- 5.5 Exclusivity The Lessee shall have the exclusive right during the Term to perform the Operations within the Premises.
- 5.6 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.
- 5.7 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.
- 5.8 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 (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

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"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 17 (Governing Law; Dispute Resolution).

- (iv) In the event that either:

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

- (e) *Exceeding Guaranteed Minimum Tonnage.* In the event that the Lessee exceeds the guaranteed minimum tonnage, there shall be an adjustment in

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the Throughput Fees due and payable by the Lessee in accordance with the provisions set out in Appendix L.

5.9 Operations Rates

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

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complaint, then the Lessee shall immediately cease and desist from such practices and pay any applicable penalties provided for under Applicable Law.

5.10 Labour.

- (a) *Qualified Personnel.* The Lessee shall select and employ sufficient, suitably skilled and qualified personnel to enable it to perform the Operations in accordance with this Agreement.
- (b) *Sources of Labour.* When sourcing personnel, the Lessee shall comply with the Staffing and Succession Plan as set out in Appendix I to the extent applicable. The Lessee shall use reasonable efforts to employ Nigerian nationals in management positions to the extent that there are Nigerian nationals who satisfy the requirements for such positions. Former employees of the Lessor who are affected by the take over, will be encouraged to apply for available positions and will be given fair and due consideration for employment by the Lessee. The Lessor shall be responsible for the retirement benefits including but not limited to all outstanding salaries and any relevant severance payments (if any) of its employees until the date on which they may be employed by the Lessee.
- (c) *Employment Contracts.* With respect to personnel employed by the Lessee under Section 5.10(b) the Lessee shall be responsible for the negotiation of the applicable employment and labour contracts which shall be made in accordance with Applicable Law. Notwithstanding the foregoing, all Lessee personnel shall remain its or its Affiliate's employees for all salary and benefit purposes and shall be compensated in accordance with the Lessee's normal policies as may be modified by the Lessee from time to time.
- (g) *Training.* The Lessee shall be responsible for the preparation and implementation of all training of all staff working at the Premises in accordance with the Staffing and Succession Plan and Applicable Law.
- (h) *Identification of Lessee Personnel.* The Lessee shall ensure that its personnel are issued the appropriate identification documentation. Such identification documentation shall be produced to any official or authorized person who has reasonable grounds to request the identification of such personnel. Upon the termination of employment of such personnel, such identity documentation shall be returned to the Lessee.

5.11 Lessee Equipment The Lessee may use additional equipment on the Premises not included in the Development Plan ("Lessee Equipment") to satisfy its obligations hereunder, including without limitation its performance of the Operations and to meet the 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.

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5.12 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.

5.13 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 VI

CONDITIONS PRECEDENT

6.1 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,

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decree or judgment of any court Authority, and there shall not have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement any Applicable Law making illegal the consummation of the transactions contemplated by this Agreement.

- (d) *Power supply.* The Parties shall be satisfied that the Lessee has access to sufficient power supply (including, but not limited to the Utilities) in order that the Lessee is able to fulfil its other obligations as set out in this Agreement.

6.2 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 11.1 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessee.* The Lessee shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessee shall have delivered to the Lessor a certificate in form and substance satisfactory to the Lessor, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 6.2 (a) and (b).
- (d) *Commencement Fee.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Commencement Fee, in accordance with Appendix F.
- (e) *Performance Bond.* Within fifteen (15) days after the Effective Date, the Lessee shall deliver to the Lessor a performance bond in favour of the Lessor in an amount not less than three hundred and fifty thousand United States Dollars (US\$350,000) and in the form set forth in Appendix J or in other form and substance reasonably acceptable to the Lessor and from a financial institution acceptable to the Lessor. Such performance bond shall remain in full force and effect until thirty (30) days after the Termination Date. Such bond shall cover the Lessee's financial obligations under this Agreement, including without limitation the payment of the Lease Fees and all other costs and financial liabilities arising from its financial obligations under this Agreement, and all financial penalties due and payable by the Lessee hereunder. All premiums or other costs associated with obtaining and maintaining such performance bond shall be paid by the Lessee.
- (f) *Evidence of Insurance.* The Lessee shall have delivered to the Lessor certificates of insurances and other documentation reasonably requested by the Lessor evidencing that the Lessee has obtained the insurance coverage on the Premises required under Section 7.1.

6.3 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

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the Effective Date, of the following additional conditions (unless waived in writing by the Lessee):

- (a) *Representations and Warranties of Lessor.* The representations and warranties of the Lessor in Section 11.2 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessor.* The Lessor shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessor shall have delivered to the Lessee a certificate in form and substance satisfactory to the Lessee, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 6.3 (a) and (b).
- (d) *Presidential Approval.* The President of the Federal Republic of Nigeria has approved this Agreement for the Term and the Lessor shall convey and BPE shall confirm the approval to the Lessee.
- (e) *Government Consents.* All consents or authorizations of Governmental Authorities that are required to lease, transfer or assign (as applicable) to the Lessee the Lease Property, shall have been made or obtained.
- (f) *Stevedoring Contracts.* All stevedoring Contracts with 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.

6.4 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.

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ARTICLE VII

LESSEE'S COVENANTS

7.1 Insurance

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

7.2 Safety; Security

- (a) *Safety Procedures.* The Lessee shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of its Operations and the Lease Property in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards and the Lessor's guidelines that are applicable to all operators at the Port.
- (b) *Security System.* The Lessee shall be responsible for the preparation and implementation of a safety and security system in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards for the Lease Property and the cargo and Containers therein (including without limitation fencing off the Lease Property) which system shall be subject to the Lessor's prior written approval, such approval not to be unreasonably withheld, provided that such approval must be given by the Lessor in writing within five (5) Business Days upon receipt of the request, failure of which, the Lessor shall be deemed to have given its approval.
- (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.

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- (d) *Traffic.* Traffic operations, vehicular traffic and all transport activities related to the Premises shall be conducted in accordance with Applicable Laws.
- (e) *Signage.* The Lessee shall be responsible for installing appropriate signs within the Port to indicate the location of and access routes to the Premises. The location, size and content of such signs, and their method of installation, shall be approved by the Lessor prior to their installation.

7.3 Environment

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

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- 7.4 Emergencies In the event of an environmental emergency emanating from the Premises and endangering life or property, the Lessee shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including the Lessee's response thereto, to the Lessor. If the Lessee has not taken reasonable precautions for the safety of the public, its customers or the protection of the Lease Property, and such failure creates an environmental emergency requiring immediate action, then the Lessor, with or without notice to the Lessee may, but shall be under no obligation to, provide reasonable protection as required to address such emergency. The taking of any such action by the Lessor, or the Lessor's failure to take any action, shall not limit the Lessee's liability. The Lessee shall reimburse the Lessor for the performance of any such work or furnishing on the Lease Property of any such equipment in connection with any emergency in an amount equal to the reasonable costs incurred by the Lessor in such performance of work or furnishing of equipment.
- 7.5 Information; Communication Within one hundred and eighty (180) days after the Effective Date, the Lessee shall install a computerized information system for the recording of Import/ Export of Cargo within the Premises, and shall periodically update this system to provide computerized information related to Cargo delivery.
- 7.6 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.
- 7.7 Lessee Ownership Structure The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent.
- 7.8 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.
- 7.9 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.
- 7.10 Non Compliance. In the event that the Lessee fails to comply with any of its obligations set out in this Article, then the Lessor may notify the Lessee of such failure and give the Lessee thirty (30) days notice in writing to rectify its failure. If the Lessee fails to rectify its failure 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).

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ARTICLE VIII

LESSOR'S COVENANTS

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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 8.5(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.

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- (b) *The Lessee.* The Lessee shall at all times be solely responsible for the scheduling of the Berths. The Lessee shall keep the Lessor fully informed of the scheduling of the Berths and any amendments thereto.
- 8.6 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.
- 8.7 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.
- 8.8 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.
- 8.9 Access to Premises. The Lessor shall ensure that at all times throughout the Term the Lessee, its employees, its customers and suppliers are provided with the road and rail access to the Premises in existence as of the Effective Date, subject to the security regulations governing access to the Port and other Applicable Laws.
- 8.10 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.
- 8.11 Utilities. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 8.12 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.
- 8.13 Lessor Obligation to Remediate. In the event that Waste Material is present on the Premises or in the waters or in or on the bottom of the Port before the Effective Date, which the Lessee reports to the Lessor and which have originated from the Premises, or after the Effective Date which has not originated from the Premises (including but not limited to Waste Material originating from vessels calling at the Port) then the Lessor shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 8.14 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 7.9.

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- 8.15 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.
- 8.16 Non Compliance. In the event that the Lessor fails to comply with any of its obligations set out in this Article, then the Lessee may notify the Lessor of such failure and give the Lessor thirty (30) days notice in writing to rectify its failure. If the Lessor fails to rectify its failure the Lessee may fulfil such obligation for and on behalf of the Lessor at its own cost. The Lessee shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 17 (Governing Law; Dispute Resolution).

ARTICLE IX

FORCE MAJEURE

- 9.1 Effect of Force Majeure. In the event that a Party can not perform its obligations hereunder due to an event of Force Majeure, such Party shall be excused from the performance of such obligations, and shall not be considered to have committed an Event of Default, from the date on which such event of Force Majeure has commenced and until a reasonable period of time after termination thereof. The Parties shall consult with each other in the event of Force Majeure and shall take all reasonable steps to minimize any losses resulting therefrom. The affected Party shall resume the performance of its obligations hereunder as soon as practicable after such event of Force Majeure has ceased.
- 9.2 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.
- 9.3 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 16 shall apply.
- 9.4 Termination. Notwithstanding the provisions of Section 9.3, if the Lessee is unable to perform the Operations or otherwise substantially perform its obligations under this Agreement as a result of an Event of Force Majeure for a period exceeding six (6) months or the Lessee notifies the Lessor prior to the expiry of the six (6) months period that performance under this Agreement is not viable then either Party may terminate this Agreement by the issuance of a Termination Notice.

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ARTICLE X

DOCUMENTATION AND AUDITS

10.1 Records and Reports

- (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 statistics on the quantity, types and weights of Cargo handled in the Premises;
 - (ii) accurate statistics on the numbers and types of ships, wagons or road trucks loaded or unloaded in the Premises;
 - (iii) average ship turn around time, cargo dwell time, truck loading/unloading time;
 - (iv) accurate details of the claims received and payments made in relation to cargo damage;

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- (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 statistics on the availability for use of major items of mechanical equipment such as gantry cranes and front-end loaders.

10.2 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) verification of financial records of the Lessee.

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

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

10.4 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

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

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

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

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

11.1 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 278792,
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There

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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.

11.2 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.

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- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under the Act, or any other Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessor of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessor and constitutes a legal, valid and binding obligation of the Lessor enforceable in accordance with its terms.
- (e) It has obtained all approvals, consents and authorizations that are required from any Governmental Authority under Applicable Law to consummate the transactions contemplated herein, including without limitation, the Operations Rates provided in Section A of Appendix H.
- (f) It has good title to the Lease Property and full legal right and power to transfer and deliver such Lease property to the Lessee in the manner contemplated by this Agreement. Upon delivery of such Lease Property against payment therefor pursuant to the terms of this Agreement, the Lessee shall receive good title thereto with vacant possession, free and clear of all liens, other than the obligation to obtain any required authorizations or consents by a Governmental Authority in connection with the transfer of any such Lease Property.

ARTICLE XII

DEFAULT

- 12.1 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 17.5, the Lessee fails to pay any amounts due in accordance with this Agreement.

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(d) The Lessee commits a breach of a material provision of this Agreement.

12.2 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 17.5, the Lessor fails to pay any amounts due in accordance with this Agreement.
- (e) The Lessor commits a breach of a material provision of this Agreement.

12.3 Consequences of Default

- (a) *Insolvency.* Upon an Event of Default described in Section 12.1(a) or 12.2(a), the Party that is not in default may immediately serve a Termination Notice.
- (b) *Expropriation and Change in Law.* Upon a Lessor Event of Default described in Section 12.2(b), or Section 12.2(c), the Lessee may immediately serve a Termination Notice.
- (c) *Other Events of Default.* Upon an Event of Default described in Section 12.1(b), (c) or (d) or 12.2(d) or (e), the Party that is not in default (the "Non-Defaulting Party") shall deliver to the Party which is in default (the "Defaulting Party"), a written notice describing the alleged Event of Default and granting not less than fifteen (15) days for the Defaulting Party to deliver a written response to the Non-Defaulting Party. If the Defaulting Party fails to respond to the Non-Defaulting Party within such fifteen (15) day period, then the Non-Defaulting Party may serve a Termination Notice. If, however, the Defaulting Party does respond to the Non-Defaulting Party, then, within such fifteen (15) day period of the Non-Defaulting Party's receipt of such written response, the Non-Defaulting Party shall deliver to the Defaulting Party a written notice stating whether there is such an Event of Default, and if so, granting the Defaulting Party at least thirty (30) days to commence and continue the remedy of such Event of Default. If such time period expires and the Defaulting Party has not commenced the remedy of the Event of Default, the Non-Defaulting Party may serve a Termination Notice.

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ARTICLE XIII

TERMINATION.

- 13.1 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 9.4
- 13.2 Rights accruing. Any such termination shall be without prejudice to the accrued rights and liabilities of the Parties in respect hereof as at the date of such termination or which may thereafter accrue in respect of any act or omission prior to such termination and shall be without prejudice to any provisions of this Agreement which are expressed to remain in force thereafter.
- 13.3 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.
- 13.4 Compensation. The Parties shall pay to one another compensation due and payable in accordance with the provisions of Article 14.

ARTICLE XIV

COMPENSATION

- 14.1 Compensation upon Force Majeure. The Parties shall bear their respective costs and neither Party shall be required to pay to the other party any costs arising out of an event of Force Majeure.
- 14.2 Compensation on termination due to Lessee Event of Default. If the termination is due to a Lessee Event of Default, the Lessee shall:
- (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.
- 14.3 Termination due to Lessor Event of Default. If the termination is due to a Lessor Event of Default, the compensation payable by the Lessor shall be the aggregate of:
- (a) any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessee as a consequence of such termination;
 - (b) in the event that there is termination due to a Lessor Event of Default in the first Operating Year following completion of the works to be undertaken pursuant to the Development Plan:
 - (i) the Commencement Fee; and

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- (ii) any and all construction and development costs incurred by the Lessee pursuant to the conduct of the Development Plan or otherwise incurred pursuant to the development of the Premises in accordance with this Agreement;

- 14.4 Compensation upon expiry of the Term The Parties shall bear their respective costs upon expiry of the Term.
- 14.5 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.
- 14.6 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 XV

INDEMNITIES; LIABILITIES.

- 15.1 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.
- 15.2 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 XVI

GOVERNING LAW; DISPUTE RESOLUTION.

- 16.1 Governing Law This Agreement shall be governed by, construed and enforced in accordance with the laws of Nigeria.
- 16.2 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.
- 16.3 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

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shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty one (21) day period following the date of the notice. During the remainder of such period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to use best efforts to resolve the Dispute.

- 16.4 Arbitration If the Parties cannot resolve the Dispute in accordance with the procedure specified in Section 16.3, then any Party may submit such Dispute to arbitration by notice to the other Party. Such arbitration shall be governed by the Rules of Arbitration of the International Chamber of Commerce, as in effect on the date of such notice. The arbitral tribunal shall consist of three (3) arbitrators. The Party initiating the arbitration shall provide written notice to the other Party of the arbitrator that it nominates. Within fourteen (14) Days of the receipt of such notice, the other Party shall provide to the initiating party a written notice identifying the name of the second nominated arbitrator, with the understanding that if such nomination is not made within such fourteen (14) Day period, then the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court") shall make such appointment. Within ten (10) Days of the date of the appointment of the second arbitrator, the two arbitrators shall appoint the third arbitrator, with the understanding that if the two arbitrators are not able to agree on third arbitrator within such ten (10) Day period, then the third arbitrator shall be appointed by the ICC Court. All three of the arbitrators shall be experienced in the port industry as well as contracts of a similar nature to this Agreement, and all three individuals shall also be proficient in the written and spoken forms of the English language. The arbitration proceedings shall be conducted and all related communications shall be in the English language. Any decision of the arbitral tribunal shall be final and binding upon the Parties. The Parties hereby waive, to the extent permitted by Applicable Law, any right to appeal or to review of such an award by any court or tribunal. Any award of the arbitral tribunal may be entered in any court having jurisdiction for purposes of enforcement. The arbitral tribunal shall presumptively award legal fees and arbitral costs to the winning party, but the arbitral tribunal shall retain the right to make such other equitable allocation with regard to such fees and costs as it may determine.
- 16.5 Place of Arbitration The place of arbitration shall be London or any other place mutually agreed by the Parties.
- 16.6 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.
- 16.7 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.
- 16.8 Waiver of Sovereign Immunity The Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in Nigeria or elsewhere, to enforce any liability or obligation related to or arising from this Agreement, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby expressly and irrevocably waives any such immunity, to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings, whether in Nigeria or elsewhere.

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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 XVII

MISCELLANEOUS.

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 Survival All rights accrued prior to the termination of this Agreement shall survive its termination.
- 17.7 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.
- 17.8 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

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applicable, after the close of business on a business day in the place of such delivery or receipt, in which case such communication shall be deemed given and effective on the next business day in the place of such delivery or receipt following such day. Notices shall be given as follows:

(i) For the Lessor:

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

(ii) For BPE:

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

(iii) For the Lessee:

Intels Nigeria Limited
Kilometer 16 Port Harcourt Aba ExpressWay,
Port Harcourt, Rivers State
Attention: The General Manager
Telephone: +234 (084) 230 571
Facsimile: +234 (084) 610 553

17.9 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.

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- 17.10 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.
- 17.11 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.
- 17.12 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.
- 17.13 Lessee Compliance with Laws; Officials Not to Benefit The Lessee shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessee represents and warrants that it has not paid, promised to pay or authorized the payment of, and agrees that it shall not pay, promise to pay or authorize the payment of, any money or anything of value, directly or indirectly to any person (whether a government official or private individual) for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.
- 17.14 Lessor Compliance with Laws; Officials Not to Benefit. The Lessor shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessor represents and warrants that it has not received, arranged or agreed to receive, and agrees that it shall not receive, arrange to receive or agree to receive payment of any money or anything of value, directly or indirectly by any person for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.
- 17.15 Transitional Period. Transitional period shall be the period between the Execution Date and the Effective date, not exceeding thirty (30) days from the Execution date.

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

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

was hereto affixed

(seal)

In the presence of:


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


Adebayo B. Sarumi
Managing Director



Ms. Clara Etsevatse
Secretary

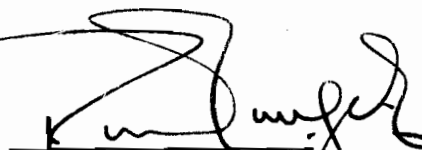
**THE COMMON SEAL OF THE BUREAU OF PUBLIC ENTERPRISES
THE WITHIN NAMED CONFIRMING PARTY**

was hereto affixed

(seal)

In the presence of:


Mrs. Irene N. Chigbue
Director General


Dr. Paul. O. Idornigie
Secretary

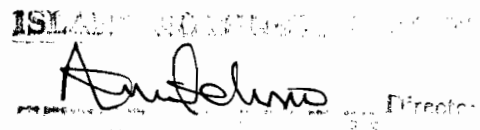
**THE COMMON SEAL OF THE WITHIN NAMED LESSEE
INTELS NIGERIA LIMITED**

was hereto affixed

(seal)

In the presence of:


Capt. Predrag Sloboda
Director


Island Nominees Limited
Secretary

Redacted



Appendix A
PREMISES

Redacted



APPENDIX B
FIXED ASSETS

Redacted

Redacted

Redacted

Redacted



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Appendix D
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, including without limitation stevedoring, loading and unloading of vessels, transporting, sorting, storage and the procurement, operation and maintenance of equipment for the foregoing;
2. the repair and maintenance of the Fixed Assets.

B Other services:

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

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Appendix E
SUBSISTING LEASES

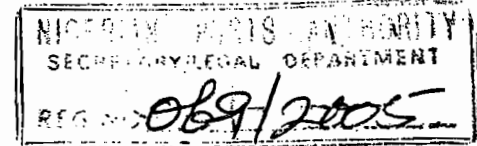
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**LEASE AGREEMENT
FOR DEVELOPMENT OF LEASED
PREMISES IN THE PORTS OF ONNE,
WARRI AND CALABAR**

BETWEEN

**NIGERIAN PORTS AUTHORITY
(LESSOR)**

AND

**INTELS NIGERIA LIMITED
(LESSEE)**

PREPARED BY:

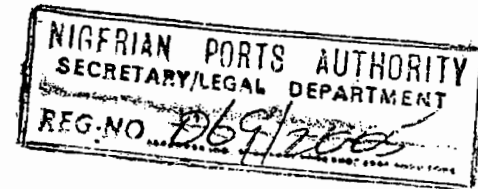
**J.O FABUNMI & CO.
BARRISTERS & SOLICITORS
BOOKSHOP HOUSE (12TH FLOOR)
50/52 BROAD STREET,
LAGOS**

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A large, stylized handwritten signature in the bottom right corner of the document.

TABLE OF CONTENTS



<u>S/NO.</u>	<u>HEADING</u>	<u>PAGES</u>
	Recital	1
Clause 1	Definition and Interpretation	3
Clause 2	Effective Date and Lease Terms	9
Clause 3	Basic Lease Rights and obligations	10
Clause 4	Use of Lease Premises	13
Clause 5	Operations	18
Clause 6	Conditions Precedent	20
Clause 7	Rent and Rent Review	22
Clause 8	Lessee's Covenants	25
Clause 9	Lessor's Covenants	30
Clause 10	Force Majeure	33
Clause 11	Representations and Warranties	35
Clause 12	Termination	39
Clause 13	Rights and Obligations Upon Termination	41
Clause 14	Indemnities and Liabilities	43
Clause 15	Surrender	45
Clause 16	Governing Law	46
Clause 17	Dispute Resolution	46

A - Afelumo

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Assignment	48
Survival	48
Entire Agreement	48
Notices	48
Confidentiality	50
Waiver	51
Verifiability	51
Further Assurances	52
Contracts Rights of Third Parties	52
Primacy of this Agreement	52
Cost	53
Duration	54
Appendix 1	
Appendix 2	
Appendix 3	
Appendix 4	

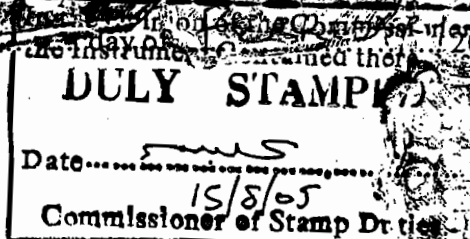
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LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

This lease made on the 15th day of August 2005

BETWEEN



THE PORTS AUTHORITY a public authority constituted under the
Ports Act Cap 126 Laws of Federation of Nigeria 2004 whose registered address is situate
at 26/28 Marina, Lagos, Nigeria (hereinafter called the "LESSOR") which expression
shall where the context so admits include its successors in title and assigns of the first part

AND

INTELS NIGERIA LIMITED a company registered in Nigeria under the Companies
and Allied Matters Act Cap 20 Laws of Federation of Nigeria 2004 and having its head
office at KM 16 Port Harcourt/Aba Expressway Port Harcourt, Rivers State, Nigeria,
(hereinafter called the "LESSEE") which expression shall where the context so admits
include its successors-in-title and assigns of the second part.

The LESSOR and the LESSEE herein shall, where the context so permits, be jointly
referred to as the Parties or separately as Party.

WHEREAS: -

The LESSOR is the owner of all that PREMISES comprising developed and undeveloped
land, various buildings and other facilities hereto, situate, lying and being at the Federal
Ocean Terminal, INTELS' Transit Terminal and Federal Lighter Terminal Onne, Rivers
State of Nigeria, Warri New Port and Warri Old Port, Delta State of Nigeria, and Calabar
Port, Calabar, Cross River State of Nigeria (hereinafter referred to as the "LEASED
PREMISES") more clearly described in Appendix 1 herein attached.



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LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, Warri AND CALABAR

The LESSOR has over the years entered into various Lease Agreements with the LESSEE over the LEASED PREMISES, part of which include plots of swamps requiring extensive dredging and reclamation, and bare land requiring substantial infrastructural development at the cost to the LESSEE.

Pursuant to the said Lease Agreements, the LESSEE has made long term investments in core logistic support facilities within the LEASED PREMISES including provision of cargo handling and support base services with specialized equipments, buildings, warehouses, stacking areas, wharf facilities, berthing and other facilities more clearly described in Appendix 2 herein attached and has successfully attracted various oil producing and servicing companies and other entities to the LEASED PREMISES for the purpose of utilization of the said facilities as well as for other business purposes

The LESSEE, having inspected the LEASED PREMISES described in Appendix 1 and finding it physically suitable for the further construction and operation of Port Facilities, shall cause the development, construction and completion of the Port Facilities in accordance with the plans, designs, drawings and specification approved in writing by the LESSOR and contained in developmental plan and more clearly described in Appendix 3.

Subject as herein provided all costs of the development of the LEASED PREMISES, as provided for in Appendix 3 and approved in writing by the LESSOR shall be borne by the LESSEE and the LESSEE shall be responsible for arrangement of all necessary funding.

The LESSOR shall in accordance with this Lease Agreement make available the areas clearly described in Appendix 1 to the LESSEE for the purpose of further developing and operating the LEASED PREMISES and the LESSEE shall be responsible for the payment of rents, assessments, rates and other charges in respect of the LEASED PREMISES and the developments thereon.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

In recognition of the long term investments already made, and future investments to be made by the LESSEE, as well as the commercial need of the LESSEE to recoup the cost of their investments on the LEASED PREMISES, the LESSOR and the LESSEE have agreed for the grant to the LESSEE of a new lease over the entire LEASED PREMISES for a term of 25 (twenty five) years commencing from the 1st day of September 2004 with an option to renew same for another term of 25 (twenty five) years.

IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definition**

Subject to any definition contained in any provisions of this Lease Agreement, the following words and expressions shall have the following meanings:

"Appendix" and "Clause" mean respectively clauses and Appendix to this Lease Agreement unless the context shows a contrary meaning.

"Applicable Law" shall mean any law, statute, order, decree, injunction, license, permit consent, approval, directive, guideline, policy, agreement or regulation of any Government Authority having jurisdiction over the matter in question, or other legislative or administrative action of a Government Authority, or a final decree, judgment or order of a court which relates to the Port, the LEASED PREMISES, the operations or the interpretation or application of this Lease Agreement. In the event of an inconsistency or conflict between any of the Applicable Law the laws most specific to the subject matter shall apply.

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LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

"Applicable Permits" or "Permits" means any and all permissions, clearances, licenses, authorizations, consents, sanctions, no-objections, approvals of or from any Government Authority required in connection with this lease agreement.

"Business Days" shall mean a day on which commercial banks in Nigeria are not authorized to be open or are required close.

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

"Clients" means any and all clients of the LESSEE utilizing the Facilities and Services at the LEASED PREMISES including, but not limited to oil producing and servicing companies, financial institutions, shipping lines, owners, shippers, consignees of Cargo, Ship owners and Ship agents, or other persons whether corporate or incorporated.

"Common Areas" means those areas on the LESSOR'S property outside the LEASED PREMISES, shown in Appendix 1 and may exist from time to time, which serve and provide access to the LEASED PREMISES.

"Defaulting Party" shall have the meaning set forth in Clause 12.3.

"Designs and Drawings" means the conceptual and detailed designs and drawings, backup technical information required for the developments on the LEASED PREMISES and all calculations, samples, patterns, models, specifications and other technical information submitted by the LESSEE from time to time and approved by the LESSOR in accordance with the provisions of this Lease Agreement.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

"Developmental plan" means time table of developments of Port Facilities to be constructed by the LESSEE and more clearly described in Appendix 3.

"Disclosing Party" shall have the meaning set forth Clause 22.

"Effective Date" shall mean the date this Lease Agreement comes into effect.

"Execution Date" shall mean the date the parties sign this Lease Agreement.

"Emergency" shall mean a crisis, incident or other untoward position or threat to public safety.

"Financiers" shall have the meaning set forth in clause 9.5.

"Force Majeure" means an exceptional event or circumstance: (i) which is beyond a Party's control; (ii) which such Party could not reasonably have provided against before entering into this Lease Agreement (iii) which, having arisen, such Party could not reasonably have avoided or overcome, and (iv) which is not substantially attributable to the other Party. A Force Majeure Event shall be, without limitation, any act of God, act of public enemies, war, riots, insurrections, civil commotion, floods, fire, general strikes, terrorist acts, restrictions due to quarantines, epidemics, storms.

"Government Authority" means Federal Government, any State Government or any Governmental Department, Commission, Board, Body, Bureau, Agency, Authority, Instrumentality, Court or other Judicial or Administrative Body, Central, State, or Local.

"Immovable Assets" are assets which are not movable Assets.

"Improvement" means any development or addition made on bare land by the LESSEE.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

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

"Leased Premises" means areas of the Ports leased to the LESSEE & Port Facilities thereon.

"Lease Term" means 25 (twenty five) years, the duration of this Lease Agreement.

"LESSEE Event of Default" shall have the meaning set forth in clause 12.1.

"LESSOR Event of Default" shall have the meaning set forth in clause 12.2.

"Material Breach" shall mean a fundamental breach that goes to the root of this Lease Agreement.

"Movable Assets" means equipment, vehicles, furniture and furnishings and any other thing which is not attached to the LEASED PREMISES.

"Month" shall mean a calendar month.

"Nigeria" shall mean the Federal Republic of Nigeria.

"Non-Defaulting Party" shall have the meaning set forth in Clause 12.3.

"Open Market Rent" means the best yearly rent at which the Leased Premises might be let.

"Party" means either the LESSOR or the LESSEE as the context may require or admit.

"Parties" means both LESSOR and the LESSEE.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

"Person" shall mean any legal or natural person, including any individual, corporation, partnership, Limited Liability Company, association, joint venture, trust, governmental or international body or agency, or other entity.

"Prudent Industry Standards" means the exercise of a degree of skill, diligence and prudence and practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time, which would reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in construction, operation and maintenance of facilities, equipment or systems of the type and size similar to those on the LEASED PREMISES.

"Port Facilities" mean all immovable Assets including roads, buildings, structures attached to, or constructed on the LEASED PREMISES.

"Rent" shall mean the sum of money payable by the LESSEE to the LESSOR as consideration for this Lease Agreement.

"Rent Payment Day" has the meaning given to it in clause 7.1

"Rent Review Date" means the date falling at the beginning of the net Rent review period

"Rent Review Notice" has meaning set forth in clause 7.5

"Rent Review Period" means a period of 3 years commencing on the Effective Date or every third anniversary thereafter

"Term" means the term of the Lease Agreement used in clause 2.4.

"Termination Date" shall have meaning the plan set forth in Clause 2.4.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

"Utilities" shall mean 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.

"Vacant space" shall mean any unoccupied space within the LEASED PREMISES.

"Writing" includes telex, cable, fax, e-mail and other forms of written material transmitted electronically.

1.2 Interpretation.

1.2.1 The Parties have participated jointly in the negotiation and drafting of this Lease Agreement. In the event an ambiguity or question of intent or interpretation arises, this Lease Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavours any Party by virtue of the authorship of any of the provisions of this Lease Agreement.

1.2.2 The word "including" shall mean "including without limitation".

1.2.3 The word "writing" includes telex, cable, fax, e-mail and other forms of written materials transmitted electronically.

1.2.4 Where an approval or decision is required from a Party, such approval or decision shall not be unreasonably withheld.

1.2.5 Unless otherwise indicated, all reference in this Lease Agreement to Clauses, and Appendixes shall refer to the corresponding Clauses and Appendix of or to this Lease Agreement.

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**LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR**



2. EFFECTIVE DATE AND LEASE TERM

- 2.1 In consideration of the rent hereinafter reserved and of the covenants on the part of the LESSEE hereinafter contained, the approval of the President and Commander In-Chief of the Armed Forces of Nigeria, having been obtained and communicated vide the Hon Minister of Transportation's letter reference T. 0160/S.95/VoII/224 dated 26 July 2004 hereby lease unto the LESSEE ALL THAT land comprising various buildings and other facilities more clearly described in Appendix 1 hereto, situate, lying and being at Federal Ocean Terminal, INTELS Transit Terminal and Federal Lighter Terminal Onne, Rivers State of Nigeria, Warri New Port and Warri Old Port in Delta State of Nigeria, and Calabar Port, Calabar, Cross River State of Nigeria, (the "LEASED PREMISES") which as to its dimensions and abutments are more particularly delineated on the Survey Plan Nos annexed hereto and marked Appendix 4
- 2.2 The provisions of this Clause, along with the provisions of other Clauses shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.
- 2.3 Except as otherwise provided in clause 2.1, this Lease Agreement shall become effective only upon satisfaction of the conditions to effectiveness set forth in Clause 6.
- 2.4 This Lease Agreement is for a period of 25 (twenty five) years, which shall commence on the Effective Date 1st September 2004 and terminate on the occurrence on the 25th (twenty fifth) anniversary of the Effective Date, unless earlier terminated in accordance with the term hereof. (The period shall be referred to as the "Term" and the date of such termination shall hereinafter be referred to as the "Termination Date".) Following such 25 (twenty fifth) anniversary of the Effective Date, and unless this Lease Agreement has otherwise

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LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

been terminated, the Parties shall have the option to mutually agree to renew this Lease Agreement for another term of 25 (twenty five) years, under terms and conditions which shall be agreed by the parties, this option shall be exercised by the LESSEE giving written notice to the LESSOR at least one year prior to the expiry date of this Lease Agreement. The LESSOR shall not unreasonably decline to extend the lease for a further term of 25 (twenty five) years. The LESSOR shall be obliged to register the renewal with the competent authorities.

3. BASIC LEASE RIGHTS AND OBLIGATIONS

- 3.1 In consideration of the covenants and agreements set forth in this Lease Agreement and other good and valuable consideration, the LESSOR shall lease the LEASED PREMISES to the LESSEE, and the LESSEE shall lease the LEASED PREMISES from the LESSOR, subject in each case to the terms and conditions set forth in this Lease Agreement. Commencing on the Effective Date, the LESSOR shall remain the owner of the LEASED PREMISES. The LESSEE shall keep and maintain the LEASED PREMISES in the good and tenable condition, free and clear of all liens, charges, claims, encumbrances, and security interests (except those permitted hereunder) arising from the operation and management of Port Facilities and any other of its obligations hereunder. The LESSEE shall indemnify, defend, and hold harmless the LESSOR from and against and promptly remove and discharge any such liens, charges, claims, encumbrances, and security interests (except those permitted hereunder) which may be placed on the LEASED PREMISES, except those attributable to the acts and omissions of the LESSOR.
- 3.2 To the extent that the LESSEE complies with the terms and condition of this Lease Agreement, the LESSEE shall peacefully and quietly hold, occupy and enjoy the LEASED PREMISES.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 3.3 The LESSEE shall pay the Rent in consideration of this Lease Agreement in accordance with the terms and conditions set forth in Clause 7. Except as the LESSOR may otherwise agree in writing, all payments shall be made in Naira during the Term hereby granted on a yearly Rent payable in advance and thereafter the Rent shall be reviewed by the LESSOR every three years, but such revised rents shall not take into account the LESSEE'S Improvements of the LEASED PREMISES and goodwill.
- 3.4 The LESSOR shall grant the LESSEE for the benefit of the LESSEE and its employees, contractors, customers and invitees during the Lease 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 LEASED PREMISES nor in any manner that unreasonably interferes with the use of the Port by other occupants or users of Port. The LESSOR reserves the right from time to time to
- 3.4.1 Make changes in or to the Common Areas;
- 3.4.2 Close temporarily any of the Common Areas provided that the LESSEE shall be duly notified at least seven days to the proposed closure and alternative access shall be provided by the LESSOR;
- 3.4.3 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;

A. Afelumo

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 3.4.4 Prohibit unauthorized Persons from using or accessing the Common Areas; or
- 3.4.5 Perform such other activities and make such other changes in, to or with respect to the Common Areas as the LESSOR may deem appropriate.
- 3.5 That if the rent hereby reserved or any part thereof shall be in arrears for one month after same shall become due (whether demanded or not) or in the event of any breach of the material covenants and obligations on the part of the LESSEE herein contained, after 6 (six) calendar months' notice to remedy or if the LESSEE goes into liquidation or enters into any arrangement with its creditors, the LESSOR may commence appropriate legal proceedings to re-enter upon the LEASED PREMISES or any part thereof in the name of the whole and upon the grant of a valid order by the court for re-entry, this Lease Agreement shall absolutely determine but without prejudice to the right of action by the LESSOR in respect of any antecedent breach of the LESSEE'S covenants and obligations herein contained. The LESSEE shall be entitled to compensation commensurate with the prevailing commercial value of its developments on the LEASED PREMISES.
- 3.6 Subject to the Applicable Law and the LESSOR'S prior written approval, the LESSEE shall have the right to negotiate rights of way, easements and other types of access to land and other properties and utilities near or adjacent to the LEASED PREMISES. The LESSOR shall ensure that all necessary access to and from the LEASED PREMISES is made available to the LESSEE, its employees, contractors, subcontractors and advisors as necessary for the development of Port Facilities and the LESSEE'S operation.
- 3.7 On the expiration of this Lease Agreement the Port Facilities shall revert to the LESSOR without the payment of any compensation.

A. Afelumo

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 3.8 On the expiration of this Lease Agreement the LESSEE shall give up possession of the LEASED PREMISES together with its rights, and interest in the Port Facilities to the LESSOR, free from any lien or encumbrance created by LESSEE and without payment of any compensation.
- 3.9 Six months prior to the expiration of this Lease Agreement, the LESSOR and the LESSEE shall meet and agree on the inventories of the Port Facilities. The LESSOR shall be responsible for all costs and expenses (including legal fees and taxes or duties) incurred in connection with the transfer of the Port Facilities to the LESSOR and shall at its own cost obtain or effect all governmental and other approvals, licenses, registrations and filings and take such other action as may be necessary for the transfer and reimburse the LESSEE on demand for all such costs and expenses incurred by the LESSEE in respect of such transfer. The parties shall however agree on new terms and conditions for the renewal of the lease.

4. USE OF LEASED PREMISES

- 4.1 The LESSEE shall only use the LEASED PREMISES to operate and develop Port Facilities and may not use the LEASED PREMISES for any other purpose without the LESSOR'S prior written approval. The LESSEE shall not conduct any activities within the LEASED PREMISES other than the operation and development of Port Facilities. The LESSEE shall not conduct such unpermitted use, or allow such unpermitted use to be conducted, in violation of any Applicable Law or in any manner that would
- 4.1.1 Violate, invalidate or cause a loss of coverage under any insurance in force on or after the Execution Date with respect to the person or properties of any person in the port

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 4.1.2 Cause diminution in the value or usefulness of all or any portion of the
LEASED PREMISES (reasonable wear and tear excepted),
- 4.1.3 Create a nuisance or waste in, on or about the LEASED PREMISES.
- 4.2 The LESSEE may sublease part of the LEASED PREMISES to ship agents,
forwarders and other parties whose principal business is to provide services
related to the Port Facilities or oil logistical services and/or services, subject to the
LESSOR'S prior written approval which shall not be unreasonably withheld.
- 4.3 In accordance with Applicable Law, the LESSOR shall have right to alter the
LEASED PREMISES without modifying the terms of this Lease Agreement;
provided that such alteration does not unreasonably interfere with the LESSEE'S
peaceful and quiet possession and enjoyment of the LEASED PREMISES.
- 4.4 The LESSEE shall not make other improvements or alterations to the LEASED
PREMISES without the LESSOR'S prior written approval. In requesting such
approval, the LESSEE shall furnish to the LESSOR at least sixty (60) days prior
to start of work, documentation and other evidence demonstrating that the
requested improvements or alterations, the plans and drawings for such
improvements or alterations, and such other documentation reasonably requested
by the LESSOR.
- 4.5 The LESSEE shall ensure that all Improvements and/or alterations are in
compliance with Applicable Law and Prudent Industry Standards and are
authorized by the LESSOR in writing, such authorizations not to be unreasonably
withheld.
- 4.6 Without limiting or reducing the LESSEE'S obligations under this Lease
Agreement, the LESSOR shall have the right to inspect such developments,

A. Afelumo

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

Improvements and or alterations which shall not be used by the LESSEE until the LESSOR has notified the LESSEE in writing that they are in accordance with the plans approved by the LESSOR and comply with Applicable Law. The LESSOR shall have the right to be present at any time during the performance of such improvements or alterations and shall have access to the LEASED PREMISES and all records and materials of the LESSEE related to the same, including participation in related progress meetings. Subject to the provisions of this Leased Agreement on payment of compensation, any improvements or alterations made by the LESSEE to the LEASED PREMISES during the Term shall be and shall remain the property of the LESSOR, without any claim for or reimbursement from the LESSOR for the cost or the value thereof.

- 4.7 The LESSEE shall be responsible for the maintenance, repairs, renewals and replacements of Port Facilities on the LEASED PREMISES.
- 4.8 The LESSEE shall maintain the LEASED PREMISES in good condition and repair. All repairs and replacements shall be equal or better in quality to the original material and workmanship standards. The maintenance work performed by the LESSEE shall comply with Applicable Law and Prudent Industry Standards. The LESSEE shall not contract any major repair work relating to the LEASED PREMISES without the prior written approval of the LESSOR. 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 all rights under any warranties it may receive or be entitled to for the LEASED PREMISES.
- 4.9 The LESSEE shall make its own arrangements and pay for the supply of Utilities to the LEASED PREMISES, including serving the vessels that calls at the LEASED PREMISES. The LESSOR shall provide reasonable assistance to the LESSEE in making such arrangements.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 4.10 The LESSEE shall provide on the LEASED PREMISES and at its own expense, reasonable office facilities for the LESSOR and other Governmental Authorities, including without limitation those who have duties such as customs and immigration functions in the LEASED PREMISES.
- 4.11 The LESSEE shall not sell, transfer, remove or dispose of any Port Facilities on the LEASED PREMISES without the LESSOR'S prior written approval. The proceeds of any such sale, transfer, removal or disposal shall be paid to the LESSOR less any costs incurred by the LESSEE related thereto. For avoidance of doubt, any sale, transfer, removal or disposal by the LESSEE of LEASED PREMISES in contravention of this clause shall constitute a LESSEE Event of Default under clause 12.1, and the LESSOR shall have all the rights and remedies (including rights to terminate this Lease Agreement) under clause 12.3.
- 4.12 The LESSEE shall deliver to the LESSOR an annual report on the Improvement made to the Port Facilities
- 4.13 The LESSEE shall permit the LESSOR and it's designated representatives and agents during the LESSEE'S working hours to enter and inspect the LEASED PREMISES for the purpose of verifying the LESSEE'S compliance with this Lease Agreement and other requirements under Applicable Law; provided that any such visit shall not unreasonably interfere with the LESSEE'S performance of the operation and management of the LEASED PREMISES. Within 3 (three) days prior to a visit, the LESSOR shall notify the LESSEE in writing of the names of the individuals to be permitted access and the time and date of such visit except in the case of Emergency:-
- 4.13.1 To take inventory of the fixtures therein.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 4.13.2 To do or cause to be done thereon all such acts and things as may be necessary for the performance of any duties or obligations imposed on the LESSOR by any law for the time being in force or for any other purpose in connection with its undertaking.
- 4.13.3 To monitor the developments on the LEASED PREMISES to ensure that such developments conform to the plans approved by the LESSOR.
- 4.13.4 To view the state of repair and condition of same and of all defects and want of repairs on or removal of fixtures then and there found, to give or leave on the LEASED PREMISES such notice in writing to the LESSEE and that the LESSEE shall within a period of 3 (three) calendar months after such notice or sooner, repair, make good and reinstate same according to such notice and the covenant in that behalf herein before contained.
- 4.13.5 That it shall be lawful for the LESSOR or its agents or workmen and for the LESSEE or occupiers for the time being of any adjoining premises at any convenient time or times during the Term hereby granted at reasonable hours in the day time without interruption, during emergency, to enter upon the LEASED PREMISES for the purpose of executing with due diligence and dispatch repairs or alterations to or upon such adjoining premises making good to the LEASED PREMISES all damages, if any, thereby occasioned.
- 4.13.6 The LESSEE shall grant access to the LEASED PREMISES to Governmental Authorities for the purpose of carrying out any activities which they are legally entitled to carry out in the Premises pursuant to Applicable Law.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

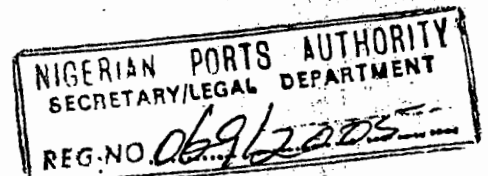
- 4.13.7 The LESSEE shall grant rights of way and easements through the LEASED PREMISES for existing and future Utilities. The LESSEE shall not take any action which is detrimental to the efficient supply of such Utilities to the Port and adjacent areas.
- 4.14 Nothing herein contained shall affect the liability of the LESSEE to pay from time to time the prescribed charges in respect of the LESSEE'S goods passing over the wharf serving the LEASED PREMISES whether or not such goods are conveyed through the LESSEE'S loading/discharging towers, conveyor system and pipes, swamp barges or payment of such other rates, dues, taxes, fees and charges properly chargeable by the LESSOR.

5. OPERATIONS

- 5.1 The LESSEE shall use the LEASED PREMISES for the sole purpose it was granted use of and in accordance with this Lease Agreement.
- 5.2 The LESSEE shall have the exclusive right during the Lease Term to operate and manage Port Facilities within the LEASED PREMISES.
- 5.3 The LESSEE shall operate and manage the Port Facilities
- 5.3.1 In a safe, efficient, effective and economic manner.
- 5.3.2 With due care and skill and
- 5.3.3 In accordance with Applicable Law and Prudent Industry Standards.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 5.4 The LESSEE shall cooperate with the LESSOR in order to enable the LESSOR perform their monitoring and other duties under the Lease Agreement and Applicable Law.
- 5.5 The LESSEE shall use its best efforts to
- 5.5.1 Develop, market and promote the Port Facilities on the LEASED PREMISES in order to achieve maximum utilization thereof in a manner which is consistent with the Applicable Law and Prudent Industry Practices, and
- 5.5.2 Ensure that there is no decline in the standards of the Port Facilities.
- 5.6 The LESSEE shall ensure that its management and operation of the Port Facilities shall be as continuous and without interruptions as is reasonably practical.
- 5.7 The LESSEE shall be responsible for the planning of the financing of the development and operation of the Port Facilities. The LESSEE shall make such plans available to the LESSOR for its review upon request by the LESSOR.
- 5.8 The LESSOR shall evaluate the LESSEE'S performance in the development of the Port Facilities on an annual basis.



LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

6. CONDITIONS PRECEDENT

6.1 The obligations of the LESSOR and the LESSEE to consummate the transaction contemplated by this Lease Agreement shall be subject to the fulfillment of the following conditions:

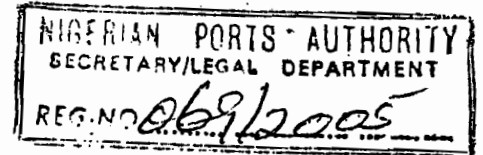
6.1.1 Each Party shall have duly executed and delivered to the other Party this Lease Agreement.

6.1.2 The consummation of the transactions contemplated by this Lease 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 or other Governmental Authority to be applicable to this Lease Agreement any Applicable Law making illegal the consummation of the transactions contemplated by this Lease Agreement.

6.1.3 All consents or authorization of Governmental Authorities that are required for this Lease Agreement shall have been made or obtained.

6.2 The obligation of the LESSOR to consummate the transactions contemplated by this Lease Agreement shall be subject to the fulfillment, prior to the Execution Date and/or the Effective Date, as applicable, of the following additional conditions (unless waived in writing by the LESSOR):

6.2.1 The representations and warranties of the LESSEE in clause 11.1 shall be true and correct in all material respects when made and at and as of the Execution Date the same effect as though made at and as of such time, except that those representations and warranties which are made as of a



**LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR**

specific date shall be true and correct in all material respects as of such date.

6.2.2 The LESSEE shall have duly performed and complied in all material respects with all covenants contained in this Lease Agreement required to be performed or complied with by it at or before the Effective Date.

6.2.3 The LESSEE shall have delivered to the LESSOR certificates of insurers and other documentation reasonably requested by the LESSOR evidencing that the LESSEE has obtained the insurance coverage on the LEASED PREMISES.

6.3 The obligations of the LESSEE to consummate the transaction contemplated by this Lease Agreement shall be subject to the fulfillment prior to the Execution Date and/or Effective Date, as applicable, of the following additional conditions (unless waived in writing by the LESSEE):

6.3.1 The representations and warranties of the LESSOR in clause 11.2 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.

6.3.2 The LESSOR shall have duly performed and complied in all material respects with all covenants and agreements contained in this Lease Agreement required to be performed or complied with by it at or before the Effective Date.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

7. RENT AND RENT REVIEW

- 7.1. This Clause shall be referred to in this Lease Agreement as the Rent Review Clause and shall for all purposes govern the Rent review. The first Rent shall fall due on the Effective date and thereafter shall fall on Rent Review Date

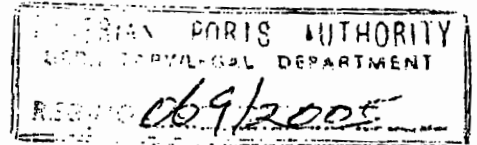
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7.1.1.2 During every successive Rent Review Period a Rent equal to the greater of:

7.1.1.2.1 The Rent payable immediately prior to the relevant Review Date, or, if payment of Rent has been suspended or abated for any reason, the Rent which would have been payable had there been no such suspension or abatement; or

7.1.1.2.2 The Open Market Rent.

7.1.2 The Open Market Rent for any Rent Review Period may be agreed in writing at any time between the Parties or (in the absence of agreement) will be determined by Arbitration under clause 17.4



LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

7.1.3 Except as expressly provided in this clause the arbitration shall be conducted in accordance with clause 17.4

7.1.4 The fees of the Arbitrator shall be borne by the Parties in equal shares.

7.1.5 If either Party shall fail to pay costs awarded against it by the Arbitrator within twenty-one days of demand the other party shall be entitled to pay the costs and the amount paid shall be repaid by the other Party on demand.

7.1.6 When the Rent has been ascertained memoranda recording this shall be signed by or on behalf of the Parties and annexed to this Lease Agreement and its counterpart and each Party shall bear their own costs in this respect.

7.2 Arrangements Pending Ascertainment of Revised Rent.

If the revised Rent payable during any Review Period has not been ascertained by the relevant Review Date Rent shall continue to be payable at the rate previously payable on account of the Rent for that Review Period.

7.3 Payment of Revised Rent

7.3.1 If the revised Rent is ascertained on or before the relevant Review Date, and that date is not a Rent Payment Day the LESSEE shall on that Review Date pay to the LESSOR the amount by which one quarter's rent (at the rate payable on the immediately preceding Rent Payment Day) is less than one quarter's rent (at the rate of the revised Rent) apportioned on a daily basis for the period from the Review Date to the next Rent Payment Day.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

7.3.2 If the revised Rent payable during any Review Period has not been ascertained at the relevant Review Date then immediately (and in any event within 14 (fourteen) business days) after the date when it has been ascertained the LESSEE shall pay to the LESSOR:

7.4 Arrangements when increasing Rent prevented etc

7.4.1 If at any Review Date there shall be in force any legislation preventing, restricting or modifying the LESSOR'S right to:

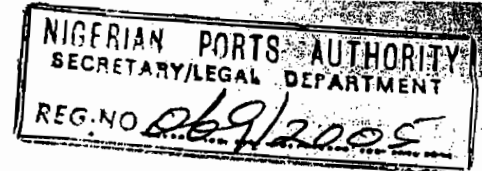
7.4.1.1 Review the Rent in accordance with this Lease Agreement; or

7.4.1.2 Recover any increase in the Rent

7.5 The LESSOR shall, when the restriction or modification is removed, relaxed, or modified, be entitled (but without prejudice to his rights (if any) to recover any Rent the payment of which has only been deferred by law) on giving not less than one month's notice in writing (a "Rent Review Notice") to the LESSEE, to invoke the provisions of clause 7.5.1

7.5.1 Upon the service of a Rent Review Notice the LESSOR shall be entitled:

7.5.1.1 To proceed with any review of the Rent which may have been prevented, or further to review the Rent in respect of any review where the LESSOR'S right to review the Rent was restricted or modified; and the date of expiry of the Rent Review Notice shall be treated for the purposes of this Lease Agreement as a Rent Review Date (provided that nothing in this clause shall be construed as varying any subsequent Rent Review Date).



LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

7.5.1.2 To recover any increase in Rent with effect from the earliest date permitted by law.

8. LESSEE'S COVENANTS

The LESSEE for themselves, their successors-in-title and assigns and to the intent that the obligations shall continue throughout the Term hereby granted, covenants with the LESSOR as follows:

- 8.1 To pay whether demanded or not, the Rent hereby reserved and made payable at the time and in the manner herein reserved and made payable without any deductions excepting statutory deductions and also pay from time to time the appropriate charges for the time being for water and electricity or other power and illuminant used or consumed on or in connection with the LEASED PREMISES and for the provision, installation, connection, use and maintenance of any pipes, appliances, fittings and metres which are considered necessary with such use and consumption.
- 8.2 The LESSEE shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the LESSEE to fulfill its obligations hereunder, including without limitation, the operation and management of the Port Facilities on the LEASED PREMISES
- 8.3 To develop in accordance to the developmental plan described in Appendix 3 any undeveloped parts of the LEASED PREMISES and to ensure that all developments on the LEASED PREMISES or any part thereof shall be in accordance with the plans, drawings, elevations and specifications of such developments shall be approved in writing by the

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

LESSOR under clause 4.4 before commencement of the development. The LESSEE shall appoint consultants and professional advisers and shall carry out such developments in substantially good and workman-like manner with the best materials in accordance with best industry practice to the satisfaction of the LESSOR in all respects, and to carry on or permit to be carried on, on the LEASED PREMISES only such business activities as are presently being carried on by the LESSEE or other entities already on the LEASED PREMISES, PROVIDED that all future or other business activities proposed to be carried on, on the LEASED PREMISES shall first be approved by the LESSOR. The LESSEE shall indemnify the LESSOR against losses, actions, proceedings, damages, claims, payments and demands arising out of the occupation and use of the LEASED PREMISES.

- 8.4 From the date hereof until this Lease Agreement expires or terminated by the parties, the LESSEE shall, directly operate and manage the Port Facilities on the LEASED PREMISES.
- 8.5 Shall during the Term hereby granted use its best endeavour to keep and maintain all the structures erected or mounted on the LEASED PREMISES actually occupied and used by the LESSEE as well as fencing and all appurtenances to the structure thereon in good tenantable repair and conditions, fair wear and tear excepted.
- 8.6 The LESSEE shall not in any manner whatsoever obstruct all or any of the roads or tamper with or disrupt all or any of the common services provided for the shared use of the other users located within the Ports.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 8.7 The LESSEE shall bear, pay and discharge all rates taxes, duties, impositions, charges, assessments, fees and outgoings imposed by Applicable Law or of any other description which, are now or at any time hereinafter during the Term of this Lease Agreement, may be assessed, charged on or imposed upon or become payable in respect of the LEASED PREMISES.
- 8.8 The LESSEE shall not do or permit anything to be done on the LEASED PREMISES or any part thereof which shall be offensive, immoral, illegal, dangerous, obnoxious, noisy or which shall be of any inconvenience, nuisance or annoyance to the LESSOR or occupiers of the adjoining or neighbouring premises.
- 8.9 The LESSEE shall not assign, alienate or otherwise transfer its interests in or over the Port Facilities or any part thereof without the written consent of the LESSOR.
- 8.10 The LESSEE shall take all precautions required by law and Prudent Industry Practice in carrying out its business in accordance with the best standard of management for oil support and logistics base and other services to indemnify the LESSOR against all or any liability whatsoever arising by reason of breach by the LESSEE of this clause.
- 8.11 The LESSEE shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and user of the Port Facilities and the LEASED PREMISES in accordance with Applicable Laws, Prudent Industry Practices, and the LESSOR guidelines. During the Lease Term, the LESSEE shall comply with such procedures.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 8.12 The LESSEE shall comply with all fire precautions and provide for fire fighting equipment on the LEASED PREMISES as prescribed by the LESSOR'S Assistant General Manager (Fire Service)
- 8.13 The LESSEE shall throughout the Term hereby granted adequately insure the LEASED PREMISES in the joint names of the LESSEE and the LESSOR an all risks insurance policy to the full value thereof or against the payment of the rent of the said PREMISES for a period of one year from the happening of any of the events insured against resulting in the destruction or damage to the LEASED PREMISES with a reputable insurance company approved in writing by the LESSOR and the policy shall stipulate that LESSOR is to receive not less than 30 days' notice of cancellation and the Lessee shall submit to the LESSOR a photocopy of such insurance policy and all renewals and the Lessee shall by the due date pay all premiums required to be paid under such insurance policy and shall immediately on request furnish to the LESSOR proof of such payment and in case of LEASED PREMISES or any part thereof shall at the time during the said Term be destroyed or damaged then and as often as same shall happen to layout promptly all monies received in respect of such insurance in rebuilding or otherwise reinstating the said PREMISES in a good and substantial manner to the satisfaction of the LESSOR and in paying the rent hereby made payable and in case the monies received in respect of the said insurance shall be insufficient for these purposes to make up any deficiency out of its own monies.
- 8.14 The LESSEE shall not do anything on the LEASED PREMISES that will cause increased insurance premium to adjoining properties or make void or voidable the insurance policy for same.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 8.15 Not to employ at any time during the said Term or continue to employ on or within the demised PREMISES such person or persons against whom the LESSOR shall have raised reasonable written objection
- 8.16 The LESSEE shall be responsible for the preparation and implementation of a safety and security system in accordance with Applicable Laws for the LEASED PREMISES (including without limitation fencing off the LEASED PREMISES), which system shall be subject to the LESSOR prior written approval defend, and hold harmless the LESSOR from and against any and all claims which arise from the presence of such objects, liquids or materials to the extent that they originate from the LEASED PREMISES
- 8.17 The LESSEE shall at all times during the said Term conform in all respects with the provisions of any present or future laws and in particular the Ports Act and all bye-laws and regulations made thereunder which may be applicable to the LEASED PREMISES or any part thereof or to the operations of the LESSEE and shall not do or fail to do on the LEASED PREMISES any act or thing whereby the LESSOR may become liable to pay any penalty imposed or to be imposed or to bear the whole or any part of any expenses incurred under such direction, requirement, Act or regulations as aforesaid and to indemnify the LESSOR against any loss, actions, proceedings, demands, claims, payment and damages sustained or incurred by reason of breach by the LESSEE of this clause.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

9. LESSOR'S COVENANTS

The LESSOR hereby covenants with the LESSEE as follows: -

- 9.1 That the LESSEE, paying the rent hereby reserved, performing and observing the covenants and obligations on its part herein contained, shall peaceably and quietly hold and enjoy the LEASED PREMISES during the Term hereby granted without interference from person or persons rightfully claiming under or in trust for it.
- 9.2 The LESSOR shall reserve the right to use the LESSEE'S wharf and berthing facilities as and when vacant. If any occasion shall arise for the use by the LESSOR of the LESSEE'S berthing facilities or the wharf built by the LESSEE, the LESSOR shall give due notice to the LESSEE for such use and shall also pay to the LESSEE appropriate charges for such use PROVIDED that such use shall not duly hamper the LESSEE'S operations.
- 9.3 The LESSOR shall at all times be responsible for compliance with, and implementation of all applicable local and international legislation, codes (including the ISPS code or regulations relating to port security and shall indemnify and hold the LESSEE harmless against any claims, losses, actions, proceedings, damages, payments and demands arising from failure of the LESSOR to comply with such legislation, codes or regulations.
- 9.4 The LESSOR acknowledges and accepts that in line with industry practice that the LESSEE shall have the right during the lease Term to grant to their clients temporary occupational license on Vacant Space to serve as utilization storage or other operational use during the period of the temporary occupational license. The LESSEE shall notify the LESSOR within seven days of the grant of said temporary occupational license.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 9.5 The LESSOR acknowledges and accepts that during the term hereby granted the LESSEE may subject to this Lease Agreement and Applicable Law grant security interests to third parties including banks and other financial institutions (referred to hereinafter as "Financiers") over certain assets or interests of the LESSEE, including its interest in the Port Facilities, for the purpose of financing the development of the LEASED PREMISES, which may amongst other things, entitle such Financiers to enter or appoint representatives to manage subject to this Lease Agreement and Applicable Law such assets or interests in LEASED PREMISES for the unexpired Term of this Lease Agreement.
- 9.6 Agrees that it will acknowledge the rights of such Financiers in this regard and the LESSEE may sublet to such financiers their interest over the Port Facilities on, or any part of, the LEASED PREMISES, PROVIDED that in every case where the LESSEE grant security interests to Financiers, the LESSEE shall provide the LESSOR one month prior notice of such transaction for the LESSOR'S approval (such approval shall not be unreasonably withheld). Nothing in this clause shall preclude the performance of the LESSEE'S covenants under clause 8 of this Lease Agreement
- 9.7 Agrees that such Financiers shall exercise their rights under the Agreement granting any such security interests and any other agreement between them and the LESSEE without interference, subject to the condition that the said financiers shall not be granted greater rights in respect of the LEASED PREMISES than are bestowed on the LESSEE under this Lease Agreement, and any pledge by way of security made by the LESSEE shall not relieve in any way or discharge the LESSEE from the performance of its obligations under this lease agreement.
- 9.8 Nothing contained in clause 9.5, clause 9.6 and clause 9.7 shall constitute or be construed to constitute an agreement between the LESSOR and the financier or any third party.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 9.9 The LESSOR shall cooperate with the LESSEE as reasonably necessary to enable the LESSEE to perform its responsibilities under this Lease Agreement
- 9.10 The LESSOR shall ensure that its personnel shall not delay or interfere with the performance of such obligations of the LESSEE or with the LESSEE'S personnel in the execution of their duties.
- 9.11 The LESSOR shall, at all times possible, keep the Ports open to shipping so that the LEASE PREMISES may be accessible for use by the LESSEE for the operation and management of Port Facilities.
- 9.12 The LESSOR shall be responsible for the general security of the Port outside the security fence of the LEASED PREMISES, including without limitation security of all land sea entrance to the Port and the provision and maintenance of the perimeter fencing on the Port.
- 9.13 The LESSOR shall provide reasonable assistance to the LESSEE in making its arrangements for the supply of the Utilities to the LEASED PREMISES.
- 9.14 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 effort to obtain and keep in force the licenses and permit required to be obtained or maintained by the LESSEE.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

10. FORCE MAJEURE

No failure or omission to carry out or observe any of the terms, provisions or conditions of this Lease Agreement shall give rise to any claim by any party hereto against any other party hereto or be deemed to be a breach of this Lease Agreement if the same shall be caused by or arise out of:

- 10.1 Any war, declared or not or hostilities, or of belligerence, blockade, revolution, insurrection, riot, public disorder, fire, unusual flood, earthquake, volcanic activity, storm, lightning, tide (other than normal tides), tidal wave, perils of the sea, epidemic, quarantine, strikes or combination of workmen, lockouts or other labour disturbances, or any other similar event, matter or thing, wherever occurring, which shall not be within the reasonable control of the party affected thereby. each of the foregoing events, matters, or things being called 'Force Majeure' in this Lease Agreement.
- 10.2 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 obligation, 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 occurrence thereof.
- 10.3 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.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 10.4 The parties shall use all reasonable efforts to ensure resumption of normal performance of this Lease Agreement after the occurrence of any Force Majeure Event and perform their obligations hereunder to the maximum extent practicable.
- 10.5 No relief shall be granted to a Party pursuant to this Clause to the extent that such failure or delay would have nevertheless been experienced by such Party had the relevant Force Majeure Event or its effects not occurred.
- 10.6 The Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of a Force Majeure Event.
- 10.7 The Party affected by the event of Force Majeure shall as soon as practicable give written notice to the other Party 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 of 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.
- 10.8 If an event of Force Majeure extends for more than one hundred twenty (120) non-consecutive days within a period of six (6) consecutive Months or ninety (90) consecutive days, or an event of Force Majeure causes substantial damage or destruction to the Port or the LEASED PREMISES so that they are not capable of repair within ninety (90) days after the termination of such event of Force Majeure, then either Party may

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

terminate this Lease Agreement by giving not less than thirty (30) days written notice of termination to the other Party.

- 10.9 In the event of termination of this agreement by the LESSOR on account of force majeure the LESSEE shall be entitled to compensation commensurate with the prevailing commercial value of ascertainable undestroyed Improvements on the LEASED PREMISES.

11. REPRESENTATIONS AND WARRANTIES

The representations and warranties of the parties made hereunder shall be true and correct at the commencement date, in all material respects, and shall survive the commencement date.

11.1 The LESSEE represents and warrants that:

11.1.1 It is a duly registered limited liability company in Nigeria and it is authorized and qualified to do business in Nigeria.

11.1.2 It is not in violation of any Applicable Law or judgment entered by any Government Authority, which violations, individually or in the aggregate, would affect its performance of any obligation under this Lease Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Government 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 a material adverse effect on the financial condition, operations prospects or business, as a whole, of the LESSEE, or its ability to perform under this Lease Agreement.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 11.1.3 Neither the execution nor delivery of this Agreement, nor the compliance with the Term 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 Lease Agreement or instrument.
- 11.1.4 It has all necessary power and authority to execute, deliver and perform its obligations under this Lease Agreement; the execution, delivery and performance by the LESSEE of this Lease Agreement has been duly authorized by all necessary action on its part; and this Lease 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.
- 11.1.5 It is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to perform its obligation hereunder
- 11.1.6 It has (a) carefully examined this Lease Agreement, together with all Appendixes attached hereto, thoroughly and become familiar with all their respective terms and provisions; (b) investigated to its satisfaction all applicable laws and it can perform its obligation hereunder in accordance therewith; (c) the experience, resources, qualifications, and capabilities to perform its obligations hereunder, including without limitation investigations and inspections of the LEASED PREMISES.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

11.1.7 The LESSEE shall in no way represent to any third party that the LESSOR is responsible for the engineering soundness of the Port Facilities; and shall, subject to the other provisions of this Lease Agreement, be solely responsible for the economic and technical feasibility, operational capability and reliability of the Port Facilities.

11.2 The LESSOR represents and warrants that:

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

11.2.2 It is not in violation of any Applicable Law or judgment entered by any Government Authority, which violations, individually or in the aggregate, would affect its performance of any obligation under this Lease Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Government 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 a material adverse effect on the financial condition, operations, prospects or business, as a whole, of the LESSOR, or its ability to perform under this Lease Agreement.

11.2.3 It has all necessary power and authority to execute, deliver and perform its obligations under this Lease Agreement; the execution, delivery and performance by the LESSOR of this Lease Agreement has been duly authorized by all necessary action on its part; and this Lease Agreement has been of the LESSOR enforceable in accordance with its term.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

11.2.4 It has obtained all approvals consents and authorization that are required from any Government Authority under Applicable Law to consummate the transactions contemplated herein

11.2.5 As of the Effective Date it has good title to the LEASED PREMISES and full legal right and power to grant the LEASED PREMISES to the LESSEE in the manner contemplated by this Lease Agreement. Upon the grant of this Lease Agreement against payment therefore pursuant to the terms of this Lease Agreement, the LESSEE shall be put in possession, free and clear of all liens, other than the obligation to obtain any required authorizations or consents by a Governmental Authority in connection with the LEASED PREMISES.

11.2.6 In the event that as a result of any laws or regulations of the Federal Republic of Nigeria or any agency or other body under the control of the Government of the Federal Republic of Nigeria or any State or local authority thereof, coming into effect after the Execution Date, or as a result of any such laws or regulations (including any official interpretation thereof which the LESSEE has relied upon in entering into this Lease Agreement) in force at the date hereof being amended, modified or repealed (Change in Law) the interest of the LESSEE in the LEASED PREMISES, the Port Facilities and/or LESSEE'S expectation of its economic return (net of tax or other imposition) on its investment is materially reduced, prejudiced or otherwise adversely affected then the parties hereto shall meet and endeavour to agree on amendments to this Lease Agreement.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

12. TERMINATION

12.1 Except if resulting from a LESSOR Event of Default or Force Majeure event, each of the following event shall be considered to constitute a "LESSEE Event of Default"

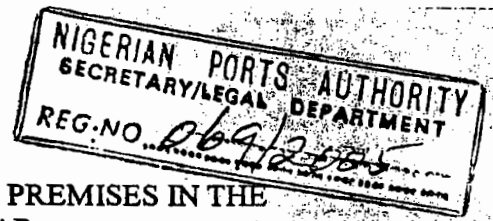
12.1.1 The LESSEE becomes insolvent, declare bankruptcy or is declared bankrupt, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its LEASED PREMISES, or commences any legal proceedings for its reorganizing, readjustment of debt, dissolution or liquidation.

12.1.2 The LESSEE fails to pay the Rent in accordance with Clause 3.5 and clause 7.3

12.1.3 The LESSEE commits a Material Breach of a material provision of this Agreement.

12.2 Except if resulting from a LESSEE Event of default or Force Majeure, each of the following event shall be considered to constitute a "LESSOR Event of Default:"

12.2.1 The LESSOR becomes insolvent, declares bankruptcy or is declared bankrupt, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, readjustment of debt, dissolution or liquidation.



LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

12.2.2 The LEASED PREMISES (in whole or in part) is expropriated, compulsorily acquired or nationalized by a Government Authority.

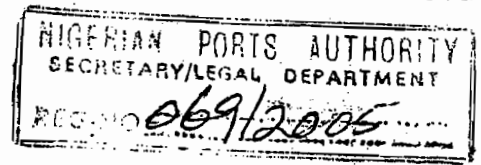
12.2.3 The LESSOR commits a material breach of a material provision of this Lease Agreement.

12.3 Consequences of Default

12.3.1 Insolvency. Upon an Event of Default described in clause 12.1.1 or 12.2.1, the party that is not in default may immediately terminate this Lease Agreement.

12.3.2 Expropriate. Upon a LESSOR Event of Default described in clause 12.2.2, the LESSEE may immediately terminate this Lease Agreement.

12.3.3 Other Event of Default. Upon an Event of Default described in clause 12.1.2, 12.1.3, 12.1.4, 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 15 (fifteen) business 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 15 (fifteen) business days period, then the Non-Defaulting Party may terminate this Lease Agreement. If however, the Defaulting Party does respond to the Non-Defaulting Party, then, within such 15 (fifteen) business 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 a reasonable period of time [not to exceed 30 (thirty) days] to remedy such Event of Default. If such time period expires and the



**LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR**

Defaulting Party has not cured the Event of Default; the Non-Defaulting Party may termination this Lease Agreement.

13. RIGHTS AND OBLIGATIONS UPON TERMINATION

- 13.1 Within one year prior to the expiration of the Term, the Parties shall agree to the procedures to be adopted and followed by them relating to the transfer of the LEASED PREMISES on such termination. The LESSOR shall have the right, at its own expense, to take any measures during the last year of the Term (or as the case may be, upon early termination) necessary to ensure the continuity of the Port Facilities. Each Party shall be responsible for the costs and expenses incurred by it in performing its obligation under this clause. Notwithstanding the foregoing, in the event that the LESSOR terminates this Lease Agreement as a result of a LESSEE'S Event of the Default, the LESSEE shall pay the LESSOR for all such cost and expenses.
- 13.2 The LESSEE shall ensure smooth continuation and operation of the Port Facilities throughout the period from its receipt of any termination notice of this Lease Agreement until the effective date of such termination, or during the last year of the Term if no such notice served. The Parties agree to minimize disruption of the operation of the Port Facilities by the LESSEE.
- 13.3 Within 30 (thirty) days prior to the Termination Date, the Parties shall each survey the LEASED PREMISES at its own cost. On the Termination Date, all rights and interests of the LESSEE in the LEASED PREMISES and all structures and fixed equipment thereon or alterations or Improvements made shall cease immediately, and the LESSEE shall

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LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

peaceably and quietly surrender to the LESSOR, the LEASED PREMISES with all the developments thereon in a good working condition in accordance with Prudent Industry Practices (excluding reasonable wear and tear). In the event that the LESSEE does not return the LEASED PREMISES in such condition, all costs which the LESSOR incurs in causing the LEASED PREMISES to be in such condition shall be paid by the LESSEE. The LESSOR or its assignee shall have immediate right to commence appropriate legal proceeding to enter and take full possession of the LEASED PREMISES to perform the operations and to remove the LESSEE, its employees and representatives, and any other parties who may occupy any part of the LEASED PREMISES. Except for Improvements made pursuant to the approval of LESSOR, the LESSOR may require the LESSEE, at the LESSEE'S own expense, to remove or undo any Improvement or alteration made by the LESSEE to the LEASED PREMISES.

- 13.4 If the LESSOR terminates this Lease Agreement for its convenience, or if the LESSEE shall be prevented from enjoying the benefit of this Lease Agreement for any cause, including revocation by a Government Authority of Nigeria or any governmental body, official or competent authority or as a result of change in law, the LESSEE shall be entitled to compensation commensurate with the prevailing commercial value of improvements on the LEASED PREMISES. Where the parties are unable to reach an agreement on the commercial value of the LESSEE'S improvements on the LEASED PREMISES, they shall jointly appoint an independent valuer who shall be a member of the Nigerian Institute of Quantity Surveyors to determine the prevailing commercial value of the development on the LEASED PREMISES, and decision of the valuer shall be binding on both parties. Where the parties are unable to agree on the

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

choice of valuer, either party may apply to the President of Nigerian Institute of Quantity Surveyors who shall appoint a valuer.

13.5 The LESSEE shall, at its own expense remove the Movable Assets from the LEASED PREMISES within thirty (30) days after the termination date, unless the LESSOR notifies the LESSEE in writing that it wishes to purchase the Movable Assets within thirty (30) days prior to the termination Date.

13.6 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 appoint to take over responsibility from the LESSEE to operate and manage Port Facilities 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 LEASED PREMISES.

14 INDEMNITIES AND LIABILITIES

14.1 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 acts or omissions in the performance of its obligations hereunder.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 14.2 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 omission in the performance of its obligations hereunder.
- 14.3 In the event that, in breach of its obligations hereunder, the LESSEE fails to develop the LEASED PREMISES, the LESSEE shall indemnify the LESSOR for all costs and liabilities incurred by the LESSOR in respect of the LESSOR'S obligations.
- 14.3.1 If the provision of Clause 15 applies prior to the expiration of this Lease Agreement, the amount payable shall be an amount equal to the aggregate of all the costs, expenses and liabilities incurred in lieu of time spent in managing the Port Facilities by LESSEE estimated by an independent accountant jointly appointed by both parties.
- 14.3.2 Except where otherwise stated in this Lease Agreement, the duties, obligations and liabilities of the parties hereto are intended to be several and not joint or collective and nothing contained in this lease agreement shall be construed to create an association, trust, partnership or joint venture amongst the parties hereto and each party shall be liable individually and severally for its own obligations under this lease agreement.
- 14.4 On the expiration of this agreement the Port Facilities shall automatically revert to the LESSOR without the payment of any compensation.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

14.5 The LESSEE'S liability to the LESSOR in connection with the development, management and operation of the Port Facilities shall be limited to monetary compensation.

15. SURRENDER

If at anytime during the Term hereby granted the LESSEE is desirous of surrendering its interest under this Lease Agreement, the LESSEE shall be permitted by the LESSOR to do so subject to the following conditions:-

- 15.1 Service by the LESSEE of six (6) calendar months notice to the LESSOR
- 15.2 Payment by the LESSEE of accrued rents together with all other taxes, charges, assessments, impositions and outings up to the effective date of termination or surrender.
- 15.3 The LESSEE at its own expense except where otherwise required by the LESSOR so to do shall dismantle and cart away conveyor system, loading/discharging towers, oil platforms and other non permanent structures and things erected or mounted on or affixed to or laid on the LEASED PREMISES.
- 15.4 The LESSEE shall pay penal rent at the rate of double the rent payable at the time under this agreement per week or part of a week thereof overstayed beyond the date of expiration of the notice of surrender served by the LESSEE on the LESSOR.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

15.5 That in the event of the LESSEE defaulting to pay all or any of the various sums under clause 15.2 to 15.4 above, the LESSOR shall be at liberty to distress for same as rent.

16. GOVERNING LAW

This Lease Agreement shall be governed by and construed in all respect in accordance with the laws of the Federal Republic of Nigeria. For implementation of this Lease Agreement and all its consequences, each party waives such of its rights and privileges under any other law or legal system.

17. DISPUTE RESOLUTION

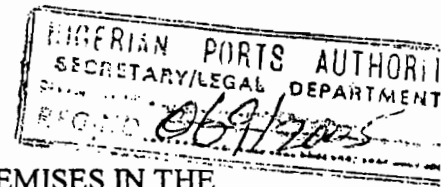
17.1 In the event of a dispute between the LESSOR and the LESSEE arising out of, or relating to this Lease Agreement, its interpretation or performance hereunder, the parties shall exert their best efforts to resolve the dispute amicably through negotiations.

17.2 Any dispute, controversy or claim arising out of or in relation to or in connection with this Lease Agreement and the activities carried out hereunder, including without limitation any dispute as to the construction, validity, interpretation, enforceability or breach of this Lease Agreement shall be exclusively and finally settled pursuant to the dispute resolution process described in clause 17.4

17.3 In the event that a dispute or difference arising from this Lease Agreement cannot be resolved amicably by the parties through negotiations within sixty (60) days of the commencement of such negotiations, such dispute shall be referred to the process described in clause 17.4 for settlement.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 17.4 Any dispute, controversy or claim arising out of or relating to this Lease Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of Arbitration of the Regional Centre for International Commercial Arbitration, Lagos. The arbitration shall be held in Lagos, Nigeria or such other place as agreed by the parties. The arbitral tribunal shall consist of three (3) arbitrators. The Party initiating the arbitration shall give written notice to the other Party of the arbitrator that it nominates. Within (14) Days of the receipt of such notice, the other party shall give to the initiating party a written notice indicating the name of the arbitrator nominated by him, and if such nomination is not made within ten (10) days thereafter the other party may apply to Regional Centre for International Commercial Arbitration, Lagos for the appointment of the second arbitrator. 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, either party may apply to Regional Centre for International Commercial Arbitration, Lagos for the appointment of the third arbitrator. All three arbitrators shall also be proficient in the written and spoken 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 such 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 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



LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

18. ASSIGNMENT.

This Lease 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, without the LESSEE'S consent. When duly assigned in accordance with the provisions of this clause, this Lease Agreement shall be binding upon the parties, any assignment not in accordance with this clause shall be void and without force or effect.

19. SURVIVAL.

All rights accrued prior to the termination of this Lease Agreement shall survive its termination.

20. ENTIRE AGREEMENT.

The terms and provisions contained in this Agreement (including the Appendix) constitute the entire agreement between the parties with respect to the subject matter hereof.

21. NOTICES.

21.1 Any notice given under this Lease Agreement shall be in writing and may be served:

21.1.1 By delivering to the address of the party given herein;

21.1.2 By registered or recorded delivery mail;

21.1.3 By telex or facsimile transmission or

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

- 21.1.4 By any other means which any party specifies by notice to the others.
- 21.2 Each party's address for the service of notice shall be above mentioned address or such other address as specified by notice to the others
- 21.3 A notice shall be deemed to have been served:
- 21.3.1 If it was served at the address of a party, at the time of service;
- 21.3.2 If it was served by post, 48 hours after it was posted; and
- 21.3.3 If it was served by telex or facsimile transmission, at the time of transmission.
- 21.4 The facsimile numbers for notices are:

NIGERIAN PORTS AUTHORITY

Fax No: 01-2630306

INTELS NIGERIA LTD

Fax No: 084-610553

Notices or communications will be deemed received as follows:

If sent by DHL, UPS or equivalent recognised Courier Company one week after having been sent;

If delivered personally, at the time of delivery;

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

If sent by facsimile, at the time of confirmed transmission by the sender's facsimile machine occurs after 17.00 in the jurisdiction of the recipients on a Business Day or on a day, which is not a Business Day, receipt will be deemed to take place at 10.00 on the next following Business Day.

22. CONFIDENTIALITY

Each party agrees to hold in confidence for a period of five (5) years following the termination of this Lease Agreement, any information supplied to such party (the "Receiving Party") by the other party (Disclosing Party") and related to the LEASED PREMISES, the Movable Assets, the operations or this Lease Agreement. The Receiving Party shall be entitled to disclose such information to its officers, directors, employees 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 clause shall not apply to information within any one of the following categories or any combination thereof:

- 22.1 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.
- 22.2 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



LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

22.3 Information received by the Receiving Party from a third party having no obligation of secrecy with respect thereto.

22.4 It shall not be a breach of the obligation of confidential information as required by Applicable Law.

23. NO WAIVER.

A failure of any party to enforce any of the provisions of this Lease Agreement or to require compliance with any of its terms at any time during the term of this Lease Agreement shall in no way affect the validity of this Lease 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.

24. SEVERABILITY.

The invalidity of one or more phrases, sentences, clauses, contained in this Lease Agreement shall not affect the validity of the remaining portions of this Lease Agreement so long as the material purposes of this Agreement can be determined and effectuated.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

25. FURTHER ASSURANCES.

The parties agree to provide such information, execute and deliver any such instruments and to take such actions as may be necessary or reasonably requested by the other party that are not inconsistent with the provisions of this Lease Agreement and that do not involve the assumptions of obligations other than those provided for in this Lease Agreement, in order to give full effect to this Lease Agreement and to carry out the intent of this Lease Agreement

26. CONTRACTS RIGHTS OF THIRD PARTIES

The LESSOR and the LESSEE mutually acknowledge that a person who is not a party to this Lease Agreement has no right to enforce any term of this Lease Agreement and the parties to this Lease Agreement do not intend that any third party rights are created by this Lease Agreement other than is expressly provided for in this Lease agreement.

27. SUPREMACY OF THIS AGREEMENT

This Lease Agreement supercedes and replaces all previous Lease Agreements granted by the LESSOR to the LESSEE over the LEASED PREMISES including the memorandum of understanding dated 27 April 2001, and no amendment or alteration of any terms or terms of this Lease Agreement shall be effective except if reduced into writing and executed by the Parties in the same manner in which this Lease Agreement has been executed.

LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR



28. COST

The LESSOR and LESSEE shall pay equally all reasonable and necessary solicitors' charges in accordance with Applicable Law and disbursements incurred in connection with the preparation, completion and execution of this Lease Agreement and a counterpart of it.

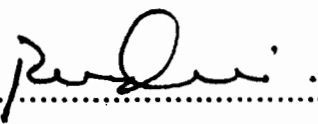
LEASE AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE
PORTS OF ONNE, WARRI AND CALABAR

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THEIR RESPECTIVE
COMMON SEALS TO BE AFFIXED HERETO ON 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:


.....
Managing Director


.....
Secretary

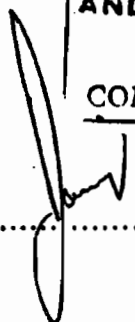
THE COMMON SEAL OF THE WITHIN NAMED LESSEE

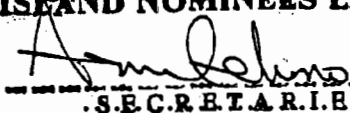
INTELS NIGERIA LIMITED

Was hereto affixed

In the presence of:

OPINION OF THE COMMISSIONER OF
STAMP DUTIES CHARGEABLE WITH A
DUTY OF #18765089. =
AND THE DUTY THEREON HAS BEEN
ASSESSED ACCORDINGLY
15/8/05
COMMISSIONER OF STAMP DUTY


.....
Director

ISLAND NOMINEES LIMITED

.....
Secretary

ANGUS SURVEYS NIGERIA, LIMITED

Address

305 PAMBA EBOHESSEWAY
BAGDADUWARI JUNCTION
PORTHARCOURT
RIVERS STATE

Tel: 084-89981, 89982

PROPERTIES

Paved Stacking Area = 101,680.70 Sq m
Unpaved Stacking Area = 16,300.00 Sq m
Bare Site = 1,060,430.00 Sq m
Warehouse 2 = 3,000.00 Sq m
Warehouse 3 = 6,000.00 Sq m
Workshop = 2,181.11 Sq m
Office Space = 102.64 Sq m

Quoted True Copy of Original Plan
Made by me on 25/06/2004

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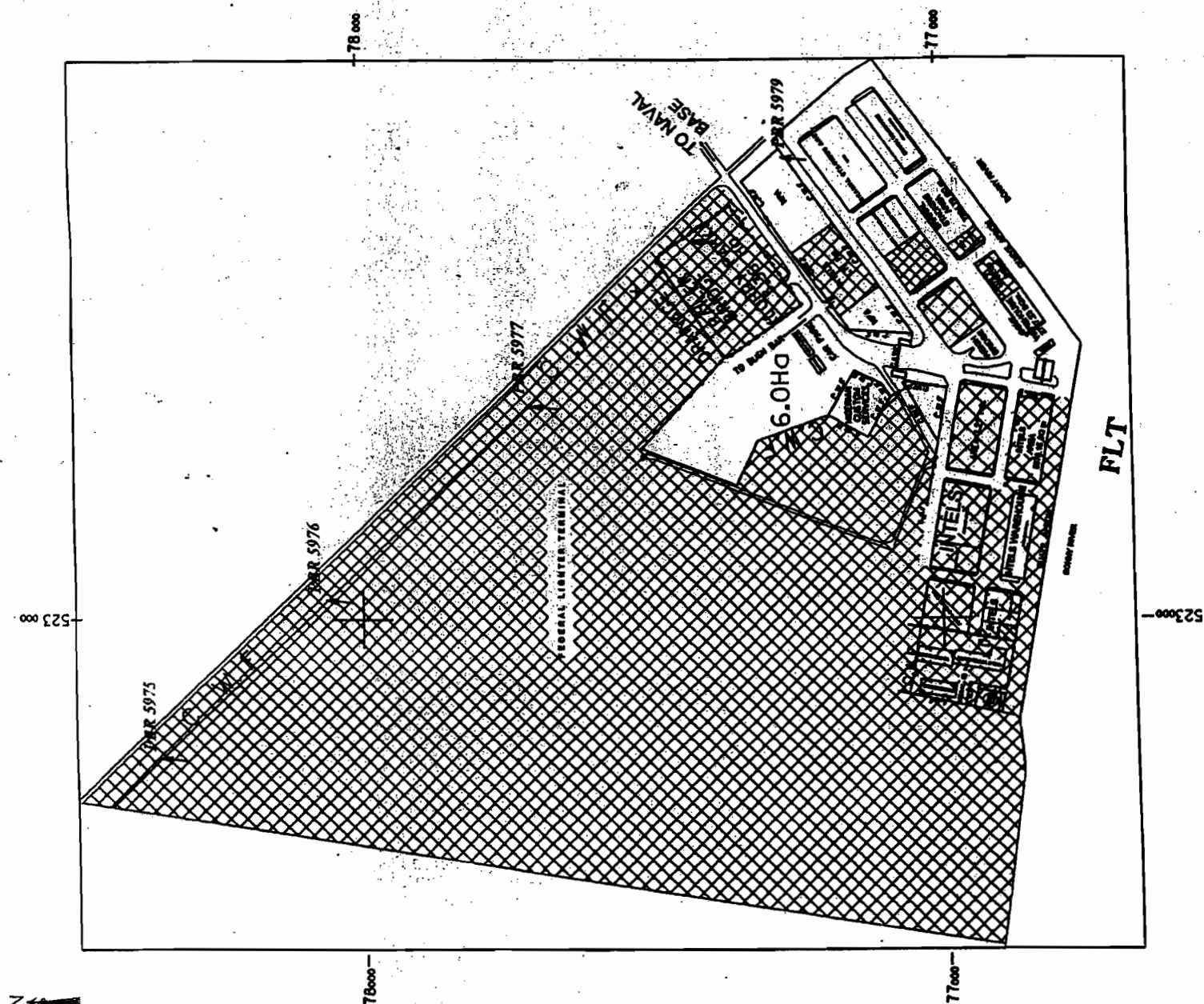
SEN. ANGUS T. ADENIRAN (Jr) (Jr) (Jr)
REGISTERED SURVEYOR

SCALE 1:2000

50 0 50 100 150 200 250 300 350 metres

INTELS NIG. LIMITED

PLAN SHEWING LANDED PROPERTY
OF
NIGERIAN PORTS AUTHORITY
LEASED TO
INTELS NIG. LIMITED
AT
FEDERAL LIGHTER TERMINAL
CABIE DOCT





PROPERTIES

Partially paved S/A	= 147,465.76 Sq m
Paved Stacking area	= 63,793.57 Sq m
Unpaved Stacking Area	= 209,874.24 Sq m
Warehouse 9A	= 7296.44 Sq m
Warehouse 9B	= 7,200.00 Sq m
Uncompleted Warehouse	= 7,200.00 Sq m
Warehouse with and without roof	= 3,957.50 Sq m
Offices	= 483.48 Sq m

76000

76 000

F.O.T

FOT

Certified true copy of original plan made by me
on 23rd August 2004

Angus I Adimora
Surv. ANGUS I ADIMORA BSc(Hons) MNIS
REGISTERED SURVEYOR

75000

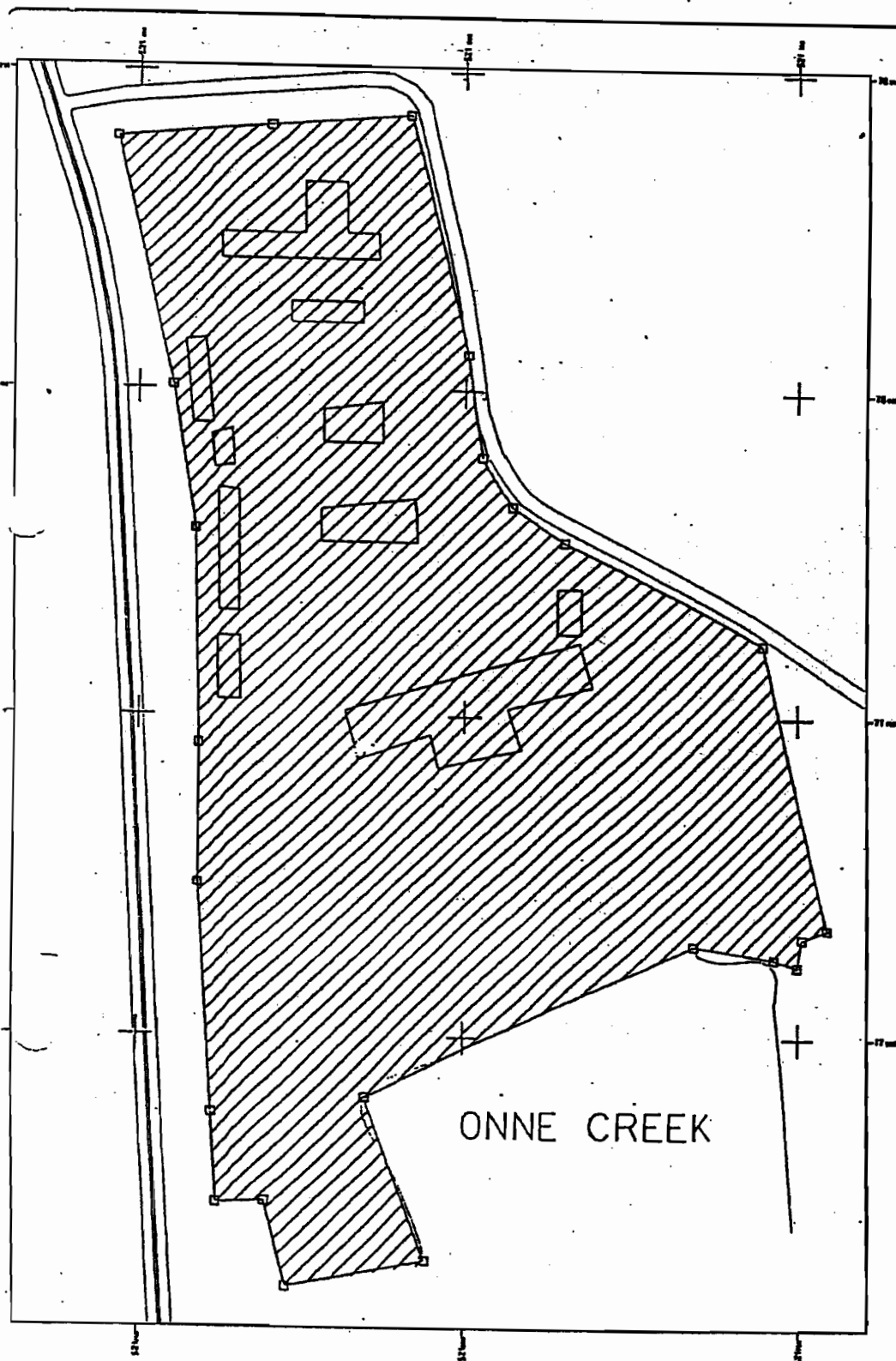
INTELS NIGERIA LIMITED

PLAN SHEWING LANDED PROPERTY
OF
NIGERIA PORTS AUTHORITY
LEASED TO
INTELS NIGERIA LIMITED
AT
FEDERAL OCEAN TERMINAL
ONNE PORTS

Scale 1:5000

Author :	Encl.	Date :
Report :		Drawing Refer:

A. Afelumo



Produced by:

ANGUS SURVEY S NIGERIA LIMITED

PROPERTIES

Paved Stacking Area	=	4,810.40 Sq m
Unpaved Stacking Area	=	2,154.61 Sq m
Warehouse	=	898.91 Sq m
Workshop	=	5,018.87 Sq m
Bare Site	=	232,850.12 Sq m
Offices	=	860.09 Sq m

Certified True Copy Of Original Plan
Made by me on 23/8/2004.

Ad. Mora

Surv. ANGUS I AD. MORA BSc. (Hons) MN
REGISTERED SURVEYOR

Scale 1: 3500

INTELS I.T.T

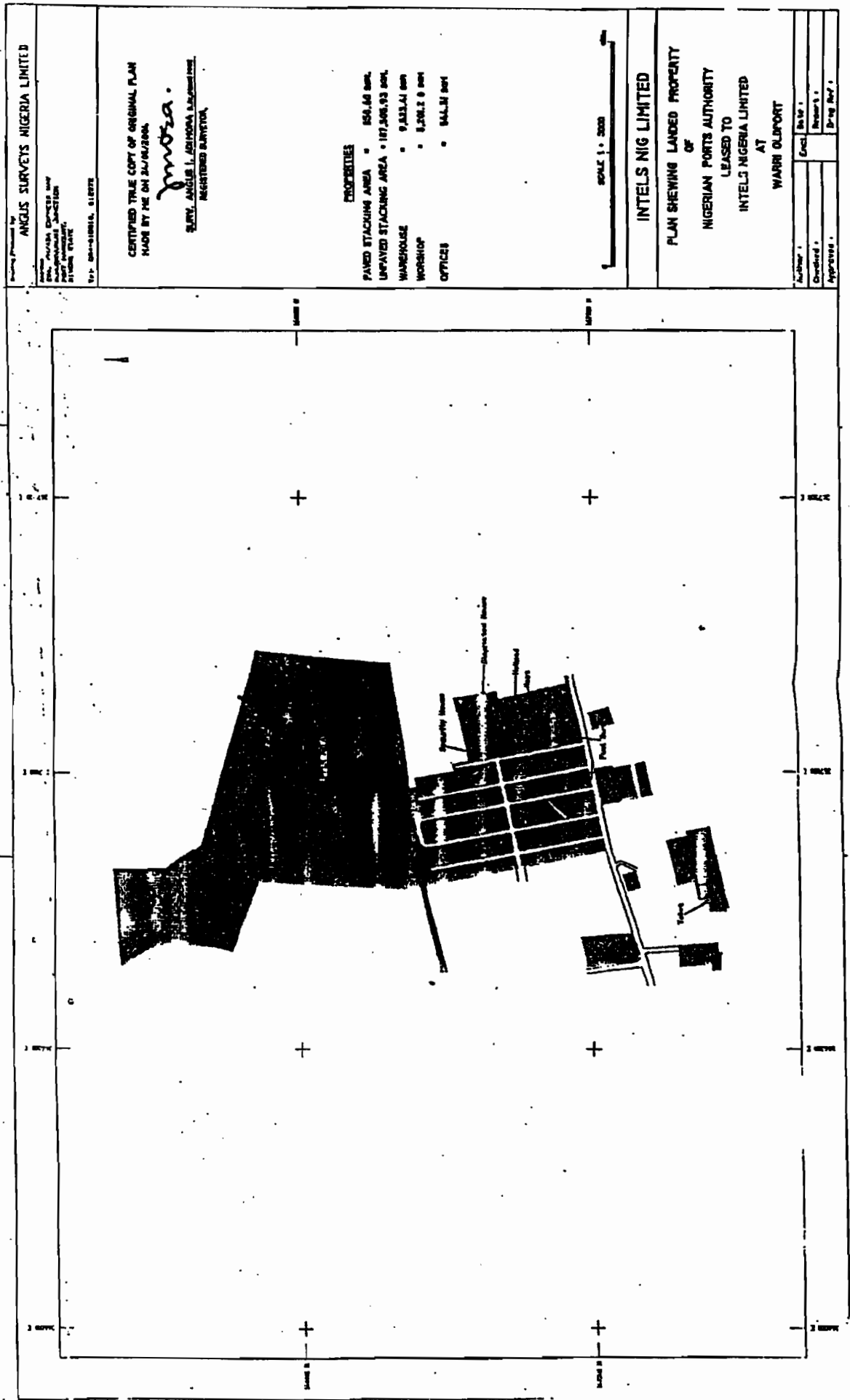
PLAN SHEWING LANDED PROPERTY
OF
NIGERIAN PORTS AUTHORITY
LEASED TO INTELS NIGERIA LIMITED
AT F.O.T
ONNE PORTS

ntsisit.dgn Sep 03, 2004 13:19:46

APPENDIX 4
LEASED AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE PORTS OF ONNE, WARRI AND CALABAR
BETWEEN NPA AND INTELS NIG. LIMITED

A. Afelumo

A. Afelumo



APPENDIX 4
LEASED AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE PORTS OF ONNE, WARRI AND CALABAR BETWEEN NPA AND INTELS NIG. LIMITED

ANGELUS SURVEYS INCORPORATED

David M. Cohen
President
Hollister Pharmaceuticals
4700 18th Avenue SW
Seattle, WA 98148

[illegible]

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NUMBER 171111 AND 171112

prosa.

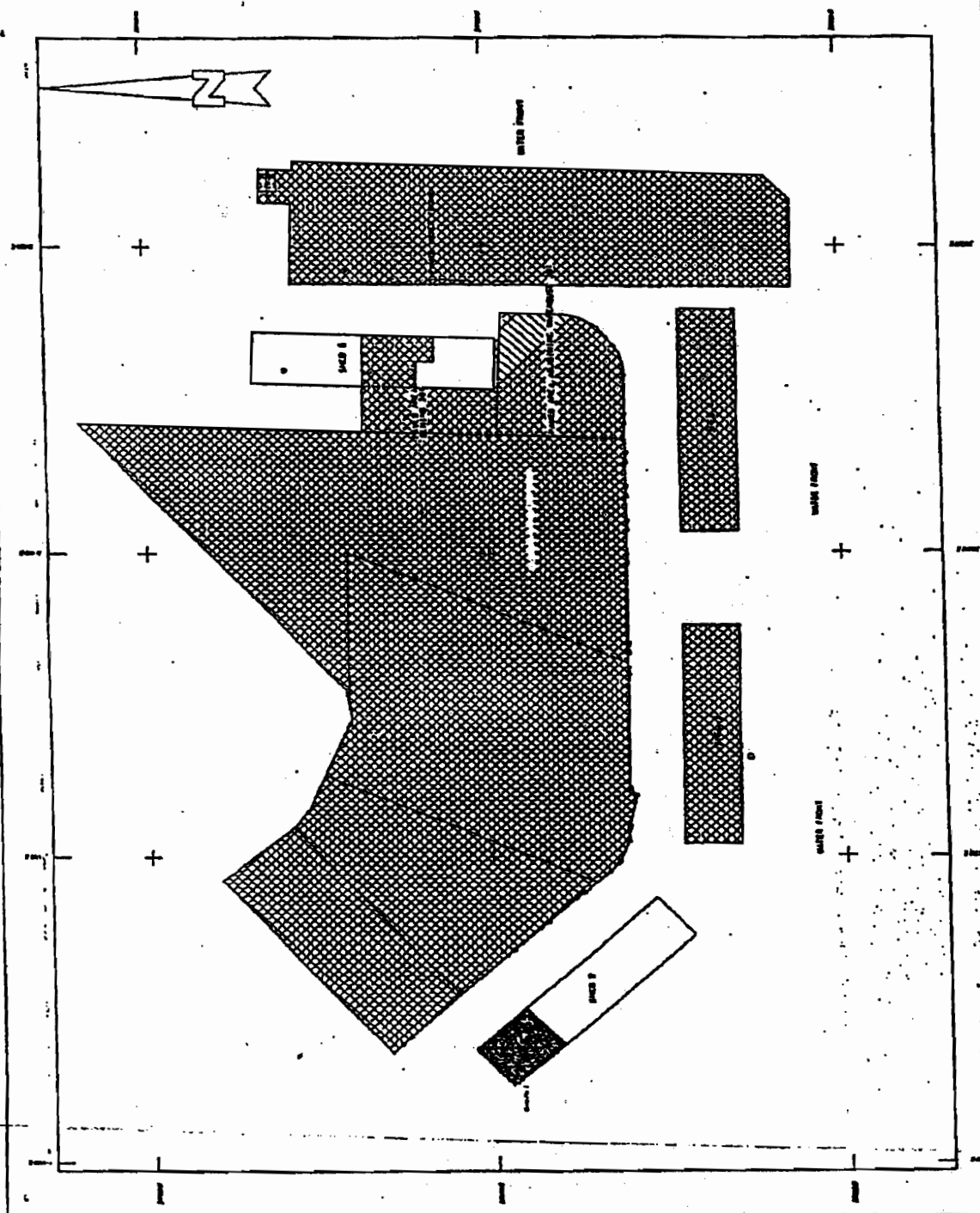
**SUNY, ARTHUR L. ALTMAN, INC. (a.k.a.) NINE
REGISTERED SURVEYOR**

PROPERTIES

Paved Stacking Area = 37,982.59 Sq ft
 Unpaved Stacking Area = 938,493.03 Sq ft
 WH Stnd 2,3 & 4 = 18,616.62 Sq ft

11-17-04

INTELS NIG LIMITED
PLAN SHEWMING LANDED PROPERTY
OF
NIGERIAN PORTS AUTHORITY
LEASED TO
INTELS NIG. LIMITED
AT
WARRI NEW PORTS



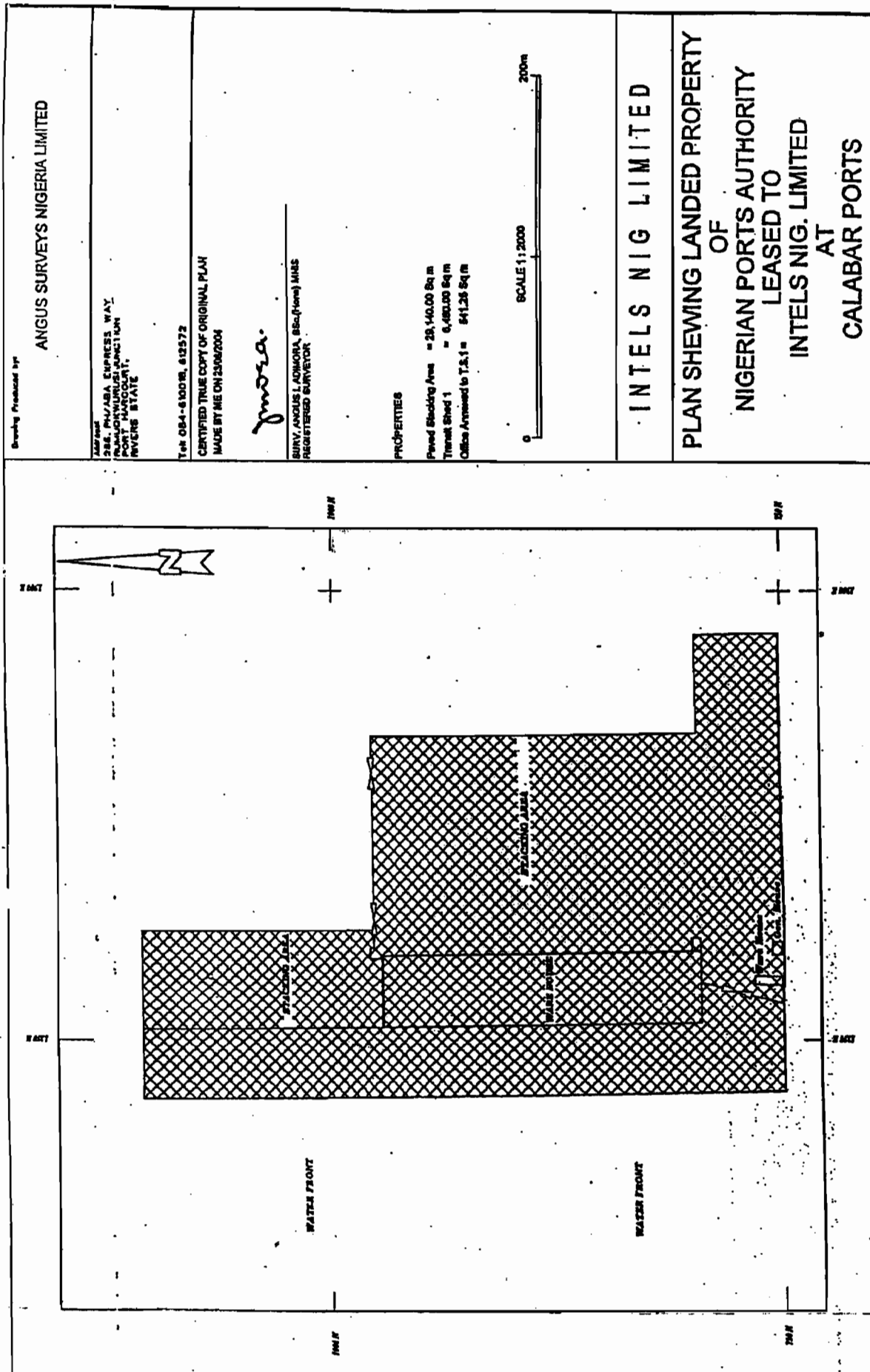
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APPENDIX 4

LEASED AGREEMENT FOR DEVELOPMENT OF LEASED PREMISED IN THE PORTS OF ONNE, WARRI AND CALABAR BETWEEN NPA AND INTELS NIGERIA LIMITED

A. Afelumo

A Afelumo



22.09.04 Sep. 04, 2004 12:52:12

APPENDIX 4
LEASED AGREEMENT FOR DEVELOPMENT OF LEASED PREMISES IN THE PORTS OF ONNE, WARRI AND CALABAR BETWEEN NP&A AND INTELS NIGERIA LIMITED

Drawing Produced by
ANGUS SURVEYS NIGERIA LIMITED

228, PH/ABA EXPRESS WAY
KALAMONWURU, ANKPA
NORTH CENTRAL
NIGERIA STATE

Tel: 084-810018, 612572

CERTIFIED TRUE COPY OF ORIGINAL PLAN
MADE BY ME ON 23/09/2004

gnora.

SURV. ANGUS L. ADIMORA, BSc.(Hons) MARS
REGISTERED SURVEYOR

INTELS NIG LIMITED

**PLAN SHEWING LANDED PROPERTY
OF
NIGERIAN PORTS AUTHORITY
LEASED TO
INTELS NIG. LIMITED
AT
CALABAR PORTS**



Appendix F
LEASE FEES

Redacted

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

Redacted

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

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

MECHANISM FOR THE COLLECTION OF THROUGHPUT FEES

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

DELAY IN PAYMENT

Subject to the provisions of Section 17.5 of the Agreement, the Lessee shall make payment to the Lessor by telegraphic transfer within five (5) Business Days of the date of the relevant invoice. If any agreed sum is not paid within such period, the Lessee shall pay the Lessor interest at a rate equal to LIBOR plus five per cent (5%) on the unpaid amount, until the date of actual payment.

A. Afelumo

Chase



BANK ACCOUNT DETAILS

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

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A. Afelumo

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Appendix G
BERTHS

A. Afelumo

Chase

A large, stylized handwritten signature in black ink.



Appendix H
OPERATIONS RATES

A. The Stevedoring Services tariff

Redacted

B. FREE STORAGE TIME

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

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Appendix I
STAFFING AND SUCCESSION PLAN

STAFFING STRATEGIES

• **HUMAN RESOURCES VISION, MISSION AND POLICY**

Vision

To attract the most qualified employees and match them to the jobs for which they are best suited to achieve business objectives and the success of Intels.

Mission Intels Nigeria is committed to;

- Providing the leadership, environment and training to promote personal development and team spirit,
- Using the abilities of every member of staff to provide the most responsive, customer driven service in the business,
- Developing a culture where Intels is seen as an “**EMPLOYER OF CHOICE**” and one that presents a positive image to all concerned, e.g. the employees, the clients, contractors, employers’ bodies, authorities, trade unions and the public.

Human Resources Policy

Intels, in providing for the well-being and security of its human capital, will be guided by the following principles:

To determine the manpower skills, size and competence required to meet present and future needs of the Company.

To provide the right environment and resources that will facilitate staff career growth on merit regardless of ethnic origin, religion, sex, age or physical disposition.

To offer reward and compensation that is fair and competitive within the industry with a view to attracting, motivating and retaining competent and resourceful employees.

Capt. Damir Miskovic

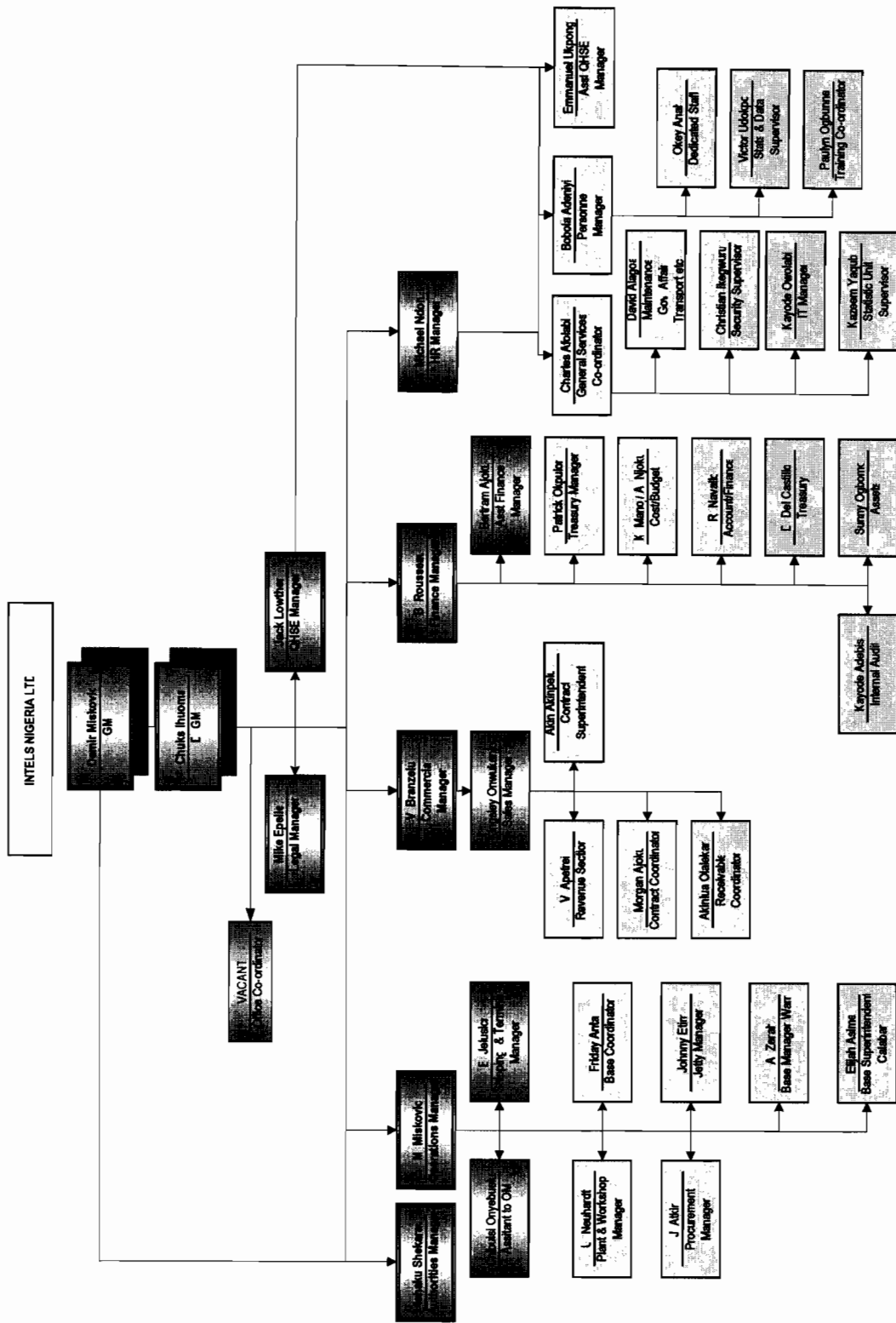
General Manager

April 2004

A- Afelumo

Chase

(i) Management Structure



BPE/NPA & Intel's Nig. Ltd. (Lease Agreement Calabar Terminal 'A')

A. Afehinbo

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A. Afekeumo

Else.





(ii) Initial Requirements

Breakdown of Employee strength at various work locations, December 2004

Work Locations:		Expatriate						National					
		ONNE			WARRI			ONNE			WARRI		
		FOT	FLT		Old	New	CALABAR	FOT	FLT		Old	New	CALABAR
1	Staff Categories												
	Regular	18	11			1		135	83		2	22	6
	Dedicated/Operations	10	6					33	4		1	5	1
	Finance and Administration	6	3					23	10			2	
	Managerial	7	4			1		19	4		1	5	1
	Engineering Services							15	10				
2	Direct Contract							1				1	
3	Direct Contract (Dedicated)							329	189		5	87	21
4	Third Party Contract							318	137		5	86	23
5	Equipment Operators							3					
6	Graduate Trainees							52	24			3	2
7	Trainees (IT/NYSC)							271	195		6	98	24
8	Dockworkers							1,199	656		20	309	78
	Subtotal:	41	24			2							
9	Contract/Armed Securities							223	101		3	40	
10	Lessor Drivers							82	37		2	10	1
	Overall Total:	41	24			2		1,504	794		25	359	79

[Handwritten Signature]

2,278

A. Afelumo

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(iii) Labour Deployment Policies

Intels Nigeria Limited works a two shift system and does not employ part time staff. Work is carried out on a seven days a week, twenty fours per day basis. This is described in more detail in Section (e) Operating Plan.

(iv) Training Time and Resources

As business organisations operate in a dynamic environment, there is a constant need for change in technologies, management style and strategies. Intels Nigeria is committed to promote personal development and team spirit by due training and retraining of its employees, and expects that each staff member receive a minimum of 20 hours of systematic training in every two years.

(iii) Training and Development Planning

Training and development planning is supported by the Intels Nigeria Training & Development Policy, which includes:

- 1) Appropriate annual T & D plans
- 2) Staffing and succession plans
- 3) Recommended training providers
- 4) Best practice procedures
- 5) Reliable evaluation
- 6) Relevant management reports
- 7) Accurate individual records
- 8) Appropriate cost/benefit analysis
- 9) Realistic budgets
- 10) Useful information, i.e. regular circulation of management development topics for personal reading.

In addition, Internal and External Training Schedules are compiled, which are circulated to employees on regular basis and are displayed on the internal website (Intranet) together with other Human Resources and T & D information.

Whilst always seeking to appoint the most suitable candidate, the Company encourages internal promotions wherever possible. Likewise the development of employees' skills and experience through transfers to different areas of the Company is also encouraged.

Appraisals are carried out annually to assess the employees' performance over the last year and to consider the suitability for promotion to higher levels of responsibility and increases in salary. The appraisals are also used to identify any training needs requirements for the coming year. Promotion to a more senior position is subject to the availability of a suitable position. Promotion is achieved through commitment to superior performance and by demonstrated improvements in skills and abilities, through training and experience.

The need to have a deliberate staffing and succession plan of ensuring that Intels Nigeria has at her disposal quality personnel available for present and future needs of the organization cannot be over-emphasized. To achieve this, development activities for employees within the organization are identified, reviewed and improved and a three tier succession plan has been put in place, which is aimed at preparing employees with future potentials at various levels for duties and responsibilities at higher levels of the organization, from junior to supervisory to management level.

Significant sums are invested each year in the development and training of staff at all levels. Courses are run in the following areas: Management Development on core competencies; Performance Management; Supervisory Management; Induction and Familiarisation and Industrial Relations, as well as specific hard skills such as Accounting, Logistics, Secretarial, etc.

A. Afelumo

Chase



Repeatedly, staff are given the opportunity to attend training programmes abroad e.g. in South Africa, Ireland, and the UK (Management Development and Strategies, IT, and Lawyer's Issues). Training Providers from abroad are invited to train top and junior Management in Leadership and other (e. g. negotiation) skills.

Intels Nigeria places the utmost emphasis on the Information Technology for the organisation and it has invested heavily to ensure that it has up to date Management Information System in place. The Microsoft Navision System, provides significant new skills for the team.

In line with the company's policy on assisting those with disabilities, Intels Nigeria provides scholarships to the disabled and handicapped at Primary and Secondary Education levels, University Education and Industrial Training. On successful completion of their training the sponsored students will be offered training / work placement with a view to full time regular employment in due course.

Also, Intels Nigeria trains a significant number, about thirty, of University graduates and graduates of the Maritime Academy in all different departments for one year. The graduates are exposed to all operations of the company in its various departments and their skills are regularly assessed. After successful training, the graduates are taken over by the company as full employees. Usually, 95% of the candidates are recruited.

In recognition of the important role of training and development in building nations and corporate organizations, Intels Nigeria has registered with the Industrial Training Fund.

Furthermore, in order to contribute to the availability of relevant skills required by the operating companies within Intels Nigeria catchment area, the Company has embarked upon training of indigenes to gain the technical and related skills. Successful trainees are either employed by the Company or available for other companies working in the area.

Intels Nigeria has also provided scholarships to Nigerians of all its immediate operating communities to pursue higher education in various colleges, apart from constructing classroom blocks in their immediate community, all of which has contributed to a peaceful relationship between Intels Nigeria and its host communities.

Intels Nigeria also recruits well-qualified and experienced expatriate professionals to ensure providing added value to the company. To ensure that these expatriate employees get to know the 'company thinking' on HSE awareness and keep abreast with modern developments in such issues, they are actively engaged in relevant training schemes and other programmes to enhance soft skills in management competencies as appropriate.

Intels Nigeria is giving specific professionals the opportunity to attend professional workshops in related areas like maritime laws, labour practice, quality management etc. The company encourages employee's membership of professional bodies and the continuous development of their profession. The company pays for appropriate membership fees and for attendance at annual conferences. The company has spread its training schemes over all different departments to enable supervisors to attend training programmes for the improvement of their skills in their field like administration, accounts, human resources, marketing, procurement, etc.

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(v) Succession Planning

Staffing and Succession Plan

Intels Nigeria Limited's Succession Planning addresses the needs and requirement of ensuring that a constant stream of highly trained and motivated people are available to ensure the future stability of the Company and to ensure that growth and expansion plans of the Company can be achieved. It also is intended to ensure a positive expansion of the skills and technology base of the National employees is enhanced and increased to allow a structured replacement of expatriate manpower with suitably qualified and experienced Nigerians.

The current ratio of Nigerian staff expatriates to is **34:1**. This compares favourably with other similar port operators in the area. In addition it is also reasonable when benchmarked against other overseas operators. The Company will endeavour to reduce the number of expatriates and consequently increase the ratio by the year 2008. For each expatriate position, there are two designated Nigerian employees who will follow the succession plan to receive the necessary training and development to enable them to take on additional responsibilities. The target of the additional positions is that, depending on the level of capability, the Nigerian staff will assume the responsibilities of the expatriate managers within a 5 year period.

The need to have a deliberate plan for staffing and succession in line with Intels Nigeria Limited Training and Development Policy cannot be over-emphasised. Succession planning, along with workforce management in general, is increasingly regarded as a growing influence in determining the success of an enterprise. If it is undertaken effectively, it ensures that the company has capable and trained leaders to guide the growth. Intels Nigeria is committed to fully integrate the process of succession planning in her corporate strategy.

Intels Nigeria succession plan is geared to identify and develop future managers and leaders, to transfer knowledge and reduce turnover among the company's talent. Succession solutions are founded in analysing the areas of talent management and selection, leadership development, competency modelling, strategic planning, leadership coaching and assessment, and performance management.

Intels Nigeria must have at her disposal quality personnel available for the current managerial requirements and future needs of the company to achieve the overall business goals of Intels Nigeria.

To achieve this, Intels Nigeria's succession plan identifies potential succession opportunities and assists in planning future staffing needs. It does this by reviewing and improving training and development activities for her employees within the organisation by the following approach:

1. Prepare development objectives for employees based on
 - a. Realistic and balanced assessment of current competencies,
 - b. Potential future competencies and
 - c. Career aspirations in line with current and anticipated team / organizational requirements.
2. Encourage employees and assist them to
 - a. Evaluate their own learning and development needs
 - b. Contribute to planning a career within the organization and
 - c. Regularly review the individual development.
3. Design development plans that contain
 - a. Clear, relevant and realistic objectives and
 - b. Details of supporting development activities.

A. Afelumo

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In addition to development issues derived from the above, guidance and assurance is provided for any individual employee striving to improve himself. A three tier Succession Plan (See Table for details) is available and can be discussed with the Training and Development Specialists. This plan, which is used for any individual employee, aims at empowering him with future potentials, which prepare him for higher levels of duties and responsibilities within the organisation.

The succession plan motivates employees to strive for completion of clearly defined career development modules. The successful completion of a module guarantees future career progression opportunities and eligibility for promotion, a strong motivator for any employee of Intels Nigeria, the "Employer of Choice".

By following the succession plan employees can undertake more satisfying work, improve their abilities to express themselves and achieve higher levels of self-actualisation and self-fulfilment. On the other hand, Intels Nigeria has the opportunity to match suitable people to specific jobs, build "bench strength" and redeploy employees in response to changing business needs.

Intels Nigeria is committed to promote personal development and team spirit by due training and retraining of its employees, and expects that each staff receive a minimum of 10 hours of systematic training in every two years.

The Succession Plan for the various levels of responsibility and its module contents is outlined below.

A. Afelumo

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Intels Nigeria's Succssion Plan

INITIAL LEVEL	HIGHER LEVEL WITH MORE RESPONSIBILITIES	MANDATORY SUCCESSION TRAINING & DEV. MODULES	MINIMUM ENTRY QUALIFICATION
Junior	Supervisory	<ul style="list-style-type: none"> Report writing How to handle grievances/complaints How to supervise people Supervisory skills 	OND or equivalent in any discipline related to the job, PLUS a minimum of 4 years working experience
Supervisory	Management	<ul style="list-style-type: none"> Basic management soft skills Staff appraisal training Training needs analysis Rudiments of human resources management Team building Effective communication skills Requisite professional / technical skills Negotiations skills Understanding Management Budgeting 	University degree or professional certificate from a recognised institution or professional body PLUS a minimum of 6 years working experience
Management	Senior/Executive Management	<ul style="list-style-type: none"> Finance for non finance Executives Advanced negotiation skills Executive management development Presentation skills Strategic planning and decision making Attendance at requisite professional conferences / seminars 	Same as above PLUS a minimum of 7 years working experience. A post-graduate qualification such as e.g. MSC, MBA, MPA, is an added advantage.
Management	Directorship	All of the Above	Eligible only in line with Company's Corporate Memoranda and Articles of Association.

A-Afelumo

Case.



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 24th October 2005 (the "Lease Agreement") between the Nigerian Ports Authority (the "Lessor") and [insert the Lessee's name] (the "Lessee"). This Performance Bond is being submitted to you pursuant to the instructions received from the Lessee.

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

1. Guaranteed Obligations. The obligations of the Lessee to pay the due and payable Fixed Payment and all financial penalties due and payable following an arbitration award by the Lessee thereunder are hereby guaranteed (collectively, the "Guaranteed Obligations").
2. Guaranteed Amount. The undersigned's total aggregate liability from the date hereof until the final annual renewal of this Performance Bond shall not exceed the amount of 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.

A - Afelumo

Use



3.3. A copy of the Lessee Demand.

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

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

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

[NAME OF FINANCIAL INSTITUTION ISSUING GUARANTY]

Name:

Title:

A. Afelumo

Chase



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.

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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 BREAKBULK CARGO THROUGHPUT AS PROPOSED BY THE LESSEE FOR
CALABAR TERMINAL A**

Redacted

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Appendix M
Dredging Plan

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