

**Project Summary of  
West African Container Terminal  
A Public Private Partnership  
Between  
Nigerian Ports Authority  
And  
West African Container Terminal**

**February, 2005**

**Disclaimer**

This summary should not be relied on as a complete description of the rights and obligations of the parties to the project and is not intended for use as a substitute for the contracts.

## Abbreviations and Acronyms

<b>NPA</b>	Nigeria Ports Authority
<b>IE</b>	Independent Engineer
<b>ICRC</b>	Infrastructure Concession Regulatory Commission
<b>RfP</b>	Request for Proposal

## Introduction

The Terminal handles general cargo, vehicles and containers.

The agreement is for the lease of the concession premises and certain immovable property affixed to it, purchase of certain movable property, improvements to the premises and performance of certain operations, maintenance and other services to the leased property.

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

## Project Summary:

### Part 1 Project Overview

- **Project Name:** West African Container Limited
  - **Status:** functional
  - **Name of Contracting Authority:** Nigerian Ports Authority
  - **Name of Concessionaire:** West African Container Limited
1. **Scope of the Project:** Construction, executing, carrying out, improving working and developing port docks, harbor and pier
- **Construction period:** 25YEARS Contract Term

**Mode of Financing:** Fixed staggered annual lease fee. Throughput fee adjusted on annual basis in accordance with the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S City Average for all Items

- **Project Benefits:** Provision of world class cargo terminal and services

**Bidding brief:** Pursuant to the said NCP approval, BPE, on 10<sup>th</sup> June, 2004 invited bids from the FMN for a right to enter into an agreement with the Lessor to lease the real property in the port of Onne Rivers and certain immovable property affixed to the Premises make certain improvements to the Lease Property.

- Maintenance and other services with respect to the Lease Property.

**Approval Structure:** On July 2004, FMN submitted its bids and following an evaluation process conducted by the BPE, the right to enter into such agreement was awarded to the FMN. FMN has formed the Lessee as a special purpose vehicle, to enter into this Agreement.

**PART 2: CONTRACT INFORMATION**

**Contract Milestones**

**Date of Execution of the concession Agreement:** 7<sup>th</sup> February, 2005.

**Start Date of Concession:** 7<sup>th</sup> February 2005

**Date of Expiry of the Concession:** 8<sup>th</sup> February, 2030.

<p><u>Public Authority:</u> The Nigerian Ports Authority 26/28 Marina, Lagos, Nigeria Attention: The Managing Director</p> <p><u>ICRC</u> The Bureau of Public Enterprises 1, Osun Crescent, Maitama District PMB 442, Garki - Abuja, Nigeria</p>	<p><u>Private Entity:</u> West African Container Limited Onne Port Complex Federal Ocean Terminal, Onne Port Rivers state.</p>
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**Shareholders of the Concessionaire:**

West African Container Limited

**Provision for Equity Transfer:**

**Land and Asset Transfers to Concessionaire:** Handed over to the Concessionaire on the 7<sup>th</sup> February, 2005 as part of the conditions precedent.

**Risk Allocation**

Risk Category	Concessionaire	Grantor
Risks associated with project preparation	X	X
Permits/Approvals Risk		X
Provision of Utilities Risk	X	
Construction Risk	X	
Completion Risk	X	X
Cost Overrun Risk	X	
Technical Risk	X	

Force Majeure Risk	X	X
Operational Risk	X	
Financing Risk	X	
Demand Risk		X
Environmental Risk	X	
Termination Risk	X	X

**Expected levels of performance:**

Minimum Expected Performance Criteria	Agreed Correction Period for Failure

**Reporting and Performance Monitoring**

Clause 14.2 states that the lessee shall maintain suitable accounting and non-accounting records that summarizes technical, commercial, personnel and financial including records relating to ship and shore services.

Clause 14.3 stipulates that within 90 days following the effective due date. The lessee shall at its own cost and expenses, select and contract an Independent external auditor to perform a statutory audit.

**Dispute Resolution:** The International Court of Arbitration of the International Chamber of Commerce, Shall appoint and arbitrator and the proceedings shall be conducted in London.

**Events of default and termination**

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Main events of default	Defaulting party	Procedure for termination.	Termination Payments.
Insolvency.	lessee/ NPA	Immediate termination notice.	
Fails to perform the Operations for 14 consecutive days in an operating year or 60 non consecutive days in a non operating year.	Lessee	15 days written notice to correct.	
Fails to pay any amounts due in accordance with the Agreement.	Lessee /NPA	Same as above	
Commits a breach of a material provision this Agreement.	Lessee /NPA	Same as above	

Lease property (in whole or in part) is expropriated compulsorily acquired or nationalized by a Government Agency.	NPA.	Immediate termination notice.	
Change in Law	NPA.	Same as above	

**Termination payments:**

The termination payments for the events leading to default and termination either due to the Concessionaire or due to the Grantor or due to other reasons are described below:

Party and Events of default	Termination payment
Lessee event of default	<ol style="list-style-type: none"> <li>1. Pay to lessor any and all actual costs, expenses charges, and/or penalties incurred or sustained by the lessor as a consequence of such termination.</li> <li>2. An Aggregate amount equivalent to the lease fees payable by the lessee for 2 years following the lessee event of default if such default occurs within two years from the effective date.</li> </ol>
Lessor event of default	<ol style="list-style-type: none"> <li>1. Any and all actual costs, expenses charges, and/or penalties incurred or sustained by the lessee as a consequence of such termination.</li> <li>2. The Commencement fee, in the event that there is termination due to a lessor event of default in the first operating year.</li> <li>3. Any and all Constructions and development costs incurred by the lessee in respect of the fixed assets pursuant to the conduct of the development plan or otherwise incurred pursuant to the development of the premises in accordance with this Agreement, in the event that there is termination within 2 years from the effective date due to a lessor event of default.</li> </ol>

**Transfer clauses at expiry of contract:**

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.

**Conditions of assets:** Must have passed tests on completion

**Responsibility for defects and liabilities:** the lesse and lessor shall appoint two members to form a transition committee responsible for overseeing the implementation and liabilities.

### **Part 3: Implementation Information**

#### ***Performance Failures***

The following instances of performance failure/breach of contract were noticed during the given year with penalty imposed and paid as shown:

Yr	Description of failure or breach	No. of events	Penalty (amount in Naira)	Penalty paid Yes/No
	Failure to fund Escrow Account		None	None
	Failure to Achieve targets 1, 2, & 3		None	None

### **Part 4: Contract Variations**

Contract Clause No.	Description of Variation	Date Variation came into effect
N\A	N\A	N\A

#### **Process followed for validation of disclosed information**

[State the process followed for checking data for accuracy before proactive disclosure]

	Yes/No	Date
<b>Review and Sign-off by the ICRC</b>		2017-08-18