



## **LEASE AGREEMENT**

**by and among**

**NIGERIAN PORTS AUTHORITY  
as the Lessor.**

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

**and**

**APAPA BULK TERMINAL LIMITED  
as the Lessee**

**Apapa Port Terminal A.**

**Dated as of 24<sup>th</sup> day of October, 2005**

*[Signature]*

*[Signature]*



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## TERMINAL A

### LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this "Agreement") is made and entered into this 24<sup>th</sup> 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, whose registered office is situated at 26/28 Marina, Lagos, Nigeria (the "Lessor" which expression shall where the context so admits includes its successors-in-title, assigns and others claiming through and under it);

**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, whose registered office is situated at No.1 Osun Crescent, Maitama – Abuja, Nigeria ("BPE"), in its capacity as Confirming Party of Lessor; and

**APAPA BULK TERMINAL LIMITED** a private company incorporated under the laws of the Federation of Nigeria whose registered office is at 2 Old Dock Road, Apapa, Lagos, Nigeria ("the Lessee") being a special purpose vehicle established by **FLOUR MILLS OF NIGERIA PLC.**, a company registered under the laws of Nigeria with its registered office at 2 Old Dock Road, Apapa, Lagos, Nigeria ("FMN")

Each of the Lessor, BPE, 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 FMN had executed a lease Agreement as contained in Appendix E ("Pre-Existing 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 FMN.
- C. The Lessee is :
  - (a) a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with registration number RC. No. 623098 and
  - (b) formed as a special purpose vehicle by FMN
- D. Pursuant to the said NCP approval, BPE, on 27<sup>th</sup> January, 2005 invited bids from the FMN for a right to enter into an agreement with the Lessor to (i) lease the real property in the port of Lagos (the "Port") described and delineated in Appendix A (the "Premises") and certain immovable property affixed to the Premises as further described in Appendix B (the "Fixed Assets," and together with the Premises, the ("Lease Property"); (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.

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- E. On 15<sup>th</sup> June 2005, 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.
- F. The Parties desire to set forth the terms and conditions of such agreement, and all of their respective rights and obligations related thereto. The Lessor, FMN and the Lessee agree that the Pre-existing Lease shall not have any force or effect from the Execution Date of this Agreement.

**WITNESSETH**

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

*[Signature]*

*[Signature]*



## 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.



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

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

"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;

"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.



## 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 ninety (90) 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 (25<sup>th</sup>) anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof. Following such Twenty Fifth (25<sup>th</sup>) 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 (25<sup>th</sup>) anniversary of the Effective Date.

## ARTICLE III

### BASIC LEASE RIGHTS AND OBLIGATIONS

- 3.1 Lease In consideration of the covenants and agreements set forth in this Agreement and other good and valuable consideration, the Lessor shall lease the Lease Property to the Lessee, and the Lessee shall lease the Lease Property from the Lessor free and clear of all Security Interests, subject to the terms and conditions set forth in this Agreement.
- 3.2 Transfer of the Lease Property. Commencing on the Effective Date and continuing throughout the Transition Period in accordance with the Transition Plan, the Lessor shall transfer to the Lessee the Lease Property free and clear of Security Interests for the Term. The Lessor shall remain the owner of the Lease Property except as expressly agreed to in writing by the Lessor. Subject to the provisions of Sections 4.3(b) and 4.4, throughout the Term, the Lessee shall keep and maintain:
- (a) the Lease Property in the condition in which it is transferred to the Lessee on the Effective Date fair wear and tear excepted, and free and clear of all Security Interests arising from the performance of the Operations or any other of its obligations hereunder, and
  - (b) the Fixed Assets in good condition and working order.

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



- 3.3 Peaceful and Quiet Enjoyment To the extent that the Lessee complies with the terms and conditions of this Agreement, the Lessee shall peacefully and quietly hold, occupy and enjoy the Lease Property. In the event that any third party other than Affiliates of the Lessee conduct(s) activities or present(s) claims which interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property or the Lessee suffers any claims, causes of action, damages, or losses which may accrue and arise from the acts or omissions of other third parties having a right of use over the Premises prior to the Execution Date, the Lessor shall indemnify, defend, and hold harmless the Lessee from and against any such claims.
- 3.4 Lease Fees The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in Appendix F. Except as the Parties may otherwise agree in writing, all payments must be made in Dollars. Any amounts due but not paid thereunder shall bear interest at LIBOR plus five percent (5%) compounded monthly.
- 3.5 Common Areas. The Lessor shall grant to the Lessee for the benefit of the Lessee and its employees, contractors, customers and invitees during the Term, the non-exclusive right to use, in common with others entitled to such use (including the Lessor), the Common Areas as they exist from time to time, subject to all rights reserved by the Lessor hereunder and under the terms of all rules and regulations promulgated from time to time with respect thereto. The Lessee shall not use the Common Areas in any manner that is inconsistent with the Lessee's permitted use of the Premises nor in any manner that unreasonably interferes with the use of the Port by other occupants or users of the Port. The Lessor reserves the right from time to time, subject to the Lessor first giving the Lessee reasonable notice and provided that the performance of the Operations by the Lessee are not adversely affected to:
- (a) make changes in or to the Common Areas;
  - (b) close temporarily any of the Common Areas;
  - (c) add, eliminate or change the location of any improvements in the Common Areas and/or construct additional buildings, facilities and other improvements within the Common Areas;
  - (d) prohibit unauthorized Persons from using or accessing the Common Areas; or
  - (e) perform such other activities and make such other changes in, to or with respect to the Common Areas as the Lessor may deem appropriate.

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



- 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.



(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

*By Lessee.*





(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)(iii) 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



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



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 I, 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.



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.



## 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.



- (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 through 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 No. 623098,
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There



are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessee) threatened against the Lessee that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessee, or its ability to perform under this Agreement.

- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Lessee, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessee of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.
- (e) It is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to perform its obligations hereunder.
- (f) It has:
  - (i) carefully examined this Agreement, together with all Appendices attached hereto, thoroughly and become familiar with all their respective terms and provisions;
  - (ii) Investigated to its satisfaction all Applicable Laws and it can perform its obligations hereunder in accordance therewith;
  - (iii) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and
  - (iv) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Lease Property.

**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.



- (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.



(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.

### **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
  - (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;

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- 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 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

*Base*





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.

## 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 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:

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(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:

Apapa Bulk Terminal Limited  
2 Old Dock Road, Apapa, Lagos, Nigeria  
Attention: The Managing Director  
Telephone: +234 (01) 5453960-9, 5803370-9  
Facsimile: +234 (01) 5870395, 5871602

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.

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 ninety (90) 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  
In the presence of:

(seal)

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

Adebayo B. Sarumi  
Managing Director

Ms. Clara Etseyatse  
Secretary

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

was hereto affixed  
In the presence of:

(seal)

Mrs. Irene N. Chigbue  
Director General

Dr. Paul. O. Idornigie  
Secretary

**THE COMMON SEAL OF THE WITHIN NAMED LESSEE  
APAPA BULK TERMINAL LIMITED**

was hereto affixed  
In the presence of:

(seal)

Chief Emmanuel Akwari Ukpabi  
Chairman

Captain Emmanuel Sunmola Omotayo  
Managing Director

Alhaji Yunus Olalekan Saliu  
Secretary



**Appendix A**  
**PREMISES**

*The leased premises and assets will consist of the following facilities/areas:*

- *A 465.16m long quay deck with appropriate quay hardware:*
- *Transit Sheds 1, 2, and 3;*
- *Warehouse A; and*
- *Tugwell House*

*Chase.*



**APPENDIX B**  
**FIXED ASSETS**

S/NO	ID NO	DESCRIPTION	AREA M2	REMARKS
1		SHED 1	6640.00	
2		SHED 2	4000.00	
3		SHED 3	4160.00	
4		WAREHOUSE A	8775.699	
5		TUGWELL HOUSE	931.802	
6		RAILWAY LINES		
7		QUAY LENGTH 465.16 METRES		
		BERTH 1		
		BERTH 2		
		BERTH 3		

*Else.*



**Appendix C**  
**DEVELOPMENT PLAN**

**THE LESSEE BUSINESS OBJECTIVES FOR APAPA BULK TERMINAL A**

**1. To operate in a safe, secure and environmentally responsible manner by:**

- > Meeting or exceeding industry standards
- > Maintaining and enhancing the port safety programme
- > Maintaining and upgrading the port security programme
- > Maintaining a property and equipment damage avoidance programme
- > Continuing an effective and proactive environmental management programme
- > Maintaining a risk assessment and contingency planning programme
- > Maintaining a safe work environment

**2. To achieve and operate as a financially viable entity by:**

- > Implementing comprehensive short and long term investment plans
- > Maximizing all sources of revenue
- > Maintaining a competitive position with other terminals in the port
- > Providing cost effective service
- > Performance measurement benchmarking against other terminals in the port
- > Operate within approved operating and capital budgets
- > Move toward full cost recovery in each operational sector

**3. To provide the maritime public with a first class facility while striving to be user friendly with a quality service orientation by:**

- > Improving the "port experience"
- > Maintaining and upgrading existing waterside and groundside facilities
- > Providing additional facilities to support growth
- > Improving customer service

**4. To form stakeholder partnerships and relationships with the community, port tenants and users by:**

- > Maintaining an Interface agreement with the Apapa Local Government
- > Ongoing liaison with tenant and user groups
- > Participating in community area groups

**5. To ensure public accountability by:**

- > Maintaining public accountability mechanisms
- > Implementing a commitment of excellence through strategic planning
- > Maintaining effective consultative mechanisms with the community at large

**6. To pursue marketing initiatives and economic development by:**

- > Implementing a port marketing plan
- > Ensuring compatibility and orderly development of port land
- > Establishing guidelines for the effective use of port facilities

**7. To support and develop a highly skilled and professional workforce by:**

- > Implementing a human resource plan
- > Ensuring a succession plan is in place
- > Ensuring a staff training program is in place

**8. To cultivate and promote the terminal's role and image within the community and to communicate with the port stakeholders in a proactive and effective manner by:**

- > Identifying and building relationships with all stakeholders
- > Maintaining an effective communications strategy and plan
- > Aggressively seek input through working groups of the Port Consultative Committee









### **Development Phasing**

A phased development is envisaged taking into consideration the present berthing capability with the throughput and storage constraints in the terminal and the business objectives of THE LESSEE. Additional equipment will be procured over the tenure of the Lease as the need arises as set out in Table A. Throughput capacities for the various commodities to be handled at the terminal will be enhanced by upgrading conveying systems and storage facilities.

### **Objective**

The objective of the development plan will be to:

- a. Improve yard and vessel planning by implementing a state of the art Port ICT solution.
- b. Improve operations and work processes
- c. Ensure adequate maintenance of all equipments
- d. Increase productivity of vessels calling at the terminal
- e. Put in place a Staff Training Programme to educate and train a competent labour force
- f. Create a Truck Waiting Area to increase efficiency in the gate and delivery process
- g. Integrate rail transport mode into cargo delivery process

### **Plan to Achieve ISO 9000 Certification**

The initial focus will be placed on enhancing the operational capability of the terminal. Once the operations have stabilized, a Quality Assurance Steering Committee chaired by the MD/CEO will be formed.

This Quality Steering Committee will set out the ISO direction based on the advice of external ISO implementation experts and will:

- Appoint an ISO Working Committee (ISO-WC) consisting of Quality Manager, Management Representative and various heads of departments.
- Decide on the ISO process to be worked on for that work year.
- Decide on the deliverables at the end of the work year.

The ISO Working Committee will:

- Request from the Quality Assurance Steering Committee resources and budget for ISO-related activities.
- Document processes and maintain ISO quality records
- Prepare ISO documentation and Internal Audit training
- Assign ISO team members with ISO documentation deadlines
- Arrange for accredited ISO External Auditors to perform ISO audit
- Conduct Annual Internal Audit and Management Review of ISO Process

It is proposed that the following ISO work plan be adopted:

- Year 4 – ISO Certification for Ship Operations
- Year 5 – ISO Certification for Planning Processes (Ship. Yard and Manpower/Equipment Ordering)

Following the above mentioned work plan, the terminals will be ISO certified for all its major work processes by the end of year 5.

### **Operating Policies**

The objectives of the operating policies are to ensure that cargo handling operations in the terminals are carried out in a safe, effective, efficient and environmentally friendly manner.

### **Infrastructure Development**

A condition survey will be undertaken to determine the condition of all the principal structural components of all infrastructures in the terminal. An evaluation of the conditions revealed by the inspection in relation to the modified requirements due to the reduced structural capacity of the infrastructure will inform the programme of work to be formulated to implement the necessary repairs to enable the infrastructure to be able to support any additional improvement required.



Based on the projected throughput of the terminal, the development of the terminal will be in phases. The phases may overlap in the implementation of some aspects of the works to be carried out.

#### **Implementation Procedures**

Continuous improvement over the next twenty five years will follow the form of approval and end-user interaction as set out herein below:

**Propose/Plan**

**Discuss**

**Refine**

**Agree**

**Sign Off**

**Construct**

**Commission/Operate**

**Maintain**

**Develop**

**Transfer**

A staged handover of all development works will be planned in such a way that ongoing construction works will not cause undue damage or unnecessarily impact operational areas.

#### **Construction Works**

An engineering consultant will prepare the design, specification and contract drawings that will be tendered to selected contractors and tenders assessed by the Lessee. Contracts would be awarded on the basis of best value, not necessarily to the lowest tenderer. The objective is to ensure that the quality of construction works meet world-class terminal standards.

Works would be separated into specialized work packages, each of which would be tendered to contractors with the relevant experience in the given field in order to achieve the earliest possible start for operations on site.

The anticipated work packages include:

- i. Civil/Building Works
- ii. Pavement Construction
- iii. Mechanical/Electrical Installations, as required

#### **Preliminary Design Criteria and Performance Specifications**

The design will be undertaken by internationally recognized consulting engineers and shall comply with all relevant local and international design standards to ensure global best practice.

#### **Environmental and Safety Considerations**

Good housekeeping practice will be used in the collection, treatment and disposal of all waste products including waste oil, oil spills, fuel spills and accidental spillage of dangerous materials.

#### **Buildings**



The existing buildings will be rehabilitated and upgraded to support the terminal operations - terminal administration, canteen, staff amenities and workshop. New buildings will be developed for the entrance and exit gate houses.

a) Administrative Building

The Tugwell House will be rehabilitated to serve as the Terminal Administration Building. The expected facilities to be provided include terminal administration, finance and personnel office, terminal electronic data processing, customs, management, operation control, boardroom and shipping company office. The customs, immigration, port health and shipping agents offices will be located on the ground floor and will also be located in the terminal administration building or close to it.

b) Facilities for catering services of about 150 square metres will be provided.

c) A staff amenities area with a floor area of 150 square metres will be provided.

d) Shed 1 which is presently used as the Workshop and Workshop Offices will be improved to provide the following features:

i. Facilities for the servicing and repair of all cargo handling equipment.

ii. Floor area for Workshop Area, Workshop Office and Store Area.

i. The Workshop will contain modern facilities to allow servicing and repair of the machines and equipment used at the Terminal.

e) Terminal Entrance and Exit Gates will be constructed to handle the traffic flows in and out of the terminal. There will be three designated entry and exit points for pedestrian and vehicular traffic. Staff and visitors will enter these buildings from the car park/bus stop area, through turnstiles which will register their attendance at the terminal. Terminal operations personnel will enter and exit into the main terminal operating area through a different set of turnstiles on the operations side towards the present Flour Mills offices on Old Dockyard Road.

f) Toilet facilities will be provided near Warehouse A and the administration areas.

**Utilities (Services)**

Notwithstanding the lessor's obligations under the Lease Agreement, those services and utilities provided for include storm water run-off sewerage lines, water supply, telephone and communications conduits as well as spare ducts as appropriate to allow for future expansion.

Electrical supply is also provided for the components of this supply are detailed in the following section.

1 Storm water Run-Off and Disposal

Pavement cross falls have been constructed to suit the bulk cargo handling operations, and will fall towards slotted drains which run parallel to the quay operations. The slotted drains will discharge to pipe drains, which will discharge into the port.

a) Strainers and/or collection pits will be fitted at the discharge locations to help to prevent any solids being discharged into the harbour.

b) The cover on box drains will be designed to support the heavy wheel loads applicable to the bulk cargo handling equipment that will be present in the terminal.

c) In the building and entrance areas, the slotted drains will be supplemented by a network of pipe work and pits as required, to ensure the collection of all storm water runoff from terminal pavements.

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- d) The design rainfall return period for box drains and pipe drains will be 1 in 10 years.

2 Water Supply

A connection to the existing water supply system shall be provided. Potable water will be provided to all buildings.

- a) If necessary, pumps will be installed to ensure adequate water pressure is available for all fresh water and fire water supplies.

3 Information Communication Technology (ICT)

Information Communication Technology (ICT) hardware and software for Electronic Data Interface (EDI) and Enterprise Resource Planning (ERP) will be installed in the terminal. CCTV will also be installed in the terminal for facility security control and monitoring.

- a) Reticulation of other cabling throughout the terminal will be required. This will cater for CCTV, communication and other general equipments including:
- i. Ship to shore communications at the quay
  - ii. Connection of entrance and exit gates at the terminal
  - iii. Connection of workshop and store buildings
  - iv. Connection to electrical panels
  - v. Other connections as may be necessary

It is also proposed to install some general conduits for communication services throughout the terminal.

4 Waste Control Systems

The terminal will be provided with waste control systems in accordance with international standard requirements. Waste material will be collected and disposed of offsite by an approved contractor.

5 Electrical and Lighting

- a) The proposed development of the terminal includes a requirement for provision of high and low voltage electrical system of sufficient capacity to:
- i. Service the bulk cargo unloaders
  - ii. Provide power for the illumination of the entire terminal area
  - iii. Service power outlets for marine vessel calling at the terminal (Emergency Use Only)
  - iv. Provide power and lighting to all building in the terminal area
  - v. Provide power to the sockets throughout the cargo storage area, and
  - vi. Service the electrical equipments for all trade waste and fuel spill monitoring systems.
- b) Yard Lighting
- i. High-pressure sodium fittings will be mounted on new high level masts to provide the optimum levels of lighting.

6 Energy Consumption – Power Load and Demand

The proposed terminal development will contain all the features of a modern first class terminal, and as such will require a reliable and uninterruptible power supply system. The following energy requirements have been considered when defining the electrical supply requirements.

a) Terminal Power Demand

The estimated phased power demand for the terminal development is about 5 MVA.

- i. Loads from miscellaneous smaller buildings, fire pump house, lighting, trade waste systems and such existing services are considered minor and do not influence the determination of the Maximum Power Demand.
- ii. In the longer term additional QCs and additional services may be utilized upon which the Maximum Demand could be revised upwards.

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- iii. The anticipated maximum power demand of 5MVA will be provided by THE LESSEE for all power requirements in the terminal.

#### Land Use Allocation

The land use policy will be in line with the Terminal Business Plan and will be reviewed in line with the terms and conditions agreed with the Lessor. Access to and from berths 1 to 3 and the ability to move cargo from the quay apron to the stacking areas will be an integral part of the cargo handling operations with increased performance levels guaranteed. Access roads will be created around all structures to ensure easy access for health, safety and environmental considerations. Adequate attention will be paid to the maintenance of all access roads in the terminal.

The buildings identified as relevant to THE LESSEE terminal operations will be revamped and maintained as well as other areas such as the quay and all open areas including all perimeter and access areas within the terminals.

#### Schedule of Building Relevant to THE LESSEE Terminal Operations

No.	Description	Area m2
1	Warehouse A	8,827
2	Transit Shed 1	7,219
3	Transit Shed 2	4,463
4	Transit Shed 3	4,454
5	Tugwell House	2,098
6	Building behind Tugwell House	515

#### Construction Works

Year of Improvement	Job Description
2006	Erection of security fences, gates and installation of surveillance security systems
2006	Renovation of Sheds 1, 2, 3 and Warehouse A
2006	Demolition of Tugwell House
2006-2007	Provision of 2 storey terminal building in demolished area
2008	Improvement on heavy duty pavement area in terminal

**Table A: Investment Plan for Movable Assets**

Year of Acquisition	Type of Equipment	No. to be acquired
2006	Siwertell Bulk Ship Un/loader (Cement)	1
2006	Fuller Marine Towers (Wheat)	2
2006	Fuller Kinyon Motorized Hoppers (Cement)	3
2006	Peabody Techtank Transfer Silo (Cement)	1
2006	Fuller Kinyon Transfer Elevator (Cement)	1
2006	Fuller Airslide Conveyor Network (Cement)	1
2006	Hi-Roller Enclosed Belt Conveyors (Wheat)	2
2006	Fuller Bucket Elevators (Wheat)	2
2006	Mobile Cranes	1
2006	Pay Loaders	8
2006	Truck Dumpers (15/30 ton)	7
2006	10 ton Forklifts	1
2006	2.5 ton Forklifts	4
2006	Cat Bucket Loader	1
2006	Man Lift	1
2006	Compressors	4
2006	Hook-Up Belts including Support Structures for Grains	2
2006	Hook-Up Belts including Support Structures for Cement	2
2007	Cat 315 Excavators	2

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2007	Truck Dumpers	7
2007-2010	Pay Loaders	3
2007	10 ton Forklifts	3
2007	2.5 ton Forklifts	4
2008	Man Lift	1
2010	25 ton Forklifts	1
2015 - 2020	Truck Dumpers	7
2017-2025	Pay Loaders	4
2020- 2027	Bucket Grabs	4
2022	Truck Dumpers	5

Allowance has been made for sufficient mechanical equipment to supply service to work vessels at berths on 24 hour coverage with alternative spare equipment made available in the event of mechanical breakdown. The Development Plan takes into cognizance anticipated increase in cargo throughput in line with traffic forecasts, Technical and Performance and Operations Plans.

#### **Equipment to meet International Standards**

All equipment to be deployed in the terminals will be designed and built based on the following list of international standards.

##### **Internationally Recognized Standards**

BS	British Standard Specification
IEC	International Electrotechnical Commission
IEE	The Institute of Electrical Engineers, UK
FEM	Federation Europeenne De La Manutention
ISO	International Standards Organization
DIN	Deutsche Institut fur Normung e. V.
UL	Underwriters Laboratory
SSPC	Steel Structures Painting Council

#### **Equipment Replacement Plan**

To ensure reliability of the equipment and the safety of the operations personnel, the following replacement guidelines will be used:

<b>Equipment</b>	<b>Replacement Period (Years)</b>
Quay Un/loading Equipment	25
Hoppers	25
All other handling equipment	15

#### **Maintenance Arrangements**

There will be implementation of modern engineering maintenance and control systems to ensure timely execution of repairs and routine maintenance tasks. The development and maintenance of store inventory control systems capable of sustaining the adequate supply of spare parts and materials is to ensure optimal equipment availability.

THE LESSEE will implement equipment maintenance and performance measurement standards to continually monitor and improve availability of all equipments and to identify training needs of the maintenance management and staff in order to implement appropriate training programmes.

Maintenance of quay areas, sheds, terminal buildings, open storage areas and equipments will be conducted regularly to ensure efficient and uninterrupted cargo handling operations. All work throughout the terminal will take into consideration environmental and occupational safety with particular emphasis on pollution, ventilation and safety. Good housekeeping will govern all operations at all times.

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### **Health, Safety and Environment**

The terminal will provide and ensure safe and healthy working conditions for the employees and safeguard the health and safety of those affected by the operations by complying with internationally recognized standards of good practice in health, safety and environment while at work. Continuous improvement in environmental performance makes for sustainable development.

A considerable degree of mitigation will be achieved by adopting principles of sustainable waste management, not only by minimizing wastes and reducing local impacts from cement dust, noise and traffic but by also reusing or recycling waste where possible. A sustainable development strategy will also be put in place to ensure that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.

The Environmental Protection (EP) sustainability principles that guide this strategy include:

- Respecting and safeguarding people
- Engaging and working with all stakeholders
- Minimizing impact of all operations on the environment
- Using resources efficiently in all operations
- Maximizing profitability
- Maximizing benefits to the host communities

### **Port IC System (Port Information and Communication System)**

A Quality Plan for Port IC System will be provided to restructure information management process after lease of the port terminal:

- i. These are a wide range of different systems which will be advantageous to be accessed from a single technological platform.
- ii. This is a one-stop window where users can go satisfy all their needs.
- iii. There will be a wealth of information within the port community on current services and possibilities.

Implementation and administration of the Port IC System (which will bring together in one technological platform all the information and document interchange services for the port terminal community and its current and future clients) would be the responsibility of the management of THE LESSEE .

The objectives of the Port IC System are:

- i. To simplify and automate electronic data interchange procedures for maritime cargo traffic and other port operations in order to reduce dwell time for vessels calling at the terminal and increase port performance through optimal cargo handling processes.
- ii. To create reliable and accurate information services to make port procedures for port users more transparent.
- iii. To help port users overcome technological and economic barriers and access new services by fostering participation of the entire port terminal community.

### **Service Platform**

Physically, the Port IC System will be a computer or a group of computers with connections to the internet and other networks (intranet, added-value networks, etc.), which will provide access to an entire range of services, some of which are already in operation and others that will need to be developed.

Logically, the objective is for these services to cover all necessary procedures for electronic data interchange in the terminal and all data services that can help speed up this process and make it more transparent.

### **Port Information Technology (IT)/Intelligent Transport System (ITS) Applications**

There are several ways in which IT and ITS can be used to improve port operations and freight transportation to and from port facilities. These applications can be grouped into several categories:



- **Web-based Information Portals.** These applications provide information on ship arrivals, cargo status, and highway traffic conditions in and around ports.

These systems are effective tools in increasing the amount and visibility of shipment and traffic information available to drayage operators and other transportation service providers, resulting in more efficient port operations.

- **Identification Verification Systems.** These applications allow port and terminal operators to more positively identify drayage operators and other transportation service providers doing business on the port. These applications have significant security benefits and also can improve gate clearance operations by allowing quicker, more accurate identity validation.
- **Electronic Processing Systems.** These systems can streamline the processing of shipment manifests and other paperwork at port and terminal gates, resulting in more efficient gate operations.
- **Traffic Management Systems.** These systems can improve traffic flow into, out of, and around port areas, improving intermodal access and the efficiency of freight movements in and out of the ports.
- **On-port Management Systems.** These systems can improve overall intermodal operations by improving the efficiency of movements within port complexes.
- **Equipment Tracking Systems.** These systems can be used by carriers to track intermodal equipment, like chassis and containers, as well as by shippers to track the movement of cargo through the supply chain. These systems have security benefits, as well, as the increased asset visibility they provide may discourage cargo theft and tampering as well as terrorist-related activities.

#### **Technical Requirements**

Servers, Desktop Computers, Peripherals - printers, e-net servers, VDT terminals, network communications equipment, WAN, wireless LAN, DGPS, scanners and plotters, cameras, sensors, etc. Software and Hardware configuration should be highly scalable and be contemporary.

Active threat protection solutions – virus protection from the desktop to the gateway, client firewalls to detect and block attacks on desktops and servers, spam protection for Exchange and Domino mail servers, virus protection and content security for Microsoft® SharePoint Portal server and centralized system security management and graphical reporting.

#### **Applications**

##### **Planning System**

- Environmental Issues
- Vessel Planning – Automatic, simulation and result evaluation
- Yard Planning
- Resource Planning - Berth, Equipment and Human Resources

##### **Operating System**

- Terminal Management
- EDI & I P Services
- Silo Management
- Process Engineering – PLC control system
- Problem Solving
- Integrated Alerting

##### **Management System**

- PMS & Inventory
- Billing
- Statistics & Performance Analysis

##### **Intermodal Transport Exchange Applications**

##### **Web- based Applications**

##### **Port Security – Intelligent facility security, automation and control systems**

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Geographical Information System – Metocean, GPS for Fleet Management  
Audio/Video/Wireless Integration  
Maintenance and Support

The development of information systems and EDI plan with accompanying estimates of investment needs for the Port IC System will be based on the results of the Capacity Analysis of existing facilities and the Future Facility Needs Assessment for the terminal. These will be used as tools or guidelines in comparing the current Maximum Practical Capacities (MPC's) of the existing berths to the trade forecasts.

The primary aim will be to provide a direct correlation between identified capacity needs (short tons/year) and the additional infrastructure required to accommodate such a need. It will in addition correlate the cargo tonnage projections to the needed infrastructure improvements and also provide information on the trigger points for a phased terminal development implementation plan including the threshold for the Port IC System.

THE LESSEE intends to deploy Navision software for all EDI and ERP planning at the terminal.

#### **Terminal Security Solutions**

The terminal security solutions are to be implemented in compliance to the requirement of the ISPS Code and other port security control measures. The Facility Security Plan will cover the following areas:

- Security, vulnerability and threat assessments
- Networked CCTV systems
- Command and control centres
- Container and vehicle security/control
- Perimeter control and intrusion detection
- Facility controls (quay, office, gate, and yard)
- Tracking systems (RFID, GPS)
- Data exchange and mining
- Cargo and equipment scanning
- Radioactivity detection devices



## **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.



**Appendix E**  
**PRE-EXISTING LEASES**

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D R A F T

THIS TENANCY AGREEMENT made the ..... day of ..... 1993

BETWEEN the NIGERIAN PORTS PLC having its registered office at 26/28 MARINA LAGOS hereafter called the "LICENSOR/WHICH expression shall where the Context so admits include its successors-in-title and assigns of the one part and FLOUR MILLS OF NIGERIAN PLC having its registered office at Apapa Lagos (hereafter called 'The Licensee' ) which expression shall where the context so admits include its successors in-title and assigns of the other part.

NOW IT IS HEREBY AGREED AS FOLLOWS:

In consideration of the rent hereby reserved and <sup>the</sup> covenants on the part of the LICENSEE hereinafter contained, The LICENSOR HEREBY demises unto the LICENSEE "A" Warehouse measuring Net Area of 9.135.35 Square Metres in Apapa Quays from the 15th day of October, 1993 (date here of not withstanding).

Yeilding and Paying thereof the rent of N1,979,123.60 (ONE MILLION NINE HUNDRED AND SEVENTY-NINE THOUSAND ONE HUNDRED AND TWENTY THREE NAIRA SIXTY KOBO) representing One Year's rent and the sum of N1,000.00 (ONE THOUSAND NAIRA) being a non refundable application fee.

The LICENSEE for itself and its assigns and to the intent that the obligations may continue throughout the term hereby created covenants with the LICENSOR.

- (1) To indemnify the LICENSOR against all liabilities whatsoever in connection with this License .
2. To pay the rent hereby reserved on the day and in the manner aforesaid.
3. To use the Warehouse on a temporary occupation License basis and for one (1) year certain but subject to renewal at the discretion of the LICENSOR.
4. To use the Warehouse for Storage of Cargoes (import/export).
5. To pay promptly on demand the rent and other extra charges which may be advised from time to time.
6. To comply with Ports' Rules and Regulations and Bye-Laws.
7. Not to alter the demised premises without the LICENSOR or its agents consenting in writing.
8. Not to assigns sublet or part with the possession of the demised premises OR any part thereof without the written consent of the LICENSOR.

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9. Not to use or permit or suffer to be used the demised premises or any part thereof for any illegal, noisy or offensive trade or business.
10. Not to do or permit or suffer to be done upon the demised premises or any part thereof anything which may be or become nuisance or cause damage or inconvenience to the LICENSOR or the Occupiers of the adjoining or neighbouring premises.
11. To keep the interior and exterior of the demised premises in clean and in good tenantable repair and condition.
12. To instal fire extinguishers in the demised premises.
13. To indemnify the LICENSOR against all damages or injuries to the demised premises or to third parties caused by the act or default of the LICENSEE and against all costs and expenses in connection therewith.
14. Not to breach any of the covenants herein contained and in <sup>the</sup> event of a breach the LICENSOR reserves the right to determine this LICENCE BY GIVING ONE (1) month's notice to the LICENSEE.
15. Not to transfer this LICENCE to any person or body of persons.
16. All charges made by the LICENSOR in connection with this LICENCE are subject to review without prior notice to the LICENSEE.
17. Not to store any hazardous or dangerous Cargo in the demised premises or any part thereof.
18. Without PREJUDICE to paragraph (14) the LICENSOR reserves the right to at any time terminate this LICENCE by giving seven (7) days notice in writing to the LICENSEE.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first above written.

SIGNED for and on behalf of the LICENSOR (NIGERIAN PORTS PLC).

BY:.....  
PORT MANAGER

In the presence of:

NAME: .....  
ADDRESS: .....  
OCCUPATION: .....  
DATE: .....

SIGNED for and on behalf of the LICENSEE (FLOUR MILLS OF NIGERIAN PLC).

In the presence of:

NAME: .....

ADDRESS: .....

OCCUPATION: .....

DATE: .....

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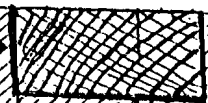
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Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 during the applicable annual period.

**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.

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**Appendix G**  
**BERTHS**

Berth 1  
Berth 2  
Berth 3

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above movements applies for outbound containers.

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

**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**

The efficient management and operation of the Terminal is dependant on the quality, experience and expertise of the Senior Management. Within the FMN Group, considerable management expertise and experience is available with in-depth knowledge of international terminal operations, systems and working practices.

The Lessee is committed to promoting employment equity among its employees, regardless of race, nationality, ethnic origin, religion, sex, age or disability. The Lessee promotes pay equity and offers excellent working conditions

Our approach will take care of immediate, near term and long term human resource development taking into consideration local factors in a sustainable manner in line with best port practices in terminal management and operation. A development framework therefore is to be established, including training plans and programmes.

#### **Immediate**

It has to be ensured that the management and the key operational staff commences operations smoothly and efficiently at the terminal by organizing familiarization programmes on terminal management and operations, organizing comprehensive technical training programmes by equipment manufacturers and conducting practical job related training on site.

#### **Near Term**

Emphasis will be placed on improving the skills of the current staff as well as organizing the training of new recruits. There will be less dependence on overseas training and on manufacturer's technical training. The Premises will be increasingly dependent on its own in-house resources and on the training resources within Nigeria.

#### **Long Term**

Emphasis of training will increasingly tend towards sustained development of personnel through specialist training in multi-functionality, safety, marketing, etc.

The Lessee will adapt its management styles, working methods and human resources practices to the changing workplace. THE LESSEE also recognizes the need to evolve with market trends, technological advancements, economic change and the competition. It will be a leader in skills development, skills enhancement and training programmes.

The management, unions and employees are to be made more aware than ever of the important role they must play in the intermodal transportation chain so as to ensure reliable and competitive services from all perspectives. This partnership is essential in ensuring the terminal's growth and thereby preserving economic spin-offs, jobs and revenues.

The goal is to have the right people in the right place and at the right time with the right leadership in place at every level of management and operation in the terminal. This will ensure continuous improvement of the work environment, fair and equal opportunities create competition through customer focus, safety, efficiency and flexibility. It will also encourage employee participation and recognize employee's contributions and family responsibilities.

The Lessee is determined to ensure that its activities and those of port users are increasingly ecologically sound. It will strive to integrate environmental protection into the planning of its projects. It will implement the measures necessary to ensure the safety of its operations and minimize their impact on the environment. THE LESSEE will also encourage shipping lines to use vessels, equipment and practices that promotes the protection and preservation of the waterways and nautical

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approaches to the terminal. That said, there is no more economical and ecologically-sound mode of transport than maritime.

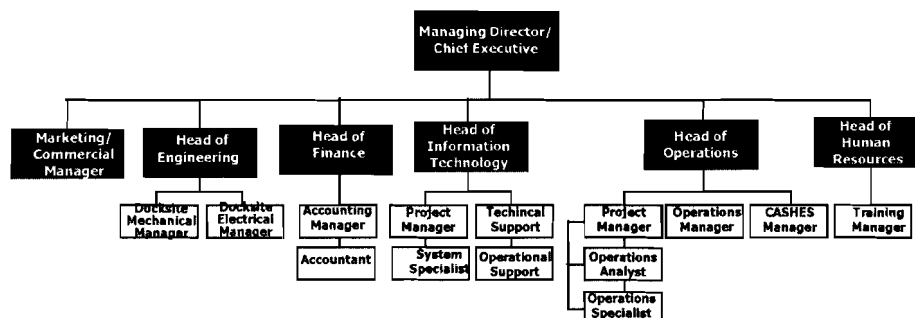
THE LESSEE will set out its own emergency response plan to handle any incident that may constitute a risk to the public, or to the natural environment. Permanent staff will be trained and certified in fire and disaster prevention. Security teams will constantly patrol the terminal, which will also be under electronic surveillance.

#### PERSONNEL ALLOCATION AND DEPLOYMENT

In order to maintain an effective personnel deployment to cope with operational need on a weekly and yearly basis, flexible rostering and shift working system will be adopted to ensure optimal manpower deployment in achieving utmost service level. Vessels will be worked on a 3-shift system on a 24 hour shift coverage.

Allocation of Personnel	
Management	7
Finance and Administration	16
Commercial/Marketing	3
Information Technology	5
Human Resources	9
Equipment Operators	45
Operational Logistics Support	36
Engineering Services/Equipment Technicians	54
Security	25

An organogram is presented in Figure A of the senior management structure for the terminal.



#### Flexible Deployment and Multi-Skilling

Wherever possible, operators and technicians will be trained on at least two types of equipment, for greater flexibility in deployment and also better prospects for the staff.

Flexible features will be introduced into the roster in terms of work days and work time, with suitable compensation (work rates), in order to buffer effectively against operational peaks and troughs while keeping head count trim.

Major HR management policies will be established to develop a highly motivated workforce, to enhance productivity and be flexible to develop individuals according to their potentials and meet the business needs of THE LESSEE.

#### General Terms and Conditions of Employment/Training Plan

The general terms and conditions of employment at the terminals will be in accordance with the relevant laws and statutory requirements including the Nigerian Labour Act and the Nigerian Maritime Labour Act 2003.



The terms and conditions will also be based on the appropriate compensation market in Nigeria and benchmarked with similar industries.

It will cover comprehensively the following items:

- Payment Arrangement and Administration
- Job Evaluation and Job Levelling
- Bonus and Incentive Schemes based on individual and group performance
- Work Days, Work Hours and Rest Periods
- Roster System and Manning Pattern
- Overtime and Rules concerning Overtime and Work on Holidays
- Annual Leave and Rules
- Medical Leave and Rules
- Medical Benefits
- Other Welfare and Benefits
- Performance Management
- Probation
- Counselling and Disciplinary Procedures
- Personal Grievances Procedures and Submission of Complaint
- Training and Development
- Career Planning
- Health and Safety
- Code of Business Conduct
- Termination of Employment and Severance Pay

Individual eligibility for the terms and conditions will depend on position, grade and other factors.

#### **RECRUITMENT POLICY**

An industry-wide standard will be set to attract reliable, high quality management and staff to meet the operational manpower requirements of the terminals. The aim is to foster a culture of high performing and productive workforce delivering quality standards of customer service and satisfaction through competitive remuneration and incentives based on individual and group productivity.

Market-driven welfare and benefits and world-class training and development are the key elements of this culture. Evaluation of the background of candidates, including their levels of educational and technical capabilities, experience and qualifications, will be conducted by THE LESSEE in order to place them in various functions.

Suitable personnel will be hired and deployed in suitable positions that they are physically and technically fit to perform jobs in. They will be provided suitable training, both on-the-job and in classroom settings. Training will include orientation programmes which will inculcate in them the value and work culture of THE LESSEE.

The thrust of the training will be to instill a sense of belonging and motivation towards job performance and satisfaction. Employees will be scheduled according to the manning roster and dynamic operational requirements. They will be encouraged to maintain high levels of discipline and conduct.

The plan is to implement world class recruitment processes which will:

- Attract quality candidates.
- Use objective criteria of skills, experience, aptitude and qualification in assessing candidates.
- Assess the workforce requirement for maximum operational effectiveness and efficiency with periodic reviews and adjustments where necessary
- Provide competitive work conditions whereby individual and group productivity is the basis of salary increment, incentive bonus and promotion.
- Promote flexible work arrangements and staff multi-skilling to ensure the highest productivity and employability.

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- Provide for individual growth through career planning.
- Provide training at all levels including operational skills, engineering skills and soft skills which will enhance the general quality of life and productivity of workers in terminals.

#### **Salaries and Allowances**

THE LESSEE will use a market-driven competitive compensation strategy in accordance with the Nigerian employment market, local laws and HR practices benchmarked against similar industries. A recognized Job Evaluation Model for Management will be reviewed and appropriately implemented at the terminal.

#### **Bonus and Incentives Schemes**

Variable bonuses and incentive schemes based on individual and group performance to reward eligible high performing individuals and work teams will be implemented when operations stabilize.

#### **Other Welfare and Benefits**

THE LESSEE will review and analyze market practices on employee welfare and benefits and propose a competitive suite of welfare and benefits for all employees at the terminal.

#### **Overtime**

There will be no fixed overtime built into the roster. If overtime is necessary during operational peaks, employees will be paid an hourly rate for overtime that is higher than the normal rate of pay.

### **PERFORMANCE MANAGEMENT POLICY**

#### **Performance Appraisal**

An effective system of employee performance appraisal will be conducted as follows:

- For employees on Probation – Any employee, including new hires and/or existing employees hired permanently into the terminal will have a confirmation appraisal in 6 months + 6 months after joining THE LESSEE.
- For Confirmed Employees – Annual Appraisals will take place during the fourth quarter of each financial year.
- For Employees Promotion – All employees to be promoted will undergo a 12-month probationary period with a promotion confirmation appraisal conducted two weeks before the expiry date of the promotion probationary period.

#### **Performance Management System**

A robust Performance Management System with key performance indicators and the use of performance appraisal forms will be introduced. It will provide a platform for formal and on-the-job training for all appointed appraisers and employees.

In line with best practices, THE LESSEE will identify high-performance employees in the terminal through the Performance Appraisal System using similar standards and criteria used by major terminal operators worldwide. Where it is appropriate, THE LESSEE will introduce a succession planning into the Performance Management System to identify high potential and high performing individuals for future management positions.

#### **Counselling and Disciplinary Procedures**

Regular communication and reporting sessions will be conducted with employees including counselling sessions if necessary to maintain a harmonious working relationship between management and staff.

Employees who perform below expectations and/or who do not meet the expected standards of discipline would be counselled and disciplined as appropriate where the performance level and/or discipline do not show any marked improvement. Based on the merit of each case, management will have the prerogative to take corrective measures to avoid such cases becoming more serious and impact on the level of efficiency, productivity and work harmony at the terminals. Such actions are deemed necessary in order to cultivate a high performance culture in the terminal to make the terminal a model port with an excellent reputation.



### **Grievance Handling Procedures**

A procedure for feedback on personal grievances will be put in place to protect the interests of all employees. Management will not hesitate to investigate all genuine reports of personal grievances and take appropriate corrective measures where necessary.

### **POLICY ON OCCUPATIONAL HEALTH, SAFETY AND ENVIRONMENT**

THE LESSEE will provide a healthy and safe work environment for all employees by providing the necessary facilities and utilities for normal work conditions and a Committee for Occupational Health, Safety and Environment will be established as appropriate to each phase of the operations in the terminal.

The Committee will perform its duties according to the dictates of local legislation and outline the rules and duties for a Working Committee that will provide assistance in cases of accidents that may result in injury or damage to employees, equipment or third parties, etc. and possible loss of life.

As terminal operations stabilizes a Safety and Hazard Reporting System will be put in place at the terminals with a Safety Merit and Demerit System that will track each employee's contribution to occupational health, safety and environment.

A continuous safety awareness programme is subsumed in this system with regular publication of statistics and public communication to educate all employees further.

THE LESSEE will work closely with the port authorities to review and dovetail the stringent criteria and processes to be put in place in the terminal which are according to international conventions and standards.

### **TRAINING AND DEVELOPMENT POLICY**

A great emphasis will be placed on employee training and development as a capable workforce is a competitive advantage. A proper framework will be formulated within which training and development activities will be conducted.

The overall mission of training and development will be to provide a clear and efficient means by which skills, knowledge and attitude will be transferred to enable or improve job performance to achieve corporate and line department set goals and objectives.

THE LESSEE will bring to bear on the training and development of employees, world class management practices and the best practices in manpower training and development to ensure availability of the essential skills necessary for the efficient running of world class bulk terminals at Apapa Port Complex.

### **Port Operations Skills**

Employees will be systematically trained on efficient methods of loading and discharging cargo to enhance and improve the terminal cargo handling rates. These will involve knowledge (Procedures and Processes) and practical training.

Training programmes to enhance port operations skills will focus on:

- i. Equipping staff with new skills required to improve terminal performance.
- ii. Enhance staff capability and competency so that they are more productive and deployable.
- iii. Reduce cost and productivity losses arising from accidents or other non-performance

### **Technical Engineering Skills**

Cost-effective port engineering services enhance the reliability and availability port equipment leading to increased operational capacity at low maintenance costs. THE LESSEE will equip engineering staff with the relevant technical engineering skills through programmes such as entry level technical, intermediate level technical and safety training and awareness programmes designed to systematically upgrade their skills.

### **Entry Level Technical Training Programme**



All technical employees will be trained on the working principles and maintenance of port equipment through series of short courses on key components of port equipment – wire ropes, anti-sway systems, etc. The aim is to build a skilled maintenance team that will improve equipment performance vis-à-vis a better Mean Move between Failure/Mean Time between Failure (MMBF/MTBF).

#### **Intermediate Level Technical Training Programme**

This is a range of short courses on key system in the port equipment – crane control system, mechanical screw technology for bulk cargo un/loading, main hoist system, engines, etc. This is designed to equip technical specialists with skills to trouble shoot and repair equipment more effectively to improve Mean Time To Repair (MTTR). The aim is to systematically build up skills inventory of the technical specialists that work in the terminal.

#### **Safety Training Programme for Engineering Staff**

With the heavy duty nature of port equipment maintenance works, it is imperative that engineering staff are equipped with the necessary skills to reduce accidents through safety awareness training. Various courses will be designed and conducted in phases to help engineering staff identify unsafe practices to prevent accidents.

#### **Training Implementation Phases**

Training and Development Plan for the Apapa Bulk Terminals A will be in 2 phases:

- **Pre-Operations Start Up and Hand Over Phase**  
The overall training objective will be to equip the newly recruited employees with the required knowledge and skills to carry out their respective job duties and responsibilities to ensure smooth running of the terminal when THE LESSEE takes over operation formally. It will be carried out as the terminal infrastructure and equipment are ready and the required employees are in place.
- **Terminal Operations Phase**  
The focus of training and development in the terminal operation phase will be to ensure that training remains relevant and continues to meet changing business needs and requirements. With increased growth in throughput, training and development will be required for all newly recruited staff while the existing staff will need to further enhance and update their skills based on individual needs.

The following value-added training services will be set up where appropriate:

- Systematic training framework geared for business results and career advancement of staff such as Learning Needs Analysis, Training Road Maps, On-the-Job Training System, Skills Standard, Measurement of Training Effectiveness, etc.
- Design, Development and Delivery of training programmes to enhance safety and to improve productivity and staff development through quality circles.

#### **Policy on Career Development**

All employees will be given the opportunity to excel and prove their capability through support in career development so that maximum potential is achieved. Promotion, Salary increment and bonuses will be awarded based on merit, productivity and efficiency.

Where applicable and practical to do so, employees will be rotated to different functions to enrich their job experience and increase job flexibility and satisfaction. This will equip them with multiple skills for multiple job postings. Every effort will be made to effect skills transfer from expatriate personnel to Nigeria nationals.

Base.



**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 24<sup>th</sup> 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.
  - 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:



**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.

*CFSE,*



**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  
APAPA TERMINAL A**

**Redacted**



UNSEEN

15



Redacted

File

A handwritten signature in black ink, consisting of a stylized 'R' followed by a checkmark-like flourish.





**Appendix M**  
**Dredging Plan**

*Chase.*

*[Signature]*