



MULTIPURPOSE TERMINAL B AT CALABAR NEW PORT

LEASE AGREEMENT

by and among

NIGERIAN PORTS AUTHORITY
as the Lessor.

BUREAU OF PUBLIC ENTERPRISES
as the Confirming Party.

and

ECM TERMINALS LIMITED
as the Lessee.

Dated the ____ day of _____, 2007

Mustapha

[Signature]

[Signature]



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CALABAR NEW PORT TERMINAL B LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is made and entered into this ____ day of May, 2007 ("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 include 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. 11 Osun Crescent, Maitama - Abuja, Nigeria ("BPE"), in its capacity as Confirming Party of Lessor; and

ECM TERMINALS LIMITED a private company incorporated under the laws of the Federation of Nigeria whose registered office is at 9 Wharf Road, Apapa, Lagos, Nigeria ("the Lessee") being a special purpose vehicle established by Ecomarine International Limited a company registered under the laws of Nigeria with its registered office at 9 Wharf Road, Apapa, Lagos, Nigeria.

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. By virtue of the Act, the Lessor is, amongst other things, charged with the responsibility of constructing, executing, carrying out, equipping, improving, working and developing ports, docks, harbours, piers, wharves, canals, water courses, embankment and jetties in Nigeria and may carry out any of these responsibilities through any other person authorised by it in that behalf.
- B. The Federal Government of Nigeria ("FGN") has embarked upon a Port Reform and Modernization Strategy in order to increase its efficiency and reduce cost to users and the FGN. As part of this strategy, the FGN has decided to transfer the management and operation of the major port terminals from the Lessor to the private sector through a series of operating leases.
- C. The NCP is the agency established by the FGN under the Public Enterprises (Privatisation and Commercialisation) Act No 28 of 1999 to formulate and approve policies on privatization and commercialization. BPE is the implementation agency of the NCP for the leasing of port terminals in Nigeria.
- D. The Lessee is:
 - (a) a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 on 12th day of December 2006 with registration number 675997.
 - (b) formed as a special purpose vehicle by Ecomarine International Limited.
- E. On 16th day of August, 2005, BPE as Secretariat of the NCP, invited bids for fully priced technical and financial proposals for the lease from the Lessor of the terminal forming part of Calabar New Port (the "Port"). On 19th day of June 2005, as a result of such competitive bid process, the right to lease Calabar New Port Terminal B at the Port from the Lessor was awarded by BPE to Ecomarine International Limited which has formed the Lessee as a special purpose vehicle, to enter into this Agreement.
- F. Following the award of the right to lease Calabar New Port Terminal B at the Port referred to in Recital E above, the Lessor has agreed to undertake a survey (the "Real Property Survey") of the real property in the Port to be leased to the Lessee (the "Premises") subject to and in accordance with this Agreement

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and to undertake a survey ("Dredging Survey") of the berths and the approach channel at the Premises with a view to preparing a dredging plan (the "Dredging Plan") in order to fulfil its obligations in relation to dredging as more particularly set out in this Agreement. Upon their completion, the results of the Real Property Survey confirming the parameters of the Premises and the Dredging Plan shall form an integral part of this Agreement.

G. The Parties have agreed to enter into this Agreement to:

- (a) lease the Premises and certain immovable property affixed to the Premises as further described in Appendix B (the "Fixed Assets," and together with the Premises, the "Lease Property");
- (b) make certain improvements to the Lease Property as further described in the development plan attached as Appendix D (the "Development Plan"); and
- (c) perform the operations as further described in Appendix E (the "Operations"), certain other operation, maintenance and other services with respect to the Lease Property, subject to and in accordance with the terms and conditions set out in this Agreement.

WITNESSETH

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

M. McIntosh



ARTICLE I

DEFINITIONS; INTERPRETATION

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

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

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

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

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

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

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

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

"Change in Law" means any amendment, modification, 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) Ecomarine International Limited 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) ECM Terminals Limited 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.

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

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

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

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

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

Signature



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Month" means a calendar month.

"Nigeria" means the Federal Republic of Nigeria.

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

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

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"Operating Year" means twelve (12) calendar months starting from the Effective Date.

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

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

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

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

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

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

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

"Prudent Industry Standards" means the generally accepted practices, methods, techniques and standards employed by the international 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 11.5.

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

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

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

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

"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.

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

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



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

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

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

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

"Voting Interests" means shares of capital stock issued by a corporation, or equivalent Equity Interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

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

1.2 Interpretation.

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

ARTICLE II

EFFECTIVE DATE AND LEASE TERM

2.1 Effective Date

- (a) *Terms Binding on Execution Date.* The provisions of this Article, along with the provisions of Articles 12 (Representations and Warranties), 16 (Indemnities), 17 (Governing Law; Disputes), shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.
- (b) *Conditions Precedent.* Except as otherwise provided in Section 2.1(a), this Agreement shall become effective ninety (90) days following the Execution Date provided that the conditions to effectiveness set forth in Article VII have been fulfilled (the "Effective Date").

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

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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 in accordance with this Agreement, 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 annual 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.

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

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

- (a) the Lessor's use of the Berth is not on a discriminatory basis; and
- (b) the Lessor pays the Lessee the Operations Rates where 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 9.10 in order to perform its obligations hereunder, including without limitation the performance of the Operations.

ARTICLE IV

USE OF LEASE PROPERTY

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

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

- 4.2 Alteration of Lease Property

- (a) By Lessor. Subject to the mutual agreement of the Parties and in accordance with Applicable Law, the Lessor shall have the right to alter the Premises subject to the alteration of the Lease Fees payable by the Lessee in accordance with the provisions of this Agreement; provided that:
 - (i) such alteration is required for technical operations and/or economic well-being of the Port

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- (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 response to the Lessee failure of which, the Lessor shall be deemed to have given its approval to the improvement and the Lessee may proceed to make such improvement.

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

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

- (1) the plans and drawings for such improvements or alterations;
- (2) the names and addresses of all proposed contractors; and
- (3) such other documentation as reasonably requested by the Lessor.

Where the Lessee has furnished the required information, the Lessor shall within the said sixty days respond to the Lessee's request, failure of which, the Lessor shall be deemed to have given its approval to the improvement or alteration and the Lessee may proceed to make such improvement.

Any improvements or alterations made on the fixed assets by the Lessee to the Lease Property during the Term shall be and shall remain the property of the Lessor without any claim for or reimbursement by the Lessee for the cost of the value thereof.

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

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

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- (v) *Rights of Lessor to Monitor and Inspect.* Without limiting or reducing the Lessee's obligations under Section 4.3(b) or 4.4, the Lessor shall have the right to inspect the Improvements and any other improvements or alterations during performance of the same and after they have been completed, and they shall not be used by the Lessee until the Lessor has confirmed to the Lessee in writing that they are in accordance with the plans approved by the Lessor and comply with Applicable Law. Such confirmation shall be given within fourteen (14) days of the Lessee's notification of the completion of such improvement, failure of which the improvement shall be deemed approved. Any inspection by the Lessor shall be undertaken in accordance with the provisions set out in Section 4.8(a). The Lessor shall have the right to be present and monitor at any time during the performance of the Improvements and any other improvements or alterations and shall have access to the Premises and to all records and materials of the Lessee related to such Improvements, improvements or alterations including participation in related progress meetings.

4.3 Maintenance

- (a) *Lessee's Maintenance Obligations.* The Lessee shall be responsible for the Maintenance (but excluding Maintenance resulting from Latent Defects which shall remain the responsibility of the Lessor) so that at all times during the Term and upon the Termination Date, the Lease Property (excluding the Quay Wall and navigational aids on the Premises) shall be in the same or better condition as on the Effective Date, excluding normal wear and tear. The Lessee shall maintain the Lease Property (excluding the Quay Wall and navigational aids on the Premises) in good condition and repair. All Maintenance shall be equal or better in quality to the original material and workmanship standard. The Maintenance performed by the Lessee shall comply with Applicable Law and Prudent Industry Standards. The Lessee shall inform the Lessor in writing of entry into any contract for Maintenance. The Lessee shall obtain and maintain all licenses, certifications or other documents required for such Maintenance in accordance with Applicable Law. The Lessor shall assign to the Lessee on the Execution Date all rights under any warranties it may receive or be entitled to for the Lease Property.
- (b) *Notification and Repair of Damage.* In the event that any Lease Property (excluding the Quay Wall and navigational aids on the Premises) is damaged, the Lessee shall notify the Lessor in writing of the same within three (3) days after the Lessee became aware of such damage. The Lessee shall commence the process of repairing such damage within seven (7) days and shall complete such repair to damaged Lease Property within a reasonable period to be mutually agreed by the Parties. In the event that the Lessee fails to commence the process of repairing within such period, then the Lessor may give notice in writing to the Lessee requiring the Lessee to commence the process of repairing within seven (7) days. If the Lessee has failed to commence the process of repairing upon expiry of the notice by the Lessor, then the Lessor may offer the repair work for tender and the Parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Lessee shall be responsible for cost of the repair and if the Lessor is required to make any payment towards such repair work, the Lessee shall reimburse the Lessor its actual costs incurred together with annual 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 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 annual 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 9, 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.

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ARTICLE V

MOVABLE ASSETS

- 5.1 Sale and Purchase of Movable Assets. Subject to the terms and conditions of this Agreement, upon the Effective Date, the Lessor shall sell to the Lessee, and the Lessee shall purchase from the Lessor, the Movable Assets for an aggregate purchase price of Twenty Two Million, three hundred and ten thousand US Dollars (\$22,310,000). (the "Movable Assets Purchase Price")
- 5.2 Payment of Movable Assets Purchase Price. On the Effective Date, the Lessee shall pay the Lessor the Movable Asset Purchase Price by wire transfer to an account of the Lessor previously designated by the Lessor in writing.
- 5.3 Conveyance of Movable Assets. On the Effective Date, and subject to its receipt of the Movable Asset Purchase Price and the satisfaction of the other conditions set forth in Article VII, the Lessor shall convey, transfer, assign and deliver to the Lessee, free and clear of all liens and encumbrances, the Lessor's right, title and interest in and to the Movable Assets, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessee.

ARTICLE VI

OPERATIONS

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

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performing the Operations, the Lessee shall cooperate with the Lessor and, if applicable, the Regulator so as to enable the Lessor and the Regulator to perform their monitoring, supervisory and other duties relating to the Port.

6.8 Performance Requirements

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

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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.

6.9 Operations Rates

- (a) *General Parameters.* The Lessee shall ensure that the Operations Rates shall be in accordance with Applicable Laws and competitive within the Port and with other competing ports of Nigeria having facilities similar to the Lease Property.
- (b) *Specific Parameters.* The Lessee shall charge cargo dues and delivery charges for the Operations which are not greater than the rates set forth in Section A of Appendix H (the "Operations Rates") in accordance with the terms and conditions included therein. The Lessee shall not make any increases in the Operations Rates, unless agreed to in writing by the Parties and any required consents of Governmental Authorities have been obtained. Value added taxes and other taxes shall be added as required to the accounts rendered to the Lessee's customers. Income from the Operations Rates shall accrue directly to the Lessee without any collection, deduction or setoff by the Lessor or the Regulator. The Lessee shall also be allowed to charge for other services rendered but not specified in Appendix E, including but not limited to: inland container depot transfers, storage and for penalties for violation of applicable rules and regulations set down by the Lessee. The level of inland bonded terminal transfer charges shall not exceed the market rates charged by the Lessor 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

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from granting Preferential Rates in accordance with the provisions set out in Sub Section (e) below.

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

6.10 Labour.

- (a) *Qualified Personnel.* The Lessee shall select and employ sufficient, suitably skilled and qualified personnel to enable it to perform the Operations in accordance with this Agreement.
- (b) *Sources of Labour.* When sourcing personnel, the Lessee shall comply with the Staffing and Succession Plan as set out in Appendix 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 6.10(b) the Lessee shall be responsible for the negotiation of the applicable employment and labour contracts which shall be made in accordance with Applicable Law. Notwithstanding the foregoing, all Lessee personnel shall remain its or its Affiliate's employees for all salary and benefit purposes and shall be compensated in accordance with the Lessee's normal policies as may be modified by the Lessee from time to time.
- (g) *Training.* The Lessee shall be responsible for the preparation and implementation of all training of all staff working at the Premises in accordance with the Staffing and Succession Plan and Applicable Law.
- (h) *Identification of Lessee Personnel.* The Lessee shall ensure that its personnel are issued the appropriate identification documentation. Such identification documentation shall be produced to any official or authorized person who has reasonable grounds to request the identification of such personnel. Upon the termination of employment of such personnel, such identity documentation shall be returned to the Lessee.

- 6.11 Lessee Equipment The Lessee may use additional equipment on the Premises 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

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Agreement for any reason unless the Parties otherwise agree that the Lessor shall become owner of such Lessee Equipment on the Termination Date. The Lessee shall, at its own expense, remove Lessee Equipment from the Premises on the Termination Date in the event that the Lessor requires such removal or the Lessee does not agree to transfer the same to the Lessor. The Lessee shall provide the Lessor with a full list of Lessee Equipment during the Termination Period and whether it is prepared to sell such Lessee Equipment to the Lessor. The purchase price for any Lessee Equipment shall be mutually agreed between the Parties.

6.12 Spare Parts and Consumables.

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

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

ARTICLE VII

CONDITIONS PRECEDENT

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

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

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

- (i) resolutions adopted by the Lessor evidencing the authorisations described in this Section; and
 - (ii) authority of the officers of the Lessor executing this Agreement and documents required hereunder.
- (c) No Injunction, etc. Consummation of the transactions contemplated by this Agreement shall not have been restrained, enjoined or otherwise prohibited in any material respect by any Applicable Law, including any order, injunction, decree or judgment of any court. Authority, and there shall not have been promulgated, entered, issued or determined by any court or



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

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

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

- (a) *Representations and Warranties of Lessee.* The representations and warranties of the Lessee in Section 12.1 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessee.* The Lessee shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessee shall have delivered to the Lessor a certificate in form and substance satisfactory to the Lessor, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 7.2 (a) and (b).
- (d) *Commencement Fee.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Commencement Fee, in accordance with Appendix G.
- (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.

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

- (a) *Representations and Warranties of Lessor.* The representations and warranties of the Lessor in Section 12.2 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessor.* The Lessor shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.

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- (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 fulfillment of the conditions set forth in Sections 7.3 (a) and (b).
- (d) *Presidential Approval.* The President of the Federal Republic of Nigeria has approved this Agreement for the Term and the Lessor shall convey and 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 and Services Contracts.* All stevedoring and Services Contracts with respect to the Premises have been terminated and all stevedores shall have vacated the Premises by the Effective Date.
- (g) *Other Agreements.* All other agreements affecting the Lessor's right to transfer the Lease Property and all pre-existing leases affecting the lease property have been terminated; and the Lease Property is free and clear of all Security Interests and all Persons on the Premises prior to the Execution Date shall have vacated the Premises and removed all their equipment from the Premises.
- (h) *Registration.* The Confirming Party shall have stamped and registered this Agreement with the appropriate Governmental Authorities in accordance with Applicable Law and shall have taken responsibility for any and all costs associated with such stamping and registration.

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

ARTICLE VIII

LESSEE'S COVENANTS

8.1 Insurance

- (a) *Required Insurance.* The Lessee shall obtain and maintain, at its expense, the insurance described in Appendix K on terms and conditions stated therein. The Lessee shall provide the Lessor with copies of all such insurance 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.



8.2 Safety; Security

- (a) *Safety Procedures.* The Lessee shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of its Operations and the Lease Property in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards and the Lessor's guidelines that are applicable to all operators at the Port.
- (b) *Security System.* The Lessee shall be responsible for the preparation and implementation of a safety and security system in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards for the Lease Property and the cargo 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.
- (d) *Traffic.* Traffic operations, vehicular traffic and all transport activities related to the Premises shall be conducted in accordance with Applicable Laws.
- (e) *Signage.* The Lessee shall be responsible for installing appropriate signs within the Port to indicate the location of and access routes to the Premises. The location, size and content of such signs, and their method of installation, shall be approved by the Lessor prior to their installation.

8.3 Environment

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

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- (d) Spill Containment Programs. Within sixty (60) days after the Execution Date, the Lessee, in cooperation with the Lessor and the applicable Governmental Authorities, shall prepare and implement a contingency plan and a hazardous materials spill containment, removal and remediation plan for the Premises in accordance with Prudent Industry Standards and Applicable Law.
- (e) Obligation to Notify. In the event that pollution occurs that may affect the Premises, the Lessee shall:
- (i) inform the Lessor immediately of the same;
 - (ii) take all reasonable measures required for detecting, cleaning and containing such pollution; and
 - (iii) provide the Lessor with frequent written updates on such measures being taken or remaining to be taken by the Lessee.
- (f) Lessee Obligation to Remediate. In the event that Waste Material is present in the waters or in or on the bottom of the Port after the Effective Date, which has originated from the Premises, then the Lessee shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 8.4 Emergencies In the event of an environmental emergency emanating from the Premises and endangering life or property, the Lessee shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including the Lessee's response thereto, to the Lessor. If the Lessee has not taken reasonable precautions for the safety of the public, its customers or the protection of the Lease Property, and such failure creates an environmental emergency requiring immediate action, then the Lessor, with or without notice to the Lessee may, but shall be under no obligation to, provide reasonable protection as required to address such emergency. The taking of any such action by the Lessor, or the Lessor's failure to take any action, shall not limit the Lessee's liability. The Lessee shall reimburse the Lessor for the performance of any such work or furnishing on the Lease Property of any such equipment in connection with any emergency in an amount equal to the reasonable costs incurred by the Lessor in such performance of work or furnishing of equipment.
- 8.5 Information; Communication Within one hundred and eighty (180) days after the Effective Date, the Lessee shall install a computerized information system for the recording of Import/ Export of Cargo within the Premises, and shall periodically update this system to provide computerized information related to Cargo delivery.
- 8.6 Dredging; Mooring The Lessee shall take such measures as shall be necessary in the Lessor's opinion to enable dredging and placing and removing of any mooring posts in the vicinity of the Premises, including without limitation allowing anchoring, mooring and dredging vessels to be installed, used and maintained by or on behalf of the Lessor in the shore strip of the Premises provided that such measures do not have an adverse effect on the performance of the Operations by the Lessee. Subject to the Dredging Plan as may be amended from time to time by mutual agreement, the Lessee shall, at its own cost and expense, perform such work to the Lease Property as shall be necessary to avoid damages which could arise from such work to be performed by or on behalf of the Lessor. If, as a result of such work, the Lease Property is damaged, such damage shall be remedied at the Lessee's costs unless the same was attributable to the Lessor's or its contractors' negligence or wilful misconduct.
- 8.7 Lessee Ownership Structure The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent. Such written consent must be given by the Lessor within ninety (90) Business Days following the receipt of the request, failure of which, the Lessor shall be deemed to have given its consent.
- 8.8 Taxes The Lessee shall pay any taxes, levies, duties, withholdings, or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessee as a result of the performance of its obligations hereunder.

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8.9 Licenses; Permits The Lessee shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessee to fulfil its obligations hereunder, including without limitation, the performance of the Operations in accordance with this Agreement.

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

ARTICLE IX

LESSOR'S COVENANTS

9.1 Cooperation The Lessor shall cooperate with the Lessee as reasonably necessary to enable the Lessee to perform its responsibilities under this Agreement, including provision by the Lessor of copies of drawings, plans, policies, papers, records, reports, data and other information directly related to the Premises or Port as reasonably necessary for the Lessee to perform the Operations and manage the Lease Property.

9.2 No Interference. The Lessor shall ensure that its personnel shall not delay or interfere with the performance of the obligations of the Lessee or with the Lessee's personnel in the execution of their duties.

9.3 Port Access The Lessor shall, at all times possible, keep the Port open to shipping so that the Premises may be accessible by sea and by land for use by the Lessee for the performance of its Operations.

9.4 Berth and navigational aids within the Premises. The Lessor shall be responsible for the maintenance of the Berths and the navigational aids within the Premises.

9.5 Port Services; Vessel Management.

(a) The Lessor. The Lessor shall:

(i) provide and maintain maritime approaches, canals, turning circles, breakwaters and navigation aids;

(ii) in accordance with Applicable Law, issue regulations and rules governing waterside safety within the Port;

(iii) provide pilotage, towage, berthing, unberthing and shifting of vessel services required by all vessels intending to call at the Premises:

(A) in accordance with the schedule of the arrivals and the departures to be prepared pursuant to consultation between the Lessor and the Lessee; and

(B) in a timely and efficient manner either directly or through the licensing of competitive suppliers of such services provided that the Lessor shall at all times be responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Sub Section; and

(C) at prices which shall not exceed the published tariffs of the Port at such time;

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Failure to provide pilotage, towage, berthing, unberthing and shifting of vessel services in accordance with the provisions of Sub Section 9.5(a) so as to have a material adverse effect upon the performance of the Operations of the Lessee shall require the Parties to meet and discuss the reduction in the Throughput Fee to compensate the Lessee for any financial loss that the Lessee has incurred as a consequence of the Lessor's acts or omissions.

(b) *The Lessee.* The Lessee shall at all times be solely responsible for the scheduling of the Berths. The Lessee shall keep the Lessor fully informed of the scheduling of the Berths and any amendments thereto.

- 9.6 Dredging. The Lessor shall be responsible for the dredging of the channel to the Port (including without limitation the face of the Berths at the Premises), either directly or through the licensing of competitive suppliers of such services. The Lessor shall, at all times, be solely responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Section. The Lessor shall undertake dredging in accordance with the Dredging Plan with the intention of achieving and maintaining a depth of water at the Berths of the Premises of 9.4 meters below Low Low Water and the approach channel of at least 9.4 meters below Low Low Water in accordance with the Dredging Plan to be provided during the Transition Period, provided that interference with the performance of the Operations by the Lessee shall be kept to a minimum.
- 9.7 Waste Disposal. The Lessor shall arrange for the disposal of waste materials generated from vessels berthed at the Ports in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 9.8 Latent Defects. The Lessor shall remedy any Latent Defects which materially impair the Lessee's use of the Lease Property and the performance of its Operations.
- 9.9 Access to Premises. The Lessor shall ensure that at all times throughout the Term the Lessee, its employees, its customers and suppliers are provided with the road and rail access to the Premises in existence as of the Effective Date, subject to the security regulations governing access to the Port and other Applicable Laws.
- 9.10 Utilities Infrastructure; Rights of Way. The Lessor shall, throughout the Term, provide all infrastructure for the provision of the Utilities to the Premises necessary to equip, operate, maintain, manage and repair the Premises. The Lessor shall grant rights of way and easements through the Port outside the Premises for existing and future Utilities to the Premises. The Lessor shall not take any action which is detrimental to the efficient supply of such Utilities to the Lessee.
- 9.11 Utilities. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 9.12 Security. The Lessor shall be responsible for the general security of the Port outside the security fence of the Premises, security of all land and sea entrances to the Port and the provision and maintenance of the perimeter fencing on the boundaries of the Port.
- 9.13 Lessor Obligation to Remediate. In the event that Waste Material is present on the Premises or in the waters or in or on the bottom of the Port before the Effective Date, which the Lessee reports to the Lessor and which have originated from the Premises, or after the Effective Date which has not originated from the Premises (including but not limited to Waste Material originating from vessels calling at the Port) then the Lessor shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 9.14 Licenses; Permits. The Lessor shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessor to fulfil its obligations hereunder and shall provide reasonable assistance to the Lessee in its efforts to obtain and keep in force the licenses and permits required to be obtained or maintained by the Lessee under Section 8.9.

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

ARTICLE X

FORCE MAJEURE

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

ARTICLE XI

DOCUMENTATION AND AUDITS

- 11.1 Records and Reports
- (a) Maintenance of Books and Records. The Lessee shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Lease Property, for providing information to the Lessor, and for informing the public and its customers of the quality and performance of its Operations.
- (b) Accounting. The Lessee shall maintain suitable and complete accounting and non-accounting records that summarize technical, commercial, financial and personnel information, including

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records relating to ship and shore services. All such information shall be retained in a form that shall permit regular audits. Financial records and accounts shall be maintained in accordance with applicable international generally accepted accounting principles as agreed to by the Lessor. Technical records (including without limitation engineering designs and drawings) shall be maintained in accordance with Prudent Industry Standards.

- (c) *Lease Property.* Beginning on the Effective Date, the Lessee shall prepare and maintain current records of the Lease Property in sufficient detail as required by the Lessor, to provide a full understanding of the location and state of the Lease Property. Such records shall be comprised of physical drawings, databases and calculation sheets along with historical records relating to their constitution, repairs, and maintenance, including all works carried out as replacements, rehabilitation and maintenance. Physical plans for buildings shall clearly identify and describe the as built profiles.
- (d) *Copies of Records.* The Lessee shall provide the Lessor and the Regulator with copies of the foregoing records as requested by the Lessor on a quarterly basis.
- (e) *Disclosure.* A Party shall obtain the written approval of the other Party prior to disclosing any confidential information related to this Agreement, the Lease Property or the Operations to the public.
- (f) *Other Information.* The Lessee shall provide to the Lessor any other information as the Lessor may reasonably require, including without limitation:
- (i) accurate data on the quantity, types and weight of Cargo handled in the Premises;
 - (ii) accurate data on the numbers and types of ships, wagons or road trucks loaded or unloaded in the Premises;
 - (iii) average ship turn around time, cargo dwell time, truck loading/unloading time;
 - (iv) accurate details of the claims received and payments made in relation to cargo damage;
 - (v) immediate notification of accidents within the Premises causing death or serious injury;
 - (vi) immediate notification of incidents causing oil pollution or other forms of environmental damage;
 - (vii) industrial relations;
 - (viii) public complaints;
 - (ix) notification of additions to and disposals of mechanical equipment and other significant assets; and
 - (x) accurate data on the availability for use of major items of mechanical equipment such as gantry cranes and front-end loaders.

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

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

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11.3 Annual Report The Lessee shall prepare an annual report ("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

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

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

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

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

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

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



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

ARTICLE XII

REPRESENTATIONS AND WARRANTIES

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

- (a) The Lessee is:
 - (i) a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with registration number RC 675997.
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessee) threatened against the Lessee that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessee, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Lessee, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessee of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.
- (e) It is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to perform its obligations hereunder.
- (f) It has:
 - (i) carefully examined this Agreement, together with all Appendices attached hereto, thoroughly and become familiar with all their respective terms and provisions;
 - (ii) Investigated to its satisfaction all Applicable Laws and it can perform its obligations hereunder in accordance therewith;
 - (iii) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and
 - (iv) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Lease Property.

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

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- (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 XIII

DEFAULT

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

- (a) The Lessee becomes insolvent, or, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal and such court or tribunal makes an order for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation and an order is made in respect thereof by a court of competent jurisdiction.
- (b) Other than as a consequence of an Interruption, the Lessee fails to perform the Operations for fourteen (14) consecutive days in an Operating Year or sixty (60) non consecutive days in an Operating Year. However, where the Lessee fails to perform the Operations for seven (7) 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 during which the traffic has been diverted to other terminals.
- (c) Subject to Section 18.5, the Lessee fails to pay any amounts due in accordance with this Agreement.
- (d) The Lessee commits a breach of a material provision of this Agreement.

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

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

13.3 Consequences of Default

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

ARTICLE XIV

TERMINATION.

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

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

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

Signature



14.3 Continuity of Operations. The Lessee shall ensure smooth continuation and provision of the Operations throughout the Termination Period. The Parties agree to minimize disruption of the Operations performed by the Lessee.

14.4 Compensation. The Parties shall pay to one another compensation due and payable in accordance with the provisions of Article 15.

ARTICLE XV

COMPENSATION

15.1 Compensation upon Force Majeure. The Parties shall bear their respective costs and neither Party shall be required to pay to the other party any costs arising out of an event of Force Majeure.

15.2 Compensation on termination due to Lessee Event of Default. If the termination is due to a Lessee Event of Default, the Lessee shall:

- (a) pay to the Lessor any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessor as a consequence of such termination; and
- (b) convey, transfer, assign and deliver to the Lessor, free and clear of all liens and encumbrances, the Lessee's right, title and interest in and to the Movable Assets for nil consideration, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessor.
- (c) an aggregate amount equivalent to the Lease fees payable by the Lessee for two years following Lessee Event of Default if such default occurs within two years from the Effective Date.

15.3 Termination due to Lessor Event of Default. The compensation payable by the Lessor shall be the aggregate of:

- (a) any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessor as a consequence of such termination;
- (b) the commencement fee, in the event that there is termination due to a Lessor Event of Default in the first Operating Year, and
- (c) any and all construction and development costs incurred by the Lessee in respect of fixed assets pursuant to the conduct of the Development Plan or otherwise incurred pursuant to the development of the Promises in accordance with this Agreement, in the event that there is termination within two years from the Effective Date due to a Lessor Event of Default.

15.4 Compensation upon expiry of the Term. The Parties shall bear their respective costs upon expiry of the Term.

15.5 Delayed Payment. If for any reason, other than those attributable to the other Party, a Party fails to pay the payments that it is required to make in accordance with this Article 15 on the Termination Date, the defaulting Party shall be liable to pay annual interest at a rate of LIBOR plus five per cent (5%) compounded monthly.

15.6 Remedies Cumulative. The exercise of the right to terminate this Agreement by either Party shall not preclude such Party from availing of other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any remedies by such Party.

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ARTICLE XVI

INDEMNITIES; LIABILITIES.

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

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

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

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

ARTICLE XVIII

MISCELLANEOUS.

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

Handwritten signature



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

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

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

ECM Terminal Limited
9, Wharf Road,
Apapa - Lagos.
Attention: The Managing Director
Telephone: + 234 1 5458858
Facsimile: +234 1 5457307
- 18.9 Confidentiality Each Party agrees to hold in confidence during the Term and for a period of five (5) years following the termination of this Agreement, any information supplied to such Party (the "Receiving Party") by the other Party (the "Disclosing Party") and related to the Lease Property, the Movable Assets, the Operations or this Agreement. The Receiving Party shall be entitled to disclose such information to its officers, directors, employees, external advisors and/or agents who have a need to know in order to assist the Receiving Party in the performance of its obligations hereunder; provided that the Receiving Party shall be responsible for ensuring that all such persons keep such information confidential. The provisions of this Section shall not apply to information within any one of the following categories or any combination thereof:

Unpublished



- (a) information that was in the public domain prior to the Receiving Party's receipt thereof from the Disclosing Party or that subsequently becomes part of the public domain by publication or otherwise except by the Receiving Party's wrongful act;
- (b) information that the Receiving Party can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; or
- (c) information received by the Receiving Party from a third party having no obligation of secrecy with respect thereto. It shall not be a breach of the obligation of confidentiality contained herein if the Receiving Party discloses such confidential information as required by Applicable Law.
- 18.10 No Waiver Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.
- 18.11 Severability The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- 18.12 Further Assurances The Parties agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.
- 18.13 Lessee Compliance with Laws; Officials Not to Benefit The Lessee shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessee represents and warrants that it has not paid, promised to pay or authorized the payment of, and agrees that it shall not pay, promise to pay or authorize the payment of, any money or anything of value, directly or indirectly to any person (whether a government official or private individual) for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.
- 18.14 Lessor Compliance with Laws; Officials Not to Benefit The Lessor shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessor represents and warrants that it has not received, arranged or agreed to receive, and agrees that it shall not receive, arrange to receive or agree to receive payment of any money or anything of value, directly or indirectly by any person for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favourable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.
- 18.15 Transition Period Transitional period shall be the period between the Execution Date and the Effective date, not exceeding forty-five (45) 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)


Hon. Min. of Transport
Chairman



Adebayo B. Sarumi
Managing Director, NPA


Mrs. O. I. Anubi
Secretary, NPA

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, BPE


Dr. Paul O. Idornigie
General Counsel, BPE

THE COMMON SEAL OF THE WITHIN NAMED LESSEE
ECM TERMINALS LIMITED
was hereto affixed
In the presence of:

(seal)


Mahmud B. Tukur
Managing Director


Paul Usoro & Co.
Secretary



Appendix A

PREMISES



APPENDIX B

FIXED ASSETS

INVENTORY OF FACILITIES AND DEVELOPMENTS ON THE SITE CONCESSIONED TO ECOMARINE SERVICES.

1. Port Engineers Office Block
2. Port engineers workshop
3. 'A' warehouse
4. Warehouse identified as shed 3
5. Ware house identified as shed 2
6. St. John's Ambulance post
7. Quay Canteen
8. Power House
9. Diesel store
10. Custom post
11. Plant office
12. Maintenance workshop with adjoining mechanical store, washing bay, vulcanizing room etc.
13. Gear Store.
14. Weigh Bridge and its office
15. Petrol filling station/ fuel dump
16. workshop security post
17. Concessioned Quay apron
18. 2 nos storage tanks (vegetable oil Silos) Within the area allocated to Assan oil limited behind shed 3.
19. Other Services Installed.

DESCRIPTION OF THE FACILITIES

1. PART ENGINEERS OFFICE BLOCK.

This is sited to the Port Engineers workshop. There are two floors in the building and each partitioned with block walls into offices of a total area of 467.37m².

2. PORT ENGINEERS WORKSHOP.

It is rectangular building with gross area of 1454.70m² partitioned into workshops. It has mezzanine ground office and also at the upper floor with net space of 55.22m². It is in good condition and high structural standard.

3. A' WAREHOUSE

It is oblong shaped warehouse located in front of shed 1 presently occupied by Intel services. It is over looking the gear store and has gross area of 6840m². While the attached store and toilet block covers 182.80m². At the time of inspection the entire floor space is in a very bad condition, the floor slabs are completely detached and sinking and the walls are cracking at various points of the warehouse. In other words a lot repair work has to be carried out before it could be brought to a good state and satisfactory standard.

4. SHED 3

It is lying beside the quay and of similar design to "A" warehouse. The warehouse is in good condition and of high standard design, and covers area of 6480m². The attached toilet has area space of 226.48m² and also electrical sub station covers 142.4m². The other end of the warehouse are with ground and mezzanine floor of 720m² linked with timber stair case.

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5. SHED 2

This is identical to shed 3 with total area of 6480m² and two attached office space for the two floors totaling 720m². It is in good condition except minor repairs to be carried out which include roof leakage at various positions of the ware house and also middle part of the floor space is dilapidated;

it is always difficult for the crane and forklift to maneuver while dropping and picking load in the warehouse.

6. ST. JOHN AMBULANCE POST

This is small rectangular bungalow beside the quay access road and overlooking the 'A' warehouse. It is in good condition only it needs painting work/ minor refurbishment. The gross area is about 81.90m².

7. QUAY CANTEN

This is a bungalow structure that is in good condition; it is located across the quay's main access road. It lies opposite sheds 1 and 2 of the port. It has total area of 522.41m².

8. POWERHOUSE

It is a bungalow structure located at the southern end of 'A' ware house. The concrete floor is raised to about one (1) meter thick from ground level. It is in good condition with gross area of 235.79m² and northern unit of headroom is 104.70m².

9. DIESEL STORE

This is small rectangular store bungalow close to the power house with gross area of 103.98m².

10. CUSTOM POST

This is a rectangular bungalow structure at the quarry's main access road. It is presently in good condition and presently occupied by custom operational officers. It has gross area of 128.42m²

11. PLANT OFFICE

It is a bungalow structure that accommodates the plant drivers and other plant management personnel's located at the northern end of the quay access road towards the mechanical workshop. It has a gross area of 55.16m²

12. MECHANICAL WORKSHOP PREMISES

i. Main Workshop

The workshop premises is in good shape and fenced round with block wall. It has an open frontage space where repairs and maintenance of cranes and vehicles are carried out. It has also an inbuilt mega suspended forklift. It is segmented into sections that include.

Fork lift section, planning and control section, Heavy duty vehicle section light vehicle section, welding, panel beating and Auto Electrical section and other sections presently occupied by NPA officials from the Stores, Procurement and Engineering Departments

The two floors in this building namely: Mezzanine office area of 302.04 m² and the ground floor space has a built up area of about 2252.10m².

ii. Vulcanized Section/ Battery Section/ Refrigeration, Air Conditioning section and washing bays

W. A. S. S.

These sections are the extension to the workshop, it is designed to high standard and the structural condition is in good order with total area of 460m²

~~THE VULCANIZING SECTION~~

This Section is used for storage of galvanized steel plates, iron rods and etc. it has gross area of 218.67m². it is located in front of vulcanizing section.

13. GEAR STORE

This is a bungalow designed structure, it is in good type and condition with total area of 1252.50m².

14. WEIGH BRIDGE

This rectangular bungalow building beside the weighbridge is at a short distance to the ports entrance gate.

The gross area is about 9.50m² and the office is presently in good state while the weighbridge has a minor operational defect.

15. FUEL DUMP/ FILLING STATION

This is located within the mechanical workshop premises; the gross area is about 18.60 with concrete basement of about 1 meter thick.

16. SECURITY POST AT MECHANICAL WORKSHOP

The Security post has cement concrete base of 0.5 meter thickness and 43.40m² gross area. It is located at the entrance to the workshop. It is presently in good condition.

17. QUAY APRON

The quay length of the concession area to Ecomarine is 480.40 meters and the quay apron, measured to the edge of the sheds from the quay is 39 meters.

Therefore the area of the quay apron is (480.40 x 39.00) i.e 18735.60m² it is important to state that the quays are in good structural standard, this is because of low operational activity in Calabar port hitherto the quays were built.

18. 2 NOS. STORAGE TANKS WITHIN THE ALLOCATED ASSAN OIL AREA.

This is paved stacking area directly behind shed 3, the gross area is (50.00 x 20)m² i.e 1000m².

It is presently fenced with transparent wire gauze. The 2 nos. storage tanks with 7.60m and 10.20 diameters respectively.

19. OTHER SERVICES INSTALLED.

There are existing access road light poles and security steel metal poles, of or about 0.5 dm. Please see table below

9/12/2012



<u>S/N</u>	<u>Location</u>	<u>No. of security light poles</u>	<u>No. of security light poles</u>
1	Mechanical workshop area	2nos.	-
2	Between mechanical workshop and plant office	2 nos.	5 nos
3	'A' warehouse	2 nos.	-
4	Between 'A' warehouse and boundary of Terminal A	3 nos.	-
5	Between the quay and entrance gate to the port	-	14 nos.
6	Within civil engineering and CPE's office block	-	7 nos.
7	Between the junction of CPE's entrance to shed 3	-	7 nos.
8	Between shed 2 and shed 3	7 nos.	-
TOTAL		16 nos	33 nos

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Redacted

Appendix C

Redacted



Redacted





Appendix E

OPERATIONS

A. OPERATIONS

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

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

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. project and oil related cargo;
5. inland depot transfers; and
6. all other activities necessary to conduct Operations.

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down market*

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Appendix F

LEASE FEES

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

- (a) an initial payment of **Redacted** to be paid within fifteen (15) days after the Execution Date (the "Commencement Fee");
- (b) a fixed annual payment of a sum as specified in the schedule below to be paid twelve in (12) equal instalments in each Operating Year, the first instalment to be paid on the first day first month after the Effective Date and then, on the same date of every month thereafter (the "Lease Fee")

Redacted

profits

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- (c) a throughput fee calculated on the basis of one United States dollar (U.S. \$ 1) per ton handled in the Premises in case of both Bulk and break-bulk Cargo and sixteen United States dollar (U.S. \$16) per

W. J. J. J.



TEU handled in the Premises for Containers payable in arrears at the end of each monthly period beginning on the first day of the first month after the Effective Date (the "Throughput Fee" and, together with the Commencement Fee and the Fixed Payment, the "Lease Fees").

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

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

MECHANISM FOR THE COLLECTION OF THROUGHPUT FEES

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

DELAY IN PAYMENT

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

BANK ACCOUNT DETAILS

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

Redacted

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Appendix G

BERTHS

BERTH NO.	MAXIMUM BERTH LENGTH
3	40m
4	150m
5	150m
6	140m

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Appendix H

OPERATIONS RATES

A. OPERATIONS RATES

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

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

Redacted

W. J. McInt



Redacted

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



Redacted

W. J. McInt



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

Maximum Tariffs for the Cargo Dues of Vehicles

Category	Vehicle Type	Cargo Dues USD	Remarks
IMP Vehicle per	Upto 15 cbm ¹	14.3	<ol style="list-style-type: none">1. The charge is paid by the consignee.2. The Cargo dues is paid in USD3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
	16 to 25 cbm	25.8	
	Over 25 cbm	55.8	
	Trailer/ Mafiwagon	110.8	
EXP vehicle per	Upto 15 cbm	13.3	<ol style="list-style-type: none">1. The charge is paid by the line2. The Cargo dues is paid in USD3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
IMP per Ton (TWA Coastal)	Upto 15 cbm	15.0	Please refer to the section for IMP per vehicle
	16 to 25 cbm	16.0	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
EXP per Ton (TWA Coastal)	Upto 15 cbm	15.0	Please refer to the section for EXP per vehicle
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
Explanatory Notes			
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic. Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S			

¹ cbm = Cubic meters

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

Redacted

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

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

B. FREE STORAGE TIME

Unless agreed otherwise with the Lessor and the Regulator, the Lessee shall provide three (3) days free storage time for import 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 PLAN⁶³

The success of most organizations depends on the caliber of their employees and how the organization is able to assist the employees to unleash their full potentials towards achieving the goals of the organization.

The ECM Terminals Limited believes strongly in the power and influence an affective work force has in achieving the goals of any organization and as a result is very determined to implement a human resource strategy that would achieve the best results for the company. This derives from our current practices where employee's issues are given top priority.

The Company is mindful of the fact that a sound human resource strategy in the effective management of the ports plays a significant role and is already articulating a comprehensive strategy that would help in developing a skilled, dedicated and well-trained workforce. The strategy is built on attracting and retaining the best people, developing and constantly training them and instituting a compensation system that would effectively align the interest of the staff with that of the Company's vision and shareholders interests.

The primary goal is to build a work force that is continuously well trained in technical skills and knowledge to operate and maintain new equipment and systems; a work force that is very customer service oriented, willing to go the extra mile to ensure that quality services are delivered and possesses a strong *can-do* attitude.

Staffing Policy

a) Strategic H/R policy

The Company's Staffing policy will focus on four strategic human resources policy areas:

1. Human resource flows:

This involves managing the recruitment and performance of our people. The management plans to develop an effective recruitment program and selection technique, which will ensure that the most suitable people are recruited, placed in the most appropriate jobs based on their key strengths and carry out periodic objective evaluations to promote those with outstanding performance;

2. Reward Systems:

Develop a financial and non-financial reward system, including pay and benefits to attract, motivate and keep employees;

3. Employee Influence, controlling levels of authority, power and decision-making;

4. Work Systems; define and design jobs so that the arrangement of people, information and technology provide the most productive and efficient results.

These policies would help the Company to recruit and retain committed employees who have bought into the vision of the company and are performing in a cost effective and competitive manner.

b) Employment and Labor Deployment

Employment

The Company would hire employees on a need basis in line with level of operations and annual manpower budget. Vacancies shall be filled with candidates who possess the academic qualifications, work experience and performance record;

Applicants would be required to submit written applications physically or electronically via email. Entry-level applicants must take a written test and all employees must appear physically for interviews;

All employees would be required to pass a medical test prior to joining the company;

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Staff Promotion/performance appraisal

Performance evaluations would be done periodically by the superior officer/ head of department of a particular staff, who works closely with the staff to be able to give an accurate evaluation of his/her performance;

Key evaluation points would include technical skills and the possession of the company's core values;

Performance levels would comprise of the following levels - outstanding, above average, meets expectations and does not meet expectations. Scores that do not meet expectations may lead to the staffs' exit from the company.

All staff promotions would be done on an objective basis using the staff evaluations that would have been done in the evaluation period. Promotions would be subject to vacancies and the company would as much as possible promote from within.

Labor Deployment policies

ECM Terminals shall comply with all the provision of labor laws and regulations in Nigeria with special reference to the maritime and allied industries.

Subject to ship traffic situation, the terminal shall operate round the clock seven days a week in 3 shifts. Port workers shall be deployed in the three shifts with appropriate attention to the provisions of Labor Act as well as Industrial practices and collective agreement.

ECM Terminals shall observe basic rules on shift hours as a vital component of its organizational policy on employee welfare. Shift hours, job contents and demand shall be carefully structured to avoid undue stress on individuals or categories of staff.

Employee of all classes shall be trained to ensure multi-skilling for individual and organizational flexibility in staff deployment in the event of operational exigencies.

Remuneration

Staff salaries and remunerations would be competitive and in line with industry standards.

Salary surveys would be done regularly by the Human Resources department and would be used to benchmark ECM Terminals staff salaries.

Salary of a staff would depend on level of the staff. Each level would have a band and a staff would earn a particular salary based on position and performance. This means that two staff on the same level but considered to be operating at different competency levels that is, one person has better evaluation, would have different salaries. The higher performing person would have a merit increase above the basic level.

c) Proposed management structure

The ECM Terminals Limited intends to adopt the following approach to staffing the management structure:

- To deploy on the outset a strong core team of key management personnel consisting of the General Manager and the heads of Operations, Finance & Administration and Business Development.
- To identify HR and other key functional managers from former NPA staff or the local market and to integrate these into the overall management operating team, providing support in implementing structural changes and introducing new operating procedures.
- To deploy as and when required, a team of highly qualified project support personnel who will be on short-term and medium term assignments in specialized areas and to execute and introduce desired changes.

In conjunction with ECM Terminals's Technical Partners, this cadre of personnel would also include well qualified and experienced expatriate personnel to establish a world class port



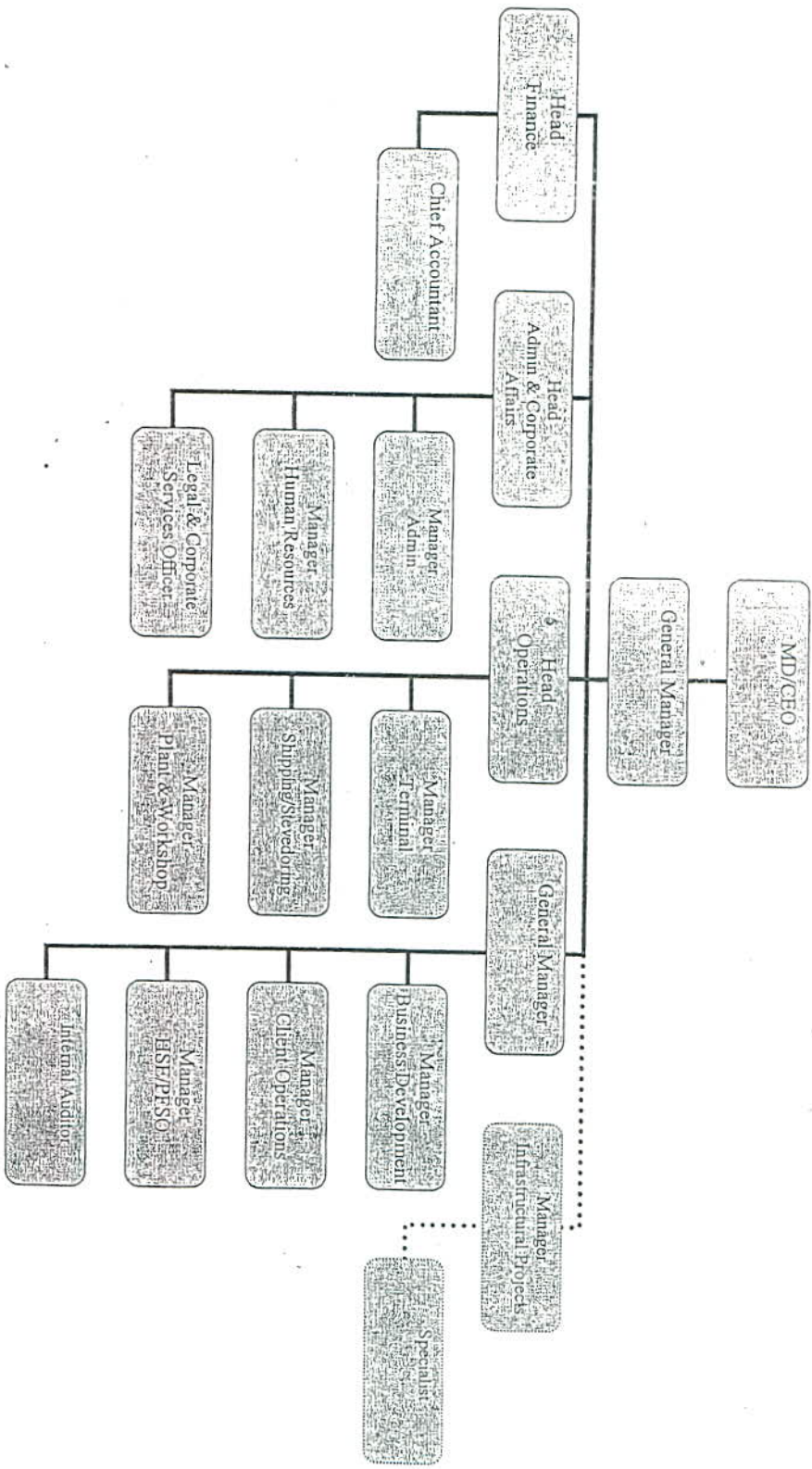
operating systems and procedures and technology transfer. The succession plan highlights the transfer of such responsibilities to competent nationals.

d) Management Organizational Chart; Staffing Levels & Summary

12



ORGANIZATIONAL CHART
MANAGEMENT & DEPARTMENTAL STRUCTURE



1

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STAFFING LEVELS

FUNCTION	NO	FUNCTION	NO
Managing Director/CEO	1	ADMIN & CORPORATE AFFAIRS DEPT	
General Manager	1	Head Admin & Corporate Affairs	1
Sub Total	2	Manager Admin	1
		Admin & General Services Officers	2
OPERATIONS DEPARTMENT		ICT Specialist	1
Head Operations	1	IT Officers/Analysts	2
Manager Shipping/Stevedoring	1	Protocol Officers	2
Port Captain	1	Legal & Corporate Services Manager	1
Chief Cargo Superintendent	1	Legal Officer	1
Cargo Superintendents	2	Claims & Insurance Officer	1
Ships Supervisors	3	Personnel Manager	1
Quayside Supervisors	3	Personnel Officers	3
Measurement & Tally Clerks	6	Secretaries	3
Manager Terminal	1	Receptionists	2
Traffic Co-ordinator	1	Drivers	6
Warehouse Supervisors	3	Sub Total	27
Yard Supervisors	3	REPORTING TO GENERAL MANAGER	
Plant Supervisors	2		
Delivery Supervisors	3	Manager Business Development	1
Operations/Tally clerks	4	Manager Client Operations	1
Riggers	12	Commercial & Receivables Executives	4
Manager Plant & Workshop	1	Research/Statistics Officers	2
Maintenance Co-ordinator/Chief Engineer	1	Sub Total	8
Engineers	3	SAFETY & SECURITY	
Technicians	7	Manager HSE/Port Facility Security Officer	1
Crane & Forklift Operators	16	HSE Officer	1
Truck Drivers	12	Chief Security Officer	1
Radio Operators	2		
Store keepers	2	Sub Total	3
Sub Total	91		
FINANCE DEPARTMENT		Internal Auditor	1
Head Finance	1	Auditor Assistant	1
Chief Accountant	1	FACILITIES (PROJECT CONTRACT)	
Accountants/Invoicing Officers	3	Manager Infrastructural Projects	1
Cashiers	2	Industry Specialist	1
		Sub Total	2
Sub Total	7	GRAND TOTAL	140

STAFF SUMMARY

Category	Total
Senior Management	5
Middle Management	11
Operations	86
Finance	7
Administration	23
Commercial/Business Development	6
Safety & Security	2

The functions marked in red on the above staffing levels indicate intended expatriate positions.

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Succession Plan

As identified in the staffing plan above, ECM Terminals would in conjunction with its Technical Partners provide experienced expatriates who would be part of the management team and specialized units within the first three years.

The technical partners are to train Nigerian nationals within the period to be able to take over full management of the port. The intention is to localize the operations as much and as quickly as possible. One of the mandates to be given to expatriate managers for the first two years will be for them to identify and groom potential successors.

Some key management roles, including Engineering, Information technology, Operations and Finance where it is believed that there are qualified and competent Nigerians will be handled by Nigerians from the outset and functions initially staffed by expatriates will be transferred to Nigerians within the first three years.

Identified Nigerian managers will be assessed to determine their development needs and a plan will be drawn up to address these. They will attend executive training programs delivered by world-class universities and participate in regional and global projects to gain experience working in multi-cultural teams.

Identified potential candidates for senior management positions will be given international assignments on rotation which could involve working at the corporate offices or in other ports within the control of Company members, to ensure that they acquire required international exposure.

Ultimately the objective is that Nigerian nationals will take over control of entire scope of activities within the shortest possible and reasonable period of time.

Expatriate representations of technical partners where necessary would of course continue within the framework of the respective technical agreements provided the overall arrangement is consistent with providing maximum exposure to all levels of the organization to Nigerian nationals.

Succession Module (HR Development and Training)

The Company plans to adopt a three-phase module in its human resource development and training:

PERIOD	KEY ACTIVITIES
PHASE 1 (Short Term)	<p>Interview and select NPA staff that are competent and have values that would align with ECM Terminals's;</p> <p>Select staff from Company members;</p> <p>Recruit other staff;</p> <p>Intense training of key operational staff to ensure that terminal operations run smoothly and efficiently;</p> <p>Comprehensive technical training program to be organized by equipment manufacturers;</p> <p>Hold computer training on new IT systems and software such as the accounting software and the container tracking system.</p>
PHASE 2 (Medium Term)	<p>As operations attain much higher levels, more technical training would continue;</p> <p>Employees to be periodically sent on offshore training courses to acquire international experience and superior knowledge, which they would be expected to transfer to other staff. This would reduce the need for expatriate staff;</p>

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	<p>At this phase much focus would also tend towards enhanced development of personnel on soft and specialist skills such as safety, marketing and customer relations;</p> <p>Use the services of training centers in Nigeria;</p> <p>In-house training facility to be established and handled by internal and external resources persons thereby reducing foreign dependence;</p> <p>Develop a comprehensive staff hand book and corporate culture;</p>
PHASE 3 (Long Term)	<p>Develop a solid corporate culture, for instance ECM Terminals staff would be known for possessing a unique way of behaving built on professionalism;</p> <p>Send middle management and top management staff for management and advanced management courses at credible institutions in Nigerian and overseas</p>

In executing the above plans, it is the objective of the ECM Terminals Limited to ensure that Calabar Terminal B runs as an internationally recognized port under capable Nigerian professionals and impacts directly on the immediate host environment as well as the national economy at macro levels within the shortest possible time.

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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 _____ 2007 (the "Lease Agreement") between the Nigerian Ports Authority (the "Lessor") the Bureau of Public Enterprises (the "Confirming Party") and ECM Terminals Limited (the "Lessee"). This Performance Bond is being submitted to you pursuant to the instructions received from the Lessee.

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

1. Guaranteed Obligations. The obligations of the Lessee to pay the due and payable Fixed Payment and all financial obligations and penalties due and payable 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.

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

[NAME OF FINANCIAL INSTITUTION ISSUING GUARANTY]

Name:

Title:

M. J. J. J.



Appendix K

INSURANCE

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

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Appendix M

Dredging Plan

Signature

Signature



Appendix N
Transition Plan

1. DEFINITIONS

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

"CY" means the Container yard to be more particularly delineated on the Real Property Survey;

"Condemned Assets" means the assets, buildings and infrastructure on the Premises at the Execution Date not being Fixed Assets which shall be demolished by the Lessee during the Term in accordance with the Development Plan;

"Demolition Works" means the demolition of the Condemned Assets;

"Development Plan Equipment" means the equipment to be purchased and installed on the Premises by the Lessee in accordance with the provisions of the Development Plan;

"ISPS Code" means the International Ship and Port Facility Security Code;

"Lessor Operations" means the operations performed by the Lessor at the Premises ;

11 "Long Sitters" means overtime Containers on the Premises at the Execution Date;

"Redundant Assets" means any and all assets, equipment and other materials on the Premises not forming part of the Condemned Assets. "TOS" means an advanced Terminal Operating System;

2. INTRODUCTION

- 2.1 This Transition Plan sets out the rights and obligations of the Lessor and the Lessee during the Transition Period.
- 2.2 The Transition Period is critical for a successful transfer of the Premises and the subsequent commencement of Operations. The Transition Committee shall ensure that during the Transition Period, the Parties shall follow and comply with the provisions of this Appendix.
- 2.3 It is important that the Lessor and Lessee work closely together towards the common goal of a successful transfer of the Premises from Lessor to Lessee in accordance with the provisions of this Agreement and the commencement of the Operations by the Lessee on the Effective Date.

3. TRANSITION COMMITTEE

- 3.1 The Lessor and the Lessee shall each appoint 2 (two) representatives to form a Transition Committee who shall be responsible for overseeing the implementation of the provisions of the Transition Plan during the Transition Period. The Transition Committee shall consult with the relevant Government Authorities where necessary in order to comply with Applicable Law and the provisions set out in the Agreement.

4. THE LESSOR OPERATIONS

- 4.1 Throughout the Transition Period:
- (a) the Lessor shall continue the Lessor Operations subject to the provisions of this Transition Plan;
 - (b) the Parties shall ensure smooth continuation and performance of the Lessor Operations provided by the Lessor to its customers; and
 - (c) the Parties also agree to minimize disruption of the Lessor Operations.

5. INSURANCE

- 5.1 The Lessor shall maintain, at its expense, during the Transition Period insurance cover against the following:

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- (a) the Lessor's general liability to a level not less than US\$10 million;
 - (b) loss, damage or destruction of all commodities moving through the Premises under the responsibility of the Lessor;
 - (c) accidents injury or death occasioned to persons lawfully within the Premises arising out of the Lessor Operations or any such other liabilities that may be occasioned to such persons as a result of the Lessor carrying out and/or performing the Lessor Operations;
 - (d) liability to all parties making lawful use of the Premises, and their properties;
 - (e) 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;
 - (f) loss, damage or destruction to the permanent structures, buildings, equipment, improvements and other such fixtures owned by the Lessor and found within the Premises;
 - (g) any other risks compulsorily provided for by Applicable Law or the rules and regulations governing the Lessor.
- 5.2 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 Lessor under this Transition Plan.
- 5.3 Notwithstanding the provisions of Sub Section 5.1 above, the Lessee shall maintain, at its expense, during the Transition Period insurance cover against the following:
- (a) the Lessee's general liability to a level of not less than US\$10 million;
 - (b) accidents, injury or death occasioned to persons lawfully within the Premises arising out of its acts or omissions or such other liabilities that may be occasioned to such persons as a result of the Lessee carrying out and/or performing in accordance with the provisions of this Transition Plan;
 - (c) loss, damage or destruction to the Development Plan Equipment and any Improvements found within the Premises; and
 - (d) all other risks compulsorily provided for by Applicable Law or the rules and regulations governing the Lessee.
- 5.4 The Parties shall provide each other with copies of all such insurance policies and shall have the right to review and approve the same, such approval not to be unreasonably withheld.
6. SURVEYS
- 6.1 As soon as possible following the Execution Date, the Parties shall appoint an Expert to conduct a condition survey of the Premises paying particular attention to the condition of the approach bridges and the Fixed Assets. If, as a result of such condition survey, the Expert reports that the Premises, the Fixed Assets or any part thereof either do not comply with the provisions of the Agreement or are not present upon the Premises notwithstanding the provisions of the Agreement then, in respect of
- (a) the Premises and the Fixed Assets, the Lessor shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition before the Effective Date.
- 6.2 The Lessor and the Lessee shall also perform the following investigations during the Transition Period so as to ascertain the condition of the Premises:
- (a) Valuation of Fixed Assets;
 - (a) a Electrical survey;
 - (b) a Plumbing survey;



- 6.3 As soon as possible after the Execution Date the Lessee shall undertake the environmental impact assessments required for the purposes of Applicable Law in order to allow the Lessee to progress with improvements in accordance with the Development Plan. The Lessor shall provide the Lessee with all assistance possible in order to allow the Lessee to obtain the environmental impact permits required in order to develop the Premises in accordance with the Development Plan and to perform the Operations.

7. CONDITIONS PRECEDENTS

- 7.1 Each Party shall use its best efforts to effectuate the satisfaction of the conditions precedent requiring action by such Party as set out in Article 6 of the Agreement during the Transition Period.

- 7.2 In respect of the conditions precedent to be fulfilled by the Lessee, the Lessee shall ensure that:

- (a) the condition survey referred to in this Agreement is completed diligently and punctually within sixty (60) days; and
- (b) in addition to the insurance cover required pursuant to the provisions of Sub Section 5.3 above, it shall also provide the insurance cover required pursuant to the provisions of Appendix J in place by the Effective Date.

- 7.3 In respect of the conditions precedent to be fulfilled by the Lessor, the Lessor shall ensure that:

- (a) it has provided the President of the Federal Republic of Nigeria with a copy of the Agreement and that the approval of the President has been properly obtained and thereafter conveyed to the Lessee in the manner set out in Section 6.3(d) of the Agreement;
- (b) it has dealt with any and all matters arising from the termination of the stevedoring contracts arising and that it has used its existing security system and personnel operating at the Premises to remove all stevedores from the Premises;
- (c) all existing lessees having rights over any part of the Premises are removed and have been made aware that the Lessee is in no way responsible for the termination of the existing leases and shall not be held responsible by an existing lessee for the termination of their relevant right to use the Premises.

8. DEMOLITION WORKS CONDEMNED ASSETS

- 8.1 The Lessee shall be entitled to commence the Improvements contemplated in the Development Plan. As part of the Improvements, the Lessor and the Lessee shall cooperate so that the Lessee may commence the Demolition Works.

- 8.2 The building materials resulting from the Demolition Works shall be the property of the Lessee.

9. PREMISES

- 9.1 The Lessee shall commence the Improvements together with the construction of the new buildings and infrastructure on the Premises as contemplated in the Development Plan as soon as is reasonable practicable.

- 9.2 The Lessee shall prepare and offer a public tender for a comprehensive security package for the Premises and shall award such contract which shall be in compliance with the ISPS Code for security services to commence upon the Effective Date. The security requirements shall include, but not be limited to control at access points, internal patrols and perimeter patrols/surveillance.

ANY OTHER TECHNICAL DETAILS MAY BE INSERTED HERE.

10. CONTRACTS AND AGREEMENTS AFFECTING THE PREMISES

- 10.1 Within thirty (30) days of the Effective Date, the Lessor shall identify and provide the Lessee with copies of all minor existing and current agreements affecting the Premises and/or the Fixed Assets including, but not limited to, maintenance and service agreements affecting the Premises.

- 10.2 The Lessor shall transfer or cause to be transferred to the Lessee any agreements relating to the Premises and/or the Fixed Assets which are:

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- (a) valid and subsisting;
- (b) capable of being transferred to the Lessee; and
- (c) that the Lessee has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Lessee; and
- (d) execute such documents and deeds as the Lessee may require to confirm or give effect to this Sub Section.

11. CUSTOMS

- 11.1 The Lessor and the Lessee will work together during the Transition Period with Customs to reform the current hours of operation of Customs, and to simplify their procedures for the Operations with a view to improving the efficiency of Customs.

12. REDUNDANT ASSETS.

- 12.1 The Lessor shall, at its own cost and expense, remove any Redundant Assets on the Premises at the Effective Date.

13. DEVELOPMENT PLAN EQUIPMENT

- 13.1 The Lessor shall allow the Lessee to take delivery of and install a TOS, that will be implemented in order to allow the Lessee to track Containers, control planning and optimize equipment utilization from the Effective Date.
- 13.2 The Lessee to receive and store without cost Container handling equipment that will be ordered. The Lessee shall provide adequate security and assume all risks associated with such equipment.
- 13.3 The Lessee shall map the terminal handling equipment requirements of the Premises taking into account the Development Plan Equipment.

14. CARGO AT THE PREMISES ON THE EFFECTIVE DATE

- 14.1 The Transition Committee shall prepare a detailed inventory of Long Sitters and other uncleared cargo on a vessel by vessel basis throughout the Transition Period.
- 14.2 The Lessor shall remove the Long Sitters and uncleared cargo identified in the inventory from the Premises which shall include requesting Customs to assist with the removal of the Long Sitters and uncleared cargo from the Premises.
- 14.3 Long Sitters and uncleared cargo shall be consolidated in a location outside of the Premises and the Lessor shall list the same for disposal through Customs. This will increase the working area within the CY and minimize the cargo stored within the Premises which will assist to:
- (a) limit/eliminate liability for the collection of past fiscal and other dues;
 - (b) limit/eliminate liability originating from any possible cargo claims;
- 14.4 Any Containers or other cargo belonging to the customers of the Lessor on the Premises at the Effective Date shall become the responsibility of the Lessee. The Transition Committee shall prepare a list of Containers and cargo at the Premises three (3) days prior to the Effective Date. Any Operations provided by the Lessor to those customers in respect of their Containers on or before the Effective Date will be invoiced by the Lessor to the Lessee. The Lessor shall then invoice the customer for the Operations provided by the Lessee and for any services provided by the Lessor.
- 14.5 The Parties agree that the Lessor shall place an advertisement in the local media as soon as possible after the Execution Date to inform customers of the Lessor of the transition of the Premises to the Lessee and requesting the customers of the Lessor to take delivery of their Containers and other cargo within thirty (30) days (in the first instance) after which an extension of thirty (30) days may be granted to as to ensure that as many Cargo are removed from the Premises as is possible prior to the Effective Date.

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If after the said extension the containers are not removed from the Premises, the parties will jointly supervise the auctioning of the containers to members of the public.

15. CUSTOMER CONTRACTS

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

16. OPERATIONS

- 16.1 The Parties shall seek to expand the hours of operation of the main gate to permit movement of Containers in and out of the Premises twenty four (24) hours a day and seven (7) days a week.
- 16.2 The Parties shall work to ensure that the transition between Lessor Operations and the Operations is such so as to minimize disruption during or at the end of the Transition Period.
- 16.3 The Lessee shall commence the implementation of the Staffing Strategy Plan as set out in Appendix H of the Agreement and shall develop a comprehensive training program for employees in order for full takeover readiness.

17. CONTRACTORS

- 17.1 The Lessee may engage any contractor possessing the requisite skill, expertise and capability to perform some, but not all, of its obligations under this Transition Plan and the Agreement provided that the Lessor shall, at all times, be solely responsible for the actions and omissions of that contractor.

18. THE EFFECTIVE DATE

- 18.1 On the Effective Date the Lessor shall:

Premises and Transferring Fixed Assets

- (a) vacate the Premises which shall include the redeployment of all Lessor employees;
- (b) surrender peaceful possession of the Fixed Assets in a good working condition in accordance with the Agreement and Prudent Industry Standards (excluding reasonable wear and tear) to the Lessee;
- (c) cease Lessor Operations;
- (d) hand over to the Lessee all documents including as built drawings, manuals and records relating to operation and maintenance of the Premises and the Fixed Assets;

Customer Contracts and Agreements

- (e) terminate any and all existing customer contracts and agreements relating to the performance of the current operations by the Lessor for and on behalf of their customers at the Premises; and

Tracking and Evaluation

- (f) commence the tracking and evaluation process as more particularly described in Section 6.9 of the Agreement.
- (g) On the Effective Date the Lessee shall commence Operations.