

Project Summary of
TINCAN ISLAND TERMINAL A

A Public Private Partnership

Between

The Nigerian Ports Authority
as the Lessor

Bureau Of Public Enterprises
as the Confirming Party

and

Josepdam Ports Services Nigeria Limited

as the Lessee

Disclaimer

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

Abbreviations and Acronyms

BPE	Bureau for Public Enterprises
FEC	Federal Executive Council
IE	Independent Engineer
ICRC	Infrastructure Concession Regulatory Commission
LoA	Letter of Award
NCP	National Council on Privatisation

NPA **Nigerian Ports Authority.**

RfP **Request for Proposal**

Introduction

The Terminal is a Bulk cargo facility which occupies Berth 1, 1A & 2 at Tin Can Island Port Agreement is for the operation and maintenance of the port terminal and also to prepare a Dredging plan for the port terminal. This is part of the Federal Government's plan to modernize major port terminals in the country in order to increase its efficiency and reduce cost to users.

This summary is in four parts;

Part I contains basic project information,

Part II contains specific contract information,

Part III contains information on actual performance of the project, and

Part IV contains information on contract variation (if any).

Project Summary:

Part I Project Overview

- **Project Name:** Josepdam Ports Services Nigeria Limited
- **Status:** On-going and Active.
- **Name of Contracting Authority:** Nigerian Ports Authority
- **Name of the Regulators:** Infrastructure Concession Regulatory Commission
- **Name of the Confirming Party:** Bearu of Public Enterprises
- **Name of Lessee:** Josepdam Ports services Nigeria Limited.
- **Scope of the Project:** the handling and delivery services for general cargoes, containers, vehicles, including without limitation stevedoring (loading and unloading) of vessels, transporting, sorting, storage and the procurement, operation and maintenance of equipment for the foregoing; the repair and maintenance of the Fixed Assets. Other services include warehousing, stuffing and stripping, cleaning and fumigating, and consolidation and the procurement, operation and maintenance of equipment for the foregoing; ship shore handling of supplies for vessels, oversized cargo handling services, terminal handling, inland depot transfers and all other activities necessary to conduct operations; Preparation of a Real Property survey, a dredging survey of the berths and approach Chanel at the premises with a view of preparing a dredging plan for the Terminal, Operations and maintenance of the Port Facilities.
- **Project land area:** The whole Port area known as Tin can Island Terminal and all the facilities and equipment attached as specified in Appendix A of the Agreement.

- **Completion period:** 15 years see article 2.2 of the Adendum
- **Lease Fees:** The Lease Fees for the (10th) year of the term shall be progressed every two years with 5% from the eleventh (11th) year till the expiration of the term. See. Article 4 of the Adendum
- **Mode of Financing:** The lessee shall be responsible for the planning of the financing of its performance of the operations as either Equity and/or Debt
- **Project Benefits:** This is part of the Federal Governments plan to:
 - modernize major port terminals in the country
 - increase its efficiency and
 - reduce cost to users.
- **Bidding brief:** The BPE invited bids for fully priced technical and financial proposals for the lease from the lessor of the Terminal forming part of the Terminal which is a Bulk cargo facility which occupies Berth 1, 1A & 2 at Tin Can Island Port. As a result of such competitive process, the right to lease Terminal Berth 1, 1A & 2 at the Port from the Lessor was awarded by BPE to Josepdam. Josepdam then formed a special purpose vehicle, to enter into this Agreement.
- **Approval Structure::** NCP through its implementing Agency BPE on request from NPA.

PART II: CONTRACT INFORMATION

Contract Milestones

- **Date of RfP:** 4th April, 2005.
- **Date of Issue of Letter of Award (LoA):** 11th May, 2005.
Date of Execution of the concession Agreement: 11th May, 2006.
Effective Date: No less than 90 days after date of execution.
Start Date of Concession: Same as Effective Date.
Date of Five (5) Years Extension: 1st May, 2014
Comencement Date of the Supplemental Agreement: 11th May, 2014
Date of Expiry of the Concession: May, 2021

<p><u>Public Authority/Lessor:</u> Nigeraian Ports Authority 26/27 Marina, Lagos, Nigeria. Attention: the Managing Director Tel: +234 (01) 2631574 <u>Confirming Party: Bureau of Public Enterprises (BPE)</u> <u>11, Osun Crescent Abuja, Nigeria</u> <u>Telephone: 234-94234670</u> <u>Facsimile: 234-94134672</u> <u>Website: www.bpeng.org</u></p>	<p><u>Private Entity/Lessee:</u> Josepdam Port Services Nig. Ltd Terminal A, Tincan Island 2nd Gate, Apapa, Lagos, Nigeria. Phone: 08172385020, 08172385026 Email: enquiries@jps.ng, sales@jps.ng Website: www.jps.ng</p>
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ICRC Director General Plot 1270, Ayangba Street, Near FCDA Headquarters, Area 11, Garki, Abuja. Phone : 09-4604900 Email : info@icrc.gov.ng Website: www.icrc.gov.ng	
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Land and Asset Transfers to Concessionaire: The Lessor shall transfer to the Lessee from the effective date the lease property free and clear of security interests for the term and shall be held by the lessee throughout the transition period in accordance with the transition plan. Article 3.2 of the Agreement.

Rights to collection of user charges: The Lessee collects user charges from users of the Port and pays lease fees to the Lessor.

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

Maintenance Prior to the End of Term: The lessee agrees that at least 18 (eighteen) months prior to the end of the Term, it shall cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire lease Property. If as a result of such survey, the Expert reports that the lease property has not been operated or performing in accordance with the Prudent Industry Standard (Normal wear and tear excepted) as well as the Agreement, the lessee shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the expiration date see article 6 in the Adendum

Risk Allocation

Risk Category	Concessionaire/Lessee	Grantor/Lessor
Risks associated with project preparation	X	
Permits/Approvals Risk	X	
Provision of Utilities Risk	X	
Construction Risk	N/A	N/A
Completion Risk	X	
Cost Overrun Risk	X	
Technical Risk	X	
Force Majeure Risk	X	X
Operational Risk	X	
Financing Risk	X	

Demand Risk	X	
Environmental Risk	X	
Termination Risk	X	X

Reporting and Performance Monitoring

The Lessor shall monitor the performance of the Lease Agreement on an annual basis. The lessee shall submit a report to the Lessor annually on its performance for that year. Article 5 .8(d) of the Agreement.

Dispute Resolution: Article 17 provides for Dispute Resolution in this order: Mutual consultation- Assistance of Expert- Arbitration in line with the Rules of Arbitration of the International Chamber of Commerce as in effect on the date of such notice.

Events of default and termination

Main events of default	Defaulting party	Procedure for termination.	Termination Payments.
Insolvency.	lessee/ NPA	Immediate termination notice.	
Fails to perform the Operations for 14 consecutive days in an operating year or 60 non consecutive days in a non operating year.	Lessee	15 days written notice to correct.	
Fails to pay any amounts due in accordance with the Agreement.	Lessee /NPA	Same a above	
Commits a breach of a material provision this Agreement.	Lessee /NPA	Same as above	
Lease property (in whole or in part) is expropriated compulsorily acquired or nationalized by a Government Agency.	NPA.	Immediate termination notice.	

Change in Law	NPA.	Same as above	
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Termination payments:

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

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

Responsibility for defects and liabilities: Article 9.8 provides that the lessor shall remedy latent defects which materially impair the lease property and performance of its operations.

Part III: Implementation Information

Actual Project Performance

The actual year-wise performance achievement against key indicators was as follows:

TIN CAN ISLAND PORT TERMINAL 'A'											
JOSEPDAM PORTS SERVICES NIGERIA LIMITED											
GUARANTEED MINIMUM THROUGHPUT TONNES											
PRODUCT	Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10	TOTAL
DRY BULK	1,376,409	1,514,050	1,665,455	1,832,000	2,015,200	2,120,988	2,232,351	234,549	2,472,900	2,602,728	18,066,633
LIQUID BULK	37,570	39,542	41,618	43,803	46,103	48,524	51,071	53,752	56,574	59,544	478,101
TOTAL	1,413,979	1,553,592	1,707,073	1,875,803	2,061,303	2,169,512	2,283,422	288,301	2,529,474	2,662,272	18,544,734

Process followed for validation of disclosed information

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

	Yes/No	Date
Review and Sign-off by the ICRC	YES.	2011.

Contract Variation 2:

S/N	Variation Article	Project Variation Clause	Date of Variation
1	1	The "Agreement" when use in the Agreement dated 11 th May, 2006 shall be deemed to include reference to this Supplemental Agreement	15 th April, 2014
2	3	Article 2.2 of the Agreement shall be amended by Replacing the "tenth (10 th) Anniversary of the effective date" with the phrase "fifteenth (15 th) Anniversary of the effective date" and the term thereby granted is hereby deemed to have been amended and restated with effect from the effective date	Same as above
3	4	The Lease Fees for the (10 th) year of the term shall be progressed every two years with 5% from the eleventh (11 th) year till the expiration of the term.	Same as above
4	5	See Article 5 of the Addendum for more info about the variation on Development Plan	Same as above
5	6	See Article six(6) on the variation relating to the Maintenance prior to the end of Term	Same as above
6	7	Waiver of prior accrued rights... see article 7	Same as above
7	10	Commencement Date, please see article 10	Same as above

