

PT/06/16/0022



GENERAL CARGO TERMINAL AT KOKO PORT

LEASE AGREEMENT

by and among

**NIGERIAN PORTS AUTHORITY
as the Lessor.**

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

and

**GREENLEIGH PORTS LIMITED
as the Lessee.**

Dated the 5th day of December 2006



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KOKO PORT LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is made and entered into this 31st day of December, 2006 ("Execution Date") by and among:

THE NIGERIAN PORTS AUTHORITY, a public authority constituted under the Nigerian Ports Authority Act No. 38 of 1999, whose registered office is situated at 26/28 Marina, Lagos, Nigeria (the "Lessor" which expression shall where the context so admits includes its successors-in-title, assigns and others claiming through and under it);

THE BUREAU OF PUBLIC ENTERPRISES, the Secretariat of the National Council of Privatisation ("NCP") and an agency of the Federal Government of Nigeria established under the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999, whose registered office is situated at No. 11 Osun Crescent, Maitama - Abuja, Nigeria ("BPE"), in its capacity as Confirming Party of Lessor; and

GREENLEIGH PORTS LIMITED, a private company incorporated under the laws of the Federation of Nigeria whose registered office is at 200 Igboere Road, Lagos ("the Lessee") being a special purpose vehicle established by GulfTainer BEL Consortium, a company registered under the laws of Nigeria with its registered office at 26B Mainland Way, Dolphin Estate, Ikoyi, Lagos.

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 privatisation and commercialisation. 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 the 1st day of December 2006 with registration number 674833.
 - (b) formed as a special purpose vehicle by GulfTainer BEL Consortium.
- 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 Koko Port (the "Port").
~~On 19th day of June 2005, as a result of such competitive bid process, the right to lease Koko Port Terminal at the Port from the Lessor was awarded by BPE to GulfTainer Bel Consortium that has formed the Lessee as a special purpose vehicle, to enter into this Agreement.~~
- F. Following the award of the right to lease Koko Port Terminal 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 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 C (the "Development Plan"); and
- (c) perform the operations as further described in Appendix D (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:



ARTICLE I

DEFINITIONS; INTERPRETATION

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

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

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

"Annual Report" has the meaning set forth in Section 10.3.

"Applicable Law" means any law, statute, order, decree, injunction, license, permit, consent, approval, agreement or regulation of any Governmental Authority having jurisdiction over the matter in question, or other legislative 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) Members of GulfTainer Bel Consortium 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) Greenleigh Ports 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 E.

"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 12.3.

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



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

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

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

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

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

"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.

"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 E.

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

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

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

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

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

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

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

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

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

"Month" means a calendar month.

"Nigeria" means the Federal Republic of Nigeria.

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

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

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



"Operations" has the meaning set forth in Section 5.1.

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

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

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

"Planning and Investment Report" has the meaning set forth in Section 10.4.

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

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

"Prudent Industry Standards" means the generally accepted practices, methods, techniques and standards employed by the international bulk terminal industry in accordance with Applicable Law with respect to: (a) the development, operation and maintenance of bulk terminals; (b) personnel and terminal safety and environmental protection; and (c) optimizing the performance of the Operations.

"Quarterly Traffic Report" has the meaning set forth in Section 10.5.

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

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

"Throughput Fee" shall mean fee stipulated by the Lessor for cargo passing through the Concession Area payable by the Lessee in accordance with Appendix E

"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 M of this Agreement.



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

"Transition Plan" means plan set out in Appendix L 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 11 (Representations and Warranties), 15 (Indemnities), 16 (Governing Law; Disputes), shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.
- (b) *Conditions Precedent.* Except as otherwise provided in Section 2.1(a), this Agreement shall become effective ninety (90) days following the Execution Date provided that the conditions to effectiveness set forth in Article VI have been fulfilled (the "Effective Date").

2.2 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 Tenth (10th) anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof. Following such Tenth (10th) 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 Tenth (10th) anniversary of the Effective Date.



ARTICLE III

BASIC LEASE RIGHTS AND OBLIGATIONS

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

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

- 3.3 Peaceful and Quiet Enjoyment To the extent that the Lessee complies with the terms and conditions of this Agreement, the Lessee shall peacefully and quietly hold, occupy and enjoy the Lease Property. In the event that any third party other than Affiliates of the Lessee conduct(s) activities or present(s) claims which interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property or the Lessee suffers any claims, causes of action, damages, or losses which may accrue and arise from the acts or omissions of other third parties having a right of use over the Premises prior to the Execution Date, the Lessor shall indemnify, defend, and hold harmless the Lessee from and against any such claims.
- 3.4 Lease Fees The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in Appendix E. 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.



The provisions of this Section 3.5 shall at all times be subject to the Lessor's covenant set out in Section 8.

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

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

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

3.7 Access to Other Property Subject to Applicable Law and the Lessor's prior written approval, such approval not to be unreasonably withheld, the Lessee shall have the right to negotiate rights of way, easements and other types of access to land and other property and Utilities near or adjacent to the Premises other than those granted to the Lessee and referred to in Section 8.10 in order to perform its obligations hereunder, including without limitation the performance of the Operations.

ARTICLE IV

USE OF LEASE PROPERTY

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

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

4.2 Alteration of Lease Property

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



(ii) such alteration does not unreasonably interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property and

(iii) such alteration shall not have a material adverse effect in the performance of the Operations.

(b) *By Lessee.*

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

- (1) the plans and drawings for such Improvement;
- (2) the names and addresses of the proposed contractor(s); and
- (3) such other documentation as may be reasonably requested by the Lessor. The Lessor shall within the said sixty days communicate its 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.



- (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 8, the Lessee shall make its own arrangements and pay for the supply of Utilities to the Lease Property, including serving the vessels that call at the Premises.
- 4.6 Office Space. The Lessee shall provide, at its own expense, adequate office space for the Lessor and other Governmental Authorities required by the Act to have office space on the Premises including without limitation to those who have duties such as customs and immigration functions in the Premises, not exceeding a total floor-space of two hundred (200) square metres.
- 4.7 Disposal of Movable Assets The Lessee shall not sell, transfer, remove or dispose of any of the Movable Assets without offering the Lessor the right of refusal to purchase such Movable Asset from the Lessee. In the event of the Lessor's refusal to purchase such Movable Asset, the Lessee shall advise the Lessor of any subsequent transfer to a third party of such Movable Asset. Notwithstanding the foregoing, in each Annual Report, the Lessee shall list the Movable Assets, if any, that have been sold, transferred, removed or disposed of during the previous year and shall provide audited details of all such transactions.
- 4.8 Access to Lease Property
- (a) *By Lessor to verify compliance with this Agreement.* The Lessee shall permit the Lessor and its designated representatives and agents during the Lessee's working hours to enter and inspect the Lease Property for the purpose of verifying the Lessee's compliance with this Agreement and any other requirements under Applicable Law provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations. The Lessor shall notify the Lessee in writing at least three (3) days in advance of any inspection of the names of the individuals to be permitted access and the time and date of such visit.
 - (b) *By Lessor in the event of Emergency.* The Lessee shall permit the Lessor and its designated representatives and agents without prior notification to enter and inspect the Lease Property in the event of Emergency provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
 - (c) *By Lessor to fulfil its obligations under this Agreement.* The Lessee shall also grant access to the Premises to the Lessor or its designates on mutually agreed terms for the purpose of fulfilling its obligations under this Agreement provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
 - (d) *Necessary right of way.* The Lessor shall have the right of access through the Premises to other facilities controlled by the Lessor under circumstances where reasonable, alternative means of access are not available subject to the prior consent of the Lessee provided that any Person granted such right of way shall follow the rules concerning safety, traffic, security and other regulations relating to the Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.
 - (e) *By Governmental Authorities.* The Lessee shall grant access to the Premises to Government Authorities for the purpose of carrying out any activities which they are legally entitled to carry out in the Premises pursuant to Applicable Law.
 - (f) *By Shipping Agents and others.* The Lessee shall grant access to the Premises to shipping line employees and agents and the staff of any contractors employed by them, to enable them perform their work efficiently provided that they do not unreasonably interfere with the Lessee's performance of the Operations and provided further that the shipping line employees and agents and the staff of any contractors employed by them shall follow the rules concerning safety, traffic, security and other regulations relating to the Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.



ARTICLE V

OPERATIONS

- 5.1 Obligation of Lessee to Perform Operations The Lessor hereby appoints the Lessee and the Lessee hereby accepts such appointment, to perform the operations and activities described in Part A of Appendix D (collectively, the "Operations") in accordance with the terms of this Agreement. The Lessor confirms that it hereby delegates to the Lessee all such powers and authority as are necessary for the Lessee to perform the Operations.
- 5.2 Common User Terminal The Lessee shall perform the Operations such that the Lease Property is a common user terminal open to any and all shippers and consignees of cargo, and to all shipping lines. The Lessee shall ensure that any agreement executed by it prior to or during the Term shall not violate this Section.
- 5.3 Performance of other services The Lessor hereby grants the Lessee the right, exercisable at the Lessee's sole discretion, to perform the other services in accordance with the terms of this Agreement. If the Lessee does commence performance of one or more of other services during the Term, reference to "Operations" in this Agreement shall be deemed to include those other services being performed by the Lessee in accordance with the right set out in this Section 5.3. The Lessee shall ensure that any charges made for other services shall be in accordance with Applicable Law and competitive within the Port and within competing ports of Nigeria.
- 5.4 Use of Lease Property The Lessee shall only perform the Operations within the Premises, and shall use the Lease Property for the sole purpose of performing the Operations in accordance with this Agreement.
- 5.5 Exclusivity The Lessee shall have the exclusive right during the Term to perform the Operations within the Premises.
- 5.6 Standards of Performance The Lessee shall perform the Operations:
- (a) in a safe, efficient, effective and economic manner;
 - (b) with due care and skill; and
 - (c) in accordance with Applicable Law and Prudent Industry Standards.
- 5.7 Duties to Cooperate The Parties shall cooperate in good faith to ensure the smooth and effective transfer of the provision of the Operations from the Lessor to the Lessee during the Transition Period. In performing the Operations, the Lessee shall cooperate with the Lessor and, if applicable, the Regulator so as to enable the Lessor and the Regulator to perform their monitoring, supervisory and other duties relating to the Port.
- 5.8 Performance Requirements
- (a) General Requirements The Lessee shall use its best efforts to:
 - (i) ~~develop, market and promote Cargo throughput and Cargo-related business of the~~ Lease Property in order to achieve maximum utilization thereof in a manner which is consistent with Applicable Law and Prudent Industry Standards; and
 - (ii) ensure that there is no decline in the standards of the Operations.
 - (b) Specific Requirements The Lessee shall perform the Operations in such a manner as to achieve the performance requirements in the applicable years of the Term (the "Performance Requirements").



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 K.

5.9 Operations Rates

- (a) *General Parameters.* The Lessee shall ensure that the Operations Rates shall be in accordance with Applicable Laws and competitive within the Port and with other competing ports of Nigeria having facilities similar to the Lease Property.
- (b) *Specific Parameters.* The Lessee shall charge cargo dues and delivery charges for the Operations which are not greater than the rates set forth in Section A of Appendix G (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 D, 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 respectively prior to this agreement, and any future increases shall require the consent of the relevant Governmental Authorities.
- (c) *Publication of Operations Rates.* The Lessee shall at all times publish its rates, charges and conditions of the Operations as directed by the Lessor or the Regulator, and shall make such information immediately available upon request by any Person
- (d) *No Discriminatory Pricing.* The Lessee shall afford to all who may request the Operations uniform treatment under like conditions and shall not apply discriminatory charges on any Person. For the avoidance of doubt, the provisions of this Section shall not prohibit the Lessee from granting Preferential Rates in accordance with the provisions set out in Sub Section (e) below.
- (e) *Preferential Rates.* If Preferential Rates are applied to any customers of the Lessee, the Lessee shall inform the Lessor and if applicable, the Regulator in writing of the same. If the Lessor can show to the satisfaction of the Regulator, or if the Lessor is the Regulator then an Expert, that the Preferential Rates applied by the Lessee are discriminatory, the Lessor shall have the right to instruct the Lessee to apply such rates to all other similar customers of the Lessee using the Operations and the Lease Property.
- (f) *Charging the Operations Rates.* Other than in circumstances where the Lessee charges Preferential Rates, if the Lessee is not able to charge the Operations Rates and/or other charges referred to in Subsection (b) above to its customers, the Lessee shall refer the matter to the Regulator for determination of the rates chargeable.
- (g) *Complaints.* In the event that the Lessor or any other Governmental Authority receives a complaint of discrimination on the part of the Lessee, and the Regulator, or if the Lessor is the Regulator then an Expert, concludes after its investigation of such complaint that there are



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

5.10 Labour.

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

5.11 Lessee Equipment The Lessee may use additional equipment on the Premises not included in the Development Plan ("Lessee Equipment") to satisfy its obligations hereunder, including without limitation its performance of the Operations and to meet the Performance Requirements provided that, in the case of Special Equipment the Lessee shall obtain the Lessor's prior written approval, such approval not to be unreasonably withheld. If the Lessor has not responded to the Lessee within five (5) days of receipt of the request for such from the Lessee, the Lessor shall be deemed to have given its approval. Lessee Equipment shall be and shall remain the Lessee's property notwithstanding the termination of this Agreement for any reason unless the Parties otherwise agree that the Lessor shall become owner of such Lessee Equipment on the Termination Date. The Lessee shall, at its own expense, remove Lessee Equipment from the Premises on the Termination Date in the event that the Lessor requires such removal or the Lessee does not agree to transfer the same to the Lessor. The Lessee shall provide the Lessor with a full list of Lessee Equipment during the Termination Period and whether it is prepared to sell such Lessee Equipment to the Lessor. The purchase price for any Lessee Equipment shall be mutually agreed between the Parties.

5.12 Spare Parts and Consumables.

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



to the Lease Property. The Lessor shall have the option to purchase from the Lessee any or all such spare parts and consumable items at a price mutually agreeable to the Parties.

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

ARTICLE VI

CONDITIONS PRECEDENT

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

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

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

- (i) resolutions adopted by the Lessor evidencing the authorisations described in this Section; and
 - (ii) authority of the officers of the Lessor executing this Agreement and documents required hereunder.
- (c) *No Injunction, etc.* Consummation of the transactions contemplated by this Agreement shall not have been restrained, enjoined or otherwise prohibited in any material respect by any Applicable Law, including any order, injunction, decree or judgment of any court Authority, and there shall not have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement any Applicable Law making illegal the consummation of the transactions contemplated by this Agreement.
- (d) *Power supply*. The Parties shall be satisfied that the Lessee has access to sufficient power supply (including, but not limited to the Utilities) in order that the Lessee is able to fulfil its other obligations as set out in this Agreement.

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

- (a) *Representations and Warranties of Lessee*. The representations and warranties of the Lessee in Section 11.1 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.



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

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

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

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

ARTICLE VII

LESSEE'S COVENANTS

7.1 Insurance

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

7.2 Safety; Security

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



- (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.

- 7.4 Emergencies In the event of an environmental emergency emanating from the Premises and endangering life or property, the Lessee shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including the Lessee's response thereto, to the Lessor. If the Lessee has not taken reasonable precautions for the safety of the public, its customers or the protection of the Lease Property, and such failure creates an environmental emergency requiring immediate action, then the Lessor, with or without notice to the Lessee may, but shall be under no obligation to, provide reasonable protection as required to address such emergency. The taking of any such action by the Lessor, or the Lessor's failure to take any action, shall not limit the Lessee's liability. The Lessee shall reimburse the Lessor for the performance of any such work or furnishing on the Lease Property of any such equipment in connection with any emergency in an amount equal to the reasonable costs incurred by the Lessor in such performance of work or furnishing of equipment.
- 7.5 Information; Communication Within one hundred and eighty (180) days after the Effective Date, the Lessee shall install a computerized information system for the recording of Import/ Export of Cargo within the Premises, and shall periodically update this system to provide computerized information related to Cargo delivery.
- 7.6 Dredging; Mooring The Lessee shall take such measures as shall be necessary in the Lessor's opinion to enable dredging and placing and removing of any mooring posts in the vicinity of the Premises, including without limitation allowing anchoring, mooring and dredging vessels to be installed, used and maintained by or on behalf of the Lessor in the shore strip of the Premises provided that such measures do not have an adverse effect on the performance of the Operations by the Lessee. 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.
- 7.7 Lessee Ownership Structure The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent.
- 7.8 Taxes The Lessee shall pay any taxes, levies, duties, withholdings, or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessee as a result of the performance of its obligations hereunder.
- 7.9 Licenses; Permits The Lessee shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessee to fulfil its obligations hereunder, including without limitation, the performance of the Operations in accordance with this Agreement.
- 7.10 Non Compliance. In the event that the Lessee fails to comply with any of its obligations set out in this Article, then the Lessor may notify the Lessee of such failure and give the Lessee thirty (30) days notice in writing to rectify its failure. If the Lessee fails to rectify its failure the Lessor may fulfil such obligation for and on behalf of the Lessee at its own cost. The Lessor shall be entitled to recover such costs ~~provided that computation of costs to be recovered shall be based on an acceptable quotation from one~~ out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 16 (Governing Law; Dispute Resolution).



ARTICLE VIII

LESSOR'S COVENANTS

- 8.1 Cooperation The Lessor shall cooperate with the Lessee as reasonably necessary to enable the Lessee to perform its responsibilities under this Agreement, including provision by the Lessor of copies of drawings, plans, policies, papers, records, reports, data and other information directly related to the Premises or Port as reasonably necessary for the Lessee to perform the Operations and manage the Lease Property.
- 8.2 No Interference. The Lessor shall ensure that its personnel shall not delay or interfere with the performance of the obligations of the Lessee or with the Lessee's personnel in the execution of their duties.
- 8.3 Port Access The Lessor shall, at all times possible, keep the Port open to shipping so that the Premises may be accessible by sea and by land for use by the Lessee for the performance of its Operations.
- 8.4 Berth and navigational aids within the Premises. The Lessor shall be responsible for the maintenance of the Berths and the navigational aids within the Premises.
- 8.5 Port Services; Vessel Management.
- (a) *The Lessor.* The Lessor shall:
- (i) provide and maintain maritime approaches, canals, turning circles, breakwaters and navigation aids;
 - (ii) in accordance with Applicable Law, issue regulations and rules governing waterside safety within the Port;
 - (iii) provide pilotage, towage, berthing, unberthing and shifting of vessel services required by all vessels intending to call at the Premises:
 - (A) in accordance with the schedule of the arrivals and the departures to be prepared pursuant to consultation between the Lessor and the Lessee; and
 - (B) in a timely and efficient manner either directly or through the licensing of competitive suppliers of such services provided that the Lessor shall at all times be responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Sub Section; and
 - (C) at prices which shall not exceed the published tariffs of the Port at such time;
- Failure to provide pilotage, towage, berthing, unberthing and shifting of vessel services in accordance with the provisions of Sub Section 8.5(a) so as to have a material adverse effect upon the performance of the Operations of the Lessee shall require the Parties to meet and discuss the reduction in the Throughput Fee to compensate the Lessee for any financial loss that the Lessee has incurred as a consequence of the Lessor's acts or omissions.
- (b) *The Lessee.* The Lessee shall at all times be solely responsible for the scheduling of the Berths. The Lessee shall keep the Lessor fully informed of the scheduling of the Berths and any amendments thereto.
- 8.6 Dredging. The Lessor shall be responsible for the dredging of the channel to the Port (including without limitation the face of the Berths at the Premises), either directly or through the licensing of competitive suppliers of such services. The Lessor shall, at all times, be solely responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Section. The Lessor shall undertake



dredging in accordance with the Dredging Plan with the intention of achieving and maintaining a depth of water at the Berths of the Premises of 7.0 meters below Low Low Water and the approach channel of at least 7.0 meters below Low Low Water in accordance with the Dredging Plan to be provided during the Transition Period, provided that interference with the performance of the Operations by the Lessee shall be kept to a minimum.

- 8.7 Waste Disposal. The Lessor shall arrange for the disposal of waste materials generated from vessels berthed at the Ports in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 8.8 Latent Defects. The Lessor shall remedy any Latent Defects which materially impair the Lessee's use of the Lease Property and the performance of its Operations.
- 8.9 Access to Premises. The Lessor shall ensure that at all times throughout the Term the Lessee, its employees, its customers and suppliers are provided with the road and rail access to the Premises in existence as of the Effective Date, subject to the security regulations governing access to the Port and other Applicable Laws.
- 8.10 Utilities Infrastructure; Rights of Way. The Lessor shall, throughout the Term, provide all infrastructure for the provision of the Utilities to the Premises necessary to equip, operate, maintain, manage and repair the Premises. The Lessor shall grant rights of way and easements through the Port outside the Premises for existing and future Utilities to the Premises. The Lessor shall not take any action which is detrimental to the efficient supply of such Utilities to the Lessee.
- 8.11 Utilities. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 8.12 Security. The Lessor shall be responsible for the general security of the Port outside the security fence of the Premises, security of all land and sea entrances to the Port and the provision and maintenance of the perimeter fencing on the boundaries of the Port.
- 8.13 Lessor Obligation to Remediate. In the event that Waste Material is present on the Premises or in the waters or in or on the bottom of the Port before the Effective Date, which the Lessee reports to the Lessor and which have originated from the Premises, or after the Effective Date which has not originated from the Premises (including but not limited to Waste Material originating from vessels calling at the Port) then the Lessor shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 8.14 Licenses; Permits. The Lessor shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessor to fulfil its obligations hereunder and shall provide reasonable assistance to the Lessee in its efforts to obtain and keep in force the licenses and permits required to be obtained or maintained by the Lessee under Section 7.9.
- 8.15 Taxes. The Lessor shall pay any taxes, levies, duties or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessor as a result of the performance of its obligations hereunder.
- 8.16 Non Compliance. In the event that the Lessor fails to comply with any of its obligations set out in this Article, ~~then the Lessee may notify the Lessor of such failure and give the Lessor thirty (30) days notice~~ in writing to rectify its failure. If the Lessor fails to rectify its failure the Lessee may fulfil such obligation for and on behalf of the Lessor at its own cost. The Lessee shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 16 (Governing Law; Dispute Resolution).



ARTICLE IX

FORCE MAJEURE

- 9.1 Effect of Force Majeure. In the event that a Party can not perform its obligations hereunder due to an event of Force Majeure, such Party shall be excused from the performance of such obligations, and shall not be considered to have committed an Event of Default, from the date on which such event of Force Majeure has commenced and until a reasonable period of time after termination thereof. The Parties shall consult with each other in the event of Force Majeure and shall take all reasonable steps to minimize any losses resulting therefrom. The affected Party shall resume the performance of its obligations hereunder as soon as practicable after such event of Force Majeure has ceased.
- 9.2 Notice The Party affected by the event of Force Majeure shall as soon as practicable provide written notice to the other Party and the Regulator of the occurrence of such event of Force Majeure. Such notice shall include a detailed description of the event of Force Majeure, an estimate of the duration of such event, the reasons for which such Party is unable to perform its obligations hereunder due to such event and a plan to mitigate and remedy such event, if possible. Such Party shall provide the other Party with regular updates of the foregoing information.
- 9.3 Satisfactory Solution. If an event of Force Majeure continues for longer than three (3) months, the Lessee and the Lessor shall enter into discussions in order to agree on a mutually satisfactory solution. If the Parties fail to reach a mutually satisfactory solution within thirty (30) days of the commencement of discussions, the provisions of Article 16 shall apply.
- 9.4 Termination. Notwithstanding the provisions of Section 9.3, if the Lessee is unable to perform the Operations or otherwise substantially perform its obligations under this Agreement as a result of an Event of Force Majeure for a period exceeding six (6) months or the Lessee notifies the Lessor prior to the expiry of the six (6) months period that performance under this Agreement is not viable then either Party may terminate this Agreement by the issuance of a Termination Notice.

ARTICLE X

DOCUMENTATION AND AUDITS

- 10.1 Records and Reports
- (a) Maintenance of Books and Records. The Lessee shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Lease Property, for providing information to the Lessor, and for informing the public and its customers of the quality and performance of its Operations.
- (b) Accounting. The Lessee shall maintain suitable and complete accounting and non-accounting records that summarize technical, commercial, financial and personnel information, including records relating to ship and shore services. All such information shall be retained in a form that shall permit regular audits. Financial records and accounts shall be maintained in accordance with applicable international generally accepted accounting principles as agreed to by the Lessor. Technical records (including without limitation engineering designs and drawings) shall be maintained in accordance with Prudent Industry Standards.
- (c) Lease Property. Beginning on the Effective Date, the Lessee shall prepare and maintain current records of the Lease Property in sufficient detail as required by the Lessor, to provide a full understanding of the location and state of the Lease Property. Such records shall be comprised of physical drawings, databases and calculation sheets along with historical records relating to their constitution, repairs, and maintenance, including all works carried out as replacements, rehabilitation and maintenance. Physical plans for buildings shall clearly identify and describe the as built profiles.
- (d) Copies of Records. The Lessee shall provide the Lessor and the Regulator with copies of the foregoing records as requested by the Lessor on a quarterly basis.



- (e) *Disclosure.* A Party shall obtain the written approval of the other Party prior to disclosing any confidential information related to this Agreement, the Lease Property or the Operations to the public.
- (f) *Other Information.* The Lessee shall provide to the Lessor any other information as the Lessor may reasonably require, including without limitation:
- (i) accurate 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.

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

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

10.3 Annual Report The Lessee shall prepare an annual report which shall include, at a minimum, the following technical and financial information:

- (a) any circumstances having an impact on the financial obligations of the Lessee under this Agreement;
- (b) volume of traffic passing through the Premises;
- (c) number of vessels, inward/outward Cargo and Cargo stored;
- (d) numbers and categories of customers, of personnel employed, levels of Operations, performance and Operations quality compliance;
- (e) renovation works and repairs carried out or to be carried out;



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

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

14.3 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 Lessee 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 Premises 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.

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

14.5 Delayed Payment. If for any reason, other than those attributable to the other Party, a Party fails to pay the payments that it is required to make in accordance with this Article 14 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.

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

ARTICLE XV

INDEMNITIES; LIABILITIES.

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

15.2 Lessor Indemnity The Lessor shall indemnify, defend, and hold harmless the Lessee, from and against any and all liabilities, losses, expenses, and claims for personal injury or property damage 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.

- 16.1 Governing Law This Agreement shall be governed by, construed and enforced in accordance with the laws of Nigeria.
- 16.2 Disputes Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement and the activities carried out hereunder, including without limitation any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement (each a "Dispute"), shall be exclusively and finally settled pursuant to the dispute resolution process described in this Article.
- 16.3 Mutual Consultation If either Party believes that a Dispute exists, it may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the twenty one (21) day period following the date of the notice. Within seven (7) days after receipt of a notice pursuant to the preceding sentence, the other Party shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty one (21) day period following the date of the notice. During the remainder of such period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to use best efforts to resolve the Dispute.
- 16.4 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.
- 16.5 Arbitration If the Parties cannot resolve the Dispute in accordance with the procedure specified in Section 16.3, then any Party may submit such Dispute to arbitration by notice to the other Party. Such arbitration shall be governed by the Rules of Arbitration of the International Chamber of Commerce, as in effect on the date of such notice. The arbitral tribunal shall consist of three (3) arbitrators. The Party initiating the arbitration shall provide written notice to the other Party of the arbitrator that it nominates. Within fourteen (14) Days of the receipt of such notice, the other Party shall provide to the initiating party a written notice identifying the name of the second nominated arbitrator, with the understanding that if such nomination is not made within such fourteen (14) Day period, then the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court") shall make such appointment. Within ten (10) Days of the date of the appointment of the second arbitrator, the two arbitrators shall appoint the third arbitrator, with the understanding that if the two arbitrators are not able to agree on third arbitrator within such ten (10) Day period, then the third arbitrator shall be appointed by the ICC Court. All three of the arbitrators shall be experienced in the port industry as well as contracts of a similar nature to this Agreement, and all three individuals shall also be proficient in the written and spoken forms of the English language. The arbitration proceedings shall be conducted and all related communications shall be in the English language. Any decision of the arbitral tribunal shall be final and binding upon the Parties. The Parties hereby waive, to the extent permitted by Applicable Law, any right to appeal or to review of such an award by any court or tribunal. Any award of the arbitral tribunal may be entered in any court having jurisdiction for purposes of enforcement. The arbitral tribunal shall presumptively award legal fees and arbitral costs to the winning party, but the arbitral tribunal shall retain the right to make such other equitable allocation with regard to such fees and costs as it may determine.
- 16.6 Place of Arbitration The place of arbitration shall be Lagos, Nigeria or any other place mutually agreed by the Parties.
- 16.7 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.



- (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:

Greenleigh Ports Limited
200 Igboosere Road,
Lagos.
Attention: The Managing Director
Telephone: + 234 08023065460 / 08057777046
Facsimile: +234 2637678

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

- (a) information that was in the public domain prior to the Receiving Party's receipt thereof from the Disclosing Party or that subsequently becomes part of the public domain by publication or otherwise except by the Receiving Party's wrongful act;
- (b) information that the Receiving Party can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; or
- (c) information received by the Receiving Party from a third party having no obligation of secrecy with respect thereto. It shall not be a breach of the obligation of confidentiality contained herein if the Receiving Party discloses such confidential information as required by Applicable Law.

- 17.10 No Waiver Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.



		Total	7,000
Year 4	Perimeter fencing & repairs	Improvement	5,000
	Power supply and lighting upgrade to the quay, cargo areas and workshop lighting mast base to be constructed	Improvement	10,000
	Quay surface and gallery cover repairs, repair, potholes, manholes covers and drains	Improvement	5,000
	Maintenance of CCTV security equipment & construction of security office	Improvement	5,000
		Total	25,000
Year 6	Perimeter fencing & repairs	Improvement & Rehabilitation	5,000
	Quay surface and gallery cover repairs, repair, potholes, manholes covers and drains	Improvement	5,000
	Cargo area refurbishment and repair, lay out design for cargo segregation	Improvement	
	Transit sheds and ware house repairs refurbishment	Improvement	5,000
		Total	15,000
Year 8	Quay surface and gallery cover repairs, repair, potholes, manholes covers and drains	Improvement	5,000
	Cargo area refurbishment and repair, lay out design for cargo segregation	Improvement	5,000
		Total	10,000
Year 9	New security gate house- construction of a complete gate house facility to I.S.P.S standards linked to the administrative building	Improvement	5,000
	Power supply and lighting upgrade to the quay, cargo areas and workshop lightning mast base to be constructed	Improvement	5,000
		Total	10,000
Year-10	Perimeter fencing & repairs	Improvement	5,000
	Maintenance of the existing Administrative Building	Improvement	10,000
	Cargo area refurbishment and repair, lay out design for cargo segregation	Improvement	5,000
		Total	20,000






Equipment Investment Table

KOKO PORT					
SCHEDULE FOR EQUIPMENT INVESTMENTS					
Year of acquisition	Type of equipment	Capacity	Number to be Acquired	Unit Cost US \$	Total Cost US \$
Year 1	Hyster Fork Lift H3.00XM	3 ton	1	28,000	28000
	Hyster Fork Lift H14.00 XM6	14 ton	1	111,500	111500
	Office equipment		1	10,000	10000
	Various computer		8	1,000	8000
				Total	157,500
Year 2	Hyster Fork Lift H4.00XMD P/R/C	4 tons	1	35,500	35500
	Hyster Fork Lift H14.00 XM6	14 ton	1	111,500	111500
				Total	147000
Year 3	Hyster Fork Lift H4.00XM5	4 tons	1	35,500	35,500
	Hyster Fork Lift H14.00 XM6	14 ton	1	111,500	111,500
				Total	147,000
	Hyster Fork Lift H 16.00XM-12	16ton	1	136,000	136000
Year 4	Vehicles Delivery		1	21,400	21400
	Vehicles Passenger		1	21,400	21400
				Total	178,800
Year 5	Hyster Fork Lift H 16.00XM-12	16ton	1	136,000	136000
				Total	136000
Year 6	Hyster Fork Lift H 12.00XM	12 ton	1	102,500	102500
				Total	102500
Year 7	Hyster Fork Lift H 7.00 XL	7 ton	1	50,700	50700
				Total	50700



Year 8	Hyster Fork Lift H 5.00XM	5 ton	1	42,500	42500
				Total	42500
Year 9	Vehicles Passenger		1	21,429	21429
				Total	21429
Year 10	Various computer		4	1,000	4000
				Total	4000



Appendix D

OPERATIONS

A. OPERATIONS

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

1. the handling and delivery services for the bulk cargoes (wet and dry), 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. inland depot transfers; and
5. all other activities necessary to conduct Operations.



Appendix E

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 One Hundred thousand United States dollars (\$100,000) 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

- (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 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.



Appendix F

BERTHS

BERTH NO.	MAXIMUM BERTH LENGTH	DEPTH
1	137.02m	7.0m



Appendix G

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

Category	Cargo Dues USD	Delivery Charge Naira	Remarks
IMP per Ton	6.1	89	1. The charge is paid by the consignee. 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. 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.
EXP per Ton	4	168	1. The charge is paid by the line 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. 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.
IMP per Ton (TWA Coastal)	3	89	Please refer to the section for IMP per Ton
EXP per Ton (TWA Coastal)	3	89	Please refer to the section for EXP per Ton
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			

Note: Maximum tariff service means the single movement of one ton of inbound General 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 general Cargo.



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

Category	Cargo Dues USD	Delivery Charge Naira	Remarks
IMP per Ton	4	49	<ol style="list-style-type: none">1. The charge is paid by the consignee.2. The Cargo dues is paid in USD and the delivery charges are paid in Naira.3. 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.
EXP per Ton	2.5	168	<ol style="list-style-type: none">1. The charge is paid by the line2. The Cargo dues is paid in USD and the delivery charges are paid in Naira.3. 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.
IMP per Ton (TWA Coastal)	2	49	Please refer to the section for IMP per Ton
EXP per Ton (TWA Coastal)	2	168	Please refer to the section for EXP per Ton
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			

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.



Maximum Tariffs for the Cargo Dues and Delivery Charges of Containers

Category		Cargo Dues USD	Delivery Charges Naira	Remarks
Laden IMP	20'	90	5,015	<ol style="list-style-type: none"> The charge is paid by the consignee. The Cargo dues is paid in USD and the delivery charges are paid in Naira. For Flat Containers, the max. delivery charge is N 5,186 and for Open Tops, the max. delivery charge is N 7,073 For Reefers, there is an additional delivery charge of N 1,750 For handling during the weekend, the consignee is charged with an additional N 294 For Unstuffing, the consignee is charged with an additional N 714 For Direct Delivery, the consignee is charged with an additional N 168
	40'	130	6,268	<ol style="list-style-type: none"> The charge is paid by consignee For Flat Containers, the max. delivery charge is N 6,707 and for Open Tops, the max. delivery charge is N 9,531. For Reefers, there is an additional delivery charge of N 2,625 For handling during the weekend, the consignee is charged with an additional N 378 For Unstuffing, the consignee is charged with an additional N 903 For Direct Delivery, the consignee is charged with an additional N 210
Laden EXP	20'	70	3,687	The charge is paid by the line
	40'	100	5,567	The charge is paid by the line
Empty IMP	20'	25	5,015	The charges are paid by the line
	40'	40	6,268	The charges are paid by the line
Empty EXP	20'	25	1,264	The charges are paid by the line
	40'	40	1,896	The charges are paid by the line
Local Laden IMP (TWA /Coastal)	20'	70	5,015	Please refer to the section on Laden IMP for 20' containers for Local Laden IMP.
	40'	100	6,268	Please refer to the section on Laden IMP for 40' containers for Local Laden IMP
Local Laden EXP (TWA /Coastal)	20'	70	3,687	The charges are paid by the line
	40'	100	5,567	The charges are paid by the line
Local Empty IMP (TWA /Coastal)	20'	25	5,015	The charges are paid by the line
	40'	40	6,268	The charges are paid by the line
Local Empty EXP (TWA /Coastal)	20'	25	3,687	
	40'	40	5,567	The charges are paid by the line

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

Note: Maximum tariff service means the single movement of an inbound Container, 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 container yard in readiness for subsequent repositioning back to a ship for transshipment, or to the ICD, or placement onto an inland vehicle, or for internal movement to the Customs examination area. The reverse of the above movements applies for outbound containers.



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

Maximum Tariffs for the Cargo Dues of Vehicles

Category	Vehicle Type	Cargo Dues USD	Remarks
IMP per Vehicle	Upto 15 cbm ¹	14.3	<div>1. The charge is paid by the consignee.</div> <div>2. The Cargo dues is paid in USD</div> <div>3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.</div> <div>4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.</div>
	16 to 25 cbm	25.8	
	Over 25 cbm	55.8	
	Trailer/ Mafiwagon	110.8	
EXP per vehicle	Upto 15 cbm	13.3	<div>1. The charge is paid by the line</div> <div>2. The Cargo dues is paid in USD</div> <div>3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise.</div> <div>4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.</div>
	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



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

	Car Upto 15cbm	Bus Upto 15cbm	Trailer Over 25cbm	Tracked Vehicles	Trailers Over 140cbm
Direct ²	2,497	2,775	3,539	4,157	3,876
Indirect ³	2,583	2,907	3,971	5,180	4,149
VAT ⁴	5%	5%	5%	5%	5%

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.



Appendix H

STAFFING AND SUCCESSION PLAN

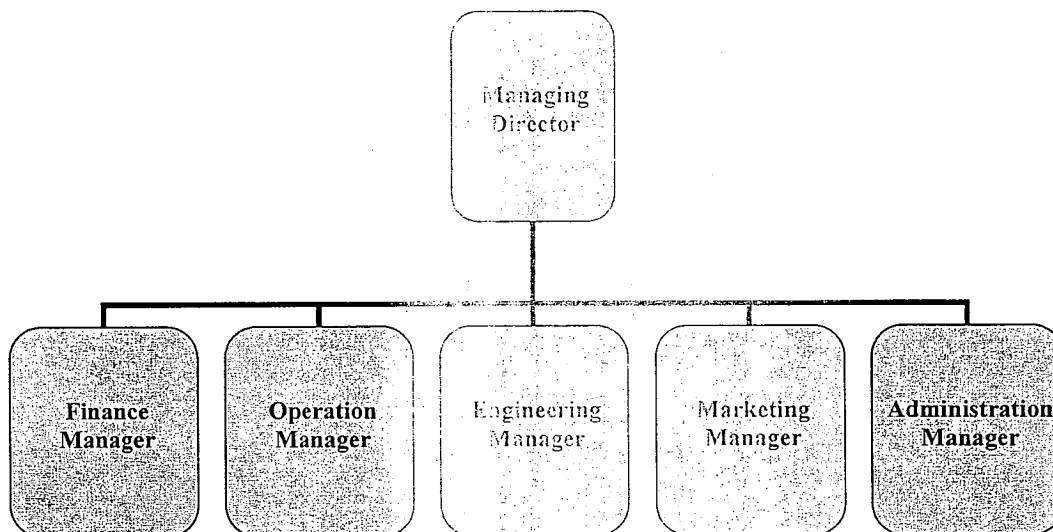
ORGANISATION AND MANAGEMENT

11.1 Summary of Formal Structure

Under lease, Greenleigh Ports Limited, a special purpose vehicle, will operate Koko Port. Greenleigh will have a Board of Directors made up of 9 directors representing the consortium, host communities and other members invited to join the company. The Board will decide policy and make strategic plans and monitor their performance.

The Managing Director will be a member of the Board. He will supervise five key departments, namely Terminal Operations, Finance, Engineering, Marketing, and Administration departments. A manager who will not be a member of the Board will head each of these departments, and they will be responsible to the Managing Director.

Proposed Management Structure



11.2 Departmental Mandates

11.2.1 Managing Director

The Managing Director will have overall responsibility for the daily running of the operations of the port and of the company. He will report to the Board of Directors for the performance of the company.

He will chair weekly Terminal Management Committee Meetings, and submit monthly reports detailing the overall performance of the terminal, strategic decisions, which require Board approval, and any other matters of strategic importance.

He will be responsible for the compilation of the annual Business Plan of the terminal and presentation to the Board for final approval.

Marketing initiatives to improve client base, increase turnover and optimise terminal capacity will be a major focus, whilst assuring that ship owners reduces port time, improved service levels and an integrated logistics chain to accommodate cargo owner aspirations.

Skill development and training will also be the responsibility of the General Manager.



11.2.2 Operations Manager

- Berth planning
- Communications
- Statistics
- Cargo working
- Stevedoring
- Shed Management
- Quay control
- Cargo in and out
- Cargo security
- Tallying
- Performance levels
- Gang rostering
- Staff allocation
- Operational procedures
- Terminal output performance levels
- ISO 9001/2000 compliance
- NOSA accreditation
- Business planning
- Training
- Quayside stowage
- Vehicle control
- Allocation of equipment and Machinery
- Cargo planning and gang allocation

11.2.3 Marketing Manager

- Marketing initiatives
- Marketing strategy
- Client liaison
- Strategic alliances
- Publications
- International marketing
- Press liaison
- Complaints
- Communications
- Client visits
- Client welfare
- Service contracts
- Image building
- Client base assessment
- Strategic planning
- Business solutions and development
- Business sourcing
- Logistics development

11.2.4 Finance Manager

- Income/Revenue Base
- Expenditure control
- Revenue collection
- Accounts
- Creditors/Debtors
- Claims
- Purchase Orders
- Audit and Reports
- Budget allocation
- Annual budget preparation
- Control of finances



- Financial Reports
- Capital Projections
- ROI
- Balance Sheets
- Capital allocation
- Financial imperatives

11.2.5 Engineering Manager

- Planned maintenance systems (vehicles and equipment)
- Maintenance of vehicles and equipment
- Purchasing
- Workshop management
- Training and development
- Fuel acquisition and control
- Stock control
- Time management system
- Workshop security
- Access control
- Environmental management
- Staff procurement and management
- Risk control
- Asset register
- Sourcing of spares
- Service agreements

11.2.6 Administration Manager

- Documentation
- Customs and immigration procedures
- Bills of lading
- Clearing and Forwarding
- NPA Administration Requirements
- Agents
- Permits
- Invoicing/Billing
- Cargo dues orders
- Vessel manifests
- Claims procedures
- Services
- Office accommodation
- Garbage disposal and collection
- Statistics
- Human resource Management
- Employment contracts
- Policies
- Staff interviews
- ~~Conditions of service~~
- Performance appraisal management
- Job evaluation
- Job profile
- HIV/AIDS policies
- Career path and development
- Labour legislation
- Trade union liaison
- Skills audit
- Succession planning



- Salary dispensation/wages
- Training
- Industrial relation
- Staff welfare
- Time management systems

11.3 Mandates of Key Sections

11.3.1 Security, Safety, Risk and Environment Officer

- Risk control
- Security control
- Safety and environment
- Traffic control
- Pedestrian access
- Gate entrance control
- Security requirements
- Security staff allocation
- Shift monitoring
- Financial asset transit
- Capital programme. (Port ship and security code application)
- Port security Code of Practice
- Pollution control
- Contingency planning
- Hazardous cargoes (HAZMAT compliance)
- Occupational safety requirements
- Environmental assessments
- ISO 14001 development plan

11.3.2 Property and Infrastructure Officer

- Infrastructure planning and requirements
- Maintenance of property
- Property management
- Plan maintenance programme
- Electricity, lights and water
- Logistics
- Office allocation
- Contracts
- Terminal planning and layout
- Capital programme
- Time and logistics programme
- NPA liaison
- Upgrading existing infrastructure
- Preparation of budget requirements
- Reports

11.3.3 Legal Services

- Litigation
- Liaison with NPA and Government Bodies
- Contracts
- Tender documentation
- Laws and statutes
- Regulations
- Arbitrations
- Claims settlement
- Service contracts



- Leal framework
- Servitude agreements

11.3.4 Information Technology Officer

- Management services
- Information system
- IT establishment and development
- Data base management
- Training and development
- Software Requirements
- Quality management
- Financial systems
- Procurement
- Business planning
- Budget compilation

11.4 Schedule of Responsibilities of Key Positions

11.4.1 Managing Director

Duties:

Manage the development and performance of Koko Port by developing business strategies, policies and strategic relationships with shareholders, authorities and customers, with a view to ensuring Koko Port's profit targets and service standards are achieved.

Responsibilities:

- Review and formulate the strategic and Business Plans in conjunction with the Board of Directors.
- Collaborate with the Board of Directors' decision and identify new threats and challenges to Koko Port Terminal.
- Update Directors at Board meetings on company's operating result and submit monthly management report to Board members.
- Provide direction to the Management Team and communicate a clear understanding of job responsibilities, objectives, deadlines and performance expectations.
- Set direction on long term key infrastructure development and planning in conjunction with the Board of Directors.
- Set directions on human resources objective, policies and initiatives.
- Head committees for contingency planning and Crisis Management.
- Develop local market expertise, intelligence and contacts and play an active part in key account management and development – in formal, social and legal activities – as required by the Board or major customers.
- Negotiate customer service contracts.
- ~~▪ Build and maintain good relationships with the government authorities so that maximum co-operation and assistance can be obtained.~~
- Identify and develop key successors to Management Team.

Specification

The person is a strong leader with excellent management skills. He is able to manage all levels of staff and build excellent relationship with customers, the Board of Directors and governmental officials. He has good business acumen and is adept at making difficult decisions. He has a minimum 15 years of experience in port and shipping management, and at least 10 of them in managerial position. He would possess a degree in engineering, business administration, finance and accounting, or other relevant fields. An MBA is preferred.



11.4.2 Operations Manager

Duties:

Provide leadership and direction to Koko Port Terminal's operation, with directed responsibility to deliver high-value services meeting and exceeding customer requirements.

Responsibilities:

- Achieve operational excellence by working with the marketing, IT and engineering functions, managing and integrating the delivery of frontline customer service.
- Supervise and monitor day-to-day cargo-handling activities including vessel, yard and warehouse activities, delivering fast, flexible and reliable service.
- Implement plans to optimize capacity and maximize people and equipment resource utilization and productivity improvement to enhance value.
- Assist the Commercial/Marketing function to gather customer and competitor information.
- Help to meet Koko Port Terminal's financial targets by identifying and implementing cost management measures with operations and customer service.
- Work with the Personnel/Administration function to implement safety programmes to ensure a safe and conducive work environment.
- Oversee the development and deployment of key managers and successors within Operations.

Specification

The individual has a strong working knowledge of container and multi-purpose terminal operations. He is expected to manage all aspect of terminal operations by effectively leading his team to achieve a high level of productivity and efficiency. He has a degree either in Engineering, Finance, Accounting, Business Administration or other relevant fields. He should have been in port operations for at least 8 years, 3 of them in a similar capacity.

11.4.3 Engineering Manager

Duties:

Lead and manage the assignment and development of the Engineering functions and its resources and co-ordinate with related functions to build an effective engineering capability enhancing Koko Port Terminal's competitiveness.

Responsibilities:

- Work and collaborate with the Operations function to achieve engineering/operational excellence by managing and integrating the engineering support function with frontline operations.
- Design and implement engineering policies and programmes including equipment design and purchase to ensure Koko Port terminal's technical expertise meets performance standard that have been aligned with business performance.
- Define and implement equipment maintenance and plant and services programmes.
- ~~▪ Create and support initiatives in resource sharing with operation to maximize resource, reduce cost and improve productivity.~~
- Integrate and align engineering's role and activities with operations to ensure sufficient engineering support for volume growth/business development.
- Provide civil engineering support in terminal design/planning and infrastructure improvement works for more optimal layout and utilization.



- Implement safety programmes, in conjunction the Administration/Personnel function, to ensure a safe and conducive work environment.
- Oversee the development and deployment of key successor within the Engineering section.

Specification

The individual has a strong technical working knowledge of technical and electrical engineering and some familiarity with terminal planning and design. He is expected to manage all aspects of the container/multipurpose terminal engineering function by effectively leading his team to achieve a high standard of efficiency and reliability. He has a degree either in Electrical or Mechanical Engineering. He should have been in an engineering function in the port industry for 8 – 10 years, exposed to both civil and equipment engineering, with at least 3 years in the managerial capacity.

11.4.4 Marketing Manager

Duties:

Oversee the commercial progress and development of Koko Port so as to secure customer loyalty and business volume, hereby achieving revenue and profit targets.

Responsibilities:

- Achieve throughput and revenue targets for Koko Port by formulating and securing a range of short to long term service agreements with shipping lines.
- Develop strategies to maintain or increase Koko Port Terminal's share in target markets.
- Head negotiations of short to medium agreements and support the port Manager in negotiating long term agreements.
- Cultivate beneficial customer relationships with government, shipping and maritime associations at all levels.
- Develop and direct the entire marketing mix, pricing policy and structure, and product and market development, under directions from the port Manager and ensuring profitability in line with budgets and targets.
- Develop Koko Port's capabilities to provide analysis and research on competition, industry commercial trends.
- Maintain an integrated database of customers, market conditions and competitors.
- Oversee the development and deployment of key managers and successors within Commerce/Marketing.

Specification

The individual has previous commercial/marketing/negotiation experience with either a terminal operator or shipping line or logistic company. He comes preferably with strong networks in the context of Nigeria and the region. He has a throughout understanding of the markets and shipping routes relevant to Koko Port. He has built and managed a sales, marketing and research team in a similar environment. He has a degree in Business Administration or a related field. He should possess 8 to 10 years of commercial/marketing experience in a related industry, with the last 3 years in a managerial capacity.

11.4.5 Administration Manager

Duties:

Plan, direct and implement all aspect of human resource policies, objectives, initiative and administration including employment, training and development, employee relations, management-union relations and compensation and benefits. Drive the alignment and implementation of administrative process in Koko Port Terminal.

Responsibilities:

- Organise local Human Resource management in accordance with Group policies, local legislation and directions from the port manager.



- Work with key managers to identify, formulate and implement Human Resource strategies and programmes required to maintain a progressive work culture in support of effective recruitment, develop and retention of high-performance staff.
- Establish and track Human Resource metrics that reflect a fact-based, comprehensive method for valuing the contributions of all staff and to provide regular reports of data and analysis to the Terminal Manager and management team.
- Oversee and ensure the implementation of Human Resource services, policies and programmes by monitoring departments' performance against standards and targets, so that a high service standard is achieved and best practices are put in place.
- Review the feasibility of performance-based compensation and incentive schemes to motivate staff towards higher performance.
- Facilitate and utilize communication plans and channels to ensure clear two-way communication between Human Resource/Management and staff/union, communicating and clarifying Human Resource policies, plans and rationale and building cohesive relations.
- Implement staff training programmes consistent with group training and development philosophy.
- Adopt a hand-on and collaborative approach with various departments to ensure a safe and conducive work environment.
- Set administrative procedures and processes in place, ensuring alignment with corporate financial and Human Resource policies and guidelines.
- Continuously identify improvements to administrative procedures and processes.
- Oversee office property maintenance and renovation contracts and review suppliers' service levels.
- Ensure the proper certification and approval of invoices for purchases and payments for goods and services.
- Ensure data control and security through periodic reviews of staff access.
- Co-ordinate the annual capital and recurrent budget exercise for the company.
- Oversee the development and deployment of key staff and successors within Administration/Personnel.

Specification

He must be an individual with strong people management skills, able to communicate effectively with all levels of staff. Reliable and steady, he has the ability to make objective judgments and communicate decision persuasively and influence positively towards acceptance. He has 8 to 10 years of Human Resource experience and at least 3 years in a managerial capacity. He should possess a diploma or degree Human Resource Management, Business Administration or related fields.

11.4.6 Finance Manager

Duties:

~~Establish robust financial policies, systems and governance, create and run a clear budget process, plan and~~
manage finances of Koko Port and communicate to relevant stakeholders and external agencies on financial performance of Koko Port Terminal

Responsibilities:

- Align policies on financial controls to ensure effective corporate governance in line with directors set by the Terminal Manager.
- Monitor performance and achieve the target set by the Terminal Manager.



- Review regularly business performance on monthly quarterly bases against short and long term company budget, alerting the Terminal Manager to mismatches and necessary adjustments to targets given the prevailing environment.
- Manage and organize local financial management and consolidated financial statement in accordance with Board directions and instructions from the Terminal Manager.
- Develop financial forecast and highlight key targets driving the forecasts.
- Oversee development and refinement of company-wide guidelines addressing key infrastructure development and planning, and oversee major fixed assets procurement per delegated authorities.
- Develop a refine capital expenditure plan and recommend financing strategy to the Terminal Manager.
- Develop risk management strategies that minimize the company's exposure.
- Communicate financial results to investors, compiling annual reports and other major financial disclosures to the relevant parties.
- Develop a matrix of level of authority for expense-approval within Koko Port Terminal, including the Terminal Manager and direct reports.
- Oversee the development and deployment of key managers and successors within Finance.

Specification

The person is an accomplished financial manager by profession with the relevant degree. He has sharp analytical skills and also possesses good leadership, integrity, communication and interpersonal skills. He is expected to be independent but yet able to manage a team of professionals. Preferably, the person has minimum of 7 years of experience in finance and accounting. and has been in a similar capacity for about 2 years.

11.4.7 IT Officer

Duties:

Conceptualise, plan, prioritise and deliver innovative IT solutions, ensuring alignment with business needs so as to result in high value added IT support to the company.

Responsibilities:

- Manage the delivery of systems according to schedule by enforcing close monitoring of project progress and effective planning and prioritising of projects and resources.
- Work with managers by providing guidance and counsel to identify effective and innovative applications o ensure increase value-added to the organization.
- Understand the company's strategic directions and provide innovative IT solutions accordingly, including exploring new technology and its relevance to business needs.
- Assess customer needs to provide IT-based support and solutions where optimal so as to increase overall terminal productivity and revenue.
- Analyse management needs regarding information retrieval, data control and expanded usage of computers and related equipment in operations and processes.
- Maintain professional contact with other organizations, research institutions and equipment manufactures concerning computer applications and equipment. Keep updated on technological changes and innovations and update the management when appropriate.
- Oversee the development and deployment of key managers and successors within IT.



Specification

The person is strong in the Information Technology domain. He is expected to manage all aspects of the Information Technology infrastructure systems at Koko port. He is also expected to manage a small team of Information Technology specialists. He should possess a degree either in Computing, Computer Engineering, or other relevant fields. He should have relevant Information Technology experience for 8 years, preferably in the port or shipping or logistics industry, with 3 years in a managerial capacity.

11.5 Personnel Requirements

The staff requirement at Koko Port Terminal will evolve in tandem with site improvement and introduction of new equipments. The ideal initial full time head count for different categories of staffers at Koko Port Terminal is shown in table 13 below.

CATEGORY	NATIONALITY	NUMBER
MD / Port Manager	F/N	1
Commercial Marketing Manager	F/N	1
Administrative & Personnel Manager	N	1
Operations Manager	F/N	1
Finance Manager	N	1
Accountants	N	4
IT Officer	N	1
Training and Safety Officer	F/N	1
Security, Safety, Risk & Environmental Officer	N	1
Doc. Supervisor	N	3
Computer Operators	N	6
Clerks	N	6
Security, Chief	N	1
Security Officers	N	10
Large Forklift Operators	N	6
Small forklift operators	N	9
Tug-master operator	N	3
Nurse	N	2
Medical attendants	N	2
Office assistants	N	3
Eng. Manager	N	1
Eng. Supervisor	N	3
Eng. Foremen	N	3
Electricians	N	4
Mechanics	N	7
Fitters	N	3
Welders	N	3
Labourers/helpers	N	3
Tyre man	N	3
Fuel man	N	2



Cleaners	N	3
Purchasing officer	N	1
Purchaser	N	2
Store manager	N	2
Store keeper	N	3
P. R. O.	N	2
Secretary	N	3
Office boy	N	3
Company / Ambulance Drivers	N	8
Stevedore Labourers	N	200

PERSONNEL POLICY

12.1 Introduction

The personnel policy has been based on the best practices of the industry in Nigeria and elsewhere. The company will continually review these policy in the light of competition and other changes in the business environment.

12.2 Proposed Hours of Duty

Shift Pattern – Operations Personnel			
Week 1			
Shift	Monday - Friday	Saturday	Sunday
A	07:30 – 15:30	Off	Off
B	15:30 – 22:30	07:30 – 19:30	07:30 – 19:30
C	22:30 – 07:30	19:30 – 07:30	19:30 – 07:30
Week 2			
Shift	Monday - Friday	Saturday	Sunday
A	22:30 – 7:30	19:30 – 07:00	19:30 – 07:30
B	07:30 – 15:30	Off	Off
C	15:30 – 22:30	07:30 – 19:30	07:30 – 15:30
Week 3			
Shift	Monday - Friday	Saturday	Sunday
A	15:30 – 22:30	07:30 – 19:30	07:30 – 19:30
Week 3	22:30 – 07:30	19:30 – 07:30	19:30 – 07:30
C	07:30 – 15:30	Off	Off
Week 4			
Shift	Monday - Friday	Saturday	Sunday
A	07:30 – 15:30	Off	Off
B	15:30 – 22:30	07:30 – 19:30	07:30 – 19:30
C	22:30 – 07:30	19:30 – 07:30	19:30 – 07:30
Working Hours per Week per Shift			
Shift	Monday - Friday	Saturday	Sunday
Week 1	07:30 – 15:30	Off	Off



Hours	40	0	0
Week 2	22:30 – 07:30	19:30 – 07:30	19:30 – 07:30
Hours	40	12	12
Week 3	15:30 – 22:30	07:30 – 19:30	07:30 – 19:30
Hours	40	12	12
Week 4	07:30 – 15:30	Off	Off
Hours	40	0	0

Week	160
Saturday (O/T)	24
Ordinary Hours	184
Sunday (S/F)	24
Total Hours	208

It can be seen that weekday shifts operate allowing half an hour carry period. This will ensure that cargo-handling procedures are not disrupted at change of shift. Security staff will work the same shift patterns as above.

Administrative staff will work 8-hour shift during the day, with flexible roaster employed over weekends.

The mechanical workshop personnel will be employed during the day on an 8 hour shift, and 5 hours on a Saturday of total 45 hours week. A roaster system will be introduced to cover essential mechanical breakdowns occurring during off peak periods.

Electrical and Engineering personnel will be employed on a 2 shift working roster, 06:00 – 14:00 and 14:00 – 22:00 hrs with alternate weekend working. There will be 24 hours coverage available for electrical breakdown services, on a rotating roster basis.

12.3 Flexible Deployment and Multi-Skills

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

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

Major HR management policies will be established to develop a highly- motivated work force, enhancing productivity and flexibility, and developing individuals according to their potential and meeting the business need.

12.4 Training

Training will be undertaken on an ongoing basis for all personnel, both on the job and structured formal training according to individual assessment criteria formulated by Human Resources Manager. As each and every employee will be adjudged on a yearly basis by the introduction of a Performance Management System coupled with job evaluation criteria, training requirements and the selection of appropriate courses for individuals can be programmed. Greenleigh places great emphases on employee training and development as it is our firm belief that a capable workforce is a competitive advantage. Management will formulate a framework within which training and development activities will be conducted. The overall mission of training and development is to provide a clear and efficient means by which skills, knowledge and attitude will be transferred to enable staff to improve job performance leading to the achievement of corporate and line departmental goals and objectives.

Greenleigh will leverage on its excellence in training and development to deliver world-class management practices and training programmes for the employees. Koko Terminal will enhance benefit from Greenleigh's extensive experience gained from other international projects, as we bring to it global best practices in manpower training and development. Currently, Greenleigh intends targeting training time of 40 hrs per years per staff and budgets 2% of total staff cost on training. Greenleigh will use these benchmarks in setting the training targets for Koko Port Terminal in addition to any statutory



requirements for contributions to training funds. It is possible that due to the introduction of new equipment and processes in the first few years of operations, the targets for training hours and budget could be higher than what is required in a steady state.

12.5 General Terms and Conditions of Employment / Training Plan

Greenleigh assures that the general terms and conditions of employment for the employee at the terminal will be in accordance with the relevant laws and statutory requirement including Nigerian Labour Act and the Nigerian Maritime Labour Act 2003. The terms and conditions will also be based on the appropriate compensation market in Nigeria and benchmarked with similar industries.

Items will cover

- Payment arrangements and administration
- Job evaluation and job levelling
- Bonus and incentive schemes based on individual and group performance
- Work day, work hour and rest periods
- Roster system and manning pattern
- Overtime and rules concerning overtime work and holidays
- Annual leave and rules
- Medical leave and rules
- Medical benefit
- Other welfare and benefits
- Performance management
- Probation
- Counselling and disciplinary procedure
- Personal grievances procedures and submission of complaints
- Training and development
- Career planning
- Health and safety
- Code of business conduct.
- Termination of employment and severance pay

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

12.6 Recruitment policy

Greenleigh will set an industry – wide standard to attract reliable, high quality management and staff who meet its operation manpower requirements in the terminal. The management aim to foster a culture of high performing and productive work force delivering quality standards of customer service satisfaction through competitive remuneration, incentives based on individual and group productivity, market – driven welfare and benefits, and world class training and development.

Greenleigh will evaluate the background of the candidates, including their levels of educational and technical capabilities experience and qualification in order to place them on various functions; and will deploy them in suitable positions to ensure they are physically and technically fit to perform the job. Such personnel hired by Greenleigh will provided suitable training, both on the job and in classroom settings. Their training will include orientation programmes, which would inculcate the value and work culture of the company. The thrust will be to instill a sense of ownership, motivation towards performance, and job satisfaction. Employees will be schedule according to manning roster and dynamic operational requirements. They will also be encouraged to maintain high level of discipline and conduct.

Greenleigh plans to implement world-class recruitment processes, which will:

- Leverage on Greenleigh excellent employer branding for the Koko port terminal so that it attracts quality candidates.
- Follow objective criteria of skills, experience aptitude and qualification in assessing candidates
- Assess the work force required for maximum operational effectiveness and efficiency, with periodic reviews and adjustments as necessary.
- Provide competitive work conditions where by individual and group productivity is the basis of salary increment, incentive, bonus and promotion.



- Promote flexible work arrangements and staff multi-skills to ensure the highest productivity and employability.
- Provide individual growth through career planning.
- Provide individual training at all levels including operational skills, engineering skills and soft skills, which will enhance the general quality of life and productivity of management and staff at the Koko Port.

12.7 Remuneration Policy

a) Salaries and Allowances

When the appropriate systems is in place, Greenleigh will introduce a market – driven competitive compensation strategy in line with the Nigerian Market, local laws, local practices and benchmarked against similar industries. Greenleigh will review and appropriately implement a recognized job Evaluation Model management.

b) Bonus and Incentive Scheme

At the appropriate time when operations stabilize and as best practice, Greenleigh will work towards implementing variable bonuses and incentive scheme based on individual and group performance, to reward eligible high- performing individuals and work teams.

c) Other Welfare and Benefits

Greenleigh will review and analyse market practice on company welfare and benefits, and propose a competitive suite of welfare and benefits for all employees at the Koko Port

d) Overtime

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

The final rate depends on the mutual agreement / collective bargaining with employees / union.

12.8 Succession Plan

Management position initially occupied by foreign nationals will be vacated within two years of commencement of the Lease Agreement. This will be subject to selected candidates meeting agreed criteria for filling the posts on a permanent basis. Candidates will be employed according to their relative experience and qualifications.

Interviews will be held in order to assess individual competencies and suitability, and submitted qualifications verified in order to eliminate malpractices.

Selected candidates will be appointed in the role of manager in Training, and be under the supervision and guidance of the Business Unit Manager.

Initial training will be in the form of a 'Company Orientation Programme', designed to introduce the candidates to all facets of Company Policy, Organisational Structure, Operational Procedures, Management Responsibilities and Portfolios, Documentation and Work Structures.

Candidates will also be allocated selected time slots with unit managers in order to familiarize themselves with overall business

Subject to the availability of suitable courses and business programmes, structured to accommodate the respective Business portfolios, candidates will be enrolled in order to further their knowledge and expertise. In certain circumstances this may involve studies overseas.

Evaluation of a candidate progress, Business Management potential, and ability will be evaluated on a 3 monthly basis according to the job profile.



Appendix I

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 _____ 2006 (the "Lease Agreement") between the Nigerian Ports Authority (the "Lessor") the Bureau of Public Enterprises (the "Confirming Party") and Greenleigh Ports 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 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.



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 GUARANTEE]

Name:

Title:



Appendix J

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\$2.5 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.



Appendix K

GUARANTEED MINIMUM TONNAGE

The Lessee is required to achieve ninety per cent (90%) of forecasted volume as contained in their Technical Proposal.

The Lessee guarantees to handle at least ninety per cent (90%) of projected cargo throughput as provided in its technical proposal and hereby attached.

If Lessee fails to achieve at least ninety per cent (90%) of such throughput, the Lessee shall pay the Lessor the throughput fees of the difference between the throughput handled and the guaranteed volume of ninety per cent (90%).

However, if the Lessee achieves between ninety percent (90%) and one hundred percent (100%), the excess throughput fee shall be discounted by ten (10%) per cent.

Any achievement above one hundred per cent (100%) shall attract a discount of twenty (20%) per cent on the excess.

Reconciliation in respect of the guaranteed tonnage shall be conducted not later than four (4) weeks from the end of the operational year.

This guaranteed minimum tonnage requirement shall be applicable twelve (12) months from the Effective Date and shall be subject to review every two (2) years.

Projected Cargo Throughput – Imports – Greenleigh Ports Limited			
Year	Frozen fish growth rate @ 5.25% Annual growth rate	Projected General Cargo Throughputs based on Projected Annual Ship Calls. (@ Average of 15000 tons per Ship)	Total Tonnage
2005	41,461.00		
2006	43,637.70		43,637.70
2007	45,928.68	90,000.00	135,928.68
2008	48,339.94	150,000.00	202,089.94
2009	50,877.78	210,000.00	266,127.78
2010	53,548.87	210,000.00	268,798.87
2030	149,002.10	510,000.00	697,252.10

Projected Terminal Throughput in Relation to Ship Calls (2006-2030)							
Year	Date	Imports (tons)		Avg tonnage per ship		No of Ship calls	
		Frozen Fish	Gen Cargo	Frozen Fish	Gen Cargo	Frozen Fish	Gen Cargo
0	2005	41,461.00		5,000		8	
1	2006	43,637.70		5,000	15,000	9	0
2	2007	45,928.68	90,000.00	5,000	15,000	9	6
3	2008	48,339.94	150,000.00	5,000	15,000	10	10
4	2009	50,877.78	210,000.00	5,000	15,000	10	14
5	2010	53,548.87	210,000.00	5,000	15,000	11	14
25	2030	149,002.10	510,000.00	5,000	15,000	30	34



Appendix L
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 ;

"**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:
- (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\$2.5million;
 - (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) a valuation of Fixed Assets;
- (b) a Electrical survey;
- (c) 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:
- (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.

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 Lessee 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.

A large, stylized handwritten signature or mark in the bottom left corner.

A handwritten signature or mark in the bottom center.

A small, circular handwritten mark or signature in the bottom right.



Appendix M
Termination Plan

19. **DEFINITIONS**

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

"Intellectual Property Rights" means:

- (a) patents, trademarks, service marks, rights in design, trade dress, trade secrets, trade names, and copyrights that are not the property of the Lessee but which are licensed to the Lessee by a third party and which relate to the Premises or the performance of the Operations;
- (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;

"Inventories" shall have the meaning set out in Article 22.1 below;

"Lessee Movable Assets" means the moveable property of the Lessee used by the Lessee for the purposes of performing the Operations at the Premises on the Termination Period Start Date, including but not limited to, the Movable Assets (or any replacement of the Movable Assets made during the Term whether pursuant to the Development Plan or otherwise) and the Lessee Equipment;

"Purchase Price" means the total purchase price to be paid by the Lessor to the Lessee before or on the Termination Date for the Transferring Lessee Movable Assets. The Purchase Price shall be calculated by reference to the purchase prices set out in the Inventories;

"Termination Period Start Date" means the date of commencement of the Termination Period;

"Transferring Lessee Movable Assets" means the Lessee Movable Assets that the Lessee agrees to sell and transfer to the Lessor subject to the payment of the Purchase Price in accordance with the provisions set out in Section 22 below;

"Transferring Fixed Assets" means the immovable property affixed to the Premises as at the Termination Period Start Date including the Fixed Assets;

20. **THE TERMINATION PLAN**

- 20.1 The Parties agree that the Termination Plan shall apply during the Termination Period.

- 20.2 Notwithstanding Section 20.1, 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.

21. **CONDITION SURVEY**

- 21.1 As soon as possible following the Termination Period Start Date, the Parties shall appoint an Expert to conduct a condition survey of the Premises and the Transferring Fixed Assets. If, as a result of such condition survey, the Expert reports that the Premises or the Transferring Fixed Assets or any part thereof has not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) the Lessee shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition before the Termination Date.



22. LESSEE MOVEABLE ASSETS

22.1 Not later than thirty (30) days after the Termination Period Start Date, the Lessee shall provide the Lessor with inventories of:

- (a) the Lessee Movable Assets; and
- (b) spare parts and consumables

which it is prepared to sell and transfer to the Lessor on the Termination Date (the "Inventories"). The Lessee shall include a purchase price for each of the Lessee Movable Assets, spare parts and consumables in the Inventories.

22.2 Not later than thirty (30) days prior to the Termination Date, the Lessor shall advise the Lessee in writing which of the Lessee Movable Assets, spare parts and consumables it wishes to purchase at the Purchase Price.

23. INTELLECTUAL PROPERTY

23.1 The Lessee shall make all reasonable efforts to procure an assignment or novation of any licenses for Intellectual Property Rights granted to the Lessee and under terms that will permit the reproduction, translation, use and lease of such license by the Lessor. The Parties shall take all steps that may reasonably be necessary or desirable to fully effectuate the provisions of this Section.

24. TERMINATION DATE

24.1 Prior to the Termination Date during the Termination Period or upon the Termination Date the Lessee shall:

Premises and Transferring Fixed Assets

- (a) vacate the Premises;
- (b) surrender peaceful possession of the Transferring Fixed Assets in a good working condition in accordance with Prudent Industry Standards (excluding reasonable wear and tear) to the Lessor;
- (c) hand over to the Lessor all documents including as built drawings, manuals and records relating to operation and maintenance of the Premises and the Transferring Fixed Assets;
- (d) transfer or cause to be transferred to the Lessor any agreements relating to the Premises and/or the Transferring Fixed Assets which are:
 - (i) valid and subsisting;
 - (ii) capable of being transferred to the Lessor; and
 - (iii) that the Lessor has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Lessor; and
 - (iv) execute such documents and deeds as the Lessor may require to confirm or give effect to this Sub Section;

Transferring Movable Assets

- (e) subject to receipt of the purchase price by the Lessee convey, transfer, assign and deliver to the Lessor, free and clear of liens and encumbrances, the Lessee's right, title and interest in and to the Lessee Movable Assets, spare parts and consumables that the Lessee has agreed to sell and transfer to the Lessor in accordance with the procedure set out in Section 22 above accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessor.



Customer Contracts and Agreements

- (f) the Lessee 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.

25. CARGO ON THE PREMISES AT THE TERMINATION DATE

- 25.1 Any Containers belonging to the customers of the Lessee on the Premises at the Termination Date shall become the responsibility of the Lessor. The Lessee shall provide the Lessor with a list of Containers at the Premises on the Termination Date. Any Operations provided by the Lessee to those customers in respect of their Containers on or before the Termination Date will be invoiced by the Lessee to the Lessor. The Lessor shall then invoice the customer for the Operations provided by the Lessee and for any services provided by the Lessor.

26. COOPERATION

- 26.1 The Lessee shall use its best efforts and act in good faith to cooperate with the Lessor or any new lessee that the Lessor may notify the Lessee of in writing on or before the Termination Period Start Date to take over responsibility from the Lessee to perform the Operations on or after the Termination Date. Such cooperation required of the Lessee shall include, without limitation, the provision of all relevant documentation and information held or used by the Lessee relating to the Premises, the Transferring Fixed Assets and the Operations (including manuals, records, data, etc.).