

07/12/2005

CONCESSION AGREEMENT

BETWEEN

NIGERIAN PORTS AUTHORITY

AND

**PORTS AND TERMINAL
MULTISERVICES LIMITED**

HA

07/12/2005

CONCESSION AGREEMENT

CONCESSION AGREEMENT	1
i. The Concession	3
ARTICLE 1	3
Definitions.....	3
1.1 Definitions	3
1.2 Other References.....	10
1.3 Rules of Interpretation.....	10
ARTICLE 2.....	11
THE CONCESSION	11
2.1 Grant of the Concession Rights	11
2.2 Exclusivity of the Concession Rights	12
2.4 Extension of the Concession Period	12
2.5 Royalty, Cargo Dues Sharing Formula and Other Payments to the Grantor by the Concessionaire	13
2.6 Ownership and Right to Operate the Port Terminal during the Concession Period.....	13
2.6.1 Ownership of the Port Terminal.....	13
2.6.2 Right to Use and Operate the Port Terminal	13
2.6.2 Transfer and Mortgage.....	14
2.7 Concessionaire's Principal Obligations during the Concession Period	14
ARTICLE 3.....	14
REPRESENTATIONS, WARRANTIES AND CONDITIONS PRECEDENT. 14	
3.1 Concessionaire's Representations and Warranties	14
3.2 The Grantor's Representations and Warranties.....	15

[Handwritten signatures]

07/12/2005

3.3	Conditions Precedent to the Grantor's Obligation to issue Certificate of Commencement	15
3.4	Satisfaction of Conditions Precedent and Construction Commencement Date	16
3.5	Satisfaction of Conditions Precedent	16
Article 4	.....	16
GRANTOR'S ADMINISTRATION OF THE PROJECT		16
4.1	The Grantor's Representative	16
4.2	Other Grantor's Personnel	17
4.3	Delegated Persons	17
4.4	Instructions	17
4.5	Determinations	18
CONSTRUCTION OF THE PROJECT		18
ARTICLE 5		18
LAND USE RIGHT		18
5.1	Land Use Right Acquisition	18
5.2	Restrictions on Site Use	19
5.3	Fee for Land Use Right	19
5.4	Suitability and Conditions of Site	19
ARTICLE 6		19
DESIGN		19
6.1	Design Requirements	19
6.2	Review of Criteria for Preliminary Design	19
6.3	The Grantor's Review and Approval of Preliminary Design	20
6.4	Concessionaire's Right to Change Preliminary Design	20
6.4.1	Conditions for Change of Preliminary Design	20
6.4.2	Approval of Proposed Changes	20
6.5	The Grantor's Review and Verification of Detailed Design	20
6.6	Concessionaire's Right to Change Detailed Design	21
6.7	Responsibility of the Concessionaire	21
6.8	Grantor's Right to Change Detailed Design	22
ARTICLE 7		22
CONSTRUCTION WORKS		22

9/11/05

07/2005

7.1	Principal Obligations of Concessionaire.....	22
7.2	Principal Obligations of the Grantor	23
7.3	Preparation of the Site.....	23
7.4	Quality of Construction Works.....	23
7.5	Quality Assurance and Quality Control	23
7.5.1	Concessionaire's Quality Assurance and Quality Control	23
7.5.2	The Grantor's Right to Control Quality Requirements	23
7.5.3	Failure to Comply with Quality and Safety Requirements	24
7.6	Construction Personnel.....	24
7.7	Equipment and Materials.....	24
7.8	Selection and Replacement of the Construction Contractor ...	24
7.8.1	Selection of Construction Contractor.....	24
7.8.2	Replacement of the Construction Contractor	25
7.8.3	Concessionaire's responsibility for the Sub-Contractors ..	25
7.9	Drawings and Technical Details	25
7.10	Project Schedule; Milestone Dates	26
7.10.1	Project Implementation Schedule.....	26
7.10.2	Extension of Milestone Dates.....	26
7.11	Progress Reports	27
7.11.1	Submission of Monthly Progress Reports	27
7.11.2	Contents of Monthly Progress Reports	27
7.12	Monitoring and Inspection by the Grantor.....	27
7.12.1	Monitoring and Inspection of the Construction Works...	27
7.12.2	Cost of Monitoring and Inspection.....	27
7.12.3	Notice of Monitoring and Inspection.....	28
7.13	Rejection of Work, etc.....	28
7.14	No Release	29
7.16	Clearance of the Site after Completion of the Construction Works	29
ARTICLE 8.....		29
TESTING AND COMPLETION		29
8.1	Testing.....	29
8.2	Attendance at Testing	29

07/12/2015

8.3	Notice of Testing Program.....	30
8.4	Certification of Testing and Completion	30
8.4.1	Completion of Building and Erection Work	30
8.4.2	Certificate of Testing.....	30
8.4.3	Preliminary Completion.....	31
8.4.4	Final Completion.....	31
8.5	No Waiver.....	31
	ARTICLE 9.....	32
	DELAY IN COMPLETION AND ABANDONMENT	32
9.1	Delayed Completion Due to the Grantor	32
9.2	Duty to Mitigate Consequences of Delay	32
9.3	Delayed Completion Due to the Concessionaire	32
9.4	Liquidated Damages for Delayed Completion Due to the Concessionaire	32
9.4.1	Preliminary Completion.....	32
9.4.2	Final Completion.....	33
9.5	Abandonment.....	33
9.6	Deemed Abandonment	33
	III. OPERATION AND MAINTENANCE OF THE Port Terminal.....	34
	ARTICLE 10.....	34
	OPERATION AND MAINTENANCE.....	34
10.1	Principal Obligations of the Concessionaire	34
10.2	Safety and Technical Guidelines	34
10.3	Manual for Inspection and Maintenance	35
10.4	Maintenance Bond	35
10.4.1	Amount of Maintenance Bond	35
10.4.2	Restoration of Maintenance Bond	35
10.4.3	Periodical Review of Value of Maintenance Bond	35
10.4.4	Validity Period	36
10.4.5	Liability for Maintenance.....	36
10.5	Failure to Maintain	36
10.5.1	Corrective Maintenance by the Concessionaire.....	36
10.5.2	Corrective Maintenance by the Grantor	36

Handwritten signature and initials at the bottom right corner.

10.6	Public Safety	37
10.7	The Grantor's Right of Access	37
10.8	Participation in the Operation and Maintenance by the Grantor	37
10.9	Security and Fire Services	37
10.10	Modifications to Inspection and Maintenance Manual	37
Error! Bookmark not defined.		
10.11	Non compliance with inspection and Maintenance Manual	38
10.12	Plant, network, communication, office and other requirements to be provided at the Port Terminal by the Concessionaire	38
10.13	Port Terminal Usage	38
10.14	Operating Reports	38
10.15	the Grantor Bye Laws regulating use of Port Terminal	39
Article 11	.....	39
Revenue Generated from the Operation and Management of the Port Terminal		39
11.1	Concessionaire's Entitlement to Collect Revenue	39
11.2	Sources of Income	39
11.3	Tariffs and Charges	39
11.4	Charge/Tariff Collection	39
11.5	Payment of Tariffs and Charges	39
11.6	Operational Expenditure	40
ARTICLE 12	.....	40
FINANCING OF THE PROJECT AND FINANCIAL MANAGEMENT		40
12.1	Concessionaire's Principal Obligations	40
12.3	Use of Nigerian Bank Accounts	40
12.4	Consent to US Dollar Accounts	40
12.5	Conversion of Project Income into Foreign Currency	41
12.6	Financial Statements	41
IV.	TRANSFER OF THE PROJECT	42
ARTICLE 13	.....	42
TRANSFER DATE PROCEDURE AND REQUIREMENTS		42
13.1	General Scope of Transfer	42

07/2005

13.2 Final Maintenance Overhaul and Operational Test 42

13.2.1 Final Maintenance Overhaul 42

13.2.2 Performance Test..... 43

13.3 Spare Parts 44

13.3.1 Spare Parts to be Transferred..... 44

13.3.2 Transfer Procedure 44

13.3.3 Purchase of Additional Spare Parts 44

13.4 Warranties..... 44

13.4.1 Condition of the Port Terminal on the Transfer Date 44

13.4.2 Defects Liability Period..... 44

13.4.3 Compensation for Failure to Repair Defects or Damage
45

13.5 Transfer of Insurance and Contractor Warranties..... 45

13.6 Technology Transfer 45

13.7 Personnel..... 46

13.8 Cancellation of Contracts, Assignment..... 46

13.9 Removal of Objects Owned by the Concessionaire 46

13.10 Passing of Risk 47

13.11 Transfer Costs and Approvals 47

13.12 Transfer Committee and Transfer Procedure 47

13.13 Effect of Transfer on this Agreement..... 48

13.14 Release of the Maintenance Bond..... 48

V. GENERAL OBLIGATIONS OF THE PARTIES..... 48

ARTICLE 14..... 48

GENERAL OBLIGATIONS OF THE GRANTOR..... 48

14.1 Compliance with Laws and Regulations 48

14.2 Tax Preference 48

14.3 Obtaining and Maintaining Approvals 49

14.3.1 Assistance with Approvals..... 49

14.3.2 Approvals to be Obtained from the Grantor 49

14.5 The Grantor's Responsibility..... 49

14.6 Utilities..... 49

14.7 Non-Interference 50

Handwritten signatures and initials at the bottom right corner.

07/12/2005

14.8	No Interruption by the Grantor and or other Relevant Authorities	50
14.8	Improper Draws against Bonds.....	51
ARTICLE 15.....		51
GENERAL OBLIGATIONS OF THE CONCESSIONAIRE		51
15.1	Change of Ownership; Restrictions on Transfer of Shares .	51
15.1.1	Restriction on Transfer of Shares.....	51
15.1.2	Exception to Restrictions on Transfer of Shares.....	51
15.1.3	Required Provisions in Articles of Association	52
15.2	Compliance with Law and Regulations.....	52
15.3	Safety Standards	52
15.4	Environmental Protection.....	52
15.4.1	Concessionaire's responsibility	52
15.4.2	Exceptions to the Concessionaire's Responsibility	52
15.5	Approvals	53
15.6	Protection of Archaeological and Historical Objects	53
15.7	Nigerian Services and Goods	54
15.7.1	Use	54
15.7.2	Competitive Bidding	54
15.7.3	Future Concessions	54
15.8	Use of Nigerian Labour	54
15.9	Worker's Rights.....	54
15.10	Co-ordination of Project Documents	54
15.11	Taxation, Customs Duty and Charges	55
15.12	Insurance	55
15.12.1	Obtaining and Maintenance of Insurance Policies	55
15.12.2	Insurance during Concession Period	55
15.12.3	Market Practice	55
15.12.4	Certificate of Insurance	55
15.12.5	Application of Insurance Monies	56
15.12.6	Insurance Reports	56
15.13	Responsibility for Contractors and their Employees and Agents	56

[Handwritten signature]

07/1/2005

15.13.1	Concessionaire's Contractors	56
15.13.2	Contracts with Contractors	57
15.14	Provision in Financing Agreements	57
15.15	Negative Covenant	57
ARTICLE 16	.....	58
OBLIGATIONS AND RIGHTS COMMON TO THE GRANTOR AND THE CONCESSIONAIRE		58
16.1	Force Majeure	58
16.1.1	Force Majeure Events	58
16.1.2	Exceptions Applicable to the Concessionaire	58
16.1.3	Exceptions Applicable to the Grantor	59
16.1.4	Notice of Force Majeure	59
16.1.5	Suspension of Performance Due to Force Majeure and Costs	59
16.1.6	Extension Due to Force Majeure	60
16.1.7	Costs	60
16.1.8	Duty to Mitigate and Resume	60
16.1.9	Continuing Force Majeure	60
16.1.10	Force Majeure and Insurance	61
16.1.11	Damage to the Port Terminal	61
16.1.12	Force Majeure and the Independent Engineer	61
16.2	Rights to Documents	61
16.2.1	The Grantor Documents	61
16.2.2	Concessionaire Documents	62
16.2.3	Compliance	62
16.3	Confidentiality	62
16.4	Obligation to Co-operate	62
16.5	Declaration Against Improper Payments	63
16.5.1	Declaration of the Concessionaire	63
16.5.2	Declaration of the Grantor	63
VI	Remedies For Breach Of Contract	64
ARTICLE 17	.....	64
Termination	.....	64

07/1/2005

17.1	Termination by the Grantor	64
17.2	Termination by the Concessionaire	65
17.3	Notice of Intention to Terminate and Notice of Termination	66
17.3.1	Notice of Intention to Terminate	66
17.3.2	Notice of Termination	66
17.4	Rights of the Grantor	67
17.4.1	the Grantor's (or any person designated by the Grantor's) Right to Operate the Port Terminal	67
17.4.2	The Grantor's Right at Any Time	67
17.5	Consequences of Termination in General	68
17.5.1	End of Rights and Obligations	68
17.5.2	Transfer of Rights and Assets	68
17.5.3	Compensation Payments	68
17.6	Liability and Indemnification	69
17.7	Use of Certain Insurance Proceeds	69
17.8	Other Remedies	69
17.9	Survival	69
ARTICLE 18	.....	70
COMPENSATION FOR BREACH OF THIS AGREEMENT	.....	70
18.1	Compensation	70
18.2	Exemptions	70
18.3	Measures to Mitigate the Loss	70
18.4	Loss Due in Part to the Aggrieved Party	70
18.5	No Consequential Damages	70
18.6	Remedies Cumulative	71
ARTICLE 19	.....	71
LIABILITY AND INDEMNIFICATION	.....	71
19.1	Cross Indemnity	71
19.2	Environmental Contamination	71
19.3	Survival of Obligations	71
19.4	Joint Responsibility	71
19.5	Defence of Claims	72
VII.	ASSIGNMENT AND APPROVAL OF CONTRACTS	72

07/1/2005

ARTICLE 20.....	72
ASSIGNMENT OF THE AGREEMENT	72
20.1 Assignment by the Grantor	72
20.2 Assignment by the Concessionaire.....	72
ARTICLE 21	73
APPROVAL OF CONTRACTS	73
21.1 Approval of Contracts	73
21.2 Approval Procedure	73
21.3 Effect of Contract Approval.....	73
viii. DISPUTE RESOLUTION.....	74
ARTICLE 22.....	74
DISPUTE RESOLUTION	74
22.1 Co-ordinating Committee.....	74
22.1.1 Composition and Tenure of Co-ordinating Committee..	74
22.1.2 Functions of the Co-ordinating Committee.....	74
22.1.3 Decisions of members of Co-ordinating Committee.....	75
22.1.4 Best efforts of Co-ordinating Committee	75
22.1.5 Cost of Co-ordinating Committee	75
22.1.6 Limitation on decisions of Co-ordinating Committee.....	75
22.2 Amicable Settlement by the Co-ordinating Committee	75
22.3 Mediation by Panel of Experts	76
22.3.1 Appointment	76
22.3.2 Statement of Claim.....	76
22.3.3 Reply	76
22.3.4 Further Evidence	76
22.3.5 Decision.....	76
22.3.6 Costs	77
22.4 Arbitration.....	77
22.5 Multiparty Dispute Resolution – Consolidation of Arbitration Proceedings	78
22.6 Performance During Dispute Resolution.....	78
22.7 Survival	78
IX. MISCELLANEOUS.....	78

07/1/2005

ARTICLE 23.....	78
Contract Documents and Entire Agreement	78
23.1 Contract Documents	78
23.2 Entire Agreement	78
23.3 Amendments and Variations	79
23.4 Separability	79
ARTICLE 24.....	79
MISCELLANEOUS	79
24.1 Several Obligations	79
23.2 Notices	79
23.3 Costs and Expenses	80
23.4 Non-waiver	80
23.5 Waiver of Sovereign Immunity	80
23.5 Governing Law	80
Annex A.....	82
Project Scope of Works.....	82
Annex B.....	83
Operation and Maintenance Bond	83
Annex C.....	85
Project Survey/Site Plan	85
Annex D	86
Detailed Project Cost.....	86
Annex E.....	87
Concession Fees and Royalty Payments Structure and Procedure.....	87
Annex F	88
Plant, Network, Communication, Office and Other Requirements.....	88
Annex G	93
List of Concessionaire's Shareholders.....	93

[Handwritten signature]

07/1/2005

CONCESSION AGREEMENT

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made and entered into this 10th day of FEBRUARY 2006

BETWEEN

NIGERIAN PORTS AUTHORITY, a parastatal established by statute having its headquarters situate at 26/28 Marina, Lagos, (hereinafter referred to as "**Grantor**" which expression shall wherever the context so admits include its successors-in-title, nominees, appointees, agents, servants and assigns) of the one part;

AND

PORTS AND TERMINAL MULTISERVICES LIMITED, a Nigerian subsidiary of the Grimaldi Group and a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, with RC No. **453,606** and having its registered office situate at No. 17, Burma Road, Apapa – Lagos, (hereinafter referred to as "**the Concessionaire**" which expression shall, wherever the context so admits, include its successors-in-title, appointees, agents and assigns) of the second part.

WHEREAS:

1. By virtue of its enabling statute (Nigerian Ports Authority Act, No. 38 of 1999), the Grantor is 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;
2. The Federal Government of Nigeria is desirous of promoting private sector investment and participation in the development and operation of public utilities and infrastructures.
3. In pursuance of the foregoing policy, the Grantor for itself and on behalf of the Federal Government of Nigeria invited proposals from interested qualified and technically competent private sector operators to express their interests in a Build, Operate and Transfer Concession

07/1/2005

Contract model for the financing, development, construction, and operation of a 230-meter length RoRo Multipurpose Berth and Terminal with facilities thereto at the RoRo Port Extension, Apapa, Lagos (herein after referred to as "the Port Terminal");

4. The Grimaldi Group is an internationally reputed Group of port developers and managers, and has the financial and technical capabilities and competence in the financing, development, construction, operation and management of port facilities and infrastructures in different parts of the world and, in particular, the Port of Salerno in Italy, the Antwerp Port in Belgium, Port of Valencia in Spain, Port of Setubal in Portugal, Port of Cork in Ireland and the Port of Esbjerg in Denmark;
5. In response to the invitation to submit proposals referred to in (3) above, the Grimaldi Group submitted to the Grantor, vide letter dated 20th November 2003, a proposal for financing the development of the Port Terminal on Build, Operate and Transfer terms;
6. The Grantor has accepted the Grimaldi Group's proposal and by letter ref. no.T0160/S92/TA/106 and dated 11th November 2004, the Honourable Minister of Transport conveyed the approval of the President of the Federal Republic of Nigeria to privately finance the development of the Port Terminal by the Grimaldi Group under a Build, Operate and Transfer (BOT) concession arrangement for 25 years and at a total sum of US\$62,473,554.00;
7. The Sponsors are members of the Grimaldi Group, who are arranging the financing for the construction, development and operation of the Port Terminal Project ;
8. The Grimaldi Group has designated the Sponsors as the principal investors for the construction development and operation of the Port Terminal.
9. The Grimaldi Group, by letter dated 21st December 2004 under the hand of Dr. Gianluca Grimaldi and addressed to the Grantor, has designated Ports and Terminal Multiservices Limited, a limited liability company incorporated under the laws of the Federal Republic of Nigeria with RC No 453,606 and having its registered office situate at No. 17 Burma Road, Apapa, Lagos (hereinafter referred to as "the Concessionaire") as the Special Purpose Vehicle (SPV) to implement, execute and work the Concession for and on behalf of the Grimaldi Group.

DH

NOW THEREFORE, in consideration of the mutual assurances, guarantees, covenants and undertakings herein contained, the parties hereby agree as follows:

I. THE CONCESSION

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Agreement, unless the subject or context otherwise requires, the following words or expressions shall have the following meanings:

"Access Roads" means the roads and related facilities providing access to the Site.

"Approved Design" means the outline architectural, structural, electrical, mechanical, engineering drawings and specifications for the Construction Works approved by the Grantor and or its Project Consultants;

"Associated Facilities" means the facilities reserved in the Port Terminal for the Users thereof and shall include all such additional developments appurtenant to the Port Terminal and incidental to its efficient operation and management;

"Business Day" means any day on which banks are generally open for business in Lagos.

"Certificate of Final Completion" means the certificate issued or deemed issued in accordance with Article 8.4.4 of this Agreement.

"Certificate of Preliminary Completion" means the certificate issued or deemed issued in accordance with Article 8.4.3 of this Agreement.

"Certificate of Commencement" means the certificate to be issued by the Grantor pursuant to Article 3.4.2 hereof;

"Commencement Date" means the date determined in accordance with Article 3.4.2 hereof;

"Concession" means the executive decision made by the President of the Federal Republic of Nigeria and conveyed to the Grantor by the Honourable Minister of Transport with reference number T0160/S92/TA/106 dated 11th November 2004;

- "Concession Period" shall be twenty-five (25) years effective from the Start Date;
- "Concession Rights" means all the rights conferred and obligations imposed on the Concessionaire pursuant to this Agreement;
- "Concessionaire" means the Ports and Terminal Multiservices Limited, a limited liability company incorporated under the laws of the federal Republic of Nigeria for the sole purpose of carrying out the provisions of this Agreement for and on behalf of the Sponsors and other members of the Grimaldi Group;
- "Concessionaire's Event of Default" means an event of default specified herein which may entitle the Grantor to issue a Notice of Intention to Terminate this Agreement;
- "Construction Commencement Date" means the date for the commencement of the Construction Works as determined in accordance with Article 3.4.2 of this Agreement;
- "Construction Completion Date" means the day upon which the Grantor issues the Certificate of Final Completion certifying that the construction of the Port Terminal has been successfully completed, tested and commissioned; and is available for beneficial use pursuant to Article 8.4.4.
- "Construction Facilities" means those facilities on the Site and, as the case may be, on the land or at sea which the Concessionaire requires for construction.
- "Construction Period" shall be a period of thirty-six (36) months from Construction Commencement Date or such longer period as may be granted by the Grantor
- "Construction Schedule" means the schedule set out in Article 7.10 hereof;
- "Construction Works" means the engineering design, procurement, construction, installation, testing, smoothing, completion and commissioning of the Port Terminal and its facilities and equipments in accordance with Article 7 and Annex A.
- "Consultation Period" has the meaning set forth in Article 17.3.1.
- "Co-ordinating Committee" means the committee appointed in accordance with Article 22.1.
- "Default" means a failure by a party to perform any of its obligations under this Agreement which is not excused by

an act or omission of the other party in breach of this Agreement, Force Majeure or by an event as to which the other party bears the risk;

"Default Rate" means a rate of 2% per annum above the Nigerian Inter Bank Offered Rate [NIBOR];

"Detailed Design" means the second phase of the design to be provided by the Concessionaire pursuant to Article 6;

"Effective Date" means the date on which the Grantor and the Concessionaire sign this Agreement following the approval of the Federal Executive Council.

"Environmental Contamination" means any contamination or pollution of the air ground or water above under or surrounding the Port Terminal or any part thereof that is not permitted by or consistent with the environmental Acts Laws Regulations and Bye-Laws of any Relevant Authority;

"Environmental Impact Assessment" means any environmental impact assessment/statement required by law to be filed by the owner or operator of a project expected to have significant impact on the environment;

"Equipment" means the tools, components and equipment to be used for the Construction Works, and such other appliances, gadgets, machinery, materials that will be installed by the Concessionaire for the effective operation, management and maintenance of the Port Terminal;

"Facility Agent" means the financial institution designated by the Lenders to represent them for the purposes of the Financing Agreements and the Security Agreement;

"Final Completion" means that (i) the Port Terminal has already reached Preliminary Completion; (ii) the Construction Works in relation to the Port Terminal have been fully completed in accordance with this Agreement, and (iii) a Certificate of Final Completion for the Port Terminal has been issued or is deemed to have been issued;

"Final Completion Date" means the date on which the Certificate of Final Completion for the Port Terminal is issued or is deemed to have been issued in accordance with Article 8.4.4;

"Final Maintenance Overhaul" has the meaning specified in Article 13.2;

"Financial Closing" means the execution and delivery of such Financing Agreements as may be required (including the

07/12/2005

satisfaction or waiver of each of the conditions precedent to the initial availability of funds under such Financing Agreement) to evidence the consummation of all transactions necessary for the Concessionaire to obtain debt financing for the Construction Works and Commissioning of the Port Terminal, together with the receipt of such equity commitments and contributions as may be required by this Agreement and the Financing Agreements;

"Financing Agreements" means any agreement entered into between the Concessionaire and any domestic and or international lender or consortium of lenders evidencing the grant and or disbursement of credit facility to the Concessionaire for the implementation of the Port Terminal;

"Force Majeure" means the events specified in Article 16.1 hereof;

"Grantor" means the Nigerian Ports Authority;

"Grantor's Event of Default" shall be the Grantor and or the Grantor's failure and or inability to perform an obligation imposed hereunder which may cause the Concessionaire to issue a Notice of Intention to Terminate this Agreement;

"Grantor's Representative" refers to the person or group of persons appointed by the Grantor to monitor and oversee on its behalf, the design and construction of the Port Terminal in accordance with approved specifications and also to inspect and undertake testing of the facilities installed in the Port Terminal;

"Improper Draw" means any draw on bonds in breach of the terms and conditions of this Agreement.

"Independent Auditor" means a reputable firm of chartered accountants who are members of or recognized by the Institute of Chartered Accountants of Nigeria and appointed by the Grantor to audit and verify the books of accounts of the Concessionaire for the purpose of determining the Concessionaire's turnover and the Concession Fee or royalty payable under this Agreement;

"Independent Engineer" means the Independent consulting engineer jointly appointed by the Grantor and the Concessionaire in accordance with the provisions of Article 4.1 hereof;

"Land Use Right" has the meaning specified in Article 5.1(a).

07/1/2005

"Lender" means any entity or institution that has granted credit facility to the Concessionaire in connection with the financing of the Project;

"Maintenance Bond" means the bond provided by the Concessionaire pursuant to Article 10.4.

"Milestone Date(s)" refers to the various dates set out in the Construction Schedule pursuant to Article 7.10 herein;

"Notice of Intention to Terminate" means a notice issued in accordance with Article 17.3.1 hereof;

"Notice of Termination" means a notice issued in accordance with Article 17.3.2 hereof;

"Operating Parameters" means the operating parameters of the Port Terminal as may be agreed with the Grantor.

"Operation and Maintenance Agreement" means the agreement entered into between the Concessionaire and the Operator for the operation, management and maintenance of the Port Terminal;

"Operation and Maintenance Procedure" means the standards and procedure for the effective operation, management and maintenance of the Port Terminal;

"Panel of Experts" means the panel of experts appointed in accordance with Article 22.3.1;

"Port Terminal" means a domestic Port Terminal building complex including the Port Terminal building, fingers, car parks, overhead pedestrian bridge, fence, boreholes and water treatment house, fire fighting facilities, sewage treatment and pumping plant, powerhouse, communication facilities and all appurtenances thereto.

"Preliminary Completion" means that: (i) the Port Terminal has been tested in accordance with the approved designs, drawings and technical specifications of the Project ; (ii) no further Construction Works is required with respect to the Port Terminal to enable the safe operation of the Port Terminal; (iii) a Certificate of Preliminary Completion for the Port Terminal has been issued or is deemed to have been issued.

"Preliminary Completion Date" means the date on which the Certificate of Preliminary Completion for the Port Terminal is issued or is deemed to have been issued in accordance with Article 8.4.3.

"Project" means the financing, designing, construction, equipping, completion, testing, commissioning, operation, management and maintenance of the Port Terminal;

"Project Schedule" means the Schedule set forth in Article 7.10.1;

"Project Scope of Works" means the scope of the Construction Works and equipping of the Port Terminal specified in Annex A hereto;

"Prudent Industry Practice" means the standard of practice attained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced contractor, or operator engaged in the same type of undertaking under the same or similar circumstances. With respect to the Port Terminal, Prudent Industry Practice shall include, but not be limited to compliance with the rules, regulations, guidelines, directives and standards of the International Maritime Organisation (IMO) which may be made, modified or reviewed from time to time regarding;

1. procurement of adequate materials, resources and supplies, to meet the Port Terminal's needs under normal conditions and reasonably anticipated abnormal conditions;
2. provision of sufficient, adequately experienced and trained operating personnel to operate the Port Terminal properly, efficiently and within the equipment manufacturers' guidelines and specifications and who are capable of responding to emergency conditions;
3. performance of preventive routine and non-routine maintenance and repairs on a basis that ensures reliable long-term and safe operation, and carried out by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;
4. undertaking appropriate monitoring and testing of equipment to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and emergency conditions; and
5. operation of equipment in a safe manner and in a manner safe to workers, the general public and the environment.

[Handwritten signature]

DATE: 07/2005

The above definitions do not imply any liability in case of *force majeure*.

"Relevant Authority" means any Ministry (whether Federal or State), governmental department, agency, public authority, directorate, or body having jurisdiction in Nigeria;

"Security Agreement" means an agreement entered into by the Concessionaire and approved by the Grantor and granting to the Lenders in accordance with Nigerian law any pledge, mortgage, encumbrance or other security interest in the Secured Property or in any property, ownership rights or other rights and interests granted by the Grantor to the Concessionaire pursuant to this Agreement;

"Secured Property" means the Land Use Right, Construction Works, the Port Terminal, and any other property or asset of the Concessionaire which is situated on the Site or in the Federal Republic of Nigeria and which is and can be the subject of any Security Agreement under the laws of the Federal Republic of Nigeria

"Site" means the parcel of land the subject of the Land Use Right and measuring approximately 87,300 square metres and the appurtenances thereto situate at Tin Can Island, Lagos, Lagos State, the dimensions and abuttal of which are specifically described and delineated red on the Survey/Site Plan attached hereto as **Annex C** including the rights of way, way leave and rights of passage delivered to the Concessionaire by the Grantor in accordance with the provisions hereof, for the construction and operation of the Port Terminal and its associated facilities;

"Sponsors" means both Grimaldi Compagnia di Navigazione S.P.A. and Atlantica S.P.A. di Navigazione, who are members of the Grimaldi Group and major shareholders of the Concessionaire;

"Start Date" means a date 14 days after the Construction Completion Date or 21 days after the Construction Period whichever occurs earlier.

"Target Final Completion Date" means the Milestone Date set forth in Article 7.10.1 representing the intended Final Completion Date for the Port Terminal as such date may be modified in accordance with the terms of this Agreement

"Technical Proposal" means the technical proposal by the Grimaldi Group submitted on behalf of the Concessionaire to the Grantor vide letter dated 20th November 2003 as

[Handwritten signature]

MINISTER OF PORTS AND MARITIME AFFAIRS
1000
07/10/2022

amended and improved by agreement and other technical changes and improvements on which the Grantor and the Concessionaire have reached agreement;

"Transfer Committee" means the committee established in accordance with **Article 13.12**;

"Transfer Date" means the Business Day following the last day of the Concession Period;

"Users" shall include shipping lines, departing and arriving cargos and passengers at the Port, exporters, importers, freight forwarders, clearing agents, and persons that use associated facilities Port Terminal;

"Utilities" shall include water, electricity, gas, sewerages, diesel, and telecommunications.

1.2 Other References

The Recitals and the Annexes to this Agreement shall form an integral part hereof and references to Annexes shall be reference to Annexes hereto, unless otherwise indicated.

Article headings are inserted herein for ease of reference only and shall not in any way affect the interpretation of this Agreement.

The words "include", "includes" and "including" shall at all times be construed as if followed by the words "without limitation to" or "but not limited to".

Wordings importing the Singular shall include the plural and vice versa and words importing persons shall include bodies corporate, unincorporated associations and partnerships.

Reference herein to statutes, legislation and the like shall include amendments, modifications and re-enactment of such statutes or legislation.

Approvals and notices required to be given hereunder shall be in writing.

In the event that the provisions of this Agreement become inconsistent with the provisions of any other Agreement or any other document that pertains hereto, the provisions of this Agreement shall prevail.

1.3 Rules of Interpretation

In this Agreement

references to Articles and Annexes are, unless the context otherwise requires, are references to Articles of, and Annexes to, this Agreement;

07/10/2022

unless the context otherwise requires, references to party and parties are references to party and parties to this Agreement;

Camp/23

unless otherwise provided herein, whether a consent or approval is required by one party from the other party, such consent or approval shall not be unreasonably withheld or delayed;

in carrying out its obligations and duties under this Agreement, each party shall have an implied obligation of good faith;

a reference for any period of time to a given number of days means calendar days;

references to days, weeks, months and years are references to days, weeks, months and years of the Gregorian calendar;

a requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the next following Business Day;

the words "include" and "including" shall be construed at all times as being followed by the words "without limitation" unless the context otherwise requires;

reference to agreements are to agreements as enumerated and to appendices thereto, and

references to "maintain" and "maintenance" shall be construed at all time as including "repair" and "replacement".

ARTICLE 2

THE CONCESSION

2.1 Grant of the Concession Rights

Subject to the provisions of this Agreement, the Grantor hereby grants to the Concessionaire a concession for **twenty-five (25)** years to design, develop, finance, construct, complete, test, commission, operate, manage, maintain and transfer the Port Terminal in accordance with the Approved Design at a cost of **US\$ 62,473,544.00 (sixty-two million, four hundred and seventy-three thousand, five hundred and forty-four United States Dollars)** and in accordance with the terms and conditions of this Concession Agreement.

The Concessionaire shall have all the rights and obligations herein reserved under this Agreement and shall transfer the Port Terminal to the Grantor at the end of the Concession Period.

2.2 Exclusivity of the Concession Rights

Save as otherwise provided in Articles 17.4 and 20.2 the concession granted to the Concessionaire pursuant to this Agreement is exclusive. The Grantor shall ensure that no part of the concession shall be granted to any other party unless the Concessionaire is in breach of any of its obligations under this Agreement that would give rise to a right of termination by the Grantor under Article 17.

2.3 Concession Period

2.3.1 Initial Concession Period

The Concession Period shall start on the Start Date and last until the twenty fifth anniversary of the Start Date unless otherwise modified in accordance with this Agreement. At the end of the Concession Period, the Concessionaire shall transfer the Port Terminal to the Grantor (or any person designated by the Grantor) without the payment of any compensation and in accordance with the provisions of Article 13.

2.3.1 Renewal of Concession

The Concessionaire shall notify the Grantor in writing not less than twelve (12) months prior to the expiry of the Concession Period if it wishes to renew the Concession Period for a further period as may be mutually agreed and such renewal of the Concession Period may be granted to the Concessionaire in accordance with the then applicable Federal Government Policy on Concessions.

2.4 Extension of the Concession Period

1. In case of:

- (a) any Default by the Grantor which results in unavoidable delay in the Commencement of the Concession Period; or
- (b) Force Majeure which results in unavoidable delay in the Commencement of the Concession Period or which falls under the scope of Article 16.1.11;

and provided the costs, losses, damages or expenses resulting therefrom to the Concessionaire are not otherwise compensated by the Grantor or by any proceeds to which the Concessionaire is or should have been entitled had it maintained insurance in accordance with Article 15.12, then the Concession Period may be mutually extended so as to place the Concessionaire in substantially the same

[Handwritten signatures and initials]

economic position as it was prior to the occurrence of such event.

CAMP/25

- (2) In considering an extension of the Concession Period, the net present value of the cash flow available for distribution by the Concessionaire during the extension shall be calculated using a discount rate equivalent to the cost of the capital invested.

2.5 Royalty, Cargo Dues Sharing Formula and Other Payments to the Grantor by the Concessionaire

1. Commencing from the Start Date and throughout the Concession Period the Concessionaire shall not later than ten (10) working days after the end of each calendar month pay to the Grantor a concession fee calculated in accordance with the cargo dues sharing formula contained in **Annex E**.
2. Each of the monthly payments referred to in paragraph 1 of this Article 2.5 shall be fully supported with clear and transparent documentation such as comprehensive cargo manifest.
3. The Concessionaire hereby covenants that during the Concession Period, it shall promptly render monthly and annual returns to the Grantor in respect of the Concessionaire's operations and revenues for each month and financial year and shall afford the Grantor, its authorised employees, agents and or Independent Auditor access after giving at least 48 hours notice to all books of accounts as may be necessary for the verification of the amount payable herein.

2.6 Ownership and Right to Operate the Port Terminal during the Concession Period

2.6.1 *Ownership of the Port Terminal*

The ownership of the infrastructure constituting the Port Terminal shall throughout the duration of this Agreement vest in the Grantor.

2.6.2 *Right to Use and Operate the Port Terminal*

Save as otherwise provided in Article 5, the Concessionaire shall have the right to use and operate all assets, equipment and facilities constituting the Port Terminal during the Concession Period.

[Handwritten signatures]

2.6.3 Transfer and Mortgage

The Concessionaire shall be allowed to mortgage or transfer the assets, facilities and equipment of the Port Terminal for purpose of financing in accordance with Article 20.2 Such mortgage or transfer shall be consented to in writing by the Grantor, such consent not to be unreasonably withheld, and shall have no adverse effect on the rights or interests of the Grantor. In the case of a proposed refinancing the Grantor shall have an absolute right to grant or withhold consent. Without prejudice to the right to grant or withhold consent, the Grantor's decision on a request to consent shall be communicated to the Concessionaire within 30 working days of the request to consent.

Save as provided in Article 20.2 the Concessionaire shall not mortgage or transfer the assets, facilities and equipment of the Port Terminal for any purpose other than the financing and refinancing of the Port Terminal.

2.7 Concessionaire's Principal Obligations during the Concession Period

The Concessionaire shall be responsible for the performance of the Construction Works and operation and maintenance of the Port Terminal during the Concession Period at the Concessionaire's own cost and risk.

ARTICLE 3

**REPRESENTATIONS, WARRANTIES AND
CONDITIONS PRECEDENT**

3.1 Concessionaire's Representations and Warranties

The Concessionaire hereby represents and warrants that:

- a. the Concessionaire has been duly established and registered under the laws of the Federal Republic of Nigeria and has the corporate power and authority to execute and carry out the terms and conditions of this Agreement.
- b. execution of the Financing Agreements has occurred and the Concessionaire has obtained sufficient equity adequate to allow the Concessionaire to carry out its obligations under this Agreement as they occur; and
- c. the Concessionaire has:

07/2005

CAMP/27

- (i) obtained all required Approvals and documentation prior to the Effective Date; and
- (ii) submitted all requisite applications, requests and documentation for obtaining any other Approval that are necessary to commence the Construction Works; and
- (iii) submitted the Preliminary design to the Grantor for approval in conformity with the criteria set out in **Annex A**

3.2 the Grantor's Representations and Warranties

The Grantor hereby represents and warrants that:

- a. it is fully entitled to enter into this Agreement and authorised to and capable of performing its obligations hereunder; and
- b. it has the Land Use Right to the Site for the purpose of the concession.
- c. It shall deliver the entire site to the Concessionaire within 90 days of the execution of this Agreement.

3.3 Conditions Precedent to the Grantor's Obligation to issue Certificate of Commencement

The Concessionaire shall within **21 days** of the execution of this Agreement furnish the Grantor with the following:

- (a) copies of all duly executed Financing Agreements including bank guarantees and evidence of equity contribution sufficient to fully finance the Port Terminal Project;
- (b) written evidence that the Concessionaire has entered into all major contracts necessary for the construction of the Port Terminal in accordance with this Agreement;
- (c) evidence of the submission to the Grantor of all the design, architectural, structural, electrical and mechanical drawings and engineering specifications incidental to the commencement of the Construction Works;
- (d) delivery to the Grantor of documentation confirming that both the Sponsors and the Concessionaire are duly incorporated and existing under the laws of Italy and the Federal Republic of Nigeria respectively, and that there are no proceedings, pending or to the best of his knowledge, capable of liquidating the Concessionaire, and that the Concessionaire is duly authorized to enter into and execute

DA DA

this Agreement.

3.4 Satisfaction of Conditions Precedent and Construction Commencement Date

3.4.1 If the conditions specified in Article 3.3 are not fulfilled within the specified period or waived by mutual agreement either the Grantor or the Concessionaire may terminate this Agreement immediately and either party shall not be liable to the other for any damages or losses in respect thereof, except to the extent that either party has intentionally or willingly failed, refused and or neglected to fulfill any of these conditions. In such circumstance, the defaulting party shall be liable to pay to the other party **US\$6.2 million** representing 10% of the estimated construction costs for damages or losses it may suffer in respect thereof.

3.4.2 Within **fourteen (14) days** of the satisfaction of the conditions precedent specified in Article 3.3 hereof, the Grantor shall issue the Certificate of Commencement to the Concessionaire. The date on the Certificate of Commencement shall be deemed to be the Construction Commencement Date for the Construction Works.

3.5 Satisfaction of Conditions Precedent

Each party shall provide written notice to the other when it considers that all of the conditions precedent set out in Articles 3.3. and 3.4 have been satisfied or waived.

ARTICLE 4

GRANTOR'S ADMINISTRATION OF THE PROJECT

4.1 The Grantor's Representative

The Grantor may appoint a Grantor's Representative to act on his behalf under this Agreement. In this event, he shall give seven (7) days notice to the Concessionaire of the name, address, duties and authority of the Grantor's Representative.

The Grantor's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Grantor. Unless and until the Grantor notifies the Concessionaire otherwise, the Grantor's Representative shall be deemed to have the full authority of the Grantor under this Agreement, except in respect of Article 17 [Termination by Grantor].

If the Grantor wishes to replace any person appointed as Grantor's Representative, the Grantor shall give the Concessionaire not less than 7 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

4.2 Other Grantor's Personnel

The Grantor or the Grantor's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials.

The Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority.

The Grantor shall give written notice of the names and designations of the Assistants.

4.3 Delegated Persons

All these persons, including the Grantor's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Concessionaire to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Grantor. However:

unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Concessionaire from any responsibility under this Agreement, including responsibility for errors, omissions, discrepancies and non-compliance;

any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Grantor to reject the work, Plant or Materials; and

if the Concessionaire questions any determination or instruction of a delegated person, the Concessionaire may refer the matter to the Grantor, who shall promptly confirm, reverse or vary the determination or instruction.

4.4 Instructions

The Grantor may issue to the Concessionaire instructions which may be necessary for the Concessionaire to perform his

obligations under this Agreement. Each instruction shall be given in writing and shall state the obligations to which it relates and the Article (or other term of this Agreement) in which the obligations are specified.

The Concessionaire shall take instructions from the Grantor, or the Grantor's Representative or an assistant to whom the appropriate authority has been delegated under this Article.

4.5 Determinations

Whenever this Agreement provides that the Grantor shall proceed in accordance with this Article to agree or determine any matter, the Grantor shall consult with the Concessionaire in an endeavour to reach agreement. If agreement is not achieved, the Grantor shall make a fair determination in accordance with this Agreement, taking due regard of all relevant circumstances.

The Grantor shall give notice to the Concessionaire of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Concessionaire gives notice, to the Grantor, of his dissatisfaction with a determination within 7 days of receiving it. Either Party may then refer the dispute in accordance with Article 22 of this Agreement [Dispute Resolution].

II CONSTRUCTION OF THE PROJECT

ARTICLE 5

LAND USE RIGHT

5.1 Land Use Right Acquisition

The Grantor shall be responsible for:

- a. providing the Concessionaire with an exclusive allocated land use right to the Site (the "Land Use Right");
- b. procuring free access to the Site through use of the Access Road;
- c. keeping the Site free from all liens and encumbrances so that the Concessionaire has the right to the free and exclusive use thereof for the Concession Period for the purposes of the Project; and
- d. Maintaining the access road in such a manner that is suitable for industrial and commercial use and economically expedient.

[Handwritten signatures]

The Grantor shall grant an automatic extension of the right of the Concessionaire for the free and exclusive use of the Site and Access Road in case of extension of the Concession Period in accordance with the provisions of this Agreement.

5.2 Restrictions on Site Use

The Site is for the special use as a Port Terminal and shall not be used by the Concessionaire for any other purpose.

The Concessionaire shall rent any parcel of land to be used outside the Site for the purpose of construction of the Port Terminal. Such land shall not be used by the Concessionaire as security under Articles 2.6.2 and 20.2 and shall be cleared and transferred by the Concessionaire to the Grantor within six (6) months after the Final Completion Date of the Port Terminal.

5.3 Fee for Land Use Right

The Concessionaire shall have no obligation to pay any amount in addition to the Concession Fee for the allocated Land Use Right.

5.4 Suitability and Conditions of Site

The Concessionaire acknowledges that it has inspected and investigated the Site prior to the Effective Date.

Except for the provisions of Article 15.4, Grantor makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Site. The Concessionaire shall accept the Site in its present condition and subject to all defects including subsurface soil conditions.

ARTICLE 6

DESIGN

6.1 Design Requirements

The Concessionaire shall be responsible for the preparation of the Preliminary Design in compliance with the requirements in **Annex A**, the Technical Proposal, and the principles agreed between the Concessionaire and the Grantor.

6.2 Review of Criteria for Preliminary Design

The Concessionaire acknowledges that it has reviewed the criteria for preliminary design and technical specifications set out in **Annex A** and have clarified any errors, inconsistencies,

ambiguities or omissions therein. The consequences and costs resulting from any errors, inconsistencies, ambiguities or omissions in the provisions of **Annex A** shall be borne by the Concessionaire.

6.3 The Grantor's Review and Approval of Preliminary Design

The Concessionaire has submitted the Preliminary Design to the Grantor and the Preliminary Design has been approved by the Grantor prior to the Construction Commencement Date.

6.4 Concessionaire's Right to Change Preliminary Design

6.4.1 Conditions for Change of Preliminary Design

At any time during the Construction Works, the Concessionaire may, by notice to the Grantor, propose changes to the Preliminary Design, if the changes

- a. expedite the construction, or
- b. reduce the cost of construction or maintenance, or
- c. improve the quality of the Project.

6.4.2 Approval of Proposed Changes

The Concessionaire shall present to the Grantor all the necessary documents to support and justify the proposed design changes.

The Grantor shall inform the Concessionaire not later than thirty (30) days after its receipt of the proposed changes whether the changes are approved. If the Grantor has not objected in writing to the proposed changes within the applicable time period. The Grantor shall be deemed to have approved such proposed changes. The Concessionaire shall not make any such changes without the written or deemed approval of the Grantor and shall respond to any question or request for clarification raised by the Grantor.

6.5 The Grantor's Review and Verification of Detailed Design

The Concessionaire shall prepare the Detailed Design for the Project in accordance with the Preliminary Design and the technical specifications applicable to the Project listed in **Annex A**. The Concessionaire shall submit on or prior to the Milestone Date applicable thereto the Detailed Design to the Grantor for review and approval.



6.6 Concessionaire's Right to Change Detailed Design

At any time during the Construction Works, the Concessionaire may, by notice to the Grantor, propose changes to the Detailed Design. The Concessionaire shall present to the Grantor all the necessary documents to support and justify the proposed changes to the Detailed Design.

The Grantor shall notify the Concessionaire, within twenty (20) days following receipt by the Grantor of notice of any such proposal from the Concessionaire of its approval or rejection of the proposed changes. The proposed changes shall be deemed approved if the Grantor does not respond within the said twenty (20) day period. The Concessionaire shall not make any such changes without the written or deemed approval of the Grantor and shall respond to any question or request for clarification raised by the Grantor. Any written or deemed approval of a change in the Design shall not result in any delay of the Construction Completion Date or extension of the Concession Period.

6.7 Responsibility of the Concessionaire

The Concessionaire shall be solely responsible for any deficiency in the design of the Project provided such deficiency does not result from a change in the Preliminary Design imposed in writing on the Concessionaire by the Grantor that is not in compliance with the criteria for Preliminary Design. The failure of the Grantor to object to any design, design drawing or specification or any change thereto shall not be construed as a waiver by the Grantor of any of its rights under this Agreement or in any way relieve the Concessionaire of its obligation thereunder. In furtherance of the foregoing, the Concessionaire:

- a. accepts that any engineering review conducted by the Grantor is solely for the Grantor's own information and that, by conducting such review the Grantor undertakes no responsibility as to the quality of engineering or construction of the Port Terminal or any component thereof.
- b. shall in no way represent to any third party that, as a result of any review by the Grantor, the Grantor is responsible for the engineering or construction soundness of the Port Terminal or any component thereof; and
- c. shall be solely responsible for the technical feasibility, operational capability, economy and reliability of the Port Terminal and any component thereof.

6.8 **Grantor's Right to Change Detailed Design**

The Grantor may also propose design alteration, amendment and or modification provided such alteration and or amendment would not delay construction completion and or increase construction costs and would actually amount to improvements of the Project.

ARTICLE 7

CONSTRUCTION WORKS

7.1 **Principal Obligations of Concessionaire**

The Concessionaire shall be responsible for all Construction Works and shall assume all costs and all risks for the Construction Works in accordance with this Agreement. Without limiting the generality of the immediately preceding sentence, the responsibilities of the Concessionaire shall include the following:

- a. commencing the Construction Works on or prior to the applicable Milestone Date;
- b. performing the Construction Works in accordance with the Design requirements, the quality requirements set forth in Article 7.4 and in accordance with the relevant laws and regulations of the Federal Republic of Nigeria.
- c. giving priority to safety in its construction approach and activities in order to protect life, health, property and the environment;
- d. taking all reasonable measures to minimize disruption and other inconvenience to the public and area residents and businesses during construction.
- e. applying for and obtaining in a timely manner and thereafter maintaining the Approvals for the Project required to be obtained from any Relevant Authority and paying all applicable fees and costs for such Approvals.
- f. applying for and obtaining, in a timely manner, all visas and work permits for foreign personnel and recruiting local labour, including paying all applicable fees and cost relating thereto.
- g. appointing three (3) representatives to the Co-ordinating Committee in accordance with Article 22.1; and
- h. completing the Construction Works on or prior to the applicable Milestone Dates.

7.2 Principal Obligations of the Grantor

The responsibilities of the Grantor shall include the following:

- a. delivery of the Site in accordance with Article 5.1;
- b. facilitating all dealings with the appropriate Relevant Authorities during the construction period;
- c. facilitating Approval(s) to be obtained by or from the Grantor, in accordance with the provisions of Article 14.3.3;
- d. appointing three (3) representatives to the Co ordinating Committee in accordance with Article 22.1.

7.3 Preparation of the Site

The Concessionaire shall at its own cost prepare the Site and the Construction Facilities in accordance with all requirements of this Agreement.

7.4 Quality of Construction Works

The Concessionaire shall ensure that the Construction Works are performed in accordance with all requirements set forth in this Agreement, including:

- a. The Preliminary Design and the Detailed Design as set out in Article 6; and
- b. The standards and technical specifications and requirements set out in **Annex A**; and
- c. When not so specified, in a proper and workmanlike manner using new and first quality materials and equipment.

7.5 Quality Assurance and Quality Control

7.5.1 *Concessionaire's Quality Assurance and Quality Control*

Prior to the Construction Commencement Date, the Concessionaire shall establish a quality assurance and quality control program, to be followed by the Concessionaire. The Concessionaire shall make available to the Grantor on a continuing basis complete documentation of quality control results for the relevant aspects of Construction Works completed or in progress.

7.5.2 *The Grantor's Right to Control Quality Requirements*

Without affecting the Concessionaire's obligations

[Handwritten signatures]

hereunder, the Grantor shall have the right within working hours to attend or examine the Concessionaire's and any Construction Contractor's quality control inspections and methods to confirm that the Construction Works in question comply with the quality requirements in Article 7.4. Such inspections shall not interfere with the progress of the construction. The Concessionaire shall assist in the performance of such checks.

7.5.3 Failure to Comply with Quality and Safety Requirements

If the Construction Works or any component thereof does not conform in a material way with the quality or safety requirements of this Agreement, the Grantor may give notice to the Concessionaire of such failure. If the Concessionaire fails or refuses to correct the lack of conformity within a reasonable time after the Grantor's notice, then the Grantor except where the Concessionaire declares a dispute, shall be entitled to carry out the necessary corrective work itself or to engage a third party to do so at the risk and expense of the Concessionaire. In such case, the Concessionaire shall allow the employees, agents or contractors of the Grantor access to the Port Terminal and to the land used for Construction Works for such purpose. The Concessionaire shall reimburse the Grantor for the full cost of the corrective works carried out in pursuance of this provision.

7.6 Construction Personnel

The Concessionaire shall provide, or ensure that the Construction Contractor provides, all necessary personnel with adequate skills and any required certificates for the performance of the Construction Works.



7.7 Equipment and Materials

The Concessionaire shall provide or cause to be provided at its own cost all equipment, materials and other items whether of temporary or permanent nature, required for the performance of the Construction Works.

7.8 Selection and Replacement of the Construction Contractor

7.8.1 Selection of Construction Contractor

In order to carry out its obligations under this Article 7, the Concessionaire has selected **Trevi Foundations Nigeria**

Limited to serve as the Construction Contractor to perform the Construction Works. The Construction Contractor shall undertake the Construction Works on the basis of the Construction Contract approved by the Grantor on or before the Effective Date.

7.8.2 Replacement of the Construction Contractor

The Concessionaire shall have the right to terminate the Construction Contract and to replace the Construction Contractor. Replacement of the Construction Contractor and the Construction Contract shall be subject to Grantor's prior written approval in accordance with Article 21.

7.8.3 Concessionaire's responsibility for the Contractor

- (a) The appointment and approval of the Construction Contractor shall not relieve the Concessionaire of any of its obligations under this Agreement. The Concessionaire shall be fully responsible to the Grantor for any acts or omissions of the Construction Contractor, its agents or any person either directly or indirectly employed by it as if such acts or omissions were the acts or omissions of the Concessionaire.
- (b) The Contracts entered into with the Construction Contractor shall contain those Articles or provisions of this Agreement which are necessary to enable the Concessionaire to fulfil its obligations under this Agreement.

7.9 Drawings and Technical Details

Within one (1) month after the Final Completion Date of the Port Terminal, the Concessionaire shall furnish the Grantor with ten (10) copies of all construction and "as built" design drawings of the Port Terminal and technical documents including:

- a. ten (10) copies of all equipment plans, instructions, warranties, installation records, testing reports, quality supervision and acceptance records; and
- b. ten (10) copies other technical documents or information relating to the Project.

7.10 Project Schedule; Milestone Dates

7.10.1 Project Implementation Schedule

The Parties shall perform their obligations under this Agreement in accordance with the Milestone Dates established in the following Project Schedule.

Item	Milestone Date
Actual construction	Not later than August 2007
Testing and smoothing	Not later than February 2008
Commissioning	February 2008
Commencement of Commercial Operations	March 2008

The deadlines applicable to the foregoing Milestone Dates shall be extended or revised in the event of:

- Force Majeure in accordance with Article 16.1.
- For Milestone Date to be met by the Concessionaire, as a result of delay caused by Default of the Grantor, or
- For Milestone Dates to be met by the Grantor, as a result of delay caused by Default of the Concessionaire.

7.10.2 Extension of Milestone Dates

A party shall be entitled to an extension of the Milestone Dates pursuant to Article 7.10.1 only if:

- such party (the "first party") gives the other party (the "second party") a written claim for an extension of time within seven (7) days of the delay occurring which states the likely effect on the relevant Milestone Dates; and
- the first party reasonably satisfies the second party that:
 - completion of the Milestone Date has actually been delayed; and
 - the first party has taken all reasonable steps to minimize the delay
- the Second party shall promptly after receiving the first party's claim under this Article give the first party

notice of any extension of time which is granted or, if no extension is granted, notice of that decision.

CAMP/39

7.11 Progress Reports

7.11.1 Submission of Monthly Progress Reports

The Concessionaire shall submit to the Grantor a monthly report of the progress of the Construction Works which report shall describe in reasonable detail the Construction Works completed and in progress and such other matters as the Grantor may reasonably request. The progress reports are in addition to the information concerning the quality control program to be made available to the Grantor by the Concessionaire pursuant to Article 7.5.

7.11.2 Contents of Monthly Progress Reports

Without prejudice to the generality of the foregoing, each report shall include:

- a. charts and detailed description of progress, including each stage of procurement, delivery to Site, construction and erection;
- b. photographs showing the status and progress of construction on the Site;
- c. safety statistics, including details of any hazardous incidents and activities relating to environmental matters; and
- d. comparison of actual and planned progress, with details of any events or circumstances, which may jeopardize construction completion, and the measures being (or to be) adopted to overcome delays.

7.12 Monitoring and Inspection by the Grantor

7.12.1 Monitoring and Inspection of the Construction Works

The Grantor or any person designated by the Grantor shall be entitled to monitor the Construction Works and carry out reasonable inspection in the presence of a Concessionaire's representative. Such monitoring and inspection by the Grantor shall not interfere with the progress of construction.

7.12.2 Cost of Monitoring and Inspection

All costs of such monitoring and inspection shall be borne

by the Grantor. However, if the results of such monitoring and inspection reveal any material defects in the Construction Works or materials all costs of such monitoring and inspection shall be paid for by the Concessionaire.

7.12.3 Notice of Monitoring and Inspection

The Concessionaire shall be advised by reasonable prior notice of any inspection to be carried out by the Grantor. The Concessionaire shall afford and shall cause the Construction Contractor to afford such access to the Site (including temporary office facilities for representatives of the Grantor), assistance and equipment as may be reasonably required by the Grantor to permit the Grantor to carry out monitoring and testing of the Construction Works with any resulting costs to be borne as provided above.

The Concessionaire shall make available and shall cause the Construction Contractor to make available for inspection at the Site by the Grantor or its duly authorized representatives and agents copies of all plans and designs and any relevant document and information relevant to the purpose of the particular inspection. Any such inspection of confidential or proprietary information shall be subject to the confidentiality provisions of Article 16.3.

7.12.4 Method of Monitoring

Such monitoring and inspections shall not interfere with the progress of construction.

7.12.5 Concessionaire Dissatisfaction

The Concessionaire may refer any dispute or dissatisfaction with the Monitoring and the attendant costs to the Coordinating Committee under Article 22.

7.13 Rejection of Work, etc

At any time prior to the Final Completion Date of the Port Terminal, the Grantor shall be entitled to reject in writing any work, materials or equipment which is not substantially in accordance with this Agreement and to require the Concessionaire to correct the work or substitute proper materials and equipment, provided that the Grantor simultaneously provides the Concessionaire with the basis for its objection(s). The Concessionaire shall be responsible for any increase in costs and delay resulting therefrom. In any case, the Concessionaire

[Handwritten signatures]

may refer any dispute to the Coordinating Committee under Article 22.

7.14 No Release

The failure of the Grantor to monitor, inspect or reject any part of the Construction Works shall not be construed as a waiver of any of the rights of the Grantor hereunder and shall not release the Concessionaire from any of its obligations under this Agreement. Notwithstanding the foregoing, the Grantor shall use its best efforts to notify the Concessionaire of any objection under Article 7.13 that it expects the Concessionaire to remedy as soon as possible after it discovers such a defect with the goal of minimizing the costs of such remedy.

7.16 Clearance of the Site after Completion of the Construction Works

On completion of Construction Works, the Concessionaire shall clear away and remove all surplus materials rubbish and temporary work so as to leave the Site in a clean and usable condition within six (6) months following the Final Completion Date of the Port Terminal.

ARTICLE 8

TESTING AND COMPLETION

8.1 Testing

The parties shall carry out the program of tests within the time limits and according to the requirements set forth in **Annex A** to confirm that the Project meets the design standards and specifications set forth in this Agreement, IMO Standards, other international Standards and applicable Nigerian laws and regulations.

8.2 Attendance at Testing

The Grantor shall be entitled to have its representatives, agents and experts present at any testing at the Site. Provided written notice of the testing program has been given pursuant to Article 8.3 and the Grantor has declined in writing to attend the testing or has failed to make any comments on the testing program before the scheduled testing date, tests may be conducted at the notified times in the absence of representatives of the Grantor.

8.3 Notice of Testing Program

No less than twenty (20) days prior to starting the testing program, or such shorter period as the parties may agree the Concessionaire shall give the Grantor notice of the testing program and of the date it proposes to commence testing at the Site. Such testing program shall indicate the items; date and time proposed for performing testing and shall otherwise be in compliance with the requirements of **Annex A**.

The Concessionaire shall perform all tests at the time and place stated in the testing program. In the event that the Concessionaire intends to carry out any testing at the Site otherwise than as set out in the testing program the Concessionaire shall give no less than twenty (20) days, or such shorter period as the parties may agree notice to the Grantor of the items date, time and place of the relevant test.

8.4 Certification of Testing and Completion

8.4.1 *Completion of Building and Erection Work*

The Concessionaire shall notify the Grantor in writing as soon as the Concessionaire considers that, with respect to the Port Terminal, no further Construction Works are required in accordance with this Agreement. The Concessionaire and the Grantor shall conduct within seven (7) days after receipt of such notice a joint inspection and the Grantor shall promptly thereafter confirm that no further Construction Works are required or will notify the Concessionaire in writing of works to be completed to finish the Construction Works. If the Grantor fails to conduct the inspection or to issue such notice within seven (7) days after receipt of the notice from the Concessionaire it shall be deemed, on the eighth (8th) day after delivery of the notice from the Concessionaire, that no further Construction Works are required.

8.4.2 *Certificate of Testing*

Upon the completion of each test the Concessionaire shall promptly certify that the test has been completed and shall provide the Grantor with a copy of such certificate which shall set forth in reasonable detail the test procedures and the results of each test. The Grantor shall advise the Concessionaire in writing within fourteen (14) days of its comments on the results of such testing.

8.4.3 Preliminary Completion

Provided that the Construction Works have been completed to the extent required to enable the safe operation of the Port Terminal, the Concessionaire shall perform tests for a period of 6 months. Upon the delivery to the Grantor of the copy of the certificate relating to the completion of the last of such tests, the Concessionaire shall notify the Grantor in writing that the Concessionaire considers that the Port Terminal has reached Preliminary Completion in accordance with this Agreement but for the issue of the Certificate of Preliminary Completion.

Within fourteen (14) days after receipt of such notice the Grantor shall advise the Concessionaire of its comments on such notice and the result of such final test and shall issue a certificate (the "Certificate of Preliminary Completion") or give notice to the Concessionaire of the reasons why a Certificate of Preliminary Completion cannot be issued. If the Grantor fails to advise the Concessionaire of its comments on the results on such final test or fails to issue such certificate or notice within that time, the Certificate of Preliminary Completion shall be deemed issued on the fifteenth (15th) day after the provision by the Concessionaire of the notice together with the copy of the final test certificate.

8.4.4 Final Completion

Within thirty (30) days of the final test and when all the Construction Works have been fully completed in accordance with this Agreement the Concessionaire shall give notice of such fact to the Grantor and on receipt of the same the Grantor shall promptly issue a certificate that the Port Terminal has been finally completed (a "Certificate of Final Completion") or give notice to the Concessionaire of the reasons why a Certificate of Final Completion cannot be issued. If the Grantor fails to issue such Certificate of Final Completion or notice within fourteen (14) days after receipt of the Concessionaire's notice, the Certificate of Final Completion shall be deemed issued on the fifteenth (15th) day after receipt of such notice.

8.5 No Waiver

The Grantor's inspection and acceptance of the Construction Works and the issuance of any Certificate of Preliminary Completion or Certificate of Final Completion shall not relieve the

RECEIVED ITS AUTHORITY
ELECTRICITY REGULATORY BOARD
07/12/2005

CANG/44

Concessionaire of liability of any type for defects or delay in the design or construction of the Project.

ARTICLE 9

DELAY IN COMPLETION AND ABANDONMENT

9.1 Delayed Completion Due to the Grantor

If there is any delay in the Commencement of Commercial Operation due to Default of the Grantor

- a. the Milestone Dates shall be appropriately extended under Article 7.10.
- b. the Concessionaire shall be entitled to a day for day extension of the Concession Period corresponding to the delay; and
- c. the Concessionaire shall be entitled to compensation from the Grantor sufficient to cover the increase in construction costs which may have resulted from such delay.

9.2 Duty to Mitigate Consequences of Delay

The Concessionaire shall without delay take all appropriate measures to avoid, limit or recover any delay or increased costs as referred to in Article 9.1. Failure to implement such measures shall bar the Concessionaire from seeking any remedy for such delay or incurred costs.

9.3 Delayed Completion Due to the Concessionaire

In addition to the obligations of the Concessionaire under Article 7.12, the Concessionaire shall pay liquidated damages to the Grantor as provided in Article 9.4 for any delay in the Preliminary Completion Date and/or Final Completion Date, provided such delay is not the result of a Default of the Grantor or of Force Majeure.

9.4 Liquidated Damages for Delayed Completion Due to the Concessionaire

9.4.1 Preliminary Completion

Subject to Article 9.3, in the event that the Concessionaire fails to bring about the Preliminary Completion Date of the Port Terminal by the Target Preliminary Completion Date, the Concessionaire shall pay to the Grantor liquidated damages for each day of delay occurring after the Target

[Handwritten signatures]

Preliminary Completion Date of

- a. an amount of One Million Naira (=N= 1,000,000.00) for the first thirty (30) days.
- b. an amount of Two Million Naira (=N= 2,000,000.00) for the following thirty (30) day period.
- c. Two Million, Five Hundred Thousand Naira (=N= 2,500,000.00) thereafter.

9.4.2 Final Completion

Subject to Article 9.3, in the event that, due to the Default of the concessionaire, the Concessionaire fails to bring about Final Completion Date of the Port Terminal by the Target Final Completion Date, the Concessionaire shall pay to the Grantor liquidated damages for each day of delay occurring after the Target Preliminary Completion Date of

- a. an amount of One Million Naira (=N= 1,000,000.00) for the first thirty (30) days.
- b. an amount of Two Million Naira (=N= 2,000,000.00) for the following thirty (30) day period.
- c. Two Million, Five Hundred Thousand Naira (=N= 2,500,000.00) thereafter.

9.5 Abandonment

In the event that due to the Default of the Concessionaire, the Concessionaire abandons or is deemed to have abandoned the Construction Works as provided under Article 9.6 the Concessionaire shall pay to the Grantor by way of liquidated damages the reasonable cost of re-awarding the Concession to another Concessionaire.

9.6 Deemed Abandonment

The construction of the Port Terminal shall be deemed to have been abandoned if the Concessionaire:

- a. notifies the Grantor in writing that it has terminated the Construction Works and does not intend to recommence construction.
- b. fails to commence Construction Works on the Site within ninety (90) days from the Milestone Date applicable to the Construction Commencement Date other than by reason of Force Majeure or a Default of the Grantor.
- c. fails to resume Construction Works within fourteen (14)

days after the end of any Force Majeure, other than by reason of Force Majeure or a Default of the Grantor.

- d. for any other reason, the Concessionaire ceases Construction Works or withdraws either directly or through action by the Construction Contractor, all, or substantially all personnel from the Site prior to the Final Completion Date of the Port Terminal other than by reason of
 - i. the occurrence of Force Majeure,
 - ii. the appointment of a replacement Construction Contractor within sixty (60) days from the date when the Construction Works ceased; or
 - iii. a Default of the Grantor; or
- e. fails to bring about the Final Completion Date of the Port Terminal within sixty (60) days after the Target Preliminary Completion Date of the Port Terminal as such date may be extended in accordance with Article 7.10.2

III. OPERATION AND MAINTENANCE OF THE PORT TERMINAL

ARTICLE 10

OPERATION AND MAINTENANCE

10.1 Principal Obligations of the Concessionaire

The Concessionaire shall be responsible for the management operation and maintenance of the Port Terminal throughout the Concession Period at its own cost and risk and in accordance with Prudent Industry Practice and the provisions of this Agreement. Without limiting the generality of the foregoing, the Concessionaire shall ensure that throughout the Concession Period the Port Terminal is at all times:

- a. suitable for use;
- b. operated in accordance with Prudent Industry Practice, and
- c. maintained in good operating condition and capable of providing services for Users in a safe and stable manner.

10.2 Safety and Technical Guidelines

Not later than ninety (90) days prior to the Target Preliminary Completion Date and thereafter from time to time, the Coordinating Committee shall specify the coordination of safety and

[Handwritten signatures]

technical guidelines required by Nigerian laws and regulations as well as IMO regulations, standards and guidelines to be implemented in connection with the operation of the Port Terminal within the Operations and Maintenance Procedure and the Grantor's requirements and otherwise in accordance with Prudent Industry Practice. The Concessionaire shall operate the Port Terminal in accordance with such safety and technical guidelines once they are established.

10.3 Manual for Inspection and Maintenance

The Concessionaire shall prepare a manual (the "Manual") for inspection and maintenance of the Port Terminal based on the Operating Parameters which shall include procedures and schedules for carrying out periodical and annual inspections, routine maintenance, major repair maintenance and annual maintenance and for adjusting and improving the inspection and maintenance program. The Concessionaire shall permit the Grantor to have access to and examine the Manual.

10.4 Maintenance Bond

10.4.1 Amount of Maintenance Bond

Prior to the commencement of the Concession Period, the Concessionaire shall provide the Maintenance Bond in the form of a first demand bond issued by a reputable insurance company as set out in **Annex B** or any other form acceptable to the Grantor in an amount of **US\$3,000,000.00 (three million United States Dollars)** to secure the performance of all of the Concessionaire's obligations under this Agreement including compliance with its warranty under Article 13.4.

10.4.2 Restoration of Maintenance Bond

In the event that any draw has been made on the Maintenance Bond during the Concession Period, the Concessionaire shall ensure that the amount of the Maintenance Bond is restored to **US\$3,000,000.00 (three million United States Dollars)** on the Transfer Date.

10.4.3 Periodical Review of Value of Maintenance Bond

The parties herein covenant to periodically review and agree on the value of the Maintenance Bond to be provided by the Concessionaire under this Agreement. The review and agreement on a new value of the Maintenance Bond shall not be later than five (5) years from the commencement of the Concession Period.

10.4.4 **Validity Period**

The Maintenance Bond shall remain in force until twelve (12) months after the Transfer Date.

10.4.5 **Liability for Maintenance**

Subject to Article 13.4, the right of the Grantor to draw upon the Maintenance Bond as specified in this Agreement may be exercised without prejudice to any other rights of the Grantor under this Agreement and shall not relieve the Concessionaire from any further liability or responsibility to the Grantor for failure to maintain the Port Terminal.

10.5 **Failure to Maintain**

10.5.1 **Corrective Maintenance by the Concessionaire**

If the Concessionaire is in breach of its obligations to maintain the Port Terminal in accordance with Article 10.1, through no Default of the Grantor, the Grantor may give notice thereof to the Concessionaire. On receipt of such notice, the Concessionaire shall either perform the necessary corrective maintenance or may notify the Grantor that it disputes the content of the notice from the Grantor. In case of a dispute, the dispute shall be resolved in accordance with Article 22.

10.5.2 **Corrective Maintenance by the Grantor**

If in the course of implementing the procedure under Article 22, the Co-ordinating Committee or the Panel of Experts decides that the Concessionaire has failed to maintain the Port Terminal in accordance with Article 10.1 and if the Concessionaire does not remedy that failure within the time period set forth in the decision made either by the Co-ordinating Committee or the Panel of Experts, then the Grantor may itself, carry out the maintenance at the risk and expense of the Concessionaire.

In such event the Concessionaire shall allow the employees, agents or contractors of the Grantor access to the Port Terminal for such purpose the Grantor shall ensure that all persons carrying out such operations shall undertake their work with the least possible interference to the operation of the Port Terminal and in accordance with Prudent Industry Practice.

In order to pay the above-mentioned maintenance expenses, the Grantor shall be entitled to draw on the Maintenance Bond to cover such expenses provided that it

NIGERIAN PORTS AUTHORITY
SECRETARY GENERAL DEPARTMENT
07/2005

CAMP/49

has furnished the Concessionaire with a detailed record of the expenses incurred.

10.6 Public Safety

If the Port Terminal or any part thereof breaches the applicable safety standards and regulations of the Federal Republic of Nigeria, the Grantor may restrict access to the Port Terminal until the Grantor is satisfied in its reasonable opinion that the Port Terminal is safe and shall notify the Concessionaire immediately. The Grantor may direct the Concessionaire to make the Project safe within the time specified in its notice. The Concessionaire shall not be entitled to any compensation whatsoever for such restriction of access or operations.

10.7 The Grantor's Right of Access

The Grantor and its representatives shall have access upon written of the names and designations of the representatives to the Port Terminal at all times to monitor operation and maintenance provided that the Grantor shall not interfere with, delay or disturb the Concessionaire and/or the O&M Contractor in performing their respective obligations under this Agreement and/or the O&M Contract.

10.8 Participation in the Operation and Maintenance by the Grantor

The participation in the operation and maintenance of the Port Terminal as specifically stated and limited in this Agreement by the Grantor shall not release or reduce the responsibilities of the Concessionaire for operation and maintenance of the Port Terminal under this Agreement.

10.9 Security and Fire Services

The Concessionaire shall ensure that the Port Terminal is fitted with appropriate security equipment and apparatus to conform with international standards. The Concessionaire shall prior to the Start Date procure the services of well trained security personnel to provide a level of law enforcement in the Port Terminal.

10.10 Modifications to Inspection and Maintenance Manual

A copy of the inspection and maintenance manual shall be delivered to the the Grantor and same shall have their respective

HA
BHA

reasonable comments and suggested modifications and amendments incorporated therein. Thereafter, the Concessionaire shall not modify the manual without the Grantor's prior approval, such approval not to be unreasonably withheld.

The inspection and maintenance manual shall, when approved by the Grantor, be deemed to be annexed to this Agreement.

10.11 Non compliance with Inspection and Maintenance Manual

If upon undertaking any scheduled periodic inspection, the Grantor discovers that the Port Terminal is not being maintained in accordance with the manual, the Grantor shall notify the Concessionaire specifying:

- a. the maintenance works required; and
- b. a reasonable period of time (having regard to the nature and the extent of works required) within which the Concessionaire shall ensure that remedial maintenance work is effected.

10.12 Plant, network, communication, office and other requirements to be provided at the Port Terminal by the Concessionaire

The Concessionaire shall throughout the Concession Period install and maintain at the Port Terminal in such quantity and quality plant, network, communication, office and other equipment as prescribed in **Annex F** and as is reasonably required to maintain an efficient operation.

10.13 Port Terminal Usage

Following the Construction Completion Date of the Port Terminal, the Concessionaire shall ensure that the Port Terminal is convenient, suitable and safe for use at all times. The Concessionaire shall not be considered in breach of its obligations hereunder to the extent that the Port Terminal is not available for use as a result of a Force Majeure, breach of this Agreement by the Grantor, measures taken in accordance with this Agreement to ensure the safe use of the Port Terminal (including maintenance or compliance with a request of the Grantor and or any Relevant Authority), the effect of which is to close the Port Terminal.

10.14 Operating Reports

Every quarter, the Concessionaire undertakes to submit to the Grantor an operating report regarding the operation of the Port

[Handwritten signatures]

Terminal.

PROCESSED PORTAL
10/11/2005
07/1/2005

CANP/51

10.15 the Grantor Bye Laws regulating use of Port Terminal

1. The Concessionaire shall display in conspicuous parts of the Port Terminal existing bye laws made by the Grantor prescribing the rules and regulations for maintaining law and order and smooth operation of the Port Terminal.
2. The Concessionaire also make copies of the Bye Laws available to Users of the Port Terminal, at their request.

ARTICLE 11

REVENUE GENERATED FROM THE OPERATION AND MANAGEMENT OF THE PORT TERMINAL

11.1 Concessionaire's Entitlement to Collect Revenue

The Concessionaire shall throughout the Concession Period be entitled to collect from Users of the Port Terminal and retain for its benefit, all revenue accruing from specified sources of income ceded to the Concessionaire by the Grantor subject to the payments specified in Article 2.5 and as set out in **Annex E**.

*11.2 Sources of Income

The charges and tariffs collectible by the Concessionaire from Users of the Port Terminal during the Concession Period will be derivable from sources specified in **Annex E** or as may be approved from time to time by the Grantor:

11.3 Tariffs and Charges

Subject to the prior approval of Relevant Regulatory Authority(ies), the Concessionaire shall determine the tariffs, rents, fees and other charges collectible from Users of the Port Terminal throughout the Concession Period.

11.4 Charge/Tariff Collection

The Concessionaire may put in place a suitable tariff/charge collection mechanism or system as it may deem expedient, and may engage any person or entity to collect the said tariff/charges on its behalf.

11.5 Payment of Tariffs and Charges

The charges, fees and tariffs collectible by the Concessionaire

AA
BHA

during the Concession Period shall be in foreign exchange as may be agreed between the Grantor and the Concessionaire.

11.6 Operational Expenditure

The Concessionaire shall bear all expenses incidental to the effective and efficient operation, maintenance and management of the Port Terminal, including payment of the O & M Contractor's management fees

ARTICLE 12

FINANCING OF THE PROJECT AND FINANCIAL MANAGEMENT

12.1 Concessionaire's Principal Obligations

The Concessionaire shall be solely responsible for obtaining all the finance, both equity and debt, necessary to construct, operate and maintain the Port Terminal for the duration of the Concession Period.

12.2 Use of Nigerian Bank Accounts

All of the Concessionaire's transactions related to the Project that require foreign exchange including debt servicing and repatriation of income, shall be effectuated through a foreign exchange account with a reputable bank.

Without prejudice to the generality of the foregoing and subject to any existing law governing foreign exchange transactions in the Federal Republic of Nigeria, foreign exchange from any foreign Lender and equity investor and used to pay foreign contractors or vendors for services provided or equipment or materials purchased outside the Federal Republic of Nigeria may be paid directly to such persons without being transferred through an account in the Federal Republic of Nigeria.

12.3 Consent to US Dollars Accounts

The Grantor shall ensure that:

- a. the Concessionaire, the Construction Contractor and the Sponsors receive consent, if required, for the opening and operation of, and retention of earnings in, US Dollars bank accounts inside the Federal Republic of Nigeria, including the payment of all US Dollars received under the Financing Agreements into such accounts and withdrawals therefrom;

and

- b. the Concessionaire, the Construction Contractor and the Sponsors shall have permission to transfer the funds from its accounts in the Federal Republic of Nigeria to accounts outside the Federal Republic of Nigeria that are necessary to implement and carry out the Project in accordance with this Agreement, including such accounts as are reasonably required under the Financing Agreements, the Construction Contract, the O&M Contract and insurance policies related to the Project.

12.4 Conversion of Project Income into Foreign Currency

The Concessionaire, subject to applicable Nigerian law, shall have the right to convert income from the Project from Naira to foreign currency in order to pay for Project expenses and debt service, if any.

12.5 Financial Statements

The Concessionaire shall carry on its business and affairs with due diligence and efficiency and in accordance with sound financial and commercial standards and practices and shall fully account for all aspects of its business by preparing financial statements and delivering them to the Grantor as follows:

- a. Annual audited financial statements consisting of a balance sheet and a statement of cash flow drawn up in accordance with generally accepted international accounting principles and any applicable provisions of the corporate laws of the Federal Republic of Nigeria (as the same may from time to time be amended) and certified by a qualified Independent Auditor;
- b. A quarterly statement of the Concessionaire's cash receipts; and
- c. Such other information on the financial position of the Concessionaire as the Grantor may from time to time reasonably request to monitor compliance with the laws of the Federal Republic of Nigeria and with this Agreement.

[Handwritten signatures]

IV. TRANSFER OF THE PROJECT

ARTICLE 13

CANP/54

TRANSFER DATE PROCEDURE AND REQUIREMENTS

13.1 General Scope of Transfer

On the Transfer Date, the Concessionaire shall transfer to the Grantor or any person designated by the Grantor, free of charge:

- a. all of the Concessionaire's rights, title and interest in and to the Port Terminal which shall all be well maintained and in good working order;
- b. all of its right to use the Site; and
- c. such operating manuals, operation summaries, transfer notes, design drawings and other information as may reasonably be required by the Grantor, and which have not been delivered previously by the Concessionaire in accordance with this Agreement to enable it to continue the operation of the Port Terminal either directly or by any person designated by the Grantor.

The Port Terminal and the right to use the Site shall be transferred to the Grantor free of charge and free and clear of all debts, liens, encumbrances, mortgages, security interests created by the Concessionaire, Environmental Contamination attributable to the construction, operation and maintenance of the Port Terminal and caused by the Concessionaire and claims of whatever kind or nature.

13.2 Final Maintenance Overhaul and Operational Test

13.2.1 *Final Maintenance Overhaul*

The Concessionaire shall carry out a Final Maintenance Overhaul of the Port Terminal no earlier than six (6) months prior to the Transfer Date provided that the same shall be completed no later than three (3) months prior to the Transfer Date. The precise time and contents of the Final Maintenance Overhaul shall be checked and approved by the Transfer Committee twelve (12) months prior to the Transfer Date. The Final Maintenance Overhaul shall include:

- a. review of the standard items listed in the

manufacturer's manual for the Port Terminal,

- b. elimination of existing defects;
- c. inspection and repair, crack detection, test and replacement of existing defects (reasonable wear and tear excepted; and
- d. such other items reasonably requested by the Grantor as are more particularly described in **Annex A**. The Concessionaire shall be responsible for including those items reasonably proposed by the Grantor into the Final Maintenance Overhaul schedule.

The Concessionaire shall however not be liable or bear the consequence and cost due to wear and tear of all facilities, fittings, spare parts, Workshop equipments and any other material element to be transferred.

13.2.2 Failure to carry out Final Maintenance Overhaul

If the Concessionaire fails to carry out the Final Maintenance Overhaul pursuant to this Article 13.2.1, the Grantor may do so itself at the risk and expense of the Concessionaire. The Grantor, except where a dispute is declared under Article 22, shall be entitled to draw on the Maintenance Bond to cover the costs of the Final Maintenance Overhaul in such circumstances provided it has furnished the Concessionaire with a detailed record of the costs incurred.

13.2.3 Performance Test

After the Final Maintenance Overhaul and prior to the Transfer Date, the Concessionaire shall carry out a performance test of the Port Terminal in the presence of a representative of the Grantor. The tested performance parameters shall be in conformity with the **Annex A** and the Technical Proposal.

In the event of a failure to meet the said parameters, the Concessionaire shall correct any such defects to the Port Terminal and repeat the performance test. If the Concessionaire fails to correct any such defect within a reasonable period, the Grantor may do so itself at the risk and expense of the Concessionaire. The Grantor, except where a dispute is declared under Article 22, shall be entitled to draw on the Maintenance Bond to cover the costs of correcting such defects provided it has furnished the Concessionaire with a detailed record of the costs

[Handwritten signatures]

incurred.

Camp/56

13.3 Spare Parts

13.3.1 *Spare Parts to be Transferred*

At the Transfer Date and if requested in writing, the Concessionaire shall transfer to the Grantor or any person designated by the Grantor, at book value, a supply of consumable spare parts adequate to meet the normal needs of the Port Terminal for a period of twelve (12) months and spare parts for the repair of breakdowns.

13.3.2 *Transfer Procedure*

The Transfer Committee shall meet and agree upon the detailed list of spare parts to be transferred and the detailed procedures for transfer in accordance with this Article six (6) months prior to the Transfer Date

13.3.3 *Purchase of Additional Spare Parts*

Prior to the Transfer Date, the Grantor may provide the Concessionaire with a list of spare parts for the Port Terminal which it requires in addition to those transferred under Article 13.3.1. The Concessionaire shall use its best efforts to transfer such spare parts to the Grantor in return for payment by the Grantor at the same preferential prices as offered by the manufacturers to the Concessionaire.

13.4 Warranties

13.4.1 *Condition of the Port Terminal on the Transfer Date*

The Concessionaire warrants that on the Transfer Dates the Port Terminal shall:

- a. Be in good operational condition and well maintained (ordinary wear and tear excepted); and
- b. meet all safety and environmental standards required by this Agreement; and
- c. meet the standards set out in **Annex A** and the **Technical Proposal**.

13.4.2 *Defects Liability Period*

The Concessionaire further warrants that it will correct any defects in or damage to any part of the Port Terminal which may appear or occur within a period of twelve (12) months after the Transfer Date due to defective material,

HA
DM

workmanship or design, or from any Default of the Concessionaire during the Concession Period (ordinary wear and tear excepted).

The Grantor shall give the Concessionaire notice promptly after having discovered any such defect or damage. Such notice must, in any case, have been given at the latest before the expiration of the twelve (12) months warranty period. Upon receipt of such notice, the Concessionaire shall correct the defect as soon as possible at its own cost. If the Concessionaire fails or refuses to correct a defect within a reasonable time after the Grantor's notification, then, except where the Concessionaire has declared a dispute, the Grantor shall be entitled to correct the defect itself or engage a third party to do so. In such a case the Concessionaire shall pay the reasonable and necessary costs of the correction and the Grantor shall be entitled to draw on the Maintenance Bond to cover such costs.

13.4.3 ***Compensation for Failure to Repair Defects or Damage***

In case it is impossible or unreasonably burdensome or expensive to repair any defect or damage to the Port Terminal so as to meet the standards set out in **Annex A** and the Technical Proposal, the Grantor shall be entitled to compensation reflecting the reduced performance of the Port Terminal. The Grantor shall be entitled to draw on the Maintenance Bond to cover such compensation.

13.5 **Transfer of Insurance and Contractor Warranties**

The Concessionaire shall assign to the Grantor or any person designated by the Grantor at the time of transfer all unexpired guarantees and warranties, free of charge, by contractors and suppliers, and all insurance policies, binders and endorsements. Insurance premium for the insurance period after such transfer shall be paid or refunded by the Grantor.

13.6 **Technology Transfer**

At the Transfer Date, the Concessionaire shall transfer and assign, including by way of licence or sub-licence, to the Grantor or any person designated by the Grantor, free of charge, all technology and know-how used at the time of transfer and required to operate and maintain the Port Terminal.

[Handwritten signatures]

13.7 Personnel

1. Six (6) months prior to the end of the Concession Period, the Concessionaire shall submit a list of the personnel currently employed by the Concessionaire at the Port Terminal giving details of the qualifications, position and income of each employee.
2. The Concessionaire shall also indicate which employees will be available for employment by the Grantor after the Transfer Date.
3. The Concessionaire shall grant the Grantor reasonable access to the Port Terminal to interview and assess such personnel. The Grantor shall select the personnel it wishes to employ to operate and maintain the Port Terminal after the Transfer Date at its sole discretion and shall not be obliged to employ all or any of the personnel previously employed by the Concessionaire.

13.8 Cancellation of Contracts, Assignment

Subject to Article 13.5 and 13.6, if required by the Grantor, the O&M Contract, equipment contracts, supply contracts and all other contracts entered into by the Concessionaire and subsisting at the time of the transfer shall be canceled by the Concessionaire. The Grantor shall not be liable for any cancellation costs arising thereby and shall be indemnified and held harmless by the Concessionaire in respect of the same. Otherwise the Concessionaire shall endeavour to assign such contracts to the Grantor or any person designated by the Grantor.

13.9 Removal of Objects Owned by the Concessionaire

The Concessionaire shall at its own cost remove all objects owned by the Concessionaire from the Site within thirty (30) days after the Transfer Date unless otherwise mutually agreed by the parties. The objects to be removed shall be limited to the personal items of the Concessionaire's employees and articles having nothing to do with the operation and maintenance of the Port Terminal and shall not include the equipment, tools, spare parts, design drawings and technical information of the Port Terminal listed in the inventories to be transferred or otherwise necessary for the operation and maintenance of the Port Terminal. If the Concessionaire fails to remove such objects within the said time the Grantor may remove and transport the same, after giving the Concessionaire notice of its intention, to a suitable location for safe storage. The Concessionaire shall bear the reasonable cost and the risk of such removal, transportation and storage.

13.10 Passing of Risk

Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Port Terminal, unless the loss or damage is due to a Default of the Grantor or *Force Majeure*.

13.11 Transfer Costs and Approvals

1. The transfers and assignments of the Port Terminal and related contractor warranties, technology and supply contracts to the Grantor or any person designated by the Grantor pursuant to Articles 13.1 through 13.6 shall be without the payment of any compensation or purchase price by the Grantor to the Concessionaire.
2. The Concessionaire and the Grantor shall each be responsible for its own costs and expenses, incurred in connection with the transfers and assignments to the Grantor or any person designated by the Grantor. The Grantor shall at its own cost obtain or effect all Approvals and take such other action as may be necessary for such transfers and assignments and shall pay all stamp duties, taxes, charges and the like payable in respect of such transfer and assignments.
3. If the Concessionaire fails to transfer in compliance with the required scope and contents of this Article 13, the Grantor shall be entitled to draw upon the Maintenance Bond in respect of the expenses or loss incurred thereby.

13.12 Transfer Committee and Transfer Procedure

1. Twelve (12) months prior to the end of the Concession Period, the Grantor and the Concessionaire shall establish a committee (the "Transfer Committee") comprising three (3) representatives of the Concessionaire and three (3) representatives of the Grantor. The Transfer Committee shall meet regularly and may meet at any time agreed by the parties and agree on –
 - i. detailed procedures for the transfer of the Port Terminal,
 - ii. a Final Maintenance Overhaul program,
 - iii. tests after the Final Maintenance Overhaul,
 - iv. a detailed list of the structures, equipment, facilities, items and spare parts to be transferred, and
 - v. measures to be taken to publicize the transfer to third parties.

2. At the time of such meetings, the Concessionaire shall submit the names of its representatives in charge of the transfer, and the Grantor shall inform the Concessionaire of the names of its representatives in charge of the transfer.
3. The Transfer Committee shall meet in the third (3rd) month prior to transfer in order to prepare the transfer ceremony.

13.13 Effect of Transfer on this Agreement

From the Transfer Date the obligations and the rights of the Concessionaire under this Agreement shall terminate, except as otherwise provided in this Agreement, and the Grantor or any person designated by the Grantor shall take over the operation of the Project and any other rights or obligations arising out of the terms of this Agreement which either expressly or implicitly survive termination of this Agreement.

13.14 Release of the Maintenance Bond

The Grantor shall release all or so much of the Maintenance Bond as shall remain outstanding within fifteen (15) days after twelve (12) months from the Transfer Date.

V. GENERAL OBLIGATIONS OF THE PARTIES

ARTICLE 14

GENERAL OBLIGATIONS OF THE GRANTOR

14.1 Compliance with Laws and Regulations

The Grantor shall at all times observe and comply with the provisions of all relevant laws and regulations published by any Relevant Authority.

14.2 Tax Preference

The Grantor shall assist the Concessionaire obtain and enjoy tax preferences it may be entitled to in accordance with the laws and regulations of the Federal Republic of Nigeria or any component thereof. The Grantor shall assist the Concessionaire to obtain permissions for other tax preferences in relation to the performance of this Agreement to the extent permitted at any time by Nigerian tax laws, regulations and by the relevant Nigerian taxation authority.

14.3 Obtaining and Maintaining Approvals

14.3.1 *Obtaining Custom Approval to designate Port Terminal to operate as a port within the Tin Can Island Port Complex*

The Grantor shall arrange for and obtain customs notification designating the Port Terminal for the purpose of enabling it operate effectively as an integral part of the Tin Can Island Port and in accordance with the terms and conditions of this Agreement;

14.3.2 *Assistance with Approvals*

The Grantor, upon proper and timely request from the Concessionaire shall use its best endeavours to assist the Concessionaire in obtaining, maintaining and renewing all Approvals from Relevant Authorities.

14.3.3 *Approvals to be Obtained from the Grantor*

Provided that the Concessionaire has properly submitted the relevant applications, requests and documentation for obtaining and maintaining Approval(s) from the Grantor in a timely manner and the relevant conditions and requirements for obtaining such Approval(s) are complied with, the Grantor shall, at no extra cost to the Concessionaire offer reasonable assistance to the Concessionaire in obtaining and/or renewing all requisite approvals and permits, the Concessionaire may require in connection with the operation of the Port Terminal.

14.4 The Grantor's Responsibility

The Grantor shall be responsible for the acts, commissions and omissions of the officials and employees under their control or supervision.

14.5 Utilities



The Grantor shall ensure that all Utilities, such as electricity and water, necessary for the construction, operation and maintenance of the Port Terminal are made available to the Concessionaire in a timely manner and at fair rates on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving service substantially equivalent to that being provided to the Concessionaire. Except as otherwise provided herein, the Grantor shall at its own cost connect and extend such Utilities to the boundary of the Port Terminal.

14.6 Non-Interference

Subject to the provisions of this Agreement, the Grantor shall not intervene in the construction, operation and maintenance of the Port Terminal save as may be necessary to protect public health and safety and for the discharge of its statutory duties. At the request of the Concessionaire, the Grantor shall use its best efforts to alleviate any interference with the Project by third parties which may arise.

14.7 No interruption by the Grantor and other Relevant Authorities

1. Subject to the provisions of this Agreement, the Grantor undertakes not to do, and shall make reasonable endeavours to ensure that no other Relevant Authority does any act which would prevent or adversely affect the Construction Works, the operation and management of the Port Terminal or the Concessionaire or its nominee's collection of approved charges from Users of the Port Terminal, save as may be necessary on grounds of national security or public safety.
2. If any operation or action is to be carried out at the Port Terminal by any Relevant Authority on the ground of national security or public safety, which said action will prevent or adversely affect the Construction Works or the operation and management of the Port Terminal or impede the Concessionaire and or its nominee's collection of approved charges from Users of the Port Terminal, the Grantor shall give the Concessionaire 14 days, written notice in advance to enable the Concessionaire to discuss and agree with the particular Relevant Authority the methods for carrying out such operation or action with the least possible disruption to the Construction Works, operation and management of the Port Terminal.
3. The obligation of the Grantor to give notice in the preceding paragraph is conditional upon the Grantor having any prior knowledge or notice of such operation or action.
4. If any operation, action or interruption by the Grantor and/or any Relevant Authority delays completion of the Construction Works, or impedes the Concessionaire's operation of the Port Terminal the Grantor's Representative shall in consultation with the Concessionaire determine the appropriate time period by which the Construction Completion and or the Concession Period shall be extended and the quantum of compensation payable to the

Concessionaire for costs it may incur and or damages it may suffer in relation thereto.

14.8 Improper Draws against Bonds

In the event that the Grantor draws against the Maintenance Bond respectively provided by the Concessionaire pursuant to Articles 10.5 of this Agreement and it is subsequently determined that the Grantor was not entitled to do so, then the Grantor shall repay such amount promptly to the Concessionaire together with all costs and expenses incurred by the Concessionaire in connection with such drawing plus interest thereon from the date of the draw to the date of repayment at the Default Rate.

ARTICLE 15

GENERAL OBLIGATIONS OF THE CONCESSIONAIRE

15.1 Change of Ownership; Restrictions on Transfer of Shares

15.1.1 *Restriction on Transfer of Shares*

Attached as **Annex I** is a list of the initial shareholders in the Concessionaire showing their respective percentage interests. Subject to the following provisions, the Concessionaire shall not change those percentage interests and the shareholders in the Concessionaire shall not transfer any shares or interests in the Concessionaire's registered capital without the prior written approval of the Grantor.

15.1.2 *Exception to Restrictions on Transfer of Shares*

No shareholder in the Concessionaire shall transfer any shares or interests owned by him in the Concessionaire's registered capital for a period of five (5) years after the Final Completion Date of the Port Terminal, except for:

- a. a transfer required by the laws of the Federal Republic of Nigeria or by order of court, tribunal or Relevant Authority with appropriate jurisdiction;
- b. a transfer resulting from the creation or enforcement of a security interest in or over any shares or interests in accordance with the Financing Agreements; or
- c. a transfer to which the Grantor has given its prior written approval.

15.1.3 Required Provisions in Articles of Association

The Concessionaire shall make appropriate provisions in its Articles of Association to ensure that appropriate legends appear on all share or interest certificates of the Concessionaire to put prospective purchasers on notice of the restrictions on the transferability of such shares or interests and shall not register or give effect to any transfer of shares or interests that are not in compliance with such restriction.

15.2 Compliance with Law and Regulations

The Concessionaire shall at all times in the performance of its obligations under this Agreement observe and comply with the provisions of all relevant laws, regulations and guidelines published by Relevant Authorities. The Concessionaire shall obtain on a current basis published and publicly available law, regulations and guidelines applicable to the Project and shall be deemed at all times to have full knowledge thereof.

15.3 Safety Standards

1. The Concessionaire shall observe and comply with health and safety standards set forth in this Agreement and laws, regulations and guidelines published by any Relevant Authority.
2. The Concessionaire shall be deemed at all time to have full knowledge of such safety standards and practice.

15.4 Environmental Protection

15.4.1 Concessionaire's responsibility

- a. The Concessionaire shall keep the Site (including the soil, ground or surface water and air) and the surrounding environment free and clear of Environmental Contamination attributable to the construction, operation and maintenance of the Port Terminal in compliance with the environmental requirements set forth in –
 - i. this Agreement; and
 - ii. current laws, regulations and guidelines published by any Relevant Authority.
- b. The Concessionaire shall be deemed at all times to have full knowledge of such environmental standards.

15.4.2 Exceptions to the Concessionaire's

[Handwritten signature] *[Handwritten signature]*

15.7 Nigerian Services and Goods

15.7.1 Use

The Concessionaire shall use Nigerian services and goods whenever they are competitive in terms of quality, warranty, service, relevant expertise, procurement, delivery schedule and price and shall ensure that its contractors and sub-contractors observe this provision.

15.7.2 Competitive Bidding

The Concessionaire shall include Nigerian contractors in invitations for competitive bidding for contracts if they produce services and goods of the kind and quality required and shall require their contractors to do the same with respect to sub-contracts. When evaluating bids for contracts generally, the Concessionaire shall take into account the extent to which the bidders use Nigerian services and goods. The Concessionaire shall be responsible for the observance of these provisions by its contractors and their subcontractors.

15.7.3 Future Concessions

When evaluating bids from the Concessionaire or any affiliate of the Concessionaire for future concessions, the Grantor may take into account the extent to which the Concessionaire has complied with the provisions of this Article 15.7 in developing, constructing and operating the Port Terminal.

15.8 Use of Nigerian Labour

Except to the extent not locally available, the Concessionaire shall employ competent Nigerian labour for the construction, operation and maintenance of the Port Terminal. The Concessionaire shall be responsible for compliance with this provision by its contractors and their sub-contractors.

15.9 Worker's Rights

The Concessionaire shall comply with the labour laws and regulations of the Federal Republic of Nigeria and respect the rights of the workers guaranteed therein, including in relation to the payment of social security insurance contributions for employees.

15.10 Co-ordination of Project Documents

The Concessionaire shall ensure that the Financing Agreements,

Handwritten signatures and initials at the bottom right of the page.

any agreement among the shareholders of the Concessionaire, the Concessionaire's Articles of Association, the insurance policies related to the Project and any other agreements entered into by the Concessionaire in relation to the Project are consistent with the provisions of this Agreement.

15.11 Taxation, Customs Duty and Charges

The Concessionaire shall pay all taxes, customs duties and charges in accordance with the applicable laws and regulations of the Federal Republic of Nigeria and any Relevant Authority.

The Grantor shall use its best endeavours to secure for the Concessionaire fiscal incentives including but not limited to tax holidays and exemptions from tariffs, customs duties and charges in accordance with the applicable laws and regulations of the Federal Republic of Nigeria.

15.12 Insurance

15.12.1 *Obtaining and Maintenance of Insurance Policies*

The Concessionaire, at its sole cost and expense, shall throughout the duration of this Agreement obtain and maintain with an insurance company(ies) to be approved by the Grantor the policies of insurance in the amounts set forth herein and during the periods mentioned herein; provided, however, that such amounts may be changed from time to time with the prior written consent of the Grantor.

15.12.2 *Insurance during Concession Period*

From the Start Date until the Transfer Date, the Concessionaire shall at its own expense keep the Port Terminal insured to the full value thereof against accidental damage from all normal risks and to a level normal for prudent operators of facilities similar to the Port Terminal.

15.12.3 *Market Practice*

The Concessionaire shall maintain the aforementioned insurance with reputable insurers of adequate financial strength and experience to the extent that the insurance policies can be subscribed on reasonable economic terms and rates.

15.12.4 *Certificate of Insurance*

- a. Every certificate of insurance issued pursuant to Article 15.12.2. of this Agreement shall have the Grantor's name

and that of the Concessionaire endorsed on it as "Joint Loss Payee".

- b. The Concessionaire shall cause its insurers or agents to provide the Grantor with certificates of insurance evidencing the policies and endorsements obtained pursuant to Article 15.12.2. Failure by the Concessionaire to obtain the insurance coverage or certificates of insurance required by Article 15.12.2 shall not in any way relieve or limit the Concessionaire's obligations and liabilities under any provision of this Agreement. If the Concessionaire shall fail to procure or maintain any insurance required pursuant to this Articles 15.12, then the Grantor shall have the right to procure such insurance and shall be entitled to offset the premium paid for such insurance by drawing on the Maintenance Bond.

15.12.5 Application of Insurance Monies

The Concessionaire and the Grantor shall be joint beneficiaries of the proceeds of insurance taken out pursuant to Article 15.12.3 hereof. It is further agreed that the proceeds of the insurance policies taken out under Article 15.12.3 shall be applied to the reinstatement or restoration of the Port Terminal.

15.12.6 Insurance Reports

The Concessionaire shall provide the Grantor with copies of any underwriters' reports or other reports received by Concessionaire from any insurer, provided that the Grantor shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement; or as may be required by any Relevant Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

15.13 Responsibility for Contractors and their Employees and Agents

15.13.1 Concessionaire's Contractors

The Concessionaire's employment of contractors including but not limited to Construction Contractor, equipment suppliers and O&M Contractor shall not relieve the Concessionaire from any of its obligations under this Agreement and the Concessionaire shall be fully responsible to the Grantor for any acts or omissions of the contractors, their agents or any person either directly or

indirectly employed by them as if such acts or omissions were the acts or omissions of the Concessionaire.

15.13.2 Contracts with Contractors

Any contract entered into with contractors shall contain those Articles of this Agreement which are necessary to enable the Concessionaire to fulfill its obligations under this Agreement.

15.14 Provision in Financing Agreements

The Concessionaire shall use its best effort to include the following provisions in the Financing Agreements:

- a binding commitment from the Lenders to the Grantor in a manner legally enforceable by the Grantor that, so long as this Agreement is in effect and so long as the Grantor shall not have committed an Event of Default which is continuing, the Lenders will take no action (except pursuant to rights granted to the Concessionaire under this Agreement) to disturb, affect or impair the rights of the Grantor under this Agreement, including its rights to have the Project constructed, operated and maintained and
- a binding commitment by the Lenders:
 - (i) to give notice to the Grantor of any Default by the Concessionaire under the Financing Agreements;
 - (ii) to afford the Grantor the right to cure any such Default within ninety (90) days after it receives notice of such Default;
 - (iii) to forbear from exercising any right or remedy available to the Lenders in respect of such Default during such cure period; and
 - (iv) not to withhold unreasonably any consent or approval required to be obtained from the Lenders or the Facility Agent pursuant to this Agreement.

15.15 Negative Covenant

The Concessionaire shall not grant any pledge, mortgage, encumbrance or other security interest in any of its property, ownership rights or other rights and interest under this Agreement to any person other than the Lenders save as expressly approved by the Grantor.

[Handwritten signatures]

OBLIGATIONS AND RIGHTS COMMON TO THE GRANTOR AND THE CONCESSIONAIRE

16.1 Force Majeure

16.1.1 Force Majeure Events

Force Majeure shall mean any event or circumstance which is beyond the control of the party seeking to rely on such Force Majeure, which shall include:

lightning, drought, earthquake, volcanic eruption,
landslide, flood, storm, typhoon or tornado;

act of war, invasion, armed conflict or act of foreign enemy, blockade, riot, terrorism or exercise of military power;

national, regional or industry-wide strike; or

the expropriation, requisition or nationalization of the Port Terminal by the Grantor or any other Relevant Authority;

and other events, which could not reasonably have been foreseen by that party at the date of this Agreement, the consequences of which could not reasonably have been avoided by that party, and which prevents that party from performing any of its obligations under this Agreement.

16.1.2 Exceptions Applicable to the Concessionaire

The Concessionaire shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement.

(a) any delay:

(i) in performance by any contractor or subcontractor of the Concessionaire, including the Construction Contractor and the Operation and Maintenance Contractor or any direct or indirect subcontractor to either of them; or

(ii) in the delivery of equipment and machinery for the Port Terminal;

except and to the extent that such delay is itself caused by an event which satisfies the criteria set out in Article 16.1.1 in relation to both the Concessionaire and the relevant contractor or subcontractor;

- (b) any patent or latent defects in any materials, equipment, machinery and spare parts for the Port Terminal; or
- (c) breakdown or ordinary wear and tear of materials, equipment, machinery or parts of the Port Terminal.

16.1.3 Exceptions Applicable to the Grantor

The Grantor shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement:

the expropriation, requisition or nationalization of the Port Terminal by any Relevant Authority.

act of war, invasion, armed conflict or act of foreign enemy, riot, terrorism or exercise of military power that occurs inside the Federal Republic of Nigeria, or

16.1.4 Notice of Force Majeure

The party claiming to be affected by Force Majeure shall promptly, when it becomes aware of the Force Majeure give notice and describe in detail the Force Majeure occurrence and effect of such Force Majeure to the other party in writing, including the dates of commencement and estimated cessation of such Force Majeure and its effects on the party's obligations under this Agreements. The party claiming Force Majeure shall also provide such evidence as the other party may reasonable request.

16.1.5 Suspension of Performance Due to Force Majeure and Costs

Either party shall be entitled to suspend performance of all or part of its obligations under this Agreement (except for payment obligations) to the extent that such party is impeded, wholly or in part, in carrying out its obligations under this Agreement by Force Majeure, being an event:

- a. which it could not reasonably have foreseen at the time of entering into this Agreement, and
- b. which event and its consequences cannot be overcome and cannot be avoided by the party

claiming Force Majeure

16.1.6 Extension Due to Force Majeure

In the event that the Construction Completion Date is delayed due to an event of Force Majeure, and or the Concessionaire is unable to perform its obligations during the Concession Period, the Grantor agree to extend the Construction Completion Date and or the Concession Period by such period that the Force Majeure subsists.

16.1.7 Costs

In case of Force Majeure, each party shall cover its own costs resulting from the Force Majeure.

16.1.8 Duty to Mitigate and Resume

The parties in consultation with each other shall use reasonable efforts to mitigate the effects of any Force Majeure event. The party claiming Force Majeure shall resume the performance of its obligations under this Agreement as soon as practicable after the Force Majeure no longer exists.

16.1.9 Continuing Force Majeure

If any event of Force Majeure continues for longer than 3 months, the Concessionaire and the Grantor shall enter into discussions in order to agree on a mutually satisfactory solution. If the Concessionaire and the Grantor fail to reach a mutually satisfactory solution within 30 days of the commencement of such discussions, the provisions of Article 22.3 shall apply prior to either party issuing a Notice of Intention to Terminate this Agreement.

In the event that this Agreement is terminated as a result of the Concessionaire's inability to perform its obligations hereunder due to a continuing Force Majeure, and or the Independent Engineer or the Panel of Experts, as the case may be, certifies that restoration is not feasible, or the Concessionaire and the Grantor are unable to agree on terms on which to continue this Agreement, the Grantor shall pay the Concessionaire such sums of money that aggregate the Concessionaire's investment in the Project and subject to any claims of the Grantor or tha of Lenders determinable by the Independent Engineer or the Panel of Experts within 30 days from the date the Notice of Termination is issued, depending on the nature of the Force Majeure and the length of time that it continues unabated.

AK SNA

16.1.10 Force Majeure and Insurance

To the extent that the consequences of an event of Force Majeure relied upon by the Concessionaire fall within the terms of the insurance cover required by Article 15.12 the Concessionaire shall forthwith make the appropriate claims thereunder and shall apply the proceeds as required by Article 15.12.6.

16.1.11 Damage to the Port Terminal

If an event of Force Majeure causes material damage to the Construction Works or the Port Terminal and such damage is either not within the terms of the insurance cover required by Article 15.12 or the insurance proceeds available are less than 50 percent of the total costs of repairing such damage, the Concessionaire shall not be obliged to complete or cause to be completed, the construction or repair of the Port Terminal unless the **Independent Engineer** certifies that the repair is feasible and the parties agree on a solution that will allow the Concessionaire to recover the costs of the additional Works necessary together with a reasonable return on its investment over the remainder of the Concession Period.

16.1.12 Force Majeure and the Independent Engineer

Upon the occurrence of such Force Majeure, the parties shall promptly obtain the opinion of the Independent Engineer as to whether such repair is feasible and shall enter into discussions to reach a mutually satisfactory agreement. If the Concessionaire and the Grantor fail to reach a mutually satisfactory solution within 30 days of the commencement of such discussions, the provisions of Article 22 shall apply, prior to either party issuing a Notice of Intention to Terminate this Agreement.

16.2 Rights to Documents

16.2.1 The Grantor Documents

Documents and computer programs provided by the Grantor (or representatives and agents of the Grantor) to the Concessionaire, or which are developed mainly on the basis of such documents and computer programs, shall be the property of the Grantor. The same shall apply to all copies of such documents and computer programs. Such documents, computer programs or copies thereof shall not be used by the Concessionaire other than for the purposes of the Project. Such documents, computer programs or

copies thereof shall be returned to the Grantor at the expiry of the Concession Period, unless otherwise agreed upon between the Grantor and the Concessionaire.

CANP/74

16.2.2 Concessionaire Documents

Documents and computer programs provided by the Concessionaire, or which are developed mainly on the basis of such documents and computer programs, shall be the property of the Concessionaire. The same shall apply to all copies of such documents and computer programs. Such documents and computer programs or copies thereof shall not be used by the Grantor other than for the purposes of the Project. The Grantor or any person designated by the Grantor shall be entitled to copies of, and a fully paid, royalty-free license to use, such documents, computer program and copies only in connection with the operation and maintenance of the Port Terminal after transfer of the Port Terminal to the Grantor or such person designated by the Grantor in accordance with the provisions of Article 13.6.

16.2.3 Compliance

The parties shall ensure that all those who have access to such documents, computer programs and copies thereof shall comply with the provisions of this Article 16.2 and with the confidentiality provisions of Article 16.3.

16.3 Confidentiality

All information and documents (whether financial, technical or otherwise) obtained by either party or its employees, contractors, consultants or agents which are not published or otherwise publicly available shall be kept confidential and not disclosed to third parties or the public for a period of five (5) years from the last day of the Concession Period without the prior written approval of the other party except as required by law of the Federal Republic of Nigeria. This prohibition shall not prevent either party, with the consent of the other, from issuing press releases containing non-sensitive information in relation to the progress of the Project. This covenant shall survive termination of this Agreement.

16.4 Obligation to Co-operate

The parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement. Whenever a consent or approval is required by one party from the other party, such

to the Concessionaire, and

- b. it shall not knowingly permit any work related to the Project to be contracted to any of its officials or employees, or any member of the immediate family (spouse, parent, child or sibling) of any such official or employee, who is directly or indirectly involved in contract awards or supervision of the Project or to any company or enterprise in which any of such persons is an executive officer or substantial owner without the prior written consent of the Grantor after full disclosure of the relevant facts.

VI REMEDIES FOR BREACH OF CONTRACT

ARTICLE 17

TERMINATION

17.1 Termination by the Grantor

Each of the following, to the extent it is not caused by a Default of the Grantor or by Force Majeure, shall, if not cured within the time period permitted (if any), be a Concessionaire Event of Default and shall entitle the Grantor to issue a Notice of Intention to Terminate immediately:

- (a) the Concessionaire fails to pay the royalties and concession fees as required under **Article 2** and **Annex E** and does not effect the payment or deposit same in an escrow account within fifteen days of receipt of a demand notice from the Grantor;
- (b) the Concessionaire abandons or is deemed to have abandoned the construction of the Port Terminal as provided in Articles 9.5 and 9.6;
- (c) the Concessionaire or the O&M Contractor (if any) abandons the operation of the Port Terminal for a period of seven consecutive (7) days without the prior written consent of the Grantor;
- (d) the Concessionaire fails to provide the Maintenance Bond as required under Article 10.4;
- (e) the Concessionaire goes into liquidation or becomes insolvent under the laws of the Federal Republic of Nigeria;
- (f) a receiver or receiver/manager is appointed for any of the assets of the Concessionaire or, under a judicial order,

execution is levied against the assets of the Concessionaire to the extent that the Concessionaire's is prevented or unable to operate the Port Terminal for a period of 30 days;

- (g) any representation or warranty made by the Concessionaire in Article 3 proves to have been materially incorrect when made such that the Concessionaire's ability to perform its obligations under this Agreement is materially adversely affected;
- (h) any failure of the Concessionaire to manage, operate and maintain the Port Terminal in accordance with this Agreement which substantially adversely affects the service provided by the Grantor, directly or through the Grantor, to Users of the Port Terminal and the Concessionaire has failed to remedy such failure within 30 days of receipt of written notice from the Grantor; or
- (i) failure of the Concessionaire to perform any other of its obligations under this Agreement amounting to a material breach of this Agreement and the Concessionaire fails to remedy such breach within thirty (30) days of receipt of written notice from the Grantor specifying such breach and requiring the Concessionaire to remedy the same.

17.2 Termination by the Concessionaire

Each of the following, to the extent it is not caused by a Default of the Concessionaire or Force Majeure, shall, if not cured within the time period permitted (if any), be a Grantor Event of Default and shall entitle the Concessionaire to issue a Notice of Intention to Terminate immediately:

- a. any representation or warranty made by the Grantor in Article 3 proves to have been materially incorrect when made such that the Grantor's ability to perform its obligations under this Agreement is materially adversely affected; or
- b. the failure of the Grantor to perform any other of its obligations under this Agreement which amounts to a material breach of this Agreement and the Grantor fails to remedy such material breach within thirty (30) days of receipt of written notice from the Concessionaire specifying such breach and requiring the Grantor to remedy the same.

REG. NO. 071/2005

17.3 Notice of Intention to Terminate and Notice of Termination

17.3.1 *Notice of Intention to Terminate*

Any notice of intention to terminate shall specify, in reasonable detail, the Concessionaire Event of Default or the Grantor Event of Default (as the case may be) giving rise to such notice (each a "Notice of Intention to Terminate"). The party issuing a Notice of Intention to Terminate to the other party shall at the same time deliver a copy to the Facility Agent. Following the issuing of a Notice of Intention to Terminate the parties shall consult for a period (the "Consultation Period") of.

in the case of the Concessionaire's failure to bring about the Final Completion Date of the Port Terminal within sixty (60) days of the Target Preliminary Completion Date (as such date may be extended in accordance with Article 7.10.2), twenty-one (21) days provided that, during this period, the Concessionaire continues to use all reasonable efforts to procure Final Completion of the Port Terminal as promptly as possible; and

in all other cases, seven (7) days, or such longer period as the parties may agree in writing as to what steps shall be taken with a view to preventing termination of this Agreement. If the Concessionaire and the Grantor do agree on such steps to be taken and/or the Concessionaire or the Grantor (as the case may be) remedies the Event of Default within the relevant Consultation Period or such longer period as may be agreed by the parties, then the Notice of Intention to Terminate shall immediately and automatically cease to have any effect.

17.3.2 *Notice of Termination*

Subject to Article 17.4, upon expiration of the Consultation Period and unless

- a. the parties shall have agreed otherwise; or
- b. the failure giving rise to the Notice of Intention to Terminate has been remedied, the party having given the Notice of Intention to Terminate may terminate this Agreement by delivering a notice to this effect to the other party and the Facility Agent (a "Notice of Termination"), whereupon this Agreement shall immediately terminate.

[Handwritten signatures]

FILED
RECEIVED
JAN 11 2005
07/12/05

CAMP/75

17.4 Rights of the Grantor

17.4.1 *the Grantor's (or any person designated by the Grantor's) Right to Operate the Port Terminal*

- a. Upon the occurrence and continuance of a Concessionaire Event of Default which materially adversely affects the Concessionaire's ability to operate and maintain the Port Terminal in accordance with this Agreement and unless a Notice of Termination is issued, the Grantor or any person designated by the Grantor shall have the right, but under no circumstance the obligation, to take over the operation of the Port Terminal in place of the Concessionaire in order to continue the operation of the Port Terminal or complete any necessary repairs so as to assure uninterrupted availability of the Port Terminal for the use of the public.
- b. In the event of the Grantor taking the step set out in paragraph (a) above, the Concessionaire hereby undertakes to cooperate with the Grantor or any person designated by the Grantor;
- c. in no event shall the Grantor's election to operate the Port Terminal be deemed to be a transfer of the Concessionaire's obligations under this Agreement;
- d. during any period when the Grantor or any person designated by the Grantor is operating the Port Terminal, the Concessionaire shall not be liable to pay for the operating costs incurred by the Grantor or any person designated by the Grantor after the date when the Grantor or any person designated by the Grantor took over the operation of the Port Terminal. The Grantor shall not be liable to make any payment to the Concessionaire after the occurrence of a Concessionaire Event of Default until the same is remedied by the Concessionaire, and the Concessionaire has resumed or assumed the operation of the Port Terminal; and
- e. the Grantor shall have the right at any time to withdraw from the operation of the Port Terminal in which case the Concessionaire shall resume full operational responsibility therefore until either party issues a Notice of Termination.

17.4.2 *The Grantor's Right to Terminate at any time after the issuance of the Notice of Intention to Terminate*

The Grantor may, at any time after the issue by it of a Notice of Intention to Terminate following a Concessionaire Event of Default, terminate this Agreement by issuing a

[Handwritten signatures]

Notice of Termination, provided that it pays to the Concessionaire an amount to be mutually agreed by the parties being an amount equivalent to the market value of the Port Terminal discounted by any part of the Concession Period already spent and the Concessionaire's reasonable profit.

17.5 Consequences of Termination in General

17.5.1 *End of Rights and Obligations*

Upon termination of this Agreement, the parties shall have no further obligations hereunder subject to any rights and obligations which accrued prior to the termination and those which expressly survive termination or relate to dispute resolution.

17.5.2 *Transfer of Rights and Assets*

Forthwith on termination of this Agreement –

- a. the Concessionaire shall relinquish any Right to Use, possess or have access to the Site or the Rights of Way, except the parts thereof over which it might have a subsisting leasehold interest;
- b. if termination occurs prior to Construction Completion, the Concessionaire shall transfer to the Grantor such parts of the Construction Works that have been completed and such materials on the Site necessary for the purposes of completing the Construction Works at a value to be mutually agreed by the Parties discounted by the cost of awarding a new Contract.
- c. if the Grantor so elects, Grantor may purchase from the Concessionaire at its book value, assets, materials, plant, machinery, equipment, vehicles, spare parts and other movable property procured by the Concessionaire in connection with the Construction Works or the operation of the Port Terminal; and
- d. the Concessionaire shall deliver to the Grantor all as-built drawings, operation and maintenance manuals and quality assurance manuals relating to the Port Terminal.

17.5.3 *Compensation Payments*

Any compensation amount payable by the Grantor to the Concessionaire shall be payable at least 30 days after the

date of termination of this Agreement, or after the amount of the compensation has been agreed or determined, where this Agreement is continuing.

17.6 Liability and Indemnification

The parties hereto undertake and agree to hold harmless and indemnify each other in full from and against all liabilities, damages, losses and expenses incurred as a consequence of third party claims, to the extent that a third party claim is not caused by the negligence, default or omission of a party hereto in the performance of its obligations under this Agreement.

17.7 Use of Certain Insurance Proceeds

Whenever this Agreement is terminated pursuant to Article 16.1.11 following a Force Majeure, and the Grantor is obligated to pay compensation to the Concessionaire pursuant to Article 17.5.3 and insurance proceeds are available in connection with the insurance policies to which the Concessionaire is entitled or should be entitled pursuant to this Agreement with respect to the Port Terminal, such proceeds shall, if not used to effect a restoration or make repairs to the Port Terminal, be used to pay the following items in the following order of priority:

- a. to the payment of all indebtedness secured by the Lenders;
- b. to reduce the compensation amount, if any, payable by the Grantor to the Concessionaire.
- c. to the Concessionaire

17.8 Other Remedies

The right of a party to terminate this Agreement, as provided herein, does not preclude that party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedies by a party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that party.

17.9 Survival

The provisions of this Article 17 shall survive the termination of this Agreement.

ARTICLE 18
COMPENSATION FOR BREACH OF THIS
AGREEMENT

18.1 Compensation

Subject to the other provisions of this Agreement, each party shall be entitled to compensation, payable by the party breaching this Agreement, for any loss, costs and expenses which a party has suffered as a result of this Agreement not being observed in whole or in part by the party breaching this Agreement.

18.2 Exemptions

A party shall not be liable for a failure to perform any of its obligations if it proves that the failure was due to Force Majeure in accordance with Article 16 or to any other event as to which the aggrieved party bears the risk.

18.3 Measures to Mitigate the Loss

A party suffering or threatened with loss as a result of a breach of this Agreement by the other party shall take such actions as are reasonable to mitigate or minimize the loss resulting from the breach. If a party fails to take such measures, the party in breach may claim a reduction in the compensation in the amount by which such loss should have been mitigated or minimized.

The aggrieved party shall be entitled to recover any expenses reasonably incurred in attempting to mitigate or minimize such loss from the other party.

18.4 Loss Due in Part to the Aggrieved Party

Where the loss is due in part to an act or omission of the aggrieved party or to another event as to which the aggrieved party bears the risk, the amount of compensation shall be reduced to the extent that these factors have contributed to the loss.

18.5 No Consequential Damages

Unless otherwise provided in this Agreement, neither party shall be liable to the other party for any indirect, special, incidental, consequential or punitive damages with respect to any claim arising out of, under or in connection with this Agreement, whether based upon contract, tort including negligence, strict

liability or otherwise unless a party's behaviour amounts to Gross Misconduct.

18.6 Remedies Cumulative

Nothing in this Article 18 shall prevent either party from exercising any other remedy provided in this Agreement or available at law.

ARTICLE 19

LIABILITY AND INDEMNIFICATION

19.1 Cross Indemnity

Each party shall indemnify, defend and hold harmless the other party from and against all liabilities, damages, losses, expenses and claims of any nature whatsoever for death, personal injury and for damage to or loss of any property arising out of in any way connected with the indemnifying party's Default in the performance of this Agreement except to the extent that such death, personal injury, damage or loss is attributable to a negligent or intentional act or omission of the party seeking to be indemnified.

19.2 Environmental Contamination

The Concessionaire shall be liable for, and shall defend, indemnify and hold the Grantor harmless from and against, all liabilities, damages, losses, expenses and claims from Environmental Contamination caused by the construction, operation and maintenance of the Project, except when such liabilities, damages, losses, expenses or claims are solely attributable to the Default of the Grantor.

19.3 Survival of Obligations

The obligations of the parties under Articles 19.1 and 19.2 shall survive the expiration or termination of this Agreement in respect of any act, omission, deed, matter or thing happening before such expiration or termination.

19.4 Joint Responsibility

Except as otherwise provided in this Agreement, in the event that any loss or damage referred to in Article 19.1 and 19.2 is caused only in part by the Default of the Grantor and in part by the Default of the Concessionaire, each party shall; be liable to the other only in proportion to its relative degree of responsibility.

19.5 Defence of Claims

The party entitled to indemnification in respect of any claim brought against it shall promptly give notice to the other party that such claim has been brought. The indemnifying party may give notice to the other party accepting liability to indemnify and giving reasonable instructions as to how and by which party the claim is to be defended. Until receipt of such notice the indemnified party may take all reasonable steps in defence of the claim. Upon receipt of such notice, if any, the indemnified party shall follow the instructions given by the indemnifying party.

VII. ASSIGNMENT AND APPROVAL OF CONTRACTS

ARTICLE 20

ASSIGNMENT OF THE AGREEMENT

20.1 Assignment by the Grantor

The Grantor shall not assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Concessionaire and the Facility Agent.

It is hereby declared that this Article 20.1 shall not prevent the Grantor from merging or consolidating with any other governmental ministry, parastatal, department, authority or agency of the Federal Republic of Nigeria or any administrative subdivision of the Federal Republic of Nigeria provided that the surviving entity –

- a. is demonstrably of equal financial strength; and
- b. has the capability and authority to assume all rights, obligations and responsibilities assumed by the Grantor; and
- c. assumes and becomes fully liable to perform the Grantor's obligations under this Agreement.

20.2 Assignment by the Concessionaire

- a. The Concessionaire shall not, without the prior written consent of the Grantor, transfer all, or any of its obligations under this Agreement.
- b. It is hereby declared that for the purpose of arranging financing for the Project, the Concessionaire shall have the right to assign to the Lenders its rights and interests under or pursuant to this Agreement and any other agreement pertaining to or in respect of

[Handwritten signatures]

07/2005

the Project and to create a security interest for the benefit of the Lenders in such rights and interests and to create a security interest in favour of the Lenders in relation to the Port Terminal, the Site, the moveable, immovable and intellectual property of the Concessionaire, the revenues of the Concessionaire and any other rights of the Concessionaire (including rights in relation to its bank accounts).

- c. The Concessionaire shall not create or allow to be created any other security interest, lien, mortgage or encumbrance in respect of its rights and interests under this Agreement or any other Project Document or in the Port Terminal without the prior written consent of the Grantor.

ARTICLE 21

APPROVAL OF CONTRACTS

21.1 Approval of Contracts

The Concessionaire shall not enter into any contract or commitment whatsoever requiring payments or granting any right in relation with the Project which may produce any effect after the end of the Concession Period, without the prior written approval of the Grantor. Change and amendment to contracts approved by the Grantor shall be similarly subject to the Grantor's prior written approval.

21.2 Approval Procedure

The Concessionaire's request for approval of contracts shall include relevant information on the proposed contractors, the subject matter of the contract, the draft of the proposed contract, the method applied for selecting the proposed contractor and the use of Nigerian labour, service and goods in accordance with Articles 15.8 and 15.9. The Grantor shall notify the Concessionaire of its decision within, thirty (30) days after its receipt of the Concessionaire's request. If the Grantor fails to act within such thirty (30) day period, the request shall be deemed to be approved.

21.3 Effect of Contract Approval

Approval by the Grantor of a contract shall not relieve the Concessionaire from any obligation or liability under this Agreement.

DA
DA

MINERALS PORTS AND HARBOURS
SECRETARY, LOCAL DEPARTMENT
REC 00 07/12/05

VIII. DISPUTE RESOLUTION

ARTICLE 22

CANP/35

DISPUTE RESOLUTION

22.1 Co-ordinating Committee

22.1.1 *Composition and Tenure of Co-ordinating Committee*

Within thirty (30) days after the Construction Commencement Date the parties shall establish a Co-ordinating Committee comprising three (3) representatives of the Concessionaire and three (3) representatives of the Grantor. Either party may remove or replace any of its Co-ordinating Committee members at any time upon giving notice to the other party. The Co-ordinating Committee shall develop procedures for the holding of meetings, the keeping of minutes of meetings and the appointment and operation of subcommittees if necessary. The first chairman of the Co-ordinating Committee shall be appointed by the Grantor. The chairman of the Committee shall then rotate every three (3) months between the parties. Decisions of the Co-ordinating Committee shall require the unanimous approval of all the members of the Co-ordinating Committee.

22.1.2 *Functions of the Co-ordinating Committee*

The Co-ordinating Committee shall be responsible for resolving disputes in accordance with Article 22.2 concerning, but not limited to, the construction, commissioning, operation and maintenance of the Port Terminal. These matters shall include:

- a. the coordination of the respective programs and procedures of the parties for the construction, commissioning and operation of the Port Terminal;
- b. the discussion of the steps to be taken on the occurrence of Force Majeure affecting the construction, commissioning and operation of the Port Terminal;
- c. safety matters affecting the Port Terminal by the parties or their agents;
- d. appointment of the Panel of Experts for the resolution of disputes under this Agreement.

MT
9/11

- e. review and revision, subject to the Grantor's approval, of safety schemes; and
- f. any other matter mutually agreed to by the parties.

Camp 66

22.1.3 Decisions of members of Co-ordinating Committee

The parties shall instruct their representatives on the Co-ordinating Committee to act in good faith in dealing with matters considered by the Co-ordinating Committee. The Concessionaire shall use reasonable efforts to incorporate decisions of the Co-ordinating Committee in the operation and maintenance of the Port Terminal. Actions taken in conformance with the decision of the Co-ordinating Committee must also comply with the terms of this Agreement.

22.1.4 Best efforts of Co-ordinating Committee

The Co-ordinating Committee shall use its best efforts to resolve disputes in accordance with the procedures established in Article 22.2.

22.1.5 Cost of Co-ordinating Committee

Relevant costs of the Co-ordinating Committee (except the salaries of the representatives of the Grantor) shall be borne by the Concessionaire.

22.1.6 Limitation on decisions of Co-ordinating Committee

The decisions of the Co-ordinating Committee shall not release either party from any of its obligations under this Agreement or impair the rights of the parties under this Agreement.

22.2 Amicable Settlement by the Co-ordinating Committee

In the event that any dispute, controversy or claim arises between the parties out of under or in connection with this Agreement or in the interpretation of any of its provisions, including any question regarding its existence, validity or termination, the Co-ordinating Committee shall meet promptly on the request of any member thereof, in an effort to resolve such dispute, controversy or claim by discussion. All such disputes shall be amicably settled through discussion between the representatives of the Co-ordinating Committee and the unanimous decision of the Co-ordinating Committee shall be binding upon the parties. In the event that a settlement is not reached pursuant to this Article 22.2 within thirty (30) days of the said request then the provisions of Article 22.3

[Handwritten signatures]

shall apply.

22.3 Mediation by Panel of Experts

22.3.1 *Appointment*

In the event that the parties are unable to resolve a dispute, controversy or claim in accordance with Article 22.2 then either party may refer the dispute, controversy or claim to a Panel of Experts to be appointed by a unanimous decision of the Co-ordinating Committee. If, the Co-ordinating Committee has not reached a unanimous decision within fifteen (15) days of the issue of a notice of intention to refer to a Panel of Experts, the parties shall either agree on the appointment of one person to act as expert or, failing agreement, appoint one expert each and those experts shall, within seven (7) days of their appointment, designate a third person to act also as expert.

In order to ease the process of appointment of expert agreeable to all parties the Coordinating Committee shall select and keep up to date at all times a list of experts who, in principle, are agreeable to both parties to act as a third expert.

22.3.2 *Statement of Claim*

The party who initially issued the notice of intention to refer the matter to the Panel of Experts shall submit to the Panel of Experts and to the other party the following written documents –

- a. a description of the dispute;
- b. a statement of that party's position; and
- c. copies of relevant documentary evidence in support.

22.3.3 *Reply*

Within ten (10) days of receipt of the above documents, the other party shall submit –

- a. a description of the dispute as perceived by that party;
- b. a statement of that party's position; and
- c. copies of relevant documentary evidence in support

22.3.4 *Further Evidence*

The Panel of Experts may call for such further documentary evidence and/or interview such persons as they deem necessary in order to reach their decision.

22.3.5 *Decision*

The Panel of Experts shall reach a majority decision and give notice to the parties of their decision within thirty (30) days of

receipt of the documents provided under Articles 22.3.2 and 22.3.3. The decision of the Panel of Experts shall be binding unless one party issues a notice of intention within thirty (30) days of the decision to refer the matter to arbitration in accordance with Article 22.4. In such case the Panel of Experts decision shall remain binding until final resolution by the arbitration or until an interim decision of the arbitration tribunal reversing or amending the Panel of Experts' decision.

22.3.6 Costs

The costs of engaging the Panel of Experts shall be borne equally by the parties, and each party bear its own costs of preparing the materials for and making presentations to the Panel of Experts.

22.4 Arbitration

22.4.1 Resolution of Disputes by Arbitration

In the event that the parties are unable to resolve any dispute, controversy, or claim in accordance with Article 22.2 or 22.3 and in case of challenge to any decision of the Panel of Experts under Article 22.3.5, or in case of any other dispute whatsoever under this Agreement, such dispute, controversy or claim shall be finally settled by arbitration in accordance with the Rules for Arbitration of the Regional Centre for International Commercial Arbitration, Lagos.

22.4.2 Place of Arbitration

The Place of arbitration shall be London or any country mutually agreed by the parties

22.4.3 Language of Arbitration

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.

22.4.4 Appointment of Arbitration Panel

The Arbitration Panel shall consist of three Arbitrators, each party appointing an Arbitrator while the two appointed Arbitrators shall appoint the third Arbitrator who shall be the Chairman. In the event of the two Arbitrators not being able to agree on the appointment of the third Arbitrator, they shall apply to the the Regional Centre for International Commercial Arbitration, Lagos, who shall appoint the third Arbitrator, to adjudicate on the dispute.

22.4.5 Procedure of Arbitration

The procedure to be followed within the arbitration, including the

the rules of evidence which are to apply shall be in accordance with Rules for Arbitration of the Regional Centre for International Commercial Arbitration, Lagos.

22.5 Multiparty Dispute Resolution – Consolidation of Arbitration Proceedings

The parties shall agree to join any dispute resolution procedure under this Agreement with any other dispute resolution procedure pending in respect of any other Project Document relating to substantially the same matter, subject to the terms of the arbitration provisions in respect of any dispute that has been referred to arbitration.

22.6 Performance During Dispute Resolution

Pending the submission of a dispute, controversy or claim to the Co-ordinating Committee, the Panel of Experts and/or arbitration and thereafter until the final decisions of the Panel of Experts and/or the arbitration tribunal, the parties shall continue to perform all of their obligations under this Agreement and shall benefit from all their rights without prejudice to a final adjustment in accordance with such decision.

22.7 Survival

The dispute resolution provisions contained in this Article 22 shall survive the termination of this Agreement.

IX. MISCELLANEOUS

ARTICLE 23

CONTRACT DOCUMENTS AND ENTIRE AGREEMENT

23.1 Contract Documents

This Agreement includes **Annexes A to G** and the Technical Designs, Drawings and Specifications, each of which shall be deemed to be incorporated herein.

23.2 Entire Agreement

This Agreement constitutes the entire understanding between the parties regarding the Project and supersedes all previous written and oral representations, agreements or arrangements regarding the Project.

[Handwritten signatures]

RECEIVED
07/12/2005

CANP/90

the rules of evidence which are to apply shall be in accordance with Rules for Arbitration of the Regional Centre for International Commercial Arbitration, Lagos.

22.5 Multiparty Dispute Resolution – Consolidation of Arbitration Proceedings

The parties shall agree to join any dispute resolution procedure under this Agreement with any other dispute resolution procedure pending in respect of any other Project Document relating to substantially the same matter, subject to the terms of the arbitration provisions in respect of any dispute that has been referred to arbitration.

22.6 Performance During Dispute Resolution

Pending the submission of a dispute, controversy or claim to the Co-ordinating Committee, the Panel of Experts and/or arbitration and thereafter until the final decisions of the Panel of Experts and/or the arbitration tribunal, the parties shall continue to perform all of their obligations under this Agreement and shall benefit from all their rights without prejudice to a final adjustment in accordance with such decision.

22.7 Survival

The dispute resolution provisions contained in this Article 22 shall survive the termination of this Agreement.

IX. MISCELLANEOUS

ARTICLE 23

CONTRACT DOCUMENTS AND ENTIRE AGREEMENT

23.1 Contract Documents

This Agreement includes **Annexes A to G** and the Technical Designs, Drawings and Specifications, each of which shall be deemed to be incorporated herein.

23.2 Entire Agreement

This Agreement constitutes the entire understanding between the parties regarding the Project and supersedes all previous written and oral representations, agreements or arrangements regarding the Project.

[Handwritten signatures]

23.3 Amendments and Variations

Any amendment, addition or variation to this Agreement shall be valid and binding only if in writing and only if signed by the authorised representatives of both parties.

23.4 Separability

If any part or parts of this Agreement shall be declared invalid by any competent arbitration tribunal or court, the other parts shall remain valid and enforceable.

ARTICLE 24

MISCELLANEOUS

24.1 Several Obligations

The duties, obligations and liabilities of the parties under this Agreement are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture among the parties. Each party shall be liable individually and severally for its own obligations under this Agreement.

23.2 Notices

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses set forth below:

The Grantor:

The Managing Director
Nigerian Ports Authority
26/28, Marina
Lagos

The Concessionaire:

17, Burma Road
Apapa - Lagos
Lagos
Attention: The Managing Director
Fax No. 01-5453435; 5873805

07/12/05

Or such other address, telex number or facsimile number as may be notified by that party to the other party from time to time, and shall be deemed to have been made or delivered –

- a. in the case of any communication made by letter, when delivered by hand by recognized international courier or by mail (registered, return receipt requested) at that address and
- b. in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.
- c. In case that party changes its address and/or attention, it shall notify the other party in writing prior to adoption of the new address and/or attention.

23.3 Costs and Expenses

Unless otherwise provided for in this Agreement or otherwise agreed by the parties, each party shall bear its own costs incurred in connection with the negotiation, completion and performance of this Agreement.

23.4 Non-waiver

None of the provisions of this Agreement shall be deemed waived by either party except when such waiver is given in writing. The failure by either party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

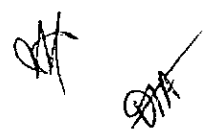
23.5 Waiver of Sovereign Immunity

To the extent that the Grantor may claim for itself or its assets or revenues immunity from suit, execution, attachment or other legal process, the Grantor agrees not to claim and hereby irrevocably waives such immunity.

23.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria.

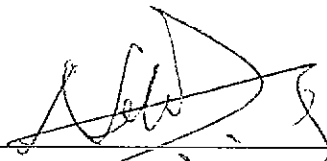
IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorised representatives on the dates first above written.



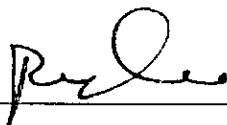
07/2005

**THE COMMON SEAL OF THE GRANTOR,
NIGERIAN PORTS AUTHORITY**

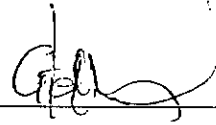
Was hereunto affixed in the presence of:



HON MINISTER OF TRANSPORT & CHAIRMAN OF THE GRANTOR



MANAGING DIRECTOR



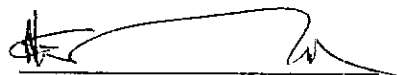
SECRETARY

**THE COMMON SEAL OF THE CONCESSIONAIRE
PORTS AND TERMINAL MULTISERVICES LIMITED**

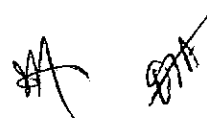
was hereunto affixed in the presence of:



CHAIRMAN/ DIRECTOR



SECRETARY



ANNEX A

PROJECT SCOPE OF WORKS

Construction of a 'new' berth, Berth 11, of about 230 meters in length along Tin Can Island.

Dredging of the berth and the access way to 11 Mt. drafts.

Construction of stacking area on the land of the existing estate and extend it by sand filling from the present shoreline to the new quay apron.

Acquisition of the existing 1979 pre-fab construction village housing estate at full commercial value in the sum of over ₦500 million with a view to converting same to the approved RoRo port infrastructure, i.e. parking area, office block, documentation building, etc.

Development and upgrading of the whole area known as Loop (Satellite Car Park).

Construction of a link (overhead/underpass) between the new terminal and the loop.

Electrical works: Build a power station. Rehabilitate existing lighting. Install lighting in the new areas developed. Install power points for refrigerated containers.

Develop an efficient, fully computerized administration block to house Terminal Releasing, Ship Agencies Releasing, Customs and banks all working all to be connected through and INTRANET to achieve the targeted 24 hours releasing of cargo set by the Ministry of Transport but not so far achieved with the objective of creating an intranet linking all parties involved in the releasing process. Demolish all redundant low-rise buildings in the operational areas, to maximise cargo storage space and exclude human traffic from operational areas by concentrating all functions in the new administration block. This will also help to achieve the IMO standard of Port Security.

CAMP/95

ANNEX B

OPERATION AND MAINTENANCE BOND

POLICY NO. _____

Brief description of Contract: **Construction of Berth 11, Tin Can Island Port, Apapa, Lagos** (referred to as "the Port Terminal").

Name and address of Beneficiary: **FEDERAL GOVERNMENT OF NIGERIA** and the **NIGERIA PORTS AUTHORITY** (together with its successor-in-title and assigns, referred to in the Concession Agreement as "the Grantor").

BY THIS BOND, We PORTS AND TERMINAL MULTISERVICES LIMITED (Concessionaire under the Concession Agreement) as **Principal** and _____ **INSURANCE COMPANY LIMITED** whose office is at _____; as **Guarantor** are irrevocably held and firmly bound to the **Beneficiary** in the total amount of **US\$3,000,000.00 (three million United States Dollars)** (the "Bond Amount") for the due performance of the Principal's construction obligations under the Agreement. The Bond shall be released upon six (6) months after the Transfer Date under the Concession Agreement (the "**Expiry Date**").

All or so much of the Bond as shall remain outstanding shall be released upon the earlier of:

- a. twelve (12) months after the Transfer Date of the Port Terminal, and
- b. twelve (12) months after the termination of this Agreement after deduction of any compensation due to the Grantor from the Concessionaire in respect of any liability of the Concessionaire under the Concession Agreement arising on or prior to such termination.

The Bond shall become effective on the commencement of the Concession Period as defined in the Concession Agreement.

We hereby undertake to pay to you any sum or sums not exceeding in aggregate **US\$3,000,000.00 (three million United States Dollars)** on receipt by us in this office of your first demand on us in writing, the signature appearing thereon to be duly authenticated by your bankers, complying with all the requirements hereof, quoting our above Guarantee Number and stating:

1. the amount payable, and

CANP/96

2. that the Concessionaire has failed to perform the terms of the said Concession Agreement.

However, the total liability of the Guarantor shall not exceed the Bond amount and the Bond amount shall reduce pro-rata with the quantum of construction work performed by the Principal.

The obligations and liabilities of the Guarantor shall not be discharged by any allowance of time or other indulgence whatsoever by the Beneficiary to the Principal, or by any variation or suspension of the works to be executed under the Concession Agreement, or by any amendments to the Concession Agreement or to the constitution of the Principal or the Beneficiary or by any other matter, whether with or without the knowledge or consent of the Guarantor.

Any claim under this Bond must be received by the Guarantor on or before (the "Expiry Date"), when this Bond shall expire and shall be returned to the Guarantor.

The benefit of this Bond may be assigned subject to the provisions for assignment to a lawful assignee of the Concession Agreement and subject to the receipt by the Guarantor of evidence of such assignment.

This Bond shall be governed by the laws of the Federal Republic of Nigeria.

Wherefore this Bond has been issued by the Principal and the Guarantor on _____, 200__.

The Common Seal of the within named.

[Handwritten signatures]

ANNEX C

CAMP 197

07/12/05

PROJECT SURVEY/SITE PLAN



SA JPA

ANNEX D

CANP/98

DETAILED PROJECT COST

Description of Works	US DOLLARS
Acquisition of housing estate	1,934,783
Construction of Berth -11	18,801,937
Dredging of berth and access channel to 11 Mt. Draft, 275,000 CBM @ USD 3.50 per CBM	962,500
Sand filling reclaimed area between quay wall and existing shoreline 75,000 CBM at NGN 1300 per CBM	717,000
Construction of new RORO multipurpose terminal and development of loop	5,462,785
Provision for under passage connecting the terminals	380,000
Electrical Works and power generators	933,000
Plant and workshop. (see Encl. 1)	9,080,439
Office block 2600 Sq. m. @ US\$ 320 per Sq. m.	832,000
Provision for communications equipment, networking, computer hardware and software, office furniture etc. (See Encl. 2)	750,000
Project Technical Supervisions for 18 months	1,275,000
Total development cost	41,129,444
Financial Costs	21,344,100
Total Project Cost:	62,473,544



[Handwritten signatures]

ANNEX E**CONCESSION FEES AND ROYALTY PAYMENTS
STRUCTURE AND PROCEDURE****Part 1 Cargo dues (Tariff) Sharing Formula**

Cargo Dues sharing from year 1 to 25		
PERIOD YEAR FROM COMMENCEMENT OF OPERATIONS	CARGO DUES (TARIFF) SHARING FORMULA GRANTOR %	CARGO DUES (TARIFF) SHARING FORMULA CONCESSIONAIRE %
1 to 5	17.5	82.5
6 to 10	19.0	81.0
11 to 15	23.0	77.0
16 to 20	27.0	73.0
21 to 25	30.0	70.0

Part 2 Sharing Formula for Rent on Cargo:

PERIOD YEAR FROM COMMENCEMENT OF OPERATIONS	CARGO DUES (TARIFF) SHARING FORMULA GRANTOR %	CARGO DUES (TARIFF) SHARING FORMULA CONCESSIONAIRE %
1 to 5	15.0	85.0
6 to 10	17.5	82.5
11 to 15	20.0	80.0
16 to 20	22.5	77.5
21 to 25	25.0	75.0

ANNEX F

PLANT, NETWORK, COMMUNICATION, OFFICE AND OTHER REQUIREMENTS

PLANT REQUIREMENTS

On board OPS/Transfer	QTY	Price/Eur	Total/Eur
32 T Kalmar	3	250,000.00	750,000.00
32 T low mast	1	250,000.00	250,000.00
12 T Kalmar for empties	2	180,000.00	360,000.00
5 T forklift	2	40,000.00	80,000.00
Tugmaster with trailer	8	132,000.00	1,056,000.00
Container Receiving			
Kalmar Reach Stacker	2	350,000.00	700,000.00
12 T for empties	2	180,000.00	360,000.00
32 T handler	1	250,000.00	250,000.00
Container delivery/Examination			
Kalmar reach stacker	2	350,000.00	700,000.00
32 T handler	2	250,000.00	500,000.00
3.5 T forklift	2	20,000.00	40,000.00
RORO Traffic			
Bobcat	4	25,000.00	100,000.00
Towing vehicles	4	25,000.00	100,000.00

GA

GA

07/12/05

CANP(10)

Van for drivers	3	12,000.00	36,000.00
7-T forklift	2	38,000.00	76,000.00
Car Park Operation			
7 t forklift	4	38,000.00	152,000.00
General Gears			
20' spreader	2	5,000.00	10,000.00
40' Spreader	2	8,000.00	16,000.00
Kit of container slings	3	1,200.00	3,600.00
Provision for Workshop Tools		100,000.00	100,000.00
Assorted Slings		5,000.00	5,000.00
Low bed trailers	4	18,000.00	72,000.00
Car lifting Slings	2	1,250.00	2,500.00
Truck lifting Slings	2	2,500.00	5,000.00
Car towing Slings	50	120.00	6,000.00
Truck towing Sling	10	250.00	2,500.00
Total FOB			5,732,600.00
Sea freight Average 10%			573,260.00
Customs Duty + VAT + Taxes + Clearing average 20%			1,261,172.00
Total provision for Plant – EUR			7,567,032.00
Total provision for Plant – USD (ROE 1.2)			9,080,438.40

ST

ST

07/12/2005

NETWORK, COMMUNICATION AND OFFICE

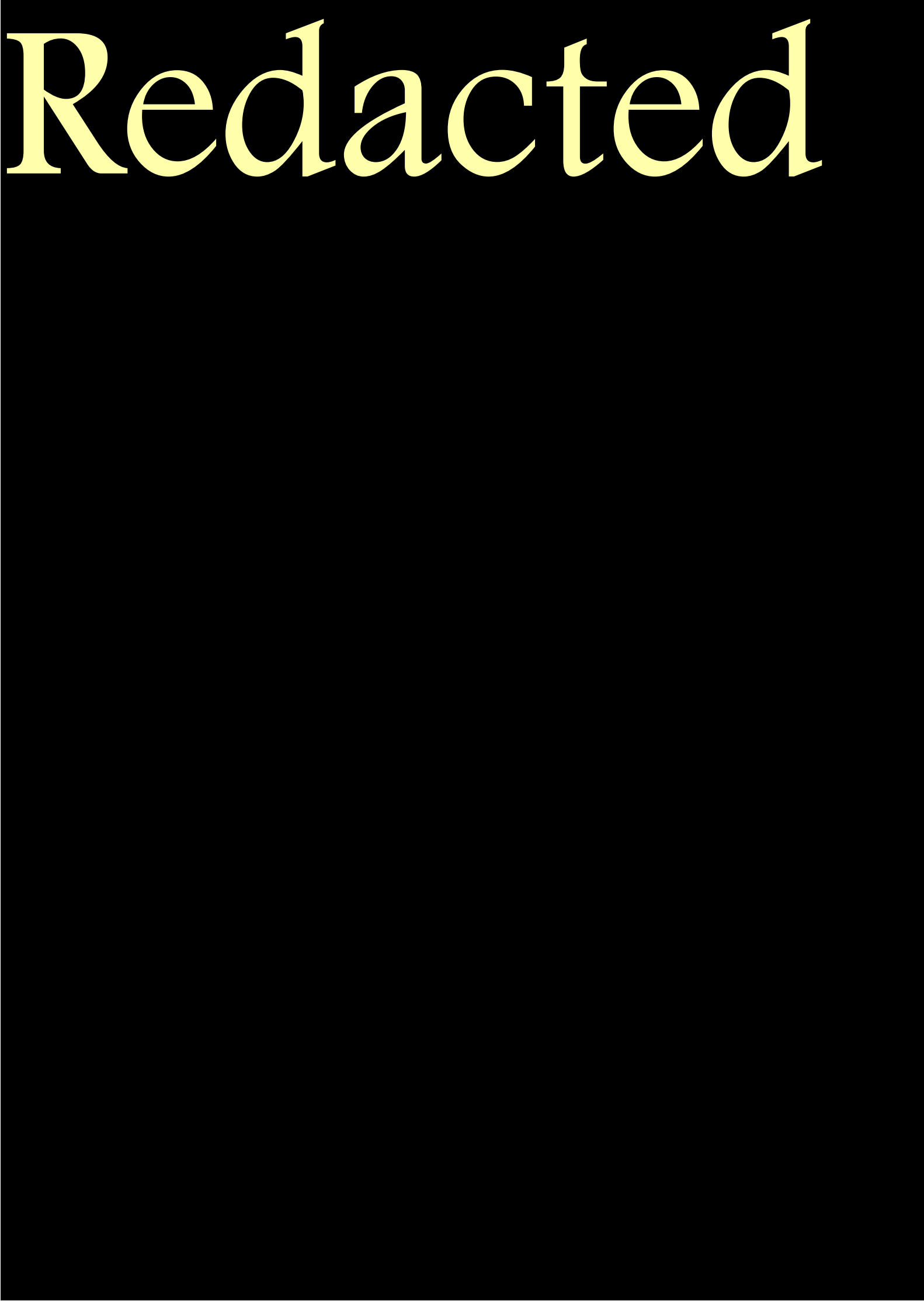
Description	QTY	Price/US\$	Total/US\$
EDP and Server room			
Main Server DL380	1	120,00.00	12,000.00
Back-up server ML350	1	35,00.00	3,500.00
Border Manager HP ML350	1	3,500.00	3,500.00
Router	1	1,800.00	1,800.00
Data Storage HP autoloader 1/8	2	9,200.00	18,400.00
APC symmetra UPS 12 Kva	3	12,500.00	37,500.00
24 port switch – 4400 Layer 3 – Standard	4	1,600.00	6,400.00
Workstation	4	1,200.00	4,800.00
Printer HP	4	250.00	1,000.00
Network laser printer	1	3,200.00	3,200.00
Cisco microwave bridge for releasing gates	3	4,200.00	12,600.00
Scanner	1	250.00	250.00
Notebook	2	1,500.00	3,000.00
Accounts + Admin + Payroll			—
Workstation	10	1,200.00	12,000.00
Printers	10	250.00	2,500.00
Network laser printer	1	3,200.00	3,200.00
Releasing documentation and			
Workstation	20	1,200.00	18,000.00
Line printers OKI ML 280	20	250.00	12,000.00

SA
SA

07/2005

Printers			
Network laser printer	1	3,200.00	3,200.00
Management			
Workstation	10	1,200.00	12,000.00
Printers	10	250.00	2,500.00
Network laser printer	1	3,200.00	3,200.00
Operations and tally			
Workstation	5	900.00	4,500.00
Printers	5	250.00	1,000.00
Bar code readers	5	1,800.00	9,000.00
Customs			
Workstation	4	900.00	3,600.00
Printers	4	250.00	1,000.00
Bank cashiers			
Workstation	4	900.00	3,600.00
Line printers OKI ML280 Printers	4	600.00	2,400.00
Software			
Novel Netware 6 with 60 users licenses	1	6,200.00	6,200.00
Novell Border Manager Licenses	1	1,150.00	1,150.00
SAGE Finance and acct.	1	4,500.00	4,500.00
Sage Payroll	1	3,000.00	3,000.00
Microsoft office with 60 users licenses	1	10,200.00	10,200.00
Container tracking and releasing Software	1	150,000.00	150,000.00
Car tracking and releasing	1	150,000.00	150,000.00

software			
Bar code interface to network	1	2,500.00	2,500.00
Ship billing software	1	20,000.00	20,000.00
Communication			
Motorola VHF net for operations			
with base, repeater and 50 handsets	1	50,000.00	50,000.00
Office furniture and fittings	1	150,000.00	150,000.00
Total Provision:			749,450.00



Redacted