

THIS SUPPLEMENTAL AGREEMENT made the 15TH day of April 2014

REG. NO. 217/2014

BETWEEN

NIGERIAN PORTS AUTHORITY, a public authority constituted under the Nigerian Ports Authority Act, cap. N126, Laws of the Federation of Nigeria, 2004 whose registered office is situate at No, 26/28, Marina, Lagos (the "Lessor").

THE BUREAU OF PUBLIC ENTERPRISES, the secretariat of the National Council on Privatization ("NCP") and an agency of the Federal Government established under the Public Enterprises (Privatization and Commercialization) Act, cap. P38, Laws of the Federation of Nigeria, whose registered office is situate at No. 11 Osun Crescent Maitama, Abuja ("BPE"); as the Confirming Party of Lessor;

AND

JOSEPDAM PORTS SERVICES LIMITED, a private limited liability company incorporated under the Laws of the Federation of Nigeria whose registered office is situate at No. 19 Fatai Atere Way, Matori, Lagos (the "Lessee") being a special purpose vehicle established by Josepdam & Sons Nigeria Limited, a company registered under the laws of Nigeria (Josepdam).

(The Lessor, BPE and the Lessee, their respective successors and assigns are hereinafter referred to individually as a "Party" and collectively as the ("Parties").

AND MADE supplemental to a Lease Agreement entered into between the Parties dated the 11th May, 2006 in respect of Terminal "A" Tin Can Island Port, Lagos.

WHEREAS

- i. Pursuant to the objectives of the Federal Government of Nigeria to concession Nigerian ports to private operators, the BPE invited bids from the general public in respect of a portion of Tin Can Island Port, known and referred to as "Terminal A";
- ii. At the end of the competitive bidding process on or about the 2nd September, 2005 the Lessee won the bid and was consequently awarded a lease of the Premises known and referred to as the Tin Can

Island Port "Terminal A" within Tin Can Island Port by a Lease Agreement dated 11th May, 2006 for a period of ten (10) years;

- iii. In line with the Lease Agreement, the Lessee was granted possession of the Premises on the 11th of May, 2006, however, the Lessee was unable to perform the Operations and fully utilize the Premises because of the following events:
- (a) At the handover date, the Lessor had tenants whose tenancies had been terminated but continued to hold over portions of the Premises thereby making it difficult for the Lessee to effectively commence operations;
 - (b) Four of the sitting tenants instituted actions in court and obtained an injunctive order of court restraining the Lessee from evicting them in order to take possession and undertake operations in the area;
 - (c) That as a direct result of the forgoing, the Lessor could not approve nor was the Lessee able to implement all its development plans.
- iv. After the cessation of the litigation, the Lessee made strenuous efforts at fulfilling the Development Plans and also kept up with the payment of its Throughput and Lease Fees.
- v. Sequel to the foregoing and as part of its strategy to create a terminal that combine an effective working relationship with neighboring millers, the Lessee engaged Hamburg PC Gmbh to undertake a study on the cost of completing the remaining developments and period necessary for undertaking them. The study shows that an investment of not less than \$40m-\$50m would be required, which is far above the projected cost under the Lease Agreement.
- vi. That in order to effectively undertake the developments and also recover the cost of its investment considering the loss of four (4) years due to litigations, the Lessee by letter 28th August, 2013 applied to the Lessor for an extension of its term with a period of five (5) years. The Lessor through the Ministry of Transport by letter referenced

T160/S95/C.33/T3/157 dated 23rd October, 2013 referred the matter to BPE for consideration;

- vii. Consequent upon paragraphs (iii) to (vi) above, BPE presented the matter to the National Council on Privatisation (NCP) at its 1st Meeting for 2014 held 14th March, 2014, which upon consideration of the Lessee request, approved that the lease period of Tin Can Island Ports Terminal "A" be extended by Five (5) years and also amend the scheduled Lease Fees accordingly;
- viii. In view of the above and in exercise of powers vested in the Parties by virtue of Article 17.3 to amend the Agreement upon the mutual consent of the Parties hereto::

THIS SUPPLEMENTAL AGREEMENT WITNESSES AS FOLLOWS:

1. Definitions

Terms defined and capitalized words in the Agreement dated 11th May, 2006 shall have the same meaning when used in this Supplemental Agreement, unless it is otherwise expressly stated.

"Agreement" when used in the Agreement dated 11th May, 2006 shall be deemed to include reference to this Supplemental Agreement.

"Supplemental Agreement" refers to the agreement contained herein.

2. Effects of Amendment

Except as modified, amended or changed as appear hereunder, all terms, provisions and conditions contained in the Agreement shall govern this Supplemental Agreement and be in full force and effect.

3. Article 2.2: Term

Article 2.2 of the Agreement shall be amended by replacing the "tenth (10th) anniversary of the Effective Date" with the phrase "fifteenth (15th) anniversary of the Effective Date" and the Term thereby granted is hereby deemed to have been amended and restated with effect from the Effective Date.

4. Lease Fees

The Lease Fees for the tenth (10th) year of the Term shall be progressed every two years with 5% from the eleventh (11th) year till the expiration of the Term.

5. Development Plan (Appendix C)

- i) The Lessee shall undertake all developments which ought to have been undertaken during the first eight (8) years of the term prior to this Supplemental Agreement which the Lessee could not undertake in line with Appendix C of the Agreement because the areas were not handed over such that the developments shall be concluded within two (2) years of this Supplemental Agreement.
- ii) The Development Plan shall be amended with the inclusion of the following developments with the investment of not less than \$50 million which shall be implemented within 3 years of this Supplemental Agreement as follows :
 - (a) Demolish the existing masonry fence walls and replacing it with DSI 1722 Part 14 category, type 4 Fence in conformity with the ISPS Code.
 - (b) Maintenance of the entire surface area within the terminal to ensure that it remains in good condition throughout the term.
 - (c) Installation of bagging machines at the terminal.
 - (d) Purchase of 500KVA Caterpillar generating set.
 - (e) Expand and upgrade its operational/safety equipment, ICT facilities, and environmental obligations.
 - (f) Rehabilitation of Office Complex.
 - (g) Installation of additional street lighting.

6. Maintenance prior to end of term

The Lessee agrees that at least 18 (eighteen) months prior to the end of the Term, it shall cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Lease Property. If as a result of such survey, the Expert reports that

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the Lease Property or any part therefore have not been operated and maintained in accordance with the requirements of this Agreement in keeping with Prudent Industry Standards, (normal wear and tear excepted), the Lessee shall, at its cost and expense, take all necessary steps to put the same in good working condition (fair wear and tear excepted) well before the expiry date.

7. Waiver of prior accrued rights

Except to the extent agreed in this Supplemental Agreement, the Lessee hereto irrevocably waives its rights in respect of any claims howsoever arising for antecedent breaches (which occurred before the date of this Supplemental Agreement), if any, and any accrued rights pertaining thereto shall remain extinguished and unenforceable against the Lessor.

8. Agreement to remain in force as amended

Save as provided above, the Agreement shall remain in full force and effect in accordance with its terms and conditions and from the commencement of this Supplemental Agreement, any and all references in the Agreement, such as "hereunder," "hereinafter" or other derivative description in the Agreement shall be construed as reference to it as amended by this Supplemental Agreement.

9. Duty to Cooperate

Upon the execution of this present, Parties shall continue to cooperate in good faith and dialogue with a view to resolving any other outstanding issues.

10. Commencement date.

It is agreed between the Parties that the commencement date of this Supplemental Agreement shall be the 11th May, 2014.

THE COMMON SEAL OF THE WITHIN NAMED LESSOR:


THE NIGERIAN PORTS AUTHORITY (NPA) was hereto affixed in the presence of:


.....
MANAGING DIRECTOR


.....
f: SECRETARY

THE COMMON SEAL OF THE BUREAU OF PUBLIC ENTERPRISES (BPE) was hereto affixed in the presence of:


.....
DIRECTOR GENERAL


.....
SECRETARY

THE COMMON SEAL OF THE WITHIN NAMED LESSEE: JOSEPDAM PORT SERVICES LTD was hereto affixed in the presence of:


.....
CHAIRMAN/ DIRECTOR


.....
DIRECTOR



Redacted

Redacted

NIGERIAN PORTS AUTHORITY
SECRETARY/LEGAL DEPARTMENT

REG. NO. 017/2019

Redacted