



**LEASE AGREEMENT
FOR TINCAN ISLAND TERMINAL A**

by and among

NIGERIAN PORTS AUTHORITY
as the Lessor.

BUREAU OF PUBLIC ENTERPRISES
as the Confirming Party.

and

JOSEPDAM PORTS SERVICES NIGERIA LIMITED
as the Lessee.

Dated the 11th day of May, 2006

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Jose

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TERMINAL A

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is made and entered into this 11th day of May, 2006 ("Execution Date") by and among:

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

THE BUREAU OF PUBLIC ENTERPRISES, the Secretariat of the National Council of Privatisation ("NCP") and an agency of the Federal Government of Nigeria established under the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999, whose registered office is situated at No.1 Osun Crescent, Maitama – Abuja, Nigeria ("BPE"), in its capacity as Confirming Party of Lessor; and

JOSEPDAM PORTS SERVICES LIMITED, a private company incorporated under the laws of the Federation of Nigeria whose registered office is at (19 Fatai Atere Way, Matori, Lagos Nigeria ("the Lessee") being a special purpose vehicle established by Josepdam & Sons Nigeria Limited, a company registered under the laws of Nigeria with its registered office at 19, Fatai Atere Way, Matori, Lagos, Nigeria (Josepdam)

Each of the Lessor, BPE, the Lessee and their respective successors and permitted assigns are hereinafter referred to individually as a "**Party**" and, collectively, as the "**Parties**."

WHEREAS:

- A. By virtue of the Act, the Lessor is, amongst other things, charged with the responsibility of constructing, executing, carrying out, equipping, improving, working and developing ports, docks, harbours, piers, wharves, canals, water courses, embankment and jetties in Nigeria and may carry out any of these responsibilities through any other person authorised by it in that behalf.
- B. The Federal Government of Nigeria ("FGN") has embarked upon a Port Reform and Modernization Strategy in order to increase its efficiency and reduce cost to users and the FGN. As part of this strategy, the FGN has decided to transfer the management and operation of the major port terminals from the Lessor to the private sector through a series of operating leases.
- C. The NCP is the agency established by the FGN under the Public Enterprises (Privatisation and Commercialisation) Act No 28 of 1999 to formulate and approve policies on privatization and commercialization. BPE is the implementation agency of the NCP for the leasing of port terminals in Nigeria.
- D. The Lessee is:
 - (a) a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 on 5th day of January 2006 with registration number RC 644061 .
 - (b) formed as a special purpose vehicle by Josepdam

Jose

[Signature]



- E. On 8th day of July 2005, BPE as Secretariat of the NCP, invited bids for fully priced technical and financial proposals for the lease from the Lessor of the terminal forming part of Tincan Island Port (the "Port"). On 2nd day of September 2005, as a result of such competitive bid process, the right to lease Terminal A at the Port from the Lessor was awarded by BPE to Josepdam. Josepdam has formed the Lessee as a special purpose vehicle, to enter into this Agreement.
- F. Following the award of the right to lease Terminal A at the Port referred to in Recital E above, the Lessor has agreed to undertake a survey (the "Real Property Survey") of the real property in the Port to be leased to the Lessee (the "Premises") subject to and in accordance with this Agreement and to undertake a survey ("Dredging Survey") of the berths and the approach channel at the Premises with a view to preparing a dredging plan (the "Dredging Plan") in order to fulfil its obligations in relation to dredging as more particularly set out in this Agreement. Upon their completion, the results of the Real Property Survey confirming the parameters of the Premises and the Dredging Plan shall form an integral part of this Agreement.
- G. The Parties have agreed to enter into this Agreement to:
- (a) lease the Premises and certain immovable property affixed to the Premises as further described in Appendix B (the "Fixed Assets," and together with the Premises, the "Lease Property");
 - (b) make certain improvements to the Lease Property as further described in the development plan attached as Appendix C (the "Development Plan"); and
 - (c) perform the operations as further described in Appendix D (the "Operations"), certain other operation, maintenance and other services with respect to the Lease Property, subject to and in accordance with the terms and conditions set out in this Agreement.

WITNESSETH

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

Jose

[Signature]



ARTICLE I

DEFINITIONS; INTERPRETATION

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

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

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

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

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

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

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

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

"Change in Law" means any amendment, modification, superceding act, deletion, addition or change in or to the Applicable Laws that occurs and takes effect after the Execution Date and demonstrably and adversely affects a Party's performance of its obligations hereunder.

"Change of Control" means the occurrence of any of the following: (a) Josepdam ceases to control fifty one percent (51%) or more of the issued and outstanding Equity Interests in the Lessee, on a fully diluted basis, or (b) Josepdam creates, incurs, assumes or suffers to exist any mortgage, lien, encumbrance, pledge, security interest, covenant, condition, restriction, claim, charge, option, right of first refusal, right of use or occupancy, or other legal or equitable encumbrance, or any preference, priority or other arrangement having materially the same effect as any of the foregoing, and any other matter affecting title on the Equity Interests in the Lessee controlled by it.

"Commencement Fee" has the meaning set forth in Appendix E.

"Common Areas" means all areas and facilities outside the Premises and within the exterior land boundary lines of the Port (excluding the Berths) that are provided and designated by the Lessor from time to time as "common areas" for general non-exclusive use.

"Control" means the possession, direct or indirect, of the power to vote fifty one percent (51%) or more of the Voting Interests of a Person or to direct or cause the

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direction of the management and policies of such Person, whether through the ownership of Voting Interests, by contract or otherwise. This definition shall also apply to the terms "Controlling," "Controlled by" and "under common Control with."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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not caused by a non-compliance with its obligations under this Agreement or Applicable Law; (vii) the inability by the affected Party, despite its reasonable efforts, to timely and correctly obtain any permit that enables such Party to meet its obligations under this Agreement; or (viii) pollution that was not caused by the noncompliance of the Party claiming Force Majeure with its obligations under this Agreement or Applicable Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Month" means a calendar month.

"Nigeria" means the Federal Republic of Nigeria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Routine Maintenance" means maintenance, repairs, renewals and replacements of the Lease Property existing at the Execution Date by the Lessee but excluding the Quay Wall and navigational aids on the Premises. For the avoidance of doubt, Maintenance does not include maintenance, repairs, renewals and replacements by the Lessor, Improvements carried out by the Lessee pursuant to the Development Plan or other improvements or alterations made in accordance with the provisions of Section 4.3(a) of this Agreement;

"Staffing and Succession Plan" means the plan set forth in Appendix H.

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

"Termination Date" has the meaning set forth in Section 2.2.

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

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

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

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

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

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

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

"Waste Material" means unwanted material left over from a manufacturing process or refuse from places of human or animal habitation and shall include hazardous waste



being a by product of anthropogenic activities that is either ignitable, corrosive, reactive or toxic and that can pose a substantial or potential hazard to human health or the environment when improperly managed.

1.2 Interpretation.

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

ARTICLE II

EFFECTIVE DATE AND LEASE TERM

2.1 Effective Date

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

- 2.2 Lease Term This Agreement shall have a lease term (the "Term"), which commences on the Effective Date and terminates on the date that occurs on the Tenth (10th) anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof. Following such Tenth (10th) anniversary of the Effective Date, and unless this Agreement has otherwise been terminated, the Parties may mutually agree to renew this Agreement for an additional period; provided that either Party has notified the other Party in writing of its desire to renew this Agreement no less than five (5) years prior to such Tenth (10th) anniversary of the Effective Date.

ARTICLE III

BASIC LEASE RIGHTS AND OBLIGATIONS

- 3.1 Lease In consideration of the covenants and agreements set forth in this Agreement and other good and valuable consideration, the Lessor shall lease the Lease Property to the Lessee, and the Lessee shall lease the Lease Property from the Lessor free and

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clear of all Security Interests, subject to the terms and conditions set forth in this Agreement.

- 3.2 Transfer of the Lease Property. Commencing on the Effective Date and continuing throughout the Transition Period in accordance with the Transition Plan, the Lessor shall transfer to the Lessee the Lease Property free and clear of Security Interests for the Term. The Lessor shall remain the owner of the Lease Property except as expressly agreed to in writing by the Lessor. Subject to the provisions of Sections 4.3(b) and 4.4, throughout the Term, the Lessee shall keep and maintain:

- (a) the Lease Property in the condition in which it is transferred to the Lessee on the Effective Date fair wear and tear excepted, and free and clear of all Security Interests arising from the performance of the Operations or any other of its obligations hereunder, and
- (b) the Fixed Assets in good condition and working order.

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

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

- 3.4 Lease Fees The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in Appendix F. Except as the Parties may otherwise agree in writing, all payments must be made in Dollars. Any amounts due but not paid thereunder shall bear interest at LIBOR plus five percent (5%) compounded monthly.

- 3.5 Common Areas. The Lessor shall grant to the Lessee for the benefit of the Lessee and its employees, contractors, customers and invitees during the Term, the non-exclusive right to use, in common with others entitled to such use (including the Lessor), the Common Areas as they exist from time to time, subject to all rights reserved by the Lessor hereunder and under the terms of all rules and regulations promulgated from time to time with respect thereto. The Lessee shall not use the Common Areas in any manner that is inconsistent with the Lessee's permitted use of the Premises nor in any manner that unreasonably interferes with the use of the Port by other occupants or users of the Port. The Lessor reserves the right from time to time, subject to the Lessor first giving the Lessee reasonable notice and provided that the performance of the Operations by the Lessee are not adversely affected to:

- (a) make changes in or to the Common Areas;
- (b) close temporarily any of the Common Areas;
- (c) add, eliminate or change the location of any improvements in the Common Areas and/or construct additional buildings, facilities and other improvements within the Common Areas;

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- (d) prohibit unauthorized Persons from using or accessing the Common Areas; or
- (e) perform such other activities and make such other changes in, to or with respect to the Common Areas as the Lessor may deem appropriate.

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

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

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

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

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

ARTICLE IV

USE OF LEASE PROPERTY

- 4.1 Permitted Use of Lease Property The Lessee shall only use the Lease Property to perform the Operations, and may not use the Lease Property for any other purpose without the Lessor's prior written approval, such approval not to be unreasonably withheld. The Lessee shall not conduct any activities within the Premises other than the performance of the Operations. The Lessee shall not conduct such permitted use, or allow such permitted use to be conducted, in violation of any Applicable Law or in any manner that would:
- (a) violate, invalidate or cause a loss of coverage under any insurance in force on or after the Execution Date with respect to the Lease Property or other premises of the Port;
 - (b) cause injury or damage to the Lease Property, to the person or property of any Person on the Lease Property or to any Person or property of any Person on other premises of the Port;
 - (c) cause diminution in the value or usefulness of all or any portion of the Lease Property (reasonable wear and tear excepted);
 - (d) disturb or unreasonably interfere with or endanger the Lessor or any other lessees of the Port; or

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

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

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

4.3 Maintenance

- (a) *Lessee's Maintenance Obligations.* The Lessee shall be responsible for the Maintenance (but excluding Maintenance resulting from Latent Defects which shall remain the responsibility of the Lessor) so that at all times during the Term and upon the Termination Date, the Lease Property (excluding the Quay Wall and navigational aids on the Premises) shall be in the same condition as on the Effective Date, excluding normal wear and tear. The Lessee shall maintain the Lease Property (excluding the Quay Wall and navigational aids on the Premises) in good condition and repair. All Maintenance shall be equal or better in quality to the original material and workmanship standard. The Maintenance performed by the Lessee shall comply with Applicable Law and Prudent Industry Standards. The Lessee shall inform the Lessor in writing of entry into any contract for Maintenance. The Lessee shall obtain and maintain all licenses, certifications or other documents required for such Maintenance in accordance with Applicable Law. The Lessor shall assign to the Lessee on the

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Execution Date all rights under any warranties it may receive or be entitled to for the Lease Property.

- (b) *Notification and Repair of Damage.* In the event that any Lease Property (excluding the Quay Wall and navigational aids on the Premises) is damaged, the Lessee shall notify the Lessor in writing of the same within three (3) days after the Lessee became aware of such damage. The Lessee shall commence the process of repairing such damage within seven (7) days and shall complete such repair to damaged Lease Property within a reasonable period to be mutually agreed by the Parties. In the event that the Lessee fails to commence the process of repairing within such period, then the Lessor may give notice in writing to the Lessee requiring the Lessee to commence the process of repairing within seven (7) days. If the Lessee has failed to commence the process of repairing upon expiry of the notice by the Lessor, then the Lessor may offer the repair work for tender and the Parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Lessee shall be responsible for cost of the repair and if the Lessor is required to make any payment towards such repair work, the Lessee shall reimburse the Lessor its actual costs incurred together with interest equal to LIBOR plus five per cent (5%) compounded monthly.

- 4.4 Quay Wall and navigational aids on the Premises. The Lessor shall be responsible for maintenance, repairs, renewals and replacements of the Quay Wall and navigational aids on the Premises during the Term. In the event that any of the Quay Wall or navigational aids on the Premises are damaged, the Party becoming aware of such damage shall notify the other Party in writing of the same within three (3) days after becoming aware of such damage. The Lessor shall commence the process of repairing such damage within seven (7) days of the date of notification by one Party to the other of damage and shall complete such repair to Berth or navigational aids on the Premises within a reasonable period to be mutually agreed by the Parties. In the event that the Lessor fails to commence the process of repairing within such period, then the Lessee may give notice in writing to the Lessor requiring the Lessor to commence the process of repairing within seven (7) days. If the Lessor has failed to commence the process of repairing upon expiry of the notice by the Lessee, then the Lessee may offer the repair work for tender and the Parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Lessor shall be responsible for cost of the repair and if the Lessee is required to make any payment towards such repair work, the Lessor shall reimburse the Lessee its actual costs incurred together with interest equal to LIBOR plus five per cent (5%) compounded monthly.
- 4.5 Utilities Subject at all times to the covenants of the Lessor set out in Section 8, the Lessee shall make its own arrangements and pay for the supply of Utilities to the Lease Property, including serving the vessels that call at the Premises.
- 4.6 Office Space. The Lessee shall provide, at its own expense, adequate office space for the Lessor and other Governmental Authorities required by the Act to have office space on the Premises including without limitation to those who have duties such as customs and immigration functions in the Premises, not exceeding a total floor-space of two hundred (200) square metres.
- 4.7 Disposal of Movable Assets The Lessee shall not sell, transfer, remove or dispose of any of the Movable Assets without offering the Lessor the right of refusal to purchase such Movable Asset from the Lessee. In the event of the Lessor's refusal to purchase such Movable Asset, the Lessee shall advise the Lessor of any subsequent transfer to a third party of such Movable Asset. Notwithstanding the foregoing, in each Annual Report, the Lessee shall list the Movable Assets, if any, that have been sold,

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transferred, removed or disposed of during the previous year and shall provide audited details of all such transactions.

4.8 Access to Lease Property

- (a) *By Lessor to verify compliance with this Agreement.* The Lessee shall permit the Lessor and its designated representatives and agents during the Lessee's working hours to enter and inspect the Lease Property for the purpose of verifying the Lessee's compliance with this Agreement and any other requirements under Applicable Law provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations. The Lessor shall notify the Lessee in writing at least three (3) days in advance of any inspection of the names of the individuals to be permitted access and the time and date of such visit.
- (b) *By Lessor in the event of Emergency.* The Lessee shall permit the Lessor and its designated representatives and agents without prior notification to enter and inspect the Lease Property in the event of Emergency provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
- (c) *By Lessor to fulfil its obligations under this Agreement.* The Lessee shall also grant access to the Premises to the Lessor or its designates on mutually agreed terms for the purpose of fulfilling its obligations under this Agreement provided that any such visit shall not unreasonably interfere with the Lessee's performance of the Operations.
- (d) *Necessary right of way.* The Lessor shall have the right of access through the Premises to other facilities controlled by the Lessor under circumstances where reasonable, alternative means of access are not available subject to the prior consent of the Lessee provided that any Person granted such right of way shall follow the rules concerning safety, traffic, security and other regulations relating to the Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.
- (e) *By Governmental Authorities.* The Lessee shall grant access to the Premises to Government Authorities for the purpose of carrying out any activities which they are legally entitled to carry out in the Premises pursuant to Applicable Law.
- (f) *By Shipping Agents and others.* The Lessee shall grant access to the Premises to shipping line employees and agents and the staff of any contractors employed by them, to enable them perform their work efficiently provided that they do not unreasonably interfere with the Lessee's performance of the Operations and provided further that the shipping line employees and agents and the staff of any contractors employed by them shall follow the rules concerning safety, traffic, security and other regulations relating to the Premises and performance of the Operations prescribed by the Lessee, which rules shall not be discriminatory in application.

ARTICLE V

OPERATIONS

- 5.1 Obligation of Lessee to Perform Operations The Lessor hereby appoints the Lessee and the Lessee hereby accepts such appointment, to perform the operations and activities

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- (e) create a nuisance or waste in on or about the Premises which adversely affects other premises of the Port.

4.2 Alteration of Lease Property

- (a) *By Lessor.* Subject to the mutual agreement of the Parties and in accordance with Applicable Law, the Lessor shall have the right to alter the Premises subject to the alteration of the Lease Fees payable by the Lessee in accordance with the provisions of this Agreement; provided that:

- (i) such alteration is required for technical operations and/or economic well-being of the Port
- (ii) such alteration does not unreasonably interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property and
- (iii) such alteration shall not have a material adverse effect in the performance of the Operations.

- (b) *By Lessee.*

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

- (1) the plans and drawings for such Improvement;
- (2) the names and addresses of the proposed contractor(s); and
- (3) such other documentation as may be reasonably requested by the Lessor.

The Lessor shall within the said sixty days communicate its response to the Lessee failure of which, the Lessor shall be deemed to have given its approval to the improvement and the Lessee may proceed to make such improvement.

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

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

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

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described in Part A of Appendix D (collectively, the "Operations") in accordance with the terms of this Agreement. The Lessor confirms that it hereby delegates to the Lessee all such powers and authority as are necessary for the Lessee to perform the Operations.

- 5.2 Common User Terminal. The Lessee shall perform the Operations such that the Lease Property is a common user terminal open to any and all shippers and consignees of cargo, and to all shipping lines. The Lessee shall ensure that any agreement executed by it prior to or during the Term shall not violate this Section.
- 5.3 Performance of other services. The Lessor hereby grants the Lessee the right, exercisable at the Lessee's sole discretion, to perform the other services in accordance with the terms of this Agreement. If the Lessee does commence performance of one or more of other services during the Term, reference to "Operations" in this Agreement shall be deemed to include those other services being performed by the Lessee in accordance with the right set out in this Section 5.3. The Lessee shall ensure that any charges made for other services shall be in accordance with Applicable Law and competitive within the Port and within competing ports of Nigeria.
- 5.4 Use of Lease Property. The Lessee shall only perform the Operations within the Premises, and shall use the Lease Property for the sole purpose of performing the Operations in accordance with this Agreement.
- 5.5 Exclusivity. The Lessee shall have the exclusive right during the Term to perform the Operations within the Premises.
- 5.6 Standards of Performance. The Lessee shall perform the Operations:
- (a) in a safe, efficient, effective and economic manner;
 - (b) with due care and skill; and
 - (c) in accordance with Applicable Law and Prudent Industry Standards.
- 5.7 Duties to Cooperate. The Parties shall cooperate in good faith to ensure the smooth and effective transfer of the provision of the Operations from the Lessor to the Lessee during the Transition Period. In performing the Operations, the Lessee shall cooperate with the Lessor and, if applicable, the Regulator so as to enable the Lessor and the Regulator to perform their monitoring, supervisory and other duties relating to the Port.
- 5.8 Performance Requirements
- (a) *General Requirements*. The Lessee shall use its best efforts to:
 - (i) develop, market and promote Cargo throughput and Cargo-related business of the Lease Property in order to achieve maximum utilization thereof in a manner which is consistent with Applicable Law and Prudent Industry Standards; and
 - (ii) ensure that there is no decline in the standards of the Operations.
 - (b) *Specific Requirements*. The Lessee shall perform the Operations in such a manner as to achieve the performance requirements in the applicable years of the Term (the "Performance Requirements").
 - (c) *Interruptions*. The Parties shall ensure that the Lessee's performance of the Operations shall be as continuous and without Interruptions as is reasonably

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practical. The Lessee shall maintain records of the number, duration, location and extent of all Interruptions. If the performance of the Operations are adversely affected by Interruptions during an Operational Year, the Performance Requirements shall be reduced by a pro rated percentage of the number of days that an Interruption prevented Operations over three hundred and sixty five days **PROVIDED** that for the purposes of this Section, any Interruption for under twenty four (24) consecutive hours shall not be taken into account when assessing whether an Interruption has occurred unless there has been Interruptions for a period of seventy two (72) cumulative hours in an Operational Year, in which case all time amounting to an Interruption shall be taken into account when assessing the Performance Requirements.

(d) *Tracking and Evaluation of Performance.* The Lessor shall evaluate the Lessee's performance of the Operations on an annual basis. The process of evaluation shall commence on the Effective Date and shall be conducted as follows:

(i) following the completion of each Operating Year, the Lessee shall provide to the Lessor a report in respect of that Operating Year which shall include, *inter alia*, a full account of its performance against the applicable Performance Requirements, an explanation of any failure to meet such Performance Requirements and any other information requested by the Lessor to enable it to make its evaluation (the "Lessee Report") within ninety (90) days after the end of each Operational Year. In the event that the Lessee fails to provide the Lessee Report within the period of ninety (90) days after the end of an Operational Year, the Lessor shall give the Lessee thirty (30) days written notice requiring the Lessee to produce the Lessee Report. In the event that the Lessee fails to produce the Lessee Report by the expiry of the thirty (30) day period then the provisions of Sub Section (iv) shall apply.

(ii) The Lessor's evaluation, which shall have been ongoing during the Operating Year, shall be completed by the Lessor and the Lessor shall produce and deliver to the Lessee an evaluation report containing its own assessment of the Lessee's performance against the Performance Requirements taking into account any Interruption, and stating whether, in its opinion, the Lessee has reached the Performance Requirements. (the "Lessor Report") within thirty (30) days of the earlier of either:

(A) receipt of the Lessee Report; or

(B) in the event that the Lessee fails to provide the Lessee Report upon the expiry of the thirty (30) days referred to in Sub Section (i) above.

In the event that the Lessor fails to provide the Lessor Report within the period stated in this Sub Section, the Lessee shall give the Lessor thirty (30) days written notice requiring the Lessor to produce the Lessor Report. In the event that the Lessor fails to produce the Lessor Report by the expiry of the thirty (30) day period then the provisions of Sub Section (iv) shall apply.

(iii) Within fourteen (14) days of submission by the Lessor of the Lessor Report to the Lessee, the Parties shall meet and agree whether the Lessor's evaluation is accepted by both Parties, whether the Lessee has

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reached or exceeded the Performance Requirements. Any disagreement between the Parties in respect of the Lessor Report shall be resolved pursuant to the provisions of Article 17 (Governing Law; Dispute Resolution).

(iv) In the event that either:

(A) the Lessee fails to produce the Lessee Report further to thirty (30) days' written notice from the Lessor given in accordance with Sub Section (i) above, then the Lessor Report shall be binding upon both Parties and Parties shall not be required to meet and agree the Lessor's evaluation in accordance with Sub Section (iii) above;

(B) the Lessor fails to produce the Lessor Report further to thirty (30) days' written notice from the Lessee given in accordance with Sub Section (ii) above, then the Lessee Report shall be binding upon both Parties and the Parties shall not be required to meet and agree the Lessor's evaluation in accordance with Sub Section (iii) above.

(e) *Exceeding Guaranteed Minimum Tonnage.* In the event that the Lessee exceeds the guaranteed minimum tonnage, there shall be an adjustment in the Throughput Fees due and payable by the Lessee in accordance with the provisions set out in Appendix K.

5.9 Operations Rates

(a) *General Parameters.* The Lessee shall ensure that the Operations Rates shall be in accordance with Applicable Laws and competitive within the Port and with other competing ports of Nigeria having facilities similar to the Lease Property.

(b) *Specific Parameters.* The Lessee shall charge cargo dues and delivery charges for the Operations which are not greater than the rates set forth in Section A of Appendix G (the "Operations Rates") in accordance with the terms and conditions included therein. The Lessee shall not make any increases in the Operations Rates, unless agreed to in writing by the Parties and any required consents of Governmental Authorities have been obtained. Value added taxes and other taxes shall be added as required to the accounts rendered to the Lessee's customers. Income from the Operations Rates shall accrue directly to the Lessee without any collection, deduction or setoff by the Lessor or the Regulator. The Lessee shall also be allowed to charge for other services rendered but not specified in Appendix I, including but not limited to: terminal handling, inland container depot transfers, storage and for penalties for violation of applicable rules and regulations set down by the Lessee. The level of terminal handling charges and inland bonded terminal transfer charges shall not exceed the market rates charged by the shipping agents and the Lessor respectively prior to this agreement, and any future increases shall require the consent of the relevant Governmental Authorities.

(c) *Publication of Operations Rates.* The Lessee shall at all times publish its rates, charges and conditions of the Operations as directed by the Lessor or the Regulator, and shall make such information immediately available upon request by any Person

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- (d) *No Discriminatory Pricing.* The Lessee shall afford to all who may request the Operations uniform treatment under like conditions and shall not apply discriminatory charges on any Person. For the avoidance of doubt, the provisions of this Section shall not prohibit the Lessee from granting Preferential Rates in accordance with the provisions set out in Sub Section (e) below.
- (e) *Preferential Rates.* If Preferential Rates are applied to any customers of the Lessee, the Lessee shall inform the Lessor and if applicable, the Regulator in writing of the same. If the Lessor can show to the satisfaction of the Regulator, or if the Lessor is the Regulator then an Expert, that the Preferential Rates applied by the Lessee are discriminatory, the Lessor shall have the right to instruct the Lessee to apply such rates to all other similar customers of the Lessee using the Operations and the Lease Property.
- (f) *Charging the Operations Rates.* Other than in circumstances where the Lessee charges Preferential Rates, if the Lessee is not able to charge the Operations Rates and/or other charges referred to in Subsection (b) above to its customers, the Lessee shall refer the matter to the Regulator for determination of the rates chargeable.
- (g) *Complaints.* In the event that the Lessor or any other Governmental Authority receives a complaint of discrimination on the part of the Lessee, and the Regulator, or if the Lessor is the Regulator then an Expert, concludes after its investigation of such complaint that there are reasonable grounds for such complaint, then the Lessee shall immediately cease and desist from such practices and pay any applicable penalties provided for under Applicable Law.

5.10 Labour.

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

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- (h) *Identification of Lessee Personnel.* The Lessee shall ensure that its personnel are issued the appropriate identification documentation. Such identification documentation shall be produced to any official or authorized person who has reasonable grounds to request the identification of such personnel. Upon the termination of employment of such personnel, such identity documentation shall be returned to the Lessee.

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

5.12 Spare Parts and Consumables.

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

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

ARTICLE VI

CONDITIONS PRECEDENT

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

- (a) *Execution and Delivery of this Agreement.* Each Party shall have duly executed and delivered to the other Party this Agreement.



(b) *Corporate Proceedings.* Each Party shall have provided to the other corporate proceedings in connection with the transactions contemplated by this Agreement. The Lessee shall have delivered to the Lessor a secretary's certificate certifying to:

- (i) resolutions adopted by the Lessee evidencing the authorisations described in this Section;
- (ii) the constitutional documents of the Lessee; and
- (iii) authority of the officers of the Lessee executing this Agreement and documents required hereunder.

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

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

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

- (a) *Representations and Warranties of Lessee.* The representations and warranties of the Lessee in Section 11.1 shall be true and correct in all material respects when made and at and as of the Execution Date and the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (b) *Covenants of Lessee.* The Lessee shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.
- (c) *Officer's Certificate.* The Lessee shall have delivered to the Lessor a certificate in form and substance satisfactory to the Lessor, dated the Effective Date and signed by a duly authorized officer, as to the fulfilment of the conditions set forth in Sections 6.2 (a) and (b).

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

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

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

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- (g) *Other Agreements.* All other agreements affecting the Lessor's right to transfer the Lease Property and all pre-existing leases affecting the lease property have been terminated; and the Lease Property is free and clear of all Security Interests and all Persons on the Premises prior to the Execution Date shall have vacated the Premises and removed all their equipment from the Premises.
- (h) *Registration.* The Confirming Party shall have stamped and registered this Agreement with the appropriate Governmental Authorities in accordance with Applicable Law and shall have taken responsibility for any and all costs associated with such stamping and registration.
- 6.4 Satisfaction of Conditions. Each Party shall use its reasonable efforts to effectuate the satisfaction of the conditions requiring action by such Party under this Article. If such conditions have not been satisfied by such Party (or waived by the other Party) on or before the date that occurs thirty (30) days following the Execution Date, then, unless otherwise agreed in writing by the Parties, the other Party shall have the right to terminate this Agreement following delivery of fifteen (15) days' prior written notice to the Party of whom action is required which still has not satisfied, whereupon each Party shall be excused and relieved of all obligations and liabilities under this Agreement, except as otherwise specified herein and the Lessor shall refund the Commencement Fee to the Lessee.

ARTICLE VII

LESSEE'S COVENANTS

7.1 Insurance

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

7.2 Safety; Security

- (a) *Safety Procedures.* The Lessee shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of its Operations and the Lease Property in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards and the Lessor's guidelines that are applicable to all operators at the Port.



- (b) *Security System.* The Lessee shall be responsible for the preparation and implementation of a safety and security system in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards for the Lease Property and the cargo and Containers therein (including without limitation fencing off the Lease Property) which system shall be subject to the Lessor's prior written approval, such approval not to be unreasonably withheld, provided that such approval must be given by the Lessor in writing within five (5) Business Days upon receipt of the request, failure of which, the Lessor shall be deemed to have given its approval.
- (c) *Fire Control.* The Lessee shall establish procedures for installing, maintaining and operating fire fighting equipment on the Premises, which shall be in accordance with the guidelines of the Lessor in force at the Port. The Lessor shall purchase fire control equipment required pursuant to Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards which shall remain the Lessor's property throughout the Term. The Lessor shall inform the Lessee of fire fighting demonstrations to be conducted by the Lessor or fire emergency services operating in the Port, and the Lessee may witness such demonstrations. The Lessee shall prepare and implement its own staff training for fire hazards awareness and develop and maintain close relations with the fire emergency agencies in the Port.
- (d) *Traffic.* Traffic operations, vehicular traffic and all transport activities related to the Premises shall be conducted in accordance with Applicable Laws.
- (e) *Signage.* The Lessee shall be responsible for installing appropriate signs within the Port to indicate the location of and access routes to the Premises. The location, size and content of such signs, and their method of installation, shall be approved by the Lessor prior to their installation.

7.3 Environment

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

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- 7.7 Lessee Ownership Structure The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent.
- 7.8 Taxes The Lessee shall pay any taxes, levies, duties, withholdings, or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessee as a result of the performance of its obligations hereunder.
- 7.9 Licenses; Permits The Lessee shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessee to fulfil its obligations hereunder, including without limitation, the performance of the Operations in accordance with this Agreement.
- 7.10 Non Compliance. In the event that the Lessee fails to comply with any of its obligations set out in this Article, then the Lessor may notify the Lessee of such failure and give the Lessee thirty (30) days notice in writing to rectify its failure. If the Lessee fails to rectify its failure the Lessor may fulfil such obligation for and on behalf of the Lessee at its own cost. The Lessor shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 17 (Governing Law; Dispute Resolution).

ARTICLE VIII

LESSOR'S COVENANTS

- 8.1 Cooperation The Lessor shall cooperate with the Lessee as reasonably necessary to enable the Lessee to perform its responsibilities under this Agreement, including provision by the Lessor of copies of drawings, plans, policies, papers, records, reports, data and other information directly related to the Premises or Port as reasonably necessary for the Lessee to perform the Operations and manage the Lease Property.
- 8.2 No Interference. The Lessor shall ensure that its personnel shall not delay or interfere with the performance of the obligations of the Lessee or with the Lessee's personnel in the execution of their duties.
- 8.3 Port Access The Lessor shall, at all times possible, keep the Port open to shipping so that the Premises may be accessible by sea and by land for use by the Lessee for the performance of its Operations.
- 8.4 Berth and navigational aids within the Premises. The Lessor shall be responsible for the maintenance of the Berths and the navigational aids within the Premises.
- 8.5 Port Services; Vessel Management.
- (a) *The Lessor*. The Lessor shall:
- (i) provide and maintain maritime approaches, canals, turning circles, breakwaters and navigation aids;
 - (ii) in accordance with Applicable Law, issue regulations and rules governing waterside safety within the Port;

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

- (A) in accordance with the schedule of the arrivals and the departures to be prepared pursuant to consultation between the Lessor and the Lessee; and
- (B) in a timely and efficient manner either directly or through the licensing of competitive suppliers of such services provided that the Lessor shall at all times be responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Sub Section; and
- (C) at prices which shall not exceed the published tariffs of the Port at such time;

Failure to provide pilotage, towage, berthing, unberthing and shifting of vessel services in accordance with the provisions of Sub Section 8.5(a) so as to have a material adverse effect upon the performance of the Operations of the Lessee shall require the Parties to meet and discuss the reduction in the Throughput Fee to compensate the Lessee for any financial loss that the Lessee has incurred as a consequence of the Lessor's acts or omissions.

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

8.6 Dredging. The Lessor shall be responsible for the dredging of the channel to the Port (including without limitation the face of the Berths at the Premises), either directly or through the licensing of competitive suppliers of such services. The Lessor shall, at all times, be solely responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this Section. The Lessor shall undertake dredging in accordance with the Dredging Plan with the intention of achieving and maintaining a depth of water at the Berths of the Premises of 10.5 meters below Low Low Water and the approach channel of at least 10.5 meters below Low Low Water in accordance with the Dredging Plan to be provided during the Transition Period, provided that interference with the performance of the Operations by the Lessee shall be kept to a minimum.

8.7 Waste Disposal. The Lessor shall arrange for the disposal of waste materials generated from vessels berthed at the Ports in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.

8.8 Latent Defects The Lessor shall remedy any Latent Defects which materially impair the Lessee's use of the Lease Property and the performance of its Operations.

8.9 Access to Premises The Lessor shall ensure that at all times throughout the Term the Lessee, its employees, its customers and suppliers are provided with the road and rail access to the Premises in existence as of the Effective Date, subject to the security regulations governing access to the Port and other Applicable Laws.

8.10 Utilities Infrastructure; Rights of Way. The Lessor shall, throughout the Term, provide all infrastructure for the provision of the Utilities to the Premises necessary to equip, operate, maintain, manage and repair the Premises. The Lessor shall grant rights of way and easements through the Port outside the Premises for existing and future

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Utilities to the Premises. The Lessor shall not take any action which is detrimental to the efficient supply of such Utilities to the Lessee.

- 8.11 Utilities. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 8.12 Security. The Lessor shall be responsible for the general security of the Port outside the security fence of the Premises, security of all land and sea entrances to the Port and the provision and maintenance of the perimeter fencing on the boundaries of the Port.
- 8.13 Lessor Obligation to Remediate. In the event that Waste Material is present on the Premises or in the waters or in or on the bottom of the Port before the Effective Date, which the Lessee reports to the Lessor and which have originated from the Premises, or after the Effective Date which has not originated from the Premises (including but not limited to Waste Material originating from vessels calling at the Port) then the Lessor shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Laws, international conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards.
- 8.14 Licenses; Permits. The Lessor shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessor to fulfil its obligations hereunder and shall provide reasonable assistance to the Lessee in its efforts to obtain and keep in force the licenses and permits required to be obtained or maintained by the Lessee under Section 7.9.
- 8.15 Taxes. The Lessor shall pay any taxes, levies, duties or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessor as a result of the performance of its obligations hereunder.
- 8.16 Non Compliance. In the event that the Lessor fails to comply with any of its obligations set out in this Article, then the Lessee may notify the Lessor of such failure and give the Lessor thirty (30) days notice in writing to rectify its failure. If the Lessor fails to rectify its failure the Lessee may fulfil such obligation for and on behalf of the Lessor at its own cost. The Lessee shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one out of three bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If Parties fail to agree the computation of costs and this has an adverse effect upon the Lessee's ability to perform the Operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 16 (Governing Law; Dispute Resolution).

ARTICLE IX

FORCE MAJEURE

- 9.1 Effect of Force Majeure. In the event that a Party can not perform its obligations hereunder due to an event of Force Majeure, such Party shall be excused from the performance of such obligations, and shall not be considered to have committed an Event of Default, from the date on which such event of Force Majeure has commenced and until a reasonable period of time after termination thereof. The Parties shall consult with each other in the event of Force Majeure and shall take all reasonable steps to minimize any losses resulting therefrom. The affected Party shall resume the performance of its obligations hereunder as soon as practicable after such event of Force Majeure has ceased.



- 9.2 Notice The Party affected by the event of Force Majeure shall as soon as practicable provide written notice to the other Party and the Regulator of the occurrence of such event of Force Majeure. Such notice shall include a detailed description of the event of Force Majeure, an estimate of the duration of such event, the reasons for which such Party is unable to perform its obligations hereunder due to such event and a plan to mitigate and remedy such event, if possible. Such Party shall provide the other Party with regular updates of the foregoing information.
- 9.3 Satisfactory Solution. If an event of Force Majeure continues for longer than three (3) months, the Lessee and the Lessor shall enter into discussions in order to agree on a mutually satisfactory solution. If the Parties fail to reach a mutually satisfactory solution within thirty (30) days of the commencement of discussions, the provisions of Article 16 shall apply.
- 9.4 Termination. Notwithstanding the provisions of Section 9.3, if the Lessee is unable to perform the Operations or otherwise substantially perform its obligations under this Agreement as a result of an Event of Force Majeure for a period exceeding six (6) months or the Lessee notifies the Lessor prior to the expiry of the six (6) months period that performance under this Agreement is not viable then either Party may terminate this Agreement by the issuance of a Termination Notice.

ARTICLE X

DOCUMENTATION AND AUDITS

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

Use

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



- (e) *Disclosure.* A Party shall obtain the written approval of the other Party prior to disclosing any confidential information related to this Agreement, the Lease Property or the Operations to the public.
- (f) *Other Information.* The Lessee shall provide to the Lessor any other information as the Lessor may reasonably require, including without limitation:
 - (i) accurate data on the quantity, types and weight of Cargo handled in the Premises;
 - (ii) accurate data on the numbers and types of ships, wagons or road trucks loaded or unloaded in the Premises;
 - (iii) average ship turn around time, cargo dwell time, truck loading/unloading time;
 - (iv) accurate details of the claims received and payments made in relation to cargo damage;
 - (v) immediate notification of accidents within the Premises causing death or serious injury;
 - (vi) immediate notification of incidents causing oil pollution or other forms of environmental damage;
 - (vii) industrial relations;
 - (viii) public complaints;
 - (ix) notification of additions to and disposals of mechanical equipment and other significant assets; and
 - (x) accurate data on the availability for use of major items of mechanical equipment such as gantry cranes and front-end loaders.

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

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

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

- (a) any circumstances having an impact on the financial obligations of the Lessee under this Agreement;
- (b) volume of traffic passing through the Premises;
- (c) number of vessels, inward/outward Cargo and Cargo stored;

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- (d) numbers and categories of customers, of personnel employed, levels of Operations, performance and Operations quality compliance;
- (e) renovation works and repairs carried out or to be carried out;
- (f) exceptional events such as pollution incidents, strikes, etc.;
- (g) Emergencies;
- (h) measures, if any, taken by the Lessee during the applicable year with respect to its obligations hereunder related to the protection and preservation of the environment;
- (i) the Operations performed during the applicable year; and
- (j) an audited set of accounts prepared in accordance with generally accepted international accounting principles and practices

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

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

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

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

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

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

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



- (iv) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Lease Property.

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

- (a) It is a public authority duly constituted and validly existing under the laws of Nigeria and is authorized and qualified to do business in Nigeria.
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessor) threatened against the Lessor that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessor, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under the Act, or any other Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessor of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessor and constitutes a legal, valid and binding obligation of the Lessor enforceable in accordance with its terms.
- (e) It has obtained all approvals, consents and authorizations that are required from any Governmental Authority under Applicable Law to consummate the transactions contemplated herein, including without limitation, the Operations Rates provided in Section A of Appendix H.
- (f) It has good title to the Lease Property and full legal right and power to transfer and deliver such Lease property to the Lessee in the manner contemplated by this Agreement. Upon delivery of such Lease Property against payment therefor pursuant to the terms of this Agreement, the Lessee shall receive good title thereto with vacant possession, free and clear of all liens, other than the obligation to obtain any required authorizations or consents by a Governmental Authority in connection with the transfer of any such Lease Property.

ARTICLE XII

DEFAULT

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

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- (a) The Lessee becomes insolvent, or, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal and such court or tribunal makes an order for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation and an order is made in respect thereof by a court of competent jurisdiction.
- (b) Other than as a consequence of an Interruption, the Lessee fails to perform the Operations for fourteen (14) consecutive days in an Operating Year or sixty (60) non consecutive days in an Operating Year. Where the Lessee fails to perform the Operations after fourteen (14) consecutive days the Lessor shall have the right to intervene and divert traffic to other terminals for a period of seven (7) days. In such an instance, the Lessor shall not be entitled to claim that there has been an Event of Default by the Lessee until the expiry of the further seven (7) day period where the traffic has been diverted to other terminals.
- (c) Subject to Section 17.5, the Lessee fails to pay any amounts due in accordance with this Agreement.
- (d) The Lessee commits a breach of a material provision of this Agreement.

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

- (a) The Lessor becomes insolvent or makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal and such court or tribunal makes an order for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation and an order is made in respect thereof by a court of competent jurisdiction.
- (b) The Lease Property (in whole or in part) is expropriated, compulsorily acquired or nationalized by a Governmental Authority.
- (c) There is a Change in Law.
- (d) Subject to Section 17.5, the Lessor fails to pay any amounts due in accordance with this Agreement.
- (e) The Lessor commits a breach of a material provision of this Agreement.

12.3 Consequences of Default

- (a) *Insolvency.* Upon an Event of Default described in Section 12.1(a) or 12.2(a), the Party that is not in default may immediately serve a Termination Notice.
- (b) *Expropriation and Change in Law.* Upon a Lessor Event of Default described in Section 12.2(b), or Section 12.2(c), the Lessee may immediately serve a Termination Notice.
- (c) *Other Events of Default.* Upon an Event of Default described in Section 12.1(b), (c) or (d) or 12.2(d) or (e), the Party that is not in default (the "Non-Defaulting Party") shall deliver to the Party which is in default (the "Defaulting



Party"), a written notice describing the alleged Event of Default and granting not less than fifteen (15) days for the Defaulting Party to deliver a written response to the Non-Defaulting Party. If the Defaulting Party fails to respond to the Non-Defaulting Party within such fifteen (15) day period, then the Non-Defaulting Party may serve a Termination Notice. If, however, the Defaulting Party does respond to the Non-Defaulting Party, then, within such fifteen (15) day period of the Non-Defaulting Party's receipt of such written response, the Non-Defaulting Party shall deliver to the Defaulting Party a written notice stating whether there is such an Event of Default, and if so, granting the Defaulting Party at least thirty (30) days to commence and continue the remedy of such Event of Default. If such time period expires and the Defaulting Party has not commenced the remedy of the Event of Default, the Non-Defaulting Party may serve a Termination Notice.

ARTICLE XIII

TERMINATION.

- 13.1 Termination. This Agreement may be terminated in any of the following ways:
- (a) the expiry of the Term;
 - (b) upon the occurrence of an Event of Default in accordance with Article 13.3(c);
 - (c) upon the occurrence of an event of Force Majeure in accordance with Article 9.4
- 13.2 Rights accruing. Any such termination shall be without prejudice to the accrued rights and liabilities of the Parties in respect hereof as at the date of such termination or which may thereafter accrue in respect of any act or omission prior to such termination and shall be without prejudice to any provisions of this Agreement which are expressed to remain in force thereafter.
- 13.3 Continuity of Operations. The Lessee shall ensure smooth continuation and provision of the Operations throughout the Termination Period. The Parties agree to minimize disruption of the Operations performed by the Lessee.
- 13.4 Compensation. The Parties shall pay to one another compensation due and payable in accordance with the provisions of Article 14.

ARTICLE XIV

COMPENSATION

- 14.1 Compensation upon Force Majeure. The Parties shall bear their respective costs and neither Party shall be required to pay to the other party any costs arising out of an event of Force Majeure.
- 14.2 Compensation on termination due to Lessee Event of Default. If the termination is due to a Lessee Event of Default, the Lessee shall:
- (a) pay to the Lessor any and all actual costs, expenses, charges, and/or penalties incurred or sustained by the Lessor as a consequence of such termination; and
 - (b) convey, transfer, assign and deliver to the Lessor, free and clear of all liens and encumbrances, the Lessee's right, title and interest in and to the Movable Assets for nil consideration, accompanied by any necessary bills of sale, assignment agreements,



Traffic Report. The Lessee shall provide any clarification of the Quarterly Traffic Report requested by the Lessor and the Regulator.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

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

- (a) The Lessee is:
 - (i) a private company limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with registration number RC 644061.
- (b) It is not in violation of any Applicable Law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of the Lessee) threatened against the Lessee that, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, operations, prospects or business, as a whole, of the Lessee, or its ability to perform under this Agreement.
- (c) Neither the execution and delivery of this Agreement, nor the compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Lessee, or any Applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Lessee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- (d) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Lessee of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.
- (e) It is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to perform its obligations hereunder.
- (f) It has:
 - (i) carefully examined this Agreement, together with all Appendices attached hereto, thoroughly and become familiar with all their respective terms and provisions;
 - (ii) Investigated to its satisfaction all Applicable Laws and it can perform its obligations hereunder in accordance therewith;
 - (iii) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and

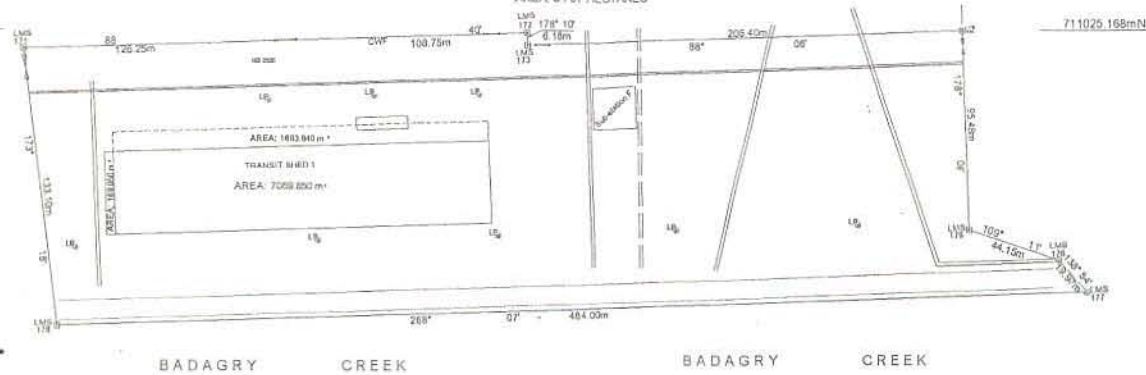
Use

PLAN SHEWING PROPERTY
OF
NIGERIAN PORTS AUTHORITY
GIVEN ON CONCESSION TO
JOSEPDAM PORTS SERVICES LIMITED (TERMINAL 'X')

AT
TINCAN ISLAND PORT, APAPA
APAPA LOCAL GOVT. AREA, LAGOS STATE

SCALE:- 1 : 2,500
ORIGIN:- UTM ZONE 31

AREA: 5 767 HECTARES



LEGEND

LB	Lamp Post
	Gate
	Conveyer Belt
	Drain
	Overhead Pipeline
	Mobile Track
	Weigh Bridge

PLAN No. LMS/016/2005/LA

539946 231mE

G. U. ONONIKPO
(Registered Surveyor)
7th December 2005
Landmate Surveys
Lagos.



Appendix A

PREMISES

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APPENDIX B

FIXED ASSETS

INVENTORY OF ASSETS IN TERMINAL 'A'

S/NO	DESCRIPTION	AREA M2	REMARKS
1.	SHED 1	6000	
2.	QUAY APRON	19,360	
3.	PLANT SECTION	625,65	
4.	OFFICE ANNEXED TO SHED 1	334.20	
5.	EAVE OF SHED 1	1683.840	
6.	LABOUR TOILET ADJOINING SHED 1	169.050	
7.	STACKING AREA	48,757.31	
8.	LAMP POSST	8 POSSTS	
9.	SUBSTATION F	155.8	
10.	CONVEYOR BELT FOR HONEY WELL	114M	
11.	CONVEYOR BELT FOR MULTI MULT	103M	
12.	CONVEYOR BELT FOR CROWN FLOUR MILLS	170M	
13.	CONVEYOR BELT FOR CROWN FLOUR MILLS	115M	
14.	CONVEYOR BELT FOR PZ INDUSTRIES	120M	
15.	BERTH 1	100M	
16.	BERTH 1A	180M	
17.	BERTH 2	180M	

Base

ESM



Appendix C

Development Plan**DEVELOPMENT (INVESTMENT PLAN)**

JOSEPDAM & SONS (NIG.) LIMITED will not rely on third parties to supply dry bulk cargo handling equipment for ship-board handling and quayside operation, other than the existing facilities presently established for pneumatic unloading and transfer.

Allowance has therefore been made for the acquisition of additional ship unloading appliance, conveyor belt systems mechanical grabs and quayside hoppers in order to service the projected increase in vessel and cargo volumes over the concessioned period in line with the Traffic Forecasts and Technical and Performance Operating Plans as detailed below:

Table 1: Development Plan (moveable Assets)

Year Of Acquisition	Type Of Equipment	Capacity	Number To Be Acquired
1 - 2006	Mechanical Grabs	5 Tonne	4
1 - 2006	Mechanical Grabs	2 Tonne	4
1 - 2006	Vigan Extractors	4 Tonne	4
1 - 2006	Quayside Hoppers	25 Tonne	8
1 - 2006	Conveyor Belt System		2
1 - 2006	Vehicles	20 Tonne	2
1 - 2006	Vehicles / Front End Loaders	10 Tonne	2
1 - 2006	Hyster Fork Lifts H6.00XL	6 Tonne	2
1 - 2006	Vehicles		2
1 - 2006	Office Equipment		1
1 - 2006	Computer Equipment		15
1 - 2006	Security Equipment		1
1 - 2006	Generator		2
2 - 2007	Systems Installation (Software)		1
2 - 2007	Vehicles		4
4 - 2008/9	Computer Equipment		10
5 - 2009/10	Vehicles	20 Tonne	10
6 - 2010/11	Vehicles		2
6 - 2010/11	Office Equipment		1
7 - 2011/12	Computer Equipment		15

Total Investment Throughout Period Of Lease

Redacted



Infrastructure Development Plan

To ensure enhanced operations at the terminal the company plans to improve the existing infrastructural facilities and with the addition of some others considered to be quite vital for successful operation of the terminal as follows:

Table 2: Infrastructure Development Plan

Year Of Acquisition	Type Of Civil Works	Type Of Investment (Improvement or Rehabilitation)	Redacted
1 - 2006	Fencing of Perimeter and Construction of Guard House Entrance & Exit Barriers	Improvement	
1 - 2006	Installation of additional high mast/security lighting	Improvement	
1 - 2006	Construction and Establishment of Office Complex	Improvement	
1 - 2006/7	Installation of 2 Bulk Silos for Grain Products	Improvement	
1 - 2006/7	Installation of 1 Bulk Liquid Storage Tanks for Edible Oil	Improvement	
1 - 2006/7	Installation of 1 Bulk Silos for Fertilizer Products	Improvement	
1 - 2006/7	Installation of Integrated Conveyor System to Augment Direct Discharge of Dry Bulk Products to Silos	Improvement	
1 - 2006/7	Rehabilitation of Quayside Area of Berths 1, 1A and 2	Improvement	
1 - 2006/7	Resurf Area Designed Around Office Complex, Car Park, Existing Road from Terminal Entrance/Exit and Truck Holding Park	Improvement	
1 - 2006/7	Demolish Transit Shed 1	Improvement	

Total Investment Throughout Period Of Lease

Security Fencing, Office Accommodation & Lighting

Insufficient and inadequate lighting at the Terminal inhibits productivity being maintained over a twenty four hour period. It is also a major concern for safety, security and theft.

It is therefore proposed that all existing lighting at the Terminal will be upgraded, and additional lighting installed, at cargo working areas, vehicle holding and dispatch areas, access and exit gates, and in the facility of all roads and the office complex to be established.

Office accommodation will be constructed in the area adjacent to the electrical sub station, with a suitable enclosed and secure parking area.

In order to address the serious problem of unlawful entry of vehicles and personnel, suitable fencing and walls will be established in order to totally secure the premises. The construction of the boundary separation will meet with all requirements of the International Ship and Port Security Code, and comply with NPA guidelines.

Additional Storage Facilities

The company is planning the establishment and construction of grain and fertilizer silos in close proximity to the established boundary walls. This is in addition to the establishment of two bulk liquid storage tanks for vegetable products to enable the terminal to accommodate increased volumes and promote competition.

The silos will be served by interlinking conveyor and piping systems direct from the quayside, and by the introduction of additional pneumatic unloading apparatus, will ensure enhanced discharged rates and quicker turn around of vessels. Direct delivery dry bulk cargoes and dry bulk cargoes assigned to

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Temporary open storage area will be handled by grab discharge directly into upgraded quayside
hoppers transferred to storage area will be undertaken by the establishment of a conveyor belt
system, or by lorry transfer in the case of small or specific consignments.

The retention of transit shed 1 in the bulk terminal complex is not considered to be in the best
interests of the business undertaking, as long term storage inhibits increased terminal throughput and
capacity utilisation.

In order to realize the total Business Plan of Josepdam Ports Services Nigeria Ltd, application to
demolish the existing transit shed will be submitted for approval.

Planning permission will be sought from the Lessor, and plans submitted for approval shortly after the
award of the concession. All construction will be under the supervision of the Lessor or his appointed
representative.

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Appendix D

OPERATIONS

A. OPERATIONS

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

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

B Other services:

1. warehousing, stuffing and stripping/unstuffing, cleaning and fumigating, and consolidation, and the procurement, operation and maintenance of equipment for the foregoing;
2. ship shore handling of supplies for vessels
3. oversized cargo handling services;
4. terminal handling;
5. inland depot transfers; and
6. all other activities necessary to conduct Operations.

The Lessee will work towards the achievement of world class standards in all operations of the terminal to ensure eness and improved efficiency. The company also plans to embark on the process towards obtaining ISO 9001/2000 and ISO14001 accreditation

Allocation Of Personnel

In line with traffic forecasts and the planned cargo off take contained in this business plan. It is proposed that two gangs will be employed per vessel, working a three shift system. Owing to the present configuration of shore side installation at berth No. 1, an increase in gang employment is not possible. With the acquisition of additional cargo handling equipment, the establishment of bulk silos for dry and liquid cargoes, provision will be made to optimize berth productivity, however, with a desirable berth occupancy of 70%, and a projected maximum throughput annually by the year 2014/15 of 2,627,951 tonnes, increase in gang deployment per vessel is not warranted, save only to expedite turnaround time of vessels.

Land Use Allocation

Any existing leases on land use and occupation will be terminated by the Effective Date, or shortly thereafter, as indicated in the Request for Proposal documentation.

With the intention of the lessee to apply for permission to demolish the Transit Shed to accommodate the establishment of dry and liquid bulk silos, and the construction of an office complex and adjacent parking area, the only available space at the Terminal will be behind berth No.1.



A portion of this area will be defined as a vehicle holding park, with access and exit established by way of existing roadway.

The proposed office complex will be constructed on the vacant area adjacent to the existing electrical sub station, together with mechanical and equipment workshop area.

Maintenance of the quay areas and all open ground will be undertaken by the Infrastructure and Development Manager in accordance with planned maintenance schedule contained in the Terminal Business Plan.

Emergency maintenance and repairs will be carried out on and if and when required basis.

Environmental Management

The Lessee management structure at the Terminal details the responsibilities and functions of the Safety, Security, Risk and Environmental Manager, whose responsibility it will be to ensure that the NPA objectives for environmental responsibility are fully met at the Terminal. An Environmental Management policy will be deployed in line with ISO 14001 guidelines, which will aim to provide a systematic approach to environmental concerns.

A comprehensive Pollution Contingency Plan will be developed to ensure a precautionary approach and to anticipate potential pollution risks.

At the present time, pollution is a major problem at and around the Terminal. Significant oil spills from road transport vehicles are apparent on the quay apron, and uncleared garbage is visible over considerable areas.

Pollution clean up operations are presently under the control of the NPA, with various charges and penalties imposed on identified offenders.

It will be the responsibility of the concession holder in the future to arrange and conduct clean up operations within the Terminal area, however, pollution caused by vessels resulting in contamination to the water area will fall under the jurisdiction of the NPA.



Appendix E

LEASE FEES

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

- (a) an initial payment of one million, five hundred United States dollars (\$1,500,000) to be paid within fifteen (15) days after the Execution Date (the "Commencement Fee");
- (b) a fixed annual payment of a sum as specified in the schedule below to be paid twelve in (12) equal instalments in each Operating Year, the first instalment to be paid on the first day first month after the Effective Date and then, on the same date of every month thereafter (the "Lease Fee")

Year	Amount in US Dollars
------	----------------------

1	Redacted
2	
3	
4	
5	
6	
7	
8	
9	
10	

- (c) a throughput fee calculated on the basis of one United States dollar (U.S. \$ 1) per ton handled in the Premises in case of both Bulk and break-bulk Cargo and sixteen United States dollar (U.S. \$16) per TEU handled in the Premises for Containers payable in arrears at the end of each monthly period beginning on the first day of the first month after the Effective Date (the "Throughput Fee" and, together with the Commencement Fee and the Fixed Payment, the "Lease Fees").

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

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

MECHANISM FOR THE COLLECTION OF THROUGHPUT FEES

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

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DELAY IN PAYMENT

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

BANK ACCOUNT DETAILS

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

Redacted



Appendix F

BERTHS

BERTH 1	100M
BERTH 1A	180M
BERTH 2	180M

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Appendix G

OPERATIONS RATES

A. OPERATIONS RATES

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

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

Category	Cargo Dues USD	Delivery Charges Naira	Remarks
IMP per Ton	6.1	89	1. The charge is paid by the consignee. 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
EXP per Ton	4	168	1. The charge is paid by the line 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
IMP per Ton (TWA Coastal)	3	89	Please refer to the section for IMP per Ton
EXP per Ton (TWA Coastal)	3	89	Please refer to the section for EXP per Ton
Explanatory Notes			
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic.			
Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S			

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

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Category	Vehicle Type	Cargo Dues USD	Remarks
	Trailer/ Mafiwagon	44.8	
Explanatory Notes Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic. Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S			

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

	Car	Bus	Truck	Tracked	Trailers
	Upto 15cbm	16- 25cbm	Over 25cbm	Vehicles	Over 140cbm
Direct ²	2,497	2,775	3,539	4,157	3,876
Indirect ³	2,583	2,907	3,971	5,180	4,149
VAT ⁴	5%	5%	5%	5%	5%

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

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

B. FREE STORAGE TIME

Unless agreed otherwise with the Lessor and the Regulator, the Lessee shall provide three (3) days free storage time for import Cargoes, one (1) day free storage time for export Cargoes, three (3) days free storage time for Cargoes in transit to neighbouring countries, and three (3) days free storage time for transshipment cargoes. The Lessee shall be permitted to determine its own storage charges after the expiration of the foregoing time periods, subject to the approval of the Regulator or any Governmental Authority charged with carrying out such regulation.

Else

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Maximum Tariffs for the Cargo Dues and Delivery Charges of Containers

Category		Cargo Dues USD	Delivery Charges Naira	Remarks
Laden IMP	20'	90	5,015	<ol style="list-style-type: none"> The charge is paid by the consignee. The Cargo dues is paid in USD and the delivery charges are paid in Naira. For Flat Containers, the max. delivery charge is N 5,186 and for Open Tops, the max. delivery charge is N 7,073 For Reefers, there is an additional delivery charge of N 1,750 For handling during the weekend, the consignee is charged with an additional N 294 For Unstuffing, the consignee is charged with an additional N 714 For Direct Delivery, the consignee is charged with an additional N 168
	40'	130	6,268	<ol style="list-style-type: none"> The charge is paid by consignee For Flat Containers, the max. delivery charge is N 6,707 and for Open Tops, the max. delivery charge is N 9,531. For Reefers, there is an additional delivery charge of N 2,625 For handling during the weekend, the consignee is charged with an additional N 378 For Unstuffing, the consignee is charged with an additional N 903 For Direct Delivery, the consignee is charged with an additional N 210
Laden EXP	20'	70	3,687	The charge is paid by the line
	40'	100	5,567	The charge is paid by the line
Empty IMP	20'	25	5,015	The charges are paid by the line
	40'	40	6,268	The charges are paid by the line
Empty EXP	20'	25	1,264	The charges are paid by the line
	40'	40	1,896	The charges are paid by the line
Local Laden IMP (TWA /Coastal)	20'	70	5,015	Please refer to the section on Laden IMP for 20' containers for Local Laden IMP.
	40'	100	6,268	Please refer to the section on Laden IMP for 40' containers for Local Laden IMP
Local Laden EXP (TWA /Coastal)	20'	70	3,687	The charges are paid by the line
	40'	100	5,567	The charges are paid by the line
Local Empty IMP (TWA /Coastal)	20'	25	5,015	The charges are paid by the line
	40'	40	6,268	The charges are paid by the line
Local Empty EXP (TWA /Coastal)	20'	25	3,687	
	40'	40	5,567	The charges are paid by the line
Explanatory Notes				
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic.				

Else

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Category		Cargo Dues USD	Delivery Charges Naira	Remarks
Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S				

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

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

Maximum Tariffs for the Cargo Dues of Vehicles

Category	Vehicle Type	Cargo Dues USD	Remarks
IMP per Vehicle	Upto 15 cbm ¹	14.3	<ol style="list-style-type: none"> The charge is paid by the consignee. The Cargo dues is paid in USD There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
	16 to 25 cbm	25.8	
	Over 25 cbm	55.8	
	Trailer/ Mafiwagon	110.8	
EXP per vehicle	Upto 15 cbm	13.3	<ol style="list-style-type: none"> The charge is paid by the line The Cargo dues is paid in USD There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
IMP per Ton (TWA Coastal)	Upto 15 cbm	13.3	Please refer to the section for IMP per vehicle
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	
	Trailer/ Mafiwagon	44.8	
EXP per Ton (TWA Coastal)	Upto 15 cbm	13.3	Please refer to the section for EXP per vehicle
	16 to 25 cbm	13.8	
	Over 25 cbm	17.8	

¹ cbm = Cubic meters

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

Category	Cargo Dues USD	Delivery Charges Naira	Remarks
IMP per Ton	4	49	<ol style="list-style-type: none"> 1. The charge is paid by the consignee. 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
EXP per Ton	2.5	168	<ol style="list-style-type: none"> 1. The charge is paid by the line 2. The Cargo dues is paid in USD and the delivery charges are paid in Naira. 3. There is a VEP (Vehicle Entry Permit) & Tally Sheets & TPR (Tenure Parking Rate) charge of N 225 per truck entering into the ports premise. 4. 5% VAT on the total amount will be collected by the terminal operator on behalf of the FGN.
IMP per Ton (TWA Coastal)	2	49	Please refer to the section for IMP per Ton
EXP per Ton (TWA Coastal)	2	168	Please refer to the section for EXP per Ton
Explanatory Notes			
Coastal refers to vessels engaged in trade within Nigerian Territorial Waters exclusive of Service boats. Goods previously landed in any seaport in Nigeria and subsequently moved to another port will rank as Coastal traffic.			
Tropical West Africa (TWA) refers to vessels engaged in trade within the West Coast of Africa lying between latitude of 15° N and 15° S			

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

File

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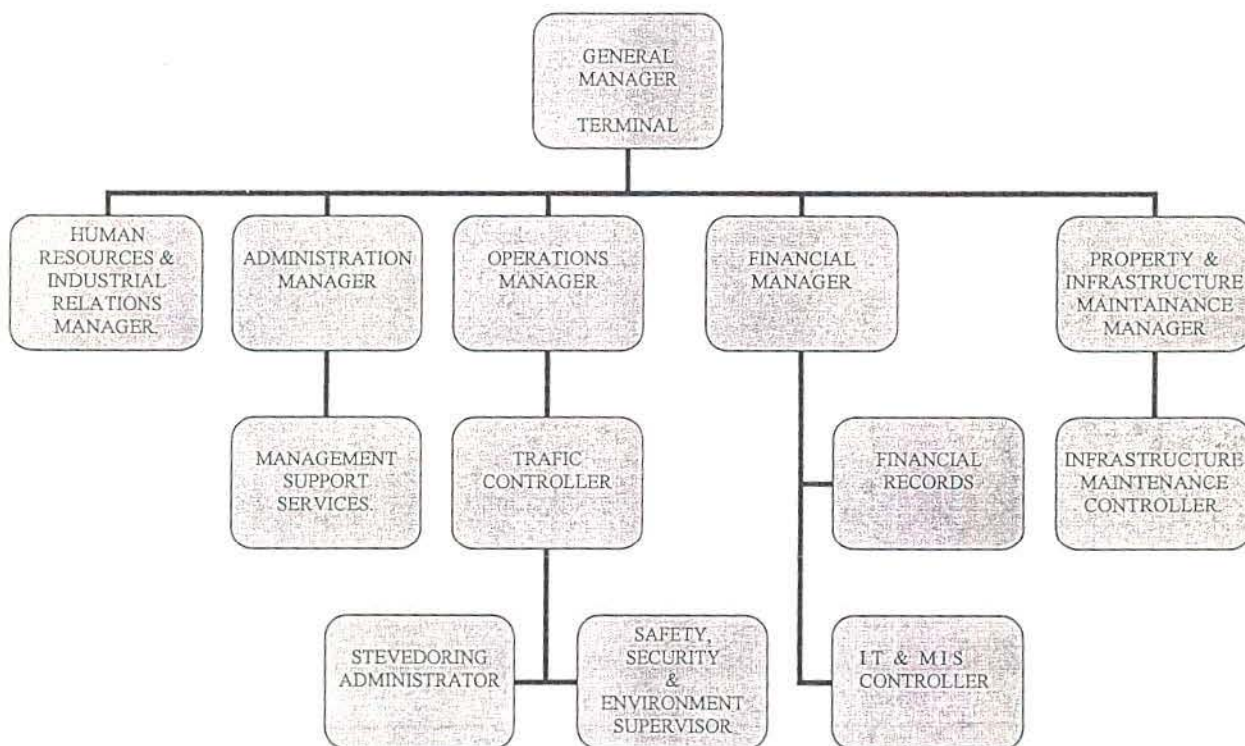


Appendix H

STAFFING AND SUCCESSION PLAN

1 STAFFING STRATEGY

1.1 Proposed Management Structure



1.2 Terminal Management Responsibility: Business Portfolio

1.2.1 General Manager (Terminal)

Reporting directly to the CEO/MD, he will be responsible for the overall management, performance and business initiatives of the Terminal.

He will submit monthly reports detailing the overall performance of the Terminal, make strategic decisions, which may ultimately require CEO/MD approval, and any other matters of strategic importance.

Marketing initiatives to increase client base, increasing throughput, and optimizing Terminal capacity will be a major focus, whilst assuring ship and cargo owners reduced port time, improved service levels and efficiency.

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He will be directly responsible for all legal requirements associated with the management of the business entity.

He will be directly responsible for the compilation and submission of all documentation and reports required in the Lease Agreement, including the Terminal Annual Business Plan, which will include all facets of the business undertaking.

1.2.2 Human Resources And Industrial Relations Manager

Reporting directly to the General Manager (Terminal), he will be responsible for the compilation of the yearly business plan of the department, and the efficient running of the department on a day to day basis. Industrial relations will be a major focus.

The portfolio will comprise the following:

- Human Resources Management
- Employment Contracts
- Policies
- Staff Interviews
- Conditions of Service
- Performance Appraisal Management
- Skills Development and Training
- Job Evaluation
- HIV/AIDS Policy
- Career Path and Development
- Labour Legislation
- Trade Union Liaison
- Skills Audit
- Salary Dispensation /Wages
- Staff Welfare
- Time Management Systems
- Industrial Relations

1.2.3 Administration Manager

Reporting directly to the General Manager (Terminal), he will be responsible for the compilation of the yearly business plan of the department, and the efficient operation of the department on a day to day basis. Client liaison will form a major focus, with specific emphasis on ship manifest identification and verification, billing and documentation.

The portfolio will comprise the following:

- Documentation
- Customs and Immigration Procedures
- Bills of Lading
- Ship's Manifests
- Provisional Billing/ Invoicing
- Final Billing
- Central Planning Office and Information
- Ship's Agents
- Machine Room (Printing of Tally Sheets, Documentation etc.,)
- Clearing and Forwarding



- Permits
- NPA Administration Requirements
- Invoice and Billing
- Claims Procedures
- Statistics
- Client Reception
- Publications
- Regulations
- Servitude Agreements
- Initial Litigation/ Arbitration
- Tender Documentation
- Filing
- Records
- Laws and Statutes
- Contracts
- Legal Framework
- Service Contracts

1.2.4 Financial Manager

Reporting directly to the General Manager (Terminal), the Financial Manager will be ultimately responsible for the compilation of the financial records, annual budget for the Terminal, the Business Plan of the department, and all aspects of financial management and control required on a day to day basis.

A key function of the Financial Manager will be to establish and manage an Audit component within the business unit in order to examine records, check and verify invoices and financial statements, check bills raised by the Administration department, and all related documents for provisional and final billing.

The portfolio will comprise the following:

- Operating Budget and Procedures
- Income/Revenue Base
- Expenditure Control
- Revenue Collection
- Accounts
- Creditors/Debtors
- Claims
- Purchase Orders
- Cash Flow
- Audit and Reports
- Budget Allocation
- Annual Budget Presentation
- Control of Finances
- Financial Reports
- Capital Projections
- Capital Allocation
- Return on Investments
- Profit and Loss Accounts
- Internal Control
- Balance Sheets



- Procurement
- Financial Imperatives
- Miscellaneous Expenses
- Stock Control and Stock Taking
- Transactions
- Salary and Wages
- Banking

1.2.5 Operations Manager

Reporting directly to the General Manager (Terminal), the Operations Manager will be directly responsible for all aspects of Terminal operations, cargo working, stevedoring activities, management and deployment of equipment and operational personnel, establishing specific goals, working practices and procedures, productivity, and efficiency, vessel berthing schedules and Terminal security and safety.

He will be directly responsible for the compilation of the portfolio Business Plan, incorporating all aspects of Terminal operations.

The portfolio of the Operations Manager will comprise the following:

- Berth Planning
- Communications
- Statistics
- Cargo Working Procedures
- Systems
- Cargo dispatch
- Performance Levels
- Operational Procedures
- Terminal Output and Performance Levels
- Vessel Turn Out Reports
- Claims Returns
- Planning and Execution
- Business Planning
- Attend Daily Berthing Meetings (NPA)
- Vessel Entry and Cargo Declaration Ratification
- Supervise "Vessel Working Progress" Forum
- Planning Towards ISO 9001/2000 Compliance
- Training and Staff Development

1.2.6 Traffic Controller

Reporting directly to the Operations Manager, the Traffic Manager will be responsible for all aspects of vessel and cargo handling operations, quay control, dispatch and working requirements and arrangements.

His close liaison with the Operations Manager will ensure that daily planning of vessel working and cargo off take ensures the smooth operation of the Terminal, with special emphasis on cargo throughput and labour requirements.

The portfolio of the Traffic Controller will comprise the following:

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- Quay Control
- Vehicle Control and Allocation
- Transportation
- Tallying
- Staff Allocation
- Gang Rostering Requirements
- Equipment Allocation
- Cargo Control
- Monitoring and Inspection
- Productivity
- Training and Staff Development
- Procedures

Reporting directly to the Traffic Controller will be the **Stevedoring Administrator**, whose function will be to coordinate . stevedoring activities labour deployment and monitor stevedoring operations with special emphasis on financial control. When required he will request additional labour in other to meet operational needs in order to successfully dispatch cargo from the vessels and quayside.

1.2.7 Property and Infrastructure Maintenance Manager

Reporting directly to the General Manager, the Property and Infrastructure Maintenance Manager will be responsible for all aspects of property and Terminal development, maintenance, repair and contingency planning.

The portfolio of the Property and Infrastructure Administrator will comprise the following:

- Infrastructure Planning and Development
- Maintenance of Property
- Property Management
- Plan Maintenance Program
- Electricity, Water and Lighting
- Logistics
- Office Planning and Implementation
- Contracts
- Terminal Planning and Layout
- NPA Liaison on Infrastructure Rehabilitation Program
- Submission of Development Plan. Planning, Organizing, Directing and Controlling Development Plan Implementation
- Waste Disposal
- Provision of Slop Facilities

1.2.8 Information Technology And MIS Controller

Reporting directly to the Financial Manager, he will be directly responsible for the compilation of the portfolio Business Plan for the department, which will include all aspects of Information Technology requirements. He will also be responsible for the compiling of financial systems, reporting structures, business planning, budget compilation and statistics, (in close cooperation with the Financial Manager), software requirements and installation and data base management.

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The portfolio of the Information Technology and MIS Controller will comprise the following:

- Management Services
- Information Systems
- I/T Establishment and Development
- Data Base Management
- Training and Development
- Software Requirements
- Quality Management
- Financial Systems
- Financial Reporting
- Business Planning
- Statistics
- Logistics Development
- Management Information Reports
- Compilation of Monthly Performance Reports
- Compilation of Monthly Statistics Reports
- Port Consultative Council Reports

1.2.9 Management Support Services Supervisor

Reporting directly to the Administration Manager, the principal role of this position is to interface with Business Unit Managers in order to assess information technology requirements, compilation of reports, documentation and business plans, publications, contracts, submissions and local marketing initiatives.

A key role of the position will involve close interface with the General Manager (Terminal) in order to assist with marketing initiatives, client liaison, marketing strategy and the establishment of strategic alliances.

The portfolio of the Management and Support Services Supervisor will comprise the following:

- Compilation of Reports, Publications, Business Plans and Documentation
- Liaise with Business Unit Managers
- Assist with Marketing Initiatives
- Marketing Strategy
- Client Liaison
- Strategic Alliances
- Publications
- International Marketing
- Press Liaison
- Communications
- Arrange Client Visits
- Image Building
- Client Base Assessment
- Business Solutions and Development
- Business Sourcing

1.2.10 Safety, Security and Environment Supervisor

Reporting directly to the Operations Manager, the Safety and Security Supervisor will be responsible for all aspects of security at the Terminal, with specific emphasis on entry and

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exit control, addressing fraud and malpractices, implementation of security systems and procedures, and reporting.

He will also be responsible for the compilation of the portfolio Business Plan, with special emphasis on security initiatives, objectives and plans to eradicate corruption

A key function will be to develop Environmental Management Quality Control Systems, and address all aspects of Pollution Control in accordance with HAZMAT and ISO 14001 guidelines

The portfolio of the Safety, Security and Environment Supervisor will comprise the following:

- Security Control and Systems
- Traffic Control
- Pedestrian Access
- Vehicle Permits
- Security Requirements
- Staff Allocation
- Office Security
- Capital Program (Port Safety and Security Code Application)
- Port Security Code of Practice
- Contingency Planning
- Cargo Security
- Shipboard Security
- Investigate Feasibility of Outsourcing Security Personnel Contract
- Monitoring, Audit and Inspection
- Risk Control
- Safety and Environment
- Pollution Control/ Reporting/Clean up Operations
- Contingency Planning
- Occupational Safety Requirements
- Environmental Impact Assessment Compilation and Submission
- ISO14001 Development Plan

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1.3 Staffing Strategy

1.3.1 Estimate Of Initial Staff Requirements

Table 3: Staffing Requirements

<u>Operational</u>	<u>Quantity</u>	<u>Administration</u>	<u>Quantity</u>	<u>Management</u>	<u>Quantity</u>
Stevedores	96	Finance	4	General Manager	1
Tally Clerks	24	Administration	12	Senior Management	4
Machine Operators	24	Property	2	Junior Management	6
Security	54	Information Technology	6		
Quay Foreman (1/Berth/Shift)	6	Safety & Security	6	<i>Total Management Requirement</i>	<u>11</u>
Assistant Quay Foreman (1/Berth/Shift)	6	Human Resources	8		
General Workers	18	Marketing	2		
Store Clerks	3	Operations Manager	4		
Technicians (3/Shift)	6				
Maintenance Personnel	6	<i>Total Administration Requirement</i>	<u>44</u>		
<i>Total Operations Requirement</i>	<u>243</u>				
<i>Total Staff Requirement</i>	<u>298</u>				

In the recruitment of all grades of staff, emphasis will be on the possession of requisite qualification and proven relevant work experience. Priority will be given to Nigerians and NPA staff in particular with good employment history and performance records. The employment of Senior management positions will be in consultation with the Technical Partners and Technical Advisors

The security functions will be outsourced to a security firm with proven satisfactory track records and high degree of efficiency.

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1.3.2 Proposed Hours of Duty

Table 4: Shift Patterns – Operational Personnel

Week 1			
Shift	Monday - Friday	Saturday	Sunday
A	06:00 - 14:30	Off	Off
B	14:00 - 22:30	06:00 - 18:00	06:00 - 18:00
C	22:00 - 06:30	18:00 - 06:00	18:00 - 06:00

Week 2			
Shift	Monday - Friday	Saturday	Sunday
A	22:00 - 06:30	18:00 - 06:00	18:00 - 06:00
B	06:00 - 14:30	Off	Off
C	14:00 - 22:30	06:00 - 18:00	06:00 - 18:00

Week 3			
Shift	Monday - Friday	Saturday	Sunday
A	14:00 - 22:30	06:00 - 18:00	06:00 - 18:00
B	22:00 - 06:30	18:00 - 06:00	18:00 - 06:00
C	06:00 - 14:30	Off	Off

Week 4			
Shift	Monday - Friday	Saturday	Sunday
A	06:00 - 14:30	Off	Off
B	14:00 - 22:30	06:00 - 18:00	06:00 - 18:00
C	22:00 - 06:30	18:00 - 06:00	18:00 - 06:00

Table 5: Working Hours per week per shift

Shift	Monday - Friday	Saturday	Sunday
Week 1	06:00 - 14:30	Off	Off
Hours	42.5	0	0
Week 2	22:00 - 06:30	18:00 - 06:30	18:00 - 06:30
Hours	42.5	12	12
Week 3	14:00 - 22:30	06:00 - 18:00	06:00 - 18:00
Hours	42.5	12	12
Week 4	06:00 - 14:30	Off	Off
Hours	42.5	0	0

Week	170
Saturday (O/T)	24
Ordinary Hours	194
Sunday (S/T)	24
Total Hours	218

Technicians will be employed on two shift system, working 06h00 to 14h00 and 14h00 to 22h00, with alternate weekend working from 08h00 to 16h00 Saturdays and Sundays. There will be 24 hour coverage available for emergency services, on a rotating roster basis.

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Administration staff will be employed from 08h00 to 17h00 Monday to Friday, with a one hour lunch break. Half the staff will be required to report for duty every other Saturday and be available for administrative duties from 08h00 to 16h00, with a one hour lunch break.

It will be a requirement that all documentation for weekend vessel clearing and working will concluded by 16h00 on a Friday.

1.3.3 Training

Training will be undertaken for all personnel on an ongoing basis, both on the job and structured formal training according to individual assessment criteria formulated by the Human Resources Manager.

As the majority of staff employed in the Terminal will be permanent employees, it will be possible to evaluate employee training requirements and capabilities.

Management will introduce a Performance Management System coupled to Job Evaluation criteria which will provide a basis for individual training requirements in order that appropriate courses for selected individuals can be programmed.

1.3.4 Succession Plan

The position of General Manager, Terminal, is considered to be vital, not only to assure a smooth transition, but to advance and manage the Terminal in accordance to International standards.

It is therefore intended that the lessee, will employ the selected candidate on a permanent basis, until such time that a suitable replacement has been identified, trained, and meets all the requirements as stipulated by the CEO/MD.

Overseas experts employed on a contract basis from the companies Technical Advisors, will assist in identifying and training selected Nigerian personnel in the areas considered crucial to the operation and development of the Terminal.

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Appendix I

PERFORMANCE BOND

[Insert letterhead and address of first class international financial institution]

[Date]

The Nigerian Ports Authority 26/28 Marina
Lagos, Nigeria

Re: Performance Bond

Ladies and Gentlemen:

We refer to that certain Lease Agreement dated _____ 2006 (the "Lease Agreement") between the Nigerian Ports Authority (the "Lessor") the Bureau of Public Enterprises (the "Confirming Party") and Josepdam Ports Services Nigeria Limited (the "Lessee"). This Performance Bond is being submitted to you pursuant to the instructions received from the Lessee.

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

1. Guaranteed Obligations. The obligations of the Lessee to pay the due and payable Fixed Payment and all financial penalties due and payable following an arbitration award by the Lessee thereunder are hereby guaranteed (collectively, the "Guaranteed Obligations").
2. Guaranteed Amount. The undersigned's total aggregate liability from the date hereof until the final annual renewal of this Performance Bond shall not exceed the amount of three hundred and fifty thousand U.S. dollars (\$350,000) (the "Guaranteed Amount") notwithstanding that the Performance Bond is renewed annually.
3. Required Documents. The undersigned shall pay the amounts due under this Performance Bond to the Lessor upon the delivery to the undersigned of all of the following documentation:
 - 3.1 A signed draft to the undersigned executed by an officer of the Lessor demanding payment under this Performance Bond, referencing this Performance Bond and specifying the Default Amount (as defined below) and the account information of the Lessor for purposes of payments due to the Lessor hereunder (the "Draft").
 - 3.2 A notarized certificate executed by an officer of the Lessor stating
 - (i) that the Lessee is in default of any of the Guaranteed Obligations, specifying the amount of the default (the "Default Amount");
 - (ii) that the amount in the Draft is due and payable to remedy a default of the Lessee under the Lease Agreement;
 - (iii) that a demand (the "Lessee Demand") was sent to the Lessee requesting payment of the Default Amount and designating the account number; and
 - (iv) that the Lessee Demand was delivered to the Lessee at least thirty (30) days prior to issuing such Draft; and (v) that the Lessor has not received such payment.

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3.3. A copy of the Lessee Demand.

3.4. A copy of the final arbitral award in favour of the Lessor in relation to default by the Lessee under the Lease Agreement.

All Drafts drawn under and in compliance with the terms of this Performance Bond shall be duly honoured by us upon delivery of documents specified above. Except for the documents specified herein, no other documents or other action shall be required notwithstanding any applicable law.

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

[NAME OF FINANCIAL INSTITUTION ISSUING GUARANTY]

Name:

Title:

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Appendix J

INSURANCE

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

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Appendix K

GUARANTEED MINIMUM TONNAGE

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

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

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

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

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

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

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

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PROJECTED BREAKBULK CARGO THROUGHPUT AS PROPOSED BY THE LESSEE

TIN CAN ISLAND PORT TERMINAL 'A'											
JOSEPDAM PORTS SERVICES NIGERIA LIMITED											
GUARANTEED MINIMUM THROUGHPUT TONNES											
Product	Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10	Total
Dry Bulk	1,376,409	1,514,050	1,665,455	1,832,000	2,015,200	2,120,988	2,232,351	234,549	2,472,900	2,602,728	18,066,630
Liquid Bulk	37,570	39,542	41,618	43,803	46,103	48,524	51,071	53,752	56,574	59,544	478,101
Total	1,413,979	1,553,592	1,707,073	1,875,803	2,061,303	2,169,512	2,283,422	288,301	2,529,474	2,662,272	18,544,731



Appendix L

Dredging Plan

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Appendix M **Transition Plan**

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

2. INTRODUCTION

- 2.1 This Transition Plan sets out the rights and obligations of the Lessor and the Lessee during the Transition Period.

- 2.2 The Transition Period is critical for a successful transfer of the Premises and the subsequent commencement of Operations. The Transition Committee shall ensure that during the Transition Period, the Parties shall follow and comply with the provisions of this Appendix.

- 2.3 It is important that the Lessor and Lessee work closely together towards the common goal of a successful transfer of the Premises from Lessor to Lessee in accordance with the provisions of this Agreement and the commencement of the Operations by the Lessee on the Effective Date.

3. TRANSITION COMMITTEE

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

4. THE LESSOR OPERATIONS

- 4.1 Throughout the Transition Period:

- (a) the Lessor shall continue the Lessor Operations subject to the provisions of this Transition Plan;



- (b) the Parties shall ensure smooth continuation and performance of the Lessor Operations provided by the Lessor to its customers; and
- (c) the Parties also agree to minimize disruption of the Lessor Operations.

5. INSURANCE

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

- (a) the Lessor's general liability to a level not less than US\$10 million;
- (b) loss, damage or destruction of all commodities moving through the Premises under the responsibility of the Lessor;
- (c) accidents injury or death occasioned to persons lawfully within the Premises arising out of the Lessor Operations or any such other liabilities that may be occasioned to such persons as a result of the Lessor carrying out and/or performing the Lessor Operations;
- (d) liability to all parties making lawful use of the Premises, and their properties;
- (e) risks arising from deficiencies or failure to dispose of waste materials including those relating to leaking Containers, damage to Containers and other property or hazards;
- (f) loss, damage or destruction to the permanent structures, buildings, equipment, improvements and other such fixtures owned by the Lessor and found within the Premises;
- (g) any other risks compulsorily provided for by Applicable Law or the rules and regulations governing the Lessor.

5.2 The proceeds from such property insurance cover shall be utilized to repair or reconstruct the installations damaged or destroyed with the end view of having them restored to their condition immediately prior to the event which occasioned the loss or damage. In no case shall the insured amount limit the responsibilities of the Lessor under this Transition Plan.

5.3 Notwithstanding the provisions of Sub Section 5.1 above, the Lessee shall maintain, at its expense, during the Transition Period insurance cover against the following:

- (a) the Lessee's general liability to a level of not less than US\$10 million;
- (b) accidents, injury or death occasioned to persons lawfully within the Premises arising out of its acts or omissions or such other liabilities that may be occasioned to such persons as a result of the Lessee carrying out and/or performing in accordance with the provisions of this Transition Plan;
- (c) loss, damage or destruction to the Development Plan Equipment and any Improvements found within the Premises; and
- (d) all other risks compulsorily provided for by Applicable Law or the rules and regulations governing the Lessee.

5.4 The Parties shall provide each other with copies of all such insurance policies and shall have the right to review and approve the same, such approval not to be unreasonably withheld.

6. SURVEYS

6.1 As soon as possible following the Execution Date, the Parties shall appoint an Expert to conduct a condition survey of the Premises paying particular attention to the condition of the approach bridges and the Fixed Assets. If, as a result of such condition survey, the Expert

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reports that the Premises, the Fixed Assets and/or the Movable Assets or any part thereof either do not comply with the provisions of the Agreement or are not present upon the Premises notwithstanding the provisions of the Agreement then, in respect of

- (a) the Premises and the Fixed Assets, the Lessor shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition before the Effective Date.

6.2 The Lessor and the Lessee shall also perform the following investigations during the Transition Period so as to ascertain the condition of the Premises:

- (a) a geotechnical investigation;
- (b) a topographical survey;
- (c) a survey of existing fire pumps and associated infrastructure;
- (d) a survey of the existing sub stations and electrical equipment.

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

7. CONDITIONS PRECEDENTS

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

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

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

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

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

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8. DEMOLITION WORKS CONDEMNED ASSETS

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

9. PREMISES

- 9.1 The Lessee shall commence the Improvements together with the construction of the new buildings and infrastructure on the Premises as contemplated in the Development Plan as soon as is reasonable practicable.
- 9.2 The Lessee shall prepare and offer a public tender for a comprehensive security package for the Premises and shall award such contract which shall be in compliance with the ISPS Code for security services to commence upon the Effective Date. The security requirements shall include, but not be limited to control at access points, internal patrols and perimeter patrols/surveillance.

ANY OTHER TECHNICAL DETAILS MAY BE INSERTED HERE.

10. CONTRACTS AND AGREEMENTS AFFECTING THE PREMISES

- 10.1 Within thirty (60) days of the Effective Date, the Lessor shall identify and provide the Lessee with copies of all existing and current agreements affecting the Premises and/or the Fixed Assets including, but not limited to, maintenance and service agreements affecting the Premises.
- 10.2 The Lessor shall transfer or cause to be transferred to the Lessee any agreements relating to the Premises and/or the Fixed Assets which are:
- (a) valid and subsisting;
 - (b) capable of being transferred to the Lessee; and
 - (c) that the Lessee has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Lessee; and
 - (d) execute such documents and deeds as the Lessee may require to confirm or give effect to this Sub Section.

11. CUSTOMS

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

12. REDUNDANT ASSETS.

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

13. DEVELOPMENT PLAN EQUIPMENT

- 13.1 The Lessor shall allow the Lessee to take delivery of and install a TOS, that will be implemented in order to allow the Lessee to track Containers, control planning and optimize equipment utilization from the Effective Date.

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13.2 The Lessee to receive and store without cost Container handling equipment that will be ordered. The Lessee shall provide adequate security and assume all risks associated with such equipment.

13.3 The Lessee shall map the terminal handling equipment requirements of the Premises taking into account the Development Plan Equipment.

14. CARGO AT THE PREMISES ON THE EFFECTIVE DATE

14.1 The Transition Committee shall prepare a detailed inventory of Long Sitters and other uncleared cargo on a vessel by vessel basis throughout the Transition Period.

14.2 The Lessor shall remove the Long Sitters and uncleared cargo identified in the inventory from the Premises which shall include requesting Customs to assist with the removal of the Long Sitters and uncleared cargo from the Premises.

14.3 Long Sitters and uncleared cargo shall be consolidated in a location outside of the Premises and the Lessor shall list the same for disposal through Customs. This will increase the working area within the CY and minimize the cargo stored within the Premises which will assist to:

(a) limit/eliminate liability for the collection of past fiscal and other dues;

(b) limit/eliminate liability originating from any possible cargo claims;

14.4 Any Containers or other cargo belonging to the customers of the Lessor on the Premises at the Effective Date shall become the responsibility of the Lessee. The Transition Committee shall prepare a list of Containers and cargo at the Premises three (3) days prior to the Effective Date. Any Operations provided by the Lessor to those customers in respect of their Containers on or before the Effective Date will be invoiced by the Lessor to the Lessee. The Lessor shall then invoice the customer for the Operations provided by the Lessee and for any services provided by the Lessor.

14.5 The Parties agree that the Lessor shall place an advertisement in the local media as soon as possible after the Execution Date to inform customers of the Lessor of the transition of the Premises to the Lessee and requesting the customers of the Lessor to take delivery of their Containers and other cargo within thirty (30) days (in the first instance) after which an extension of thirty (30) days may be granted to as to ensure that as many Cargo are removed from the Premises as is possible prior to the Effective Date.

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

15. CUSTOMER CONTRACTS

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

16. OPERATIONS

16.1 The Parties shall seek to expand the hours of operation of the main gate to permit movement of Containers in and out of the Premises twenty four (24) hours a day and seven (7) days a week.

16.2 The Parties shall work to ensure that the transition between Lessor Operations and the Operations is such so as to minimize disruption during or at the end of the Transition Period.

16.3 The Parties agree that the Transition Committee shall be responsible for the manning of the Premises for the period ninety (90) days prior to the Effective Date. Notwithstanding the

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provisions of this Sub Section, the Lessor shall ensure that all of its employees have vacated the Premises before or on the Effective Date.

- 16.4 Within sixty (60) days of the Execution Date, a CY plan should be implemented that regulates the discharge of Containers and or cargo to a carefully defined area on the Premises, thereby facilitating easier identification and inventory checking with minimum operational impact.
- 16.5 Further to the completion of the condition survey referred to in Section 6.1 of this Appendix, the Lessee shall commence a full overall review of the Premises and the Operations and the Lessor shall cooperate with the Lessee in respect of the provision of information and assistance in relation to such review, which shall include a review in the following areas:
- (a) Personnel organization;
 - (b) CY planning and operations;
 - (c) planning and operations on the Premises outside the CY;
 - (d) gate procedures and operations;
 - (e) IT hardware and systems;
 - (f) Documentation produced as part of the Operations;
 - (g) billing and finance functions;
 - (h) Customs procedures;
 - (i) statistics;
 - (j) safety procedures;
 - (k) security procedures;
 - (l) future and anticipated processes;

- 16.6 The Lessee shall commence the implementation of the Staffing Strategy Plan as set out in Appendix H of the Agreement and shall develop a comprehensive training program for employees in order for full takeover readiness.

17. CONTRACTORS

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

18. THE EFFECTIVE DATE

- 18.1 On the Effective Date the Lessor shall:

Premises and Transferring Fixed Assets

- (a) vacate the Premises which shall include the redeployment of all Lessor employees;
- (b) surrender peaceful possession of the Fixed Assets in a good working condition in accordance with the Agreement and Prudent Industry Standards (excluding reasonable wear and tear) to the Lessee;
- (c) cease Lessor Operations;

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- (d) hand over to the Lessee all documents including as built drawings, manuals and records relating to operation and maintenance of the Premises and the Fixed Assets;

Customer Contracts and Agreements

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

Tracking and Evaluation

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

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Appendix N
Termination Plan

19. DEFINITIONS

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

"Intellectual Property Rights" means:

- (a) patents, trademarks, service marks, rights in design, trade dress, trade secrets, trade names, and copyrights that are not the property of the Lessee but which are licensed to the Lessee by a third party and which relate to the Premises or the performance of the Operations;
- (b) applications for registration to any of the items contained in subsection (a) of this definition, to the extent that such application under Applicable Law provides protection for such items;
- (c) rights under licenses and consents in relation to any of the items contained in subsection (a) of this definition; and
- (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may exist anywhere in Nigeria;

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

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

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

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

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

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

20. THE TERMINATION PLAN

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

20.2 Notwithstanding Section 20.1, the Lessee shall ensure smooth continuation and provision of the Operations throughout the Termination Period. The Parties agree to minimize disruption of the Operations performed by the Lessee.



21. **CONDITION SURVEY**

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

22. **LESSEE MOVEABLE ASSETS**

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

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

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

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

23. **INTELLECTUAL PROPERTY**

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

24. **TERMINATION DATE**

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

Premises and Transferring Fixed Assets

- (a) vacate the Premises;
- (b) surrender peaceful possession of the Transferring Fixed Assets in a good working condition in accordance with Prudent Industry Standards (excluding reasonable wear and tear) to the Lessor;
- (c) hand over to the Lessor all documents including as built drawings, manuals and records relating to operation and maintenance of the Premises and the Transferring Fixed Assets;
- (d) transfer or cause to be transferred to the Lessor any agreements relating to the Premises and/or the Transferring Fixed Assets which are:
 - (i) valid and subsisting;
 - (ii) capable of being transferred to the Lessor; and



- (iii) that the Lessor has chosen to take over, and cancel or cause to be cancelled such agreements not to be transferred to the Lessor; and
- (iv) execute such documents and deeds as the Lessor may require to confirm or give effect to this Sub Section;

Transferring Movable Assets

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

Customer Contracts and Agreements

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

25. CARGO ON THE PREMISES AT THE TERMINATION DATE

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

26. COOPERATION

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

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