



**BREAK BULK TERMINAL D AT APAPA PORT
LEASE AGREEMENT**

by and among

**NIGERIAN PORTS AUTHORITY,
as the Lessor,**

**BUREAU OF PUBLIC ENTERPRISES,
as CONFIRMING PARTY for Lessor,**

and

**ENL CONSORTIUM LIMITED,
as Lessee**

Dated as of 3rd June, 2005

Atsoyabese

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Chase

[Signature]



BREAK BULK TERMINAL D AT APAPA PORT

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is made and entered into this 3rd day of June, 2005 ("Execution Date") by and among:

THE NIGERIAN PORTS AUTHORITY, a public authority constituted under the Nigerian Ports Authority Act No. 38 of 1999 Cap N126 Laws of the Federation of Nigeria, whose registered office is situated at 26/28 Marina, Lagos, Nigeria (the "Lessor");

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 Cap P38 Laws of the Federation of Nigeria, whose registered office is situated at No.1 Osun Crescent, Maitama – Abuja, Nigeria ("BPE"), in its capacity as Confirming Party of Lessor; and

ENL Consortium Limited, a Public Limited Liability Company registered under the laws of Nigeria with registered office at 26 Burma Road, Apapa, Lagos State (the "Lessee").

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.** , In accordance with the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999, the NCP, along with its Secretariat, BPE, on 23rd September, 2004_ invited bids for a right to enter into an agreement with the Lessor to (i) lease the real property in the port of Apapa (the "Port") described and delineated in Appendix A (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"); (ii) purchase certain movable property as further described in Appendix C (the "Movable Assets"); (iii) make certain improvements to the Lease Property as further described in the development plan attached as Appendix D (the "Development Plan") and (iv) perform certain other operation, maintenance and other services with respect to the Lease Property and the Movable Assets.
- B.** As a result of such competitive bidding process, the right to enter into such agreement was awarded to the Lessee.



- C. The Parties desire to set forth the terms and conditions of such agreement, and all of their respective rights and obligations related thereto.

WITNESSETH

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



ARTICLE I

DEFINITIONS; INTERPRETATION

1.1 Definitions. The following terms shall 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" shall mean 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.

"Affiliate" shall mean any Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person and shall, in the case of the Lessee and notwithstanding the foregoing, be deemed to include ENL Consortium Limited

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

"Annual Report" shall have the meaning set forth in Section 11.3.

"Applicable Law" shall mean 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 or administrative 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" shall mean quay structures including quay wall (gravity wall), fendering system, bollards and service gallery

"BPE" shall have the meaning set forth in the Preamble.

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

"Change in Law" shall mean 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 which demonstrably has a material adverse effect on a Party's performance of its obligations hereunder.

"Change of Control" shall mean the occurrence of any of the following: (a) Lessee and any of its affiliates cease 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) The Lessee 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" shall have the meaning set forth in Appendix F.

"Common Areas" shall mean 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" shall mean the possession, direct or indirect, of the power to vote more than ten percent (10%) of the Voting Interests of a Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Interests, by contract or otherwise. This definition shall also apply to the terms "controlling," "controlled by" and "under common control with."

"Day" or "day" shall mean a calendar day.

"Defaulting Party" shall have the meaning set forth in Section 13.3.

"Development Plan" shall have the meaning set forth in the Recitals.

"Disclosing Party" shall have the meaning set forth in Section 17.6.

"Dispute" shall have the meaning set forth in Section 16.2.

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

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

"Execution Date" shall have the meaning set forth in the Preamble.

"Emergency" shall mean a crisis, incident or other untoward situation so declared by the Regulator or threat to public safety, health and environment.

"Equity Interests" shall mean, 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" shall mean a Lessee Event of Default or Lessor Event of Default, as applicable.

"Fixed Assets" shall have 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; (iv) strikes or other labor disputes in Nigeria that are not due to the breach of any labor agreement by the Party claiming Force Majeure; (v) fires; (vi) actions or omissions by a Governmental Authority that were not induced or promoted voluntarily by the affected Party or were not caused by a noncompliance with its obligations under this Agreement or Applicable Law; (vii) Change in Law; (viii) 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 (ix) 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" shall mean 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.

"ICC Court" shall have International Chamber of Commerce

"Intellectual Property Rights" shall mean (a) patents, trademarks, service marks, 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" shall mean 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 fulfill 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 Government 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" shall mean 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" shall have the meaning set forth in Appendix F.

"Lease Property" shall have 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" shall have the meaning set forth in Section 2.2.

"Lessee" shall have the meaning set forth in the Preamble.

"Lessee Event of Default" shall have the meaning set forth in Section 13.1.

"Lessor" shall have the meaning set forth in the Preamble.

"Lessor Event of Default" shall have the meaning set forth in Section 13.2.

"LIBOR" shall mean 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 and significant 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" shall mean a calendar month.

"Movable Assets" shall have the meaning set forth in the Recitals.

"Movable Asset Purchase Price" shall have the meaning set forth in Section 5.1.

"Nigeria" shall mean the Federal Republic of Nigeria.

"Non-Defaulting Party" shall have the meaning set forth in Section 13.3.

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

"Operations" shall have the meaning set forth in Section 6.1.

"Operations Rates" shall have the meaning set forth in Section 6.7(b).

"Party" or "Parties" shall have the meaning set forth in the Preamble.

"Person" shall mean 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" shall have the meaning set forth in Section 11.4.

"Port" shall have the meaning set forth in the Recitals.

"Premises" shall have the meaning set forth in the Recitals.

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



"Quarterly Traffic Report" shall have the meaning set forth in Section 11.5.

"Receiving Party" shall have the meaning set forth in Section 17.6.

"Regulator" shall mean any Governmental Authority of Nigeria established, assigned, chartered or commissioned to regulate and control the development and/or conduct of Nigeria's maritime industry, including without limitation the Lessor and the Port.

"Staffing and Succession Plan" shall mean the plan set forth in Appendix I.

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

"Termination Date" shall have the meaning set forth in Section 2.2.

"Utilities" shall mean 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" shall mean 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.

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 favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
- (b) The word "including" shall mean "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 12, 15 and 16, 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 only upon satisfaction of the conditions to effectiveness set forth in Article VII (the "Effective Date").

- 2.2 Lease Term. This Agreement shall have a term (the "Lease 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. (The date of such termination shall hereinafter be referred to as the "Termination Date.") Following such tenth (10th) anniversary of the Effective Date, and unless this Agreement has otherwise been terminated, the Parties shall have the option to mutually agree to renew this Agreement for an additional period [not to exceed five (5) years]; [provided that either Party has notified the other Party in writing of its desire to renew this Agreement no less than three (3) 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, subject in each case to the terms and conditions set forth in this Agreement. Commencing on the Effective Date, the Lessor shall transfer to the Lessee the Lease Property for the Lease 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 Lease Term, the Lessee shall keep and maintain (i) the Lease Property in the condition in which it is transferred to the Lessee on the Effective Date, and free and clear of all liens, charges, claims, encumbrances, and security interests arising from the performance of the Operations or any other of its obligations hereunder, and (ii) 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 liens, charges, claims, encumbrances, and security interests which may be placed on the Lease Property, except those attributable to the acts or the omissions of the Lessor.



- 3.2 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(ies) 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, the Lessor shall indemnify, defend, and hold harmless the Lessee from and against any such claims.
- 3.3 Lease Fees. The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set forth in Appendix E. Except as the Lessor may otherwise agree in writing, all payments shall be made in Dollars. Any amounts due but not paid hereunder shall bear interest at the lesser of (a) LIBOR plus [five percent (5%) compounded monthly, or (b) the maximum rate permitted under Applicable Law.
- 3.4 Common Areas. The Lessor shall grant the Lessee for the benefit of the Lessee and its employees, contractors, customers and invitees during the Lease 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 to (a) make changes in or to the Common Areas; (b) close temporarily any of the Common Areas; (c) add, eliminate or change the location of any improvements in the Common Areas and/or construct additional buildings, facilities and other improvements within the Common Areas; (d) prohibit unauthorized Persons from using or accessing the Common Areas; or (e) perform such other activities and make such other changes in, to or with respect to the Common Areas as the Lessor may deem appropriate.
- 3.5 Berths. Subject to the provisions of this Article, the Lessee shall at all times have an exclusive right to use the berths listed in Appendix G. The Lessor shall have the right of primary use of the Berths in the case of an Emergency; provided that the Lessor pays the Lessee its normal charges for freight passing through the Premises. If such preferential use by the Lessor continues for more than five (5) days, 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.
- 3.6 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 in order to perform its obligations hereunder, including without limitation 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 or to the person or property of any person on the Premises or the Port; (c) cause diminution in the value or usefulness of all or any portion of the Lease Property (reasonable wear and tear excepted), (d) disturb or unreasonably interfere with or endanger the Lessor or any other lessees of the Port, or (e) create a nuisance or waste in, on or about the Premises.
- 4.2 Right to Sublease. The Lessee may sublease office space in the Premises to ship agents, forwarders and other parties whose principal business is to provide services related to the Port or marine operations and/or services, subject to the Lessor's prior written approval which shall not be unreasonably withheld.
- 4.3 Alteration of Lease Property.
- (a) *By Lessor.* In accordance with Applicable Law, the Lessor shall have the right to alter the Premises without modifying the terms of this Agreement; provided that (i) such alteration is required for technical operations and/or economic well-being of the Port and (ii) such alteration does not unreasonably interfere with the Lessee's peaceful and quiet possession and enjoyment of the Lease Property.
- (b) *By Lessee.*
- (i) *Development Plan.* The Lessee shall perform each of the improvements to the Lease Property required under the Development Plan; provided that (a) 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) documentation and other evidence demonstrating that such improvement will enhance the Lessee's performance of the Operations, (2) the plans and drawings for such improvement, (3) the names and addresses of the proposed contractor(s) and (4) such other documentation as reasonably requested by the Lessor, and (b) the Lessor has approved all such documentation in writing, such approval not to be



unreasonably withheld. If the Lessor does not disapprove the same within ninety (90) days, they shall be deemed approved.

- (ii) *Other Improvements.* The Lessee shall not make any other improvements or alterations to the Lease Property without the Lessor's prior written approval. In requesting such approval, the Lessee shall furnish to the Lessor the following no later than ninety (90) days prior to the proposed date for commencement of the work implementing such improvements or alterations: (a) documentation and other evidence demonstrating that the requested improvements or alterations will enhance the Lessee's performance of the Operations, (b) the plans and drawings for such improvements or alterations, (c) the names and addresses of all proposed contractors and (d) such other documentation as reasonably requested by the Lessor.
- (iii) *Applicable Standards.* The Lessee shall ensure that all improvements and/or alterations are in compliance with (a) Applicable Law, (b) International Conventions, Protocols and Agreements and (c) Prudent Industry Standards.
- (iv) *Rights of Lessor to Monitor and Inspect.* Without limiting or reducing the Lessee's obligations under Section 4.3(b)(iii), the Lessor shall have the right to inspect such 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 notified the Lessee in writing that they are in accordance with the plans approved by the Lessor and comply with Applicable Law. The Lessor shall have the right to be present at any time during the performance of such improvements or alterations and shall have access to the Premises and all records and materials of the Lessee related to the same, including participation in related progress meetings. Any improvements or alterations made by the Lessee to the Lease Property during the Lease Term shall be and shall remain the property of the Lessor, without any claim for or reimbursement from the Lessor for the cost of the value thereof.

4.4 Maintenance.

- (a) *Lessee's Maintenance Obligations.* The Lessee shall be responsible for the maintenance, repairs, renewals and replacements of the Lease Property (excluding the same resulting from Latent Defects) so that at all times during the Lease Term and upon the Termination Date, the Lease Property shall be in the same condition as of the Effective Date or, if applicable, as of the date of improvement under the Development Plan, excluding normal wear and tear. The Lessee shall maintain the Lease Property in good condition and repair. All repairs and



replacements shall be equal or better in quality to the original material and workmanship standard. The maintenance work performed by the Lessee shall comply with Applicable Law and Prudent Industry Standards. The Lessee shall not contract any maintenance or repair work relating to the Lease Property without giving prior written notice to the Lessor. 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 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 is damaged, the Lessee shall notify the Lessor in writing of the same within twelve (12) hours after such damage occurred. The Lessee shall commence its repair of such damaged Lease Property within fourteen (14) days after such damage occurred, and shall complete such repair within a reasonable period of time thereafter. If the Lessee fails to notify the Lessor of such damage within the specified period, the Lessee shall pay to the Lessor a penalty of two hundred and fifty Dollars (\$ 250) per day from the expiration of the 12 hours to the date such property is replaced. In the event that the Lessee fails to commence the repair within such fourteen (14) day period or complete such repair within such time period, as applicable, then the Lessor may, upon written notice to the Lessee, perform such repair. In such an event, the Lessee shall reimburse the Lessor for any costs which the Lessor incurs in performing such repair, with interest at LIBOR plus five percent.
- (c) *Maintenance of Navigation Aids.* The Lessee shall not be responsible for the maintenance of navigation aids located within the Premises; provided that the Lessee shall ensure that such navigation aids are not damaged by the Lessee's performance of the Operations. If such navigation aids are damaged or destroyed due to the Lessee's performance of the Operations, the Lessee shall notify the Lessor in writing within twelve (12) hours of the incident and shall in addition, provide a temporary replacement acceptable to the Lessor within such twelve (12) hours. The Lessee shall further replace such navigation aids at its own cost within fourteen (14) days of such incident. If the Lessee fails to provide such notice within such twelve (12) hour period, then the Lessee shall pay the Lessor a penalty equal to two hundred and fifty Dollars (\$250) for each day until the day on which the Lessee provides to the Lessor such notice. If the Lessee fails to provide such replacement within such fourteen (14) day period, then the Lessor shall provide such replacement and the Lessee shall reimburse the Lessor the cost of replacement with an interest equal to LIBOR plus 5%. In addition, the Lessee shall pay the Lessor a penalty equal to two hundred fifty Dollars (\$250) for each day until the day on which the Lessor provides such replacement.



(d) *Maintenance of Quay Wall.* The Lessor shall be responsible for maintenance, repairs, renewals and replacements of the Quay Wall on the Premises during the Lease Term. In the event that the Quay Wall is damaged, the Party becoming aware of such damage shall notify the other Party in writing of 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 Quay Wall within a reasonable period of time 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 fails 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 the 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 cost incurred together with interest at LIBOR plus five per cent (5%) compounded monthly.

4.5 Utilities. The Lessee shall make its own arrangements and pay for the supply of Utilities to the Lease Property. The Lessor shall provide reasonable assistance to the Lessee in making such arrangements. . For the avoidance of doubt, the Lessee shall pay the Lessor for water supplied to its Premises, including but not limited to, water supplied through hydrants at a tariff agreed by both Parties.

4.6 Office Facilities. The Lessee shall provide, at its own expense, adequate office space for the Lessor and other Governmental Authorities, including without limitation those who have duties such as customs and immigration functions in the Premises.

4.7 Disposal of Movable Assets. The Lessee shall not sell, transfer, remove or dispose of any of the Movable Assets without the Lessor's prior written approval, PROVIDED that prior to the Effective date, the Lessee shall notify the Lessor of any equipment that have no value and the Lessor shall within thirty (30) days of such notification, dispose of such equipment at its own cost. In each Annual Report the Lessee shall list any of the Movable Assets, if any, that have been sold, transferred, removed or disposed of during the previous year and shall provide audited details of all such transactions. For avoidance of doubt, any sale, transfer, removal or disposal by the Lessee of Movable Assets in contravention of this Section shall constitute a Lessee Event of Default under Section 13.1(f), and the Lessor shall have all the rights and remedies (including rights to terminate this Agreement) under Section 13.3.



4.8 Access to Lease Property.

- (a) *By Lessor.* 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. Within three (3) days prior to a visit, the Lessor shall notify the Lessee in writing of the names of the individuals to be permitted access and the time and date of such visit. Notwithstanding the foregoing, the Lessor shall not be required to provide the Lessee with such prior written notice in the event of an Emergency. The Lessee shall also grant access to the Premises for the Lessor or its designees for the purpose of maintaining and modifying structures, Utilities and equipment which are reasonably necessary for the efficient operation of the Port, including without limitation:
- (i) constructing new facilities, installing new equipment, or undertaking other activities which have been approved by the Lessee;
 - (ii) within two (2) years prior to the Termination Date, installing new mechanical equipment and any other works necessary to ensure that the Lease Property continues to operate in a satisfactory manner after such date, provided that such installations and other works shall not unreasonably interfere with the Lessee's performance of the Operations; and
 - (iii) emergency action to safeguard the operations of the Port, health, safety and security of its employees, or the quality of the environment in and around the Port. The Lessee shall not deny the right of access through the Premises to other facilities controlled by the Lessor under any other circumstances to the extent that reasonable, alternative means of access are not available.
- (b) *By Governmental Authorities.* The Lessee shall grant access to the Premises to Governmental Authorities for the purpose of carrying out any activities, which they are legally entitled to carry out in the Premises pursuant to Applicable Law.
- (c) *By Utilities Providers.* The Lessee shall grant rights of way and easements through the Premises for existing and future Utilities. The Lessee shall not take any action, which is detrimental to the efficient supply of such Utilities to the Port and adjacent areas **PROVIDED THAT** any such rights shall not unreasonably affect the efficient operation of the terminal.



- (d) *By Others.* Subject to prior notification by the Lessor to the Lessee, the Lessee shall grant access to the Premises to Lessor's employees and agents and the staff of any contractors employed by them, to enable them to perform their work efficiently; provided that they do not unreasonably interfere with the Lessee's performance of the Operations and provided further that they shall follow the rules concerning safety, traffic, security, and other regulations relating to the Operations of the Terminal prescribed by the Lessee.

ARTICLE V

MOVABLE ASSETS

- 5.1 Sale and Purchase of Movable Assets. Subject to the terms and conditions of this Agreement, upon the Effective Date, the Lessor shall sell to the Lessee, and the Lessee shall purchase from the Lessor, the Movable Assets for an aggregate purchase price of two hundred and seventy thousand Dollars (\$270,000.00) (the "Movable Assets Purchase Price").
- 5.2 Payment of Movable Assets Purchase Price. On the Effective Date, the Lessee shall pay the Lessor the Movable Asset Purchase Price by wire transfer to an account of the Lessor previously designated by the Lessor in writing.
- 5.3 Conveyance of Movable Assets. On the Effective Date, and subject to its receipt of the Movable Asset Purchase Price and the satisfaction of the other conditions set forth in Article VII, the Lessor shall convey, transfer, assign and deliver to the Lessee, free and clear of all liens and encumbrances, the Lessor's right, title and interest in and to the Movable Assets, accompanied by any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessee.

ARTICLE VI

OPERATIONS

- 6.1 Obligation of Lessee to Perform Operations. The Lessor hereby appoints the Lessee and the Lessee hereby accepts such appointment, to perform the operations and activities described in Appendix E (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 authorities as are necessary for the Lessee to perform the Operations.
- 6.2 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.
- 6.3 Exclusivity. The Lessee shall have the exclusive right during the Lease Term to perform the Operations within the Premises.



- 6.4 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.
- 6.5 Duties to Cooperate. The Parties shall cooperate in good faith to ensure at the Effective Date smooth and effective transfer of the provision of the Operations from the Lessor to the Lessee. In performing the Operations, the Lessee shall cooperate with the Lessor and the Regulator so as to enable the Lessor and the Regulator to perform their monitoring, supervisory and other duties relating to the Port.
- 6.6 Performance Requirements.
- (a) *General Requirements.* The Lessee shall use its best efforts to (i) develop, market and promote the cargo business of the Lease Property in order to achieve maximum utilization thereof in a manner which is consistent with Applicable Law and Prudent Industry Practices, 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 Lease Term described in Section A of Appendix L (the "Performance Requirements").
- (c) *Interruptions.* The Lessee shall ensure that its performance of the Operations shall be as continuous and without interruptions as is reasonably practical. The Lessee shall maintain records of the number, duration, location and extent of all emergencies and unforeseen interruptions. Subject to prior written notification to the Lessor, the Operations may be interrupted in order to carry out maintenance, rehabilitation or reinforcement of the Lease Property. During any such repairs or in the event of an accident or Emergency requiring immediate interruption of the Operations, the Lessee may take all necessary measures to manage the same.
- (d) *Tracking and Evaluation of Performance.* The Lessor shall evaluate the Lessee's performance of the Operations on an annual basis. Such evaluation shall commence on the first day of the first month following the Effective Date. To enable the Lessor to perform such evaluation, the Lessee shall provide to the Lessor an evaluation report within sixty (60) days of the anniversary date which shall include, *inter alia*, a full accounting of its performance against the applicable Performance Requirements, and a reasonably sufficient explanation of any failure to meet such Performance Requirements and any other information requested by the Lessor to enable it to perform such evaluation. If the Lessee fails to achieve the Performance Requirements for reasons not attributable to the Lessee, the Lessee shall notify the Lessor in writing of the same and the Lessee shall document the details of such failure. Upon its receipt of such information, the Lessor shall analyze the same



and prepare an evaluation report containing its own assessment of the Lessee's performance against the Performance Requirements. In making such evaluation, the Lessor shall take into account any interruption of the Lessee's rights to the Berths during the applicable evaluation period due to the Lessor exercising any of its rights under any of the provisions of this Agreement, including without limitation Section 3.5. Upon its completion, the Lessor shall deliver a copy of its evaluation report to the Lessee. Within fifteen (15) days of the Lessee's receipt of such evaluation report, the Lessee shall deliver to the Lessor any comments which it may have with respect to such report. The Lessor may incorporate such comments into its report if the Lessor agrees with the comments.

6.7 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 rates for the Operations which are not greater than the rates set forth in Section A of Appendix H (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 be allowed to set its charges for services rendered but not specified in Appendix H, including but not limited to: handling, storage, and for penalties for violation of applicable rules and regulations, including those relating to the protection of the environment.
- (c) *Publication of Operations Rates.* The Lessee shall at all times publish its rates, charges and conditions of the Operations as directed by the Lessor or the Regulator, and shall make such information immediately available upon request by any Person.
- (d) *No Discriminatory Pricing.* The Lessee shall afford to all who may request the Operations uniform treatment under like conditions and shall not apply preferential or discriminatory charges on any Person, except to the extent expressly permitted under this Agreement, such as volume discounts, discounts for transshipment cargoes, discounts to attract volume during low periods. Consistent with the foregoing principles:



- (i) Where concessionary or other 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. The Lessor and the Regulator 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.
- (ii) In the event that the Lessor or any other Governmental Authority receives a complaint of discrimination on the part of the Lessee, and the Lessor or the Regulator, as applicable, concludes after its investigation of such complaint that there are reasonable grounds for such complaint, then the Lessee, upon written notice from the Lessor or such other Governmental Authority, as applicable, shall cease and desist from such practices and pay any applicable penalties provided for under Applicable Law.

6.8 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.* The Lessee personnel may be sourced from Nigeria; **PROVIDED**, however, that the Lessee shall comply with the Staffing and Succession Plan as provided in Appendix I to the extent applicable. The Lessee shall use commercially reasonable efforts to employ as many Nigerian nationals as commercially practical and feasible in management positions to the extent that there are Nigerian nationals, who satisfy the requirements for such positions.
- (c) *Employment Contracts.* With respect to personnel employed by the Lessee under Sections 6.8(b), the Lessee shall be responsible for the negotiation of the applicable employment and labor contracts. Such contracts shall offer the respective employees terms and conditions of employment, which are in accordance with Applicable Law.
- (d) *Lessor Personnel.* Within thirty (30) days Prior to the Effective Date, the Lessee shall notify the Lessor in writing of the Lessor personnel that the Lessee wishes to employ. In effectuating such employment, the Lessor and the Lessee shall comply with all Applicable Laws. 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 are employed by the Lessee.
- (e) *Training.* The Lessee shall be responsible for the preparation and implementation of all training of all staff working at the Premises in accordance with Appendix I ("the Staffing and Succession Plan") and Applicable Law.



(f) *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.

6.9 Lessee Equipment. The Lessee may purchase, at its own expense, additional equipment (i.e., not reflected in the Development Plan) to use for the satisfaction of its obligations hereunder, including without limitation its performance of the Operations to meet the Performance Requirements; **PROVIDED** that the Lessee shall obtain the Lessor's written approval prior to the introduction of any such additional equipment where it is a rubber tyred equipment of more than 50 tons or non rubber tyred equipment. Such additional equipment shall be the Lessee's property unless the Parties otherwise agree that the Lessor shall become owner of it on the Termination Date. The Lessee shall, at its own expense, remove it 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. Nine (9) months prior to the Termination Date, the Lessee shall notify the Lessor in writing of the Lessee's intention to remove such equipment from the Premises or to transfer to the Lessor such equipment at a mutually agreed price.

6.10 Spare Parts and Consumables.

(a) *On Commencement of Lease Term.* Within thirty (30) days after the Execution 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/or consumable items at a price mutually agreeable to the Parties.

(b) *On Termination of Lease Term.* The Lessee shall provide the Lessor with a list of its inventory of spare parts and consumable items related to the Lease Property within sixty (60) days prior to the Termination Date. On the Termination Date, the Lessee may sell to the Lessor any spare parts and/or consumable items which the Lessor wishes to acquire at a price mutually agreeable to the Parties.

6.11 Financing of Operations. The Lessee shall be responsible for the planning of the financing of its performance of the Operations. The Lessee shall make such plans available to the Lessor for its review upon request by the Lessor.

ARTICLE VII

CONDITIONS PRECEDENT

7.1 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 fulfillment 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) *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 or other Governmental 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.
- (c) *Governmental Consents.* All consents or authorizations of Governmental Authorities that are required to lease, transfer or assign (as applicable) to the Lessee the Lease Property or Movable Assets, shall have been made or obtained.

7.2 Conditions to Obligations of Lessor. The obligation of the Lessor to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, 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 12.1 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 fulfillment of the conditions set forth in Sections 7.2(a) and (b).
- (d) *No Material Adverse Effect.* Between the Execution Date and the Effective Date, there shall have been no event, change or other occurrence that has or would result in a Material Adverse Effect on the Lessor.

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- (e) *Corporate Proceedings.* All corporate proceedings of the Lessee in connection with the transaction contemplated by this Agreement, and all documents and instruments incident thereto, shall be reasonably satisfactory in form and substance to the Lessor and its counsel, and the Lessor and its counsel shall have received all such documents and instruments, or copies thereof, certified, as may be reasonably requested. The Lessee shall have delivered to the Lessor a secretary's certificate certifying to (i) resolutions adopted by the Lessee evidencing the authorizations described in this Section, (ii) the constituent documents of the Lessee, and (iii) incumbency of the officers of the Lessee executing this Agreement and documents required hereunder.
- (f) *Movable Asset Purchase Price.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Movable Asset Purchase Price, in accordance with Section 5.2.
- (g) *Commencement Fee.* The Lessee shall have paid to the Lessor, and the Lessor shall have received, the Commencement Fee, in accordance with Appendix F.
- (h) *Performance Bond.* Within fifteen (15) days after the Execution Date, the Lessee shall deliver to the Lessor a performance bond in favor of the Lessor in an amount equal to the pro rated yearly value of the Throughput fee equal to ninety (90) days or three hundred and fifty thousand U.S Dollars (\$350,000), whichever is higher 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 be renewed annually such that it shall remain in full force and effect until thirty (30) days after the Termination Date. If thirty (30) days before the annual anniversary date of the performance bond it is not renewed for another year, such non-renewal of the performance bond shall be an event of default of the Lessee, and the Lessor shall have the right to call on the performance bond. Such bond shall cover the Lessee's obligations under this Agreement, including without limitation the payment of the Lease Fees, all other costs and liabilities arising from its obligations under this Agreement, and all 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.
- (i) *Evidence of Insurance.* The Lessee shall within sixty (60) days from Execution Date have delivered to the Lessor certificates of insurance and other documentation reasonably requested by the Lessor evidencing that the Lessee has obtained the insurance coverage on the Premises required under Section 8.1.

7.3 Conditions to Obligations of Lessee. The obligations of the Lessee to consummate the transaction contemplated by this Agreement shall be subject to the fulfillment 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 12.2 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 fulfillment of the conditions set forth in Sections 7.3(a) and (b).
- (d) *No Material Adverse Effect.* Between the Execution Date and the Effective Date, there shall have been no event, change or other occurrence that has or would result in a Material Adverse Effect of the Lessee.
- (e) *Bill of Sale.* The Lessor shall have delivered to the Lessee any necessary bills of sale, assignment agreements, novation agreements or other instruments of transfer reasonably requested by the Lessee in respect of the Movable Assets in form and substance reasonably satisfactory to the Lessee as required in Section 5.3.

7.4 Additional Covenants of Parties.

- (a) *Registration and Filing.* The Lessee shall file and register this Agreement with the applicable Governmental Authorities within fifteen (15) days after the Effective Date.
- (b) *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 ninety (90) 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.



ARTICLE VIII

LESSEE'S COVENANTS

8.1 Insurance.

- (a) *Required Insurance.* The Lessee shall obtain and maintain, at its expense, the insurance described in Appendix K 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 the same. All such insurance policies shall be in the names of the Parties. All insurance policies shall be purchased from insurance companies approved by the Lessor. In no event shall the insured amount limit the Lessee's responsibilities and liabilities under this Agreement.
- (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. In the event that the Lessee at any time fails to secure and maintain in full force and effect any and all of the insurance required under this Agreement, the Lessor may procure or renew such insurance, and all costs incurred by the Lessor in connection therewith plus five percent (5%) over such costs shall be paid by the Lessee within thirty (30) days after the Lessor has sent the Lessee an invoice for such payment. In the event that the Lessee fails to pay the Lessor such invoiced amount within such thirty (30) day period, then the Lessee shall pay the Lessor a penalty equal to two hundred fifty Dollars (\$250.00) per day until the Lessee pays such invoiced amount.

8.2 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 and Agreements, Prudent Industry Standards, and the Lessor guidelines. During the Lease Term, the Lessee shall comply with such procedures.
- (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 and Agreements for the Lease Property (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.
- (c) *Fire Control.* The Parties shall agree to the procedures for installing, maintaining and operating fire fighting equipment in the Port. The Lessor shall purchase such equipment and it shall remain the Lessor's



property throughout the Lease 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 and the Lessor guidelines.
- (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.

8.3 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 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 relevant 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 materials generated from the Premises in a manner acceptable to the Lessor and in accordance with Applicable Laws, International Conventions Protocols and Agreements 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.
- (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 hazardous materials spill containment, removal and remediation plan for the



Premises in accordance with Prudent Industry Practices and Applicable Law.

- (e) *Obligation to Notify.* In the event that pollution occurs that may affect the Premises, the Lessee shall (a) inform the Lessor immediately of the same, (b) take all reasonable measures required for detecting, cleaning and containing such pollution and (c) provide the Lessor with frequent written updates on such measures being taken or remaining to be taken by the Lessee.
- (f) *Obligation to Remediate, Reimburse and Indemnify.* In the event that objects, liquids or materials are present in the waters or in or on the bottom of the Port in the vicinity of the Premises after the Effective Date and, which, in the Lessor's opinion, do not belong there and have originated from the Premises then (i) the Lessee shall take immediate action to contain, remove and/or remediate the same in accordance with Applicable Law, International Conventions, Protocols and Agreements and Prudent Industry Standards; and (ii) the Lessee shall pay the Lessor any costs incurred by the Lessor in connection with the containment, removal and/or remediation thereof. The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any and all claims which arise from the presence of such objects, liquids or materials to the extent that they originate from the Premises after the Effective Date provided that such indemnification shall not apply to vessels berthed at the Premises which are owned by or performing services on behalf of the Lessor. Where the Lessee fails to take immediate steps to contain, remove and/or remediate the same, the Lessor shall notify the Lessee and take such necessary steps to contain, remove and/or remediate the same and the Lessee shall refund the Lessor the cost incurred at a rate equal to LIBOR plus 5%.
- (g) *Pre-Existing Pollution.* The Lessee shall not be responsible for the cost of the containment, removal and/or remediation of pollution that has occurred prior to the Effective Date.

8.4 Emergencies. In the event of any emergency 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 health and safety of the public, its customers or the protection of the Lease Property, and such failure creates an 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 Leased 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.

- 8.5 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. The Lessee shall, at its own expense, perform such work to the Lease Property as shall be deemed necessary by the Lessor 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 willful misconduct.
- 8.6 Lessee Ownership Structure. The Lessee shall not cause or permit any Change of Control in the Lessee without the Lessor's prior written consent.
- 8.7 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.
- 8.8 Licenses; Permits. The Lessee shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessee to fulfill its obligations hereunder, including without limitation, the performance of the Operations in accordance with this Agreement.
- 8.9 Cargo Declaration. The Lessee shall make true and accurate declaration of all cargo handled by it. In the event of any discrepancy in figures relating to actual cargo handled and the declaration made by the Lessee, the Parties shall meet to reconcile the figures. Where parties fail to reconcile the figures and the Lessor establishes that the Lessee has knowingly made an under declaration of cargo, the Lessee shall be liable to pay to the Lessor a penalty of one hundred percent (100%) of the royalty payable on the particular ship load, which was under declared.

ARTICLE IX

LESSOR'S COVENANTS

- 9.1 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.



- 9.2 No Interference. The Lessor shall ensure that its personnel shall not delay or interfere with the performance of such obligations of the Lessee or with the Lessee's personnel in the execution of their duties.
- 9.3 Port Access. The Lessor shall, at all times possible, keep the Port open to shipping so that the Premises may be accessible for use by the Lessee for the performance of its Operations.
- 9.4 Waste Disposal. The Lessor shall arrange for the disposal of waste materials received from the vessels berthed at the Premises in accordance with Applicable Laws, International Conventions Protocols and Agreements and Prudent Industry Standards.
- 9.5 Port Services; Dredging.
- (a) *Port Access and Navigation.* The Lessor shall provide and maintain maritime approaches, canals, turning circles, breakwaters and navigation aids. The Lessor shall also provide vessel traffic management, pilotage, towage, berthing, unberthing and shifting of vessels services. The Lessor, in consultation with the Lessee, shall undertake the scheduling of the arrival and departure of the vessels berthing at the Premises subject to the availability of pilotage and towage services and its responsibility for safe navigation within the Port. The Lessor shall provide timely and efficient pilotage and towage services to the vessels calling at the Premises, either directly or through the licensing of competitive suppliers of such services, at prices, which shall not exceed the published tariffs of the Port at such time.
 - (b) *Safety Regulations.* In accordance with Applicable Law, the Lessor shall issue regulations and rules governing waterside and navigation safety within the Port.
 - (c) *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 maintain (or cause to be maintained) a depth of water at the Berths of the Premises of 9.75 m meters below Low Low Water, and their navigable approaches maintained at sufficient depths at all times to service the berths.
- 9.6 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.
- 9.7 Access to Premises; Rights of Way. The Lessor shall ensure that 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 and other Applicable Laws governing access to the Port.



The Lessor shall grant rights of way and easements through the Port outside the Premises for existing and future Utilities to the Premises. The Lessor shall not take any action, which is detrimental to the efficient supply of such Utilities to the Lessee.

- 9.8 Utilities. The Lessor shall provide reasonable assistance to the Lessee in making its arrangements for the supply of the Utilities to the Premises.
- 9.9 Security. The Lessor shall be responsible for the general security of the Port outside the security fence of the Premises and the provision and maintenance of the perimeter fencing on the boundaries of the Port.
- 9.10 Licenses; Permits. The Lessor shall obtain and keep in force all necessary licenses, permits and warranties which are necessary for the Lessor to fulfill 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 8.8.
- 9.11 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.

ARTICLE X

FORCE MAJEURE

- 10.1 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. Notwithstanding the foregoing, the Lessee's payment obligations hereunder shall not be excused by an event of Force Majeure. 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.
- 10.2 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.
- 10.3 Termination. If an event of Force Majeure extends for more than one hundred twenty (120) non-consecutive days within a period of six (6) consecutive



Months or ninety (90) consecutive days, or an event of Force Majeure causes substantial damage or destruction to the Port or the Lease Property so that they are not capable of repair within ninety (90) days after the termination of such event of Force Majeure, then either Party may terminate this Agreement by giving not less than thirty (30) days written notice of such termination to the other Party.

ARTICLE XI

DOCUMENTATION AND AUDITS

11.1 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 Practices.
- (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 from time to time.
- (e) *Disclosures.* The Lessee shall obtain the Lessor written approval prior to disclosing any confidential information related to its Operations or the Lease Property to the public.

(f) *Retaining Requirements.* The Lessee shall retain all records, reports and other documentation required to be prepared and maintained by the Lessee hereunder for at least three (3) years, including those pertaining to the three years prior to the Termination Date.

(g) *Other Information.* The Lessee shall provide to the Lessor any other information as the Lessor may reasonably require, including without limitation (i) statistics on the volume and types of commodity handled in the Premises; (ii) statistics on the numbers and types of ships, wagons or road trucks loaded or unloaded in the Premises; (iii) details of the claims received in relation to cargo damage; (iv) immediate notification of accidents within the Premises causing death or serious injury; (v) immediate notification of incidents causing oil pollution or other forms of environmental damage; (vi) industrial relations; (vii) public complaints; (viii) notification of additions to and disposals of mechanical equipment and other significant assets; and (ix) statistics on the availability for use of major items of mechanical equipment.

11.2 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) review of financial records.

11.3 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; (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 Lease 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.

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

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(a) detailed five (5) year capital program which identifies areas for expansion of the Operations; (b) proposals for improving Operations levels; and (c) human resource proposals ("Planning and Investment Report"); and (d) a benchmarking of all of the foregoing against the Development Plan. 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 and the Regulator.

11.5 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 through the Premises; (b) number of vessels ("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 Lease Term. The Parties shall agree upon the format of the Quarterly Traffic Report. The Lessee shall provide any clarification of the Quarterly Traffic Report requested by the Lessor and the Regulator.

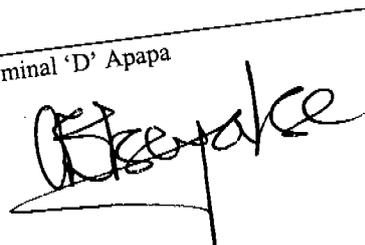
ARTICLE XII

REPRESENTATIONS AND WARRANTIES

12.1 Lessee Representations and Warranties. The Lessee represents and warrants that:

- (a) It is a Nigerian Public Limited Company duly organized and validly existing under the laws of the Federal Republic of Nigeria¹ and is authorized and qualified to do business in Nigeria.
- (b) It is not in violation of any Applicable Law or judgment entered by an Governmental Authority, which violations, individually or in the aggregate, would affect its performance of any obligations under the Agreement. There are no legal or arbitration proceedings or a proceeding by or before any Governmental Authority, now pending (to the best knowledge of the Lessee) threatened against the Lessee that, if adversely determined, could reasonably be expected to have material 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 compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter of

BPE/NPA & ENL Consortium (Lease Agreement Terminal 'D' Apapa



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 (a) carefully examined this Agreement, together with all Appendices attached hereto, thoroughly and become familiar with all their respective terms and provisions; (b) investigated to its satisfaction all Applicable Laws and it can perform its obligations hereunder in accordance therewith; (c) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and (d) made all investigations and inspections that it deems necessary to perform its obligations hereunder, including without limitation investigations and inspections of the Lease Property.

12.2 Lessor Representations and Warranties. The Lessor represents and warrants 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 a material 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, [Memorandum and



Articles of Association] of the Lessor, or any 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.
- (f) As of the Effective Date it has good title to the Movable Assets and full legal right and power to transfer and deliver such Movable Assets to the Lessee in the manner contemplated by this Agreement. Upon delivery of such Movable Assets against payment therefor pursuant to the terms of this Agreement, the Lessee shall receive good title thereto, 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 Movable Assets.

ARTICLE XIII

DEFAULT:

- 13.1 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:"
- (a) The Lessee becomes insolvent, is declared bankrupt, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal 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.
 - (b) Failure of the Lessee to perform Operations for fourteen (14) consecutive days would entitle the Lessor to divert vessels to other terminals for a period of seven (7) days after which such continued



failure may be considered a Lessee Event of Default or failure of Lessee to perform Operations for sixty (60) non consecutive days.

- (c) The Lessee fails to pay the Lease Fees in accordance with Appendix F.
- (d) The Lessee commits a material breach of a material provision of this Agreement.

13.2 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:"

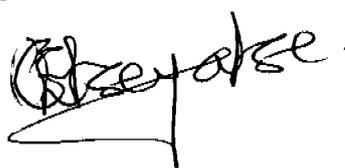
- (a) The Lessor becomes insolvent, is declared bankrupt, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation.
- (b) The Lease Property (in whole or in part) is expropriated, compulsorily acquired or nationalized by a Governmental Authority.
- (c) The Lessor commits a material breach of a material provision of this Agreement.

13.3 Other Events of Default. Upon an Event of Default described in Section 13.1(b), (c), (d), or 13.2(c), 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 terminate this Agreement. 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 a reasonable period of time (not to exceed thirty (30) days) to remedy such Event of Default. If such time period expires and the Defaulting Party has not cured the Event of Default, the Non-Defaulting Party may terminate this Agreement.

ARTICLE XIV

TERMINATION

14.1 Termination. This Agreement may be terminated in any of the following ways:



- (i) the expiry of the Lease Term;
- (ii) upon the occurrence of an Event of Default in accordance with Article 13;
- (iii) upon the occurrence of an event of Force Majeure in accordance with Article 10.

14.2 Procedures. Within one year prior to the expiration of the Lease Term, the Parties shall agree to the procedures to be adopted and followed by them relating to the transfer of the Lease Property on such termination. The Lessor shall have the right, at its own expense, to take any measures during the last year of the Lease Term (or as the case may be, upon early termination) necessary to ensure the continuity of the performance of the Operations. Each Party shall be responsible for the costs and expenses incurred by it in performing its obligations under this Article. Notwithstanding the foregoing, in the event that the Lessor terminates this Agreement as a result of a Lessee Event of Default, the Lessee shall pay the Lessor for all such costs and expenses.

14.3 Continuity of Operations. The Lessee shall ensure smooth continuation and provision of the Operations throughout the period from its receipt of any termination notice of this Agreement until the effective date of such termination, or during the last year of the Lease Term if no such notice is served. The Parties agree to minimize disruption of the Operations performed by the Lessee.

14.4 Surrender of Lease Property. Within thirty (30) days prior to the Termination Date, the Parties shall conduct a joint survey on the Lease Property at shared cost. On the Termination Date, all rights and interests of the Lessee in the Lease Property and all structures and fixed equipment thereon or alterations or improvements made thereto pursuant to Section 4.3(b) (excluding those owned by the Lessee pursuant to the terms hereof) shall cease immediately, and the Lessee shall peaceably and quietly surrender to the Lessor the Lease Property in a good working condition in accordance with Prudent Industry Standards (excluding reasonable wear and tear). In the event that the Lessee does not return the Lease Property in such condition, all costs, which the Lessor incurs in causing the Lease Property to be in such condition, shall be paid by the Lessee. The Lessor or its designee shall have the immediate right to enter and take full possession of the Lease Property to perform the Operations and to remove the Lessee, its employees and representatives, and any other parties who may occupy any part of the Premises. Except for improvements made pursuant to the Development Plan, the Lessor may require the Lessee, at the Lessee's own expense, to remove or undo any improvements or alterations made by the Lessee to the Lease Property.

14.5 Movable Assets. The Lessee shall, at its own expense, remove the Movable Assets from the Premises within ninety (90) days after the Termination Date,



unless the Lessor notifies the Lessee in writing that it wishes to purchase the Movable Assets within thirty (30) days prior to the Termination Date.

- 14.6 Intellectual Property. In the event the Intellectual Rights are held by third parties, the Lessee shall make all reasonable efforts to obtain the granting of a license under terms that will permit the reproduction, translation, use and lease of a sub-license by the Lessor for such purpose. The Parties shall take all steps that may reasonably be necessary or desirable to fully effectuate the provisions of this Section.
- 14.7 Cooperation; Exchange of Information. 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 appoint 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 Lease Property and the Operations (including manuals, records, data, etc.) and customers (including charging, billing and payments), but shall exclude any Intellectual Property Rights.

ARTICLE XV COMPENSATION

- 15.1 Compensation upon Force Majeure. The Parties shall bear their respective costs and neither Party shall be required to pay the other Party any costs arising out of an event of Force Majeure.
- 15.2 Compensation On Termination Due To Lessee Event of Default. If the termination is due to a Lessee event of default, the compensation payable by the Lessee to the Lessor shall be the aggregate of:
- a) Any and all costs, expenses, charges incurred or sustained as a result of such termination;
 - b) An amount equal to two times the total revenue received by the Lessee in respect of the Performance of the Operations for the twelve (12) months ending immediately preceding the Lessee Event of Default;
 - c) An amount equal to two times the Expected Lease fees payable by the Lessee in respect of the Performance of the Operations for the year after the Lessee Event of Default.
- 15.3 Compensation on Termination due to a Lessor Event of Default. If the termination is due to a Lessor event of default, the compensation payable by the Lessor to the Lessee shall be the aggregate of: (a) any and all cost, expenses, charges, and penalties incurred or sustained as a result of such termination, including the cost of removal of the Movable assets (if any). (b) Any and all construction and development costs incurred by the Lessee pursuant to the conduct of the Development Plan



calculated on a pro rated basis.(c) An amount equal to two times the total revenue received by the Lessee in respect of the Performance of the Operations for the twelve (12) months ending immediately preceding the Lessor Event of Default.

- 15.4 Compensation on expiry of the Lease Term. The Parties shall bear their respective costs upon the expiry of the Lease Term.
- 15.5 Delayed Payment to the Lessee. If for any reasons, other than those attributable to the Lessee, the Lessor fails to pay the payments that it is required to make in accordance with this Article on the Termination Date, the Lessor shall be liable to pay interest at the rate of LIBOR plus [five percent (5%)] compounded monthly for the period of the delay until payment thereof.
- 15.6 Delayed Payment to the Lessor. If for any reasons, other than those attributable to the Lessor, the Lessee fails to pay the payments that it is required to make in accordance with this Article on the Termination Date, the Lessee shall be liable to pay interest at the rate of LIBOR plus [five percent (5%)] compounded monthly for the period of the delay until payment thereof.
- 15.7 Remedies Cumulative. The exercise of the right to terminate this Agreement by either Party shall not preclude such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

ARTICLE XVI

INDEMNITIES; LIABILITIES

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



- 16.3 Cumulative Remedies. All rights and remedies provided hereunder to the Lessor and/or the Lessee and all rights and remedies available to the Lessor and/or the Lessee under Applicable Law shall be cumulative and concurrent. The exercise by the Lessor or the Lessee of its rights or remedies under this Agreement shall not operate as a waiver of its rights and remedies under Applicable Law.

ARTICLE XVII

GOVERNING LAW; DISPUTE RESOLUTION

- 17.1 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of Nigeria, excluding any provisions of conflicts of law that would cause the laws of another jurisdiction to apply
- 17.2 Disputes. Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement and the activities carried out hereunder, including without limitation any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement (each a "Dispute"), shall be exclusively and finally settled pursuant to the dispute resolution process described in Sections 17.3 and 17.4.
- 17.3 Mutual Consultation. If either Party believes that a Dispute exists, it may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the twenty one (21) day period following the date of the notice. Within seven (7) days after receipt of a notice pursuant to the preceding sentence, the other Party shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty one (21) day period following the date of the notice. During the remainder of such period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to use best efforts to resolve the Dispute.
- 17.4 Binding Arbitration. If the Parties cannot resolve the Dispute in accordance with the procedure specified in Section 17.3, then any Party may submit such Dispute to arbitration by notice to the other Party. Such arbitration shall be governed by the Rules of Arbitration of the International Chamber of Commerce, as in effect on the date of such notice. The arbitral tribunal shall consist of three (3) arbitrators. The Party initiating the arbitration shall provide written notice to the other Party of the arbitrator that it nominates. Within fourteen (14) Days of the receipt of such notice, the other Party shall provide to the initiating party a written notice identifying the name of the second nominated arbitrator, with the understanding that if such nomination is not made within such ten (10) Day period, then the International Court of



Arbitration of the International Chamber of Commerce (the "ICC Court") shall make such appointment. Within ten (10) Days of the date of the appointment of the second arbitrator, the two arbitrators shall appoint the third arbitrator, with the understanding that if the two arbitrators are not able to agree on third arbitrator within such ten (10) Day period, then the third arbitrator shall be appointed by the ICC Court. All three of the arbitrators shall be experienced in the port industry as well as contracts of a similar nature to this Agreement, and all three individuals shall also be proficient in the written and spoken forms of the English language. The arbitration proceedings shall be conducted and all related communications shall be in the English language. The arbitration shall be conducted in Abuja, Nigeria or such other place within Nigeria as the Parties may mutually agree. Any decision of the arbitral tribunal shall be final and binding upon the Parties. The Parties hereby waive, to the extent permitted by Applicable Law, any right to appeal or to review of such an award by any court or tribunal. Any award of the arbitral tribunal may be entered in any court having jurisdiction for purposes of enforcement. The arbitral tribunal shall presumptively award legal fees and arbitral costs to the winning party, but the arbitral tribunal shall retain the right to make such other equitable allocation with regard to such fees and costs as it may determine.

- 17.5 Waiver of Sovereign Immunity. The Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in Nigeria or elsewhere, to enforce any liability or obligation related to or arising from this Agreement, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby expressly and irrevocably waives any such immunity, to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings, whether in Nigeria or elsewhere.

ARTICLE XVIII

MISCELLANEOUS

- 18.1 Amendments. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification shall be in writing and duly executed by both Parties hereto.
- 18.2 Assignment. This Agreement may be assigned to other parties only upon the prior written consent of the non-assigning Party hereto, except the Lessor may assign this Agreement in whole or in part to any Governmental Authority, without the Lessee's consent, but with prior written notification to the Lessee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee; any assignment not



in accordance with the provisions of this Section shall be void and without force or effect.

- 18.3 Sub-Contracting. The Parties may engage any contractor or sub-contractor possessing the requisite skill, expertise and capability to perform some, but not all, of its obligations under this Agreement **PROVIDED** that the Party engaging the sub-contractor shall, at all times, be solely responsible for the action and omissions of that sub-contractor and **PROVIDED ALSO** that the Lessee shall not subcontract any of its core terminal operations without a prior written consent of the Lessor.
- 18.4 Survival. All rights accrued prior to the termination of this Agreement shall survive its termination.
- 18.5 Entire Agreement. The terms and provisions contained in this Agreement (including the Appendices) constitute the entire agreement between the Parties with respect to the subject matter hereof.
- 18.6 Notices. Any notice, request, document, or other communication required or permitted under this Agreement may be given in any manner provided herein to the address or number provided below and shall be deemed effective as indicated: (a) if in writing and delivered in person or by courier, on the date it is delivered; (b) if sent by electronic or facsimile transmission, on the date that the sender receives written confirmation of such receipt by the recipient, provided that a copy is sent in accordance with clause (a) or (b) above; or (c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered; unless the date of such delivery or receipt, as applicable, is not a business day in the place of such delivery or receipt, or such communication is delivered or received, as applicable, after the close of business on a business day in the place of such delivery or receipt, in which case such communication shall be deemed given and effective on the next business day in the place of such delivery or receipt following such day. Notices shall be given as follows:

(a) For the Lessor:

The Nigerian Ports Authority
26/28 Marina
Lagos, Nigeria
Attention: Chief A. B. Sarumi Telephone: 234 09 4134670
Facsimile: 234 09 4134672

(b) For BPE:

The Bureau of Public Enterprises
Osun Crescent
Garki – Abuja, Nigeria



Attention: Mrs. Irene N. Chigbue
Telephone: 234 09 4134670
Facsimile: 234 09 4134672

(c) For the Lessee:

ENL Consortium Limited.
26 Burma Road Apapa
Lagos
Attention: Prince Clement Adesuyi Haastrup
Telephone: 234 -01 -7744589 or 234- 01- 4714382
Facsimile: 234 - 01- 4817944

- 18.7 Confidentiality. Each Party agrees to hold in confidence for a period of five (5) years following the termination of this Agreement, any information supplied to such Party (the "Receiving Party") by the other Party (the "Disclosing Party") and related to the Lease Property, the Movable Assets, the Operations or this Agreement. The Receiving Party shall be entitled to disclose such information to its officers, directors, employees and/or agents who have a need to know in order to assist the Receiving Party in the performance of its obligations hereunder; provided that the Receiving Party shall be responsible for ensuring that all such persons keep such information confidential. The provisions of this Section shall not apply to information within any one of the following categories or any combination thereof: (a) information that was in the public domain prior to the Receiving Party's receipt thereof from the Disclosing Party or that subsequently becomes part of the public domain by publication or otherwise except by the Receiving Party's wrongful act; (b) information that the Receiving Party can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; or (c) information received by the Receiving Party from a third party having no obligation of secrecy with respect thereto. It shall not be a breach of the obligation of confidentiality contained herein if the Receiving Party discloses such confidential information as required by Applicable Law.
- 18.8 No Waiver. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.
- 18.9 Severability. The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- 18.10 Further Assurances. The Parties agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not



involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

18.11 Compliance with Laws; Officials Not to Benefit. The Lessee shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities. In any event, the Lessee represents and warrants that it has not paid, promised to pay or authorized the payment of, and agrees that it shall not pay, promise to pay or authorize the payment of, any money or anything of value, directly or indirectly to any person (whether a government official or private individual) for the purpose of or where there is a likelihood of illegally or improperly inducing any official or political party or official thereof in obtaining or retaining business, or to take any other action favorable to the Lease Property, the Movable Assets, the Operations, the Lessor, the Lessee, or third party thereto.

18.12 Transitional Period. Transitional period shall be the period between the Execution Date and the Effective date, not exceeding ninety (90) days from the Execution date. During the Transitional period, both Parties shall mutually agree on a Transitional Plan to be implemented during the Transitional period.



IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THEIR RESPECTIVE COMMON SEALS TO BE AFFIXED HERETO AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

THE COMMON SEAL OF THE WITHIN NAMED LESSOR
THE NIGERIAN PORTS AUTHORITY
was hereto affixed
In the presence of:

(seal)



Dr. Abiye S.P Sekibo
Hon. Min. of Transport
Chairman

Chief Adebayo Sarumi
Managing Director

Ms. Clara Etseyatse
Secretary

THE COMMON SEAL OF THE WITHIN NAMED CONFIRMING PARTY FOR LESSOR
THE BUREAU OF PUBLIC ENTERPRISES
was hereto affixed
In the presence of:

(seal)

Mrs. Irene N. Chigbue
Director General



Dr. Paul. O. Idornigie
General Counsel

THE COMMON SEAL OF THE WITHIN NAMED LESSEE
ENL CONSORTIUM LIMITED
was hereto affixed
In the presence of:

(seal)

Princee C.A. Hastrup
Executive Chairman

R.J. Tainton
Group General Manager
/Director

Olatoye Wahab (Esq.)
Secretary

Ms. Clara Etseyatse



Appendix A

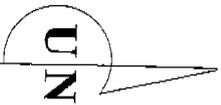
PREMISES

The Lease Property has an area of 10.548 hectares and is clearly described on Plan No. LMS/005/2005/LA of 25th April 2005 (Copy attached) and delineated by beacon numbers LMS 67,68,61,69,70 and 71

Note:

The leased premises and assets will consist of the following facilities/areas:

- *A 950 m long quay deck with appropriate quay hardware;*
- *Transit Sheds 10, 11, 12 and 13;*
- *The open cargo storage areas behind Sheds 10 to 13 up to the north side of the new common access road to be constructed north of Warehouses E and F; and*
- *The open cargo storage areas between the sheds.*



PLAN SHEWING PROPERTY

NIGERIAN PORTS AUTHORITY

GIVEN ON CONCESSION TO

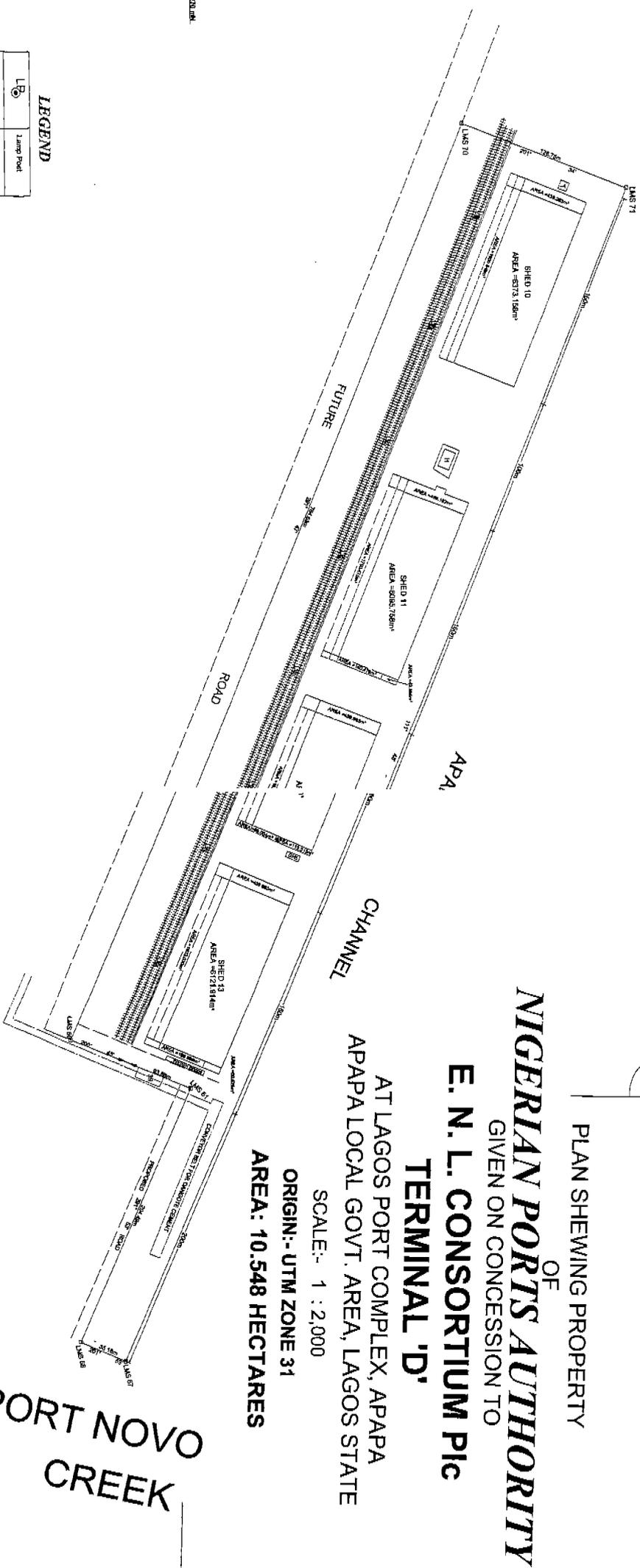
E. N. L. CONSORTIUM Pte TERMINAL 'D'

AT LAGOS PORT COMPLEX, APAPA
APAPA LOCAL GOVT. AREA, LAGOS STATE

SCALE:- 1 : 2,000

ORIGIN:- UTM ZONE 31

AREA: 10.548 HECTARES



LEGEND

LB	Lamp Post
GH	Generator House
	Gate
	Railway Line
	Overhead Pipeline
	Drain
T	Tower

PLAN No. LMS/005/2005/LA

PORT NOVO CREEK

G. U. ONONIKPO

(Registered Surveyor)

25th April 2005

Landmata Surveys
Lagos.



Appendix B

FIXED ASSETS

S/O	ID NO	DESCRIPTION	AREA M2	REMARKS
1	T	Tower	36	
2		Shed 10	6373.158	
3		Office annexed to used 10	438.283	
4		Eave of shed 10	1506.840	
5	A	Dock Superintendents bungalow office	252	
6		Shed 11	6095.758	
7		Offices annexed to shed 11	649.555	
8		Eave of shed 11	1700.475	
9		Shed 12	6150.300	
10		Offices annexed to shed 12	638.276	
11		Eave of shed 12	1633.030	
12		Shed 13	6121.91	
13		Office annexed to shed 13	687.071	
14		Weighbridge		
15		Conveyor belt		
16		Quay length 960 Berth 10 Berth 10A	160 Metres 100 "	

Obsej also.

[Handwritten signature]



	Berth 11	160	"	
	Berth 12	180	"	
	Berth 13	160	"	
	Berth 14	200	"	
17	Stacking Area	7.332H		
18	Lamp Posts	8		
19	Railway Lines			
20	Electrical Sub Stations	2		
21	Public Toilets	8		

- Note: (1) ID no indicates the number/alphabet used to identify an asset on the survey plan.
- (2) The Capital values of the assets shall be provided when the valuation exercise is concluded.



Appendix C

MOVABLE ASSETS

Description	Make	Capacity	Asset No.	Acquisition Date	Serviceable/Unserviceable	Status	Overall Condition	Replacement Cost	Estimated Useful Life	Remaining Useful Life	Depreciation	Book Value	ENL Offer	
Fork Lift	Lancer-Boss	12T	L 12006	1993	S	OK	Good	110,000	10	0	110,000	0	5,250	
Fork Lift	Kalmar	12T	L 12015	1994	US	AP	Good	110,000	10	0	110,000	0	5,250	
Fork Lift	Hyster	4T	L 4041	2001	US	AP	Good	42,000	10	7	12,600	29,400	18,576	
Fork Lift	Hyster	6T	L 6013	2001	US	AP	Good	60,000	10	7	18,000	42,000	31,176	
Fork Lift	Hyster	6T	L 6014	2001	S	OK	Good	60,000	10	7	18,000	42,000	31,176	
Fork Lift	Hyster	8T	L 8001	2003	S	OK	Good	75,000	10	9	7,500	67,500	51,264	
Fork Lift	Kalmar	3T	L 3004	1994	S	OK	Good	33,000	10	0	33,000	0	5,880	
Fork Lift	Kalmar	4T	L 4023	1994	S	OK	Good	42,000	10	0	42,000	0	5,880	
Fork Lift	Kalmar	5T	L 5005	1994	S	OK	Good	51,000	10	0	51,000	0	5,880	
Fork Lift	Kalmar	5T	L 5006	1994	S	OK	Good	51,000	10	0	51,000	0	5,880	
Fork Lift	Kalmar	6T	L 6004	1994	S	OK	Good	60,000	10	0	60,000	0	6,468	
Fork Lift	Kalmar	4T	L 4006	1993	S	OK	Fair	42,000	10	0	42,000	0	5,880	
Fork Lift	Clark	4T	L 4008	1993	S	OK	Fair	42,000	10	0	42,000	0	5,880	
Fork Lift	Clark	4T	L 4011	1993	US	AP	Fair	42,000	10	0	42,000	0	5,880	
Fork Lift	Clark	4T	L 4030	1980	S	OK	Fair	42,000	10	0	42,000	0	5,880	
Fork Lift	Caterpillar	6T	L 6009	1980	US	AP	Fair	60,000	10	0	60,000	0	5,880	
Top Loader	Kalmar	28T	L 28001	1994	S	OK	Good	320,000	10	0	320,000	0	5,880	
Top Loader	Kalmar	28T	L 28002	1995	US	AP	Good	320,000	10	1	288,000	32,000	21,176	
Mobile Crane	Jones	25T	L 25003	1985	S	OK	Good	300,000	20	1	285,000	15,000	9,588	
Truck - Tractor	Reliance-Mercury	15T	L 15001	1995	S	OK	Good	70,000	10	1	63,000	7,000	7,000	
Truck - Tractor	Kalmar	12T	L 27001	1999	S	OK	Good	70,000	10	5	35,000	35,000	24,176	
								2,002,000			1,732,100	269,900	269,900	269,900

[Handwritten signatures and initials]



Appendix D

DEVELOPMENT PLAN

Infrastructure Development

The proposed Development Plan is presented for the period 2005 – 2015. The Plan includes both a discussion of the approach and the investment schedules for both new equipment and moveable assets and the upgrading of existing facilities at the Terminal.

Details of the plan are contained in Tables B & C in this section.

Lighting

Shift productivity levels are, at present, at an unacceptable level due to a variety of circumstances, the most noticeable being insufficient lighting on the pier and stacking areas.

This will be addressed as a matter of critical importance by:

1. Installation of additional lighting in the working areas, and

2. Installation of additional lighting at cargo stacking