



**UNION**

**SECRETARIAT OF PORTS OF THE PRESIDENCY OF THE REPUBLIC- SEP/PR**

**NATIONAL WATERWAY TRANSPORTATION AGENCY- ANTAQ**

**ANNEX 3 - LEASING CONTRACT DRAFT – GENERAL PART**

**AUCTION Nº 1/2015-ANTAQ FOR LEASING OF PUBLIC AREA AND INFRASTRUCTURE IN ORDER  
TO HANDLE AND STORAGE VEGETABLE SOLID BULK, LOCATED WITHIN THE ORGANIZED PORT  
OF SANTOS, STATE OF SÃO PAULO, ENTITLED STS04**



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LEASE CONTRACT N. \_\_\_\_\_, of  
\_\_\_\_\_, SIGNED BETWEEN THE  
UNION, THROUGH THE SECRETARIAT OF  
PORTS OF THE PRESIDENCY OF THE  
REPUBLIC - SEP/PR, WITH THE  
INTERVENTION OF THE NATIONAL  
WATERWAY TRANSPORTATION AGENCY -  
ANTAQ, AND THE  
\_\_\_\_\_ COMPANY

The UNION, through the SECRETARIAT OF PORTS OF THE PRESIDENCY OF THE REPUBLIC - **SEP/PR**, created by Federal Law 11.518, of September 5, 2007, with head offices at Centro Empresarial VARIG, SCN Quadra 04 - Pétala C, Cobertura, CEP 70714-900, Brasília/DF, inscribed in the CNPJ/MF under n. 08.855.874/0001-32, hereinafter referred to as **GRANTOR AUTHORITY**, represented herein by the Minister of State of the Secretariat of Ports of the Presidency of the Republic, Hon. Mr....., appointed by Federal Decree ....., of ....., nationality, civil status, profession, bearer of Identity Card n. ...., CPF/MF under n. ...., through intermediation of the **NATIONAL WATERWAY TRANSPORTATION AGENCY**, a special agency, created by Federal Law 10.233, of June 5, 2001, with head offices at SEPN - Quadra 514 - Conjunto E, Brasília/DF, inscribed in the CNPJ/MF under n. 04.903.587/0001-08, herein represented by its Director-General, Mr. ...., appointed by ....., published in the DOU of ....., nationality, civil status, profession, bearer of Identity Card n. ...., CPF/MF under n. ...., hereinafter referred to as **ANTAQ**, and the ..... company, a Special Purpose Entity, with head offices at ....., inscribed in the CNPJ/MF under n. ...., hereinafter referred to as the **LESSEE**, represented herein by Mr. ...., nationality, civil status, profession, bearer of Identity Card n. ...., CPF/MF under n. ...., ... instrument assigning powers, both with commercial address at....., bearing in mind the content of Administrative Proceeding n. ...., resolve to enter into this Contract, which shall be governed by the following Clauses and conditions:

## 1 Initial Provisions

### 1.1 Definitions

1.1.1 For purposes of this **Contract**, and notwithstanding other definitions established herein, the following definitions shall apply to the respective expressions:

- (i) **Port Administration:** a corporate entity responsible for Administration of the **Organized Port** by delegation of the **Grantor Authority**, or the Union directly in cases of non-delegated ports.
- (ii) **Annex:** each of the documents attached to the Contract.
- (iii) **Annex of the Auction Notice:** each of the documents attached to the **Auction Notice**.
- (iv) **Year:** refers to the time lapse always counted as of commencement of validity of the **Contract**, except when express reference is made to another meaning.
- (v) **ANTAQ:** the National Waterway Transportation Agency, a special agency, created by Federal Law 10.233, of June 5, 2001, and featuring as the intervening consenting party in this **Contract**.
- (vi) **Area of influence of the Organized Port:** geographic areas, continuous or otherwise, from which or to which goods may be transported loaded or unloaded at the **Organized Port**, considering the economic feasibility of using the **Organized Port** and its installed capacity.
- (vii) **Lease Site Area:** areas, port facilities and public infrastructure, located within the **Organized Port**, as foreseen in the **Annex 2 - Technical Guidelines and Lease Parameters**, which are the object of the **Lease**, under the terms of Sub-Clause 2.1
- (viii) **Area of the Organized Port:** an area defined by the Federal Executive Branch, including port

facilities and protection of infrastructure and access to the **Organized Port**.

- (ix) **Lease:** this assignment for consideration of the **Lease Site Area** located within the **Organized Port**, for exploitation for a specific period.
- (x) **Lessee:** holder of the area under assignment for consideration and public infrastructure located within the **Organized Port**, for exploitation for a specific period, identified in the preamble of this **Contract**;
- (xi) **Activities:** port activities to be exploited by the **Lessee** within the **Lease Site Area**, in accordance with this Contract and its **Annexes**.
- (xii) **Lease Assets:** meaning defined in this **Contract** and its **Annexes**.
- (xiii) **Berth:** space to be used for mooring of vessels intended for loading and unloading of cargoes destined for the **Lease** site.
- (xiv) **Wharf:** platform to be used for loading and unloading of cargoes destined for the **Lease** site.
- (xv) **Effective Capacity:** quantity of cargo handled during a given period of time and at an adequate level of service.
- (xvi) **Static Capacity:** maximum quantity of cargo that can be stored for a given time.
- (xvii) **Cargoes:** cargo referred to in the annex that is included in the list of **Lease Activities**.
- (xviii) **Contract:** meaning defined in the Preamble hereof.
- (xix) **Assumption Date:** date of the signing of the Term of Provisional Acceptance and Asset Use License foreseen in Sub-clause 3.1.1.
- (xx) **DOU:** Official Gazette of the Union.

- (xxi) **Auction Notice:** this **Auction Notice** for Lease n. [●]/[●], including its **Annexes**.
- (xxii) **Vessel type:** reference vessel to be considered for purposes of defining the scope of investments.
- (xxiii) **Financers:** financial institutions responsible for financing the **Lessee** for making the necessary investments;
- (xxiv) **Guarantee of Contract Execution:** guarantee that the **Lessee** shall, in faithful compliance with his contractual obligations, as established in this **Contract** and in its **Annexes**;
- (xxv) **IPCA:** Broad Consumer Price Index, published by the Brazilian Institute of Geography and Statistics (IBGE);
- (xxvi) **Effectively Calculated Movement:** effectively calculated movement over the period of one year, as provided for in this **Contract** and in its **Annexes**;
- (xxvii) **Minimum Required Movement:** movement required, in accordance with the table in the **Annex 2 - Technical Guidelines and Lease Parameters**, when applicable;
- (xxviii) **Performance Parameters:** indicators that express defined technical criteria for measuring performance of the **Lessee** during performance of **Activities**, that shall be deployed and maintained throughout the entire **Lease Period**, under the terms of the **Annex 2 Technical Guidelines and Lease Parameters**;
- (xxix) **Operational Parameters:** references to minimal technical operational characteristics that shall define the scope of the project, its investments and **Activities** to be performed by the **Lessee**, under **Annex 2 The Technical Guidelines and Lease Parameters**.

- (xxx) **Technical Parameters:** minimum technical specifications to be observed by the **Lessee** during performance of the **Activities** that are the object of the **Lease**, under the **Annex 2 Technical Guidelines and Lease Parameters**.
- (xxxii) **Lease Parameters:** reference to **Performance Parameters, Operational Parameters** and **Technical Parameters**.
- (xxxiii) **Related Parties:** relating to the **Lessee**, any Controlling corporate entity or direct or indirect Subsidiary, or company under joint control, understood as meaning a company in which the Controller, either directly or through other subsidiaries, is the holder of stockholder rights that ensure him, permanently, predominance in corporate decisions and power to elect a majority of directors of the Subsidiary, under art. 243, § 2, of Law 6.404/76.
- (xxxiv) **Environmental Liabilities:** Any event, act or occurrence, known or otherwise, which entails compliance with a legal or regulatory requirement relating to the environment, observing specificities foreseen in the **Contract**.
- (xxxv) **Basic Implantation Plan (BPI):** a plan with technical and performance specifications to be deployed by the **Lessee** for fulfillment of the objectives of the **Lease Proposal**, and **Lease Parameters**.
- (xxxvi) **Grantor Authority:** meaning defined in the preamble to the **Contract**.
- (xxxvii) **Organized Port:** a public asset, built and equipped to meet the needs of shipping, movement of passengers or handling and storage of goods, traffic and port operations of which are under jurisdiction of the **Port Administration**.

- (xxxvii) **Lease Period:** the period of duration of the **Lease**, established in accordance with this **Contract**, counting as of the **Assumption Date**.
- (xxxviii) **Price:** a sum charged by the **Lessee** from **Users** as counterpart for **Activities** performed, which may be freely set by the **Lessee**, as indicated in the Annex 4 - Specific Conditions of Contract.
- (xxxix) **Lease Proposal (or Bid):** offer made by the **Winning Bidder** at the **Auction** for exploitation of the **Lease**.
- (xl) **Extension:** Any form of prolonging, extension, renewal or postponement of the term of this **Contract** in relation to the **Lease Period**.
- (xli) **Regulation for Exploitation of the Organized Port:** a normative act issued by the **Port Administration**, for purposes of disciplining use of the **Organized Port**.
- (xlii) **Extraordinary Review:** an extraordinary procedure for determining the need to restructure the economic and financial balance.
- (xliii) **Ordinary Review:** common procedure for reviewing **Performance Parameters** and **Service Charges**, when they exist, carried out at 5-year intervals;
- (xliv) **SEP:** the Secretariat of Ports of the Presidency of the Republic, created by Federal Law 11.518/2007, the respective **Grantor Authority** of the **Activities**, representing the Union.
- (xlv) **SPE:** the Special Purpose Entity established by the Winning Bidder, in the form of joint-stock company, that shall sign this **Contract** with the **Grantor Authority**, in its capacity as **Lessee**.
- (xlvi) **Port Charges:** sums owed to the **Port Administration** by the **Lessee** for use of port facilities or port infrastructure or provision of



service within its competency in the **Area of the Organized Port**.

- (xlvii) **Service Charge:** sums owed to the **Lessee** by **Users** as a consequence of performance of **Activities** corresponding thereto, whenever foreseen in the Annex 4 - Specific Conditions of Contract
- (xlviii) **User:** all individuals and corporate entities that are takers of **Activities** provided by the **Lessee**, or by third parties he may indicate, in the **Area of the Organized Port**.
- (xlix) **Lease Value:** is the **Fixed Lease Value** and **Variable Lease Value** owed by the **Lessee** to the **Port Administration**, as a result of exploitation of the **Lease**, under the **Annex 4 Specific Conditions of Contract**.
- (l) **Fixed Lease Value:** is the fixed sum owed by the **Lessee** to the **Port Administration**, as a result of exploitation of the **Lease**, under the **Annex 4 - Specific Conditions of Contract**
- (li) **Variable Lease Value:** is the variable sum owed by the **Lessee** to the **Port Administration**, as a result of exploitation of the **Lease**, under the **Annex 4 - Specific Conditions of Contract**

## 1.2 Interpretation

1.2.1 Except when the context does not allow such interpretation:

1.2.1.1 Definitions of the **Contract** shall be applied equally in their singular and plural forms; and

1.2.1.2 References to the Contract or to any other document shall include any possible changes and amendments that are agreed upon by the **Parties**.

1.2.2 Titles of chapters and of **Contract** Clauses and **Annexes** shall not be used in their application or interpretation.

1.2.3 In the event of discrepancy between the **Contract** and the **Annexes**, the provisions of the **Contract** shall prevail.

- 1.2.4 In the event of discrepancy between the **Annexes**, those issued by the **Grantor Authority** shall prevail.
- 1.2.5 In the event of discrepancy among the **Annexes** issued by the **Grantor Authority**, those with the most recent date shall prevail.
- 1.2.6 The Clauses and conditions of the **Contract** relating to its **Extension** shall be restrictively interpreted.

### 1.3 Attached Documents

- 1.3.1 For all legal and contractual effects, the **Annexes** listed in this Clause shall be considered part of this **Contract**:
  - a) **Specific Conditions of Contract**;
  - b) **Technical Guidelines and Lease Parameters**
  - c) **Environmental Terms of Reference** [when applicable];
  - d) **Other Annexes**: Corporate Structure and Articles of Incorporation of the **Lessee**, **Auction Notice** and **Lease Proposal** (written)].

### 1.4 Legal Governance

- 1.4.1 This **Contract** is of the administrative contract type and is governed by precepts of public law and, complementarily, by private law, especially provisions relating to the general rules of contracts.
- 1.4.2 Applicable to this **Contract** are the provisions of Federal Laws 12.815, of June 5, 2013; 12.529, of November 30, 2011; 10.233, of June 5, 2001; 12.462, of August 4, 2011; 9.784, of January 29, 1999; 8.666, of June 21, 1993; 8.987, of February 13, 1995; of Federal Decree 8.033, of June 27, 2013; Federal Decree 7.581, of October 11, 2011; and of other standards and regulations applicable to leased assets, to areas and public infrastructure, and to the **Activities** that are the object of this **Contract**, issued by the competent authorities.
- 1.4.3 Also applicable to this **Contract** are the legal and regulatory provisions on engineering works and services, on labor related obligations, social security, technical, civil and criminal liability, work medicine and safety, environment, notwithstanding other relevant provisions.

## 2 Areas and Public Infrastructure of the Lease

2.1 Comprising the **Lease** that is the object of this **Contract** are the areas, port facilities and public infrastructure, located within the **Organized Port**, as foreseen in the **Annex 2 - Technical Guidelines and Lease Parameters**.

2.2 The **Lease Site Area** is assigned by the **Grantor Authority** to the Lessee on an *ad corpus* basis, it being clear that the descriptions, size and boundaries indicated in the **Annex 2 - Technical Guidelines and Lease Parameters** do not bind the **Grantor Authority** in any manner, provided that the leased area is effectively available for use by the **Lessee**, who shall declare said area sufficient for fulfillment of obligations under this **Contract** and its **Annexes**.

2.2.1 The descriptions, size and boundaries indicated in the **Annex 2 - Technical Guidelines and Lease Parameters Annex**, however, represent the maximum limits of the area which the **Lessee** shall have the right to exploit, and the **Lessee** may not allege the *ad corpus* nature of the **Lease** to claim any area other than that indicated in the **Annex 2 - Technical Guidelines and Lease Parameters**.

2.3 Subject to prior authorization from the **Grantor Authority**, expansion of the **Lease Site Area** may be accepted, considering the provisions of the legislation.

2.3.1 Such expansion will require an **Extraordinary Review** of **Contract** procedure for restoration of its economic and financial balance, under Chapter 14 of this **Contract**.

2.3.2 The request for expansion of leased area shall be formalized by the **Lessee** before **ANTAQ** and approved by the **Grantor Authority** after conclusion of the **Extraordinary Review** foreseen in this **Contract**, in observance of regulations issued by **ANTAQ** an the **Grantor Authority**.

## 3 Lease Period and Ordinary Five-year Review

3.1 The **Lease Period** is the one foreseen in Clause **Erro! Fonte de referência não encontrada.** of the **Annex 4 - Specific Conditions of Contract**, always counting as of the **Assumption Date**.

3.1.1 For the purposes of this **Contract**, the **Assumption Date** shall be considered the date of signing of the Provisional Term of Acceptance and Asset Use Permit, appended to the **Annex 4 - Specific Conditions of Contract**, which shall be signed by the

Parties in up to thirty (30) days, counted as of the notice of no objection, by the **Grantor Authority**, to the **Basic Implantation Plan** presented by the **Lessee** as a condition for signing of this **Contract**.

- 3.2** The Lessee shall not have the right to hold the **Lease** for a period longer than the **Lease Period**, even if judicial or extrajudicial discussion is pending as to payment of any sum to the **Lessee** by the **Grantor Authority**, including for compensation.
- 3.3** This **Contract** may be extended only once, for a maximum period equal to that originally contracted, at the sole discretion of the **Grantor Authority**, under the terms of this **Contract** and its **Annexes**, conditioned to restoration of the economic and financial balance of the **Contract**, including through definition of new investments, compatible with the new deadline, and necessary to ensure updatedness of service.
- 3.4** When the request for **Extension** is made by the **Lessee**, the **Grantor Authority** shall examine compliance with the following objective requirements, that comprise conditions for appraisal of the request:
- (i) Compliance with **Lease Parameters**, goals and deadlines of the **Lease**, as provided for in this **Contract**;
  - (ii) Positive performance assessment of the **Lessee**, with respect to duties and tasks set out in the **Contract**, especially those relating to investments and performance of **Activities**;
  - (iii) Absence of serious or very serious contractual breaches by the **Lessee**, excepting in cases of overcoming default or of rehabilitation;
  - (iv) Maintenance, throughout the period of validity of the **Contract**, in line with commitments assumed, of the conditions of qualification and eligibility required in the **Auction**;
  - (v) **Lessee** Regularity regarding the payment of **Port Charges** and other financial obligations with the **Port Administration** and **ANTAQ**.
- 3.4.1** Compliance with the requirements set forth in Sub-clause 3.4 shall be corroborated by means of information to be submitted by the **Lessee** to **ANTAQ** under the regulations and under Clause **Erro! Fonte de referência não encontrada.**, which shall assist the **Grantor Authority** in making its decision as to the convenience and opportuneness of granting an **Extension** to the **Contract**.

- 3.4.2 The **Lessee** shall formally manifest to the **Grantor Authority** his interest in **Extension** of the **Contract** within forty-eight (48) months prior to the date of completion of the **Lease Period**.
- 3.4.3 Lack of such manifestation by the **Lessee** in the period foreseen in the previous Sub-clause shall imply waiving of the right to request **Extension**.
- 3.5 The **Lessee** expressly acknowledges that **Extension** of the **Contract** is a prerogative of the **Grantor Authority**, whose decision will be based on the public interest and criteria indicated herein, there being no subjective right to **Extension**.
- 3.6 The **Contract** shall be subjected to **Ordinary Review**, every five (5) years counted as of the **Assumption Date**, for assessment of the following **Contract** features, observing procedures and deadlines to be established in **ANTAQ** regulations:
- 3.6.1 Verification and application of **Performance Parameters** to activities performed by the **Lessee**, and verification of the suitability of adoption of such parameters by other similar terminals;
- 3.6.2 When there are **Service Charges**, evaluation as to the possibility of their review as a function of efficiency gains verified in the sector or through other parameters to be issued under **ANTAQ** regulations, based upon technical criteria.
- 4 **Basic Implantation Plan – BPI**
- 4.1 The **Grantor Authority** shall have a maximum of thirty (30) days, counted as of signing of the Contract, to expressly manifest non objection or to request the clarifications or modifications mentioned in Sub-clause 4.2 relative to the **BPI**.
- 4.2 The **Grantor Authority** may request clarifications or modifications to the **BPI** from the **Lessee** or may reject it if, after said request for clarifications and modifications, its suitability for compliance with requirements of the **Contract** and **Annexes** is not shown.
- 4.2.1 In the event that the **BPI** is the object of a request for complementation or modification, the **Grantor Authority** shall notify the Lessee of the reasons for such and shall establish a deadline for presentation of a new **BPI** with corrections.

- 4.2.2 If after representation, under the terms of Sub-Clause 4.2.1, the **BPI** remains unsuitable for securing compliance with the requirements of the **Contract** and **Annexes**, the **Contract** shall be declared null and void by fault of the **Lessee**, under the terms of Sub-Clause 25.4.
- 4.3 The **BPI** may be altered at any time, by request of the **Lessee** or of **ANTAQ**, provided that the rules of the **Contract**, **Annexes** and laws and regulations are observed.
- 4.4 To carry out infrastructure and superstructure works, at any time, the **Lessee** shall draw up basic engineering plans, obtain the necessary approvals, and send an electronic copy to the **Port Administration** and to **ANTAQ**, accompanied by a note justifying their compatibility with the **BPI**.
- 4.4.1 The documentation to be submitted shall include primary data resulting from sounding, topography, bathymetry, and other studies conducted by the **Lessee**, and other elements defined in **ANTAQ** regulations.

## 5 Object

- 5.1 The Object of this **Contract** includes the **Activities** to be performed by the **Lessee**, under the **Annex 2 - Technical Guidelines and Lease Parameters**, respecting the provisions of this **Contract** and other **Annexes**.
- 5.2 The **Activities** shall be carried out in an adequate manner, as provided for in this **Contract** and in its **Annexes**, notably its **Annex 2 - Technical Guidelines and Lease Parameters**.
- 5.3 The adequacy of the **Activity** shall be checked and monitored by **ANTAQ**, directly or by third parties, by means of the **Performance Parameters** of the **Lessee**, as provided for in this **Contract**, in compliance with the regulations, notwithstanding the powers of the **Port Administration**, foreseen in inset VI of §1 of art. 17 of Law 12.815/2013.
- 5.4 Execution of **Activities** may be directly by the **Lessee**, or through contracting of pre-qualified port operators for this purpose, in accordance with this **Contract**.

## 6 Transfer of Corporate Control of the Lessee or of the Lease

- 6.1 Transfer, in whole or in part, directly or indirectly, of corporate control of the **Lessee** or of the **Lease** shall be subject to prior analysis by **ANTAQ** and express

approval of the **Grantor Authority**, and shall, furthermore, observe the provisions of art. 27, of Federal Law 8.987/95, and of art. 29 and 30 of Federal Law 10.233/2001, on pain of breach of contract, declaration of nullity of the **Lease** by fault of the **Lessee** and application of appropriate civil penalties.

- 6.2** Transfer of Corporate Control from the **Lessee** to a person who, directly or indirectly, through a controller, subsidiary, affiliate or company under joint control already exploits an area or public infrastructure within an **Organized Port** or in the **Area of influence of an Organized Port** shall only be authorized after examination by **ANTAQ** and approval by the **Grantor Authority**, with a view to preserving competition and avoiding market concentration as a consequence of said transfer.

## **7 Obligations and Prerogatives of the Parties**

### **7.1 Obligations of the Lessee**

- 7.1.1 The Lessee shall be obliged, notwithstanding other provisions of this **Contract** and its **Annexes**, to:
- i. Perform the **Activities** in compliance with this **Contract** and its **Annexes**, under standards issued by **ANTAQ**, and the **Regulations for Exploitation of the Organized Port**, and other tender and contracting governance documents;
  - ii. Arrange customs services for the **Lease** before the Customs Authority, if applicable;
  - iii. Draft and disclose, on its website and at a visible location at the entrances of the **Lease**, in up to thirty (30) days counted as of the **Assumption Date**, a table of maximum reference values (prices and charges) and also a detailed description of services to be charged from **Users**, in accordance with **ANTAQ** regulations. In the event of a review of values, these shall only be applied ten (10) days after publication of the new **Price List**. Whenever a new service is added to the **Price List** the Lessee shall inform **ANTAQ** immediately, and republish it, under the terms of this Clause;
  - iv. Perform the **Activities** with the aim of full and proper handling of the cargoes foreseen for this **Lease**;
  - v. Obtain and submit to **ANTAQ** all the licenses and permits required by the competent authorities, under this **Contract** and its **Annexes**;



- vi. Implement the measures necessary for any relocation or demolition of facilities or equipment at the **Organized Port**, that may be interfering with the area and public infrastructure, leased or not, where **Activities** are to be carried out, and the **Lessee** shall bear all related expenses and obtain prior authorization from the **Port Administration**;
- vii. Accredite, by written document, one or more representatives to serve as its interlocutors before the **Grantor Authority**, the **Port Administration** and **ANTAQ**, and as technical managers for implementation of this **Contract**;
- viii. Use only qualified staff and in sufficient number for implementation of the **Activities**, assuming full and sole responsibility for their contracting, for work contracts signed with their employees and for the respective charges this entails, including payment, as the case may be, of compensation, fines and any other penalties stemming from infractions committed, judicial claims and any measures proposed by employees, those subcontracted, or third parties, exempting the **Grantor Authority** of any direct, joint and/or subsidiary liability therefore, at any time, and assuming full responsibility for any labor claims that may be filed against the **Grantor Authority** and **ANTAQ** in relation to this **Contract**;
- ix. Perform the **Activities** in a manner that does not interfere with existing facilities or services, public or private;
- x. Mitigate damages or disturbance to third-party property, resulting from pollution, including noise and other causes stemming from its work methods;
- xi. Ensure that all vehicles and personnel involved in performance of the **Activities** are identified in compliance with the regulations;
- xii. Provide and ensure, in accordance with the law and pertinent standards, the necessary means for protecting the physical integrity of workers, and ensure adequate signage and isolation of potential hazards on roadways at the site of the **Activities**, obtaining from the competent public bodies, when appropriate, the respective permits and measures necessary;
- xiii. Draw up basic designs and detailed plans, perform engineering works and services, assembly, pre-operation testing, and all other



necessary operations, and replace or repair, at own expense, any goods or services related to the **Activities** that may justifiably be considered by the **Grantor Authority** or by **ANTAQ**, defective, incorrect, insufficient or inadequate, or goods or services regarded as inappropriate for performance of commitments assumed by the **Lessee**, particularly the **Lease Parameters**;

- xiv. Whenever the implantation of new buildings is completed, arrange for the registration/deed thereof and with the competent Real Estate Registry Office, when appropriate, and obtain other licenses required by the competent authorities for deployment of the **Activities**;
- xv. Maintain, throughout performance of the **Contract**, in compliance with obligations hereunder assumed, all conditions of qualification and eligibility as required and fulfilled during the tender;
- xvi. Provide information, when requested, for sectoral planning with a view to possible changes to the Development and Zoning Plan (DZP), in accordance with the law or regulations;
- xvii. Present accounts of the **Activities** and furnish economic-financial, operational information and on **Lease Site Assets** to the **Grantor Authority, ANTAQ** and to competent government bodies, in accordance with provisions in Clause **Erro! Fonte de referência não encontrada.** and in regulations;
- xviii. Provide all necessary support to inspectors of the **Grantor Authority, ANTAQ** and other authorities that work in the ports sector, ensuring them freedom of access, at any period and upon simple notice with one (1) day notice, to works, equipment and installations linked to the **Lease**, and to examine all financial statements, other documents, information and statistical systems, relating to performance of the **Activities**;
- xix. Maintain continuity of the **Activity** provided, excepting interruption caused by unforeseeable circumstances or force majeure, and communicate such event immediately to **ANTAQ** and to the Port Administration;
- xx. Pay taxes and charges of any kind, that apply or may come to apply, to leased areas and public infrastructure and to the **Activity** performed;

- xxi. Pay **Port Charges** within the time limits provided for in regulations applicable to the **Organized Port**;
- xxii. Adapt to measures and determinations of the **Grantor Authority** and of **ANTAQ** relating to correction of imperfect competition at the **Organized Port** or in the **Area of Influence of the Organized Port**;
- xxiii. Allow the **Grantor Authority** and **ANTAQ** free access to data that comprise the cost of the **Activities**, whenever restoration of the economic and financial balance of the **Contract** is requested or, moreover, when necessary for arbitration of disputes;
- xxiv. Make arrangements for recovery, remediation and management of **Environmental Liabilities** relating to the **Lease**, as provided for in Clause **Erro! Fonte de referência não encontrada.**;
- xxv. Adopt and comply with the necessary measures for supervision by the **Grantor Authority**, by **ANTAQ**, by the **Port Administration** and **by** customs, maritime, sanitary and phytosanitary authorities, maritime police and other government authorities operating in the ports sector;
- xxvi. Inform the **Grantor Authority**, **ANTAQ** and public authorities of any illicit or illegal acts or events of which he has knowledge as a consequence of the **Activities**;
- xxvii. Obtain pre-qualification for conducting of the handling and storage of cargoes directly or proof of the hiring of pre-qualified port operators therefore, and maintain the status of pre-qualification or the contracting of pre-qualified port operators throughout the **Lease Period**;
  - (a) In the case of contracting of pre-qualified port operators, the Lessee and the Port Operator shall be jointly liable for reimbursement of damages, in the case of events described in insets I, II and III, of art. 26 of Law 12.815/13;
- xxviii. Allow, on an exceptional basis and for remuneration, use by third parties of the **Port Installations** and leased equipment, and grant the right of way to third parties, in the manner provided for in the regulations;
- xxix. Within a period of no more than twelve (12) months as of the **Assumption Date**:
  - (a) Conduct a full inventory of **Lease Site Assets**, including the estimated useful life and market value of each asset

- documented by an independent report and in consonance with the approved **BPI**, and submit it to **ANTAQ**;
- (b) Present a Program for obtaining NBR ISO 9001 certification or equivalent accepted by ANTAQ;
  - (c) Present a Program for Compliance with Normative Guideline the BS 8.800 or OHSAS 18.001 Standard or equivalent accepted by ANTAQ;
  - (d) Present a Program for obtaining NBR ISO 14001 certification or equivalent accepted by ANTAQ;
- xxx. Within a period of no more than twelve (12) months as of the **Deadline for Commencement of Activities** indicated in the Technical Guidelines and Lease Parameters Annex:
- (a) Obtain a Declaration of Compliance (DC), issued by CONPORTOS and CESPOTOS, attesting to compliance with the ISPS Code, if applicable;
- xxxi. Within a period of no more than twenty-four (24) months as of the **Deadline for Commencement of Activities** indicated in the **Technical Guidelines and Lease Parameters Annex**:
- (a) Obtain and maintain ISO 9001 certification or equivalent accepted by ANTAQ, throughout the entire term of this **Contract** and must update the certification to new demands created by certification;
  - (b) Obtain and maintain certification of compliance with Normative Guideline BS 8.800 or the OHSAS 18.001 Standard or equivalent accepted by ANTAQ, throughout the entire term of this **Contract** and must update the certification to new demands created by certification;
  - (c) Obtain and maintain ISO 14001 certification or equivalent accepted by ANTAQ, throughout the entire term of this **Contract** and must update the certification to new demands created by certification;
  - (d) Implant and certify an environmental management and control system.

## 7.2 Powers and Prerogatives of the Grantor Authority and of ANTAQ

- 7.2.1 The **Grantor Authority** may unilaterally modify the conditions of provision of the **Activities**, so as better to adapt them to the

purposes of public interest that justify the **Lease**, respecting the rights of the **Lessee**, including with respect to maintenance of the economic and financial balance of the **Contract**, verified by an **Extraordinary Review procedure**, and also decide on transfer of corporate control or ownership of the **Contract**, under this **Contract** and the regulations.

7.2.2 It shall be incumbent upon **ANTAQ** to:

- a) Apply contractual penalties;
- b) Comply with and ensure compliance of provisions of law applicable to services and Clauses of this **Contract**;
- c) Maintain permanent monitoring of **Activities** inherent to the **Lease**;
- d) Regulate, monitor and inspect performance of this **Contract**;
- e) Previously analyze transfer of corporate control or ownership of this **Contract**, for the exclusive decision of the **Grantor Authority**;
- f) Arbitrate, at the administrative level, conflicts of interest and disputes on the **Contract** that are not resolved amicably between the **Port Administration** and the **Lessee**;
- g) Arbitrate, at the appeals level, conflicts among agents that work in the **Organized Port**, respecting the powers of other public authorities;
- h) Assess, *ex officio* or upon instigation, abusive or discriminatory treatment, respecting powers laid down in Federal Law 12.529, of November 30, 2011;
- i) Arbitrate, at the administrative level, upon request of the **Users** or of the **Lessee** himself, the **Price** of services provided to **Users**, when no agreement is reached among the Parties;
- j) Analyze proposals for investments not foreseen in this **Contract**, for purposes of prior approval by the **Grantor Authority**.

## 8 Rights and Obligations of Users

8.1 Notwithstanding other rights and obligations provided for in law, regulations and other normative acts applicable to the ports sector, the rights and obligations of **Users** of the **Lease** are to:

- a) Receive adequate **Activity** to fulfill their needs, free from abuse of economic power;

- b) Obtain and use the **Activities** related to the **Lease**, with freedom to choose among providers of **Organized Port** services;
- c) Receive from the **Grantor Authority**, from **ANTAQ** and from the **Lessee** information for the correct use of the **Activities** provided by the **Lessee** and for defense of individual or collective interests;
- d) Bring to attention of the **Grantor Authority**, of **ANTAQ**, of the **Lessee** and of other competent bodies any irregularities or illicit acts of which they have knowledge, referent to the **Activities** performed;
- e) Pay sums charged by the **Lessee**, as provided for in this **Contract** and in its **Annexes**.

## 9 Estimated Contract Value, Conditions of Payment and Readjustment of Values

- 9.1 This **Contract** has an estimated overall value as indicated in Clause 9 of the **Annex 4 - Specific Conditions of Contract**, it being understood that this is merely indicative, and cannot be claimed by any of the parties as a basis for restoration of the economic and financial balance of the **Contract**.
- 9.2 It shall be incumbent upon the Lessee to pay the **Fixed Lease Value** and the **Variable Lease Value** foreseen in Clause 9 of the **Annex 4 - Specific Conditions of Contract**, in accordance with conditions and deadlines, on pain of penalties foreseen in current legislation and in this **Contract**.
- 9.3 The monetary values indicated and quoted in this **Contract**, in the **Annex 4 - Specific Conditions of Contract** and in the **Annex 2 - Technical Guidelines and Lease Parameters**, shall comply with current legislation, and must be readjusted annually as of the date of signing of the **Contract**, in accordance with the **IPCA**, applying the following formula, with the first readjustment taking place upon signing of the **Contract**:

$$P_t = P_{jun/13} * \left( \frac{IPCA_t}{IPCA_{jun/13}} \right)$$

In which:

$P_t$  corresponds to any of the monetary values indicated or quoted in this **Contract**, in the **Annex 4 - Specific Conditions of Contract** and in the **Annex 2 - Technical Guidelines and Lease Parameters**, duly readjusted;

$P_{jun/13}$  corresponds to the monetary values indicated and quoted in this **Contract**, in the **Annex 4 - Specific Conditions of Contract** and in the **Annex 2 - Technical Guidelines and Lease Parameters Annex**, referenced to June 2013;

$IPCA_t$  corresponds to the Index Number of the IPCA referenced to the date of readjustment;

$IPCA_{jun/13}$  corresponds to the Index Number of the IPCA referenced to June 2013;

$\frac{IPCA_t}{IPCA_{jun/13}}$  corresponds to one (1) plus variance of the accumulated IPCA over the period between June 2013 and the date of readjustment;

$t$  corresponds to the period of the date of readjustment;

- 9.4** In the event that the **IPCA** is abolished, this index shall automatically be replaced by whatever succeeds it, in its absence, another similar index shall be indicated by the **Grantor Authority**.

## **10 Lessee Remuneration**

- 10.1** **Lessee Remuneration** shall stem from **Activities** provided and respective revenues therefrom, in accordance with this **Contract** and its **Annexes**.

## **11 Contracting of Third Parties**

- 11.1** The **Lessee** may contract specialized companies to furnish goods or provide services inherent, accessory or complementary to performance of the object of this **Contract**.
- 11.2** Whenever requested, the **Lessee** shall inform the **Grantor Authority** and **ANTAQ**, the list of companies contracted to perform services inherent, accessory or complementary to performance of this **Contract**.

- 11.3** The **Lessee** shall not avoid full or partial compliance of its obligations under this **Contract**, or justify any delay in respect of the deadlines herein, owing to contracting of third parties for its performance.
- 11.4** Contracts signed between the **Lessee** and third parties shall be governed by standards of private law, and shall not establish any link whatsoever between third parties and the **Grantor Authority** or **ANTAQ**, excepting regulatory and inspection activities under the charge of **ANTAQ**.
- 11.5** In the event that a subcontractor incurs from the **Lessee**, any obligation or provides any guarantee relating to the assets, materials, construction elements or services performed for the **Lessee**, and if such obligation or guarantee extends beyond the period of this **Contract**, the **Lessee** shall ensure that the **Grantor Authority** is secured from any legal liability stemming therefrom, for any reason, after conclusion of this **Contract** thereby enjoying its benefits during the period remaining until it expires.

## **12 Environmental Obligations and Liabilities**

- 12.1** It shall be incumbent upon the Lessee to arrange for the recovery, remediation and management of **Environmental Liabilities** relating to the **Lease**, with a view to maintaining environmental compliance.
- 12.2** Unknown **Environmental Liabilities**, existing prior to the date of signing of this **Contract** and that are identified by the **Lessee** within one hundred and eighty (180) days counted as of the **Assumption Date**, shall be the responsibility of the **Grantor Authority**, such responsibility being limited to the requirements of the environmental body relative to the unknown liability, under this **Contract**.
- 12.2.1 Environmental Liabilities** known to exist prior to the date of signing of this **Contract** are understood to be those indicated: (i) in existing environmental licenses and in the environmental studies that were used in the process of environmental licensing; (ii) in public reports and studies; (iii) in public administrative proceedings or court cases.
- 12.3** Within one hundred and eighty (180) days counted as of the **Assumption Date**, the **Lessee** may contract and present a technical environmental report from an independent environmental consultancy, that shall be submitted to **ANTAQ** before the aforementioned deadline.
- 12.3.1** The technical environmental report aims to identify the unknown **Environmental Liabilities** existing prior to the **Assumption Date**,



the costs of recovery, remediation and management of which shall be the responsibility of the **Grantor Authority** through restoration of the economic and financial balance of the **Contract**, under the terms of Clause **Erro! Fonte de referência não encontrada.**

- 12.3.2 The technical environmental report shall contain, at least, a preliminary assessment of the **Environmental Liabilities** and a confirmatory investigation of contaminated areas, under the terms of CONAMA Resolution 420/09, with an indication of the **Environmental Liabilities** encountered at the **Lease**, the forms of recovery, remediation and management indicated, and associated costs.
- 12.3.3 For restoration of the economic and financial balance of the **Contract** only costs for recovery, remediation and management of **Environmental Liabilities** indicated in the report presented by the **Lessee** shall apply, and those required by the competent environmental authority.
- 12.3.4 It shall be **ANTAQ's** prerogative to assess, at any time, whether the liabilities indicated in the aforesaid report could have been known, under criteria provided in Sub-clause 12.2.1.
- 12.3.5 It shall be incumbent upon the Lessee to contract an independent environmental consultancy, which must be approved by the **Grantor Authority** within fifteen (15) days, counted as of its indication by the **Lessee** and, if the deadline elapses without manifestation, it shall be deemed tacit approval.
- 12.3.6 The technical environmental report mentioned in Sub-clause 12.3 shall not require prior approval by the competent environmental authority.
- 12.3.7 Failure to deliver to **ANTAQ** the technical environmental report referred to in Sub-clause 12.3 shall imply irrefutable presumption of the absence of any environmental Liabilities not known prior to the date of signing of this **Contract**.
- 12.4** Known **Environmental Liabilities** and those not identified in the technical environmental report referred to in Sub-clause 12.3 shall be the responsibility of the **Lessee**, as shall also those occurring after the date of signing of this **Contract**.
- 12.5** It is incumbent upon the Lessee to implement and certify, within two (2) years, counted as of commencement of performance of the **Activities** foreseen in this



**Contract**, and to maintain, throughout the entire **Lease Period**, an environmental management and control system, that shall encompass all processes carried out within the **Lease Site Area** and for its support, from receipt of cargoes to their respective shipment.

**12.6** It is incumbents upon the Lessee to comply with CONAMA Resolution 306, of July 5, 2002, and to present the report required in Clause **Erro! Fonte de referência não encontrada.** of this **Contract** as well with the Resolution updates or new Resolutions.

**12.7** Upon identification of environmental noncompliance, the **Lessee** shall present, for approval by **ANTAQ**, within thirty (30) days as of the date of identification of the noncompliance, a plan of action with measures for mitigation of impacts and risks or reparation of damage.

### **13 Allocation of Risks**

**13.1** Excepting in the hypotheses foreseen in this **Contract**, the **Lessee** is fully and solely responsible for all risks relating to the **Lease**, including, but without limitation to, the following risks:

- 13.1.1 Design, engineering and construction risks;
- 13.1.2 Refusal of **Users** to pay for services;
- 13.1.3 Obtaining of licenses, permits and authorizations for the **Lease**;
- 13.1.4 Cost overruns related to the **Activities** that are the object of the **Lease**;
- 13.1.5 Delay in compliance of schedules foreseen in the **Contract**, in the **Annex 2 - Technical Guidelines and Lease Parameters** or other deadlines established among the Parties during the period of the **Contract**, except in cases foreseen in this **Contract**;
- 13.1.6 Technology used in **Activities** under the **Lease**;
- 13.1.7 Perishing, destruction, robbery, theft, loss or any other types of damage to **Lease Site Assets**, responsibility for which shall not be reduced or excluded by virtue of inspection by **ANTAQ**;
- 13.1.8 Social and/or public demonstrations that affect, in any manner, performance and provision of **Activities** relating to the **Contract** for:

- a) up to fifteen (15) days, successively or not, in each twelve (12) month period, counted as of the **Assumption Date**, if the losses and damages caused by such events are not covered by insurance provided in Brazil on the date of their occurrence, under normal insurance-market conditions; and
  - b) up to ninety (90) days, successive or not, in each twelve (12) month period, counted as of the **Assumption Date**, if the losses and damages caused by such events are covered by insurance provided in Brazil on the date of their occurrence, under normal insurance-market conditions;
- 13.1.9 Shutdown of **Activities** of the **Lessee** owing to strike by its employees or subcontractors;
  - 13.1.10 Changes in the cost of capital, including those resulting from interest-rate changes;
  - 13.1.11 Changes in foreign exchange rates;
  - 13.1.12 Changes in taxation;
  - 13.1.13 Unforeseeable circumstances and force majeure that may be the object of insurance coverage offered in Brazil during the period of their occurrence, under normal insurance-market conditions;
  - 13.1.14 Recovery, remediation and management of **Environmental Liabilities** relating to the **Lease**, with the exception of those expressly assumed by the **Grantor Authority** under this **Contract**;
  - 13.1.15 Possibility that inflation in a certain period be higher or lower than the adjustment rate used for sums provided for in the **Contract** and in its **Annexes** over the same period;
  - 13.1.16 Civil, administrative and criminal liability for environmental damage resulting from operation of the **Lease**;
  - 13.1.17 Damages caused to third parties, by the **Lessee** or its officers, employees, agents or service providers or any other individual or corporate entity linked thereto, in the performance of activities encompassed by the **Lease**;
  - 13.1.18 Flaws in **Lease Site Assets** acquired after the **Assumption Date**, leased or rented for operations and maintenance of the **Lease** throughout the **Lease Period**;

- 13.1.19 Failure to fulfill projected demand for any reason, including during implantation of new organized ports or private-use terminals, within or outside the **Area of Influence of the Organized Port**;
  - 13.1.20 Delay in obtaining federal, state or municipal licenses, including licenses relating specifically to the **Lease Site Area**, when the maximum legal or regulatory deadline for issue by the competent authorities is not stipulated;
  - 13.1.21 Disturbances caused by administrative limitations, right of way or easements supported by the **Lessee**, notwithstanding the right to reimbursement by the beneficiary, under terms of the regulations;
  - 13.1.22 Value of investments, payments, costs and expenses resulting from administrative constraints, right of way or easements that benefit the **Lessee**.
- 13.2** The **Lessee** is likewise responsible for the following risks, but shall not be penalized, under this **Contract** and its **Annexes**, in cases in which such risks occur:
- 13.2.1 Social and/or public demonstrations that in any manner affect performance or provision of the **Activities** relating to the **Contract**, when such events exceed the periods set out in Sub-clause 13.1.8;
  - 13.2.2 A court or administrative decision making it unfeasible for the **Lessee** to perform the activities object of the **Contract**, in accordance with conditions established herein, and in the laws, in regulations, and in the **Regulations for Exploitation of the Organized Port**, except in cases in which the **Lessee** has given cause for such a decision;
  - 13.2.3 Fortuitous event or force majeure that cannot be the object of insurance coverage offered in Brazil during the period of occurrence, under normal insurance-market conditions;
  - 13.2.4 Delay or shutdown of the **Activities** resulting from delays in obtaining federal, state and municipal licenses, when the period for analysis by the bodies responsible for issuing them exceeds the prescribed legal and regulatory deadlines, except when in consequence of an event imputable to the **Lessee**;
    - 13.2.4.1 An event imputable to the Lessee shall be deemed any delay resulting from failure to deliver all the documents, studies and information required by the environmental authority, or in a

lesser quantity than set by the licensing body, prior to or following the licensing request;

13.2.5 Delay or shutdown of **Activities** resulting from delay or impossibility of obtaining the environmental licenses for installation of the port owing to lack or cancellation of the environmental licenses for the **Organized Port**, and failure to comply with conditions established therein, provided that such reason is expressly declared by the environmental authority in an official document.

13.2.6 Delay or shutdown of the **Activities** resulting exclusively from performance of works for expansion, reform or modernization of **Port Installations** in the **Lease Site Area**, provided there is prior authorization from **ANTAQ**.

**13.3** The **Lessee** shall not be responsible for the following risks relating to the **Lease**, for which the **Grantor Authority** shall be responsible:

13.3.1 Noncompliance with contractual obligations attributed to the **Grantor Authority**;

13.3.2 Costs arising from recovery, remediation, monitoring and management of **Environmental Liabilities** existing within the **Lease Site Area** on the date of signing of this **Contract**, provided they were not known on the **Assumption Date** and are identified in the technical environmental report mentioned in Clause **Erro! Fonte de referência não encontrada**. and that they were not caused by the **Lessee**;

13.3.3 Shutdown of activities of the **Lessee** owing to environmental risks foreseen in Sub-clause 13.3.2, provided that they were not caused by the **Lessee**;

13.3.4 Costs stemming from delay in availability of the **Lease Site Area** in which the **Activities** object of this **Contract** are to be carried out, provided the delay is greater than twelve (12) months counted as of the foreseen **Assumption Date** and that there is proof of significant damage; the **Lessee**, in this case, being exempt from penalties arising from delays in fulfillment of his obligations.

**13.4** The **Lessee** declares that:

- a) He has full awareness of the nature and extent of the risks he is assuming under the **Contract**; and
- b) He has taken such risks into consideration when drawing up his **Proposal**.

**13.5** The **Lessee** shall not be entitled to restoration of the economic and financial balance if any of the risks assumed under the **Contract** materialize.

#### **14 Extraordinary Review for Restoration of Economic and Financial Balance**

**14.1** Whenever the conditions of the **Contract** are met and allocation of risks set forth therein maintained, its economic and financial balance shall be considered maintained.

14.1.1 The **Lessee** may request restoration of the economic and financial balance in cases in which, after signing of this **Contract**, any of the risks expressly assumed by the **Grantor Authority** under this **Contract come to pass**, with negative economic and financial repercussions for the **Lessee**.

14.1.2 The **Grantor Authority** may request restoration of the economic and financial balance of the **Contract** in cases in which, after signing of this **Contract**, any of the risks assumed by the **Grantor Authority**, under this **Contract come to pass**, with positive economic and financial repercussions for the **Lessee**.

14.1.3 The **Grantor Authority** may, exclusively, to promote the restoration of the economic and financial balance of the **Contract**, in cases in which it determines or previously authorize investments and services of public interest or expansion or reduction of the **Lease Site Area**.

14.1.4 To request restoration of the economic and financial balance of the **Contract**, the procedures, terms and requirements set forth in regulations issued by **ANTAQ** shall be observed.

**14.2** The purpose of the **Extraordinary Review** procedure shall be to assess requests for restoration of the economic and financial balance effected under the terms and hypotheses foreseen in regulations issued by **ANTAQ**, and under this **Contract**, and shall commence as of a request presented by the **Lessee** or by the **Grantor Authority**, directly, or through **ANTAQ**.

14.2.1 The **Extraordinary Review** procedure for restoration of the economic and financial balance shall be concluded within the period foreseen in regulations issued by **ANTAQ**.

14.2.2 At the end of the **Extraordinary Review** procedure, if the need for restoration of the economic and financial balance of the **Contract** is confirmed, the **Grantor Authority** shall adopt the forms of restoration foreseen in regulations issued by **ANTAQ**.

**14.3** In compliance with current regulations, the **Grantor Authority** shall be empowered to assign to a possible new Lessee the obligation to pay compensation to the **Lessee**, in the event that this form of restoration of the economic and financial balance of the **Contract** be chosen, in terms to be established in a future **Auction Notice**.

**14.4** In consonance with regulations issued by **ANTAQ**, in the event of a request for conversion of the compensation values into an **Extension**, the **Lessee** may request, within the same period, an **Extension** of the **Lease Period** under the terms of Sub-Clause 3.2 and those following it of this **Contract**: in this hypothesis, in addition to conversion of the compensation values, the procedure for restoration of the economic and financial balance for purposes of a possible **Extension** of investments in the **Lease** proposed by the **Lessee** shall be considered, as well as the need for adjustment of the **Lease Value**, and of other obligations of the **Lessee** in counterpart for the granting of an **Extension**, depending upon the additional period to be granted by the **Grantor Authority**.

## **15 Lease Site Assets**

**15.1** Notwithstanding other provisions of this **Contract** on the theme, the **Lease** shall comprise the following assets, possession, safekeeping, maintenance and surveillance of which shall be the responsibility of the **Lessee**:

15.1.1 All goods linked to operation and maintenance of the **Activities**, assigned to the **Lessee**, as indicated in the Terms of Acceptance and Asset Use Permit;

15.1.2 Goods and assets acquired by the **Lessee**, throughout the term of the **Contract**, to be used for operation and maintenance of the **Lease** and in performance of the **Activities**, respecting provisions of the in the **Annex 4 - Specific Conditions of Contract**;

15.1.3 All facilities that may come to be built by the **Lessee** during the term of the **Contract** and applied in performance of the **Activities**.

**15.2** The **Lessee** shall receive the **Lease Site Assets**, including the areas, infrastructures and Port Installations, in the condition in which they are found and at his own expense and risk.

- 15.3** The **Lease Site Assets** shall be kept in normal conditions of use, so that, when returned to the **Grantor Authority**, they are in perfect condition, except for normal wear of use
- 15.4** The movable and immovable goods mentioned in the previous Sub-clause and existing on the date of signing of this **Contract** shall be assigned to the **Lessee** upon signing of the **Provisional Term of Acceptance** and **Asset Use License** by the **Lessee**, the **Grantor Authority** and **ANTAQ**, a model of which is to be found in the **Annex 4 Specific Conditions of Contract**
- 15.4.1 The **Lessee** may, with good cause, refuse to accept **movable goods** considered unnecessary for operation and maintenance of the **Activities** or that are abnormally deteriorated; such refusal shall not, however, imply a right on the part of the **Lessee** to receive any sum, or a right to restoration of the economic and financial balance of the **Contract**.
- 15.4.2 After signing the **Provisional Term of Acceptance** and **Asset Use License**, the **Lessee** shall have sixty (60) days to present any disagreements and sign the **Definitive Term of Acceptance** and **Asset Use Permit**, in accordance with the draft in the appendix of the **Annex 4 - Specific Conditions of Contract**
- 15.5** The **Lessee** declares that he has knowledge of the nature and condition of the **Lease Site Assets** to be assigned to him by the **Grantor Authority**, under this **Contract** and its **Annexes**.
- 15.6** Excepting in cases of **Extraordinary Review** foreseen in Sub-clause 14.1.3, all **Lease Site Assets** or the investments therein, including maintenance of the updatedness and modernity of the **Lease Site Assets** and of the **Activities** associated thereto, shall be fully amortized by the **Lessee** during the term of the **Contract**, in accordance with current legislation and this **Contract**, not allowing any claim for restoration of the economic and financial balance during the contract term.
- 15.7** Control and monitoring of the **Lease Site Assets** shall be carried out in compliance with rules foreseen in the regulations, in this **Contract** and in its **Annexes**.
- 15.8** Return of the **Lease Site Assets** to the **Grantor Authority** in the event of termination of the **Contract** shall be governed by the applicable provisions of this **Contract**.



## 16 Guarantee of Contract Execution

**16.1** The **Lessee** shall maintain, on behalf of the **Grantor Authority**, as a guarantee of faithful compliance with contractual obligations, a **Guarantee of Contract Execution** with sums indicated in Clause **Erro! Fonte de referência não encontrada.** of the **Annex 4 - Specific Conditions of Contract**

16.1.1 The **Guarantee of Contract Execution** shall be readjusted annually under the terms of Sub-Clause 9.3 of this **Contract**.

**16.2** The **Lessee** shall remain responsible for compliance with contractual obligations, including payment of any fines and compensation, independently of use of the **Guarantee of Contract Execution**.

**16.3** The **Guarantee of Contract Execution**, at the **Lessee's** discretion, may be provided in one of the following modalities:

16.3.1 Surety, in money or in federal debt bonds, in the latter case the following securities are acceptable: National Treasury Bills - LTN, Treasury Bills- LFT, National Treasury Notes- C series - NTN-C, or National Treasury Notes - F series - NTN-F, that must be issued in book-entry form, upon registration in a centralized settlement and custody system authorized by the Central Bank of Brazil and evaluated by their economic values, as defined by the Ministry of Finance;

16.3.2 Bank guarantees, in the form of the model in the appendix to the **Annex 4 - Specific Conditions of Contract**;

16.3.2.1 If the contracting of bank guarantees is the chosen option, these must: (i) be presented in their original form (no copies of any kind will be accepted), (ii) have values expressed in reais, (iii) nominate the **Grantor Authority** as beneficiary, (iv) be duly signed by the managers of the guarantor financial institution, and (v) provide for waiving of the benefit of entitlement, observing other conditions established for guarantee of the proposal in the **Auction Notice**.

16.3.3 **Guarantee Insurance** the policy for which shall observe, no less than, the content of the **Annex 4 - Specific Conditions of Contract**

**16.4** The letters of guarantee and guarantee insurance policies shall have a term of no less than one (1) year counting as of the data of issue, it being the sole responsibility of the **Lessee** to keep them fully and continuously in effect throughout the entire contract period, and he shall, to this end, conduct the



renewals and updates necessary, no less than sixty (60) days prior to their expiration.

16.4.1 Any modification to the content of the letter of guarantee or to the guarantee insurance must be submitted for prior approval of the **Grantor Authority**.

16.4.2 The **Lessee** must submit to the **Grantor Authority**, in compliance with current regulations, a document evidencing that the bank guarantee letters or insurance guarantee policies have been renewed and their values readjusted in accordance with Sub-clause 16.1.1.

**16.5** Notwithstanding other hypotheses foreseen in the **Contract** and in current regulations, the **Guarantee of Contract Execution** may be used in the following cases:

16.5.1 If the **Lessee** fails to effect payment of fines that are applied, in compliance with current regulations upon the occurrence of the event, and in the cases foreseen in this **Contract** and its **Annexes**, especially in Clause 19 of the **Annex 4 Specific Conditions of Contract**;

16.5.2 In the case of return of Returnable Assets that fail to comply with requirements established in this **Contract** and in its **Annexes**;

16.5.3 In the event of non-payment of the **Lease Value**, as foreseen in the **Annex 4 Specific Conditions of Contract**; or

16.5.4 As a consequence of proven damages resulting from non-compliance with contract obligations by the **Lessee** and their repercussions.

**16.6** Whenever the **Grantor Authority** uses the **Guarantee of Contract Execution**, the **Lessee** shall undertake to restore the full amount, within ten (10) business days counting as of the data of such use, whereas, during this period, the **Lessee** shall not be exempt from liabilities assigned to him under the **Contract**.

## **17 Insurance**

**17.1** The **Lessee** shall maintain the respective insurances throughout performance of the **Activities**, until the end of the **Contract** and shall fully comply with its object, considered essential to ensuring effective coverage of all risks inherent to the **Activities**.

- 17.2** All the insurance policies to be contracted by the **Lessee** shall contain a clause of waiver of subrogation rights on behalf of the **Grantor Authority**, his representatives, the **Financers**, and their successors, and contain clauses stipulating that they shall not be canceled without prior written authorization from the **Grantor Authority**, and that none of their conditions shall be altered, without his prior written consent.
- 17.3** Any action or omission on the part of the **Lessee** that may cause loss or reduction of any insurance coverage required under this **Contract** shall imply total liability of the **Lessee** for compensation that would be paid by the insurance company in the event of accident, without prejudice to imposition of penalties foreseen in this **Contract** and in its **Annexes**.
- 17.4** Prior to commencement of any of the works foreseen in the **Contract** and in its **Annexes**, to be effected prior to its conclusion, the **Lessee** shall:
- 17.4.1 Contract insurance in the form of Engineering Risks - Civil Works for Construction, Facilities and Assembly; the policy shall include basic coverage, encompassing all acceptance tests, with insured value equal to the value of spending on execution of works, value of supplies, of electromechanical assembly, worksites and other costs amounting to the total of investments, in accordance with plans presented by the **Lessee**. The policy shall also include the following additional coverage:
- a) Project error;
  - b) Manufacturer risks;
  - c) Rescue expenses and containment of losses ;
  - d) Machinery and equipment for works;
  - e) Property damage;
  - f) Machine breakdown;
  - g) Extraordinary expenses representing no more than ten percent (10%) of basic coverage;
  - h) Removal of debris from the site representing no more than ten percent (10%) of basic coverage;
  - i) At the discretion of the **Lessee**, other additional coverage available in the form of Engineering Risks may be included.
- 17.4.2 Contract insurance in the form of General and Cross Liability, providing coverage of risks arising from the implantation of works

and of any other risks set forth in the **Contract** and in its **Annexes**, covering the **Lessee** and the **Grantor Authority**, as well as their administrators, employees, staff and contracted personnel, in the amounts for which they can be held liable (consequential damages and lost earnings), personal, moral damages, arising from activities in the performance of works, including legal fees and any other charges related to property, personal or moral damages, with minimum coverage for unintended personal damages, deaths, property damage caused to third parties and their vehicles, including the **Grantor Authority**, including damages resulting from ground survey work, groundwater drawdown, excavations, opening of galleries, staking, related services (foundations) and moral damages (with minimum coverage of 20% of the ensured value). The following additional coverage shall also be encompassed by the policy:

- a) Material damage to neighboring properties;
- b) Employer Civil Liability, with limits in accordance with market practices;
- c) Sudden pollution;
- d) Damage to public networks and services;
- e) Civil Liability in the Performance of Services on behalf of third parties, if applicable, in an amount compatible with the potential damage in each situation;
- f) For transport of all materials and equipment under its responsibility during construction.

**17.5** Starting as of commencement of the **Activities** and until the end of the Lease Period:

- 17.5.1 Contract insurance in the form of Nominated Risks/Multirisks, including loss of earnings during the operation, with coverage for fixed expenses required for the continuity of performance of **Activities**, for an indemnity period of at least six (6) months, fire, lightning, explosion of any kind, electrical damage, windstorm, smoke, flooding and landslide for buildings, structures, machinery, mobile and stationary equipment, relating to assets under their responsibility or in their possession, especially the Returnable Assets that comprise the **Lease**;

- 17.5.2 Contract insurance in the form of General and Cross Liability, covering risks arising from the **Activities**, covering the **Lessee** and the **Grantor Authority**, and also his managers, employees, staff and contracted parties, in the amounts for which they can be held liable for (consequential damages and lost earnings), personal, moral damages, including legal fees and any other charges related to property, personal or moral damages, arising from the **Activities**, with minimum coverage for unintended personal damages, deaths, property damage caused to third parties and their vehicles, including the **Grantor Authority**;
- 17.5.3 Contract insurance for industrial accidents relating to collaborators and employees of the **Lessee** deployed for provision of the services foreseen in the **Contract**.
- 17.6 For failure of the obligation to contract or maintain up to date insurance policies, **ANTAQ** shall apply a fine until presentation of said polices or the respective endorsement, notwithstanding other measures foreseen in the **Contract**.
- 17.7 The **Lessee** shall assume full responsibility for the scope or omissions resulting from effecting of insurances mentioned in this **Contract**.
- 17.8 The **Lessee** is responsible for full payment of the deductible, in the event of the use of any insurance foreseen in this **Contract**.
- 17.9 The insurance policies shall have a minimum duration of twelve (12) months, and be renewed successively for an equal period during the contract term.

## 18 Supervision by ANTAQ

- 18.1 The supervisory powers for implementation of this **Contract** shall be exercised by **ANTAQ**, notwithstanding inspections carried out by the **Port Administration**, by customs, river, sanitary, environmental and health authorities, within the scope of their powers, and shall be carried out directly or by agreement, whereas **ANTAQ** shall, at any time, in the exercise of its duties, have free access to data relating to administration, accounting and technical, economic and financial resources referent to the **Lease**, and to **Lease Site Assets**.
- 18.2 It shall be incumbent upon **ANTAQ** to:
- a) Encourage increased quality and productivity and require upkeep of the equipment that is the object of this **Contract**;

- b) Comply, and ensure compliance with, requirements concerning safety and preservation of the environment in the execution of this **Contract**;
- c) Curb practices that are harmful to free competition or that constitute discriminatory treatment in performance of the **Activities**;
- d) Ensure high quality of the **Activities**, receive, investigate and take measures to resolve complaints of **Users**;

**18.3** The supervisory and control bodies of **ANTAQ** are responsible for supervision, inspection and auditing of the **Contract**, and for evaluation of the performance of the **Lessee**, that may be carried out at any time.

**18.4** Determinations that may be issued within the scope of inspections foreseen shall apply immediately and shall be binding upon the **Lessee**, possible appeals notwithstanding.

**18.5** **ANTAQ** inspections shall take note in a specific document of occurrences identified during inspection, and shall formally submit them to the Lessee for correction of failings or defects identified.

18.5.1 Failure to correct failings or defects indicated in the specific document for reporting of occurrences, within the stipulated deadlines, shall be considered breach of contract and entail issuance of a notice of infraction, other applicable penalties notwithstanding.

18.5.2 In the event that the **Lessee** fails to comply with determinations of **ANTAQ** within the scope of inspections, the latter shall proceed to correct the situation, directly or through a third party, at the expense of the **Lessee**.

**18.6** **ANTAQ** shall inspect the **Lease** periodically, for purposes of verifying its current condition, so as to ensure that it is maintained in adequate condition, as foreseen in the **Contract** and in its **Annexes**, when it is to be returned to the **Grantor Authority**.

**18.7** **ANTAQ** shall, up to twelve (12) months prior of the close of the **Contract**, conduct a detailed inspection specifically to assess the condition of the **Returnable Assets**.

**18.8** Having received notifications issued by **ANTAQ**, the **Lessee** may exercise his right to defense, in compliance with current regulations.

**18.9** It shall also be incumbent upon **ANTAQ** to arbitrate any conflicts of interest between the **Users, Lessee, Port Administration** and other players in the **Organized Port**, preserving the public interest and avoiding situations that constitute abuse of a dominant market position or breaches of the economic order.

**18.10** Supervision carried out by **ANTAQ** or by other competent bodies shall in no way exclude, limit or attenuate the responsibility of the **Lessee** for damages caused to the **Port Administration**, to **Users** or to third parties, in accordance with regulations.

## **19 Monitoring of the Lease**

**19.1** Notwithstanding the economic and financial, corporate and operational information that may be requested by the **Grantor Authority** and/or by **ANTAQ**, under the terms of regulations, the **Lessee** must submit the following information to **ANTAQ**:

19.1.1 Annually, up until day ten (10) of the month subsequent to closing of each year, counting as of the **Assumption Date**, an Operational Report containing the following information:

- a) Cargo handled, including total volumes for all months of operation of the terminal, broken down by type of cargo;
- b) Monitoring of **Lease Parameters** containing all the necessary information to appraise parameters indicated in the **Technical Guidelines and Lease Parameters Annex**;
- c) An updated inventory of **Lease Site Assets**, informing the quality of each type of equipment, nominal and effective capacity (when applicable) and inventory report;
- d) Results of audits and environmental performance reports on the **Lease**, in accordance with guidelines set out in NBR ISO 14.031 or equivalent accepted by ANTAQ;
- e) An audit report, as required by CONAMA Resolution 306, of July 5, 2002 or by a new Resolution . This report shall be presented every two (2) years;
- f) Financial statements relating to the months of the Operational Report.

19.1.2 Annually, prior to April 30, of each year, an Accounting and Financial Report on the Lessee containing the following information:

- a) Financial statements relating to the fiscal year closing on December 31 of the previous year, prepared in accordance with accounting practices adopted in Brazil, based on specific laws, on rules and regulations of the Securities and Exchange Commission (CVM) and on the Accounting Standards issued by the Federal Accounting Council (CFC), including, among others, the Management Report, Balance Sheet, Statement of Accumulated Earnings or Losses, a Statement of Profit and Loss for the Period and Cash Flow Statements, Notes to the Balance Sheet, Opinions of the Independent Auditors and Fiscal Council, in compliance with provisions of Federal Law 6.404/76, of Federal Law 11.638/07 and of other current legal provisions, notwithstanding the powers of **ANTAQ** to conduct investigations and audits to assess the situation; such documents must be audited by the company's independent auditors, registered and authorized by the Securities and Exchange Commission (CVM);
- b) The direct and indirect corporate structure of the **Lessee**, down to the individual level, considering all types of stockholdings, including minority holdings, greater than five percent (5%) of capital, voting or otherwise, and all shareholders' agreements for the period;
- c) A report informing on compliance of shareholders with minimum paid-up capital obligations of the **Lessee**, notwithstanding the powers of **ANTAQ** to conduct investigations and audits to assess the situation;
- d) Documents proving that insurance policies were renewed or will be renewed automatically and unconditionally immediately upon maturity, accompanied by the respective policy.

19.1.3 Annually, prior to the tenth (10) day of the month following the end of each year counted as of the **Assumption Date**, a User Services Report containing:

- a) Measures adopted to address complaints of **Users**, the **Port Administration** and Port operators submitted by **ANTAQ** or received directly by the **Lessee**, also informing time elapsed between the complaint and resolution of the problem;
- b) The report shall also relate requests of third parties for use of Port installations or equipment held by the **Lessee**, indicating at least: (a) whether or not such requests were attended, accompanied by appropriate justification; (b) the deadline for use that was agreed; and (c) the prevailing prices – notwithstanding that **ANTAQ** may request the full contract signed by the parties.



19.1.4 Other reports and information to be submitted to **ANTAQ**:

- a) Report informing **ANTAQ** of the proposal for decommissioning or write-off of **Returnable Assets**, observing the obligation to replace the decommissioned or written-off assets with others with identical or better functional or working capabilities, to be submitted every year counted as of the **Assumption Date**, always prior to the tenth (10) day of the month after closing of the half year;
- b) Progress Report on the status of activities stated in the Implantation Schedule presented in the **BPI**, to be submitted every six (6) months, counted as of the **Assumption Date**, always prior to the tenth (10) day of the month after closing of the half year, until completion of Implantation;
- c) Independent technical report for verification of the operational condition of **Returnable Assets**, to be submitted every five (5) years, counted as of the **Assumption Date**, always prior to the tenth (10) day of the month following close of the five-year period.

19.1.5 The format of the documents and the form in which information is to be disclosed shall be determined by **ANTAQ**.

**19.2** For purposes of monitoring and control of competition, each year, the **Lessee** shall provide to **ANTAQ**, for the **Area of Influence of the Organized Port**, [a listing of] operations with cargoes of the same type as those in the Activities that are the object of the **Lease**, handled by the **Lessee** and **Related Parties**, encompassing areas within and outside the **Organized Port**.

19.2.1 The **Lessee** shall provide all the information in accordance with regulations to be issued by **ANTAQ**, containing, at least, data on cargo operations at the **Organized Port** in which the area of the **Lessee** is located, data on movement at Private Use Terminals in the area of influence, as may be established by **ANTAQ**, including data on prices and rates charged.

19.2.2 Until the **Area of Influence of the Organized Port** is defined, the **Lessee** shall provide information referred to in this Clause in relation to Port Installations in the State of the Federation in which the **Organized Port** is located.

19.2.3 The information provided under the terms of this Clause may be furnished to bodies of the Brazilian Antitrust System *ex officio* by **ANTAQ**, or upon request.



## 20 Penalties

**20.1** Failure to comply with the Clauses of this **Contract** and its **Annexes**, the **Auction Notice** and **Regulations for Exploitation of Organized Ports** shall result in the application of the penalties foreseen in this **Contract**, notwithstanding other penalties foreseen in other legal provisions and **ANTAQ** regulations.

**20.2** Fines may be applied for noncompliance or delay in the fulfillment of contractual obligations.

**20.3** For partial or total non-performance of this **Contract**, **ANTAQ** or the **Grantor Authority** may, while ensuring the right to ample defense, singly or cumulatively, impose upon the Lessee the following sanctions:

- a) Warning;
- b) Fine;
- c) Suspension of the right to participate in tenders and to contract with the Federal Public Administration;
- d) Termination of the **Contract** by fault of the **Lessee**;
- e) Declaration of unfitness to bid or contract with the Public Administration, for as long as the motives for such punishment remain or until rehabilitation is achieved, through compensation for damages and expiration of the term of the penalty applied, on the basis of inset "c" above.

**20.4** Application of the fines referred to in the previous Sub-clauses shall not stop the **Grantor Authority** from declaring termination of the **Lease** by fault of the **Lessee**, subject to the procedures set therein, or from applying other sanctions foreseen, neither shall it imply exemption from criminal or civil liability on the part of the **Lessee** and/or his managers or extinction of the obligation to correct flaws or verified failures.

**20.5** For infractions for which no specific fines have been set under Clause **Erro! Fonte de referência não encontrada.** of the **Annex 4 - Specific Conditions of Contract** and **ANTAQ** regulations fines shall be applied with a possible minimum value equivalent to one hundredth of one percent (0.01%) of the estimated aggregate value of the **Contract** and the maximum value permitted shall be of five percent (5%) of the estimated aggregate value of the **Contract**, per infraction, depending upon the seriousness of the offense.

**20.6** Upon completion of the administrative process of application of the fine, the **Lessee** must pay the value of the fine within a period of no more than thirty (30) days; in the event that the **Lessee** fails to pay the fine within the specified deadline,



**ANTAQ or Grantor Authority shall proceed to execute the Guarantee of Contract Execution.**

- 20.7** Unsettled debt of the **Lessee** not covered by the **Guarantee of Contract Execution** shall be reported to the Register of Information on Outstanding Credits of the Federal Public Sector (CADIN) until effectively settled.
- 20.8** The administrative procedure for application of penalties shall observe provisions of current legislation and regulations.
- 20.9** Suspension of the right to participate in tenders and to contract with the Federal Public Administration shall be applied in the event of repeated breaches of contract, under this **Contract** and current regulations.
- 20.10** Imposition of penalties upon the **Lessee** shall not exclude the possibility of application by **ANTAQ** of precautionary measures, with a view to preserving the assets or physical integrity of third parties, including: detention, interdiction of premises, seizure, construction embargos, and other measures foreseen under the laws and sectoral regulations.

## **21 Special Purpose Entity - SPE**

- 21.1** The **Lessee** will maintain itself as a **SPE**, in the form of a joint-stock company, established under Brazilian law, for an indefinite period, solely for purposes of exploiting the **Lease**.
- 21.2** The minimum share capital of the **Lessee** and other rules pertaining to it are set out in this **Contract** and in its **Annexes**, especially in Clause 21 of the **Annex 4 - Specific Conditions of Contract**
  - 21.2.1** The **Lessee** shall not, during the term hereof, reduce its capital below the minimum amount specified in Clause 21 of the **Annex 4 - Specific Conditions of Contract**, without prior and express consent of the **Grantor Authority**.

## **22 Financing**

- 22.1** The **Lessee** is solely and exclusively responsible for obtaining the financing necessary for exploitation of the **Lease**, as provided for in this **Contract**, in order to fully comply, in timely manner, with all commitments assumed under the **Contract**.

- 22.2** The **Lessee** shall submit to **ANTAQ** certified copies of financing contracts and guarantees that he may sign and of documents representing stocks and bonds that may be issued, and of any alterations to these instruments, within ten (10) business days as of their date of signing or issue, depending upon the case.
- 22.3** The **Lessee** shall not invoke any provision, clause or condition of the financing contracts, or any delay in disbursement of resources, to exempt himself, in whole or in part, from any of the commitments assumed under the **Contract**.
- 22.4** The **Lessee** shall provide guarantee of financing contracted under the terms of this Clause, the rights stemming from this **Lease**, such as revenues from exploitation of the **Lease**, within limits that do not compromise regular execution of the **Contract**, as well the art. 28-A from Federal Law n. 8.987/95.
- 22.5** The **Lessee** is forbidden to:
- a) Grant loans, financing and/or any other form of transfer of resources to shareholders and/or **Related Parties**, excepting transfers for purposes of distribution of dividends, payments interest on own capital and/or payments for contracting of **Activities**, signed in fair market conditions; or
  - b) Provide warrantee, endorsement or any other form of assurance on behalf of **Related Parties** and/or third parties.

## **23 Assumption of Control by the Financers**

- 23.1** The **Grantor Authority** may authorize, upon prior analysis by **ANTAQ**, assumption of control of the **Lessee** by its **Financers**, in the event of default on financing contracts, to carry out financial restructuring and ensure the continuity of the **Activities**, as well the art. 27-A from Federal Law n. 8.987/95.
- 23.1.1 The assumption mentioned in the previous Sub-clause may occur in cases in which the default on contractual obligations, by the **Lessee**, makes unfeasible or jeopardizes the continuity of exploitation of the **Lease**.
  - 23.1.2 After the regular completion of the relevant administrative proceedings, upon request, the **Grantor Authority** shall authorize assumption of control of the **Lessee** by its **Financers** with the aim of promoting financial restructuring of the **Lessee** and ensuring continuity of the exploitation of the **Lease**.

- 23.2** In the event of Assumption of Control by the Financers, the performance of activities shall occur through contracting of pre-qualified third parties for that purpose, in accordance with this **Contract**.
- 23.3** Such authorization will only be granted upon proof, by the **Financers** that they meet the legal and tax compliance requirements foreseen in the **Auction Notice**, and also, the operational requirements foreseen in the applicable regulations and standards.
- 23.4** Assumption of control of the **Lessee** under the terms of this Clause shall not alter the obligations of the **Lessee** and of the **Financer**-controllers before the **Grantor Authority**.

## **24 Intervention of the Grantor Authority**

- 24.1** The **Grantor Authority** may intervene in the **Lessee** in order to ensure adequate performance of the **Activities**, and also, full compliance of applicable contractual, regulatory and legal standards.
- 24.2** Such intervention shall be effected by decree of the **Grantor Authority**, duly published in the **DOU**, which shall contain the name of the intervenor, the period of intervention, the objectives and limits of the measure.
- 24.3** Once the intervention has been decreed, the **Grantor Authority**, within thirty (30) days, will open an administrative proceeding which shall be completed within a period of no more than one hundred and eighty (180) days, to verify the causes prior to intervention and determine the respective responsibilities, ensuring the **Lessee's** right to ample defense.
- 24.4** When the intervention is over, if the **Lease** has not been terminated, the **Activities** object of the **Contract** shall revert to responsibility of the **Lessee**, and the intervenor shall present account of his acts.
- 24.5** The **Lessee** undertakes to make available to the **Grantor Authority** the **Lease** and other **Lease Site Assets** immediately after intervention has been decreed.
- 24.6** Revenues earned during the intervention period shall be used to cover investments, costs and expenses required to restore normal operation of the **Activities** of the **Lease**.
- 24.7** If revenues are not sufficient to cover the value of investments, costs and expenses resulting from the **Lease** incurred by the **Grantor Authority**, he may use the **Guarantee of Contract Execution** to:
- a) Cover them, wholly or in part; and/or

- b) Discount, from potential future remuneration to be received by the **Lessee**, the value of investments, costs and expenses incurred.

## 25 Cases of Termination

### 25.1 The **Lease** may be terminated upon:

- a) Onset of the contractual term;
- b) Early termination of the **Contract** in the public interest;
- c) Rescission of the **Contract** by fault of the **Lessee**;
- d) Rescission of the **Contract** by fault of the **Grantor Authority**;
- e) Annulment ; or
- f) Bankruptcy or termination of the **Lessee**.

25.1.1 Once the **Lease** is terminated, all **Lease Site Assets** shall automatically revert to the **Union** free and unencumbered of any liability or charges, and all the rights of the **Lessee** stemming from this **Contract** shall cease.

25.1.2 Upon termination of the **Lease**, the **Activities** related to the **Lease** shall immediately be assumed by the **Grantor Authority**, which shall be authorized to occupy the installation and use all the **Lease Site Assets**, notwithstanding maintenance of obligations of the **Lessee** assumed before third parties or its employees.

### 25.2 Onset of the contractual term

25.2.1 Upon closing of the term of the **Contract**, the **Lessee** shall be responsible for closing of any **Contracts** inherent to the **Lease** signed with third parties, assuming all consequent charges, responsibilities and liability.

25.2.2 The **Lessee** shall take all reasonable measures and cooperate fully with the **Grantor Authority** so that the **Activities** object of the **Lease** may continue to be provided in accordance with the **Technical Guidelines and Lease Parameters Annex**, without any interruption to the **Activities** object of the **Lease**, and shall avoid and mitigate any inconvenience or risk to the health or safety of **Users** and of staff of the **Grantor Authority**.

25.2.3 The **Lessee** shall not be entitled to any indemnification relating to investments linked to the **Lease Site Assets** as a consequence of expiration of the **Contract**.

### 25.3 Early termination of the Contract in the public interest

25.3.1 The **Grantor Authority** may, at any time, terminate the **Contract** in the public interest with due justification, upon prior payment of compensation, to be calculated under the terms of Sub-Clause 25.3.2.

#### 25.3.2 Indemnification

Indemnification owed to the **Lessee** shall cover:

- a) Installments of investments made, including those in maintenance **Activities**, goods and facilities, not yet amortized or depreciated, made in compliance of this **Contract**, provided they were duly authorized by the **Grantor Authority**, deducting outstanding financial liabilities;
- b) Exemption of the **Lessee** from obligations arising from financing contracts entered into and demonstrably used to ensure compliance of this **Contract**, provided they are linked to investments that have not yet been fully amortized.
- c) Liabilities and charges resulting from fines, rescissions and compensation owed to suppliers, contractors and third parties in general, including attorneys' fees resulting from consequent disruption caused to the respective contractual relationships, and provided they were demonstrably used to ensure compliance of this **Contract**.
- d) The portion of compensation owed to the **Lessee**, corresponding to the negative outstanding balance mentioned in line "b" of Sub-clause 25.3.2, may be paid directly to the **Financers**, whereas the remainder shall be paid to the **Lessee**.
- e) Fines, compensation and any other sums owed by the **Lessee** shall be discounted from the indemnification foreseen for this case of termination.

### 25.4 Rescission of the Contract by fault of the Lessee

25.4.1 The **Grantor Authority** may declare **Rescission of the Contract by fault of the Lessee** in the event of total or partial non-execution of



the **Contract**, observing the provisions of pertinent regulatory and legal standards, and especially when the **Lessee**:

- a) Has a **BPI** rejected by the **Grantor Authority**, for unfitness to meet the requirements of the **Contract and Annexes**;
- b) Performs the **Activities** object of this **Contract** in an inadequate or deficient manner, based upon the **Performance Parameters**;
- c) Fails to meet deadlines for implantation and deployment of the **Activities**;
- d) Fails to comply with contractual clauses or legal and regulatory provisions relating to the **Lease**;
- e) Shuts down the **Activities** or seeks to do so, except in cases arising from fortuitous event or force majeure;
- f) Lacks the economic, technical or operational means to maintain adequate performance of the **Activities** object of the **Lease**;
- g) Fails to comply with penalties imposed, in due time;
- h) Diverges from the object of the contractual objectives, effects corporate change or alteration of the corporate purpose or structure thereby preventing or impairing implementation of the **Contract**, including dissolution of the company;
- i) Conducts, without prior and express consent, an operation for transfer of corporate control or ownership of the **Lease**, or a total or partial sublease;
- j) Defaults on payment of contractual charges to the **Port Administration** for more than one hundred and twenty (120) calendar days;
- k) Fails to attend to a summons from the **Grantor Authority**, to regularize performance of the **Activity**; or
- l) Is convicted in final judgment for tax evasion, including social charges.

25.4.2 The **Grantor Authority** shall not declare rescission of the **Contract** by fault of the **Lessee** in the case of uninsurable fortuitous event or force majeure.

25.4.3 Rescission of **Contract** by fault of the **Lessee** shall be preceded by verification of contractual default of the **Lessee** by administrative proceedings, ensuring his right to ample defense.

25.4.4 Administrative proceedings shall not be filed for this purpose without serving prior notice to the **Lessee**, who shall have, in each case, time to correct flaws and transgressions identified and to adapt to the contractual terms.

25.4.5 Once an administrative proceeding has been filed and default proven, rescission shall be declared by the **Grantor Authority**, regardless of prior indemnification, which shall be calculated during the proceeding and in accordance with Sub-clause **Erro! Fonte de referência não encontrada.**

25.4.6 The **Contract** having been rescinded and the respective compensation paid, the **Grantor Authority** shall not bear any type of responsibility in relation to charges, liabilities, obligations or commitments with third parties or employees of the **Lessee**.

#### 25.4.7 **Indemnification**

- a) The indemnification owed to the Lessee in the event of rescission of the **Contract** by fault of the Lessee shall be limited to the value of investments, approved by the **Grantor Authority**, relating to as yet not amortized **Lease Site Assets**.
- b) Of the sum foreseen in the previous Sub-clause, the following shall be discounted:
  - i. Damages caused by the **Lessee** to the **Grantor Authority** and to society, calculated by administrative procedure;
  - ii. Contractual fines applied to the Lessee that have not been settled; and
  - iii. Any sums received by the **Lessee** as insurance coverage relating to events or circumstances that led to declaration of nullity of the **Contract** by fault of the **Lessee**.
- c) The portion of the indemnification owed to the **Lessee**, corresponding to the negative outstanding balance of financing effectively invested, may be paid directly to the **Financers**, at the discretion of the **Grantor Authority**, whereas the remaining sums shall be paid directly to the **Lessee**.



25.4.8 The declaration of nullity of the **Contract** by fault of the **Lessee** shall, furthermore, result in:

- a) Execution of the **Guarantee of Contract Execution**, as reimbursement for fines and any damages caused to the **Grantor Authority**; and
- b) Retention of any credits arising from the **Contract**, up to the limit of damages caused to the **Grantor Authority**.

## 25.5 Rescission by fault of the Grantor Authority

25.5.1 The **Lessee** shall notify the **Grantor Authority** of his intention to rescind the **Contract**, in the case of breach of contractual standards by the **Grantor Authority**, by court action especially filed for this purpose, as provided for in legislation.

25.5.2 The **Activities** provided by the **Lessee** shall only be interrupted or shut down after the final decision of the court ordering rescission of the **Contract**.

### 25.5.3 Indemnification

- a) Indemnification owed to the Lessee in the event of rescission by fault of the **Grantor Authority** shall be calculated in accordance with Sub-clause 25.3.2.
- b) For purposes of the calculation indicated in the previous item, sums received by the **Lessee** as insurance coverage relating to the events or circumstances that resulted in rescission shall be considered.

## 25.6 Annulment

25.6.1 The **Grantor Authority** shall declare the nullity of the **Contract**, thereby preventing the legal effects that it would ordinarily produce, and also cancel those already produced, if any illegality is detected in its formalization or in the **Auction**.

25.6.2 In the event described in Sub-clause 25.6.1, if the illegality is attributable solely to the **Grantor Authority**, the **Lessee** shall be compensated for that which he has done up to the date when nullity is declared and for other duly demonstrated damages, discounting, however, any sums received by the **Lessee** as insurance coverage relating to events or circumstances that gave rise to the declaration of nullity.

## 25.7 Bankruptcy or Termination of the Lessee

25.7.1 The **Lease** shall be terminated in the event that the **Lessee** is declared bankrupt, by final court decision, or in the event of court-ordered restructuring detrimental to execution of this **Contract**.

25.7.2 In the event of termination of the **Lessee** for declaration of fraudulent bankruptcy or dissolution of the **Lessee** by decision of its stockholders, an administrative procedure will be opened to appraise the effective losses and determine applicable sanctions.

25.7.3 Sharing of the net assets of the terminated **Lessee** among its stockholders shall not take place prior to payment of all liabilities before the **Grantor Authority**, or before an inspection report has been issued attesting to the state of the **Lease Site Assets**.

### 25.7.4 Indemnification

a) Indemnification owed to the **Lessee** in the event of bankruptcy or termination of the **Lessee** shall be limited to the value of investments related to as yet unamortized **Lease Site Assets**.

b) From the sums foreseen in the above Sub-clause the following shall be discounted:

- i. Damages caused by the **Lessee** to the **Grantor Authority** and to society calculated by administrative procedure;
- ii. Contractual fines applied to the **Lessee** not settled prior to the date of termination of the **Contract**; and
- iii. Any sums received by the **Lessee** as insurance coverage related to events or circumstances that resulted in declaration of nullity of the **Contract**.

c) The part of compensation owed to the **Lessee**, corresponding to the negative outstanding balance of financing effectively invested, may be paid directly to the **Financers**, at the discretion of the **Grantor Authority**, whereas the remaining sums shall be paid directly to the **Lessee**.

25.7.5 Upon declaration of bankruptcy or termination of the **Lessee**, the **Grantor Authority** shall take possession of the all the **Lease Site Assets** and shall immediately take over execution of the object of this **Contract**.

## 26 Intellectual Property

**26.1** The **Lessee** shall transfer, free of charge, to the **Grantor Authority** all designs, plans, blueprints, documents, computer systems and programs and other materials of any type, necessary for performance of duties incumbent upon the **Grantor Authority** or for the exercise of his rights under this **Contract**, and that were specifically acquired or produced during development of the **Activities** under this **Lease**, either directly by the **Lessee**, or by contracted third parties.

**26.2** The intellectual property rights on studies and projects prepared for purposes specified in the **Activities** as part of this **Lease**, and all designs, plans, blueprints, documents, systems and computer programs and other materials mentioned in the previous Sub-clause, shall be transferred free of charge and with exclusivity to the **Grantor Authority** at the end of the **Lease**, it being incumbent upon the **Lessee** to adopt all necessary measures for this purpose.

## 27 Final Provisions

### 27.1 Exercise of Rights

27.1.1 Non-exercise or partial or late exercise of any right pertaining to any of the **Parties** under this **Contract** shall not imply waiving thereof, or impede its later exercise at any time, nor shall it constitute novation of the respective obligation or precedent, provided it has not proscribed or lapsed.

### 27.2 Partial Invalidity

27.2.1 In the event that any provision of this **Contract** is considered or declared null, invalid, illegal or non-executable in any aspect, the validity, legality and execution of the other provisions of the **Contract** shall not, in any manner, be affected or restricted thereby. The **Parties** shall negotiate, in good faith, substitution of invalid, illegal or non-executable provisions for valid, legal and executable provisions, whose economic effects shall be as close as possible to those of the provisions considered invalid, illegal or non-executable.

27.2.2 Each declaration and guarantee made by the **Parties** to this **Contract** shall be treated as an independent declaration and guarantee, and the responsibility for any flaw shall be solely of the one who committed it and shall not be altered or modified by knowledge on the part of any of the **Parties**.



### 27.3 Venue

27.3.1 The Federal Courts - Judicial Section of the Federal District - shall be the venue for resolving any disputes arising from this **Contract**.

### 27.4 Communications

27.4.1 Communications and notifications between the **Parties** shall be in writing, and delivered: (i) by hand, against copy of receipt; (ii) by registered mail, with notice of receipt; or (iii) by email, provided that it is unquestionably possible to prove the origin of the message and its receipt.

27.4.2 Any of the **Parties** may change their address, simply by notifying the other **Party**.

### 27.5 Deadlines

27.5.1 For deadlines expressed in days in the **Contract**, the first day is excluded and the due date included, counting calendar days, excepting when there is specific reference to business days.

27.5.2 Deadlines shall refer solely to working days at the **Grantor Authority**.

### 27.6 Language

27.6.1 All documents relating to the **Contract** and to the **Lease** must be written in the Portuguese language, or translated thereto by a sworn translator; when dealing with foreign documents, in the event of any dispute, conflict or inconsistency, the Portuguese-language version shall take precedence.

### 27.7 Publication

27.7.1 The **Grantor Authority** shall arrange for publication of the abstract of this **Contract** and its respective amendments in the **DOU**, this condition being indispensable for their taking effect.

And, being agreed and contracted hereby, the Parties sign this **Contract** in three (3) copies of equal content and form, each being an original, in the presence of the undersigned witnesses.

Brasília/DF, [●] [●], [●],



[signatures]