



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



**UNION**

**MINISTRY OF TRANSPORT, PORTS AND CIVIL AVIATION**

**NATIONAL WATERWAY TRANSPORTATION AGENCY- ANTAQ**

**DRAFT OF THE LEASE AGREEMENT**

**AUCTION NO. 01/2017-ANTAQ, FOR THE LEASE OF PUBLIC AREA AND INFRASTRUCTURE FOR THE MOVEMENT AND STORAGE OF SOLID BULK OF PLANT ORIGIN, ESPECIALLY WHEAT, LOCATED INTO THE ORGANIZED PORT OF RIO DE JANEIRO, IN THE STATE OF RIO DE JANEIRO, DENOMINATED RDJ05.**

**Important Note:** For legal purposes, it will only be valid for contesting this draft contract linked to Notice 01/2017 in the Portuguese Version, due to its effective publication in the Official Gazette (DOU), determining factor for its validity. In view of this, the English Version of this draft is merely referential, because it aims at greater understanding and publicity for foreigners interested in the Auction of Leases of Areas in the Brazilian Public Ports.

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MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
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LEASE CONTRACT N. \_\_\_\_\_, of  
\_\_\_\_\_, SIGNED BETWEEN THE UNION,  
THROUGH THE MINISTRY OF TRANSPORT, PORTS  
AND CIVIL AVIATION, WITH THE INTERVENTION  
OF THE NATIONAL WATERWAY  
TRANSPORTATION AGENCY - ANTAQ, AND THE  
\_\_\_\_\_ COMPANY

THE **UNION**, through the **MINISTRY OF TRANSPORT, PORTS AND CIVIL AVIATION**, with headquarters in the Esplanada dos Ministérios, Block "R", Post Code 70310-500, Brasília / DF, enrolled with the CNPJ / MF under No. 37.115.342/0001-67, Hereinafter referred to as the **GRANTOR AUTHORITY**, herein represented by the Minister of State, Mr. \_\_\_\_\_, appointed by Federal Decree no .... of \_\_\_\_\_, nationality, marital status, profession, holder of Identity Card No. \_\_\_\_\_, enrolled with the CPF / MF under No. \_\_\_\_\_, with the intervention of the **NATIONAL WATERWAY TRANSPORTATION AGENCY**, special agency created by Law Federal n. 10,233, dated June 5th, 2001, with headquarters at SEPN - Quadra 514 - Joint E, Brasília / DF, inscribed in the CNPJ/MF under no. 04.903.587 / 0001-08, herein represented by the Director-General, Mr. \_\_\_\_\_, appointed by ... published in the DOU of \_\_\_\_\_, Nationality, marital status, profession, bearer of Identity Card No. \_\_\_\_\_, CPF / MF under number \_\_\_\_\_, hereinafter referred to as **ANTAQ**, and the intervention of the **PORT AUTHORITY**, name of the Port Authority, legal entity, with headquarters \_\_\_\_\_, CNPJ / MF under no. \_\_\_\_\_, in this act represented by the Chief Executive Officer \_\_\_\_\_, designated by \_\_\_\_\_, published in the DOU of \_\_\_\_\_, nationality, marital status, profession, bearer of Identity Card No. \_\_\_\_\_, enrolled with CPF / MF Under No. \_\_\_\_\_, hereinafter referred to as \_\_\_\_\_ and The company \_\_\_\_\_, Special Purpose Entity – SPE, headquartered in \_\_\_\_\_, enrolled with the CNPJ / MF under number \_\_\_\_\_, Hereinafter referred to as **LESSEE**, herein represented by Mr. \_\_\_\_\_, nationality, marital status, Identification Card No. \_\_\_\_\_, enrolled with the Individual Taxpayers Registry (CPF / MF) under number \_\_\_\_\_, Grant of powers, both with the commercial address \_\_\_\_\_, in view of the Administrative Procedures n. ... hereby agree to execute 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 5th, 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 area:** areas, port facilities and public infrastructure, located within the Organized Port object of this contract.

(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. 01/2017.
- (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 Subclause 7.1.2.1, 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 Subclause 7.1.2.2;

(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 Subclause 7.1.2.3.

(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 Subclause 7.1.2.4.

(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**.

(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) **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.

(xlv) **Port Charges:** The amounts owed to the **Port Administration** by the **Lessee** for the use of port facilities and port infrastructure or the provision of services in their jurisdiction **Organized Port Area**.

(xlvi) **Service Fee:** the amounts owed to the **Lessee** by the **Users** due to the provision of the corresponding **Activities** provided for in the contract or instrument previously approved by ANTAQ.

(xlvii) **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**.



(xlviii) **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.

(xlix) **Fixed Lease Value:** is the fixed sum owed by the **Lessee** to the **Port Administration**, as a result of exploitation of the **Lease**.

(l) **Variable Lease Value:** is the variable sum owed by the **Lessee** to the **Port Administration**, as a result of exploitation of the **Lease**.

## 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) **Environmental Terms of Reference** [when applicable];
- b) **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 of Rio de Janeiro, State of Rio de Janeiro**.

2.2 The total area of the **lease** in Rio de Janeiro, whose ID code is **RDJ05**, 13.453 m<sup>2</sup> (thirteen thousand, four hundred and fifty three square meters), consisting of the land on which the equipment and buildings to be used (Landing, internal movement, storage and shipment) and embarkation (reception, storage, internal movement and shipment) of solid bulk of vegetable origin, especially wheat, according to the rules set forth in the **Contract** and in its **Annexes**.

2.3 The public berths used by the Lessee shall be shared with other lessees, as well as users from outside the Organized Port area. The other conditions and rules for access to berths are those defined by the Port Authority.

2.4 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 Sub-Clause 2.2, 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**.

2.4.1 The descriptions, size and boundaries indicated in the Sub-Clause 2.2, however, represent the maximum limits of the area that the **Lessee** shall have the right to exploit, and the **Lessee** may not allege the *ad corpus* nature of the **Lease** to claim any other area.

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

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

2.5.2 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** and the **Grantor Authority**.

### 3 Lease Period and Ordinary Five-year Review

3.1 The Lease shall be in force for a term of 25 (twenty-five) years as of the **Assumption Date**, under the terms and conditions set forth in this Contract.

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 **Appendix 2 to this Contract**, which shall be signed by the Parties in up to 30 (thirty) 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**.

(vi) Information whether or not it is a port operator, licensee, lessee or concessionaire in the Brazilian port sector. If so, submit a certificate to prove its compliance and the legal entities, directly or indirectly, controlling, controlled, affiliated or common controller with the Lessee before the Port Administrations of the Organized Ports, where it carries out such activities, and with 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 **19**, 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 48 (forty-eight) 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 5 (five) 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 30 (thirty) 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 **PBI**.

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.

**4.5** Notwithstanding to compliance with applicable legal and regulatory provisions, as well as to the other provisions of this Contract and its related Annexes, the Basic Deployment Plan to be presented by the Lessee, in accordance with the Contract, shall contain the requirements of **Appendix 4**.

#### 5 Object

**5.1** The Object of this **Contract** is the leasing of Public Port Areas, Infrastructures and Facilities located in the Port of Rio de Janeiro, in the State of the Rio de Janeiro, to carry out the **Activities** to be performed by the Lessee in an adequate manner under the terms of this **Contract**.

5.1.1 The lease will be used for the movement and storage of solid bulk of plant origin, especially wheat admitted by the Development and Zoning Plan - DZP of Organized Port.

5.2 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.

5.3 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**.

5.4 The **Lessee** shall have a maximum term of 2 (year), as of the **Date of Assumption**, to make available the area, infrastructure, port facilities and **Activities** in accordance with the **Performance, Sizing, Operation and Technical Parameters** required by this Contract And its Annexes.

5.5 The **Lessee** will be responsible for all investments, additional improvements and services not specified, but that will be necessary to reach the **Performance, Dimensioning and Operation Parameters**. The projects and constructions must observe the **Technical Parameters**.

## 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 30 (thirty) 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 10 (ten) 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. To Provide the **Activities** aiming at the adequate and full movement and/or storage of the cargoes foreseen for the **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. Accredited, 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 **19** 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 1 (one) 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 12;

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 12 (twelve) 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 **PBI**, 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**; and

(d) Present a Program for obtaining NBR ISO 14001 certification or equivalent accepted by **ANTAQ**;

xxx. Within a maximum period of 12 (twelve) months from the **Limit Period for Beginning of Activities** indicated in Sub-Clause 5.4:

(a) Obtain a Declaration of Compliance (DC), issued by CONPORTOS and CESPOTOS, attesting to compliance with the ISPS Code, if applicable;

xxxi. Within a maximum period of 24 (twenty-four) months from the **Limit Period for Beginning of Activities** indicated in Sub-Clause 5.4:

(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; and

(d) Implant and certify an environmental management and control system.

7.1.2 The Lessee shall also be bound to:

7.1.2.1 Attend throughout the term of the **lease** the **minimum amounts of annual cargo handling** indicated in the table below:

Lease Contract Year	Minimum Movement Required (thousand tons)
---------------------	---

Year 1 and 2	0
Year 3	682
Year 4	737
Year 5	745
Year 6	753
Year 7	761
Year 8	768
Year 9	777
Year 10	785
Year 11	793
Year 12	802
Year 13	810
Year 14	819
Year 15	827
Year 16	836
Year 17	845
Year 18	854
Year 19	862
Year 20	872
Year 21	881
Year 22	890
Year 23	899
Year 24	909
Year 25	918

I. For the annual verification of compliance with the Minimum Required Movement, only wheat loads landed from vessels moored in the Organized Port or embarked on these vessels, in operations that use the Lease, shall be accounted for.

7.1.2.2 Provide the Activities according to the following **Performance Parameters:**

i. Making the facilities of the Lease provide the following Service Levels to Users:

Efficiency in the landing of vessels: minimum of 600 (six hundred) tons per hour, on average, during the time of occupation of the berth.

(A) The calculation shall be made by dividing the total number of tons handled in the berth by the total number of hours in which the vessels remain moored in the berth.

(B) The determination of compliance with the Performance Parameters will be performed quarterly, within 30 (thirty) days of the end of each quarter, considering the period of 12 (twelve) previous months, computed the quarter ascertained.

7.1.2.3 Provide the Activities according to the following **Dimensioning and Operating Parameters:**

i. Realize investments and carry out the Activities in order to comply that the storage system of the Lease must have a static capacity of at least 35,000t (thirty-five thousand tons).

7.1.2.4 Provide the Activities according to the following **Technical Parameters:**

i. Project Parameters:

(A) The Lessee shall be solely responsible for all technical studies, including, but not limited, to field investigations, feasibility studies, to conceptual designs and end, the planning documents and the documents relating to improvements and necessary deployments Performance of the Activities in the Lease.

(B) The projects for the implementation of all improvements and works in the Lease and in the implantation of new wharves shall comply with all applicable municipal, state and federal codes and regulations, as well as design standards indicated by the organizations below (in case of conflict between The indicated design patterns, the more restrictive code will be applied):

- ABNT
- ISO
- IMO
- MARPOL

(C) Investments in civil works to be performed by the Lessee for the performance of the Activities foreseen for the Lease must consider a useful life of 50 (fifty) years

(D) The Lessee shall perform preventive maintenance routines in the equipment as recommended by the respective manufacturers in their technical documentation, or, in case of absence thereof, in accordance with the best international practices.

ii. Construction Parameters:

(A) Any facilities constructed shall conform to the standards and codes below:

- Standards produced by ABNT, or where these are not available, appropriate and internationally recognized standards, including those listed in Sub-Clause 7.1.2.4;
- National codes, state and municipal building and construction.

7.1.2.5 Provide Activities according to the following **Environmental Parameters:**

i. From the beginning of the Activities, Lessee shall guarantee the air quality standard for Total Solid Particles corresponding to CONAMA Resolution No. 003/90, or standard that replaces it.

ii. Sampling for this parameter shall be carried out using high volume (Hi-Vol) samplers, suitably calibrated and in accordance with the method specified in ABNR 9547, or another one that replaces it.

iii. The installation of samplers must be done before the start of the Activities. The location and specification of the equipment shall be subject to approval by ANTAQ.

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

i. 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.

- ii. 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 Global Estimated Value of Contract

9.1.1 The global estimated value of the **Lease Contract** is R\$ 515,797,013.85 (five hundred and fifteen million, seven hundred and ninety-seven thousand, thirteen Reais and eighty-five cents), corresponding to the estimated amount of revenues to be obtained by the **Lessee** to explore the **Activities** during the term of the **Contract**;

9.1.2 The global estimated value of the **Lease Contract** is only indicative, and can not be used by any of the parties to claim recomposition of their economic-financial balance.

### 9.2 Payment Terms

9.2.1 The Lessee shall pay to the Port Administration the following Lease Values:

a) R\$ 428,395.73 (four hundred twenty-eight thousand, three hundred ninety-five reais and seventy-three cents) per month, the title of **Fixed Lease Value** for the right to explore the **activities** in the **lease**, including the remuneration of the **Grantor Authority** for the onerous assignment of the **Lease Area**; and

B) R\$ 1.32 (one real and thirty-two cents) per ton of any cargo handled as Variable **Lease Value**; For the right to exploit the **Activities** in the **Lease**, including the remuneration of the **Grantor Authority** for the onerous assignment of the Lease Area, also observing the specific rule of its minimum value considering the **Minimum Movement Required**.

9.2.2 The **Lease Value** provided for in Sub-Clause 9.2.1 "a" shall be paid by the **Lessee** to the **Port Administration**, from the **Assumption Date** until the end of the **Lease Term**, in national currency, within 30 (Thirty) days as of the last day of the reference month, by means of a deposit into a current account to be indicated or by a specific guide.

9.2.3 The **Variable Lease Value** provided for in Sub-Clause 9.2.1 "b" shall be paid monthly by the **Lessee** to the **Port Administration**, based on the monthly movement of all cargoes, from the beginning of the **Activities** to the end of the **Lease Term**, in national currency, within a period of up to 30 (thirty) days as of the last day of the reference month, by means of a

deposit in a current account to be indicated or by a specific guide.

9.2.3.1 From the beginning of the **Activities**, at the end of each period of 1 (one) year, if the **Effective Accounting Movement** is less than the **Minimum Required Movement**, the **Lessee** shall pay to the **Port Administration** the **Value of the Variable Lease**, taking Basis the value in Reais per tonne indicated in Sub-Clause 9.2.1 "b", multiplied by the difference between the Required Minimum Movement in Sub-Clause 7.1.2.1 and the Effective Accounting Movement in the period. The Payment must be made within 30 (thirty) days from the last day of the year in question, by means of a deposit in a current account to be indicated or by a specific guide.

9.2.3.2 For the purposes of accounting for the **Effective Accounting Movement** provided for in Sub-Clause 9.2.3.1, only the cargoes required by **Minimum Required Movement**, pursuant to Sub-Clause 7.1.2.1, shall be admitted, excluding the cargoes that the **Lessee** is authorized to move but are not included among those required as **Minimum Required Movement**.

9.2.4 The **Lessee** shall pay to the **Union** five installments of R\$ \_\_\_\_\_ (\_\_\_\_\_ reais) to the title **Grant value** corresponding to the difference between the value of the offering at the **auction** of this **Lease** and the amount already paid by the winning **Lessee** as an obligation prior to the conclusion of the **Contract**.

9.2.5 The installments shall be paid annually, and the payment of the first annual installment of the **Grant Value** shall be made at the end of the 12th (twelfth) month, counted from the **Assumption Date**, and the other installments shall be paid every 12 (twelve) Months.

9.2.6 The **Grant Value** will be adjusted by the IPCA accumulated between the month of the **Public Auction Session** and the start date of payment of each annual installment, observing the following formula:

$$O1 = O0 \times (IPCA_t / IPCA_{t-1})$$

Means:

O1 is the Annual **Grant Value** readjusted on the date of start of the payment of the first annual installment;

O0 is the Annual **Grant Value** at current prices on the day of the Auction's Public Session;

IPCA<sub>t</sub> / IPCA<sub>t-1</sub> is the cumulative **IPCA** of the period between the month of the Public **Auction** Session and the month prior to the beginning of the payment of the Annual **Grant value**.



9.2.7 After the first readjusted, the Annual Grant Value will be readjusted annually by the IPCA, observing the following formula:

$$O_t = O_{t-1} \times (IPCA_t / IPCA_{t-1})$$

Means:

**t** represents the time in years;

**O<sub>t</sub>** is the Grant Value annual readjusted;

**O<sub>t-1</sub>** is the annual Grant value in force;

**IPCA<sub>t</sub> / IPCA<sub>t-1</sub>** is the accumulated variation of the IPCA in the period.

9.2.8 The delay in the payment of any amount due, provided for in this **Contract**, shall imply a fine moratorium of 2% (two percent) of the amount due, monetary adjustment of the **IPCA** variation and default interest of 1% (one percent) per month, calculated *pro rata temporis*, until the actual payment, notwithstanding to the other penalties for breach of contractual obligations.

**9.3** The monetary values indicated and quoted in this **Contract**, 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**:

$$P_t = P_{jun/15} * \left( \frac{IPCA_t}{IPCA_{jun/15}} \right)$$

In which:

**P<sub>t</sub>** corresponds to any of the monetary values indicated or quoted in this **Contract**, duly readjusted;

**P<sub>jun/15</sub>** corresponds to the monetary values indicated and quoted in this **Contract**, referenced to June 2015;

**IPCA<sub>t</sub>** Corresponds to the Index Number of the IPCA referenced to the date of the adjustment;

**IPCA<sub>jun/15</sub>** Corresponds to the IPCA Index Number referenced to June 2015;

$\frac{IPCA_t}{IPCA_{jun/15}}$  Corresponds to one (1) plus variance of the accumulated IPCA over the period between June 2015 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 The **Lessee** may charge the **User** the **Service Rates** provided for in this Section, as a counterpart to the **Activities**.

10.2 The value indicated in this Clause correspond to the maximum limit that may be levied by the **Lessee** as a form of remuneration for the **Activities**, subject to the adjustment rules established in the **Contract** and its **Annexes**.

10.3 The **Lessee** shall observe the current tariff exemptions. The new hypotheses of exemption, subsequent to the date of signature of the **Contract**, will be subject to the recomposition of the economic-financial balance of the **Contract**.

10.4 The following Service Fees are payable by Users upon the effective performance of the Activities by the Lessee and are intended to remunerate the Lessee for the services provided:

10.4.1 Wheat Movement Tariff, in the value of R \$ 23.29 (twenty-three Reais and twenty-nine cents) per ton.

10.5 The Wheat Movement Tariff is intended to compensate the carrying out of handling activities and storage, for the minimum period of 10 (ten) days (Free Period) of wheat. The tariff in question includes the following sub activities:

10.5.1. The preparation activities beginning or end of the landing operation carried out by the operator;

10.5.2. Unloading of wheat from vessel holds;

10.5.3. Transport of the cargo from the vessel to the warehouse;

10.5.4. A weighing by truck in the output or input terminal;

10.5.5. Storage of cargo for the Free Period;

10.5.6. Internal cargo movement carried out at the initiative of the operator or motivated by Authorities during the Free Period;

10.5.7. Issuance of documentation necessary for the receipt, storage and transportation of wheat and the shipment of wheat in trucks.

10.6 Other activities not prohibited by the Contract and its Annexes and not covered by the tariffs provided for in this Clause may be provided by the **Lessee**, and in this sense, be subject to remuneration for **Price**, freely by the **Lessee**, always observing the prerogative of ANTAQ to establish rules of regulation with a view to curbing the abuse of economic power against the Users, by means of previous administrative procedure and public discussion about them.

## 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 360 (three hundred and sixty) 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 360 (three hundred and sixty) 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 **13**.

**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 previously mentioned 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 15 (fifteen) days, counted as of its indication by the **Lessee**.

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 2 (two) 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 **19** of this **Contract** as well with the Resolution updates or new Resolutions, as well as any updates or standards that may replace it.

**12.7** Upon identification of environmental noncompliance, the **Lessee** shall present, for approval by **ANTAQ**, within 30 (thirty) 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**, 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 15 (fifteen) days, successively or not, in each 12 (twelve) 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 90 (ninety) days, successive or not, in each 12 (twelve) 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 the legislation of the income taxes;

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**.

13.1.23 Judicial or administrative decision to impede the **Lessee** to perform the object of the **contract** activity in accordance with the conditions set out therein, as well as legislation, regulation and the **Organized Port of the Regulations**, where the **Lessee**, directly or indirectly, by act or omission, given any cause or some sort contributed to this decision.

**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 **12** 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 the Lessee did not cause them;

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 12 (twelve) 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.

13.3.5 Change in tax legislation, with the exception of taxes on income.

**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**, 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** The conversion of indemnification value into extension of contract is a power of the **Granting Authority**, whose decision will be based on the public interest, in addition to technical and legal criteria, and no subjective right to the extension in favor of the **Lessee**.

## **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 The Goods and assets acquired by the **Lessee**, throughout the term of the **Contract**, that are used in the operation and maintenance of the **Lease** and in the performance of the **Activities**, in compliance with the provisions of Sub-Clause 15.5;

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 **Appendix 2** of this **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 60 (sixty) days to present any disagreements and sign the **Definitive Term of Acceptance** and **Asset Use Permit**, in accordance with the draft in the appendix 3 of this **Contract**.

**15.5** For the purposes of Sub-Clause 15.1.2, the following goods will not be considered the **Lease Assets**, nevertheless acquired, rented or leased by the **Lessee**, over the term of the **Contract**, for use in the operation and maintenance of **Lease** and Provision of **Activities**:

15.5.1 Equipment on wheels or tracks as portainers, MHC's (Mobile Harbour Crane - mobile crane tires) and RTGs (Rubber tyred Gantry - Portico on tires);

15.5.2 Reach stackers and small-size reach;

15.5.3 Trucks used in internal movement to the Lease;

15.5.4 Electronic equipment, such as computers, cameras, scanners, electrical systems;

15.5.5 Pumps and pipelines;

15.5.6 Other small mobile equipment, such as: Mechanical horse (Terminal Tractor), container spreader, wheel loader, backhoe.

**15.6** The **Lessee** may use lease agreements or lease of assets considered **Lease Goods** to enable the operation and maintenance of the Lease and the provision of the **Activities** over the term of the **Lease**. However, it shall obligatorily make mention of such contracts, a subrogation Clause to the Granting Authority, which shall be exercised by the Granting Authority in its sole discretion, in the event of extinction of the lease.

**15.7** 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**.

**15.8** 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.

**15.9** 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**.

**15.10** 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 in favor of the **Grantor Authority**, as security for the faithful performance of contractual obligations, the **Performance Security Contract** in any of the means admitted in the Contract in the values of R\$ 25,789,850.69 (twenty five million seven hundred eighty nine thousand, eight hundred fifty reais and sixty-nine cents).

**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 1 to this 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 **Appendix 1 to this Contract**;

16.3.4 The letters of credit and guarantee insurance policies shall have a minimum duration of 1 (one) year from the date of issue, being the sole responsibility of the lessee keep them in full force and uninterruptedly throughout the contract period and must promote to both renewals and updates that are required with a minimum of 60 (sixty) days of winning.

16.3.5 Any change in the contents of the letter of guarantee or in the guarantee insurance must be previously submitted to the approval of the Grantor Authority.

16.3.6 The Lessee shall submit to the Grantor Authority, in accordance with current regulations, a document certifying that the bank guarantee letters or insurance policies have been renewed and their values readjusted in accordance with Sub-Clause 16.1.1.

16.4 Notwithstanding the other cases provided for in the Contract and in the current regulation, the Performance Security Contract may be used in the following cases:

16.4.1 When the Lessee does not pay the fines applied to it, in accordance with the regulations in force at the time of the occurrence of the event, as well as in the cases provided for in this **Contract** and its **Annexes**, especially Clause 20.

16.4.2 In the case of **reversible Assets** of return in violation of the requirements set forth in this **Contract** and its **Annexes**;

16.4.3 In the event of non-payment of the **Lease Value**; or

16.4.4 Due to proven losses arising from the non-performance of contractual obligations by the **lessee** and its consequences.

16.5 Whenever the **Grantor Authority** uses the **Performance Guarantee of the Contract**, the lessee must reinstate its full amount within 10 (ten) business days from the date of its use, during which time the **lessee** will not be released from the responsibilities assigned to it **by 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 insurance policies to be contracted by the **Lessee** shall contain clause waiver of subrogation rights in the face of the **Grantor Authority**, its representatives, financiers, and their successors, and contain clauses stipulating that will not be canceled and will not be able altered without the prior written consent of the **Grantor Authority**.

**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 10% (ten percent) of basic coverage;
- h) Removal of debris from the site representing no more than 10% (ten percent) 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 12 (twelve) 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 12 (twelve) 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 10 (ten) 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 this Contract;
- 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 2 (two) 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 5% (five percent) 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 10 (tenth) 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 10 (tenth) 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 6 (six) months, counted as of the **Assumption Date**, always prior to the 10 (tenth) 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 5 (five) years, counted as of the **Assumption Date**, always prior to the 10 (tenth) 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** The application of penalties 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** 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 30 (thirty) 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**.

**20.6** 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.

**20.7** The administrative procedure for application of penalties shall observe provisions of current legislation and regulations.

**20.8** 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.

**20.9** 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 initial capital, duly subscribed and fully paid, of the Specific Purpose Company established for the exploration of the Arrangement is R\$ 18,222,671.20 (eighteen million, two hundred twenty-two thousand, six hundred and seventy-one reais and twenty cents).

21.2.1 During the contractual period, the Lessee may not reduce its capital stock below the minimum amount specified above, without prior and express authorization from 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 10 (ten) 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 intervener, the period of intervention, the objectives and limits of the measure.

**24.3** Once the intervention has been decreed, the **Grantor Authority**, within 30 (thirty) days, will open an administrative proceeding, which shall be completed within a period of no more than 180 (one hundred and eighty) 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 intervener 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 Termination Cases**

**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 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**.

25.3.3 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**.

25.3.4 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) Paralyzing the **Activity** or concurring thereto, except for the hypotheses arising from a fortuitous event or force majeure, and those authorized by ANTAQ or by the Granting Authority, in accordance with the applicable legislation;
- 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 120 (one hundred and twenty) calendar days;
- k) Fails to attend to a summons from the **Grantor Authority and or ANTAQ**, 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 25.4.7.

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 3 (three) copies of equal content and form, each being an original, in the presence of the undersigned witnesses.



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E AVIAÇÃO CIVIL



Brasília/DF, [●] de [●] de [●],

[signatures]



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## **Appendix 1. Minimum Conditions for contracting of the Insurance Guarantee and Bank Guarantee**

### **Minimum Terms and Conditions of the Insurance Guarantee**

#### **1. Taker**

1.1 Lessee

#### **2. Insured Party**

2.1 The **Federal Union**, represented by the Secretariat of Ports of the Presidency of the Republic (Grantor Authority)

#### **3. Object of the Insurance**

3.1 To ensure faithful compliance of all contractual obligations by the Lessee before the Grantor Authority, under the terms of Contract, and the Insured Party shall be compensated, of the sum fixed in item 5 below, whenever a breach of a contractual obligation, application of penalties or default occurs.

#### **4. Instrument**

4.1. An Insurance-Guarantee Policy issued by an insurer a duly constituted and authorized to operate by the Superintendence of Private Insurance (SUSEP) – SUSEP, observing the normative regulations of SUSEP applicable to insurance guarantees.

#### **5. Value of the Guarantee**

5.1. The Insurance-Guarantee Policy shall provide the compensation values foreseen in the Contract and in its Annexes, especially in the Annex Insurance and Guarantees.

5.2 The Guarantee of Contract Execution shall be readjusted annually, on the same date as other values of the Contract are readjusted, observing the readjustment rules foreseen therein.

#### **6. Term**

6.1. The Insurance-Guarantee Policy shall be valid for a period of no less than 12 (twelve) months, and shall be renewed in compliance with provisions of the Contract and its Annexes.

#### **7. Additional Provisions**

7.1 The Insurance-Guarantee Policy shall contain the following additional provisions: (i) Declaration from the Insurer stating that he knows and accepts the terms and conditions of

the Lease Contract and its Annexes; (ii) Prohibition of the cancellation of the Insurance Policy for partial or total failure to pay the premium ; (iii) Upon confirmation of noncompliance, by the Taker, of obligations covered by the Insurance, and notification of the Taker proves fruitless, the Insured Party shall have the right to demand of the Insurer the compensation due; (iv) any legal disputes shall be dealt with in the jurisdiction of domicile of the Insured Party.

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### Bank Guarantee Model

[local], [•] de [•] de 2016

To the Union, represented by the Ministry of Transport, Ports and Civil Aviation (Granting Authority)

Ref.: Letter of Bank Guarantee n.. [•] (“Letter of Guarantee”) R\$ [·] (Reais)

1. By this Letter of Guarantee, the Bank [•], with headquarters at [•], inscribed in the Ministry of Finance General Registry of Corporate Entities under n. [•] (“Guarantor Bank”), directly of itself and for its eventual successors, commits itself to the Federal Government, represented by the Secretariat of Ports of the Presidency of the Republic [full qualification], with express waiver of the rights foreseen in articles 827, 835, 837, 838 and 839 of Law n. 10.406, of January 10, 2002 (Brazilian Civil Code), faithfully to comply with all obligations assumed by [•], the entity established as a joint stock company , with headquarters at [Municipality], State of [•], at [address], inscribed in the Ministry of Finance General Registry of Corporate Entities under n.[•], (the “Secured Party”), in Lease Contract n. [•](“Contract”), signed between the Federal Government and the Secured Party, on [•], the terms, clauses and conditions of which the Guarantor Bank expressly declares that it knows and accepts.

2. In consequence of this Letter of Guarantee, the Guarantor Bank is committed to pay the Federal Government, in the event of failure to comply with the obligations assumed by the Secured Party to this Contract, the sums indicated below, for each Lease period: (Values in accordance with the Lease Contract and its Annexes, especially Annex Insurance and Guarantees)

Note (1): The sums indicated above shall be readjusted annually, on the same date as the readjustment of the Lease Values, in accordance with the formula foreseen in the Lease Contract.

3. The Guarantor Bank is further committed, within the scope of the values indicated above, to pay for any damages caused by the Secured Party, and any fines applied by the Federal Government or by ANTAQ relating to the Contract, sums stemming from contractual default before the Port Administration, and commits to effect payments stemming from such securities when claimed, within a period of no more than 48 (forty-eight) hours, counted as of receipt by the Guarantor Bank, of notification in writing sent by the Federal Government.



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**4.** The Guarantor Bank shall not accept any objection or opposition from the Secured Party or invoked therefrom for purposes of excusing it from fulfilling the obligation assumed to the Federal Government under the terms of this Letter of Guarantee, unless there is a formal manifestation from the Federal Government releasing it from the obligation to pay, or if there is a court order impeding or suspending payment.

**5.** The Guarantor Bank and the Secured Party shall not alter any of the terms of the Guarantee without prior and express consent of the Union.

**6.** Whenever the Secured Party makes use of a part of the total of the Guarantee, the Guarantor Bank agrees immediately to notify the Secured Party so that it shall proceed, within 10 (ten) business days of the date of such use, to restore the sum total of the Guarantee.

**7.** In the event that the Federal Government files court action to demand fulfillment of the obligation to which this Letter of Guarantee refers, the Guarantor Bank shall be obliged to pay the court or extrajudicial costs.

**8.** The Guarantee shall be in effect for the period of 1 (one) year, counted as of this date, in accordance with the conditions stated in the Contract and in its Annexes.

**9.** The Guarantor Bank declares that:

**9.1** This Letter of Guarantee is duly accounted for, fully observing regulations of the Central Bank of Brazil currently in effect, and in compliance with the applicable precepts of the Banking Legislation;

**9.2** The signatories of this Instrument are authorized to provide the Guarantee on his behalf and upon his responsibility; and

**9.3** Their capital stock is R\$ [•] (• Reais), that they are authorized by the Central Bank of Brazil to issue Letters of Guarantee, and that the value of this Letter of Guarantee, for the sum of R\$ [•] (• Reais), is within the limits authorized by the Central Bank of Brazil.

**10.** The terms that have not been expressly defined in this Letter of Guarantee shall have meanings attributed to them in the Lease Contract.

[signature of the attorneys, duly notarized]





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[signature of the witnesses]

## Appendix 2. Definitive Acceptance Declaration and Asset Use License

On the one side:

(1) The **Federal Union**, hereinafter referred to as “**Federal Government**”, through the Ministry of Transport, Ports and Civil Aviation, with headquarters at \_\_\_\_\_, represented in this act by its \_\_\_\_\_, Mr. [●], [qualification], appointed by Decree of [●], published in the Official Gazette of the Federal Government on [●], hereinafter referred to as “**MTPAC**”, in the capacity of “**Grantor Authority**”; and

(2) The **National Waterway Transportation Agency**, an authority pertaining to the indirect Federal Administration, with headquarters at \_\_\_\_\_, represented in this act by its Director-General, Mr. [●], [qualification], appointed by Decree of [●], published in the Official Gazette of the Federal Government on [●], and by its Director [●], appointed by Decree of [●], published in the Official Gazette of the Federal Government on [●], hereinafter referred to as “**ANTAQ**”, in the capacity of “**Consenting Party**”; and

And, on the other side:

(3) [●], [Specific Purpose Entity], with headquarters at [Municipality], State of [●], at [address], inscribed in the Ministry of Finance General Registry of Corporate Entities under n. [●], duly represented in this act by Messrs. [●], [qualification], in the capacity of “**Lessee**”;

Referred to collectively as “Parties” and, individually as “Party”:

### Clause 1st. – Object

1.1. The object of this Declaration is:

1.1.1. The presentation of the inventory with all existing assets and components of the Lease, pursuant to the Contract and its Annexes, indicating the state of conservation and operation of said assets, and

1.1.2. The permission to use and have access to the inventoried assets indicated on the attached list, in accordance with the Contract and its Annexes, of which this Term is an integral part, so that the Lessee can proceed with the object of the Lease.



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1.2. The inventory of the assets is included in the annex to this Provisional Acceptance and Asset Use Permit, with its description, conservation status and operating capacity, with the other complementary technical specifications.

#### **Clause 2nd. – Term**

2.1. The **Lessee** hereby agrees to verify the exactness of the inventory presented, and to request adjustments, if necessary, as may be justified.

2.2. After having agreed to the requested adjustments, the Grantor Authority and ANTAQ shall issue a new inventory, which shall be attached to the Definitive Acceptance Declaration and Asset Use License to be signed by the Parties.

2.3. This Provisional Acceptance Declaration and Asset Use License shall be in effect as of the date of signing and of termination on the same date as the signing of the Definitive Acceptance Declaration and Asset Use License.

#### **Clause 3rd. – Improvements**

3.1. Any improvements, be they useful, necessary or merely voluptuary, as well as accessions, whether consented or not, that the Lessee may make to the area that is the object of the Use License, shall be incorporated thereto, with the Lessee waiving any right to retention or compensation therefore.

#### **Clause 4th. – Extinction**

4.1. This Provisional Acceptance Declaration and Asset Use License shall become extinct under the same hypotheses of extinction foreseen in the Lease Contract.

4.2. Extinction of this Provisional Acceptance Declaration and Asset Use License shall imply immediate vacation of the leased areas, on pain of the Lessee being considered a usurper for purposes of repossession, in accordance with articles 926 and those following of the Code of Civil procedure and its subsequent alterations, and the return of all leased equipment, notwithstanding compensation to the Grantor Authority, as may be the case.

And, thus being in agreement, the representatives of the Parties sign this Provisional Acceptance Declaration and Asset Use License, in two copies of identical content and form.

Brasília, DF, [date]

[signatures]

**Provisional List of Goods and Assets and Inventory**

<b>Description of the Asset</b>	<b>State of Conservation</b>	<b>Operational Capacity</b>	<b>Other Technical Specifications</b>



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### Appendix 3. Definitive Acceptance Declaration and Asset Use License

On the one side:

(1) The **Federal Union**, hereinafter referred to as “**Federal Government**”, through the the Ministry of Transport, Ports and Civil Aviation, with headquarters at \_\_\_\_\_, represented in this act by its \_\_\_\_\_, Mr. [●], [qualification], appointed by Decree of [●], published in the Official Gazette of the Federal Government on [●], hereinafter referred to as “**MTPAC**”, in the capacity of “**Grantor Authority**”; and

(2) The **National Waterway Transportation Agency**, an authority pertaining to the indirect Federal Administration , with headquarters at \_\_\_\_\_, represented in this act by its Director-General, Mr. [●], [qualification ], appointed by Decree of [●], published in the Official Gazette of the Federal Government on [●], and by its Director [●], appointed by Decree of [●], published in the Official Gazette of the Federal Government on [●], hereinafter referred to as “**ANTAQ**”, in the capacity of “**Consenting Party**”; and

And, on the other side:

(3) [●] [Specific Purpose Entity], with headquarters at [Municipality], State of [●], at [address], inscribed in the Ministry of Finance General Registry of Corporate Entities under n. [●], duly represented in this act by Messrs. [●], [qualification], in the capacity of “**Lessee**”;

Referred to collectively as “Parties” and, individually as “Party”“:

#### Clause 1st. Object

1.1. The object of this Declaration is:

1.1.1. Formal acceptance on the part of the Lessee of the inventory of all existing assets pertaining to the Lease, presented in the Provisional Acceptance Declaration; and

1.1.2. The permission to use and have access to the inventoried assets indicated on the attached list, in accordance with the Contract and its Annexes, of which this Declaration is an integral part, so that the Lessee can proceed with the object of the Lease.



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## **Clause 2nd. Term**

2.1. This Definitive Acceptance Declaration and Use of Assets License shall be in effect as of the date of signing and shall terminate on the same date as extinction of the Lease Contract.

## **Clause 3rd. Conditions of the License**

3.1. The Lessee agrees to:

3.1.1. Have inspected said assets and, being in agreement with the description provided in the inventory, which shall henceforth be an integral part hereto, having no further complaints of the Grantor Authority with respect to said assets;

3.1.2. Use the area, equipment and assets exclusively for purposes of execution of the Lease, their use for any other purpose being forbidden;

3.1.3. Safeguard and conserve the areas and the equipment in such manner as to return them to the Grantor Authority in the same working condition as they were delivered;

3.1.4. Effect payment of any taxes for which the areas may be liable owing to execution of the Lease Contract, and any expenses relating to electricity, water and telephone bills at the worksite, responding, moreover, to all requirements the Public Authorities may raise; and

3.1.5. Occupy the property and assume responsibility for safeguarding thereof, of the equipment and assets, as of signing of this Instrument.

## **Clause 4th. Improvements**

4.1. Any improvements, be they useful, necessary or merely voluptuary, as well as accessions, whether consented or not, that the Lessee may make to the area that is the object of the Use License, shall be incorporated thereto, with the Lessee waiving any right to retention or compensation therefore.

## **Clause 5th. Extinction**



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5.1. This Definitive Acceptance Declaration and Asset Use License shall become extinct under the same hypotheses of extinction foreseen in the Lease Contract.

5.2. Extinction of this Definitive Acceptance Declaration and Asset Use License shall imply immediate vacation of the leased areas, on pain of the Lessee being considered a usurper for purposes of repossession, in accordance with articles 926 and those following of the Code of Civil procedure and its modifications, and the return of all leased equipment, notwithstanding compensation to the Grantor Authority, as may be the case.

And, thus being in agreement, the representatives of the Parties sign this Definitive Acceptance Declaration and Asset Use License, in two copies of identical content and form.

Brasília, DF, [date]

[signatures]

#### Definitive List of Goods and Assets and Inventory

Description of the Asset	State of Conservation	Operational Capacity	Other technical specifications

#### **Appendix 4. Requirements of the Basic Implementation Plan**

With an adequate level of precision, the Basic Implementation Plan (“PBI”) should include those necessary and sufficient elements required to inform the Grantor Authority of the stages and strategies to be followed in implementation of the Activities by the Lessee. The PBI should also ensure that the Lessee possesses the conditions and plans required to implement the structures necessary for performing all of the Activities that are the object of the Contract, without generating unnecessary interference in the port system and the surrounding area of the Organized Port. More specifically, the PBI should clearly and precisely demonstrate that the Lessee possesses all of the conditions required to comply with all of the Technical Guidelines and Lease Parameters indicated in the Contract and its Annexes.

The PBI should also characterize the port facilities to be used by the Lessee, including those located both in and outside the Lease site, that already exist or that will be implemented, as well as their adequacy for the requirements specified in this Annex and their consistency with the services to be rendered.

The following items determine the content to be submitted in the PBI.

##### **A.1. Introductory Documentation:**

A.1.1. Description of the Lease site and the localities in which the Activities will be performed, including georeferencing of the area, with identification of physical and/or operational interferences with surrounding lease sites and public areas and proposals for mitigating such, when required;

A.1.2. Preliminary listing of leased assets and evaluation of the physical state and use conditions of such;

A.1.3. Description of the operational flow and material flow chart of the Activities to be performed, indicating the equipment, major infrastructural elements and their main technical characteristics, including static storage capacity and nominal movement capacity.

a) In the case of multiple stages of development of the Lease site, the description above should be submitted for each stage.

##### **A.2. Commercial Plan of the Lease Site:**



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A.2.1. Description of the services to be rendered at the Lease site;

A.2.2. Projections of cargo movement over the entire period of the Lease and underlying premises utilized.

A.3. Technical and Operational Feasibility of the Lease:

A.3.1. Utilization of technical drawings in blueprints and cross-sections on an adequate scale, with captions and quotas, duly undersigned by a qualified professional, for purposes of presenting the overall arrangement of the proposed facility, encompassing:

- a) Map of the location within the Organized Port;
- b) Elements of infrastructure, superstructure and major equipment, including that already existent and to be installed;
- c) Highway, railway, waterway and pipeline access already existent and to be installed, utilizing a unifilar diagram, as required;
- d) Proposed environmental prevention systems (gases, dust removal, trash removal, noise, among others) that already exist and/or are to be implemented, with the respective descriptions;
- e) Items “b” to “d” above should be presented for each stage, in cases involving multiple stages of development of the Lease site.

A.3.2. General description of the leased equipment or that to be acquired by the Lessee, including, in the case of equipment to be acquired, type, model, main dimensions, nominal capacity, expected efficiency, range;

A.3.3. Based on the calculation log, corroboration that the port facilities and already existent equipment and/or that to be implemented at the Lease site are sufficient to meet projected demand, as determined in the accompanying material flow chart. With this in mind, an evaluation of the dynamic capacity of the following systems should be submitted for the entire period of the Lease, including expansions planned by the Lessee:



- a) Loading and unloading systems;
- b) Storage system;
- c) Land-based reception and dispatch systems.

A.3.4. Based on utilization of the calculation log, corroboration that the port facilities and equipment already existent and/or to be installed in the Lease site are sufficient to meet the Performance Parameters.

- a) Corroboration of compliance with efficiency parameters during unloading of vessels should consider estimates of the availability of berths and equipment, nominal capacities and the efficiency of the equipment, pre- and post-operational time lapses and stoppages during operations, caused by a variety of reasons;
- b) The values adopted for the items above should be compatible with those normally observed in analogous terminals and situations or good international practices. Should the contrary occur, the differences should be justified and explained in the calculation log;
- c) The corroboration referred to in this item should be presented for each stage in those cases in which there are multiple stages of development of the Lease site.

A.3.5. Based on the detailed description log, corroboration that port facilities and equipment already existent and/or to be installed by the Lessee are sufficient to meet the Dimensioning and Operating Parameters.

- a) In case of multi-phase development of the Lease, the evidence referred to in this item shall be submitted for each stage.

A.3.6. In the case of expansion of the maritime infrastructure (piers, berths, dolphins, etc.), preliminary evaluation that the works in question are feasible from the viewpoint of maneuverability and that they do not interfere with waterway access to the other port facilities in the region;

A.3.7. Presentation of the physical and financial schedule of the undertaking, duly respecting the maximum deadlines indicated in the Contract and its Annexes, particularly the Technical Guidelines and Lease Parameters Annex;



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A.3.8. Description of the facilities utilized by the Federal Revenue Service and other inspection entities at the Organized Port, as required.

A.4. Environmental Feasibility of the Lease Site:

A.4.1. Utilizing the detailed descriptive log, evaluation of the impacts of the Lease on land traffic of trucks and railway compositions in the surrounding area, including:

- a) Estimate of the vehicle flow involving the terminal as required to achieve forecast movement;
- b) Description of the actions to be implemented by the Lessee with the objective of avoiding formation of waiting lines of vehicles, including constitution or utilization of regulating patios aimed at minimizing these impacts;

A.4.2. Utilization of the detailed descriptive log for purposes of evaluation of the environmental impacts of performance of the Activities, together with mitigating measures to be adopted, such as engineering solutions and management measures aimed at controlling emissions of particulates, treatment of effluents and solid waste, among others.

A.4.3. Attestation of the efficacy of the measures to be implemented based on a comparison with analogous terminals and situations, as well as adoption of best international practices.