



UNION

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

NATIONAL WATERWAY TRANSPORTATION AGENCY- ANTAQ

ANNEX 4 - LEASING CONTRACT DRAFT – SPECIFIC PART

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



Summary

1.	Clause 3 – Lease Term	3
2.	Clause 9 – Estimated Contract Value and Payment Conditions	4
2.1.	Overall Estimated Value of the Contract.....	4
2.2.	Payment Conditions	4
4.	Clause 13 – Risk Allocation.....	6
5.	Clause 15 – Lease Site Assets	6
6.	Clause 16 – Guarantee of Contract Execution	7
7.	Clause 20 - Penalties	7
8.	Clause 21 - Minimum Capital Stock of Special Purpose Entity.....	8
	Appendix 1. Minimum Conditions for Contracting Insurance Guarantee and Bank Guarantee...9	
	Appendix 2. Provisional Acceptance Declaration and Asset Use License	13
	Appendix 3. Definitive Acceptance Declaration and Asset Use License	17

References to Chapters, Sections and Subsections in this Annex indicate the respective Chapters, Sections and Subsections of the General Contract Conditions.

1. Clause 3 – Lease Term

1.1. The **Lease Contract** will remain in effect for 25 (twenty-five) years as of the **Assumption Date** according to the following terms and other conditions set down in the **Contract** and its **Annexes**.

1.1.1. For the specific purposes of this Lease, the **Assumption Date** is the date on which the Provisional Acceptance Declaration and the Asset Use License are formalized - Appendix to the Annex 4 - Specific Contract Conditions for the area identified as Area 1 in **Appendix B** of the **Annex 2 - Technical Guidelines and Lease Parameters**. The **Provisional Acceptance Declaration** and the **Asset Use License** for Area 1 should be formalized by the Parties within up to 30 (thirty) days as of the notice of no objection issued by the Grantor Authority regarding the Basic Implementation Plan presented by the Lessee.

1.1.2. The other area included in the Lease site, identified as Area 2 in **Appendix B** of the **Annex 2 - Technical Guidelines and Lease Parameters**, should be made available to the Lessee by the Grantor Authority by June 30, 2017 through formalization of the Provisional Acceptance Declaration and the Asset Use License - Appendix to the Annex 4 - Specific Contract Conditions, as related to the aforementioned area and respective assets.

1.1.3. Following signing of the Provisional Acceptance Declaration and the Asset Use License for each one of the areas, the Lessee will have 60 (sixty) days to submit possible discrepancies and formalize the Definitive Acceptance Declaration and respective Asset Use License, based on the terms of the draft set down in this Annex 4 - Specific Contract Conditions.

1.1.4. The Lessee may, within a period of up to 180 (one hundred and eighty) days as of the signature of the **Provisional Acceptance Declaration** and **Asset Use License**, utilize the right specified in clause 12.3 of the **General Contract Conditions**

1.1.5. If, for any reason whatsoever, the area identified in clause 1.1.2. above is not made available to the Lessee within up to 6 (six) months as of the maximum term specified therein, the Lessee

will be entitled to initiate extraordinary contractual review procedures with the objective of reestablishing economic-financial equilibrium. Such procedures should culminate in formalization of an addendum stating the result of the procedures and the method chosen for reestablishing economic-financial equilibrium, while also determining a new date for the availability of the area(s), should that be required.

- 1.1.6. Any delays of less than the maximum term foreseen in clause 1.1.5. will not be the subject of re-equilibrium procedures, nor of review of the minimum quantities determined in clause 5.2 of the Annex 2 - Technical Guidelines and Lease Parameters.

2. Clause 9 – Estimated Contract Value and Payment Conditions

2.1. Overall Estimated Value of the Contract

- 2.1.1. The overall estimated value of the **Lease Contract**, of which this document corresponds to one of its **Annexes**, is R\$ 2.739.911.334,83 (two billion, seven hundred and thirty nine million, nine hundred and eleven thousand, three hundred and thirty four reais and eighty three centavos), corresponding to the estimated volume of revenues to be obtained by the **Lessee** in order to perform the **Activities** during the life of the **Contract**.

2.2. Payment Conditions

- 2.2.1. The **Lessee** should pay the following **Lease Values** to the **Port Administration**:

- a) R\$ 1.959.805,74 (one million, nine hundred and fifty nine thousand, eight hundred and five reais and seventy four centavos) per month as the **Fixed Lease Value** for the right to perform the **Activities** in the **Lease site**, including remuneration of the **Grantor Authority** for the assign for consideration of the **Lease Area**.
- b) R\$ 2,37 (two reais and thirty seven centavos) per ton of any cargo movement, as the **Variable Lease Value**, for the right to perform the **Activities** in the **Lease site**, including remuneration of the **Grantor Authority** for the assign for consideration of the **Lease Area**,

duly observing the specific rule on its minimum value in light of the **Minimum Required Movement**.

2.2.2. The **Fixed Lease Value** determined in subclause 2.2.1 “a” will be paid by the **Lessee** to the **Port Administration** as of the **Assumption Date** until the end of the **Lease Term** in legal tender of the country within up to 30 (thirty) days as of the final day of the reference month, such payment to be made by deposit to an account to be indicated opportunely or by means of a special payment document.

2.2.3. The **Variable Lease Value** determined in subclause 2.2.1 “b” will be paid monthly by the **Lessee** to the **Port Administration**, according to the monthly movement of all cargoes as of the start of the **Activities** through the end of the **Lease Term**, in legal tender of the country within up to 30 (thirty) days as of the final day of the reference month, such payment to be made by deposit to an account to be indicated opportunely or by means of a special payment document.

2.2.3.1. If, from the start of the **Activities** through the end of each period of 1 (one) year, the **Effectively Calculated Movement** is less than the **Minimum Required Movement**, the **Lessee** should pay the **Variable Lease Value** to the **Port Administration**, based on the per ton value in real indicated in subclause 2.2.1. “b”, multiplied by the difference between the **Minimum Required Movement** stated in the **Annex 2 - Technical Guidelines and Lease Parameters** and the **Effectively Calculated Movement** in the period. The payment should be made within up to 30 (thirty) days as of the final day of the reference year by deposit into an account to be indicated opportunely or by means of a special payment document.

2.2.3.2. For purposes of calculating the **Effectively Calculated Movement** as foreseen in subclause 2.2.3.1., only those cargo movements required under the terms of **Minimum Required Movement**, as determined in the **Annex 2 - Technical Guidelines and Lease Parameters**, will be included, with exclusion of the cargoes that the **Lessee** is authorized to move but that are not included among those required under **Minimum Required Movement**.

- 2.2.4. Delays in the payment of any amount due according to the terms of this **Annex** will result in levying of a fine on arrears equivalent to 2% (two percent) of the amount due, with monetary updating according to the change in the **IPCA** plus interest of 1% (one percent) per month calculated *pro rata temporis* up to the time of payment, without prejudice to other penalties consequent upon noncompliance with contractual obligations.

3. Clause 10 – Lessee Remuneration

- 3.1. The **Lessee** may charge the **Price**, which is the amount due by the **User** to the **Lessee** as counterpart of the **Activities**, such amounts being freely determined by the **Lessee**, duly observing the right of ANTAQ to define regulations aimed at avoiding abuse of economic power against users. This is to be done through prior administrative procedures in which **ANTAQ** will be entitled to utilize information supplied by users.

4. Clause 13 – Risk Allocation

- 4.1. Aside from the risks expressly attributed to the **Grantor Authority** in the **General Lease Contract Conditions**, the **Lessee** will not be responsible for the risk described below:

- 4.1.1. Corroboration of **Lessee** losses as a result of the impossibility of ship traffic requiring depth of the berth, evolution basin and access channel corresponding to 11.8 meters (eleven meters and eighty centimeters) MLLW (lowest low tide averages), as a result of reductions in this depth over the course of the **Contract** term;

- 4.1.1.1. For purposes of the provision in Subclause 4.1.1, only those losses corroborated on the basis of historic cargo movement figures that demonstrate effective utilization by ships requiring the aforementioned depth will be considered, together with later alterations in movement as a result of the impossibility of traffic of such ships.

5. Clause 15 – Lease Site Assets

- 5.1. For purposes of clause 15.1.2 of the **General Contract Conditions**, the following assets will not be considered as **Lease Site Assets** - independently of whether they were acquired, rented or leased by

the **Lessee** over the course of the **Contract** term - to be used in operation and maintenance of the **Lease site** and in performance of the **Activities**:

- 5.1.1. Equipment on wheels or tracks such as portainers, MHC and RTGs;
- 5.1.2. Reach-stacker type and small size stackers;
- 5.1.3. Trucks used in the internal movement operations to the Lease site;
- 5.1.4. Electronic equipment;
- 5.1.5. Pumps and pipelines;
- 5.1.6. Other small-scale mobile equipment.

5.2. The **Lessee** may utilize rental or lease contracts of assets considered as **Lease Site Assets** in order to make it possible to operate and maintain the **Lease site** and to perform the **Activities** over the course of the **Lease** term. However, the corresponding contracts must necessarily contain a clause of subrogation to the Grantor Authority, to be exercised by the Grantor Authority at its own exclusive discretion in the case of extinction of the lease.

6. Clause 16 – Guarantee of Contract Execution

6.1. Without prejudice to the provisions of the **Contract** regarding obligatory contracting and maintenance of the **Guarantee of Contract Execution**, the **Lessee** is obligated to provide a **Guarantee of Contract Execution** in any of the modalities permitted in the **Contract**, in the amount of R\$ 136.995.566,74 (one hundred and thirty six million, nine hundred and ninety five thousand, five hundred and sixty six reais and seventy four centavos)

6.2. The **Guarantee of Contract Execution** provided in the bank guarantee and insurance guarantee modalities will comply with the conditions defined in Appendix 1.

7. Clause 20 - Penalties

7.1. Without prejudice to the provisions of the **General Contract Conditions** and specific regulations on levying of fines and other penalties, the **Lessee** will submit to levying of the specific fines as indicated below:

	Description of wrongful conduct	Levyng Criterion	Amount of Fine
1	Failure to remit any one of the Lease Reports, consisting of the Operational Report, User Service Report and Accounting and Financial Report to ANTAQ within the contractually determined time frame.	Per violation	R\$ 1.643.946,80 (one million, six hundred and forty three thousand, nine hundred and forty six reais and eighty centavos)

8. Clause 21 - Minimum Capital Stock of Special Purpose Entity

8.1. The minimum initial capital stock of the Special Purpose Entity constituted for purposes of working the **Lease** is R\$ 49.971.636,21 (forty nine million, nine hundred and seventy one thousand, six hundred and thirty six reais and twenty one centavos).

Appendix 1. Minimum Conditions for Contracting Insurance Guarantee and Bank Guarantee

Minimum Insurance Guarantee Terms and Conditions

1. Borrower

1.1 Lessee

2. Insured party

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

3. Object of the Insurance Guarantee

3.1 Guarantee full compliance with all of the obligations contracted by the Lessee before the Grantor Authority, as stated in the Contract, while the Insured party is to be indemnified in the fixed amount set down in item 5 below, when any noncompliance with a contractual obligation, levying of penalties or default occurs.

4. Instrument

4.1. Insurance Guarantee Policy issued by an insurance company that is duly constituted and authorized to operate by the Superintendency of Private Insurance – SUSEP, with due compliance with SUSEP normative acts applicable to insurance guarantees.

5. Guarantee Amount

5.1. The Insurance Guarantee Policy should foresee the indemnity amounts set down in the Contract and its Annexes, particularly in the Insurance and Guarantee Annex.

5.2 The Guarantee of Contract Execution will be readjusted annually on the same dates as the readjustment of the other Contract amounts, duly complying with the readjustment rules set down therein.

6. Term

6.1. The Insurance Guarantee Policy should have a minimum term of validity equivalent to 12 (twelve) months and is to be renewed according to the terms set down in the Contract and its Annexes.

7. Additional Provisions

7.1 The Insurance Guarantee Policy should contain the following additional provisions: (i) Declaration of the Insurance Company stating that it is knowledgeable of and accepts the terms and conditions of the Lease Contract and its Annexes; (ii) Prohibition of cancellation of the Insurance Policy for lack of full or partial payment of the insurance premium; (iii) the Insured shall be entitled to require the Insurer due compensation when confirmed the breach, by the Borrower, of the obligations covered by the insurance, resulting invalid the notice given to the Borrower; (iv) any legal conflicts will be treated in the home jurisdiction of the Insured.

Bank Guarantee Model

[location], [•] / [•] / 2015

The Union, represented by the Secretariat of Ports of the Presidency of the Republic

Re.: Bank Guarantee Letter no.. [•] (“ Bank Guarantee Letter”) R\$ [·] (Reais)

1. According to the terms of this Bank Guarantee Letter, the bank [•], registered under Ministry of Finance General Registry of Corporate Entities no. [•] (“Guarantor Bank”), hereby obligates itself and its possible successors before the Union, represented by the Secretariat of Ports of the Presidency of the Republic [full characterization], expressly waiving the rights foreseen in articles 827, 835, 837, 838 and 839 of Law no. 10,406, dated January 10, 2002 (Brazilian Civil Code), to full compliance with all of the obligations assumed by the [•], a company constituted in the form of a joint stock company, [headquartered in the [Municipality], State of [•], at [address], registered under Ministry of Finance General Registry of Corporate Entities no. [•], (the “Secured Party”, in Lease Contract no. [•], (“Contract”), formalized between the Union and the Secured Party on [•], the terms, clauses and conditions of which the Guarantor Bank accepts and declares itself to be knowledgeable.
2. As a consequence of this Bank Guarantee Letter, in the case of noncompliance with the obligations assumed by the Secured Party in the Contract, the Guarantor Bank obligates itself to pay to the Union the amounts indicated below for each period of the Lease: (Amounts according to the terms of the Lease Contract and its Annexes, particularly the Insurance and Guarantee Annex).

NOTE (1): The amounts indicated above are to be readjusted annually on the same date as the readjustment of the Lease amounts, according to the formula foreseen in the Lease Contract.

3. In the framework of the amounts indicated above, the Guarantor Bank further obligates itself to pay for damages caused by the Secured Party, as well as fines levied by the Union or by ANTAQ and related to the Contract, and amounts consequent upon contractual default to the Port Administration, committing itself to make such payments when so demanded, within a maximum of 48 (forty eight) hours as of reception by the Guarantor Bank of written notification remitted by the Union.

4. The Guarantor Bank cannot permit any objection or opposition raised by the Secured Party or invoked by that party for the purpose of excusing it from compliance with the obligations assumed before the Union as stated in the terms of this Bank Guarantee Letter, except when there is a formal manifestation on the part of the Union in the sense of not requiring such payment, or in the case of a judicial decision that impedes or suspends such payment.

5. The Guarantor Bank and the Secured Party may not alter any of the terms of the Guarantee without the prior and express authorization of the Union, represented by the Secretariat of Ports of the Presidency of the Republic.

6. Whenever the Secured Party utilizes part of the total Guarantee, the Guarantor Bank is obligated to notify the Secured Party immediately so that the latter can, within 10 (ten) business days of the date of utilization, proceed to replenishment of the full amount of the Guarantee.

7. Should the Union go to court in order to enforce compliance with the obligation referred to in this Bank Guarantee Letter, the Guarantor Bank is obligated to effect payment of judicial and extrajudicial expenses.

8. The Guarantee will remain in effect for a minimum period of 1 (one) year as of this date, under the conditions cited in the Contract and its Annexes.

9. The Guarantor Bank declares that:



9.1 This Bank Guarantee Letter has been duly incorporated into accounting, with full compliance with Central Bank of Brazil regulations now in effect, while also complying with the precepts of applicable banking legislation;

9.2 The signatories of this instrument are duly authorized to provide the Guarantee in their name and under their responsibility; and

9.3 Its capital stock is equivalent to R\$ [•], (Reais), being duly authorized by the Central Bank of Brazil to issue Bank Guarantee Letters and the value of this Bank Guarantee Letter in the amount of R\$[•], (Reais) is within the limits authorized by the Central Bank of Brazil.

10. Terms that are not expressly defined by this Bank Guarantee Letter will have the meanings attributed to them in the Lease Contract.

[Signature of legal representatives with notarization of signature]

[Signature of witnesses]

Appendix 2. Provisional Acceptance Declaration and Asset Use License

On the one hand:

- (1) The **Union**, henceforward designated “**Government**”, acting through the **Secretariat of Ports of the Presidency of the Republic**, headquartered in _____, represented in this act by its representative, Mr. [•], [characterization], designated by Decree [•], published in the *Diário Oficial da União* dated [•], henceforward designated “**SEP**”, as “**Grantor Authority**”; and
- (2) The **National Waterway Transportation Agency**, a semiautonomous agency that is part of the indirect federal administration, headquartered in _____, represented in this act by its General Director, Mr. [•], [characterization], designated by Decree [•], published in the *Diário Oficial da União* dated [•], and by its Director [•], designated by Decree [•], published in the *Diário Oficial da União* dated [•], henceforward designated “**ANTAQ**”, in the role of “**Consenting Party**”; and

on the other hand:

- (3) [•],[Special Purpose Entity], headquartered in [Municipality], State of [•], at [address], registered under Ministry of Finance National Registry of Corporate Entities, under no. [•],, duly represented in this act by Mr. [•],, [characterization], in the role of “**Lessee**”;

Jointly designated as “Parties” and, individually, as “Party”:

Clause 1 – Object

1.1. The objective of this instrument is:

- 1.1.1. Presentation of the inventory with all of the existing assets that are part of the Lease site, according to the terms of the Contract and its Annexes, with indication of the state of conservation and operating conditions of such, and
- 1.1.2. The use license and access of the inventoried goods indicated in the appended list, as required by the Contract and its Annexes of which this instrument becomes an integral part, so that the Lessee may proceed to execution of the objective of the Lease site.

1.2. The inventory of the assets is found in the appendix to this Provisional Acceptance Declaration and Asset Use License, with their description, state of conservation and operating capacity, with all other complementary technical specifications.

Clause 2 – Term

- 2.1. According to this instrument, the Lessee assumes the commitment to verify the exactness of the inventory presented, as well as to request duly justified alterations, if so required.
- 2.2. After granting of the requested alterations, the Grantor Authority and ANTAQ will issue a new inventory that will be appended to the Provisional Acceptance Declaration and Asset Use License to be signed by the Parties.
- 2.3. This Provisional Acceptance Declaration and Asset Use License will have a period of validity initiating on the date of its signature and ending on the same date on which the Definitive Acceptance Declaration and Asset Use License are signed.

Clause 3 – Improvements

- 3.1. Any improvements, whether useful, necessary or superfluous, as well as accessions, whether consented to or not, that the Lessee may come to make in the area that is the object of the Use License, will be incorporated into it and the Lessee waives any right of retention or indemnity.

Clause 4 – Extinction

- 4.1. This Provisional Acceptance Declaration and Asset Use License will be extinguished in the same hypotheses of extinction foreseen in the Lease Contract.
- 4.2. Extinction of this Provisional Acceptance Declaration and Asset Use License will imply immediate vacating and return of the areas assigned subject to the penalty of the Lessee being considered as usurper of such, for purposes of repossession, based on the terms of articles 926 and the following of the Civil Process Code and its later alterations, as well as the return of all equipment assigned, without prejudice to indemnities to be paid to the Grantor Authority, should such be required.

Having thus agreed, the representatives of the Parties sign this Provisional Acceptance Declaration and Asset Use License, in two copies of equal content and form.



Brasília, DF, (date)

[signatures]

Provisional List of Goods and Assets and Inventory

Description of Assets	State of Conservation	Operating Capacity	Other Technical Specifications

Appendix 3. Definitive Acceptance Declaration and Asset Use License

On the one hand:

- (1) The **Union**, henceforward designated “**Government**”, acting through the **Secretariat of Ports of the Presidency of the Republic**, headquartered in _____, represented in this act by Mr. [•], [characterization], designated by Decree [•], published in the *Diário Oficial da União* dated [•], henceforward designated “**SEP**”, as “**Grantor Authority**”; and
- (2) The **National Waterway Transportation Agency**, a semiautonomous agency that is part of the indirect federal administration, headquartered in _____, represented in this act by its General Director, Mr. [•], [characterization], designated by Decree [•], published in the *Diário Oficial da União* dated [•], and by its Director [•], designated by Decree [•], published in the *Diário Oficial da União* dated [•], henceforward designated “**ANTAQ**”, in the role of “**Consenting Party**”; and

on the other hand:

- (3) [•], [Special Purpose Entity], headquartered in [Municipality], State of [•], at [address], registered under Ministry of Finance National Registry of Corporate Entities, under no. [•], duly represented in this act by Mr. [•], [characterization], in the role of “**Lessee**”;

Jointly designated as “Parties” and, individually, as “Party”:

Clause 1 – Object

- 1.1 The objective of this instrument is:
 - 1.1.1 Formal acceptance by the Lessee of the inventory with all of the existing assets that are part of the Lease site presented in the Provisional Acceptance Declaration; and
 - 1.1.2 The use license and access of the inventoried goods indicated in the appended list, as required by the Contract and its Annexes of which this instrument becomes an integral part, so that the Lessee may proceed to execution of the objective of the Lease site.

Clause 2 – Term

2.1. This Definitive Acceptance Declaration and Asset Use License will have a period of validity initiating on the date of its signature and ending on the same date on which the Lease Contract is extinguished

Clause 3 – Licensing Conditions

3.1. The Lessee assumes the obligation of:

- 3.1.1 Inspecting the aforementioned assets, being in agreement with the description stated in the inventory, which becomes an integral part of this instrument, there being no other complaints to be presented to the Grantor Authority with respect to the stated assets;
- 3.1.2. Utilizing the area, equipment and assets exclusively for purposes of achieving the objective of the Lease site, any other use for any purpose whatsoever being hereby prohibited;
- 3.1.3. Ensuring the custody and conservation of the areas and of the equipment in such a way as to be able to return them to the Grantor Authority in the same operating conditions in which they were received;
- 3.1.4. Making payment of any taxes that are levied or may come to be levied on the areas as a result of execution of the Lease Contract, as well as expenses related to electrical power, water and telephone at the work sites, and furthermore being responsible for any and all demands that it may generate on the part of the public authorities; and
- 3.1.5. Occupying the real estate and assuming responsibility for the custody of the same, and of the equipment and assets, as of the signing of this instrument.

Clause 4 – Improvements

4.1. Any improvements, whether useful, necessary or superfluous, as well as accessions, whether consented to or not, that the Lessee may come to make in the area that is the object of the Use License, will be incorporated into it and the Lessee waives any right of retention or indemnity.

Clause 5 - Extinction



- 5.1. This Definitive Acceptance Declaration and Asset Use License will be extinguished under the same circumstances foreseen for extinction of the Lease Contract.

- 5.2. Extinction of this Definitive Acceptance Declaration and Asset Use License will imply immediate vacating and return of the areas assigned subject to the penalty of the Lessee being considered as usurper of such, for purposes of repossession, based on the terms of articles 926 and the following of the Civil Process Code and its alterations, as well as the return of all equipment assigned, without prejudice to indemnities to be paid to the Grantor Authority, should such be required.

Having thus agreed, the representatives of the Parties sign this Definitive Acceptance Declaration and Asset Use License, in two copies of equal content and form.

Brasília, DF, (date)

[signatures]

Definitive List of Goods and Assets and Inventory

Description of Assets	State of Conservation	Operating Capacity	Other Technical Specifications

