

FEDERAL GOVERNMENT

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

NATIONAL WATERWAY TRANSPORT AGENCY- ANTAQ

ANNEX 4 - DRAFT LEASE CONTRACT – SPECIFIC PORTION

**AUCTION n. 04/2016-ANTAQ, FOR THE LEASE OF AN AREA OF PUBLIC INFRASTRUCTURE FOR
MOVEMENT AND STORAGE OF SOLID BULK MINERALS, LOCATED WITHIN THE ORGANIZED PORT
OF SANTARÉM, IN THE STATE OF PARÁ, DENOMINATED STM02**

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Mentions of Chapters, Sections and Subsections in this Annex refer to the respective Chapters, Sections and Subsections of the **General Conditions of Contract**.

1. Clause 3 – Lease Term

1.1. The Lease **Contract** shall remain in effect for a period of 25 (twenty-five) years counted as of the Assumption Date, under the terms and conditions foreseen in the **Contract and in its Annexes**.

2. Clause 9 – Estimated Value of the Contract and Conditions of Payment

2.1. Estimated Overall Value of the Contract

2.1.1. The estimated overall value of the Lease Contract, one of the Annexes of which is this document, is R\$ 751.141.203,60 (seven hundred and fifty-one million, one hundred and forty-one thousand, two hundred and three reais and sixty centavos), corresponding to the sum of estimated revenue to be obtained by the **Lessee** from exploitation of the Activities during the Contract period.

2.2. Conditions of Payment

2.2.1. The **Lessee** shall pay the **Port Administration** the following **Lease Values**:

- a) R\$ 30.391,87 (thirty thousand, three hundred and ninety-one reais and eighty-seven centavos) per month, as the **Fixed Lease Value**, for the right to exploit the **Activities** at the **Lease Site**, including remuneration of the **Grantor Authority** for assignment for consideration of the **Lease Area**.
- b) R\$ 1,30 (um real and thirty centavos) per ton of any cargo handled, as the **Variable Lease Value**, for the right to exploit the **Activities** at the **Lease Site**, including remuneration of the **Grantor Authority** for assignment for

consideration of the **Lease Area**, observing moreover the specific rule of its minimum value considering the **Minimum Required Movement**.

2.2.2. The **Fixed Lease Value** foreseen in subclause 2.2.1 “a”. shall be paid by the **Lessee** to the **Port Administration**, as of the **Assumption Date** until the end of the Lease Term, in current national currency, within a period of 30 (thirty) days counted as of the last day of the month of reference, by deposit in a current account that shall be duly indicated or using a specific deposit form.

2.2.3. O **Variable Lease Value** foreseen in subclause 2.2.1 “b”. shall be paid each month by the **Lessee** to the **Port Administration**, based on the monthly movement of all cargoes, as of start of the Activities until the end of the **Lease Term**, in current national currency, within a period of 30 (thirty) days counted as of the last day of the month of reference, by deposit in a current account that shall be duly indicated or using a specific deposit form.

2.2.3.1. As of start of the **Activities**, at the end of each one (1) year period, in the event that the **Effectively Calculated Movement** is lower than the **Minimum Required Movement**, the **Lessee** shall pay the **Port Administration** the **Variable Lease Value**, using as a basis the value in Reais per ton indicated in subclause 2.2.1. “b”, multiplied by the difference between the **Minimum Required Movement** provided in **Annex 2 - Technical Guidelines and Parameters of the Lease** and a **Effectively Calculated Movement** over the period. Payment shall be effected within a period of 30 (thirty) days counted as of the last day of the year of reference, by deposit in a current account that shall be duly indicated or using a specific deposit form

2.2.3.2. For purposes of accounting for the **Effectively Calculated Movement** foreseen in subclause 2.2.3.1., only movements required under the **Minimum Required Movement** shall be accepted, under the terms of **Annex 2 - Technical Guidelines and Parameters of the Lease**, excluding cargoes that the **Lessee** is

authorized to handle but which are not included among those required under the **Minimum Required Movement**.

2.2.4. The **Lessee** shall pay the **Federal Government** five installments of R\$ _____ (_____ reais) as the **Bid Value**, corresponding to the difference between the sum offered at the **Auction** for this **Lease** and the sum already paid by the winning **Lessee** as an obligation prior to signing of the **Contract**.

2.2.5. The installments shall be paid annually, and payment of the first installment of the **Bid Value** shall be effected at the end twelfth (12th) month, counted as of the **Assumption Date**, and the other installments paid at each subsequent twelve (12) month period.

2.2.6. The **Bid Value** shall be readjusted by the accumulated **IPCA** between the month of the holding of the **Public Auction Session** and the initial date of payment of each annual installment, observing the following formula:

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

Where:

O1 is the annually readjusted **Bid Value** on the initial date of payment of the first annual installment;

O0 is the annual **Bid Value** at current prices on the date of holding of the **Public Auction Session**;

IPCA_t/IPCA_{t-1} is the accumulated **IPCA** for the period between the month of holding of the **Public Auction Session** and the month prior to initial payment of the annual **Bid Value**.

2.2.7. Following the first readjustment, the annual **Bid Value** shall be readjusted annually by the **IPCA**, observing the following formula:

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

Where:

t represents the time in years;

Ot is the annually adjusted **Bid Value**;

Ot -1 is the annual **Bid Value** in effect;

IPCA_t/IPCA_{t-1} is the accumulated change in the IPCA over the period.

- 2.2.8. Delay of payment of any sum owed, foreseen in this **Annex**, shall incur a fine of two percent (2%) of the sum owed, with monetary indexation in accordance with the **IPCA** and a fine for delay of one percent (1%) per month, calculated *pro rata temporis*, up until payment is effected, other penalties for contractual noncompliance notwithstanding.

3. Clause 10 – Lessee Remuneration

- 3.1. The **Lessee** may charge the **Price**, this being the sum owed by the **User** to the **Lessee** in counterpart for the Activities, that may be freely set by the **Lessee**, always observing **ANTAQ**'s prerogative to set regulatory rules with a view to restricting the abuse of economic power against users, through prior administrative procedures, **ANTAQ** being empowered to request and use information provided by users.

4. Clause 15 – Lease Assets

- 4.1. For the purposes of clause 15.1.2 the **General Conditions of Contract**, the following assets shall not be considered **Lease Assets**, whether acquired, leased or rented by the **Lessee**, throughout the period of this **Contract**, to be used in the operation and maintenance of the **Lease Site** and in the performance of the **Activities**:

- 4.1.1. Equipment on tracks or wheels such as portainers, MHCs and RTGs;
- 4.1.2. Reach-stackers and small-scale loaders;
- 4.1.3. Trucks used for movement within the Lease;
- 4.1.4. Electronic equipment;

4.1.5. Pumps and pipelines;

4.1.6. Other small-scale movable equipment;

4.2. The **Lessee** may make use of lease contracts or of goods regarded as **Lease Assets** to ensure operation and maintenance of the **Lease Site** and performance of the **Activities** throughout the period of this **Lease**. However, he must ensure that such contracts contain a subrogation clause in favor of the Grantor Authority, which shall be executed by the Grantor Authority at his sole discretion, in the event of extinction of the lease.

5. Clause 16 – Guarantee of Contract Execution

5.1. Notwithstanding provisions of the **Contract** with respect to the need to contract and maintain the **Guarantee of Contract Execution**, it is an obligation of the **Lessee** to provide the **Guarantee of Contract Execution** under any of the modalities accepted under the **Contract**, of the sum of R\$ 37.557.060,18 (thirty-seven million, five hundred and fifty-seven thousand and sixty reais and eighteen centavos).

5.1.1. The value of the **Guarantee of Contract Execution** shall be reduced by fifty percent (50%) as of the year in which the **Minimum Required Movement** provided for in item 5.2 of **Annex 2 - Technical Guidelines and Parameters of the Lease** reaches its maximum level.

5.2. The **Guarantee of Contract Execution**, provided in the form of a bank guarantee and insurance guarantee, shall observe the conditions set forth in Appendix 1.

6. Clause 20 - Penalties

6.1. Notwithstanding the provisions set forth in the **General Conditions of Contract** and in specific regulations on the application of fines and other penalties, the **Lessee** shall be subject to the specific fines indicated below:

	Description of the wrongful conduct	Application criteria	Value of the fine
1	Failure to submit to ANTAQ within the contractual deadline any of the Lease Reports, consistent in the Operational Report, User-Service Report and Accounting and Financial Report	Per infraction	R\$ 450.684,72 four hundred and fifty thousand, six hundred and eighty-four reais and seventy-two centavos)

7. Clause 21 - Minimum Capital Stock of the Special Purpose Entity

7.1. The initial minimum capital stock of the Special Purpose Entity founded to exploit the **Lease** is R\$ 20.595.137,25 (twenty million, five hundred and ninety-five thousand, one hundred and thirty-seven reais and twenty-five centavos).

Apêndice 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 twelve (12) 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.

[place], [•] [•], 2016

To the Federal Government, represented by the Secretariat of Ports of the Presidency of the Republic

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 forty-eight (48) hours, counted as of receipt by the Guarantor Bank, of notification in writing sent by the Federal Government.

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 Federal Government, represented by the Secretariat of Ports of the Presidency of the Republic.

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 ten (10) 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 one (1) 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 Bank Central 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]

[signature of the witnesses]

Apêndice 2. Provisional Acceptance Declaration and Asset Use License

On the one side:

- (1) The **Federal Union**, hereinafter referred to as “**Federal Government**”, through the **Secretariat of Ports of the Presidency of the Republic**, with headquarters at _____, represented in this act by its representative, Mr. [●], [qualification], appointed by Decree of [●], published in the Official Gazette of the Federal Government on [●], hereinafter referred to as “**SEP**”, in the capacity of “**Grantor Authority**”; and
- (2) The **National Waterway Transport 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”“:

Cláusula 1ª. – Object

1.1. The object of this Declaration is:

- 1.1.1. To present the inventory of all the assets existing as part of the Lease, under the terms of Contract and its Annexes, with indication of 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 Declaration is an integral part, so that the Lessee can proceed with the object of the Lease.
- 1.2. The inventory of assets is to be found attached to this Provisional Acceptance Declaration and Asset Use License, with their description, state of conservation and operational capacity, along with other complementary technical specifications .

Cláusula 2ª. – 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.

Cláusula 3ª. – 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.

Cláusula 4ª. – 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]

Apêndice 3. Definitive Acceptance Declaration and Asset Use License

On the one side:

- (1) The **Federal Union**, hereinafter referred to as “**Federal Government**”, through the **Secretariat of Ports of the Presidency of the Republic**, 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 “**SEP**”, in the capacity of “**Grantor Authority**”; and
- (2) The **National Waterway Transport 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”“:

Cláusula 1ª. – 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.

Cláusula 2ª. – 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.

Cláusula 3ª. – 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.

Cláusula 4ª. 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.

Cláusula 5ª. – Extinction

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]

