



STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

**ANNEX XIV - DEMOBILIZATION AND TRANSITION PLAN**

## 1. INTRODUCTION

- 1.1. This ANNEX has the purpose of defining the fundamental conditions for the devolution of CAMINHOS DO MAR to the GRANTING AUTHORITY by the CONCESSIONAIRE (hereinafter referred to as "DEVOLUTION"), with or without TRANSFER (as defined below), in whole or in part, to the concessionaire that may come to succeed it (hereinafter referred to as the "SUCCESSOR"). Notwithstanding the DEMOBILIZATION PLAN concerning Clause Fifty-Six of the CONTRACT.
- 1.2. Thus, for purposes of complying with this ANNEX, the terms and regulations referring to the DEVOLUTION also apply in the case of TRANSFER, a term that designates in this ANNEX, and which shall be construed hereunder, as the new concession of an asset or a set of assets reverted to the GRANTING AUTHORITY by the CONCESSIONAIRE.
- 1.3. Furthermore, all references to TRANSFER and/or to the SUCCESSOR shall apply if, at any time before the end of the CONCESSION, any of the possibilities of early termination of this instrument have taken place.
- 1.4. The CONCESSIONAIRE, regardless of the maintenance and conservation needed to maintain the PERFORMANCE INDICATORS, and the fulfillment of other contractual obligations during the CONCESSION TERM, shall devolve and/or transfer CAMINHOS DO MAR in good conditions and functioning, thereby enabling continuity of the services that are object of the CONTRACT for a minimum additional term of 5 (five) years, effective the date of termination of the CONTRACT, except for those with a shorter useful life.
- 1.5. 24 (twenty four) months before the CONCESSION ends, the GRANTING AUTHORITY shall establish and oversee one COMMISSION composed of representatives of the GRANTING AUTHORITY, the CONCESSIONAIRE and, if any, the successor, in even numbers, with the purpose of overseeing the CONCESSIONAIRE's deployment of measures prior to the DEVOLVING and/or TRANSFER of CAMINHOS DO MAR, as set forth hereunder.
- 1.6. If, at the time of the establishment of the COMMISSION, the bidding process whose object includes a new CAMINHOS DO MAR concession, which is the object of this CONCESSION, has not yet been concluded, the SUCCESSOR shall be automatically included in the COMMISSION effective the date of execution of the new concession contract.
- 1.7. The COMMISSION shall prepare, within 90 (ninety) days effective its establishment, the first INSPECTION REPORT (as defined below), and shall propose to SIMA, with the approval of the CONCESSIONAIRE and, if any, the SUCCESSOR's consent, the parameters that shall guide the devolution and/or transfer of all, or part of CAMINHOS DO MAR that is the object of the CONTRACT.

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- 1.8. The INSPECTION REPORT provided for in item 1.7 above shall convey CAMINHOS DO MAR's current situation and may propose to SIMA either its acceptance or signal the need for corrections, before it is devolved to the GRANTING AUTHORITY and/or transferred to the SUCCESSOR.
- 1.8.1. Any and all corrections shall be made within previously set deadlines by SIMA, and shall entail a new inspection after completion of the services.
- 1.9. When it comes to CAMINHOS DO MAR's DEVOLUTION to the GRANTING AUTHORITY, as well as its TRANSFER to the SUCCESSOR, the regulations provided for in item 6 of this ANNEX shall be fulfilled.
- 1.10. In the event of a TRANSFER, the COMMISSION shall define the manner in which the interaction between the CONCESSIONAIRE and the SUCCESSOR shall take place, and submit it to SIMA for approval in the month prior to the start of the operations by the latter.

**2. PARTIAL AND FINAL REPORTS**

- 2.1. Every three (3) months, effective the approval of the first INSPECTION REPORT devised in accordance with items 1.7 and 1. 8 above, the COMMISSION shall prepare and submit to the SIMA a PARTIAL REPORT describing efforts carried out to correct any non-conformities verified during its work.
- 2.2. The REPORTS, separated as PARTIAL REPORT and FINAL REPORT, may be devised and signed by an independent verifier, who shall be responsible for inspections and devising the REPORTS (hereinafter referred to as the "INDEPENDENT VERIFIER" or "VERIFIER"), assisting SIMA's decisions.
- 2.3. The FINAL REPORT shall be delivered 15 (fifteen) days before the end of the CONCESSION, and shall bring an in-depth description of inspection dates and meetings held, minutes, all non-conformities verified and corrected during the COMMISSION's work, and other information deemed relevant by the COMMISSION, issuing a final expert opinion regarding compliance with the devolution of conditions set forth hereunder.
- 2.4. The INDEPENDENT VERIFIER may be heard on the conclusions submitted in the FINAL REPORT, prior to SIMA's decision, even if he/she was responsible for drawing it up.
- 2.5. The INDEPENDENT VERIFIER shall be chosen by SIMA among one of the candidates from the list of three candidates submitted by the CONCESSIONAIRE in a timely manner, so that he/she can act within the scope of the COMMISSION's responsibility procedures, in those cases where the CONCESSIONAIRE opts for the INDEPENDENT VERIFIER.

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- 2.5.1. The INDEPENDENT VERIFIER may not have had any type of relationship with the CONCESSIONAIRE and its RELATED PARTIES, nor may he/she have realized any form of remuneration in the 12 (twelve) months, prior to the constitution of the COMMISSION, nor may he/she have any type of relationship with the CONCESSIONAIRE and its RELATED PARTIES, nor realize any type of remuneration from them, in the 12 (twelve) months subsequent to the delivery of the Final Report.
- 2.5.2. Devising the list of three candidates shall cumulatively comply with the criteria of extensive technical reputation in the market and the absence of impediments to contract with the PUBLIC ADMINISTRATION.
- 2.5.3. SIMA may request, at its discretion but only once, that a new list with three candidates be devised within 7 (seven) days of the submission of the first list with three candidates by the CONCESSIONAIRE, which, within 7 (seven) days, shall submit a new list with three candidates, replacing the three candidates with the VERIFIER.
- 2.5.4. All costs and potential responsibilities relating to the VERIFIER's contracting and performance shall be exclusively attributed to the CONCESSIONAIRE, with no type of burden to the GRANTING AUTHORITY or to the SUCCESSOR, if any.
- 2.5.5. Once the VERIFIER is selected by SIMA, he/she shall proceed, whether by him/herself or by his/her representatives, with the necessary inspections, in addition to devising the REPORTS provided for hereunder.
- 2.6. If SIMA disagrees with the conclusions contained in the REPORTS mentioned in this ANNEX and submitted by the RAPPORTEUR, it may be requested to convey its opinion on the methods and results within five (5) working days of the notification to SIMA, which may be extended if the VERIFIER submits a justification.
- 2.7. Having received the first INSPECTION REPORT referred to in item 1.7 above, SIMA shall initiate administrative proceedings to appraise the content of this and other REPORTS produced within the scope of this ANNEX.
- 2.8. Once the REPORTS under this ANNEX, and subject to the provisions in item 12.2 above have been received, SIMA shall appraise them and deliberate in a timely manner in regard to the proceedings.

### **3. PROVISIONAL RECEIPT CERTIFICATE**

- 3.1. The PROVISIONAL RECEIPT CERTIFICATE shall be signed on the last day of the CONTRACT by the CONCESSIONAIRE, the GRANTING AUTHORITY, and if there is a SUCCESSOR, it shall expressly consent to it, thereby constituting the end of the CONCESSIONAIRE's responsibilities for maintaining and operating CAMINHOS DO MAR.
- 3.2. If the conditions provided for hereunder still pend compliance by the CONCESSIONAIRE, these shall be fulfilled in accordance with the specific situations set out below:
  - I. in case of DEVOLUTION to the GRANTING AUTHORITY, the fulfillment of pending conditions shall take place according to the timetable to be established by the DEMOBILIZATION PLAN;
  - II. in case of TRANSFER, should it be unfeasible to fulfill the pending conditions until the contractual term, the sum equivalent to these conditions shall be converted into indemnity to be paid by the CONCESSIONAIRE directly to the SUCCESSOR, notwithstanding the possibility of the PERFORMANCE BOND being excluded, in the event of default of this indemnity.
- 3.3. The PROVISIONAL RECEIPT CERTIFICATE shall convey the REVERSIBLE ASSET's current situation, including the terms of their acceptance and the potential need for corrections or substitutions under the responsibility of the CONCESSIONAIRE, whereas the CONCESSIONAIRE shall not be entitled to any type of reimbursement.
- 3.4. In the event of any corrections or substitutions to be made by the CONCESSIONAIRE, the PROVISIONAL RECEIPT CERTIFICATE shall signal, in a motivated manner, the term for its execution.
- 3.5. Corrections and replacements made by the CONCESSIONAIRE, with the aim of devolving the REVERSIBLE ASSETS to the prior conditions of use, technological updating and maintenance, shall not generate the right to indemnity or compensation in its favor.
  - 3.5.1. Failure to carry out the corrections and substitutions provided for in the PROVISIONAL RECEIPT CERTIFICATE shall entail the establishment of an indemnity in favor of the GRANTING AUTHORITY, in an amount corresponding to services not yet performed, in addition to the application of sanctions provided for in this CONTRACT and its ANNEXES, and due to contractual default.
- 3.6. The CONCESSIONAIRE shall remove, within the period established in the PROVISIONAL RECEIPT CERTIFICATE, all assets used in the CONCESSION that are not appraised as REVERSIBLE ASSETS.

#### **4. PROVISIONAL TRANSFER TO SUCCESSOR**

- 4.1. Signing of the TERM OF PROVISIONAL RECEIPT entails transfer of CAMINHOS DO MAR's operations and maintenance to the SUCCESSOR, following the adjudication act of the object of the respective bidding process won; however, it does not exempt the CONCESSIONAIRE from the responsibility of holding the GRANTING AUTHORITY and/or SUCCESSOR harmless, as a result of the useful life guarantee provided for hereunder.

#### **5. FINAL ACCEPTANCE CERTIFICATE**

- 5.1. After the observation term of 6 (six) months, effective the PROVISIONAL RECEIPT CERTIFICATE, CAMINHOS DO MAR's FINAL ACCEPTANCE CERTIFICATE shall be drawn up. If, within this term, all the requirements provided for hereunder are met, the FINAL ACCEPTANCE CERTIFICATE shall inform on the regularity and approve the execution of the PERFORMANCE BOND.
- 5.2. In case CAMINHOS DO MAR is devolved to the GRANTING AUTHORITY, and at the end of 6 (six) months effective the PROVISIONAL RECEIPT CERTIFICATE, the CONCESSIONAIRE has not fulfilled all the conditions provided for hereunder, then the GRANTING AUTHORITY shall be indemnified through execution of the PERFORMANCE BOND.
- 5.3. In case of TRANSFER to the SUCCESSOR, if the CONCESSIONAIRE has not fulfilled all the conditions provided for hereunder, and pursuant to item 3.2, item I, has not made the indemnity payment, the SUCCESSOR shall then claim execution of the indemnity sum concerning the PERFORMANCE BOND.
- 5.4. The CONCESSIONAIRE's final responsibilities shall only end within the legal terms then in force, without exempting the CONCESSIONAIRE, however, from its civil responsibility to hold the GRANTING AUTHORITY and/or the SUCCESSOR harmless, as a result of the useful life guarantee provided for hereunder.
- 5.5. For purposes of calculating the indemnity provided for in items 5.2 and 5.3, unit costs to be used shall be based on public price bases in force, or on another document that may replace them, and, if more current information is unavailable, and at the discretion of the GRANTING AUTHORITY, of the projections made at the time of the BIDDING PROCESS or other parameters, for instance, those used and published in national and international engineering magazines. Quotations may be taken from the market, with at least 3 (three) bidders.

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**6. TRANSITION**

- 6.1. For a seamless transition of CAMINHOS DO MAR to the GRANTING AUTHORITY, or to the SUCCESSOR, the provisions contained in clause 59 of the CONTRACT shall be duties pertaining to the CONCESSIONAIRE.
- 6.2. In the event of disagreement or divergences within the COMMISSION on the need for corrections or on non-compliance with any of the minimum conditions provided for hereunder, as well as in light of SIMA's decisions, the dissatisfied member shall express his/her objection, in writing and as reasonably applies, to SIMA, along with a copy for the other members, within 15 (fifteen) days of the objected act, including alternate solutions to the challenged or objected points with estimated costs, if applicable. The other COMMISSION members may convey their opinions within 5 (five) days of becoming aware, respectively, of the objection.
- 6.3. Objections submitted shall be analyzed by SIMA's staff within 15 (fifteen) working days, effective their receipt.
- 6.4. If the divergence submitted has been appraised by the INDEPENDENT REPORTER, its conclusions shall be binding on the CONCESSIONAIRE, prevailing over its previous objections, except in the event of proven illegality.
- 6.5. The decision of the STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT on the objection submitted by the COMMISSION member(s) is binding to it, which shall deploy, immediately after its notification, measures defined for signing the PROVISIONAL RECEIPT CERTIFICATE, if before the end of the CONCESSION, or the FINAL ACCEPTANCE CERTIFICATE, if this takes place during the observation term.
  - 6.5.1. The binding of the COMMISSION, referred to in item 6.5, does not impair the CONCESSIONAIRE's right to avail itself, should it choose to, from dispute settlement mechanisms provided for in the CONTRACT.
- 6.6. SIMA's validation of the COMMISSION's work, including the INSPECTION REPORTS, entails full acceptance, by the CONCESSIONAIRE and the SUCCESSOR, of the conditions of CAMINHOS DO MAR, and any burdens that the SUCCESSOR may incur due to unforeseeable flaws, and not resulting from fault or willful misconduct on behalf of the COMMISSION members, shall be addressed in accordance with the contractual provision of the future concession.
- 6.7. Interference, damages, imposition of obstacles or breach of continuity in the provision of the services covered by the CONTRACT is prohibited, as is the imposition of any burden not arising from the CONTRACT to the CONCESSIONAIRE during the TRANSITION term.



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- 6.8. Any and all joint definitions made between the CONCESSIONAIRE and the SUCCESSOR, whether or not referring to the TRANSITION stage, and of a strictly private nature that does not interfere with the provision of the ADEQUATE SERVICE, shall be notified to SIMA, but shall not give rise to any right to recovery in favor of the CONCESSIONAIRE or the SUCCESSOR, nor can it imply any burden to the GRANTING AUTHORITY.