

CONVENTION FOR THE DELEGATION OF COMPETENCES

CONVENTION FOR THE DELEGATION
OF COMPETENCES ENTERED INTO BY
THE FEDERAL GOVERNMENT,
THROUGH THE MINISTRY OF PORTS
AND AIRPORTS, AND THE
GOVERNMENT OF THE STATE OF SÃO
PAULO FOR THE CONSTRUCTION,
OPERATION AND MAINTENANCE OF
THE PROJECT NAMED THE
INTERCONNECTION SYSTEM.

By this instrument, the **PARTIES**:

The **FEDERAL GOVERNMENT**, through the **MINISTRY OF PORTS AND AIRPORTS - MPOR**, with address at Esplanada dos Ministérios, Bloco R, Brasília, Distrito Federal, registered with the CNPJ (National Register of Legal Entities) under no. 49.582.441/0001-38, hereinafter referred to as **DELEGATOR**, in this act represented by the Minister of Ports and Airports, Mr. **SÍLVIO COSTA FILHO**; and

The **STATE OF SÃO PAULO**, with address at Palácio dos Bandeirantes, São Paulo, State of São Paulo, hereinafter referred to as **DELEGATEE**, represented by its Governor, Mr. **TARCÍSIO DE FREITAS**;

WHEREAS:

The common interest of the **PARTIES** in developing a public-private partnership project involving public services for the construction, operation, maintenance and implementation of the investments required for the exploration of an immersed tunnel connecting the cities of Santos and Guarujá, hereinafter referred to as the **PROJECT**, as previously formalized within the scope of Technical Cooperation Agreement No. 1/2024;

The execution of the **PROJECT**, since it is developed in the area of the **ORGANIZED PORT**, touches on the powers of the **FEDERAL GOVERNMENT**, exercised through the respective Port Authority, and, since it encompasses the implementation and operation of an inter municipal road connection, it also involves the powers of the **STATE OF SÃO PAULO**;

The need to harmonize the powers of the **FEDERAL GOVERNMENT** and the **STATE OF SÃO PAULO** for the efficient execution of the **PROJECT**;

The provisions of Decree-Law No. 200, on February 25, 1967, and of art. 6th, Paragraph 2, of Law 12,379, on January 6, 2011;

They decide to enter into this **DELEGATION CONVENTION**, which they do under the following terms:

CLAUSE ONE APPLICABLE LEGISLATION

This **CONVENTION** is governed, at the federal level, by Decree-Law No. 200, on February 25, 1967, by Law No. 12,379, on January 6, 2011, by Law No. 12,815, on June 5, 2013, regulated by Decree No. 8,033, on June 27, 2013, by Law No. 8,987, on February 13, 1995, by Law No. 11,079, on December 30, 2004, by Law No. 10,233, on June 5, 2001 and by Federal Law No. 14,133, on April 1, 2021, as well as, at the state level, by State Law No. 11,688, on May 19, 2004, and by State Decree No. 66,173, on October 26, 2021.

CLAUSE TWO DEFINITIONS

For the purposes of this **CONVENTION**, and without prejudice to other definitions established herein, the following expressions are defined as follows:

URBAN ACCESSES	Routes, loops and devices implemented for the exclusive purpose of connecting the TUNNEL with the local roads in the cities of Santos and Guarujá. URBAN ACCESSES include not only the traffic lanes, but also shoulders, shelters, cycle paths, sidewalks, walkways, OAEs (bridges, overpasses and tunnels), trenches, drainage elements, signaling and safety devices, as well as cut and fill slopes.
ANTAQ	National Waterway Transportation Agency
PUBLIC CONTRIBUTION DEFINED IN THE TENDER	Amount defined in the tender process based on the submission of a proposal by the Winning Tenderer that will constitute the future CONCESSIONAIRE of the INTERCONNECTION SYSTEM and that will be used by the GRANTING AUTHORITY to make payments for disbursement events under the terms set forth in the SPONSORED CONCESSION AGREEMENT ,
MAXIMUM TOTAL PUBLIC CONTRIBUTION	Maximum amount of public resources to be paid to the future CONCESSIONAIRE for the construction of the INTERCONNECTION SYSTEM , under the terms set forth in the SPONSORED CONCESSION AGREEMENT ,
APS	Port Authority of Santos
ARTESP	Regulatory Authority for Delegated Public Transportation Services of the State of São Paulo
CONCESSIONAIRE	Special purpose entity (SPE) to be established by the Winning Tenderer in the tender process for the concession of the INTERCONNECTION SYSTEM , which will sign the SPONSORED CONCESSION AGREEMENT with the GRANTING AUTHORITY .
SPONSORED CONCESSION AGREEMENT	Sponsored Concession Agreement for the public services of construction, operation, maintenance and implementation of the necessary investments to be signed for the exploration of the INTERCONNECTION SYSTEM , in which the construction will be carried out through the payment of the PUBLIC CONTRIBUTION DEFINED IN THE TENDER PROCESS , so that the CONCESSIONAIRE may exercise it in its own name and at its own risk and expense.
STATE FUNDING	Amount transferred by the STATE OF SÃO PAULO , to be deposited in a linked account – STATE FUNDING ACCOUNT (escrow account) and released for payment of the construction of the INTERCONNECTION SYSTEM in accordance with the achievement of contractual milestones (disbursement events) of the works by the future CONCESSIONAIRE within the scope of the sponsored concession.
FEDERAL FUNDING	Amount transferred by the FEDERAL GOVERNMENT , using its own resources and/or those of the PORT AUTHORITY OF SANTOS , to be operationalized by its own legal instrument and deposited in a linked account – FEDERAL FUNDING ACCOUNT (escrow account) and released for payment of the construction of the INTERCONNECTION SYSTEM in accordance with the achievement of contractual milestones (disbursement events) of the works by the future CONCESSIONAIRE within the scope of the sponsored concession.
SANTOS ESTUARY	Areas of the Organized Port of Santos between the neighborhoods of Macuco, in the Municipality of Santos (right bank) and the neighborhood of Vicente de Carvalho, in the Municipality of Guarujá (left bank).
COMPLETION NOTIFICATION	Notification communicating the completion of construction works and services related to a specific disbursement event, for the purpose of releasing a portion of the PUBLIC CONTRIBUTION DEFINED IN THE TENDER .

INSPECTION NOTIFICATION	Notification that aims to certify the effective realization of the disbursement event by the future CONCESSIONAIRE and the amount related to the disbursement event based on the inspection by the independent auditor under the terms of the SPONSORED CONCESSION AGREEMENT .
CONTRIBUTION PAYMENT NOTIFICATION	Notification informing about each of the payments made to the future CONCESSIONAIRE .
GRANTING AUTHORITY	As delegated by the FEDERAL GOVERNMENT , the Government of the State of São Paulo, through the DELEGATEE .
ORGANIZED PORT	Organized Port of Santos.
ACCESS BUILDINGS	Buildings that allow pedestrians and cyclists to enter and exit the TUNNEL .
INTERCONNECTION SYSTEM	Project to be implemented by the CONCESSIONAIRE to enable the implementation of an immersed dry connection, in the channel of the Organized Port of Santos, between the Municipalities of Santos and Guarujá, in the State of São Paulo, through the construction of the TUNNEL, URBAN ACCESSES and ACCESS BUILDINGS .
TUNNEL	Immersed tunnel connecting the cities of Santos and Guarujá in accordance with the characteristics established in the SPONSORED CONCESSION AGREEMENT .

CLAUSE THREE PURPOSE

The purpose of this **CONVENTION** is to delegate powers from the Federal Government, related to part of the functions of the Port Authority of the **ORGANIZED PORT**, to the State of São Paulo, aiming to enable the **DELEGATEE** to act, as **GRANTING AUTHORITY**, within the scope of the **SPONSORED CONCESSION AGREEMENT** intended for the construction, operation, maintenance and realization of the investments necessary for the implementation of the **INTERCONNECTION SYSTEM**.

Subclause one. The **DELEGATEE** will promote the implementation, maintenance and exploration of the **INTERCONNECTION SYSTEM** indirectly, through a **SPONSORED CONCESSION AGREEMENT**, in which the construction will be carried out through the payment of the **PUBLIC CONTRIBUTION DEFINED IN THE TENDER PROCESS**, so that the **CONCESSIONAIRE** may exercise it in its own name and at its own risk.

Subclause two. The execution of the **PROJECT**, since it is developed in the area of the **ORGANIZED PORT**, touches on the powers of the **FEDERAL GOVERNMENT**, exercised through the respective Port Authority, and, since it encompasses the implementation and operation of an inter municipal road connection, it also involves the powers of the **STATE OF SÃO PAULO**;

CLAUSE FOUR OBLIGATIONS OF THE DELEGATOR

The obligations of the **DELEGATOR** are:

I - to take the measures, within the scope of its powers, to ensure the execution of the necessary instruments for the coexistence of port activities with the construction, operation and maintenance of the **INTERCONNECTION SYSTEM**, including the interruption or limitation of certain port activities in the area of implementation of the **INTERCONNECTION SYSTEM**, for a specific and determinable period;

II - ensure the use of areas and roads of the Organized Port of Santos in the Municipality of Santos (right bank) and in the Municipality of Guarujá (left bank) for the purposes of construction, operation and maintenance of the **INTERCONNECTION SYSTEM**;

III - take the necessary measures, within the scope of its powers, to ensure the execution of the necessary instruments for the coexistence of port activities with the construction, operation and maintenance of the **INTERCONNECTION SYSTEM**;

IV - ensure the interruption of port activities in the Santos Estuary for the implementation of the **INTERCONNECTION SYSTEM** at least every 15 (fifteen) calendar days, for a minimum period of 48 (forty-eight) hours;

V - actively participate in negotiations to regulate the relationship between the parties in relation to the interaction of the Organized Port of Santos and the **INTERCONNECTION SYSTEM**, within 90 (ninety) days of the signing of the **SPONSORED CONCESSION AGREEMENT**;

VI - offer, on a mutual collaboration basis, all facilities for the execution of this instrument; and

VII - guarantee the transfer of financial resources related to **FEDERAL FUNDING** within 3 (three) business days prior to the signing of the **SPONSORED CONCESSION AGREEMENT**.

Sole subclause. The Joint Tender Committee, established by means of the DG ANTAQ Personnel Ordinance No. 2, on January 31, 2025, will monitor the tender process for the sponsored concession of the **INTERCONNECTION SYSTEM** to be carried out by the **DELEGATEE**.

CLAUSE FIVE OBLIGATIONS OF THE DELEGATEE

The obligations of the **DELEGATEE** are:

I - execute the purpose of the delegation, complying with the rules applicable to delegation agreements, in particular those mentioned in **CLAUSE ONE - APPLICABLE LEGISLATION** of this Instrument;

II – act as the **GRANTING AUTHORITY** of the sponsored concession for the construction, operation and maintenance of the **INTERCONNECTION SYSTEM**;

III – exercise, as the **GRANTING AUTHORITY**, directly or indirectly, through **ARTESP**, the supervision of the **SPONSORED CONCESSION AGREEMENT**;

IV – facilitate the monitoring and follow-up of the **DELEGATOR**, providing, whenever requested, the information and documents related to the execution of the object of this **CONVENTION**, especially with regard to the examination of the documentation related to the tender process held and the **SPONSORED CONCESSION AGREEMENT** signed;

V – post in a visible location a work plaque prepared in accordance with the Federal Government Brand Usage Manual - Works, keeping it in good condition throughout the entire period of execution of the works;

VI – adopt the necessary measures to ensure the maintenance and conservation of the assets of the Federal Government under its management;

VII - ensure the provision of adequate service to fully meet the needs of users of the **INTERCONNECTION SYSTEM**, meeting the conditions of timeliness, comfort, continuity, courtesy, efficiency, generality, hygiene, affordable rates, punctuality, environmental sustainability, regularity and safety;

VIII - receive, preserve and safeguard the integrity of the assets of the delegated port, including its protection and access infrastructure, keeping them in perfect condition of conservation and operation until they are returned to the Federal Government;

IX - provide conditions and support to the **DELEGATOR** and **ANTAQ** in carrying out the monitoring, inspection and control activities of the **CONVENTION**, providing, in a timely manner, all information and facilities for the supervision and inspection of their activities; and

X - return to the **DELEGATOR**, at the end of the delegation, all areas of the **ORGANIZED PORT** and the **TUNNEL**, with the exception of **URBAN ACCESSES** and **ACCESS BUILDINGS**, without the **DELEGATEE** having any right to compensation.

CLAUSE SIX SUPERVISION AND INSPECTION

It is the responsibility of **ANTAQ**, within its legal authority, to supervise and inspect the activities developed by the **DELEGATEE**, monitoring the execution of the obligations provided for in this **CONVENTION**, with the purpose of guaranteeing the provision of port services and activities performed at the **ORGANIZED PORT**, imposing, when applicable, corrective measures and imposing penalties for non-compliance, in accordance with current legislation, without prejudice to the powers to be exercised, within the scope of the **SPONSORED CONCESSION AGREEMENT**, by the **DELEGATEE**, directly or through **ARTESP**.

CLAUSE SEVEN RENDERING OF ACCOUNTS

The **DELEGATEE** shall render its annual accounting directly to the Court of Auditors of the State of São Paulo, in accordance with current regulations, forwarding a copy of said accounting to **ANTAQ**.

Subclause one. After the accounts have been assessed, the **DELEGATEE** is obliged to forward to **ANTAQ** the respective act issued by the Court of Auditors of the State of São Paulo.

Subclause two. The rendering of accounts referred to in subclause one does not exclude the **DELEGATEE**'s obligation to submit to the Federal Court of Auditors the rendering of accounts related to **FEDERAL FUNDING**.

Subclause three. The rendering of accounts to the Court of Auditors of the State of São Paulo does not exclude the **DELEGATEE**'s obligation to submit to the supervision and inspection of **ANTAQ** and/or the **DELEGATEE**, where applicable and as provided for in the governing legislation.

CLAUSE EIGHT DURATION

This **CONVENTION** shall come into effect on the date of its signature and shall be valid for 32 (thirty-two) years, and may be extended upon duly substantiated request from either party, made at least 60 (sixty) days before its termination, in accordance with the validity of the **SPONSORED CONCESSION AGREEMENT**.

CLAUSE NINE WAIVER AND TERMINATION

The parties may terminate this **CONVENTION** at any time, on the initiative of either party, by notifying the other party at least 180 (one hundred and eighty) days in advance.

Subclause one. The following are grounds for immediate termination of this **CONVENTION**:

- I - failure to comply with any of its clauses; or
- II - the impossibility of its execution due to a supervening fact.

Subclause two. The termination or rescission of the **A CONVENTION** shall not result in the termination of the **SPONSORED CONCESSION AGREEMENT**, and the **PARTIES** shall act to ensure its regular execution. The party that, through its conduct, causes harm to the other party shall be obliged to compensate it.

Subclause three. Cases of rescission shall be accompanied by the respective motivation in the case records, ensuring the adversarial system and full defense.

CLAUSE TEN

PUBLICATION

The parties shall publish an extract of this Amendment in the Federal Official Gazette and the Official Gazette of the State, with the expenses being borne by the **DELEGATOR** and the **DELEGATEE**, respectively.

CLAUSE ELEVEN ADMINISTRATIVE RESOLUTION OF DISPUTES

To resolve any doubts, omissions or any issues arising from this **CONVENTION**, before resorting to the Judiciary, the parties undertake to forward the issue to the Mediation and Conciliation Chamber of the Federal Public Administration, an agency of the Attorney General's Office, in accordance with art. 4, item XI, of Complementary Law No. 73, on February 10, 2010.

CLAUSE TWELVE JURISDICTION

The Federal Court - Judicial Section of the Federal District is elected to resolve any dispute arising from this **CONVENTION**, with waiver of any other.

In witness whereof, the parties hereby sign this **CONVENTION** in 2 (two) copies, of equal content and form, in the presence of two witnesses named below who also sign it.

on the date of signature

By the DELEGATOR:

MINISTRY OF PORTS AND AIRPORTS
SÍLVIO COSTA FILHO

By the DELEGATEE:

GOVERNMENT OF THE STATE OF SÃO PAULO
TARCÍSIO DE FREITAS

Witnesses:

Name:
ID Card No.
CPF/ME (National Register of Individuals) No.

Name:
ID Card No.
CPF/ME (National Register of Individuals) No.