



Governo do Estado do Rio de Janeiro

**ANNEX 01**  
**ITB No. 01/2020**

**DRAFT CONCESSION AGREEMENT FOR PUBLIC WATER SUPPLY AND SANITATION SERVICES IN  
THE MUNICIPALITIES OF BLOCK [●]**

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MUNICIPALITIES OF BLOCK [●]**

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**CONCESSION AGREEMENT FOR PUBLIC  
WATER SUPPLY AND SANITATION SERVICES  
IN THE MUNICIPALITIES OF BLOCK [●]**

By this instrument,

**ESTADO DO RIO DE JANEIRO**, a legal entity of public law, enrolled with the Brazilian Corporate Taxpayers' Registry (CNPJ/MF) under no. [no.], with registered office at [...], in the Capital City of the State of [...], herein represented by Mr. [\*], as representative of the holders of the SERVICES, hereinafter referred to simply as STATE;

**(\*\*\*CORPORATE NAME OF THE CONCESSIONAIRE)**, [identification data], hereinafter referred to simply as CONCESSIONAIRE;

and, as an intervening consenting party,

**AGENCIA REGULADORA DE ENERGIA E SANEAMENTO BÁSICO DO ESTADO DO RIO DE JANEIRO**, with registered office at Rua [...], herein represented by Mr. [●], hereinafter referred to simply as REGULATORY AGENCY; and

**WHEREAS:**

- a) the present AGREEMENT was duly authorized and/or validated by the public agencies and entities and holders involved in the planning, organization, management, regulation, inspection and control of the provision of water and sanitation services in the CONCESSION AREA, of BLOCK [●], through the joint management instruments and as stated in the administrative proceedings no. SEI-220002/001019/2020 and SEI-120207/000707/2020;
- b) the existence, validity and effectiveness of all cooperation agreements, management agreements and water production agreement entered into, as well as of this CONCESSION, pursuant to Federal Law no. 11,445/2007, Federal Law no. 11,107/05, Federal Law no. 13,089/2015, Federal Law no. 14.026/2020, State Supplementary Law no. 184/2018 and other state and municipal legislation governing the matter;
- c) the effective participation of the general population in the process of hiring this CONCESSION, ensured by the Public Consultation held between June 8, 2020 and August 7, 2020, as well as the holding of Public Hearings on June 25, 2020, July 6, 2020 and August 4, 2020; and
- d) the national and international INVITATION TO BIDS, published in the Official Gazette of the State of Rio de Janeiro and the BIDDING carried out, whereby [●] was declared the winning bidder, incorporating thereafter the Specific Purpose Entity, in compliance with item 30 of the International Invitation to Bids no. 01/2020.

NOW THEREFORE, the parties hereto decide to execute this AGREEMENT, which shall be governed by the relevant legislation and by the clauses and conditions set forth below.

## **1. DEFINITIONS**

1.1. The PARTIES hereby agree that the terms and expressions listed below are used, for the purposes of this AGREEMENT, in accordance with the definitions set forth in this clause, except where the context or form of their employment clearly indicates otherwise:

1.1.1. AFFILIATE: legal entity related, directly or indirectly, to another legal entity who CONTROLS, or is CONTROLLED by, or is under common CONTROL with other legal or natural person(s);

1.1.2. REGULATORY AGENCY: Energy and Basic Sanitation Regulatory Agency of the State of Rio de Janeiro (AGENERSA), created by the State Law no. 4.556/2005, with competence to regulate, control and inspect the rendering of basic sanitation public services, or any other state body or entity that may replace it in the attributions of regulation of basic sanitation public services.

1.1.3. ANNEX: each of the documents annexed to this AGREEMENT, numbered sequentially in roman alphabets, which are an integral part hereof.

1.1.4. CONCESSION AREA: urban area of the municipalities and respective urban districts of BLOCK [●], delimited according to Annex 04 of the ITB where the SERVICES will be provided by the CONCESSIONAIRE, pursuant to this AGREEMENT. The urban area to be considered includes the entire macro urban region, as delimited in the Master Plans of each MUNICIPALITY and, in the absence thereof, that defined by municipal legislation or, finally, by the IBGE.

1.1.5. NON-URBANIZED IRREGULAR AREAS: areas in the municipality of Rio de Janeiro identified by the Pereira Passos Urbanism Institute, through SABREN - Low Income Settlements System, throughout the term of the AGREEMENT, such as slum areas and subnormal agglomerations, classified as non-urbanized or partially urbanized, where the CONCESSIONAIRE shall be responsible for the expansion of the water supply and sanitation systems and the respective operation and maintenance of the SYSTEM.

1.1.6. B3: BRASIL, BOLSA, BALCÃO - B3, current name of BM&FBOVESPA S.A. - Bolsa de Valores, Mercadorias e Futuros, located in the City of São Paulo, State of São Paulo, at Praça Antônio Prado, no. 48, Centro, responsible for conducting the Public Auction Session of the International Invitation to Bids no. 01/2020 together with the Special Mixed Bid Committee.

1.1.7. PRIVATE ASSETS: property of the CONCESSIONAIRE which, despite being LINKED ASSETS, are not considered REVERSIBLE ASSETS, as they are goods of administrative use and/or not essential to the REGIONALIZED PROVISION.

1.1.8. REVERSIBLE ASSETS: set of movable and immovable assets, including facilities, equipment, machinery, apparatus, buildings and accessories of the existing water and sanitation systems, subject matter of the CONCESSION, which are essential and indispensable to the REGIONALIZED PROVISION, and which will be transferred to the CONCESSIONAIRE, as well as the other assets essential and indispensable to the REGIONALIZED PROVISION that will be acquired and/or built by the CONCESSIONAIRE, and that will revert to the holders of the SERVICES, through the STATE, upon the extinguishment of the CONCESSION;

1.1.9. LINKED ASSETS: PRIVATE ASSETS and REVERSIBLE ASSETS, which together represent all the assets used by the CONCESSIONAIRE in the performance of the AGREEMENT;

1.1.10. BLOCKS: a set of Municipalities in the State of Rio de Janeiro, grouped in four areas, for the development of the REGIONALIZED PROVISION of water supply and sanitation services, pursuant to Annex 04 of the ITB;

1.1.11. CEDAE: Rio de Janeiro State Water and Sanitation Company, a semi-public company, with registered office at Avenida Presidente Vargas, no. 2655 - Cidade Nova, CEP 20210-030, Rio de Janeiro - RJ, responsible for the provision of water abstraction, raw water supply and water treatment services, with which the INTERDEPENDENCE AGREEMENT, ANNEX VI of the AGREEMENT, shall be entered into.

1.1.12. INDEPENDENT CERTIFIER: legal entity, responsible for monitoring the ACTION PLAN in NON-URBANIZED IRREGULAR AREAS and the schedule of investments in dry weather collector, through technical reports and opinions, to be hired by the REGULATORY AGENCY, in accordance with ANNEX V - PROVISIONS FOR HIRING INDEPENDENT VERIFIER AND CERTIFIER, who has sufficient training and no bias for the performance of the duties that are attributed to it and does not have any kind of link with the CONCESSIONAIRE or with companies of its economic group that may compromise its independence and unbiased approach.

1.1.13. MONITORING COMMITTEE: collegiate body that has the purpose of monitoring the performance of the delegation agreements by the CONCESSIONAIRES and CEDAE, propose improvements, contribute to the definition of guidelines for planning, regulation and inspection of services, possibly considering the reference standards issued by the competent regulatory body, to receive and analyze criticism, suggestions and complaints from users, in order to provide transparency on information regarding social and environmental benefits, the guidelines of which for its operation are established in the ANNEX XII - MONITORING COMMITTEE.

1.1.14. TRANSITION COMMITTEE: collegiate body that has the purpose of facilitating the liaison and interaction between the CEDAE and CONCESSIONAIRE teams, in order to contribute to the exchange of information regarding the essential aspects of the transfer of the SYSTEM and the operation of the services.

1.1.15. TECHNICAL COMMITTEE: committee established by the STATE and composed of independent professionals appointed by the STATE and the CONCESSIONAIRE, with the task of resolving technical questions and conflicts between the PARTIES, in accordance with the terms established in this AGREEMENT.

1.1.16. CONCESSION: delegation of the provision of the SERVICES to the MUNICIPALITIES, which shall be governed by Federal Law no. 8.987/1995, during the term established in the ITB and in the AGREEMENT.

1.1.17. CONCESSIONAIRE: specific purpose entity incorporated by the winning bidder for the performance of the SERVICES object of this AGREEMENT.

1.1.18. BOARD OF HOLDERS: a collegiate body established for the purpose of coordinating and integrating the relations between the holders of the REGIONALIZED PROVISION of water supply and sanitation services relating to the BLOCK [●], the STATE and the REGULATORY AGENCY, with a view to ensuring the advisory participation of the holders in decisions concerning the implementation of the AGREEMENT, in accordance with ANNEX XVI – BOARD OF HOLDERS and the clauses hereof.

1.1.19. WATER SUPPLY SYSTEM BOARD: body composed by representatives of each of the CONCESSIONARIES of each of the BLOCKS that compose the regionalized sanitation system in the STATE, of the RIO METROPOLE INSTITUTE, of CEDAE, of the STATE and of the REGULATORY AGENCY, whose attribution will be to foster the liaison and interaction between all the parties that integrate the Water Supply System, with a view to promoting actions and measures that are convenient or necessary to the improvement of this system, as well as to produce decisions, observing the limits established in ANNEX X - WATER SUPPLY SYSTEM RULES;

1.1.20. CENTRAL ACCOUNT: current account held by the CONCESSIONAIRE and exclusively handled by the financial agent, in which all the receivables from the TARIFF REVENUE of the CONCESSIONAIRE are deposited, pursuant to ANNEX XI - DRAFT OF ESCROW ACCOUNT AGREEMENT.

1.1.21. ESCROW ACCOUNT: an account to hold the amounts corresponding to the difference between the TARIFF REVENUE and the income deriving from the EFFECTIVE TARIFFS, after the application of the PERFORMANCE INDICATORS, pursuant to the AGREEMENT and ANNEX XI - DRAFT OF ESCROW ACCOUNT AGREEMENT.

1.1.22. AGREEMENT: this legal instrument and its ANNEXES, entered into between the STATE and the CONCESSIONAIRE, with the intervention and consent of the REGULATORY AGENCY.

1.1.23. MANAGEMENT AGREEMENT: instrument executed between the holders of the water supply and sanitation services and the STATE, the subject matter of which is, in addition to the COOPERATION AGREEMENT, to regulate the transfer of the organization and management of the REGIONALIZED PROVISION of water supply and sanitation services in the urban area of the Municipalities grouped in BLOCKS assigned to the STATE in order to regulate the transfer of regulation, including tariff, and surveillance to the REGULATORY AGENCY, as well as to regulate the authorization of the transfer of the service provision by the STATE to third parties, in accordance with Federal Laws No. 8,666/1993, 8,987/1995, 11,107/2005, 11,445/2007 and 14,026/2020, among other applicable rules.

1.1.24. INTERDEPENDENCE AGREEMENT: legal instrument to be executed between the CONCESSIONAIRE and CEDAE, with the intervention and consent of the REGULATORY AGENCY and the STATE, which provides on the supply of drinking water to the CONCESSIONAIRE.

1.1.25. WATER PRODUCTION AGREEMENT: agreement entered into between the STATE and CEDAE, subject matter of which is the maintenance of water production services provided by CEDAE in the METROPOLITAN REGION, pursuant to art. 10-A, § 2, of Law no. 11,445/2007.

1.1.26. CONTROLLED: any person or investment fund whose CONTROL is exercised by another person or investment fund.

1.1.27. CONTROLLER: any person, investment fund or pension fund entity that exercises CONTROL over another person or investment fund.

1.1.28. CONTROL: power held by a person or group of persons bound by a voting agreement or under common control, whether directly or indirectly, alone or jointly, to: (i) exercise, on a permanent basis, rights that ensure the majority of votes in the corporate decisions and to elect the majority of the officers or managers of another person, investment fund or pension fund entity, as the case may be; or (ii) to effectively direct the corporate activities and guide the operation of the bodies of another person, investment fund or pension fund entity.

1.1.29. COOPERATION AGREEMENTS: instruments that established the JOINT MANAGEMENT of the water supply and sanitation services between the SERVICE contractors and the STATE, with the transfer of the activities of organization and management of the service provision to the STATE, and the activities of regulation and supervision to the REGULATORY AGENCY.

1.1.30. ITB: instrument of invitation and its annexes (International Invitation to Bid no. 01/2020) regulating the terms and conditions of the BIDDING PROCESS.

1.1.31. STATE: State of Rio de Janeiro, representative of the SERVICE holders, pursuant to the JOINT MANAGEMENT instruments, mandated to organize, manage and transfer the provision of water supply and sanitation services in the CONCESSION AREA;

1.1.32. MARGINAL CASH FLOW: projection of the variation in the cash flow performance of the CONCESSIONAIRE, measuring the influence of changes in the activities of operations and investments resulting from a given event on the behavior of the CONCESSIONAIRE's cash flow, in the cases and conditions expressly established in the AGREEMENT.

1.1.33. PERFORMANCE GUARANTEE: guarantee to be provided by the CONCESSIONAIRE in order to guarantee the perfect compliance with the obligations set out in this AGREEMENT, in all its terms, as per clause 17.

1.1.34. JOINT MANAGEMENT: voluntary association between each Municipality of the State of Rio de Janeiro, alone or through the Deliberative Council of the METROPOLITAN REGION of BLOCK [●], with the STATE, in accordance with the COOPERATION AGREEMENTS and MANAGEMENT AGREEMENTS, with the purpose of structuring and organizing the water supply and sanitation services, in an integrated and regionalized manner.

1.1.35. PERFORMANCE INDICATORS: indicators of the quality and availability of the SERVICES listed in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS.

1.1.36. INEA: State Environment Institute, responsible for granting the use of water resources for water abstraction and for the final outlet of sanitary sewage.

1.1.37. RIO METRÓPOLE INSTITUTE: an independent governmental agency competent to carry out the decisions of the Deliberative Council of the METROPOLITAN REGION, pursuant to the State Complementary Law no. 184/2018.

1.1.38. INVENTORY OF REVERSIBLE ASSETS: permanently updated report, proposed by the CONCESSIONAIRE, containing the list of the REVERSIBLE ASSETS, with their descriptions and minimum information, pursuant to the AGREEMENT.

1.1.39. BIDDING PROCESS: International Competitive Bid no. 01/2020, object of the ITB, which aimed to select the bid most advantageous to the STATE, in view of granting the CONCESSION object of this AGREEMENT.

1.1.40. DEVELOPMENTS: enterprises whose developers must obtain approvals from the public authorities for carrying out allotments and divisions of real estate, also undertaking responsibility for the implementation of sanitation infrastructure in the relevant real estate, in accordance with the legislation and this AGREEMENT.

1.1.41. SERVICE TARGETS: universalization and service targets set for the provision of the



SERVICES as set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS.

1.1.42. MUNICIPALITIES: Municipalities identified in Annex 04 of the ITB.

1.1.43. SYSTEM IMPROVEMENT WORKS: performance of infrastructure and installation works under the responsibility of the CONCESSIONAIRE for the satisfactory provision of the SERVICES, in the water and sanitation systems, in accordance with ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS of this AGREEMENT.

1.1.44. ASSISTED OPERATION OF THE SYSTEM: period of 180 (one hundred and eighty) days, as from the execution of the AGREEMENT, which may be extended for another 90 (ninety) days by mutual agreement between the PARTIES, during which the CONCESSIONAIRE shall intensively monitor the activities related to the OPERATION OF THE SYSTEM, with CEDAE, for all intents and purposes, directly liable for the OPERATION OF THE SYSTEM and recipient of the revenues from such operation.

1.1.45. OPERATION OF THE SYSTEM: comprises the set of operational actions to be developed and performed by the CONCESSIONAIRE, after the issuance of the CERTIFICATE OF SYSTEM TRANSFER, for the provision of the SERVICES to the USERS of the SYSTEM, following the parameters and conditions provided for in the AGREEMENT and its ANNEXES.

1.1.46. FIXED CONCESSION FEE: payment made by the CONCESSIONAIRE to the STATE, as a condition precedent for the exploitation of the CONCESSION, the values of which shall be shared by the STATE with the MUNICIPALITIES and the Metropolitan Region Development Fund, in accordance with the ITB, the JOINT MANAGEMENT documents and clause 36 of this AGREEMENT.

1.1.47. VARIABLE CONCESSION FEE: monthly payment to be made by the CONCESSIONAIRE to the MUNICIPALITIES and to the Metropolitan Region Development Fund, corresponding to a percentage of the TARIFF REVENUE originating from the TARIFF payments by the USERS located in their territories.

1.1.48. PARTIES: the STATE and the CONCESSIONAIRE, who execute the present AGREEMENT.

1.1.49. ACTION PLAN: plan to be proposed by the CONCESSIONAIRE, with a 05 (five) year term, with the purpose of describing and detailing the realization of the investments planned for the NON-URBANIZED IRREGULAR AREAS.

1.1.50. TRANSITION PLAN: all measures to be taken by the STATE and especially by the CONCESSIONAIRE, so that the return of the SYSTEM to the STATE may be carried out in compliance with the conditions set forth in this AGREEMENT and without any prejudice to the continuity of the provision of the SERVICES.

1.1.51. METROPOLITAN WATER AND SANITATION PLAN: planning instrument approved by the METROPOLITAN REGION, containing provisions and information related to the water and sanitation services, pursuant to Article 17 §1 of Federal Law No. 11,445/2007.

1.1.52. MUNICIPAL WATER AND SANITATION PLAN: planning instrument approved by the holder of the service, containing provisions and information related to the water and sanitation services, in line with Article 17 §1 of Federal Law No. 11,445/2007.

1.1.53. REGIONALIZED PROVISION: performance of the SERVICES by the CONCESSIONAIRE in the MUNICIPALITIES of BLOCK [●], with a view to generating gains of scale and ensuring the universalization and technical and economic-financial feasibility of the SERVICES.

1.1.54. WATER PRODUCTION: integrated activities that include all the services to be provided by CEDAE by virtue of the WATER PRODUCTION AGREEMENT and the INTERDEPENDENCE AGREEMENT comprising the reservoir, abstraction, supply and treatment of raw water in the Imunama, Laranjal, Guandu and Acari river basins;

1.1.55. BID: bid submitted by the winning bidder, within the BIDDING PROCESS, as set forth in ANNEX II of the AGREEMENT - BID.

1.1.56. ADDITIONAL REVENUE: any and all alternative, complementary and accessory revenue that may be directly or indirectly received by the CONCESSIONAIRE as a result of the exploitation of an associated project or the rendering of services additional to the SERVICES, pursuant to article 11 of Federal Law 8.987/95 and article 10-A, II of Federal Law 11.556/2007, upon prior and express authorization of the STATE.

1.1.57. EXPLOITATION REVENUE: revenue earned by the CONCESSIONAIRE as a result of the collection of the TARIFFS for the provision of the SERVICES to the USERS of the SYSTEM, plus the ADDITIONAL REVENUE and the revenue resulting from the provision of SUPPLEMENTARY SERVICES.

1.1.58. TARIFF REVENUE: amount collected by the CONCESSIONAIRE as a result of the payment of the TARIFFS by the USERS of the SYSTEM for the provision of the SERVICES.

1.1.59. METROPOLITAN AREA: the Metropolitan Region of Rio de Janeiro, a regional unit established by State Complementary Law no. 184/2018, composed by the State of Rio de Janeiro together with the Municipalities of Rio de Janeiro, Belford Roxo, Cachoeiras de Macacu, Duque de Caxias, Guapimirim, Itaboraí, Itaguaí, Japeri, Magé, Maricá, Mesquita, Nilópolis, Niterói, Nova Iguaçu, Paracambi, Petrópolis, Queimados, Rio Bonito, São Gonçalo, São João de Meriti, Seropédica and Tanguá, with a view to the organization, planning and performance of public duties and services of metropolitan or common interest.

1.1.60. WATER SUPPLY SYSTEM RULES: Annex X of the AGREEMENT that establishes the rules on the operation of the Water Supply System (WSS) related to the regionalized provision of water supply services of the STATE, with a view to outlining the responsibilities and attributions among all the members of the WSS and to defining the governance structure for its relationship.

1.1.61. SURETY COMPANY: Brazilian or foreign surety company authorized to operate in Brazil.

1.1.62. SERVICES: integrated activities that comprise all the services to be provided by the CONCESSIONAIRE, namely:

(I) drinking water supply: public service covering the activities, infrastructure and facilities required for the public supply of drinking water, from abstraction to service connections and the respective measuring instruments;

(II) sanitation: public service that covers the activities of collection, transportation, treatment and final disposal of the treated sewage, from the service connections to its final discharge in the environment.

1.1.63. SUPPLEMENTARY SERVICES: services' auxiliary, supplementary and correlated services, to be provided by the CONCESSIONAIRE and under the regulation of the REGULATORY AGENCY, in accordance with ANNEX VII - TARIFF STRUCTURE AND SUPPLEMENTARY SERVICES;

1.1.64. SYSTEM: the set of infrastructures related to the provision of the SERVICES, such as networks, connections, water lifting stations, sewage lifting stations, sewage treatment stations, manholes, interceptors, outlets, trunk collectors, among other structures necessary for rendering the SERVICES, in the CONCESSION AREA established in ANNEX 04 of the ITB.

1.1.65. TARIFF(S): the monetary values due by the USERS to the CONCESSIONAIRE, for the provision of the SERVICES, in accordance with the tariff structure of the concession, as set out in ANNEX VII - TARIFF STRUCTURE AND SUPPLEMENTARY SERVICES, which shall be adjusted annually and reviewed, as the case may be, as regulated in this AGREEMENT.

1.1.66. EFFECTIVE TARIFF(S): the actual amounts due to the CONCESSIONAIRE, in consideration of the provision of the SERVICES, taking into account any deductions arising from non-compliance with the PERFORMANCE INDICATORS, as set forth in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS.

1.1.67. TERMS OF REVERSION OF THE SYSTEM: formal document of acceptance and receipt of the SYSTEM by the STATE, as representative of the holders of the SERVICES, after the transfer of the REVERSIBLE ASSETS.

1.1.68. CERTIFICATE OF SYSTEM TRANSFER: document whereby the STATE, as representative of the holders of the SERVICES, at the end of the period of ASSISTED OPERATION OF THE SYSTEM, transfers to the CONCESSIONAIRE the responsibility for the OPERATION OF THE SYSTEM, enabling it to provide all the SERVICES in accordance with this AGREEMENT.

1.1.69. USERS: natural and legal persons, within the classifications and categories provided for in ANNEX VII - TARIFF STRUCTURE AND SUPPLEMENTARY SERVICES, who will be the recipients of the SERVICES provided by the CONCESSIONAIRE in BLOCK [●], upon payment of the TARIFF.

1.1.70. INDEPENDENT VERIFIER: legal entity of private law, with technical knowledge on services and activities similar to those performed by the CONCESSIONAIRE, pursuant to ANNEX V - PROVISIONS FOR HIRING INDEPENDENT VERIFIER AND CERTIFIER, with the attribution of surveying information and performing acts to support the supervision of the AGREEMENT, notably concerning the compliance with the PERFORMANCE INDICATORS, set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS and that proves complete independence and impartiality towards the PARTIES, the absence of any contract with the CONCESSIONAIRE or any companies of its economic group, as well as with the CEDAE.

1.2. The acronyms, terms and expressions listed in the singular include the plural and vice versa.

## **2. APPLICABLE LAW AND LEGAL REGIME OF THE AGREEMENT**

2.1. The AGREEMENT is subject to the laws of Brazil, with express waiver of the application of any other, as well as the general rules of Public Law.

2.2. Without prejudice to the other applicable constitutional, legal and regulatory provisions, the following rules in particular shall apply:

- 2.2.1. Federal Constitution;
- 2.2.2. Federal Law No. 6404, of December 15, 1976;
- 2.2.3. Federal Law no. 8.987, of February 13, 1995;
- 2.2.4. Federal Law no. 9.074, of July 7, 1995;
- 2.2.5. Federal Law No. 9,307, of September 23, 1996;
- 2.2.6. Federal Law no. 8.666, of June 21, 1993;
- 2.2.7. Federal Law no. 11.445, of January 5, 2007;
- 2.2.8. Federal Law no. 13.089, of January 12, 2015;
- 2.2.9. Federal Law no. 13.460, 26 of June, 2017;
- 2.2.10. State Law no. 4,556, June 6, 2005;
- 2.2.11. Federal Law no. 13.140, June 26, 2015; and
- 2.2.12. Federal Law no. 14.026, of July 15, 2020.

2.3. References to the rules applicable to CONCESSION shall also be construed as references to the legislation that might replace or amend them, in whole or in part.

2.4. This AGREEMENT is governed by its provisions and the precepts of Public Law, in addition to the specifically applicable principles of the General Theory of Contracts and the provisions of Private Law.

2.5. The legal regime of this AGREEMENT, together with the transactions related to it, grants the STATE the prerogative of:

- 2.5.1. amending it unilaterally, for a better adjustment to the purposes of public interest, in accordance with the provisions of this AGREEMENT and the legislation, always ensuring the maintenance of the economic-financial balance of the AGREEMENT;
- 2.5.2. terminating it, if necessary, in compliance with the provisions of this AGREEMENT and legislation;
- 2.5.3. supervise, through the REGULATORY AGENCY, the performance of the AGREEMENT, in accordance with this instrument and the legislation; and
- 2.5.4. to take over, intervene and decree the forfeiture, respecting the provisions of this AGREEMENT and the legislation.

2.6. In view of the existence of legal transactions linked to this AGREEMENT, the

interpretation of its content must be construed in accordance with the legal instruments listed in sub-clause 2.7.

2.7. The following are the legal transactions related to this agreement, without prejudice to any other transaction:

2.7.1. Addenda of Termination of existing links between CEDAE and the municipalities of the State of Rio de Janeiro;

2.7.2. COOPERATION AGREEMENTS entered into between the contractors and STATE, with the intervention of the REGULATORY AGENCY;

2.7.3. MANAGEMENT AGREEMENTS and respective ANNEXES executed between the holders and the STATE, with the intervening consent of the REGULATORY AGENCY;

2.7.4. WATER PRODUCTION AGREEMENT and respective ANNEXES.

### **3. INTERPRETATION**

3.1. In case of conflicts between the rules provided for in legislation, in the instruments listed in sub-clause 2.7, in the ITB, in this AGREEMENT and its ANNEXES, the following order shall prevail:

3.1.1. firstly, the provisions set forth in the current legal, regulatory and technical norms, except for the legal norms of private law;

3.1.2. secondly, the provisions of this AGREEMENT and its ANNEXES that have greater relevance in the matter in question, with the provisions of the AGREEMENT prevailing over those of its ANNEXES;

3.1.3. thirdly, the provisions set out in the ITB and its Annexes, the provisions of the ITB prevailing over those of its Annexes;

3.1.4. in fourth place, the provisions set out in the BID of the winning bidder, provided they are in accordance with the rules of the ITB;

3.1.5. in fifth place, the provisions of the WATER PRODUCTION AGREEMENT, with the provisions of the WATER PRODUCTION AGREEMENT prevailing over those of its annexes;

3.1.6. in sixth place, the provisions of the MANAGEMENT AGREEMENTS for the regionalized provision of services, with the provisions of the MANAGEMENT AGREEMENTS prevailing over those of its annexes;

3.1.7. in seventh place, the provisions set out in the Addenda of Termination of the existing links between CEDAE and the Municipalities of the State of Rio de Janeiro; and

3.1.8. in eighth place, the provisions established in the COOPERATION AGREEMENTS.

3.2. Any questions arising from the application of this agreement, as well as cases of silence, shall be resolved by the REGULATORY AGENCY, observing the applicable legislation.

#### **4. ANNEXES**

4.1. The following Annexes are an integral part of this AGREEMENT, for all legal intents and purposes:

ANNEX I - ITB, ANNEXES AND CLARIFICATIONS

ANNEX II - BID / BUSINESS PROPOSAL

ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS

ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS

ANNEX V - PROVISIONS FOR HIRING INDEPENDENT VERIFIER AND CERTIFIER

ANNEX VI - INTERDEPENDENCE AGREEMENT

ANNEX VII - TARIFF STRUCTURE AND SUPPLEMENTARY SERVICES

ANNEX VIII - PROVISIONS FOR PERFORMANCE GUARANTEES

ANNEX IX - BOARD OF HOLDERS

ANNEX X - WATER SUPPLY SYSTEM RULES

ANNEX XI - DRAFT OF ESCROW ACCOUNT AGREEMENT

ANNEX XII - MONITORING COMMITTEE

ANNEX XIII - GUIDELINES FOR THE PREPARATION OF CASH FLOWS FOR THE PURPOSE OF ECONOMIC-FINANCIAL REBALANCING

ANNEX XIV - TECHNICAL AND ECONOMIC FEASIBILITY REFERENCE STUDY - TEFS.

ANNEX XV - PRE-EXISTING INTERDEPENDENCE AGREEMENTS

#### **5. PURPOSE OF THE CONCESSION**

5.1. The object of the CONCESSION is the REGIONALIZED PROVISION of the SERVICES by the CONCESSIONAIRE, with exclusivity, in the CONCESSION AREA relating to BLOCK [●], through the exploitation of the infrastructures integrating the SYSTEM, in accordance with the description, characteristics and technical specifications detailed in this AGREEMENT and its ANNEXES.

5.2. The CONCESSIONAIRE represents to be aware of the pre-existing concessions of water supply and/or sanitation services that are in force and precede the execution of the AGREEMENT, the object of which is the provision of such services within the urban areas of the MUNICIPALITIES, even if not inside the CONCESSION AREA, and which shall not be amended as a result of the CONCESSION and the AGREEMENT.

5.3. The CONCESSIONAIRE undertakes to respect the operation of the concessions in force and pre-existing at the time of execution of the AGREEMENT, referred to in subclause 5.2, and undertakes to comply, in relation to those that have a relationship of interdependence with it

and in what is applicable to it, with the obligations set out in ANNEX IV – CONCESSION TECHNICAL SPECIFICATIONS and in ANNEX XV - PRE-EXISTING INTERDEPENDENCE AGREEMENTS.

5.4. The CONCESSIONAIRE undertakes to comply with the obligations inherent to the interdependence agreement entered into by CEDAE and the contractors, as per ANNEX XV – PRE-EXISTING INTERDEPENDENCE AGREEMENTS, as successor and assignee of all the rights and obligations acquired and assumed by CEDAE in the scope of said agreements.

5.5. At the end of the pre-existing concession agreements mentioned in Sub-Clause 33.4, the STATE, after favorable statement by the METROPOLITAN REGION, may, subject to the conditions and procedures for amendment of the AGREEMENT, including the need to maintain the economic-financial balance of the AGREEMENT, decide to include such public services in the object of the AGREEMENT, extending the CONCESSION AREA.

## **6. ESTIMATED AGREEMENT VALUE**

6.1. The value of the present AGREEMENT, to all legal intents and purposes, is of R\$ [●] ([●]), corresponding to the present value of the sum of the revenues of TARIFFS estimated for the entire term of the AGREEMENT, which shall be readjusted based on the same rates applied in the readjustment of the TARIFFS.

6.2. The value set out in this Clause has a merely illustrative purpose and cannot be used by any of the PARTIES to claim the economic-financial rebalance of this AGREEMENT.

## **7. TERM OF THE CONCESSION**

7.1. The term of this AGREEMENT includes the sum of the period of ASSISTED OPERATION OF THE SYSTEM and the period of 35 (thirty-five) years of OPERATION OF THE SYSTEM, which starts upon the issuance of the CERTIFICATE OF SYSTEM TRANSFER.

7.2. The term of effectiveness of this AGREEMENT, provided for in sub-clause 7.1, may only be extended maintaining a direct link with the reason that justifies it and verifying, in each case, if the original subject matter of the AGREEMENT was not distorted, and the discretionary extension of the concession shall be prohibited.

## **8. ASSISTED OPERATION OF THE SYSTEM**

8.1. On the date of execution of the AGREEMENT, the STATE and the CONCESSIONAIRE shall begin the period of ASSISTED OPERATION OF THE SYSTEM, with expected duration of up to 180 (one hundred and eighty) days.

8.2. The STATE shall be responsible, during the period of ASSISTED OPERATION OF THE SYSTEM, for the appropriate provision of information by CEDAE in order to guarantee the flow of information necessary for the CONCESSIONAIRE to start the OPERATION OF THE SYSTEM.

8.3. During the period of ASSISTED OPERATION OF THE SYSTEM, CEDAE shall be considered, to all intents and purposes, fully responsible for the provision of the SERVICES, and the CONCESSIONAIRE shall be responsible for monitoring the activities related to the OPERATION OF THE SYSTEM, and shall mobilize, to this end, its own resources, in terms of personnel, material, hiring and developing *software*, among other items necessary for the monitoring and transition of the activities performed by CEDAE.

8.3.1. The CONCESSIONAIRE shall be fully liable for correctly sizing the necessary resources for monitoring the activities related to the ASSISTED OPERATION OF THE SYSTEM.

8.4. Within 7 (seven) working days after the execution of the AGREEMENT, a TRANSITION COMMITTEE shall be constituted, according to the criteria established in sub-clause 51.2.

8.4.1. The role of the TRANSITION COMMITTEE shall be to facilitate the liaison and interaction between the STATE, CEDAE, the REGULATORY AGENCY and the CONCESSIONAIRE's teams, enabling the exchange of information on the essential aspects for the transition of the SERVICES.

8.5. During the period of ASSISTED OPERATION OF THE SYSTEM, the STATE undertakes to ensure, in accordance with clause 8 of the WATER PRODUCTION AGREEMENT, the compliance with the following obligations by CEDAE:

8.5.1. Granting the CONCESSIONAIRE free access to the necessary information on the SYSTEM and all the SERVICES including, but not limited to:

8.5.1.1. Records of the provision of the SERVICES and any other activities, in relation to the last 5 (five) years;

8.5.1.2. Technical files, registries, plans, designs and other documents and information concerning the facilities integrating the existing system that will be operated by the CONCESSIONAIRE;

8.5.1.3. Environmental licenses in force and other documents relating to compliance with environmental legislation, including procedures for any environmental licensing in progress;

8.5.1.4. Real estate registrations of the REVERSIBLE ASSETS.

8.5.2. To make available, to the CONCESSIONAIRE, any other relevant information for the adoption and planning of the necessary arrangements for the satisfactory transfer of the existing SYSTEM and all the SERVICES;

8.5.3. Granting the CONCESSIONAIRE free and unfettered access to the assets of the existing SYSTEM.

8.5.4. Granting the CONCESSIONAIRE, during the period of ASSISTED OPERATION OF THE SYSTEM and for a period up to 90 (ninety) days after the end of the ASSISTED OPERATION OF THE SYSTEM, free access to any and all information, complete and unabridged, relating to the registration data, commercial management, database, billing, measurement, issue, cut, reconnection, default, receipt and control systems of the SERVICES and any other services provided by CEDAE in the CONCESSION AREA, through the provision of passwords, source codes and other access permissions to the CONCESSIONAIRE employees assigned for such purpose, as well as at least one specific terminal for access to the commercial management system at the headquarters of CONCESSIONAIRE.

8.5.5. Providing, to the CONCESSIONAIRE, at the CEDAE headquarters building, physical



infrastructure for the CONCESSIONAIRE teams, in charge of the transition of the SERVICES, to carry out the necessary activities for the assumption of the SERVICES.

8.5.6. To provide information concerning its obligations under the existing interdependence agreements that will be assumed by the CONCESSIONAIRE.

8.6. The non-compliance with the obligations provided for in sub-clause 8.5, as well as the materialization, during the ASSISTED OPERATION OF THE SYSTEM, of the risks under the responsibility of the STATE, in accordance with sub-clause 34.4, shall result in the economic-financial rebalancing of this agreement in favor of the CONCESSIONAIRE for any duly evidenced losses.

8.6.1. The disputes between the PARTIES regarding the period of ASSISTED OPERATION OF THE SYSTEM, including those related to the charges and rights provided for in sub-clause 8.5, shall be settled by the REGULATORY AGENCY, upon request of the interested PARTY.

8.7. During the period of ASSISTED OPERATION OF THE SYSTEM, CEDAE shall remain liable for the performance of all SERVICES, including the operation and maintenance of the entire existing SYSTEM, and the corresponding revenue until the end of this period of ASSISTED OPERATION OF THE SYSTEM shall be due exclusively to the CEDAE, who shall be responsible for billing and collection under the terms of this AGREEMENT; the CONCESSIONAIRE, in turn, shall be entitled to the revenues relating to the SERVICES provided as from the first day of OPERATION OF THE SYSTEM.

8.8. The STATE, during the period of ASSISTED OPERATION OF THE SYSTEM, shall be responsible for taking the appropriate steps with CEDAE for the preservation of the REVERSIBLE ASSETS that are part of the SYSTEM, being responsible for its maintenance, protection against acts of vandalism and for its transfer to the CONCESSIONAIRE under use and operation conditions similar to those at the time of submission of the BID in the BIDDING PROCESS.

8.9. At the end of the period of ASSISTED OPERATION OF THE SYSTEM and upon compliance with the previous obligations, CEDAE and the PARTIES shall execute the CERTIFICATE OF SYSTEM TRANSFER, through which the OPERATION OF THE SYSTEM shall be transferred to the CONCESSIONAIRE.

8.10. After the formalization of the CERTIFICATE OF SYSTEM TRANSFER, the CONCESSIONAIRE shall become responsible for the provision of the SERVICES and have the ownership of the assets transferred, until the extinguishment of the CONCESSION, undertaking all the obligations and being entitled to the set of rights provided for in the AGREEMENT, including regarding the receipt of the corresponding revenues.

8.11. In the event of mutual agreement between the PARTIES, the period of ASSISTED OPERATION OF THE SYSTEM may be brought forward with the execution of the CERTIFICATE OF SYSTEM TRANSFER, and the CONCESSIONAIRE assuming the full and complete operation of the SYSTEM, pursuant to subclause 8.10.

8.11.1. The early closure of the period of ASSISTED OPERATION OF THE SYSTEM shall not give rise to any claim for economic-financial rebalancing, nor shall it affect the original term of 35 (thirty-five) years of OPERATION OF THE SYSTEM established in sub-clause 7.1.

8.12. The CONCESSIONAIRE may request, justifiably, the REGULATORY AGENCY, up to 30 (thirty)

days prior to the end date of the ASSISTED OPERATION OF THE SYSTEM, the extension of the period of ASSISTED OPERATION OF THE SYSTEM, and only once, for up to 90 (ninety) days, in the following cases:

- 8.12.1. Failure to comply with the obligations set forth in the sub-clause 8.5 of this AGREEMENT, which makes it impossible or burdens the assumption of the SYSTEM in the original deadline; or
  - 8.12.2. Occurrence of fact whose responsibility is attributed to the STATE by virtue of the law or the allocation of risks provided for in the sub-clause 34.4 of this AGREEMENT.
- 8.13. The postponement of the period of OPERATION ASSISTED OF THE SYSTEM shall not matter in amendment to the period of 35 (thirty-five) years of OPERATION OF THE SYSTEM established in the sub-clause 7.1.
- 8.14. In the event the extension of the ASSISTED OPERATION OF THE SYSTEM ends, pursuant to sub-clause 8.12, without the the resolution of the hindrances to the start of the OPERATION OF THE SYSTEM, the CONCESSIONAIRE may terminate the AGREEMENT, pursuant to the Clause 43.1 and art. 39 of Federal Law 8,987/1995.

## **9. INVENTORY OF REVERSIBLE ASSETS OF THE CONCESSION**

- 9.1. From the start of the ASSISTED OPERATION OF THE SYSTEM, the CONCESSIONAIRE shall prepare, at its own expense, the INVENTORY OF REVERSIBLE ASSETS, where it shall list in detail all the assets whose safekeeping and operation will be transferred to the CONCESSIONAIRE, describing its features and state of conservation.
- 9.1.1. The CONCESSIONAIRE, at its discretion and expenses, may hire a specialized company to carry out the INVENTORY OF REVERSIBLE ASSETS.
- 9.2. The STATE and CEDAE shall participate in the preparation of the INVENTORY OF REVERSIBLE ASSETS providing any information and clarifications requested by the CONCESSIONAIRE.
- 9.2.1. The REGULATORY AGENCY shall follow up on the preparation of the INVENTORY OF REVERSIBLE ASSETS, and the CONCESSIONAIRE shall send monthly reports to the REGULATORY AGENCY on the progress of the INVENTORY OF REVERSIBLE ASSETS.
- 9.2.2. The STATE shall ensure, and liaise with CEDAE whenever necessary, the full access of the CONCESSIONAIRE's agents to the information, facilities and equipment integrating the existing SYSTEM for carrying out surveys of the REVERSIBLE ASSETS and preparing the INVENTORY OF REVERSIBLE ASSETS.
- 9.3. The INVENTORY OF REVERSIBLE ASSETS shall cover the real estate, facilities and equipment allocated to the operation of the SERVICES, not including the real estate where CEDAE currently performs merely commercial or administrative activities.
- 9.4. The first version of the INVENTORY OF REVERSIBLE ASSETS must be concluded and sent by the CONCESSIONAIRE to the STATE, CEDAE and the REGULATORY AGENCY within 130 (one hundred and thirty) days as from the execution of the AGREEMENT.

9.4.1 The INVENTORY OF REVERSIBLE ASSETS may contain evaluations and possible reservations regarding the conditions of the REVERSIBLE ASSETS.

9.4.1.1. The STATE shall have the maximum and non-extendable period of 15 (fifteen) days to approve the INVENTORY OF REVERSIBLE ASSETS or to propose, in a technically reasoned manner, changes and adjustments to the survey and/or evaluation of the REVERSIBLE ASSETS, communicating its decision to the CONCESSIONAIRE and the REGULATORY AGENCY within the mentioned deadline.

9.4.1.2. After the STATE communicates its decision to the CONCESSIONAIRE, the CONCESSIONAIRE shall have the maximum and non-extendable period of 15 (fifteen) days to issue a statement, in a technically reasoned manner, on the suggestions for changes or adjustments presented by the STATE, and shall, within this period, resend the INVENTORY OF REVERSIBLE ASSETS, with any changes, to the STATE, with copy to the REGULATORY AGENCY, for approval.

9.4.1.3. Once the INVENTORY OF REVERSIBLE ASSETS is sent by the CONCESSIONAIRE in accordance with sub-clause 9.4.1.2, with any changes and accompanied by the statement by the CONCESSIONAIRE, the STATE shall have the maximum non-extendable deadline of 10 (ten) days for the final approval of the INVENTORY OF REVERSIBLE ASSETS, and in the event of non-approval, it shall communicate, within said deadline, the CONCESSIONAIRE and the REGULATORY AGENCY the reasons that support its decision.

9.4.1.4. Once the REGULATORY AGENCY is notified that the INVENTORY OF REVERSIBLE ASSETS has not been approved, it shall have 10 (ten) days to express its opinion on the any divergences between the PARTIES, deciding on the content of the INVENTORY OF REVERSIBLE ASSETS that shall prevail for the purposes of the CONCESSION.

9.4.1.5. Once the deadline provided for in sub-clause 9.4.1.3 has elapsed, without any statement by the STATE regarding the approval of the INVENTORY OF REVERSIBLE ASSETS, the REGULATORY AGENCY shall state its opinion on the matter, within the period and for the purposes provided for in sub-clause 9.4.1.4.

9.5. The CONCESSIONAIRE may send preliminary drafts of the version of the INVENTORY OF REVERSIBLE ASSETS, throughout the period of SERVICE OPERATION OF THE SYSTEM, with the purpose of bringing forward the analysis by the STATE.

9.6. The final approval of the INVENTORY OF REVERSIBLE ASSETS must occur within a maximum of 180 (one hundred and eighty) days as from the execution of the AGREEMENT.

9.7. The STATE's or the REGULATORY AGENCY's failure to act with respect to the approval of or decision on the INVENTORY OF REVERSIBLE ASSETS or its unjustified non-approval, which delays the start of the OPERATION OF THE SYSTEM or which causes losses to the CONCESSION, may give rise to economic-financial rebalancing of the AGREEMENT in favor of the CONCESSION, provided that the resulting direct losses have been effectively demonstrated and evidenced.

9.8. The CONCESSIONAIRE shall update the INVENTORY OF REVERSIBLE ASSETS throughout the term of the AGREEMENT, sending new versions to the STATE and to the REGULATORY AGENCY, at least annually.

9.9. The CONCESSIONAIRE undertakes to keep, at its own expense, the REVERSIBLE ASSETS in good operational, conservation state and safe during the term of the AGREEMENT.

## **10. LINKED ASSETS**

10.1. The CONCESSION shall be integrated with LINKED ASSETS, thus construed as all facilities, equipment, machinery, apparatus, buildings and accessories allocated to the provision of the SERVICES.

10.2. All the assets described in the INVENTORY OF LINKED ASSETS, including facilities, equipment, machinery, equipment, buildings and accessories that integrate the SYSTEM that are essential and indispensable to the provision of the SERVICES, which shall be transferred by the holders, through the STATE and/or CEDAE, as well as any other assets that are essential and indispensable to the provision of the SERVICES that might be acquired and/or built by the CONCESSIONAIRE, and that will revert to the holders, through the STATE, when the AGREEMENT is extinguished.

10.3. The commercial and administrative premises of the CONCESSIONAIRE, such as offices, stores, warehouses and equipment yards, shall be deemed PRIVATE ASSETS, except for those that provenly affect the provision of the SERVICES and that are listed in the INVENTORY OF REVERSIBLE ASSETS.

10.3.1. The PRIVATE ASSETS which are not directly related to the performance of the AGREEMENT and, therefore, are not considered essential to the rendering of the SERVICES, may be encumbered, given as collateral or freely disposed of.

10.4. The CONCESSIONAIRE undertakes to maintain the LINKED ASSETS in good operational, conservation state and safe, at its own expense, carrying out the repairs, renewals, adaptations and maintenance necessary for the good performance and the updating of the SERVICES, in accordance with the terms provided for in this AGREEMENT.

10.5. The structures, facilities, assets and equipment resulting from the investments made during the term of the CONCESSION shall be incorporated into the SYSTEM and shall be operated by the CONCESSIONAIRE under the conditions provided for in this AGREEMENT.

10.5.1. After the performance of each of the works necessary for the provision of the SERVICE, the resulting buildings, structures and facilities shall be incorporated into the SYSTEM, including for purposes of reversal, and shall be operated by the CONCESSIONAIRE under the conditions provided for in this AGREEMENT.

10.6. The CONCESSIONAIRE may only decommission and/or dispose of movable assets and equipment that are no longer necessary for the OPERATION OF THE SYSTEM, and it shall be incumbent upon it to immediately replace them with other of similar operational and operating conditions, with previous authorization by the REGULATORY AGENCY.

10.7. The public assets that are part of the REVERSIBLE ASSETS may not be recorded or offered as collateral for loan operations carried out by the CONCESSIONAIRE, under penalty of forfeiture of the CONCESSION.

10.8. The facilities of REVERSIBLE ASSETS that are deactivated by the CONCESSIONAIRE

will be reverted to the holders of the SERVICES through the STATE, which, as a representative of the holders of the SERVICES, shall take the necessary steps, on behalf of the holders, to ensure the continuity of the provision of the public service, by means of REVERSAL AGREEMENT.

10.9. Except in the event of the occurrence of risks for which the STATE is assigned liability by law or sub-clause 34.4, all costs relating to the decommissioning of installations shall be borne by the CONCESSIONAIRE, including the environmental matters, not including any costs of demolition works or any form of reassignment of the facilities for use by the STATE.

## **11. NON-URBANIZED IRREGULAR AREAS**

11.1. The CONCESSIONAIRE shall be responsible for providing the SERVICES throughout the CONCESSION AREA of BLOCK [●], including slum areas and subnormal agglomerations.

11.2. The investment in NON-URBANIZED IRREGULAR AREAS must comply with the provisions of ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS.

11.2.1. NON-URBANIZED IRREGULAR AREAS are those identified by the Pereira Passos Urbanism Institute, through SABREN - Low Income Settlements System, as slums and subnormal agglomeration areas, classified as non-urbanized or partially urbanized.

11.2.2. In the other areas of slums and subnormal agglomerations existing in the MUNICIPALITIES that make up the BLOCK [●], the investments to be made for implementation and expansion of the water supply and sewage collection system shall comply with the provisions of clause 13 of this AGREEMENT and be accounted for purposes of universalization targets.

## **12. DRY WEATHER COLLECTOR**

12.1. For making investments in the sanitation services through the construction method of dry weather collectors in the first 5 (five) years of the CONCESSION, according to ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS, the CONCESSIONAIRE shall comply with the following:

12.1.1. The obligation provided for in the clause 12.1 shall be observed only for the MUNICIPALITIES listed in ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS;

12.1.2. In those MUNICIPALITIES where the CONCESSIONAIRE undertakes to make investments in dry weather collector, the obligation of extension of the sanitation system in its territory shall only start after a period of 5 (five) years of the AGREEMENT.

12.2. The planning, implementation and monitoring of investments in dry weather collectors must comply with the provisions of ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS.

## **13. SYSTEM IMPROVEMENT WORKS**

13.1. The CONCESSIONAIRE shall perform the SYSTEM IMPROVEMENT WORKS in accordance with the applicable technical standards and in accordance with the studies and designs to be prepared under its exclusive responsibility, however it deems most efficient.

13.2. In the performance of the SYSTEM IMPROVEMENT WORKS and in the realization of investments, the CONCESSIONAIRE shall be responsible for achieving the targets and other

provisions of this AGREEMENT, in line with the norms issued by the specialized technical bodies, including those specifically agreed by it with international organizations, also complying with all the Brazilian specifications and technical norms that assure the integral soundness of the works under its responsibility.

13.3. The CONCESSIONAIRE shall be responsible for obtaining in a timely manner all the necessary permits for the performance of the SYSTEM IMPROVEMENT WORKS, including those issued by environmental bodies and entities.

13.4. In order to carry out the works necessary to comply with the object of this AGREEMENT, the PARTIES shall make their best efforts in order to avoid or minimize the any shut down of the SYSTEM, as well as to minimize the period of interventions that affect urban mobility, aiming at a swift recovery of the roads.

13.5. The implementation of the SYSTEM IMPROVEMENT WORKS may be developed in stages, in view of the evolution of the demand due to the population growth, provided there is compliance with the PERFORMANCE INDICATORS, as set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS.

13.6. The CONCESSIONAIRE shall send to the STATE, with a copy to the REGULATORY AGENCY, the schedule for the performance of the SYSTEM IMPROVEMENT WORKS, which shall detail the interventions planned for each one of the MUNICIPALITIES.

13.6.1. It is the responsibility of the STATE to inform the MUNICIPALITIES about the interventions planned by the CONCESSIONAIRE.

13.6.2. Without prejudice to the subclause above, the CONCESSIONAIRE shall make available on its website the schedule of planned interventions at least 30 (thirty) days in advance.

13.6.3. The performance schedule of the SYSTEM IMPROVEMENT WORKS shall not be binding on the CONCESSIONAIRE, and shall be regularly updated by it throughout the CONCESSION, provided there is compliance with the PERFORMANCE INDICATORS, as listed in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS;

13.6.4. The implementation schedule of the SYSTEM IMPROVEMENT WORKS shall be submitted to the STATE within 180 (one hundred and eighty days) after the start of the OPERATION OF THE SYSTEM and shall detail the planned investments for a period of at least 5 (five) years, also providing any updates on the progress of the SYSTEM IMPROVEMENT WORKS already started;

13.7. On the occasion of each ORDINARY REVIEW, the CONCESSIONAIRE shall update the execution schedule of the SYSTEM IMPROVEMENT WORKS;

13.8. The STATE or the REGULATORY AGENCY may request at any time an updated copy of the implementation schedule of the SYSTEM IMPROVEMENT WORKS.

13.9. The CONCESSIONAIRE shall submit to the STATE, with a copy to the REGULATORY AGENCY, within three months of the conclusion of each of the SYSTEM IMPROVEMENT WORKS, 3 (three) full copies of the definitive written and design ("*as built*" designs) works related to the SYSTEM IMPROVEMENT WORKS performed, in electronic media and hard copies that allow its reproduction in accordance with the applicable technical standards.

13.10. The CONCESSIONAIRE may adopt individual solutions for specific conditions, within the CONCESSION AREA, for a single USER or for a group of USERS located in areas where traditional sanitation systems are not feasible, as long as the measure is previously justified, and undertaking responsibility for its operation and maintenance.

13.11. The CONCESSIONAIRE can only perform the connection of the branch to the sewage collection system if the network is connected to a sewage transport system to the Sewage Treatment Station that serves it. All branch connection works must be informed to the REGULATORY AGENCY.

13.12. For the preparation of executive designs and other studies of the SYSTEM IMPROVEMENT WORKS, the CONCESSIONAIRE shall take into consideration the provisions of the ITB, the data contained in ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS, as well as the schedule and other information contained in the PROPOSALS.

13.13. At least 60 (sixty) days before the start of the works, the CONCESSIONAIRE shall submit to the STATE, with a copy to the REGULATORY AGENCY, the executive designs and other studies, for its information, and the latter may request, within a maximum period of 60 (sixty) days, the review of its content or some parts thereof whenever there is a technical error or disregard for the provisions of the ITB, the AGREEMENT and its ANNEXES.

13.14. Failure by the STATE to request a review of the content of the executive designs, in accordance with sub-clause 13.13, shall imply its tacit consent to the design submitted, which shall not exempt the CONCESSIONAIRE from liability for any errors or technical defects that may be verified in the designs and in the respective works performed.

13.14.1. The act of tacit consent shall be immediately submitted to the higher level of the STATE responsible for reviewing the content of the executive designs, for evaluation of the consent.

13.15. The executive designs referred to in sub-clause 13.13 shall be required for works with a value greater than or equal to R\$ 200,000,000.00 (two hundred million BRL).

13.16. Any change in the form of performing the SYSTEM IMPROVEMENT WORKS or in the schedule of investments and works of the CONCESSIONAIRE, due to external interference, such as change in the METROPOLITAN WATER AND SANITATION PLAN or MUNICIPAL WATER AND SANITATION PLANS, a request by the REGULATORY AGENCY, the MUNICIPALITY, the RIO METROPOLE INSTITUTE or the STATE, among others, which may cause economic-financial imbalance of the AGREEMENT, shall be evidenced by the CONCESSIONAIRE and follow the procedure provided for in Clause 35.

13.17. The CONCESSIONAIRE shall maintain the records of works and services updated in an Order Book, pursuant to Resolution 1.094/2017 of the Federal Council of Engineering and Agronomy - Confea.

13.18. The STATE may, by unilateral amendment of the AGREEMENT, in accordance with clause

33.2.2, incorporate into the SYSTEM the works carried out by the STATE and/or the MUNICIPALITY participating in the REGIONALIZED PROVIDER, upon compliance with the assumptions and requirements provided for in this AGREEMENT and the maintenance of its economic-financial balance.

13.19. In the events provided for in sub-clause 13.18, besides compliance with clause 33, the STATE shall, prior to the amendment of the AGREEMENT:

13.19.1. Ensure and consider the CONCESSIONAIRE's statement regarding the technical compatibility of the works with the SYSTEM, the physical and financial feasibility of the incorporation, any need for renovation, adaptation works or completion of the referred facilities, as well as the economic-financial impacts of the incorporation within the scope of the AGREEMENT; and

13.19.2. Make available to the CONCESSIONAIRE all the technical information necessary for the full description of the proposed incorporation, as well as the documents that may be necessary for its evaluation for the purpose of quantifying the economic-financial rebalancing.

13.19.3. When works executed by the STATE and/or the MUNICIPALITY are incorporated into the SYSTEM, the REGULATORY AGENCY shall promote the rebalancing AGREEMENT within the scope of the ordinary review provided for in clause 30, considering the need to indemnify the public entity that made the investment.

13.20. To comply with sub-clause 13.18, the STATE shall send to the CONCESSIONAIRE, within three months of the conclusion of each of the works managed by it or by the MUNICIPALITY participating in the REGIONALIZED PROVISION, which may be incorporated into the SYSTEM, 3 (three) full copies of the definitive written and drawn designs ("*as built*" drawings), in electronic and printed media that allow their copy in accordance with the applicable technical standards.

#### **14. ALLOTMENT**

14.1. The implementation of the sewerage and water distribution networks and other installations that may be necessary for the proper connection of the respective allotment to the SYSTEM shall not be under the responsibility of the CONCESSION, as provided for in ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS.

14.1.1. The CONCESSIONAIRE shall not be responsible for the investments, of any nature or complexity, necessary to reinforce and/or expand the SYSTEM in order to make possible the connection of ALLOTMENTS into the SYSTEM.

14.2. During the term of this AGREEMENT, the STATE shall ensure the CONCESSIONAIRE's right to analyze and approve in advance, within a maximum period of 180 (one hundred and eighty) days, the engineering designs prepared by the developers with a view to the implementation of the sewage collection and water distribution networks in the ALLOTMENT projects.



- 14.3. The CONCESSIONAIRE shall have the right to supervise the performance of the works.
- 14.4. The sewerage and water distribution systems implemented by the developers, after the technical approval of the CONCESSIONAIRE and the execution of an agreement to assign the facilities to the CONCESSIONAIRE, the networks shall be connected to the SYSTEM and shall assume the status of REVERSIBLE ASSETS, to all intents and purposes, and must be immediately included in the INVENTORY OF REVERSIBLE ASSETS, as provided for in ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS.
- 14.4.1. In case the investments made by developers represent an anticipation of SYSTEM IMPROVEMENT WORKS assigned to the CONCESSIONAIRE, the CONCESSIONAIRE shall be responsible for refunding them, pursuant to sole paragraph of art. 18-A of Federal Law 11,445/2007, and areas in which the traditional sanitation systems are not feasible, according to the regulation norms issued by the REGULATORY AGENCY.
- 14.4.2. In case the allotment is located in areas where the traditional sanitation systems are not feasible, the solutions provided for in sub-clause 13.10 shall be applied, and the CONCESSIONAIRE shall be responsible for informing the REGULATORY AGENCY about the alternative solution adopted.
- 14.5. The CONCESSIONAIRE shall undertake to render the provision of SERVICES in the new ALLOTMENTS, including the connection of USERS to the SYSTEM, and it is the responsibility of the CONCESSIONAIRE to exercise the necessary police power to demand the connection of the USER to the network.
- 14.6. The CONCESSIONAIRE may establish minimum construction standards to be observed by the developers for authorized ALLOTMENTS after the execution of the present AGREEMENT, respecting the municipal norms and jurisdiction on the subject.
- 14.7. If the works performed by the developers do not comply with the applicable legislation and technical standards (including the specifications established at the time of the authorization of the ALLOTMENTS by the MUNICIPALITIES and minimum construction standards issued by the CONCESSIONAIRE), the CONCESSIONAIRE may refuse to connect them to the SYSTEM until the corrections and adaptations required by the CONCESSIONAIRE are performed by the respective DEVELOPER.
- 14.7.1. In case it identifies irregularities, the CONCESSIONAIRE may request, upon a technically substantiated claim, submitted to the appreciation and decision of the REGULATORY AGENCY, the mitigation of the PERFORMANCE INDICATORS and other obligations provided for in this AGREEMENT, until the incorporation of the sewage collection and water distribution networks located in the ALLOTMENTS to the SYSTEM.
- 14.7.2. In the event provided for in sub-clause 14.7.1, the CONCESSIONAIRE, at its discretion, may assume the operation of the collection and distribution networks located in the ALLOTMENTS, being responsible, at its own expense, for making the necessary corrections and for the provision of the SERVICES under this AGREEMENT.
- 14.7.2.1. In this case, the CONCESSIONAIRE may use the sureties and construction guarantees originally hired by the developers, as well as subrogate itself to the position of the STATE and claim the reimbursement of expenses incurred with the adaptation of the assumed collection and distribution networks.

14.8. All the water connections of the ALLOTMENTS must have a water meter.

**15. PROVISIONS APPLICABLE TO THE CONCESSIONAIRE**

15.1. The CONCESSIONAIRE is a limited liability company, with registered office at [●], whose corporate purpose, during the term of the CONCESSION, shall be specific and exclusive to operate the SYSTEM and provide the SERVICES and, additionally, ancillary or associated activities, pursuant to the terms of this AGREEMENT.

15.2. The total or partial transfer of the CONCESSION or direct transfer of the corporate control of the CONCESSIONAIRE, without prior consent of the STATE and any other requirements set forth in legislation, shall entail the forfeiture of the CONCESSION.

15.2.1. The prior consent of the STATE is hereby waived for any amendment to the CONCESSIONAIRE's articles of incorporation, or in its corporate structure, which does not constitute a change in its corporate control or transfer of the CONCESSION.

15.2.2. In order to obtain the consent for total or partial transfer of the CONCESSION or of the corporate control of the CONCESSIONAIRE by the STATE, the party intending to assume the CONCESSION or the corporate control of the CONCESSIONAIRE shall:

15.2.2.1. undertake to comply with all the provisions of this AGREEMENT; and

15.2.2.2. meet the requirements of technical capacity, financial suitability and legal and fiscal good standing strictly necessary for the assumption of the SERVICES and required in accordance with the stage and conditions of the CONCESSION at the time the consent is requested to the STATE, taking into account the investments already made by the CONCESSIONAIRE.

15.3. Upon receipt of the CONCESSIONAIRE's request regarding the assignment of the CONCESSION, or the change in the corporate control, supported by the due documentation and justification, the STATE shall have a period of 30 (thirty) days, as from the receipt of the request, to issue a statement, requesting the additional documents or requesting other information necessary for the analysis of the requirements for granting the consent pursuant to sub-clause 15.2.2.

15.3.1. If the STATE requests that the CONCESSIONAIRE submit new information or additional documents, the STATE shall decide on the request for consent within a maximum period of 10 (ten) days as from the receipt of the additional information and/or documents.

15.4. The STATE shall authorize the transfer of corporate control of the CONCESSIONAIRE to the financial agent with the purpose of promoting the financial reorganization of the CONCESSIONAIRE and ensuring the continuity of the SERVICES (*step in*), pursuant to art. 27-A of Federal Law no. 8.987/95 and observing the procedure set forth in the sub-clauses below:

15.4.1. The request for authorization of transfer of corporate control to the financial institution must be submitted to the STATE, in writing, by the CONCESSIONAIRE or the financial agent, presenting the due justification, as well as elements that may support the analysis of the request, such as copies of minutes of meetings of partners or shareholders of the CONCESSIONAIRE, correspondence, audit reports, financial statements, etc.

15.4.2. The STATE shall examine the request within 15 (fifteen) days, extendable for an equal period if necessary, and may, at its discretion, request additional information and/or documents from the CONCESSIONAIRE and/or the financial agent and call the controlling partners or shareholders of the CONCESSIONAIRE for clarifications.

15.4.3. The authorization for the transfer of control from the CONCESSIONAIRE to the financial agent, if granted by the STATE, shall be formalized, in writing, establishing the related conditions and requirements.

## **16. SHARE CAPITAL OF THE CONCESSIONAIRE**

16.1. The minimum share capital subscribed and paid up by the CONCESSIONAIRE shall be:

<b>Concession year</b>	<b>BLOCK 1</b>	<b>BLOCK 2</b>	<b>BLOCK 3</b>	<b>BLOCK 4</b>
condition precedent to the execution of the AGREEMENT	R\$ 645.896.889,78	R\$ 507.553.330,30	R\$ 145.297.434,88	R\$ 400.519.865,19
Until the end of Year 1	R\$ 702.887.489,78	R\$ 524.548.330,30	R\$ 174.052.234,88	R\$ 536.744.865,19
Until the end of Year 2	R\$ 862.047.489,78	R\$ 554.851.730,30	R\$ 232.642.834,88	R\$ 779.577.865,19
Until the end of Year 3	R\$ 988.575.089,78	R\$ 603.680.730,30	R\$ 294.518.634,88	R\$ 1.069.717.265,19
Until the end of Year 4	R\$ 1.131.511.289,78	R\$ 661.029.530,30	R\$ 361.760.034,88	R\$ 1.359.494.865,19
Until the end of Year 5	R\$ 1.271.685.689,78	R\$ 717.370.330,30	R\$ 425.942.234,88	R\$ 1.669.792.865,19

16.2. The CONCESSIONAIRE, except with prior authorization of the REGULATORY AGENCY, may not reduce its share capital, and any reduction of its share capital shall be forbidden in the following cases:

16.2.1. reduction until the end of the 12th (twelfth) year of the AGREEMENT;

16.2.2. if the universalization targets provided for in ANNEX III - PERFORMANCE INDICATORS AND ATTENDANCE GOALS are not being met;

16.2.3. for values lower than those provided in sub-clause 16.1.

16.3. Any changes in the shareholding structure shall be communicated to the STATE, in compliance with the contractual provisions on the transfer of effective shareholding control established in the ITB and in this AGREEMENT.

16.4. The resources available to the CONCESSIONAIRE shall be applied exclusively for the development of activities related to the CONCESSION, with the sole exception of financial investments.

16.5. The CONCESSIONAIRE shall comply with corporate governance standards and adopt standardized accounting and financial statements, in accordance with the accounting rules in

force in Brazil and the relevant corporate regulations, especially Federal Law no. 6.404/76 and any subsequent amendments.

## **17. CONTRACT PERFORMANCE GUARANTEE**

17.1. The CONCESSIONAIRE shall provide, and shall maintain, throughout the entire term of the CONCESSION, in accordance with Article 56 of Federal Law no. 8.666/93, a CONTRACT PERFORMANCE GUARANTEE in favor of the STATE, to be provided as follows:

Concession year	Guarantee Value (R\$)			
	Block 1	Block 2	Block 3	Block 4
Year 1 to 5	R\$ 207.583.250,00	R\$ 67.272.050,00	R\$ 65.805.175,00	R\$ 402.196.150,00
Year 6 to 10	R\$ 146.881.450,00	R\$ 48.087.525,00	R\$ 38.747.350,00	R\$ 282.324.275,00
Year 11 to 15	R\$ 67.983.200,00	R\$ 22.275.400,00	R\$ 18.154.700,00	R\$ 131.793.650,00
Year 16 to 20	R\$ 28.532.425,00	R\$ 10.853.800,00	R\$ 10.355.600,00	R\$ 59.522.075,00
Year 21 to 25	R\$ 18.966.100,00	R\$ 7.730.600,00	R\$ 6.760.825,00	R\$ 41.372.200,00
Year 26 to 30	R\$ 12.018.450,00	R\$ 5.101.275,00	R\$ 4.247.675,00	R\$ 26.942.275,00
Year 31 to 35	R\$ 207.583.250,00	R\$ 67.272.050,00	R\$ 65.805.175,00	R\$ 402.196.150,00

17.2. The CONTRACT PERFORMANCE GUARANTEE shall be hired as condition precedent for the execution of the AGREEMENT, observing the model set out in ANNEX VIII - PROVISIONS FOR PERFORMANCE GUARANTEES.

17.3. The CONTRACT PERFORMANCE GUARANTEE shall have as beneficiary the STATE and shall remain in force for at least 180 (one hundred and eighty) days after the end of the AGREEMENT, through regular renewals .

17.4. The CONTRACT PERFORMANCE GUARANTEE provided may not contain any type of reservation or condition that may hinder or preclude its enforcement or that may leave doubts as to its consistency, and may be enforced by the STATE, in accordance with the conditions set forth in this AGREEMENT.

17.5. The CONTRACT PERFORMANCE GUARANTEE shall be annually readjusted by the Consumer Price Index - IPCA according to clause 28.1.

17.6. The CONTRACT PERFORMANCE GUARANTEE may be provided, at the discretion of the CONCESSIONAIRE, in any of the following manners, or in any combination thereof:

17.6.1. cash deposit in the currency of the country, which shall be made in an account to be appointed by the STATE;

17.6.2. collateral in government bonds, which shall be provided through securities issued in book-entry form, through registration in a centralized settlement and custody system authorized by the Central Bank of Brazil and assessed by their economic values, as established by the Ministry of Economy.

17.6.3. surety bond; or

17.6.4. bank guarantee.

17.7. The letters of guarantee and the surety policies must have a term of at least 12 (twelve)

months, and the CONCESSIONAIRE fully liable maintaining them in full force and effect uninterruptedly throughout the term of the CONCESSION, carrying out, to this end, any necessary renewals and updates.

17.8. When the CONTRACT PERFORMANCE GUARANTEE is provided in government bonds, only Fixed-rate bond (LTN), Selic Floating-rate bond (LFT), IPCA+ Floating-rate bond (NTN-B Principal), IPCA+ Floating-rate bond with Semi-annual Interest (NTN-B) or Fixed-rate bond with Semi-annual Interest (NTN-F) shall be accepted, and the same must be issued in book-entry form, through registration in a centralized settlement and custody system authorized by the Central Bank of Brazil and assessed by their economic values, as established by the Ministry of Economy.

17.9. In the event of presentation in national currency or government bonds, the CONCESSIONAIRE shall provide a bank guarantee, expressed in an original document, addressed to the STATE, dated and signed by a financial institution custodian of the securities given as guarantee and which establishes:

17.9.1. that the pecuniary value of the deposit or securities, clearly identified, shall be guaranteed in favor of the STATE as a guarantee for the performance of the CONCESSIONAIRE's obligations under the AGREEMENT;

17.9.2. a list identifying the pledged bonds, clarifying that they are regulated by Federal Law no. 10.179, of February 6, 2001; and

17.9.3. that the STATE may enforce the guarantee under the conditions provided for in the AGREEMENT.

17.10. Bank guarantees must be hired with financial institutions authorized by the Central Bank - BACEN to operate in Brazil, and must comply with the rules issued by said entity, and must also be presented in its original form (copies of any kind are not accepted);

17.11. The bank guarantees shall contain a specific clause providing for the guarantor bank to waive the right to the order referred to in Article 827 of the Civil Code, and which makes it jointly and severally liable with the BIDDER, complying with the provisions of Articles 835 and 838 of the Civil Code and the conditions of the model in the AGREEMENT must be followed.

17.12. When in surety bond, the original copy or digital copy of the policy must be presented, duly certified or a second copy, issued in favor of the STATE, supplied by a surety company registered with the Superintendence of Private Insurance - SUSEP, in accordance with the conditions of the model in the AGREEMENT.

17.13. The CONTRACT PERFORMANCE GUARANTEE may be used in the following cases:

17.13.1. in the event that the CONCESSIONAIRE does not perform the obligations provided for in this AGREEMENT, and the STATE incurs the payment of costs and expenses that should be borne by the CONCESSIONAIRE;

17.13.2. in the event of the return of REVERSIBLE ASSETS not in compliance with the requirements established in the AGREEMENT;

17.13.3. in the event that the CONCESSIONAIRE does not pay the fines imposed on it due to default in the performance of its contractual obligations, pursuant to this AGREEMENT; and

17.13.4. in the event that the CONCESSIONAIRE does not make, within the established deadlines, the payment of other indemnities or pecuniary obligations due to the STATE, as a result of the AGREEMENT.

17.14. In the event of partial or full enforcement of the CONTRACT PERFORMANCE GUARANTEE, the CONCESSIONAIRE must restore the full amount of the guarantee provided within 30 (thirty) days of the respective enforcement, under penalty of breach of contract.

17.15. If the amount to be enforced by the STATE is higher than the value of the CONTRACT PERFORMANCE GUARANTEE provided, in addition to the loss of this guarantee, the CONCESSIONAIRE shall be liable for the difference through the restitution of the full amount due, being ensured the right to a full defense and adversarial proceedings.

17.16. If the term of this AGREEMENT is extended, the CONCESSIONAIRE undertakes to renew the CONTRACT PERFORMANCE GUARANTEE under the terms and conditions set out in this AGREEMENT.

17.17. Any amendment to the terms and conditions of the CONTRACT PERFORMANCE GUARANTEE must be previously approved by STATE.

17.18. All expenses arising from the constitution and renewal of the CONTRACT PERFORMANCE GUARANTEE shall be borne exclusively by the CONCESSIONAIRE.

17.19. In compliance with the entire term of the CONTRACT PERFORMANCE GUARANTEE provided for in sub-clause 17.3, the guarantee provided shall be returned or released only after the full performance of all contractual obligations and evidence of full compliance with all labor and social security obligations of the CONCESSIONAIRE.

## **18. INSURANCE**

18.1. The CONCESSIONAIRE, in addition to the insurance policies required by the applicable legislation, shall hire with an INSURANCE COMPANY, during the entire term of the CONCESSION, at least the insurance policies listed in this clause, as available in the Brazilian market and without prejudice to the insurance coverages required by the applicable legislation.

18.2. Engineering Risk Insurance to cover property damage that may be caused due to the SYSTEM IMPROVEMENT WORKS and other civil works and/or installation and assembly necessary for the performance of the object of the AGREEMENT, that also have maintenance and conservation purposes.

18.2.1. The Engineering Risk Insurance should be hired and released to the extent each of the SYSTEM IMPROVEMENT WORKS is performed, and the insured amount of the policy should be identical to the costs of replacement with new assets, with a minimum limit corresponding to the value of the investment realized.

18.3. The Concessions Operational Risk Insurance ("All Risks") which shall be hired on the date of start of the OPERATION OF THE SYSTEM, including the following coverages:

18.3.1. property damage covering the loss, destruction or damage to all the assets included in the CONCESSION, including additional coverage for expert fees, engineering risks - small works and low voltage equipment;

18.3.2. loss of revenue and loss of profit covering the financial consequences for 3 (three) months of interruption of operation of the SYSTEM, where such delay or interruption is the result of loss, destruction or damage covered by the property damage coverage provided for above.

18.4. The amounts covered by the Operational Risk Insurance policies shall be identical to the costs of replacement with new assets, and the coverage shall correspond to the value of the REVERSIBLE ASSETS transferred to the CONCESSIONAIRE at the start of the OPERATION OF THE SYSTEM, as well as any subsequently constructed or acquired, considering the depreciation for use and state of conservation on the start date of the policy;

18.5. General Civil Liability Insurance, during the period of OPERATION OF THE SYSTEM, covering the STATE and the CONCESSIONAIRE, as well as their officers, employees, contractors, agents or delegates, for the amounts to which they may be liable for property, environmental, personal and moral damages, indemnities, procedural costs, including to the SERVICE USERS, and any other charges related to personal, moral, environmental or property damages, arising from the activities in the scope of the CONCESSION, including the following coverages:

18.5.1. employer civil liability;

18.5.2. contingent vehicles civil liability;

18.5.3. cross civil liability; and

18.5.4. construction works civil liability.

18.6. The amount covered by the General Civil Liability Insurance shall not be less than R\$ 32,000,000.00 (thirty-two million BRL).

18.6.1. To the insurance addressed in sub-clause 18.5 must be added a Private Clause - Equalization of Municipal and/or State Governments and/or Municipalities and Third Parties.

18.7. The minimum coverage values set out in this clause shall be annually readjusted by the IPCA, according to clause 28.1.

18.8. Except for the insurance provided for in sub-clause 18.2, which shall be hired and maintained during the period of performance of each of the respective SYSTEM IMPROVEMENT WORKS, the CONCESSIONAIRE shall hire the other insurance coverages by the end of the period of ASSISTED OPERATION OF THE SYSTEM, and the respective policies shall remain effective for at least 180 (one hundred and eighty) days after the end of the AGREEMENT, through regular renewals.

18.9. The policies must be hired with insurers and reinsurers duly constituted and authorized to operate by the Superintendence of Private Insurance - SUSEP, observing the terms of the normative acts of SUSEP and the conditions established in this AGREEMENT.

18.10. The STATE shall be appointed as co-beneficiary in the insurance policies referred to in this Clause and their cancellation, suspension or replacement shall be previously approved by the STATE in the relevant cases, as provided for in this Clause.

18.10.1. Financial institutions that make loans or place on the market CONCESSIONAIRE bonds may be included in the insurance policies, as beneficiaries or co-beneficiaries, having preference in receiving the policies.

18.11. The CONCESSIONAIRE shall be responsible for the full payment of the deductible, in case of claim of any insurance provided for in this AGREEMENT.

18.12. The CONCESSIONAIRE, with prior approval of the STATE, may change the coverage or other conditions of the insurance policies, aiming to adapt them to the new situations that might occur during the term of this AGREEMENT.

18.12.1. The CONCESSIONAIRE may change coverages and deductibles, as well as other conditions of the hired policies, in order to adapt them to the implementation and performance stages of the object of this CONCESSION, and the STATE shall be duly informed of such changes.

18.13. The CONCESSIONAIRE shall submit to the STATE in the relevant events provided for in this Clause, at least 30 (thirty) days before its expiration, appropriate evidence that the insurance policies were renewed or of the possibility of issuing new policies.

18.13.1. In case the CONCESSIONAIRE does not evidence the renewal of the policies within the above-mentioned deadline, the STATE may hire the insurance and charge the CONCESSIONAIRE the total amount of the premium, at any time, without prejudice to the applicable contractual penalties.

18.14. The CONCESSIONAIRE shall submit to the STATE in the relevant events provided for herein, a copy of the vouchers of payment of the premiums related to the hired insurance policies, within 10 (ten) days from the respective payment.

18.14.1. Without prejudice to the provisions of this Clause, the CONCESSIONAIRE shall provide evidence to the STATE, when the STATE so requests, within fifteen (15) days as from the receipt of said request, that the insurance policies provided for in this AGREEMENT are in full force and effect and that the respective premiums due have been paid.

18.15. The insurance policies must contain an obligation for the insurance companies to immediately inform the CONCESSIONAIRE and the STATE, of changes in the insurance contracts, mainly those involving the total or partial cancellation of the insurance coverage(s) hired or a reduction in the insured amounts.

18.16. If the CONCESSIONAIRE fails to comply with the obligation to hire or maintain the insurance policies mentioned in this Clause, the penalties provided for in this AGREEMENT shall be applied.

18.17. In the event of any claims not covered by the hired insurance policies, the CONCESSIONAIRE shall be exclusively liable for the damages and losses that it may cause to the STATE as a result of the performance of the works and services arising from the performance of this AGREEMENT, being also at its own expense, exclusively, the indemnifications arising from such damages and losses.

## **19. THIRD-PARTY AGREEMENTS**

19.1. Without prejudice to its liabilities and the risks provided for in this AGREEMENT, the



CONCESSIONAIRE may enter into agreements with third parties for the development of activities inherent or accessory to the CONCESSION, as long as they do not exceed the term of the CONCESSION.

19.2. The performance of the activities hired by the CONCESSIONAIRE with third parties presupposes the compliance with the legal, regulatory and contractual rules.

19.3. The fact that the STATE is aware of the outsourcing with third parties by the CONCESSIONAIRE shall not be invoked by the CONCESSIONAIRE to claim exemption from compliance, in whole or in part, with its obligations arising from this AGREEMENT.

19.4. Service agreements entered into between the CONCESSIONAIRE and third parties shall be governed by the rules of private law and no legal relationship shall be established between the respective third parties and the STATE and/or the REGULATORY AGENCY.

19.5. It is the duty of the CONCESSIONAIRE to provide and demand, from any entity with which it may contract, the necessary measures to safeguard the integrity of the LINKED ASSETS and the USERS, as well as the compliance with the regulatory standards of the CONCESSION.

19.6. The CONCESSIONAIRE shall prepare a policy for transactions with related parties, which shall be submitted to the STATE and the REGULATORY AGENCY.

19.6.1. The agreement with related parties shall be published on a website and shall contain the following information:

19.6.1.1. identification of the CONCESSIONAIRE related party;

19.6.1.2. object of the contract;

19.6.1.3. contract term;

19.6.1.4. general conditions of payment and form of readjustment relating to the contract;

19.6.1.5. incorporation of anti-corruption policies and ethics program; and

19.6.1.6. justification by the CONCESSIONAIRE for hiring the related party in view of the market alternatives, and in any case, the good practices of selection and hiring of third parties must be respected.

## **20. LOANS**

20.1. The CONCESSIONAIRE shall be responsible for obtaining the financial resources necessary for the regular development of the SERVICE and performance of the WORKS, so that all the obligations undertaken in this AGREEMENT are fully and timely met.

20.1.1. The CONCESSIONAIRE may not claim any provision, clause or condition of the loan agreements(s), or any delay in the disbursement of the resources, to exempt itself, in whole or in part, from the obligations undertaken in this AGREEMENT, the terms of which the financial institution(s) providing the funds shall be fully aware of.

20.2. The CONCESSIONAIRE is hereby authorized to offer as collateral, in the loan agreements,

the rights arising from the CONCESSION, under the terms of Article 28 of Federal Law no. 8.987/95, upon prior notification to the STATE.

20.2.1. The CONCESSIONAIRE may assign or provide as collateral to the relevant financial institution(s) its incidental rights and guarantees concerning the EXPLOITATION REVENUE, as well as other credits or receivables held by CONCESSIONAIRE, whether existing, to be realized or contingent, including any indemnities in the event of extinguishment of the CONCESSION.

20.2.2. In order to guarantee long term loan agreements, of any kind, intended to secure the investments related to this AGREEMENT, the CONCESSIONAIRE may assign to the lender, upon simple notification to the STATE, on a fiduciary basis, a portion of its future operational credits, in compliance with the conditions of article 28-A, of Federal Law no. 8,987/95.

20.2.3. Indemnities due to the CONCESSIONAIRE in the event of early extinguishment of this AGREEMENT may be paid directly to the financial institution(s), in case of fiduciary assignment or other collateral.

20.2.4. In the event provided for in clause 20.2.3, the CONCESSIONAIRE shall send a prior written communication to the STATE, informing the amounts involved and information on the financial institution.

20.3. Shareholders may also offer as collateral or counter-guarantee, in loan agreements and/or credit facility agreements related to the performance of the CONCESSION, the CONCESSIONAIRE shares held by them, upon simple notification to the STATE.

20.4. The CONCESSIONAIRE shall submit to STATE a copy of any credit facility and collateral agreements it might enter into and of any documents representing the securities it may issue, and any amendments to such instruments, within 10 (ten) business days of their execution and issuance, as the case may be and under the terms of article 28 of Federal Law no. 8.987/95.

20.4.1. The entity that enters into an agreement with the CONCESSIONAIRE for the supply of materials, equipment or services through payment in installments or by loan may be deemed as a FINANCIAL AGENT, if the supply contract clearly contains a description of a credit operation to the CONCESSIONAIRE by this supplier, with the expected payment dates, interest rates and other parameters, in which case the CONCESSIONAIRE shall be responsible for making the communication provided for in sub-clause 20.4.

20.4.2. For the purposes of this AGREEMENT, the provisions set forth in sub-clauses 20.5 and 20.8 shall not apply to the case provided for in subclause 20.4.1.

20.5. The credit facilities and their respective collaterals may, in compliance with the applicable civil and commercial legislation, grant the respective financial agents the right to assume the control or temporary management of the CONCESSIONAIRE, or the CONCESSION itself, in the event of unremedied default of the respective credit facilities or collateral agreements, or, even, for the regularization of the SERVICES in the event of default of the CONCESSIONAIRE in the scope of this AGREEMENT that makes the CONCESSION unfeasible or threatens the CONCESSION, in accordance with the conditions of sub-clause 20.10.

20.6. The CONCESSIONAIRE shall immediately inform the STATE of any default of its obligations in the credit facility agreements that may lead to the enforcement of the collaterals or the

assumption of control by the FINANCIAL AGENTS.

20.7. The CONCESSIONAIRE shall also submit to STATE a copy of any communication, report or notification sent to FINANCIAL AGENTS containing relevant information regarding the financial situation of the CONCESSION or the CONCESSIONAIRE.

20.8. The CONCESSIONAIRE may provide as collateral for the credit facility agreements, pursuant to the terms of this Clause, the incidental rights of the CONCESSION, as set out in sub-clause 20.2, provided that it does not compromise the operation and the continuity of the investments and of the SERVICES object of the CONCESSION.

20.9. It is forbidden for the CONCESSIONAIRE:

20.9.1. To provide any form of collateral to third parties, including in favor of related parties, except in favor of its financial agents;

20.9.2. To grant loans, credit facilities or any other form of transfer of resources to related parties, except:

20.9.2.1. Transfers of funds by way of dividend distribution;

20.9.2.2. Capital reduction;

20.9.2.3. Interest payments on equity; and

20.9.2.4. Payments for hiring services.

20.10. Pursuant to article 27-A of Federal Law no. 8.987/95, the STATE may authorize the transfer of control or temporary management of the CONCESSIONAIRE to its lenders and guarantors with whom it does not have a direct corporate link, with a view to its financial reorganization and to ensure the continuity of the SERVICES.

20.10.1. In order to obtain the consent for transfer of control or temporary management of the CONCESSIONAIRE, the financial agent or guarantor must:

20.10.1.1. meet the requirements of legal and fiscal good standing necessary for the assumption of the object of the CONCESSION;

20.10.1.2. provide and/or maintain the relevant guarantees, as the case may be; and

20.10.1.3. undertake to comply with all the clauses of this AGREEMENT.

20.11. The assumption of control or temporary management authorized under sub-clause 20.10 above shall not amend the obligations of the CONCESSIONAIRE and its controllers towards third parties, the STATE, the REGULATORY AGENCY and the USERS, pursuant to Article 27-A, §2, of Federal Law no. 8.987/95.

20.12. In order to institute the temporary management of the CONCESSIONAIRE, its financial agents and guarantors must be granted the powers provided for in article 27-A, §4, of Federal Law no. 8.987/95, which must be defined by the STATE.

## **21. REGULATION AND SUPERVISION OF THE SERVICES**

21.1. In compliance with the principles of decision-making , administrative, budgetary and financial independence, transparency, technicality, speed and objectivity of decisions the regulation and surveillance of the CONCESSION shall be incumbent on the REGULATORY AGENCY, preferably observing the reference norms issued by the National Agency of Water and Basic Sanitation - ANA, as long as the same are applicable to the SERVICES, during the entire term of the AGREEMENT, in accordance with the legislation in force, and it shall be especially responsible for:

21.1.1. issuing the regulatory standards of the CONCESSION, in compliance with the provisions of this AGREEMENT;

21.1.2. applying to the CONCESSIONAIRE the penalties provided for under this AGREEMENT and the applicable legislation;

21.1.3. receiving, assessing and resolving complaints and claims by the SERVICE USERS;

21.1.4. resolving conflicts between the CONCESSIONAIRE, the STATE and the USERS, without prejudice to the provisions of Clauses 49 and 50.

21.1.5. monitoring and supervising the performance of the AGREEMENT;

21.1.6. monitoring the quality of the SERVICE, in accordance with the terms of this AGREEMENT, notably the provisions of ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS;

21.1.7. approving the tariff readjustments and holding the ordinary and extraordinary reviews, pursuant to the applicable legislation and the provisions of this AGREEMENT;

21.1.8. observing the reference standards for the regulation of basic sanitation public services that may be issued by the National Agency of Water and Basic Sanitation - ANA, especially standards on efficiency of operation and on the definition of performance indicators in slum areas and subnormal agglomerations, provided they are applicable to the SERVICES;

21.1.9. exercising all the attributions and competencies arising from the JOINT MANAGEMENT instruments and that are attributed to it by the present AGREEMENT;

21.1.10. ascertaining the liability of the owners or those in possession of the properties who are not complying with the legal obligation to connect to the public water supply and sanitation networks available;

21.1.11. exercising the supervisory and sanctioning role over the users of the public service; and

21.1.12. complying with its other legal duties and those attributed to it through the COOPERATION AGREEMENTS and the MANAGEMENT AGREEMENTS.

21.2. In the case the regulatory norms issued by the REGULATORY AGENCY, or by the National Agency of Water and Basic Sanitation - ANA, after the execution of the present AGREEMENT

significantly change the charges, risks and conditions provided for in the ITB and in this AGREEMENT, undertaken by the CONCESSIONAIRE at the time of the presentation of its BID, entailing a proven economic-financial imbalance of the CONCESSION, the CONCESSIONAIRE shall be entitled to reinstatement, due to the occurrence of the factum principis, pursuant to clause 35 of this AGREEMENT.

21.3. The REGULATORY AGENCY may enter into cooperation instruments with the regulatory agencies of the holders, having as its purpose the partial or total decentralization of surveillance roles, in the respective area in which the regulatory agency is located, in accordance with article. 23, § 1B, of Federal Law 11.445/2007.

21.3.1. The cooperation instrument referred to in the sub-clause 21.3 may provide for any financial collaboration necessary for the decentralized supervision activities.

21.4. The CONCESSIONAIRE shall grant the REGULATORY AGENCY free access to the LINKED ASSETS, books and documents related to the CONCESSIONAIRE, as well as books, records and documents related to the activities in the scope of the CONCESSION, including statistics and management records, and shall provide any clarifications requested.

21.5. The REGULATORY AGENCY may carry out, in the presence of representatives of the CONCESSIONAIRE, tests or trials that allow the proper evaluation of the operating conditions and characteristics of the equipment, systems and facilities.

21.6. The PERFORMANCE INDICATORS, listed in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS, shall be used to assess the CONCESSIONAIRE's performance, allowing the REGULATORY AGENCY to monitor the quality of the SERVICES and apply, as the case may be, the contractual fines and deductions on the tariff values, in accordance with this AGREEMENT.

21.7. If the STATE identifies non-conformities in the provision of the SERVICES by the CONCESSIONAIRE, the supervision of which is the exclusive responsibility of the REGULATORY AGENCY, it shall notify the occurrence for the adoption of the appropriate measures.

21.7.1. During the term of the CONCESSION, the CONCESSIONAIRE undertakes to submit to the STATE and to the REGULATORY AGENCY, annually, by the last day of March, an operational report, highlighting information on:

21.7.1.1. the performance of the SYSTEM IMPROVEMENT WORKS, notably those performed in the previous year, showing, for each work already concluded or in progress, the amount effectively invested and the respective amortization, without prejudice of the provisions of subclause 13.6;

21.7.1.2. the investments made in dry weather, NON-URBANIZED IRREGULAR AREAS and other investments provided for in ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS;

21.7.1.3. the service statistics, with analysis of critical points and remedy measures implemented or to be implemented; and

21.7.1.4. update of the INVENTORY OF REVERSIBLE ASSETS, with an indication on the state of conservation of each one of such assets.

21.8. Throughout the CONCESSION term, the CONCESSIONAIRE shall pay monthly to the REGULATORY AGENCY the Inspection Fee on the Public Services Delegated by the State of Rio de Janeiro, in an amount corresponding to 0.5% (half percent) of the monthly invoiced revenues, excluding taxes, for the exercise of regulation and surveillance activities, pursuant to art. 18, of State Law No. 4,556/2005.

## **22. EXPROPRIATION, EASEMENT AND EMINENT DOMAIN**

22.1. The expropriations, evictions and the institution of easements and any other eminent domain powers necessary for the provision of the SERVICES object of the CONCESSION shall be carried out by the CONCESSIONAIRE, at its own expenses and under its liability, in compliance with the applicable legislation.

22.2. The facilities, infrastructure and equipment integrating the SYSTEM, at the time the of the start of the OPERATION OF THE SYSTEM, shall be transferred by the holders and by CEDAE, with the intermediation of the STATE, to the CONCESSIONAIRE, without any burden and/or hindrance of any kind, through the CERTIFICATE OF SYSTEM TRANSFER.

22.3. In order to comply with its obligations related to expropriation or institution of administrative easements, the CONCESSIONAIRE shall:

22.3.1. submit to the STATE or the MUNICIPALITY, when necessary, all the elements and documents necessary for the declaration of eminent domain of the properties to be expropriated or over which administrative easements will be instituted, in accordance with the current legislation;

22.3.2. conduct the procedures of expropriation or institution of administrative easements, being responsible for all costs related thereto, including those related to the provisional vesting of possession and the acquisition of the real estate and the payment of indemnities or any other compensation arising from the expropriation or easements or other related burdens or expenses, including the possible temporary use of real estate or the reallocation of assets or persons, as well as the attorney's and expert fees;

22.3.3. proceed, at its own expense, and with supervision of the STATE or the MUNICIPALITY, as the case may be, which shall issue the respective notice, the demarcation of the lands that are part of the SERVICE provision, including the survey of the respective cadastre plan, and with the identification of the lands that integrate the CONCESSION and the remaining areas;

22.3.4. to file, on its own behalf, the legal actions that prove to be necessary to enable the expropriation or the institution of administrative easements, bearing the expenses related to the fees, court costs and indemnities to be allocated to the owners/possessors of the expropriated properties.

22.4. The CONCESSIONAIRE shall be responsible for structuring and organizing the necessary documents for the regularization of the assets of CEDAE that will be transferred to the CONCESSIONAIRE's management and which deeds are irregular, CEDAE being liable for the costs related to government debts (*precatórios*), indemnifications, expropriations and notarial expenses.

22.5. The STATE shall be responsible for take the necessary steps to declare the eminent

domain of the properties to be expropriated to carry out the object of the CONCESSION, including those of temporary use or subject to easements.

22.5.1. The PARTIES, in mutual agreement, shall establish, when necessary, a work program, containing the deadlines for obtaining the declaration of eminent domain of the properties, for the purpose of expropriation or institution of easements, and the necessary elements that shall be provided by the CONCESSIONAIRE, within the conditions set forth in the applicable legislation and in line with the deadlines established for the provision of the SERVICES of the CONCESSION.

22.5.2. In case the STATE does not carry out the measures that are incumbent upon it in relation to expropriations or administrative easements necessary for the performance of the SERVICE, pursuant to this Clause, the deadlines relating to the obligations and the compliance with the PERFORMANCE INDICATORS directly impacted shall be reviewed, provided that it is demonstrated that the inertia of the STATE interfered in the compliance with such obligations, indicators and targets.

22.5.2.1. The review of the deadlines addressed in sub-clause 22.5.2 does not rule out any need for contractual review, in case the economic-financial balance is disrupted, and any penalties to the CONCESSIONAIRE directly resulting from this inertia shall not be applied.

### **23. USER RIGHTS AND OBLIGATIONS**

23.1. Without prejudice to the other provisions of this AGREEMENT and the applicable legislation, the rights of the USERS are:

23.1.1. to have available, pursuant to the AGREEMENT, the water supply and sanitation networks in order to carry out their personal connection to the SYSTEM, as provided in sub-clause 23.2.4;

23.1.2. to receive the SERVICES in satisfactory conditions;

23.1.3. to receive from the CONCESSIONAIRE, the STATE and the REGULATORY AGENCY the information necessary for the defense of individual or collective interests;

23.1.4. to inform the CONCESSIONAIRE, the REGULATORY AGENCY or the STATE of any irregularities they may learn of concerning the CONCESSION;

23.1.5. to communicate the CONCESSIONAIRE, the STATE or the REGULATORY AGENCY regarding the occurrence of unlawful acts or irregularities that may have been committed by the CONCESSIONAIRE or its agents in the performance of this AGREEMENT;

23.1.6. to receive from the CONCESSIONAIRE the information necessary for the use of the SERVICES;

23.1.7. to receive a response from the REGULATORY AGENCY, the STATE or the CONCESSIONAIRE on applications made to the latter two;

23.1.8. be informed at least 48 (forty-eight) hours in advance of scheduled service interruptions;

- 23.1.9. to be informed at least 30 (thirty) calendar days in advance of changes in the value of the TARIFFS;
  - 23.1.10. receive the letter of services to the USERS, in accordance with Article 7 of Federal Law No. 13,460/2017;
  - 23.1.11. have the implementation and operation of ombudsman's office, pursuant to arts. 13 to 16 of Federal Law no. 13,460/2017;
  - 23.1.12. the creation of procedures for continuous evaluation of the SERVICES, pursuant to art. 23 of Federal Law 13,460/2017;
  - 23.1.13. compliance, by the CONCESSIONAIRE, the REGULATORY AGENCY and the STATE, with the rules regarding the treatment of personal data, in accordance with Federal Law no. 13,709/2018;
  - 23.1.14. to receive the bills at least five (5) working days before their maturity date; and
  - 23.1.15. to choose one of at least six (6) dates offered by the CONCESSIONAIRE for the maturity of the bill.
- 23.2. Without prejudice to the other provisions of this AGREEMENT and the applicable legislation, the obligations of the USERS are:
- 23.2.1. to use the SERVICES rationally, avoiding waste and collaborating with the preservation of natural resources;
  - 23.2.2. when so requested, to provide the necessary information so that the SERVICES can be offered in an appropriate and rational manner, being liable for any inaccuracy or omission;
  - 23.2.3. to contribute to the permanence of the good conditions of the water supply and sanitation systems of the CONCESSION AREA and other public assets somehow connected with the provision of the SERVICES;
  - 23.2.4. to carry out the activities in their responsibility for connection to the SYSTEM, within a period not exceeding thirty (30) days as from the date of receipt of the notification by the CONCESSIONAIRE about the availability of the public networks of water supply and/or sanitation, and, after said period, allow the CONCESSIONAIRE to, as provided in sub-clause 25.1.8, carry out the necessary actions on the properties occupied by them to enable their connection to public water supply and/or sanitation networks, without prejudice to the collection by the CONCESSIONAIRE of the costs incurred with the performance of such connection and the application of applicable penalties, in accordance with sub-clauses 23.2.5, 24.2.8 and 27.9 in addition to article 45 of Federal Law No. 11.445, of January 5, 2007;
  - 23.2.5. to pay the TARIFFS on time, the prices for the SERVICES rendered and any fines charged by the CONCESSIONAIRE, and it is hereby established that the timely payment of the TARIFFS is also due by the USERS for whom the SERVICES are available, such availability being construed as the existence of an installed sewage system or water supply capable of carrying out the services by the CONCESSIONAIRE;



- 23.2.6. to allow the installation of and access to water and sewage meters by the CONCESSIONAIRE;
  - 23.2.7. not to tamper with any piping, meter or other installation related to the SERVICES;
  - 23.2.8. to comply with ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS and other applicable rules, including those concerning industrial dumping;
  - 23.2.9. to grant the employees and agents of the CONCESSIONAIRE, provided they are duly identified, access to water meters and other equipment intended for such purpose, keeping them clean, in accessible, safe and clean locations;
  - 23.2.10. to observe and comply with the standards issued by the competent authorities;
  - 23.2.11. to inform the CONCESSIONAIRE on any change in the cadastre of the property, regarding the SERVICES;
  - 23.2.12. to consult the CONCESSIONAIRE, prior to the installation of internal piping, regarding the location of the water distribution and sewage collection points;
  - 23.2.13. to meet the CONCESSIONAIRE's requirements regarding the pre-treatment of sewage effluents, when these are incompatible with the sanitation system, in compliance with the ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS and the rules issued by the REGULATORY AGENCY;
  - 23.2.14. to allow the CONCESSIONAIRE to enter its residence or establishment so that it can shut down alternative wells and water sources in the locations of the CONCESSION AREA where there is a public water supply system available and/or when such wells and sources are in disagreement with the applicable legislation, and shall be incumbent on it to make arrangements with the STATE for the latter to exercise its police power concerning the requirement; and
  - 23.2.15. to allow the CONCESSIONAIRE to enter their residence or establishment to install of the internal connections of the properties classified exclusively as subsidized residential category (social tariff).
  - 23.2.16. to carry out the internal water and sewage connection, when the infrastructure is made available by the CONCESSIONAIRE
- 23.3. Upon prior notice to the USER and in compliance with the minimum notice provided for in the relevant legislation, the provision of the SERVICES may be suspended by the CONCESSIONAIRE, in the cases provided for in sub-clause 25.1.5.
- 23.4. The lack of payment of the amounts due by the USERS to the CONCESSIONAIRE, on the date of their maturity, shall entail default charges and other applicable penalties, pursuant to art. 6, §§3 and 4 of Federal Law no. 8.987/1995 and art. 40 of Federal Law no. 11.445/2007, as well as in accordance with this AGREEMENT and the rules of the REGULATORY AGENCY.

#### **24. STATE RIGHTS AND OBLIGATIONS**

24.1. Without prejudice to the other provisions of this AGREEMENT and the applicable legislation and the related agreements, the rights of the STATE, as representative of the holders of the SERVICES, are:

- 24.1.1. to unilaterally amend this AGREEMENT, maintaining the economic-financial balance;
- 24.1.2. to receive, as representative of the SERVICE holders, in reversion, upon extinguishment of the AGREEMENT, the REVERSIBLE ASSETS;
- 24.1.3. to intervene in the CONCESSION, by instruction of the REGULATORY AGENCY, in the cases and under the conditions provided for in the legislation and in this AGREEMENT;
- 24.1.4. to be fully indemnified for any damages caused by the CONCESSIONAIRE in the event of non-compliance with this AGREEMENT;

24.2. Without prejudice to the other provisions of this AGREEMENT, the related legal transactions and the applicable legislation, the obligations of the STATE, as representative of the holders of the SERVICES, are:

- 24.2.1. To make available, representing the holders, the assets to be transferred to the CONCESSIONAIRE at the time of the assumption of the SYSTEM, free and clear of any personal or real liens, in order to allow their use by the CONCESSIONAIRE;
- 24.2.2. to extinguish the CONCESSION in the cases and in accordance with legislation and this AGREEMENT;
- 24.2.3. to comply and enforce the legal, regulatory and contractual provisions relevant to the CONCESSION;
- 24.2.4. to stimulate, to the best of its ability, the increase of quality and productivity of the SERVICES, as well as the conservation of the environment, in the scope of the CONCESSION;
- 24.2.5. to stimulate associations of USERS for defense of interests related to the SERVICES;
- 24.2.6. to arrange for, upon request of the CONCESSIONAIRE, the issuance of the declarations of eminent domain necessary for the expropriations or easements, and authorizations for temporary occupation of the real estate necessary to ensure the performance of the works, undertaking liability and assuming the risks for any delays in issuing the Decrees, in accordance with the provisions of this AGREEMENT;
- 24.2.7. as a representative of the SERVICE holders, to assign to the CONCESSIONAIRE the existing easements, as well as the use of the REVERSIBLE ASSETS integrating the SYSTEM;
- 24.2.8. to determine, within the scope of its jurisdiction, the liability of the owners or those in possession of the properties that are using individual water supply solutions outside the cases allowed by environmental and water resources legislation;
- 24.2.9. to actively collaborate with the REGULATORY AGENCY in the regulation and supervision of the provision of the SERVICES;

- 24.2.10. to pay the CONCESSIONAIRE the indemnities, if applicable, provided for in the applicable legislation and in this AGREEMENT, resulting from the extinguishment of the CONCESSION;
- 24.2.11. to submit to the CONCESSIONAIRE, for analysis and appraisal, within 10 (ten) days from its receipt, the designs related to the implementation of new allotments that are located in the CONCESSION AREA;
- 24.2.12. to inform the DEVELOPER, when applying for approval of water supply and sewerage designs for new allotments, that all the costs relating to the implementation of the water supply and sewerage systems that are under the responsibility of the CONCESSIONAIRE, shall be reimbursed by it;
- 24.2.13. to ensure that the CONCESSIONAIRE makes full use of the REVERSIBLE ASSETS;
- 24.2.14. to undertake liability for matters relating to acts or facts relating to the REVERSIBLE ASSETS and the SERVICES, prior to the date of start of the OPERATION OF THE SYSTEM, even if verified after such date, for which no liability shall be attributed to the CONCESSIONAIRE under this AGREEMENT;
- 24.2.15. to execute the financial instruments as a intervening party, when so requested by the CONCESSIONAIRE and the financial agents;
- 24.2.16. to provide technical support to the CONCESSIONAIRE in the relationship and negotiations with the MUNICIPALITIES and other public authorities and bodies regarding the construction, reformulation or removal of access to the SYSTEM, including the necessary support for the removal of interferences that hinder or prevent the performance of the SYSTEM IMPROVEMENT WORKS and also for blocking public roads and places for vehicle traffic or transit of persons as necessary to allow the performance of the works;
- 24.2.17. to undertake liability for the risks related to judicial and administrative orders to comply with obligations originally attributable to the STATE, including labor claims brought by employees or third parties linked to the STATE or other companies hired by the STATE;
- 24.2.18. to terminate, or to make arrangements with CEDAE for its termination, before the execution of the CERTIFICATE OF SYSTEM TRANSFER, the contracts entered into with subcontractors that may interfere with the performance of the AGREEMENT, undertaking liability and assuming the risks for any delays or hindrances that prevent or affect the performance of the SERVICES and/or of the WORKS;
- 24.2.19. to immediately notify the CONCESSIONAIRE of the summons or subpoena concerning any lawsuit or administrative proceeding that assigns liability to the CONCESSIONAIRE or entails impacts in the SERVICES or in the SYSTEM IMPROVEMENT WORKS, including information on the procedural terms and deadlines, as well as undertake to make its best efforts in the defense of the common interests, carrying out all applicable procedural acts for this purpose;
- 24.2.20. to assign to the CONCESSIONAIRE the necessary infrastructure for the water supply and sanitation services resulting from subdivisions of land, allotments, real estate ventures of any nature, under the responsibility of the respective developers, with a

view to the operation and maintenance, until the effective onerous reversal, at the time of contractual termination; and

- 24.2.21. to fully comply with the provisions of ANNEX X - WATER SUPPLY SYSTEM RULES and undertake to adopt arbitration as the mechanism for resolving all disputes arising out of or related to the Water Supply System (WSS), in accordance with Federal Law No. 9.307/1996 and with the Decree no. 46.245/2018 of the State of Rio de Janeiro.

## **25. CONCESSIONAIRE RIGHTS AND OBLIGATIONS**

25.1. Without prejudice to the other provisions of this AGREEMENT and the applicable legislation, the rights of the CONCESSIONAIRE are:

- 25.1.1. to request the STATE to adopt, to the best of its abilities, the necessary measures for the declaration of eminent domain of real estate that will be necessary for the performance of the object of this AGREEMENT;
- 25.1.2. to agree with the competent public authorities on the common use of the land and subsoil when necessary for the provision of the SERVICES for the construction and operation of the works;
- 25.1.3. to propose guidelines, analyze and approve designs and supervise the implementation of expansion works or sanitation infrastructure originated from subdivisions of land, allotments and real estate developments of any nature, under the responsibility of the developers, when such infrastructure is located in the CONCESSION AREA of BLOCK [●];
- 25.1.4. to assume the assets related to the implementations promoted by the developers in subdivisions of land, allotments and real estate developments of any nature, located in the CONCESSION AREA of BLOCK [●] and which become part of the SYSTEM, observing the rules provided for in Clause 14;
- 25.1.5. to cease the provision of the SERVICES or interrupt their provision, upon prior communication to the REGULATORY AGENCY, whenever it considers the service connections irregular, unsafe or inadequate, or part of them, that are made or changed by the USERS or third parties other than the CONCESSIONAIRE, without prejudice to other cases of interruption provided for in the applicable rules;
- 25.1.6. to instruct the USERS to deliver their sewage effluent free of pollutants incompatible with the public sanitation system, according to the relevant standards;
- 25.1.7. to, in compliance with the current legislation, change the classification of the property whenever activities other than those originally informed are carried out thereon;
- 25.1.8. to carry out, upon collection from the USER, after expiration of the period of 30 (thirty) days provided for in sub-clause 23.2.4 without the USER having provided its connection to the(s) network(s) made available by the CONCESSIONAIRE, the necessary actions in the property to make possible its connection to the SYSTEM, as well as to carry out such connection;
- 25.1.9. to support the STATE in identifying locations with alternative wells and water sources, in locations within the CONCESSION AREA of BLOCK [●] where the public water supply

system is available and/or where such wells and sources are in disagreement with applicable legislation.

25.1.10. to be indemnified in the event of an act or omission of responsibility by the other concessionaires or CEDAE that demonstrably harm or cause damage to the CONCESSIONAIRE.

25.2. Without prejudice to the other provisions of this AGREEMENT and the applicable legislation, the obligations of the CONCESSIONAIRE are:

25.2.1. to comply with the AGREEMENT, the legal and regulatory provisions and also the instructions by the STATE and the REGULATORY AGENCY;

25.2.2. to perform all services, controls and activities related to the AGREEMENT, including engineering and supervision services, supply of labor, materials and equipment, transportation, storage, operation, maintenance and the performance of construction works with due care and diligence, in accordance with the specifications of this AGREEMENT and other relevant standards, using the best technique applicable to each of the tasks performed, assuming the risks related to the costs in the operation and maintenance of the SYSTEM;

25.2.3. to provide the REGULATORY AGENCY promptly, when so requested, with any and all available information regarding the SERVICES and the CONCESSION, as well as any modification or interference carried out by it or by third parties;

25.2.4. to inform the USERS about the scheduled interruptions of the SERVICES and their resumption, in compliance with the conditions and deadlines set forth in this AGREEMENT and in the regulatory standards issued by the REGULATORY AGENCY;

25.2.5. to receive, assess and resolve, when applicable, the complaints of the USERS, which shall be informed within 20 (twenty) days about the measures adopted;

25.2.6. to pay the amounts due to the REGULATORY AGENCY for the exercise of the regulatory and supervisory activities, in accordance with the terms provided for in this AGREEMENT;

25.2.7. to maintain the INVENTORY OF REVERSIBLE ASSETS updated;

25.2.8. to perform the SYSTEM IMPROVEMENT WORKS necessary for the provision of the SERVICES, in accordance with this AGREEMENT;

25.2.9. to obtain credit facilities for the investments necessary to carry out the SERVICES and SYSTEM IMPROVEMENT WORKS required for the performance of the AGREEMENT;

25.2.10. to account for the SERVICES by submitting the reports, financial statements, accounting records and other information provided for in this AGREEMENT to the STATE and the REGULATORY AGENCY;

25.2.11. to maintain available to the STATE and the REGULATORY AGENCY all the documents, designs, accounting records and other technical, operational and financial information related to the CONCESSION;

- 25.2.12. to allow the agents of the STATE and of the REGULATORY AGENCY to have free access to the REVERSIBLE ASSETS, to the SYSTEM IMPROVEMENT WORKS and to the other equipment and facilities linked to the CONCESSION;
- 25.2.13. to maintain systems for monitoring the quality of water and treated effluents, in the scope of the CONCESSION;
- 25.2.14. to inform the REGULATORY AGENCY and the competent environmental agencies about any action or omission that comes to its knowledge, that causes contamination of the water resources or that damages the provision of the SERVICES, or actions related to it, so that such authorities may take the appropriate measures, without prejudice to the economic-financial rebalancing of this AGREEMENT that might be applicable;
- 25.2.15. to inform the REGULATORY AGENCY of any irregularities by the USERS that come to its attention;
- 25.2.16. to collaborate with the public authorities, in cases of public danger of emergency or disaster, involving the SERVICES, ensuring the preservation of the economic-financial balance of this AGREEMENT, as the case may be;
- 25.2.17. to obtain and maintain with the competent authorities the licenses, including environmental licenses, necessary for the performance of the SYSTEM IMPROVEMENT WORKS and the provision of the SERVICES, bearing their respective costs;
- 25.2.18. to be responsible for the payment of the amount of the concession fee of the rights of use of water resources necessary for the OPERATION OF THE SYSTEM, except for the rights related to the services provided by CEDAE;
- 25.2.19. to provide in the contracts entered into with third parties, whose object refers to the activities of the CONCESSION, that the rules of the ITB, this AGREEMENT, and other applicable legal, regulatory and technical provisions be strictly observed, clearly establishing that the term of such contracts shall not exceed the CONCESSION term, also expressly informing the respective third parties that there shall be no legal relationship between them and the STATE and the REGULATORY AGENCY;
- 25.2.20. to request and obtain from the USERS evaluations regarding the quality of the SERVICES, as provided for in the regulation standard issued by the REGULATORY AGENCY;
- 25.2.21. to publish its financial statements annually in accordance with the applicable legislation;
- 25.2.22. to comply with the obligations that the CONCESSIONAIRE may negotiate with financial institutions or any other entity to obtain the necessary credit facilities to carry out the SERVICES and SYSTEM IMPROVEMENT WORKS;
- 25.2.23. to undertake responsibility for any tests and commissioning that are necessary for the performance of the SERVICES and SYSTEM IMPROVEMENT WORKS;
- 25.2.24. to prepare and undertake responsibility for the environmental impact studies and socio-environmental management plan required for the performance of the SERVICES and the SYSTEM IMPROVEMENT WORKS;

- 25.2.25. to ensure the adequacy of the facilities and infrastructure of the construction site, lodgings and canteens that are necessary for the performance of the SYSTEM IMPROVEMENT WORKS;
- 25.2.26. not to transfer, in whole or in part, the CONCESSION, or the direct corporate control of the CONCESSION, without the prior consent of the STATE, except as otherwise provided for in this AGREEMENT;
- 25.2.27. to ensure free access of the persons appointed by the REGULATORY AGENCY and the STATE to the facilities relevant to the maintenance and direct operation of the SYSTEM;
- 25.2.28. to provide the information and documents requested by the STATE and the REGULATORY AGENCY;
- 25.2.29. to take due care of the integrity of the LINKED ASSETS, taking all necessary steps to preserve them, assuming the risks and liability for the damage caused to them;
- 25.2.30. to conduct, after the issue of the respective public utility decree by the respective Public Authority, the expropriation procedures of the areas necessary for the provision of the SERVICES and the performance of the SYSTEM IMPROVEMENT WORKS, undertaking liability and assuming the risks for any delays in the conduction of said procedures;
- 25.2.31. to communicate to the competent public authorities any unlawful acts or facts of which it is aware and which may impact the performance of the AGREEMENT;
- 25.2.32. to comply with the legal norms regarding labor, social security, occupational health and safety legislation, in relation to its own employees and third parties that might be subcontracted by the CONCESSIONAIRE;
- 25.2.33. to comply with corporate governance standards and adopt standardized accounting and financial reporting systems;
- 25.2.34. to publish, pursuant to law, the financial statements and maintain the accounting records of all operations in accordance with the fundamental principles of accounting, the Brazilian technical accounting standards approved by the Federal Accounting Council;
- 25.2.35. to carry out separate account per MUNICIPALITY, in compliance with the sanitation legislation, individualizing, among other elements, the amounts of investments made and amounts paid as FIXED CONCESSION FEE and VARIABLE CONCESSION FEE;
- 25.2.36. to present to the REGULATORY AGENCY, by May 1st of each year, the standard financial statements for the fiscal year ended on December 31st of the previous year, with the external auditors' report;
- 25.2.37. to pay the Fee of Supervision of Delegated Public Services to the REGULATORY AGENCY;
- 25.2.38. to give immediate notice to the REGULATORY AGENCY and to the STATE of any and all events that may hinder or preclude the punctual and timely compliance with the

obligations of this AGREEMENT, in particular the PERFORMANCE INDICATORS, and that may constitute cause for intervention, forfeiture of the CONCESSION or termination of this AGREEMENT;

- 25.2.39. to immediately inform the REGULATORY AGENCY and the STATE of any and all situations that relate to facts that substantially change the normal development of the SERVICES, submitting, in writing, a detailed report on these facts, indicating the measures taken or in progress to overcome or remedy the referred facts, including, if applicable, activities from specialized entities;
- 25.2.40. to be liable for damages caused to the STATE, in the event that the forfeiture of the CONCESSION is duly declared, in accordance with the terms established in this AGREEMENT and in the applicable legislation;
- 25.2.41. to be liable for the costs arising from the suspension of the AGREEMENT due to bankruptcy of the CONCESSIONAIRE;
- 25.2.42. to undertake liability for the occurrence of facts deemed as act of God and of force majeure, which are the object of the insurance coverage expressly provided for in this AGREEMENT, up to the limit of the insured amounts;
- 25.2.43. to hire in a timely manner the insurance coverages provided for in this AGREEMENT;
- 25.2.44. to inform the STATE promptly, when subpoenaed or summoned for any lawsuit or administrative proceeding, which may result in direct or indirect liability for the STATE or entail impacts on the SERVICES and/or the AGREEMENT, including information on the procedural terms and deadlines, as well as undertake to make its best efforts in the defense of the common interests, carrying out all applicable procedural acts for this purpose;
- 25.2.45. to reimburse the STATE for all disbursements resulting from court orders to comply with obligations attributed to the STATE, but under the responsibility of the CONCESSIONAIRE, including labor claims brought by employees or third parties linked to the CONCESSIONAIRE, even if such awards are rendered after the termination of the AGREEMENT, provided the decisions are res judicata;
- 25.2.46. to comply with environmental legislation;
- 25.2.47. to pay the FIXED CONCESSION FEE and the VARIABLE CONCESSION FEE
- 25.2.48. to notify the USERS at least 30 (thirty) days in advance of the start of billing for the availability of the infrastructure, informing on the obligation of the USERS to make the internal connection with the existing network;
- 25.2.49. to be responsible for all costs and expenses with conservation and maintenance of the infrastructure of the Macro Treated Water Supply System (MSS) located in its area of operation (area of the BLOCK), being responsible for the damages and losses that the lack of maintenance, conservation and repair in these infrastructures may generate to third parties, in accordance with ANNEX X - WATER SUPPLY SYSTEM RULES.



25.2.50. to fully comply with the provisions of ANNEX X - WATER SUPPLY SYSTEM RULES and undertake to adopt arbitration as the mechanism for resolving all disputes arising out of or related to the Water Supply System (WSS), in accordance with Federal Law No. 9.307/1996 and with the Decree no. 46.245/2018 of the State of Rio de Janeiro.

25.2.51. to make available on its website the duties of the USERS related to ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS; and

25.2.52. to present an ethics program as a condition precedent to the execution of the AGREEMENT.

25.3. The impacts that affect in any way the performance of the AGREEMENT by the CONCESSIONAIRE, resulting from the default by the STATE of any of its obligations, as set out in clause 24 shall not entail the application of penalties to the CONCESSIONAIRE.

## **26. INDEPENDENT VERIFIER AND PERFORMANCE INDICATORS**

26.1. The CONCESSIONAIRE undertakes to, under the terms and conditions set out in this AGREEMENT, comply with the PERFORMANCE INDICATORS and the SERVICE TARGETS established in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS, which shall be taken into account for the purposes of calculating the EFFECTIVE TARIFF values, as provided for in this clause.

26.2. The application of PERFORMANCE INDICATORS on the TARIFF shall be annual, based on the General Performance Indicator (GPI) coefficient, pursuant to clause 29.

26.3. The PERFORMANCE INDICATORS and other provisions set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS shall be regularly assessed by the REGULATORY AGENCY with the support of the INDEPENDENT VERIFIER, which shall be hired by the REGULATORY AGENCY, subject to the conditions set out in ANNEX V - MINIMUM TERMS AND CONDITIONS FOR HIRING INDEPENDENT VERIFIER AND CERTIFIER.

26.4. The INDEPENDENT VERIFIER shall perform instrumental acts in support of the REGULATORY AGENCY, having its reports and statements evaluated, reviewed and approved by said agency.

26.5. In accordance with ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS of this AGREEMENT, the measurement of the CONCESSIONAIRE's performance shall be as follows:

26.5.1. The CONCESSIONAIRE shall, on a monthly basis, prepare the PERFORMANCE INDICATORS' compliance report and send them to the INDEPENDENT VERIFIER, within 5 (five) days as from the start of the month subsequent to the verification.

26.5.2. Upon receipt of the PERFORMANCE INDICATORS' compliance report referred to in sub-clause 26.5.1, the INDEPENDENT VERIFIER shall have a period of up to 10 (ten) days to prepare the monthly verification report and send it to the REGULATORY AGENCY, with a copy to the STATE and to the CONCESSIONAIRE.

26.5.3. The PARTIES shall have up to 10 (ten) days to, if they wish, express their views on the content of the monthly verification report presenting any disagreements in a substantiated manner.

- 26.5.4. The REGULATORY AGENCY shall decide on the disagreements in relation to the content of the monthly verification report, within a maximum of 10 (ten) days, and may request additional information from the INDEPENDENT VERIFIER.
- 26.5.5. In the event of disagreement between the PARTIES regarding the decision of the REGULATORY AGENCY, as provided for in sub-clause 26.5.4., procedures for settlement of disputes provided for in the clauses 49 and 50 may be instituted.
- 26.5.6. The monthly verification reports sent to the REGULATORY AGENCY shall support the exercise of its surveillance on the compliance with the SERVICE TARGETS and contractual obligations related to the PERFORMANCE INDICATORS and to the rendering of the SERVICE, for all the intents and purposes of this AGREEMENT.
- 26.5.7. In addition to the monthly verification, the INDEPENDENT VERIFIER shall prepare, within 15 (fifteen) days after the annual targets verification period, based on the annual report of indicators prepared by the CONCESSIONAIRE presented within 5 (five) days as from the start of the subsequent month, the annual verification report containing the measurement of performance and compliance with the SERVICE TARGETS and the PERFORMANCE INDICATORS sending it, within said period, to the REGULATORY AGENCY, to the STATE and to the CONCESSIONAIRE.
- 26.5.7.1. The annual report prepared by the CONCESSIONAIRE shall meet the requirements set forth in item 3.2 of ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS.
- 26.5.8. The annual verification report prepared by the INDEPENDENT VERIFIER shall support the decision of the REGULATORY AGENCY regarding the application of PERFORMANCE INDICATORS on the TARIFF, in accordance with clause 29.
- 26.5.9. In case of silence by the REGULATORY AGENCY, regarding the documents presented by the INDEPENDENT VERIFIER, its contents shall be deemed accepted, including for purposes of calculation of possible penalties and reductions for the calculation of the EFFECTIVE TARIFFS, which shall apply pursuant to ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS, this AGREEMENT and this clause.
- 26.6. For the purposes of this Clause, the INDEPENDENT VERIFIER shall permanently monitor the performance of the SERVICES, and the STATE and the CONCESSIONAIRE shall provide information and grant access to facilities as requested by the INDEPENDENT VERIFIER.
- 26.7. The PERFORMANCE INDICATORS and SERVICE TARGETS may be reviewed due to changes and/or revisions in the MUNICIPAL WATER AND SANITATION PLANS or in the METROPOLITAN WATER AND SANITATION PLAN and due to changes in the relevant legal and intralegal rules, as well as in other cases set out in this AGREEMENT, provided the economic-financial balance of this AGREEMENT is maintained.
- 26.8. Failure to timely verify the PERFORMANCE INDICATORS and SERVICE TARGETS, whether due to the INDEPENDENT VERIFIER's failure to perform or due to the REGULATORY AGENCY's failure to hire, or for any other reason, shall not authorize the approval of the verification report directly by the REGULATORY AGENCY, event in which, for that calculation period, the respective reducers in the revenue of TARIFFS shall not apply, except as provided in the subclause 26.9.

26.9. The failure to verify the PERFORMANCE INDICATORS referred to in the subclause 26.8 shall not prevent their subsequent verification, by the INDEPENDENT VERIFIER, in relation to the previous period that was not verified, whenever technically possible, for all the intents and purposes provided for in the AGREEMENT:

26.9.1. In the event provided for in the subclause 26.9, the return of any amounts due by the CONCESSIONAIRE in relation to the retroactive application of the PERFORMANCE INDICATORS may be paid in installments in up to five (5) years, as from the end of the original verification period.

26.9.2. The failure to hire the INDEPENDENT VERIFIER in a timely manner by the REGULATORY AGENCY shall be duly justified.

## **27. CONCESSIONAIRE REMUNERATION**

27.1. The CONCESSIONAIRE shall be remunerated by the EXPLOITATION FEES, to be composed as follows:

27.1.1. Revenue arising from the collection of TARIFFS from the USERS as a result of the provision of the SERVICES, discounting any reductions arising from the application of PERFORMANCE INDICATORS (EFFECTIVE TARIFFS);

27.1.2. Revenue from the performance of SUPPLEMENTARY SERVICES; and

27.1.3. ADDITIONAL REVENUE, as authorized in this AGREEMENT.

27.2. For the purpose of the CONCESSIONAIRE's remuneration, the TARIFF REVENUE collected shall be discounted from the amounts resulting from the application of the PERFORMANCE INDICATORS, and the revenue actually perceived by the CONCESSIONAIRE shall be that composed of the EFFECTIVE TARIFFS, pursuant to sub-clause 29 of this AGREEMENT.

27.3. The CONCESSIONAIRE, in compliance with the provisions of clause 36.5, undertakes to transfer to the ESCROW ACCOUNT on a monthly basis the amounts corresponding to the difference between the TARIFF REVENUE and the income deriving from the EFFECTIVE TARIFFS (after application of the PERFORMANCE INDICATORS), within a maximum of five (5) working days of the month following the calculation, whenever the PERFORMANCE INDICATORS impact the TARIFF REVENUE, in accordance with ANNEX XI - DRAFT OF ESCROW ACCOUNT AGREEMENT.

27.4. Until the date of start of the OPERATION OF THE SYSTEM formalized by the CERTIFICATE OF SYSTEM TRANSFER, all TARIFF billing rights, and all other USER collection rights shall remain exclusively exercised by CEDAE.

27.5. In the operation of the SERVICES, the CONCESSIONAIRE may not give differentiated treatment, including regarding tariff, to USERS of the same category of consumption, except in the cases provided for by law and in the regulations of the REGULATORY AGENCY.

27.6. In the event the STATE and the REGULATORY AGENCY, during the term of the CONCESSION, re-establish tariff privileges that benefit specific segments of USERS, except those already provided for by law or in the regulations of the REGULATORY AGENCY on the date of submission of the BID, the AGREEMENT shall be reviewed in order to maintain its economic-

financial balance.

27.7. In order to ensure the maintenance of the satisfactory provision of the SERVICES, the economic-financial balance and the isonomic treatment of the USERS in the CONCESSION AREA of BLOCK [●], exemption from payment of the TARIFF shall not be allowed, including to entities that are part of the Government, directly or indirectly, observing the provisions of ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS.

27.8. The CONCESSIONAIRE may hire other companies to act as collection agents of the TARIFFS or make investments so that the collection of TARIFF is carried out remotely, and the respective costs shall not be passed on to the USERS.

27.9. The CONCESSIONAIRE is hereby authorized, under the terms of ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS and the regulatory standards issued by the REGULATORY AGENCY, to record in the USERS' consumption accounts, where applicable, any fines imposed on the USERS and other costs associated with the provision of the SERVICES.

27.10. The CONCESSIONAIRE may include in the USERS' consumption account the amounts related to other services provided by third parties to the USERS, provided there is express consent by the USERS.

27.11. The CONCESSIONAIRE is hereby authorized to obtain ADDITIONAL REVENUE through the exploitation of alternative, accessory or project revenue sources associated with the CONCESSION, through activities resulting from the treatment of effluents from tank trucks (slurry from landfills, pits, etc.), the sale of used hydrometers, advertising via water and sewage bills (including the leaflets with the water and sewage bills), the sale of reuse water and the sale of sludge from treatment processes to produce fertilizer.

27.12. Any exploitation of sources of ADDITIONAL REVENUE not expressly and specifically listed in the above clause shall depend on the prior consent of the STATE.

27.13. The exploitation of alternative, accessory or associated projects revenue sources may not compromise the quality standards of the SERVICES, as also provided for in the rules and procedures of the ITB and this AGREEMENT.

27.14. The exploitation of activities or the promotion of advertising that infringe the legislation in force, that violate morals and good customs, of a religious or political nature, or that may hinder the operational development and commercial aspects of the SYSTEM, shall not be allowed.

27.15. The term of all commercial exploitation contracts executed by the CONCESSIONAIRE for the purpose of obtaining ADDITIONAL REVENUE shall not exceed the term of the CONCESSION.

27.15.1. The financial income derived from ADDITIONAL REVENUE shall be shared between the CONCESSIONAIRE, and the STATE, in the percentages of 85% (eighty five percent) for the CONCESSIONAIRE and 15% (fifteen percent) for the STATE, over the gross revenue value, and such amounts to be deposited in a specific and individualized account and transferred monthly.

27.15.1.1. The values mentioned in the previous subclause and that are shared with the STATE, shall be segregated by the CONCESSIONAIRE in the ESCROW ACCOUNT and used by the STATE exclusively for the purposes set forth in ANNEX XI - DRAFT OF ESCROW

## ACCOUNT AGREEMENT.

- 27.15.2. The reduction of the percentage of alternative revenues to be shared with the STATE shall be allowed as a form of economic-financial rebalance the AGREEMENT or for the economic-financial feasibility of the activity, upon consent by the PARTIES.
- 27.15.3. The provisions of this clause, in particular the provision of revenue sharing, do not apply to the SUPPLEMENTARY SERVICES, which shall be performed by the CONCESSIONAIRE and remunerated directly by the USERS of the SERVICES.
- 27.16. The CONCESSIONAIRE may, in mutual agreement with CEDAE, carry out actions to recover credit from CEDAE arising from USER debts existing prior to the term of the AGREEMENT.

## 28. REAJUSTMENT

28.1. The values of the TARIFFS charged by virtue of the provision of the SERVICES shall be readjusted every 12 (twelve) months, as from the date of the submission of the BID in the BIDDING PROCESS. The readjustment shall follow the following parametric formula:

$$TARIFF_b = TARIFF_{b-1} * CRI$$

Where:

- TARIFF<sub>b</sub>**: BASE TARIFF to be calculated;  
**TARIFF<sub>b-1</sub>**: BASE TARIFF in force in the previous year;  
**CRI**: Contractual Readjustment Index.

- 28.1.1. The first readjustment shall be carried out on [\*] and shall take into account the inflation variation between the base date mentioned in sub-clause 28.1 until the date of the first readjustment, as well as the formula of the previous subclause.
- 28.1.2. The CRI shall be calculated as follows:

$$CRI = [P1 \times (Ai/Ao) + P2 \times (Bi/Bo) + P3 \times (Ci/Co) + P4 \times (Di/Do) + P5 \times (Ei/Eo)]$$

Where:

**P1, P2, P3, P4 and P5** = These are weighting factors to be applied on the indices used in the formula, the values of which are listed in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS of this AGREEMENT. The sum of the weighting factors must be equal to 1 (one).

**Ai**: is the Index "ICC - Labor - labor index (column 56) published by Fundação Getúlio Vargas - FGV", corresponding to the fourth month prior to the tariff readjustment date;

**Ao**: is the same index as above, relating to the fourth month before the base date set out in this clause;

**Bi**: is the average of the electric energy tariff values referring to "Group A - Conventional, Subgroup A4 (2.3 kV to 25kV)", consumption value in MWh, practiced by the local concessionaire, on the 1st day of the 12 months prior to the tariff readjustment date; The average of the tariff flags for the 12-month period prior to the date of the tariff readjustment should also be considered;

**Bo:** is the same index as above, practiced by the local concessionaire, on the 1st day of the 12 months prior to the date of the last tariff readjustment;

**Ci:** is the index "GPI - Origin - OG-DI - Industrial Products - Manufacturing Industry - Chemicals (1006820)", corresponding to the fourth month prior to the tariff readjustment date;

**Co:** is the same index as above, relating to the fourth month before the base date set out in this clause;

**Di:** is the price of the water charged by CEDAE, corresponding to the month prior to the tariff readjustment date;

**Do:** is the price of the water charged by CEDAE, corresponding to the month prior to the date of the last tariff readjustment;

**Ei:** is the index "INCC - National Index of Construction Cost, column 1A of Conjuntura Econômica magazine of Fundação Getúlio Vargas", corresponding to the fourth month prior to the tariff readjustment date;

**Eo:** is the index "INCC - National Index of Construction Cost, column 1A of Conjuntura Econômica magazine of Fundação Getúlio Vargas", relating to the fourth month prior to the date of the last tariff readjustment.

28.2. The indexes that make up the CRI, listed in the previous sub-clause, shall be subject to a triennial variation, as set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS of this AGREEMENT.

28.3. The parametric formula provided for in this clause is intended to reflect the evolution of the main costs of the CONCESSION due to inflation variations since the last TARIFF readjustment.

28.4. If the indices established in this clause are published late in relation to the month of calculation of the readjustment, the most recent available index shall be used.

28.5. In the absence of any of the indices established in this clause, should they cease to be published, the index that replaces it shall be adopted, according to the organization responsible for the calculation and publication of the index.

28.6. Should no index automatically replace the respective index, the PARTIES and the REGULATORY AGENCY shall determine, by mutual agreement, the new index to be used.

28.6.1. If the PARTIES do not reach an agreement within 45 (forty-five) days after said readjustment index ceases to be published, the one appointed by the REGULATORY AGENCY shall prevail.

28.7. Over the values of the TARIFFS, readjusted annually pursuant to this clause, the PERFORMANCE INDICATORS of the CONCESSION shall be applied in order to determine the values of the EFFECTIVE TARIFFS to be paid to the CONCESSIONAIRE.

## **29. APPLICATION OF PERFORMANCE INDICATORS TO THE TARIFFS**

29.1. From the third year of OPERATION OF THE SYSTEM, the EFFECTIVE TARIFFS shall be

determined annually, at the same time as the TARIFFS are readjusted, with the application of the PERFORMANCE INDICATORS, which shall be assessed by the INDEPENDENT VERIFIER, and applied by the REGULATORY AGENCY, in accordance with clause 26 of this AGREEMENT, and pursuant to ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS.

29.1.1. In the first 2 (two) years of operation of the system, the value of the EFFECTIVE TARIFF shall coincide with that of the TARIFF, duly readjusted.

29.1.2. The EFFECTIVE TARIFFS shall be calculated on the basis of the following formula:

$$\mathbf{TARIFF_e = TARIFF_b * GPI + TARIFF_b * STI}$$

Where:

**TARIFF<sub>e</sub>**: EFFECTIVE TARIFF;

**TARIFF<sub>b</sub>**: Base tariff, readjusted pursuant to clause 28 of this AGREEMENT;

**GPI**: General Performance Indicator, calculated in accordance with ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS;

**STI**: Social Tariff Index, calculated in accordance with ANNEX V - PERFORMANCE INDICATORS AND SERVICE TARGETS of this AGREEMENT.

29.2. The percentage of reduction on the TARIFFS, applied by the GPI, shall not exceed 10% (ten percent).

29.2.1. On the occasion of the first non-compliance with the PERFORMANCE INDICATORS, the percentage of reduction applied by GPI shall be mitigated, as set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS of this AGREEMENT.

29.3. In order to ensure the correct measurement of the percentage of units benefiting from the social tariff, the CONCESSIONAIRE shall carry out an annual re-registration of beneficiaries, two (2) months prior to the date of application of the calculation provided for in sub-clause 29.1.2.

29.3.1. In the calculation of STI, the social tariff units of USERS residing in slum areas and subnormal agglomerations of the municipality of Rio de Janeiro shall not be considered.

29.4. The readjustment of the TARIFFS and the calculation of the EFFECTIVE TARIFFS shall be approved by the REGULATORY AGENCY through a single public administrative procedure, widely publicized, with the support of the INDEPENDENT VERIFIER.

29.5. The calculations of the TARIFFS and EFFECTIVE TARIFFS shall be prepared by the CONCESSIONAIRE and the respective calculation memory shall be submitted to the REGULATORY AGENCY, with a copy to the STATE, up to sixty (60) days prior to the date established for the readjustment.

29.6. The calculation memory should detail:

29.6.1. the values of the TARIFFS, in accordance with the readjustment criteria set forth in subclause 28.1 of this AGREEMENT; and

29.6.2. the values of the EFFECTIVE TARIFFS, considering the application of the General Performance Indicator and the Social Tariff Index, pursuant to the sub-clause

29.1.2 according to the verification prepared by the INDEPENDENT VERIFIER.

29.6.3. If it is found that the targets set out in subclause 37.6 have not been met, the REGULATORY AGENCY shall initiate administrative proceedings in order to evaluate the actions to be adopted, any penalties and, as the case may be, a recommendation for the forfeiture of the CONCESSION, ensuring the right to a full defense and adversary proceedings.

29.7. The REGULATORY AGENCY shall have up to 30 (thirty) days as from the receipt of the calculation memories sent by the CONCESSIONAIRE to analyze them and issue a statement regarding their adequacy.

29.8. The STATE may, if it deems it appropriate, within 10 (ten) days from the submission of the calculation memories prepared by the CONCESSIONAIRE, issue a statement to the REGULATORY AGENCY regarding the calculations presented by the CONCESSIONAIRE.

29.9. After the REGULATORY AGENCY analyzed the calculation memory of the TARIFFS and EFFECTIVE TARIFFS, as well as any statement by the STATE, and having concluded that the CONCESSIONAIRE's calculations are correct, the REGULATORY AGENCY shall approve the tariff values presented, formally communicating the CONCESSIONAIRE and the STATE in this regard, and the CONCESSIONAIRE shall be authorized to start charging the TARIFFS based on the variation calculated.

29.10. The REGULATORY AGENCY may only refuse to approve the calculations submitted by the CONCESSIONAIRE if it proves, in a substantiated manner, that:

29.10.1. there was an error in the calculation of the TARIFF readjustment;

29.10.2. there was an error in the indication of the indices applicable to the TARIFF readjustment;

29.10.3. there was an error in the calculation of the EFFECTIVE TARIFFS, considering the GPI value informed by the INDEPENDENT VERIFIER and previously approved by the REGULATORY AGENCY;

29.10.4. the period of 12 (twelve) months provided for in subclause 29.1 for readjustment of the TARIFFS and calculation of EFFECTIVE TARIFFS has not been completed.

29.11. In the event that the REGULATORY AGENCY does not agree, in whole or in part, with the calculation memories prepared by the CONCESSIONAIRE, it shall inform the PARTIES, in a substantiated manner, the reasons for its disagreement, observing the following conditions:

29.11.1. the REGULATORY AGENCY shall present to the CONCESSIONAIRE and to the STATE, in a duly substantiated statement, its objection, indicating the values of TARIFFS and EFFECTIVE TARIFFS that it understands to be correct;

29.11.2. the values deemed correct by the REGULATORY AGENCY shall be applied immediately to the TARIFFS and EFFECTIVE TARIFFS, until a final decision on the matter, and where applicable, the disclosure to the USERS;



29.11.3. the STATE and the CONCESSIONAIRE may express their views on the decision of the REGULATORY AGENCY within 15 (fifteen) days;

29.11.4. in the event that the statement is accepted and the calculations originally proposed by the CONCESSIONAIRE are accepted, the amounts of the differences due regarding the invoices prior to the decision accepting the statement shall be charged in the first invoice following said decision;

29.11.5. if any challenge by the CONCESSIONAIRE or the STATE is not accepted, the values set out in subitem 'ii' of this sub-clause shall represent the final value of the EFFECTIVE TARIFFS and TARIFFS.

29.12. If the REGULATORY AGENCY does not issue a statement within the period established in subclause 29.5, the CONCESSIONAIRE shall be authorized to bill the proposed EFFECTIVE TARIFFS, without prejudice to the initiation of the procedure provided for therein.

29.13. If the REGULATORY AGENCY issues a statement after the established deadline, the CONCESSIONAIRE shall undertake to observe, from then on, the conditions contained in said statement.

29.14. In relation to the collections already made as readjusted from the calculation presented by the CONCESSIONAIRE, any compensation shall only be promoted by the CONCESSIONAIRE after the end of the procedure set out in subclause 29.10, in which case the CONCESSIONAIRE shall offset the amount in up to three monthly installments.

29.15. The CONCESSIONAIRE shall advertise to the USERS the changes applied to the TARIFFS of the CONCESSION, due to the application of the readjustment of the TARIFFS and calculation of the EFFECTIVE TARIFFS, at least 30 (thirty) days before the application of the new tariff values.

29.15.1. The information set out in this sub-clause shall also be on the invoice immediately preceding the one on which the readjustment will be applied.

29.16. The calculated variation for the calculation of the TARIFFS and EFFECTIVE TARIFFS shall apply to the values of the SUPPLEMENTARY SERVICES and fines applicable to the USERS.

29.17. Once the value of the EFFECTIVE TARIF is defined, the CONCESSIONAIRE shall inform the fiduciary agent hired pursuant to ANNEX XI - DRAFT OF ESCROW ACCOUNT AGREEMENT, within 5 (five) days, the percentage that shall be segregated from the TARIFF and allocated to the ESCROW ACCOUNT, sending a copy of the communication to the STATE and to the REGULATORY AGENCY.

### **30. ORDINARY REVIEWS**

30.1. Every 5 (five) years, as from the date of the start of the OPERATION OF THE SYSTEM, in accordance with the schedule issued by the REGULATORY AGENCY at the time of execution of the AGREEMENT, the ordinary review of the AGREEMENT shall be carried out, observing the processing conditions and the limits established below.

30.2. The ordinary review of the AGREEMENT shall be conducted by the REGULATORY

AGENCY, with the participation of the CONCESSIONAIRE and the STATE, and shall aim to:

30.2.1. process the economic-financial rebalancing claims not submitted to the extraordinary reviews;

30.2.2. approve the ACTION PLAN for NON-URBANIZED IRREGULAR AREAS;

30.2.3. update the SERVICE TARGETS and the PERFORMANCE INDICATORS, in view of any updates in the WATER AND SANITATION MUNICIPAL PLANS and the METROPOLITAN WATER AND SANITATION PLAN, observing the limits established below and the preservation of the economic-financial balance;

30.2.4. promote other adaptations in the subject matter of the AGREEMENT that are necessary under this instrument, respecting the legal limitations and maintaining the economic-financial balance of the AGREEMENT.

30.3. The processing of the economic-financial rebalancing claims in the scope of the ordinary review shall observe the rules set out in clause 31 of this AGREEMENT.

30.4. The updating of the SERVICE TARGETS, in accordance with subclause 30.2.3, may be implemented by consensus, by agreement between the CONCESSIONAIRE and the STATE, with the intervention of the REGULATORY AGENCY, or be unilateral, implemented by the STATE, with the intervention of the REGULATORY AGENCY, observing the rules on the unilateral amendment set out in clause 33, maintaining, in all cases, the economic-financial balance of the AGREEMENT.

30.5. The changes in the PERFORMANCE INDICATORS listed in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS may be implemented jointly by the STATE and the CONCESSIONAIRE, with the intervention of the REGULATORY AGENCY, with a view to improving the monitoring conditions, functionality and effectiveness of the PERFORMANCE INDICATORS, based on the consideration of technological development, user perception and qualitative and quantitative improvement of the service, and shall depend in all cases on the maintenance of the economic-financial balance of the AGREEMENT.

30.6. The performance of the ORDINARY REVIEWS does not exclude the right of the PARTIES to EXTRAORDINARY REVIEW whenever the conditions for such review are verified, as per the terms established in this AGREEMENT.

### **31. ORDINARY REVIEW PROCESS**

31.1. The ordinary review process shall be initiated through notification by the REGULATORY AGENCY to the PARTIES, informing them 15 (fifteen) days in advance of the date and time of the meeting to start the work, according to the schedule of events and meetings issued at the time of execution of the AGREEMENT.

31.1.1 Upon the execution of the AGREEMENT, the REGULATORY AGENCY shall disclose the agenda of the first ordinary review to be carried out after 5 (five) years as from the start of the SYSTEM OPERATION, and at the end of the processing of each ordinary review, the agenda for the next ordinary review shall be disclosed, with the publication on the official page of the REGULATORY AGENCY.

31.1.2 The schedule of agendas and the definition of the form and number of meetings and events shall be adapted according to the convenience of the REGULATORY AGENCY and the PARTIES, with a view to conferring effectiveness, transparency and efficiency to the process of ORDINARY REVIEWS.

31.2. On the occasion of the ordinary review, the CONCESSIONAIRE shall submit to the REGULATORY AGENCY and the STATE:

31.2.1. Detailed and updated report of the progress in the achievement of the SERVICE TARGETS and PERFORMANCE INDICATORS;

31.2.2. Updated schedule of implementation of the SYSTEM IMPROVEMENT WORKS;

31.2.3. Detailed and updated report on the availability of works and equipment;

31.2.4. Report containing any changes to the MUNICIPAL WATER AND SANITATION PLANS and the METROPOLITAN WATER AND SANITATION PLAN that might entail adjustments to the SERVICE TARGETS;

31.2.5. ACTION PLAN for the next 5 (five) years.

31.2.6. Other supporting documentation required under this AGREEMENT for the requirements of economic-financial rebalancing requested by the PARTIES.

31.3. The ACTION PLAN must be presented by the CONCESSIONAIRE to the STATE and to the REGULATORY AGENCY, in accordance with ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS, at the start of the processing of each ordinary review.

31.3.1. The REGULATORY AGENCY shall analyze the ACTION PLAN, deciding on its approval within a maximum period of 60 (sixty) days from its presentation by the CONCESSIONAIRE.

31.3.2. In the event of non-approval of the ACTION PLAN, the decision of the REGULATORY AGENCY shall specifically point out the reasons for the disagreement, opening a new deadline for the CONCESSIONAIRE to resubmit it.

31.3.3. In the event of a deadlock between the CONCESSIONAIRE and the REGULATORY AGENCY on the content of the ACTION PLAN, the interested party may call the TECHNICAL COMMITTEE to issue its opinion report on the disagreement, and, thereafter, a period of 30 (thirty) days shall be opened for the REGULATORY AGENCY to make a new decision, ratifying or reviewing its previous decision.

31.4. Before the first ordinary review begins, the REGULATORY AGENCY, after hearing the CONCESSIONAIRE and the STATE, shall define the procedure for the ordinary reviews, which shall ensure transparency, through public consultations and dissemination of information, and consensus in the conduct of the works, as well as ensuring the PARTIES the opportunity to submit requests for economic-financial rebalancing, proposals for amendments in the object of the AGREEMENT, whenever necessary, and other statements intended to discuss and

implement the provisions listed in subclause 30.1, observing the deadlines, requirements and assumptions set forth in this AGREEMENT for such cases.

31.5. At the end of the ordinary review, an addendum to the AGREEMENT shall be formalized, signed by the PARTIES, with the intervening consent of the REGULATORY AGENCY, and shall be published in the official press according to the legislation, listing any amendments and adaptations that have been made to the content of the AGREEMENT.

## **32. EXTRAORDINARY REVIEW**

32.1. The PARTIES may request an extraordinary review of the AGREEMENT, aimed at promoting its economic-financial rebalancing in view of the already verified or imminent materialization of the risks allocated to the other PARTIES, whose consequences generate economic-financial losses and/or the need to adopt urgent measures with a view to mitigating the burdens caused or that might be caused in the scope of the AGREEMENT.

32.2. The claims for extraordinary review shall be applicable whenever there is imminent loss without the economic and financial rebalancing and the adoption of measures that are inherent thereto are carried out and processed within the scope of the ordinary review.

32.3. The extraordinary review shall have the objective of rebalancing the AGREEMENT and/or promoting the steps and adoption of measures to mitigate the financial or economic damage of the PARTIES and shall be processed in accordance with the terms established below.

32.4. In case there is no urgency for the economic-financial rebalancing, but there is still a need for urgent measures and steps to be taken in order to mitigate the impact of risk in the scope of the AGREEMENT, such measures may be discussed and implemented within the scope of the extraordinary review.

32.5. The claim for extraordinary review shall demonstrate the relevance and urgency of the proposed economic-financial rebalancing and adoption of measures, as well as observe the other stipulations of this AGREEMENT, as provided for in clause 35.

## **33. AMENDMENT TO THE AGREEMENT**

33.1. This AGREEMENT may be amended unilaterally by STATE or upon agreement between the parties.

33.1.1. The unilateral amendment of the AGREEMENT must be sufficiently motivated, with reasons that consider the content of the statement of the CONCESSIONAIRE, as well as the consequences of the implementation of the measure for the CONCESSION and for the USERS.

33.1.2. The unilateral amendment of the AGREEMENT shall be accompanied by the definition of the conditions for the implementation of the measure, including in relation to the necessary steps to be taken by the STATE for its implementation.

33.2. The AGREEMENT may be amended, among other reasons, upon agreement between the PARTIES and provided there is justification for such amendment, in order to:

33.2.1. change the SERVICE TARGETS, upon demonstration of their inadequacy in the light of new circumstances, including in view of changes in the MUNICIPAL WATER AND

SANITATION PLANS and the METROPOLITAN WATER AND SANITATION PLAN;

- 33.2.2. include or cancel works and services in the object of the AGREEMENT;
  - 33.2.3. to adapt the regulatory content of the CONCESSION, from the demonstration of its obsolescence in the face of new circumstances;
  - 33.2.4. to adjust the PERFORMANCE INDICATORS, whenever they prove to be obsolete due to technological advance, to the conditions of their monitoring, the perception of users and the need to adapt them to public policy;
  - 33.2.5. to adapt the term of the ASSISTED OPERATION, pursuant to the provisions of this AGREEMENT;
  - 33.2.6. to adjust the performance deadlines provided for in this AGREEMENT, when they prove to be unfeasible in view of the new circumstances;
  - 33.2.7. to adjust the form and comprehensiveness of reports and statements provided for in this AGREEMENT, as well as of the procedures for the supervision of the provision of the SERVICES, with a view to achieving greater efficiency in the activities of supervision and regulation;
  - 33.2.8. to amend the content of the ANNEX IV - TECHNICAL SPECIFICATIONS OF THE CONCESSION and of the manner of provision of the SERVICES, observing the stability of its essential characteristics;
  - 33.2.9. to adjust the tariff structure and the value of the TARIFFS, always observing the maintenance of economic-financial balance;
  - 33.2.10. to adjust its object due to the event of a new regulatory policy for the sector;
  - 33.2.11. to include or cancel works or services in the scope of the CONCESSION, observing the limits established in this instrument.
- 33.3. Any amendment to the universalization targets set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS must, in all cases, observe the provisions of art. 11-B of Federal Law no. 11.445/2007.
- 33.4. The PARTIES hereby recognize the possibility of expanding the CONCESSION AREA to include the areas of the METROPOLITAN REGION listed below, with the extension of the respective SERVICES subject matter of this AGREEMENT to the added areas, as of the termination of pre-existing water supply and sanitation concession agreements to which they are subject, linking them to the respective BLOCKS as referred to in subclause 33.4.1.
- 33.4.1. In view of the better technical suitability and the greater synergy with the operation of the CONCESSION, in the event of expansion of the CONCESSION AREA for the incorporation of the areas mentioned in subclause 33.4, the following shall be observed:
- 33.4.1.1. Pre-existing full concessions in the Municipalities of Guapimirim and Niterói will be included in BLOCK 1;

- 33.4.1.2. The pre-existing full concession in the Municipality of Petrópolis will be included in BLOCK 2;
- 33.4.1.3. The pre-existing AP-5 sanitation concession will be included in BLOCK 3; and
- 33.4.1.4. The pre-existing São João de Meriti sanitation concession will be included in BLOCK 4.
- 33.4.2. The expansion of the CONCESSION AREAS, referred to in subclause 33.4, may give rise, when applicable, to the obligation of the CONCESSIONAIRE to pass on values of VARIABLE CONCESSION FEE directly to the respective holder(s) whose areas were incorporated into the subject matter of the AGREEMENT, and to the Metropolitan Region Development Fund, through the percentages over the revenue coming from the exploitation of the SERVICE in the respective added areas.
- 33.4.2.1. Whenever the institution of payment obligation of VARIABLE CONCESSION FEE is feasible, as per sub-clause 33.4.2, its percentage shall be established taking into account the maintenance of the economic-financial balance of the AGREEMENT, and the values of the VARIABLE CONCESSION FEE shall be due to the municipality that is part of the CONCESSION and, as the case may be, to the Metropolitan Region Development Fund.
- 33.4.2.2. Thereafter and in addition to the transfer of values of the VARIABLE CONCESSION FEE by the CONCESSIONAIRE to the MUNICIPALITY (IES) and the Metropolitan Region Development Fund, it may be established the obligation for payment of a FIXED CONCESSION FEE to the MUNICIPALITIES whose areas were incorporated into the subject matter of the AGREEMENT, and to the Metropolitan Region Development Fund in amounts that do not compromise the financial feasibility of the performance of the AGREEMENT, and always maintaining the economic-financial balance of the AGREEMENT.
- 33.4.3. The payment of the FIXED CONCESSION FEE that the subclause 33.4.2 addresses shall be shared between the STATE and the MUNICIPALITIES and the Metropolitan Region Development Fund in the same proportion set out in subclause 36.2.1.
- 33.5. Prior to the issuance of any unilateral amendment act, the STATE shall send to the CONCESSIONAIRE a proposal on the content of such unilateral amendment, detailing the economic-financial rebalancing and the conditions for the implementation of any measures necessary for the effectiveness of the measures that depend on the STATE.
- 33.5.1. The CONCESSIONAIRE must express its opinion on the content of the unilateral amendment within a maximum period of 30 (thirty) days.
- 33.5.2. After the expiration of the period mentioned in the previous sub-clause without any statement, the consent of the CONCESSIONAIRE shall be implied.
- 33.5.3. In duly justified cases of urgency, the prior statement by the CONCESSIONAIRE may be dispensed with, with the opportunity for its statement immediately after the issuance of the act.

33.6. The unilateral amendment of the AGREEMENT shall be made upon the issuance of a reasoned administrative act, whose grounds shall consider the content of the CONCESSIONAIRE's statement, as well as all the consequences for the CONCESSION and for the USERS that will entail from the implementation of the measure.

33.7. The unilateral amendment of the AGREEMENT shall be accompanied by the definition of the conditions for the implementation of the measure, including any necessary steps to be taken by the STATE for its implementation.

33.8. The amendment of the AGREEMENT shall be compulsorily accompanied by the concomitant implementation of the economic-financial rebalancing, preceded by the definition of the rebalancing by the REGULATORY AGENCY, pursuant to clause 35. AGREEMENT.

33.9. Without prejudice to the process of unilateral amendment of the AGREEMENT and the respective economic-financial rebalancing, the CONCESSIONAIRE, once notified of the proposal of unilateral amendment, may request the REGULATORY AGENCY to review the merits of the proposed amendment, from the perspective of its convenience and legality, and the REGULATORY AGENCY, after hearing the STATE, shall decide on the request from the CONCESSIONAIRE within a reasonable time.

33.10. The consensual amendment of the AGREEMENT shall be preceded by the definition of the economic-financial rebalancing by the REGULATORY AGENCY, and the PARTIES may send a joint proposal for its decision, observing, where applicable, the procedure provided for in clause 35.

33.11. The amendments to the AGREEMENT shall be implemented through the formalization of an addendum, signed by the PARTIES and by the REGULATOR AGENCY, the latter as an intervening consenting party.

33.11.1. Except for the definition of the economic-financial rebalancing and the other cases in which the AGREEMENT expressly provides for the prior or subsequent decision by the REGULATORY AGENCY, all other amendments to the subject matter of the AGREEMENT shall not depend on the previous or subsequent statement or decision by the REGULATORY AGENCY, except for its intervening consent in the respective addendum and any normative provision otherwise.

#### **34. ECONOMIC-FINANCIAL BALANCE AND RISK ALLOCATION**

34.1. The economic and financial balance of the AGREEMENT shall be maintained during the entire term of the AGREEMENT.

34.1.1. Whenever the conditions of this AGREEMENT are verified and its risk matrix is maintained, its economic-financial balance is considered maintained.

34.2. Exception for the risks allocated by this AGREEMENT or by legislation to the responsibility of the STATE, the CONCESSIONAIRE, from the start of the OPERATION OF THE SYSTEM, is fully and exclusively liable for all ordinary risks and obligations related to the operation and provision of the SERVICES, including, without limitation, the following:

- 34.2.1. variation in the demand of the SERVICES and SUPPLEMENTARY SERVICES, including, without limitation, due to the growth of the population, population concentration different from predicted, default of the USERS, existence of irregular connections, change in the housing profile or in the pattern of consumption or composition of users, among others;
- 34.2.2. variation in operating and maintenance costs of the SYSTEM, including in relation to not obtaining the economic return foreseen by CONCESSIONÁRIA, provided that such variation does not result, directly or indirectly, from any action or omission by the STATE or the REGULATORY AGENCY, as per subclause 34.4.11;
- 34.2.3. variation in the cost of labor affecting the performance of the SERVICES, SUPPLEMENTARY SERVICES and SYSTEM IMPROVEMENT WORKS;
- 34.2.4. geological and climate risks related to the performance of the SYSTEM IMPROVEMENT WORKS, except in areas that present, before the execution of the AGREEMENT, instability in the subsoil, until its recovery and release by the competent bodies, in the judicial and administrative levels;
- 34.2.5. excess costs related to the provision of the SERVICES, as well as losses due to inefficient management of the SERVICES;
- 34.2.6. obtaining the licenses, permits and authorizations necessary for the performance of the object of this AGREEMENT, except in the event that the delay and/or failure to obtain licenses, permissions and authorizations is caused by action or omission by the responsible Government body or entity, in which case the CONCESSIONAIRE shall be exempt from liability and/or discounts related to the PERFORMANCE INDICATORS;
- 34.2.7. current technology used in the works and in the provision of the SERVICES, except in the event provided for in subclause 34.4.25;
- 34.2.8. wear and tear, destruction, theft, loss or any other kind of damage caused to the LINKED ASSETS;
- 34.2.9. unavailability of credit facilities and/or increase in the cost of capital, including those resulting from increases in interest rates;
- 34.2.10. variation of exchange rates, no matter how great they may be;
- 34.2.11. flaws in the basic and executive designs, in the performance of works and in the infrastructure applied in the SERVICES;
- 34.2.12. delays and additional costs in the implementation of the SYSTEM IMPROVEMENT WORKS which are not attributable to the STATE or to the MUNICIPALITIES in accordance with the terms of this AGREEMENT;
- 34.2.13. occurrence of acts of God and force majeure events which are object of insurance coverage required in this AGREEMENT, up to the limit of the policies;
- 34.2.14. civil, administrative and criminal liability for environmental damage resulting from the performance of the SYSTEM IMPROVEMENT WORKS, the operation and maintenance



of the LINKED ASSETS and the provision of the SERVICES, in relation to events occurring after the CERTIFICATE OF SYSTEM TRANSFER;

- 34.2.15. damage caused to third parties, including SERVICE USERS, by the CONCESSIONAIRE or its officers, employees, agents or service providers or any other natural person or legal entity related to it, in the exercise of the activities in the scope of the CONCESSION;
  - 34.2.16. losses arising from risks inherent to the business activity;
  - 34.2.17. investments, payments, costs and expenses arising from expropriation, easements, eminent domain or provisional occupation of real estate;
  - 34.2.18. expenditure resulting from hidden defects in the REVERSIBLE ASSETS,
  - 34.2.19. events of collective bargaining, collective labor or bargaining agreement or failure by the CONCESSIONAIRE's contractors to provide materials and services, as well as strikes by their staff;
  - 34.2.20. losses resulting from interruptions and/or failures in the supply of materials and services by suppliers and providers subcontracted by the CONCESSIONAIRE or operational failures of the CONCESSIONAIRE that affect other CONCESSIONAIRES, except for interruptions and/or failures in the supply of CEDAE, which shall be regulated in ANNEX VI - INTERDEPENDENCE AGREEMENT AND ANNEXES;
  - 34.2.21. liability for delays attributable to the CONCESSIONAIRE in conducting the expropriation procedures of the areas necessary for the provision of the SERVICES, and for the performance of the SYSTEM IMPROVEMENT WORKS, subject to the provisions of clause 13;
  - 34.2.22. variation identified by the CONCESSIONAIRE of up to 18.5% (eighteen point five percent), verified up to the twenty-fourth month after the end of the ASSISTED OPERATION, between the effectively existing level of service of the water distribution system and the water distribution system established in ANNEX III, and between the effectively existing level of service of the sanitation system and the level of service of the sanitation system established in ANNEX III.
- 34.3. The risks provided for above, if they occur, shall not give rise to the review of the AGREEMENT for the purpose of economic-financial rebalancing in favor of the CONCESSIONAIRE.
- 34.4. The events and risks listed below, in case they occur and provided that they prove to impact the economic-financial balance of the AGREEMENT, either way, shall give rise to its ordinary or extraordinary review as provided for in the AGREEMENT:
- 34.4.1. change in the CONCESSION AREA of the BLOCK [●] due to the transformation of rural areas into urban areas or of urban areas into rural areas;
  - 34.4.2. failure by the REGULATORY AGENCY and/or the STATE to comply with its contractual, regulatory or legal obligations, including, without limitation, failure to comply with deadlines applicable to them, as provided for in this AGREEMENT and/or in current legislation;

- 34.4.3. delay in the compliance by the STATE, when in its responsibility, with its obligations relating to expropriation or easement, as provided for in Clause 22;
- 34.4.4. unilateral amendment of this AGREEMENT, which demonstrably results in variations in costs, revenues or investments of the CONCESSIONAIRE;
- 34.4.5. issuance of standards applicable to the CONCESSION or other directives by the REGULATORY AGENCY that entail a change in the PERFORMANCE INDICATORS provided for in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS of this AGREEMENT, as well as other conditions for the provision of the SERVICES;
- 34.4.6. factum principis or government fact that provenly results in variations of costs, expenses or investments and/or revenues of the CONCESSIONAIRE, including norms, directives and conditions from environmental authority or agency that do not stem from non-compliance by the CONCESSIONAIRE with the current environmental norms;
- 34.4.7. except for taxes on income, the creation, amendment or extinction of taxes or legal charges or the inclusion of new provisions, which impact the costs and/or revenues of the CONCESSIONAIRE, either way, in accordance with the provisions of §3 of article 9 of Federal Law no. 8,987;
- 34.4.8. legislative amendment of specific nature that produces a direct impact on the revenues of the CONCESSIONAIRE, such as those granting exemption, reduction, discount or any other tax or tariff privilege;
- 34.4.9. occurrence of unforeseeable and supervening circumstances or of immeasurable consequences, due to act of God or force majeure, which are not covered by the insurance coverages or in regard to the part that exceeds the limit of the insurance policy values required in this AGREEMENT;
- 34.4.10. if the proportion of units subject to the payment of social tariff exceeds 5 % (five percent) of the total active units listed in the CONCESSIONAIRE's registry;
- 34.4.11. delay in works and activities resulting from the delay in obtaining environmental licenses or permits from public bodies under the responsibility of CONCESSIONAIRE when the deadlines for analysis by the body responsible for issuing the licenses or permits exceed those set out in the applicable rules or those informed by the public body, except if it is due to a fact attributable to the CONCESSION, which is understood as any delay arising from the failure to deliver of all documents, studies and information required by the public body, or in a quality inferior to the minimum established by the licensing or authorizing agency, before or after the application for licensing or authorization;
- 34.4.12. acts or facts occurred before the date of transfer of the SYSTEM, including environmental damages and liabilities, even if known after such date, which affect the performance of the AGREEMENT or burden the costs, expenses or investments of the CONCESSIONAIRE, regardless of having been aware of such events before the execution of the AGREEMENT or the date of transfer of the EXISTING SYSTEM, except for the risks expressly allocated to the liability of the CONCESSIONAIRE in this AGREEMENT;

- 34.4.13. judicial and administrative orders to comply with obligations originally attributable to the STATE, the METROPOLITAN REGION or the MUNICIPALITIES, including labor claims brought by employees or third parties linked to the STATE or other companies hired by the STATE;
- 34.4.14. archaeological risks, including the possible discovery of historical and archaeological sites that affect the performance of the AGREEMENT;
- 34.4.15. non-availability of electric energy, resulting from facts not attributable to the CONCESSIONAIRE and that affect the performance of the AGREEMENT;
- 34.4.16. delays or hindrances to the performance of the SERVICES, SUPPLEMENTARY SERVICES and performance of the SYSTEM IMPROVEMENT WORKS arising from interference caused by social movements and/or presence of indigenous populations, '*quilombolas*' and any other traditional people and communities;
- 34.4.17. extraordinary and unpredictable increase in the costs of inputs, operation and maintenance necessary for the adequate provision of the SERVICES;
- 34.4.18. social demonstrations that affect in any way the provision of the SERVICES, including strikes by public servants, that impact the provision of the SERVICES, except internal strikes by employees of the CONCESSIONAIRE itself;
- 34.4.19. delays or suspensions of the performance of the AGREEMENT due to court or administrative decisions, including from the control agencies, due to factors not attributable to the CONCESSIONAIRE;
- 34.4.19.1. For purposes of this AGREEMENT, the CONCESSIONAIRE shall not be held liable for any breach by the STATE of the rules and principles applicable to the bidding process and government contracts, such as failure to comply with legal deadlines and procedures and other requirements and conditions for administrative decisions.
- 34.4.20. supervening administrative, judicial or arbitral decision that prevents the CONCESSIONAIRE from charging TARIFFS, adjusting them or rebalancing them in accordance with this AGREEMENT, except if the CONCESSIONAIRE has directly contributed for the practice of the facts considered invalid by the decision;
- 34.4.21. increase in the price of water charged by CEDAE, or its successor, resulting from a claim for economic-financial rebalancing of the WATER PRODUCTION AGREEMENT or from unilateral decision of CEDAE that breaches the clauses of the INTERDEPENDENCE AGREEMENT.
- 34.4.22. risks related to the water availability of the SYSTEM;
- 34.4.23. damage or losses caused to the CONCESSIONAIRE, resulting from a fact or act of request by the STATE for employment of new technology or technique in the SERVICES or in the assets used for the provision of the SERVICES, when not resulting from contractual obligations of the CONCESSIONAIRE to ensure the continuity and timeliness of the SERVICES, provided that the PERFORMANCE INDICATORS are already being met by the CONCESSIONAIRE with the technology/technique previously employed;

- 34.4.24. risks related to the breach, by the CEDAE, of the quality standards provided for in the WATER PRODUCTION AGREEMENT, that affect the provision of services under the responsibility of the CONCESSIONAIRE or that can affect the measurement of the PERFORMANCE INDICATORS, including, without limitation, the standards of potability and quality of the supplied water, pursuant to the current legal and regulatory standards issued by the competent regulatory authorities and, notably, in the event that CEDAE does not proceed with the appropriate economic-financial rebalancing in view of the imbalance experienced, in accordance with the terms of Clause Eight of ANNEX VI - INTERDEPENDENCE AGREEMENT AND ANNEXES;
- 34.4.25. variation identified by the CONCESSIONAIRE above 18.5% (eighteen-point five percent), verified up to the twenty-fourth month after the end of the ASSISTED OPERATION, between the effectively existing level of service of the water distribution system and the water distribution system established in ANNEX III, and between the effectively existing level of service of the sanitation system and the level of service of the sanitation system established in ANNEX III.
- 34.4.25.1. The variation shall be calculated considering the absolute value of the result of the division of the effective level of service of the referred system by the level informed upon the execution of the AGREEMENT, minus one unit.
- 34.4.26. lack of implementation of asphalt or drainage network in the CONCESSION AREA that prevents the CONCESSIONAIRE from making the investments to achieve the SERVICE TARGETS.
- 34.5. For the purposes of the preceding sub-clauses, the following definitions shall be considered:
- 34.5.1. force majeure: situation arising out of a fact beyond the will of the PARTIES, but arising out of human acts; i.e., acts of war, hostilities, acts of vandalism, invasion or terrorism;
- 34.5.2. force majeure: any situation arising out of a fact beyond the will of the PARTIES, beyond the human will, i.e., the global epidemics recognized by the World Health Organization (WHO), atomic radiation, severe floods, cyclones, earthquakes and other natural cataclysms that directly affect the works, services and activities covered in this AGREEMENT;
- 34.5.3. factum principis: state act, general, unforeseen and unpredictable, by commission or omission, which burdens or discharges the performance of this AGREEMENT;
- 34.5.4. Government fact: action or omission of a government that, having a direct and specific impact on this AGREEMENT, delays, aggravates or prevents its performance by the CONCESSIONAIRE; an example of such act is the non-performance of this AGREEMENT due to changes in the political-administrative structure of the STATE that directly affect the works, services and activities included in this AGREEMENT.
- 34.5.4.1. Government fact, for the purposes of this AGREEMENT, is any action or omission by the MUNICIPALITIES or the METROPOLITAN REGION, which delays, aggravates or prevents its performance by the CONCESSIONAIRE.

34.6. The process of economic-financial rebalancing of the AGREEMENT shall be carried out in such a way that the net present value of the MARGINAL CASH FLOW projected in view to the event that gave rise to the imbalance is null, considering (i) the marginal flows resulting from the event that gave rise to the rebalancing and (ii) the marginal flows necessary for the economic-financial balance, by applying the following formula for the discount rate:

34.6.1. The actual annual discount rate to be used in calculating the present value shall be the daily average of the last 12 (twelve) months of the gross sale interest rate of the IPCA+ Treasury Notes with semi-annual interest (NTN-B) or, in the absence of such a rate, another rate that replaces it, *ex ante* the deduction of income tax, due on 15/08/2050 or maturity date more compatible with the contractual end date, published by the National Treasury Secretariat, calculated at the beginning of each contractual year, capitalized by a spread or surcharge equivalent to 183% p.a., base 252 (two hundred and fifty-two) working days, by applying the following formula:

$$\sum_{a=1}^{t=(n-1)} VPLFCMa = 0$$

$$VPLFCMa = \frac{FCMa}{(1 + NTNBS \times SPREAD)^a}$$

Where:

$\sum_{a=1}^{t=(n-1)} NPV$ : Sum of the MARGINAL CASH FLOWS of the year of origin of the rebalancing event to the last year of the Marginal cash flow [t-(n-1)];

*FCMa* (resulting MARGINAL CASH FLOW for the year): Resulting marginal cash flow in year "a", considering the sum of; (i) marginal cash flow resulting from the event that gave rise to the rebalancing and (ii) marginal cash flow necessary for the economic-financial balance;

*a*: Year of origin of the rebalancing event;

*n*: Year of the concession when the observed imbalance occurs;

*t*: End year of the concession;

*NTNBs*: Value of the daily average of the last 12 months of Treasury Notes with maturity on 15/08/2055, or equivalent;

*Interest Spread or Surcharge*: Applies on the semi-annual NTB-B interest rate (183%).

34.7. Regardless of the result of the calculation set out in the sub-clause above, the actual annual Discount Rate to be used in calculating the Present Value may not be lower than 3.54%.

34.7.1. If the rebalancing process is due to one or more of the events provided for in sub-clauses 34.4.1, 34.4.7, 34.4.8, 34.4.13, 34.4.17 or 34.4.24, the CONCESSIONAIRE's preparation of the MARGINAL CASH FLOW, and, if necessary, of the reference base flow, shall comply with the provisions of ANNEX XIII - GUIDELINES FOR THE PREPARATION OF CASH FLOWS FOR THE PURPOSE OF ECONOMIC-FINANCIAL REBALANCING.

34.7.2. If the rebalancing process is due to one or more events provided for in sub-clauses 34.4.2, 34.4.3, 34.4.10, 34.4.11, 34.4.14 to 34.4.16, 34.4.18 to 34.4.23 or 34.4.26, the

CONCESSIONAIRE's preparation of the MARGINAL CASH FLOW, and, if necessary, of the base reference flow, shall consider the projections established in ANNEX XIV - FINANCIAL STATEMENTS OF THE TECHNICAL AND ECONOMIC FEASIBILITY STUDY - TEFS.

34.7.3. In the event that the rebalancing process is due to one or more of the events set forth in sub-clauses 34.4.4 to 34.4.6, 34.4.9, 34.4.12 or 34.4.25, the CONCESSIONAIRE's preparation of the MARGINAL CASH FLOW, and, if necessary, of the baseline flow, shall consider the following provisions:

34.7.3.1. In the event of a change in existing obligations, the methodology set out in sub-clause 34.7.2 shall be used;

34.7.3.2. In the case of inclusion of new obligations, the methodology set out in sub-clause 34.7.1 shall be used.

34.7.4. In the event of any rebalancing event not covered by sub-clauses 34.7.1 to 34.7.3, the following guideline shall be observed:

34.7.4.1. For events whose rebalancing can be calculated only on the basis of the parameters in the initial projection, the methodology provided for in sub-clause 34.7.2 shall be used;

34.7.4.2. For events whose rebalancing cannot be calculated solely on the basis of the parameters in the initial projection, the methodology provided for in sub-clause 34.7.1 shall be used;

34.7.4.3. If any gain in productivity and/or efficiency that is related to any liability or risk allocated in this AGREEMENT to the CONCESSIONAIRE, there shall be no obligation to share it with the STATE.

34.8. The change in the price of m<sup>3</sup> of treated water supplied by CEDAE throughout the term of the CONCESSION shall not matter in economic-financial rebalancing of the AGREEMENT in favor of the STATE, according to the rules established in ANNEX VI - INTERDEPENDENCE AGREEMENT AND ANNEXES.

34.8.1. The provisions of this clause shall not prevent the purchase value of the water provided by CEDAE to the CONCESSIONAIRE from being reviewed due to other factors or by negotiation between the parties.

34.9. The economic and financial rebalancing of this AGREEMENT shall be implemented through one of the alternatives below, upon a justified decision by the REGULATORY AGENCY, including to preserve the reasonableness of the tariffs, where applicable, and may be implemented in any of the following manners, alone or cumulatively:

34.9.1. change in the value of TARIFFS;

34.9.2. reduction or extension of the term of the CONCESSION;

34.9.3. direct compensation to the PARTY;

34.9.4. amendment to the SERVICE TARGETS (with the suppression or expansion of investments, as the case may be, and/or change in its implementation schedule);

- 34.9.5. change of investment targets in dry weather collector and NON-URBANIZED IRREGULAR AREAS;
  - 34.9.6. assumption of investments by the STATE;
  - 34.9.7. inclusion or cancellation of works or services in the AGREEMENT;
  - 34.9.8. change in the value of the VARIABLE CONCESSION FEE;
  - 34.9.9. reduction in the value of the FIXED CONCESSION FEE, when there is an obligation to pay the FIXED CONCESSION FEE;
  - 34.9.10. combination of any of the above alternatives;
  - 34.9.11. change in PERFORMANCE INDICATORS;
  - 34.9.12. reduction in the percentage of alternative revenues to be shared with the STATE; and
  - 34.9.13. other methods allowed by law.
- 34.10. In case there is an outstanding obligation to pay the FIXED CONCESSION FEE, the reduction in the value of this obligation shall be adopted as a preferential way to fully or partially offset the economic-financial rebalancing.
- 34.10.1. In case there are consistent indications about the economic-financial imbalance verified in the AGREEMENT, in detriment of the CONCESSIONAIRE, and a substantiated demonstration of its size, the REGULATORY AGENCY, at the request of the CONCESSIONAIRE, after hearing the STATE, may suspend the enforceability of the obligation to pay the FIXED CONCESSION FEE to be due, in the exact proportion necessary to offset the imbalance demonstrated, even before the definitive decision on the economic-financial rebalancing by the REGULATORY AGENCY.
- 34.10.1.1. Any discrepancies between the economic-financial rebalancing value on which the provisional decision of the REGULATORY AGENCY was based and the one recognized in its decision, shall give rise to compensation through the legal form(s) established by the REGULATORY AGENCY, as per subclause 34.9.
- 34.10.2. The event provided for in subitem 34.9.2 depends on the prior consent of the SERVICE holders, pursuant to subitem 3.1.6 of ANNEX IX - BOARD OF HOLDERS.
- 34.11. In the event that the economic-financial rebalancing originates from changes in SERVICE TARGETS or PERFORMANCE INDICATORS due to the updating of MUNICIPAL SANITATION PLANS or the METROPOLITAN SANITATION PLAN, or, still, of any act or fact practiced directly or indirectly by the MUNICIPALITIES or the METROPOLITAN REGION, the form of economic-financial rebalancing preferably used for the partial or full offset of the losses or advantages verified will be the change in the value of VARIABLE CONCESSION FEE, except as provided in subclause 34.10.
- 34.12. Without prejudice to the possibility of adopting the other forms of rebalancing provided for in subclause 34.9, the repercussions of the economic-financial imbalance of the AGREEMENT

in specific MUNICIPALITY (IES) may be offset by the variation in the value of the tariff in force in its territory.

34.13. On the occasion of the provisions of sub-clauses 35.3 and 35.4, the PARTIES may propose, together with the presentation of the request for economic-financial rebalancing, the forms of offset for the purposes of the economic-financial rebalancing, observing the provisions of sub-clauses 34.9, 34.10, 34.10.2 and 34.12, and their claims shall be considered in the reasons for the decision of the REGULATORY AGENCY.

34.14. The definition by the REGULATORY AGENCY of a form of economic-financial rebalancing that burdens the situation of certain MUNICIPALITY (IES) shall ensure their prior statement on the matter.

34.15. The event or fact that originates the economic-financial rebalancing of the present AGREEMENT may not be invoked again as a basis for further revisions.

34.16. The MARGINAL CASH FLOWS should consider any economic-financial rebalancing previously performed.

### **35. ECONOMIC-FINANCIAL REBALANCING PROCESS**

35.1. Whenever unbalancing events occur, the interested PARTY shall notify the other PARTY and the REGULATORY AGENCY of such occurrence.

35.2. On the date established for the start of the ORDINARY REVIEW process, according to the schedule issued by the REGULATORY AGENCY, the CONCESSIONAIRE shall present the list of the unbalanced events verified until then and which have not been subject to EXTRAORDINARY REVIEW, duly accompanied by the relevant documents and the documents provided for in subclauses 34.7.1, 34.7.2 and 34.7.3, as the case may be, as well as meeting the other requirements applicable to the events established in this AGREEMENT for carrying out the ECONOMIC-FINANCIAL REBALANCING.

35.3. When initiated by the CONCESSIONAIRE, the claim for economic-financial rebalancing shall be addressed to the REGULATORY AGENCY, supported in accordance with subclauses, 34.7.1, 34.7.2 and 34.7.3, as the case may be.

35.4. When initiated by the STATE, once the substantiated claim has been submitted to the REGULATORY AGENCY, the CONCESSIONAIRE shall be notified by the latter to submit the documents provided for in sub-clauses 34.7.1, 34.7.2 and 34.7.3, as the case may be, within a maximum period of 60 (sixty) days, expressing its opinion as to the rebalancing proposed by the STATE, pursuant to this AGREEMENT.

35.5. The AGENCY shall have up to 120 (one hundred and twenty) days to make a reasoned decision about the claimed economic-financial rebalancing, as of the receipt of the statements of the parties and the presentation of the statements and documents mentioned in items 35.3 and 35.4.

35.6. If there is an expression of interest by the PARTIES to hear the TECHNICAL COMMITTEE prior to decision by the REGULATORY AGENCY, it shall be notified in order to prepare the analysis of the case and the conclusive opinion, in accordance with the terms established in this AGREEMENT, within a maximum period of 90 (ninety) days.



35.7. Having received the opinion of the TECHNICAL COMMITTEE, the REGULATORY AGENCY shall notify the PARTIES to present their statements on it within 15 (fifteen) days, after which the 90 (ninety) day period for the final decision by the REGULATORY AGENCY shall start.

35.7.1. The reasons set out in the opinion of the TECHNICAL COMMITTEE, as well as in the statements of the PARTIES, shall be considered by the REGULATORY AGENCY in the reasoning of the decision on the claimed economic-financial rebalancing.

35.8. Should the REGULATORY AGENCY understand the need for further consultation of the TECHNICAL COMMITTEE, with a view to clarifying or supplementing aspects of the opinion, as well as consulting or hiring independent *advisors* and auditors, it may extend the period referred to for as long as necessary.

### **36. VALUE OF CONCESSION FEE**

36.1. The CONCESSIONAIRE undertakes to carry out the payment of the FIXED CONCESSION FEE and the VARIABLE CONCESSION FEE, in accordance with this AGREEMENT.

36.2. The payment of the amount of the FIXED CONCESSION FEE shall be made directly to the STATE and is divided into 3 (three) installments. The first installment, in the amount of 65% (sixty five percent) of the FIXED CONCESSION FEE, shall be paid as a condition precedent for the execution of the AGREEMENT. The second installment, in the amount of 15% (fifteen percent) of the FIXED CONCESSION FEE, shall be paid up to 2 (two) working days after the issuance of the CERTIFICATE OF SYSTEM TRANSFER and/or the start of the OPERATION OF THE SYSTEM by the CONCESSIONAIRE, whichever occurs first. And, the third installment, in the amount of 20% (twenty percent) of the FIXED CONCESSION FEE, shall be paid up until last day of the third year of effectiveness of the AGREEMENT, the issuance of the CERTIFICATE OF SYSTEM TRANSFER and/or the start of the OPERATION OF THE SYSTEM by the CONCESSIONAIRE, whichever occurs first.

36.2.1. From the value referred to in the item 36.2, the STATE shall pass on to the MUNICIPALITIES served by the provision of the SERVICES the percentage of 15% (fifteen percent) of the value of the FIXED CONCESSION FEE, proportional to the number of inhabitants of each MUNICIPALITY, based on data from the Municipal Population Estimates, published by the Brazilian Institute of Geography and Statistics - IBGE, with reference date on July 1, 2020.

36.2.2. From the amount referred to in the item 36.2, the STATE shall pass on to the Metropolitan Region Development Fund the percentage of 5% (five percent) of the value of the FIXED CONCESSION FEE.

36.2.3. The surplus amount of the value of the BID of the CONCESSIONAIRE, which exceeds the minimum values of FIXED CONCESSION FEE provided for in the ITB, shall have the surplus distributed in the proportion of 50% (fifty percent) for the STATE, and 50% (fifty percent) for the MUNICIPALITIES of REGIONALISED PROVISION, observing the proportionality in relation to the number of inhabitants of each municipality, based on data from the document Population Estimates of Municipalities, published by the Brazilian Institute of Geography and Statistics - IBGE, with reference date of July 1, 2020.

36.3. The FIXED CONCESSION FEE installments shall have their values updated by the Broad National Consumer Price Index - IPCA, as of the date of delivery of the BID.

36.3.1. The delay in the payment of the FIXED CONCESSION FEE shall give entail the payment of a fine corresponding to two percent (2%) of the amount in arrears, plus default interest of one percent (1%) per month, and the outstanding balance shall be updated in accordance with subclause36.3.

36.3.2. Without prejudice to the provisions of the previous sub-clause, the failure to pay the FIXED CONCESSION FEE, in the form and within the deadlines established in this AGREEMENT, shall subject the CONCESSIONAIRE to the penalties provided for in this AGREEMENT, without prejudice to the possibility of enforcement by the STATE of the guarantees provided by the CONCESSIONAIRE in addition to potential declaration of FORFEITURE.

36.4. In addition to the FIXED CONCESSION FEE, the CONCESSIONAIRE undertakes to pay monthly to the MUNICIPALITIES and to the Metropolitan Region Development Fund, as from the start of the OPERATION OF THE SYSTEM until the end of the term of the CONCESSION, the VARIABLE CONCESSION FEE in the following values and conditions:

36.4.1. The CONCESSIONAIRE shall pay monthly to the MUNICIPALITIES served by the REGIONALIZED PROVISION of the SERVICES, the amount corresponding to 3% (three percent) of the total revenue of the previous month from the payment of TARIFFS by USERS located in its territory, understood as equivalent to the amounts actually billed, without deduction of taxes or any other expenses or reductions arising from the assessment of PERFORMANCE INDICATORS;

36.4.2. The CONCESSIONAIRE shall pay monthly to the Metropolitan Region Development Fund the amount corresponding to 0.5% (half percent) of the total tariff revenue billed in the previous month, in the municipalities that make up the Metropolitan Region of the State of Rio de Janeiro (i.e: tariff revenue from TARIFFS paid by USERS located in the territory of the Metropolitan Region of Rio de Janeiro), understood as equivalent to the amounts actually billed, without deduction of taxes or any other expenses or reductions arising from the assessment of PERFORMANCE INDICATORS;

36.4.3. It shall not be included in the calculation basis for the application of the VARIABLE CONCESSION FEE calculation percentage, as per items 36.4.1 and 36.4.2, the values related to ADDITIONAL REVENUES and revenues from the performance of SUPPLEMENTARY SERVICES.

36.5. The CONCESSIONAIRE shall create a CENTRAL ACCOUNT, in accordance with ANNEX XI - DRAFT ESCROW ACCOUNT AGREEMENT, under the operation of a financial agent, with a view to ensuring that the payment process and apportionment of the values of VARIABLE CONCESSION FEE to the MUNICIPALITIES and the Metropolitan Region Development Fund is automatic, as well as the amounts related to the difference between the TARIFF REVENUE and the revenue due to the CONCESSIONAIRE after the application of the PERFORMANCE INDICATORS.

### **37. CONTRACTUAL PENALTIES**

37.1. For breach of contract by the CONCESSIONAIRE, the following penalties may be applied:

37.1.1. warning;

37.1.2. fine;

- 37.1.3. temporary suspension of participation in bidding processes and preclusion from hiring with the Rio de Janeiro State Government, for a period not exceeding 2 (two) years;
- 37.1.4. declaration of disrepute to bid or contract with all levels of Government in Brazil while the reasons for the sanction persist or until the rehabilitation of the CONCESSIONAIRE before the STATE, which shall be granted whenever the CONCESSIONAIRE reimburses the STATE for the resulting losses, considering, in addition to the damage, loss of profits and fines imposed on it, and after the expiration of the period of sanction applied on the basis of the previous subclause;
- 37.1.5. forfeiture of the CONCESSION, in accordance with clause 42 of this AGREEMENT.
- 37.2. The gradation of penalties shall observe the following parameters:
  - 37.2.1. the infraction shall be considered minor, when it derives from involuntary or excusable conducts of the CONCESSIONAIRE and that does not have the potential to cause interruptions to the provision of the SERVICES, reflect in the quality of the SERVICES provided or from which it does not benefit;
  - 37.2.2. the infraction shall be considered of medium severity when it results from gross negligence or willful misconduct, may potentially cause interruptions to the provision of the SERVICES, reflect in the quality of the SERVICES provided, but does not bring to the CONCESSIONAIRE any benefit or advantage;
  - 37.2.3. the infraction shall be considered serious when it derives from willful misconduct of the CONCESSIONAIRE and has the potential to generate economic-financial advantages to the CONCESSIONAIRE.
- 37.3. The application of any penalty does not exempt the CONCESSIONAIRE from the duty to remedy, within the established period, the contractual obligations in which it is in default.
- 37.4. The warning penalty shall be applied, without prejudice to other cases, when the CONCESSIONAIRE:
  - 37.4.1. does not to allow the entry of the employees of the STATE or of the REGULATORY AGENCY for surveillance as provided for in this AGREEMENT;
  - 37.4.2. does not facilitate or prevents access to books, accounting documents and other information related to the provision of the SERVICE;
  - 37.4.3. fails to provide, within the established deadline, the information requested or that to which it is obliged to provide regardless of request;
  - 37.4.4. fails to comply with any of the obligations undertaken in this AGREEMENT not provided as an event that entails of a fine, or is negligent, reckless or commits malpractice in the performance of such obligations.
  - 37.4.5. Without prejudice to the other possibilities of warning provided for in this clause, in the case of infractions classified as minor, the fine penalty shall be replaced by a warning to the CONCESSIONAIRE, which shall be formally notified of the sanction.

37.5. Without prejudice to the possibility of application of fines for breach of contract, in compliance with the procedures and parameters laid down respectively in the subclauses 37.11 and 37.16, the CONCESSIONAIRE shall be subject to the following monetary penalties:

37.5.1. for preventing or hindering the inspection by the REGULATORY AGENCY, a fine, per infraction, of 0.2% to 1% of the value of the TARIFFS collected in the month in which the infraction occurred;

37.5.2. for the unjustified suspension of the SERVICE a fine, per infraction, of 0.5% to 1% of the value of the TARIFFS collected in the month in which the violation occurred;

37.5.3. for delay in hiring or renewing the CONTRACT PERFORMANCE GUARANTEE, a fine, per infraction, of 0.02% to 0.05% of the TARIFFS collected in the month in which the infraction occurred;

37.5.4. for delay in contracting or renewing insurance policies, a fine per day of delay of 0.02% to 0.05% of the value of the TARIFFS collected in the month in which the infraction occurred;

37.5.5. for delay in the payment of the capital stock, in accordance with subclause 16.1, a fine, per day of delay, of 0.05% of the value of the TARIFFS collected in the month in which the infraction occurred, observing the maximum percentage of 0.5%;

37.5.6. for failing to comply with the minimum drinking water volume distribution to the upstream CONCESSIONAIRE, a fine of 0,05% to 0,1% of the value of the TARIFFS collected in the month in which the infraction occurred, for each cubic meter not met, in disagreement with the decision of the REGULATORY AGENCY.

37.5.6.1. The fine established in item 37.5.6 shall be passed on to the other concessionaires that were not served by the CONCESSIONAIRE, in proportion to the impact of the default for each CONCESSIONAIRE, in accordance with the decision of the REGULATORY AGENCY.

37.5.7. for failing to comply with the provisions of sub-clauses 48.4 and 48.5, a fine of 0.5% to 1% on the value of the TARIFFS collected in the month of the occurrence of the infraction.

37.5.8. for failing to comply with the communication provided for in clause 29.17, a fine of 0.1% to 0.5% of the value of the TARIFFS collected in the year of the infraction.

37.5.9. for failing to meet the targets set out in subclause 37.6, a fine of 1% to 2% of the value of TARIFFS collected in the previous 12 (twelve) months.

37.6. for purposes of ascertaining administrative infractions, pursuant to applicable legislation, the universalization, non-intermittent supply, reduction of losses and improvement of treatment processes targets shall be verified annually by the REGULATORY AGENCY, observing the interval of the last 5 (five) years, in which the targets must have been met in at least 3 (three) years in an uninterrupted or interval manner.

37.6.1. The first ascertainment referred to in the above subclause shall be carried out at the end of the fifth year of effectiveness of the AGREEMENT.

37.6.2. In the event of failure to meet the targets set forth in subclause 37.637.6, the REGULATORY AGENCY shall initiate an administrative proceeding in order to evaluate the actions to be adopted regarding the sanctioning measures, with possible communication to the STATE for declaration of forfeiture of the CONCESSION, where applicable, ensuring the right to adversary proceedings and full defense to the CONCESSIONAIRE.

37.7. The CONCESSIONAIRE shall not be fined as a consequence of situations that have already led to a reduction in tariff collection through the application of the PERFORMANCE INDICATORS set out in ANNEX III - PERFORMANCE INDICATORS AND SERVICE TARGETS.

37.8. Under penalty of forfeiture of the CONCESSION by the STATE, the total amount of fines imposed each year may not exceed ten percent (10%) of the previous year's revenues.

37.9. The application of fines on the CONCESSIONAIRE shall not exempt it from the duty to indemnify any damage caused to the STATE, nor shall it exempt it from the obligation to remedy the respective failure or non-compliance.

37.10. The fines provided for in this clause shall be applied without prejudice to the characterization of the cases of intervention or declaration of forfeiture provided for in this AGREEMENT, as well as the administrative, civil and criminal liability of the CONCESSIONAIRE.

37.11. When a situation that can be characterized as default or breach of contract is identified, the REGULATORY AGENCY shall notify the CONCESSIONAIRE to present its prior defense within 30 (thirty) days.

37.12. Once the previous defense has been analyzed and in case it is deemed without grounds, the REGULATORY AGENCY shall issue an infraction notice, which shall characterize the infraction committed, for the purpose of applying the respective penalty.

37.13. The notice of infraction shall detail precisely the infraction committed and the contractual provision breached, and shall be issued in 02 (two) copies, through notification delivered to the CONCESSIONAIRE under protocol of receipt, indicating the exact monetary value of the penalty and the right to its reduction, as follows:

37.13.1. reduction of 10% (ten percent) of the amounts assessed, in the event that the payment is made without administrative discussion of the assessment;

37.13.2. reduction of 5% (five percent) of the amounts assessed, in the event that the payment is made without the presentation of an administrative appeal;

37.14. Within 15 (fifteen) days as from the receipt of the notification of the penalty, the CONCESSIONAIRE may file an administrative appeal, which will be received in stay effect and decided in a reasoned manner by the REGULATORY AGENCY.

37.14.1. Upon receipt of the administrative appeal, the authority that issued the infraction notice may reconsider its decision. If the decision is not reconsidered, the case shall be submitted to the higher authority, after the discovery, for decision.

37.14.2. The decision of the administrative appeal shall be justified and reasoned by the REGULATORY AGENCY, pointing out the elements addressed or not in the defense presented by the CONCESSIONAIRE.

- 37.14.3. If the sanction is applied by the higher authority, the CONCESSIONAIRE will be notified accordingly.
- 37.14.4. The REGULATORY AGENCY shall:
- 37.14.4.1. in the case of a warning, write down the sanction in the CONCESSIONAIRE's records with the REGULATORY AGENCY;
- 37.14.4.2. in the event of fine, notify the CONCESSIONAIRE to make the payment within 20 (twenty) days, as from the receipt of the notification of the decision, and the failure to make the payment within the established deadline shall give rise to the possibility of the STATE enforcing the CONTRACT PERFORMANCE GUARANTEE.
- 37.14.5. The failure to pay any fine applied in accordance with the provisions of this clause, within the established deadline, shall entail monetary correction by the variation of the Broad National Consumer Price Index - IPCA index, or any other index that might replace it, and default interest of 1% (one percent) per month *pro rata die*.
- 37.14.6. The actions of the CONCESSIONAIRE in order to remedy the action or omission that led to the administrative procedure, with a view to ascertaining liability and the application of penalty, shall be considered by the competent authorities when the penalty is imposed.
- 37.15. The notification of the acts and decisions referred to in the above items shall be made by written communication to the CONCESSIONAIRE.
- 37.16. Two or more similar infractions, or infractions arising from the same triggering event, may be ascertained in the same proceedings, with separate penalties applied for each of the infractions or a single penalty in the case of continued infractions.
- 37.16.1. Infractions that are proven to result from the same triggering event and whose effects extend in time will be considered continuous.
- 37.17. The monetary amounts resulting from the application of the fines shall be allocated to the STATE.
- 37.18. For the application of the penalty, the following circumstances shall be considered:
- 37.18.1. the nature and severity of the infraction;
- 37.18.2. the technical nature and the standards of provision of the SERVICES;
- 37.18.3. the damages resulting from the infraction to the SERVICE and to the USERS;
- 37.18.4. the advantage obtained by the CONCESSIONAIRE by virtue of the infringement;
- 37.18.5. the general aggravating and mitigating circumstances, especially the existence of bad faith on the part of the CONCESSIONAIRE or the failure of the STATE to comply with its contractual obligations;

- 37.18.6. the CONCESSIONAIRE's history of infractions; and
- 37.18.7. the recidivism of the CONCESSIONAIRE in committing the infraction.
- 37.19. For the purpose of calculating penalties, mitigating circumstances are considered, whenever duly proven:
- 37.19.1. The recognition by the CONCESSIONAIRE, in the period for presentation of the defense, of the breach of the contractual obligation that is the object of the investigation, reducing by 5% (five percent) the amount of the fine;
- 37.19.2. The contribution of external agents for the breach, which has an influence on the result produced, reducing by 3% (fifteen percent) the value of the fine;
- 37.19.3. The implementation of spontaneous measures by the CONCESSIONAIRE, resulting in the cessation of the infraction and remedy of the damage, within the period for presentation of the defense, reducing by 10% (ten percent) the amount of the fine; and,
- 37.19.4. The non-existence of infractions, definitely judged, practiced in the previous 05 (five) years, reducing by 5% (five percent) the value of the fine.
- 37.20. For the purpose of calculating penalties, aggravating circumstances are considered, whenever duly proven:
- 37.20.1. The infraction was committed through fraud or bad faith of the CONCESSIONAIRE, increasing in 30% (thirty percent) the amount of the fine;
- 37.20.2. Failure to adopt alternative and/or mitigating measures, within the period and under the terms recommended by the REGULATORY AGENCY, increasing the value of the fine in 20% (twenty percent);
- 37.20.3. Practice infraction to facilitate or ensure economic benefit to the CONCESSIONAIRE or to third parties appointed by it;
- 37.20.4. The specific recurrence of the Concessionaire in committing the infraction in the previous 05 (five) years, increasing the value of the fine in 5% (five percent).
- 37.21. The declaration of disrepute must be applied, cumulatively with the penalty of fine, to those who have committed unlawful acts in order to frustrate the objectives of this AGREEMENT.
- 37.21.1. The period of effectiveness of the declaration of disrepute shall not exceed five (5) years, as from the receipt of the summons for the administrative decision from which no further appeal can be made.

37.21.2. The sanction of declaration of disrepute also applies to the officers and controlling partners of CONCESSIONAIRE, when they commit acts with excess of power, abuse of rights or violation of the law, articles of association or bylaws, as well as the irregular dissolution of the specific purpose entity.

### **38. INTERVENTION**

38.1. Without prejudice to the applicable penalties and the contingent liabilities, the STATE may, after prior statement by the REGULATORY AGENCY, exceptionally and ultimately and always assured to the CONCESSIONAIRE the right to full defense and adversarial proceedings, intervene in the CONCESSION in order to ensure the satisfactory provision of the SERVICES, as well as the full compliance with the relevant contractual, regulatory and legal rules.

38.1.1. The intervention may also take place by virtue of a recommendation made by the REGULATORY AGENCY, which shall state the suggested time frame for intervention, as well as the objectives and limits of the measure, including territorial limits.

38.2. The intervention will be instituted by means of a Decree issued by the Head of the State Executive Branch, and there must be prior consultation with the BOARD OF HOLDERS, provided there is the occurrence of one of the following events:

38.2.1. Full or partial interruption of the provision of the SERVICES that are the subject matter of this AGREEMENT by the CONCESSIONAIRE for a period of more than 30 (thirty) days and provided that they are not scheduled or justified interruptions;

38.2.2. Failure of the CONCESSIONAIRE to comply with the CONCESSION's obligations that offer risks to the health and safety of the USERS, or that offer imminent risk to the environment;

38.2.3. Repeated breaches of the relevant obligations of this AGREEMENT by the CONCESSIONAIRE, which affect the provision of the SERVICES; or

38.2.4. Use of the CONCESSION's infrastructure for unlawful purposes.

38.3. The CONCESSIONAIRE's failure to comply with contractual obligations of a purely financial nature and that do not compromise the security, regularity, and technical suitability of the provision of the SERVICES do not give rise to intervention.

38.4. In the event of any situation that may give rise to intervention in the CONCESSION, the REGULATORY AGENCY shall notify the CONCESSIONAIRE in order to remedy such irregularities, within the period established, without prejudice to the application of the penalties incurred.

38.5. Once the intervention is declared, the STATE shall, within 30 (thirty) days, initiate administrative proceedings to verify the determining causes of the measure and to assess liabilities, ensuring the CONCESSIONAIRE the right to a full defense and adversarial proceedings.

38.5.1. If it is proven that the intervention has not complied with the legal and regulatory requirements, it shall be declared null and void and the management of the services shall be immediately returned to the CONCESSIONAIRE, without prejudice to its right to compensation for any losses and damages incurred as a result of the intervention.



38.5.2. The administrative proceeding referred to in this clause must be concluded within a maximum period of 180 (one hundred and eighty) days, otherwise the effects of the intervention shall cease, and the management of the SERVICES shall be immediately returned to the CONCESSIONAIRE, without prejudice to its right to compensation for any losses and damages incurred as a result of the intervention.

38.6. Once the intervention is finished without the termination of the AGREEMENT, the intervenor shall be held accountable for all acts performed during its management.

### **39. EVENTS OF EXTINGUISHMENT OF THE CONCESSION**

39.1. The AGREEMENT shall be extinguished upon:

39.1.1. the end of the contractual term;

39.1.2. Act of God or force majeure events;

39.1.3. takeover;

39.1.4. forfeiture;

39.1.5. termination;

39.1.6. annulment of the AGREEMENT, and

39.1.7. bankruptcy or dissolution of the CONCESSIONAIRE.

39.2. Except for the events of forfeiture of the CONCESSION and annulment of the AGREEMENT due to facts attributable to the CONCESSIONAIRE, the transfer of the REVERSIBLE ASSETS and assumption of the SERVICES by the STATE shall always be made upon prior payment by the STATE of the indemnities due to the CONCESSIONAIRE, pursuant to this AGREEMENT.

39.3. In the event the AGREEMENT is extinguished in any of the cases provided for in the subclause 39.1, the transfer of the REVERSIBLE ASSETS shall occur by operation of law to the STATE pursuant to clause 46 and the resumption of the SERVICES, paying to the CONCESSIONAIRE the respective indemnity, pursuant to subclauses 39.5 and 39.6.

39.4. In the event of extinguishment of the CONCESSION, the STATE may, at its sole discretion, and provided it complies with the legislation in force, subrogate the contracts entered into by the CONCESSIONAIRE with third parties and which are necessary for the continuity of the SERVICES, including, among them, credit facility agreements for the performance of works or services and which do not include an amortization period longer than the remaining period until the end of the CONCESSION, giving prior notification thereof to the BOARD OF HOLDERS.

39.4.1. In the event of subclause, the CONCESSIONAIRE undertakes to continue to provide, in a satisfactory manner, the SERVICES, on the same basis of this AGREEMENT, until the replacement by another concessionaire, respecting the economic-financial balance provided for in this AGREEMENT.

39.5. For the purpose of calculating the indemnity addressed in subclause 39.2, observing the

specific clauses of each modality of contract termination, it shall be considered:

39.5.1. values referring to the claims of economic-financial rebalancing of the AGREEMENT, presented by the PARTIES;

39.5.2. the value of the installments of investments linked to REVERSIBLE ASSETS not yet amortized, recorded as intangible assets.

39.5.2.1. These investments referred to in subclause 39.5.2 shall be amortized on a linear basis considering the residual term of the contract, in compliance with the rules for monetary restatement set forth in this AGREEMENT;

39.6. It shall not be considered for the purpose of calculating the indemnity addressed in subclause 39.2:

39.6.1. the amounts accounted for as interest and other financial expenses during the period of operation of the SYSTEM;

39.6.2. the amounts accounted for as pre-operating expenses;

39.6.3. the values accounted for as construction margin;

39.6.4. the values referring to acquisition goodwill; and

39.6.5. the values accounted for as VARIABLE CONCESSION FEE.

39.7. Once the CONCESSION is extinguished, the STATE may:

39.7.1. directly or indirectly assume the provision of the SERVICE, as representative of the holders;

39.7.2. occupy and use the premises, facilities, equipment and materials and make use of personnel employed in the provision of the SERVICE necessary for its continuity;

39.7.3. apply the applicable penalties, depending on the type of extinguishment;

39.7.4. withhold and enforce the performance guarantee, for the purpose of receiving administrative fines and compensation for damages caused by the CONCESSIONAIRE;

39.7.5. maintain, whenever possible, the contracts entered into by the Concessionaire with third parties for the term and under the initially agreed conditions, the third parties being liable for the losses arising from the non-fulfillment of the undertaken obligations.

39.8. In any case of extinguishment of the AGREEMENT, and if it is legally feasible in light of the current legislation, the STATE may demand that the CONCESSIONAIRE continues to provide the SERVICES, until the bidding process for hiring a new concessionaire is concluded and the respective concessionaire is able to assume the SERVICES, preserving the economic-financial balance of the AGREEMENT.

#### **40. END OF THE CONTRACTUAL TERM**

40.1. The end of the contractual term of the AGREEMENT entails, by operation of law, the extinguishment of the CONCESSION.

40.2. The REGULATORY AGENCY shall, within 180 (one hundred and eighty) days prior to the end of the term of the AGREEMENT, prepare the necessary surveys and assessments reports in order to determine the amount of indemnity that might be due to the CONCESSIONAIRE, in accordance with the terms of the following sub-clauses.

40.3. The REGULATORY AGENCY can count on the assistance of the INDEPENDENT VERIFIER to support the preparation of the reports addressed in subclause 40.2.

40.4. All investments provided for in the AGREEMENT and made by the CONCESSIONAIRE in the REVERSIBLE ASSETS must be amortized during the period of effectiveness of the AGREEMENT.

40.5. If the CONCESSIONAIRE is entitled to any indemnity, it shall be paid in, at most, six (6) monthly installments, until the date of resumption of the SERVICES by the STATE.

40.6. The amount of any contractual fines and direct damages caused by the CONCESSIONAIRE shall be deducted from the indemnity provided for in this clause, insofar as they are not covered by the CONTRACT PERFORMANCE GUARANTEE.

40.7. The delay in the payment of the indemnity provided for in this clause shall give rise to the payment of a fine by the STATE corresponding to two percent (2%) of the amount in arrears, plus default interest of one percent (1%) per month, and the outstanding balance (principal and default charges) shall be monetarily adjusted *pro rata die*, from the maturity date until the date of actual payment of the amounts.

40.8. The CONCESSIONAIRE shall, three hundred and sixty-five (365) days before the end of the contract, present an Operational Demobilization Program with the proposal of procedures for the assumption of the operation by the holders of the SERVICES or by a new concessionaire.

40.9. In the course of the procedure for the end of the contract term, the CONCESSIONAIRE undertakes to cooperate with the STATE to maintain the provision of the appropriate and uninterrupted SERVICE until the transfer of the SYSTEM to the holders of the SERVICES.

#### **41. TAKEOVER**

41.1. The takeover is the resumption of the CONCESSION by the STATE, during the term of the CONCESSION, for duly justified reasons of public interest, preceded by a specific authorization of law and the previous payment of compensation.

41.2. The takeover shall be preceded by the hearing of the BOARD OF HOLDERS and the hiring by the STATE of a consulting firm with expertise in the evaluation of assets to carry out surveys and evaluations necessary to determine the amount of the indemnity that might be due to the CONCESSIONAIRE, which shall comply with the rules established in sub-clause 39.5 and also consider:

41.2.1. All charges and burdens resulting from fines, terminations and indemnities that are due to suppliers, contractors and third parties in general, as a result of the breach of contractual obligations, such amounts should be compatible with those practiced in the market, especially in the case of related parties;

41.2.2. Amounts accounted for receipt of the FIXED CONCESSION FEE, not yet amortized.

41.2.2.1. These values referred to in subclause 41.2.2 shall be amortized on a linear basis considering the residual term of the contract, in compliance with the rules for monetary restatement set forth in this AGREEMENT;

41.2.3. If the PARTIES do not reach a consensus on the amount of indemnity due, the dispute shall be resolved by the REGULATORY AGENCY, which shall have 60 (sixty) days to issue an opinion defining the amount of indemnity, extendable once for an equal period, and the STATE shall make the corresponding payment within 60 (sixty) days.

41.2.4. The part of the indemnity, due to CONCESSIONAIRE, corresponding to the outstanding balance of the credit facility agreements, may be paid directly to the Financial Agents, with the remainder to be paid directly to CONCESSIONAIRE.

41.3. Fines, indemnities and any other amounts due by CONCESSIONAIRE, regularly ascertained within the scope of administrative proceedings, which are not under stay execution, shall be deducted from the indemnity provided for in the event of takeover, up to the limit of the outstanding balance of the credit facilities executed by CONCESSIONAIRE to meet the investment obligations provided for in the agreement.

41.4. In case of extinguishment of the CONCESSION by takeover, the indemnity due by the STATE to the CONCESSIONAIRE shall be paid prior to the transfer of the REVERSIBLE ASSETS, pursuant to article 37 of Federal Law no. 8.987/1995.

## **42. FORFEITURE**

42.1. The total or partial and repeated failure to comply with the AGREEMENT that causes effective damage to the provision of the SERVICES, may result, at the discretion of the STATE, in the forfeiture of the CONCESSION, in accordance with the provisions of this AGREEMENT, especially this clause, always ensuring the right to full defense and adversarial proceedings.

42.2. The forfeiture of the CONCESSION, by action or omission of the CONCESSIONAIRE, may be declared when the events below occur, in addition to those provided for in art. 38, of Federal Law no. 8.987/1995:

42.2.1. loss of the economic, technical or operational conditions necessary to maintain the satisfactory provision of the SERVICES;

42.2.2. if the CONCESSIONAIRE has a General Performance Index - GPI below the minimum of 0.90 in 2 (two) consecutive years or 3 (three) non-consecutive times in less than 5 (five) years;

42.2.3. transfer of the CONCESSION, without prior authorization of the STATE;

- 42.2.4. reiterated non-compliance with contractual obligations, technical norms and the conditions of adequate provisions of the SERVICES, duly recorded in administrative proceedings, ensuring the right to full defense and adversary proceedings, as well as a remedy period of no less than 60 (sixty) days;
- 42.2.5. in the event of default of the value of the FIXED OR VARIABLE CONCESSION FEE, in breach of Clause 36 of this AGREEMENT, for a period of more than 30 (thirty) consecutive days;
- 42.2.6. non-compliance for 3 (three) years, consecutive or not, with the ACTION PLAN for NON-URBANIZED IRREGULAR AREAS;
- 42.2.7. non-compliance for 3 (three) years, consecutive or not, with the DRY WEATHER COLLECTOR INVESTMENT SCHEDULE;
- 42.2.8. the encumbrance of public assets that integrate the REVERSIBLE ASSETS for financing operations carried out by the CONCESSIONAIRE; and
- 42.2.9. the recurrence of unjustified failure to meet the targets set out in subclause 37.6.
- 42.3. The forfeiture of the CONCESSION shall be preceded by the verification of the actual default by the CONCESSIONAIRE in a prior administrative proceeding initiated by the REGULATORY AGENCY, and the CONCESSIONAIRE shall be assured the right to full defense and adversarial proceedings.
- 42.4. No administrative proceeding shall be initiated before the CONCESSIONAIRE has been previously notified of the contractual infractions committed, and it shall be granted a period of time to remedy said infractions, in accordance with the conditions provided for in this AGREEMENT.
- 42.5. At the end of the administrative proceeding, the REGULATORY AGENCY shall issue a final opinion with its conclusions.
- 42.5.1. If the final opinion is that the declaration of forfeiture of the CONCESSION should be dismissed, the administrative proceeding shall be closed.
- 42.5.2. If the final opinion is that the declaration of forfeiture of the CONCESSION should be accepted, it shall be sent to the STATE for a final decision, with prior consultation of the BOARD OF HOLDERS.
- 42.6. The forfeiture shall be declared by Decree issued by the Head of the State Executive Branch, regardless of prior indemnification.
- 42.7. In the event of extinguishment of the AGREEMENT by forfeiture, the CONCESSIONAIRE shall be entitled to receive the due compensation, which shall be limited to the amount calculated in accordance with Clauses 39.5 and 39.6, discounting:
- 42.7.1. the damages caused by the CONCESSIONAIRE due to the failure to comply with contractual obligations and the amounts due by the CONCESSIONAIRE to the STATE;
- 42.7.2. contractual fines imposed on the CONCESSIONAIRE, which have not been paid by the

date of payment of the amount of the indemnity; and

42.7.3. any amounts received by the CONCESSIONAIRE as insurance coverage related to the reversal of assets or early termination of the concession.

42.8. The part of the indemnity, due to CONCESSIONAIRE, corresponding to the outstanding balance of the credit facilities effectively invested in REVERSIBLE ASSETS may be paid directly to the Financial Agents, if the credit facility agreement entered into so provides, with the remainder being paid directly to CONCESSIONAIRE.

42.9. The STATE may hire a consulting firm with expertise in asset valuation to carry out the surveys and evaluations necessary in order to determine the amount of indemnity due to the CONCESSIONAIRE, and the amounts associated with such hiring shall be debited from the amount of indemnity due.

42.10. The declaration of forfeiture of the CONCESSION shall also entail to the CONCESSIONAIRE:

42.10.1. enforcement of the CONTRACT PERFORMANCE GUARANTEE by the STATE for compensation of possible damages caused by the CONCESSIONAIRE to the STATE;

42.10.2. withholding of any credits arising from this AGREEMENT, up to the limit of the damages caused to the STATE;

42.10.3. immediate transfer to the STATE of the REVERSIBLE ASSETS; and

42.10.4. immediate resumption by the STATE of the provision of the SERVICES.

42.11. The declaration of forfeiture shall not result in the STATE being held liable for any liens, burdens, obligations or commitments towards third parties, or towards the employees of the CONCESSIONAIRE.

### **43. TERMINATION**

43.1. The CONCESSIONAIRE may terminate the AGREEMENT, according to art. 39, of Federal Law No. 8,987/1995, in case of non-compliance with the contractual rules by the STATE by means of a lawsuit specially filed for this purpose, in which case the SERVICES may not be interrupted or shut down until a decision is made by the Judiciary, except in the cases expressly authorized in this AGREEMENT.

43.2. The AGREEMENT may also be terminated by mutual agreement between the PARTIES, in the event of bilateral termination, upon a termination agreement.

43.3. The indemnity due to the CONCESSIONAIRE, in case of judicial termination of the Agreement due to fault of the STATE, shall be equivalent to the takeover and calculated as provided for in clause 39.5, 39.6 and 41.2 of this AGREEMENT.

43.3.1. Amounts accounted for upon receipt of the FIXED CONCESSION FEE not yet amortized shall only be considered in the calculation of the indemnity when the termination occurs for the exclusive responsibility of the STATE.

#### **44. ANULLMENT**

44.1. In the event that defects are verified in the ITB and its Annexes, in the BIDDING PROCESS and/or in this AGREEMENT and its ANNEXES, the STATE and the REGULATORY AGENCY undertake to validate, whenever possible, the administrative acts in order to preserve the public interest, the social order and to comply with the principle of legal security.

44.2. If it is provenly and justifiably unfeasible pursuant to Law no. 13.655/2018, to validate the administrative acts with defects due to any irregularities verified in the ITB and its annexes, in the BIDDING PROCESS, in this AGREEMENT and its ANNEXES, the STATE, by recommendation of the REGULATORY AGENCY, and after prior consultation with the BOARD OF HOLDERS and the establishment of a specific administrative proceeding that gives the CONCESSIONAIRE the right to adversary proceedings and full defense, may annul the CONCESSION upon indemnity to be paid by the STATE to the CONCESSIONAIRE, pursuant to the terms of art. 35, V, of Federal Law no. 8.987/95, in compliance with the provisions of article 59 of Federal Law no. 8.666/93.

44.3. The REGULATORY AGENCY, in case of annulment of the CONCESSION, shall carry out the necessary surveys and evaluations in order to determine the amount of indemnity that might be due to the CONCESSIONAIRE, in accordance with this AGREEMENT.

44.4. The indemnity referred to in subclause 44.3 above shall be paid prior to the resumption of the SERVICES and the assumption of the REVERSIBLE ASSETS, provided that there is no proven bad faith or willful misconduct of the CONCESSIONAIRE.

44.5. In case of annulment of the CONCESSION for facts exclusively attributable to the STATE, compensation shall be due to the CONCESSIONAIRE in the amounts corresponding to takeover and calculated as provided for in clauses 39.5, 39.6 and 41.2 of this AGREEMENT.

#### **45. CONCESSIONAIRE BANKRUPTCY OR DISSOLUTION**

45.1. The CONCESSION may be extinguished if the CONCESSIONAIRE has its bankruptcy declared, or in the event of the dissolution of the CONCESSIONAIRE or, further, in the event of judicial reorganization that demonstrably hinders the performance of the AGREEMENT.

45.2. In this case, the indemnity due by the STATE shall be calculated based on the investments made by the CONCESSIONAIRE, which are not yet fully amortized, in the course of the AGREEMENT, as monetarily adjusted by the IPCA index.

45.2.1. In the event of the dissolution of the CONCESSIONAIRE or of any of its shareholders by declaration of fraudulent bankruptcy or dissolution by resolution of its shareholders, the same provisions regarding the forfeiture of the CONCESSION shall apply, with the institution of the due administrative proceeding for the determination of the effective loss and determination of the applicable sanctions.

45.3. The indemnity referred to in the above item shall be paid to the bankruptcy estate, duly monetarily adjusted by the IPCA index, as from the date of the investment until the date of full payment of the amount due.

45.4. In the event of winding-up or liquidation of the CONCESSIONAIRE, the division of the respective corporate assets may not be carried out without the STATE certifying, through an inspection report, the state of the LINKED ASSETS, which shall be reverted free of liens, and without the payment of any amounts due to the STATE, as indemnity or any other reason.

#### **46. REVERSAL OF REVERSIBLE ASSETS**

46.1. Upon termination of the CONCESSION, the REVERSIBLE ASSETS shall be automatically transferred to the STATE, as representative of the SERVICE holders, subject to the need for any compensation, pursuant to 39.5.2, as well as the provisions of this clause.

46.1.1. The STATE shall pass on the REVERSIBLE ASSETS, thereafter, to the holders of the SERVICES.

46.2. For the purposes set forth in this clause, the CONCESSIONAIRE is obliged to transfer to the STATE the REVERSIBLE ASSETS, free and clear of any encumbrances or liens, and they must be in normal conditions of operation, use and maintenance, except for the normal wear and tear resulting from their use and operation, in order to allow the continuity of the SERVICES for a minimum additional period of 24 (twenty-four) months, except in exceptional cases when they have a shorter useful life.

46.3. Within up to 365 (three hundred and sixty-five) days before the extinguishment of the CONCESSION by virtue of the end of the contractual term, the CONCESSIONAIRE shall verify, together with the technical teams of the STATE and with the monitoring of the REGULATORY AGENCY, the compliance with sub-clause 39.3.

46.4. In other cases of extinguishment of the CONCESSION, within 60 (sixty) days as from the notification sent by the CONCESSIONAIRE to the REGULATORY AGENCY, a prior inspection of the REVERSIBLE ASSETS shall be carried out by the CONCESSIONAIRE and the REGULATORY AGENCY, and the CERTIFICATE OF REVERSION OF THE SYSTEM shall be issued indicating the state of conservation of the REVERSIBLE ASSETS and shall be executed by the CONCESSIONAIRE and the REGULATORY AGENCY.

46.5. In the event of omission by the REGULATORY AGENCY to carry out the survey and/or issue the CERTIFICATE OF REVERSION OF THE SYSTEM mentioned above, it shall be incumbent on the CONCESSIONAIRE to directly notify the STATE to carry out the survey, within 30 (thirty) days as from the notification sent by the CONCESSIONAIRE.

46.6. In the event that the REVERSIBLE ASSETS in relation to which the CONCESSIONAIRE has interference or use by reason of the activities hereby attributed to it, are not in satisfactory conditions upon their return as provided for in this subclause 46.2, the CONCESSIONAIRE shall indemnify the STATE, in the amount to be calculated by the REGULATORY AGENCY, ensuring the full defense and participation of the CONCESSIONAIRE.

46.7. The STATE, after the statement of the REGULATORY AGENCY, may also withhold or enforce the CONTRACT PERFORMANCE GUARANTEE, at its sole discretion, in case it is verified in the survey, that the REVERSIBLE ASSETS are not in accordance with the specifications provided for in this AGREEMENT.

46.8. If the amount of the CONTRACT PERFORMANCE GUARANTEE is insufficient to meet the obligation provided for in sub-clause 46.7, the STATE may deduct its credits from the amount of indemnity due to the CONCESSIONAIRE, by virtue of the extinguishment of the CONCESSION.

46.9. Any indemnity paid by the CONCESSIONAIRE pursuant to sub-clauses 46.6, 46.7 or 46.8 shall be passed on by the STATE to the holders of the REVERSIBLE ASSET(s) to which the indemnity refers.



46.10. At least 300 (three hundred) days in advance of the end of the contractual term, the PARTIES and the REGULATORY AGENCY shall prepare a TRANSITION PLAN in order to facilitate the reversal of the REVERSIBLE ASSETS and SYSTEM to the STATE.

46.10.1. The TRANSITION PLAN shall contain the updated list of REVERSIBLE ASSETS with identification of their location, state of conservation, any related environmental license and georeferencing, among other information that the PARTIES jointly with the REGULATORY AGENCY might deem important.

46.11. A Committee with duties similar to those provided for in the subclauses 1.1.14 and 8.4.1 shall be constituted, in accordance with subclause 51.2, by the PARTIES and REGULATORY AGENCY, in order to plan and conduct the process of reversing the REVERSIBLE ASSETS and SYSTEM.

46.12. The STATE shall inform the BOARD OF HOLDERS about the TRANSITION PLAN by submitting a copy of the TRANSITION PLAN to said body, as well as presenting a monthly report on the progress of the transfer work of REVERSIBLE ASSETS and the conduction of the reversion process of REVERSIBLE ASSETS.

#### **47. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**

47.1. The intellectual property rights on the studies and designs prepared for the specific purposes of the activities integrated in the CONCESSION, as well as designs, plans, blueprints, documents and other materials, shall be transferred, at no cost, on a permanent basis, to the STATE, as representative of the holders, throughout the CONCESSION, and the CONCESSIONAIRE shall be responsible for adopting all the necessary measures for this purpose.

47.1.1. At the end of the CONCESSION, the intellectual property referred to in subclause 47.1 shall be transferred to the METROPOLITAN REGION and to the MUNICIPALITIES.

47.2. Likewise, the intellectual property currently held by the STATE and integral part of the ITB or this AGREEMENT, shall be deemed assigned, free of charge, to the CONCESSIONAIRE for its exclusive use in the CONCESSION during its term of effectiveness.

47.2.1. Any refusal or delay in the assignment of the intellectual property addressed in the previous subclause that may result in proven damage to the OPERATION OF THE SYSTEM may be the subject to economic-financial rebalancing.

47.3. The registry of USERS used by the STATE, and assigned to it by CEDAE, shall be provided free of charge to the CONCESSIONAIRE when the OPERATION OF THE SYSTEM begins, being subsequently reverted in its most current version, at the end of the CONCESSION, to ESTADO, in compliance with the rules provided for in Federal Law No. 13,709/2018.

#### **48. CONCESSIONAIRE'S SOCIAL RESPONSIBILITY**

48.1. The CONCESSIONAIRE, during the performance of the AGREEMENT, undertakes not to promote, in any way, actions that demonstrate partisan, religious, racial and social preferences.

48.2. The CONCESSIONAIRE undertakes to reserve at least 1% of the job vacancies for physically or mentally handicapped persons, as per art. 93 of Federal Law No. 8,123/1991.

48.3. The CONCESSIONAIRE shall reserve at least 1% job vacancies to be filled by former inmates of the penitentiaries and prisons of the STATE in order to contribute to the rehabilitation and reintegration of these people into society.

48.4. The CONCESSIONAIRE may not take any action against fraud and/or theft of water, nor cut off the water supply in the CONCESSION AREA, in places where there is no public basic sanitation network, including in NON-URBANIZED IRREGULAR AREAS and other areas of slums and subnormal agglomerations within the CONCESSION AREA.

48.5. The CONCESSIONAIRE shall make available a tank truck for the NON-URBANIZED IRREGULAR AREAS when needed, up to the limit of R\$ 300,000.00 (three hundred thousand BRL) per month, updated by the same base date and index of the tariff adjustment provided for in clause 28.

48.5.1. The CONCESSIONAIRE shall not be required to make available the tank truck provided for in sub-clause 48.5 in case the SYSTEM IMPROVEMENT WORKS in the NON-URBANIZED IRREGULAR AREAS make such provision unnecessary.

#### **49. TECHNICAL COMMITTEE**

49.1. By the end of the ASSISTED OPERATION period, the STATE shall establish a TECHNICAL COMMITTEE composed by specialized professionals with the purpose of resolving any issues and conflicts between the PARTIES regarding legal, contractual, technical and economic-financial aspects of the performance of the AGREEMENT, in accordance with the terms below.

49.2. The TECHNICAL COMMITTEE shall consist of three (3) full members and three (3) alternate members, appointed as follows:

49.2.1. 1 (one) full member and respective alternate member appointed by the STATE, with the role of chairing the TECHNICAL COMMITTEE;

49.2.2. 1 (one) member and respective alternate member appointed by the CONCESSIONAIRE;

49.2.3. 1 (one) full member and respective alternate member appointed jointly by the STATE and the CONCESSIONAIRE, with the role of chairing the TECHNICAL COMMITTEE.

49.3. The members of the TECHNICAL COMMITTEE must be professionals with recognized technical, economic or legal qualification and knowledge on the subjects involved in the performance of the AGREEMENT.

49.4. The CONCESSIONAIRE shall be responsible for paying the remuneration of the members of the TECHNICAL COMMITTEE.

49.5. The members of the TECHNICAL COMMITTEE shall be remunerated by performance and/or availability, depending on the contractual terms negotiated by the CONCESSIONAIRE, with the consent of the STATE.

49.6. In case arrangements and activities are necessary to better clarify the case, according to the instructions of the TECHNICAL COMMITTEE on a case-by-case basis, such expenses shall be borne by the PARTY that requested the TECHNICAL COMMITTEE's intervention.

49.7. The TECHNICAL COMMITTEE shall be removed at the end of the term of the AGREEMENT.

49.8. The early destitution of the TECHNICAL COMMITTEE shall depend on the agreement of the PARTIES.

49.9. The TECHNICAL COMMITTEE shall have the role of analyzing the disputes and issues that might arise between the PARTIES, issuing reasoned and conclusive opinions, containing a proposal for resolution, with a view to guiding the decision making by the PARTIES, the STATE or the REGULATORY AGENCY.

49.10. The opinions and resolution proposals of the TECHNICAL COMMITTEE regarding the issues and disputes submitted to it by the PARTIES shall be of a purely opinion nature, not binding the PARTIES nor the decisions by the STATE and the REGULATORY AGENCY.

49.11. The conclusive opinions and the resolution proposals of the TECHNICAL COMMITTEE shall be deemed approved if at least two (2) of its members vote in its favor.

49.12. The content of the opinions and resolution proposals of the TECHNICAL COMMITTEE shall be taken into account by the STATE and by the REGULATORY AGENCY in their decision-making related to the issues addressed therein.

49.13. The following technical, legal, economic and interpretative matters may be submitted to the analysis and decision proposal of the TECHNICAL COMMITTEE:

49.13.1. default of contractual obligations by the PARTIES;

49.13.2. the economic-financial rebalancing of the AGREEMENT, including the materialization of risks allocated by way of contract or legislation, the liability of the PARTIES, the definition of methodologies and the correction of the corresponding calculations;

49.13.3. the interpretation of the risk matrix of the concession;

49.13.4. any irregularity regarding the tariff readjustment and any unlawfulness in the acts and procedures related to the ORDINARY REVIEW;

49.13.5. the PARTIES' right to indemnification related to the performance and extinguishment of the AGREEMENT, including with regard to criteria and methodologies for its quantification, as well as the corresponding calculations;

49.13.6. issues concerning the assets that integrate the SYSTEM, the LINKED ASSETS and the classification of reversible assets;

49.13.7. the CONCESSIONAIRE's compliance with the SERVICE TARGETS and PERFORMANCE TARGETS;

49.13.8. compliance with ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS by the PARTIES;

49.13.9. technical, economic or legal issues related to the unilateral amendment of the AGREEMENT, intervention, termination, takeover and other issues

- 49.13.10. events of extinguishment of the concession;
- 49.13.11. events of transfer of control of the CONCESSION;
- 49.13.12. other technical, economic or legal issues related to the performance of the AGREEMENT.
- 49.14. The PARTIES that wish to clarify aspects or settle disputes concerning technical, economic or legal aspects related to the subjects mentioned above may request the action of the TECHNICAL COMMITTEE, upon delivery of a request that contains:
- 49.14.1. A description of the facts that gave rise to the submitted issue or dispute;
- 49.14.2. The presentation of the technical, legal and economic grounds that substantiate their allegations as to the merits of the dispute;
- 49.14.3. Delimitation of the request as to the analysis and the respective resolution proposal to be issued by the TECHNICAL COMMITTEE.
- 49.15. The request referred to in clause 49.13. duly supported with the necessary documents to substantiate the report and the allegations contained therein, shall be sent to the representative of the other PARTY and, subsequently, to the Chairman of the TECHNICAL COMMITTEE, together with the receipt evidencing the notification of the other PARTY.
- 49.16. Upon receipt of the notification by the TECHNICAL COMMITTEE, the respondent PARTY shall have up to 15 (fifteen) days to present its statement on the facts and grounds of the request, after which a period of 30 (thirty) days shall start for the analysis and presentation of the opinion by the TECHNICAL COMMITTEE.
- 49.17. The requesting PARTY may at any time withdraw the request for an opinion by the TECHNICAL COMMITTEE, upon notification to the latter, and the remuneration due to the members for their performance shall be ensured.
- 49.18. In the event of withdrawal of the request, the cancellation of the analysis by the TECHNICAL COMMITTEE shall depend on notification to the other PARTY, which may express its intention to proceed with the analysis and opinion by the TECHNICAL COMMITTEE.
- 49.19. At the end of the term established in clause 49.15, the TECHNICAL COMMITTEE shall issue an opinion or proposal for resolution, analyzing the facts and the grounds presented, which, if accepted by the PARTIES, may be followed by the formalization of an agreement to incorporate the opinion to the AGREEMENT, with a view to its consideration in the performance of the AGREEMENT, including for purposes of interpretation of its clauses in relation to future events.
- 49.19.1. If the implementation of the resolution proposed by the TECHNICAL COMMITTEE and accepted by the PARTIES requires the formalization of an addendum to the AGREEMENT, the PARTIES shall do so with the intervention of the REGULATORY AGENCY, observing the advertising requirements provided for in the legislation.
- 49.19.2. If the resolution proposed by the TECHNICAL COMMITTEE is not accepted by the PARTIES, they may submit the dispute to the other dispute resolution mechanism provided for in this AGREEMENT, to Arbitration or to the Judiciary, as the case may be.

49.19.3. The submission of any issue or dispute to the TECHNICAL COMMITTEE does not exempt the PARTIES from compliance with the contractual obligations under discussion as established and as provided for in the AGREEMENT until any potential change is implemented.

49.19.4. Exceptionally, the suspension of compliance by the PARTIES with the obligations set forth in the AGREEMENT shall be admitted by consensus, when the object of the dispute/conflict submitted to the TECHNICAL COMMITTEE causes risks to the safety of persons and/or the development.

49.20. The self-resolution of the conflict may also take place before the chamber of prevention and administrative resolution of disputes, or by mediation, pursuant to Law no. 13,140/15.

## **50. ARBITRATION**

50.1. Any disputes arising out of or related to this AGREEMENT, which are of a pecuniary nature and do not concern primary public interests, shall be definitively resolved by arbitration in accordance with Federal Law No. 9,307/1996, with Decree No. 46,245/2018 of the State of Rio de Janeiro and the arbitration rules of ( \_\_\_\_\_ XXXX \_\_\_\_\_ ).

50.1.1. Disputes that may be subject to arbitration are, among others: (i) issues related to the restoration of the AGREEMENT economic-financial balance; (ii) the calculation of indemnities resulting from extinguishment or transfer of the AGREEMENT; and (iii) the breach of contractual obligations by any of the PARTIES.

50.2. Any of the PARTIES may initiate mediation proceedings prior to arbitration, and the other PARTY may agree or not to participate, in accordance with the mediation rules of the institution mentioned in the previous item.

50.3. The arbitration shall be conducted and decided by three arbitrators, appointed in accordance with the established arbitration rules.

50.4. If the value of the dispute is lower than R\$ 5,000,000.00 (five million BRL), if both PARTIES consent, the arbitration may:

50.4.1. be conducted and decided by only one arbitrator, appointed pursuant to the established arbitration rules; and/or

50.4.2. be conducted in accordance with the expedite arbitration rules of the same institution mentioned above in this clause.

50.5. For the purposes of subclause 50.4, the value of the dispute shall be assessed by adding the requests put forward by the claimant in the request for arbitration and by the defendant in its answer to such request.

50.6. The PARTIES must make clear the intention to exercise the choices mentioned in the subclause 50.4 in these same procedural documents.

50.7. The seat of the arbitration shall be the city of Rio de Janeiro/RJ, Brazil.

50.8. Brazilian law shall apply to the merits of the dispute, the arbitration clause and the arbitral proceeding.

50.9. The arbitral proceeding language shall be Portuguese, reason for which the arbitral tribunal shall require the translation of documents submitted in a foreign language.

50.10. The Court of the District of the Capital City of the State of Rio de Janeiro shall be competent to process and judge any judicial measure in support of the arbitration, except for the provisions of the sole paragraph of Article 4 of Decree No. 46,245/2018.

50.11. The expenses with the arbitration shall be advanced by the CONCESSIONAIRE when it is the claimant of the arbitration, including the arbitrators' fees, any expert investigation costs and other expenses with the proceeding.

50.11.1. The attorneys' fees shall be borne by each of the PARTIES, without any advance by the PARTY that initiates the dispute.

50.12. The acts of the arbitration proceeding shall be public, observing the rules of art. 13 of Decree No. 46,245/2018.

50.13. The allocation of the costs of arbitration shall comply with the provisions of art. 16 of Decree No. 46,245/2018.

50.14. If the claimant of the arbitration is the STATE, it shall be up to the STATE to inform the BOARD OF HOLDERS about its request and request an advisory opinion from said body.

## **51. GOVERNANCE OF THE WATER AND SANITATION SYSTEMS**

51.1. The governance structure of the water and sanitation systems that comprises this CONCESSION is composed by the MONITORING COMMITTEE, with the objective of supervising and verifying the compliance by the CONCESSIONAIRE with its contractual obligations throughout the term of the AGREEMENT, and by the TRANSITION COMMITTEE, aimed at facilitating the dialogue between CONCESSIONAIRE, CEDAE and STATE within the scope of ASSISTED OPERATION OF THE SYSTEM.

51.2. The TRANSITION COMMITTEE shall be composed by: 02 (two) representatives of the STATE, 02 (two) representatives of the REGULATORY AGENCY, 04 (four) representatives of the CONCESSIONAIRE(s) and 04 (four) representatives of CEDAE.

51.2.1. The representatives of the STATE and of the REGULATORY AGENCY must be career public servers, while the representatives of the CONCESSIONAIRE and of CEDAE shall be, each, of the accounting area, of the operational area, of the commercial area and of the technical area of each company.

51.2.2. The representatives of the TRANSITION COMMITTEE shall be appointed prior to the start of the ASSISTED OPERATION.

51.3. The constitution and operation of the MONITORING COMMITTEE shall follow the rules established in ANNEX XII - MONITORING COMMITTEE.

51.3.1. The decisions and actions of the MONITORING COMMITTEE shall not be binding on the

CONCESSION and the AGREEMENT, and its main purpose is to to promote the transparency of the management of the sanitation services regarding the actions to the social control, according to the legislation and the COOPERATION AGREEMENTS.

51.4. The TRANSITION COMMITTEE shall act in accordance with clause 8 of this AGREEMENT.

## **52. COMMUNICATIONS**

52.1. Communications between the PARTIES shall be in writing and delivered:

52.1.1. in person, upon protocol of receipt;

52.1.2. by registered mail, with return receipt; and

52.1.3. by e-mail, with read receipt.

52.2. The following addresses shall be used for the purpose of sending communications pursuant to this clause:

52.2.1. STATE:

(full address)

Phone: [●]

(e-mail)

52.2.2. CONCESSIONAIRE:

(full address)

Phone: [●]

(e-mail)

52.2.3. REGULATORY AGENCY:

(full address)

Phone: [●]

(e-mail)

52.3. The PARTIES may change their address by means of communication to the other parties and must therefore be the subject of prior notice.

52.4. Communications will be considered delivered on the date of receipt by the recipient.

## **53. DEADLINE COUNT**

53.1. The deadlines set out in days, in this AGREEMENT, shall be counted in calendar days, except if reference is expressly made to working days, excluding the first day and including the last day.

53.2. The deadlines with initial and final dates on public holidays, optional state holidays and weekends shall fall on the first subsequent working day.

## **54. NO WAIVER**

54.1. No failure or delay of any right by any of the PARTIES of this AGREEMENT shall operate as

waiver thereof or otherwise result in novation of such right, neither shall any single or partial exercise of any such rights preclude any other or further exercise thereof, unless expressly provided otherwise.

**55. PARTIAL NULITY**

55.1. If any provisions of this AGREEMENT are declared void or null, such declaration shall not affect the validity of the other contractual provisions, which shall remain in full force and effect, observing the provisions of in art. 24 of Decree-Law no. 4.657/1942.

**56. INTERVENTION-CONSENT**

56.1. The INTERVENING CONSENTING PARTY hereby represents to have full and complete knowledge as to the content that concerns the regulation and supervision of this instrument and its annexes, with respect to which it represents to have no reservations or caveats, hereby expressing its consent.

**57. JURISDICTION**

57.1. The Court of the District of Rio de Janeiro, State of Rio de Janeiro, is hereby appointed as competent to adjudicate on matters related to this AGREEMENT that cannot be decided through arbitration, and for the enforcement of the arbitral award, in compliance with the provisions of clause 50 of this AGREEMENT, excluding any other, however privileged it may be.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in 3 (three) counterparts, and the STATE shall provide for the publication of the summary of this AGREEMENT in the official press, pursuant to the sole paragraph of Article 61 of Federal Law 8.666/93.

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