

**APPENDIX 12**  
**AGREEMENT WITH THE DEPOSITARY FINANCIAL INSTITUTION**

## ANEXO 12

### PREÂMBULO

A versão em língua inglesa deste Anexo é meramente referencial, não vinculante. A única versão oficial do documento está redigida em língua portuguesa, cujo conteúdo é vinculante para todos os interessados. Em caso de dúvidas de interpretação entre a versão traduzida do Anexo 12, em inglês, e a versão oficial, redigida em língua portuguesa, prevalecerá a versão em língua portuguesa, documento oficial da licitação.

## APPENDIX 12

### PREAMBLE

The English version of this Appendix is not binding to the parties. The Portuguese version of the document is the only official version of the auction and it is binding to all stakeholders. Should any interpretation doubt arise between this English version and the Portuguese version of this Appendix 12, the Portuguese version shall prevail, as the only official document for the auction.

**AGREEMENT DRAFT OF THE ACCOUNT MANAGEMENT, NOMINATION OF  
DEPOSITARY FINANCIAL INSTITUTION AND OTHER AGREEMENTS**

On [•] days of the month of [•] of the year of [•]:

**THE MUNICIPALITY OF ARACAJU**, through the **Municipal Secretariat** [•], headquartered at [•], in the City [•], State [•], represented by Mr. [NAME], [nationality], [marital status], [profession], holder of identity card No. [•], issued by [•], and registered with the CPF/ME under No. [•] and the Secretariat [•], with headquarters at [•], [•], Postal Code [•], City [•], State [•], represented by Mr. [NAME], [nationality], [marital status], [profession], Municipal Secretary [•], holder of identity card No. [•], issued by [•], and registered with the CPF/ME under No.[•] (“MUNICIPALITY”);

**CONCESSIONAIRE** [NAME], headquartered at [address], in City [•], State [•], registered with CNPJ/ME under No. [•], represented, under the terms of its Bylaws, by Messrs. [NAME], [nationality], [marital status], [profession], holder of identity card No. [•], issued by [•], registered with the CPF/ME under No. [•], and [NAME], [nationality], [marital status], [profession], holder of identity card No. [•], issued by [•], registered with the CPF/ME under No. [•], (“CONCESSIONAIRE”); and

**FINANCIAL INSTITUTION** [•], an institution authorized to operate in Brazil by the Central Bank of Brazil, headquartered in [•], registered with the CNPJ/ME under No. [•], hereby represented by [•] (“DEPOSITARY FINANCIAL INSTITUTION”);

THE MUNICIPALITY, the CONCESSIONAIRE and the DEPOSITARY FINANCIAL INSTITUTION are hereinafter referred to, individually, as “Party”, and together, “Parties”,

**CONSIDERING THAT:**

- (i) The MUNICIPALITY and the CONCESSIONAIRE signed, on [date], the Public-Private Partnership CONTRACT in the Administrative Concession No. [•]/2020 modality;
- (ii) The CONTRACT, in its Clause 36, foresees the constitution of LIQUIDITY BALANCE to ensure the faithful, integral and punctual fulfillment of the assumed obligations, comprising (a) EFFECTIVE MONTHLY PAYMENTS; (b) ENERGY BONUSES; and (c) other transfers, amounts due, indemnities and compensation due to the CONCESSIONAIRE, in any

capacity, especially those that may result from the early termination of the CONTRACT;

(iii) The Contribution to the Cost of the Public Lighting Services (COCIP) was instituted in the MUNICIPALITY, with the purpose of funding the SERVICES;

(iv) According to the CONTRACT regime, the BOUND ACCOUNT cannot be freely moved by any political agent or agency of the MUNICIPALITY until full compliance with the obligations assumed in the CONTRACT, except as a result of the presence of excess value, as provided for in this INSTRUMENT;

(v) The MUNICIPALITY has already provided for the opening, together with the DEPOSITARY FINANCIAL INSTITUTION, of the BOUND ACCOUNT and the RESERVE ACCOUNT, which the accounts have received the following numbers: Bank Account No. [•], Agency No. [•] (Agency [•]), on behalf of the MUNICIPALITY (“BOUND ACCOUNT”); and Bank Account No. [•], Agency No. [•] (Agency [•]), on behalf of the MUNICIPALITY (“RESERVE ACCOUNT”);

The Parties RESOLVES, by mutual agreement, to enter this contract for the linking of revenues and the nomination of a DEPOSITARY FINANCIAL INSTITUTION (“INSTRUMENT”), which will be governed by the following clauses:

## **1. DEFINED TERMS**

1.1. Unless expressly provided to the contrary contained in this INSTRUMENT, terms in capital letters and not defined otherwise will have the same meanings assigned to them in the CONTRACT. The terms defined in the singular have the same meaning when used in the plural and vice versa. Terms that designate male gender also designate female gender and vice versa.

## **2. OBJECT**

2.1. This INSTRUMENT establishes the set of rules, procedures, rights and obligations intended to enable the use of LINKED REVENUES for the constitution of LIQUIDITY BALANCE, to be administered by the DEPOSITARY FINANCIAL INSTITUTION, whose purpose is to ensure the full, punctual and faithful fulfillment of obligations contracted by the GRANTING AUTHORITY.

2.2. For the fulfillment of this purpose, the present INSTRUMENT has the purpose of:

2.2.1. Appoint [•] as a DEPOSITARY FINANCIAL INSTITUTION and regulate the terms and conditions under which it will act, as the MUNICIPALITY's agent, being responsible for the handling of the BOUND ACCOUNT and RESERVE ACCOUNT, Bank Account No. [•], Agency n° [•] (Agency [•]) and Bank Account No. [•], Agency No. [•] (Agency [•]), respectively, both opened by the MUNICIPALITY, to enable the payment of the GRANTING AUTHORITY 's obligations under the CONTRACT ;

2.2.2. Operate the binding of LINKED REVENUES, destined to the payment of the obligations contracted by the GRANTING AUTHORITY in the CONTRACT; and

2.2.3. Establish the rules for handling the BOUND ACCOUNT and the RESERVE ACCOUNT, by the DEPOSITARY FINANCIAL INSTITUTION, as well as the obligations and prerogatives of each of the Parties with respect to the LIQUIDITY BALANCE.

2.3. The pecuniary obligations assumed by the MUNICIPALITY as a result of the CONTRACT before the CONCESSIONAIRE, protected by the LIQUIDITY BALANCE provided for in this INSTRUMENT have the following characteristics (“PAYMENT OBLIGATIONS”):

2.3.1. EFFECTIVE MONTHLY PAYMENT: monthly amount to be paid to the CONCESSIONAIRE, in return for the SERVICES performance, as described in the CONTRACT;

2.3.2. ENERGY BONUSES: Bonuses that the CONCESSIONAIRE will be entitled in the hypothesis of additional saving in the energy consumption related to the PUBLIC LIGHTING, after the achievement of the efficiency target, based on the calculation rules;

2.3.3. Fines: the fine(s) possibly due to the CONCESSIONAIRE, due to the delay or non-payment of any amount, in any capacity, under the terms of the CONTRACT;

2.3.4. Interest: interest eventually due to the CONCESSIONAIRE, due to the delay or non-payment of any amount, in any capacity, calculated according to the rate in force for the late payment of taxes due to the Municipal Treasury, under the terms of the CONTRACT; and

2.3.5. Indemnities: indemnities due to the CONCESSIONAIRE, especially those that may result from the early termination of the CONTRACT.

2.4. The LINKED REVENUES will be aligned to the fulfillment of the PAYMENT OBLIGATIONS, in the form and according to the rules provided for in the CONTRACT and in this INSTRUMENT.

2.5. From the date of signature of the CONTRACT WITH THE DEPOSITARY FINANCIAL INSTITUTION, the monthly COCIP amounts collected on the electricity consumption invoice will be fully deposited by the DISTRIBUTION COMPANY in the BOUND ACCOUNT, pursuant to this APPENDIX.

2.6. The LINKED REVENUES indicated will be bound exclusively to the purposes referred to in item 3.2, therefore, their use for any other purposes is prohibited, subject to the provisions of items 2.7 and 2.8.

2.7. The funds deposited in the RESERVE ACCOUNT in the amount of the minimum balance established in item 4 and those transiting in the BOUND ACCOUNT, may not be subject to movements or used for any other purpose, nor be given as guarantee for any other projects or contracts of the GRANTING AUTHORITY, regardless of its nature, observing the provisions of item 2.8.

2.8. The excess of revenue beyond the amounts referred to in item 2.5 shall be used to make the monthly payments due by the GRANTING AUTHORITY to the DISTRIBUTION COMPANY for the operation of the collection and transfer of COCIP and for the supply of electricity for PUBLIC LIGHTING.

2.9. After the payments referred to in the previous items, the remaining funds will be transferred monthly by the DEPOSITARY FINANCIAL INSTITUTION to the free transactional account of the MUNICIPALITY (Bank Account No. [•], Agency No. [•] (Agency [•])).

2.10. The portion of the COCIP, related to the administration fee charged by the DISTRIBUTION COMPANY for the collection of the tax, which is today located in the ENERGY SUPPLY CONTRACT signed between the GRANTING AUTHORITY and the DISTRIBUTION COMPANY, will also transit through the BOUND ACCOUNT only for the

purposes of operationalizing the DISTRIBUTOR COMPANYS' payment or of an entity that will replace it in this task.

2.11. The MUNICIPALITY shall ensure that the DISTRIBUTION COMPANY or any agent that eventually replaces it in the COCIP collection activity, directs the maximum amount of COCIP 's monthly collection to the BOUND ACCOUNT.

### **3. NOMINATION OF THE DEPOSITARY FINANCIAL INSTITUTION**

3.1. The MUNICIPALITY, exclusively with regard to the management and handling of the BOUND ACCOUNT and the RESERVE ACCOUNT, hereby irrevocably and irreversibly appoint and constitute [•] as a DEPOSITARY FINANCIAL INSTITUTION, granting it sufficient powers to, as an agent, to manage the BOUND ACCOUNT and the RESERVE ACCOUNT in accordance with the terms and conditions stipulated in this INSTRUMENT.

3.2. The DEPOSITARY FINANCIAL INSTITUTION, hereby, accepts its nomination as an attorney of the MUNICIPALITY, with the powers defined in this INSTRUMENT, to act as a proxy, pursuant to Articles 627, 653 and following, of the Brazilian Civil Code, respectively, of the amounts deposited in the BOUND ACCOUNT and in the RESERVE ACCOUNT, which will be kept in its custody and released to the CONCESSIONAIRE or to the MUNICIPALITY in the strict terms of the provisions of this INSTRUMENT and the CONTRACT.

3.2.1. In fulfilling its nomination, the DEPOSITARY FINANCIAL INSTITUTION undertakes to comply with all the terms and conditions set forth in this INSTRUMENT and in the applicable legislation, employing, in the execution of the mandate granted herein, the same diligence that it would employ in the management of its own businesses.

3.3. Except in cases expressly provided for in this INSTRUMENT, the duties and responsibilities of the DEPOSITARY FINANCIAL INSTITUTION will be limited to the terms of this INSTRUMENT, being certain that the LIQUIDITY BALANCE contemplated in this INSTRUMENT can only be changed by means of a written instrument signed by the respective Parties.

3.4. As a result, the DEPOSITARY FINANCIAL INSTITUTION is hereby invested, in an irrevocable and irreversible manner, with powers of representation conferred by the MUNICIPALITY to, pursuant to Article 653 and following the Brazilian Civil Code, act as an agent

and perform all acts necessary for the fulfillment of the payment obligations under the CONTRACT, pursuant to this INSTRUMENT and the CONTRACT.

3.5. As a result of the mandate granted, the DEPOSITARY FINANCIAL INSTITUTION will be empowered to carry out all the material acts necessary to pay the pecuniary obligations contracted as a result of the CONCESSION, notably the payment of the EFFECTIVE MONTHLY PAYMENT, ENERGY BONUSSES, indemnities and other amounts eventually due, such as payments made to the DISTRIBUTION COMPANY for the operation of the collection and transfer of COCIP and for the supply of electricity for PUBLIC LIGHTING.

3.6. The DEPOSITARY FINANCIAL INSTITUTION must follow the instructions that are in conformity with the express provisions of the CONCESSION CONTRACT and of this INSTRUMENT, and it cannot be required to perform any act that implies the premature disbursement of own resources.

3.7. The DEPOSITARY FINANCIAL INSTITUTION shall make access keys and passwords available to the MUNICIPALITY and to the CONCESSIONAIRE for self-service consultation on the internet to the extracts from the BOUND ACCOUNT and the RESERVE ACCOUNT.

3.8. The mandate given to the DEPOSITARY FINANCIAL INSTITUTION is an essential condition of the business and is irrevocable and irreversible during the period between its execution and the CONCESSION TERM or until the full compliance and settlement of all PAYMENTS' OBLIGATIONS.

3.9. The non-institution, non-maintenance and/or replacement of the BOUND ACCOUNT, by the GRANTING AUTHORITY, as well as the non-fulfillment of the obligations assumed under the CONTRACT WITH THE DEPOSITARY FINANCIAL INSTITUTION, will give rise to the termination of the CONTRACT.

3.10. The MUNICIPALITY may not revoke the mandate granted by means of this INSTRUMENT, or change its scope and terms, without the CONCESSIONAIRES' prior and express consent.

3.11. Whenever the DEPOSITARY FINANCIAL INSTITUTION responsible for the transfer of LINKED REVENUES is changed, after the CONCESSIONAIRES' previous and express consent, the new DEPOSITARY FINANCIAL INSTITUTION responsible for such obligation must

be included in the contract, which allows the adoption of the transfer mechanisms under the same terms of the this INSTRUMENT.

#### **4. ACCOUNT OPENING, FORMATION OF MINIMUM BALANCE OF THE RESERVE ACCOUNT AND REVENUE FLOW**

4.1. The MUNICIPALITY will open and maintain the BOUND ACCOUNT and the RESERVE ACCOUNT, both owned by the MUNICIPALITY itself, with movement restricted by the DEPOSITARY FINANCIAL INSTITUTION and dedicated specifically to meet the payment obligations under the CONTRACT and enable the constitution of the performance BOUND of the pecuniary obligations assumed by the MUNICIPALITY.

4.1.1. The BOUND ACCOUNT may be located in a financial institution authorized to operate by the Central Bank of Brazil other than the DEPOSITARY FINANCIAL INSTITUTION, as long as the rule of its restricted and exclusive movement by the aforementioned DEPOSITARY FINANCIAL INSTITUTION is observed.

4.2. The formation of the minimum balance to be maintained in the RESERVE ACCOUNT (“MINIMUM BALANCE OF THE RESERVE ACCOUNT”) by the DEPOSITARY FINANCIAL INSTITUTION, must comply with the following schedule:

<b>Period</b>	<b>Number of MAXIMUM MONTHLY CONSIDERATIONS maintained from the RESERVATION ACCOUNT</b>
EFFECTIVE DATE	-
End of year 1	3
End of year 2	3
End of year 3	3
End of year 4	3
End of year 5	3
End of year 6	3
End of year 7	3
End of year 8	3
End of year 9	3
End of year 10	3
End of year 11	3
End of year 12	3
End of year 13	3

4.2.1. The value of each MAXIMUM MONTHLY PAYMENT referred to in the

Sub-Clause above will be kept up to date, considering the annual readjustments and variations suffered by COCIP, resulting from events that trigger the restoration of the CONTRACTS' economic and financial rebalancing.

4.3. If necessary, at any time, the DEPOSITARY FINANCIAL INSTITUTION shall proceed with the retention and transfer of the BOUND ACCOUNT to the RESERVE ACCOUNT in an amount equivalent to the necessary complementation to achieve the MINIMUM BALANCE OF THE RESERVE ACCOUNT, pursuant to item 4.2.

4.4. The INDEPENDENT VERIFIER shall inform the DEPOSITARY FINANCIAL INSTITUTION of any changes in the amount of the MAXIMUM MONTHLY PAYMENT, such as those relating to:

- (i) Incidence of monetary correction; and
- (ii) Possible adjustments resulting from processes to restore the economic and financial balance of the CONTRACT.

4.5. It will also be the responsibility of the INDEPENDENT VERIFIER to inform the DEPOSITARY FINANCIAL INSTITUTION of the amounts referring to any ENERGY BONUSES.

4.6. In the absence of an INDEPENDENT VERIFIER, the CONCESSIONAIRE shall inform the DEPOSITARY FINANCIAL INSTITUTION of the changes in value referred to in item 4 and the amounts referred to in item 4.2, subject to the provisions of the CONTRACT, taking civil and criminal responsibility for its veracity.

4.7. In the form of the CONTRACT and the present INSTRUMENT, the full amount of COCIPS' collection to the BOUND ACCOUNT will be directed by the DISTRIBUTION COMPANY, so that they meet the payment purposes and obligations arising from the CONCESSION.

## **5. ACCOUNT ADMINISTRATION**

5.1. The MUNICIPALITY and the CONCESSIONAIRE hereby grant, in an irrevocable and irreversible manner, to the DEPOSITARY FINANCIAL INSTITUTION, full power to administrate the BOUND ACCOUNT and the RESERVE ACCOUNT, make the resources

available to the CONCESSIONAIRE or the MUNICIPALITY strictly in accordance with the rules and conditions established in the CONTRACT and in this INSTRUMENT.

5.2. Due to the powers now granted, the BOUND ACCOUNT and the RESERVE ACCOUNT will be used in the hypothesis and in the cases provided for in this INSTRUMENT, without the need for any other authorizations or approvals, in addition to those expressly provided for therein.

5.3. The Parties agree that no other purpose may be given by the DEPOSITARY FINANCIAL INSTITUTION to the LINKED REVENUES directed to the BOUND ACCOUNT and to the RESERVE ACCOUNT other than those provided for in this INSTRUMENT, regardless of any notification to the contrary received by the DEPOSITARY FINANCIAL INSTITUTION from any of the Parties or from third parties.

5.4. The MUNICIPALITY and the CONCESSIONAIRE hereby appoint the DEPOSITARY FINANCIAL INSTITUTION as the faithful depository of the BOUND ACCOUNT and the RESERVE ACCOUNT, of the financial investments and of the gains and LINKED REVENUES resulting from it. The DEPOSITARY FINANCIAL INSTITUTION, by this INSTRUMENT, expressly accepts your appointment and charge as a faithful depository, free of charge, and assumes full responsibility for the proper maintenance, conservation and preservation of the values received.

5.5. The BOUND ACCOUNT and the RESERVE ACCOUNT cannot be operated by the MUNICIPALITY under any circumstances.

5.6. The DEPOSITARY FINANCIAL INSTITUTION will be responsible for the administration of the BOUND ACCOUNT, in the form of this INSTRUMENT, with a view to achieving all the purposes of the LIQUIDITY BALANCE, notably:

- (i) The satisfaction of the CONCESSIONAIRES' credit vis-à-vis the GRANTING AUTHORITY, including in case of default of the PAYMENTS OBLIGATIONS;
- (ii) The release of funds for the DISTRIBUTION COMPANY corresponding to the administration fee charged by the DISTRIBUTION COMPANY for the tax collection;
- (iii) The preservation of the value of the revenues destined to the payment of the SERVICES, through its investment, in the manner provided for in this INSTRUMENT; and

(iv) The release, for the MUNICIPALITY, of the remaining resources not used for this purpose, after the payment of the payments referred to in the previous items.

5.6.1. While not transferred, the funds deposited in the BOUND ACCOUNT and in the RESERVE ACCOUNT must be invested by the DEPOSITARY FINANCIAL INSTITUTION, acting on behalf of the MUNICIPALITY, in investments with daily liquidity and low risk, according to the applicable legislation.

5.6.2. The gains resulting from the applications mentioned in the previous item will be returned to the MUNICIPALITY, observing the terms and procedures described in item 6.

## **6. PAYMENT MECHANISM, BOUND ACCOUNT AND RESERVE ACCOUNT MOVEMENT**

6.1. All LINKED REVENUE must be deposited in the BOUNDACCOUNT for the constitution of the mechanism of payment of the pecuniary obligations assumed by the MUNICIPALITY vis-à-vis the CONCESSIONAIRE under the CONTRACT. The LINKED REVENUES cannot be a payment mechanism by any other projects or contracts in the MUNICIPALITY, regardless of their nature, while they are still deposited in the BOUND ACCOUNT or RESERVE ACCOUNT.

6.2. From the EFFECTIVE DATE of the CONTRACT until the end of year 1, will be deposited the amount corresponding to 3 (three) MAXIMUM MONTHLY PAYMENTS, which will be deposited in monthly installments of 1/12 (one twelfth) for a period of 12 (twelve) consecutive months.

6.3. During Phase 0, the LINKED REVENUE will transit through the BOUND ACCOUNT only for the release of funds to the DISTRIBUTION COMPANY, and must be released in a free movement account of the GRANTING AUTHORITY, within 2 (two) working days of the deposit, to cover SERVICES costs and related expenses during Phase 0.

6.4. EFFECTIVE MONTHLY PAYMENT will be due by the GRANTING AUTHORITY in favor of the CONCESSIONAIRE after receipt of the QUARTER INDICATORS REPORT issued by the INDEPENDENT VERIFIER and the collection documents relating to the provision of the SERVICES, in compliance with the CONTRACT rules.

6.5. The operationalization of the BOUND ACCOUNT for payment of the EFFECTIVE MONTHLY PAYMENT and the ENERGY BONUSES will take place as provided for in Clause 36 of the CONTRACT, according to the following procedures:

6.5.1. In possession of the QUARTER INDICATORS REPORT, the CONCESSIONAIRE will issue its monthly invoice in the amount indicated in the report of the INDEPENDENT VERIFIER, notifying the DEPOSITARY FINANCIAL INSTITUTION, with a copy to the GRANTING AUTHORITY, and the DEPOSITARY FINANCIAL INSTITUTION must perform within 2 (two) working days. counted from said notification, the transfer of the EFFECTIVE MONTHLY PAYMENT to the CONCESSIONAIRES' account, as indicated in the invoice backed by the QUARTER INDICATORS' REPORT, regardless of any prior manifestation by the GRANTING AUTHORITY.

6.5.2. Any divergence by the Parties as to the value of the PERFORMANCE FACTOR, of the EFFECTIVE MONTHLY PAYMENT or any other amount due will not cause the interruption of the payment process.

6.5.3. The divergences must be dealt within the scope of the dispute settlement mechanisms provided for in the CONTRACT and any differences due between the Parties will be paid or compensated when paying future EFFECTIVE MONTHLY PAYMENTS, after issuing a binding decision on the subject matter of controversy.

6.6. The DEPOSITARY FINANCIAL INSTITUTION shall retain, on a monthly basis, in the BOUND ACCOUNT, sufficient resources for the payment of the EFFECTIVE MONTHLY PAYMENT for the respective month, as well as any ENERGY BONUSES to be paid on that occasion, based on the amounts informed in the terms of item 4 and in the CONTRACT.

6.7. Immediately after the payment of the EFFECTIVE MONTHLY PAYMENT and any ENERGY BONUSES to the CONCESSIONAIRE, the payment of the MUNICIPALITY energy bill and the COCIP collection fee must be paid to the DISTRIBUTION COMPANY. The amounts remaining in the BOUND ACCOUNT must be transferred by the DEPOSITARY FINANCIAL INSTITUTION to the RESERVE ACCOUNT until the fulfillment of the minimum limit established in item 4.

6.8. If the LINKED REVENUES of a given month are insufficient to pay the EFFECTIVE

MONTHLY PAYMENT and any ENERGY BONUSES, the DEPOSITARY FINANCIAL INSTITUTION shall transfer resources from the RESERVE ACCOUNT to the account indicated by the CONCESSIONAIRE sufficient to pay the full amount due of the EFFECTIVE MONTHLY PAYMENT referring to that month and any ENERGY BONUSES to be paid on that occasion.

6.9. If the procedure provided for in item 6.7 is not sufficient to restore the MINIMUM BALANCE OF THE RESERVE ACCOUNT, the GRANTING AUTHORITY shall, within 60 (sixty) days, make the deposit in the amount necessary for the restoration of the MINIMUM BALANCE OF THE RESERVE ACCOUNT.

6.10. The DEPOSITARY FINANCIAL INSTITUTION can only transfer funds deposited in the BOUND ACCOUNT to the MUNICIPAL account when there is no pending notification of full service, after full payment of the overdue PAYMENTS OBLIGATIONS and provided that it has not received any communication from the INDEPENDENT VERIFIER that inform about the validity of the payment obligation of the EFFECTIVE MONTHLY PAYMENT or any other amounts due.

6.11. The DEPOSITARY FINANCIAL INSTITUTION is forbidden to direct the LINKED REVENUE to any account other than the BOUND ACCOUNT, the CONCESSIONAIRES' account, the FINANCIERS' account, if applicable, the DISTRIBUTION COMPANY's account and the MUNICIPALITY's free movement account, in express assumptions provided for in this INSTRUMENT, even if such transfer has been determined by the MUNICIPALITY.

## **7. WAIVER AND DISPOSAL OF THE DEPOSITARY FINANCIAL INSTITUTION**

7.1. The DEPOSITARY FINANCIAL INSTITUTION may, at any time, by giving a minimum of 120 (one hundred and twenty) days' notice to the CONCESSIONAIRE and the MUNICIPALITY to waive the powers granted to it by means of this Agreement.

7.2. The CONCESSIONAIRE and the MUNICIPALITY may, by mutual agreement, choose to remove the DEPOSITARY FINANCIAL INSTITUTION from its functions, at any time, without just cause and without any burden for all involved, by giving prior notice at least 90 (ninety) days in advance.

7.3. The DEPOSITARY FINANCIAL INSTITUTION must renounce its function, in the event of conflicts of interest or any other circumstance that prevents the exercise of its duties.

7.4. In the event of impediment, resignation, dismissal, intervention, judicial or extrajudicial liquidation, bankruptcy, or any other case that prevents the activities of the DEPOSITARY FINANCIAL INSTITUTION, the hiring will be carried out, within the maximum period of 30 (thirty) days counted from the event, the hiring of a new DEPOSITARY FINANCIAL INSTITUTION, respecting the rules defined in the CONTRACT, to whom all amounts held in custody will be transferred.

7.5. It is established, as a condition for the realization of the resignation of the DEPOSITARY FINANCIAL INSTITUTION or its dismissal, in any event:

7.5.1. The fulfillment, by the DEPOSITARY FINANCIAL INSTITUTION, of any remaining obligations related to the payment of the PAYMENTS OBLIGATIONS, initiated prior to the request for resignation or removal;

7.5.2. That the DEPOSITARY FINANCIAL INSTITUTION will perform its duties, provided for in this Agreement, until the nomination of another DEPOSITARY FINANCIAL INSTITUTION, to which it must transfer the management of the BOUND ACCOUNT and the RESERVE ACCOUNT;

7.5.3. The CONCESSIONAIRE, at its discretion, may release the DEPOSITARY FINANCIAL INSTITUTION from complying with the provisions of item 7.5.2.

## **8. POSSIBLE JUDICIAL BLOCKS**

8.1. The DEPOSITARY FINANCIAL INSTITUTION shall notify the CONCESSIONAIRE and the MUNICIPALITY, within a maximum period of 48 (forty-eight) hours, of the receipt of any judicial blockade order, seizure or attachment of LINKED REVENUE, whether or not they have been deposited in the BOUND ACCOUNT or in the RESERVE ACCOUNT.

8.2. The MUNICIPALITY is in charge for the adoption of all administrative and/or judicial measures necessary for the lifting of any blockage, seizure or attachment of the LINKED REVENUE.

## **9. MUNICIPALITY OBLIGATIONS**

9.1. Without prejudice to the other obligations assumed in this INSTRUMENT and in the CONCESSION CONTRACT, during the term of this INSTRUMENT, the MUNICIPALITY undertakes to:

(i) Until full compliance with the PAYMENTS OBLIGATIONS, maintain the present binding of LINKED REVENUE, without any restriction or condition, in accordance with its terms and the terms of the CONTRACT;

(ii) Not performing or attempting to perform any act that would imply violation, repudiation, annulment, revocation of this LINKED REVENUE;

(iii) Do not assign, bind, transfer, loan, lease, institute usufruct or trust, or in any way voluntarily dispose of the LINKED REVENUE, nor do they constitute any liens, or real rights of guarantee or dispose, in any way , totally or partially, directly or indirectly, free of charge or against payment, without prior and express written consent of the CONCESSIONAIRE;

(iv) Not entering into any contract or performing any act that may restrict the rights or capacity of the DEPOSITARY FINANCIAL INSTITUTION to make transfers or otherwise dispose of the LINKED REVENUE;

(v) Communicate to the DEPOSITARY FINANCIAL INSTITUTION and the CONCESSIONAIRE, within a maximum period of 48 (forty-eight) hours from the moment it became aware of, any act or fact that could depreciate or threaten the security, liquidity and certainty of the obligations contracted, including the binding dealt with herein;

(vi) Defend, in a timely and effective manner, against any act, action, procedure or process that may, in any way, have an adverse effect on the linkage object of this INSTRUMENT, or on the LINKED REVENUE or on this INSTRUMENT, in order to threaten the integral and punctual fulfillment of the PAYMENTS OBLIGATIONS;

(vii) Not to perform any act that could, in any way, affect the effectiveness of the linkage object of this INSTRUMENT;

(viii) Do not alter, terminate or encumber, without the CONCESSIONAIRES' prior and express consent, the BOUND ACCOUNT or RESERVE ACCOUNT or allow any clause or condition of the respective bank account opening contract, nor perform any act that may, in any

case, result in the alteration, closure or encumbrance of said account or the resources deposited therein; and

(ix) Do not withdraw or transfer any amount deposited in the BOUND ACCOUNT and in the RESERVE ACCOUNT in disagreement with the provisions of this INSTRUMENT; and

(x) Perform all the records, authorizations and notes that may be required by applicable law, in order to operationalize the LIQUIDITY BALANCE, under the terms of the CONCESSION CONTRACT, or to allow the CONCESSIONAIRE to fully exercise all the rights that it are assured here.

## **10. OBLIGATIONS OF THE DEPOSITARY FINANCIAL INSTITUTION**

10.1. Without prejudice to the other obligations assumed in this INSTRUMENT, the DEPOSITARY FINANCIAL INSTITUTION undertakes to:

(i) Inform the CONCESSIONAIRE, in written form, within 48 (forty-eight) hours, after becoming aware of any non-compliance, on the part of the MUNICIPALITY, of its obligations, established in this INSTRUMENT, which may imply in any form of damage to the LIQUIDITY BALANCE;

(ii) Do not oppose to the CONCESSIONAIRE or to third parties the eventual revocation, nullity or annulment of the CONTRACT to justify the non-compliance with the transfer of the LINKED REVENUES through this INSTRUMENT;

(iii) Deliver to the CONCESSIONAIRE and to the GRANTING AUTHORITY, through email, followed by originals sent by mail, the monthly statements related to the BOND ACCOUNT and RESERVE ACCOUNT to the CONCESSIONAIRE, now authorized by the MUNICIPALITY, and to the CONCESSIONAIRE itself, for conference, up to the 5th business day of the month following the month's closing;

(iv) Render accounts, by means of statements to the CONCESSIONAIRE and the MUNICIPALITY, (a) whenever requested, within a maximum period of 15 (fifteen) business days from such request, or a longer period as necessary, depending on the nature of the information to be provided, which, however, cannot exceed 30 (thirty) days; and (b) after its replacement, either due to resignation or dismissal; being agreed that, in case of a judicial decision

determines the aforementioned accountability or information, such information must be provided within the legal deadline set forth;

(v) Comply with the instructions sent by the INDEPENDENT VERIFIER in the cases expressly provided for in this INSTRUMENT;

(vi) If he is replaced, remain in the exercise of his functions until the conclusion of the respective amendment to this INSTRUMENT;

(vii) Communicate to the CONCESSIONAIRE, within a maximum period of 24 (twenty four) hours from the moment it became aware of, any act or fact that could depreciate or threaten the security, liquidity and certainty of the LIQUIDITY BALANCE;

(viii) Do not perform any act that could, in any way, affect the BOUND ACCOUNT and the RESERVE ACCOUNT, the transfer of resources or the ability to comply with the obligations provided for in this INSTRUMENT;

(ix) Provide or send, to any of the Parties, within 5 (working days) from the date of receipt of the corresponding request, all the information and documents associated with the management of the BOUND ACCOUNT and the RESERVE ACCOUNT;

(x) Send, to any of the Parties, whenever requested, a bank statement (credit/debit) and consolidated report informing the detailed movement of the BOUND ACCOUNT and the RESERVE ACCOUNT; and

(xi) Ensure the faithful performance of the obligations provided for in this INSTRUMENT.

## **11. DECLARATIONS AND GUARANTEES**

11.1. The MUNICIPALITY declares and warrants that:

(i) This INSTRUMENT constitutes a legal, valid and effective obligation, required in accordance with its respective terms;

(ii) It is authorized to link the revenues from the collection of COCIP, as well as to comply with the provisions of this INSTRUMENT;

(iii) The celebration and execution of this INSTRUMENT does not violate any agreement to which it is bound, or laws and regulations to which it is subject;

(iv) The signatories to this INSTRUMENT are empowered to celebrate it;

(v) There is no legal impediment related to the linking of revenues from the collection of COCIP in favor of the CONCESSIONAIRE; and

(vi) As of the signing of this INSTRUMENT, the LINKED REVENUES are exempt from any encumbrances, except for the payment system and the LIQUIDITY BALANCE set forth herein, and will remain so under the terms of this INSTRUMENT and the CONTRACT.

11.2. The CONCESSIONAIRE and the DEPOSITARY FINANCIAL INSTITUTION declare and guarantee that:

(i) It is authorized, under the terms of their corporate/constitutive documents, the law and the applicable governmental authorities, to comply and perform all the provisions contained in this INSTRUMENT and no other authorization, consent or approval, notification or registration is required or it must be obtained or made for proper execution, delivery, protocol, registration or compliance with this INSTRUMENT or any operation contemplated herein; and

(ii) The execution, delivery and compliance with this INSTRUMENT does not violate any provision of its corporate/constitutive documents, any obligation previously assumed by it or any laws and regulations to which it is subject.

11.3. If the Parties sign an amendment to this INSTRUMENT, the declarations and guarantees provided herein must also be made in relation to the amendment, and must be correct, valid and effective on the date of signature of the respective amendment.

11.4. The MUNICIPALITY, at its own expense, will sign all additional documents and instruments that may be required from time to time to allow the proper functioning of the LIQUIDITY BALANCE and the full and full compliance with the PAYMENTS OBLIGATIONS.

11.5. Additionally, the MUNICIPALITY will defend, at its own expense, all rights and interests of the CONCESSIONAIRE, with respect to the LINKED REVENUE, against any claims and demands of any third parties.

11.6. Without prejudice to the foregoing, the MUNICIPALITY declares, as of now, that it consents to the intervention of the CONCESSIONAIRE, as co-defendant/co-plaintiff, whenever it deems necessary, in the judicial lawsuits or extrajudicial procedures that may be triggered involving any discussion about the system of LIQUIDITY BALANCE foreseen in the CONCESSION CONTRACT and in this INSTRUMENT.

## **12. TERM**

12.1. This INSTRUMENT will take effect on the date of its signature and will remain in effect until the CONCESSION CONTRACT is closed and after the settlement of the pecuniary obligations assumed by the MUNICIPALITY.

12.2. Upon full payment of all PAYMENTS OBLIGATIONS provided for in the CONTRACT, this INSTRUMENT will be automatically extinguished and the warranty rights now constituted will be canceled, except for any disputes then existing.

12.2.1. While any dispute exists that may give rise to a PAYMENT OBLIGATION, this INSTRUMENT shall remain in force.

12.3. As soon as the CONTRACT terminates and after the settlement of the pecuniary obligations assumed by the MUNICIPALITY, the remaining balance located in the RESERVE ACCOUNT must be transferred by the DEPOSITARY FINANCIAL INSTITUTION to the MUNICIPALS' free movement account.

12.4. The LINKED REVENUES accumulated in the BOUND ACCOUNT, after being released in the MUNICIPALITY free movement account, as provided for in this INSTRUMENT, may be the object of guarantee of any other projects or contracts of the MUNICIPALITY, in compliance with the legislation that regulates COCIP.

## **13. REMUNERATION OF THE DEPOSITARY FINANCIAL INSTITUTION**

13.1. No fees will be debited from the BOUND ACCOUNT and RESERVE ACCOUNT by the DEPOSITARY FINANCIAL INSTITUTION, and only the LINKED ACCOUNT and

RESERVE ACCOUNT will be charged for the amounts related to the use of the LIQUIDITY BALANCE by the CONCESSIONAIRE and the DISTRIBUTOR COMPANY, on behalf of the CONCESSIONAIRE, and resources returned to the MUNICIPALITY accounts.

13.2. The remuneration to which the DEPOSITARY FINANCIAL INSTITUTION is entitled for the performance of activities and for the maintenance of the BOUND ACCOUNT and the RESERVE ACCOUNT will be R\$ [●] ([●]), which must be deposited within [●] days counted from the signing of this INSTRUMENT, and , on a monthly basis, on the [●] ([●]) day of the month following that of the provision of services, the fixed remuneration in the amount of R\$ ([●]), both by means of a debit, already authorized, in the Bank Account No. [ ●], maintained by the CONCESSIONAIRE.

13.3. The fixed remuneration should be adjusted annually according to the variation of the IPCA, or any other index that may replace it.

#### **14. RESIGNATION TO THE RIGHT OF RETENTION OR COMPENSATION**

14.1. The BOUND ACCOUNT and the RESERVE ACCOUNT must be used solely and exclusively to implement the LIQUIDITY BALANCE, so that the DEPOSITARY FINANCIAL INSTITUTION waives, in this act, any right to carry out retention or compensation of amounts that may be due by the MUNICIPALITY or by the CONCESSIONAIRE, with the resources deposited in said BOUND ACCOUNT and in the RESERVE ACCOUNT.

#### **15. MISCELLANEOUS RECORDS AND REQUIREMENTS**

15.1. Without prejudice to the foregoing, the MUNICIPALITY, at its expense, must carry out all the records, authorizations and notes that may be required to operate the LIQUIDITY BALANCE, under the terms of the CONCESSION CONTRACT, or to allow the CONCESSIONAIRE to fully exercise all the rights guaranteed here.

#### **16. COMMUNICATIONS AND NOTIFICATIONS**

16.1. All notifications, consents, requests and other communications from one Party to the other must always be made in writing, observing any of the following ways: (i) personally, considering it received on the date of its delivery and receipt; (ii) via notary, considering it received on the date certified by the notary; (iii) electronic message with proof of receipt, being considered received on the day of the respective sending if sent by 5:00 p.m., or, if after this time,

on the following business day; or, (iv) letter with acknowledgment of receipt, considering it received on the date indicated in the acknowledgment of receipt. For the purposes of complying with the provisions of this item, the Parties present their contact details below:

For the CONCESSIONAIRE:	[•]
For the DEPOSITARY FINANCIAL INSTITUTION:	[•]
For the MUNICIPALITY:	[•]

16.2. Any Party may change the data mentioned in this item provided that, by means of prior written notice to the other Parties, in the form established herein and at least 5 (five) days in advance, under penalty of the notifications made of according to outdated data.

## **17. GENERAL DISPOSITIONS**

17.1. This INSTRUMENT has an irrevocable and irreversible character, binding the Parties for themselves and their successors and assignees in any title. The Parties are also obliged to implement the adjusted terms and conditions in relation to third parties.

17.2. The Parties are also obliged to cooperate actively with each other, in order to fulfill their obligations and achieve the objectives now set, through conduct informed by mutual trust, good faith and business loyalty.

17.3. The Parties declare, mutually and expressly, that the present INSTRUMENT was signed respecting the principles of probity and good faith, by free, conscious and firm expression of will of the Parties and in a perfect relationship of equity.

17.4. In the event of force majeure situations (Article 393, sole paragraph, of the Civil Code), which prevent the development of this INSTRUMENT, the Parties, by mutual agreement, will take the necessary measures to meet and/or restore their interests.

17.5. If any of the Parties fail to comply with this INSTRUMENT, they will be subject to the payment, in favor of the other Party, of losses and damages, without prejudice to the right to perform specific obligations.

17.6. If any disposition of this INSTRUMENT is deemed invalid, illegal or unenforceable, under the terms of the applicable law, the provision will be considered ineffective only to the

extent of such invalidity, illegality or unenforceability and will not affect any other provisions of this INSTRUMENT or the validity, legality or enforceability of the provision in question in any other jurisdiction. To the extent permitted by applicable law, the Parties, in good faith, will negotiate and enter into an amendment to this INSTRUMENT in order to replace that provision with a new one that: (a) reflects its original intention; and (b) is valid and binding.

17.7. Any and all modifications, alterations or additions to this INSTRUMENT will only be valid if done by written instrument, signed by all the Parties, and with the consent of the CONCESSIONAIRE'S FINANCIERS to whom the credit rights related to the PAYMENTS OBLIGATIONS, offered in the authorized by the CONTRACT.

17.8. This INSTRUMENT obliges the Parties and their respective successors and assignees, in any capacity.

17.9. The Parties hereby declare that they are aware of, know and understand all the terms of the anti-corruption rules, in particular Federal Law No. 12.846, of August 1, 2013, and Federal Decree No. 8.420, of March 18, 2015, undertaking to abstain from any activity that constitutes a violation of the provisions of the anti-corruption rules and other provisions relating to the matter.

17.10. The Parties, by themselves and by their administrators, directors, employees and agents, as well as by their partners, undertake to conduct their commercial practices, during the performance of this INSTRUMENT, in an ethical manner and in accordance with the applicable legal precepts.

17.11. In the performance of this INSTRUMENT, the Parties, any of its directors, employees, agents or partners acting on their behalf, must not give, offer, pay, promise to pay or authorize the payment of, directly or indirectly, any money or any amount to governmental authority, consultants, representatives, partners, or any third party, for the purpose of influencing the agent or government's act or decision, or to secure any undue advantage, or to conduct business that violates anti-corruption rules ("Payment Prohibited").

17.12. No waiver of any rights arising from this INSTRUMENT is presumed. Accordingly, no delay, omission or liberality in the exercise of any right, faculty or remedy that falls to any Party due to any breach of obligations under this INSTRUMENT will harm such rights, faculties or remedies, or be interpreted as a waiver thereof or agreement with such default, nor will it constitute a novation or modification of any other obligations assumed by any Party in this INSTRUMENT or precedent with respect to any other default or delay.

17.13. This INSTRUMENT constitutes an extrajudicial enforcement order, giving rise to its specific execution, in accordance with the law. The Parties recognize that the attribution of losses and damages will not constitute enough reparation for the breach of the obligations provided for in this INSTRUMENT, and any Party may legally demand specific compliance with the defaulted obligation.

17.14. This INSTRUMENT constitutes the only and complete agreement between the Parties, with respect to the object of this contract, replacing all other documents, letters, memoranda or exchanged proposals, as well as the oral understandings maintained between them, prior to the present date.

17.15. It is expressly forbidden to assign to third parties, by any of the Parties, the rights and obligations provided for in this INSTRUMENT, without the prior consent of the other Parties, except for the assignment, by the CONCESSIONAIRE to its FINANCIERS, under the terms authorized by the CONTRACT.

17.16. Any amendment or alteration to this INSTRUMENT will only be valid and will take its effects if done in writing and signed by all Parties, observing the registration obligations contained in this INSTRUMENT.

## **18. APPLICABLE LAW AND JURISDICTION**

18.1. This INSTRUMENT will be governed and interpreted in accordance with the laws of Brazil. Any disagreements between the Parties regarding the interpretation and execution of this INSTRUMENT, which have not been resolved amicably by the mediation procedure, will be obligatorily resolved through arbitration, in the form of Federal Law No. 9,307/96, renouncing any other procedure, however privileged it may be.

18.2. The Parties indicate the Arbitration and Mediation Center of the Brazil-Canada Chamber of Commerce (CAM-CCBC) as competent to settle disputes submitted to arbitration, under the terms of this INSTRUMENT, applying mutatis mutandis the arbitration procedures described in the CONTRACT.

18.3. The Parties elect Aracaju District Court to settle the controversial arising from this INSTRUMENT that can not be resolved by the arbitration procedure.

Being fair and contracted, this contract is signed by each of the Parties in an equal number of copies, of equal content and form, together with two witnesses.