



# PREFEITURA DE ITANHAÉM

ESTÂNCIA BALNEÁRIA | ESTADO DE SÃO PAULO

## ANNEX 13 - CONTRACT WITH THE DEPOSITORY FINANCIAL INSTITUTION



**ANEXX 13**

**DRAFT CONTRACT OF ACCOUNT MANAGEMENT, APPOINTMENT OF DEPOSITORY  
FINANCIAL INSTITUTION AND OTHER CONTRACTS**

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

**THE MUNICIPALITY OF ITANHAÉM/SP**, through the Municipal Secretary [•], headquartered at [•], in the City of Itanhaém/SP, São Paulo State, represented by Mr. [NAME], [nationality], [marital status], [profession], bearer of identity card No. [•], issued by [•], and registered with CPF under No. [•] and the Secretariat [•], headquartered at [•] Street, [•], CEP [•], in the City of [•], State of [•], represented by Mr. [NAME], [nationality], [marital status], [profession], Municipal Secretary [•], bearer of identity card No. [•], issued by [•], and registered with the CPF under No. [•] ("MUNICIPALITY");

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

**FINANCIAL INSTITUTION [•]**, institution authorized to operate in Brazil by the Central Bank of Brazil, headquartered in [•], registered with CNPJ under number [•], herein represented by [•] ("DEPOSITORY FINANCIAL INSTITUTION");

The MUNICIPALITY, the CONCESSIONAIRE and the DEPOSITORY FINANCIAL INSTITUTION are hereinafter referred to individually as a "Party", and together, "Parties",



**WHEREAS:**

- (i) The MUNICIPALITY and the CONCESSIONAIRE signed on [date], the Public-Private Partnership Contract in the form of Administrative Concession no. [•], hereinafter understood as “CONTRACT”;
- (ii) THE CONTRACT, in its clause 37, provides for the constitution of payment system to ensure the faithful, complete and punctual fulfilment of the obligations assumed, comprising (a) the EFFECTIVE MONTHLY CONSIDERATION; (b) the BONUS ON THE ENERGY BILL; and (c) the other transfers, amounts due, indemnities and compensations due to the CONCESSIONAIRE, in any capacity, especially those that may arise from the early CONTRACT termination;
- (iii) The Contribution for Funding the Street Lighting Service (CIP) was established in the MUNICIPALITY by Municipal Law nº 139, of December 26, 2012, with the purpose of defraying the STREET LIGHTING SERVICES of the MUNICIPALITY;
- (iv) The Municipal Law [•]/[•] authorized the binding of CIP in CONTRACT’S favor;
- (v) According to the CONTRACT regime, the LINKED ACCOUNT and the RESERVE ACCOUNT cannot be freely moved by any political agent or organ of the MUNICIPALITY until the 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;
- (vi) The MUNICIPALITY has already arranged for the opening, together with the DEPOSITORY FINANCIAL INSTITUTION, of the LINKED ACCOUNT and the RESERVE ACCOUNT, which have the following numbers: Current Account No. [•], Agency No. [•], on behalf of the MUNICIPALITY (“LINKED ACCOUNT”); and Current Account No. [•], Branch No. [•], on behalf of the MUNICIPALITY (“RESERVE ACCOUNT”);

The Parties resolve, by mutual CONTRACT, to appoint the DEPOSITORY FINANCIAL INSTITUTION and to enter into this revenue binding contract (“INSTRUMENT”), which will be ruled 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 otherwise defined shall have the same meanings assigned to them in the CONTRACT. Terms defined in the singular have the same meaning when used in the plural and vice versa. The terms that designate the masculine gender also designate the feminine gender and vice versa.

## **2. OBJECT**

2.1. This INSTRUMENT establishes the set of rules, procedures, rights and obligations intended to enable LINKED REVENUES use for the establishment of a payment system, to be managed by the DEPOSITORY FINANCIAL INSTITUTION, whose purpose is to ensure the full, punctual and faithful performance of the obligations contracted by the GRANTOR.

2.2. In order to fulfil this purpose, this INSTRUMENT aims at:

2.2.1. Appointing [•] as DEPOSITORY FINANCIAL INSTITUTION and regulating the terms and conditions under which it will act, as agent of the MUNICIPALITY, being responsible for handling the LINKED ACCOUNT and RESERVE ACCOUNT, Current Account No. [•], Agency No. [•]) and Current Account No. [•], Agency No. [•]), respectively, both opened by the MUNICIPALITY, to enable the payment of the GRANTOR's obligations under the CONTRACT;

2.2.2. Operationalizing the binding of LINKED REVENUE, intended for the payment of obligations contracted by the GRANTOR in the CONTRACT; and

2.2.3. Establishing the rules for handling the LINKED ACCOUNT and the RESERVE ACCOUNT, by the DEPOSITORY FINANCIAL INSTITUTION, as well as the obligations and prerogatives of each of the Parties regarding the payment system.



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

2.3.1. **EFFECTIVE MONTHLY CONSIDERATION:** monthly amount to be paid to the CONCESSIONAIRE, in consideration for SERVICES execution, as described in the CONTRACT;

2.3.2. **BONUS ON THE ENERGY BILL:** bonus to which the CONCESSIONAIRE will be entitled in the event of additional savings in the electricity consumption of STREET LIGHTING after reaching the efficiency goal, based on the calculation rules defined in the CONTRACT and its ANNEXES;

2.3.3. **Fines:** the fine(s) eventually due to the CONCESSIONAIRE, due to the delay or not in the payment of any amount, in any capacity, under the terms of the CONTRACT;

2.3.4. **Interest:** the interest eventually due to the CONCESSIONAIRE, due to the delay or not in the payment of any amount, in any capacity, calculated according to the rate in force for 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 arising from the early termination of the CONTRACT;

2.4. The LINKED REVENUES will be bound to the fulfilment of the PAYMENT OBLIGATIONS, in the form and in accordance with the rules provided for in the CONTRACT and in this INSTRUMENT.

2.5. From the date of signature of the CONTRACT WITH THE DEPOSITORY FINANCIAL INSTITUTION, CIP amounts collected monthly in the electricity consumption bill will be deposited, by the DISTRIBUTOR COMPANY or any agent that eventually replaces it in the collection activity, in the LINKED ACCOUNT, in the terms of this ANNEX.



2.6. The LINKED REVENUES indicated will be linked exclusively to the purposes referred to in the item 2.3, therefore, its 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 that transit through the LINKED ACCOUNT, may not be moved or used for any other purpose, nor be given in guarantee of any other projects or contracts of the GRANTOR, regardless of their nature, subject to the provisions of item 5.6.

2.8. The MUNICIPALITY shall ensure that the DISTRIBUTOR COMPANY or any agent that eventually replaces it in CIP collection activity directs CIP monthly collection to the LINKED ACCOUNT.

### **3. NOMEAÇÃO DA INSTITUIÇÃO FINANCEIRA DEPOSITÁRIA**

3.1. The MUNICIPALITY, exclusively regarding the management and handling of the LINKED ACCOUNT and the RESERVE ACCOUNT, hereby, on an irrevocable and irreversible basis, appoints and constitutes the [•] as a DEPOSITORY FINANCIAL INSTITUTION, granting it enough powers to, as agent, manage the LINKED ACCOUNT and the RESERVE ACCOUNT in accordance with the terms and conditions stipulated in this INSTRUMENT.

3.2. The DEPOSITORY FINANCIAL INSTITUTION hereby accepts its appointment as attorney-in-fact of the MUNICIPALITY, with the powers defined in this INSTRUMENT to act as depository and agent, pursuant to arts. 627, 653 et seq. of the Brazilian Civil Code, of the amounts contributed on the LINKED ACCOUNT and on the RESERVE ACCOUNT, which will be kept in their 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 fulfilment of its appointment, the DEPOSITORY 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 DEPOSITORY FINANCIAL INSTITUTION's duties and responsibilities will be limited to the terms of this INSTRUMENT, being certain that the payment system 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 DEPOSITORY FINANCIAL INSTITUTION is, in this act, invested, irrevocably and irreversibly, with powers of representation conferred by the MUNICIPALITY to, pursuant to article 653 and following of the Brazilian Civil Code, act as agent and perform any and all acts necessary for the fulfilment of the obligations under the CONTRACT, under the terms of this INSTRUMENT and the CONTRACT.

3.5. Depending on the mandate granted, the DEPOSITORY FINANCIAL INSTITUTION will be empowered, in the event of default by the GRANTOR, to perform all material acts necessary to settle the pecuniary obligations incurred as a result of the CONCESSION, notably the payment of the MONTHLY EFFECTIVE CONSIDERATION, BONUS ON THE ENERGY BILL, indemnities and other amounts eventually due.

3.6. The DEPOSITORY FINANCIAL INSTITUTION must follow the instructions that are in accordance with the express provisions of the CONTRACT and this INSTRUMENT and cannot be required to perform any act that implies the advance of own resources.

3.7. The DEPOSITORY FINANCIAL INSTITUTION shall make access keys and passwords available to the MUNICIPALITY and the CONCESSIONAIRE for consultation via internet self-service to the LINKED ACCOUNT and RESERVE ACCOUNT statements.

3.8. The mandate given to the DEPOSITORY FINANCIAL INSTITUTION constitutes an essential condition of the business and is irrevocable and irreversible, especially during its term, until the full compliance and settlement of all PAYMENT OBLIGATIONS.

3.9. The MUNICIPALITY may not revoke the mandate granted through this INSTRUMENT, or change its scope and terms, without the prior and express consent of the CONCESSIONAIRE.

3.10. Whenever the DEPOSITORY FINANCIAL INSTITUTION responsible for



transferring the LINKED REVENUES is changed, after the CONCESSIONAIRE'S prior and express consent, a clause that allows the adoption of transfer mechanisms under the same terms of the provisions of this INSTRUMENT.

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

4.1. The MUNICIPALITY will open and maintain the LINKED ACCOUNT and the RESERVE ACCOUNT, both owned by the MUNICIPALITY itself, with movement restricted by the DEPOSITORY FINANCIAL INSTITUTION and specifically dedicated to fulfilling the PAYMENT OBLIGATIONS under the CONTRACT and enabling the constitution of the mechanism for performing the pecuniary obligations assumed by the GRANTOR on behalf of the MUNICIPALITY.

4.1.1. The LINKED ACCOUNT may be in a financial institution authorized to operate by the Central Bank of Brazil other than the DEPOSITORY FINANCIAL INSTITUTION, provided that the rule of its restricted and exclusive movement by said DEPOSITORY 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 DEPOSITORY FINANCIAL INSTITUTION correspond to 3 (three) MAXIMUM MONTHLY CONSIDERATION.

4.3. If necessary, the DEPOSITORY FINANCIAL INSTITUTION shall retain and transfer funds from the LINKED ACCOUNT to the RESERVE ACCOUNT in an amount equivalent to the complementation necessary to reach the MINIMUM BALANCE OF THE RESERVE ACCOUNT, pursuant to item **Erro! Fonte de referência não encontrada..**

4.4. The INDEPENDENT VERIFIER shall inform the DEPOSITORY FINANCIAL INSTITUTION of any changes in the value of the MAXIMUM MONTHLY CONSIDERATION, such as those relating to:

(i) Incidence of monetary correction, as described in clause 36 of the CONTRACT; and





(ii) Any adjustments resulting from recomposition processes of the economic-financial balance of the CONTRACT.

4.5. The INDEPENDENT VERIFIER must inform the DEPOSITORY FINANCIAL INSTITUTION of the amounts referring to any BONUS ON THE ENERGY BILL.

4.6. In the absence of an INDEPENDENT VERIFIER, the CONCESSIONAIRE shall inform the DEPOSITORY FINANCIAL INSTITUTION of the changes in value referred to in the item 4 and the amounts referred to in the item **Erro! Fonte de referência não encontrada.**, observing the CONTRACT provisions, being civilly and criminally responsible for its veracity.

4.7. In the form of CONTRACT and this INSTRUMENT, the funds from CIP collection to the LINKED ACCOUNT will be directed by the DISTRIBUTOR COMPANY or agent that eventually replaces it in the collection activity, so that they meet the payment purposes and obligations arising from the CONCESSION, except for any amounts intended for the DISTRIBUTOR COMPANY itself to pay the Administration cost for the provision of CIP collection services and/or electricity bills for street lighting.

## **5. ACCOUNT ADMINISTRATION**

5.1. The MUNICIPALITY and the CONCESSIONAIRE hereby grant, irrevocably and irreversibly, to the DEPOSITORY FINANCIAL INSTITUTION, full powers to manage the LINKED ACCOUNT and the RESERVE ACCOUNT, make the resources available to the CONCESSIONAIRE and/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 granted herein, the LINKED ACCOUNT and the RESERVE ACCOUNT will be operated in the hypotheses and 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 DEPOSITORY FINANCIAL INSTITUTION to the LINKED REVENUES directed to the LINKED ACCOUNT and the RESERVE ACCOUNT other than those provided for in this INSTRUMENT,



regardless of any notice to the contrary received by DEPOSITORY FINANCIAL INSTITUTION of either Party or third parties.

5.4. The MUNICIPALITY and the CONCESSIONAIRE hereby appoint the DEPOSITORY FINANCIAL INSTITUTION as the trustee of the LINKED ACCOUNT and the RESERVE ACCOUNT, the financial investments and the earnings and LINKED REVENUES arising from them. The DEPOSITORY FINANCIAL INSTITUTION, by this INSTRUMENT, expressly accepts its appointment and its duty as a faithful depositary and assumes full responsibility for the good maintenance, conservation and preservation of the values thus received.

5.5. The LINKED ACCOUNT and the RESERVE ACCOUNT may not be operated by the MUNICIPALITY under any circumstances.

5.6. DEPOSITORY FINANCIAL INSTITUTION must manage the LINKED ACCOUNT, in the form of this INSTRUMENT, with a view to achieving MINIMUM BALANCE, notably:

- (i) Satisfaction of the CONCESSIONAIRE's credit before the GRANTOR, including in the event of default of the PAYMENT OBLIGATIONS;
- (ii) The satisfaction of the credit of the DISTRIBUTOR COMPANY
- (iii) Monthly payments to the INDEPENDENT VERIFIER, on behalf of the CONCESSIONAIRE;
- (iv) The preservation of the amount of the resources under its management, through their investment, as provided for in this INSTRUMENT; e
- (v) The release, to the MUNICIPALITY, of the remaining funds not used for this purpose, after the payments referred to in the preceding items have been made.

5.6.1. While not transferred, the funds deposited on the LINKED ACCOUNT and on the RESERVE ACCOUNT must be applied by the DEPOSITORY FINANCIAL INSTITUTION, acting on behalf of the MUNICIPALITY, in investments with daily liquidity and low risk, in accordance with applicable legislation.

5.6.2. The gains resulting from the applications mentioned in the previous item



will be returned to the MUNICIPALITY, observing the deadlines and procedures described in the item 6.

## **6. PAYMENT MECHANISM, TRANSACTION OF THE LINKED ACCOUNT AND THE RESERVE ACCOUNT**

6.1. The LINKED REVENUES must be deposited on the LINKED ACCOUNT for the constitution of the mechanism for performing the pecuniary obligations assumed by the MUNICIPALITY vis-à-vis the CONCESSIONAIRE under the CONTRACT. LINKED REVENUES may not be the object of a payment mechanism for any other projects or contracts of the MUNICIPALITY, regardless of their nature, while they are still deposited on the LINKED ACCOUNT or RESERVE ACCOUNT.

6.2. During PHASE 0 of the AGREEMENT, the LINKED REVENUES will transit through the LINKED ACCOUNT only for the release of funds to the DISTRIBUTOR COMPANY and must be released into a free movement account of the GRANTOR, within 1 (one) business day of deposit, to cost of SERVICES and related expenses during PHASE 0.

6.3. The EFFECTIVE MONTHLY CONSIDERATION will be payable by the GOVERNMENT in favor of the CONCESSIONAIRE after receipt of the PERFORMANCE REPORT issued by the INDEPENDENT VERIFIER and the billing documents related to the provision of SERVICES, in compliance with the CONTRACT rules.

6.4. The operationalization of the LINKED ACCOUNT for the payment of the EFFECTIVE MONTHLY CONSIDERATION and the BONUS ON THE ENERGY ACCOUNT will occur as provided for in the CONTRACT, in accordance with the following procedures:

6.4.1. In possession of the QUARTERLY INDICATOR REPORT, the CONCESSIONAIRE will issue its monthly invoice in the amount indicated in the INDEPENDENT VERIFIER'S report, notifying the DEPOSITORY FINANCIAL INSTITUTION, with a copy to the GRANTOR. The DEPOSITORY FINANCIAL INSTITUTION shall transfer, within seven (7) business days from the notification, the amount of the EFFECTIVE MONTHLY CONSIDERATION and any BONUS ON THE ENERGY BILL to the CONCESSIONAIRE's account, as indicated in the invoice backed in the REPORT QUARTERLY OF INDICATORS, regardless of any previous manifestation



by the GRANTOR.

- 6.4.2. Any disagreement between the Parties as to the PERFORMANCE SYSTEM and calculation of the EFFECTIVE MONTHLY CONSIDERATION or any other amount due will not be cause for interruption of the payment process.
- 6.4.3. Differences shall be dealt with within the scope of the dispute settlement mechanisms provided for in the CONTRACT, and any differences due between the Parties shall be paid or compensated upon payment of future EFFECTIVE MONTHLY CONSIDERATION, after issuance of a binding decision on the subject matter of dispute.
- 6.5. The DEPOSITORY FINANCIAL INSTITUTION shall retain, monthly, in the LINKED ACCOUNT, enough funds for the payment of the EFFECTIVE MONTHLY CONSIDERATION for the respective month, as well as any BONUS ON THE ENERGY BILL to be paid at that time, based on the amounts informed in the item terms 6.3, subject to the terms of the CONTRACT.
- 6.5.1. After receiving the information and documents described in item 6.4.1 and issuing an invoice by the CONCESSIONAIRE, the amounts corresponding to the EFFECTIVE MONTHLY CONSIDERATION will be transferred by the DEPOSITORY FINANCIAL INSTITUTION from the LINKED ACCOUNT to the current account indicated by the CONCESSIONAIRE, regardless of request by the of the GRANTOR
- 6.5.2. Within 15 (fifteen) days, counted from the issue of a specific invoice by the CONCESSIONAIRE, the amounts corresponding to any BONUS ON THE ENERGY ACCOUNT will be transferred by the DEPOSITORY FINANCIAL INSTITUTION from the LINKED ACCOUNT to the current account indicated by the CONCESSIONAIRE, regardless of request by the of the GRANTOR.
- 6.6. Immediately after payment of the EFFECTIVE MONTHLY CONSIDERATION and any BONUS ON THE ENERGY ACCOUNT to the CONCESSIONAIRE, the amounts remaining in the LINKED ACCOUNT must be transferred by the DEPOSITORY FINANCIAL INSTITUTION to the RESERVE ACCOUNT until the minimum limit established



in item 4 is met.

6.7. If the LINKED REVENUES of a given month are insufficient to pay the EFFECTIVE MONTHLY CONSIDERATION and any BONUS ON THE ENERGY ACCOUNT, the DEPOSITORY FINANCIAL INSTITUTION shall transfer funds from the RESERVE ACCOUNT to the account indicated by the CONCESSIONAIRE sufficient to pay the total amount due of the CONSIDERATION EFFECTIVE MONTHLY BONUS referring to that month and any BONUS ON THE ENERGY ACCOUNT to be paid on that occasion.

6.8. After the transfer mentioned in the item above, the DEPOSITORY FINANCIAL INSTITUTION, to the extent that the following amounts collected from COSIP are deposited in the LINKED ACCOUNT, must transfer them to the RESERVE ACCOUNT in sufficient quantity to reach the minimum balance at which refers to item 4.

6.9. If the procedure set out in item 6.5 is not sufficient to restore the minimum balance of the RESERVE ACCOUNT, the GOVERNMENT shall, within 60 (sixty) days, make the deposit in the amount necessary to restore the minimum balance of the RESERVE ACCOUNT.

6.10. The DEPOSITORY FINANCIAL INSTITUTION may only transfer funds deposited in the LINKED ACCOUNT to the specific Public Lighting account of the MUNICIPALITY, when there is no pending notification of full compliance, after full payment of the overdue PAYMENT OBLIGATIONS and provided that it has not received any communication from the INDEPENDENT VERIFIER that reports on the maturity of the payment obligation of the EFFECTIVE MONTHLY CONSIDERATION or any other amounts due.

6.11. The DEPOSITORY FINANCIAL INSTITUTION is prohibited from directing the LINKED REVENUES to any account other than the LINKED ACCOUNT, the CONCESSIONAIRE's account, the FINANCERS' account, if applicable, the DISTRIBUTOR COMPANY's account and the MUNICIPALITY's free movement account, in the express hypotheses provided for in this INSTRUMENT, even if such transfer has been determined by the MUNICIPALITY.

## **7. WAIVER AND DISMISSAL OF THE DEPOSITORY FINANCIAL INSTITUTION**



7.1. The DEPOSITORY FINANCIAL INSTITUTION may, at any time, upon notification at least 120 (one hundred and twenty) days in advance to the CONCESSIONAIRE and the MUNICIPALITY, waive the powers conferred upon it by means of this INSTRUMENT.

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

7.3. The DEPOSITORY FINANCIAL INSTITUTION shall resign from its function, in the event of conflicts of interest or any other circumstance that prevents the exercise of its attributions.

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

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

7.5.1. Compliance, by the DEPOSITORY FINANCIAL INSTITUTION, of any remaining obligations related to the payment of PAYMENT OBLIGATIONS, initiated prior to the request for waiver or dismissal;

7.5.2. DEPOSITORY FINANCIAL INSTITUTION'S performance of its attributions, provided for in this INSTRUMENT, until the appointment of another DEPOSITORY FINANCIAL INSTITUTION, to which it shall transfer the management of the LINKED ACCOUNT and RESERVE ACCOUNT;

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

## **8. POSSIBLE JUDICIAL BLOCKS**





8.1. The DEPOSITORY FINANCIAL INSTITUTION shall notify the CONCESSIONAIRE and the MUNICIPALITY, within a maximum of 48 (forty-eight) hour period of the receipt of any judicial blocking order, seizure or attachment of LINKED REVENUES, whether or not they have been deposited on the LINKED ACCOUNT or the RESERVE ACCOUNT.

8.2. It is incumbent upon the MUNICIPALITY to adopt all administrative and/or judicial measures necessary for the lifting of any blocking, arrest or attachment of the LINKED REVENUES.

## **9. MUNICIPALITY'S OBLIGATIONS**

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

- (i) Until the full compliance with the PAYMENT OBLIGATIONS, to maintain this link to LINKED REVENUE, without any restriction or condition, in accordance with its terms and the terms of the CONTRACT;
- (ii) Not to practice or attempt to practice any act that results in violation, repudiation, annulment or revocation of this link to LINKED REVENUES;
- (iii) Not to assign, bind, transfer, lend, lease, establish usufruct or trust, or in any way voluntarily dispose of the LINKED REVENUES, nor constitute any encumbrance, encumbrance or real right to guarantee or dispose of, in any way, total or partially, directly or indirectly, free of charge or for consideration, without the prior and express written consent of the CONCESSIONAIRE;
- (iv) Not to enter into any contract or perform any act that may restrict DEPOSITORY FINANCIAL INSTITUTION'S rights or ability to make transfers or otherwise dispose of the LINKED REVENUES;
- (v) To communicate to DEPOSITORY FINANCIAL INSTITUTION and to the CONCESSIONAIRE, within a maximum of 48 (forty-eight) hour period from the moment it becomes aware of any act or fact that may depreciate or threaten the security, liquidity and



certainty of the obligations contracted, including the binding dealt with herein;

(vi) To defend, in a timely and effective manner, from any act, action, procedure or process that may, in any way, have an adverse effect on the binding object of this INSTRUMENT, or even on the LINKED REVENUES or on this INSTRUMENT, in order to threaten the full and timely performance of the PAYMENT OBLIGATIONS;

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

(viii) Not to change, terminate or encumber, without the prior and express consent of the CONCESSIONAIRE, the LINKED ACCOUNT or the RESERVE ACCOUNT or allow any clause or condition of the respective current account opening CONTRACT to be changed, or perform any act that may, in any result in the alteration, closure or encumbrance of said account or of the funds deposited therein; and

(ix) Not to withdraw or transfer any amount deposited on the LINKED ACCOUNT and on the RESERVE ACCOUNT in violation of the provisions of this INSTRUMENT; and

(x) To carry out all records, authorizations and notes that may be required by the applicable law, in order to operationalize this payment system, under the terms of the CONTRACT, or to allow the CONCESSIONAIRE to fully exercise all the rights that are guaranteed here.

## **10. DEPOSITORY FINANCIAL INSTITUTION'S OBLIGATIONS**

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

(i) Inform the CONCESSIONAIRE, in writing, within a maximum of 48 (forty-eight) hour period after becoming aware of any non-compliance by the MUNICIPALITY with its obligations established in this INSTRUMENT that may imply in any form of damage to the payment system;

(ii) Not to oppose to the CONCESSIONAIRE or to third parties the eventual





revocation, nullity or annulment of the CONTRACT to justify the non-compliance with the transfers of the revenues linked through this INSTRUMENT;

(iii) Deliver to the CONCESSIONAIRE and the GRANTOR via email, followed by originals sent by mail, the monthly statements relating to the LINKED ACCOUNT and RESERVE ACCOUNT to the CONCESSIONAIRE, for verification, until the 5th (fifth) business day of the month following the closing of the month;

(iv) Provide accounts by means of statements to the CONCESSIONAIRE and to the MUNICIPALITY (a) whenever requested, within a maximum period of 15 (fifteen) business days from such request, or longer period that is necessary, depending on the nature of the information to be provided, which, however, cannot exceed 30 (thirty) days; and (b) after its replacement, whether by virtue of resignation or dismissal; it being agreed that, if a court decision determines the aforementioned rendering of accounts or information, such information must be provided within the legal term established;

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

(vi) If replaced, remain in the exercise of their functions until the respective amendment execution to this INSTRUMENT;

(vii) Notify the CONCESSIONAIRE, within a maximum of 24 (four) hours period from the moment it becomes aware of any act or fact that may depreciate or threaten the security, liquidity and certainty of the payment system;

(viii) Not to perform any act that may, in any way, affect the LINKED ACCOUNT and the RESERVE ACCOUNT, the transfers of resources or the ability to fulfil the obligations set forth in this INSTRUMENT;

(ix) Provide or send to either Party, within 5 (five) business days from the date of receipt of the respective request, all information and all documents associated with the management of the LINKED ACCOUNT and the RESERVE ACCOUNT;

(x) Send, to either Party, whenever requested, an extract (credit/debit) and consolidated report informing the detailed movement of the LINKED ACCOUNT and 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 guarantees that:

- (i) This INSTRUMENT constitutes a legal, valid and effective obligation, enforceable in accordance with its respective terms;
- (ii) that the MUNICIPALITY is authorized to link the revenues from the collection of the COSIP, as well as to comply with the provisions of this INSTRUMENT;
- (iii) The execution and execution of this INSTRUMENT do not violate any CONTRACT to which it is bound, or laws and regulations to which it is subject;
- (iv) The signatories of this INSTRUMENT have powers to celebrate it;
- (v) There is no legal impediment to the allocation of revenues from CIP collection in the CONCESSIONAIRE'S favor; and
- (vi) At linked revenues are, as of the signing of this INSTRUMENT, exempt from any encumbrances, excepted the payment system provided herein and will remain so under the terms of this INSTRUMENT and the CONTRACT.

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

- (i) They are authorized, under the terms of their corporate/constitutive documents, the law and the applicable GRANTOR authorities, to comply with and execute all the provisions contained in this INSTRUMENT and no other authorization, no other consent or approval, notification or registration is required or shall be obtained or made for due execution, delivery, due protocol, registration or fulfilment of this INSTRUMENT or any operation contemplated herein; and
- (ii) The execution, delivery and performance of this INSTRUMENT do not violate any provision of their corporate/constitutive documents, any obligation by them previously



assumed or any laws and regulations to which they are subject.

11.3. In case the Parties sign an amendment to this INSTRUMENT, the representations and guarantees provided herein must also be provided in relation to the amendment, and must be correct, valid and in force on the date of respective amendment signing.

11.4. The MUNICIPALITY, at its own expense, will execute any and all additional documents and instruments that may be required from time to time to allow the proper functioning of the payment system and the full and complete fulfilment of the PAYMENT OBLIGATIONS.

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

11.6. Without prejudice to the foregoing, the MUNICIPALITY hereby declares that it consents to the intervention of the CONCESSIONAIRE, as co-joint, whenever it deems necessary, in legal actions or extrajudicial procedures that may be triggered involving any discussion about the system of payment and payment system provided for in the CONTRACT and in this INSTRUMENT.

## **12. VALIDITY**

12.1. This INSTRUMENT of Account Management Agreement, Appointment of Depository Financial Institution and Other Covenants will be in force from the date of signature of the AGREEMENT and will remain in force until its termination, observing, regarding the validity of said INSTRUMENT, the form of contracting and / or necessary bids carried out by the MUNICIPALITY

12.2. Upon full payment of all PAYMENT OBLIGATIONS provided for in the CONTRACT, this INSTRUMENT will be automatically terminated and the payment rights now constituted will be cancelled, with the exception of any disputes then existing.

12.2.1. As long as any dispute exists that may give rise to a PAYMENT OBLIGATION, this



INSTRUMENT shall remain in force

12.3. As soon as the CONTRACT is terminated, and after the settlement of the pecuniary obligations assumed by the MUNICIPALITY, the remaining balance located on the RESERVE ACCOUNT shall be transferred by the DEPOSITORY FINANCIAL INSTITUTION to the free movement account of the MUNICIPALITY.

12.4. The linked revenues accumulated on the LINKED ACCOUNT, after being released in the free movement account, held by the MUNICIPALITY, as provided for in this INSTRUMENT, may be subject to the guarantee of any other projects or contracts of the MUNICIPALITY, in compliance with the legislation that regulates COSIP.

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

13.1. No fees will be debited from the LINKED ACCOUNT and the RESERVE ACCOUNT by the DEPOSITORY FINANCIAL INSTITUTION, and only the amounts expressly provided for in item 6 of this INSTRUMENT.

13.2. The remuneration to which the DEPOSITORY FINANCIAL INSTITUTION is entitled for the performance of the activities and for the maintenance of the LINKED ACCOUNT and the RESERVE ACCOUNT will be R\$ [●], which must be deposited, by the CONCESSIONAIRE, within [●] days from the signature of this INSTRUMENT, and, monthly, on the [●] ([●]) day of the month following services provision, the fixed remuneration in the amount of R\$ [●].

13.3. The fixed remuneration must be readjusted annually according to the variation of the Broad Consumer Price Index (IPCA/IBGE), or another index that may replace it.

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

14.1. The LINKED ACCOUNT and the RESERVE ACCOUNT shall be used solely and exclusively to implement the payment system, so that the DEPOSITORY FINANCIAL



INSTITUTION hereby waives any right to withhold or offset amounts that may be owed to it by the MUNICIPALITY or by the CONCESSIONAIRE, with the funds deposited on said LINKED ACCOUNT and on the RESERVE ACCOUNT.

## **15. RECORDS AND SEVERAL REQUIREMENTS**

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

## **16. COMMUNICATIONS AND NOTIFICATIONS**

16.1. All notifications, requests, all consents and other communications from one Party to the other must always be made in writing, observing any of the following forms: (i) in person, considered to be received on the date of delivery and receipt; (ii) via the registry, considered received on the date certified by the registry; (iii) electronic message with proof of receipt, considered received on the day of the respective sending if sent before 5:00 pm, or, if after this time, on the following business day; or (iv) letter with acknowledgment of receipt, considered 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:

To the CONCESSIONAIRE:	[•]
To the DEPOSITORY FINANCIAL INSTITUTION:	[•]
To the INDEPENDENT VERIFIER:	[•]
To the MUNICIPALITY:	[•]

16.2. Any Party may change the data mentioned in this item provided that through prior



written notice to the other Parties, as established herein, and at least 5 (five) days in advance, otherwise the notifications made will be considered valid according to outdated data.

## **17. GENERAL PROVISIONS**

17.1. This INSTRUMENT is irrevocable and irreversible, binding the Parties and their successors and assignees in any capacity. The Parties also undertake to implement the clauses and conditions agreed in relation to third parties.

17.2. The Parties also undertake to actively cooperate with each other to fulfil the obligations and achieve the objectives set herein, through conduct informed by mutual trust, good faith and business loyalty.

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

17.4. If either Party fails to comply with this INSTRUMENT, it will be subject to payment in favor of the other Party of losses and damages, without prejudice to the right to specific performance of obligations.

17.5. If any provision of this INSTRUMENT is held to be invalid, illegal or unenforceable under the terms of 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 nor the validity, legality or enforceability of the provision in question in any other jurisdiction. To the extent permitted by applicable law, the Parties will, in good faith, negotiate and enter into an amendment to this INSTRUMENT in order to replace said provision with a new one that: (a) reflects its original intent and (b) is valid and binding.

17.6. The Parties declare, mutually and expressly, that this INSTRUMENT was executed respecting the principles of probity and good faith, by free, conscious and firm manifestation of the will of the Parties and in a perfect relationship of equity



# PREFEITURA DE ITANHAÉM

ESTÂNCIA BALNEÁRIA | ESTADO DE SÃO PAULO

17.7. Any and all additions, modifications or alterations to this INSTRUMENT will only be valid if made in a written instrument, signed by all Parties, and with the consent of the CONCESSIONAIRE'S FINANCIERS to which the credit rights related to the PAYMENT OBLIGATIONS, assigned under the terms 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, know and understand all the terms of the anti-corruption rules, in particular Law No. 12.846, of August 1, 2013, and Decree No. 8.420, of March 18, 2015, committing to refrain from any activity that constitutes a violation of the provisions of the anti-corruption rules and other provisions relating to the matter. The Parties, for themselves and for their managers, directors, employees and agents, as well as their partners, undertake to conduct their business practices, during the execution of this INSTRUMENT, in an ethical manner and in accordance with the legal precepts applicable to the execution of this INSTRUMENT, shall not the Parties, any of their directors, employees, agents or partners acting on their behalf give, offer, pay, promise to pay or authorize the payment of, directly or indirectly, any money or any amount to GRANTOR'S authority, consultants, representatives, partners, or any third parties, for the purpose of influencing the agent's or GRANTOR'S act or decision, or to secure any undue advantage, or direct business that violates anti-corruption rules ("Prohibited Payment").

17.10. For the purposes of this INSTRUMENT, the Parties hereby declare that (a) they have not violated, violate or will violate the anti-corruption rules; and that (b) they are aware that any activity that violates the anti-corruption rules is prohibited and they declare to know the possible

17.11. The waiver of any of the rights deriving from this INSTRUMENT is not presumed. Thus, 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 prejudice such rights, faculties or remedies, or be interpreted as a waiver thereof. or CONTRACT with such default, nor will it constitute novation or modification of any other obligations assumed by any Party in this INSTRUMENT or precedent with respect to any other default or delay.

17.12. This INSTRUMENT constitutes an extrajudicial enforceable title, giving rise to its





specific execution, in accordance with the Law. The Parties recognize that the attribution of losses and damages will not constitute sufficient compensation for the breach of the obligations set forth in this INSTRUMENT, and any Party may judicially demand the specific fulfilment of the defaulted obligation.

17.13. This INSTRUMENT constitutes the sole and integral CONTRACT between the Parties, with respect to the object of this INSTRUMENT, replacing all other documents, letters, memoranda or proposals exchanged, as well as the oral understandings held between them, prior to the present date.

17.14. The assignment to third parties, by either Party, of the rights and obligations provided for in this INSTRUMENT, without the prior consent of the other Parties, is expressly prohibited, except for the assignment by the CONCESSIONAIRE to its FINANCIERS, under the terms authorized by the CONTRACT.

17.15. Any addition or amendment to this INSTRUMENT will only be valid and will take effect if made in writing and signed by all Parties

## **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 mandatorily resolved through arbitration, pursuant to Federal Law No. 9,307/96, waiving any other procedure by more privileged than it is.

18.2. The PARTY that requests the initiation of the arbitration procedure shall indicate, at the time of filing its claim, the chamber responsible for the administration of the dispute, which shall be selected from among those accredited by the Federal Attorney General's Office to resolve disputes involving the Direct Administration and its authorities, under the terms of this INSTRUMENT, applying mutatis mutandis the arbitration procedures described





# PREFEITURA DE ITANHAÉM

ESTÂNCIA BALNEÁRIA | ESTADO DE SÃO PAULO

in the AGREEMENT.

18.3. The Itanhaém/SP District Court is hereby elected to settle any disputes arising from this INSTRUMENT that cannot be resolved by arbitration procedure.

And, for they are fair and contracted, the present contract is signed by each of the Parties in an equal number of copies, of equal content and form, together with two witnesses.