



Governo do Estado do Rio de Janeiro

ANNEX XI - DRAFT OF ESCROW ACCOUNT AGREEMENT

AGREEMENT FOR THE CONSTITUTION AND MANAGEMENT OF ACCOUNTS FOR RESTRICTED MOVEMENTS OF THE CONCESSION FOR THE REGIONALIZED PROVISION OF PUBLIC SERVICES OF WATER SUPPLY AND SANITATION AND SUPPLEMENTARY SERVICES OF THE MUNICIPALITIES OF THE STATE OF RIO DE JANEIRO

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

(* CORPORATE NAME OF THE FINANCIAL INSTITUTION)**, a financial institution authorized by the Central Bank of Brazil to operate in the country, registered with the Brazilian Corporate Taxpayer's Registry (CNPJ/ME) ..., with registered office..., herein represented by ..., hereinafter referred to as Financial Agent,

and, as an intervening consenting party,

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. [*], hereinafter referred to simply as STATE;

WHEREAS,

a) The CONCESSIONAIRE was awarded, in [●] of [●], 20 [●], the winning bidder of the International Invitation to Bid no. [●]/20[●] for the execution of a concession agreement for the regionalized provision of public water supply and sanitation services and the supplementary services of the Municipalities of the State of Rio de Janeiro for Block no. [●]; and

b) There is, in the concession agreement, an obligation assigned to the CONCESSIONAIRE, as per Clauses 27.2, 27.3 and 36.5, for the same to take all the necessary measures for opening and maintaining the Escrow Account, to be held by the CONCESSIONAIRE having as beneficiary the STATE, and the constitution of which must precede the end of the assisted operation of the system;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the parties enter into this Escrow Account Agreement (hereinafter referred to as the "AGREEMENT"), which shall be governed by the clauses set forth below:

CLAUSE ONE - PURPOSE

1.1. The purpose of this AGREEMENT is to regulate the opening, maintenance, handling and management of Restricted Transactions Accounts, through which the following transactions will be operated:

- a) The collection of the Tariff Revenue, obtained by the payment of tariffs by the users of the systems; and
- b) The deposit of the amounts corresponding to the difference between the Tariff Revenue and the amount resulting from the Effective Tariffs, after the application of the General Performance Indicator (GPI) coefficient, in accordance with the terms of the Concession Agreement.

CLAUSE TWO - THE CENTRAL ACCOUNT

2.1. The Central Account will be linked to the current account number ..., held by the CONCESSIONAIRE, but handled exclusively by the Financial Agent, and should be of a restricted nature and opened especially for this purpose, at the branch no. ... of the Financial Agent, and shall receive the funds mentioned in Clause 1.1, item "a", of this AGREEMENT.

2.1.1 All the funds deriving from the Tariff Revenue received by the CONCESSIONAIRE shall be allocated at the Central Account.

2.1.2 The Central Account is held by the CONCESSIONAIRE, but will be handled exclusively by the Financial Agent, in accordance with terms of this AGREEMENT, without any interference whatsoever from the CONCESSIONAIRE or the STATE.

2.2. The CONCESSIONAIRE shall carry out all necessary acts to have all Revenue Tariff related to the concession credited directly to the Central Account, including, without limitation, the notification of all parties involved in the payment, deposit, intermediation or transfer of the Revenue Tariff, in order to instruct such parties on the deposit of the totality of the amounts due directly into the Central Account, without any compensation, discounts, withholdings or any other form of deduction.

2.3. The CONCESSIONAIRE hereby agrees that if it receives directly any amounts related to the Revenue Tariff, it must carry out the deposit of all amounts received into the Central Account, within 2 (two) business days as from their receipt, without offsetting any credits it may have.

2.4. In the scope of the Central Account, the Financial Agent shall be responsible for processing the payment of the apportionment of the variable concession fee amounts due to the Municipalities and the Metropolitan Region Development Fund, in the bank accounts to be informed by the MUNICIPALITIES and the RIO METROPOLE INSTITUTE.

2.4.1. The variable concession fee mentioned in clause 2.4 shall consist of the amount corresponding to 3% (three percent) of the total amount collected from the payment of tariffs by users located in each Municipality, the same being construed as equivalent to the amounts actually received, without deduction of taxes or any other expenses or reductions arising from the measurement of performance indicators;

2.4.2. It shall be also included in the variable concession fee the amount corresponding to 0.5% (half percent) of the total tariff revenue billed in the municipalities that make up the Metropolitan Region of the State of Rio de Janeiro (i.e: tariff revenue from payments made 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;

2.4.3. The variable concession fee provided for in clause 2.4 shall be automatically transferred by the Financial Agent to the Municipalities and the Metropolitan Region Development Fund.

CLAUSE THREE - THE ESCROW ACCOUNT

3.1. The Escrow Account shall be linked to the current account number ..., held by the CONCESSIONAIRE, having as its sole beneficiary the STATE, and shall be of a restricted nature and opened especially for this purpose at the branch number ... of the Financial Agent, and the funds mentioned in Clauses 1.1, paragraph "b", shall be deposited therein.

3.2. The funds resulting from the difference between the Tariff Revenue and the Effective Tariff shall be transferred monthly by the Financial Agent to the Escrow Account.

3.3. If the CONCESSIONAIRE chooses to exploit additional revenues under clauses 27.11 and 27.12 of the Concession Agreement, it shall inform the financial agent and the STATE for the purpose of sharing the gross revenue, in which case the amounts to be allocated to the STATE shall be deposited in the Escrow Account, pursuant to sub-clause 27.15.1 of the Concession Agreement.

3.4. The balance of the ESCROW ACCOUNT should be exclusively used for:

a) reduction of the tariff value over the term of the Concession Agreement, as a measure to ensure reasonable tariffs; or

b) any payment of liabilities of the STATE that might be due to the CONCESSIONAIRE, such as, without limitation, economic and financial rebalancing of the Concession Agreement and indemnities, where applicable, in accordance with clause 39 et seq. of the Concession Agreement.

3.5. In addition to the amounts set out in clause 1.1, item "b", of this AGREEMENT, at the discretion of the STATE and upon its request, the Escrow Account may receive the funds stemming from the application of monetary penalties that are not related to the reimbursement of another concessionaire due to the governance between Blocks.

CLAUSE FOUR - OBLIGATIONS OF THE CONCESSIONAIRE

4.1. The following are the obligations of the CONCESSIONAIRE:

4.1.1. To bear all expenses inherent to the creation and maintenance of the Central Account and the Escrow Account, in accordance with the terms established in the Concession Agreement;

4.1.2. To ensure, during the entire performance of the Concession Agreement, that the Central Account and the Escrow Account are active and unblocked, as well as to provide, to the STATE, a copy of the agreement and any addenda between the

CONCESSIONAIRE and the Financial Agent;

4.1.3. To carry out all the necessary acts for all the funds resulting from the tariff revenue to be credited directly to the Central Account.

4.1.4. To ensure that any difference arising from the application of the General Performance Indicator is duly withheld.

4.2. The CONCESSIONAIRE shall be forbidden to use the amounts held in the Escrow Account, such prerogative being only of the STATE, as beneficiary, and in compliance with the rules strictly provided for in clause 3.4.

4.3. Without limitation to any right provided for in this AGREEMENT or in the applicable legislation, the CONCESSIONAIRE:

a) shall require the Financial Agent to fulfill its obligations as set forth in this AGREEMENT;

b) shall take care that the maintenance of the Central Account and the Escrow Account, for the entire term of the Concession Agreement, be free of any restrictions and limitations, and shall enable, whenever necessary, the immediate hiring of a new Central Account and/or Escrow Account, pursuant to legislation and this AGREEMENT;

c) may challenge any action by the Financial Agent in disagreement with this AGREEMENT;

d) may initiate any judicial or extrajudicial measure in defense of its interests, if the Financial Agent does not do so.

4.4. It is the duty of the CONCESSIONAIRE to ensure that the Escrow Account remains fit for its purposes throughout the performance of the Concession Agreement, except in the cases provided for in clause 8 of this AGREEMENT.

CLAUSE FIVE - OBLIGATIONS OF THE FINANCIAL AGENT

5.1. Whenever requested, the Financial Agent must send to the STATE information about the Central Account and/or the Escrow Account, within 2 (two) business days, including accounts and information on balances, statements, deposits, transfers and investment history.

5.2. The Financial Agent shall apply to the Escrow Account the percentage of the General Performance Indicator on the Tariff Revenue over the reference months of its application, according to guidelines to be sent annually by the STATE.

5.3. The Financial Agent shall only be bound to comply with any instruction to apply or release the balance of the Escrow Account, in whole or in part, or to follow any notice or instruction from any person or entity, if (i) the instruction is in line with the terms and conditions of this AGREEMENT, or (ii) if it is a res judicata decision rendered by a competent court.

5.4. The Financial Agent shall not have any interest in the Escrow Account, acting only as manager of the funds deposited therein and, further, shall not have any liability in relation to the Concession Agreement or any other document related to it, as its duties shall be exclusively those provided for in this AGREEMENT.

5.5. To transfer, on a daily basis, the funds arising from the Tariff Revenue credited to the Central Account in the amount established in the sub-clause 2.4 to the Municipalities and the Metropolitan Region Development Fund.

CLAUSE SIX - OBLIGATIONS OF THE STATE

6.1. It is the responsibility of the STATE to pass on to the CONCESSIONAIRE any and all information and documents necessary for the opening of the Escrow Account, for the former to qualify as beneficiary.

6.2. The amounts held in the Escrow Account shall be used exclusively by the STATE as provided for in clause 3.4 of this AGREEMENT.

6.3. It shall be also the responsibility of the STATE, without prejudice of any other obligations et forth in this AGREEMENT, in the Concession Agreement and its respective annexes, as well as in the applicable legislation:

a) to ensure the full and timely performance of the present AGREEMENT during the entire duration of the Concession Agreement, always acting in good faith and ensuring that any restrictive measures of the rights assigned to the parties in this AGREEMENT are carried out in accordance with the law and with the duly motivated;

b) not to create, incur or allow any encumbrances, burdens or hindrances on the amounts deposited in the Central Account and the Escrow Account;

c) to inform the CONCESSIONAIRE, whenever necessary, of the immediate need to hire a new Escrow Account in order to ensure the continuity of the objectives for which the Escrow Account was established.

CLAUSE SEVEN - MAINTENANCE OF THE CENTRAL ACCOUNT AND THE ESCROW ACCOUNT IN THE COURSE OF THE PERFORMANCE OF THE CONCESSION AGREEMENT

7.1. The Central Account and the Escrow Account shall be maintained open and operational throughout the term of the Concession Agreement.

7.2. Only in exceptional situations, to be duly justified, the CONCESSIONAIRE may, at the request of the STATE, request the closure of the Central Account and/or the Escrow Account, observing in all cases, the following conditions:

a) that a new Centralized Account Contract and/or a new Escrow Account Contract has been executed with the official financial institution, which fully complies with to the obligations set forth herein and is in line with all the conditions of the Concession Agreement; and

b) that the new Central Account and/or the new Escrow Account is already open and operational, for the same purposes outlined in the present AGREEMENT.

7.3. The Financial Agent hereby undertakes to keep the Central Account and the Escrow Account open until the conditions established in the previous sub-clause, items "a" and "b", have been previously fulfilled, when it may transfer any remaining balance to the new

Account(s).

7.4. It is hereby agreed between the signatory parties of this AGREEMENT that any order by the CONCESSIONAIRE, or the STATE, to close the Central Account and/or the Escrow Account, without observing the conditions set forth in this clause are not met, or that any order regarding the movement, transfer or withholding of any values not included in the events admitted in this AGREEMENT and in the Concession Agreement, shall characterize the default of the obligations of the party causing the cancellation; the same shall apply in relation to the Financial Agent that carries, in said circumstances, such an order.

7.5. The closing of the Central Account and/or the Escrow Account or the termination of the present AGREEMENT without complying with the conditions set out therein and the non-compliance of the obligations set forth therein shall entail the application of the relevant administrative and civil sanctions, including the payment of compensation for any losses and damage.

CLAUSE EIGHT - REPRESENTATIONS

8.1. The Financial Agent hereby represents to the other Parties that:

- a) it is a duly incorporated and existing financial institution;
- b) in accordance with Brazilian law, it is authorized to operate by the Central Bank of Brazil, has full power, authority and capacity to enter into this AGREEMENT and to comply with the obligations undertaken in this AGREEMENT and has taken all the corporate steps necessary to authorize the execution of this Agreement;
- c) the present AGREEMENT constitutes a legal, valid and binding obligation and may be enforced against it according to its terms;
- d) the execution of this AGREEMENT shall not constitute a violation of its Bylaws or any other corporate documents and shall not constitute a breach or default of any contract the same is a party to.

CLAUSE NINE - TERMINATION AND RELEASE

9.1. Due to its overarching dependence on the Concession Agreement, the obligations provided for in this AGREEMENT, in relation to the Central and Escrow Accounts, shall remain fully effective until the end of the term of the Concession Agreement, and the rescission or termination of this AGREEMENT shall not be possible without, first, the termination of the Concession Agreement pursuant to applicable legislation, except in the events provided for in clause six, of this AGREEMENT.

9.2. Upon termination of the Concession, if there are any funds remaining in the Escrow Account, the same shall be transferred to an account held by the STATE, to be indicated by it.

CLAUSE TEN - NOTIFICATIONS

10.1. All communications between the parties to this AGREEMENT shall always be made in

writing, including when intended for sending information in digital means, being addressed to the following addresses:

- a) for the STATE:
- b) for the CONCESSIONAIRE:
- c) for the Financial Agent:

10.2. The documents and communications shall be deemed received when delivered upon protocol of receipt or by return receipt (*aviso de recebimento - AR*) issued by the Brazilian Postal Service (CORREIOS), at the addresses established above, or upon confirmation of receipt of transmission via facsimile, e-mail or other electronic means of transmission.

CLAUSE ELEVEN - REGISTRATION

11.1. The CONCESSIONAIRE shall arrange for the registration of this AGREEMENT, within 10 (ten) business days as from its execution, at the Registry of Deeds and Documents of its own jurisdiction, as well as the jurisdiction of the STATE.

11.2. Any addenda to this AGREEMENT shall also be registered as set out above, within 10 (ten) business days as from their execution.

11.3. The expenses incurred with the registration of this AGREEMENT and its amendments, pursuant to the subclauses above, shall be borne by the CONCESSIONAIRE.

CLAUSE TWELVE - FINAL PROVISIONS

12.1. Any and all waiver, addenda or amendment of any of the terms or provisions of this AGREEMENT shall only be effective if in writing and executed by the Parties. This AGREEMENT binds the parties and their respective successors and any assignees.

12.2. Any delay in the exercise or failure to exercise by the STATE or the CONCESSIONAIRE of any power or right established herein shall not operate as a waiver, nor a novation or contract amendment, unless expressly stated. The rights and remedies established in this AGREEMENT are cumulative, may be exercised alone or simultaneously and do not exclude any rights or remedies established by law.

12.3. Any provision of the present AGREEMENT that might become unenforceable shall be deemed ineffective without invalidating the other provisions established herein, and the Parties shall, in the event of a declaration of unenforceability of the provisions of the present AGREEMENT, jointly draft a substitute provision with a similar and enforceable content in accordance with the applicable legislation.

12.4. In case of any outstanding funds in the Escrow Account at the time the concession is extinguished, such amounts must be used for tariff reduction.

12.5. The District Court of Rio de Janeiro, State of Rio de Janeiro, shall be competent to settle the disputes related to this AGREEMENT, excluding any other, however privileged it may be.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in 03 (three) counterparts, in the presence of the two undersigned witnesses.
