



**SPONSORED CONCESSION  
AGREEMENT FOR IMPLEMENTATION  
AND OPERATION OF THE SUBURB  
LIGHT RAIL VEHICLE.**

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In [●], on the [●] day, in 2017, having, on the one side, the **State of Bahia**, through the Office for Urban Development (“SEDUR”), represented herein by the Mr. Secretary [●], hereinafter referred to as **GRANTING AUTHORITY**, and, on the other side, [●], Special Purpose Company specially organized for the performance of this **CONCESSION AGREEMENT**, registered with the Brazilian National Directory for Legal Entities (“CNPJ”) under number [●], with address at [●], represented herein by its Officers [●] and [●], pursuant to its charters, hereinafter referred to as **CONCESSIONAIRE**, and, as **CONSENTING PARTIES, COMPANHIA DE TRANSPORTES DO ESTADO DA BAHIA – CTB**, a government-owned company integrating the organizational structure of the Executive Branch Administration, under the State Law no. 12.911, of October 11, 2013, represented herein by its Managing Director Mr. José Eduardo Copello, and Mr. George Bittencourt Rebouças, with address at Largo da Calçada, s/n – Estação de Trens, Bairro da Calçada, CEP: 40410-360, Municipality of Salvador, State of Bahia, and **AGÊNCIA DE FOMENTO DO ESTADO DA BAHIA S.A. – DESENBAHIA**, as administrator of **Fundo Garantidor Baiano de Parcerias (“FGBP”)**, represented herein by the Managing Director, Mr. [●], and Mr. [●], with address at R. Ivone Silveira, 213 - Doron, CEP 41194-015 Municipality of Salvador, State of Bahia.

#### WHEREAS

- 1) **BAHIAINVEST S.A** published, on January 12, 2017, the Call for Bid no. 01/2016, with the purpose of gathering proposals for funding the **CONCESSION**;
- 2) as published in the **State Official Gazette (“DOE”)** of January 25, 2017, funding proposal was presented in the Call for Bid no. 01/2016, contemplated in Exhibits to the Concession Public Notice no. 01/2017;
- 3) the **GRANTING AUTHORITY**, in the period comprised between 12/20/2016 and 01/20/2017, in compliance with the Article 10 of the State Law no. 9.290, of December 27, 2004, submitted the drafts of the **PUBLIC NOTICE** and this **AGREEMENT** to public inquiry, and also published at SEDUR website the clarifications to the questions submitted in such period;
- 4) the **GRANTING AUTHORITY**, in compliance with Article 76, of the State Law no. 9.433, of March 1, 2005, submitted the drafts of the **PUBLIC NOTICE** and this **AGREEMENT** to public hearing held on January 20, 2017, in Salvador / BA;
- 5) the **GRANTING AUTHORITY** held public session for presenting the LRV, on January 27, 2017, at the auditorium of the São Paulo Stock Futures and Commodities Exchange (“BM&F BOVESPA”);



6) on January 20, 2012, the State of Bahia, Municipality of Salvador and Municipality of Lauro de Freitas, entered into the intra federative cooperation covenant no. 01/2012, for the co-planning of the construction, implementation, and operation of an integrated intercity public transportation system having urban nature;

7) on April 22, 2013, the State of Bahia, the Municipality of Salvador, the Municipality of Lauro de Freitas, and Companhia de Transporte de Salvador (currently Companhia de Transportes do Estado da Bahia) entered into the **PROGRAM AGREEMENT**, with the purpose of regulating the associated management of passenger public transportation services in the Municipality of Salvador and Lauro de Freitas;

8) SEDUR published, in the **DOE** of April 27, 2017, the Administrative Ruling no. 079, of April 26, 2017, the Exhibit I of which approves the justifying act granting the **CONCESSION**, in compliance with the requisites of the Federal Law no. 8.987, of February 13, 1995;

9) the **GRANTING AUTHORITY**, as provided for in the State Law no. 9.433, of March 1, 2005, conducted bid procedure in the public tender modality for delegation of the **IMPLEMENTATION** and **OPERATION** of Suburb Light Rail Vehicle (“LRV”);

10) after such regular bidding procedure, the company [●] was selected, in accordance with act by the Mr. Secretary to Urban Development, published in the State Official Gazette (“**DOE**”) of [●] [●], 2017; and

11) as provided for in the Concession Public Notice no. 01/2017, the company [●], winner in the alluded public tender, organized the **CONCESSIONAIRE**,

The parties hereto agreed under the express conditions of this public-private partnership **AGREEMENT**, in the sponsored concession modality, to be governed by the rules and clauses set out hereafter.

## CHAPTER I

### Clause 1 – APPLICABLE LAWS

1.1 This **CONCESSION** for **IMPLEMENTATION** and **OPERATION** of the Suburb Light Rail Vehicle (“LRV”) shall be governed by the Article 175, of the Federal Constitution, and the following laws: Federal Law no. 11.079, of December 30, 2004; Federal Law no. 12.587, of January 3, 2012; State Law no. 9.290, of December 27, 2004; State Law no. 9.433, of March 1, 2005; State Law no. 11.477, of July 1, 2009; State Law no. 12.501, of December 29, 2011, and, as applicable, by the Federal Law no. 8.987, of February 13, 1995; Federal Law no. 9.074, of July 7, 1995; Federal Law no. 8.666, of June 21, 1993, and Federal Law no. 10.406, of January 10, 2002, as well as other regulatory acts published or to be published by the **GRANTING AUTHORITY** or other legislative bodies, or also general regulation bodies and entities.



## Clause 2 – DEFINITIONS AND CONSTRUCTION

- 2.1** For purposes of construction of the AGREEMENT, the expressions below, when written in upper case, in singular or plural form, shall have the following definitions:
- 2.1.1 AFFILIATE:** legal entity related to another legal entity as associate, through corporate control (whether as subsidiary or parent company), or even for being subject to common control by another person, whether natural person or legal entity;
  - 2.1.2 TRADING AGENT:** function discharged by the CONCESSIONAIRE or third party contracted thereby, consisting of the activity of issuing and trading, to USERS, of travel cards and credits of any order and/or through any medium or system, answering for the collection of the respective amounts and transfer to the blocked account maintained with the SETTLEMENT SYSTEM;
  - 2.1.3 PAYMENT AGENT:** person designated by the GRANTING AUTHORITY to make the payments, to the CONCESSIONAIRE, of the PUBLIC CONSIDERATIONS, upon administration of a bank account in which the respective amounts shall be deposited;
  - 2.1.4 EXHIBIT TO THE PUBLIC NOTICE:** each of the documents attached to the Concession Public Notice no. 01/2017;
  - 2.1.5 EXHIBIT:** each of the documents attached to this AGREEMENT;
  - 2.1.6 PERFORMANCE APPRAISAL:** set of criteria and technical specifications included in EXHIBIT 6, concerning the goals and quality standards of the SERVICE provision, which shall be used in the assessment of performance and so as to determine the compensation due to the CONCESSIONAIRE;
  - 2.1.7 BAHIAINVESTE:** quasi public corporation, with private corporate entity whose creation was authorized by State Law no. 13.467, of December 23, 2015;
  - 2.1.8 ESCHEATABLE ASSETS:** are the BLOCKED ASSETS deemed required and material to the provision of the SERVICES subject matter of the CONCESSION, which shall be escheated to the GRANTING AUTHORITY upon the expiration of the AGREEMENT;
  - 2.1.9 BLOCKED ASSETS:** are all tangible and intangible assets used by the CONCESSIONAIRE in the performance of the AGREEMENT, whether are they ESCHEATABLE ASSETS or not, comprising both the assets on which the



CONCESSIONAIRE holds the title of, and those in connection with which the GRANTING AUTHORITY assigns use to the CONCESSIONAIRE;

- 2.1.10 CAS FORTUIT or FORCE MAJEURE:** extraordinary or supervening event, unpredictable at the moment the agreement was entered into, beyond the parties' will and totally irresistible, affecting the performance of the agreement, in accordance with the provisions in subsection XXIV, of Article 8, of the State Law no. 9.433/05;
- 2.1.11 CONSUMPTION CENTER:** infrastructures implemented by the CONCESSIONAIRE, the operation of which demands significant electric power supply, including, but without limitation to, STOPS, ROLLING STOCK, the operational control center, the maintenance yards, and administrative offices.
- 2.1.12 FOLLOW-UP COMMITTEE:** committee to be organized, per event, by the PARTIES, for solving possible divergences or conflicts of interests having a technical or economic-financial nature, which may be created during the whole term of the LRV CONCESSION;
- 2.1.13 AGREEMENT MANAGEMENT COMMITTEE:** committee formed by no less than three (3) members, created by the GRANTING AUTHORITY, with the purpose of accompanying the performance of the AGREEMENT;
- 2.1.14 GRANTING AUTHORITY or GRANTING BRANCH:** the State of Bahia, whose powers in such condition shall be exercised by the Office for Urban Development ("SEDUR"), or other bodies of the Administration, according to legal distribution of powers;
- 2.1.15 CONCESSION:** delegation, through sponsored concession, of the IMPLEMENTATION and OPERATION of the three SECTIONS of PHASE 1 of the LRV, as EXHIBITS 4 and 5, studies concerning PHASES 2 and 3, and performance of the works having a social nature concerning PHASE 4;
- 2.1.16 CONCESSIONAIRE:** special purpose company created by the winner of the TENDER no. 01/2017, contracted by the GRANTING AUTHORITY to perform the CONCESSION;



**2.1.17 TENDER:** bidding process initiated by the public notice no. 01/2017;

**2.1.18 HALF-YEARLY INVESTMENT CONSIDERATION:** value offered by the CONCESSIONAIRE in its PROPOSAL, corresponding to the half-yearly installment of the ANNUAL MAXIMUM CONSIDERATION not subject to the IGDA arising out of the PERFORMANCE APPRAISAL, and which is intended, as a priority, to the payment of the investments made by the CONCESSIONAIRE;

**2.1.19 ANNUAL MAXIMUM CONSIDERATION:** value corresponding to the sum of the ANNUAL OPERATION CONSIDERATION to both HALF-YEARLY INVESTMENT CONSIDERATIONS, and which represent the maximum consideration value to be paid by the GRANTING AUTHORITY to the CONCESSIONAIRE, the AGREEMENT and its EXHIBITS;

**2.1.20 ANNUAL OPERATION CONSIDERATION:** value offered by the CONCESSIONAIRE in its PROPOSAL, corresponding to the maximum value of the variable installment of the compensation to be annually paid by the GRANTING AUTHORITY to the CONCESSIONAIRE, and which shall be subject to application of the IGDA arising out of the PERFORMANCE APPRAISAL, under the AGREEMENT and the EXHIBITS hereto;

**2.1.21 ACTUAL CONSIDERATION:** actual value to be monthly paid to the CONCESSIONAIRE, equivalent to the sum of the MONTHLY INVESTMENT CONSIDERATION with the result of the multiplication of the MONTHLY OPERATION CONSIDERATION by the IGDA obtained in the precedent year, arising out of the PERFORMANCE APPRAISAL;

**2.1.22 MONTHLY INVESTMENT CONSIDERATION:** value corresponding to one sixth (1/6) of the value of the HALF-YEARLY INVESTMENT CONSIDERATION, to be monthly paid by the GRANTING AUTHORITY to the CONCESSIONAIRE, under the AGREEMENT and the EXHIBITS hereto;

**2.1.23 MONTHLY OPERATION CONSIDERATION:** value corresponding to one twelfth (1/12) of the value of the ANNUAL OPERATION CONSIDERATION, to be monthly paid by the GRANTING AUTHORITY to the CONCESSIONAIRE, under the AGREEMENT and the EXHIBITS hereto;

**2.1.24 PROPORTIONAL CONSIDERATION:** is the value to be monthly paid to the CONCESSIONAIRE between the OPERATION of the OPERATIONAL LANDMARK 1 and the beginning of the LRV FULL OPERATION, calculated according to the percentages set forth in the AGREEMENT and the EXHIBITS hereto.



- 2.1.25 PUBLIC CONSIDERATIONS:** corresponds to the totality of the pecuniary considerations due by the GRANTING AUTHORITY under the AGREEMENT and the EXHIBITS hereto;
- 2.1.26 AGREEMENT:** this public-private partnership agreement;
- 2.1.27 PAYMENT AGENT APPOINTMENT AGREEMENT:** agreement setting forth the mechanism for paying the PUBLIC CONSIDERATIONS to the CONCESSIONAIRE, under the State Law no. 11.477, of July 1, 2009, and the amendments thereto, as well as other payments possibly due to the CONCESSIONAIRE, entered into by and among the PAYMENT AGENT, the GRANTING AUTHORITY, and DESENBAHIA, with the CONCESSIONAIRE's subscription;
- 2.1.28 PROGRAM AGREEMENT:** agreement entered into on April 22, 2013, under Federal Law no. 11.107, of April 06, 2005, and Federal Decree no. 6.017, of January 17, 2007, between the State of Bahia, the Municipality of Salvador, Municipality of Lauro de Freitas and Companhia de Transporte de Salvador (current Companhia de Transportes do Estado da Bahia), with purpose of regulating the management associated to public transportation services in the Municipality of Salvador and Lauro de Freitas, under Exhibit VII to the Public Notice no. 01/2017;
- 2.1.29 CONTROL:** power held by natural person or legal entity, or group of persons tied to voting agreement, or under common control, assuring to the holder of the partner's right, on a permanently basis, the majority vote in resolutions of the general meeting and prerogatives to elect the majority of the company's managers, of directing the corporate activities and orientating the operation of the company's bodies;
- 2.1.30 IMPLEMENTATION TIME SCHEDULE:** document to be submitted by the CONCESSIONAIRE and approved by Companhia de Transportes do Estado da Bahia -CTB under subclause 14.3, containing the detailing of all relevant activities for the IMPLEMENTATION, characterizing the complex of civil installations, systems and ROLLING STOCK, prepared in compliance with the terms of the OPERATING LANDMARKS, and also with the guidelines of EXHIBITS 4, 5 and 7;
- 2.1.31 DOE:** Official Gazette of the State of Bahia;
- 2.1.32 PROJECTED DEMAND:** annual demand data provided by the GRANTING AUTHORITY, included in EXHIBIT 8, for the period comprised between years 2017 to 2046, based on December each year;



**2.1.33 DESENBAHIA:** Agência de Fomento do Estado da Bahia S.A., organized by State Law no. 7.133, of July 21, 1997;

- 2.1.34 PHASE 1:** comprises the IMPLEMENTATION of the three (3) SECTIONS OF THE LRV, whose total extension is of, approximately, 18.50 Km;
- 2.1.35 PHASE 2:** comprises the performance of studies for future implementation of the section of a line over integration rail of the LRV with Line 1 of the SMSL;
- 2.1.36 PHASE 3:** comprises the performance of the studies for future implementation of the Metropolitan LRV which comprises the Municipalities of Camaçari, Simões Filho, Candeias, and Dias D'Ávila, and its integration with the LRV including the STOP Mapele;
- 2.1.37 PHASE 4:** comprises the performance of works having a social nature in the Old Center of Salvador, upon prior submission and approval of projects;
- 2.1.38 PUBLIC SECURITY FORCES:** the Military Police of the State of Bahia, Municipal Police of Salvador, Federal Police, and others discharging comparable tasks;
- 2.1.39 PERFORMANCE BOND:** the guarantee of strict compliance with the liabilities for CONCESSION, to be maintained by the CONCESSIONAIRE in favor of the GRANTING AUTHORITY in the amounts and terms defined in the AGREEMENT;
- 2.1.40 GUARANTEES PROVIDED BY THE GRANTING AUTHORITY:** the guarantee(s) assuring the payment of pecuniary liabilities taken under agreement by the GRANTING AUTHORITY, under Clause 30;
- 2.1.41 IGDA or ANNUAL GENERAL PERFORMANCE INDEX:** index annually assessed by the PERFORMANCE APPRAISAL, under EXHIBIT 6, for determination of the performance of the CONCESSIONAIRE, through which the value of the ACTUAL CONSIDERATION due to the CONCESSIONAIRE shall be calculated, each twelve (12)-month period;
- 2.1.1 IMPLEMENTATION:** performance of the infrastructure, comprising the civil works, installation of permanent via and electric feeding, signalization, safety, control, telecommunication and ancillary systems, acquisition, installation, tests and commissioning of equipment and ROLLING STOCK and other actions required to allow the complete physical performance of the venture;



- 2.1.2 OPERATING LANDMARKS:** are the dates provided for the OPERATION startup of the SECTIONS OF THE LRV, as informed in EXHIBITS 5 and 7, as well as, in briefly manner, in subclause 4.3;
- 2.1.3 ROLLING STOCK or TRAINS:** are the trains to be provided, installed and operated by the CONCESSIONAIRE, according to minimum specifications and quantities required in EXHIBITS 4 and 8;
- 2.1.4 METROPOLITAN BUSES:** metropolitan bus lines forming the public transportation system of the metropolitan region of Salvador and which shall be integrated into the Suburb Light Rail Vehicle (“LRV”);
- 2.1.5 FULL OPERATION OF THE LRV:** consists of the concurrent OPERATION of all SECTIONS OF THE LRV;
- 2.1.6 OPERATION or SERVICES:** activities related to the operation, conservation and maintenance of any LRV SECTION;
- 2.1.7 STOPS:** are the infrastructures to be built by the CONCESSIONAIRE, intended to the arrival and departure of passengers in the TRAINS, including platforms and any other structure intended to that purpose, according to specifications included in EXHIBIT 4;
- 2.1.8 PARTIES:** THE GRANTING AUTHORITY and the CONCESSIONAIRE;
- 2.1.9 PASSENGER or USER:** all that using the transport SERVICES provided by the CONCESSIONAIRE;
- 2.1.10 BUSINESS PLAN:** document gathering the main economic-financial information of the **CONCESSION**, provided by the **CONCESSIONAIRE** upon the execution of the **AGREEMENT**, in accordance with item 17.4.5.4 of the Public Notice no. 01/2017;
- 2.1.11 ENERGY PLAN:** document to be annually prepared by the CONCESSIONAIRE, and approved by the GRANTING AUTHORITY under this AGREEMENT, containing the consumption projection for the electric power required to the SERVICE provision;
- 2.1.12 FINANCIAL PROJECT:** structure for raising of funds actually contracted or created by the CONCESSIONAIRE for obtaining the funds required to the compliance with the investment liabilities hereby contracted;



**2.1.13 PROPOSAL:** value of the ANNUAL OPERATION CONSIDERATION (and documents referred to in item 10 of the PUBLIC NOTICE) offered by the CONCESSIONAIRE in the TENDER;

- 2.1.14 EXTRAORDINARY REVENUES:** any alternative, complementary or ancillary revenues to the PUBLIC CONSIDERATIONS and COMPENSATION FARE of the LRV or, even, revenues arising out of associated projects, under subclause 25.9;
- 2.1.15 FARE REVENUE:** revenue received by the CONCESSIONAIRE, resulting from the multiplication of the COMPENSATION FARE by the total number of PASSENGERS transported in the LRV;
- 2.1.16 ELECTRONIC BILLING SYSTEM:** group of information technology, software, equipment, and infrastructure systems to be implemented and managed by the TRADING AGENT, aimed at carrying out the control of use of travel credits, tickets, and travel cards, provided that the specifications contained in EXHIBIT 5 are complied with;
- 2.1.17 TRADING SYSTEM:** system implemented and managed by the TRADING AGENT, for sale, control, assessing and management of all funds arisen from the trading of the LRV PUBLIC FARE and the PUBLIC INTEGRATION FARE, which includes the ELECTRONIC BILLING SYSTEM;
- 2.1.18 SETTLEMENT SYSTEM:** group of mechanisms, comprising the occasional actuation of financial institution(s), the maintenance of blocked bank accounts, the implementation and maintenance of information and control systems, created by the CONCESSIONAIRE and the other public transportation operators in the Municipality of Salvador and in the Metropolitan Region of Salvador, associated or not in consortium, including, but without limitation to, the SMSL, the STCO operators, and the METROPOLITAN BUSES, with the function of conducting the custody of amounts and settling the trading operations for travel credits under fare integration system, as set forth in this agreement and in the regulation of the metropolitan transportation of Salvador;
- 2.1.19 BUS PUBLIC TRANSPORTATION SYSTEM or “STCO”:** bus urban lines forming the public transportation system of Salvador, which shall be integrated into the Suburb Light Rail Vehicle (“LRV”);
- 2.1.20 SMSL:** Subway System of Salvador and Lauro de Freitas;
- 2.1.21 COMPENSATION FARE:** is the value, provided for by the AGREEMENT, due to the CONCESSIONAIRE per passenger transported in the LRV, except for



infants, with up to two years old, which shall not be accounted for purposes of measuring the number of transported passengers;

- 2.1.22 LRV PUBLIC FARE:** fare fixed by the GRANTING AUTHORITY, and paid by the LRV USERS;
- 2.1.23 PUBIC INTEGRATION FARES:** fares to be fixed by the GRANTING AUTHORITY, to be paid by USERS using the LRV in integrated manner in relation to the other modals;
- 2.1.24 LRV SECTION:** each of the three (03) sections comprised between two STOPS of the LRV, as informed in EXHIBITS 4, 5 and 7, and in subclause 4.2, which shall be operated in a cumulative manner;
- 2.1.25 SECTION 1:** extension with approximately 3.5 Km, comprised between the STOPS Comércio and Calçada;
- 2.1.26 SECTION 2:** extension with approximately 1.1 Km, comprised between the STOPS Calçada and Baixa do Fiscal;
- 2.1.27 SECTION 3:** extension with approximately 13.9 Km, comprised between the STOPS Baixa do Fiscal and São Luis de Paripe.
- 2.1.28 SUBURB TRAIN:** existing railway line connecting Calçada district to Paripe district, located in the Suburb of Salvador, consisting of ten (10) stations with 13.5 km of permanent via and system extension;
- 2.1.29 USER:** see PASSENGER;
- 2.1.30 PRICE OF THE AGREEMENT:** reference value adopted in this AGREEMENT, which represents the total nominal value estimated for payments to be made by the GRANTING AUTHORITY as ANNUAL MAXIMUM CONSIDERATION, during the whole term of the CONCESSION;
- 2.1.31 SUBURB LIGHT RAIL VEHICLE or LRV:** is the Light Rail Vehicle to be implemented and operated by the CONCESSIONAIRE in the Metropolitan Region of Salvador - RMS, which comprises the permanent via and passenger access stops, operation and maintenance complex, pursuant to EXHIBITS 4 and 5, to the draft of the AGREEMENT
- 2.1.32 INDEPENDENT VERIFIER:** specialized consulting firm contracted by the CONCESSIONAIRE, the assignments of which are provided for in subclause 22.5;



**2.2** Except when the context does not allow such construction:

- 2.2.1** the definitions in the AGREEMENT shall be equally applied in the plural and singular forms;
- 2.2.2** references to the AGREEMENT or any other document should include possible alterations and amendments to be entered into by and between the PARTIES;
- 2.2.3** in the case of divergence between the AGREEMENT and the EXHIBITS hereto, the provisions in the AGREEMENT shall supersede;
- 2.2.4** in the event of divergence among the EXHIBITS, those issued by the GRANTING AUTHORITY shall supersede;

### **Clause 3 – EXHIBITS**

**3.1** The following EXHIBITS are part to the AGREEMENT:

- a) Exhibit 1: Concession Public Notice no. 01/2017
- b) Exhibit 2: Charters of the Concessionaire.
- c) Exhibit 3: Economic Proposal
- d) Exhibit 4: Reference Project.
  - i. Appendix A: LRV - Tome I – Social-economic study
  - ii. Appendix A: LRV - Tome II – Pre-project of the Railway Superstructure
  - iii. Appendix A: LRV - Tome III – Reference Projects
  - iv. Appendix B: Interference Registration
  - v. Appendix C: Inema - Bid Exemption Proceeding Waiver - LRV
  - vi. Appendix D: Associated Interventions
- e) Exhibit 5: Implementation and Operation Program (PIO)
- f) Exhibit 6: Performance Appraisal System.
- g) Exhibit 7: Consideration Payment Time Schedule
- h) Exhibit 8: Annual Demands and Reference Fleets
- i) Exhibit 9: Granting Authority Guarantee.
- j) Exhibit 10: Guidelines for Contracting of Independent Verifier

### **Clause 4 – PURPOSE AND ANCILLARY LIABILITIES**

**4.1** The purpose of this AGREEMENT is the delegation, through public-private partnerships in the sponsored concession modality, of the IMPLEMENTATION and OPERATION of the LRV, under EXHIBITS 4 and 5.



**4.2** The LRV to be implemented and operated by the CONCESSIONAIRE comprises a light rail vehicle line, twenty-one (21) passenger access STOPS and a complex for operation and maintenance of the region of São Luís de Paripe, located in the Municipality of Salvador according to the following operating division:

- a) SECTION 1: extension with approximately 3.5 Km, comprised between STOPS Comércio and Calçada;
- b) SECTION 2: extension with approximately 1.1 Km, comprised between STOPS Calçada and Baixa do Fiscal;
- c) SECTION 3: extension with approximately 13.9 Km, comprised between STOPS Baixa do Fiscal and São Luis de Paripe.

**4.3** The OPERATION shall be developed according to the OPERATING LANDMARKS described in details in EXHIBITS 5 and 7, in compliance with summarized table below:

<b>Operating Landmark no.</b>	<b>Section comprised</b>	<b>Operation Startup (no. of months after the signature of the Agreement)</b>
<b>1</b>	Section 1 and 2	Up to 19 months
<b>2</b>	Sections 1, 2 and 3	Up to 25 months

**4.3.1** The liabilities with respect to each OPERATING LANDMARK are described in EXHIBITS 5 and 7, and the compliance with a certain OPERATING LANDMARK shall only be considered upon full compliance with all liabilities related thereto.

**4.3.2** The possible noncompliance with the start dates of the OPERATING LANDMARKS shall give rise to application of fines, under Clause 34.

**4.4** The characteristics of the SERVICES and its IMPLEMENTATION, described in EXHIBITS 4 and 5, comprising the performance of civil works, permanently, implementation of systems, supply of rolling stocks, equipment, assembly and other interventions, are guidelines and minimum conditions estimated by the GRANTING AUTHORITY so as to guide the provision of the services, and the CONCESSIONAIRE shall make its own surveys, investigations, appraisals and estimates, with purpose to assess and, if so is the case, adopt technical characteristics, quantities, and exceeding quality, to allow the proper SERVICE provisions granted.

**4.4.1** The sections guidelines of the LRV included in EXHIBIT 4 shall serve as basis for preparation of engineering conception projects, and shall, therefore, comply with, what is set forth therein, the sections and location of the STOPS.



**4.4.2** The engineering conception projects may be changed so as to fit its implementation in the locations and forms defined, and shall be submitted, in any case, to appraisal and approval of CTB.

**4.5** The CONCESSIONAIRE, during PHASE 1 of the LRV, shall perform the investments required to the implementation of paths, accessibility equipment and urban furniture, as set forth in EXHIBITS 4 and 5 of the AGREEMENT, in the surrounding areas and railway network of LRV.

**4.5.1** For purpose of the precedent subclause, it is understood as surrounding areas all those around the LRV railway network, as set forth in EXHIBIT 4 and Appendixes.

**4.5.2** The maintenance of the interventions made in the surrounding area of the LRV railway network shall not be responsibility of the CONCESSIONAIRE, and the same shall bear only the implementation investment.

**4.6** The IMPLEMENTATION and OPERATION of PHASE 2 and PHASE 3 shall be subject to supervening reasoned decision by the GRANTING AUTHORITY.

**4.6.1** The CONCESSIONAIRE, with respect to PHASE 2, shall be liable for submitting for approval of the GRANTING AUTHORITY, within no more than a twelve (12)-month term from its signature, the studies with respect to integration section of the LRV with Line 1 of the Salvador Subway System and Lauro de Freitas - SMSL, taking into account the implementation of railway line, which shall comprise, at least: (i) study of demands considering the integration with other modals; (ii) identification of the most proper transportation modal; (iii) engineering preliminary design; (iv) economic and financial feasibility studies; (v) business plan; (vi) other demands included in EXHIBITS 4 and 5 of the Draft of the AGREEMENT; and (vii) economic proposal considering the IMPLEMENTATION and OPERATION of PHASE 2;

**4.6.2** The CONCESSIONAIRE, with respect to PHASE 3, shall submit within no more than eighteen (18) months from the signature of the AGREEMENT, the studies concerning the Metropolitan LRV which comprises the Municipalities of Camaçari, Simões Filho, Candeias and Dias D'Ávila, as well as its integration with the LRV upon extension of its section, going through Mapele, in Simões Filho, which shall comprise: (i) study of demands; (ii) identification of the most proper transportation modal; (iii) engineering preliminary design; (iv) economic feasibility study; (v) business plan; (vi) other requirements included in EXHIBITS 4 and 5 of the Draft of the AGREEMENT; and (vii) economic proposal which considers the IMPLEMENTATION and OPERATION of PHASE 3.



**4.7** The studies caused by the CONCESSIONAIRE under subclauses 4.5.1 and 4.5.2 shall be considered property of the GRANTING AUTHORITY, for all effects.

**4.8** The OPERATION of the section of the called PHASE 2 of the CONCESSION, if approved respective studies, shall be finalized by the CONCESSIONAIRE, upon prior economic-financial rebalance of the CONCESSION, and its IMPLEMENTATION may be performed by the CONCESSIONAIRE or third parties, as per the GRANTING AUTHORITY's discretion, upon separate contracting, under the law.

**4.8.1** Should the IMPLEMENTATION of the section of the called PHASE 2 of the CONCESSION be performed by the CONCESSIONAIRE, an amendment to the AGREEMENT shall be executed, and the compensation of the CONCESSIONAIRE shall be measured by the use of the incremental cash flow method, as described in subclause 27.2.8.2.

**4.9** The IMPLEMENTATION and OPERATION of the sections of the called PHASE 3 of the CONCESSION, if approved respective studies, may be made by the CONCESSIONAIRE, upon prior economic-financial rebalance of the CONCESSION, measured by the use of the incremental cash flow method, as described in subclause 27.2.8.2, or third parties, as per the GRANTING AUTHORITY's discretion, upon separate contracting, under the law.

**4.10** The CONCESSIONAIRE, with respect to PHASE 4, shall conduct the works having a social nature in the Old Center of Salvador ("CAS"), described in EXHIBIT 4 of the AGREEMENT.

**4.10.1** The CONCESSIONAIRE, based on provision set forth in EXHIBIT 4 of AGREEMENT, shall submit to the GRANTING AUTHORITY basic project, implementation time schedule and detailed budget for its approval within no more than a twelve (12) months term, from the signature of the AGREEMENT, in compliance with the forty-eight million Brazilian *Reais* (R\$ 48,000,000.00), base date January / 2017, for performance of the investments.

**4.10.2** The liabilities of PHASE 4 are restricted to submission of projects and performance of the investments, not comprising the maintenance of the venture during the CONCESSION.

## **Clause 5 – CONCESSION TERM**

**5.1** The approval of the CONCESSION shall have a twenty (20)-year term, from the date of signature of the AGREEMENT.



**5.2** Except for the provisions set forth in subclause 27.2.7.2 and in compliance with the provisions set forth in article 4 of the State Law no. 9.290 of December 27, 2004, the term of the CONCESSION shall be extended one or more times up to the limit of thirty-five (35) years, upon justified act of the GRANTING AUTHORITY, backed by the public interest.

**5.2.1** The CONCESSIONAIRE shall pronounce its interest in the extension of the contractual effectiveness in up to eighteen (18) months from the termination of the CONCESSION.

**5.2.1.1** The pronouncement of interest provided for in the precedent subclause shall be accompanied by technical studies stating the cost-effectiveness of the extension and economic-financial feasibility of its conduction.

**5.2.1.2** The GRANTING AUTHORITY shall use its best efforts so as to decide with respect to the extension within no more than a six (6) month term, from the delivery of the technical studies provided for in subclause 5.2.1.1.

**5.2.2** The PARTIES may review the conditions for performance of the AGREEMENT with purpose to fit them to the legal requirements, as well as the technical and social-economic needs existing due to the extension.

## **Clause 6 – CONDITION PRECEDENT TO AGREEMENT**

**6.1** In up to sixty (60) days from the signature of the AGREEMENT, the CONCESSIONAIRE shall submit to the GRANTING AUTHORITY the FINANCIAL PROJECT of the CONCESSION, accompanied by all receipts evidencing the actual obtainment of the economic-financial funds required for the performance of the AGREEMENT.

**6.2** Upon lapsed the term fixed in the subclause above, as per the CONCESSIONAIRE's request, the GRANTING AUTHORITY may grant supplementary term for completion of the FINANCIAL PROJECT.

**6.3** Should the CONCESSIONAIRE for any reason, fail to complete the FINANCIAL PROJECT within the term covenanted, the PARTIES, individually or collectively, may assume the AGREEMENT as terminated, being released from the liabilities not complied with up to then, without any penalty or indemnification being applied or charged.

**6.3.1** The PARTIES shall draw up a termination sheet of the AGREEMENT, declaring, as the case may be, reciprocal release of the contractual liabilities.



**6.4** Having one of the PARTIES pronounced the interest in terminating the AGREEMENT, under subclause 6.3, the CONCESSIONAIRE shall have a maximum term of thirty (30) days, from this pronouncement, to take the measures required for the demobilization of the IMPLEMENTATION and completion of the contractual liabilities whose execution term had elapsed and expired in the interval between the execution of the AGREEMENT and its actual termination.

**6.4.1** The term provided for in this subclause may be extended as per the GRANTING AUTHORITY's discretion.

**6.5** Pronounced interest for termination of the AGREEMENT under subclause 6.3, possible resistance of the CONCESSIONAIRE in complying with its liabilities, or in acknowledging the rights of the GRANTING AUTHORITY, or signing the termination sheet of the AGREEMENT shall give the GRANTING AUTHORITY the option:

**6.5.1** To apply contractual penalties against the CONCESSIONAIRE;

**6.5.2** To charge indemnifications, due to confirmed damages;

**6.5.3** To execute the PERFORMANCE BOND;

**6.5.4** To terminate the AGREEMENT one a one-sided basis.

**6.6** Should the GRANTING AUTHORITY, in the hypothesis of subclause 6.2, grant to the CONCESSIONAIRE supplementary term exceeding thirty (30) days:

**6.6.1** The PARTIES may agree to the stay of the contractual liabilities payable upon this period; or

**6.6.2** Alternatively, the PARTIES shall agree which contractual liabilities must be complied with by the CONCESSIONAIRE in the period exceeding the supplementary thirty (30) days, hypothesis in which the CONCESSIONAIRE shall be entitled only and solely to refund of the costs incurred in the performance of this liabilities.

**6.7** Upon submitted the FINANCIAL PROJECT of the CONCESSION, the CONCESSIONAIRE shall, regardless of other liabilities assumed in the AGREEMENT, in up to fifteen (15) business days from this submission:

**6.7.1** Complement the PERFORMANCE BOND, under clause 29;

**6.7.2** Contract the insurances provided for in clause 28;



**6.7.3** Refund the disbursement in the amount of two million, four hundred and sixty-five thousand Brazilian *Reais* (R\$ 2,465,000.00), corresponding to the costs incurred by Empresa Baiana de Ativos S.A. - BAHIAINVESTES with the modeling of this CONCESSION.

## **Clause 7 – ASSETS TIE TO THE CONCESSION**

**7.1** It shall be tied to the CONCESSION the assets used in the performance of the SERVICES which:

**7.1.1** are domain or under use of the GRANTING AUTHORITY and are assigned for use of the CONCESSIONAIRE; and

**7.1.2** belong to the CONCESSIONAIRE or is acquired with purpose to execute this AGREEMENT.

**7.2** The CONCESSIONAIRE must make the corrective and preventive maintenance of the ASSETS TIED, so as to conserve them in proper use conditions, in compliance with the technical standards to health, safety, accessibility, hygiene, comfort, environmental sustainability, among other parameters essential to its good use.

**7.2.1** In the event of break, obsolescence or misplacement of the assets mentioned in subclause 7.1.1 and 7.1.2, the CONCESSIONAIRE shall fix, substitute or replace the asset, as set forth in EXHIBITS 4, 5 and 8.

**7.3** The CONCESSIONAIRE shall submit to CTB, in term to be fixed in the IMPLEMENTATION TIME SCHEDULE, the list of ASSETS TIED to the CONCESSION, highlighting those considered ESCHEATABLE ASSETS for effect of this AGREEMENT, according to subclause 7.6 below.

**7.3.1** From the submission of the report subclause 7.3 refers to, the list of ASSETS TIED shall be annually updated and submitted by the CONCESSIONAIRE to CTB, up to the end of the CONCESSION, subject to penalty, under this agreement.

**7.3.2** For the purposes of assessment of the list of ASSETS TIED, as well as appraisal of the contents of the list of ESCHEATABLE ASSETS, CTB may be assisted by third parties, including by the INDEPENDENT VERIFIER.

**7.4** The CONCESSIONAIRE is expressly authorized to file, in its own name, judicial measures so as to assure or retrieve the ownership of ASSETS TIED to the CONCESSION.

**7.5** All ASSETS TIED to the CONCESSION or investments made in it shall be completely depreciated and amortized by the CONCESSIONAIRE during the CONCESSION,



under the laws in force, and no plead for indemnification in the advent of termination of the agreement shall be applicable.

**7.5.1** In the hypotheses of acceleration of the AGREEMENT, the CONCESSIONAIRE shall be entitled to indemnification corresponding to the installments of the investments made, including in works, assets and installations, not amortized or depreciated yet, which have being made as provided for in the AGREEMENT, deducted the outstanding financial charges and possible discounts provided for in the AGREEMENT, especially in the cases of lapse of the CONCESSION.

## **7.6 ESCHEATABLE ASSETS**

**7.6.1** It shall be considered GRANTING AUTHORITY's assets all works, improvements, betterments, and accessions made by the CONCESSIONAIRE with respect to the ESCHEATABLE ASSETS.

**7.6.2** Upon terminated the CONCESSION, return to the GRANTING AUTHORITY the ESCHEATABLE ASSETS, rights and privileges tied to the CONCESSION, transferred or made available to the CONCESSIONAIRE, or created / implemented and acquired thereby, within the scope of the CONCESSION, regardless of any notices or formalities.

**7.6.3** The reversal shall be free and automatic, with assets in proper operation, use and maintenance conditions, as well as free from any charges, burdens, residual value, taxes, liability, encumbrance or collection of any value of the CONCESSIONAIRE, with characteristics and technical requisites which allow full OPERATION.

**7.6.4** The reversed assets to the GRANTING AUTHORITY shall be in proper conservation and operation conditions, so as to allow the continuity of the services subject matter of the CONCESSION, and the GRANTING AUTHORITY may withhold the payments of the CONCESSIONAIRE to fix irregularities possibly detected.

**7.6.5** Should the CONCESSIONAIRE not make available the reversibility of the assets according to the conditions set forth in this Clause, the GRANTING AUTHORITY shall be entitled to indemnification, to be calculated under applicable laws, without prejudice to the penalties applicable and execution of the insurance and contractual guarantee.

**7.6.6** The associated ventures, to be exploited by the CONCESSIONAIRE so as to receive EXTRAORDINARY REVENUES, shall not be considered ESCHEATABLE ASSETS, except those located at the areas of the STOPS, of



the TRAINS or other assets essential to the SERVICE provisions, including platforms, yards, accesses, among others.

**7.6.7** The ESCHEATABLE ASSETS, including, but not limited to, useful domain of real estate acquired by the CONCESSIONAIRE for performance of the services, affected to the OPERATION, may be assigned, charged, leased, loaned for use or given as guarantee, provided that the operation is previously authorized by the GRANTING AUTHORITY and assets return, free and clear, at full and useful domain of the CONCESSIONAIRE in up to twelve (12) months before the termination of the CONCESSION term.

**7.6.8** The CONCESSIONAIRE may only dispose of ESCHEATABLE ASSETS should it receive authorization by the GRANTING AUTHORITY and carry out immediate replacement of the assets disposed of by others not affecting the proper service provision.

**7.6.8.1** The CONCESSIONAIRE may also dispose of the ESCHEATABLE ASSETS, in the event it confirms, through prior authorization of the GRANTING AUTHORITY, that the same are no longer required for the proper service provision.

**7.6.9** All legal businesses of the CONCESSIONAIRE with third parties involving the ESCHEATABLE ASSETS shall expressly mention its sole tie to the CONCESSION.

## **7.7 TECHNOLOGICAL ACTUALITY**

**7.7.1** It is the CONCESSIONAIRE liability to assure the service provision with actuality, to be understood as the right of enjoyment of the USER, with respect to the subject matter of the CONCESSION, of infrastructure, services and contemporary utilities, that is, that during the CONCESSION, follow-up the innovation in the technological development, and that assure the perfect operation, improvement and expansion of the SERVICES, according to the performance benchmarks included in the PERFORMANCE APPRAISAL system.

**7.7.1.1** Aiming at the actuality and greater efficiency in the service provision and increase in the quality of the service to the USERS, the PARTIES may, upon common sense, with support of the INDEPENDENT VERIFIER, revert the indexes demanded in the performance benchmarks included in the PERFORMANCE APPRAISAL system, fitting them to the new technological conditions or requirements for satisfactory provision of the SERVICES, hypothesis in which the economic-financial balance of the AGREEMENT shall be preserved.



**7.7.2** In order to assure the actuality of the service provision of the AGREEMENT, the CONCESSIONAIRE shall comply with the specification, qualitative parameters and useful life terms of the ASSETS TIED.

**7.7.3** The CONCESSIONAIRE may suggest, at its own expenses, for homologation of CTB, the acquisition of new equipment contemplating the technologic innovation available in the market, which, under no circumstances, may jeopardize the continuity of the services provided.

**7.7.4** The possible request of the GRANTING AUTHORITY which involves the incorporation of technology innovation in standards exceeding the duty of the CONCESSIONAIRE of providing services with actuality shall be hypothesis of recomposition of the economic-financial balance of the CONCESSION, provided that such incorporation results in increment of the costs projected to the AGREEMENT.

## **7.8 ROLLING STOCK**

**7.8.1** The CONCESSIONAIRE shall be responsible for the purchase and making available of the ROLLING STOCK aiming at meeting the guidelines of this CONCESSION.

**7.8.2** The following are comprised in the ROLLING STOCK concept for purpose of this AGREEMENT:

**7.8.2.1** the TRAINS to be acquired by the CONCESSIONAIRE for IMPLEMENTATION of the LRV;

**7.8.2.2** the TRAINS which are acquired during the OPERATION of the LRV by the CONCESSIONAIRE, as a consequence of substitution or technological innovation, increase of demand or expansion of the system, in compliance with the conditions provided for on this AGREEMENT.

**7.8.3** The ROLLING STOCK acquired for the SERVICE provision granted, and which shall be considered REVERSIBLE ASSET shall meet the minimum specification and quantities referred to in EXHIBITS 4 and 8.

**7.8.4** Exceptionally, in the OPERATION of the SECTIONS 1 and 2 of the LRV, the CONCESSIONAIRE may use the ROLLING STOCK with characteristics inferior to those specified in the EXHIBITS 4 and 8, provided that, such conditions, meet the PROJECTED DEMAND for the period.



**7.8.4.1** In the hypothesis of the precedent subclause, the CONCESSIONAIRE shall substitute the ROLLING STOCK prior to the start of the FULL OPERATION OF THE LRV, carrying out the acquisition of the TRAINS according to the specifications set forth in EXHIBITS 4 and 8.

## CHAPTER II – RIGHTS AND LIABILITIES OF THE PARTIES

### Clause 8 – AUTHORIZATIONS AND LICENSES

- 8.1** The CONCESSIONAIRE shall comply with all arrangements required by the relevant bodies, under the laws in force, for obtainment and renewal of licenses, permits and authorizations required for IMPLEMENTATION and OPERATION of the LRV, bearing the corresponding expenses and costs.
- 8.2** The GRANTING AUTHORITY shall use its best efforts so the CONCESSIONAIRE complies, in the smallest time possible, with the liability provided for in subclause 8.1.
- 8.3** Any qualitative or quantitative increase in comparison with the project submitted in EXHIBIT 4, which is subject matter of requirements or liabilities, by relevant bodies, for the obtainment of licenses, permits and authorizations, shall grant the CONCESSIONAIRE the right to recompose the economic-financial balance of the AGREEMENT.
- 8.3.1** The delay in the issue, including the delay in the analysis and approval of the documents, the failure to obtain, or unjustified negative by the relevant authorities, of the licenses and authorization required, provided that evidenced by the CONCESSIONAIRE the diligent compliance with all legal requirements provided for in the Public Branch, shall release the CONCESSIONAIRE from and against its liabilities for the total or partial noncompliance with any liability imputed thereto by the AGREEMENT, and shall be entitled, if so is the case, to recomposition of the economic-financial balance.
- 8.4** It is the CONCESSIONAIRE's only and sole liability the obtainment of all licenses and authorizations required for the development of alternative, complementary activities and associated projects.

### Clause 9 – EXPROPRIATIONS AND REMOVALS

- 9.1** The GRANTING AUTHORITY shall be liable for the edition of public utility decrees which are required to the expropriations and utility easement, to the imposition of administrative limitation and provisional occupation or temporary requisition of the real estate required to the IMPLEMENTATION and OPERATION of the LRV, in term compatible with the IMPLEMENTATION TIME SCHEDULE to be submitted by the



CONCESSIONAIRE under subclause 14.3 and, particularly, with the OPERATING LANDMARKS provided for in subclause 4.3.

- 9.2** The delay in the arrangement of expropriations and utilities the GRANTING AUTHORITY is liable for, shall not lead to CONCESSIONAIRE's liability and may give rise to recomposition of the economic-financial balance of the AGREEMENT.
- 9.2.1** For the purpose of this subclause, the CONCESSIONAIRE shall not be liable for possible losses or noncompliance with the contractual clauses caused by the GRANTING AUTHORITY's delay in the arrangements for the public utility statements, thus in those acts demanding the exercise of the police power, exclusive of the Public Administration.
- 9.3** The CONCESSIONAIRE shall submit the CTB the following information and documents within a ninety (90)-day term upon the signature of the AGREEMENT:
- 9.3.1** Social-economic registration of the owners or occupants of the areas reached;
- 9.3.2** physical registration describing the properties, according to its land situation, specifying the extension, per property, of the areas reached;
- 9.3.3** other information CTB sees as relevant.
- 9.4** The CONCESSIONAIRE shall be liable, in the exercise of the delegation activity by the GRANTING AUTHORITY and under its supervision, the promotion and conclusion of the legal expropriation proceedings, creation of utility easement, imposition of administrative limitation, provisional occupation of the real estate and adoption of other applicable measures for the clearance of the area intended to IMPLEMENTATION and OPERATION of the LRV.
- 9.5** It is the CONCESSIONAIRE's liability the performance of investments, payment, costs and expenses arising out of the execution of acts mentioned in the precedent items, be it consensually or through legal actions.
- 9.6** The CONCESSIONAIRE shall use its best efforts so the owners or possessors, objectifying the causing, amicably, of clearance of the areas intended to the IMPLEMENTATION and OPERATION of the LRV.
- 9.7** The payment, by the CONCESSIONAIRE, of the third party removed, expropriated or whose property was registered for utility or administrative limitation or, even, provisionally occupied for the purposes provided in this AGREEMENT, when made through private way, that is, through agreement between the CONCESSIONAIRE and the third party appointed, it is subject to prior approval and homologation of its value by the GRANTING AUTHORITY, with submission, by the CONCESSIONAIRE, of appraisal report subscribed by accredited agent of Caixa Econômica Federal, in



compliance with the appraisal parameters of the Brazilian National Standards Organization (“ABNT”).

- 9.8** The CONCESSIONAIRE shall assume the liability to pay the expropriations amicably or judicially, utilities or removals required for the performance of the subject matter of the AGREEMENT up to the global limit of thirty million Brazilian *Reais* (R\$ 30,000,000.00).
- 9.8.1** The values appointed in subclause 9.8 comprises the estimated value of the indemnifications arising out of the expropriations, utilities and removals, as well as costs and expenses with the proceedings for its effectuation, amicably or judicially, such as procedural and notary’s offices’ costs, appraisal report, expert report, attorney’s fees.
- 9.8.2** The value indicated in subclause 9.8 shall be monetarily restated through the percentage variation of the Comprehensive Consumer Price Index (“IPCA”) or the Brazilian Institute of Geography and Statistics (“IBGE”), having as base date the month of January / 2017.
- 9.8.3** Should the value informed in subclause 9.8 be insufficient for the payment of all indemnifications related to the expropriations, amicably or judicially, to the utilities and removals, the CONCESSIONAIRE shall make the payments of the outstanding differences directly with the indemnified parties.
- 9.8.3.1** In the hypothesis of the subclause 9.8.3, upon termination of the amicable or judicial expropriations, utilities or removals required to the performance of the subject matter of the AGREEMENT, the GRANTING AUTHORITY shall refund the CONCESSIONAIRE for the additional values supported.
- 9.8.3.2** The refund mentioned in subclause 9.8.3.1 shall be paid in twelve equal, monthly and consecutive installments, to be complied with along with the subsequent PUBLIC CONSIDERATIONS, and the first installment shall be due up to the thirtieth (30<sup>th</sup>) business day from the end of the assessment period of the values disbursed.
- 9.8.4** Should it be assessed, upon completed all amicable and judicial expropriations, utilities and removals, that the payments of the indemnifications did not reach the value informed in subclause 9.8, an economic-financial rebalance of the AGREEMENT shall be caused in favor of the GRANTING AUTHORITY.
- 9.9** The CONCESSIONAIRE shall maintain, during the effectiveness of the CONCESSION, the integrity of the vacant areas, even adopting the arrangements required to its



vacancy if and when invaded by third parties, with assistance of the police and Judicial Branch, when it is the case.

#### **Clause 10 – ASSISTANCE TO THE POLICE BY THE PUBLIC SECURITY FORCES**

- 10.1** The CONCESSIONAIRE shall collaborate with the PUBLIC SECURITY FORCES providing them the means required for the persecution and criminal investigation of the faults perchance occurring in the facilities of the LRV.
- 10.2** For compliance with this liability, the CONCESSIONAIRE may make available space for possible installation of police posts, telephone lines for emergency calls, access to internal television and monitoring circuits, among other instruments showing to be useful to the security increment of the USERS and other persons which are in the facilities of the LRV.
- 10.3** The adoption of collaboration measures with the PUBLIC SECURITY FORCES shall be previously agreed upon between the PARTIES and shall not eliminate the CONCESSIONAIRE's liability in contracting a private equity security, aiming at the protection of the integrity of the ASSETS TIED and of the USERS and other persons which are in the facilities of the LRV.

#### **Clause 11 – FINANCING**

- 11.1** The CONCESSIONAIRE is responsible for the obtainment of the funds intended to the IMPLEMENTATION and OPERATION, including through intermediation of possible financing required.
- 11.2** The CONCESSIONAIRE shall submit to the GRANTING AUTHORITY a copy of all instruments executed for feasibility of its FINANCIAL PROJECT, including, but not limited to, copy of financing and guarantee agreements which may execute, as well as documents representing the instruments and securities it may issue, and any alterations to these documents, within a ten (10) business days from the date of its signature and issue, as the case may be.
- 11.3** The CONCESSIONAIRE shall also submit to the GRANTING AUTHORITY the receipts of the payments of the settlement installments of the financings contracted thereby.
- 11.4** Upon contracting of the financing, issue of bonds or performance of debt operation of any other nature (including, but not limited to, issue of debentures, instruments of any kind or funds structuring) the CONCESSIONAIRE shall expressly provide and assure the effectuation, through agreement, of the liability of the funders or creditor to immediately give notice to the GRANTING AUTHORITY on the noncompliance with any liability of the CONCESSIONAIRE in the financing or debt operation agreements or assumption of control by the funders.



- 11.5** The CONCESSIONAIRE shall also submit to the GRANTING AUTHORITY a copy of any and all notice, report or notification sent to the funders, which contain relevant information with respect to the financial situation of the CONCESSION or of the CONCESSIONAIRE.
- 11.6** The CONCESSIONAIRE may not invoke any provision, clause or condition of the financing agreements, or any delay in the disbursement of the funds, so as to exempt, whether partially or as a whole, from the liabilities assumed in the AGREEMENT.
- 11.7** The CONCESSIONAIRE may offer rights arising out of the CONCESSION as guarantee of financings obtained for the investments required, up to the limit that it does not jeopardize the operation and continuance of the service provisions, in compliance with articles 28 and 28-A of the Federal Law no. 8.987, of February 13, 1995.
- 11.8** The CONCESSIONAIRE may pledge, assign or in any way transfer directly to the funder, according to the limits and legal requisites, the rights to receive (i) the PUBLIC CONSIDERATIONS, (ii) COMPENSATION FARE of the LRV; (iii) EXTRAORDINARY REVENUES; and (iv) of the indemnifications due to the CONCESSIONAIRE by virtue of the AGREEMENT.
- 11.9** It is prohibited to the CONCESSIONAIRE to grant loans, financing or to make any other type of fund transfer for its stockholders, except for:
- 11.9.1** transfer of funds as dividend distribution;
  - 11.9.2** capital reduction, in compliance with the limit provided for in Clause 32;
  - 11.9.3** payment of interests on net equity; and
  - 11.9.4** payment for the contracting of services executed in conditions equitable to the ones in the market.

## **Clause 12 – SHARING OF THE FINANCIAL PROFITS**

- 12.1** Under subparagraph IX of article 5 of the Federal Law no. 11.079, of December 30, 2004, and article 8, VI, of the State Law no. 9.290/2004, the CONCESSIONAIRE shall share with the GRANTING AUTHORITY, at the ratio of fifty percent (50%), the economic profits it obtains, as a consequence of the reduction of the credit risk of the financings perchance taken, especially due to renegotiation of previously contracted conditions or acceleration of the liabilities.
- 12.1.1** Should the reduction of the credit risk not arise out of the concrete actuation of the CONCESSIONAIRE, the economic profit obtained shall be completely



allocated by the GRANTING AUTHORITY upon review of the ANNUAL MAXIMUM CONSIDERATION.

**12.1.2** The economic profit shall be assessed with respect to the BUSINESS PLAN submitted by the CONCESSIONAIRE.

### **Clause 13 – SUBURB TRAIN INFRASTRUCTURE AND EQUIPMENT**

**13.1** The CONCESSIONAIRE shall define in its IMPLEMENTATION TIME SCHEDULE, the date on which the operation of the SUBURB TRAIN shall be stayed, for disassembly and material and equipment use in its operation removal purposes.

**13.2** The CONCESSIONAIRE shall disassemble all infrastructure, operation and maintenance equipment and rolling stock existing in the SUBURB TRAIN and store what is not subject matter of reuse by the CONCESSIONAIRE, and which is required by CTB, in location to be defined by CTB, in the Municipality of Salvador.

**13.3** The CONCESSIONAIRE is obliged to properly allocate the useless assets arising out of the disassembly of the existing infrastructure.

### **Clause 14 – IMPLEMENTATION**

**14.1** The CONCESSIONAIRE shall make the IMPLEMENTATION according to the IMPLEMENTATION TIME SCHEDULE, submitted thereby and approved by CTB, in compliance with the provisions set forth in subclause 35.9.

**14.2** In up to thirty (30) days upon the date of signature of the AGREEMENT, the CONCESSIONAIRE shall submit, through printed and electronic mean, for CTB's approval, an IMPLEMENTATION TIME SCHEDULE.

**14.3** The IMPLEMENTATION TIME SCHEDULE shall:

**14.3.1** include detailing of all relevant activities for IMPLEMENTATION, characterizing the complex of civil installations, of systems and ROLLING STOCK, with clear identification of all IMPLEMENTATION steps;

**14.3.2** be prepared in compliance with the OPERATING LANDMARKS registered in subclause 4.3 and also with the guidelines of EXHIBITS 4, 5 and 7;

**14.3.3** comprise the period between the date of signature of the AGREEMENT and the LRV FULL OPERATION;

**14.3.4** describe each activity relevant to the IMPLEMENTATION and interdependency of the future activities with precedent activities, if any;



- 14.3.5** set forth the term for submission of the list of the ASSETS TIED and specification booklet of the ESCHEATABLE ASSETS;
  - 14.3.6** inform the performance term of all steps of the IMPLEMENTATION, in consecutive days, including the date foreseen for the startup and completion, including the term for start of the tests and commissioning subclause 15.1.1. refers to;
  - 14.3.7** inform the critical paths of the venture;
  - 14.3.8** consider the term estimated for obtainment or redefinition of the environmental license for installation, operation and other authorization of the Public Branch required for the IMPLEMENTATION and OPERATION, up to the LRV FULL OPERATION;
  - 14.3.9** contain a preparation and delivery of the executive projects time schedule for each step informed in the IMPLEMENTATION TIME SCHEDULE, considering the term required for approval thereof by CTB under subclause 14.6.1;
- 14.4** CTB shall analyze the IMPLEMENTATION TIME SCHEDULE within fifteen (15) days from its submission by the CONCESSIONAIRE, and shall approve it or inform the need for adequacies and corrections, should it understand that there is noncompliance with the guidelines set forth in the AGREEMENT and its EXHIBITS, informing on a detailed and justified manner the noncompliance assessed.
- 14.4.1** Should CTB determine that adequacies or corrections in the IMPLEMENTATION TIME SCHEDULE are to be made, the CONCESSIONAIRE shall have a five (5)-day term to make the adequacies or correction determined and resubmit the corresponding time schedule.
  - 14.4.2** CTB shall approve the IMPLEMENTATION TIME SCHEDULE, duly adjusted, in up to five (5) days upon the date of its resubmission by the CONCESSIONAIRE.
  - 14.4.3** Should CTB fail to pronounce within the terms provided for in the subclauses 14.4 and 14.4.2, the IMPLEMENTATION TIME SCHEDULE shall be considered approved.
- 14.5** In up to ninety (90) days from the date of signature of the AGREEMENT, the CONCESSIONAIRE shall submit to CTB preliminary design, under the provisions set forth in EXHIBIT 4.



- 14.5.1** CTB shall analyze the preliminary design within a fifteen (15)-day term, from its submission by the CONCESSIONAIRE, and shall approve it or inform the need for adequacies and corrections, should it understand that there is noncompliance with the guidelines set forth in the AGREEMENT and its EXHIBITS, informing on a detailed and justified manner the noncompliance assessed.
- 14.5.2** Should CTB fail to pronounce within the term provided for in subclause 14.5.1, the preliminary design shall be considered approved.
- 14.5.3** Should CTB determine that adequacies or corrections are to be made in the preliminary design, the CONCESSIONAIRE shall adjust it and resubmit it within a fifteen (15)-day term for CTB's approval, which shall have a new ten (10) day term for approval.
- 14.6** From the approval of the preliminary design, the CONCESSIONAIRE shall submit to CTB the executive designs with at least a sixty (60)-day priority to the start of the respective works, in compliance with the terms provided for in the IMPLEMENTATION TIME SCHEDULE.
- 14.6.1** CTB shall analyze each executive design within a fifteen (15)-day term from its submission by the CONCESSIONAIRE, and shall approve it or inform the need for adequacy and corrections, should it understand that there is noncompliance with the guidelines set forth in the AGREEMENT and its EXHIBITS, informing on a detailed and justified manner the noncompliance assessed.
- 14.6.2** Should CTB fail to pronounce within the term provided for in subclause 14.6.1, the executive design shall be considered approved.
- 14.6.3** Should CTB determine that adequacies or corrections are to be made in the executive design, the CONCESSIONAIRE shall adjust it and resubmit it within no more than a thirty (30)-day term, for CTB's approval, which shall have a new fifteen (15)-day term for approval.
- 14.6.4** Should CTB request alteration in the executive designs after its approval, the same shall submit possible alterations to the CONCESSIONAIRE, hypothesis in which the economic impact and term of the alteration shall be assessed, and the corresponding economic-financial rebalance of the AGREEMENT shall be made.
- 14.6.5** Possible alteration of project approved, requested by the CONCESSIONAIRE shall only be performed upon prior and express authorization of CTB.
- 14.7** The procedure for acquisition of the equipment and systems shall comply with the minimum guidelines provided for in EXHIBIT 5 and also the following:



- 14.7.1** The CONCESSIONAIRE shall submit the specifications booklet of the equipments in up to ninety (90) days from the date foreseen for startup of each IMPLEMENTATION LANDMARK;
- 14.7.2** CTB shall have a fifteen (15)-day term, from the submission of the specification booklet by the CONCESSIONAIRE, for full or partial homologation, or to request possible alterations;
- 14.7.3** Upon the clarification or alteration orders and requested by CTB, the CONCESSIONAIRE shall have a fifteen (15)-day supplementary term to submit its pronouncement, being the case, accompanied of new submission of the specification booklet;
- 14.7.4** CTB shall have a supplementary fifteen (15)-day term for analysis of the pronouncement of the CONCESSIONAIRE and, as the case, of the alteration made in the specification booklet;
- 14.7.5** The noncompliance by the CONCESSIONAIRE with the terms informed in this subclause shall imply being responsible for and application of penalties as set forth in this AGREEMENT;
- 14.7.6** The noncompliance by CTB with the terms set forth in this subclause shall imply tacit acceptance of the documents and information submitted by the CONCESSIONAIRE.
- 14.8** The noncompliance with the IMPLEMENTATION TIME SCHEDULE shall subject the CONCESSIONAIRE to the penalties provided for in the AGREEMENT.
- 14.9** CTB shall issue determinations to the CONCESSIONAIRE whenever it understands that the OPERATING LANDMARKS set forth in the subclause 4.3 or quality of the IMPLEMENTATION may be jeopardized, without prejudice to possible application of penalties under Clause 34.
- 14.10** CTB shall require of the CONCESSIONAIRE the preparation of plans for recovery of delays in the IMPLEMENTATION, aiming at the meeting of the terms agreed upon.

#### **Clause 15 - RECEIPT OF THE IMPLEMENTATION**

- 15.1** With at least a thirty (30)-day prior notice to the delivery of each OPERATING LANDMARK, the CONCESSIONAIRE shall send notice to the GRANTING AUTHORITY formalizing its intent to complete and deliver the OPERATING LANDMARK.



- 15.1.1** During this period the CONCESSIONAIRE shall conduct tests and commissioning with the participation of CTB, which shall attest the completion of the OPERATING LANDMARK, issuing conclusive reports.
- 15.1.2** For the purposes of certifying the completion of each OPERATING LANDMARK, CTB may be assisted by third parties contracted thereby.
- 15.2** Grounded on the reports mentioned in subclause 15.1.1, the AGREEMENT MANAGEMENT COMMITTEE shall prepare receipt sheet of the OPERATING LANDMARK to be executed between the PARTIES.
- 15.3** The OPERATING LANDMARK receipt sheet shall:
- 15.3.1** attest (i) the completion and receipt of works and physical installations provided with respect to the OPERATING LANDMARK under analysis; (ii) the receipt of the ROLLING STOCK and other equipment required in the EXHIBITS, if so is the case; (iii) the completion of the installation of the systems (iv) the approval of the tests and commissioning of the installations corresponding to the OPERATION startup; (v) statement of the CONCESSIONAIRE that it is fit to do the OPERATION;
  - 15.3.2** contain the detailed description of the ASSETS TIED which are part of the IMPLEMENTATION step to be delivered;
  - 15.3.3** be accompanied by acceptance booklet with detailed description of the equipment and systems, as well as respective installation location;
  - 15.3.4** be accompanied by all authorizations of the relevant public bodies, if so is the case, for startup of related operation.
- 15.4** CTB shall carry out the full inspection of the installations and equipment object of the OPERATING LANDMARK under analysis, being able to require (i) the substitution, change of the location or works, equipment and system installation method which are not in compliance with the specification booklet, as well as (ii) correction, remediation or substitution of the works made in noncompliance with the executive designs approved.
- 15.5** CTB shall dispose of a thirty (30)-day term to submit to the CONCESSIONAIRE its pronouncement, under the precedent subclauses, after which, its silence shall imply receipt of the OPERATING LANDMARK submitted to appraisal.
- 15.5.1** Being reprovved, CTB shall issue reprovval sheet and set forth date for the correction of the noncompliance and new receipt of the step(s) reprovved.



- 15.6** The CONCESSIONAIRE shall submit to CTB, within up to thirty (30) days upon the receipt of the OPERATING LANDMARK, the operation and maintenance manuals of the equipment and systems, based on the tests and commissioning made.
- 15.7** The CONCESSIONAIRE cannot oppose to the GRANTING AUTHORITY any exception or defense means so as to exempt, whether partially or as a whole, from its contractual liabilities, based on facts resulting of contractual relations set forth with third parties contracted, even if approved by the GRANTING AUTHORITY.
- 15.8** Regardless of issue of the receipt sheet(s) of the OPERATING LANDMARK(S), the CONCESSIONAIRE shall remain in charge of the compliance with any liability assumed within the scope of this AGREEMENT, and shall not be valid the opposition of the acceptance as excluding cause for the liability for supervening faults or defects.

#### **Clause 16 – OPERATION STARTUP**

- 16.1** Upon execution of the receipt sheet of each OPERATING LANDMARK, the CONCESSIONAIRE shall start the OPERATION of respective SECTIONS OF LRV, in compliance with the provisions set forth in EXHIBIT 5.
- 16.2** The OPERATION of the SECTIONS 1 and 2 of the LRV shall be on an assisted manner, and there shall be no charging of PUBLIC FARE to the USERS, in compliance with the provisions set forth in EXHIBIT 5.
- 16.2.1** During the OPERATION of the SECTIONS 1 and 2 of the LRV, the CONCESSIONAIRE shall be solely compensated by the PROPORTIONAL CONSIDERATION, in the percentage provided for in subclause 25.6.2.1.
- 16.3** Immediately upon the start of the OPERATION of each SECTION OF THE LRV, the CONCESSIONAIRE shall implement a communication plan with the USERS, through advertizing campaign through the mass communications means and with the assistance of the collaborators in the STOPS.
- 16.4** It is understood as OPERATION startup, the moment in which the CONCESSIONAIRE starts to make available its SERVICES to the USERS, in one or more SECTIONS OF THE LRV.
- 16.5** It is understood as LRV FULL OPERATION startup, the moment in which the CONCESSIONAIRE starts to make available its SERVICES to the USERS in all three (3) SECTIONS OF THE LRV, simultaneously, under EXHIBIT 5.
- 16.6** The CONCESSIONAIRE shall start the OPERATION of each SECTION OF THE LRV according to the OPERATING LANDMARKS, following strictly the order and time schedule set forth therein, according to clause 4.3 and EXHIBITS 5 and 7.



- 16.6.1** The OPERATION of each SECTION OF THE LRV may be advanced, and the CONCESSIONAIRE shall be entitled to the receipt of the PROPORTIONAL CONSIDERATION corresponding to the SECTION OF THE LRV in operation.
- 16.7** It is possible, upon agreement between the PARTIES, the OPERATION of a fraction of a certain SECTION OF THE LRV, provided that certified its functionality by CTB, in compliance with the procedures set forth in clause 15 and the following rules:
- 16.7.1** In the hypothesis of OPERATION of a fraction of SECTION 1, the CONCESSIONAIRE shall comply with the conditions for OPERATION provided for in EXHIBIT 5 for the very SECTION 1;
- 16.7.2** In the other hypothesis, the CONCESSIONAIRE shall comply with the conditions set forth in EXHIBIT 5 for the immediate precedent SECTION;
- 16.7.3** For the OPERATION of a fraction of the SECTIONS OF THE LRV, the CONCESSIONAIRE shall be entitled to the receipt of PROPORTIONAL CONSIDERATION equivalent to the extension of the SECTION in OPERATION.
- 16.8** Possible delays in the IMPLEMENTATION, of confirmed liability of the CONCESSIONAIRE, shall not give rise to alteration in the final SERVICE prevision sheet, and the twenty (20) years term made effective in this AGREEMENT shall remain unaltered.
- 16.9** Delays not arising out of malice aforethought or gross negligence of the CONCESSIONAIRE in the performance of this AGREEMENT, shall exempt its liability, not being possible the application of any penalty, and shall give rise to review of the IMPLEMENTATION TIME SCHEDULE and OPERATING LANDMARKS, further to the possibility of recomposition of the economic-financial balance of the AGREEMENT, elements which shall be addressed to through amendment to the AGREEMENT.
- 16.10** In the event of the delay of the OPERATION startup due to sole liability of the GRANTING AUTHORITY, the period corresponding to the delay shall be automatically accrued to the effectiveness term of the CONCESSION, in compliance with the legal limit, without prejudice to the possibility of recomposition of the economic-financial balance of the AGREEMENT, if so is the case.

## **Clause 17 – OPERATION GUIDELINES**

- 17.1** The CONCESSIONAIRE is responsible for the performance of the SERVICES object of the AGREEMENT, as set forth in EXHIBIT 5.



**17.2** The CONCESSIONAIRE shall submit to CTB the plans for the OPERATION of each SECTION OF THE LRV and for the LRV FULL OPERATION, as the case may be, which shall avail of, at least, the following aspects:

**17.2.1** the procedures for the OPERATIONS, under EXHIBIT 5 and;

**17.2.2** the time schedule of the contracting, training and mobilization of employees, third parties or service providers, taking into account also the OPERATING LANDMARKS of subclause 4.3.

**17.3** The plan shall be submitted to the GRANTING AUTHORITY for approval within sixty (60) days term before the OPERATION startup of each SECTION OF THE LRV, and may be improved according to the CTB's determinations.

**17.4** Further to meet the provisions set forth in EXHIBIT 5, the performance of the SERVICES shall comply with the technical standards applicable, especially:

**17.4.1** the regulation edited by the GRANTING AUTHORITY;

**17.4.2** the regulation of INMETRO;

**17.4.3** the regulation of ABNT.

**17.5** The CONCESSIONAIRE shall perform the services so as to assure the best results to the GRANTING AUTHORITY and the USERS, using permanently and continued its best efforts to optimize the management of the human resources, consumption material and ASSETS TIED to the CONCESSION.

**17.6** The GRANTING AUTHORITY may issue determinations to alter the service provision rules, as well as define specific protocols with purpose to improve its quality.

**17.7** Except upon express authorization of the GRANTING AUTHORITY, it is prohibited the performance of services not included in this AGREEMENT and its EXHIBITS, as well as its performance in a way other than the ones provided for therein.

**17.7.1** Aiming at the costs reduction or increase in the quality of the service to the USERS, the GRANTING AUTHORITY may order or authorize the performance of the services not included in EXHIBIT 5 of the AGREEMENT, as well as its performance in a way other than the one provided for therein, provided that:

**17.7.1.1** does not cause the alteration of the object of the AGREEMENT;

**17.7.1.2** does not jeopardize the PERFORMANCE APPRAISAL of the CONCESSIONAIRE.

**17.8** Aiming at the attraction of the PASSENGERS, its best distribution during the LRV working hours, in holydays, weekends and the correct service of the PROJECTED



DEMAND, the PARTIES may, upon mutual consent, alter the procedures and parameters provided for in EXHIBIT 5.

- 17.9** Upon agreement, the PARTIES may create an auxiliary transportation system to feed the LRV, consisting of any type of equipment, such as, but without limitation to, microbus, escalator, cableways and funiculars, with purpose to make easier the passenger access to the STOPS.

## **Clause 18 – ELECTRIC POWER ACQUISITION**

- 18.1** The GRANTING AUTHORITY shall be liable for the acquisition of electric power quotas required for the performance of the AGREEMENT, what shall be done according to the ENERGY PLAN prepared by the CONCESSIONAIRE under this clause.

**18.1.1** Based on the ENERGY PLAN submitted by the CONCESSIONAIRE, the GRANTING AUTHORITY shall execute the supply with the electric power distribution concessionaire.

**18.1.2** The CONCESSIONAIRE, from the ENERGY PLAN approved, shall assist the GRANTING AUTHORITY in the negotiation of the energy supply conditions with the electric power distribution concessionaire.

- 18.2** With one hundred and fifty (150) days prior to the OPERATING LANDMARK 1 of the LRV the CONCESSIONAIRE shall submit to the GRANTING AUTHORITY the ENERGY PLAN of the CONCESSION which shall contemplate the steps of the OPERATION of the LRV.

**18.2.1** Annually the CONCESSIONAIRE shall prepare the new ENERGY PLAN, submitting it to the GRANTING AUTHORITY up to July 31 of each year.

- 18.3** The ENERGY PLAN shall:

**18.3.1** Comprise the period from January 1<sup>st</sup> to December 31 of the year subsequent to its submission, and, in the case of the first plan, also contemplate the first months of the OPERATION of the LRV relevant to the year of its start;

**18.3.2** Estimate, individually through CONSUMPTION CENTER, the consumption of electric power required to the SERVICE provision in compliance with the conditions and parameters provided for in the AGREEMENT and EXHIBIT 5;

**18.3.3** Foresee a contingency margin for emergency and/or exceptional consumption situations.



**18.4** Upon submitted the ENERGY PLAN according to the subclauses above, the GRANTING AUTHORITY may request clarifications and correction, should it understand that there was noncompliance with the guidelines set forth in the AGREEMENT and its EXHIBITS.

**18.4.1** The approval of the ENERGY PLAN by the GRANTING AUTHORITY does not obviate the liability of the CONCESSIONAIRE for the accuracy of the information provided, and shall not be valid the opposition of the acceptance as excluding cause for the liabilities for supervening faults or defects.

**18.4.2** For approval of the ENERGY PLANS, the GRANTING AUTHORITY may be assisted by third parties, including by the INDEPENDENT VERIFIER.

**18.5** The GRANTING AUTHORITY's liability to acquire electric power quotas required to the performance of the AGREEMENT does not exempt the CONCESSIONAIRE's liability for the IMPLEMENTATION of the electric power feeding systems required to the LRV's proper energizing.

## **Clause 19 – REPRESENTATIONS**

**19.1** The CONCESSIONAIRE hereby represents it obtained, whether on its own or through third parties, all information required for the compliance with its contractual liabilities, and that it conducted the surveys and studies required for the preparation of its PROPOSAL and for the performance of the subject matter of the AGREEMENT, including possible interferences with existing projects and works.

**19.2** The CONCESSIONAIRE also represents:

**19.2.1** it is fully aware of the nature and extension of the risks taken thereby in the AGREEMENT;

**19.2.2** it took such risks into consideration when prepared its PROPOSAL;

**19.2.3** it is fully aware and acknowledged that the compensation variation is a mechanism covenanted between the PARTIES for the maintenance of the contractual balance between the services provided and the compensation therefor, immediately and automatically applied by the GRANTING AUTHORITY, in view of the variance between the services provided and the requirements in the AGREEMENT;

**19.2.4** that the PROPOSAL is unconditional and took into consideration all investments, taxes, and burdens (including, but without limitation to, the financial ones) necessary to operate the CONCESSION, as well as the risks to



be taken by the CONCESSIONAIRE by virtue of the CONCESSION OPERATION and the twenty (20)-year term for CONCESSION.

## Clause 20 – PROVISION OF INFORMATION

**20.1** During the CONCESSION, and without prejudice to the other liabilities set forth in the AGREEMENT or in the applicable laws, the CONCESSIONAIRE undertakes to:

**20.1.1** give immediate notice to the GRANTING AUTHORITY of any and all fact altering the CONCESSION's ordinary development, or which, in any manner, interrupts the proper provision of the SERVICES to the PASSENGERS;

**20.1.2** monthly submit, to CTB, Implementation Follow-up Report, during the IMPLEMENTATION step, containing detailed information on the advances of works, equipment acquisitions, service provisions, to be delivered up to the thirtieth (30<sup>th</sup>) day of the subsequent month, in compliance with the provisions in EXHIBIT 4;

**20.1.3** monthly submit, to CTB, Operation Follow-up Report, during the OPERATION step, containing material information on the provision of services, provision of preventive and predictive maintenance services, training courses given to collaborators, technological update, in compliance with the provisions in EXHIBIT 5;

**20.1.4** provide to the GRANTING AUTHORITY or the Administration control bodies and entities, within the term established thereby, information they shall request;

**20.1.5** submit to the GRANTING AUTHORITY, whenever requested thereby, the agreements and invoices from outsourced activities, receipts for the payment of taxes, and payment receipts for the respective social security liabilities;

**20.1.6** submit, to CTB, quarterly report concerning the operation of the User Service Center, with the USERS' complaints, as well as with the answers given, actions taken in each case, and the time for response and action;

**20.1.7** quarterly submit to the GRANTING AUTHORITY its accounting and financial statements, accompanied by report from independent audit firm, in compliance with the Federal Law no. 6.404, of December 15, 1976 (Generally Accepted Accounting Principles in Brazil (BR GAAP)), the Federal Law no. 11.638, of December 28, 2007, and the Federal Law no. 9.430, of December 27, 1996, or rules to succeed such statutes, within the following terms:

**20.1.7.1** forty-five (45) days from the end of each quarter, for quarterly reports;



**20.1.7.2** twenty (20) days from the end of the accounting year, for the annual report.

**20.2** The annual financial statements shall contemplate the following information:

**20.2.1** transactions with the parent company or subsidiaries;

**20.2.2** depreciation and amortization of the CONCESSIONAIRE's assets;

**20.2.3** provision for (civil, labor, tax, environmental or administrative) contingencies;

**20.2.4** management report;

**20.2.5** opinion of the statutory audit committee, if installed;

**20.2.6** CONCESSIONAIRE's declaration including the amount of its paid-up corporate capital and the alterations in its membership.

**20.3** The GRANTING AUTHORITY's knowledge of possible agreements entered into with third parties does not release the CONCESSIONAIRE from the total or partial compliance with its liabilities arising out of this AGREEMENT.

## **Clause 21 – CONTRACTS WITH THIRD PARTIES AND HIRING OF EMPLOYEES**

**21.1** For performing the OPERATION and the IMPLEMENTATION, the CONCESSIONAIRE shall use its employees, and may contract third parties for conducting activities inherent, ancillary or complementary to the IMPLEMENTATION and the OPERATION, and for the implementation of associated projects, in compliance with the conditions set forth in the PUBLIC NOTICE concerning technical qualification and designated third party.

**21.2** The CONCESSIONAIRE shall be held objective liability for damages its agents, employees or third subcontractors, in such capacity, shall cause to the GRANTING AUTHORITY, the USERS, and third parties.

**21.3** The employees and third parties contracted by the CONCESSIONAIRE shall have technical skills for performing their activities.

**21.4** The CONCESSIONAIRE shall, upon prior notice to the GRANTING AUTHORITY, implement training plan and orientation to employees and third parties contracted thereby.



- 21.5** The CONCESSIONAIRE shall use its best efforts for the employees and third subcontractors to maintain a good relationship with the GRANTING AUTHORITY's servants and the general public.
- 21.6** For the provision of the SERVICES, the CONCESSIONAIRE shall appoint an agent in charge, who shall assure the proper performance thereof, take relevant actions, and report them, as required, to the GRANTING AUTHORITY.
- 21.7** The communication between the PARTIES and the requests for corrective actions by the GRANTING AUTHORITY in relation to the CONCESSIONAIRE shall be made through representatives of the CONCESSIONAIRE.
- 21.8** The CONCESSIONAIRE shall instruct its personnel on the need of complying with Labor Safety and Medicine rules, fire prevention rules, and those related to the use of Personal Protective Equipment (PPE).
- 21.9** The CONCESSIONAIRE shall remove and substitute employees and third subcontractors not complying with the labor rules, servicing standards required, the GRANTING AUTHORITY's requests, or who cause any sort of embarrassment to USERS, within time not to exceed twenty-four (24) hours from final decision on the respective disciplinary proceeding or, at its discretion, preventively, from the moment it becomes aware of the act.
- 21.9.1** In the case of the provisions in the precedent subclause, except for the hypothesis of gross negligence, the employee or third subcontractor may be reintegrated into the activity in the event that he has been successfully completed training or refreshment course turned to his rehabilitation.
- 21.9.2** Employee or third subcontractor who evidences his innocence in relation to the imputations or accusations brought against him may also be rehired or re-contracted.
- 2.10** The CONCESSIONAIRE has the right to prevent the circulation of any employee or nominee bearing infectious-contagious disease, or who is not complying with general hygiene precepts.
- 21.11** The agreements between the CONCESSIONAIRE and its employees or third subcontractors shall be governed by the private law rules, not creating, in any case, relationship of any nature between employees, third subcontractors, and the GRANTING AUTHORITY.
- 21.12** All employees and third parties contracted by the CONCESSIONAIRE shall bear identification (badges) with recent picture and, should it be required for the function,



duly using uniforms bearing the CONCESSIONAIRE's logotype when discharging their tasks.

**21.13** The CONCESSIONAIRE takes full and sole responsibility for labor, social security, tax, accident, environmental or any other liability concerning its employees or third subcontractors.

**21.14** The CONCESSIONAIRE shall indemnify and hold harmless the GRANTING AUTHORITY from and against any suit or loss it shall suffer in reason of:

**21.14.1** act performed in gross negligence or with malice aforethought by the CONCESSIONAIRE, its managers, employees, nominees, service providers, third parties it has contracted, or any other natural person or legal entity connected therewith;

**21.14.2** issues having a labor, social security, or accident nature, related to the CONCESSIONAIRE's employees and third subcontractors;

**21.14.3** the incurrence of objective liability for damages arising out of acts and facts related to the IMPLEMENTATION, SERVICES, and activities generating EXTRAORDINARY REVENUES;

**21.14.4** of issues having an environmental nature related to the IMPLEMENTATION, SERVICES, and activities generating EXTRAORDINARY REVENUES; and

**21.14.5** of issues having a fiscal or tax nature, related to the IMPLEMENTATION, SERVICES, and activities generating EXTRAORDINARY REVENUES.

**21.15** The CONCESSIONAIRE shall also indemnify and hold harmless the CONCESSIONAIRE from and against legal expenses, attorney's fees, and other burdens to be directly or indirectly borne thereby in reason of the events set out in subclause 21.14.

**21.16** The GRANTING AUTHORITY is hereby given the option to offset, from subsequent PUBLIC CONSIDERATIONS, amounts arising out of the application of subclause 21.14.

## **Clause 22 – CONCESSION'S CONTROL**

**22.1** The control of the IMPLEMENTATION and OPERATION of the LRV shall be a GRANTING AUTHORITY's responsibility, to be performed through delegation, by CTB, whether solely or upon support by third parties contracted for that.



**22.2** The CONCESSION control service shall have free and unconditional access to the CONCESSIONAIRE's facilities, as well as to databanks and other facilities used for the performance of the AGREEMENT, so the CONCESSIONAIRE shall accept and facilitate the control work.

**22.3** The CONCESSIONAIRE shall make the monthly payment, as control fee, for the whole term the AGREEMENT remains effective, to CTB, which is assigned to take, among other assignments, the control of the AGREEMENT, under the following amounts:

**22.3.1** Four hundred thousand Brazilian *Reais* (R\$ 400,000.00), per month, to be paid up to the fifth business day of the month subsequent to be elapsed month, due from the fourth month upon the date the AGREEMENT was executed, up to the beginning of the LRV FULL OPERATION, to be annually restated in accordance with the IPCA, considering the base date of January/2017; and

**22.3.2** One hundred thousand Brazilian *Reais* (R\$ 100,000.00), per month, to be paid up to the fifth business day of the month subsequent to be elapsed month, from the beginning of the LRV FULL OPERATION to the expiration of the AGREEMENT, to be annually restated in accordance with the IPCA, considering the base date of January/2017.

## **22.4 IMPLEMENTATION CONTROL**

**22.4.1** For following up the IMPLEMENTATION, and for checking the compliance with the IMPLEMENTATION TIME SCHEDULE, CTB may be aided by third parties contracted thereby.

**22.4.1.1** CTB shall, possibly aided by third parties, assess the list of BLOCKED ASSETS, evaluate the contents of the ESCHEATABLE ASSETS' list, evaluate and follow up the IMPLEMENTATION TIME SCHEDULE, analyze and validate the preliminary design and the executive designs, and the specification booklet provided by the CONCESSIONAIRE, in the minimum implementation conditions set forth in EXHIBIT 4, under Clause 14, and the test and commissioning steps, under subclauses 15.1.1 to 15.1.2, up to the final receipt provided for in subclause 15.5.

**22.4.2** CTB shall register and process the events assessed by the control service, giving notice to the CONCESSIONAIRE for regularization of the faults or defects observed, without prejudice to possible application of penalties provided for in this AGREEMENT.

**22.4.3** Even though the faults and defects assessed by the control service do not give rise to the application of penalties, the noncompliance, by the



CONCESSIONAIRE, with the regularization or correction terms determined by CTB shall give rise to the initiation of administrative proceeding, subjecting the CONCESSIONAIRE to the application of the penalties provided for in this AGREEMENT.

**22.4.4** In the case of nonperformance of the agreement, actions shall be taken in accordance with subclauses 34.9.1 to 34.9.8.

**22.4.5** The CONCESSIONAIRE shall be required to repair, correct, interrupt, suspend or substitute, at its expenses, and within the term fixed by CTB, the faults or defects observed in the IMPLEMENTATION performance, as well as the LRV SERVICES.

**22.4.6** CTB may require, within terms to be specified thereby, that the CONCESSIONAIRE provides an action plan aimed at repairing, correcting, interrupting, suspending, or substituting any activity conducted in faulty, defective, or incorrect way.

**22.4.7** In the case of omission, by the CONCESSIONAIRE, as for the liability provided for in subclause 22.4.2., without prejudice to the intervening hypothesis provided for in Clause 35, CTB may cause the correction of the situation, whether directly or through third party, even with possibility of provisionally occupancy of the CONCESSIONAIRE's assets and facilities.

**22.4.8** In compliance with the duty above, the GRANTING AUTHORITY may avail of the PERFORMANCE BOND for being refunded of the involved burdens, as well as of possible indemnities due to third parties, and for remedying the identified vices, defects, or incorrectness.

## **22.5 OPERATION CONTROL**

**22.5.1** CTB shall conduct the OPERATION control, supported by the INDEPENDENT VERIFIER, which, among other assignments, shall: (i) prepare the PERFORMANCE APPRAISAL and the calculation of the ACTUAL CONSIDERATION's variation; (ii) prepare the calculation of the adjustments of amounts provided for in the AGREEMENT; and (iii) provide USERS' satisfaction survey, without prejudice to other assignments provided for in this AGREEMENT.

**22.5.1.1** The CONCESSIONAIRE shall be required to contract the INDEPENDENT VERIFIER, pursuant to EXHIBIT 10.

**22.5.1.2** Exceptionally, in the hypothesis of delay in contracting the INDEPENDENT VERIFIER, CTB shall be directly liable for conducting



the PERFORMANCE APPRAISAL, and for calculating the variation of the ACTUAL CONSIDERATION and for the recomposition of the economic-financial balance of the AGREEMENT.

- 22.5.2** The determinations to be issued within the scope of the inspections provided shall be immediately applicable, and shall be binding on the CONCESSIONAIRE, without prejudice to possibly reasonable appeal.
- 22.5.3** The CTB's control service shall annotate, in proper record document, the assessed events, forwarding them to the CONCESSIONAIRE for regularization of the faults or defects observed.
- 22.5.4** The CONCESSIONAIRE shall be required to repair, correct, interrupt, suspend or substitute, at its expenses, and within a thirty (30)-day term, the services, related to the CONCESSION, containing vides, defects, or incorrectness.
- 22.5.4.1** The term informed in the precedent subclause is extendable upon justification accepted by the GRANTING AUTHORITY.
- 22.5.4.2** The non-regularization of the faults or defects informed in the incident record sheet within the fixed term, extendable upon justification accepted by CTB, and without prejudice to the continuance and suitability of the services, characterizes breach of agreement, subjecting the CONCESSIONAIRE to the application of the penalties provided for in the AGREEMENT, and to possible administrative, civil, or criminal sanction for breach of applicable legal or non-statutory precept.
- 22.5.5** CTB may demand that the CONCESSIONAIRE submits an action plan intended to repair, correct, interrupt, suspend or substitute any service provided in faulty, defective, or incorrect manner, in relation to the CONCESSION, in term to be established by CTB. CTB may accompany the service provision, and may ask for clarifications or modifications in the event that it sees the existence of noncompliance with the liabilities provided for in the AGREEMENT, especially as for the compliance with performance benchmarks.
- 22.5.6** The clarifications or modifications requested by CTB to the CONCESSIONAIRE shall not alter, in any manner whatsoever, the allocation of risks provided for in the AGREEMENT.
- 22.5.7** The total or partial noncompliance with the investment liabilities by the CONCESSIONAIRE, shall involve reduction of the CONCESSIONAIRE's



compensation, in the event that it means noncompliance with the performance benchmarks fixed in EXHIBIT 6.

**22.5.8** In the event of the CONCESSIONAIRE's omission to comply with CTB's determinations in its control capacity, CTB shall have the option to correct the situation whether directly or through third party, and the respective costs shall be borne by the CONCESSIONAIRE.

**22.5.8.1** The GRANTING AUTHORITY is given the option to enforce the PERFORMANCE BOND for remedying vices, defects, or incorrectness identified.

**22.5.9** The CONCESSIONAIRE shall assure to the GRANTING AUTHORITY, CTB, and the INDEPENDENT VERIFIER, unrestricted, uninterrupted, and online access to the SERVICES' follow-up and monitoring systems. The INDEPENDENT VERIFIER shall prepare and submit a procedure manual for the PERFORMANCE APPRAISAL up to sixty (60) days before the beginning of the LRV FULL OPERATION.

**22.5.9.1** The PARTIES shall analyze the procedure manual for the PERFORMANCE APPRAISAL within thirty (30) days from its submission by the INDEPENDENT VERIFIER, and shall approve it or inform the need of adequacies and corrections in accordance with the rules of this AGREEMENT, and with the guidelines set forth in EXHIBIT 6.

**22.5.9.2** Should the PARTY(IES) determine that adequacies or corrections are made in the procedure manual for the PERFORMANCE APPRAISAL, the INDEPENDENT VERIFIER shall have twenty (20) days for carrying out the determined adequacies or corrections, and resubmit it.

**22.5.9.3** In the hypothesis provided for in the precedent subclause, the PARTIES shall have ten (10) days for approving the procedure manual for the PERFORMANCE APPRAISAL, duly corrected.

**22.5.9.4** In the event that the PARTIES fail to pronounce within the terms provided for in the subclauses above, the procedure manual for PERFORMANCE APPRAISAL provided by the INDEPENDENT VERIFIER shall be deemed accepted.

## Clause 23 – USERS' RIGHTS AND OBLIGATIONS



**23.1** Without prejudice to other rights and obligations provided in law and regulations, the following are USERS' rights:

- 23.1.1** to count on the proper provision of the SERVICES, based on the minimum specifications and on the PERFORMANCE APPRAISAL, referred to in EXHIBITS 5 and 6, respectively;
- 23.1.2** to be treated with politeness and respect by the CONCESSIONAIRE's nominees and employees;
- 23.1.3** to be benefited of gratuities and reductions specified in the laws;
- 23.1.4** to receive information from the GRANTING AUTHORITY and the CONCESSIONAIRE concerning the provision of the SERVICES, for defense of individual or collective interests;
- 23.1.5** to inform the GRANTING AUTHORITY and the CONCESSIONAIRE of irregularities he is aware of;
- 23.1.6** to inform to the relevant authorities, the illegal acts performed by the CONCESSIONAIRE upon the performance of the IMPLEMENTATION and the SERVICES;
- 23.1.7** to count on effective communication channels with the CONCESSIONAIRE, through call centers and, through electronic media (website, email, fax, among others);
- 23.1.8** to be informed of any modification in the lines or in the manner how the service shall be provided no less than ten (10) consecutive days in advance; and
- 23.1.9** to count on the GRANTING AUTHORITY's and the CONCESSIONAIRE's support for the creation of associations for defense of interests related to the SERVICE.

**23.2** The USERS shall care for the conservation and good use of the CONCESSION's assets, equipment, and facilities.

### **CHAPTER III – CONCESSION'S ECONOMIC-FINANCIAL BALANCE**

#### **Clause 24 – PRICE OF THE AGREEMENT**

**24.1** The total estimated price of the AGREEMENT is XXXXXXXXXXXXXXXXXXXX (R\$ XXXXXX), related to the total estimated nominal value of payments to be made by the



GRANTING AUTHORITY, by way of ANNUAL MAXIMUM CONSIDERATION, during the whole CONCESSION's term.

**24.2** The percentage of discount on the value of CONSIDERATIONS, offered in the CONCESSIONAIRE's PROPOSAL in the TENDER, is XXXXXXX (X%).

## **Clause 25 – COMPENSATION AND OTHER REVENUES**

**25.1** The CONCESSIONAIRE shall be paid upon receiving:

**25.1.1** COMPENSATION FARE; and

**25.1.2** PUBLIC CONSIDERATIONS paid by the GRANTING AUTHORITY.

**25.2** Further to the compensation provided for in agreement, the CONCESSIONAIRE may also avail of the EXTRAORDINARY REVENUES.

### **25.3 FARE MODEL**

**25.3.1** For all purposes under this AGREEMENT, explicit separation is considered among the COMPENSATION FARE, to be relayed to the CONCESSIONAIRE for the provision of the service, the LRV PUBLIC FARE, and the PUBLIC INTEGRATION FARES to be collected from USERS by the TRADING SYSTEM.

**25.3.2** The LRV PUBLIC FARE, as well as the PUBLIC INTEGRATION FARES, shall have their prices established by the GRANTING AUTHORITY, and may only be charged upon the LRV FULL OPERATION startup.

**25.3.3** The COMPENSATION FARE is initially established to be two Brazilian *Reais* and ten cents (R\$ 2.10), to be paid to the CONCESSIONAIRE, per transported PASSENGER, regardless of being a LRV sole passenger or one from integration with the STCO, the METROPOLITAN BUSES, or the SMSL.

**25.3.3.1** The amount to be paid to the CONCESSIONAIRE, by way of COMPENSATION FARE, shall be that informed in subclause 25.3.3, and the FARE REVENUE shall result from such value multiplication by the total of transported PASSENGERS, except for infants up to two years old of age, notwithstanding they enjoy or not benefits or fare exemptions.

**25.3.4** The COMPENSATION FARE shall be relayed to the CONCESSIONAIRE through the SETTLEMENT SYSTEM, from the LRV FULL OPERATION



startup, in the manner and term provided for in Banco Central do Brasil 25.5.4 *et seq.*

- 25.3.5** The value of the COMPENSATION FARE shall be annually adjusted from the January/2017 base date, regardless of the GRANTING AUTHORITY's prior consent, pursuant to the following equation:

$$TR_{reaj} = TR_o \cdot (1 + \frac{IPCA_t}{IPCA_o})$$

where:

$TR_{reaj}$ : the adjusted COMPENSATION FARE;

$TR_o$ : the COMPENSATION FARE on January/2017 base date

$IPCA_t$ : Number of the Comprehensive Consumer Price Index ("IPCA") published by the Brazilian Institute for Geography and Statistics, 2 months before the adjustment date.

$IPCA_o$ : Number of the Comprehensive Consumer Price Index ("IPCA") published by the Brazilian Institute for Geography and Statistics, in November, 2016.

- 25.3.6** Aiming at attracting PASSENGERS, their better distribution during the LRV operation hours, on holidays, weekends, and the proper servicing of the PROJECTED DEMAND, the PARTIES may, upon agreement, grant discounts in the price of the LRV PUBLIC FARE, provided that they do not affect the share of revenues inherent to the fare integration.

- 25.3.7** The discounts referred to in this subclause may reflect discount in the COMPENSATION FARE;

## **25.4 THE INTEGRATION OF THE LRV WITH SMSL, STCO, AND METROPOLITAN BUS**

- 25.4.1** The LRV shall be integrated, as fare, with STCO, SSMSL, and the METROPOLITAN BUSES.

- 25.4.2** In any of the integration hypotheses, the COMPENSATION FARE value due to the CONCESSIONAIRE shall be maintained.

## **25.5 TRADING, COLLECTION, CUSTODY, SETTLEMENT AND DISTRIBUTION OF FARE COLLECTION**

- 25.5.1** The TRADING AGENT shall issue the tickets and cards to be solely used in the LRV, and in the LRV integration with the STCO, the LRV integration with



the METROPOLITAN BUSES, and the LRV integration with the SMSL, bearing, in all events, the costs of such operation, observing, in any hypothesis, that the funds arisen from the trading of any travel credits shall be always and immediately transferred to the SETTLEMENT SYSTEM blocked account(s).

**25.5.1.1** The tickets and cards for integration of the LRV with the STCO, the LRV with the METROPOLITAN BUSES, and the LRV with the SMSL, may be issued and traded by the respective concessionaries / assignees of such services, in which hypotheses they shall bear the costs of such operation, under the Operating Agreement to be entered into by and between such operators, with the consent of the GRANTING AUTHORITY, admitted, in such case, the partial transfer of travel credits to the blocked account(s).

## **25.5.2 TRADING SYSTEM:**

**25.5.2.1** For trading, controlling, assessing, blocking and managing all amounts received for the sale of travel credits, the TRADING AGENT shall have or implement and manage the TRADING SYSTEM, which shall allow, at least:

25.5.2.1.1 the trading, control, assessment, management and segregation of all amounts received for the sale of travel credits, in the LRV, arising from the LRV PUBLIC FARE and the PUBLIC INTEGRATION FARE(S), through the ELECTRONIC BILLING SYSTEM;

25.5.2.1.2 the control of the physical counting of transported passengers assuring the correct assessment of the amounts due to STCO's operators, the METROPOLITAN BUSES, the SMSL, and the CONCESSIONAIRE; and

25.5.2.1.3 the crediting of the amounts collected by the TRADING AGENT through the ELECTRONIC BILLING SYSTEM, for deposit in blocked account maintained with the SETTLEMENT SYSTEM.

**25.5.2.2** The TRADING SYSTEM shall have, at least, the following general objectives:

25.5.2.2.1 integration of the transportation system through the use of card allowing the transfer between the LRV and the



STCO, between the LRV and the METROPOLITAN BUSES, and between the LRV and the SMSL;

- 25.5.2.2.2 propitiation of the passengers' numeric control, so that all LRV's users, classified by category (e.g.: elderly, student, etc.) be computed;
- 25.5.2.2.3 assessment of the compliance with the service operation determinations and obtainment of operational data required for calculating the compensation for the services provided by the CONCESSIONAIRE;
- 25.5.2.2.4 allowing a data gathering capable of aiding the LRV's planning and service programming;
- 25.5.2.2.5 assurance of the interoperability of travel credits and integration cards issued by the TRADING AGENT, so that the LRV's, STCO's, METROPOLITAN BUSES' and SMSL's electronic billings systems accept said travel credits and cards, respecting preestablished operating standards, pursuant to the Operating Agreement to be executed by and between the modal operators;
- 25.5.2.2.6 allowing modal, temporal, physical, fare, logic, and spatial integration mechanisms;
- 25.5.2.2.7 allowing integrations by using the card or other media, defined per time, space, and fare collection policy capable of parameterization, allowing the transfer of the user between the LRV and the STCO, between the LRV and the METROPOLITAN BUSES, and the LRV and the SMSL;
- 25.5.2.2.8 allowing, in compliance with preestablished operating standards, pursuant to Operating Agreement to be entered into by and among the modal operators, the automatic charging and recharging of travel credits in LRV equipment or at LRV recharging stations, for all types of integration card, bringing convenience and comfort to the user and the public transport voucher buying companies, further to the cost and operational optimization required to the sale of public transport voucher and other travel rights;



25.5.2.2.9 allowing the generation, control, and traceability of travel credits in the system, using interoperation capability solution allowing the fare integration among the different transportation systems;

25.5.2.2.10 propitiation of control of all LRV users, whether inside vehicles, at the STOP blocking lines, or any other blocking characterizing the transfer from a free to a paid area. The control shall distinguish all types of users, whether paying users or not, when passing by the turnstile or any flow counting instruments being substitutes therefor, detailing the number of passengers in each category, value debited from the card, and amount due, considering the fare policies in force and revenue sharing criteria;

25.5.2.2.11 implementation of security technology against the revenue dodge;

25.5.2.2.12 allowing better control and management of beneficiaries of discounts or gratuities, allowing the identification of the actual beneficiary;

25.5.2.2.13 enabling flexibility to the fare structure.

**25.5.2.3** All USERS, payers or free users, bearers of card, shall be computed by the validating device, registering the card validation hours.

**25.5.2.4** The system shall control all USERS, making available applications managing reports, indicating, for each time range (fractioned in units capable of parameterization, in any time unit), the LRV users, detailing the user category.

**25.5.2.5** The central data storage and processing system of the TRADING SYSTEM shall contain all data related to the operation of the ELECTRONIC BILLING SYSTEM.

**25.5.2.6** The TRADING SYSTEM and its peripheral systems shall be capable of processing and issuing reports, with quality and reliability, containing, among other information: (i) the behavior of travel supply, demand, sales per type of sale station, type of charging and per type of card; (ii) the profile of free users, per type of gratuity; (iii) the profile of public transport voucher buying companies per size type, sale channel, location, and purchasing intervals; (iv) follow-up for the occurrence of losses of cards, paid and free ones, per type of card, and with replacement copy and travel credit replacement issue control; (v) the composition of the revenue per ticket and fare type; (vi)



follow-up concerning the financial behavior of the ELECTRONIC BILLING SYSTEM; (vii) follow-up for the regularity of the service provided by the CONCESSIONAIRE; (viii) follow-up for alternative revenues arisen from the ELECTRONIC BILLING SYSTEM, such as: reports on card balance, report on the use of cards, report on fees for services provided.

**25.5.2.7** In addition to that, the TRADING SYSTEM shall be capacitated for, within data bases, address other information having a managerial nature, and issuing different reports, whenever it is so requested by the GRANTING AUTHORITY or third party possible designated thereby.

**25.5.2.8** The CONCESSIONAIRE shall be liable for all contracting, planning, installation, implementation, test, customization, operation, maintenance, renovation, adaptation, expansion and development costs of the TRADING SYSTEM, complying with the liabilities set out in the subclause below.

**25.5.2.9** Within the scope of the TRADING SYSTEM, the following are CONCESSIONAIRE's liabilities:

25.5.2.9.1 to install the systems constituting the TRADING SYSTEM;

25.5.2.9.2 to maintain the TRADING SYSTEM with high availability level;

25.5.2.9.3 to technologically update all elements of the TRADING SYSTEM, including the ELECTRONIC BILLING SYSTEM;

25.5.2.9.4 to preventively and correctively maintain the entire TRADING SYSTEM;

25.5.2.9.5 to implement and customize the operating procedures of the TRADING SYSTEM, among them, the procedures for issue, sale, distribution, charging and tracking of travel credits, cards, and media; information to the user; management, communication of data and information of the system, etc., answering for the security of all procedures, bearing possible losses arising out of the implementation, supply, installation, customization, maintenance (when applicable) or improper use of its supply objects;



25.5.2.9.6 supply of programs, services, applications, platforms, equipment, data, systems, and infrastructure for control, inspection, fare collection, information to the user, and operational management of the LRV, through the contracting and provision of supply, contracting, installation, implementation, customization, operation, maintenance, renovation (or upgrade), expansion and development services for the aforementioned items;

25.5.2.9.7 supply of all own or third parties' equipment and services required to implement the services contained in the TRADING SYSTEM, as detailed in EXHIBIT 5;

25.5.2.9.8 contracting of telecommunication resources and data storage and processing services required for interconnecting all equipment, systems, and agents involved in the system operation and management;

25.5.2.9.9 contracting of specialized labor for operation, maintenance, implementation, and development of the TRADING SYSTEM.

**25.5.2.10** Any and all contracting of systems and services related to the TRADING SYSTEM and the ELECTRONIC BILLING SYSTEM shall be approved by the GRANTING AUTHORITY.

### **25.5.3 ELECTRONIC BILLING SYSTEM:**

**25.5.3.1** The issue and trading of travel credits shall be controlled by the TRADING AGENT, which shall immediately transfer funds to the SETTLEMENT SYSTEM, for custody in the blocked account(s), through the ELECTRONIC BILLING SYSTEM, the implementation of which shall comply with the specifications and objectives provided for in EXHIBIT 5, and also the following guidelines:

25.5.3.1.1 The ELECTRONIC BILLING SYSTEM shall allow the operation of the structure for the issue and distribution of tickets and travel cards for using the LRV, as well as the registration of public transport voucher buying entities and common users, or entities, companies or natural persons buyers of any travel credits, pursuant to the GRANTING AUTHORITY's definitions;



25.5.3.1.2 The TRADING AGENT shall implement and operate travel credit sale stations at departure and arrival points, kiosk and other strategic points, and to make available information, data, and contents to the LRV USERS and any citizen, availing, for that, of proper and sufficient technology and equipment. At such places, the users may recharge their cards with travel credits upon the purchase or prepaid purchase or credit issued for the benefit of such user or entity or company.

25.5.3.1.3 The ELECTRONIC BILLING SYSTEM shall ensure the fare integration between the **LRV** and the **STCO**, between the **LRV** and the **METROPOLITAN BUS**, and between the **LRV** and the **SMSL**, it being allowed up to two integrations of the **STCO-LRV-STCO**, **METROPOLITAN BUS-LRV-STCO**, **LRV-STCO-SMSL**, in period no exceeding two hours;

#### **25.5.4 CUSTODY AND SETTLEMENT OF THE FARE REVENUE:**

**25.5.4.1** The GRANTING AUTHORITY grants to the CONCESSIONAIRE powers for it, in its name, place in custody and settle the amounts arisen from the LRV PUBLIC FARE and the PUBLIC INTEGRATION FARE(S), according to the subclauses below.

25.5.4.1.1 The CONCESSIONAIRE shall be liable for the acts performed thereby in the administration of fare values, so it may not, in any hypothesis whatsoever, appropriate such funds beyond the authorizations provided for in the AGREEMENT.

**25.5.4.2** The amounts alluded by the precedent subclause shall be placed in custody and settled in accordance with the SETTLEMENT SYSTEM, which shall be created by the CONCESSIONAIRE, along with the other SMSL, STCO, and METROPOLITAN BUS operators, as the fare integration provided for by subclause 25.4 of the AGREEMENT is made.

25.5.4.2.1 The fare funds may be placed in custody in the SETTLEMENT SYSTEM through blocked account(s), or in any other way the CONCESSIONAIRE shall agree with the operators of the other modals, upon the GRANTING AUTHORITY's prior consent.



**25.5.4.3** The costs for creating, operating and maintaining the SETTLEMENT SYSTEM shall be solely borne by the CONCESSIONAIRE, and the use of the funds placed in custody by the SETTLEMENT SYSTEM, or the financial yields thereof, shall not be admitted for such purpose.

**25.5.4.4** The SETTLEMENT SYSTEM shall meet, at least, the following requisites:

25.5.4.4.1 The CONCESSIONAIRE shall operate the amounts in custody in the blocked account(s) only for the following purposes:

25.5.4.4.1.1 payment of the COMPENSATION FARE to the CONCESSIONAIRE;

25.5.4.4.1.2 payment of compensation fares arising out of the fare integration, due to the STCO, the METROPOLITAN BUSES, and the SMSL operators;

25.5.4.4.1.3 release of the surplus in the blocked account(s) to the CONCESSIONAIRE, as provided for in subclause 26.2.2.4 of the AGREEMENT.

**25.5.4.5** The CONCESSIONAIRE shall assure to the GRANTING AUTHORITY and the INDEPENDENT VERIFIER full openness of the operating and financial data of the SETTLEMENT SYSTEM, informing them of the agreements entered into with the other operators of the SETTLEMENT SYSTEM, and of their activities of collection and distribution of fare revenues.

25.5.4.5.1 The CONCESSIONAIRE shall monthly send to the GRANTING AUTHORITY and the INDEPENDENT VERIFIER, reports containing the description of all events related to the collection and distribution of all fare revenues.

**25.5.4.6** The CONCESSIONAIRE shall ensure that the SETTLEMENT SYSTEM shall recognize the travel credits actually used; as well as the reciprocal credits of all operators integrating the SETTLEMENT SYSTEM, and the relay of the amounts due to their respective



creditors up to the day subsequent to the day the travel has been made.

**25.5.4.7** The CONCESSIONAIRE shall ensure that the SETTLEMENT SYSTEM prioritizes the payment of STCO, METROPOLITAN BUSES, and SMSL operators.

**25.5.4.8** The net funds of the blocked accounts shall be incorporated into their balance.

**25.5.4.9** The services the CONCESSIONAIRE shall answer for, related to the TRADING SYSTEM, the ELECTRONIC BILLING SYSTEM, and the SETTLEMENT SYSTEM, may be subcontracted with the concessionaire of the SMSL, in compliance with the conditions in this subclause.

## 25.6 THE PUBLIC CONSIDERATIONS

**25.6.1** The PUBLIC CONSIDERATIONS due to the CONCESSIONAIRE shall be complied with in accordance with the payment time schedule established in EXHIBIT 7, and with the rules provided for in the subclauses below.

### 25.6.2 PROPORTIONAL CONSIDERATION

**25.6.2.1** From the OPERATIONAL LANDMARK 1 to the LRV FULL OPERATION, the CONCESSIONAIRE shall be entitled to receive the PROPORTIONAL CONSIDERATION, pursuant to the following percentages:

Operational Landmark	Section comprised	PROPORTIONAL CONSIDERATION
1	Section 1 and 2 Comércio – Baixa do Fiscal	25% of the MONTHLY OPERATION CONSIDERATION
2	Sections 1, 2 and 3 Comércio – São Luis de Paripe	100% of the MONTHLY OPERATION CONSIDERATION

**25.6.2.2** The payments of the PROPORTIONAL CONSIDERATION shall be monthly made, up to the twentieth (20<sup>th</sup>) day of each month subsequent to that of the respective SERVICE provision, upon pecuniary deposit in separate checking account managed by the PAYMENT AGENT, under the State Law no. 11.477, of July 1, 2009, and EXHIBIT 9 to this AGREEMENT.



**25.6.2.3** The calculation of the first installment of the PROPORTIONAL CONSIDERATION shall be made on a *pro rata* basis, according to the days elapsed between the LRV SECTION OPERATION startup and the last day of the respective month.

### **25.6.3 MONTHLY OPERATION CONSIDERATION**

**25.6.3.1** From the LRV FULL OPERATION to the twelfth (12<sup>th</sup>) subsequent month, the CONCESSIONAIRE shall receive, pursuant to Exhibit 7, the entire MONTHLY OPERATION CONSIDERATION without reductions arisen from the PERFORMANCE APPRAISAL.

**25.6.3.2** From the thirteenth (13<sup>th</sup>) month of the LRV FULL OPERATION, the CONCESSIONAIRE shall receive the MONTHLY OPERATION CONSIDERATION with reductions of the IGDA, arisen from the PERFORMANCE APPRAISAL of the latest twelve (12) months, and it shall so remain until the expiration of the AGREEMENT.

### **25.6.4 ACTUAL CONSIDERATION**

**25.6.4.1** Provided that the IMPLEMENTATION is completed, from the fortieth (40<sup>th</sup>) month from the date when the AGREEMENT was executed, the CONCESSIONAIRE shall be entitled to receive the ACTUAL CONSIDERATION, which shall consist of the sum of the MONTHLY INVESTMENT CONSIDERATION to the result of the multiplication of the MONTHLY OPERATION CONSIDERATION by the IGDA, arisen from the PERFORMANCE APPRAISAL, pursuant to EXHIBIT 6 and the rules set out hereafter.

## **25.7 PERFORMANCE APPRAISAL**

**25.7.1** The PERFORMANCE APPRAISAL shall be conducted from the LRV FULL OPERATION startup, and, from such moment on, performance grades shall be assessed at annual intervals, as provided for in EXHIBIT 6.

**25.7.2** Up to the LRV FULL OPERATION startup, and during the first year of its OPERATION, the IGDA shall not be applied and the CONCESSIONAIRE shall receive the MONTHLY OPERATION CONSIDERATION without reductions arisen from the PERFORMANCE APPRAISAL.

**25.7.3** The benchmarks forming the PERFORMANCE APPRAISAL may be assessed in different time intervals, provided for in EXHIBIT 6, without prejudice to the annual assessment of the IGDA, which shall actually determine the value of the ACTUAL CONSIDERATION.



- 25.7.4** The PERFORMANCE APPRAISAL benchmarks may be reviewed upon the CONCESSION's ordinary review, under subclause 27.1.2.2, in order to grant greater efficiency and effectiveness in the provision of the SERVICE to the USER.
- 25.7.2** Up to the LRV FULL OPERATION startup and during the first year of its OPERATION, the IGDA shall not be applied and the CONCESSIONAIRE shall receive the MONTHLY OPERATION CONSIDERATION without the reductions arisen from the PERFORMANCE APPRAISAL.
- 25.7.3** The benchmarks forming the PERFORMANCE APPRAISAL may be assessed at different time intervals, provided for in EXHIBIT 6, without prejudice to the annual assessment of the IGDA, which shall actually determine the value of the ACTUAL CONSIDERATION.
- 25.7.4** The benchmarks of the PERFORMANCE APPRAISAL may be reviewed upon the CONCESSION's ordinary review, under subclause 27.1.2.2, in order to grant more efficiency and effectiveness in the provision of the SERVICE to the USER.
- 25.7.5** The non-reduction of the MONTHLY OPERATION CONSIDERATION, arising out of the PERFORMANCE APPRAISAL in certain steps of the OPERATION, does not release the CONCESSIONAIRE from taking, during such period, all actions required to the full compliance with its liabilities, subject to the application of the specific penalties provided for in Clause 34.
- 25.7.6** The CONCESSIONAIRE shall, no later than thirty (30) days upon the LRV FULL OPERATION startup, implement computed system for conducting the PERFORMANCE APPRAISAL, as provided for in EXHIBIT 6.
- 25.7.7 ASSESSMENT OF THE IGDA**
- 25.7.7.1** The process for assessing the IGDA and determining the amount of the ACTUAL CONSIDERATION shall comply with the following:
- 25.7.7.1.1** The INDEPENDENT VERIFIER shall conduct the PERFORMANCE APPRAISAL in the course of twelve (12) months, and shall send to the GRANTING AUTHORITY, up to fifteen (15) days upon the end of the appraised period, the assessing report for the PERFORMANCE APPRAISAL, containing also the information of the amount of the ACTUAL CONSIDERATION due for the subsequent twelve (12) months.



25.7.7.1.2 The GRANTING AUTHORITY shall pay to the CONCESSIONAIRE the amount of the ACTUAL CONSIDERATION, informed in the report provided by the INDEPENDENT VERIFIER.

25.7.7.1.3 In the case of divergences as for the amount of the ACTUAL CONSIDERATION, either PARTY may request the institution of the FOLLOW-UP COMMITTEE addressed in subclause 42.1, up to fifteen (15) days from the INDEPENDENT VERIFIER's pronouncement mentioned in subclause 25.7.7.1.1.

25.7.7.1.4 The FOLLOW-UP COMMITTEE shall, upon its institution, have a thirty (30)-day term for deciding the amount of the ACTUAL CONSIDERATION due to the CONCESSIONAIRE.

25.7.7.1.5 The term in the subclause above may be extended for equal period, provided that there is mutual consent by the PARTIES.

25.7.7.1.6 The increase or reduction of the differences shall be incorporated into the ACTUAL CONSIDERATION of the subsequent month.

25.7.7.1.7 The amount due after each assessment shall be effective until new assessment is made and new value is fixed.

**25.7.7.2** Should the CONCESSIONAIRE obtain, in the PERFORMANCE APPRAISAL, in three consecutive years, the "Satisfactory" rating, in two consecutive years, the "Marginally Satisfactory" rating, or in any year the "Unsatisfactory" rating, it shall submit to the GRANTING AUTHORITY, within a sixty (60)-day term, an action plan for achieving the "Fully Satisfactory" performance in the next year, as provided for in EXHIBIT 6.

## **25.8 ADJUSTMENTS OF THE ANNUAL MAXIMUM CONSIDERATION**

**25.8.1** The ANNUAL MAXIMUM CONSIDERATION shall be annually adjusted under this clause, from the base date of the PROPOSAL to determine the month January/2017.



**25.8.1.1** The HALF-YEARLY INVESTMENT CONSIDERATION shall be adjusted pursuant to the variation of the IPCA, in compliance with the methodology set forth in subclause 25.3.5.

**25.8.1.2** The ANNUAL OPERATION CONSIDERATION shall be adjusted in accordance with the following equation:

$$CP_{\text{opreaj}} = CP_{\text{opo}} \times (0.60 \times IPCA_t / IPCA_o) \times (0.40 \times IDIS_t / IDIS_o)$$

where:

$CP_{\text{opreaj}}$ : the adjusted ANNUAL OPERATION CONSIDERATION;

$CP_{\text{opo}}$ : the ANNUAL OPERATION CONSIDERATION on the base date January/2017;

$IPCA_t$ : Number of the Comprehensive Consumer Price Index ("IPCA") published by the Brazilian Institute for Geography and Statistics 2 months before the adjustment date;

$IPCA_o$ : Number of the Comprehensive Consumer Price Index ("IPCA") published by the Brazilian Institute for Geography and Statistics in November, 2016;

$IDIS_t$  – is the number-index reflecting the base pay obtained upon agreement, convention, or labor collective bargaining agreement negotiated by labor Union for railway and subway companies of the States of Bahia and Sergipe ("SINDIFERRO"), in force at the time of the adjustment;

$IDIS_o$  – is the number-index reflecting the base pay obtained upon agreement, convention, or labor collective bargaining agreement negotiated by labor Union for railway and subway companies of the States of Bahia and Sergipe ("SINDIFERRO"), in force in January/2017;

**25.8.2** The PUBLIC CONSIDERATION shall have its first adjustment (i) one (1) year from January/2016 or (ii) on the date the payment was initiated, whichever the later.

**25.8.3** The date of the first adjustment of the PUBLIC CONSIDERATIONS shall be considered as base date for purpose of subsequent annual adjustments.

## **25.9 EXTRAORDINARY REVENUES**

**25.9.1** The CONCESSIONAIRE is authorized to exploit the following EXTRAORDINARY REVENUES, provided that they are included in the business plan submitted upon the execution of the AGREEMENT:



- 25.9.1.1** commercial exploitation of stores, kiosks, snack bars, convenience machines, bathrooms, service stations at stops, facilities and accesses to the LRV;
- 25.9.1.2** commercial exploitation of advertising and communication spaces, except for naming rights on trains, accesses and stops.
- 25.9.2** The revenues and burdens arisen from the exploitation of activities provided for in subclause 25.9.1 shall not be shared with the GRANTING AUTHORITY.
- 25.9.3** The EXTRAORDINARY REVENUES informed in subclause 25.9.1 shall be exploited upon the CONCESSIONAIRE's sole account and risk, so claims for economic-financial rebalance by the PARTIES shall not be admitted.
- 25.9.4** The CONCESSIONAIRE may commercially exploit the naming rights associated to the trains, STOPS, and accesses to the LRV, provided that it shares, with the GRANTING AUTHORITY, amount corresponding to five percent (5%) of the whole gross revenue obtained with such activity.
- 25.9.5** The CONCESSIONAIRE shall submit, eighteen (18) months upon the execution of the AGREEMENT, studies, including business plan and geomarketing study, for exploitation of associated venture in the area of the current Calçada Terminal, with no less than thirty thousand square meters (30,000 m<sup>2</sup>), which shall set forth an annual return value for the GRANTING AUTHORITY, subject to approval by the GRANTING AUTHORITY.
- 25.9.5.1** Provided that the studies provided by the CONCESSIONAIRE are approved, the GRANTING AUTHORITY may cause public call for bid for convening possible interested parties in the exploitation of the area described in subclause 25.9.5, in order to select proposal with annual return value higher than that offered by the CONCESSIONAIRE, even though for venture having a different nature.
- 25.9.5.2** In equal conditions as regards the annual return value of the proposal selected under subclause 25.9.5.1, the CONCESSIONAIRE holds preemption right, so it shall be convened at the end of the public call for bid for expressing its option.
- 25.9.6** The failure to submit the studies addressed in subclause 25.9.5 is subject to the application of the penalties provided for in this AGREEMENT, and shall authorize the GRANTING AUTHORITY to negotiate, with third parties, the real estate economic exploitation.



**25.9.7** The CONCESSIONAIRE shall be given the option, as regards the exploitation of associated ventures, to submit projects availing of possible concession of right *in rem* to use or to the surface of the real properties, for time required to the amortization of the respective investments, or which provide for the creation of civil co-ownership, under proper laws, comprising the necessary areas.

## Clause 26 – RISK SHARING

### 26.1 THE RISKS ASSUMED BY THE CONCESSIONAIRE

**26.1.1** The CONCESSIONAIRE shall conduct detailed survey of the risks it shall take upon the execution of this AGREEMENT and, when performing the LRV IMPLEMENTATION and OPERATION activities, it must adopt proper and efficient technical solutions or processes to mitigate them.

**26.1.2** Among others, the following are the risks taken by the CONCESSIONAIRE:

**26.1.2.1** costs arising out of delay, caused by its action or omission in the compliance with the IMPLEMENTATION TIME SCHEDULE;

**26.1.2.2** errors or omissions in engineering designs, regardless of the GRANTING AUTHORITY's acceptance;

**26.1.2.3** errors or omissions in electric engineering designs of the LRV, regardless of the GRANTING AUTHORITY's acceptance, which give rise to the need of unpredicted investments for receiving the electric power required to the LRV OPERATION;

**26.1.2.4** those inherent to the performance of works, including those related to the security at the place they were performed, including the safekeeping, conservation, and surveillance of the CONCESSION's assets;

**26.1.2.5** those inherent to the provision of the SERVICE, including, among others, additional investments, costs or expenses required to meet the PERFORMANCE APPRAISAL, by virtue of its performance, costs related to management, control, monitoring, and maintenance of the concession's assets, as well as those related to the compliance with technical standards and contractual rules;

**26.1.2.6** inefficiencies or economic losses arisen from faults, negligence, defective pleading or omission in the IMPLEMENTATION and in the OPERATION arising from the CONCESSION;



- 26.1.2.7** increase of the cost of loans and financings to be obtained by the CONCESSIONAIRE for investing in the IMPLEMENTATION or defrayal of the OPERATION subject matter of the CONCESSION;
- 26.1.2.8** reduction of the expectations or frustration of the EXTRAORDINARY REVENUES, alternative and complementary, and associated projects and ventures;
- 26.1.2.9** incorrect estimate of the amount of investments to be made, assuming any variation in relation to the provisions in the PROPOSAL;
- 26.1.2.10** obtainment of funds and assumption of its costs, including any variation in the terms of the FINANCIAL PROJECT in relation to the provisions in the BUSINESS PLAN, except as provided for in clause 6 above;
- 26.1.2.11** supervening ascertainment of errors or omissions in the PROPOSAL, in the BUSINESS PLAN, or in surveys supporting thereto, including those required for assessing the data and projects disclosed by the GRANTING AUTHORITY;
- 26.1.2.12** interferences in the IMPLEMENTATION, including, but without limitation to, optical fiber, pluvial water ducts, sewage pipe, gas ducts, oil ducts, energy ducts, and arising out of possible historic or cultural heritage sites, even though not provided for in the PUBLIC NOTICE and the EXHIBITS thereto;
- 26.1.2.13** variation in the input, operating, maintenance, purchase, investment costs, among others of such nature, except for the cost of electric power, regulated under this AGREEMENT;
- 26.1.2.14** delays, impacts and costs of repair or prevention of damages caused by social marches and/or protests at the surroundings of the concession's assets;
- 26.1.2.15** delays, costs and other impacts arising out of stealing, thefts or damages caused to the CONCESSION's assets;
- 26.1.2.16** delays, costs and other impacts arising out of faults, errors, or obsolescence of the technology implemented in the CONCESSION;



**26.1.2.17** delays, costs and other impacts arising out of the occurrence of strikes or collective bargaining disputes of employees or third parties contracted by the CONCESSIONAIRE;

**26.1.2.18** impacts arising out of inflation exceeding the index provided for adjustment of the ANNUAL MAXIMUM CONSIDERATION;

**26.1.2.19** variation in the CONCESSIONAIRE's income tax regime;

**26.1.2.20** variation of costs tied to the foreign exchange rate;

**26.1.2.21** delays or costs arising out of unpredictable or predictable facts, but having incalculable consequences that may be object of insurance;

**26.1.2.22** delays, costs and other impacts caused for negligence, recklessness, unskillfulness or faults having the same nature during the CONCESSION's IMPLEMENTATION and OPERATION.

## **26.2 RISKS TAKEN BY THE GRANTING AUTHORITY**

**26.2.1** The following are risks taken by the GRANTING AUTHORITY, which give rise to the recomposition of the economic-financial balance of the AGREEMENT, for the benefit or not of the CONCESSIONAIRE, as the case may be:

**26.2.1.1** one-sided modification of the AGREEMENT, imposed by the GRANTING AUTHORITY, provided that, as direct result of the modification, material alteration in the costs or revenue is observed, up or down;

**26.2.1.2** modification made by the GRANTING AUTHORITY in the performance benchmarks provided for in EXHIBIT 6, impacting the economic-financial equation of the AGREEMENT;

**26.2.1.3** reduction of costs arisen from productivity gains or reduction of sectorial burdens, generated by factors outside the CONCESSIONAIRE;

**26.2.1.4** creation, extinction or alteration of taxes or legal burdens, except for taxes and contributions on income and profit, directly impacting the CONCESSIONAIRE's revenues / compensation or expenses, up or down, specifically related to the provision of the services subject matter of the CONCESSION;



**26.2.1.5** delays, costs, and other impacts arising out of archeological prospecting and rescue, for discoveries made during the CONCESSION's works;

**26.2.1.6** levying of Value Added Tax on Sales and Services ("ICMS") on internal operations with assets and goods intended to the implementation of the LRV, occurred in reason of administrative or judicial decision against the non-levying of the tax;

**26.2.1.7** levying of the ICMS or the Service Tax ("ISS") on the provision of inter-municipal passenger transportation services having urban or metropolitan transport characteristic, occurred in reason of administrative or judicial decision against the non-levying of the tax;

**26.2.1.8** levying of the ICMS on electric power;

**26.2.1.9** arbitral award, judicial or administrative decision preventing or making impossible to the CONCESSIONAIRE, whether partially or as a whole, (i) to perform the IMPLEMENTATION or the OPERATION subject matter of this AGREEMENT; (ii) to receive the ACTUAL CONSIDERATION agreed, (iii) to charge the FARES; or (iv) to adjust or review the installments of the compensation, as set forth in the AGREEMENT, except when expressly arising from a CONCESSIONAIRE's action or omission, at variance of the liabilities and rights arising out of the AGREEMENT.

## **26.2.2 THE RISK OF DEFICIT IN THE BLOCKED ACCOUNT OF THE SETTLEMENT SYSTEM**

**26.2.2.1** Without prejudice to the application of the rules for mitigating the demand risk set forth in subclause 26.3.4, at monthly intervals, upon the LRV FULL OPERATION startup, the CONCESSIONAIRE shall make the calculations for verifying the deficit or surplus of the blocked account(s) of the SETTLEMENT SYSTEM or other means agreed by its members.

**26.2.2.2** The risk of deficit or surplus of the SETTLEMENT SYSTEM shall be fully taken by the GRANTING AUTHORITY.

**26.2.2.3** The deficit assumed by the GRANTING AUTHORITY shall be complied with on a lump sum basis, and accrued to the PUBLIC CONSIDERATION due up to the thirtieth (30<sup>th</sup>) business day from the expiration of the respective assessment period.



**26.2.2.4** Should a surplus be verified, it shall be deducted from the PUBLIC CONSIDERATIONS due from the expiration of the respective assessment period, in that manner, the amounts held in custody for the surplus shall be released to the CONCESSIONAIRE.

**26.2.2.5** The deficits or surpluses shall be assessed by the CONCESSIONAIRE and forwarded to the GRANTING AUTHORITY up to the tenth (10<sup>th</sup>) business day of the month immediately subsequent to that of the expiration of the period considered in the assessment.

**26.2.2.6** The deficits and surpluses calculated by the CONCESSIONAIRE shall be subject matter of verification by the INDEPENDENT VERIFIER, and shall only produce effects in relation to the GRANTING AUTHORITY upon respective validation, which shall occur within time period not to exceed fifteen (15) days from the date of their submission.

**26.2.2.7** For the purpose of this subclause 26.2.2, it is understood as deficit or surplus the difference between the funds available at the blocked account(s) of the SETTLEMENT SYSTEM or in other means agreed by its members, for the use on the respective day, upon deduction of the minimum balance set forth in subclause 26.2.2.8 hereafter, and the payments due by way of compensation fare, arising out of the integration into operators of the STCO, METROPOLITAN BUSES, SMSL, and the CONCESSIONAIRE, accrued of the operating expenses of the SETTLEMENT SYSTEM.

26.2.2.7.1 The amounts arising out of the anticipated sale of credits, overdue credits and net financial revenues constitute the funds available in the blocked account, for all purposes.

26.2.2.7.2 The calculation of the deficit or surplus of the blocked account shall also consider the amounts to be adjusted for possible differences between the amounts foreseen and actually relayed to the CONCESSIONAIRE, STCO, METROPOLITAN BUSES, and SMSL operators within the period, duly assessed, in compliance with the provisions in the operating agreement entered into by and between the operators.

26.2.2.7.3 Should the assessment result in difference to be relayed by STCO operators, the METROPOLITAN BUSES



operators, or the SMSL operator to the blocked account for the period under assessment, the calculation of the deficit or surplus provided for in this subclause shall consider such funds when assessing the period.

26.2.2.7.4 Should the assessment result in difference to be returned to the operators of the STCO, METROPOLITAN BUSES, or the SMSL, as regards the period under assessment, the calculation of the deficit or surplus shall also consider such amounts.

**26.2.2.8** For all purposes of the procedures provided for in this subclause 26.2.2, a minimum balance of one thousand Brazilian *Reais* (R\$ 1,000.00) shall be maintained in the blocked account of the SETTLEMENT SYSTEM.

## **26.3 SHARED RISKS**

### **26.3.1 RISK OF DELAYS OR FAILURE TO OBTAIN LICENSES AND AUTHORIZATIONS**

**26.3.1.1** The delay in the issue, including the delay in the analysis and approval of documentation, the failure to obtain, or the unjustified withholding, by the relevant authorities, of licenses and authorizations required, notwithstanding the CONCESSIONAIRE's diligent compliance with all requirements provided by the Public Authorities, shall release the CONCESSIONAIRE from the liabilities for the total or partial default of any liabilities imputed thereto by the AGREEMENT, which shall also entitled to recomposition of the economic-financial balance.

**26.3.1.2** The risks arising out of delays or the failure to obtain all licenses and authorizations required to the conduction of alternative and complementary activities and associated projects are solely borne by the CONCESSIONAIRE.

**26.3.1.3** The risks regulating the traffic alterations required to the IMPLEMENTATION and OPERATION, including those under the jurisdiction of the Municipality, shall be solely borne by the GRANTING AUTHORITY.

### **26.3.2 CAS FORTUIT AND FORCE MAJEURE**



**26.3.2.1** For the purposes of this AGREEMENT, it is included in the concept of *CAS FORTUIT* and *FORCE MAJEURE*, without prejudice to others, third parties' fact or possible perishing, destruction, stealing, theft, loss or any other types of damages caused to the **BLOCKED ASSETS**, not covered by the insurance policies taken by the **CONCESSIONAIRE** or the manufacturer's warranty.

**26.3.2.2** The recomposition of the economic-financial balance of the AGREEMENT shall not be applicable in the event of *CAS FORTUIT* or *FORCE MAJEURE* corresponding to risk insurable in Brazil at the time when the obligatory insurance plan was contracted, up to the insurance value informed in Clause 28, regardless of the **CONCESSIONAIRE** to have taken such insurances.

**26.3.2.3** The recomposition of the AGREEMENT's economic-financial balance shall be applicable in the event of *CAS FORTUIT*, *FORCE MAJEURE*, or act of state delaying or preventing the performance of the AGREEMENT, or causing the interruption of the **IMPLEMENTATION** or **OPERATION**, in the following hypotheses:

26.3.2.3.1 Should the consequences exceed the amounts informed in Clause 28 (of the obligatory insurances);

26.3.2.3.2 Should the consequences be not covered by the insurances provided for in Clause 28 (obligatory insurances) and are not insurable in Brazil at the time when the obligatory insurance plan is contracted.

**26.3.2.4** The occurrence of *CAS FORTUIT* or *FORCE MAJEURE*, the consequences of which are not covered by the insurances provided for in Clause 28 (the obligatory insurances), has the effect of releasing the **PARTIES** from the liability for the noncompliance with the corresponding contractual liabilities.

### **26.3.3 THE ELECTRIC POWER ACQUISITION RISK**

**26.3.3.1** Possible interruption and/or intermittence in the electric power supply caused by the **GRANTING AUTHORITY**, provided that the **CONCESSIONAIRE** has not collaborated to its cause, shall obviate the measuring of performance benchmarks in the period of its occurrence, as well as the application of penalties, so the recomposition of the economic-financial balance of the AGREEMENT shall be applicable, by virtue of economic damages arising out thereof.



**26.3.3.2** Provided that the GRANTING AUTHORITY has not collaborated to its cause, possible interruption and/or intermittence in the electric power supply arising out of error in the ENERGY PLAN or general faults in the electric system maintained by the CONCESSIONAIRE, the CONCESSIONAIRE shall be held liable for economic damages caused to the GRANTING AUTHORITY, the USERS or the SERVICES.

**26.3.3.3** Should, in the course of the contractual performance, emergency and/or unpredicted demand of electric power be verified, further to that provided for in the ENERGY PLAN, the CONCESSIONAIRE shall request to the GRANTING AUTHORITY the acquisition of supplementary power quota required to the continuity of the SERVICE provision, regardless of assessment of liability provided for in this subclause.

**26.3.3.4** In the hypothesis provided for in the precedent subclause, the CONCESSIONAIRE shall refund the GRANTING AUTHORITY for possible difference between the price of the electric power originally contracted, based on the ENERGY PLAN, and that incurred with the emergency contracting.

**26.3.3.5** Provided that the GRANTING AUTHORITY has not collaborated to its cause, possible error in the ENERGY PLAN importing the excessive acquisition of electric power shall hold the CONCESSIONAIRE's liable for economic damages caused to the GRANTING AUTHORITY.

#### **26.3.4 DEMAND RISK**

**26.3.4.1** The initial economic-financial balance of the CONCESSION considers the PROJECTED DEMAND.

**26.3.4.2** From the LRV FULL OPERATION startup, the risk of variation of the PROJECTED DEMAND shall be shared between the GRANTING AUTHORITY and the CONCESSIONAIRE, pursuant to the rules set forth in the subsequent subclauses.

**26.3.4.3** The mechanism for sharing the demand risk shall be applied each year, in compliance with the variation of the passengers' actual demand in each year, under the PROJECTED DEMAND for the same period, shared as follows:



- 26.3.4.3.1 Should the passengers' actual demand assessed in the period is between ninety percent (90%), inclusively, and one hundred and ten percent (110%), inclusively, of the PROJECTED DEMAND for the same period, there shall be no increase or reduction in the CONCESSIONAIRE's compensation;
- 26.3.4.3.2 Should the passengers' actual demand accounted in the same period is between ninety percent (90%) and seventy-five percent (75%), inclusively, of the PROJECTED DEMAND for the period, the CONCESSIONAIRE shall be entitled to receive seventy percent (70%) of the FARE REVENUE corresponding to the less volume of passengers transported, up to the limit of the risk fully assumed by the CONCESSIONAIRE, that is, 90% of the PROJECTED DEMAND.
- 26.3.4.3.3 Should the passengers' actual demand accounted in the same period is between one hundred and ten percent (110%) and one hundred and twenty-five percent (125%), inclusively, of the PROJECTED DEMAND for the period, the CONCESSIONAIRE shall be entitled to receive thirty percent (30%) of the FARE REVENUE corresponding to the volume of passengers transported beyond one hundred and ten percent (110%).
- 26.3.4.3.4 Should the annual passengers' actual demand accounted is under seventy-five percent (75%) or over one hundred and twenty-five percent (125%) of the PROJECTED DEMAND for the period, the recomposition of the AGREEMENT's economic-financial balance shall be applicable, taking as basis the center of the PROJECTED DEMAND (100%), so as to reestablish the contractual balance of the year in which the variation of the passengers' demand was assessed.
- 26.3.4.3.5 In the case of limit over the projected demand range (over 125%), the recomposition of the economic-financial balance shall consider the needs of anticipation of investments for maintaining the CONCESSION's actuality.
- 26.3.4.4** The adjustments to the FARE REVENUE, arising out of the application of the demand risk sharing mechanism addressed in this subclause, shall be assessed up to the twentieth (20<sup>th</sup>) business day



of the month subsequent to the end of the period considered in the assessment.

**26.3.4.5** The amounts due to the CONCESSIONAIRE, resulting from the application of the demand risk sharing mechanism, shall be paid in twelve equal monthly and consecutive installments, to be paid along with the subsequent PUBLIC CONSIDERATIONS, and the first installment shall be due up to the thirtieth (30<sup>th</sup>) business from the expiration of the respective assessment period.

**26.3.4.6** The time intervals and payment terms set forth above may be altered in the course of the CONCESSION, upon agreement between the PARTIES.

### **26.3.5 THE FOREIGN EXCHANGE RISK TIED TO THE OBTAINMENT OF FUNDS OR TO THE FINANCIAL PROJECT IN FOREIGN CURRENCY**

**26.3.5.1** In the hypothesis of the obtainment of funds or financing in foreign currency, the foreign exchange variation risk shall be fully assumed by the GRANTING AUTHORITY, upon application of the foreign exchange rebalance mechanism provided for in this subclause.

**26.3.5.2** The foreign exchange rebalance mechanism shall be triggered whenever the following conditions occur:

26.3.5.2.1 when there shall be foreign exchange variation generating difference between the amount in Brazilian *Reais* actually disbursed by the CONCESSIONAIRE, for the payment of installments of the financing, and the amount established for that in the BUSINESS PLAN; and

26.3.5.2.2 the accumulated amount of the difference related to the foreign exchange variation has exceeded the amount of ten million Brazilian *Reais* (R\$ 10,000,000.00), whether up or down.

26.3.5.2.2.1 For financing installments, it should be understood the payment liabilities assumed by the CONCESSIONAIRE through any leverage or fund-raising instrument in foreign currency, in accordance with the FINANCIAL PROJECT submitted.

**26.3.5.3** The recomposition of the economic-financial balance shall be conducted as provided for in subclause 27.2.



**26.3.5.4** Provided that the recomposition of the economic-financial balance is conducted, the foreign exchange rebalance mechanism shall be applied again whenever the conditions indicated in subclause 26.3.7 occur again.

**26.3.5.5** Every accumulated residual foreign exchange difference not possibly been subject matter of recomposition through the foreign exchange rebalance mechanism shall be subject matter of the due recomposition, under clause 27.2, regardless of its value, and preferably upon the payment of the last MONTHLY INVESTMENT CONSIDERATION, or up to the eighteenth (18<sup>th</sup>) month preceding the expiration of the term of the AGREEMENT.

**26.3.5.6** The foreign exchange rebalance mechanism shall have maximum coverage of up to five hundred and ninety-four million, two hundred and sixty-six thousand, four hundred and forty-three United States Dollars, and eighty-eight cents (US\$ 594,266,443.88), reference value obtained considering the sum of the HALF-YEARLY INVESTMENT CONSIDERATIONS provided for in the AGREEMENT, totaling one billion, eight hundred and fifty-eight million, two hundred and seventy-one thousand Brazilian *Reais* (R\$ 1,858,271,170.00), on the base date January/2017, and translated by the foreign exchange rate of three Brazilian *Reais* and one hundred and twenty-seven cents (R\$ 3.127), in force on 01/31/2017, as disclosed by Banco Central do Brasil (“Bacen”) (PTAX Closing rate for the United States Dollar).

**26.3.5.7** When the financing(s) are taken in foreign currency other than the United States Dollar (USD), for applying the maximum coverage thresholds informed above, the corresponding amount in United States Dollar (USD) of the foreign currency adopted, on the date of internalization of funds by the CONCESSIONAIRE, shall be used, in compliance with the following:

26.3.5.7.1 For translation of the United States Dollars, both for internalization of the financings funds and for using the hedging mechanism, the rate of the United States Dollar shall always be applied (according to the PTAX, option 5, sale).

26.3.5.7.2 PTAXt Rate: foreign exchange rate of the United States Dollar published by the Information System of the Brazilian Central Bank (“SISBACEN”), through the PTAX sale



Transaction, based on data in force 2 business days before the certain date  $t$ , that is, based on  $t-2$  rate or comparable ratio, should it be extinguished.

## **26.4 THE INFLATIONARY RISK**

**26.4.1** No recomposition of the economic-financial balance shall be made in the event that the inflation is higher or lower than the index used for adjusting the ANNUAL MAXIMUM CONSIDERATION or other amounts provided for in the AGREEMENT for the same period.

## **Clause 27 – THE CONCESSION’S ECONOMIC-FINANCIAL BALANCE**

### **27.1 THE ORDINARY REVIEW OF THE CONCESSION’S PARAMETERS AND RESULTS**

**27.1.1** At each seven (7) years from the date when the AGREEMENT was executed, the PARTIES shall conduct the ordinary review of the CONCESSION’s parameters and general results.

**27.1.1.1** The review process shall be initiated by the GRANTING AUTHORITY, whether voluntarily or upon the CONCESSIONAIRE’s request.

**27.1.1.2** The maximum term for initiation of the process of ordinary review is sixty (60) days from the beginning of the seven year of each period.

**27.1.1.3** The ordinary review process shall be completed within term not to exceed six (6) months, upon which, with PARTY feeling jeopardized may refer to arbitration.

**27.1.1.4** The meetings, hearings, or negotiations conducted in the course of the ordinary review process shall be duly registered.

**27.1.1.5** The ordinary review process shall be completed upon agreements between the PARTIES, and their results shall be duly documented and, should they import alterations to the AGREEMENT, they shall be incorporated into amendment to the agreement.

**27.1.1.6** The PARTIES shall be assisted by the INDEPENDENT VERIFIER in the course of the ordinary review process, and reports, studies, averments or opinions issued thereby shall be enclosed in the process, so as to explain the reasons that led the PARTIES to the final agreement or possible divergence.

**27.1.2** The ordinary review process shall have, as objective:



**27.1.2.1** To review the CONCESSION's PROJECTED DEMAND;

**27.1.2.2** To critically analyze, and possibly alter, the PERFORMANCE APPRAISAL system;

**27.1.2.3** To review the minimum and quantitative specifications for the SERVICE provision, even for the acquisition of ROLLING STOCK, especially for incorporating technological advances and for improving the provision of the SERVICES;

**27.1.2.4** To review the sharing of risks set forth in this AGREEMENT, alter it or establishing new measures for mitigating the risks, in the event that the risk sharing in force at the time does not seem suitable and such measure is indispensable for the perfect performance of the object of the AGREEMENT;

**27.1.2.5** To review the ENERGY PLAN submitted by the CONCESSIONAIRE, in accordance with Clause 18, in order to suit them to the SERVICES' needs.

**27.1.3** In the hypothesis that the ordinary review gives rise to the need of recomposing the AGREEMENT's economic-financial balance, the PARTIES shall comply with the provisions in subclauses 27.2.6 *et seq.*

## **27.2 THE CONCESSION'S EXTRAORDINARY REVIEW**

**27.2.1** The PARTIES shall maintain the AGREEMENT's economic-financial balance.

**27.2.2** The proportionality and/or equivalence ratio among the burdens provided for in this AGREEMENT, and the compensation due to the CONCESSIONAIRE, fixed from the base date of the WRITTEN ECONOMIC PROPOSAL.

**27.2.3** For the purpose of this AGREEMENT, the economic-financial balance shall only be deemed broken when the proportionality ratio among the burdens and the CONCESSIONAIRE's compensation referred to in the precedent subclause is broken for the supervening of some risk that has been fully or partially taken by the GRANTING AUTHORITY.

**27.2.3.1** The risks not expressly allocated to the GRANTING AUTHORITY by the AGREEMENT are deemed fully taken by the CONCESSIONAIRE.

**27.2.3.2** In the case of shared risks, the AGREEMENT shall be rebalanced in the exact terms provided for in this AGREEMENT.



- 27.2.4** The recomposition of the AGREEMENT's economic-financial balance shall be carried out through request for extraordinary review, as set forth in this clause.
- 27.2.5** The AGREEMENT's extraordinary review, for purposes of recomposition of its economic-financial balance, shall be requested by the PARTY feeling impaired, by sending grounded request for recomposition to the other PARTY.
- 27.2.5.1** The omission of either PARTY to request recomposition shall import waiver of such right upon five (5) years from the event giving rise to the unbalance.
- 27.2.5.2** The request shall be obligatorily supported by technical report or expert report conclusively showing the CONCESSION's economic-financial unbalance, subject to be not examined.
- 27.2.5.3** The request shall contain, as the case may be, information on:
- 27.2.5.3.1** the date of occurrence and probable duration of the hypothesis giving rise to recomposition;
  - 27.2.5.3.2** the estimate of variation of investments, burdens, revenues, and the CONCESSION's economic result;
  - 27.2.5.3.3** any alteration required in the services subject matter of the AGREEMENT;
  - 27.2.5.3.4** the possible need of amendment to the AGREEMENT;  
and
  - 27.2.5.3.5** the possible need of release from the compliance with any liabilities, of either PARTY.
- 27.2.5.4** The CONCESSIONAIRE shall provide all information required in inquiry conducted by the GRANTING AUTHORITY for assessing possible economic-financial unbalance in the AGREEMENT.
- 27.2.5.5** In the case of recomposition for the benefit of the GRANTING AUTHORITY, it shall give notice to the CONCESSIONAIRE for it to express its agreement, submit settlement proposal, or prepare its defense within a thirty (30)-day term.
- 27.2.5.6** Provided that the CONCESSIONAIRE's request is received or the term for the CONCESSIONAIRE's pronouncement in relation to the



GRANTING AUTHORITY's request is lapsed, with or without such pronouncement, the GRANTING AUTHORITY shall, reasonably and within a thirty (30)-day term, decide on the AGREEMENT's rebalance.

**27.2.5.7** The GRANTING AUTHORITY's decision addressed in the precedent subclause shall be binding on the PARTIES up to judicial determination or arbitral award.

**27.2.6** Should the GRANTING AUTHORITY needs technical support for evaluating the economic-financial balance of the AGREEMENT, and for reviewing the incremental cash flow addressed in subclause 27.2.8.2, it may request that the CONCESSIONAIRE contracts a specialized consulting firm.

**27.2.6.1** For contracting the specialized consulting firm, the CONCESSIONAIRE shall comply with the procedures and conditions provided for in EXHIBIT 10.

**27.2.6.2** Alternatively to the provisions in the subclause above, and considering the economics of scale generated with the contracting, the GRANTING AUTHORITY may request that the CONCESSIONAIRE contracts the technical support required with the INDEPENDENT VERIFIER, provided that the compatibility of the price presented thereby with those practiced in the market is confirmed.

**27.2.6.3** In both hypotheses provided for in subclauses 27.2.6.1 and 27.2.6.2 above, the GRANTING AUTHORITY shall repay the CONCESSIONAIRE in amount equivalent to half of the costs incurred with the contracting.

**27.2.6.4** The repayment due to the CONCESSIONAIRE, under subclause 27.2.6.3, shall be paid in up to twelve (12) equal, monthly, and consecutive installments, to be paid along with the subsequent ACTUAL CONSIDERATIONS, the first installment to be due in the month subsequent to that of the actual contracting of the technical support requested by the GRANTING AUTHORITY.

**27.2.7** The recomposition may be implemented by the following mechanisms, at the GRANTING AUTHORITY's discretion:

**27.2.7.1** indemnification;

**27.2.7.2** alteration of the term of the AGREEMENT;



**27.2.7.3** review of the amount of the ANNUAL MAXIMUM CONSIDERATION;

**27.2.7.4** review of the amount of the COMPENSATION FARE;

**27.2.7.5** alteration of the investment time schedule;

**27.2.7.6** alteration of the works inherent to the IMPLEMENTATION or its specifications;

**27.2.7.7** alteration of activities related to the operation, conservation, and maintenance of the LRV, as provided for in EXHIBIT 5 to the AGREEMENT;

**27.2.7.8** alteration of the activities related to the elaboration and performance of the executive designs, the supply of material, equipment, and information technology and communication equipment and systems, related to the construction, assembly, installation, test and commissioning of the LRV, as provided for in EXHIBITS 4 and 5 of the AGREEMENT; and

**27.2.7.9** combination of the former mechanisms.

**27.2.8** The way how the AGREEMENT's economic-financial balance shall be recomposed shall vary in accordance with the event giving rise to the unbalance:

**27.2.8.1** In the hypothesis of suppression of investments or liabilities originally contemplated in the object of this AGREEMENT, to be understood as such those provided for in the ECONOMIC PROPOSAL and in the Reference Project, respectively included in Exhibits 3 and 4, the recomposition process shall be carried out so as to maintain the return provided for in the BUSINESS PLAN originally provided by the CONCESSIONAIRE, which shall be made through internal real return rate, without inflation, of the cash flow provided for in the BUSINESS PLAN.

**27.2.8.2** In the hypothesis of including new investments or liabilities not originally contemplated in the object of this AGREEMENT, to be understood as such those provided for in the ECONOMIC PROPOSAL and in the Reference Project, respectively included in Exhibits 3 and 4, the recomposition process shall be carried out so that the current net value of the projected incremental cash flow is null, in reason of the event that gave rise to the unbalance,



considering (i) the flows of the incremental disbursements resulting from the event that gave rise to the recomposition, and (ii) the flows of incremental revenues resulting from the recomposition of the economic-financial balance.

**27.2.8.2.1** The flows of disbursements and incremental revenues referred to in subclause 27.2.8.2 above shall be reduced under the annual actual discount rate obtained upon application of the following formula:

Incremental flow discount rate = NTN-B + three point one percent (3.1%)

Where:

NTN-B: the gross interest rate (IPCA excluded) for sale of Brazilian National Treasury Notes – B Series, ex-ante the deduction of the income tax, and due closer to the expiration of the AGREEMENT, published by the Brazilian National Treasury Office.

**27.2.8.2.2** For purposes of determining the incremental disbursement flows, market criteria shall be used for estimating the value of investments and burdens resulting from the event that gave rise to the unbalance.

**27.2.9** In the hypothesis of investments in which there is express mention to payment upon refund in this AGREEMENT, the disbursements foreseen or made shall be actually dimensioned and repaid to the CONCESSIONAIRE, and the incremental cash flow shall not be applicable thereto, as provided for in subclause 27.2.8.2.

## CHAPTER IV – INSURANCES AND GUARANTEES

### Clause 28 – INSURANCE

**28.1** From the term provided for in subclause 6.7, the CONCESSIONAIRE shall take and maintain in force during the whole CONCESSION's term, the insurance policies informed below, as set forth in this AGREEMENT, without prejudice to the insurances required by the applicable laws.

**28.2** During the whole IMPLEMENTATION, the CONCESSIONAIRE shall take the following policies:

**28.2.1** Engineering risk insurance in the All-Risk modality, with coverage for performance of civil construction and supply, installation, assembly works, tests and commissioning of all system and equipment installations, including



rolling stock, of the LRV, with effectiveness corresponding to the IMPLEMENTATION term, with basic coverage (OCC/IM) in the amount of the investments provided for in the WRITTEN ECONOMIC PROPOSAL, to be carried out without considering any expurgations concerning non-indemnifiable assets and items or Indirect Bonuses and Expenses (“BDI”), also contemplating temporary works, worksites, deposits, warehouses, lodgings and train yards and, at least, the following additional coverages and thresholds:

- 28.2.1.1** Project error / manufacturing risks, with threshold identical to that of the Basic coverage;
- 28.2.1.2** Comprehensive maintenance (12 months), with threshold identical to that of the Basic coverage;
- 28.2.1.3** Extraordinary expenses, with threshold corresponding to 5% of the Basic coverage threshold;
- 28.2.1.4** Debris removal expenses, with threshold corresponding to 5% of the Basic coverage threshold;
- 28.2.1.5** Riots, strikes, and lockouts, with a twenty million Brazilian *Reais* (R\$ 20,000,000.00) minimum threshold;
- 28.2.1.6** Expert fees, with a two million Brazilian *Reais* (R\$ 2,000,000.00) minimum threshold;
- 28.2.1.7** Salvage and loss containment expenses, with a twenty million Brazilian *Reais* (R\$ 20,000,000.00) minimum threshold;
- 28.2.1.8** Storage and transportation outside the worksite, with a five million Brazilian *Reais* (R\$ 5,000,000.00) minimum threshold;
- 28.2.1.9** Recomposition of records and documents, with a one million Brazilian *Reais* (R\$ 1,000,000.00) minimum threshold;
- 28.2.1.10** Aircraft charters, with a five million Brazilian *Reais* (R\$ 5,000,000.00) minimum threshold; and
- 28.2.1.11** Works placed into operation (concerning the sections / equipment under commissioning or already commissioned), with threshold in accordance with the situation of occurrence.



**28.2.2** Civil liability insurance for IMPLEMENTATION works, with effectiveness corresponding to the term of the work, for covering pecuniary damages, bodily injuries, and pain and suffering damages caused to third parties, arising out of CONCESSIONAIRE's actions and omission, with Basic Work Civil Liability Coverage, with threshold not below fifteen million Brazilian *Reais* (R\$ 15,000,000.00), including the following additional coverages, all with maximum indemnification threshold ("LMI") identical to that of the Basic Coverage:

**28.2.2.1** Crossed civil liability;

**28.2.2.2** Foundations;

**28.2.2.3** Project error;

**28.2.2.4** Sudden / accidental pollution;

**28.2.2.5** Installations and public services networks;

**28.2.2.6** Circulation of equipment by adjacent ways;

**28.2.2.7** Land Motor Vehicles' contingent risks;

**28.2.2.8** Subsidiary civil liability for goods conveyed by third parties;

**28.2.2.9** Loss of profits;

**28.2.2.10** Pecuniary damages caused to the owner of the works;

**28.2.2.11** Employer's civil liability; and

**28.2.2.12** Pain and suffering damages arising out of all coverages.

**28.2.3** Sundry Risk Insurance for all mobile and/or stationary equipment involved in the work services (OCC/IM) related to the object of this AGREEMENT, effective for twelve (12) months, annually extendable for the whole IMPLEMENTATION period, with Basic coverage with maximum indemnification threshold ("LMI") not under 30% of the Total Risk amount of the equipment, including the following additional coverages, with the same maximum indemnification threshold ("LMI"):

**28.2.3.1** Electrical damages;

**28.2.3.2** Fire, lighting, and explosion;





Coverage (Pecuniary Damages) the minimum threshold equal to the value of the BLOCKED ASSETS and, at least, the following additional coverages:

**28.7.1.1** Electric damages;

**28.7.1.2** High and low voltage electronic equipment;

**28.7.1.3** Stealing or compound larceny of assets;

**28.7.1.4** Flood and/or inundation;

**28.7.1.5** Small engineering works (conservation and maintenance);

**28.7.1.6** Riots, strikes, and lockouts;

**28.7.1.7** Collapse;

**28.7.1.8** Recuperation of sidehills and slopes;

**28.7.1.9** Emergency expenses for operation retaken;

**28.7.1.10** Extraordinary expenses;

**28.7.1.11** Debris clearance expenses;

**28.7.1.12** Salvage and containment expenses;

**28.7.1.13** Expert fees; and

**28.7.1.14** Loss of income / Fixed Expenses / Loss of Profits.

**28.7.1.15** The values of the assets that shall be subject matter of the Operating Risk insurance shall be based on the replacement cost of said assets.

**28.7.1.16** The coverage for loss of income must consider the estimated gross revenue for the twelve (12) first months of the OPERATION, with indemnifying term corresponding to no less than six (6) months.

**28.7.2** Civil Liability Insurance – Operations, for covering the pecuniary damages, bodily injuries, disfigurement damages, and pain and suffering damages caused to third parties, passengers or not, with Basic coverage (Public Utilities or not), with a twenty million Brazilian *Reais* (R\$ 20,000,000.00) minimum



threshold, including, but without limitation to, the following additional coverages:

**28.7.2.1** Crossed Clause;

**28.7.2.2** Foundations;

**28.7.2.3** Sudden Pollution;

**28.7.2.4** Loss of Profits;

**28.7.2.5** Riots;

**28.7.2.6** Damages to public service installations and networks;

**28.7.2.7** Contingent risks for land motor vehicles;

**28.7.2.8** Equipment at the insured's service;

**28.7.2.9** Transportation of people and employees, and permanence at stations;

**28.7.2.10** Employer's Civil Liability;

**28.7.2.11** Pain and Suffering Damages;

**28.7.2.12** Costs of Defense before Civil Courts; and

**28.7.2.13** Pain and suffering damages for all coverages.

**28.7.3** Group Life Insurance for all employees involved in the OPERATION, contemplating, at least the insured coverages and amounts provided for in the collective bargaining agreement(s) for the class(es).

**28.7.4** Optional Civil Liability Insurance – Vehicles ("RCF-V") for all vehicles involved in the OPERATION, considering, at least, the following coverages and thresholds:

**28.7.4.1** Pecuniary damages / Bodily injuries: R\$ 300,000.00 (sole guarantee);  
and

**28.7.4.2** Pain and Suffering Damages: R\$ 150,000.00.

**28.7.5** The GRANTING AUTHORITY shall appear as co-insured in the Operating Risk and Civil Liability – Operations policies.



- 28.7.6** The insurances for the OPERATION, set out above, shall be effective for one year, and shall be effective during the whole term of the AGREEMENT, from the OPERATION startup.
- 28.8** The insurance agreements shall be taken with insurance companies duly authorized by the Superintendency of Private Insurance (“SUSEP”), and with financial capacity enough for honoring the payment of indemnities, in the event of loss.
- 28.8.1** The CONCESSIONAIRE’s shall be solely liable for choosing the insurance company(ies) to issue the insurance policy(ies), and the CONCESSIONAIRE shall answer for the damages caused to the GRANTING AUTHORITY in the event of bankruptcy / liquidation / composition with creditors / intervention of the respective insurance company, further to be required to retake new insurance policy(ies) solely at the CONCESSIONAIRE’s expenses.
- 28.9** No work or service may be started or proceed without the CONCESSIONAIRE to submit to the GRANTING AUTHORITY evidence that the insurance policies required in the AGREEMENT are in force, and satisfy the conditions set forth in this AGREEMENT.
- 28.10** Up to thirty (30) days after the date when the respective policy is issued, the CONCESSIONAIRE shall submit, to the GRANTING AUTHORITY, certified copy of the insurance policies.
- 28.11** The policy shall expressly register the exclusion of the subrogation clause against the GRANTING AUTHORITY.
- 28.12** The CONCESSIONAIRE shall be liable for full costs related to deductibles required by the respective insurance agreements, in the event of loss, except in those hypotheses in which the event has been caused by fact solely imputable to the GRANTING AUTHORITY.
- 28.13** In the insurance policies shall expressly contain the insurance company’s liability to immediately inform the GRANTING AUTHORITY of any and all contractual alteration, mainly those implying the total or partial cancellation of the insurance(s) taken, or reduction in the thresholds or insured amounts.
- 28.13.1** The policies shall also include the issuing insurance company’s liability to give written notice to the CONCESSIONAIRE and the GRANTING AUTHORITY of the delay in paying the premium in proper time for avoiding the policy cancellation by virtue of such default.
- 28.14** In the hypothesis of the failure to pay the obligatory insurance premium, as provided for in this Clause, the GRANTING AUTHORITY may deliberately make the payment,



discounting the respective amount from the PUBLIC CONSIDERATIONS due to the CONCESSIONAIRE, or from any other payments ought thereto.

- 28.15** In the hypothesis that the IMPLEMENTATION and OPERATION periods are superposed, even though partially, the insurances provided for each of the phases shall be fully taken, therefore independently and complementarily protecting the risks related to each of the CONCESSION's steps, up to its final implementation.
- 28.16** The CONCESSIONAIRE shall forward to the GRANTING AUTHORITY, no less than thirty (30) days before their expiration, supporting document that the insurance policies were renewed or shall be automatically, unconditionally, and immediately renewed, up to 24 hours before their expirations.
- 28.17** The CONCESSIONAIRE may, upon the GRANTING AUTHORITY's prior consent, alter the guarantees or other conditions of the insurance agreements, aiming at suiting them to the new situations and risks occurring during the effectiveness of the Agreement.
- 28.18** For insurances taken for annual term, the CONCESSIONAIRE shall annually forward to the GRANTING AUTHORITY, no less than thirty (30) days before the renewal, copy of the insurance policies taken and renewed.
- 28.19** The insurance coverage shall include damages for events of *FORCE MAJEURE* whenever they are insurable in the Brazilian market, within reasonable commercial conditions, at the time of the contracting and respective renewals of the insurance policies.
- 28.19.1** Reasonable commercial conditions are those indicating a cost-effectiveness ratio between the amount of the premium and the coverages informed in the policy, so as to enable their contracting by the CONCESSIONAIRE without making unfeasible the economic proposal offered in the bidding procedure.
- 28.20** Upon the occurrence of losses with the due payment of indemnities exceeding the threshold values of the contracted guarantee, as required in the AGREEMENT, for reasons not imputable to the CONCESSIONAIRE, the CONCESSION's economic-financial balance shall be reviewed.
- 28.21** The CONCESSIONAIRE takes all liability for the comprehensiveness or omissions arising out of the insurance taken addressed in this AGREEMENT, even for assumed risk purposes.
- 28.22** The existence of insurance coverage does not release the CONCESSIONAIRE's liability to replace the assets damaged and/or made useless.



**28.23** Upon the occurrence of losses not covered by the insurances taken, the CONCESSIONAIRE shall, provided that the risk allocation of the AGREEMENT is complied with, solely answer for damages and losses it may possibly cause to the GRANTING AUTHORITY and/or third parties, as a consequence of the performance of works, and the indemnities arising out of such damages and losses shall be solely borne thereby.

## Clause 29 – PERFORMANCE BOND BY THE CONCESSIONAIRE

**29.1** The CONCESSIONAIRE shall keep, for the benefit of the GRANTING AUTHORITY, as assurance to the strict compliance with the contractual liabilities, PERFORMANCE BOND.

**29.1.1** Up to the definition as for the condition precedent provided for in clause 6, the PERFORMANCE BOND shall be provided in amount corresponding to fifteen million Brazilian *Reais* (R\$ 15,000,000.00).

**29.1.2** Upon the event referred to in the subclause above, provided that the AGREEMENT has not been terminated, the PERFORMANCE BOND shall be submitted in the amounts informed in the table below:

Year of the Agreement	Value
year 1	R\$ 150,000,000.00
year 2	R\$ 150,000,000.00
years 3 to 19	R\$ 20,000,000.00
year 20	R\$ 80,000,000.00

**29.1.3** The minimum amounts of the PERFORMANCE BOND shall be annually adjusted, on the same date of the adjustments of the ANNUAL MAXIMUM CONSIDERATION, according to the variation of the percentage of the Comprehensive Consumer Price Index (“IPCA”) of the IBGE, for the latest twelve (12) months, considering the base date January/2017.

**29.2** The CONCESSIONAIRE shall remain liable for the compliance with the contractual liabilities, including the payment of occasional fines and indemnities, regardless of the use of the PERFORMANCE BOND.

**29.3** The PERFORMANCE BOND may, at discretion of the CONCESSIONAIRE, be rendered in one of the following modalities:

**29.3.1** cash bond;

**29.3.2** bank guarantee;



### 29.3.3 surety bond; or

**29.3.4** treasury bonds, as provided for in Federal Law no. 10.179, of February 6, 2001.

**29.4** The letters of guarantee and the surety bond policies shall be effective for no less than one (1) year from the date of execution of the AGREEMENT, and the CONCESSIONAIRE shall be fully liable for keeping them fully effective, uninterruptedly, during the whole CONCESSION, and, for that, it shall cause the renovations and updates that shall be required.

**29.4.1** Any modification to the contents of the letter of guarantee or the surety bond shall be prior submitted to the GRANTING AUTHORITY's approval.

**29.4.2** The CONCESSIONAIRE shall forward to the GRANTING AUTHORITY, up to twenty (20) days before the expiration of the effectiveness term, supporting document that the bank letters of guarantee or surety bond policies were renewed for the full amount, adjusted according to subclause 29.1.3.

**29.4.3** In the case that the PERFORMANCE BOND is provided through surety bond, the policies should be contracted with prime insurance companies and reinsurance companies, to be understood as such those having nationwide financial power, with operations duly approved by SUSEP.

**29.4.4** In the case that the PERFORMANCE BOND is provided through surety bond, the same should be contracted with prime financial institutions, to be understood as such those the risk rating of which is comprised by the "investment level" class with, at least, one of the following agencies: Fitch, Standard & Poors, or Moody's.

**29.4.5** The CONCESSIONAIRE shall be fully liable for selecting the insurance company or the financial institution issuer of the guarantee, and the CONCESSIONAIRE shall answer for the damages caused to the GRANTING AUTHORITY in the event of bankruptcy / liquidation / composition with creditors / intervention of the respective institution, further to be required to re-contract new guarantee, at the CONCESSIONAIRE's sole expenses.

**29.4.6** Any modification in the contents of the letter of guarantee or the surety bond shall be prior submitted to the GRANTING AUTHORITY's approval.

**29.5** The PERFORMANCE BOND granted through the means provided for in subclauses 29.3.1 and 29.3.4 shall be confirmed upon submission of original document addressed to the GRANTING AUTHORITY, dated and executed by the financial institution custodian of the bond or the securities given as security, which shall include that:



- 29.5.1** the pecuniary value or said securities, clearly identified, shall be pledged for the benefit of the GRANTING AUTHORITY, as PERFORMANCE BOND; and
- 29.5.2** the GRANTING AUTHORITY may execute the pledge in the conditions provided for in the Agreement.
- 29.6** In the hypothesis that the PERFORMANCE BOND is provided through treasury bonds, the following conditions shall be complied with:
- 29.6.1** it shall only, only, accepted, the Prefixed National Treasury Bills (“LTN”); Prefixed Semiannual Coupon National Treasury Notes – F Series (“NTN-F”); Post-fixed Financial Bills; Selic-Indexed Treasury Financial Bills (“LFT”); IPCA-Indexed + Semiannual Coupon National Treasury Notes – B Series (“NTN-B”); IPCA-Indexed National Treasury Notes – B Series - Principal (“NTN-B Principal”);
- 29.6.2** for purposes of calculating the value of the note referred to above, it shall be considered the total value of the notes, according to the latest quotation published on the business day before the date when the document was issued by the custodian institution; and
- 29.6.3** the CONCESSIONAIRE shall assure, during the entire CONCESSION, the coverage of the amounts referred to in subclause 29.1, comprising the adjustment provided for in subclause 29.1.3.
- 29.7** In the hypothesis of partial or full enforcement of the PERFORMANCE BOND, the CONCESSIONAIRE shall cause its immediate renewal, in the amounts established in subclauses 29.1 and 29.1.3, as the case may be.
- 29.7.1** Should, for any reason whatsoever, the PERFORMANCE BOND ceases to be renewed, the CONCESSIONAIRE may offer another sound guarantee among those provided for in subclause 29.3, in compliance with the conditions of this Clause 29.
- 29.7.2** Without prejudice to the other hypotheses provided for in the AGREEMENT and in the regulation in force, the PERFORMANCE BOND may be used in the following cases:
- 29.7.3** in the hypothesis that the CONCESSIONAIRE fails to comply with the liabilities provided for in the AGREEMENT, or execute them at variance of what has been set forth;



- 29.7.4** in the hypothesis that the CONCESSIONAIRE fails to pay the fines applied thereto, or the indemnities imposed thereto, under the AGREEMENT;
- 29.7.5** in the hypothesis of the delivery of ESCHEATABLE ASSETS at variance of the requirements set forth in the AGREEMENT;
- 29.7.6** in the hypothesis that the CONCESSIONAIRE fails to pay, in the due term, any indemnities or pecuniary liabilities it is responsible for, due to the GRANTING AUTHORITY and related to the CONCESSION; and
- 29.7.7** whenever the CONCESSIONAIRE fails to take actions for curing default of legal, contractual, or regulatory liability, which shall not release the CONCESSIONAIRE from the liabilities assigned thereto by the Agreement.
- 29.8** The CONCESSIONAIRE shall remain liable for the compliance with the other contractual liabilities, regardless of the use of the PERFORMANCE BOND.
- 29.9** The PERFORMANCE BOND shall remain in force up to, at least one hundred and twenty (120) days upon the expiration of the agreement.
- 29.10** The PERFORMANCE BOND provided shall be restituted or released upon full performance of all contractual liabilities and, when in cash, it shall be monetarily restated as provided for by the State Law no. 9.433/05, of March 1, 2005.
- 29.10.1** The restitution or release of the guarantee shall depend on the full confirmation of the CONCESSIONAIRE's compliance with all labor and social security liabilities, and the issue of the Final Escheating Report provided for in subclause 36.7.
- 29.11** All expenses arising out of the institution and maintenance of the PERFORMANCE BOND shall be borne by the CONCESSIONAIRE.

### **Clause 30 – GUARANTEES PROVIDED BY THE GRANTING AUTHORITY**

- 30.1** The payments of the PUBLIC CONSIDERATIONS shall be made through pecuniary deposit in separate checking account managed by the PAYMENT AGENT, pursuant to State Law no. 11.477, of July 1, 2009, and EXHIBIT 9 to this AGREEMENT.
- 30.2** The funds separated from the FPE, as provided for in the PAYMENT AGENT APPOINTMENT AGREEMENT, shall serve not only for the compliance with the PUBLIC CONSIDERATIONS, but also for the compensation of the PAYMENT AGENT and DESENBAHIA.



**30.3** The strict compliance with the GRANTING AUTHORITY's pecuniary liabilities, within the scope of this AGREEMENT, shall be assured with quotas of the FGBP, under the State Law no. 12.610, of December 27, 2012, and its Bylaws and Regulation contained in EXHIBIT 9.

**30.3.1** The following are the GRANTING AUTHORITY's pecuniary liabilities assured by the FGBP: (i) PUBLIC CONSIDERATIONS; (ii) the installments accrued to the PUBLIC CONSIDERATIONS arisen from the risks assumed by the GRANTING AUTHORITY, under clauses 26.2.2 and 26.3.4, except as provided for in Clause 26.3.5, the coverage of which shall be as provided for in clause 30.4, and (iii) other general indemnities due by the GRANTING AUTHORITY to the CONCESSIONAIRE, mainly those arising out of the AGREEMENT's earlier termination.

**30.3.2** The guarantee referred to in subclause 30.3 shall be constituted by the FGBP, upon cash bond in blocked account for the liabilities set out above.

**30.3.2.1** The guarantee shall be constituted for the period required to cover the liabilities provided for in subclause 30.3.1, and shall be constituted for the minimum balance informed in subclause 30.3.2.2, which shall be restituted in the hypothesis that the guarantee is enforced, and the failure to so retribute for time period exceeding six (6) months may give rise, provided that requested by the CONCESSIONAIRE, to the termination of the AGREEMENT, under clause 40.

**30.3.2.2** During the whole effectiveness of the AGREEMENT, the minimum balance of the GUARANTEES PROVIDED BY THE GRANTING AUTHORITY shall correspond to 1/12 of ANNUAL MAXIMUM CONSIDERATION.

**30.3.3** FGBP shall, on an irrevocably and unchangeably basis, assume the condition of guarantor, co-liable for the strict compliance with the liabilities mentioned in subclause 30.3.1, which shall be effective, as provided for in this clause and in the guarantee agreement(s) to be entered into with the CONCESSIONAIRE, from the beginning of the CONCESSION to the final settlement, by the GRANTING AUTHORITY, of the latest ACTUAL CONSIDERATION, expressly waiving the benefit provided for in Article 827, of the Civil Code.

**30.3.4** The pecuniary liabilities arising out of the risk of foreign exchange variation assumed by the GRANTING AUTHORITY, under clause 26.3.5, may be guaranteed by specific fund to be created, upon capital to be contributed by the GRANTING AUTHORITY.



**30.3.5** The guarantees addressed in this clause may be substituted for any other guarantee modality accepted by law, provided that there is prior consent by the CONCESSIONAIRE.

**30.4** The non-creation of the guarantees provided for in clauses 30.3.3 and 30.3.4 within terms up to six (6) months and up to twenty-four (24) months, both from the execution of the AGREEMENT, respectively, may give rise to the earlier termination of the AGREEMENT for a CONCESSIONAIRE's initiative, under clause 40.

## CHAPTER V – THE CONCESSIONAIRE'S LEGAL STRUCTURE

### Clause 31 – MEMBERSHIP

**31.1** The CONCESSIONAIRE shall give immediate notice to the GRANTING AUTHORITY of alterations in its membership, described in EXHIBIT 2, existing at the time of execution of the AGREEMENT, including as for charters and later amendments thereto, in compliance with the liabilities established in the AGREEMENT, concerning the CONCESSIONAIRE's transfer of CONTROL.

**31.2** Any transfer or alteration in the CONCESSIONAIRE's CONTROL shall be prior authorized by the GRANTING AUTHORITY, under the law.

**31.3** The CONCESSIONAIRE is allowed to participate in the membership of other legal entity(ies) in order to make feasible the CONCESSION's FINANCIAL PROJECT.

**31.3.1** In the case provided for in this subclause, the CONCESSIONAIRE shall give notice to the GRANTING AUTHORITY of its equity interest in other company(ies), making available thereto copy of the respective charters and later amendments thereto.

### Clause 32 – CORPORATE CAPITAL

**32.1** The CONCESSIONAIRE's subscribed corporate capital shall be three million Brazilian *Reais* (R\$ 3,000,000.00), which are fully paid on the date when the AGREEMENT was executed.

### Clause 33 – TAKEOVER BY FUNDERS

**33.1** For assuring the CONCESSION's continuity, the CONCESSIONAIRE's funders are given the option, upon the GRANTING AUTHORITY's prior and formal consent, to take over the CONCESSIONAIRE's CONTROL in the following events:

**33.1.1** default in the financing contracted by the CONCESSIONAIRE, provided that such possibility is provided in the respective financing agreements;



- 33.1.2** in the other hypotheses provided for in the agreement(s) entered into by and between the CONCESSIONAIRE and its funder(s).
- 33.2** When default of the financing is characterized, which may give rise to the transfer mentioned in this subclause, the funder shall give notice to the CONCESSIONAIRE and the GRANTING AUTHORITY, informing about the default and opening term for the CONCESSIONAIRE to purge the default.
- 33.3** For them to be able to take the CONCESSIONAIRE's CONTROL, the funders shall:
- 33.3.1** undertake to comply with all clauses of the AGREEMENT, the PUBLIC NOTICE, and the EXHIBITS thereto; and
- 33.3.2** inform that they meet the legal and tax compliance requisites required to assume the services.
- 33.4** The taking of the CONCESSIONAIRE's CONTROL, under this subclause, shall not alter the CONCESSIONAIRE's liabilities to the GRANTING AUTHORITY.

## CHAPTER VI – PENALTIES

### Clause 34 – GENERAL PROVISIONS ON CONTRACTUAL PENALTIES

- 34.1** The noncompliance with the clauses of this AGREEMENT, the EXHIBITS hereto and the PUBLIC NOTICE, the applicable laws and regulation shall, without prejudice to the civil and criminal liabilities and other penalties possibly provided for in the relevant laws and regulation, the application of the following contractual penalties:
- 34.1.1** fines, quantified and applied under this AGREEMENT;
- 34.1.2** temporary suspension of participation in bids and hindrance to contract with the GRANTING AUTHORITY for term not exceeding five (5) years; and
- 34.1.3** statement of disqualification to bid or contract with the Public Administration, for the time the reasons for the punishment remains, and until its rehabilitation is caused before the Public State Administration.
- 34.2** Each of the penalties provided for in subclauses 34.1.2 and 34.1.3 may be applied along with subclause 34.1.1, and prior defense of the interested party in the respective proceeding shall be authorized, under this AGREEMENT and the laws in force at the time of the breach.
- 34.3** Except as otherwise provided for in this AGREEMENT, the conducts provided for in Articles 185 and 199 of the State Law no. 9.433, of March 1, 2005, subject the



breaching parties to legal sanctions, especially those defined in Article 186 of the same statute, assured prior and full defense in the administrative proceeding.

**34.4** The process for assessment of penalties shall commence with grounded administrative act by the GRANTING AUTHORITY, containing the description of the breach.

**34.4.1** The CONCESSIONAIRE shall submit defense within five (5) business days from notice, by the GRANTING AUTHORITY, of the act performed thereby, providing thereto the supporting elements it sees fit.

**34.4.2** Provided that the discovery phase in proceeding is completed, the party shall be summoned to submit the final arguments within a five (5)-business day term.

**34.4.3** Provided that the reasons submitted by the CONCESSIONAIRE are not entertained, or if the term addressed in subclause 34.4.1 is elapsed without submission of defense, reasonable penalty shall be applied and the CONCESSIONAIRE shall be summoned.

**34.4.4** The summoning referred to in subclause 34.4.3 shall be made in writing, against receipt, determining, in the case of fine, the payment, within no less than ten (10) business days from its receipt, if another term is not established.

**34.4.5** Appeal may be brought within a five (5)- business day term from the summons receipt by the CONCESSIONAIRE.

**34.5** For application of penalties, the nature of the fault, the seriousness of the tort, the losses caused to the Public Administration, and the recurrence in the performance of the act shall be taken into account, in compliance with the dosimetry criteria set forth by the State Decree no. 13.967, of May 7, 2012.

**34.5.1** The classification of the administrative torts, according to their nature, shall comply with Article 14, of the State Decree no. 13.967, of May 7, 2012.

**34.5.2** Further to the hypotheses provided for in Article 14, IV, of the State Decree no. 13.967, of May 7, 2012, it is classified as administrative tort having extremely serious nature the failure to contract or to maintain in force, by the CONCESSIONAIRE, the PERFORMANCE BOND and/or the insurances required in the AGREEMENT.

**34.5.3** Further to the aggravating circumstances provided for in Article 15, of the State Decree no. 13.967, of May 7, 2012, the following shall be considered for purposes of assessing the seriousness of the tort:



34.5.3.1 the extent of the damages caused by the CONCESSIONAIRE to the SERVICES, the GRANTING AUTHORITY, or the USERS;

34.5.3.2 confirmed bad faith by the CONCESSIONAIRE, when performing the tort;

34.5.3.3 breach arising out of direct or indirect benefit to the CONCESSIONAIRE;

34.5.3.4 obtainment of advantages, by the CONCESSIONAIRE, as a consequence of the tort;

34.5.3.5 loss, without possibility of remediation, caused by the CONCESSIONAIRE in the LRV OPERATION;

34.5.3.6 significant economic loss to the GRANTING AUTHORITY, as a consequence of tort committed by the CONCESSIONAIRE;

34.5.3.7 ascertainment, by the GRANTING AUTHORITY, in view of the circumstances of the SERVICE and the act performed by the CONCESSIONAIRE, that its behavior is extremely harmful to the public interest, for actually or potentially jeopardizing the life or the physical integrity of USERS, public health, the environment, the exchequer, or the continuity of the SERVICES.

**34.5.4** Further to the mitigating circumstances provided for in Article 15, of the State Decree no. 13.967/12, it shall be considered, for purposes of assessing the seriousness of the tort, the CONCESSIONAIRE's economic and financial situation, specially its capacity to honor financial commitments, generate income, and maintain the performance of the AGREEMENT.

**34.5.5** The assessment of the loss caused to the Public Administration and the recurrence shall comply with the Articles 16 and 17 of the State Decree no. 13.967, of May 7, 2012.

**34.6** Penalty under the same generating fact that gave rise to the reduction in the PERFORMANCE APPRAISAL is not applicable.

**34.7** The continued recurrence specified in subclause 34.5 is hypothesis for the application of penalty.

**34.8** The nonperformance of the agreement in perfectly remediable or excusable hypotheses shall not be punished with the penalty addressed in subclause 34.1.2, without excluding the application of the corresponding fine for the breach.



**34.9** In cases of nonperformance of the agreement, including for the noncompliance of intermediary terms of the time schedules, the GRANTING AUTHORITY may accept new schedule for conducting the activity or service not yet performed or performed at variance, provided that:

- 34.9.1** in situations perfectly remediable or excusable and of which the CONCESSIONAIRE is not benefited or obtains advantage of;
  - 34.9.2** the final date of the time schedule originally provided for in the IMPLEMENTATION and in the OPERATION phase is not altered.
  - 34.9.3** the decision on the acceptance of the new schedule, under the AGREEMENT MANAGEMENT COMMITTEE, shall be grounded and guided by technical criteria, and it shall count on approval by Higher Authority.
  - 34.9.4** In the cases in which the acceptance of the new schedule is capable of giving rise to economic-financial rebalance of the agreement, the decision shall be of the PPP Managing Committee, under Article 24, § 4, of the State Law no. 9.290, of December 27, 2004.
  - 34.9.5** Regardless of approval of the new schedule referred to in subclause 34.9, the process for assessing penalties provided for in subclause 34.4 shall be initiated, and the application of penalty shall be stayed.
  - 34.9.6** The stay of application of the penalty may only be deferred when the term provided for in the new schedule for the conduction of the activity or performance of the service does not imply lapse of the GRANTING AUTHORITY's pretension to punish.
  - 34.9.7** Provided that the term established in the new schedule is complied, and the original time schedule is recovered, the penalty, including the fine, shall be extinguished by the GRANTING AUTHORITY.
  - 34.9.8** In the event that the term provided for in the new schedule is not complied with, the process for application of penalty shall be retaken, and interests on arrears shall be charged in the case of fine, in which hypothesis the submission of new schedule shall not be allowed.
- 34.10** The interests on arrears shall be indexed at the SELIC rate, and shall be calculated on a *pro rata die* basis comprising the period alluded in subclause 34.4.4 and the date of elaboration of the collection document.
- 34.10.1** The collection document shall be issued on the business day immediately subsequent to the not complied term of the new schedule, and the CONCESSIONAIRE shall pay fine within a five (5)-business day term.



**34.11** Upon complying with the criteria provided for in subclause 34.5, no fine applied to the CONCESSIONAIRE shall be less than zero point zero one percent (0.01%) of the value of the ANNUAL MAXIMUM CONSIDERATION, except for daily fines, or over one percent (1%) of the ANNUAL MAXIMUM CONSIDERATION.

**34.12** In the case of continued breaches, daily fines shall be fixed while the noncompliance remains.

**34.13** The sum of the daily fines applied by the same generating factor may not exceed ten percent (10%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, under subclause 34.11.

**34.14** The fines shall not have an indemnifying nature.

**34.15** The pecuniary amounts resulting from the application of fines shall be received by the GRANTING AUTHORITY.

**34.16** The CONCESSIONAIRE shall answer for:

**34.16.1** daily fine of zero point zero one percent (0.01%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, in the hypothesis of failure to take or keep updated the insurance policies required in this AGREEMENT;

**34.16.2** daily fine of zero point zero one percent (0.01%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, in the hypothesis of failure to constitute and maintain the PERFORMANCE BOND as required in this AGREEMENT;

**34.16.3** daily fine corresponding to zero point zero three percent (0.03%) of the ANNUAL MAXIMUM CONSIDERATION, for the noncompliance with a certain OPERATIONAL LANDMARK provided for in subclause 4.3;

**34.16.4** daily fine of zero point zero one percent (0.01%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, in the hypothesis of the non-obtainment of the licenses and authorizations provided for in the AGREEMENT, provided that the nonexistence of omission by the CONCESSIONAIRE when taking the necessary actions is confirmed;

**34.16.5** daily fine of zero point zero one percent (0.01%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, in the hypothesis of noncompliance with the openness duty when providing economic, accounting, technical, financial and other information related to the performance of this AGREEMENT;

**34.16.6** daily fine of zero point zero one percent (0.01%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, in the hypothesis of noncompliance, by the



CONCESSIONAIRE, with the GRANTING AUTHORITY's requests, notices, and determinations;

- 34.16.7** fine of zero point five percent (0.5%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, in the case of obtainment of grade, according to EXHIBIT 6 to the AGREEMENT, of the PERFORMANCE APPRAISAL, equal or under seven (7.0) for two consecutive years or three alternate years;
- 34.16.8** fine corresponding to one hundred percent (100%) of the amount of corresponding indemnities, in the event of escheating of ESCHEATABLE ASSETS at variance of the provisions in subclause 7.6, without prejudice to the payment of the respective indemnities.
- 34.17** Without prejudice to other forms of performance provided for in the laws and in this AGREEMENT, the daily fines may be subject matter of offset against future payments of PUBLIC CONSIDERATIONS.
- 34.18** In the hypothesis of noncompliance, by the CONCESSIONAIRE, with any liability provided for in this AGREEMENT, for which there is no specific fine sanction, it shall vary from zero point one percent (0.1%) to five percent (5%) of the amount of the ANNUAL MAXIMUM CONSIDERATION, in compliance with the dosimetry criteria referred to in subclause 34.5.
- 34.19** For determining the amount of the residual fine addressed in subclause 34.18, the following percentages shall also be used in the event of accident, regardless of the existence or not of victims:
- 34.19.1** accident without victims: 0.50%;
- 34.19.2** accident with victims: 2.0%.
- 34.20** The failure to pay the fines set forth in term set forth shall import the automatic charging of interests on arrears corresponding to the *pro rata* variation of the SELIC rate, from the date of the respective due date up to the date of actual payment.
- 34.21** Should the CONCESSIONAIRE not pay the fine imposed within the established term, the GRANTING AUTHORITY shall enforce the guarantees rendered under this AGREEMENT for the settlement of the fine.
- 34.22** The application of the penalties provided for in this clause, and the compliance therewith, does not jeopardize the application of the imposed penalties for the same fact by the applicable laws, or other sanctions provided for in agreement.
- 34.23** The administrative decision from which results application of penalty as a consequence of performance of administrative tort shall have a binding nature, and only the



administrative appeals provided for in the State Law no. 9.433, of March 1, 2005, shall be applicable thereto.

- 34.24** The administrative decision referred to in subclause 34.23 is not subject to the levels of resolution of disputes provided for in Clause 42.

## **CHAPTER VII – THE INTERVENTION AND TERMINATION OF THE AGREEMENT**

### **Clause 35 – INTERVENTION BY THE GRANTING AUTHORITY**

- 35.1** The GRANTING AUTHORITY may intervene in the CONCESSIONAIRE in order to assure adequacy in the performance of the IMPLEMENTATION or OPERATION of the LRV, as well as the strict compliance with the relevant contractual, regulatory, and legal rules, in the following hypotheses:
- 35.1.1** total or partial ceasing or interruption of the IMPLEMENTATION or SERVICE performance;
  - 35.1.2** serious deficiencies in the conduction of the activities comprised by the CONCESSION;
  - 35.1.3** situations hazardous to the environment and security of people or assets; and
  - 35.1.4** reiterated and ostensive noncompliance with the contractual liabilities.
- 35.2** The intervention shall be made as set forth in law, and shall be accompanied by designation of the intervening authority, also specifying the term and limits of the intervention.
- 35.3** Immediately upon decreeing the intervention, the GRANTING AUTHORITY shall cause the occupancy and use of the facilities, equipment, material and personnel employed in the performance of the AGREEMENT, required to its continuity.
- 35.4** Once the intervention is decreed, the GRANTING AUTHORITY shall, within a thirty (30)-day term, initiate administrative proceeding, which shall be concluded within time period not to exceed one hundred and eighty (180) days, for confirming the causes determining the intervention and assessing the respective liabilities, assuring to the CONCESSIONAIRE full right to defense.
- 35.5** Provided that the intervention is ceased, if the CONCESSION is not extinguished, the IMPLEMENTATION and the SERVICES of the LRV subject matter of the AGREEMENT shall return to the CONCESSIONAIRE's liability.
- 35.6** The occurrence of intervention by the GRANTING AUTHORITY does not release the liabilities assumed by the CONCESSIONAIRE with its funders and, for justified reason for the benefit of the public interest, the GRANTING AUTHORITY may abdicate the



intervention in favor of the taken, by such funders, of the CONCESSIONAIRE's CONTROL, according to Clause 33.

- 35.7** The occurrence of intervention does not release the GRANTING AUTHORITY from any of the pecuniary liabilities to the CONCESSIONAIRE.

### **Clause 36 – EXTINCTION CASES**

- 36.1** The CONCESSION shall be extinguished upon:

- 36.1.1** expiration of the agreement;
- 36.1.2** takeover;
- 36.1.3** forfeiture;
- 36.1.4** termination; or
- 36.1.5** annulment.

- 36.2** Upon terminated the CONCESSION, the GRANTING AUTHORITY shall immediately assume the SERVICE provision, and all ESCHEATABLE ASSETS shall be reverted thereto, free and clear from any burdens or charges.

- 36.3** Within the twenty-four months precedent to the extinction of the CONCESSION, the GRANTING AUTHORITY shall prepare the Provisional Escheating Report.

- 36.3.1** The Provisional Escheating Report shall refer to the situation of the ESCHEATABLE ASSETS and determine its acceptance by the GRANTING AUTHORITY or inform the need for interventions or substitutions under the CONCESSIONAIRE's liability.

- 36.3.2** The Provisional Escheating Report shall fix the terms in which possible interventions or substitutions shall be made.

- 36.4** The interventions and substitutions made arising out of the maintenance duty of the ESCHEATABLE ASSETS by the CONCESSIONAIRE shall not generate right to indemnification or compensation in favor of the CONCESSIONAIRE

- 36.5** The Provisional Escheating Report, in the case of it is assessed noncompliance with the maintenance duty of the ESCHEATABLE ASSETS, shall determine the opening of the due proceeding for possible application of penalty against the CONCESSIONAIRE.

- 36.6** The CONCESSIONAIRE shall cause the removal of all non-escheatable assets.

- 36.7** Upon removed the non-escheatable assets and verified the complete compliance with the determination of the Provisional Escheating Report, the GRANTING AUTHORITY shall prepare the Final Escheating Report, with purpose to clear the CONCESSIONAIRE from all liabilities inherent to the assets escheating.



**36.7.1** While the Final Escheating Report is not issued the PERFORMANCE BOND shall not be cleared.

**36.8** The GRANTING AUTHORITY may, at its own discretion, succeed the CONCESSIONAIRE in the leasing or assets lease agreements essential to the SERVICE provision.

### **Clause 37 – EXPIRATION OF THE AGREEMENT**

**37.1** Upon expiration of the agreement, the CONCESSIONAIRE shall be responsible for the termination of any agreement executed with third parties, assuming all burdens, liabilities and charges arising out thereof, except for the agreements assigned to the GRANTING AUTHORITY as per escheating process force.

**37.2** The CONCESSIONAIRE shall take all reasonable measures to fully cooperate with the GRANTING AUTHORITY so that the services subject matter of this CONCESSION continues to be provided without interruptions under the AGREEMENT.

### **Clause 38 – TAKEOVER**

**38.1** The GRANTING AUTHORITY may, at any time, takeover the CONCESSION, for public interest reasons, under the laws in force upon prior indemnification payment which shall consider:

**38.1.1** the installments of the investments made, including in maintenance works, assets and installations, not amortized or depreciated yet, which have been made for compliance with this AGREEMENT, deducted the outstanding financial charges;

**38.1.2** the CONCESSIONAIRE relief with respect to the liabilities arising out of the financing agreements contracted thereby aiming at the compliance with the AGREEMENT, upon, as the case may be: (a) prior assumption, before the credit financing institutions, of the contractual liabilities of the CONCESSIONAIRE, especially when the incomes appears as financing guarantee; or (b) prior indemnification to the CONCESSIONAIRE of the totality of the outstanding debts before this credit financing institutions;

**38.1.3** all burdens and charges arising out of fines, rescissions and indemnifications due to suppliers, contractors and third parties in general, as a consequence of the breach of respective contractual relationships; and

**38.1.4** loss of profit.

**38.2** In the hypothesis of Clause 39 shall be effective up to the end of the right *in rem* to use concession agreement possible executed between the GRANTING AUTHORITY and



the CONCESSIONAIRE for performance of the projects associated to the CONCESSION.

### Clause 39 – FORFEITURE

**39.1** The GRANTING AUTHORITY may declare the forfeiture of the CONCESSION in the occurrence of any of the following events:

**39.1.1** decree, by *in rem judicatam* sentence, bankruptcy of the CONCESSIONAIRE in the hypothesis of its managers have acted so as to bring ruin or malice aforethought, simulation or fraud against the interests of its creditors;

**39.1.2** the concessionaire does not comply with summoning of the granting authority to, in one hundred and eighty (180) days, submit documentation with respect to fiscal compliance, in the course of the concession, according to article 100 of the State Law no. 9.433, of March 1<sup>st</sup>, 2005.

**39.1.3** transfer of the CONCESSION or alteration of the CONTROL of the CONCESSIONAIRE without the GRANTING AUTHORITY's prior consent;

**39.1.4** noncompliance, by the CONCESSIONAIRE, with the liability for annual renewal of the PERFORMANCE BOND in the hypothesis of offering of surety bond or bank guarantee, or of carrying out the restitution of the full amount of the PERFORMANCE BOND, within a sixty (60)-day term from its use by the GRANTING AUTHORITY;

**39.1.5** noncompliance exceeding one hundred and eighty (180) days, by the CONCESSIONAIRE, of the liability to contract or maintain contracted the insurance policies provided for in the AGREEMENT;

**39.1.6** when the total amount of fines and penalties applied to the CONCESSIONAIRE exceed the value of the PERFORMANCE BONDS;

**39.1.7** obtainment of score, in the form of EXHIBIT 6, of the PERFORMANCE APPRAISAL smaller or equal to seven point zero (7.0) for three consecutive years or five alternate ones.

**39.2** The forfeiture statement of the CONCESSION shall be preceded of assessment of the contractual noncompliance of the CONCESSIONAIRE in administrative proceeding assuring it the right to full defense.

**39.2.1** Initiated the administrative proceeding and confirmed the noncompliance, the forfeiture shall be declared by the GRANTING AUTHORITY.

**39.3** Upon declared the forfeiture, the CONCESSIONAIRE may be indemnified in the amount of the investments made, but not duly amortized.



**39.3.1** From the possible indemnification by the investments not amortized shall be discounted:

**39.3.1.1** the losses caused by the CONCESSIONAIRE to the GRANTING AUTHORITY, USERS and third parties;

**39.3.1.2** the contractual fines applied to the CONCESSIONAIRE which were not paid, compensated or refunded upon enforcement of the performance bond of the agreement; and

**39.3.1.3** any values received by the CONCESSIONAIRE as insurance coverage related to the events or circumstances giving rise to the forfeiture statement.

**39.4** Upon declared the forfeiture and, if so is the case, respective indemnification is paid, shall not result to the GRANTING AUTHORITY any kind of liability with respect to the burdens, charges, liabilities or commitments with employees of the CONCESSIONAIRE or third parties the same had contracted with for activities inherent, ancillary, associated or complementary to the CONCESSION.

**39.5** The CONCESSIONAIRE and its controllers shall remain in charge for holding the GRANTING AUTHORITY harmless from and against possible pecuniary conviction or of equity effects related to the employees of the CONCESSIONAIRE or third parties contracted thereby, including, but not limited to, sentences in social security, accident and tax claims.

**39.6** The forfeiture statements do not hinder the application of other penalties, particularly the ones provided for in subclause 34.1.

**39.7** The forfeiture statements shall also cause:

**39.7.1** enforcement of the PERFORMANCE BOND, for refund of possible losses caused to the GRANTING AUTHORITY; and

**39.7.2** withholding of possible credits arising out of the AGREEMENT, up to the limit of the losses caused to the GRANTING AUTHORITY.

#### **Clause 40 – TERMINATION**

**40.1** The AGREEMENT may be terminated by initiative of the CONCESSIONAIRE, upon action proposed before the court of arbitration especially for that purpose, in the event of noncompliance with the contractual rules by the GRANTING AUTHORITY, especially in the event of noncompliance with any PUBLIC CONSIDERATION provided for in the AGREEMENT for a period exceeding six (6) months.



**40.2** It shall not configure hypothesis of termination the noncompliance with the liabilities by the GRANTING AUTHORITY which has been postponed, provided that does not definitely jeopardizes the possibility of performance of the AGREEMENT.

**40.3** The SERVICES provided by the CONCESSIONAIRE cannot be interrupted or stopped up to ninety (90) days upon sentence of the court of arbitration which decrees the termination of the AGREEMENT.

**40.4** The indemnification due to the CONCESSIONAIRE in the event of termination shall be calculated according to subclause 38.1.

**40.5** For the purposes of calculation informed in the precedent subclause, it shall be considered the values received by the CONCESSIONAIRE as insurance coverage, related to events or circumstances giving rise to the termination.

#### **Clause 41 – ANNULMENT**

**41.1** The GRANTING AUTHORITY shall declare the nullity of the AGREEMENT, preventing the legal effects which would ordinarily cause, further to reverse the ones already made, if verifies illegality in its formalization or in the Tender.

**41.2** In the hypothesis described in the precedent subclause, if the illegality is imputed only to the very GRANTING AUTHORITY, the CONCESSIONAIRE shall be indemnified for what it has made up to the date in which the annulment is declared and for the losses regularly confirmed.

### **CHAPTER VIII – OTHER PROVISIONS**

#### **Clause 42 – RESOLUTION OF DISPUTES**

##### **42.1 FOLLOW-UP COMMITTEE**

**42.1.1** For resolution of possible divergences having a technical or economic-financial nature during the CONCESSION term, either party, upon written notice addressed to the other party, may request the creation of the FOLLOW-UP COMMITTEE, delimiting the object of the dispute and hereby informing its representative in the FOLLOW-UP COMMITTEE.

**42.1.2** The FOLLOW-UP COMMITTEE shall consist of three (3) incumbent members, thus chosen:

**42.1.2.1** one (1) member appointed by the GRANTING AUTHORITY;

**42.1.2.2** one (1) member appointed by the CONCESSIONAIRE; and

**42.1.2.3** one (1) member appointed by the PARTIES, upon mutual consent.



**42.1.2.4** Within the maximum fifteen (15)-day term from the receipt of the request for creation of the FOLLOW-UP COMMITTEE, the other party shall appoint its representative.

**42.1.2.5** The third member shall be chosen, upon mutual consent, by the PARTIES, in no more than thirty (30) days from the appointment of the second member.

**42.1.2.6** The incumbent members appointed by the GRANTING AUTHORITY and by the CONCESSIONAIRE shall have one (1) substitute to replace them in possible hindrances.

**42.1.2.7** Each PARTY shall bear the expenses of its representatives, and the expenses of the member mentioned in subclause 42.1.2.5 shall be equally divided between both, under subclause below:

42.1.2.7.1 The CONCESSIONAIRE shall bear the complete expenses of the member mentioned in subclause 42.1.2.5 and shall be entitled to refund, by the GRANTING AUTHORITY, of half the costs incurred.

**42.1.3** The FOLLOW-UP COMMITTEE shall not decide any matter without prior hearing of the PARTIES and without pronouncement of all its members.

42.1.3.1 The FOLLOW-UP COMMITTEE shall decide through majority of votes.

**42.1.4** Every divergence raised shall be forwarded to the FOLLOW-UP COMMITTEE along with copy of all documents required to the solution of the matter.

**42.1.5** The submission of any matter to the FOLLOW-UP COMMITTEE does not exempt the PARTIES from the complete compliance with its contractual liabilities.

**42.1.6** The decision of the FOLLOW-UP COMMITTEE shall be binding to the PARTIES, until possible arbitration decision is issued.

**42.1.7** The PARTIES may, at any time, submit its divergences directly to the arbitration regardless of prior appeal or prior decision of the FOLLOW-UP COMMITTEE.

## **42.2 ARBITRATION**

**42.2.1** The PARTIES agree, as determined by Federal Law no. 9.307, of September 23, 1996, to resolve through arbitration any and all conflict of interests arising



out of the performance of the AGREEMENT or of any agreement, documents, exhibits or covenants related thereto.

**42.2.2** The arbitration shall be processed by the CENTER FOR ARBITRATION AND MEDIATION OF THE CHAMBER OF COMMERCE BRAZIL-CANADA, according to the rules provided for in its regulation in force at the date in which the arbitration was initiated.

42.2.2.1 In the event the PARTIES agree to, another chamber shall be elected for the arbitration proceeding.

**42.2.3** The arbitration shall be held in the Municipality of Salvador, using Brazilian Portuguese as official language for the practice of any and all act.

**42.2.4** The laws applicable to the arbitration shall be the following: State Law no. 9.290, of December 27, 2004; State Law no. 9.433, of March 01, 2005; State Law no. 12.209, of April 20, 2011; Federal Law no. 11.079, of December 30, 2004; Federal Law no. 8.987, of February 13, 1995; Federal Law no. 9.074, of July 07, 1995; Federal Law no. 8.666, of June 21, 1993; and the Brazilian civil proceeding laws in what is not conflicting with the rules of the court of arbitration.

**42.2.5** The court of arbitration shall consist of three (3) arbitrators of renowned reputability and knowledge on the matter to be decided, and each PARTY shall appoint one arbitrator. The third arbitrator shall be chosen upon mutual consent by the arbitrators appointed by the PARTIES. The third arbitrator shall be the chairperson of the court of arbitration.

**42.2.5.1** In the event there is no consent between the arbitrators chosen by each PARTY, the third arbitrator shall be appointed by the CENTER FOR ARBITRATION AND MEDIATION OF THE CHAMBER OF COMMERCE BRAZIL-CANADA, in compliance with the provisions and conditions applicable provided for in its arbitration regulation.

**42.2.6** Should it be required the obtainment of coercive, provisional or urgent measures, before or after the creation of the arbitration court, the PARTIES may require them directly to the relevant body of the Judicial Branch.

42.2.6.1 Should the measures referred to in the precedent subclause be required in the course of the arbitrating procedure, they shall be required and appreciated by the arbitration court, which, on its turn, may request them to relevant body of the Judicial Branch, if it understand it to be required.



**42.2.7** The decisions and sentence of the arbitration court shall be definitive and binding ones to the PARTIES and its successors.

**42.2.8** The responsibility for the costs of the arbitration procedure shall be determined as follows:

42.2.8.1 The CONCESSIONAIRE shall be liable for the costs for installation of the arbitration procedure, including the advance of the percentage of the fees of the arbitrators, even if the procedure is installed by initiative of the GRANTING AUTHORITY;

42.2.8.2 the costs and charges concerning possible measures taken in the arbitration procedure shall fall on the CONCESSIONAIRE, even when the arrangement is required by the very court of arbitrators;

42.2.8.3 the PARTY losing the arbitration procedure shall assume all costs, and, if so is the case, refund the CONCESSIONAIRE for the costs the same perchance had already assumed in said procedure.

42.2.8.4 in the event of partial approval of the plea brought to the court of arbitrators, the costs shall be divided between the PARTIES, if so the court understands, to the extent of the loss of each party.

### **Clause 43 – FINAL**

**43.1** Except if provided for otherwise, the failure to exercise, or late or partial exercise, of any right assisting either PARTY by the AGREEMENT, shall not imply waiver, or prevent its later exercise, nor create novation of respective liability.

**43.2** The statement of invalidity, nullity, illegality, irregularity or unenforceability of any provision of this AGREEMENT shall not necessarily affect the other clauses and liabilities provided for herein.

**43.3** The GRANTING AUTHORITY shall adopt all measures required, including the execution and/or adequacy of the relevant legal instruments, for transfer to the CONCESSIONAIRE of the use of the totality of the areas comprised in the CONCESSION, at compatible term and way with the liabilities assumed thereby in this AGREEMENT, except for the areas to be expropriated, to which the procedure set forth in clause 9 shall be observed.

**43.4** The CONCESSIONAIRE shall give preference to the contracting of former CTB's employees, dismissed due to deactivation SUBURB TRAIN, for the creation of its staff, as well as ex-highway employees dismissed due to deactivation of the bus lines, as a consequence of the LRV implementation.



- 43.5** The communications and notices between the PARTIES shall be made in writing and submitted: (i) in hands, provided that confirmed by protocol; (ii) by fax, e-mail or other remote mean, with return receipt; or (iii) through registered letter, with return receipt.
- 43.6** All documents related to the execution of the AGREEMENT and the CONCESSION shall be drawn up in Brazilian Portuguese or officially translated for that language.
- 43.7** In the event of dispute or inconsistency, the version in Brazilian Portuguese shall prevail.
- 43.8** The terms established in days, in the AGREEMENT, shall be counted in consecutive days.
- 43.9** It is hereby elected the Courthouse of the Judicial District of Salvador so as to solve any dispute arising out of this AGREEMENT which escape the court of arbitration jurisdiction.



In witness whereof, the **PARTIES** sign this **AGREEMENT** in four (4) counterparts, having the same substance and form, and each of them shall be considered an original.

Salvador, xxxxxxx XX, 2017.

Urban Development Secretary

José Eduardo Copello  
CTB's Managing Director

George Bittencourt Rebouças  
CTB's Administrative and Financial Director

Otto Alencar Filho  
DESENBAHIA Managing Director

Paulo de Oliveira Costa  
DESENBAHIA Operations Director

XXXXXXXXXXXXXXXXXXXXX  
XXXXX Managing Director

XXXXXXXXXXXXXXXXXXXXX  
XXXXX Director

**Witness:**

Name:

RG:

**Witness:**

Name:

RG: