

ANNEX VII
PROVISIONS FOR PERFORMANCE GUARANTEES

ANEXO VII

PREÂMBULO

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

ANNEX VII

PREAMBLE

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

ANNEX VII – PROVISIONS FOR PERFORMANCE GUARANTEES

Template No. 01 – PRESENTATION LETTER OF THE PERFORMANCE BOND OF THE GUARANTEE-INSURANCE TYPE

To
State of Amapá
Ref.: Bid Notice No. [●]/[●]

Dear Sir,

In response to the referred BID NOTICE, the company [●], with head office at [●], in the city of [●], State of [●], registered with the CNPJ No. [●], herein represented by [●], holder of ID (RG) No. [●] and registered with the CPF/MF under No. [●], presents a PERFORMANCE BOND, as a condition to the execution of the CONCESSION AGREEMENT of the bidding process, as per the attached policy.

[PLACE], [DATE].

[NOTARIZED SIGNATURE]

CONCESSIONAIRE
By its legal representative
ID (RG) No. [●]
CPF/ME under No. [●]

TERMS AND CONDITIONS OF THE PERFORMANCE BOND

1. BORROWER: CONCESSIONAIRE

2. INSURED: STATE OF AMAPÁ

3. OBJECT OF THE INSURANCE: To guarantee strict compliance with all obligations assumed by the CONCESSIONAIRE before the STATE, under the terms of the CONCESSION AGREEMENT, considering that the Insured must be indemnified with the amounts set in item 5 below, upon noncompliance with any of the contractual obligations, including, among others, the events indicated in **Clause 16** of the CONCESSION AGREEMENT, as well as the fines arising from the referred events of noncompliance.

4. INSTRUMENT: A performance bond policy issued by the insurance company duly incorporated and authorized by the Superintendence of Private Insurance – SUSEP, pursuant to the terms of the normative acts of SUSEP.

5. AMOUNT OF THE GUARANTEE: The performance bond Policy must provide for the indemnity amounts for each period of the CONCESSION AGREEMENT, **under the terms of clause 16.1:**

5.1. The guarantee of performance of the CONCESSION AGREEMENT shall be adjusted on a yearly basis, on the same date of the adjustments of the amounts of the RATES, according to the following formula:

$$Gt = Gt_{-1} \times (1 + IPCA_p)$$

Where:

Gt is the amount of the adjusted Performance Bond;

Gt₋₁ is the amount of the Performance Bond in effect;

IPCA_p is the National Extended Consumer Price Index calculated by the Brazilian Institute for Geography and Statistics (IBGE); accrual for the period between the month of the latest adjustment and the month of the adjustment in point.

6. TERM: The performance bond Policy must remain in effect for at least twelve (12) months from the start of the effectiveness of the CONCESSION AGREEMENT, renewable in the cases provided for in the CONCESSION AGREEMENT.

7. MISCELLANEOUS: A performance bond Policy must contain the following additional provisions:

7.1. Declaration of the insurance company that it is aware of and accepts the terms and conditions of the CONCESSION AGREEMENT;

7.2. Prohibition of the cancellation of the Performance Bond Policy due to lack of total or partial payment of the premium;

7.3. In the event of confirmation of noncompliance by the Borrower with the obligations covered by the Performance Bond Policy, the Insured shall have the right to require from the Insurance Company the indemnity owed, when the notification made to the Borrower is unsuccessful;

7.4. In the event of declaration of lapse of the CONCESSION, the insured may forfeit the Performance Bond Policy for purposes of reimbursement of any losses; and

7.5. In the event of the filing of lawsuits between the Insurance Company and Insured, the dispute shall be settled in the jurisdiction of domicile of the Insured.

Any terms not expressly defined in this ANNEX will have the meanings ascribed to them in the BID NOTICE.

**Template No. 02 –PRESENTATION LETTER OF THE PERFORMANCE BOND OF THE BANK
GUARANTEE TYPE**

To

State of Amapá

Ref.: BID NOTICE no. [•]/[•]

Dear Sir,

1. By this Letter of Guarantee, Bank [•], with head office at [•], registered with the CNPJ/MF under No. [•], (“Guarantor Bank”), directly on its own behalf or on behalf of any of its successors, undertakes before the STATE, as joint and several guarantor of [CONCESSIONAIRE], (the “Guaranteed Party”), with express waiver of the rights provided for in articles No. 827, 835, 837, 838, and 839 of Law No. 10406, of January 10, 2002 (Brazilian Civil Code), for strict compliance with all obligations assumed by the Guaranteed Party in the CONCESSION AGREEMENT, arising from International Bid No. [•]/[•], (the “Agreement”), to be executed between the STATE and the Guaranteed Party, the terms, clauses and conditions of which the Guarantor Bank expressly represents to know and accept.

2. As a consequence of this Letter of Guarantee, the Guarantor Bank undertakes, in the event that the Guaranteed Party fails to comply with its obligations arising from the Law or the CONCESSION AGREEMENT, including, among others, the events indicated in Clause 16 of the CONCESSION AGREEMENT, as well as the fines arising from the referred events of noncompliance, under the conditions and within the deadlines established in the CONCESSION AGREEMENT, to pay to the STATE the amounts indicated below:

[Amounts according to clause 16.1]

The amount of the Letter of Guarantee shall be adjusted on a yearly basis, on the same date of the adjustments of the amounts of the RATES, according to the following formula:

$$G_t = G_{t-1} \times (1 + IPCA_p)$$

Where:

G_t is the amount of the adjusted Performance Bond;

G_{t-1} is the amount of the Performance Bond in effect;

$IPCA_p$ is the National Extended Consumer Price Index calculated by the Brazilian Institute for Geography and Statistics (IBGE); accrual for the period between the month of the latest adjustment and the month of the adjustment in point.

3. The Guarantor Bank also undertakes, within the scope of the amounts indicated above, to pay for all losses caused by the Guaranteed Party, such as fines applied by the REGULATORY AGENCY, associated with the CONCESSION AGREEMENT, undertaking to make the payments

arising from these instruments when required therefrom, within no more than forty-eight (48) hours, calculated from receipt, by the Guarantor Bank, of the written notice submitted by the STATE.

4. The Guarantor Bank cannot admit any objection or opposition from the Guaranteed Party or evoked thereby for the purpose of avoiding compliance with the obligation assumed before the STATE under the terms of this Letter of Guarantee.

5. The Guarantor Bank and the Guaranteed Party cannot amend any of the terms of the Guarantee without the prior and express consent of the STATE.

6. Whenever the Guaranteed Party uses part of the total Guarantee, the Guarantor Bank shall undertake to immediately notify the Guaranteed Party so that it may recompose the full amount of the Guarantee within ten (10) business days from the date of use.

7. In the event that the STATE files a lawsuit to request compliance with the obligation referred to in this Letter of Guarantee, the Guarantor Bank shall be required to pay all judicial and extrajudicial costs.

8. The Guarantee shall remain in effect for one (1) year from the date of signing of the CONCESSION AGREEMENT, as per the conditions referred to in Clause 16, renewable for an equal period.

9. The Guarantor Bank also represents that:

a) this letter of guarantee is duly booked in strict compliance with the regulations of the Central Bank of Brazil currently in effect, in addition to meeting the precepts of the applicable Banking Legislation;

b) the signatories of this instrument are authorized to provide guarantee on its behalf and under its responsibility; and

c) its share capital is [•] reais (BRL [•]), being authorized by the Central Bank of Brazil to issue the Letters of Guarantee and that the amount of this Letter of Guarantee, in the amount of [•] reais (BRL [•]), is within the limits authorized thereto by the Central Bank of Brazil.

[PLACE], [DATE].

[NOTARIZED SIGNATURE OF THE LEGAL REPRESENTATIVES]

[Signature of the Witnesses]