

**ANNEX V**  
**PROVISIONS FOR THE ENGAGEMENT OF AN INDEPENDENT VERIFIER AND INDEPENDENT  
CERTIFIER**

## ANEXO V

### 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 V, em inglês, e a versão oficial, redigida em língua portuguesa, prevalecerá a versão em língua portuguesa, documento oficial da licitação.

## ANNEX V

### 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 V, the Portuguese version shall prevail, as the only official document for the auction.

## **ANNEX V – PROVISIONS FOR THE ENGAGEMENT OF AN INDEPENDENT VERIFIER AND INDEPENDENT CERTIFIER**

### **1. General provisions on the INDEPENDENT AUDITOR**

1.1. An INDEPENDENT VERIFIER is a legal entity, with proven technical knowledge on the provision and management of services and activities similar to those performed by the CONCESSIONAIRE.

1.2. The INDEPENDENT VERIFIER will be in charge of assisting the REGULATORY AGENCY in inspecting the AGREEMENT during all its stages, as well as responsible for surveying all information and data required to inspect the AGREEMENT, particularly in terms of achievement of the PERFORMANCE INDICATORS, provided for in ANNEX III - PERFORMANCE INDICATORS AND SERVICE GOALS, among other contributions provided for as follows.

1.3. It will be incumbent upon the INDEPENDENT VERIFIER to detail the procedures to calculate the PERFORMANCE INDICATORS provided for in the AGREEMENT, as well as in ANNEX III - PERFORMANCE INDICATORS AND SERVICE GOALS.

1.4. The work of the INDEPENDENT VERIFIER must be developed in partnership with the REGULATORY AGENCY, in compliance with the guidelines provided for herein, promoting the integration of the teams and alignment in relation to the best practices to be adopted.

### **2. Scope of the services to be provided by the INDEPENDENT VERIFIER**

2.1. The scope of the services provided by the INDEPENDENT VERIFIER during the first cycle of engagements made by the REGULATORY AGENCY must follow the stages below:

- a) **PLANNING:** the initial stage of the works with the purpose of structuring the project bases, setting forth the guidelines for the performance of the SERVICES, and equating concepts and practices, in addition to promoting full integration between the REGULATORY AGENCY's work teams.
- b) **STRUCTURING:** services that require intense effort in the beginning of the AGREEMENT and, once structured, they will require more specific efforts to maintain their functionality, such as:
  - I. Analysis of the collection systems and PERFORMANCE INDICATORS calculations;  
and
  - II. Preparation of the functional mapping of the performance systems.

c) **MANAGEMENT:** services that comprise the activities involving the management of the AGREEMENT routine, and which will be performed during the entire engagement period, such as:

- I. Support to the REGULATORY AGENCY in inspecting the CONCESSIONAIRE's activities in compliance with the clauses and items of the AGREEMENT;
- II. Follow up of the CONCESSIONAIRE's performance in relation to the obligations, indicators, and goals defined for each item under the terms of ANNEXANNEX III – PERFORMANCE INDICATORS AND SERVICE GOALS and the Clause 25 of the AGREEMENT;
- III. Preparation and availability of verification reports on compliance with the PERFORMANCE INDICATORS reports prepared by the CONCESSIONAIRE, with the frequency and within the deadlines indicated in clause 25 of the AGREEMENT.

3.2. First cycle is understood to be the first engagement made by the REGULATORY AGENCY for the independent inspection of the SERVICES provided within the scope of this AGREEMENT.

3.3. In addition to the stages described in the first cycle of engagements of the INDEPENDENT VERIFIER, the following comprise the services to be provided by this entity throughout the entire CONCESSION cycle:

- a) Support to the inspection conducted by the CONCESSIONAIRE for the REGULATORY AGENCY regarding the aspects of the ascertainment of the performance and quality of the SERVICES performed by the CONCESSIONAIRE; and
- b) Conduction of diligences, surveys, field inspections, and collection of information with the CONCESSIONAIRE and the SYSTEM, when applicable.

3.4. Within the scope of the first cycle of engagements of the INDEPENDENT VERIFIER by the REGULATORY AGENCY, it will be incumbent upon contractor to carry out the necessary procedures to transfer the knowledge acquired with respect to the processes for measuring the performance of the CONCESSIONAIRE with the necessary transfer of the macro-processes to the REGULATORY AGENCY.

3.5. The requirement established in the previous item is intended to qualify the REGULATORY AGENCY with respect to the inputs necessary for the coming engagements, with an aim at avoiding insecurity and a setback in performing the AGREEMENT.

3.6. The INDEPENDENT VERIFIER neither substitutes nor averts the exercise of the inspection power of the REGULATORY AGENCY within the scope of the CONCESSION.

### **3. Engagement of the INDEPENDENT VERIFIER**

3.1. The engagement of the INDEPENDENT VERIFIER and the respective remuneration will be incumbent upon the REGULATORY AGENCY, under the terms of the guidelines provided for in this ANNEX.

3.2. Without prejudice to other restrictions provided for in the legislation, the following entities cannot be hired as INDEPENDENT VERIFIERS:

- a) Entities prevented or suspended from engaging with the Public Administration;
- b) Entities which members directly or indirectly participate in the management or shareholding structure of CAESA, the CONCESSIONAIRE, or the economic group to which the latter belongs;
- c) An AFFILIATE or associate entity or an entity under common control of CAESA, the CONCESSIONAIRE, their shareholders, or any company subcontracted by CONCESSIONAIRE to perform the services dealt with in the AGREEMENT;
- d) Entities that include in their technical body a person who is or has been, over the past six (6) months, a director, manager, employee, outsourced contractor or partners of the shareholders of CAESA, the CONCESSIONAIRE, or any company subcontracted by CONCESSIONAIRE to perform the services dealt with in this AGREEMENT;
- e) Entities that provide, concomitantly to the engagement, an independent audit service at CAESA or at the CONCESSIONAIRE;
- f) Entities that have an effective agreement with the CONCESSIONAIRE, even with a different subject matter;
- g) Entities that could somehow have their independence and impartiality compromised;
- h) It must not be in liquidation, intervention or a Regime of Temporary Special Administration (RAET), bankruptcy or judicial reorganization;
- i) nor be temporarily suspended from participating in biddings or barred from entering into contracts with Public Authorities;
- j) nor may it have been declared unsuitable to bid or enter into contracts with Public Authorities, or have been condemned at the final instance to loss of rights due to the practice of environmental crimes, as provided for in Article 10 of Law No. 9605, of 2.12.1998.

3.3. The engagement of an INDEPENDENT VERIFIER mandatorily requires previous experience in services the characteristics of which is similar to the following:

- I. Independent Inspection or Audit of PPP/Concession agreements;
- II. Project Management;

III. Assessment of Performance Indicators;

IV. Inspection and Control of Processes/Indicators;

V. Implementation of WEB platforms for the sharing of information;

VI. Vulnerability analysis in Information Technology environments, from an information security point of view.

#### **4. Considerations on the INDEPENDENT CERTIFIER**

4.1. The INDEPENDENT CERTIFIER is a legal entity with the role of monitoring the compliance with the investments provided for in the INVESTMENTS PLAN, in support of the supervision of the AGREEMENT by the REGULATORY AGENCY, as provided for in the ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS.

4.2. The work of the INDEPENDENT CERTIFIER shall be developed in partnership with the REGULATORY AGENCY, in accordance with the guidelines set forth herein, promoting the integration of teams and alignment with the best practices to be adopted.

#### **5. Scope of services to be provided by the INDEPENDENT CERTIFIER**

5.1. The INDEPENDENT CERTIFIER shall act in the CONCESSION as a technical agent that will monitor the fulfillment of the investments foreseen in the ADDITIONAL INVESTMENT PLANS, in support of the inspection of the AGREEMENT by the REGULATORY AGENCY, as provided for in ANNEX IV – CONCESSION TECHNICAL SPECIFICATIONS.

5.2. The scope of the services provided by the INDEPENDENT shall follow the following steps:

- a) a) PLANNING: initial stage of the work with the objective of structuring the bases of the project, from the analysis of the proposals for investments provided for in item 4.2 of ANNEX IV – CONCESSION TECHNICAL SPECIFICATIONS.
- b) IMPLEMENTATION: services that make up the activities to follow up on the investments provided for in item 4.2. of ANNEX IV – CONCESSION TECHNICAL SPECIFICATIONS, such as:

I. Support to the REGULATORY AGENCY in the inspection;

II. Preparation and presentation of reports on the compliance with the investment targets by the CONCESSIONAIRE.

5.3. The INDEPENDENT CERTIFIER does not replace, nor does it rule out the exercise of the power of supervision of the REGULATORY AGENCY within the scope of the CONCESSION.

#### **6. Hiring of the INDEPENDENT CERTIFIER**

6.1. The hiring of the INDEPENDENT CERTIFIER and the respective remuneration shall be the responsibility of the REGULATORY AGENCY, in accordance with the guidelines set forth in this ANNEX.

6.2. The following entities may not be hired as INDEPENDENT CERTIFIER:

- a) Those precluded or suspended from hiring with the Public Administration;
- b) Those whose partners have direct or indirect participation in the management or corporate structure of the CONCESSIONAIRE or the economic group to which the latter belongs;
- c) Those that are AFFILIATED, associated or under the common control of the CONCESSIONAIRE, its shareholders or any subcontractor to perform the services that are the purpose of this CONCESSION AGREEMENT;
- d) Those which have in their technical body a person that is or has been, in the previous 6 (six) months, an officer, manager, employee, outsourced contractor or partner of the shareholders of the CONCESSIONAIRE or any subcontractor company to perform the services that are the purpose of this CONCESSION AGREEMENT;
- e) Those which have an effective contract with the CONCESSIONAIRE, even if with a different object;
- f) Those that may somehow have their independence and impartiality compromised;
- g) Shall not to be under liquidation, intervention or Special Temporary Administration Regime - RAET, bankruptcy or judicial reorganization; under a penalty of temporary suspension from participation in bidding processes or precluded from hiring with the Government; not have been declared ineligible to bid or hire with the Government, as well as not to have been sentenced, by a res judicata judgement, to the interdiction of rights due to the practice of environmental crimes, as regulated by Article 10 of Law No. 9605 of February 12, 1998.

6.3. It shall be mandatory requirements for hiring of the INDEPENDENT CERTIFIER to have previous experience in services of similar characteristics to those set out in this Annex and in ANNEX IV - CONCESSION TECHNICAL SPECIFICATIONS, thus understood as activities of:

- I. Independent supervision, certification or audit;
- II. Project management and/or supervision;
- III. Process Supervision and Control;

6.4. The above activities must be proven by a technical certificate issued by a legal entity of public or private law.

## **7. Final provisions**

7.1. The CONCESSIONAIRE shall warrant to the STATE, the REGULATORY AGENCY, INDEPENDENT VERIFIER and INDEPENDENT CERTIFIER unrestricted, uninterrupted and online access, at any time, to the SERVICES' monitoring and follow-up systems and to the data related

to the CONCESSIONAIRE's management, accounting and technical, economic and financial resources.

7.2. The INDEPENDENT VERIFIER and the INDEPENDENT CERTIFIER shall follow good corporate governance practices, with the presentation of accounts and standardized financial statements in accordance with the accounting rules and practices adopted in Brazil.

7.3. Provided that the requirements are proven cumulatively, the REGULATORY AGENCY may execute a single contract in order to develop the services related to the INDEPENDENT VERIFIER and the INDEPENDENT CERTIFIER.

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