



STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

## **ANNEX X – DEMOBILIZATION AND TRANSITION GUIDELINES**



STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

## TABLE OF CONTENTS

1.	INTRODUCTION .....	3
2.	PARTIAL AND FINAL REPORTS .....	4
3.	PROVISIONAL RECEIPT CERTIFICATE .....	5
4.	PROVISIONAL TRANSFER TO SUCCESSOR .....	6
5.	FINAL ACCEPTANCE CERTIFICATE .....	6
6.	TRANSITION .....	7

STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

**1. INTRODUCTION**

- 1.1. The purpose of this ANNEX is to establish the main conditions for the CONCESSIONAIRE's return of the PARKS to the GRANTING AUTHORITY, with or without the TRANSFER, whether in full or in part, to any succeeding concessionaire (hereinafter referred to as the "SUCCESSOR"). Notwithstanding submission of the DEMOBILIZATION PLAN referenced in Clause Fifty-Six of the CONTRACT.
- 1.2. Thus, for purposes of complying with this ANNEX, all references and rules concerning said RETURN shall also apply to the event of a TRANSFER, which designates and is to be construed under this ANNEX as a new concession of an asset or a set of assets that the CONCESSIONAIRE is to hand back to the GRANTING AUTHORITY.
- 1.3. Moreover, all references to the TRANSFER and/or the SUCCESSOR shall only apply if, at any time prior to the CONCESSION's end, any of the events provided for hereunder for early termination have come to fruition.
- 1.4. Notwithstanding all maintenance and upkeep activities required to retain PERFORMANCE INDICATORS and fulfill all other contractual obligations throughout the CONCESSION TERM, the CONCESSIONAIRE shall return and/or transfer the PARKS in sound working and operating conditions, allowing for the continuity of services rendered under the CONTRACT for an additional term of 5 (five) years, starting from the termination date of the CONTRACT, save for those having a shorter useful life.
- 1.5. Twenty-four (24) months prior to the CONCESSION's end, the GRANTING AUTHORITY shall be required to assemble and oversee a COMMISSION comprised of GRANTING AUTHORITY, CONCESSIONAIRE and, if any, SUCCESSOR representatives, in equal numbers, aimed at overseeing the CONCESSIONAIRE's deployment of measures prior to the RETURN and/or TRANSFER of the PARKS, as set forth under this ANNEX.
- 1.6. If, upon establishing the COMMISSION, the bidding process whose purpose includes a new concession for the PARKS under this CONCESSION has not yet started or, even if it has begun, has not yet concluded, the SUCCESSOR shall automatically be included in the COMMISSION effective the date of signature of the new concession contract.
- 1.7. The COMMISSION shall, within 90 (ninety) days starting from the day of its establishment, draft the first INSPECTION REPORT (as defined below) and recommend to SIMA, subject to the CONCESSIONAIRE's approval and, if any, the SUCCESSOR's consent, the baselines used to brief the RETURN and/or TRANSFER of all or part of the PARKS that are the object of the CONTRACT.
- 1.8. The INSPECTION REPORT referenced in item 1.7 above shall convey the PARKS' current conditions, and may recommend that SIMA accept them or point out the need for amendments before they are handed back to the GRANTING AUTHORITY and/or transferred to the SUCCESSOR.
  - 1.8.1. Any potential amendments are to be made in accordance with deadlines previously set by SIMA and shall lead to a new inspection after services are concluded.
- 1.9. Whether in instances of PARKS' RETURN to the GRANTING AUTHORITY or their TRANSFER to the SUCCESSOR, rules specified in item 6 of this ANNEX are to be complied with.
- 1.10. In TRANSFER events, the COMMISSION shall determine how the interaction between the CONCESSIONAIRE and the SUCCESSOR is to unfold, submitting it to SIMA's approval the month before the start of operations by the latter.

## **2. PARTIAL AND FINAL REPORTS**

- 2.1. Every 3 (three) months, starting from approval of the first INSPECTION REPORT drafted in accordance with the terms of items 1.7 and 1.8, the COMMISSION shall be required to draft and submit a PARTIAL REPORT to SIMA's approval describing the status of works carried out, for purposes of rectifying any potential breaches verified throughout the course of such works.
- 2.2. REPORTS, split between a PARTIAL REPORT and a FINAL REPORT, may be drafted and signed by the INDEPENDENT RAPPOREUR in charge of inspections and for devising the REPORTS (hereinafter referred to as the "INDEPENDENT RAPPOREUR" or "RAPPOREUR"), so as to underpin SIMA-issued rulings. Any and all incidents verified during inspections conducted at the PARKS, the SPECIFIC PURPOSE COMPANY and/or the CONCESSION, shall be recorded in the proper registration book corresponding to the INSPECTION TERM, and remitted to the CONCESSIONAIRE, establishing a deadline for it to amend any shortcomings or breaches verified, notwithstanding the right to simultaneously initiate sanctioning administrative proceedings, pursuant to the terms of State Law no. 10.177/1998.
- 2.3. The FINAL REPORT is to be delivered 15 (fifteen) days before the end of the CONCESSION and is to thoroughly describe dates of inspections and meetings held, minutes of meetings, all breaches verified and rectified throughout the course of the COMMISSION's works, as well as any other information deemed relevant by the COMMISSION, including a final expert opinion on the fulfillment of return-related requirements established under this ANNEX.
- 2.4. The INDEPENDENT RAPPOREUR may be heard about findings submitted in the FINAL REPORT prior to the SIMA-issued ruling, regardless of whether said individual was or was not the person who drafted it.
- 2.5. The INDEPENDENT RAPPOREUR shall be chosen by SIMA, observing the procedure provided for in clause 15.5 of the CONTRACT, among other candidates submitted in the three-name list provided by the CONCESSIONAIRE within a time frame that allows said individual to carry out procedures the COMMISSION is responsible for, in the event that the CONCESSIONAIRE chooses the INDEPENDENT RAPPOREUR.
  - 2.5.1. The INDEPENDENT RAPPOREUR and his agents may neither have had any association with the CONCESSIONAIRE or its RELATED PARTIES, nor have received any type of compensation therefrom during a 12 (twelve)-month period before the COMMISSION's establishment, nor shall have any association with the CONCESSIONAIRE or its RELATED PARTIES, or receive any type of compensation therefrom during a 12 (twelve)-month period after the FINAL REPORT's submission.
  - 2.5.2. The three-name list drafted shall comply, all at once, with criteria determining that individuals are to have widespread technical reputation in the market and not be banned from transacting with the PUBLIC ADMINISTRATION.
  - 2.5.3. SIMA may request, at its discretion and only once, that a new three-name list be drafted within 7 (seven) days after the first list is submitted by the CONCESSIONAIRE, which, within a 7 (seven)-day term, shall draft the new three-name list replacing the three candidates to carry out the role of RAPPOREUR.
  - 2.5.4. All costs and any potential responsibilities associated with procuring the RAPPOREUR and



## STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

said individual's activities shall be assigned solely to the CONCESSIONAIRE, whereas no burden whatsoever shall fall upon the GRANTING AUTHORITY or, if applicable, the SUCCESSOR.

- 2.5.5. Upon SIMA's choice of the INDEPENDENT RAPPOREUR, the former shall, whether by itself or using its agents, proceed with all mandatory inspections, as well as drafting REPORTS provided for in this ANNEX.
- 2.5.6. The GRANTING AUTHORITY and the CONCESSIONAIRE may request, at any time, information or clarifications directly from the INDEPENDENT RAPPOREUR, and the RAPPOREUR must forward any reports, expert opinions, information or clarifications, simultaneously, to both PARTIES, without any prior knowledge or consent from either of them, even if they are the ones requesting the report, expert opinions, information or clarification.
- 2.6. Should either PARTY disagrees with the findings of REPORTS produced by the INDEPENDENT RAPPOREUR specified in this ANNEX, the latter may be called upon to explain the methods said individual used and the results he or she attained within 5 (five) working days, starting from notification, which may be extended upon due justification provided by the RAPPOREUR.
- 2.7. Upon receipt of the first INSPECTION REPORT addressed in item 1.7, SIMA shall initiate administrative proceedings to appraise the contents thereof as well as that of any other REPORTS submitted within the scope of this ANNEX.
- 2.8. Once REPORTS provided for in this ANNEX are received, and subject to the provisions of item 2.7, SIMA shall appraise and decide on them expeditiously, so as to enable works to proceed.
- 2.9. In order to provide technical independence to the analyses and contents produced by the INDEPENDENT RAPPOREUR:
  - i. all documents, reports, manuals, analyses, and studies produced by the INDEPENDENT RAPPOREUR must be made available in digital format, to the CONCESSIONAIRE, and to the GRANTING AUTHORITY; and
  - ii. the INDEPENDENT RAPPOREUR will enjoy total technical independence to perform the contracted services, and any disagreements as to the content of his work will not give rise to the enforcement of any penalties, delays, or discounts on his compensation.

### 3. PROVISIONAL RECEIPT CERTIFICATE

- 3.1. The PROVISIONAL RECEIPT CERTIFICATE shall be signed on the last day of the CONTRACT's term by the CONCESSIONAIRE, the GRANTING AUTHORITY, and should there be a SUCCESSOR, the latter shall clearly consent to it, thereby denoting the end of the CONCESSIONAIRE's responsibility for the PARKS' maintenance and operations. The PROVISIONAL RECEIPT CERTIFICATE shall indicate eventual measures that still need to be rectified by the CONCESSIONAIRE.
- 3.2. If any conditions referenced in this ANNEX still require the CONCESSIONAIRE's compliance, they are to be met in accordance with the following means:
  - I. in case of RETURN to the GRANTING AUTHORITY, conditions pending compliance are to be met based on a schedule to be laid out in the DEMOBILIZATION PLAN;

STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

- II. in case of TRANSFER, if compliance with conditions pending by the end of the contract's term is unfeasible, the amount corresponding thereto shall be converted into compensation to be paid by the CONCESSIONAIRE to the GRANTING AUTHORITY, or straight to the SUCCESSOR at the GRANTING AUTHORITY's discretion, with said compensation to be estimated according to the economic-financial recovery method specified in the terminating CONCESSION CONTRACT.
- 3.3. The PROVISIONAL RECEIPT CERTIFICATE shall convey REVERTIBLE ASSETS' current conditions, setting forth the terms for their acceptance, as well as stating any potential need to rectify or replace them, which shall fall under the CONCESSIONAIRE's responsibility, for which the CONCESSIONAIRE shall be entitled no reimbursement.
- 3.4. Should the CONCESSIONAIRE need to make any amendments or replacements, the PROVISIONAL RECEIPT CERTIFICATE shall establish, based on justified reasons, the deadline for their execution.
- 3.5. Any amendments and replacements made by the CONCESSIONAIRE aimed at reverting REVERTIBLE ASSETS back to their proper state of use, or to promote their technological upgrading or maintenance, shall not trigger any right to indemnification or compensation to its benefit.
  - 3.5.1. Failure to execute amendments and replacements foreseen under the PROVISIONAL RECEIPT CERTIFICATE shall entail payment of compensation to the benefit of the GRANTING AUTHORITY in an amount corresponding to services that were not executed, in addition to the enforcement of sanctions specified in this CONTRACT and its ANNEXES as a result of breach of contract.
- 3.6. It shall be incumbent upon the CONCESSIONAIRE to remove, within the time frame stipulated in the PROVISIONAL RECEIPT CERTIFICATE, all assets used in the CONCESSION that are not deemed REVERTIBLE ASSETS, as set forth under the CONCESSION CONTRACT and its other ANNEXES.

**4. PROVISIONAL TRANSFER TO SUCCESSOR**

- 4.1. Signing of the PROVISIONAL RECEIPT CERTIFICATE shall entail transfer of operations and maintenance of the PARKS to the SUCCESSOR upon awarding the object of the concluded bidding process, although it shall not exempt the CONCESSIONAIRE from its civil liability to hold the GRANTING AUTHORITY and/or the SUCCESSOR harmless as a result of the assurance of the useful life specified in this ANNEX.

**5. FINAL ACCEPTANCE CERTIFICATE**

- 5.1. Once the 6 (six)-month observation period has elapsed, starting from the PROVISIONAL ACCEPTANCE CERTIFICATE, the PARKS' FINAL ACCEPTANCE CERTIFICATE shall be drawn up. If, during said time frame, all requirements set out in this ANNEX are met, the FINAL ACCEPTANCE CERTIFICATE shall certify compliance and approve clearance of the PERFORMANCE BOND.
- 5.2. If, at the end of 6 (six) months, starting from the PROVISIONAL ACCEPTANCE CERTIFICATE, the CONCESSIONAIRE has failed to meet all conditions provided for under this ANNEX, the GRANTING AUTHORITY shall be compensated and/or the SUCCESSOR shall be entitled to claim deduction of the respective amount from the PERFORMANCE BOND provided by the CONCESSIONAIRE under this CONTRACT.

STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

- 5.2.1. In the event that the PARKS are handed back to the GRANTING AUTHORITY, the PERFORMANCE BOND shall be executed in the amount estimated according to the economic-financial recovery method established under the terminating CONCESSION CONTRACT.
- 5.2.2. In the event of TRANSFER to the SUCCESSOR, in the case that the SUCCESSOR has been assigned the responsibility for the correction of faults, the compensation amount due shall be proven by the SUCCESSOR by initiating appropriate administrative proceedings, to which the CONCESSIONAIRE shall be allowed to speak out on or object to.
- 5.3. The CONCESSIONAIRE's final responsibilities shall only terminate within legal deadlines in effect at the time, without, however, exempting the CONCESSIONAIRE from its civil liability to hold the GRANTING AUTHORITY and/or the SUCCESSOR harmless as a result of the assurance of the useful life provided in this ANNEX.
- 5.4. For purposes of estimating compensation due under items 5.2 and 5.3, unit costs to be considered shall be based on current public pricing standards, or any other document that may potentially replace them, whereas in the absence of more current information and at the GRANTING AUTHORITY's discretion, of projections made while the BIDDING PROCESS was in place, or other baselines, such as those adopted and published in Brazilian and foreign engineering publications. A market quote may be procured, considering at least 3 (three) suppliers.
- 5.5. The PERFORMANCE BOND shall not be cleared for use until the FINAL ACCEPTANCE CERTIFICATE is issued.
- 5.6. Until the FINAL ACCEPTANCE CERTIFICATE is signed, and regardless of the reason that led the CONTRACT to be terminated, the CONCESSIONAIRE may not execute any dissolution, sharing of equity, or distribution of valuables, under any pretense whatsoever, among its shareholders, until the GRANTING AUTHORITY certifies, under the FINAL ACCEPTANCE CERTIFICATE, that REVERTIBLE ASSETS are in proper working and maintenance conditions, and free and clear of any encumbrances or charges, and that payment of any amounts potentially due to the GRANTING AUTHORITY, whether by way of compensation or otherwise, is fully secured.

## **6. TRANSITION**

- 6.1. The provisions of Clause Fifty-Seven of the CONTRACT set forth the CONCESSIONAIRE's obligations to ensure a streamlined transition of the PARKS to the GRANTING AUTHORITY or to the SUCCESSOR.
- 6.2. In the event of disagreement or discrepancies within the COMMISSION regarding the need for amendments or instances of non-compliance with any of the preconditions referenced in this ANNEX, or concerning any SIMA-issued ruling, the dissenting member shall express his or her dissenting position in writing, duly justifying his or her position to SIMA and submitting a copy of the document to the other members within no more than 15 (fifteen) days after the objected action, including suggestions for alternate courses of action to resolve the refuted or opposed issues while bringing, where applicable, a cost estimate. Additional COMMISSION members may speak up or object to it within 5 (five) days, starting from the respective notice of dissent.
- 6.3. Notices of dissent received are to be appraised by SIMA's staff within 15 (fifteen) working days, starting from their receipt.





STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT

- 6.4. If the submitted dissent has been appraised by the INDEPENDENT RAPPOREUR, its findings shall be binding upon the CONCESSIONAIRE and prevail over any of its prior notices, except for instances of proven unlawfulness.
- 6.5. The decision made by the State Secretary presiding over the STATE SECRETARIAT FOR INFRASTRUCTURE AND ENVIRONMENT concerning the dissent brought forth by any COMMISSION member(s) shall be binding upon it, who, in turn, shall immediately upon its notification, take all actions provided for aimed at signing the PROVISIONAL ACCEPTANCE CERTIFICATE, when prior to the end of the CONCESSION, or the FINAL ACCEPTANCE CERTIFICATE, when during the observation period.
  - 6.5.1. Notwithstanding the obligation to comply with the decision provided for in item 6.5, if the CONCESSIONAIRE disagrees with the decision, it may resort to the dispute settlement methods provided for in the CONTRACT.
- 6.6. SIMA's approval of the COMMISSION's work, including INSPECTION REPORTS, entails both the CONCESSIONAIRE and the SUCCESSOR's full acceptance of the PARKS' current conditions, whereas any costs incurred by the SUCCESSOR as a result of unpredictable defects, and which cannot be attributed to COMMISSION members' negligence or willful misconduct, shall be handled in accordance with the provisions set forth under the future concession's contract.
- 6.7. No interferences, losses, hindrances or disruptions in the provision of services object of this CONTRACT shall be admissible, as well as assignment of any costs not resulting from the CONCESSION CONTRACT to the CONCESSIONAIRE throughout the TRANSITION period.
- 6.8. Any and all joint definitions applying to the CONCESSIONAIRE and the SUCCESSOR, whether or not applying to the TRANSITION stage, and which have a strictly private nature and do not interfere with the appropriate provision of an ADEQUATE SERVICE, are to be notified to SIMA, without, however, giving rise to any right of recovery in favor of the CONCESSIONAIRE or the SUCCESSOR, nor shall they entail any costs being levied upon the GRANTING AUTHORITY.