

## United Nations Development Programme



Empowered lives.  
Resilient nations.

## Contract for Goods and/or Services Between the United Nations Development Programme and Ernst & Young ET Associés

<b>1. Country Where Goods Services Will be Provided:</b> Brazil					
<b>2. UNDP</b> <input checked="" type="checkbox"/> Request for Proposal RFP JOF 2259/2020					
<b>3. Contract Reference:</b> BRA10/38372/682/38374/683/2020.					
<b>4. Long Term Agreement:</b> <input checked="" type="checkbox"/> No					
<b>5. Subject Matter of the Contract:</b> <input checked="" type="checkbox"/> Services					
<b>6. Type of Services:</b> Independent Auditor to analyse and prepare a pre-issuance report for the Climate Bonds Initiative (CBI) certification, aiming to qualify MInfra's New Railway Concessions Program.					
<b>7. Contract Starting Date:</b> 22 <sup>nd</sup> October 2020.			<b>8. Contract Ending Date:</b> 31 <sup>st</sup> December 2020.		
<b>9. Total Contract Amount:</b>					
Phase	% of Total Amount	Amount Real	Amount Dolar	Ernst & Young Assessoria Empresarial Ltda.	Ernst & Young ET Associés
		(BRL)	(USD)	Amount (BRL)	Amount (USD)
Product 1	10%	45.087,16	8,247.15	42.832,80	412,36
Product 2	70%	315.610,13	57,730.04	299.829,62	2,886.50
Product 3	20%	90.174,32	16,494.30	85.665,61	824,71
<b>Total</b>	<b>100%</b>	<b>450.871,61</b>	<b>82,471.49</b>	<b>428.328,03</b>	<b>4,123.57</b>
(UN exchange rate as of September 2020 USD 1.00 = BRL 5,467)					
<b>9a. Advance Payment:</b>					
<input checked="" type="checkbox"/> Not applicable					

**10. Total Value of Goods and/or Services:**

**Equal to or above US\$50,000 (Goods and/or Services)** – UNDP General Terms and Conditions for Contracts apply

**11. Payment Method:**  Fixed price**12. Contractor's Name:**

Ernst & Young ET Associés  
 Tour First 1 Place des Saisons - Paris la Défense - France - 92400  
 +33 1 46 93 71 10  
[arnauld.bertrand@fr.ey.com](mailto:arnauld.bertrand@fr.ey.com)

**13. Contractor's Contact Person's Name:** Luis Henrique Pontes

Partner – Ernst & Young Assessoria Empresarial  
 Av. Presidente Juscelino Kubitschek, 1909 – SP Corporate Tower – Torre Norte – 9º andar  
 +55 11 2573 6300 - +55 61 2104 0164  
[luis.pontes@br.ey.com](mailto:luis.pontes@br.ey.com)

**14. UNDP Contact Person's Name:** Renata Ribeiro

Gerente de Projeto  
[renata.ribeiro@undp.org](mailto:renata.ribeiro@undp.org)  
 +55 61 3038 9026

**15. Contractor's Bank Account to which payments will be transferred:**

- **ERNST & YOUNG ET ASSOCIÉS – FRANCE (Vendor Atlas 113470)**

Bank: HSBC  
 Account number: 0050 200 1001  
 SWIFT number: FR76 3005 6000 5000 5020 0100 193  
 IBAN FR76 3005 6000 5000 5020 0100 193  
 Routing instructions for payments: wire transfer  
 Amount: US\$ 4,123.57  
**BRA10/38374/683/2020**

- **ERNST & YOUNG ASSESSORIA EMPRESARIAL LTDA. – BRAZIL (Vendor Atlas 62419)**

Bank: Bradesco  
 Bank ID: 237  
 Branch ID: 2372-8  
 Account number: 026466-0  
 Routing instructions for payments: wire transfer  
 Amount: BRL 428.328,03  
**BRA10/38372/682/2020**

This Contract consists of the following documents, which in case of conflict shall take precedence over one another in the following order:

1. This face sheet ("Face Sheet").
2. UNDP General Terms and Conditions for Contracts.
3. Terms of Reference (TORs) and Schedule of Payments, incorporating the description of services, deliverables and performance targets, time frames, schedule of payments, and total contract amount.
4. The Contractor's Technical Proposal and Financial Proposal; these documents not attached hereto but known to and in the possession of the Parties and forming an integral part of this Contract.
5. Declaration of Commitment for UNDP Suppliers.

All the above, hereby incorporated by reference, shall form the entire agreement between the Parties (the "Contract"), superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Contract.

This Contract shall enter into force on the date of the last signature of the Face Sheet by the duly authorized representatives of the Parties and terminate on the Contract Ending Date indicated on the Face Sheet. This Contract may be amended only by written agreement between the duly authorized representatives of the Parties.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized thereto, have on behalf of the Parties hereto signed this Contract at the place and on the day set forth below.

For the Contractor		For UNDP	
Signature:	<i>Arnauld Bertrand</i>	Signature:	<i>Carlos Arboleda</i>
Name:	Arnauld Bertrand	Name:	Carlos Arboleda
Title:	Partner	Title:	Deputy Resident Representative
Date:	22 <sup>nd</sup> October 2020	Date:	22 <sup>nd</sup> October 2020

## United Nations Development Programme



*Empowered lives.  
Resilient nations.*

### GENERAL TERMS AND CONDITIONS FOR CONTRACTS

This Contract is between the United Nations Development Programme, a subsidiary organ of the United Nations established by the General Assembly of the United Nations (hereinafter “UNDP”), on the one hand, and a company or organization indicated in the Face Sheet of this Contract (hereinafter the “Contractor”), on the other hand.

**1. LEGAL STATUS OF THE PARTIES:** UNDP and the Contractor shall be referred to as a “Party” or, collectively, “Parties” hereunder, and:

**1.1** Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.

**1.2** The Contractor shall have the legal status of an independent contractor *vis-à-vis* UNDP, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

**2. OBLIGATIONS OF THE CONTRACTOR:**

**2.1** The Contractor shall deliver the goods described in the Technical Specifications for Goods (hereinafter the “Goods”) and/or perform and complete the services described in the Terms of Reference and Schedule of Payments (hereinafter the “Services”), with due diligence and efficiency, and in accordance with this Contract. The Contractor shall also provide all technical and administrative support needed in order to ensure the timely and satisfactory delivery of the Goods and/or performance of the Services.

**2.2** To the extent that the Contract involves any purchase of the Goods, the Contractor shall provide UNDP with written evidence of the delivery of the Goods. Such evidence of delivery shall, at the minimum, consist of an invoice, a certification of conformity, and other supporting shipment documentation as may otherwise be specified in the Technical Specifications for Goods.

**2.3** The Contractor represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Contract, as well as the quality of the deliverables and reports foreseen under this Contract, in accordance with the highest industry and professional standards.

**2.4** All time limits contained in this Contract shall be deemed to be of the essence in respect of the performance of the delivery of the Goods and/or the provision of the Services.

**3. LONG TERM AGREEMENT:** If the Contractor is engaged by UNDP on the basis of a long-term agreement (“LTA”) as indicated in the Face Sheet of this Contract, the following conditions shall apply:

**3.1** UNDP does not warrant that any quantity of Goods and/or Services shall be ordered during the term of the LTA.

**3.2** Any UNDP business unit, including, but not limited to, a Headquarters unit, a Country Office or a Regional Centre, as well as any United Nations entity, may benefit from the retainer and order Goods and/or Services from the Contractor hereunder.

**3.3** The Contractor shall provide the Services and/or deliver the Goods, as and when requested by UNDP and reflected in a Purchase Order, which shall be subject to the terms and conditions stipulated in this Contract. For the avoidance of doubt, UNDP shall acquire no legal obligations towards the Contractor unless and until a Purchase Order is issued.

**3.4** The Goods and/or Services shall be at the Discount Prices annexed hereto. The prices shall remain in effect for a period of three years from the Starting Date stated in the Face Sheet of this Contract.

**3.5** In the event of any advantageous technical changes and/or downward pricing of the Goods and/or Services during the term of the retainer, the Contractor shall notify UNDP immediately. UNDP shall consider the impact of any such event and may request an amendment to the retainer.

**3.6** The Contractor shall report semi-annually to UNDP on the Goods delivered and/or Services provided, unless otherwise specified in the Contract. Each report should be submitted to the UNDP Contact Person indicated in as indicated in the Face Sheet hereto, as well as to a UNDP business unit that has placed a Purchase Order for the Goods and/or Services during the reporting period.

**3.7** The LTA shall remain in force for the maximum period of two years and may be extended by UNDP for one additional year by mutual agreement of the Parties.

#### **4. PRICE AND PAYMENT:**

**4.1 FIXED PRICE:** If Fixed Price is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory delivery of the Goods and/or provision of the Services, UNDP shall pay the Contractor a fixed amount indicated in the Face Sheet of this Contract.

4.1.1 The amount stated in the Face Sheet of this Contract is not subject to any adjustment or revision because of price or currency fluctuations, or the actual costs incurred by the Contractor in the performance of the Contract.

4.1.2 UNDP shall effect payments to the Contractor in the amounts and pursuant to the schedule of payments set forth in the Terms of Reference and Schedule of Payments, upon completion by the Contractor of the corresponding deliverable(s) and upon acceptance by UNDP of the original invoices submitted by the Contractor to the UNDP Contact Person indicated in the Face Sheet of this Contract, together with whatever supporting documentation that may be required by UNDP:

4.1.3 Invoices shall indicate a deliverable completed and the corresponding amount payable.

4.1.4 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's delivery of the Goods and/or provision of the Services.

**4.2 COST REIMBURSEMENT:** If Cost Reimbursement is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory delivery of the Goods and/or provision of the Services under this Contract, UNDP shall pay the Contractor an amount not exceeding the total amount stated in the Face Sheet of this Contract.

4.2.1 The said amount is the maximum total amount of reimbursable costs under this Contract. The breakdown of costs contained in the Financial Proposal, referred to in the Face Sheet to this Contract shall specify the maximum amount per each cost category that is reimbursable under this Contract. The Contractor shall specify in its invoices or financial reports (as required by UNDP) the amount of the actual reimbursable costs incurred in the delivery of the Goods and/or the provision of the Services.

4.2.2 The Contractor shall not provide the Services and/or deliver the Goods or equipment, materials and supplies that may result in any costs in excess of the amount stated in the Face Sheet of this Contract, or of the maximum amount per each cost category specified in the breakdown of costs contained in the Financial Proposal, without the prior written agreement of the UNDP Contact Person.

4.2.3 The Contractor shall submit original invoices or financial reports (as required by UNDP) for the Goods delivered in accordance with the Technical Specifications for Goods and/or the Services provided in accordance with the schedule set forth in the Terms of Reference and Schedule of

Payments. Such invoices or financial reports shall indicate a deliverable or deliverables completed and the corresponding amount payable. They shall be submitted to the UNDP Contact Person, together with whatever supporting documentation of the actual costs incurred that is required in the Financial Proposal, or may be required by UNDP.

4.2.4 UNDP shall effect payments to the Contractor upon completion by the Contractor of the deliverable(s) indicated in the original invoices or financial reports (as required by UNDP) and upon acceptance of these invoices or financial reports by UNDP. Such payments shall be subject to any specific conditions for reimbursement specified in the breakdown of costs contained in the Financial Proposal.

4.2.5 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's delivery of the Goods and/or performance of the Services.

#### **5. ADVANCE PAYMENT:**

**5.1** If an advance payment is due to the Contractor pursuant to the Face Sheet of this Contract, the Contractor shall submit an original invoice for the amount of that advance payment upon signature of this Contract by the Parties.

**5.2** If an advance payment representing 20% or more of the total contract value, or amounting to US\$30,000 or more, is to be made by UNDP upon signature of the Contract by the Parties, such payment shall be contingent upon receipt and acceptance by UNDP of a bank guarantee or a certified cheque for the full amount of the advance payment, valid for the duration of the Contract, and in a form acceptable to UNDP.

#### **6. SUBMISSION OF INVOICES AND REPORTS:**

**6.1** All original invoices, financial reports and any other reports and supporting documentation required under this Contract shall be submitted by mail by the Contractor to UNDP Contact Person. Upon request of the Contractor, and subject to approval by UNDP, invoices and financial reports may be submitted to UNDP by fax or email.

**6.2** All reports and invoices shall be submitted by the Contractor to the UNDP Contact Person specified in the Face Sheet of this Contract.

#### **7. TIME AND MANNER OF PAYMENT:**

**7.1** Invoices shall be paid within thirty (30) days of the date of their acceptance by UNDP. UNDP shall make every effort to accept an original invoice or advise the Contractor of its non-acceptance within a reasonable time from receipt.

**7.2** Where the Services are to be provided, in addition to an invoice, the Contractor shall submit to UNDP a report, describing in detail the Services provided under the Contract during the period of time covered in each report.

**8. RESPONSIBILITY FOR EMPLOYEES:** To the extent that the Contract involves the provision of the Services to UNDP by the Contractor's officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor's "personnel"), the following provisions shall apply:

**8.1** The Contractor is responsible for and shall assume all risk and liabilities relating to its personnel and property.

**8.2** The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

**8.3** Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of UNDP, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.

**8.4** At the option of and in the sole discretion of UNDP:

8.4.1 the qualifications of personnel proposed by the Contractor (e.g., a curriculum vitae) may be

reviewed by UNDP prior to such personnel's performing any obligations under the Contract;

8.4.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of UNDP prior to such personnel's performing any obligations under the Contract; and,

8.4.3 in cases in which, pursuant to Article 8.4.1 or 8.4.2, above, UNDP has reviewed the qualifications of such Contractor's personnel, UNDP may reasonably refuse to accept any such personnel.

**8.5** Requirements specified in the Contract regarding the number or qualifications of the Contractor's personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:

8.5.1 UNDP may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel, and such request shall not be unreasonably refused by the Contractor.

8.5.2 Any of the Contractor's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of UNDP, which shall not be unreasonably withheld.

8.5.3 The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.

8.5.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.

8.5.5 Any request by UNDP for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and UNDP shall not bear any liability in respect of such withdrawn or replaced personnel.

8.5.6 If a request for the withdrawal or replacement of the Contractor's personnel is *not* based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with UNDP officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.

**8.6** Nothing in Articles 8.3, 8.4 and 8.5, above, shall be construed to create any obligations on the part of UNDP with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.

**8.7** The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of UNDP shall:

8.7.1 undergo or comply with security screening requirements made known to the Contractor by UNDP, including but not limited to, a review of any criminal history;

8.7.2 when within UNDP premises or on UNDP property, display such identification as may be approved and furnished by UNDP security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to UNDP for cancellation.

**8.8** Within one working day after learning that any of Contractor's personnel who have access to any UNDP premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform UNDP about the particulars of the charges then known and shall continue to inform UNDP concerning all substantial developments regarding the disposition of such charges.

**8.9** All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within UNDP premises or on UNDP property shall be confined to areas authorized or approved by UNDP. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UNDP premises or on UNDP

property without appropriate authorization from UNDP.

**8.10** The Contractor shall (i) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the Services are being provided; and (ii) assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan.

**8.11** UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this contract. Notwithstanding the foregoing, the Contractor shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth in paragraph 8.10 above.

## **9. ASSIGNMENT:**

**9.1** Except as provided in Article 9.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNDP. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UNDP. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of UNDP. Any such unauthorized delegation, or attempt to do so, shall not be binding on UNDP.

**9.2** The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations, provided that:

9.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and,*

9.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; *and,*

9.2.3 the Contractor promptly notifies UNDP about such assignment or transfer at the earliest opportunity; *and,*

9.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to UNDP following the assignment or transfer.

**10. SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of UNDP. UNDP shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that UNDP reasonably considers is not qualified to perform obligations under the Contract. UNDP shall have the right to require any subcontractor's removal from UNDP premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

**11. PURCHASE OF GOODS:** To the extent that the Contract involves any purchase of the Goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to such purchases under the Contract:

**11.1 DELIVERY OF GOODS:** The Contractor shall hand over or make available the Goods, and UNDP shall receive the Goods, at the place for the delivery of the Goods and within the time for delivery of the Goods specified in the Contract. The Contractor shall provide to UNDP such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the Goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the Goods shall be borne exclusively by the Contractor until physical delivery of the



Goods to UNDP in accordance with the terms of the Contract. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by UNDP.

**11.2 INSPECTION OF THE GOODS:** If the Contract provides that the Goods may be inspected prior to delivery, the Contractor shall notify UNDP when the Goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, UNDP or its designated inspection agents may also inspect the Goods upon delivery in order to confirm that the Goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to UNDP or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the Goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

**11.3 PACKAGING OF THE GOODS:** The Contractor shall package the Goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the Goods. The Goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the Goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by UNDP as well as such other information as is necessary for the correct handling and safe delivery of the Goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.

**11.4 TRANSPORTATION & FREIGHT:** Unless otherwise specified in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the Goods in accordance with the requirements of the Contract. The Contractor shall ensure that UNDP receives all necessary transport documents in a timely manner so as to enable UNDP to take delivery of the Goods in accordance with the requirements of the Contract.

**11.5 WARRANTIES:** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of UNDP stated in or arising under the Contract, the Contractor warrants and represents that:

11.5.1 The Goods, including all packaging and packing thereof, conform to the technical specifications, are fit for the purposes for which such Goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

11.5.2 If the Contractor is not the original manufacturer of the Goods, the Contractor shall provide UNDP with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;

11.5.3 The Goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

11.5.4 The Goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

11.5.5 The Goods are new and unused;

11.5.6 All warranties will remain fully valid following any delivery of the Goods and for a period of not less than one (1) year following acceptance of the Goods by UNDP in accordance with the Contract;

11.5.7 During any period in which the Contractor's warranties are effective, upon notice by UNDP that the Goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective Goods with Goods of the same or better quality or, at its own cost, remove the defective Goods and fully reimburse UNDP for the purchase price paid for the defective Goods; and,

11.5.8 The Contractor shall remain responsive to the needs of UNDP for any services that may be required in connection with any of the Contractor's warranties under the Contract.

**11.6 ACCEPTANCE OF GOODS:** Under no circumstances shall UNDP be required to accept any Goods

that do not conform to the specifications or requirements of the Contract. UNDP may condition its acceptance of the Goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall UNDP be obligated to accept any Goods unless and until UNDP has had a reasonable opportunity to inspect the Goods following delivery. If the Contract specifies that UNDP shall provide a written acceptance of the Goods, the Goods shall not be deemed accepted unless and until UNDP in fact provides such written acceptance. In no case shall payment by UNDP in and of itself constitute acceptance of the Goods.

**11.7 REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to UNDP under the Contract, in case any of the Goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, UNDP, at its sole option, may reject or refuse to accept the Goods, and within thirty (30) days following receipt of notice from UNDP of such rejection or refusal to accept the Goods, the Contractor shall, in sole option of UNDP:

11.7.1 provide a full refund upon return of the Goods, or a partial refund upon a return of a portion of the Goods, by UNDP; or,

11.7.2 repair the Goods in a manner that would enable the Goods to conform to the specifications or other requirements of the Contract; or,

11.7.3 replace the Goods with Goods of equal or better quality; *and,*

11.7.4 pay all costs relating to the repair or return of the defective Goods as well as the costs relating to the storage of any such defective Goods and for the delivery of any replacement Goods to UNDP.

**11.8** In the event that UNDP elects to return any of the Goods for the reasons specified in Article 11.7, above, UNDP may procure the Goods from another source. In addition to any other rights or remedies available to UNDP under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and UNDP shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the Goods for the Contractor's account.

**11.9 TITLE:** The Contractor warrants and represents that the Goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the Goods shall pass from the Contractor to UNDP upon delivery of the Goods and their acceptance by UNDP in accordance with the requirements of the Contract.

**11.10 EXPORT LICENSING:** The Contractor shall be responsible for obtaining any export license required with respect to the Goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to UNDP under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of UNDP, UNDP shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with UNDP to enable UNDP to take appropriate measures to resolve the matter.

## **12. INDEMNIFICATION:**

**12.1** The Contractor shall indemnify, defend, and hold and save harmless, UNDP, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against UNDP, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

12.1.1 allegations or claims that the possession of or use by UNDP of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to UNDP under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; or,

12.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

**12.2** The indemnity set forth in Article 12.1.1, above, shall not apply to:

12.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by UNDP directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; or

12.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof furnished under the Contract if UNDP or another party acting under the direction of UNDP made such changes.

**12.3** In addition to the indemnity obligations set forth in this Article 12, the Contractor shall be obligated, at its sole expense, to defend UNDP and its officials, agents and employees, pursuant to this Article 12, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

**12.4** UNDP shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of UNDP or any matter relating thereto, for which only UNDP itself is authorized to assert and maintain. UNDP shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

**12.5** In the event the use by UNDP of any Goods, property or Services provided or licensed to UNDP by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

12.5.1 procure for UNDP the unrestricted right to continue using such Goods or Services provided to UNDP;

12.5.2 replace or modify the Goods and/or or Services provided to UNDP, or part thereof, with the equivalent or better Goods and/or Services, or part thereof, that is non-infringing; *or*,

12.5.3 refund to UNDP the full price paid by UNDP for the right to have or use such Goods, property or Services, or part thereof.

### **13. INSURANCE AND LIABILITY:**

**13.1** The Contractor shall pay UNDP promptly for all loss, destruction, or damage to the property of UNDP caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

**13.2** Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

13.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

13.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;

13.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to

property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; and,

13.2.4 such other insurance as may be agreed upon in writing between UNDP and the Contractor.

**13.3** The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

**13.4** The Contractor acknowledges and agrees that UNDP accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.

**13.5** Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNDP, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:

13.5.1 name UNDP as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;

13.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against UNDP;

13.5.3 provide that UNDP shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,

13.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNDP.

**13.6** The Contractor shall be responsible to fund all amounts within any policy deductible or retention.

**13.7** Except for any self-insurance program maintained by the Contractor and approved by UNDP for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to UNDP. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNDP with evidence, in the form of certificate of insurance or such other form as UNDP may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNDP reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 13.5.3, above, the Contractor shall promptly notify UNDP concerning any cancellation or material change of insurance coverage required under the Contract.

**13.8** The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

**14. ENCUMBRANCES AND LIENS:** The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with UNDP against any monies due to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or UNDP.

**15. EQUIPMENT FURNISHED BY UNDP TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by UNDP to the Contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment shall be returned to UNDP at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to UNDP, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate UNDP for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

**16. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

**16.1** Except as is otherwise expressly provided in writing in the Contract, UNDP shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP.

**16.2** To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

**16.3** At the request of UNDP, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNDP in compliance with the requirements of the applicable law and of the Contract.

**16.4** Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of UNDP, shall be made available for use or inspection by UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

**17. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:**

The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with UNDP, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of UNDP or the United Nations, or any abbreviation of the name of UNDP or the United Nations in connection with its business or otherwise without the written permission of UNDP.

**18. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:

**18.1** The Recipient shall:

18.1.1 use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; *and*,

18.1.2 use the Discloser's Information solely for the purpose for which it was disclosed.

**18.2** Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 18, the Recipient may disclose Information to:

18.2.1 any other party with the Discloser's prior written consent; *and*,

18.2.2 the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, *provided that*, for these purposes a controlled legal entity means:

18.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; *or*,

18.2.2.2 any entity over which the Party exercises effective managerial control; *or*,

18.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

**18.3** The Contractor may disclose Information *to the extent* required by law, *provided that*, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give UNDP sufficient prior notice of a request for the disclosure of Information in order to allow UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

**18.4** UNDP may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

**18.5** The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.

**18.6** These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

## **19. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:**

**19.1** In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

**19.2** If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, UNDP shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 20, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNDP shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

**19.3** *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Contract.

## **20. TERMINATION:**

**20.1** Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 23 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

**20.2** UNDP may terminate the Contract at any time by providing written notice to the

Contractor in any case in which the mandate of UNDP applicable to the performance of the Contract or the funding of UNDP applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, UNDP may terminate the Contract without having to provide any justification therefor.

**20.3** In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by UNDP, the Contractor shall, except as may be directed by UNDP in the notice of termination or otherwise in writing:

20.3.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;

20.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;

20.3.3 place no further subcontracts or orders for materials, services, or facilities, except as UNDP and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;

20.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;

20.3.5 transfer title and deliver to UNDP the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;

20.3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to UNDP thereunder;

20.3.7 complete performance of the work not terminated; *and*,

20.3.8 take any other action that may be necessary, or that UNDP may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which UNDP has or may be reasonably expected to acquire an interest.

**20.4** In the event of any termination of the Contract, UNDP shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, UNDP shall not be liable to pay the Contractor except for those Goods satisfactorily delivered and/or Services satisfactorily provided to UNDP in accordance with the requirements of the Contract, but only if such Goods or Services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from UNDP or prior to the Contractor's tendering of notice of termination to UNDP.

**20.5** UNDP may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

20.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;

20.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;

20.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;

20.5.4 a Receiver is appointed on account of the insolvency of the Contractor;

20.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,

20.5.6 UNDP reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

**20.6** Except as prohibited by law, the Contractor shall be bound to compensate UNDP for all damages and costs, including, but not limited to, all costs incurred by UNDP in any legal or non-legal proceedings, as a result of any of the events specified in Article 20.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform UNDP of the occurrence of any of the events specified in Article 20.5, above, and shall provide UNDP with any

information pertinent thereto.

**20.7** The provisions of this Article 20 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.

**21. NON-WAIVER OF RIGHTS:** The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

**22. NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, UNDP shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNDP shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

**23. SETTLEMENT OF DISPUTES:**

**23.1 AMICABLE SETTLEMENT:** The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.

**23.2 ARBITRATION:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 23.1, above, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim measures”) and Article 34 (“Form and effect of the award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

**24. PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

**25. TAX EXEMPTION:**

**25.1** Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations provides, *inter alia*, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of UNDP from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNDP to determine a mutually acceptable procedure.

**25.2** The Contractor authorizes UNDP to deduct from the Contractor’s invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately



authorized, and UNDP shall reimburse the Contractor for any such taxes, duties, or charges so authorized by UNDP and paid by the Contractor under written protest.

## **26. MODIFICATIONS:**

**26.1** No modification or change in this Contract shall be valid and enforceable against UNDP unless executed in writing by the duly authorized representatives of the Parties.

**26.2** If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 26.1, above.

**26.3** The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any Goods or Services provided under the Contract shall not be valid and enforceable against UNDP nor in any way shall constitute an agreement by UNDP thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 26.1, above.

## **27. AUDITS AND INVESTIGATIONS:**

**27.1** Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or by other authorized and qualified agents of UNDP at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

**27.2** UNDP may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

**27.3** The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNDP access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

**27.4** UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits or investigations to have been paid by UNDP other than in accordance with the terms and conditions of the Contract. The Contractor also agrees that, where applicable, donors to UNDP whose funding is the source of, in whole or in part, the funding for the procurement of Goods and/or Services which are the subject of this Contract, shall have direct recourse to the Contractor for the recovery of any funds determined by UNDP to have been used in violation of or inconsistent with this Contract.

## **28. LIMITATION ON ACTIONS:**

**28.1** Except with respect to any indemnification obligations in Article 12, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 23.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

**28.2** The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

**29. ESSENTIAL TERMS:** The Contractor acknowledges and agrees that each of the provisions in Articles 30 to 36 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle UNDP to terminate the Contract or any other contract with UNDP immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the said essential terms to the relevant national authorities for appropriate legal action.

**30. SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its obligations under the Contract. Should any authority external to UNDP seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify UNDP and provide all reasonable assistance required by UNDP. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of UNDP or the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNDP.

**31. STANDARDS OF CONDUCT:** The Contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract, or the award thereof, to any representative, official, employee or other agent of UNDP. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In addition, in the performance of the Contract, the Contractor shall comply with the Standards of Conduct set forth in the Secretary General's Bulletin ST/SGB/2002/9 of 18 June 2002, entitled "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Expert on Mission" and ST/SGB/2006/15 of 26 December 2006 on "Post-employment restrictions", and shall also comply with and be subject to the requirements of the following documents then in force at the time of signature of the Contract:

**31.1** The UN Supplier Code of Conduct;

**31.2** UNDP Policy on Fraud and other Corrupt Practices ("UNDP Anti-fraud Policy");

**31.3** UNDP Office of Audit and Investigations (OAI) Investigation Guidelines;

**31.4** UNDP Social and Environmental Standards (SES), including the related Accountability Mechanism;

**31.5** UNDP Vendor Sanctions Policy; and

**31.6** All security directives issued by UNDP.

The Contractor acknowledges and agrees that it has read and is familiar with the requirements of the foregoing documents which are available online at [www.undp.org](http://www.undp.org) or at <http://www.undp.org/content/undp/en/home/operations/procurement/business/>. In making such acknowledgement, the Contractor represents and warrants that it is in compliance with the requirements of the foregoing, and will remain in compliance throughout the term of this Contract.

**32. OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to UNDP, as such obligations are set forth in UNDP vendor registration procedures.

**33. CHILD LABOR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

**34. MINES:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

**35. SEXUAL EXPLOITATION:**

**35.1** In the performance of the Contract, the Contractor shall comply with the Standards of Conduct

set forth in the Secretary-General's bulletin ST/SGB/2003/13 of 9 October 2003, concerning "Special measures for protection from sexual exploitation and sexual abuse." In particular, the Contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

**35.2** The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

**35.3** UNDP shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

**36. ANTI-TERRORISM:** The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under the Contract is used to provide support to individuals or entities associated with terrorism and that recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to Resolution 1267 (1999). The list can be accessed via [https://www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list). This provision must be included in all sub-contracts or sub-agreements entered into under the Contract.

## TERMS OF REFERENCE

### 1. BACKGROUND

Empresa de Planejamento e Logística S.A. (EPL) was established in order to structure and qualify the integrated logistics planning process in Brazil, through studies and research. International Technical Cooperation Project BRA/13/013 consists of an institutional strengthening instrument, so that EPL can provide the necessary technical support for the development and attainment of the objectives outlined by the Federal Government in solving the challenges faced by the transportation sector, especially regarding its planning.

Among the actions planned for the Project, some studies will be conducted to define the standardization and management model of multimodal logistics planning. This action is aimed at developing best practices, methodologies and tools that contribute to the formulation of a proactive agenda in relation to the interests of the sector, contributing to increased legal security of the projects and improvements in the business environment. This will lead to more investments and foster economic growth.

In this context, the New Railway Concessions Program of the Brazilian Ministry of Infrastructure (MInfra) comprises a number of enterprises that shall be certified in order to enable financing through the issuance of green bonds. The Program's objective is to transfer the expansion, maintenance and operation of railway infrastructure to the private sector in order to rectify infrastructure and management deficiencies and provide effective rail services to society.

This Program consists of the following enterprises:

1. West-East Integration Railway (*Ferrovía de Integração Oeste-Leste – FIO*L);
2. Central-West Integration Railway (*Ferrovía de Integração do Centro-Oeste – FICO*);
3. Ferrogrão Railway (*Ferrogrão – EF-170*).

The Program will involve investments over BRL 20 billion (twenty billion reais) and will ultimately lead to a significant opportunity to reconcile the increase of freight transport supply in strategic regions of the country and significant environmental gains, mainly in relation to the reduction of greenhouse gas emissions.

The Program aims to:

- a) Establish more economical and environmentally sustainable alternatives for long-haul freight transportation;
- b) Favour multimodal transport and interconnect the Brazilian railway network;
- c) Propose new logistic alternatives for the production flow;
- d) Stimulate green investments, which will increase production, foster more efficient modern production processes and bring environmental gains.

### **Brief presentation of the enterprises comprised by the Program**

The EF-170 Railway project, also called *Ferrogrão*, aims to consolidate Brazil's new export railway route through Arco Norte. The railway is 933-kilometre long and connects the Central-West's grain producing region to the State of Pará, ending at the Port of Miritituba.

When finished, Ferrogrão will have a high freight capacity and production flow through Arco Norte. Currently, BR-163 highway is main route for transportation of grain crops. The EF-170 route will consolidate a new alternative for soy and corn exports in Brazil. This undertaking will reduce the flow of heavy trucks as well as the BR-163 maintenance costs.

The West-East Integration Railway - FIOLE (EF-334) is 1,527-kilometre long, between Ilhéus/BA and Figueirópolis/TO. The project is divided into three sections:

- a) Section I: Ilhéus/BA - Caetité/BA, 537-kilometre long. More than 73.6% of its works have already been completed (Jul/2019). This is the section that was qualified for sub-concession;
- b) Section II: Caetité/BA - Barreiras/BA, 485-kilometre long. Approximately 36% of its works have already been completed (Jul/2019);
- c) Section III: Barreiras/BA - Figueirópolis/TO, 505-kilometre long. Ongoing studies and project.

The total investment estimated for the works of FIOLE's sections 1 and 2 (Ilhéus/BA - Caetité/BA and Caetité/BA - Barreiras/BA) is around BRL 6.4 billion.

FIOLE is an important ore transportation route of southern Bahia (Caetité and Tanhaçu) as well as grain crops of western Bahia. It may even be connected to the North-South Railway in the future. In such case, this will lead to the integration of the national railway grid and improve the logistics conditions of the country.

Freight transport will take place through the terminals of Porto Sul Port Complex, located in the municipality of Ilhéus, region of Aritaguá, with a back area of 1,224 ha, maritime access bridge and pier with breakwater 3,500 meters from the coast.

The EF-354 railway begins on the northern coast of the state of Rio de Janeiro and ends in Boqueirão da Esperança/AC, on the Brazil-Peru border, about 4,400 km long. This route was known as the Transcontinental Railway (*Ferrovía Transcontinental*). Law 11.772 of September 17, 2008, granted Valec with the construction, use and fruition of the railway. The section between Mara Rosa/GO and Vilhena/RO is known as the Central-West Integration Railway – FICO, at approx. 1,641-kilometre long.

This contract will address the projected railway section between Mara Rosa/GO and Lucas do Rio Verde/MT, which is 880-kilometre long, subdivided into two segments:

- a) FICO I: Section from Mara Rosa/GO to Água-Boa/MT (374.4 km);
- b) FICO II: Section Água Boa/MT to Lucas do Rio Verde/MT (505 km).

The Central-West Integration Railway will bring the following benefits: i) provide a freight transport alternative to North and Northeast ports, mainly for commodities produced in Goiás, Mato Grosso and Rondônia. Thus, this will reduce travel times and maritime transport costs of crops and ores exported to ports located on the Atlantic Ocean, Europe, the Middle East and Asia; ii) increase the agro-industrial production of the region, due to better conditions of access to domestic and international markets; and iii) enable and foster mining operations of ore reserves that are yet underexplored.

## 2. JUSTIFICATION

Just as conventional bonds investors conduct a financial due diligence analysis and rely on quality assessments by credit rating agencies, Green Bonds investors need to evaluate the additional information needed for environmental due diligence. This assessment ensures the recognition and credibility of the issuance in the market. This Independent Audit brings the following benefits:

- c) It confirms the environmental credentials of the projects;
- d) It ensures greater transparency to the process, facilitating investors' access to relevant and standardized data;
- e) It reduces environmental due diligence costs by investors, and attracts investors, who have little or no experience with the environmental analysis of projects.

Hence, an Independent Auditor must be contracted to perform the verification and certification of MInfra's New Railway Concessions Program.

Green Bonds are used to raise funds in the market in order to implement or refinance projects that have environmentally positive attributes. To access these resources, a certification that meets strict scientific criteria and ensures compatibility with the Paris Agreement (2015) is required. Bond issuers, investors, financial markets and governments prioritizing investments that really contribute to tackling climate change, use this certification globally.

#### **Certification benefits for issuers**

- a) Improved reputation of companies or enterprises;
- b) Increased number of options to access other investors;
- c) Greater visibility;
- d) Compliance with international standards.

#### **Benefits for investors**

- a) Proactive protection against future climate risks, through financing during low carbon transitions;
- b) The market becomes acquainted with their demand for a green business flow that is suitably adjusted to environmental risks;
- c) The government becomes aware of their willingness to invest in low carbon transition, subject to stable political structures and risk adjusted returns.

### **3. OBJECTIVE**

To contract an Independent Auditor to analyse and prepare a pre-issuance report for the Climate Bonds Initiative (CBI) certification, aiming to qualify MInfra's New Railway Concessions Program. Such a contract does not include expenses with environmental performance analysis, once the bonds have been issued, which will be borne by the respective railway concessionaires.

### **4. ACTIVITIES**

#### **4.1 PERFORMANCE OF ACTIVITIES**

The purpose of these Terms of Reference is to specify the products and services to be developed in order to achieve the contract goals. In this sense, this document constitutes the basis for the tender process and **award of a contract with an Independent Auditor for the attainment of its objective.**

After the tender and award process, the Contractor shall have an operating relationship with EPL. The EPL Management Board (DGE/EPL), the intervening management area and the Intelligence and Business Management (GEINE/DGE/EPL) will be the technical and operational units.

The performance of activities must ensure data confidentiality and secrecy.

In order to carry out the work, the Contractor must have sufficient human, material and logistics resources for the performance of all proposed activities to ensure compliance with deadlines and quality of services in accordance with the guidelines of these Terms of Reference and EPL.

The activities developed by the consulting professionals should be conducted together with the EPL and MInfra teams, aimed at knowledge transfer, as well as the provision of training sessions and improvement of any techniques that may be adopted.

The analysis of the technical content of the Product developed by the consulting team will be done by the technical area at EPL. EPL will make suggestions to improve the work of the consulting team, who should make the necessary adjustments before the deadlines set for delivery of the Products. This will avoid delays in the evaluation and payment thereof.

## **5. DESCRIPTION OF ACTIVITIES AND PRODUCTS**

For the development of the works, the activities and products are described in detail below.

### **5.1. PRODUCT 1 - GREEN RAILWAY FRAMEWORK REVIEW**

The purpose of product 1 is to analyse the green railroad framework prepared by MInfra and indicate any review and/or complementary needs, aimed at its improvement. To this end, the certification criteria established by the Climate Bond Standards for railways, as well as the characteristics and specificities required for the Brazilian green bonds market should be considered.

#### **5.1.1 Expected Product**

The product (P1) to be delivered consists of:

1. Technical Report containing the framework analysis and review as well as indication of any review and/or complementary needs, in order to improve and obtain the CBI certification,



2. Technical Manual detailing the procedures to be performed so that the criteria of the Climate Bond Standards are contemplated during the preparation of rail projects, including all the processes, procedures, deadlines and documentation costs that may be necessary for the CBI certification.

## **5.2. PRODUCT 2 - PREPARATION OF AN INDEPENDENT AUDIT REPORT**

The purpose of product 2 is to analyse the West-East Integration Railway- FIOL, Central-West Integration Railway - FICO and Ferrogrão Railway - EF-170, in order to evaluate sustainability aspects, environmental aspects, eligibility criteria for the CBI, and other information required in independent audit processes for rail infrastructure projects.

This product should describe in detail:

- a) Project eligibility conditions for certification, presenting the rationale used and ensuring that it is aligned with the criteria of the Climate Bonds Standards;
- b) Estimate of the maximum value that can be obtained through debt instruments associated with climate debt instruments;
- c) Systems, policies and processes to be used for the management and allocation of resources associated with climate debt instruments;
- d) Strategy related to update reports, aiming to reaffirm the commitment to the Climate Bonds Standards while the certification is effective;
- e) Other actions that may be necessary to obtain the certification;

### **5.3.1 Expected Product**

The product (P2) to be delivered consists of:

1. Technical Analysis Report and Independent Audit Report, describing documents, processes, decision-making criteria, analysis and actions necessary for the projects of the West-East Integration Railway - FIOL, Central-West Integration Railway - FICO and Ferrogrão Railway - EF-170 to be aligned with the eligibility criteria of the Climate Bonds Standards.

## **5.3. PRODUCT 3 - CERTIFICATION PROCESS**

The purpose of product 3 is to perform conformity assessments based on technical criteria that apply for the issuance of the Climate Bond Standards certification

### **5.4.1. Expected product**

The product (P3) to be delivered consists of:

- a) Technical report evaluating the compliance with the criteria required to obtain the certification.
- b) In case the enterprise fulfils the necessary requirements, a report shall be delivered by an

institution approved by the CBI for the certification of the analysed enterprise, so that the application towards the certification can be processed.

c) Otherwise, a report must be submitted indicating which aspects of the project need to be adjusted in order to obtain the certification.

## **6. QUALITY ASSESSMENT AND ACCEPTANCE CRITERIA OF THE CONTRACTOR'S PRODUCTS AND SERVICES**

According to the schedule for the delivery of products and services, the Contractor must deliver the products pursuant to NBR 10719 as well as any amendments thereof.

All products must bear the signatures of the technicians responsible for their preparation.

The Contractor must deliver the products, in accordance with the physical-financial schedule and specific guidelines contained in this document or issued by EPL.

Each Technical Report shall include the following items at a minimum; notwithstanding any others that the Contractor may deem necessary:

- (a) Introduction;
- (b) Objective;
- (c) Executive Summary, whose formatting and content summarize the methodology used, its results and the scope of the work, as well as the main recommendations;
- (d) Description of the Activities, whose content should present the methodological basis, the information basis, including collected data and any spreadsheets;
- (e) Results;
- (f) Analytical study of the results;
- (g) General recommendations;
- (h) Annexes;
- (i) Separate volumes for the specifications, calculations and technical drawings.

EPL may request clarification from the Contractor about the execution of the services at any time, aimed at the alignment of the products in their execution phase.

All documents produced by the Contractor must be submitted in two (2) printed copies and, when delivered in digital format, they must be editable *.dwg/.doc/.xls/.shp* files, among others, and in printable version (preferably *.pdf*). Drawings must be represented in separate layers and different colours.

Products should be printed in A4 format, with technical drawings and/or other items in appropriate size and folded sheets in A4 format.

The volumes corresponding to the technical drawings should be plotted in formats appropriate to the respective scales, preferably in A3 format. They shall contain captions and formatting should be defined by mutual agreement with EPL, containing technical drawings, schematics, diagrams, matrices, etc.

The technical drawings must be compatible with technological solutions that provide interoperability between different types of software. This technology aims to facilitate technical communication between the actors involved in the project and the sharing of multidisciplinary data. It should be possible to include data from different agents, helping to eliminate data redundancy and reduce the potential for errors in all project stages. This will allow for the automation of tasks such as documentation and interference detection.

The use of software should meet at least the following guidelines:

- (a) Whenever possible, open-source software should be used;
- (b) Proprietary standards may be accepted, on a transitional basis, maintaining the prospects of replacement as soon as there are conditions for migration;
- (c) The standards published by the *Open Geospatial Consortium* shall be adopted as a reference, with software approved by or adhering to these standards being preferred.

Some market standard software solutions are listed below, and some of them are already in use at EPL, whose data files should have compatible formats. It is worth mentioning that this list is not comprehensive. The most relevant software solutions are included herein, considering the EPL needs:

- a) PTV Visum – Software for transport macro-simulation that is virtually unlimited, considering the EPL license. This includes the network size, network nodes and zoning, allowing for a very accurate work.
- b) PTV Vissim - Software for transport microsimulation.
- c) Trimble Quantm - Software for planning and study of new routes and interventions in the geometry and construction of highways and railways.
- d) AutoDesk Civil 3D - Software for road and rail geometric design.
- e) Rockwell Arena - Software for simulation of linear systems, based on the queueing theory and mixed-integer linear programming, which enables the analysis of a port system's efficiency.
- f) OpenTrack - Software for the simulation of the railway motion, enabling the analysis, understanding and maximization of the efficiency of systems in this way.
- g) ESRI ArcGIS - GIS software for treatment and analysis of specialized data, with geo online portal and several integrated geoprocessing tools.
- h) TRL HDM 4 v2 - Software for economic assessment of costs and interventions (maintenance and construction) of road paving.
- i) Qlik Sense - Software for the creation of interactive data panels, with a web version for remote viewing of panels.

The assessment of the quality of products and services, as well as submission formats, should be carried out by EPL in accordance with official technical standards, considering the resolutions, scales, appropriate dimensions and quantities, official standards and legislation applied for each activity.

In general, EPL will have up to 15 days, which can be extended for the same period, to accept the products; from the date, such documentation is submitted to EPL. The analysis will consider both the quality of the information and its compliance with NBR 10719 and any amendments thereof.

The members of staff responsible for the analysis and approval indicated by EPL shall have the support of MInfra's technical team in the evaluation of the reports. However, EPL shall ultimately approve or reject the delivered products.

In the process for the analysis and acceptance of the products and services delivered by the Contractor, EPL may position itself towards:

- (a) Full approval;
- (b) Approval with submission reservations;
- (c) Request for correction;
- (d) Need for partial resubmission of products and their by-products;
- (e) Full resubmission of documentation.

Table 2 systematizes the criteria and consequences of EPL's stance on the process of analysis and acceptance of the products and services.

**Table 2:** Criteria and consequences of EPL's stance on the acceptance of products and services.

<b>EPL stance</b>	<b>Criteria</b>	<b>Consequences applied to the products and services</b>
<b>Full approval</b>	No technical or submission items that cause any obstacle to approval.	Continuity of the process at EPL with a view to communicating the competent authorities and execution of any subsequent procedures.
<b>Approval with formal reservations</b>	There are items in the submission of documents that do not fully meet the provisions of these Terms of Reference. However, there are no technical items prevent its approval.	(i) Continuity of the process at EPL with a view to communicating the competent authorities and execution of any subsequent procedures.  (ii) Communication with the Contractor of the reservations, with a request for full compliance in the delivery of the following products and by-products.
<b>Request for correction</b>	Identification of technical item(s) not in accordance with the provisions of these	(i) Suspension of the process at EPL until the Contractor submits corrections via e-mail.

	Terms of Reference. However, these are subject to prompt correction.	(ii) Communication with the Contractor of the request for correction. Within 3 working days, the Contractor shall submit the digital version of the documentation with any corrections made and file the printed corrected versions with EPL, within 2 working days after sending the digital version of the documentation.
<b>Partial resubmission required</b>	Identification of by-product (or significant portion thereof) that is in significant non-compliance with the provisions of these Terms of Reference.	(i) Suspension of the process at EPL until the Contractor resubmits the corrected printed version of the by-product(s) identified as unsatisfactory.  (ii) Communication with the Contractor of the need to resubmit the by-product(s). Within 3 to 10 working days (to be defined according to the degree of non-compliance and by mutual agreement with GEINE/DGE/EPL), the Contractor shall resubmit the corrected printed version of the by-product(s).
<b>Full resubmission required</b>	Identification of product (or significant part thereof) that is in significant non-compliance with the provisions of these Terms of Reference.	(i) Suspension of the process at EPL until the Contractor resubmits the corrected printed version of the product and its by-product(s) identified as unsatisfactory.  (ii) ) Communication with the Contractor of the need to resubmit the product. Within 3 to 20 working days (to be defined according to the degree of non-compliance and by mutual agreement with GEINE/DGE/EPL), the Contractor shall resubmit the corrected printed version of the product.

The products and services may be delivered in advance, by mutual agreement with EPL, by preserving the quality requirements of the products and the order of precedence between the different activities provided for in this document.

## 6.1 MONITORING AND OVERSIGHT MECHANISMS

EPL shall monitor the progress of the scheduled activities by comparing the original plan with the activities that are being performed. Any situation that may compromise the pre-established schedule for the completion of the studies should be communicated immediately to EPL and UNDP for the adoption of necessary measures.

EPL may request clarification from the Contractor regarding the execution of the products at any time, aimed at the alignment of the products and by-products in their execution phase and the good and regular application of the financial resources.

In order to monitor the execution of the products, the Contractor shall:

- (a) Render accounts on the execution of products through invoices and other necessary supporting documents;
- (b) Comply with requests made in oversight actions enforced by the Federal Court of Auditors, Ministry of Transparency and the Comptroller General of Brazil and other supervisory bodies, during the execution of the contract, and up to one year after its closure;
- (c) Inform in a timely manner the progress of the activities, clearly and objectively exposing compliance with the overall schedule and delivery schedule of products;
- (d) Inform in a timely manner, when requested by EPL, data, documents and other items collected from the performance of the planned actions (such as meetings with external institutions, on-site technical visits, etc.);
- (e) Record outstanding facts and/or those requiring a decision by EPL, gathering evidence of the aforementioned facts, whenever possible;
- (f) Monitor the risk map, informing the mitigating measures adopted, when requested by EPL.

## **7. PRODUCT PAYMENT CONDITIONS**

Payments are subject to the delivery and acceptance of the products that are specified in this document. Payments will be made in accordance with the established execution schedule of up to 15 days, if the products meet the established quality specifications for their acceptance and payment. In case any non-conformities are identified, we will enforce the provisions in Table 1 (Criteria and consequences of EPL's stance on the acceptance of products).

The Contractor shall present a detailed budget, which shall include direct and indirect expenses for the provision of services and delivery of the products, including expenses with daily allowances, tickets and road travel of its technicians and/or experts, in addition to the printing and equipment services.

Payments shall only be made after EPL's approval of the rendered services, and upon submission of the invoice.

## **8. CONTRACTOR'S ORGANIZATION**

### **8.1. Contractor's Technical Team**

The Contractor must have a Technical Team to deliver all the required products. The Technical Team must be present during the execution of the contract by fully complying with the demands requested by EPL. Furthermore, they must be available to travel to Brasilia whenever deemed necessary by the managers in charge of the contract at EPL.

### 8.1.1 Contractor's Technical Team Framework Composition

The Technical Team required for the delivery of the required products and services is considered a reference. The Contractor can deploy the human resources deemed necessary, but they must fully meet the requirements contained herein.

Considering the degree of complexity of the activities and its workload, the allocation of professionals has considered the following criteria:

- (a) Senior Professionals (with eight or more years of experience) for the coordination, supervision and guidance of activities;

### 8.1.2 Requirements for the Key Contractor's Team

The professionals of the Key Contractor's Team must fulfil the profile requested by EPL for the delivery of products and services, according to Table 3 below.

**Table 3:** Profile of the Key Contractor's Team professionals.

Professional	Requested profile	Requested Professional's Experience
<b>Senior Environmental Engineer</b>	Environmental Engineer, with experience in the preparation of environmental studies and evaluations of the railway infrastructure sector.	Eight (8) or more years of professional experience in activities related to the contract goals.
<b>Civil Engineer Senior Railroad Specialist</b>	Civil Engineer, with experience in the assessment of operational aspects of the railway subsector.	Eight (8) or more years of professional experience in activities related to the contract goals.
<b>Senior Economist</b>	Experience in the analysis of Technical, Economic and Environmental Feasibility Studies in undertakings for the transportation sector.	Eight (8) or more years of professional experience in activities related to the contract goals.
<b>Senior Lawyer</b>	Experience in the preparation of legal studies or provision of legal consultancy in the transport sector with experience in the area of issuance and certification of green bonds.	Eight (8) or more years of professional experience in activities related to the contract goals.

The professionals of the Key Contractor's Team must prove their professional training and experience to perform the functions and at least one member of the Key Team must hold knowledge and expertise in Assurance (ISAE 3000 of IFAC's IAASB).

## 9. PHYSICAL AND FINANCIAL SCHEDULE

Table 4 presents the physical and financial schedule for the products and services to be delivered.

Atividades	Semanas									
	1	2	3	4	5	6	7	8	9	10
Produto 1	13%									
Produto 2				29%						
Produto 3							29%			29%
<b>Total Acumulado</b>	<b>13%</b>			<b>42%</b>			<b>71%</b>			<b>100%</b>

### 1. DEADLINE FOR DELIVERY

The estimated period for the delivery of the products and services regarding the goals specified herein is ten (10) weeks after the contract is signed. This deadline can be extended upon express written consent of EPL.

### 2. TENDER ASSESSMENT CRITERIA

Bids shall include all direct and indirect expenses arising from the execution of the contract, including taxes and/or duties, social, labour, social security, tax and commercial charges as well as administration, freight, insurance and other fees necessary for the attainment of the contract goals.

The bidder that offers the LOWEST GLOBAL PRICE will be awarded the contract, to be chosen from other technically appropriate bids, regarding the delivery of the products and services.

### 3. ADDITIONAL CLARIFICATIONS AND INFORMATION

The execution of the works set forth in this document does not imply any employment relationship with the institution in charge of the project. Contractual relations within the scope of services of these Terms of Reference are governed by the UNDP rules.

Any documents provided and/or products delivered hereunder may not be used for purposes other than those arising hereof and may not be disclosed without the express written consent of EPL.

All intellectual property rights as well as other studies and documents produced by the Contractor under these Terms of Reference shall belong to UNDP, which shall assign such rights to EPL.

The Contractor shall inform its employees of the compliance with the rules established in the EPL Code of Ethics and Conduct, which is available on its website at [www.epl.gov.br](http://www.epl.gov.br).

The consulting team must ensure requirements for the protection of social and health rights of the staff providing the services. It should also take the necessary measures to protect its staff as well as EPL and



UNDP teams from possible COVID-19 risks in the execution of the contract (e.g. by means of proper PPE, telework, if possible, and avoiding commuting and travel).

## Declaration of Commitment for UNDP Suppliers

### UNDP Contract/Tender Reference: JOF 2259/2020

**For:** Independent Auditor to analyse and prepare a pre-issuance report for the Climate Bonds Initiative (CBI) certification, aiming to qualify MInfra's New Railway Concessions Program.

I, the undersigned, hereby declare to be aware and committed NOT to tolerate any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, abuse of authority in rendering services at the workplace or in connection with work or intellectual output.

I declare that I am not personally, or by means of any affiliates (if any), subsidiaries, or branches (if any) engaged in any practice inconsistent with the criteria set forth in the Convention on the Rights of the Child, which sets out the principles regarding the right to life, the right to freedom, the parental responsibilities, and those of the State and society regarding the child.

I also declare to agree that any breach of any rule will constitute a serious breach of contract and that, in addition to other rights and legal provisions publicly available, will serve as basis for termination and the consequent extinction of any existing contractual relationship.

Additionally, I acknowledge that nothing in these terms shall limit UNDP's right to bring to the attention of the authorities any breach of the rules of conduct.

Signature:	<i>Arnauld Bertrand</i>
Name:	Arnauld Bertrand
Functional Title:	Partner
Date:	23 <sup>rd</sup> October 2020