

July 10, 2020

CONCESSIONARIA LINHA UNIVERSIDADE S.A.
as the Concessionaire

and

ACCIONA CONSTRUCCIÓN, S.A.
as the EPC Contractor

ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT
related to the implantation of São Paulo's Subway Line 6



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This Engineering, Procurement and Construction Contract (the "**Contract**") is dated 10th July 2020 and made between:

1. **Concessionaria Linha Universidade S.A.**, a company organized under the laws of Brazil, having its principal place of business at na Rua Olimpíadas, 134, 72, room H, 7th floor, Condomínio Alpha Tower, Vila Olímpia, enrolled with the Corporate Taxpayer's Registry under No. 35.588.161/0001-22 (the "**Concessionaire**"); and
2. **Acciona Construcción S.A.**, a company organized under the laws of Brazil, having its principal place of business at Rua Olimpíadas, 134, 7th floor, in the city of São Paulo, State of São Paulo, Brazil, enrolled with the Corporate Taxpayer's Registry under No. 03.503.152/0001-03 (the "**EPC Contractor**").

The Concessionaire and the EPC Contractor each referred to herein as a "**Party**" or, collectively, as the "**Parties**".

WHEREAS:

- A. In December 18, 2013, State of São Paulo, represented by its State Secretary of the Metropolitan Transportation ("the **Grantor**"), celebrated the Concession Contract No. 015/2013 between Concessionária Move São Paulo S.A (the "**Original Concessionaire**"), as amended by Amendment 1 and Amendment 2 entered into with the Concessionaire ("**Concession Contract**"); with the object of granting the concession to the Original Concessionaire for the passenger transportation service of *Line 6 of the São Paulo Subway*, with a 15,3 Km extension comprising the stretch between Brasilândia and São Joaquim (formed by fifteen (15) underground stations), including the infrastructure, systems, equipment and facilities of the metropolitan public transport necessarily related to it, as further described in the Tender Documents, in the Concession Contract and in the Construction Requirements ("**System**"), contemplating the financing, the implantation of the Civil Works and systems, supply of rolling stock, operation, conservation, maintenance and expansion of the System ("**Project**");
- B. For the Project's implementation, the Original Concessionaire hired Consórcio Expresso Linha 6 ("**Original EPC Contractor**") under an engineering procurement and construction contract ("**Original EPC Agreement**");
- C. As part of the assignment transaction between the Concessionaire and the Original Concessionaire, the Original Concessionaire terminated the Original EPC Agreement; and
- D. The Concessionaire wishes to hire the EPC Contractor for the resumption of the Civil Works necessary for the implementation of the Project;



NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the Parties agree as follows:

1. GENERAL PROVISIONS

1.1. Definitions. In this Contract, except to the extent that the context requires otherwise, the following words and expressions shall have the following meanings:

"Affiliate" means, with respect to any person, any other person that directly or indirectly controls, is controlled by or is under common control with such first person. For purposes of this definition, **"control"** (including "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, or by contract or otherwise.

"Amendment 1" means the amendment to the Concession Contract, executed by and between the Grantor, the Original Concessionaire and the Original Concessionaire.

"Amendment 2" means the amendment to the Concession Contract, executed by and between the Grantor and the Concessionaire.

"Anticorruption Laws" means all applicable Laws prohibiting corruption, bribery, fraud, conflict of interest in the public sector, administrative improbity, procurement fraud in the public sector, money laundering, and unethical operation of business, including, without limitation, UK Bribery Act, the Foreign Corrupt Practices Act of 1977 (FCPA), Brazilian Decree Law No. 2,848/1940, Brazilian Law No. 8,429/1992, Brazilian Law No. 8,666/1993, Brazilian Law No. 9,504/1997, Brazilian Law No. 9,613/1998, Brazilian Law No. 12,813/2013, Brazilian Law No. 12,846/2013, and other related standards, and similar regulation as applicable to the EPC Contractor, the Subcontractors and their respective Associated Persons' activities, all of which as may be further amended and supplemented from time to time.

"Arbitral Tribunal" has the meaning ascribed to it in Clause 29.3.3.

"Arbitration Rules" has the meaning ascribed to it in Clause 29.3.2.

"ART" means the Technical Responsibility Annotation (*Anotação de Responsabilidade Técnica*) to be issued by the relevant CREA.

"Associated Persons" means, in relation to any entity, any director, officer, employee, Affiliate, representative, consultant, supplier or any other person acting on that Party's behalf.

"As-Built Documents" has the meaning ascribed to it in Clause 7.3.1.



"Back-to-Back Principle" means the principle described in Clause 3.1 (Back-to-Back Principle).

"Back-to-Back Right of the Concessionaire" means any right of the Concessionaire, pursuant to the Concession Contract, related to: (a) any compensation, indemnification or any other right; and/or (b) the defence of any claim or fine claimed or imposed by the Grantor.

"Basic Design" (*Projeto Básico*) means the set of elements, with adequate level of precision, necessary and sufficient to characterize the Civil Works or service, or complex of Civil Works or services, under the Contract Documents, prepared by the EPC Contractor based on indications of preliminary technical studies, which ensure the technical feasibility and the adequate handling of the environmental impact of the Project and enable the assessment of the cost of the work and the definition of the methods and the implementation period and which is a part of the Technical Documentation. It includes: drawings, specifications, memoranda, construction and construction/financial budget, project management tools, with a sufficient level of detail to define work packages (which are key in clearly defining deadlines and costs).

"BNDES" means the National Bank of Economic and Social Development (*Banco Nacional de Desenvolvimento Econômico e Social*).

"BNDES Requirements" has the meaning ascribed to it in Clause 26.2.1.

"Business Day" means a day (other than Saturday, Sunday or holidays) when banks in the Country are open for business.

"CAU" means the Architecture and Urbanism Council (*Conselho de Arquitetura e Urbanismo*).

"Certifying Authority" means the certifying entity appointed by the Concessionaire in accordance with the Concession Contract to inspect and approve any part of the Civil Works

"Civil Works" has the meaning ascribed to it in Clause 2.1.

"Civil Works Construction Book" means a numbered workbook to contain the Civil Works executed by the EPC Contractor on daily basis, as well as communications between the Concessionaire and the EPC Contractor.

"Claim of the Concessionaire" has the meaning ascribed to it in Clause 3.4.1.

"CNO" means the National Registration of Civil Works (*Cadastro Nacional de Obras*) as defined by the Laws.

"Commencement Date" means the date established in the Notice to Proceed issued by the Concessionaire pursuant to Clause 11.2.1.



"Completion Date" means the dates for the conclusion of the Milestones established in the Program and in Exhibit XIII (Project Milestones), including the Substantial Completion.

"Concession Contract" has the meaning ascribed to it in the Recitals of this Contract.

"Concessionaire" means Concessionaria Linha Universidade S.A, a company organized under the laws of Brazil, having its principal place of business at na Rua Olímpíadas, 134, 72, room H, 7th floor, Condomínio Alpha Tower, Vila Olímpia, enrolled with the Corporate Taxpayer's Registry under No. 35.588.161/0001-22, and the legal successors in title to, and the permitted assigns of, such Party.

"Concessionaire's Documents" means the set of technical documents, studies, drawings, descriptive memorials, design requirements, technical specifications and instructions provided or to be provided by the Concessionaire according to the Good Engineering and Construction Practices and set forth in Exhibit IV (Concessionaire's Documents).

"Concessionaire Event of Default" has the meaning ascribed to it in Clause 22.2.1.

"Concessionaire's Insurance" has the meaning ascribed to it in Clause 26.3.2.

"Concessionaire's Licenses" means the Licenses provided for in Exhibit V (Concessionaire's Licenses).

"Concessionaire's New Right" has the meaning ascribed to it in Clause 3.4.1.

"Concessionaire's Obligations" has the meaning ascribed to it in Clause 5.5.1.

"Concessionaire's Personnel" means the Concessionaire's Representative, the assistants referred to in Clause 5.2 (Delegated Persons) and all other staff, labor and other employees of the Concessionaire and of the Concessionaire's Representative, and any other personnel notified to the EPC Contractor, by the Concessionaire or the Concessionaire's Representative, as Concessionaire's Personnel.

"Concessionaire's Representative" means any person or entity appointed from time to time by the Concessionaire under Clause 5.1 (Concessionaire's Representative).

"Confidential Information" means any details of this Contract, and, in relation to any Party (the **"Provider"**), all information relating to it or its Affiliates, which is supplied by or on behalf of the Provider (whether before or after the Contract Date), either in writing, orally or in any other form, directly or indirectly or pursuant to discussions with the Provider or which is obtained through observations made by the Party receiving such information and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which: (a) the Provider confirms



in writing is not required to be treated as confidential; and (b) is or comes into the public domain other than as a result of any disclosure prohibited by this Contract.

"Contract" has the meaning ascribed to it in the preamble of this instrument and all Exhibits hereto.

"Contract Date" means the date of execution of this Contract.

"Contract Documents" means this Contract, the Concession Contract, the Tender Documents, the Exhibits and the Technical Documentation.

"Contract Liability Limit" has the meaning ascribed to it in Clause 25.1.

"Contract Price" has the meaning ascribed to it in Clause 21.1.1.

"Construction Requirements" means the means the technical specifications and description of the Civil Works set forth in Exhibit I of this Contract.

"Country" means the Federative Republic of Brazil.

"CREA" means the Engineering and Agronomy Regional Council (*Conselho Regional de Engenharia e Agronomia*).

"DAB" has the meaning ascribed to it in Clause 29.2.1.

"Decision" has the meaning ascribed to it Clause 29.2.6.

"Defect" means any error, defect, non-conformity or damage in or to the Civil Works or any part thereof (including in each case in any design, engineering, materials or workmanship), and any failure of the Civil Works to comply or conform with the Contract Documents or the Law.

"Defect Liability Period" means the Original Defect Liability Period and the Extended Defect Liability Period, as the case may be.

"Delay Damages" has the meaning ascribed to it in Clause 14.3.3.

"Detailed Design" (*Projeto Executivo*) means the set of technical documents, studies, drawings, descriptive memorials, design requirements, technical specifications of civil construction, assembly and equipment supply related to the Civil Works, to be prepared by the EPC Contractor in accordance with the Contract Documents, which document shall be part of the Technical Documentation when concluded by the EPC Contractor and commented by the Concessionaire and/or approved by the Grantor, as the case may be, according to Clause 7.2 (Detailed Design).



"Disclosed Data" has the meaning ascribed to it in Clause 6.10.1.

"Dispute" means any claim, dispute or controversy of any kind whatsoever in connection with or arising out of this Contract.

"Documentation Schedule" has the meaning ascribed to it in Clause 7.5.1.

"Due Proportion Principle" has the meaning ascribed to it in Clause 3.4.2.

"Effective Date" has the meaning ascribed to it in Clause 11.1 (Effective Date).

"EPC Contractor" means Acciona Construcción, S.A., a company organized under the laws of Brazil, having its principal place of business at Rua Olimpíadas, 134, 7th floor, in the city of São Paulo, State of São Paulo, Brazil, enrolled with the Corporate Taxpayer's Registry under No. 03.503.152/0001-03.

"EPC Contractor Event of Default" has the meaning ascribed to it in Clause 22.1.1.

"EPC Contractor Direct Agreement" has the meaning ascribed to it in Clause 26.1.1.

"EPC Contractor's Documents" has the meaning ascribed to it in Clause 7.5.1 (EPC Contractor's Documents).

"EPC Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Civil Works. However, the EPC Contractor's Equipment excludes Temporary Civil Works, the Concessionaire's equipment, Materials and any other things intended to form or forming part of the Civil Works.

"EPC Contractor's Insurances" means the insurances described in Part 1 of Exhibit XVII (Insurance).

"EPC Contractor's Licenses" means the Licenses established in Exhibit VI (EPC Contractor's Licenses) and any other Licenses required for the carrying out of the Civil Works and performance by the EPC Contractor of its obligations hereunder which are not Concessionaire's Licenses, considering that, in case there were additional licenses to be claimed for compensation to the Grantor, the back to back principle and the change in law provisions herein under will apply.

"EPC Contractor's Personnel" means the EPC Contractor's Representative and all personnel engaged by the EPC Contractor for the execution of the Civil Works, who may include the staff, labor and other employees of the EPC Contractor and the Subcontractors and their employees, and any other personnel assisting the EPC Contractor in the execution of the Civil Works.

"EPC Contractor's Related Claim" has the meaning ascribed to it in Clause 4.1.1.



"EPC Contractor's Representative" means the person named by the EPC Contractor in this Contract or appointed from time to time by the EPC Contractor under Clause 6.2 (EPC Contractor's Representative), who acts on behalf of the EPC Contractor.

"EPC Contractor's Unrelated Claim" has the meaning ascribed to it in Clause 4.2.1.

"Equivalent Project Relief Principle" has the meaning ascribed to it in Clause 3.2.1.

"Extra Cost" means all additional and documented expenditure reasonably, directly and properly incurred by the EPC Contractor, including overheads but excluding loss of profit, revenue, opportunity, indirect or reflexive or consequential damages or costs. Extra Costs shall be calculated by the actual costs incurred by the EPC Contractor on an open-book basis, plus a margin in relation to overheads.

"Extended Defect Liability Period" has the meaning ascribed to it in Clause 18.3.

"Extension of Time Event" has the meaning ascribed to it in Clause 13.1 (Extension of Time of the Completion Dates by the EPC Contractor's Request).

"Final Acceptance Certificate" means the certificate issued under Clause 19.1 (Final Acceptance Certificate).

"Finance Documents" means any and all loan contracts, notes, deeds, indentures, loan guarantee contract, equity support agreement, guarantee agreements (including pledge and security documents), terms of record or disclosure, subordinate contracts, contracts between creditors, deeds of trust, letters of credit, subscription and interest contracts (including any hedging agreement) and other documents relating to short, medium and long-term financing from the Finance Parties in connection with the Project, including any change, amendment, extension, renewal, recuperation or refinancing thereof.

"Finance Parties" means any party designated as a "Finance Party" or equivalent term in the Finance Documents, including any guarantor.

"Financing" means any debt financing obtained by the Concessionaire for the implantation of the Project, including but not limited to bridge, non-recourse and/or limited recourse, long or short term loans obtained with financial institutions, whether in the FINEM type or any other type, or capital market transactions.

"FINAME" means the line of credit, including its conditions, for direct or indirect long term financing offered by BNDES for the production and acquisition of new industrial machines and equipment.



"First Tier Insurance Company" has the meaning ascribed to it in Clause 23.1.1.

"Force Majeure" has the meaning ascribed to it in Clause 6.18.1.

"Good Engineering and Construction Practices" means the nationally and internationally recognized good engineering practices and other practices, methods, equipment and procedures usually employed in engineering, procurement and construction and that degree of skill, diligence, prudence and foresight which would reasonably be expected to be observed by a skilled and experienced turnkey contractor engaged in carrying out activities the same as or similar to the Civil Works under the same or similar circumstances for the lawful, safe, reliable and efficient engineering, procurement and construction of subway and underground infrastructure.

"Goods" means, including but not limited to, the EPC Contractor's Equipment, Materials and Temporary Civil Works, or any of them as appropriate.

"Government Authority" means any authority, entity, agency, office, body, foundation, department, court, arbitrator, chamber or commission, either federal, state or municipal, national, foreign or supranational, governmental, administrative, regulatory or self-regulatory, including any recognized stock exchange, or any of the respective agencies or departments, any person controlled, directly or indirectly, by the public powers or governments, Brazilian or foreign, state entities, bodies, diplomatic offices or international public organizations, as well as public utility concessionaire companies, foundations, associations or other entities sponsored or financed with public resources, candidates for public offices, political parties or members of the political party administration.

"Grantor" has the meaning given to it in Recital A of this Contract.

"Guarantor" means Corporación Acciona Infraestructuras, S.L., a *sociedad limitada* organized and existing under the laws of the Kingdom of Spain, with its headquarters at Avda. de Europa Nº 18, P.E. La Moraleja, C.P. 28108 Alcobendas, Madrid, Spain; with CIF registration number B-87324455.

"IFC Performance Standards" means the "Performance Standards on Social & Environmental Sustainability", as applicable to each Party, issued by the International Finance Corporation, dated January 1, 2012 and which are available at: http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards, as amended from time to time;

"If and When Principle" has the meaning ascribed to it in Clause 3.3.1.

"Indemnifying Party" has the meaning ascribed to it in Clause 24.1.

"Indemnified Party" has the meaning ascribed to it in Clause 24.1.



"Initial Installment" means the first installment of the Contract Price to be paid by the Concessionaire to the EPC Contractor as described in Exhibit XV (Payment Exhibit).

"Inspection and Test Personnel" has the meaning ascribed to it in Clause 9.1.

"Intellectual Property" means any Civil Works, inventions, designs, know-how or other intangible assets which are protected by or may be protected upon fulfilment of certain conditions required by Law (in particular in the form of patents, data, utility models, industrial designs, trademarks, copyrights, trade names and trade secrets), irrespective of whether they are registered or not (including pending applications to register any such right) and irrespective of the object in which they are incorporated.

"Key Personnel" means the construction manager and design manager, who shall be previously approved by the Concessionaire in writing.

"Latent Defect" means a Defect in a part of the Civil Works that affects the operation or use of the Civil Works and manifests itself in a mechanical, structural or electrical failure, that (a) manifested itself during the Latent Defect Period; (b) could not have been detected by a prudent examination of the Civil Works by a qualified engineer acting in accordance with Good Industry Practice; and (c) shall not include those Defects which are due to the normal wear and tear that can be expected of properly designed, engineered and manufactured Civil Works or normal operation or those Defects where, at the time of discovery, the repair or replacement is already contemplated for such parts under the recommendations contained in the Operating Documents provided by the EPC Contractor.

"Latent Defect Period" has the meaning ascribed in Clause 18.4.1 hereof.

"Laws" means any and all laws, codes, standards, regulations (including ABNT regulations), ordinances, rules, judgments, orders, decrees, provisional measures, treaties, ordinances, resolutions, international conventions, directives, requirements and/or any similar form of decision or determination by, and/or any interpretation and/or administration of any of the foregoing, by any public authority, as may be in effect from time to time, including all applicable Anticorruption Laws.

"License" means any permit, consent, approval, authorization, agreement, waiver or license which must be obtained from any Government Authority or person in order for the Civil Works to be performed, for any Goods to be transported, imported or exported and for the System to be operated, and shall include agreements for the obtaining of rights of way, easements, land purchase or leasing and the like with persons who would otherwise possess rights to prevent or impede the carrying out of any portion of the Civil Works (or towards whom the Concessionaire or the EPC Contractor would otherwise incur any liability by reason of the carrying out of the Civil Works) including the EPC Contractor's Licenses and the Concessionaire's Licenses.



"Lien" means any mortgage, lien, pledge, claim, charge, lease, easement, security interest or encumbrance of any kind.

"List of Exclusions" means the exhaustive list of the exclusions of the Civil Works and the EPC Contractor's responsibilities related to the Civil Works, as established in Exhibit III (List of Exclusions).

"Major Subcontractor" means each Subcontractor (i) supplying a portion of the Civil Works in an amount equal or higher than R\$ 150,000,000.00 (one hundred and fifty million Reais) whether under a single or multiple contracts or (ii) supplying significant operating systems, which shall be previously approved by the Concessionaire in writing.

"Major Subcontracts" means any subcontract executed by and between the EPC Contractor and a Major Subcontractor.

"Major Supplier" means each of the major suppliers listed in Exhibit VII (Major Supplies), which have been already approved by the Concessionaire to supply the specific item of the Civil Works.

"Major Supplies" means the major supplies listed in Part II of Exhibit VII (Major Supplies), which shall be furnished by the Major Suppliers specified under such Exhibit.

"Management Committee" has the meaning ascribed to it in Clause 29.1.2.

"Materials" means things of all kinds intended to form or forming part of the Civil Works, including the supply-only materials (if any) to be supplied by the EPC Contractor under this Contract.

"Milestone" means the fixed milestones of the Civil Works established in the Concession Contract.

"Milestones Delay Damages" has the meaning ascribed in Clause 14.3.2.

"Notice to Proceed" means the notice to be issued by the Concessionaire to the EPC Contractor, in accordance with Clause 11.2 (Commencement of Civil Works).

"Operating Documents" means any documents to be used by the Concessionaire in relation to the transition from construction to operation of the Civil Works such as operating and maintenance manuals for any portion of the Civil Works or associated training materials as described in the Contract Documents.

"Original Defect Liability Period" has the meaning ascribed to it in Clause 18.1.



"Parties" has the meaning ascribed to it in the preamble of this Contract.

"Party" has the meaning ascribed to it in the preamble of this Contract.

"Payment Certificate" means a payment certificate issued under Clause 21.2.1.

"Payment Milestone" means a Milestone the achievement of which entitles the Concessionaire to a payment from the Grantor under the Concession Contract.

"Penalties" has the meaning ascribed to it in Clause 14.2.1.

"Performance Bond" means the insurance bond to be presented by the EPC Contractor to the Concessionaire, according to Clause 23.1, subject to approval by the Finance Parties (Performance Bond).

"Performance Damages" has the meaning ascribed to it in Clause 18.6.

"Performance Standards" means the standards of performance to be achieved by the Civil Works set forth in Exhibit II.

"Program" has the meaning ascribed to it in Clause 12.1.

"Project" has the meaning ascribed to it in Recital A of this Contract.

"Public Official" means (a) any officer, employee, office holder, or anyone who exercises, even though temporarily or without pay, by election, appointment, designation, contract or any other form of endowment or bond, mandate or function in any Government Authority; (b) any political party or supra-national organization (such as the United Nations, the World Bank or International Monetary Fund); (c) any political candidate; or (d) any other person who is linked to or associated personally with any of the foregoing, whose is forbidden by any Anticorruption Law or by any other mean for the purpose of influencing any act or decision of such beneficiary in her/his official capacity, leading to that recipient to do or abstain from doing any act in breach of its legal duty to ensure any advantage or inducing such beneficiary to use its influence with a Government Authority or instrumentality thereof to affect or influence any act or decision of such Government Authority or instrument.

"Punch List" means the list of minor outstanding Civil Works to be listed in accordance with item (ii) of Clause 17.1 that do not prevent: (a) the System from operating under the conditions for which it is designed to operate; and (b) the safe and reliable operation of the System in accordance with the Contract Documents, the applicable Laws, the Good Engineering and Construction Practices and the Licenses.



"Recovery Plan" means a recovery plan of the Program, which shall include the measures to be taken by the EPC Contractor in order to recover a delay and conclude the subsequent Milestones in their Completion Dates and the Civil Works in the Time for Completion Dates.

"REIDI Deadline" has the meaning ascribed to it in Clause 21.1.4.

"Rolling Stock" means rolling stock and other ancillary equipment required for the operation of the System.

"Rolling Stock Supplier" means the supplier of the Rolling Stock.

"Rolling Stock Supply Agreement" means the contract to be executed between Concessionaire and Rolling Stock Supplier for the supply of the Rolling Stock Supply.

"RRT" means the Technical Responsibility Registry (*Registro de Responsabilidade Técnica*) to be issued by the relevant CAU.

"Site" means the areas where the Civil Works shall be performed as described in Exhibit XII(Site Description).

"Subcontract" means any contract between the EPC Contractor and a Subcontractor.

"Subcontractor" means any person named in this Contract as a subcontractor, or any person appointed as a subcontractor in accordance with the terms hereof, for a part of the Civil Works and the legal successors in title to each of these persons, including the Major Subcontractors.

"Substantial Completion" means the state of completion of the Civil Works, except for the Punch List items, as well as the date of such completion set forth in the Substantial Completion Certificate, in accordance with this Contract.

"Substantial Completion Certificate" means the certificate to be issued by the Concessionaire attesting the achievement of Substantial Completion.

"Substantial Completion Delay Damages" has the meaning ascribed to it in Clause 14.3.1.

"Technical Adviser" means the person notified by the Concessionaire to the EPC Contractor as being the technical adviser to the Finance Parties and any successor or replacement of such person as notified by the Concessionaire to the EPC Contractor from time to time.

"Technical Documentation" means the Performance Standards, the Construction Requirements, the Concessionaire's Documents and, when concluded by the EPC Contractor and commented by the Concessionaire and/or the Grantor (if applicable) and the EPC Contractor's Documents.



"Temporary Civil Works" means all temporary Civil Works of every kind (other than the EPC Contractor's Equipment) required on Site for the execution and completion of the Civil Works.

"Tender" means the public tender procedure organized by the Grantor and which awarded the Concession Contract to the Original Concessionaire.

"Tender Documents" means the documents produced, presented or released by the Grantor for or during the Tender. The Tender Documents include their annexes and any other documents associated or related to them.

"Time for Completion Date" means the date falling 60 (sixty) months after the Commencement Date.

"Variation" means any change to the Civil Works, according to Clause 20 (Variations).

"Warranty" has the meaning ascribed to it in Clause 18.1.

1.2. Interpretation

1.2.1. In this Contract, except where the context requires otherwise:

- (i) references to a provision of Law are references to that provision as amended, extended or re-enacted and include all Laws and official requirements made under or deriving validity from it or enacting such modification;
- (ii) words indicating one gender include all genders;
- (iii) words indicating the singular also include the plural and vice versa;
- (iv) headings are for ease of reference only and shall not be used in the interpretation of this Contract;
- (v) the words "include" and "including" are to be construed without limitation;
- (vi) references to a "person" include any individual, firm, company, corporation, entity, association, foundation, trust, partnership or multination organization or public entity, private or mixed capital, as well as their successors and assignees (whether or not having separate legal personality), or two or more of the foregoing and words denoting natural persons include any other persons;
- (vii) references to Clauses and Exhibits are to clauses and Exhibits of this Contract;



- (viii) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (ix) references to an agreement, deed, instrument, License, code or other document (including this Contract), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- (x) unless provided otherwise, references to "written" or "in writing" mean hand-written, type-written, printed or electronically made, in each case resulting in a permanent record;
- (xi) the "winding-up" of a person also includes the amalgamation, reconstruction, reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), administration, dissolution, liquidation, merger or consolidation of that person and any equivalent or analogous procedure under the Law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets;
- (xii) the word "incurred" is to be construed as also including any cost, expense, loss, damage, penalty or indemnity (as applicable) to be incurred;
- (xiii) references to acts or omissions of a Party is to be construed as also including its Associated Persons; and
- (xiv) each time an entitlement to an extension of time and/or an increase in the Contract Price and/or Extra Costs and/or any other provisions hereof is expressed as being subject to the "Back-to-Back Principle", such reference shall be construed as comprising the Equivalent Project Relief Principle, the If and When Principle and the Due Proportion Principle.

1.2.2. Unless a contrary indication appears, a term used in this Contract but not defined herein shall bear the meaning given to such term in the Portuguese language of the Concession Contract.

1.2.3. Should there be a contradiction between any provisions (including any defined term) of any English language translation of the Concession Contract and the Portuguese language version of the Concession Contract, the Portuguese language version of the Concession Contract shall prevail and the corresponding provision of this Contract shall be construed accordingly.

1.3. Communications



1.3.1. Wherever this Contract provides for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (i) in writing and delivered by hand (against receipt), sent by registered mail or courier, or transmitted using any of the systems of electronic transmission agreed between the Parties, including scanned and emailed letters, followed by registered mail; and
- (ii) delivered, sent or transmitted to the address, email address or facsimile number (as applicable) informed by one Party to the other within five (5) days from the Effective Date, provided that:
 - (a) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (b) if the recipient has not stated otherwise, they may be sent to the address from which the communications were issued.

1.3.2. Any communication addressed in accordance with Clause 1.3.1 which has been sent by:

- (i) registered mail shall be deemed to have been received on the date of the receipt; and
- (ii) electronic mail shall be deemed to have been received on the day of dispatch if dispatched prior to 17:00 hours of Brazil time, but otherwise on the next Business Day and in proving such service it shall be sufficient to produce a "delivery confirmation" confirming delivery to the correct address of the addressee in accordance with Clause 1.3.1;

1.3.3. In case any communications by the EPC Contractor are required to be forwarded by the Concessionaire to the Grantor, the EPC Contractor shall submit such communication to the Concessionaire at least 7 (seven) days, if reasonable (and in any event at least 4 (four) days) prior to the date in which the Concessionaire is obliged to submit a corresponding communication to the Grantor. In case the term for the Concessionaire to submit such communication is of 5 (five) days or less, the EPC Contractor shall be obliged to provide such communication 1 (one) day in advance.

1.4. Law and Language

1.4.1. This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of the Federative Republic of Brazil.



1.4.2. Any written communications pursuant to this Contract and all other communications arising out of or in connection with this Contract or the performance or termination of this Contract shall be made in Portuguese language, unless otherwise agreed by the Parties.

1.5. Contract Documents. This Contract comprises this document and the Exhibits listed below:

- (i) Exhibit I - Construction Requirements
- (ii) Exhibit II - Performance Standards
- (iii) Exhibit III - List of Exclusions
- (iv) Exhibit IV - Concessionaire's Documents
- (v) Exhibit V - Concessionaire's Licenses
- (vi) Exhibit VI - EPC Contractor's Licenses
- (vii) Exhibit VII - Major Supplies
- (viii) Exhibit VIII - Health and Safety Requirements
- (ix) Exhibit IX - Quality Requirements
- (x) Exhibit X - Environmental Requirements
- (xi) Exhibit XI - Form of Progress Reports
- (xii) Exhibit XII - Site Description
- (xiii) Exhibit XIII - Project Milestones
- (xiv) Exhibit XIV - Program
- (xv) Exhibit XV - Payment Exhibit
- (xvi) Exhibit XVI - Form of Payment Certificate
- (xvii) Exhibit XVII - Insurance
- (xviii) Exhibit XVIII - Non-financeable Items by BNDES



1.6. Assignment

- 1.6.1. The Concessionaire shall be freely entitled, without the consent of the EPC Contractor, to assign, pledge, charge or otherwise encumber the whole or any part of the benefit of its interest in this Contract to any Finance Parties, including its right to any monies due, or to become due, under this Contract (and the Finance Parties may enforce and execute such security by way of sale or otherwise). The EPC Contractor hereby gives its consent for such assignment or pledge of rights under this Contract in accordance with this Clause 1.6.
- 1.6.2. Other than as permitted under this Clause 1.6 or the EPC Contractor Direct Agreement, the Parties shall not, without the prior written consent of each other (not to be unreasonably withheld or delayed), assign, novate or otherwise transfer the whole or any part of this Contract or any obligation, benefit or interest in or under this Contract to any other person.
- 1.6.3. The EPC Contractor shall be entitled to assign the receivables under an invoice issued based on an approved Payment Certificate by the Concessionaire, upon prior written agreement of the Concessionaire and the Finance Parties.

1.7. Confidentiality

- 1.7.1. Subject to Clause 1.7.2, both Parties shall treat any Confidential Information as private and confidential and shall not disclose any such information to any other person or make use of any such information other than for the purposes of this Contract without the prior written consent of the Party to whom such information relates.
- 1.7.2. A Party shall, without the prior written consent of the other Party, be entitled to disclose Confidential Information:
- (i) that is reasonably required by that Party in the performance of its obligations, or the enforcement of its rights, arising out of or in connection with the Project, including the disclosure of any Confidential Information to any employee, consultant, agent, officer, Subcontractor (of any tier) or adviser to the extent necessary to enable that Party to perform its obligations or enforce its rights, arising out of or in connection with the Project;
 - (ii) to enable a determination to be made in accordance with Clause 30 (Disputes and Arbitration);
 - (iii) to the Concessionaire's Representative, the Finance Parties, their professional advisers (including the Technical Adviser and, if applicable, any rating agencies)



or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Concessionaire, to that person but only to the extent reasonably necessary to enable a decision to be taken on the relevant proposal;

- (iv) to the extent required by Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- (v) for the purpose of the examination and certification of either Party's accounts;
- (vi) to register or record any Licenses and to effect any property registration that may be required; or
- (vii) to the Grantor.

1.7.3. Where disclosure is permitted under Clause 1.7.2 above, other than items (ii), (iv), (vi) and (vii), the Party making such disclosure shall ensure that the recipient of the Confidential Information is bound by a written confidentiality undertaking on terms no less stringent than the obligations imposed on the Party making such disclosure under this Contract.

1.7.4. Save as otherwise agreed, the EPC Contractor shall not publish, permit to be published, or disclose any particulars of the Civil Works or this Contract, in any trade or technical paper or elsewhere, without the previous agreement of the Concessionaire. Save as otherwise agreed, the Concessionaire shall not publish, permit to be published, or disclose any Confidential Information of the EPC Contractor, this Contract, or any particulars of the EPC Contractor's Documents, in any trade or technical paper or elsewhere, without the previous agreement of the EPC Contractor, except any Confidential Information that needs to be disclosed to the Grantor by the Concessionaire.

1.7.5. In relation to documents or information other than the EPC Contractor's Documents that the Concessionaire, the Grantor, the Concessionaire's Representative and/or the Finance Parties may reasonably require in order to verify the EPC Contractor's compliance with this Contract and/or to enable the Concessionaire to comply with the Concession Contract, the EPC Contractor shall:

- (i) in respect of such information or documents which are not confidential in nature, disclose and provide such documents or information to the Concessionaire on the same basis as the EPC Contractor's Documents are given under Clause 27.2 (Concessionaire's Use of the EPC Contractor's Documents); and



- (ii) in respect of such information or documents which are confidential in nature, disclose such information or documents to the Concessionaire, the Grantor, the Concessionaire's Representative and/or the Finance Parties in the EPC Contractor's or the relevant Subcontractor's premises in accordance with Clause 9 (Inspection and Tests) and shall ensure that such disclosure is permitted by the relevant Subcontracts.
- 1.7.6. The EPC Contractor must ensure that each Subcontract contains provisions similar to those set out in Clause 9 (Inspection and Tests) and this Clause 1.7.
- 1.8. Licenses
- 1.8.1. The EPC Contractor shall obtain, maintain and comply (and shall cause the Subcontractors to comply) with all the EPC Contractor's Licenses and indemnify, defend and hold the Concessionaire harmless, pursuant to the terms of Clause 24 (Indemnity), against and from the consequences of any failure to do so, as well as pay for all taxes, duties and fees in connection with this Contract related to the EPC Contractor's Licenses.
- 1.8.1.1. The Concessionaire shall cooperate with the EPC Contractor to obtain the EPC Contractor's Licenses in a timely manner, including all documents (to the extent they are in the possession of the Concessionaire) required to obtain the EPC Contractor's Licenses.
- 1.8.2. The Concessionaire shall obtain and maintain all the Concessionaire's Licenses and indemnify and hold the EPC Contractor harmless against and from the consequences of any failure to do so, and pay for all taxes, duties and fees in connection with this Contract related to the Concessionaire's Licenses.
- 1.8.2.1. The EPC Contractor shall cooperate with the Concessionaire in obtaining and/or maintaining any of such Licenses, including when the Grantor requests any support from the Concessionaire in this respect under the Concession Contract or the presentation of any information and/or documents (*e.g.* the EPC Contractor's Documents).
- 1.8.3. The EPC Contractor shall, in performing this Contract, comply, and cause its Subcontractors to comply, with all the EPC Contractor's Licenses (including their existing constraints and conditions) and the Concessionaire's Licenses, including any environmental and social programs and plans resulting from, or set forth in, the EPC Contractor's Licenses or the Concessionaire's Licenses and with the IFC Performance Standards (as regulated in Clause 26.1.3).
- 1.9. Communication of relevant documents to the EPC Contractor. The Concessionaire shall, as soon as is reasonably practicable to allow the EPC Contractor to comply with the relevant instructions, but no later than two (2) Business Days, following receipt, provide the EPC Contractor with copies of any:



- (i) amendment to any Finance Document;
- (ii) communication from any third party in relation to any EPC Contractor's License; and
- (iii) instruction, technical information or technical communication from the Grantor in relation to the Civil Works;

to the extent that any of such document has, in respect of items (i) and (ii), any impact on the performance of the EPC Contractor's obligations under this Contract or the EPC Contractor's liability under or in relation to this Contract.

- 1.10. Communication with the Grantor. The EPC Contractor will not initiate or maintain any contact or communication directly with the Grantor in relation to any matter in connection with this Contract. If the Grantor enters into communications with the EPC Contractor, the EPC Contractor will promptly inform the Concessionaire and will refer the Grantor to the Concessionaire. The Concessionaire shall, as soon as reasonably practicable to allow the EPC Contractor to comply with the relevant instructions, but no later than two (2) Business Days, keep the EPC Contractor informed of developments in relation to the Project, taking into consideration the Clauses related to claims and/or penalties, under this Contract, whichever applicable. In case the Concessionaire requests the assistance of the EPC Contractor in any discussions and/or negotiations with the Grantor in relation to the execution of the Civil Works, the EPC Contractor agrees that it will immediately attend such request from the Concessionaire.

2. SCOPE OF WORKS

- 2.1. The EPC Contractor must execute the civil works set forth in the Technical Documentation, the Concession Contract and the Tender Documents (the "**Civil Works**") on a fixed price and turnkey basis in order to comply with the Concession Contract; provided that the Civil Works do not include the works set forth in the List of Exclusions or the supply of the Rolling Stock and related supplies for the System. The Civil Works must be executed and the Goods provided in accordance with the Contract Documents and the Back-to-Back Principle. Substantial Completion must be achieved on or prior to the Time for Completion Date.
- 2.2. Any equipment and material furnished by the EPC Contractor in the context of the Civil Works' completion, although inseparable part of the Civil Works, shall be deemed as having an accessory nature in relation to the Civil Works. For avoidance of doubt, pursuant to Clause 2.1., within the Scope of the Contract there is a pricing preponderance of the Civil Works in relation to any equipment and material to be provided by the EPC Contractor.



- 2.3. The EPC Contractor shall provide the EPC Contractor's Documents specified in this Contract.
- 2.4. The EPC Contractor acknowledges and accepts that there are existing Civil Works already executed in the Site, waives any claim for time or cost relief against the Concessionaire and/or the Grantor in relation to those Civil Works already executed at the date of this Contract (whether such claim is based on the terms of this Contract or applicable Law) and commits to, promptly and at its own expense, correct any Defect affecting such existing Civil Works at any time after the Commencement Date and subject to the terms of Clause 18 (Warranty).

3. PRINCIPLES

3.1. Back-to-Back Principle

3.1.1. The EPC Contractor acknowledges that:

- (i) it has a full knowledge and understanding of all the provisions of the Concession Contract and the Tender Documents; and
- (ii) it shall undertake and fulfill its obligations pursuant to this Contract and related to the Civil Works, being fully aware of the obligations, risks and liabilities undertaken by the Concessionaire under the Concession Contract and the Tender Documents.

3.1.2. The EPC Contractor shall perform all of the obligations and undertake all the liabilities of the Concessionaire related to the Civil Works set forth in the Concession Contract and the Tender Documents (except those obligations expressly excluded in this Contract, the List of Exclusions, or expressly undertaken by the Concessionaire herein (the "**Back-to-Back Principle**") and shall:

- (i) bear the risks and consequences expressly borne by the Concessionaire under the Concession Contract and the Tender Documents in relation to the Civil Works; and
- (ii) defend, hold the Concessionaire harmless and indemnify it against any claim, loss, liability, damage of any kind (contractual, extra contractual, judicial or whatsoever) from the Grantor arising from (i) above, if related to the Civil Works, subject to the Contract Liability Limit and the provisions hereunder.

3.1.3. The Concessionaire shall not agree to any modification to the Concession Contract, nor agree to or make any admission, transaction or waiver of its rights in relation to the Civil



Works without the prior written consent of the EPC Contractor, except in the case the Concessionaire is obliged pursuant to the Concession Contract.

- 3.1.4. Under the Back to Back Principle, the EPC Contractor shall have the same rights under the Concession Contract and the Tender Documents in relation to the Civil Works as the Concessionaire. Except when there are deadlines and terms specified in this Contract, the Concessionaire shall exercise its rights and duties under this Contract in such manner and at such times as necessary to enable the EPC Contractor to duly and timely perform its obligations in respect of the Civil Works under this Contract.
- 3.1.5. In order to give full effect to the Back-to-Back Principle, the EPC Contractor shall not make any EPC Contractor's Related Claims against the Concessionaire, unless and insofar as the Concessionaire holds a corresponding right against the Grantor under the Concession Contract.
- 3.1.6. The EPC Contractor shall not be entitled to delay or suspend the execution of any portion of the Civil Works or any obligation imposed by the Grantor upon the Concessionaire regarding the Civil Works due to any claim and/or dispute between the Concessionaire and the Grantor under the Concession Contract resulting from an EPC Contractor's Related Claim not having been resolved or compensated by the Grantor; provided that the EPC Contractor shall be entitled to a suspension of the relevant portion of the Civil Works if the Concession Contract or the applicable Laws entitle the Concessionaire to such suspension without having to first obtain acknowledgment of the circumstances having led to suspension by the Grantor or any other third party.

3.2. Project Relief Principle

- 3.2.1. In accordance with the Back-to-Back Principle, the EPC Contractor shall, with regard to the Concessionaire and as far as the Civil Works are concerned, benefit from the same rights (including rights to extension of time and/or compensation and/or payment) towards the Concessionaire under this Contract as those enjoyed by the Concessionaire towards the Grantor under the Concession Contract, subject to the discipline related to the EPC Contractor's Related Claims and the EPC Contractor's Unrelated Claims (the **"Equivalent Project Relief Principle"**).
- 3.2.2. The Concessionaire will do its best efforts to agree with the Grantor that any compensation to be transferred to the EPC Contractor will be paid by the Grantor in cash. Notwithstanding this, if the Grantor decides to compensate through any compensation mechanism that does not allow the Concessionaire to directly transfer the EPC Contractor the amount corresponding to the claim compensation amount, such amount shall be paid to the EPC Contractor by the Concessionaire (i) in the form agreed in Clause 21.2 (Payment Procedure) for payment of work certificates as from the moment in which they exist, and charged to the free distributable cash flow as generated (i.e. before dividends are distributed), as this term will be defined in the Finance Documents, or (ii) through



direct payment in favor of the EPC Contractor of the amount in which the investments ("*aporte de recursos*") paid by the Grantor to the Concessionaire are increased, provided that such increase shall be identifiable and determinable, whichever occurs first, and in the understanding that in no case the EPC Contractor shall have the right to claim the Concessionaire any amount that is higher to the economic value taken into account by the Grantor to grant the compensation.

3.3. If and When Principle

- 3.3.1. Except with respect to the EPC Contractor's Unrelated Claims, the EPC Contractor's rights towards the Concessionaire under this Contract are subject to the same limits, amounts and restrictions (notably in terms of the sums actually paid and/or of the time extension actually granted) as the rights of the Concessionaire towards the Grantor under the Concession Contract, subject, however, to the Due Proportion Principle, when applicable (the "**If and When Principle**").

3.4. Due Proportion Principle

- 3.4.1. Provided that similar circumstances result in both an EPC Contractor's Related Claim (against the Concessionaire), on the one hand, and a claim of the Concessionaire (against the Grantor) for compensation of its own damages, on the other hand (the "**Claim of the Concessionaire**"), in the event that the Concessionaire has been officially notified that the Grantor has responded to such claims by granting any right (the "**Concessionaire's New Right**") without fully satisfying both claims and without identifying an allocation of such Concessionaire's New Right between the EPC Contractor's Related Claim and the Claim of the Concessionaire, the Concessionaire and the EPC Contractor shall promptly meet in order to agree on such allocation.
- 3.4.2. If the Concessionaire and the EPC Contractor fail to agree on such allocation within five (5) Business Days from the notification of the initial proposal of the Concessionaire to the EPC Contractor, the Concessionaire, acting reasonably, shall determine which portion of such Concessionaire's New Right (in relation to the Civil Works) will be granted to the EPC Contractor in order to reflect in this Contract the balance of the adjustment to the Concession Contract which has been made through the granting of the Concessionaire's New Right (the "**Due Proportion Principle**")
- 3.4.3. If the EPC Contractor does not agree with the Concessionaire's determination, the matter in controversy shall be submitted directly to the DAB referred to in Clause 30 (Disputes and Arbitration), without prejudice to the provisions of Clause 29.2.7. In any case, even before the submission of the Dispute to the DAB, the Concessionaire shall pay or transfer to the EPC Contractor the undisputed part of the Concessionaire's New Right. The decision of DAB shall be implemented within twenty-one (21) Business Days from the decision.



4. CLAIMS

4.1. EPC Contractor's Related Claims

4.1.1. The EPC Contractor shall be entitled to make a related claim to the extent the Concessionaire is also entitled to submit such claim against the Grantor according to the Concession Contract or the applicable Laws in relation to the Civil Works (the "**EPC Contractor's Related Claim**").

4.1.2. Procedure

4.1.2.1. The EPC Contractor shall notify, for information purposes, about any claim and shall prepare a detailed claim in accordance with the relevant provisions of the Concession Contract, which shall include the grounds for the claim, as well as the impact of the event on the execution of the Civil Works, Extra Costs, the Contract Price and the Program. Such EPC Contractor's Related Claim will be submitted by the Concessionaire to the Grantor within ten (10) days from the presentation of the detailed and justified claim by the EPC Contractor.

4.1.2.2. In any case, the EPC Contractor will give to the Concessionaire all reasonable assistance as may be required by the Concessionaire and the costs of passing through the EPC Contractor's Related Claims shall be borne by the EPC Contractor.

4.1.2.3. If the Concessionaire refuses to take an EPC Contractor's Related Claim, the Concessionaire shall compensate the EPC Contractor in respect of the Back to Back Right of the Concessionaire from which the EPC Contractor intended to benefit. In case the claim is related to a payment, such payment shall be made within thirty (30) days counted from the refusal to submit the EPC Contractor's Related Claim (or any different period that the Parties may agree).

4.1.3. General Provisions

4.1.3.1. The performance by the Concessionaire of its obligations described in Clause 3 (Principles) and this Clause 4.1 does not imply an obligation to obtain a specific result when submitting an EPC Contractor's Related Claim. However, the Concessionaire ensures to the EPC Contractor to maintain transparency and give information on the progress of the EPC Contractor's Related Claims as well as to deal with all the EPC Contractor's Related Claims as if they were its own claims.

4.1.3.2. The decision made by the Grantor with respect to any EPC Contractor's Related Claim shall be passed through to the EPC Contractor in accordance with the Back-to-Back Principle, Equivalent Project Relief Principle, If and When Principle and the Due Proportion Principle set out in Clause 3 (Principles), subject to the provisions of this Contract.



- 4.1.3.3. For the avoidance of any doubt, in case an EPC Contractor's Related Claim is refused in whole or in part by the Grantor, the EPC Contractor shall not be entitled to claim such refused part to the Concessionaire and/or to be indemnified by the Concessionaire as a consequence of such refusal and/or to refuse, suspend, discontinue or slow down the performance of the Civil Works as well as any of its obligations under the Contract Documents.
- 4.1.3.4. As soon as the Concessionaire receives from the Grantor the payment in cash corresponding to the EPC Contractor's Related Claim, the Due Proportion Principle shall be applied by the Concessionaire and the respective amount must be paid within a period of five (5) Business Days from the date of the Concessionaire's receipt of such payment.
- 4.1.3.5. The EPC Contractor shall bear all costs and expenses related to the defense of the EPC Contractor's Related Claim.
- 4.1.3.6. In the context of a claim of the Concessionaire to the Grantor made together with an EPC Contractor's Related Claim, the EPC Contractor shall bear only the costs associated to the EPC Contractor's Related Claim, it being agreed that the Concessionaire shall inform the EPC Contractor of the estimated costs to be incurred in relation to the claims.
- 4.1.3.7. In case the EPC Contractor's Related Claim is accepted by the Grantor, the Parties shall execute an amendment to this Contract in order to reflect what has been settled in the negotiation with respect to such claim.
- 4.1.3.8. For purposes of following-up the EPC Contractor's Related Claim before the Grantor, all formalities and procedures of the Concession Contract must be followed, with the maximum transparency and involvement of the EPC Contractor. Accordingly, the Concessionaire shall, in addition to always act in good faith:
- (i) maintain fidelity to the content of the EPC Contractor's Related Claim prepared by the EPC Contractor and defend the interests of the EPC Contractor, in an active, diligent and loyal manner, as if they were its own interests;
 - (ii) submit all communications with the Grantor strictly regarding the EPC Contractor's Related Claim to prior approval of the EPC Contractor;
 - (iii) immediately forward to the EPC Contractor all communications received from the Grantor referring to the EPC Contractor's Related Claim; and
 - (iv) grant to the representative of the EPC Contractor the opportunity to participate in visits or inspections by the Grantor in the Site.



- 4.1.3.9. For the avoidance of doubt, in case an EPC Contractor's Related Claim is submitted to the Grantor and is wholly or partially rejected by the Grantor, the portion of the claim rejected by the Grantor shall be treated according to the procedure set forth in the Concession Contract. If, after the end of the administrative process in which the claim is being discussed under the Concession Contract the Grantor keeps rejecting the claim, then the EPC Contractor shall decide on the commencement of a judicial or arbitral proceeding to discuss the claim, which decision shall be previously approved by the Concessionaire. In case the Concessionaire fails to submit the rejected claim to the dispute resolution mechanisms of the Concession Contract, then provisions of Section 4.1.2.3 shall apply.
- 4.1.3.10. If the EPC Contractor's Related Claim is not approved by the Grantor, and the Parties decide to submit the controversy to the dispute resolution process under the Concession Contract, the costs of such proceeding, including fees with lawyers, arbitrators, court costs and expenses, will be borne by the EPC Contractor. If, in such procedure, requests are made in benefit of both Parties (that is, the Concessionaire and the EPC Contractor), the costs shall be proportionally shared by the Parties, in view of the amounts claimed by each of them.
- 4.1.3.11. The Parties hereby agree that the payment to be made by the Concessionaire to the EPC Contractor shall correspond to the amount granted by the Grantor considering the IPCA, from the date that the Grantor formalizes its acceptance of the EPC Contractor's Related Claim until the date of the effective payment.
- 4.1.3.12. If the Parties are not able to reach a mutual agreement with respect to the amount to be paid by the Concessionaire to the EPC Contractor, the matter in controversy shall be submitted directly to the DAB.
- 4.2. EPC Contractor's Unrelated Claims
- 4.2.1. Subject to the provisions of Clause 4.2.5 (EPC Contractor's Unrelated Claim Procedure), the EPC Contractor may present an unrelated claim against the Concessionaire (the "**EPC Contractor's Unrelated Claim**"), if such claim arises out of:

- (i) delays and interferences attributable to the Concessionaire, its contractors (without prejudice to the EPC Contractor's obligations under Clause 8 (Interface)) or agents affecting the Civil Works, provided that any delays in the implementation of the Civil Works or payment of amounts due under this Contract resulting from the exercise of the Grantor's or Certifying Authority's rights under Clause 10.2.1 of the Concession Contract shall not entitle the EPC Contractor to present an EPC Contractor's Unrelated Claim, which shall be considered an EPC Contractor's Related Claim;



- (ii) delays in issuance or loss of the Concessionaire's Licenses, not due to acts of the EPC Contractor or any Subcontractor;
- (iii) changes in the applicable laws and regulations in Brazil which result in (A) additional costs in executing the Civil Works or (B) the creation of new taxes, increase of existing taxes or revoking or reduction of tax benefits applicable to the EPC Contractor exclusively as a result of its involvement in the Project. Any potential costs due to change in laws and regulations not covered by the Back-to-Back Principle will be paid through equity contributions or free distributable cash flow of the Concessionaire.

4.2.2. In order to submit an EPC Contractor's Unrelated Claim to the Concessionaire, the EPC Contractor shall prepare a detailed and justified claim in accordance with Clause 4.2.5 (EPC Contractor's Unrelated Claim Procedure). The EPC Contractor shall be entitled to include in such claim the request for the reimbursement of Extra Costs (for avoidance of doubt this Clause does not preclude application of Clause 13.4).

4.2.2.1. Any EPC Contractor's Unrelated Claim or any other claim from the EPC Contractor seeking an adjustment in the Contract Price and/or the reimbursement of Extra Costs shall be accompanied by appropriate supporting documentation containing a breakdown of all elements constituting the basis for such claim.

4.2.3. Any EPC Contractor's Unrelated Claim or any other claim from the EPC Contractor seeking an adjustment in the Time for Completion Date shall be accompanied by appropriate supporting documentation containing a detailed explanation of why each Completion Date should be postponed and for how long. Such supporting documentation shall include updated schedules demonstrating, by comparison of unaffected and affected schedule versions, the relationship between the initiating event and the extent of the EPC Contractor's need for time relief.

4.2.4. Notwithstanding the provisions above regarding the EPC Contractor's Unrelated Claim related to extensions of time, the Parties agree the following:

- (i) In case the delay affecting the Program is less than, or equal to, ten (10) Business Days ("**Minor Delay**"), the EPC Contractor shall not be entitled to claim the related extension of time, subject to sub-paragraph (ii) below;
- (ii) However, in case at any time the sum of Minor Delays affecting the Program exceeds ten (10) Business Days, the EPC Contractor shall be entitled to claim the extension of time related to such aggregate Minor Delays, provided that, the requirements provided in the paragraph above are met;



For the avoidance of doubt, the Parties agree that the provisions of Section 4.2.3 shall not apply to Minor Delays until the aggregate of Minor Delays reach the threshold provided above entitling the EPC Contractor to claim the respective extension of time.

4.2.5. EPC Contractor's Unrelated Claim Procedure

4.2.5.1. Each and every EPC Contractor's Unrelated Claim of any nature that may be presented by the EPC Contractor shall be initially notified in writing and submitted to the Concessionaire on a summarized basis within ninety (90) days, as from the date on which the EPC Contractor has become aware of its occurrence.

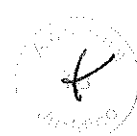
4.2.5.2. The Concessionaire shall review the claim and present a response in writing to the EPC Contractor, in relation to each claim submitted, within twenty (20) days, as from receipt of the respective claim. The Concessionaire shall have the right to extend once the term of its response for the same period, provided that it notifies the EPC Contractor before the term has expired.

4.2.5.3. In case the claim is accepted by the Concessionaire, the Parties shall execute an amendment to this Contract in order to reflect what has been settled in the negotiation with respect to the claim and, unless otherwise agreed in the amendment, the Concessionaire shall make any payment due to the EPC Contractor within 30 (thirty) days from the date of acceptance of the claim (except for Unrelated Claims described in Clause 4.2.1 (iii) which will be paid as described in such Clause) In case the Concessionaire rejects the claim, the EPC Contractor shall be entitled to submit the controversy to the dispute resolution mechanisms provided in Article 29.

4.2.5.4. The Concessionaire may, at its discretion, replace an EPC Contractor's Unrelated Claim seeking an extension of time by increasing the Contract Price to compensate any measures of acceleration to be taken by the EPC Contractor, which are necessary to maintain the Completion Dates and the Time for Completion Date in effect before the event that triggered the EPC Contractor's Unrelated Claim, as long as technically feasible and the Parties agree on the Variation conditions. In this case, the procedures stated in Clause 20 (Variations) shall apply and the delayed Milestones shall be recovered by the EPC Contractor in accordance with the Recovery Plan to be presented by the EPC Contractor within 15 (fifteen) Business Days from the notice sent by the Concessionaire in this sense.

5. **THE CONCESSIONAIRE**

5.1. Concessionaire's Representative



5.1.1. The Concessionaire shall appoint a Concessionaire's Representative to act on its behalf under this Contract and upon such appointment shall give notice to the EPC Contractor of the name, address, duties and authority of the Concessionaire's Representative.

5.1.2. The Concessionaire's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Concessionaire. Unless and until the Concessionaire notifies the EPC Contractor otherwise, the Concessionaire's Representative shall be deemed to have the full authority of the Concessionaire under the Contract, except:

- (i) in respect of Clause 22.1 (Termination due to the EPC Contractor's Default);
- (ii) the Concessionaire's Representative shall have no authority to amend the Contract and/or to instruct or approve any Variation; and
- (iii) any approval, check, certificate, consent, examination, inspection, instruction, proposal, request, test or similar act by the Concessionaire's Representative (including absence of disapproval) shall not relieve the EPC Contractor from any responsibility it has under this Contract, including, but not limited to, responsibility for errors, omissions, discrepancies and non-compliances. Notwithstanding the aforementioned, the Concessionaire shall only be entitled to cancel or change any of the Concessionaire's Representative's acts if (a) it does not impact the Contract Price or the Time for Completion Date; or (b) any such acts are not in accordance with the Concession Contract.

5.1.3. The Concessionaire shall be entitled to replace the Concessionaire's Representative without the consent of the EPC Contractor. If the Concessionaire wishes to replace any person appointed as the Concessionaire's Representative, the Concessionaire shall give the EPC Contractor not less than ten (10) Business Days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

5.2. Delegated Persons

5.2.1. The Concessionaire or the Concessionaire's Representative may, unless provided otherwise in this Contract, from time to time assign duties and delegate authority to assistants and may also revoke such assignment or delegation. These assistants may include a resident engineer, an employee of an Affiliate and/or independent inspectors appointed to inspect and/or test items of the Civil Works and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the EPC Contractor.

5.3. Extent of Delegation



5.3.1. All these persons, including the Concessionaire's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the EPC Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the appointer, subject to the provisions of Clause 5.1.2 above. However:

- (i) any failure to disapprove any Civil Works, Goods or Materials shall not constitute approval, and shall therefore not prevent the Concessionaire from rejecting the Civil Works, Goods or Materials in case they are not in accordance with the Contract Documents; and
- (ii) if the EPC Contractor questions any determination or instruction of an assistant, the EPC Contractor may refer the matter to the Concessionaire, who shall promptly confirm, reverse or vary the determination or instruction.

5.4. Instructions

5.4.1. The Concessionaire may issue to the EPC Contractor instructions, which may be necessary for the EPC Contractor to perform its obligations under this Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Clause (or other term of this Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 20 (Variations) shall apply.

5.4.2. The EPC Contractor shall take instructions from the Concessionaire or from the Concessionaire's Representative or an assistant to whom the appropriate authority has been delegated under this Clause 5.

5.4.3. The EPC Contractor shall promptly inform the Concessionaire whether and to what extent such instruction could have a negative effect on its performance of its obligations under this Contract (including, without limitation, delay with respect to the Program or damage to the Civil Works).

5.5. Concessionaire's Obligations

5.5.1. The Concessionaire shall be responsible for the performance of the following obligations (the "**Concessionaire's Obligations**"):

- (i) timely pay any amount due and payable to the EPC Contractor under and in accordance with this Contract;



- (ii) give the EPC Contractor right of access to, and possession of, the Site as and when necessary for, and for the purpose of, the performance of the Civil Works by the EPC Contractor in accordance with this Contract;
- (iii) provide the EPC Contractor with reasonable assistance for the EPC Contractor's applications for any EPC Contractor's Licenses and obtain the Concessionaire's Licenses, in accordance with Clause 1.8 (Licenses);
- (iv) subscribe and maintain the Concessionaire's Insurances in accordance with Clause 26.2 (Concessionaire's Insurances);
- (v) comply with its obligations under the applicable Laws;
- (vi) provide the EPC Contractor with the Concessionaire's Documents (and shall provide, in good faith, all documents and information that are in its possession, which are necessary to execute the Civil Works) and meet within reasonable time any request for delivery of such documents or information made by the EPC Contractor;
- (vii) perform all the "to do obligations" (*obrigações de fazer*) and negative covenants (*obrigações de não fazer*) expressly provided herein under the Concessionaire's responsibility.

6. THE EPC CONTRACTOR

6.1. EPC Contractor's General Obligations

- 6.1.1. Compliance with the Contract Documents and applicable Laws. The EPC Contractor shall execute and complete the Civil Works and perform all the obligations of the Concessionaire in relation to the Civil Works under the Back-to-Back Principle in accordance with, and in the manner required by the Contract Documents, including the List of Exclusions.
- 6.1.2. For the avoidance of doubt and notwithstanding any provisions to the contrary in this Contract, the EPC Contractor shall not be responsible for the operation of the System. However, the Civil Works need to be (a) delivered in the condition required by the Contract Documents, (b) fit for their purpose, subject to the requirements of the Concession Contract and Technical Documentation, when the Concessionaire, directly or indirectly, operates the System and (c) free of any defects and deficiencies.
- 6.1.3. The EPC Contractor shall keep and maintain on the Site the Civil Works Construction Book, which shall be signed daily by the Concessionaire's Representative and the EPC Contractor's Representative.



- 6.1.4. The EPC Contractor shall purchase and install all the Materials and Goods, in accordance with the Contract Documents, the applicable Laws, the Licenses and the Good Engineering and Construction Practices, and with properly equipped facilities with good quality and non-hazardous Goods and Materials which are suitable for use as part of the Civil Works.
- 6.1.5. For the purpose of executing the Civil Works, the EPC Contractor shall at its own cost provide and maintain warning signs and signals (both diurnal and nocturnal) in quantity and quality required for the Civil Works, according to the applicable Laws.
- 6.1.6. The EPC Contractor shall provide the ART and the RRT related to the Civil Works and to the EPC Contractor's Personnel to be issued by the relevant CREA and CAU. The EPC Contractor shall present the ART and the RRT to the Concessionaire, when requested, duly paid and updated, and shall be responsible for complying with any requirement related to the ART and/or the RRT.
- 6.1.7. The EPC Contractor shall make the registration of the Civil Works before the CNO, and shall also be responsible for its regularity and cancellation upon the conclusion of the execution of the Civil Works, bearing all related costs.
- 6.1.8. The Basic Design and the Detailed Design, as well as all the EPC Contractor's Documents and any portion of the Civil Works shall comply with the Contract Documents.
- 6.1.9. The EPC Contractor shall comply, and cause its Subcontractors to comply, with its obligations under the applicable Laws.
- 6.2. EPC Contractor's Representative
- 6.2.1. The EPC Contractor shall appoint an EPC Contractor's Representative to act on its behalf under this Contract and upon such appointment shall, prior to the Commencement Date, give notice to the Concessionaire of the name, address, duties, authority and particulars of the EPC Contractor's Representative, who shall be approved by the Concessionaire in writing, which shall not be unreasonably withheld.
- 6.3. Delegated Persons
- 6.3.1. The EPC Contractor or the EPC Contractor's Representative may, unless provided otherwise in this Contract, from time to time assign duties and delegate authority to assistants and may also revoke such assignment or delegation. These assistants may include a resident engineer, an employee of an Affiliate and/or independent inspectors appointed to inspect and/or test items of the Civil Works and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Concessionaire.



6.4. Subcontractors

- 6.4.1. The EPC Contractor shall not subcontract, transfer, novate, underlet, sell, bargain or otherwise dispose of the whole of the Civil Works or all of its obligations under this Contract.
- 6.4.2. The Parties hereby agree that any Major Subcontractor shall be previously approved by the Concessionaire, which shall not unreasonably reject any proposed Major Subcontractor.
- 6.4.3. The Parties agree that the EPC Contractor shall include (and once included, not amend without the prior written consent of the Concessionaire) the following provisions in the Major Subcontracts and submit copies of each Major Subcontract to the Concessionaire no later than five (5) Business Day after the execution thereof:
- (i) (a) Major Subcontractor agreement on the assignment of the Major Subcontract to Finance Parties and to the Concessionaire upon request from the Concessionaire on termination of this Contract due to an EPC Contractor's Event of Default; (b) covenant to negotiate, in good faith, a direct agreement with the Finance Parties;
 - (ii) assignment of warranties to the Concessionaire upon termination of this Contract, except due to the Concessionaire's non-payment Event of Default, provided such non-payment is the exclusive cause of the EPC Contractor not paying the Major Subcontractors whose warranties are to be assigned;
 - (iii) obligation of the Major Subcontractor to notify the Concessionaire in case of any default in the payment (in whole or in part) of undisputed amounts by the EPC Contractor, not cured within applicable cure periods.
- 6.4.4. Upon the occurrence of an EPC Contractor's Event of Default that has not been challenged with reasonable justification, cured or waived upon receipt of a written Contract termination notice from the Concessionaire, the EPC Contractor shall cause the prompt assignment of each Major Subcontract and warranties to the Concessionaire.
- 6.4.5. The EPC Contractor shall be directly responsible for the management and supervision of the Subcontractors and the acts or defaults of any Subcontractor shall be deemed as if they were acts or defaults of the EPC Contractor. The subcontracting by the EPC Contractor of the Civil Works or any of its obligations under this Contract shall not relieve or excuse the EPC Contractor from the due and proper performance of such obligations. No failure from any Subcontractor shall be considered a cause for time or cost relief under this Contract, unless such failure derives from circumstances, which would have entitled the EPC Contractor to claim under this Contract.



6.4.6. The EPC Contractor shall be solely responsible for the EPC Contractor's Personnel and liable for the acts, omissions, defaults, breaches and negligence of the EPC Contractor's Personnel as if they were its own. Pursuant to Clause 24 (Indemnity) and Clause 25 (Liability Limit), the EPC Contractor shall defend and indemnify the Concessionaire, to the fullest extent, for all damages, losses, costs and expenses arising from those acts, omissions, defaults, breaches and negligence, including for any such losses suffered as a result of the non-payment by the EPC Contractor of the EPC Contractor's Personnel and of the breaches of applicable Laws related to labor, social security payments and subcontracting, including, but not limited to, fines applied by any public authority, and all labor, social security, civil and criminal claims initiated by any of the EPC Contractor's Personnel.

6.5. Staff and Labor

6.5.1. General

6.5.1.1. On a monthly basis and together with the submission of each Payment Certificate, the EPC Contractor shall provide the Concessionaire all of the required documentation related to the previous month, in order to evidence the compliance of all tax, labor and social security payments according to applicable law related to the Civil Works and the EPC Contractor's Personnel, that is the (a) proof of payment of (i) all taxes related to the Civil Works; (ii) the labor and employment dues (*comprovações de pagamentos das verbas trabalhistas e empregatícias*); (iii) the labor union and assistance contributions (*comprovações de pagamentos das contribuições sindicais e assistenciais*); (iv) the social security and social dues (*comprovações de recolhimentos das verbas previdenciárias e sociais*); and (v) the Employee Severance Indemnity Fund (*Fundo de Garantia por Tempo de Serviço – FGTS*); and (b) norms and collective union agreements (*normas e convenções coletivas*) applicable, whenever amended.

6.5.2. Labor and Social Security Laws

6.5.2.1. The EPC Contractor shall comply with all the relevant labor and social security Laws applicable to the EPC Contractor's Personnel, including Laws related to their employment, health, safety, immigration and emigration, and shall allow them all their legal rights.

6.5.2.2. The EPC Contractor shall require the EPC Contractor's Personnel to obey all applicable Laws, including, but not limited, to those concerning health and safety at work.

6.6. Health and Safety

6.6.1. The EPC Contractor shall at all times take all reasonable precautions to maintain the health and safety of the EPC Contractor's Personnel. In collaboration with local health



Handwritten signature and date 12/05/2018.

and safety authorities, the EPC Contractor shall ensure, if required by the applicable Laws and/or the Concession Contract and/or indicated in Exhibit VIII (Health and Safety Requirements), that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for the EPC Contractor's and the Concessionaire's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

6.6.2. The EPC Contractor shall comply with the requirements established in Exhibit VIII (Health and Safety Requirements) during the term of this Contract until the end of the Defects Liability Period.

6.7. EPC Contractor's Personnel

6.7.1. The EPC Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Concessionaire's Representative may require the EPC Contractor to remove (or cause to be removed) any of the EPC Contractor's Personnel, including the EPC Contractor's Representative, who is having an improper behavior, which shall be justified, by giving written notice to the EPC Contractor. If appropriate, the EPC Contractor shall then appoint a suitable replacement person.

6.7.2. The removal and/or replacement of any of the EPC Contractor's Personnel if required by the Concessionaire shall not relieve the EPC Contractor of any of its obligations hereunder or be construed as a waiver by the Concessionaire of any of its rights under this Contract.

6.8. Safety and Security Procedures. The EPC Contractor shall:

- (i) comply with all applicable safety Laws and ensure that the EPC Contractor's Personnel observe the same;
- (ii) take care for the safety of all persons entitled to be on the Site;
- (iii) use reasonable efforts to keep the Site clear of unnecessary obstruction so as to avoid danger to any persons;
- (iv) provide fencing, lighting, guarding and watching of the Civil Works if necessary for the fulfilment of the EPC Contractor's safety obligations, until the issuance of the last Certificate by the Concessionaire;
- (v) provide any Temporary Civil Works (including roadways, footways, guards and fences) which may be reasonably necessary or required under the Contract Documents for the execution of the Civil Works and for the use and protection of the public and of owners and occupiers of adjacent land;



- (vi) comply with any safety requirements as provided for in the Contract Documents, the applicable Laws and the Good Engineering and Construction Practices.

6.9. Quality Assurance, Quality Control and Environmental Management System

6.9.1. The EPC Contractor shall comply with the requirements established in Exhibit IX (Quality Requirements) and Exhibit X (Environmental Requirements) during the execution of the Civil Works.

6.9.2. Without prejudice to the provisions of Clause 6.9.1 above, the EPC Contractor shall prepare:

- (i) a quality assurance system and a quality control system in accordance with the Contract Documents and the applicable Laws and in any case in a manner allowing the Concessionaire to comply with its obligations under the Concession Contract; and
- (ii) an environmental management system in accordance with the Contract Documents and the applicable Laws and in any case in a manner allowing the Concessionaire to comply with its obligations under the Concession Contract in relation to the Civil Works (for the avoidance of doubt, the EPC Contractor will not be responsible for obtaining and completing procedures and requirements for the obtention of the Concessionaire's Licenses).

6.9.3. The Concessionaire's Representative shall be entitled to audit any aspect of any of such systems.

6.9.4. Details of all procedures and compliance documents shall be submitted to the Concessionaire for information according to the quality assurance system, the quality control system or the environmental management system.

6.9.5. Compliance with the quality assurance system, the quality control system or the environmental management system shall not relieve the EPC Contractor of any of its duties, obligations or responsibilities under this Contract.

6.10. Disclosed Data

6.10.1. The Grantor, the Original Concessionaire and the Original EPC Contractor have made available documents, information and data in relation to the Project, the Site, and any other matter in relation to the Civil Works, including, but not limited to, the Tender Documents and the Concession Contract (the "**Disclosed Data**"). The receipt of any Disclosed Data by the EPC Contractor shall not prevent the EPC Contractor to present an EPC Contractor's Related Claim, whenever applicable.



6.10.2. In case of any inconsistency or error in the Concessionaire's Documents or Disclosed Data with the Concession Contract, the requirements of the Concession Contract will prevail.

6.11. Access Route

6.11.1. The EPC Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to and on the Site. The EPC Contractor shall prevent any road or bridge from being damaged by the EPC Contractor's and the EPC Contractor's Personnel.

6.12. Transport of Goods

6.12.1. Unless otherwise stated in this Contract, the EPC Contractor shall give the Concessionaire not less than five (5) Business Days' notice of the date on which Goods will be delivered to the Site.

6.12.2. The EPC Contractor shall be responsible for packing, loading, transporting, receiving, unloading, insuring, storing and protecting all Goods, Materials and any other items required for the Civil Works.

6.12.3. Pursuant to Clause 24 (Indemnity) and Clause 25 (Liability Limit), the EPC Contractor shall indemnify, defend and hold the Concessionaire harmless against and from all damages, losses and expenses resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

6.12.4. All customs clearance of Goods is the sole responsibility of the EPC Contractor.

6.13. EPC Contractor's Equipment. The EPC Contractor shall be responsible for all the EPC Contractor's Equipment. When brought on to the Site, the EPC Contractor's Equipment shall be deemed to be exclusively intended and designed for the execution of the Civil Works.

6.14. Electricity, Water, Gas and Other Services

6.14.1. The EPC Contractor shall be responsible for the provision and payment of all power, water, gas, communication and other services (including the collection and treatment of waste water and the moving, removing, change, installation and reinstallation of cabling and net Civil Works of the Site) necessary for the purposes of the execution and completion of the Civil Works.

6.15. Progress Reports



6.15.1. Monthly progress reports shall be prepared by the EPC Contractor and submitted to the Concessionaire up to the fifth (5th) day of each month, in a comprehensive form and in accordance with the provisions of Exhibit XI (Form of Progress Reports). The first report shall cover the period up to the end of the first calendar month following the Commencement Date, and shall be submitted within two (2) days after the last Business Day of the period to which it relates.

6.16. Security of the Site

6.16.1. From the Effective Date and until the issuance of the Substantial Completion Certificate, the EPC Contractor shall be responsible for the protection and security of the Site delivered by the Concessionaire and under the control of the EPC Contractor, including the Civil Works, Goods and persons located in the Site, as well as for the provision of temporary roadways and footways on the Site as far as may be necessary to secure the Civil Works, Goods and persons. The EPC Contractor shall maintain permanent security personnel at the Site, preventing the entrance of non-authorized persons. Additionally the EPC Contractor shall be responsible for the protection and security only in relation to those specific areas in which it may have to repair defects during the Defect Liability Period.

6.16.2. Authorized persons shall be limited to the EPC Contractor's Personnel and the Concessionaire's Personnel, the Finance Parties, the Technical Adviser, the Certifying Authority and to any other personnel notified to the EPC Contractor, by (or on behalf of) the Concessionaire.

6.17. Fossils

6.17.1. The EPC Contractor shall, upon discovery of any fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site, communicate this event immediately to the Concessionaire.

6.17.2. The EPC Contractor shall in all cases comply with all obligations imposed on, and shall have all the rights granted to (subject to the Back-to-Back Principle), the Concessionaire by the Concession Contract and applicable Laws in relation to such discoveries within the Site, and the Concession Contract shall apply, *mutatis mutandis*, to the EPC Contractor and this Contract as if set out herein in full, without prejudice to the Back-to-Back Principle.

6.18. Force Majeure and Acts of God

6.18.1. It is considered an act of God or force majeure, with the consequences established herein, the events defined in the Concession Contract that exempt the affected Party from its responsibilities whilst impacting its obligations in this Contract and recognized as such by



the Grantor under the Concession Contract ("**Force Majeure**"). In case the EPC Contractor, as the affected Party, does not agree with the qualification or disqualification of the Grantor of an event as Force Majeure, the EPC Contractor shall treat the issue according to the procedure established in Clause 4.1.2.

- 6.18.2. The Party affected by a Force Majeure event shall communicate to the other Party of its occurrence, within 24 hours of its awareness.
- 6.18.3. If the Concession Contract is terminated due to Force Majeure, according to Clause 26.1.3 of the Concession Contract, this Contract shall be automatically terminated and the provisions of Clause 22.2.3 shall apply.
- 6.18.4. Any extension of time for Force Majeure events shall be treated in accordance with the Back-To-Back Principle, without prejudice to the fact that the Parties may renegotiate in good faith the Program.
- 6.18.5. The Party asserting force majeure shall bear the burden of proof of demonstrating the occurrence and the effects of the Force Majeure event.
- 6.18.6. The Parties undertake to use commercially reasonable efforts to mitigate the effects of the circumstances constituting the Force Majeure event in a back to back basis.
- 6.18.7. The EPC Contractor undertakes to reasonably cooperate with the Concessionaire in the filing of claims with insurance companies with regards to damages caused by Force Majeure events impacting the Civil Works.

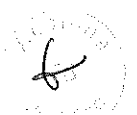
7. EPC CONTRACTOR'S DOCUMENTS

7.1. Basic Design

- 7.1.1. The Basic Design approved by the Grantor is attached included in the Exhibit I (Technical Documentation).

7.2. Detailed Design

- 7.2.1. The EPC Contractor shall present to the Concessionaire, on the date indicated in the Documentation Schedule, the Detailed Design, in accordance with the Contract Documents.
- 7.2.2. In relation to the approval of the Detail Design the Parties agree:
 - (i) in relation to the documentation called "Dispensables" that are for information purposes only, the Concessionaire shall approve or request clarifications within 10 (ten) Business Days from its receipt. If the Concessionaire does not respond

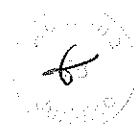


within the period referred in this paragraph or does request clarifications, the EPC Contractor shall have the right to proceed with the Civil Works (at its risk) and shall also respond in detail to the clarifications requested by the Concessionaire;

- (ii) in relation to the documentation that according to the Concession Contract has to be approved by the Certifying Authority, the Concessionaire shall approve, request reasonable clarifications or reject such documentation within 25 (twenty five) Business Days from its receipt, and the EPC Contractor shall present to the Concessionaire, within 5 (five) Business Days from the receipt of any comments, the documentation duly revised, which shall be analyzed, within 5 (five) Business Days, by the Concessionaire. The Concessionaire will engage its best efforts to agree such documentation with the Certifying Authority; and in the event of non-approval, to require detail justification and clarification of the reasons.
 - (iii) in relation to documentation that is not described in point (i) and (ii) above, the Concessionaire shall approve, request reasonable clarifications or reject within 10 (ten) Business Days from its receipt, and the EPC Contractor shall present to the Concessionaire, within 5 (five) Business Days from the receipt of any comments, which shall be analyzed, within 5 (five) Business Days, by the Concessionaire. In the event of non-approval, the Concessionaire shall provide the EPC Contractor detail justification and clarification of the reasons.
- 7.2.3. Subject to Section 27.1.1, the Basic Design and Detailed Design shall remain under the property of the EPC Contractor, subject to a non-exclusive irrevocable, fully paid-up and royalty free license for use by the Concessionaire. The Concessionaire shall be entitled to assign the entire benefit of such license to any person that is the rightful owner of the Civil Works for the purposes of operation and maintenance of the System.
- 7.2.4. Upon the earlier of (a) the termination of this Contract or (b) expiration of the Defect Liability Periods, the EPC Contractor shall deliver to the Concessionaire all drawings, documents, specifications, Basic Design and Detailed Design relating to the Civil Works already performed (including those prepared by Subcontractors) and return to the Concessionaire all the Concessionaire's Documents.

7.3. As-Built Documents

- 7.3.1. The EPC Contractor shall prepare, and keep up to date, a complete set of "as-built" records of the execution of the Civil Works, showing, amongst others, the exact as-built locations, sizes and details of the work as executed, which shall comply with BIM (the "**As-Built Documents**"), and the EPC Contractor shall give full on time access to such As-Built Documents to the Concessionaire. These records shall be kept on the Site and shall be used exclusively for the purposes of this Clause 7.3 (As-Built Documents).



7.3.2. In addition, the EPC Contractor shall supply to the Concessionaire the As-Built Documents of the Civil Works, showing all Civil Works as executed, and submit them to the Concessionaire for review under Clause 7.2.2. The EPC Contractor shall obtain the consent of the Concessionaire as to their size, the referencing system and other relevant details, which shall be in accordance with the Grantor's requirements.

7.3.3. Prior to the issuance of the Substantial Completion Certificate, the EPC Contractor shall supply to the Concessionaire the As-Built Documents in relation to the Civil Works referred to in the respective Certificate in electronic media, unless otherwise requested by the Grantor. The Civil Works shall not be considered to be completed for the purposes of Substantial Completion until these documents have been supplied.

7.4. Operating Documents

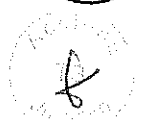
7.4.1. No later than fifteen (15) months prior to commencement of the tests referred to in Clause 16 (Tests on Completion), the EPC Contractor shall supply to the Concessionaire's Representative the final version of the operation and maintenance manuals of supplies in sufficient detail for the Concessionaire to operate, maintain, dismantle, reassemble, adjust and repair the equipment and to submit any relevant documents necessary for reporting to the Finance Parties.

7.4.2. The Civil Works shall not be considered to be completed for the purposes of any Substantial Completion until the Concessionaire's Representative has received such operation and maintenance manuals in such detail, and any other manuals specified in the Contract Documents for these purposes.

7.5. EPC Contractor's Documents

7.5.1. Within the term provided in the Contract Documents, unless provided otherwise herein, the EPC Contractor shall provide to the Concessionaire, among others, the following documents (together, the "**EPC Contractor's Documents**"):

- (i) the documents which form part of the Concession Contract;
- (ii) the documentation schedule, which shall contain the list of the EPC Contractor's Documents, including submissions in respect of Detailed Design to be submitted to the Concessionaire throughout the term of the Contract and the delivery dates (the "**Documentation Schedule**"). This list shall not be exhaustive and shall be subject to the Concessionaire's review and approval, according to the procedure established in Clause 7.5.6.
- (iii) the technical documents specified in the Contract Documents (including the Basic Design and Detailed Design);



- (iv) documents required to satisfy the provisions of the Concession Contract or all regulatory approvals;
- (v) documents requested by the Grantor; and
- (vi) the documents described in Clauses 7.3 (As-Built Documents) and 7.4 (Operating Documents).

7.5.2. The EPC Contractor's Documents shall be written in Portuguese.

7.5.3. The EPC Contractor shall prepare the Documentation Schedule to be compliant with the Program, in order to ensure that the Concessionaire's comments on the EPC Contractor's Documents issued within the timelines of the Concession Contract, can be incorporated in the subsequent stages of the design or the execution of the Civil Works with no disruption to the design and construction progress.

7.5.4. The EPC Contractor shall prepare all the EPC Contractor's Documents, and update them (where necessary) until issuance of the Final Acceptance Certificate, and shall also prepare any other documents necessary to instruct the Concessionaire's Personnel.

7.5.5. Without prejudice to the provisions of this Clause 7 related to the design documents, the EPC Contractor's Documents established in items (ii) and (iii) of Clause 7.5.1 shall be provided to the Concessionaire for review and comments, according to the procedure established in Clause 7.5.6 below.

7.5.6. The EPC Contractor shall present to the Concessionaire the Documentation Schedule and each EPC Contractor's Document to be reviewed and the Concessionaire shall comment it, within 5 (five) Business Days from its receipt. The EPC Contractor shall present to the Concessionaire, within 5 (five) Business Days from the receipt of such comments, the Documentation Schedule and each document duly revised, which shall be analyzed, within 5 (five) Business Days, by the Concessionaire.

7.5.7. Notwithstanding any other provision in this Contract, the EPC Contractor undertakes to execute and complete the EPC Contractor's Documents in accordance with time limit, comment and/or mechanism provided under the Concession Contract and/or requested or imposed by the Grantor within the requirements of the Concession Contract.

7.6. General Provisions

7.6.1. The EPC Contractor shall cause the EPC Contractor's Documents to be carried out in accordance with the Contract Documents and with the Concession Contract. The EPC Contractor shall be responsible for the accuracy of such documents with the Contract Documents (including designs criteria and calculations) and the applicable Laws.



7.6.2. The EPC Contractor undertakes that the relevant EPC Contractor's Personnel shall be available to attend discussions with the Concessionaire's Representative at all reasonable times to discuss any of the Contract Documents.

7.6.2.1. The Parties also agree that the Concessionaire may also, within the review periods provided hereunder, give notice to the EPC Contractor proposing reasonable amendments following Good Engineering and Construction Practices that would have a positive effect on net output, net efficiency, availability or maintainability of the Civil Works.

8. INTERFACE

8.1. Interface

8.1.1. The EPC Contractor undertakes to: (a) cooperate with any other persons located at the Site; and (b) execute the Civil Works without unnecessarily or improperly interfere with, hinder or obstruct the general operation and maintenance of the System and of the São Paulo Subway.

8.1.2. The Concessionaire undertakes to coordinate, cooperate and oblige any other person under its responsibility to cooperate, in order to not unnecessarily or improperly interfere in the performance of the Civil Works by the EPC Contractor.

8.1.3. Notwithstanding the provisions above, considering that the EPC Contractor is responsible for the Site, the EPC Contractor has the authority to authorize the entry and remove any person located at the Site other than the Inspection and Test Personnel, in case it understands that such person is unnecessarily or improperly interfering in the Civil Works.

8.2. Utilities Relocation

8.2.1. Subject to the Back-to-Back and Equivalent Project Relief Principles, the EPC Contractor shall be responsible for coordinating interfaces and, if necessary, relocating any utilities or operation of utility companies which may go through or interfere with the Site and with the performance of the Civil Works.

8.3. Geotechnical & Environmental Risks

8.3.1. The Parties agree that any claims of the EPC Contractor for any extensions of time and/or reimbursements of any Extra Costs arising from the materialization of geotechnical or environmental risks in relation to the Civil Works shall be subject to the Back-to-Back Principle.

9. INSPECTIONS AND TESTS



9.1. The EPC Contractor shall at all times allow the access and inspection of the Civil Works (including manufacturing facilities and design offices) by the Concessionaire, the Finance Parties, Technical Adviser, any Government Authority, including the Grantor or of any other persons appointed by them, and the Certifying Authority appointed by the Concessionaire in accordance with the Concession Contract ("**Inspection and Test Personnel**").

9.1.1. Any of the Inspection and Test Personnel shall be entitled to inspect the Civil Works. The Concessionaire shall bear all costs and expenses incurred in connection with such attendance, including, but not limited to, all travelling and board and lodging expenses. The Concessionaire shall give the EPC Contractor, to the extent possible, not less than three (3) days' notice of any of the Inspection and Test Personnel's intention to such inspection. If any of the Inspection and Test Personnel does not attend at the time and place agreed, the EPC Contractor may proceed with any part of the Civil Works.

10. LIENS; TRANSFER OF TITLE; RISK OF LOSS

10.1. The EPC Contractor shall not exercise, file, claim or register any Lien and shall prevent any Lien from being exercised, filed, claimed or registered by any EPC Contractor's Personnel against any portion of the Civil Works or against any monies then due or to become due to the EPC Contractor from the Concessionaire.

10.2. In the event that any such Lien should be exercised, filed, claimed or registered by any such person against any portion of the Civil Works or against any monies then due or to become due to the EPC Contractor from the Concessionaire, the EPC Contractor shall immediately notify the Concessionaire and shall promptly discharge, by bond or otherwise, such Lien or attachment.

10.3. The EPC Contractor shall assume the risk of loss and be responsible for and obligated to replace, repair or reconstruct, all at its expense and without being entitle to an Extension of Time as a result thereof (without prejudice to what is stated in this Contract including the back to back principle) of damage to real or personal property comprising the Civil Works until the Substantial Completion except to the extent that:

- (i) such is the result of acts or omissions of the Concessionaire (additionally, the Concessionaire shall bear the cost of any deductible assessed under any insurance policy or any such part of such loss not covered by such insurance); or
- (ii) the loss or damage arises from a Force Majeure event not covered under the EPC Contractor's and the Concessionaire's Insurances.



- 10.4. The portion of the insurance proceeds received from the relevant Concessionaire's Insurances that the corresponding restoration plan mandates to be paid to the EPC Contractor shall be paid to the EPC Contractor within 3 Business Days after they have been deposited to the Concessionaire's account.

11. TERM AND COMMENCEMENT OF CIVIL WORKS

- 11.1. Effective Date. This Contract shall enter into force and effect in accordance with Article 125 of the Brazilian Civil Code on simultaneously to the effective assignment of the Concession Contract from the Original Concessionaire to the Concessionaire (the "**Effective Date**"), once any conditions precedent provided for such effectiveness of the assignment of the Concession Contract have been fulfilled and subject to:

- (i) Payment of the Initial Installment by Concessionaire; and
- (ii) Execution of the Rolling Stock Supply Agreement.

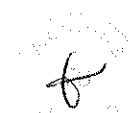
11.2. Commencement of Civil Works

- 11.2.1. The EPC Contractor shall commence the Civil Works upon issuance of the Notice to Proceed by the Concessionaire ("**Commencement Date**").

- 11.2.2. The Concessionaire shall only be allowed to issue the Notice to Proceed upon the fulfillment of the following conditions:

- (i) the portion of the Site required for the commencement of the Civil Works, as defined in Exhibit XII (Site Description) has been made available to the EPC Contractor in accordance with the Program;
- (ii) The Concessionaire has obtained the Concessionaire's Licenses necessary for the commencement of the Civil Works;
- (iii) The Concessionaire has received the relevant EPC Contractor's Documents as described in Exhibit I (Construction Requirements); and
- (iv) The Concessionaire has received the EPC Contractor's Performance Bond.

- 11.2.3. Non-Issuance of the Notice to Proceed. In case the Notice to Proceed has not been issued within 6 (six) months from the Contract Date, the Parties shall review the Contract Price and the Program in order to reflect the impacts of such delay.



11.2.3.1. In case the Notice to Proceed has not been issued by the Concessionaire due to failure of the EPC Contractor to present the applicable EPC Contractor's Documents and the Performance Bond, Clause 11.2.3 shall not apply.

12. PROGRAMME

12.1. The program provided in Exhibit XIV (Program) describes the EPC Contractor's plan to execute the Civil Works and to conclude each Milestone on its respective Completion Date (the "**Program**").

12.2. The EPC Contractor has presented to Concessionaire the first version of the Program, which shall be updated until the Effective Date. The Program shall be updated on a monthly basis thereafter to reflect the actual progress of the Civil Works and any impact on the execution of the Civil Works, subject to the Concessionaire's approval. The Program shall take into account any requirements in the Contract Documents and the Milestones and their respective Completion Dates provided in Exhibit XIII (Project Milestones), as well as the installation license, the EPC Contractor's Licenses and any other EPC Contractor's duties and obligations.

12.3. Bonuses. The Concessionaire shall pay to the EPC Contractor a bonus for early completion of the Civil Works, at the rate (to be agreed by the Concessionaire and the EPC Contractor) of the net income obtained by the Concessionaire based on the early operation of the System. Bonus accrued shall be paid by the Concessionaire to the EPC Contractor. The bonus will be paid with free distributable cash flow available for such payment until sufficient free distributable cash flow has been generated for such purposes, which shall consider the additional revenue accrued by the Concessionaire with the early completion of the Civil Works.

13. EXTENSION OF TIME

13.1. Extension of Time of the Completion Dates at the EPC Contractor's Request. If, by reason of (each an "**Extension of Time Event**"):

- (i) any suspension of the Civil Works under Clauses 15.1.2 and 15.3;
- (ii) issuance, by the Concessionaire, of a Variation, when the EPC Contractor evidences that an extension of time is necessary to comply with the related activities, according to the terms of Clause 20 (Variations), as long as such Variation was not issued due to the EPC Contractor's non-compliance with its obligations stated in this Contract;
- (iii) breach of any Concessionaire's Obligations under this Contract that affects the Program;



- (iv) delay by the Concessionaire to give access to the Site, as provided in Clause 5.5 (Concessionaire's Obligations); and
- (v) any other event established in this Contract that expressly entitles the EPC Contractor to claim for an extension of time,

the EPC Contractor may, within ninety (90) days from the awareness of any of the events above, request to the Concessionaire an extension of time, which shall be proportional and compatible with the impacts of delays suffered by the EPC Contractor;

- 13.2. Any request from the EPC Contractor seeking an adjustment in the Time for Completion Date shall be accompanied by appropriate supporting documentation containing a detailed explanation of why each Completion Date should be postponed and for how long. Such supporting documentation shall include updated schedules demonstrating, by comparison of unaffected and affected schedule versions, the relationship between the initiating event and the extent of the EPC Contractor's need for time relief.
- 13.3. The Concessionaire may, at its discretion, replace the extension of time by increasing the Contract Price to compensate any measures of acceleration to be taken by the EPC Contractor, which are necessary to maintain the Completion Dates and the Time for Completion Date valid before the event that caused the right to an extension of time by the EPC Contractor, as long as technically feasible and the Parties agree on the Variation conditions. In this case, the procedures stated in Clause 20 (Variations) shall apply and the delayed Milestones shall be recovered by the EPC Contractor in accordance with the Recovery Plan to be presented by the EPC Contractor within 15 (fifteen) Business Days from the notice sent by the Concessionaire in this sense.
- 13.4. In case the EPC Contractor has concurred to the delays, the EPC Contractor shall be entitled to an extension of time under Clause 13.1 (Extension of Time of the Completion Dates at the EPC Contractor's Request) not taking into account the delay the EPC Contractor concurred to but shall not be entitled to the reimbursement for the Extra Costs incurred in relation to such extension of time.
- 13.5. The Parties hereby agree that the provisions of this Clause 13 shall not be applied in case the request of the EPC Contractor is considered an EPC Contractor's Related Claim. In such case, the Back-to-Back Principle, the If and When Principle, the Due Proportion Principle, the Equivalent Project Relief Principle and Clause 4.1 (EPC Contractor's Related Claim) shall apply.

14. DELAYS, RECOVERY PLAN, PENALTIES AND DELAY DAMAGES

14.1. Recovery Plan



14.1.1. Should the Program expected to be delayed by more than sixty (60) days due to a default of the EPC Contractor, the EPC Contractor shall submit a notice to the Concessionaire, as soon as being aware of such delay or potential delay within five (5) Business Days and within fifteen (15) Business Days, the EPC Contractor shall provide the Concessionaire with:

(i) a report indicating the reasons of the delay or potential delay; and

(ii) a Recovery Plan in order to recover the delay or potential delay.

14.1.2. The Concessionaire shall verify, at its sole discretion, if the Recovery Plan presented by the EPC Contractor is feasible and allows the proper recovery of the Program and ensures achievement of the Milestones in their Completion Dates and the issuance of the Substantial Completion Certificate on or prior to the Time for Completion Date. The EPC Contractor shall bear all the costs related to the preparation, implementation and execution of the Recovery Plan, without the Contract Price being modified.

14.2. Penalties

14.2.1. Penalties of Clause 34.4 of the Concession Contract related to the Civil Works due to an EPC Contractor's default, will be paid by the EPC Contractor under the Back-to-Back Principle (the "**Penalties**"), without prejudice to Clause 14.3.3.

14.3. Delay Damages

14.3.1. The Concession Contract requires approval of Substantial Completion by the Certifying Authority. If the Substantial Completion Certificate of the Civil Works is not issued according to the Contract Documents on or prior to the Time for Completion Date (as it may be postponed due to Extension of Time Events), the EPC Contractor shall pay the Substantial Completion Delay Damages in the amount of (i) R\$ 2,519,000.00 per day of delay for the first 90 (ninety) days of delay and (ii) R\$ 2,616,000.00 per day of delay for the following 270 (two hundred and seventy) days of delay until the issuance of such Certificate (the "**Substantial Completion Delay Damages**"). The Substantial Completion Delay Damages already encompass the penalties provided for in Clause 34.3.5.3 of the Concession Contract. The Parties confirm that this sum represents a genuine pre-estimate of the Concessionaire's damages to be suffered as a result of the delay in achieving Substantial Completion.

14.3.2. The Concession Contract requires approval of each Payment Milestone by the Certifying Authority. If the Payment Milestones (other than Substantial Completion) are not achieved on or prior to their respective Completion Dates according to the Contract Documents other than due to Extension of Time Events, the EPC Contractor shall pay the milestones delay damages (the "**Milestones Delay Damages**") in the amount



corresponding to 0.654% of monthly interest applicable to the amount of the delayed Milestone as indicated in the Concession Contract , from the relevant Completion Date until its achievement, subject to a cap of 1.75% of the Contract Price. The Parties confirm that this sum represents a genuine pre-estimate of the Concessionaire's damages to be suffered as a result of the delay in achieving each Payment Milestone (other than Substantial Completion).

14.3.2.1. The Parties agree that, in case the EPC Contractor is not including in the Payment Certificate amounts which would be funded by the amounts received by the Concessionaire from the Grantor in relation to a delayed Payment Milestone, the Concessionaire shall not be entitled to collect the Milestone Delay Damages related to the delay of that Payment Milestone. These amounts will be calculated and agreed at the time the event occurs.

14.3.2.2. The Parties agree that, in case the EPC Contractor achieves early completion of a Payment Milestone and due to such early completion, the Concessionaire enjoys an optimization or reduction of projected financing, the Concessionaire shall only be entitled to collect Milestone Delay Damages once the increase of financing incurred to the delay in achieving Payment Milestones exceeds the optimization or reduction of financing obtained by previous early completion of Payment Milestones. These amounts will be calculated and agreed at the time the event occurs.

14.3.3. Penalties, Substantial Completion Delay Damages and Milestones Delay Damages shall be referred to jointly as the "**Delay Damages**". Delay Damages shall jointly be subject to a cap of 11.8% (eleven point eight per cent) of the Contract Price. The Delay Damages will be calculated daily, however, shall be due and payable on a monthly basis irrespective of any pending (a) extension of time claim (whether an EPC Contractor's Related Claim, an EPC Contractor's Unrelated Claim, force majeure claim or any other type of extension of time claim) or (b) dispute under Clause 30 (Disputes and Arbitration) around the event(s) that resulted in the delay.

14.3.4. The Concessionaire shall issue an invoice with the due and payable Delay Damages.

14.3.5. Without prejudice to the Concessionaire's rights under Clause 22.1 (Termination due to the EPC Contractor's Default) and remedies arising from the exercise of such rights, payment of any Delay Damages in accordance with this Clause 14.3 (Delay Damages) shall constitute the sole and exclusive remedy for any cost, damage or loss incurred by the Concessionaire as a result of the delays in achieving any Milestones and/or the Substantial Completion.

15. SUSPENSION

15.1. Suspension for the Concessionaire's convenience or by Grantor's request



15.1.1. The Concessionaire may, at any time, by giving written notice to the EPC Contractor, suspend the Civil Works in whole or in part. The EPC Contractor shall immediately discontinue the Civil Works on the date and during the period specified in the notice.

15.1.2. Unless otherwise provided in Clause 15.1.1, in case of suspension for the Concessionaire's convenience, the EPC Contractor shall be entitled to an extension of time equivalent to the suspension period plus a time for mobilization if necessary and the reimbursement of its Extra Costs, according to Clauses 13.1 (Extension of Time of the Completion Dates at the EPC Contractor's Request) and 15.4 (Extra Costs).

15.1.3. In case of suspension for Grantor's request the back to back principle will apply.

15.2. Suspension by the Concessionaire due to the EPC Contractor's fault

15.2.1. The Concessionaire may, at any time, suspend the Civil Works, in whole or in part, by giving prior notice to the EPC Contractor, if a requirement from a Public Official, administrative or judicial order or security reason causes the suspension of the Civil Works exclusively as a result of any act or omission of the EPC Contractor or any Subcontractor.

15.2.2. The EPC Contractor will bear its costs and expenses related to the suspension of the Civil Works in the cases provided in this Clause 15.2. In this sense, the EPC Contractor shall not be entitled to any extension of time and/or the reimbursement of any costs.

15.3. Suspension by the EPC Contractor due to the Concessionaire's fault

15.3.1. In case of a delay in the payment of any undisputed amounts under the Contract exceeding thirty (30) consecutive days from the date upon which such sum was due and payable, the EPC Contractor shall be entitled to suspend the Civil Works or any part thereof or reduce pace thereof after (i) a period of seven (7) days has elapsed after a written notification to the Concessionaire for this purpose and (ii) an additional cure period to be provided by the Finance Parties under the EPC Contractor Direct Agreement has elapsed. Two (2) months after the expiration of the time periods provided above, if the Concessionaire has not paid such sum due together with the interest accrued pursuant to Clause 21.2.10, then the EPC Contractor shall be entitled to terminate the Contract for breach of the Concessionaire.

15.3.2. In case of a suspension of the Civil Works by the EPC Contractor due to the Concessionaire's fault, the EPC Contractor shall be entitled to an extension of time equivalent to the suspension period plus a mobilization/demobilization period and/or the reimbursement of its Extra Costs, according to Clauses 13.1 (Extension of Time of the Completion Dates at the EPC Contractor's Request) and 15.4 (Extra Costs).

15.4. Extra Costs. Except in case of Clause 15.2 (Suspension by the Concessionaire due to the EPC Contractor's fault), the Concessionaire shall reimburse the Extra Costs incurred by



the EPC Contractor during the suspension period, which shall be evidenced by the EPC Contractor, including the following: (a) additional maintenance and conservation costs of the Civil Works already executed; (b) additional mobilization or the demobilization costs; (c) remobilization costs in case the Civil Works are resumed; and (d) other reasonable additional costs, which the EPC Contractor evidences that it was not possible to interrupt during the suspension period.

- 15.5. Resumption of the Civil Works. The EPC Contractor shall resume the execution of the Civil Works within five (5) days in case the suspension does not result in the demobilization and within fifteen (15) days in the event that the suspension results in the demobilization, as from the receipt of the notice of the resumption of the Civil Works by the Concessionaire.

16. TESTS ON COMPLETION

- 16.1. The EPC Contractor shall submit to the Concessionaire for approval the detailed procedures for the tests required to attain the respective Substantial Completion, no later than fifteen (15) months before the date scheduled for Substantial Completion to occur.
- 16.2. All tests procedures submitted pursuant to this Clause 16 shall be performed by the EPC Contractor in accordance with the Contract Documents following their approval by the Concessionaire which shall be provided no later than 90 days from receipt of the tests procedures (or any other period necessary, if applicable, to allow the Certifying Authority or any other certifying authority to approve such tests procedures).
- 16.3. Such tests shall demonstrate that the Civil Works have been completed in accordance with the Contract Documents, as well as the EPC Contractor has constructed and installed all materials, equipment, components and systems constituting the Civil Works in all respects in accordance with the Contract Documents.
- 16.4. In case the Concessionaire identifies, during the tests, any Defect(s) that may prevent the safe and reliable operation of the Civil Works in accordance with the Contract Documents, the EPC Contractor shall repair the Defect(s), without prejudice to any applicable Delay Damages. Upon the conclusion of the repair(s), the EPC Contractor shall notify the Concessionaire and new tests procedures shall commence within ten (10) days from such notice.

17. SUBSTANTIAL COMPLETION CERTIFICATE

- 17.1. Substantial Completion. The EPC Contractor may request to the Concessionaire the issuance of the Substantial Completion Certificate of the Civil Works when all the conditions provided in the Contract Documents are fulfilled, including, but not limited to:



- (i) the tests referred to in Clause 16 (Tests on Completion) have been passed and approved by the Concessionaire, according to the agreed procedures, and to the satisfaction of the Technical Adviser;
- (ii) the EPC Contractor has completed the relevant Civil Works in accordance with the Contract Documents, except for the items listed in the Punch List, which has been agreed by the Parties together with their respective execution program and corresponding price for the purposes of item (ii) of Clause 17.3.1;
- (iii) the EPC Contractor has supplied the operation and maintenance manuals required for the relevant Civil Works and as required to operate and maintain such Civil Works;
- (iv) all Delay Damages and other liquidated amounts due by the EPC Contractor under the terms of the Contract have been paid;
- (v) the EPC Contractor has cleared away and removed all surplus material, wreckage, rubbish and Temporary Civil Works in relation to, and in the area of the relevant Civil Works;
- (vi) the EPC Contractor has provided the As-Built Documents;
- (vii) the EPC Contractor has provided reasonable assistance to the Concessionaire to obtain those Licenses needed for the operation of the System that require the EPC Contractor's support or the EPC Contractor to present any information and/or documents;
- (viii) all the spare parts have been delivered by the EPC Contractor to the Concessionaire;
- (ix) the EPC Contractor is not in default with any of its obligations under the Contract; and
- (x) the Grantor has certified the "Ordem de Serviço" as described in Clause 12.1 of the Concession Contract.

17.2. If, in the EPC Contractor's opinion, the conditions established in the Contract Documents, among others, those included in Clause 17.1 are fulfilled, the EPC Contractor may submit to the Concessionaire a notice for the issuance of the Substantial Completion Certificate. The Concessionaire shall (as soon as practical and no later than three (3) Business Days from the receipt of such notice):

- (i) issue the Substantial Completion Certificate; or



- (ii) notify the EPC Contractor in writing informing the reasons why the Substantial Completion Certificate has not been issued by the Concessionaire.

17.3. Consequences of Substantial Completion

17.3.1. Consequences of the Substantial Completion. Upon the issuance of the Substantial Completion Certificate:

- (i) the EPC Contractor shall transfer to the Concessionaire the direct possession, control and operation of the Civil Works concluded by the EPC Contractor, when the corresponding risk of loss shall be transferred from the EPC Contractor to the Concessionaire;
- (ii) provided payments by the Concessionaire to the EPC Contractor as a result of the issuance of the Substantial Completion Certificate, the EPC Contractor shall guarantee (in addition to the Warranty) one hundred percent (100%) of the amount corresponding to the items of the Punch List, , which shall only be released upon the conclusion by the EPC Contractor, and acceptance by the Concessionaire of such items, without any interests, penalties and/or adjustment; and
- (iii) the Defect Liability Period in relation to such Civil Works shall commence.

18. **WARRANTY**

18.1. The EPC Contractor warrants that the Civil Works shall be free from Defects, including in design, materials and workmanship (the "**Warranty**"), for a period of twelve (12) months from the issuance date of the Substantial Completion Certificate (the "**Original Defect Liability Period**") of the Civil Works, as the case may be, without prejudice to the Article 618 of the Brazilian Civil Code.

18.1.1. During the Defect Liability Period, the EPC Contractor is obliged to repair, at its own cost, any Defect(s) within the time period agreed by the Parties. The EPC Contractor will endeavor best efforts in making necessary repairs and replacements in a manner which minimizes interference in the operation of the System by the Concessionaire.

18.1.2. Subject to Clause 6.4.4., the EPC Contractor shall assign to the Concessionaire any remaining warranties provided by the Subcontractors upon the expiration of the Defects Liability Period.

18.2. Step-In. In the event that:



- (i) the EPC Contractor does not comply with its obligation to repair any Defect(s) within the period indicated in Clause 18.1.1. above; or
- (ii) the EPC Contractor refuses to execute the repair,

the Concessionaire may, at its own discretion, and without prejudice to any other remedies under this Contract, hire a third party to execute such repair at market prices, at the EPC Contractor's cost.

18.2.1. The hiring of a third party to execute the repair shall not affect the provisions of this Contract, especially those with respect to any of the EPC Contractor's guarantees related to the Civil Works, including the Warranty, provided that the EPC Contractor shall not give any warranty related to the Civil Works performed by such third party.

18.3. Extended Defect Liability Period. The Defect Liability Period with respect to any repaired Civil Works shall be extended for an additional period of twelve (12) months from the date of the repair (the "**Extended Defect Liability Period**"). The EPC Contractor will endeavor best efforts in making necessary repairs and replacements in a manner which minimizes interference in the operation of the System by the Concessionaire. Except as otherwise provided for by this Contract and/or the applicable Laws, the Defect Liability Period cannot be extended for a period longer than twenty-four (24) months, from the issuance of the Substantial Completion Certificate of the Civil Works, without prejudice to the provisions of Clause 18.5 below.

18.4. Latent Defect

18.4.1. The warranty in relation to any part of the Civil Works that presents a Latent Defect will be of 5 (five) years for structural damages and 2 (two) years for equipment counted as from the issuance of the expiration of the Defect Liability Period ("**Latent Defect Period**"), which shall not be subject to any renewal or extension.

18.4.2. Any defective item of the Civil Works presenting a Latent Defect shall be repaired or replaced by the EPC Contractor at its sole cost and expense, within the time period agreed by the Parties. In case the EPC Contractor fails to perform such repair or replacement, the remedies provided for in Clause 18.2 (Step-In) shall apply.

18.5. Exclusions of Warranty. The Warranty does not cover any Defects caused by (a) the Concessionaire and/or the Grantor; (b) normal wear and tear that can be expected of properly designed, engineered and manufactured Civil Works; and (c) failure by the Concessionaire to operate and maintain any part of the System in accordance with the Operating Documents. In which cases, the EPC Contractor shall not be responsible for repairing them.



18.6. Performance Damages. If and to the extent that, after the issuance of the Substantial Completion Certificate and until the expiration of the Defects Liability Period, the Concessionaire incurs in penalties or deductions under the Concession Contract and/or applicable Law due to failure of the EPC Contractor to comply with the Contract Documents, including the Performance Standards provided under Exhibit II (Performance Standards), then the EPC Contractor shall be liable to reimburse these amounts to the Concessionaire ("**Performance Damages**") at the time those penalties and/or deductions are applied. The Parties confirm that this sum represents a genuine pre-estimate of the Concessionaire's damages to be suffered as a result of the non-performance. Performance Damages shall be subject to a cap of 1% (one per cent) of the Contract Price).

18.6.1. Without prejudice to the Concessionaire's rights under Clause 22.1 (Termination due to the EPC Contractor's Default) and remedies arising from the exercise of such rights, the sums due and payable by the EPC Contractor under Clause 18.6 shall be the sole and exclusive remedy for any cost, damage or loss arising as a result of or in connection with events triggering the application of such Clause.

19. FINAL ACCEPTANCE CERTIFICATE

19.1. Final Acceptance Certificate. Upon the expiration of the Defect Liability Period of all Civil Works, the EPC Contractor shall request to the Concessionaire the issuance of the final acceptance certificate when all the specific conditions for the final acceptance provided in the Contract Documents are fulfilled, amongst others (the "**Final Acceptance Certificate**");

- (i) any outstanding Defects (including Punch List items) have been repaired;
- (ii) all Punch List items have been completed;
- (iii) the EPC Contractor has cleared away and removed all the EPC Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Civil Works from the Site; and
- (iv) the EPC Contractor must have complied with all of its obligations under this Contract (including those related to repair, payment of fees or other amounts and provide evidence of the cancellation of the ART and RRT of the Civil Works, as well as the CNO of the Project).

19.1.1. Upon the issuance of the Final Acceptance Certificate, the Performance Bond (or Warranty bond, as the case may be) will be released by the Concessionaire.

19.2. If, in the EPC Contractor's opinion, the conditions specified in the Contract Documents for the Final Acceptance Certificate are fulfilled, the EPC Contractor may submit to the



Concessionaire a notice for the issuance of the Final Acceptance Certificate. The Concessionaire shall (as soon as practical and no later than three (3) Business Days from the receipt of such notice):

- (i) issue the Final Acceptance Certificate; or
- (ii) notify the EPC Contractor in writing informing the reasons why the Final Acceptance Certificate has not been issued by the Concessionaire.

20. VARIATIONS

20.1. Variations initiated by the Concessionaire

20.1.1. Variations may be initiated by the Concessionaire at any time prior to issuance of the Substantial Completion Certificate.

20.1.2. The EPC Contractor will only execute and be bound by each Variation initiated by the Concessionaire after its formalization by the Parties.

20.2. Variations initiated by the Grantor

20.2.1. Variations may be initiated by the Grantor in accordance with the Concession Contract at any time prior to issuance of the Substantial Completion Certificate.

20.2.2. In case a Variation is initiated by the Grantor, the Concessionaire shall inform the EPC Contractor of any communication with the Grantor and the EPC Contractor shall be allowed to assist the Concessionaire in meetings (and negotiations, if any) with the Grantor regarding such Variation.

20.3. Variations initiated by the EPC Contractor

20.3.1. The EPC Contractor may, at any time, submit to the Concessionaire a written justified proposal which will, if adopted: (a) accelerate completion; (b) reduce the cost to the Concessionaire of executing, maintaining or operating the Civil Works; (c) improve the efficiency or value to the Concessionaire of the completed Civil Works; and/or (d) otherwise be of benefit to the Concessionaire.

20.4. Variations' Procedure

20.4.1. In case any Variation is the result of an amendment to the Concession Contract initiated by the Grantor, the Back-to-Back Principle, the If and When Principle, the Due Proportion Principle and the Equivalent Project Relief Principle shall apply.



- 20.4.2. In case of any Variation not related to a request of the Grantor is initiated by the Concessionaire or the EPC Contractor, the EPC Contractor shall send a proposal related to it in writing and shall execute the basic design of the Civil Works, Program modification and adjustment to the Contract Price related to such Variation according to the Concession Contract within thirty (30) days from the Concessionaire's request, at the Concessionaire's cost.
- 20.4.3. The Concessionaire shall, as soon as practicable after receiving such proposal (under Clause 20.4.2), respond with its approval, rejection or comments, subject to the approval, rejection or comments from the Grantor and the Financial Parties. In case of a Variation initiated by the EPC Contractor, the Concessionaire may at its discretion, approve, reject or comment any proposal without submitting to the Grantor's prior approval if allowed by the Concession Contract.
- 20.4.3.1. In case the Concessionaire agrees with the EPC Contractor's proposal, the Parties shall execute an amendment to this Contract in order to reflect the new conditions related to the Variation. The payments related to the Variation shall be paid in accordance with the procedures of Clause 21.
- 20.4.4. If a Variation that leads to a cost savings is initiated by:
- (i) the Concessionaire (not related to a request of the Grantor), eighty percent (80%) of the savings shall remain with the Concessionaire and twenty percent (20%) shall be for the EPC Contractor; or
 - (ii) the EPC Contractor, eighty percent (80%) of the savings shall be for the EPC Contractor and twenty percent (20%) shall remain with the Concessionaire.
- 20.4.5. The Parties hereby agree that the Concessionaire (if not requested by the Grantor) may not initiate any Variations in order to reduce the scope of the Civil Works.
- 20.4.6. In case of a Variation requested by the Concessionaire (and not initiated by the Grantor in accordance with the Concession Contract), the Concessionaire undertakes to pay, within thirty (30) days as from its request, the undisputed portion of the price offered by the EPC Contractor and the EPC Contractor undertakes to perform the Variation.
- 20.4.7. In case the aggregate amount in relation to Variations being negotiated at any time exceeds R\$ 250,000,000.00, the EPC Contractor shall only be obliged to implement the Variation after agreement on the price, conditions and form of payment between the Parties in writing.
- 20.4.8. In case the aggregate amount in relation to Variations being negotiated at any time is less or equal to R\$ 250,000,000.00, the Concessionaire will do its best efforts to reach an agreement on the price, conditions and form of payment between the Parties in writing



before implementation of the Variation (especially those Variations that may affect the critical path of the Civil Works).

- 20.5. Additional Scope of Works. In case the Concessionaire wishes to contract the Phase III of the Project, the Concessionaire shall give the EPC Contractor a right of first refusal to contract the Phase III and the Parties shall negotiate an amendment to this Contract including the price and the method of payment, in accordance with the Contract Documents which do not consider Phase III as a Variation.

21. CONTRACT PRICE AND PAYMENT

21.1. Contract Price

- 21.1.1. The EPC Contractor agrees to perform the Civil Works in accordance with the Contract Documents within the Time for Completion Date for the lump-sum price of eleven billion, twenty one million, six hundred eighty four thousands and eight hundred ninety one Brazilian Reais (R\$ 11,021,684,891), (the "**Contract Price**"). The Contract Price is a fixed price and may be adjusted or increased only pursuant to Clause 20 (Variations), Clause 21.2.12 and in accordance with the provisions of the Interface Agreement to be entered into between EPC Contractor, Rolling Stock Supplier and the Concessionaire.

- 21.1.2. The Contract Price includes all taxes, customs clearance, duties and fees required to be paid by the EPC Contractor, including, but not limited, ICMS, IPI, II, ISSQN, ISS and PIS/COFINS.

- 21.1.3. The Parties acknowledge that the Concessionaire must apply for REIDI (*Regime Especial de Incentivos para o Desenvolvimento da Infraestrutura*). For such purposes, the EPC Contractor shall support the Concessionaire in obtaining and maintaining any such tax benefits.

- 21.1.4. The Parties acknowledge that the Contract Price is based on the premise that the Concessionaire will obtain REIDI and the EPC Contractor the Co-qualification for REIDI. In case the Concessionaire is not able to obtain REIDI within the REIDI Deadline (as defined below), the Contract Price shall be amended to reflect the applicable taxes (PIS and COFINS) to be borne by the EPC Contractor from the REIDI Deadline until the date in which the Concessionaire obtains REIDI. The Parties agree that "**REIDI Deadline**" will be the following date: (i) in the event the Commencement Date is on or before 6th October 2020, REIDI Deadline will be three (3) months from the Commencement Date and (ii) in the event the Commencement Date is after 6th October 2020, the Parties agree that the REIDI Deadline will be the 6th January 2021.

- 21.1.5. The Parties acknowledge that the Contract Price is based on the premise that the Concessionaire will obtain exemption from ICMS. In case the Concessionaire is not able



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to obtain such exemption, the Contract Price shall be amended to reflect the ICMS to be borne by the EPC Contractor. In case the non-compliance with any of the ICMS exemption conditions results from actions/omissions exclusively attributable to the EPC Contractor, the Contract Price should not be amended to reflect the increased costs resulting from the loss of the benefit.

- 21.1.6. With respect of the ICMS exemption, the EPC Contractor acknowledges that it shall only apply to imported goods in case: (a) there are no similar goods produced in the country, attested by a competent federal agency or by a representative entity of the productive sector with coverage throughout the national territory; and (b) the landing and customs clearance are carried out in territory of the State of São Paulo.

21.2. Payment Procedure

- 21.2.1. The EPC Contractor shall, up to the fifth (5th) day of each month, according to the progress of the Civil Works make an application to the Concessionaire for payment by issuing a payment certificate (in the form set out in Exhibit XVI (Form of Payment Certificate) (the "**Payment Certificate**"), detailing the Civil Works executed in the relevant month and their equivalent amounts.

- 21.2.2. The Payment Certificate shall be accompanied by a report explaining the progress of the Civil Works and the Milestones achieved and supporting documents (including a measurement report) and other information as may reasonably be requested by the Technical Adviser and the Certifying Authority for the purpose of satisfying itself of the proper achievement of the relevant progress.

- 21.2.3. The Concessionaire may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate.

- 21.2.4. The Payment Certificate shall be approved or not by the Concessionaire, within 15 (fifteen) Business Days from the date of receipt of the Payment Certificate.

- 21.2.5. In case the Concessionaire does not approve, in whole or in part, the Payment Certificate (including any of the supporting documents) the Concessionaire shall notify the EPC Contractor with the reasons for such non-approval. The Concessionaire shall approve the payment for the undisputed portion of the Payment Certificate, which shall be invoiced by the EPC Contractor. As soon as the EPC Contractor remedies the Civil Works and solves any other issues indicated by the Concessionaire with respect to the Payment Certificate, the EPC Contractor shall submit a new Payment Certificate for the Concessionaire's approval and the procedure established in this Clause must be repeated with respect only to the rejected items. The Concessionaire shall proceed with the approval of the disputed portion of the Payment Certificate after the EPC Contractor solves any issues indicated by the Concessionaire.



- 21.2.6. Upon approval of the Payment Certificate, the EPC Contractor shall issue and deliver to the Concessionaire, within two (2) Business Days an invoice with the due amount approved in the Payment Certificate by the Concessionaire and the Technical Adviser. The Concessionaire shall inform the EPC Contractor, within two (2) Business Days from its receipt, any errors, misunderstandings and/or discrepancies in the invoice presented by the EPC Contractor.
- 21.2.7. The Concessionaire shall pay the invoice related to the approved Payment Certificate within five (5) days from its receipt.
- 21.2.8. No Payment Certificate issued under this Contract, and no consent or approval given or payment made by the Concessionaire and/or the Certifying Authority and/or the Technical Adviser to the EPC Contractor under this Contract, shall be conclusive evidence that the EPC Contractor has performed any of its obligations under this Contract or that any portion of the Civil Works is in accordance with the Contract Documents.
- 21.2.9. Payments shall be made into the bank account nominated by the EPC Contractor in Reais in accordance with the provisions of Exhibit XV (Payment Exhibit).
- 21.2.10. In case any of the Parties delays the payment of any amount under this Contract, except if due to reasons attributable to the other Party, over the due amount shall apply: (a) an interest of one per cent (1%) per month plus (b) a compensatory penalty of two per cent (2%), calculated *pro rata die* from the due date up to the date of effective payment. The compensatory penalty will not apply to payments in dispute.
- 21.2.11. The relevant Party shall be entitled to this payment without prejudice to any other right or remedy. Such amounts will be added to the late payment owed by the delaying Party when such payment is made by the delaying Party.
- 21.2.12. The Concessionaire shall pay to the EPC Contractor additional amounts (the "Adjusted Amounts") equivalent to the amounts received by the Concessionaire as a result of the adjustment formula by virtue of Section 7.2 of the Concession Contract in relation to the amounts paid by the Grantor ("*Aporte de Recursos*"). Such "Adjusted Amounts" shall only be paid to the EPC Contractor if they are paid by the Grantor to the Concessionaire. Should this be the case, the calculation of the Adjusted Amounts shall consider the base date as the date of October 01, 2019 and shall be included in an independent invoice and paid according to the provisions contained in this Article 21.
- 21.2.13. The Concessionaire is entitled to offset any and all amounts owed by the EPC Contractor to the Concessionaire from the payments due to the EPC Contractor under the terms of this Contract.



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- 21.3. Direct Invoicing. The Parties will agree which Brazilian Subcontractors that are not providing/invoicing services may be subject to direct invoicing the Concessionaire pursuant to direct payment arrangements to be reasonably agreed by the Parties according to usual commercial practices. Such arrangements shall subject any such direct payment to the same terms and conditions applicable to payment to the EPC Contractor under this Contract. The Concessionaire shall have no obligation with respect to any such Subcontractors other than to make payment to such Subcontractors. Notwithstanding any direct payment made by the Concessionaire to a Subcontractor, the EPC Contractor shall retain all responsibilities set forth in this Contract with respect to such Subcontractors and the work performed by them. The payments to be made by the Concessionaire to any Subcontractors with whom a direct payment arrangement is made must first be approved for payment by the EPC Contractor by affixing his "approved" on the invoice drawn up by the Subcontractor, thereby approving the contents thereof, confirming the faithfulness of the invoice prepared by the Subcontractor, and representing that all taxes and/or contributions due on the payment of the invoice to the Subcontractor shall be included in, and comply with all requirements of, an invoice issued pursuant to this Clause 21 (Contract Price and Payments). When aggregated with any other payments to be made by the Concessionaire at the relevant due date, payments to any Subcontractors with whom a direct payment arrangement has been entered into shall not exceed the amount then payable by the Concessionaire in accordance with this Contract. To the extent paid, the amounts paid directly to such Subcontractors in accordance with this Clause 21.3 (Direct Invoicing) shall be credited against the Contract Price. The direct payment arrangement and the documentation thereof shall not create any rights or remedies for the relevant Subcontractors against the Concessionaire but in the event of breach by the Concessionaire of its payment obligation in connection with any direct payment to any Subcontractor, the EPC Contractor shall be entitled to exercise the same rights contemplated in this Contract for delay or default by the Concessionaire of its payment obligations to the EPC Contractor.
- 21.4. First Installment. As a condition for the issuance of Notice to Proceed, the Concessionaire shall pay to the EPC Contractor the Initial Installment on the date provided for in Exhibit XV (Payment Exhibit).
- 21.5. The monthly payments of the Contract Price shall be subject to the aggregate maximum disbursement curve set forth in Exhibit XV (Payment Exhibit). In case the EPC Contractor is able to accelerate the progress of the Civil Works, then the Concessionaire shall endeavor best efforts to agree on a revision of the maximum disbursement curve to allow for the payment of the corresponding amounts according to physical progress of the Civil Works.

22. TERMINATION

- 22.1. Termination due to the EPC Contractor's Default



22.1.1.1. The Concessionaire shall be entitled to terminate this Contract by giving written notice to the EPC Contractor if (each, an "**EPC Contractor Event of Default**"):

- (i) the EPC Contractor becomes bankrupt ("*concurso de acreedores*" under the laws of Spain) or insolvent, goes into cessation of payments, liquidation, carries on business under a receiver, trustee or manager for the benefit of its creditors;
- (ii) the Guarantor becomes bankrupt or insolvent, goes into cessation of payments, liquidation, carries on business under a receiver, trustee or manager for the benefit of its creditors and the EPC Contractor fails to replace the Guarantor with an entity acceptable to the Finance Parties within thirty (30) days of the date on which the Guarantor incurred in any of the events described herein;
- (iii) the Contract Liability Limit has been reached by the EPC Contractor;
- (iv) (a) an amount equivalent to 83% (eighty-three percent) of the Delay Damages cap referred to in clause 14.3.3 has been reached without being unreasonably disputed or (b) Substantial Completion of the Works has not been achieved by the date that falls 300 (three hundred) days after the Completion Date of the Substantial Completion for causes attributed to the EPC Contractor without being unreasonably disputed;
- (v) Milestone Delay Damages cap referred to in clause 14.3.2 has been reached, provided that: (i) the EPC Contractor will have the option to increase the cap up to a maximum of 3,5% of the Contract Price, and (ii) the Concessionaire will have the right to accept or to reject such increase of cap; (iii) if the Concessionaire rejects the increase, the EPC Contractor will have the right to continue with the Contract, but will have to renounce to the proportional part of the payments that the Concessionaire would fund with the payments received from the Grantor due to achieving the Payment Milestones in delay (thus, if the EPC Contractor does not exercise its right to continue with the Contract as per this (iii), the Contract will be terminated);
- (vi) the EPC Contractor assigns and/or transfers its rights and obligations under this Contract, except if in accordance with the provisions of this Contract;
- (vii) the Performance Bond or the Warranty Bond is not issued, fails to be in effect or is not renewed at least thirty (30) days prior to its stated expiration date;
- (viii) the Performance Bond, the Warranty Bond ceases to be issued by a First Tier Insurance Company and the EPC Contractor fails to replace the such bond with one issued by a First Tier Insurance Company within thirty (30) days of the date on which the issuer ceased to be a First Tier Insurance Company;



- (ix) the Performance Bond is fully executed by the Concessionaire, due to the EPC Contractor's fault without being unreasonably disputed;
- (x) the EPC Contractor breaches any substantial obligations under this Contract, not cured within thirty (30) days from receipt of notice from the Concessionaire in that sense;
- (xi) the Concession Contract is terminated due to a breach by the EPC Contractor; or
- (xii) if the Concessionaire's is entitled to terminate the EPC Contract pursuant to Clause 28.

22.2. Termination due to the Concessionaire's Default

22.2.1. The EPC Contractor shall be entitled to terminate this Contract by giving written notice to the Concessionaire, if (each, a "**Concessionaire Event of Default**"):

- (i) the Concessionaire becomes bankrupt ("concurso de acreedores" under the laws of Spain) or insolvent, goes into cessation of payments, liquidation, carries on business under a receiver, trustee or manager for the benefit of its creditors;
- (ii) the Concessionaire breaches any substantial obligations under this Contract, not cured within thirty (30) days from receipt of notice from the EPC Contractor in that sense;
- (iii) the Concessionaire assigns and transfers its rights and obligations under this Contract, except if in accordance with the provisions of this Contract;
- (iv) the Concession Contract is terminated due to reasons attributable to the Concessionaire; and
- (v) the Concessionaire fails to comply with any of its payment obligations hereunder within ninety (90) days from the date in which any such payment should have been made.

22.2.2. Termination due to the Grantor: If the Concession Contract is terminated due to reasons attributable to the Grantor and not to either the EPC Contractor or the Concessionaire, this Contract will terminate automatically. In this event, the Concessionaire shall pay to the EPC Contractor ten percent (10%) of the Contract Price as a compensation for termination following the termination of the Concession Contract and payment to the Concessionaire of amounts thereunder. The EPC Contractor acknowledges that its credits with regards to this paragraph may only be paid by the Concessionaire after the



Concessionaire has indefeasibly paid to the Finance Parties all amounts owed to them under the Financing Documents.

22.2.3. Termination due to Force Majeure. In case of termination of the Concession Contract due to an event of force majeure, the EPC Contractor shall be entitled to claim against the Concessionaire equivalent to those which the Concessionaire is entitled against the Grantor under the Back-to-Back Principle.

22.3. General Consequences

22.3.1. Where this Contract is terminated pursuant to this Clause 22, the EPC Contractor shall, at the Concessionaire's written request:

- (i) cease all further Civil Works and shall take prompt steps to bring its services to an end in an orderly manner and leave the Site;
- (ii) assist the Concessionaire in preparing an inventory of all Goods in use or in storage at the Site or in transit to it;

22.3.2. In any case of termination:

- (i) the Concessionaire shall pay to the EPC Contractor the amounts related (a) to the Civil Works effectively completed and duly approved by the Concessionaire which have not been already paid on the date of termination (b) equipment and materials ordered which title has been transferred to the Concessionaire;
- (ii) if any portion of the Civil Works has been completed but not submitted to the approval of the Concessionaire prior to the date of termination of this Contract, the EPC Contractor shall present a final Payment Certificate (including the measurement report) within ten (10) days from the termination date, in accordance with the procedure set forth in Clause 21.2 (Payment Procedure) of this Contract.

22.3.3. In case of a termination of this Contract due to breach of the EPC Contractor and the Concessionaire, then the EPC Contractor and the Concessionaire, as applicable, shall be liable for the costs and expenses arising out of such termination in the proportion of its contribution to the termination.

22.3.4. The termination of this Contract shall be without prejudice to any other rights of the Parties existing on the date of termination, under this Contract.

22.4. Consequences of Termination due to an EPC Contractor Event of Default



22.4.1. In case of termination due to an EPC Contractor Event of Default, the EPC Contractor shall: (a) perform any activities specified by the Concessionaire in the termination notice for the sole purpose of preserving and protecting the Goods, the Materials and any other portion of the Civil Works; and (b) clear and remove all the EPC Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Civil Works from the Site.

22.4.2. In the event of termination due to an EPC Contractor Event of Default, according to Clause 22.1 (Termination due to the EPC Contractor's Default), the Concessionaire, at its sole discretion, will be entitled to complete the Civil Works directly or through third parties and the EPC Contractor shall pay to the Concessionaire:

- (i) all evidenced costs of a new tender for the selection of a new contractor;
- (ii) the difference between the outstanding Contract Price and the amounts charged by the new contractor after a competitive tender process with selection criteria not inconsistent with market practice for the completion of the remaining Civil Works under conditions and scope substantially similar to those provided under this Contract and within reasonable market standards, provided that the EPC Contractor will not be liable for the new contractor's Civil Works; and
- (iii) any direct damages incurred by the Concessionaire due to the termination of the Contract, including any financing costs payable under the Financing Documents during such re-tendering (for which the Concessionaire shall be entitled, without limitation, to draw under the Performance Bond or any other bond or guarantee delivered by or on behalf of the EPC Contractor hereunder);

provided that the EPC Contractor may set-off these amounts from amounts due and payable to the EPC Contractor by the Concessionaire.

22.4.3. Within thirty (30) days from the selection of a new contractor, as set forth above, the Concessionaire shall notify to the EPC Contractor all relevant information to ascertain the costs referred to in (i) to (iii) above.

22.4.4. The EPC Contractor shall reimburse the Concessionaire the costs referred to in (i) and (iii) above in thirty (30) days from notification by the Concessionaire in accordance with this Clause.

22.4.5. The EPC Contractor shall reimburse the Concessionaire the cost referred to in (ii) above in thirty (30) days from notification by the Concessionaire of the occurrence of such costs in accordance with the performance of works by the new contractor, as demonstrated by the Concessionaire.



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22.4.6. In case the Concessionaire determines that no replacement scenario can be implemented, the EPC Contractor will be liable for any direct damages incurred by the Concessionaire due to the termination of the Contract, including all amounts due and payable by the Concessionaire under the Finance Documents (including any breakage costs), all amounts due and payable by the Concessionaire to its shareholders as a result of such termination (including all equity and quasi-equity contributed by such shareholders in connection with the financing of the Project excluding loss of profit) and any other termination amounts payable by the Concessionaire under any document entered into in connection with the Project as a result of the EPC Contract termination

22.4.7. The Parties hereby agree that the amounts described in Clause 22.4.2 above are subject to the Contract Liability Limit set forth in to Clause 25.

22.5. Consequences of Termination due to a Concessionaire's Event of Default

22.5.1. In the event of termination of this Contract due to a Concessionaire's Event of Default, the Concessionaire shall pay to the EPC Contractor:

- (i) the demobilization Extra Costs, as well as the Extra Costs incurred by the EPC Contractor to terminate the subcontracts that are not transferred to the Concessionaire;
- (ii) any other damages incurred by the EPC Contractor due to the termination of the Contract, provided that (a) the Concessionaire may set-off these amounts from amounts due and payable to the Concessionaire by the EPC Contractor and (b) in case the termination was due to the termination of the Concession Contract without fault of the Concessionaire, the Concessionaire shall be obliged to pay the termination amounts provided herein simultaneously with the compensation/indemnification received by the Grantor in accordance with the Concession Contract or the applicable Laws.

22.5.2. The EPC Contractor acknowledges that its credits with regards to indemnification may only be paid by the Concessionaire after the Concessionaire has indefeasibly paid to the Finance Parties all amounts owed to them under the Financing Documents. In any case, the payments described in Sections 22.3.2(i) and (ii), as well as Section 22.5.1, above, whenever applicable, shall not be subject to the subordination set forth herein.

23. **SECURITIES**

23.1. Performance Bond

23.1.1. On or before the Commencement Date, the EPC Contractor shall deliver to the Concessionaire the Performance Bond issued by a First Tier Insurance Company, under the terms and conditions of *Circular 477/13* of the Superintendence of Private Insurance



(*Superintendência de Seguros Privados – SUSEP*) and the applicable Laws (a “**First Tier Insurance Company**”). The Performance Bond shall be in an amount equivalent to 7% (seven percent) of the Contract Price (as may be increased in accordance to the terms herein). The Concessionaire shall be entitled to collect from the Performance Bonds any amounts due and payable by the EPC Contractor under this Contract upon failure of the EPC Contractor to timely pay such amounts to the Concessionaire, subject to any specific cure periods provided under this Contract.

23.1.2. The Performance Bond shall have no deductible and shall ensure the due and timely fulfillment by the EPC Contractor of all its obligations in accordance with this Contract.

23.1.3. The EPC Contractor shall bear all costs related to the issuance, maintenance and replacement of the Performance Bond.

23.1.4. The Performance Bond shall be in full force and effect from its issuance date until the end of the Defect Liability Period. Upon the issuance of the Substantial Completion Certificate, the EPC Contractor shall replace the Performance Bond by a warranty bond (“**Warranty Bond**”), by a First Tier Insurance Company in an amount equivalent to 3.5% (three and a half percent) of the Contract Price (as may be increased in accordance to the terms herein), in the same form of the Performance Bond approved by the Concessionaire. After the end of the Defect Liability Period the warranty bond shall be cancelled or released.

23.1.5. All the provisions related to the Performance Bond in this Contract shall be applied to the Warranty Bond (when applicable).

23.1.6. The Parties hereby agree that in case:

- (i) the Performance Bond or the Warranty Bond are issued with a fixed expiry date and such expiry date is prior to the end of the required period of cover specified in Clause 23.1.4 above, then, no later than ten (10) Business Days prior to the expiry date of such Performance Bond or of the Warranty Bond, the EPC Contractor shall deliver a replacement Performance Bond or Warranty Bond, as applicable, which complies with the requirements of this Clause 23;
- (ii) of non-renewal of the Performance or Warranty Bond as per Clause 23.1.6.(i) above, the Concessionaire shall have the right to collect the entire amount of the Performance Bond or Warranty Bond as the case may be; and
- (iii) the Performance Bond being called partially or totally, the EPC Contractor shall have no obligation to restore the amounts drawn under the Performance Bond.

24. INDEMNITY



- 24.1. Each Party undertakes to indemnify, defend and hold harmless (the "**Indemnifying Party**") the other Party, its directors, officers, employees, subsidiaries, Affiliates, as well as their successors and assigns (collectively, the "**Indemnified Party**") against any claim, loss, liability or damage of any kind arising out of or resulting from:
- (i) breach of any obligation provided for in the Contract Documents (which includes, as per the Contract, the breach of obligations of its subcontractors);
 - (ii) death and personal injury;
 - (iii) loss or damage to property, real or personal, and/or the environment;
 - (iv) breach of any obligation provided for in any License;
 - (v) non-payment by the EPC Contractor of the EPC Contractor's Personnel and of the breaches of applicable Laws related to labor, social security payments and subcontracting, including, but not limited to, fines applied by any public authority, and all labor, social security, civil and criminal claims initiated by any of the EPC Contractor's Personnel;
 - (vi) the transport of Goods; and/or
 - (vii) the infringement of rights over Intellectual Property.
- 24.2. In the event of receipt of a claim arising from any of the events provided in Clause 24.1 above, the Indemnified Party shall notify the Indemnifying Party within five (5) days from the receipt of the summon or notice of the claim or, as the case may be, within a period that does not exceed half of the deadline for response (whether due to the applicable Laws or otherwise defined), whichever is less.
- 24.3. If the Indemnified Party fails to notify the Indemnifying Party of any claim within the deadline set forth in Clause 24.2 above and such failure completely jeopardizes the defense of the claim, the Indemnified Party shall assume the full responsibility for such claim, exempting the Indemnifying Party from any obligation or liability.
- 24.4. If the nature of the claim is judicial or administrative, the Indemnifying Party shall take all necessary measures to exclude the Indemnified Party from the claim.
- 24.5. If the nature of the claim is not judicial or administrative, the Indemnifying Party shall take all necessary measures to withdraw the Indemnified Party in respect of the claim. The Indemnifying Party shall also assume before the claimant the negotiations or proceedings for the resolution of the claim, exempting the Indemnified Party from any liability with respect of the claim.



- 24.6. In the event that it is not possible to exclude or withdraw the Indemnified Party of the claim, in accordance with Clauses 24.4 and 24.5, as the case may be, the Indemnifying Party shall, within ten (10) Business Days prior to the expiration of the period for the presentation of the respective defense, notify the Indemnified Party, informing if: (a) it will pay the total amount of the claim; (b) will negotiate in order to amicably solve the claim; or (c) continue with the discussions at the administrative and/or judicial level, as the case may be.
- 24.7. The Indemnified Party agrees to cooperate and make available to the Indemnifying Party a copy of the claim, as well as to provide any information and documents that are reasonably necessary and useful in connection with the preparation of the defense. The Indemnifying Party shall keep the Indemnified Party updated about the progress of the discussions, providing any documents presented in the proceeding. In case of a judicial or administrative claim, the Indemnifying Party shall send to the Indemnified Party monthly reports containing updated information about the progress of the process, as well as a copy of the main parts.
- 24.8. The Indemnifying Party shall be responsible for the payment of the attorney's fees and other costs and expenses related to the defense of the claim, including any burden of defeat. Any judicial deposits or other guarantees required by the court or relevant authority shall be provided directly by the Indemnifying Party within the deadline. If the claim is issued in the name of the Indemnified Party, the Indemnified Party undertakes to grant a power of attorney, with sufficient powers, to the lawyers indicated by the Indemnifying Party.
- 24.9. In the event that the Indemnifying Party fails to take any of the measures set forth in Clause 24.6 within the deadlines provided therein, the Indemnified Party may, at its sole discretion: (a) undertake the defense of the claim; or (b) pay any amounts owed to the claimant, whether by agreement or by judicial or administrative decision.
- 24.10. If there is a final and unappeasable decision against the Indemnifying Party with respect to the claim, the Indemnifying Party shall pay any amounts due to the claimant, either by agreement or judicial or administrative decision, including legal fees and other costs related to the resolution of the claim, if any. If the Indemnified Party has disbursed any amounts for the defense of the claim or payment of the amounts owed to the claimant, as the case may be, the Indemnifying Party shall reimburse them upon presentation of the evidence documents.
- 24.11. If, for any reason, the Indemnifying Party fails to make any payments due to the Indemnified Party under the terms of this Clause, the interest and adjustment of Clause 21.2.10 shall apply.

25. LIABILITY LIMIT



25.1. The maximum overall liability of the EPC Contractor in relation to this Contract shall be limited to forty percent (50%) of the Contract Price (as may be increased in accordance to the terms herein) (the "**Contract Liability Limit**").

25.2. The only exceptions to the Contract Liability Limit shall be:

- (i) liability arising out of fraud, willful default, gross misconduct or violation of Anticorruption Laws or any other Laws; or
- (ii) where such limitation of liability is expressly prohibited under applicable Laws; or
- (iii) liability arising from the EPC Contractor abandoning voluntarily the Civil Works; or
- (iv) liability arising from bodily injury or death of a third person caused by the EPC Contractor or any Subcontractors resulting from the performance of the Civil Works; or
- (v) liabilities arising from environmental contamination and/or environmental damage claims, in each case, caused by the EPC Contractor or any Subcontractor; or
- (vi) liabilities arising from labor and social security or tax obligations associated to any employee of the EPC Contractor or any Subcontractor; or
- (vii) liabilities arising from fines and penalties imposed by any Governmental Authority arising from the EPC Contractor's or any Subcontractor's breach of any Law (including Anticorruption Laws); or
- (viii) liabilities from any claim in connection with intellectual property infringement; or
- (ix) insurance proceeds recovered by a Party, except for deductible incurred by that Party.

25.2.1. For sake of clarity, Penalties, Delay Damages, Performance Damages and the termination fees (including the replacement of the EPC Contractor by a new contractor) are included in the Contract Liability Limit.

25.3. The Parties hereby agree that none of the Parties shall be liable in any event for any consequential and/or indirect losses and damages, such as loss of revenue, loss of contracts, loss of data, profits and outgoing revenue to the other Party; provided that this Clause shall not exclude liability for amounts: (a) which a Party would have recovered from any insurer but for a breach by the other party of its obligations in relation to maintaining the corresponding insurance; (b) payable as Delay Damages, Performance



Damages; or (c) incurred by a Party as a result of fraud, fraudulent misrepresentation, wilful misconduct or wilful default or a violation of any Anticorruption Law by the other Party (or such other Party's subcontractors).

26. FINANCING

26.1. Financing Arrangements

26.1.1. Without charging any additional cost to the Concessionaire, the EPC Contractor shall cooperate (and shall endeavor best efforts to cause the Guarantor to cooperate), from time to time with the Concessionaire's financing and refinancing of the Project, including by (a) delivering, and undertaking to deliver, audited financial statements of the EPC Contractor and Guarantor, (b) delivering customary legal opinions and (c) entering into a direct agreement acceptable to the Finance Parties (the "**EPC Contractor Direct Agreement**"), in each case at the request of the Concessionaire.

26.1.2. The EPC Contractor shall not enter into independent discussions with the Finance Parties with respect to the financing of the Project unless specifically authorized in writing in advance to do so by the Concessionaire. However, if requested to do so by the Concessionaire, the EPC Contractor shall assist the Concessionaire in discussions with the Finance Parties with respect to financing of the Project.

26.1.3. The EPC Contractor agrees to comply with the IFC Performance Standards as of the date of the Contract.

26.2. BNDES Requirements

26.2.1. Considering that the Concessionaire intends to obtain Financing with BNDES for the implantation of the Project, the EPC Contractor shall ensure, during the term of this Contract, that the Civil Works (except the amounts described in Exhibit XVIII (Non-financeable Items by BNDES)) will comply with the relevant official financing requirements of BNDES, including those regarding local content ("**BNDES Requirements**" and "**Fundable Items**").

26.2.2. Without prejudice to the above in respect to BNDES Requirements, the EPC Contractor shall comply and ensure that Subcontractors comply with the following obligations:

- (i) Cooperate with the Concessionaire in obtaining FINAME;
- (ii) cooperate with the Rolling Stock Supplier and with the Concessionaire and with BNDES during the process of accreditation, by timely providing all necessary information, documentation and assistance; and



- (iii) maintain any necessary accreditations, licenses, permits and certifications valid during the duration of the Contract as to allow FINAME accreditation by the Concessionaire.

26.2.3. If the EPC Contractor breaches any of the provisions of this Clause 26.2.1 and, due to such breach, the Concessionaire loses financing, in whole or in part, the EPC Contractor shall pay to the Concessionaire a penalty corresponding to the difference, if any, between (a) the financial cost (all-in) of the funding from BNDES and (b) the financial costs of alternative financing or additional equity injections needed, subject to a cap of three percent (3%) of the Contract Price. This penalty shall be paid upon accrual of the additional financial costs.

26.3. Insurance

26.3.1. EPC Contractor's Insurances

26.3.1.1. Without prejudice to the indemnities and other risk allocation in the Contract, the EPC Contractor shall effect and maintain in force throughout the continuance of the Contract the EPC Contractor's Insurances with First Tier Insurance Companies duly licensed to operate in Brazil by the Superintendence of Private Insurance. All such insurance policies shall be suitably endorsed to include all of the Civil Works covered by this Contract.

26.3.1.2. Upon request by the Concessionaire, the EPC Contractor shall provide within five (5) Business Days a current certificate detailing that the EPC Contractor has procured and/or is maintaining the EPC Contractor's Insurances. Failure to provide such a certificate may be taken by the Concessionaire to indicate that the EPC Contractor has failed to meet its obligations to provide the EPC Contractor's Insurances, in which case Clause 26.8 (Remedy of Failure to Insure) shall apply.

26.3.1.3 The EPC Contractor shall give immediate notice to the Concessionaire and all insured parties in the event of cancellation or material change affecting any insured party's interest in respect of the EPC Contractor's Insurances.

26.3.1.4 The EPC Contractor shall procure and maintain (or cause to be procured and maintained by its Subcontractors) the EPC Contractor's Insurances in full force and effect at all times, from the Effective Date until the expiry date stipulated in Exhibit XVII (Insurance). The Concessionaire will provide any required documentation and information so that the EPC Contractor complies with this obligation, including to postpone the validity and effectiveness of any policy.

26.3.1.5 Notwithstanding the foregoing, the Parties hereby agree that the EPC Contractor's Insurances necessary for the effectiveness of the Concession Contract, if any, shall be hired by the EPC Contractor.



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26.3.2. Concessionaire's Insurances

- 26.3.2.1 The Concessionaire shall take out and maintain the insurances stipulated in the Concession Contract (the "**Concessionaire's Insurances**").

26.4. Compliance and Disclosure

- 26.4.1. The EPC Contractor and its Associated Persons shall comply with all the terms of the Concessionaire's Insurances and the EPC Contractor's Insurances and the procedures for claims notification and administration thereunder, and shall not do or omit to do anything which might render voidable or unenforceable such policy or policies of insurance or entitle insurers to avoid liability thereunder.

- 26.4.2. The EPC Contractor must provide the Concessionaire and the Concessionaire's insurance adviser with such assistance and information as they may reasonably require to effect and maintain the Concessionaire's Insurances.

- 26.4.3. The EPC Contractor must disclose promptly to the Concessionaire all facts, circumstances or other occurrences material to the risks insured under the Concessionaire's Insurances and the EPC Contractor must promptly advise the Concessionaire in writing of any material change to such information (and the Concessionaire will inform its insurers).

26.5. Premiums

- 26.5.1. The Concessionaire will bear the cost of all insurance premiums in relation to the Concessionaire's Insurances, and the EPC Contractor will bear the cost of all insurance premiums in relation to the EPC Contractor's Insurances.

26.6. Subcontractor's Insurance

- 26.6.1. The EPC Contractor shall ensure that its Subcontractors procure and maintain throughout the continuance of this Contract the insurances similar to those which the EPC Contractor is required to procure.

- 26.6.2. The EPC Contractor must ensure that, where applicable, its Subcontractors take out and maintain in effect adequate insurance policies for their personnel and vehicles and for Civil Works executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the EPC Contractor.

26.7. Policy Endorsements



26.7.1. To the extent permissible under the Law and required under the Contract, all policies of insurance in respect of the EPC Contractor's Insurances shall:

- (i) name the Grantor, the Concessionaire and the Finance Parties as additional insureds or beneficiaries for their interests but only to the extent of the liabilities assumed by the EPC Contractor under the Contract;
- (ii) provide an insurer's waiver of subrogation in favor of the Concessionaire, each insured party and other persons as may reasonably be required by the Concessionaire; and
- (iii) provide that they may not be cancelled, non-renewed or materially changed by the EPC Contractor without thirty (30) Business Days' prior written notice sent by registered mail to the Concessionaire and the Finance Parties.

26.7.2. The EPC Contractor shall notify the Concessionaire of any material changes instigated by an insurer within thirty (30) Business Days of receipt by the EPC Contractor of notice from the relevant insurer.

26.8. Remedy of Failure to Insure

26.8.1. Should the EPC Contractor effect any material change to or fail to provide or maintain any EPC Contractor's Insurance, the Concessionaire shall have the right to provide or maintain such coverage or difference in coverage, as appropriate, at the EPC Contractor's expense, either by direct charge or set-off.

26.8.2. The Concessionaire is not required to pay the EPC Contractor any sum under this Contract until the EPC Contractor has fully complied with the obligation to provide evidence of coverage pursuant to a request by the Concessionaire in accordance with Clause 26.3.1.2.

26.9. Vitiating of Policies. Neither Party shall take or fail to take any action or, so far as is reasonably within its power, permit or suffer anything to occur which would entitle any insurer to refuse to pay any claim under, or otherwise prejudice, any insurance policy maintained under or pursuant to this Contract.

26.10. Conduct of Claims

26.10.1. Unless otherwise provided in this Contract, each Party will, if so reasonably required by the other Party, prepare and conduct all and any claims made under the EPC Contractor's Insurances or the Concessionaire's Insurances, as the case may be, effected pursuant to this Clause 26.3, and such Party will give all such reasonable assistance as may be required.



26.10.2. With respect to insurance claims in which the other Party's insurable interest is involved, the Party making the insurance claim will not give any release or make any compromise with the insurer without the prior written consent of the other Party, which shall be notified in a maximum period of ten (10) Business Days.

26.10.3. If any of the Parties fails to comply with its obligations under Clause 26.10.1, the other Party will be entitled to prepare and conduct any such claims, and the breaching Party will give to the other all such reasonable assistance as may be required at its own costs.

26.11. Loss Payees

26.11.1. Subject to the requirements of the Finance Documents, the EPC Contractor must apply all insurance proceeds received from any Concessionaire's Insurances pursuant to claims made in accordance with Clause 26.10 (Conduct of Claims) to the repair or reinstatement of the loss or damage which is the subject of such a claim or otherwise apply such proceeds at the direction of the Concessionaire.

26.11.2. The Concessionaire will ensure that, subject to the requirements of the Finance Documents, insurance proceeds paid under the Concessionaire's Insurances shall be payable by the insurers directly to the Concessionaire unless otherwise authorized by the Concessionaire to be paid to the EPC Contractor.

26.12. No Effect on the EPC Contractor's Obligations. Neither the failure to comply nor full compliance with this Clause 26.3 will limit or relieve the EPC Contractor of its obligations under this Contract.

27. **INTELLECTUAL PROPERTY RIGHTS**

27.1. Concessionaire's Use of the EPC Contractor's Documents

27.1.1. As regards the assignment to the Grantor of Intellectual Property in relation to any specific part of the Civil Works pursuant to the Contract Documents, the Back-To-Back Principle will be applicable to the EPC Contractor (if Concession Contract requires the Intellectual Property to be delivered at the end the concession period, the EPC Contractor shall deliver it upon the Construction Contract is terminated). Notwithstanding this, the EPC Contractor herein grants to the Concessionaire and to the Grantor a perpetual, transferable, non-exclusive, royalty-free license to copy, use and communicate the EPC Contractor's Documents. This license will survive in case of Contract termination. In this sense, such license shall:

- (i) entitle any person in proper possession of the relevant portion of the Civil Works to copy, use and communicate the EPC Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, upgrading, expanding,



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improving, repairing, dismantling, decommissioning and demolishing the Civil Works;

- (ii) in the case of the EPC Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as needed by the Concessionaire; and
- (iii) assign to the Concessionaire all rights to any software to be used for the completion, operation, maintenance, alteration, adjustment, upgrade, expansion, repair, dismantling, decommissioning or demolition of the Civil Works.

27.1.2. The EPC Contractor shall acquire for itself from all relevant third parties such rights as they are necessary in order for the EPC Contractor to be able to comply with its obligations under this Clause 27.1.

27.1.3. The provisions of this Clause 27.1 shall survive termination or expiry for whatever reason of this Contract or the EPC Contractor's engagement under it.

27.1.4. The EPC Contractor's Documents and other design documents made by (or on behalf of) the EPC Contractor shall not, without the EPC Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Concessionaire for purposes other than those permitted under this Clause 27.1.

27.1.5. The EPC Contractor shall indemnify and hold harmless the Concessionaire against any legal action that may be filed against it in connection with the use or alleged use of any Intellectual Property rights that are used in any EPC Contractor's Document or otherwise in relation to the EPC Contractor's design, manufacture, construction or implementation of the Civil Works.

27.1.6. The Concessionaire shall only use the Intellectual Property (made available by the EPC Contractor under this Contract) in accordance with this Contract and the Concession Contract.

27.1.7. The EPC Contractor shall not be responsible for the Concessionaire's use of the licenses granted herein.

27.2. EPC Contractor's Use of the Concessionaire's Documents

27.2.1. The Parties agree that the Concessionaire shall retain the copyright and other Intellectual Property rights over any document made by (or on behalf of, except as provided in Clause 27.1 (Concessionaire's use of the EPC Contractor's Documents) the Concessionaire, including, but not limited to, the Concessionaire's Documents. The EPC Contractor may, at its own cost, copy, use and obtain communication of the Concessionaire's Documents for the purposes of this Contract.



27.2.2. The documents referred to in Clause 27.2.1 above shall not, without the Concessionaire's consent, be copied, used or communicated to a third party by the EPC Contractor, except as necessary for the purposes of this Contract.

28. ANTICORRUPTION

28.1. No Unlawful Activity

28.1.1. Regarding the performance of the Contract, neither Party shall, and shall procure (insofar as it lawfully can) that each of its Associated Persons do not, engage in any activity or conduct that results in a violation of any Anticorruption Laws.

28.2. Adequate Procedures

28.2.1. Each of the Parties confirms that it has and shall maintain in place a high quality and enforceable compliance and anticorruption program pursuant to the requirements established in the Concession Contract.

28.2.2. Each of the Parties confirms that (a) none of its directors, officers, employees or representatives is a Public Official or is related to a Public Official; and (b) no Public Official currently has or will hold any legal interest or stake, either direct or indirect, in its share capital.

28.3. Either Party shall be entitled to terminate this Contract in case the other Party has engaged in any activity or conduct that results in a violation of any Anticorruption Laws, as set forth in Clause 28.1.1, provided that such breach (a) is recognized by means of a final and unappealable decision rendered by the Arbitral Tribunal or; (b) is recognized by means of a decision rendered by any other competent Government Authority and is confirmed by a competent upper court (*2a instância*).

29. DISPUTES AND ARBITRATION

29.1. Mutual Consultation and Amicable Settlement

29.1.1. The Parties agree to seek to resolve any Dispute of any kind whatsoever arising between them under or in relation to this Contract or the subject matter thereof by mutual consultation.

29.1.2. If a Party is unable to settle a Dispute through mutual consultation, it shall first refer the Dispute in writing to a committee comprising two senior managers from the shareholders of each of the Parties who shall not be involved in the day-to-day running and/or management of this Contract ("**Management Committee**") with a copy of the notice



of referral to the other Party. The Management Committee shall convene at a mutually agreed venue (or through electronic means) within five (5) Business Days of the notice of referral to consider the information available and provide the opinion within twenty-one (21) Business Days of the notice of referral, provided that the Parties may agree to longer periods for convening the Management Committee and for it to form an opinion.

- 29.1.3. If, within such twenty-one (21) Business Day or longer period as aforesaid, a unanimous agreement is reached by the Management Committee resolving the Dispute, such agreement shall be binding on the Parties. Notwithstanding the above, the Parties may opt to submit the Dispute directly to arbitration.

29.2. Dispute Adjudication Board

- 29.2.1. The Parties hereby agree to establish a Dispute Adjudication Board ("**DAB**") in accordance with the Rules for the Committee of Prevention and Solution of Disputes (the "**DAB Rules**") of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (the "**CAM-CCBC**"), which are incorporated herein by reference. The DAB established herein shall function as a Permanent and Decision Committee, pursuant to the DAB Rules. Any Dispute arising out of or in connection with the Contract shall be submitted to the DAB in accordance with the DAB Rules.
- 29.2.2. The DAB shall be composed by three (3) members, appointed by the Parties pursuant to the DAB Rules, and shall be installed as of the Effective Date. The members of DAB shall be and remain impartial and independent from the Parties, and none of the members shall be a relative of any other member within the third degree of consanguinity or affinity.
- 29.2.3. The DAB shall be seated in the city of São Paulo, State of São Paulo, Brazil and the language to be used in the DAB proceedings shall be English, provided that evidence may be produced in Portuguese without the need for translation.
- 29.2.4. The DAB proceedings (including, but not limited to its existence, the parties' allegations and statements, third-party statements, evidence and documents presented, as well as any Decisions rendered by the DAB) shall be confidential and shall only be disclosed to the DAB, to an arbitral tribunal, the parties to the arbitration, its representatives and any person necessary to the proper conduction and the result of the arbitration.
- 29.2.5. The expenses of the DAB, including, but not limited, to the administrative costs of the CAM-CCBC and the members' fees shall be borne by each party as per the DAB Rules.
- 29.2.6. For any given Dispute, the DAB shall issue a decision in accordance with the DAB Rules ("**Decision**"). The Decisions of the DAB shall be binding upon the Parties and their successors at any title. If any Party fails to comply with a Decision, when required to do



so pursuant to the DAB Rules, the other Party may take all necessary measures available under the applicable Law to enforce the Decision. A Party that has failed to comply with a Decision, when required to do so pursuant to the DAB Rules, shall not raise any issue as to the merits of the Decision as a defence to its failure to comply with the Decision.

29.2.7. Any Dispute arising out of or in connection with this Contract may be submitted to the DAB in accordance with the DAB Rules and upon any Party's request. Notwithstanding the above, the Parties may opt to submit the Dispute directly to arbitration.

29.3. Arbitration

29.3.1. Notwithstanding and independently from the provisions of Clauses 29.1 (Mutual Consultation and Amicable Settlement), any Dispute shall be finally settled by arbitration in accordance with this Clause 29.3 and such arbitral tribunal shall have exclusive jurisdiction to settle any and all Disputes.

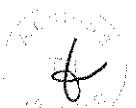
29.3.2. The arbitration shall be seated in the city of São Paulo, State of São Paulo, Brazil, and administrated by the CAM-CCBC according to its Arbitration Rules (the "**Arbitration Rules**") and Brazilian Federal Law No. 9,307/96. The language of the arbitration shall be English, provided that any evidence may be produced in Portuguese, without the need for translation. In case of conflict between the Arbitration Rules and the provisions of this Clause, the provisions hereof shall prevail.

29.3.3. The arbitral tribunal shall be composed by (3) arbitrators (the "**Arbitral Tribunal**"). The claimant shall appoint one arbitrator and the respondent shall appoint one arbitrator. The two arbitrators so appointed shall, in consultation with the parties to the arbitration, appoint the third arbitrator, who shall serve as the chairperson of the Arbitral Tribunal. If a Party fails to appoint its arbitrator or if the two arbitrators appointed cannot agree on the third arbitrator within the terms established under the Arbitration Rules, then such arbitrator(s) shall be appointed by the CAM-CCBC pursuant to the Arbitration Rules. The Parties hereby agree that any provision in the Arbitration Rules referring to limitations to the appointment of arbitrators due to any arbitrators' list and/or chart shall not be applied.

29.3.4. No arbitrator shall be a present or former employee or agent of any Party or any affiliate thereof.

29.3.5. The applicable law to the arbitration shall be the Brazilian Law. Any award shall be final and binding on the parties to the proceeding and to their successors at any title.

29.3.6. The arbitration and its elements, including but not limited to its existence, the Parties' allegations and statements, third-party statements, evidence and documents, as well as any decision rendered by the Arbitral Tribunal, including the arbitral award, among others, shall be confidential, and shall only be disclosed to the arbitral tribunal, the parties



to the arbitration, its representatives and any person necessary to the proper conduction and the result of the arbitration.

29.3.7. The expenses of the arbitral proceedings, including, but not limited, to the administrative costs of the CAM-CCBC, arbitrator's fees and independent expert's fees, when applicable, shall be borne by each party as per the Arbitration Rules. Upon issuance of the arbitral award, the Arbitral Tribunal may determine that the winning party be reimbursed by the losing party for these expenses proportionally, including reasonable attorney's fees.

29.3.8. Consolidation of Arbitrations. The CAM-CCBC (if before the signing of the Terms of Reference) and the arbitral tribunal (if after the signing of the Terms of Reference) may, upon request of one of the parties to the arbitrations, consolidate simultaneous arbitral proceedings involving any of the Parties, even if they are not all parties to both proceedings, and this Agreement and/or related instruments, including the Rolling Stock Supply Agreement, if (a) the arbitration agreements are compatible; and (b) there is no unjustifiable harm caused to one of the parties to the consolidated arbitrations. In this case, the jurisdiction to consolidate shall be incumbent upon the first arbitral tribunal constituted, and its decision shall be final and binding upon all parties to the consolidated arbitrations.

29.3.9. For the purposes of the consolidation provided in Section 29.3.8 above, the Parties herein acknowledge to be fully aware of the content of the Rolling Stock Supply Agreement, which shall be attached to this Contract after their execution by means of an amendment to this Contract.

29.3.10. Provisional Measures

29.3.10.1. Before the constitution of the Arbitral Tribunal, the Parties may request any provisional or urgent measures to the Courts and/or to the emergency arbitrator. After the constitution of the Arbitral Tribunal, any provisional or urgent measures shall be exclusively requested to the Arbitral Tribunal, which may uphold, modify or revoke any decision(s) previously granted by the Courts and/or to the emergency arbitrator.

29.3.10.2. Provisional and/or urgent measures requested to courts, as well as enforcement actions, when applicable, may be requested, upon the option of the interested Party, (i) to the Courts where the measures shall take effect; or (ii) to the Courts of São Paulo, State of São Paulo, Brazil. As to other judicial measures available under Law no. 9,307/96, the Parties hereby agree to elect the exclusive jurisdiction of the courts of São Paulo, State of São Paulo, Brazil. For the purpose of the election of exclusive jurisdiction of courts, the Parties acknowledge the international nature of this Contract. Requesting any judicial measure available under Law 9,307/96 shall not be construed as a waiver of the rights under this clause or to arbitration as the sole Dispute resolution mechanism.



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30. MISCELLANEOUS

30.1. Non-Waiver and Preservation of Remedies

30.1.1. No relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of this Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of this Contract operate as a waiver of any subsequent or continuing breach of this Contract.

30.1.2. Unless otherwise provided in this Contract, no approval, expression of satisfaction, comment, review, test, inspection, payment or certificate made or given (or any failure to make or give or attend the same) by the Concessionaire under the Contract, by the Finance Parties or by any of such persons' representatives shall relieve the EPC Contractor of any of its obligations, risks or liabilities under this Contract.

30.1.3. Any waiver of a Party's rights, powers or remedies under this Contract must be in writing, dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

30.2. Entire Agreement

30.2.1. This Contract and the EPC Contractor Direct Agreement, if any, constitute the entire agreement between the Parties with respect to the subject matter of this Contract and supersede any prior written or oral agreement between them with respect to such subject matter.

30.3. Amendment

30.3.1. No amendment or other variation of this Contract shall be effective unless it is in writing, is dated, expressly refers to this Contract and is signed by a duly authorized representative of each Party hereto.

30.3.2. The EPC Contractor agrees that it will not unreasonably withhold its consent to any amendment which any Finance Party or other provider of funds or facilities in connection with the financing of the Project or prospective Finance Party or other provider of funds or facilities requests to be made to this Contract.

30.4. Partial Invalidity

30.4.1. If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or



enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will, in any way, be affected or impaired.

30.5. Negotiation Expenses

30.5.1. Each Party shall be responsible for paying its own costs and expenses incurred in connection with negotiating, preparing and entering into this Contract.

30.6. Independent EPC Contractor

30.6.1. The EPC Contractor shall be an independent contractor performing this Contract. This Contract does not create any partnership, joint venture or other joint relationship between the Concessionaire on the one hand and the EPC Contractor on the other hand.

30.7. Representations and Warranties

30.7.1. Each Party hereby represents and warrants to the other as follows:

- (i) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (ii) it has the power to own its assets and carry on its business as it is being conducted;
- (iii) it has the power to enter into, perform and deliver, and has taken all necessary action to authorize its entry into, performance and delivery of, this Contract and the transactions contemplated by this Contract;
- (iv) the obligations expressed to be assumed by it under this Contract are valid, binding and enforceable.

30.7.2. The representations and warranties are separate and independent and, except as expressly provided to the contrary in this Contract, are not limited by reference to any of the others of them or by anything in this Contract.

30.8. Survival

30.8.1. Clauses 1.7 (Confidentiality), 24 (Indemnity), 27 (Intellectual Property Rights) and 29 (Disputes and Arbitration) shall survive the termination of this Contract and, notwithstanding any such termination.



In witness of which this Contract has been duly executed in two (2) counterparts.



Signature page 1/2 of the ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT entered between CONCESSIONARIA LINHA UNIVERSIDADE S.A. and ACCIONA CONSTRUCCIÓN S.A. on July 10, 2020

Concessionaire:

CONCESSIONARIA LINHA UNIVERSIDADE S.A.

Name: André Lima De Angelo

Name: Janaína Martinez Jatobá Bedette

Janaína Martinez Jatobá Bedette
OAB/SP 232.798
CPF 223.521.918-74

TABEIÃO OLIVEIRA LIMA
15º Cartório de Notas
Bel. João Roberto de Oliveira Lima

Av. Dr. Cardoso de Melo, 1855, CEP: 04548-005
Vila Olímpia - Esquina com a Rua Funchal - São Paulo - SP
PABX: (11) 3058-5100 - www.15notas.com.br

Reconheço por SEMELHANÇA COM VALOR ECONÔMICO a(s) Firma(s) de:
ANDRÉ LIMA DE ANGELO e JANAÍNA MARTINEZ JATOBÁ BEDETTE, a qual
confere com padrão depositado em cartório.
São Paulo/SP, 17/07/2020 - 12:11:07

Em testemunho da verdade. Total R\$ 19,70
PAULO ROBERTO DA CUNHA VIANA - ESCRIVENTE
Etiqueta: 2903563 Selos: AB 547720

VALIDO SOMENTE COM O SELO

PAULO ROBERTO DA CUNHA VIANA
ESCRIVENTE AUTORIZADO



O Presente documento para produzir efeito no Brasil
e para valer contra terceiros, deverá ser
vertido em vernáculo, e registrada a tradução.
"NSCGJ-SP"



Signature page 2/2 of the ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT entered between CONCESSIONARIA LINHA UNIVERSIDADE S.A. and ACCIONA CONSTRUCCIÓN S.A. on July 10, 2020

EPC Contractor:

ACCIONA CONSTRUCCIÓN S.A.

Name: Fábio Luis do Santos

Name: Flávio Luis Saraiva

Witnesses:

Name:

CPF/ME:

RG:

Tatiana Barcelos Hayashi
RG: 42.671.116-6
CPF: 332.226.848-98

Name:

CPF/ME:

RG:

Luis Gabriel A. Coutinho
Engenheiro Civil
Crea: 5061803832

TABELIÃO OLIVEIRA LIMA
15º Cartório de Notas
Bel. João Roberto de Oliveira Lima

Av. Dr. Cardoso de Melo, 1855, CEP: 04548-005
Vila Olímpia - Esquina com a Rua Funchal - São Paulo - SP
PABX: (11) 3058-5100 - www.15netas.com.br

Reconheço por SEMELHANÇA COM VALOR ECONÔMICO a(s) Firma(s) de:
FABIO LUIS DOS SANTOS, FLAVIO LUIS SARAIVA, TATIANA BARCELOS
HAYASHI e LUIS GABRIEL ALONSO COUTINHO, a qual confere com padrão
depositado em cartório.
São Paulo/SP, 17/07/2020 - 12:13:10
Em Testemunho da verdade, Total R\$ 39,40
PAULO ROBERTO DA CUNHA VIANA - ESCRIVENTE
Etiqueta: 2803579 Selos: AB 547731 547732
VALIDO SOMENTE COM O SELO DE AUTENTICIDADE AE344530

PAULO ROBERTO DA CUNHA VIANA
ESCRIVENTE AUTORIZADO

Colégio Notarial do Brasil
São Paulo - SP
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FIRMA
VALOR ECONÔMICO 2
C21059AB0547732
FIRMA
VALOR ECONÔMICO 2
C21059AB0547731

Este documento para produzir efeito no Brasil e para valer contra terceiros, deverá ser vertido em vernáculo, e registrada a tradução.
"NSCGJ-SP"

