



MINISTERIO  
DE TRANSPORTE  
Y OBRAS PÚBLICAS



PUBLIC-PRIVATE PARTICIPATION RAILWAY PROJECT

CONTRACT PROJECT PPP

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## 1 DEFINITIONS

In order to properly interpret the Contract, the terms set forth below shall have the meaning attributed to them below:

- **Hiring Administration:** Ministry of Transportation and Public Works of Uruguay (MTOP).
- **Public-Private Participation Contract:** Contract executed between the Hiring Administration and the Contractor Company pursuant to the provisions of Law N° 18786 of July 19, 2011 and the concordant, supplementary and modifying regulations.
- **Days:** Calendar days. Where reference is made to business days in the Contract, this reference will be expressly indicated. "Business days" means the days on which the Hiring Administration offices are open.
- **Contract Documents:** Documents of the Contract. The public-private participation contract executed between the Hiring Company and the Contractor Company, the Technical Specifications and their annexes, the offer submitted by the awardee, the Administrative Terms and Conditions and their annexes, and other annexes to the Hire Terms and Conditions.
- **Bid Documents:** Set of Administrative Terms and Conditions and their annexes, Technical Specifications and their annexes, Public-Private Participation Contract Project and Data relating to the project which are not binding upon the Hiring Administration and will be provided for information purposes only.
- **Act of God or Absolute Force Majeure:** For the purposes of this Contract, Act of God or Absolute Force Majeure means any supervening event beyond the parties' control which is unpredictable, cannot be avoided and prevents the performance of the Contract.
- **Act of God or Relative Force Majeure:** Any supervening event beyond the parties' control which is unpredictable, cannot be avoided and does not absolutely prevent the performance of the Contract.
- **Payments upon Availability (PPD):** The amounts to be paid by the Hiring Administration to the Contractor Company as remuneration for the performance of the various tasks and services which constitute the subject matter of this Contract, as per the provisions of the Contract Documents.
- **Financial-Economic Plan (PEF):** The set of documents submitted by the awardee as part of its economic offer in which it describes in detail the investment estimates and the evolution of the economic and financial variables expected for the project for the life of the Contract.
- **Acknowledged Final Price:** The amount of the investment acknowledged by the Hiring Administration.
- **Contractor Company (or "Contractor"):** Corporation with an exclusive purpose created by the successful bidder which is a party to this Contract.
- **Contract Supervision:** Persons appointed by the Hiring Administration to control and supervise the performance of the Contract.

- **Control Body:** The top-authority body which exercises control functions directly dependent upon the Hiring Administration.
- **Project IRRbefore taxes:** This is the internal return rate associated with the cash flows resulting from the collective project income and expenses, excluding the financial transactions, the payment of interest and the payment of income tax. The IRR of the project before taxes depends, consequently, on the project financing method.

## 2 THE PARTIES

First: The Ministry of Transportation and Public Works (MTOP), hereinafter, the “Hiring Administration”.

Second:           , hereinafter, the “Contractor Company”.

## 3 CONTRACT SUBJECT MATTER

The purpose of this Public-Private Participation Contract is the construction, remediation and maintenance of the infrastructure, railway and deviations from the railway stretch Montevideo Port –Paso de los Toros Station, apart from the financing, through remuneration based on availability and service levels, as per the provisions of this Contract clauses, the Administrative Terms and Conditions (PCA) and their annexes, the Technical Specifications and their annexes, the awarded offer and the other Contract Documents annexed to the hiring terms and conditions.

## 4 CONTRACT NATURE, APPLICABLE REGULATIONS AND TAX REGIME

### 4.1 CONTRACT NATURE

The reference contract is framed by the “public-private participation” contracts governed by our Laws (hereinafter, “contract” or “PPP contract”).

### 4.2 APPLICABLE REGULATIONS

The contract is governed by the provisions of Law No. 18786 dated July 19, 2011, Decrees N° 17/012 dated January 26, 2012, N° 280/012 dated August 24, 2012 and N° 045/013 dated February 6, 2013, Decree 181/015 dated July 6, 2015, Decree 251/015 dated September 14, 2015, Decree 326/015 dated December 7, 2015 and Decree N° 313/017 dated November 6, 2017, as well as any other applicable supplementary or related provision.

This Contract will be made up of the Administrative Terms and Conditions (PCA) and their annexes, the Technical Specifications and their annexes, the Communications published on the web [www.comprasestatales.gub.uy](http://www.comprasestatales.gub.uy), the awarded offer and any other documents attached to the hiring terms and conditions.

## 5 CONTRACT TERM

### 5.1 AVAILABILITY OF THE WORK AREA

The Hiring Administration shall make available to the Contractor Company the work area necessary for the execution of the works and the performance of the provisions subject matter of the Contract.

The Contractor Company shall receive and assume the possession of the work area once both parties have signed the "Holding and Commencement Record". The maximum term for the execution of such record will be ten (10) business days as from the execution of this Contract.

If the Hiring Administration fails to make available to the Contractor Company a stretch of the work area within the term provided for due to causes not attributable to the Contractor Company, the running of the terms for such stretch shall be stayed until said work area is made available. If this action takes more than 50 business days, the Contractor Company may claim compensation for the financial cost of the verified expenses incurred up to that moment.

In the case of delays in the expropriations, the Hiring Administration may make a partial delivery of one or several sub-stretches for the work to be executed. Such sub-stretches are defined in clause 2.1 of the Technical Specifications. These investments made will be recognized even where the sub-stretch has not been completed due to the aforementioned cause. The running of the term for the sub-stretch area not timely submitted by the Hiring Administration will start running as from the date of delivery thereof.

### 5.2 COMPLETION OF CERTAIN MILESTONES

The Contractor Company has a term of nine (9) months, as from the execution of the Contract, to deliver to the Hiring Administration all the final documents, graphs and calculation reports which make up the executive project of the works including a description of the technological components to be used and the technical prescriptions to be met, the materials and equipment proposed, as well as the updated work schedule. These must be consistent with the offer draft and developed in detail. Any modification of the project will be considered as part of the risks assumed by the Contractor Company. However, such modifications must be informed to the Contract Supervision, which will have a term of fifteen (15) business days to render a decision.

In order for the work to be executed within the expected terms, the Contractor Company shall make partial deliveries, per sub-stretch, of the documentation mentioned above. These sub-stretches are defined in clause 2.1 of the Technical Specifications.

The Hiring Administration has a term of fifteen (15) calendar days to approve the final design documents submitted by Contractor.

For these purposes, the awardee must provide in each stage a digital copy of the BIM models developed, pursuant to the development level established for each phase as per the specifications established in standards PAS 1192-2 (UK) and AIA G202-2013 [Building Information Modeling](#) Protocol Form (USA).

#### **DESIGN–Executive Project and Detail Engineering:**

#### **PAS 1192-2 Specifications:**

Design: Objects are represented in 3D with the attached specification together with information on the allocation of space for operation, access, maintenance, installation and replacement.

**AIA G202-2013 Protocol:**

LOD 400 (Development level): The element of the model is graphically represented within the model as a system, an object or a specific assembly in terms of size, shape, location, amount and orientation with details, manufacture, mounting and installation information.

The documents which make up the executive project must be prepared and signed by the persons appointed as design Project Manager and Project Engineer in the technical offer. If the Contractor Company finds any need for replacement of any of the professionals appointed in the technical offer, it must replace them by other professionals with the same or higher qualification and must attach the acknowledgements evidencing their capacity. The replacement will be assessed by the Contract Supervision based on the instructions that were part of the Administrative Terms and Conditions within a maximum term of ten (10) business days. Once this term has elapsed, such replacement will be deemed accepted.

Before the commencement of the execution of the works, Contractor must have obtained approval by the Hiring Administration of the design documents submitted, in whole or in part, apart from the quality self-control plan, safety and health survey and Environmental Management Plan for the construction stage, as established in the Technical Specifications and their annexes.

Contractor must commence the actual execution of the works before November 1, 2018 (11/01/2018).

The Contractor Company shall have a period of thirty-six (36) months as from the execution of the Contract to reach the Commissioning of the infrastructure. For this purpose, the parties shall proceed as indicated in the relevant annex to the Technical Specifications, which are part of the Contract Documents. During the infrastructure construction and remediation phase, the Technical Representative and Work Manager of the Contractor Company must be the same persons as those appointed in the Offer. If the Contractor Company finds any need for replacement of any of the professionals appointed in the technical offer, it must replace them by other professionals with the same or higher qualification and must attach the acknowledgements evidencing their capacity. The replacement will be assessed by the Contract Supervision based on the instructions that were part of the Administrative Terms and Conditions within a maximum term of ten (10) business days. Once this term has elapsed, such replacement will be deemed accepted.

At least sixty (60) days before the date scheduled for the Commissioning of the infrastructure, the Contractor Company shall submit to the Contract Supervision for analysis the maintenance plan and schedule for the first two years of operation of the infrastructure, at least. These must be consistent with those filed as part of the offer, and developed in detail. Thereafter, the maintenance plans and schedules and replacements thereof will be delivered at least sixty (60) days before the date scheduled for the commencement of their effective term. Any modification will be subject to approval by the Contract Supervision, which will have fifteen (15) business days to render a decision and may not reject it without fair cause. Within this term, the Contractor Company must also submit the tests and commissioning Plan, quality assurance Plan for the maintenance phase, equipment calibration Program and Organizational Chart and payroll for the maintenance phase and environmental action Program for such phase.

The Contractor Company must have a Maintenance Manager who is a Civil or Railway Engineer with experience in at least three railway projects lasting at least six months each. Also, any participation



as work director in charge of the execution or maintenance management of railway projects will also be considered. The Contract Supervision will evaluate and verify that the person occupying the position of Maintenance Manager from the Commissioning to the contract termination meets this requirement. The Contract Supervision will have a period of ten (10) business days to evaluate these requirements as from the date the acknowledgments evidencing their compliance are submitted. It may not reject it without just cause. Upon expiration of this term they will be considered as approved.

The Contractor Company will have a period of sixty (60) days as from the infrastructure Commissioning to submit the as built version of all the graphic and written requirements relating to the work performed, particularly, it must submit the BIM model developed, which must be consistent with the development level established as per the specifications established in standards PAS 1192-2 (UK) and AIA G202-2013 [Building Information Modeling](#) Protocol Form (USA).

#### **CONSTRUCTION:**

##### **PAS 1192-2 Specifications:**

Construction and commissioning: The generic objects are replaced by the manufacturer's objects with the essential information re-linked to the replacement objects and the added manufacturer's information.

##### **AIA G202-2013 Protocol:**

LOD 500 (Development Level) –The element of the model is a field-verified representation in terms of size, shape, location, amount and orientation.

#### **INFRASTRUCTURE COMMISSIONING:**

##### **PAS 1192-2 Specifications:**

Delivery and closing: The model represents the project under construction and all the necessary information is included in the documentation to be submitted, including the maintenance and operation documentation, the commissioning records, the health and safety requirements, etc.

##### **AIA G202-2013 Protocol:**

LOD 500 (Development Level) – The element of the model is a field-verified representation in terms of size, shape, location, amount and orientation.

#### **INFRASTRUCTURE MAINTENANCE**

##### **PAS 1192-2 Specifications:**

Operation and use: The performance is verified based on the employer's information requirements and the project summary and, if necessary, the model is updated. It is possible to add information on maintenance, replacement dates, etc.

##### **AIA G202-2013 Protocol:**

(Development Level) – The element of the model is a field-verified representation in terms of size, shape, location, amount and orientation.

### 5.3 EFFECTIVE TERM

The effective term of the Contract will be eighteen (18) years as from its execution by the parties.

### 5.4 TERMS EXTENSION

If the Contractor Company must conduct any dealings before the central government agencies and department authorities which are required to conclude the work subject matter hereof and which last more than 60 days as from the date on which the Contractor Company commenced the dealings, the terms of this clause referring to the commissioning of the infrastructure and the effective term of the contract shall be extended for several days equal to:

- a) The total term for the processing of the dealings by the relevant agency
- b) minus the days used by the Contractor Company to process the dealings and comply with the requirements ordered by the relevant agencies as per the regulations
- c) minus 60 days.

This criterion will be applied if the delay is not attributable to the Contractor Company.

The terms established for the construction stage and/or all the references to the construction during the effective term of this Contract will be stayed upon measures adopted by the Single Construction Union or due to union-related conflicts which bring about measures adopted by the PIT CNT which are so relevant that prevent the normal execution of the work. In the case of the measures adopted by the PIT CNT, these must prevent the normal execution of the works for a term greater than ten (10) calendar days, if they do not apply exclusively to the work, the Contractor or Subcontractors.

## 6 REMUNERATION OF THE CONTRACTOR COMPANY

### 6.1 REMUNERATION OF THE CONTRACTOR COMPANY

The remuneration payable to the Contractor Company for the execution of this Contract will be under the modality of "Payment upon Availability" (PPD) of the infrastructure.

The Hiring Public Administration shall make the Payments upon Availability (PPD) to the Contractor Company adjusted based on the level of actual availability and the quality of the status of the infrastructure, as per the provisions of the Technical Specifications which are part of the Contract Documents.

The maximum daily Payment upon Availability will be \_\_\_\_\_ US dollars ***[the price included in the offer, plus the Value Added Tax (VAT)]***.

***The payments upon availability to the Contractor Company will be sub-divided into two portions, where:***

***Z***      *Is the portion of the payment which will be adjusted based on the price of the US dollar, Z being a value from 0 to 1.*

***1- Z***    *Is the portion of the payment which will be adjusted based on the Indexed Unit.*

***The z portion will be paid in US dollars*** using the inter-banking quotation of the US dollar (source: Uruguay Central Bank) applicable on the last day of the month n.

**The portion 1 – Z will be** converted to Uruguayan pesos based on the following formula:

$$(PPD\ n - 3 + PPD\ n - 2 + PPD\ n - 1 + PPD\ n) * [(1 - Z) * \frac{TC_0}{UI_0} * UI\ n]$$

**Where:**

PPD<sub>n</sub> Means the payment for availability corresponding to month n, expressed in indexed units.

TC<sub>0</sub> Means the inter-banking quotation of the US dollar (source: Uruguay Central Bank) applicable on the last day of the month prior to the filing of the offer.

UI<sub>n</sub> Means the value of the Indexed Unit as of the last day of the month n.

UI<sub>0</sub> Means the value of the Indexed Unit as of the last day of the month prior to the filing of the offer.

[Figures Z, TC<sub>0</sub> and UI<sub>0</sub> will be numerically determined before the execution of the Contract]

Contractor may request a modification in the Z value upon prior authorization by the Hiring Administration.

The Payments upon Availability will start accruing once the infrastructure has been completely enabled throughout the railway mentioned in the contract, as per the specifications established in the Technical Specifications and the Offer, and once the Commissioning of the infrastructure has been conducted as per the provisions thereof and this has been so recorded in the Infrastructure Commissioning Record. The first date of payment to the Contractor Company will be that following the date of the Commissioning Record.

The income to which the Contractor Company is entitled to receive will be liquidated per calendar four-month period due after the verification of the availability criteria as per the provisions of the Technical Specifications. Such income will be paid by the Hiring Administration within sixty (60) days as from the reception of the invoice issued by the Contractor Company, pursuant to the provisions of clause 2.5.1 of the Technical Specifications. If the payment is delayed for more than sixty (60) days, the Hiring Administration shall pay to the Contractor Company delinquency interest as per the provisions of clause 8.5.

The first and last payment to the Contractor Company will be liquidated as per the following exception: For the first payment, the period from the day following the date of the Infrastructure Commissioning Record to the last day of the relevant pair month will be considered. For the last payment under the contract, the period from the first day of the four-month period ending the contract to the last day of effectiveness of the contract will be considered.

## **6.2 AUDITS TO THE PAYMENT UPON AVAILABILITY REGIME**

The Hiring Administration may request external audits, at its own expense, for the purpose of examining all the aspects related to the regime or procedure of the Payment upon Availability (PPD) governed by the Contract Documents and, particularly, to conduct the liquidation due to readjustment, as per the provisions of clause 2.5.2 of the Technical Specifications.

In addition, the Contractor Company must conduct on an annual basis the quality audit. Each fiscal year, as from the completion of the work, the Contractor Company shall file with the Hiring Administration a quality audit on the performance of the obligations assumed about the Payment

upon Availability regime. The cost of such audit will be fully assumed by the Contractor Company. The selection of the audit firms among world class firms requires prior administrative authorization.

As a result of this audit, the Hiring Administration will prepare numerical qualifications or indexes which reflect the quality levels and direct corrective, preventive or sanctioning actions.

## **7 DEFINITION OF AVAILABILITY**

In order for contractor to be entitled to receive the income in full in the form of payment upon availability in each period of time considered, the infrastructure must meet the following conditions:

- That it is not closed or blocked in a way that prevents the circulation of the trains in any part of the path of the railway infrastructure subject matter hereof, except where motivated by the events described below as exceptions.
- That no failure or event of unavailability occurs in any stretch or area which should have been rehabilitated or rectified by the Contractor Company within the term of response provided for, as the case may be, and which was not.
- That no failure of the type with “no response time” occurs.

Exceptionally, the railway infrastructure will not be considered as unavailable upon occurrence of the following events:

- A.** The total or partial closing or blockage of the infrastructure is motivated by causes attributable to the Hiring Administration itself, to a direct act by the Hiring Administration or to the direct and express orders by the competent authorities in terms of safety or ordering of the railway traffic, not motivated by defaults by the Contractor Company.
- B.** The total or partial closing or blockage of the infrastructure is motivated by ordinary and extraordinary maintenance tasks and works as long as they are conducted according to the maintenance schedule previously defined, or as long as the relevant modification thereof has been requested sufficiently in advance and this has been duly authorized, Contractor Company having to make its best efforts at all times so that these tasks affect the railway operations as minimum as possible.
- C.** During the time incurred to respond to the incidents and events provided for in clause 3.2 of the Technical Specifications in the case of accidents or other contemplated events.
- D.** Causes not attributable to the Contractor Company as long as it evidences before the Contract Supervision that it has adopted all the measures required under the Contract Documents and the applicable regulations.

Regarding item B, the Contractor Company shall have periods to conduct the scheduled maintenance of the infrastructure, as established in the Technical Specifications and their Annexes. At least ninety days before the date scheduled for the commissioning of the work, it will propose to the Contract Supervision the maintenance schedule applicable for these purposes. If changes must be introduced to such schedule, these must be requested thirty days in advance thereof.

As regards item C, the Contractor Company shall submit the incident and events management protocol mentioned in item 2 (“Response to incidents and events”) established in clause 3.2 of the

Technical Specifications at least sixty days before the date scheduled for the commissioning of the infrastructure. Such protocol must specify the procedures and actions to be followed in case of incidents and events. The same must include specific procedures for the most frequent incidents as well as for the most serious ones including, at least, the following: derailing, spill of hazardous substances, detachment of slopes in embankments and slopes, occupation of the railway and its area of coverage, whether by animals or others, damage to the railway not attributable to Contractor which pose a risk, as established in the Technical Specifications and their annexes.

## **8 FINANCIAL-ECONOMIC REGIME OF THE CONTRACT**

### **8.1 BEFORE THE INFRASTRUCTURE COMMISSIONING**

During the infrastructure construction and remediation phase, the Hiring Administration will make an advance payment on account of PPD which will be determined as follows:

- U\$S 30,000,000 (thirty million US dollars) in the month 12 of the work schedule agreed upon.
- U\$S 30,000,000 (thirty million US dollars) in the month 18 of the work schedule agreed upon.

The actual payment of this advancement by the Hiring Administration will be dependent upon the compliance with the aforementioned work schedule agreed and upon the obtainment of the final Financial Closing. If compliance is not verified as per the provisions, the advance payment will be suspended until both compliances are verified.

The aforementioned financial advance payment must be deducted on a linear basis from the PPD throughout the term of the Contract.

Contractor shall submit to the Contract Supervision, within the first 5 business days of each quarter, a description of the activities completed in the previous quarter, detailing the physical progress of each item. The Contract Supervision, within a term of 10 business days, shall approve or request the modifications it deems relevant to the work progress and acknowledge such modifications in a record.

This record will also acknowledge any defects found and not cured, attributable to Contractor, which imply a reduction in the provisions hired, for which a cost for the execution of the works lower than that established in the offer will be recognized.

### **8.2 ACKNOWLEDGED FINAL PRICE OF THE WORKS**

Once the Commissioning Record has been issued (whether for a sub-stretch or for the entire stretch), the Contract Supervision will establish the Acknowledged Final Price (PRF) of the works, expressed in Indexed Units and US dollars, VAT excluded, in the same proportion as that established for the Payments upon Availability, which will be calculated based on:

- a) The initial investment budget awarded, included in Annex 1 of this Contract, including the items of prior Stages, executive Project and Construction;
- b) The result from the modifications requested by the Hiring Public Administration or agreed upon between the parties as per the provisions of the Contract Documents;
- c) The relevant reduction for defects in the execution of the work attributable to Contractor if they were not cured and for which a lower cost in the execution of the works will be acknowledged.

No increase in the final price of the work for modifications involving greater costs which are not the result of the agreement between the parties will be acknowledged.

The Acknowledged Final Price of each work will be notified by the Contract Supervision to Contractor within a maximum term of 30 business days after the commissioning so that the latter may give its conformity or conduct the relevant observations within a term of 15 business days and submit them to the Contract Supervision. If Contractor fails to conduct such observations within this term, the relevant Acknowledged Final Price will be deemed accepted.

### **8.3 ALTERATION OF THE FINANCING INSTRUMENTS**

Any alteration to the financing instruments approved must require prior authorization from the Hiring Public Administration. However, the transactions made on the secondary market referring to negotiable instruments, shares or other financial instruments or securities will not be comprised by such prior authorization obligation.

### **8.4 PAYMENTS TO THE HIRING ADMINISTRATION**

On account of the supervision of the contract, the Contractor Company must pay the amount of 3,532,582 UI (three million five hundred thirty-two thousand five hundred eighty-two indexed units) plus VAT per month for the time of the remediation works and 856,004 UI (eight hundred fifty-six thousand four indexed units) plus VAT per month as from the commissioning of the works. These amounts will be paid to the name of the Hiring Administration using the fund established by it.

The first payment must be made on the fifteenth (15th) day after the issuance of the Holding and Commencement Record mentioned in clause 5.1 of this Contract in the amount corresponding to the days elapsed between such date and the last day of the month following that of the record. The following payments must be made in advance: the term to make the payment of any relevant amount corresponding to the following month will expire on the last business day of each month.

### **8.5 COMPENSATION DUE TO DELAYS IN PAYMENTS**

Should there be any delay in the payments to be made by the parties, and for the purpose of the calculation of the compensation due to the delay, the interest rate corresponding to one year of the CUI curve prepared by BEVSA arising from the simple average of the three last days before the date of enforceability of the obligation, expressed in percentage points, plus one per cent will be considered. The interest will be computed as from the date the obligations become enforceable.

After the elapse of the 20-calendar day period as from the day following the date on which the Contractor Company should have made the payment as per the provisions of Clause 8.4 hereof, the Hiring Administration will enforce the portion of the Contract Performance Bond corresponding to the amount due, the penalty mentioned in Clause 19 and the compensation due to delay mentioned in the paragraph above. In this case, the Contractor Company will be obliged to increase the amount of the bond until the original amount is reached, as per clause 10.2.

## **9 RISK ALLOCATION CONDITIONS**

### **9.1 RISKS OF THE HIRING ADMINISTRATION**

The Hiring Administration shall assume the risks derived from:

- A) Delays in the commencement of the works where these are due to causes exclusively attributable to the Hiring Administration.

- B) Delays and surcharges affecting the works derived from failures in the expropriation process.
- C) Changes in the project scope subject matter of the contract where these changes were made by the Hiring Administration.
- D) Finding of archeological remains interfering with the normal development of the remediation or maintenance of the infrastructure, which will determine the suspension of the obligations by the Contractor Company and the extension of the contract term for the time incurred in the restoration.
- E) Time extensions due to strikes or general or sector strikes ordered by the Unions of Uruguay PIT-CNT or by the relevant union, as long as they are not exclusively against the work, contractor or subcontractor and their term does not exceed ten (10) calendar days.
- F) Changes in the technical, environmental, accessibility and barrier elimination and users' safety regulations.

## **9.2 RISKS ASSUMED BY THE CONTRACTOR COMPANY**

The Contractor Company shall assume the risks and responsibilities derived from the design and construction regarding remediation and maintenance works. The entire PPP contract, its project, design, construction and financing and maintenance aspects are developed to the risk of Contractor.

Particularly, and by way of example only, the Hiring Public Administration shall not be held liable in the following cases:

- A) Failure to obtain the financing relating to the contract subject matter.
- B) Inappropriate design of the project subject matter
- C) Surcharges concerning the construction, remediation or maintenance works, whether due to increases in the work amounts or due to increases in the input prices.
- D) Time extensions concerning the construction, remediation or maintenance works.
- E) Obligations as against third parties as a result of the execution of the contract.
- F) Errors in previous surveys.
- G) Environmental damages generated as a result of the execution of the project subject matter of the contract.
- H) The evolution of the financial market conditions during the contract term.
- I) Hire of insurance policies, renewal thereof upon their expiry, and payment of deductibles. The Contractor Company shall assume any risks derived from under-insurance or over-insurance.
- J) Labor union disputes or strikes.
- K) Non-availability of labor, inputs or materials necessary for the execution of the project subject matter of the contract.

- L) Use of inputs or materials not specified in the contract documents.
- M) Delays in the execution of subcontracts.
- N) Occupational accidents.
- O) Insolvency of the Contractor Company.

## **10 CONTRACT STRICT PERFORMANCE BOND**

### **10.1 CREATION OF CONTRACT STRICT PERFORMANCE BONDS**

The Contractor Company must guarantee the strict performance of the Contract by posting a bond acceptable to the Hiring Administration (see Annex 3 of the Public-Private Participation Contract Project) in an amount of US\$ **90,000,000 (US dollars ninety million)** for the construction and remediation stage.

The amount of the guarantee will be divided into four documents of a same value if created through a surety bond or bank aval.

These will have a minimum effective term of one year and must be renewed at least thirty (30) days before their expiration date, until the Commissioning of the infrastructure.

After the Commissioning of the infrastructure, the contract performance bond for the maintenance stage will be created in an amount of US dollars equivalent to 70 times the maximum daily payment established in Clause 6.1 REMUNERATION TO THE CONTRACTOR COMPANY.

The same as in the case of the contract strict performance bond for the construction and remediation stage, this guarantee must be acceptable to the Hiring Administration and the amount of the guarantee will be divided into four documents of a same value, with a minimum effective term of one year and must be renewed at least thirty (30) days before expiration. The creation of this performance bond is a condition precedent for the Commissioning of the infrastructure.

If, as a result of the execution of the contract, there are variations in the amount or the price of the project due to eventual modifications, the relevant guarantee must be readjusted so that it maintains the due proportion as to the new amount or price of the contract. The new guarantee must be created within a term of twenty days as from the date on which the Hiring Administration is notified of the modification agreement. The amount to be readjusted will be defined, in each case, based on the criteria established in the contract documents, or otherwise, upon mutual agreement by the parties.

### **10.2 EXTENSION OF THE CONTRACT STRICT PERFORMANCE BOND**

If penalties or compensations required from the Contractor Company are enforced against the guarantee, the Contractor Company must replace or extend such guarantee in the relevant amount within a term of fifteen days from the execution thereof; otherwise, this may be a ground for the termination of the Contract.

### **10.3 APPLICATION OF THE BOND CREATED**

The contract strict performance bond will be applied to the following:

- A) The penalties imposed to the Contractor Company.
- B) The expenses in which the Hiring Administration could incur as a result of the incorrect execution of the provisions, the expenses incurred by the Hiring Administration for the delay in compliance with the obligations by the Contractor Company and for the damages caused to the Hiring Administration.



C) The seizure which may be ordered upon contract termination.

D) Any other default incurred by the Contractor Company.

#### **10.4 CANCELLATION OF THE CONTRACT PERFORMANCE BOND**

The contract performance bond for the construction and remediation stage must be returned within a maximum of thirty (30) days after the Commissioning.

The contract strict performance bond corresponding to the maintenance stage must be returned within a maximum of sixty (60) days as from the contract termination.

In the case of contract assignment, such bond posted by the assignor will not be returned or cancelled until the bond of the assignee has been duly created.

### **11 GUARANTEES FOR THE BENEFIT OF CREDITORS**

The Contractor Company may create for the benefit of its creditors and by virtue of the execution of the contract any kind of suretyships or collateral.

#### **11.1 ASSIGNMENT OF GUARANTEE**

The Contractor Company may assign as guarantee exclusively in favor of the entities financing the execution of the project the rights and obligations arising from the contract so that such creditors assign it to a third party.

The assignment of the contract to a third party will be conditioned upon the prior authorization by the Hiring Administration as described hereinbelow.

The Contractor Company must execute the relevant assignment contract with the entity financing the project and formally notify so to the Hiring Administration.

Upon the filing of the financial closing documentation as per Clause 24.2 of the Administrative Terms and Conditions, Contractor must inform of the existence of the assignment contracts as guarantee in favor of creditors. Any alteration regarding these contracts must be authorized by the Hiring Administration.

The assignment of the contract must be conditioned upon the configuration of “default events”. For the purposes of this clause, the following will be considered “default events”:

1. Where the amount corresponding to the Payment upon Availability:

A) For three consecutive four-month periods is lower than 85% of the maximum amount it should have collected on this account.

B) For six consecutive four-month periods is lower than 90% of the maximum amount it should have collected on this account.

2. Where the balance of unpaid penalties exceeds 45% of the contract performance bond, whether in the remediation or the maintenance stage.

3. [Any other “event of default” regulated in the documents agreed upon between the Contractor Company and the entities financing the project, expressly incorporated to this Contract in the Hiring Administration understanding that the same endangers its execution.]

If any of these “events of default” regulated in this clause is verified, the entity financing the project must, in order to conduct the aforementioned assignment, notify its intention to the Hiring Administration and present an assignee.

The financier of the project must provide the Hiring Administration with all the information which, in its discretion, evidences the technical and administrative capacity, and any other capacity, of the person proposed to meet the obligations under this contract. The assignee proposed must have previous experience which is at least equivalent to that presented in the offer awarded. If the public-private participation contract has been partially met, the candidate must, at least, meet the requirements corresponding to the aspects of the contract subject matter pending performance.

Within a term of 60 calendar days as from the filing of the request for assignment, the Hiring Administration must verify whether the assignee proposed meets the requirements and conditions necessary to continue the proper performance of the Contract and may request any extensions or clarifications it deems relevant. After the term stated above without the Administration deciding on the request for assignment, it will be understood that the same has been rejected. That notwithstanding, the Hiring Public Administration may, at any time, render an express decision on the request for assignment.

The assignment of the contract as guarantee to a third party will become effective once the Hiring Administration notifies the acceptance of the proposed assignee. After the assignment is conducted as established above, the assignee will become the holder of all the rights and obligations arising from this Contract.

If an assignee who meets the requirements demanded has been introduced and the assignment has been actually conducted, the creditor and the original contractor will agree on the manner in which the first must compensate the second for the investments made under the Contract.

The assignment will not give rise to any obligations on the part of the Hiring Administration.

## **11.2 SPECIAL PLEDGE OF PUBLIC-PRIVATE PARTICIPATION**

The “special pledge of public-private participation” set forth in section 56 of Law No. 18786 of July 19, 2011, may be agreed upon by the Contractor Company with the financiers of the remediation and maintenance works.

At the time of the filing of the final financing conditions, the Contractor Company must inform of the existence of pledgees. After approval thereof, any alteration in connection with the contract pledge must be authorized by the Hiring Administration.

Within thirty days following the creation of the reference pledge, the Contractor Company must submit to the Hiring Administration two notarial deed copies of the relevant public deed or private document with certified signatures, with their relevant registration with the relevant registry, as per the provisions of section 56 of Law No. 18786 of July 19, 2011 and its regulations.

The pledgee shall be entitled to enforce the pledge whether because the secured obligation has not been met in whole or in part upon expiration or because the contract termination due to default by the Contractor Company has been ordered.

Where the pledge is enforced as a result of the termination of the contract due to default by the Contractor Company, the notice of the enforcement claim must be filed with the Hiring Administration within ten days after the date of the notice to the creditor of the decision to terminate the contract.

Before proceeding to terminate the contract, the Hiring Public Administration shall notify the pledgee.

## 12 INSURANCE POLICIES

The Contractor Company is responsible, pursuant to the applicable regulations, for the damages caused to the works executed or the infrastructure in general, the injuries caused to the people working there and to third parties, as well as for the damage to public or private property, whether such damages are caused by the maneuvers at its facilities or to the infrastructure subject matter of the contract or due to other reasons attributable to it, its representatives, dependents, employees and subcontractors during the effective term of the contract.

For these purposes, the Contractor Company must keep in force during the remediation and construction stage one or more all risk insurance policies. The extension of the coverage shall include, at least, that of the Münchener text for Latin America with the A, B, C, D, E, F and G coverage, including coverage for errors in the design, acceleration expenses, existing goods. The coverage will be effective for the entire term of the works until the Commissioning including a long period for maintenance of up to twelve (12) months after the Commissioning. Moreover, the coverage will contemplate the coexistence of All Risk Construction and All Risk Operation insurance during the maintenance period of the first year of operations. Such policy must provide for Third Party Tortious Liability insurance (E and F coverage) in an amount of at least US\$ 10,000,000 (US dollars two million[sic]) for the period of the work and maintenance including crossed Third Party Liability. This coverage will include as insured all the intervening parties to the contract including the Hiring Administration, the Contractor Company and its subcontractors with the relevant crossed third party liability insurance.

The Contractor Company must have hired, before the Commissioning of the infrastructure and during the entire maintenance period, one or more all-risk operation insurance policies.

The Contractor Company must also maintain, before the Commissioning and during the entire exploitation period, a third party liability insurance policy which provides coverage for injuries to passengers and damage to cargo and third parties for property damage and bodily injuries in an amount of at least US\$ 10,000,000 (US dollars two million[sic]) or its equivalent in legal tender during the entire contract term. This coverage may be annual, renewable or for greater periods and must be renewed at least thirty (30) days before its expiration. All the intervening parties to the contract including the Hiring Administration, the Contractor Company and its subcontractors with the relevant crossed third party liability insurance must be included. Sixty (60) days before the date scheduled for the Commissioning of the railway infrastructure remediated as per the contract subject matter, the Contractor Company must submit to the Hiring Administration for approval an "Insurance Project" with the insurance policies that the Contractor Company proposes to hire for the maintenance stage, plus the technical background supporting such project.

Once the Contractor Company has filed the "Insurance Project", the Hiring Administration may approve it, reject it or make observations in that regard within a term not greater than thirty days. If there are any observations, the Contractor Company shall have a term of fifteen days to cure them. In any event, the Contractor Company may not commence the maintenance stage until the insurance policies approved by the Hiring Administration have been hired.

Such policies may be hired annually or for greater periods and their renewal must be verified thirty days before the expiration of the above. In turn, each of these policies must include evidence of the payment in cash thereof in compliance with the provisions established in this clause. The default on

the terms set forth for the delivery of the policy projects and the insurance policies approved will be considered a serious fault.

Notwithstanding the insurance hired, the Contractor Company shall be equally liable for all the risks not insured as well as for the difference that may arise between the amount actually paid by the insurance company and the total value of the damage caused due to the loss or where due to any cause attributable to the Contractor Company the insurance company fails to compensate the damages. **The deductibles will be under the charge of the Contractor Company.**

The insurance regime hereunder covers, as may be applicable, the subcontractors.

### **13 EMPLOYMENT-RELATED LIABILITY**

The Contractor Company must meet all the employment and social security obligations as well as the measures on occupational risk safety and prevention required under the applicable regulations relevant to the work executed hereunder.

The Contractor Company must hire all personnel and labor (of local origin or from other origins), necessary for the execution of the works, as well as pay its remuneration and food, lodging and transportation, where applicable, in strict compliance with the applicable legislation and particularly with the labor regulations relating to collective bargaining agreements, awards, work schedules, safety and rest days and those relating to social security and occupational HSE.

The Contractor Company must comply with the provisions regarding the allocation of non-specialized laborers as per Law No. 18516 and its regulations, and with the provisions regarding the obligation to hire, for the execution of the works, at least 5% of personnel including persons who have released from jail and who are registered with the Job Bank of the National Services for the Incarcerated and Released, as established by Law No. 17897 and Decree No. 226/006 as well as with any other regulations on the hire of labor.

Irrespective of the obligations set forth by the laws and regulations relating to labor, Contractor must communicate the Contract Supervisor the list of the personnel hired for the execution of the works and their relevant qualifications and keep such list updated at all times.

In order to control the compliance with such obligations, Contractor must file with the Contract Supervision where it so requests: a) a payroll indicating the personal data of the employees who have performed any of the activities under the scope of Contractor, b) the nominated statement of the work history and the stub of payment to the social security entity (Law No. 16713, section 87), c) a certificate evidencing the regular status concerning the payment of the contribution to the social security fund to the relevant entity (Law No. 16170, section 663), d) the acknowledgement by Banco de Seguros del Estado evidencing the existence of the workers' compensation insurance and occupational illnesses insurance (Law No. 16074), e) the work control sheet, the salary stubs and, as the case may be, the applicable collective bargaining agreement. The employees hired by any subcontractor will be considered as employees of the Contractor as regards the exercise of their activities, the responsibilities and obligations derived therefrom for the employee and the employer, in compliance with the provisions of Law No. 18099 and No. 18251. Therefore, wherever the personnel, employees or workers of Contractor are mentioned, this mention comprises those hired by any subcontractor.

If the Contract Supervision detects any errors or omissions, it shall inform them to the Contractor and require that they are cured. Any penalty or sanction applied by third parties due to errors or omissions, whether detected by the Contract Supervision or not, will be paid by Contractor.

The Contract Supervision may order the inspection of the places where the works and/or services are performed in order to verify compliance with the occupational risk prevention and safety regulations.

Contractor shall report any work accidents and occupational illnesses as per the applicable legal provisions and must inform the Contract Supervisor of the events that occurred, delivering, where applicable, such reports.

The special conditions set forth above are considered an essential obligation and failure to comply with them shall cause Contractor to incur in the sanction established in clause 19 of this contract.

#### **14 SUBCONTRACTING**

Subcontractors shall comply with the legal and regulatory normative in force; in any event the Contractor is the only person in charge of the Public Administration for the subcontracting tasks carried out.

#### **15 PERMISSIONS AND AUTHORIZATIONS**

The Contractor Company shall be obliged to negotiate and manage, at his expense, the appropriate permissions, enrollments, registries, authorizations, qualifications or any administrative intervention before any public or private organism and which are necessary for the initiation and execution of the works, as well as the execution of each of the services included in the subject matter of the contract.

#### **16 EXPROPRIATIONS**

The execution and payment of the indemnifications of all the expropriations, as well as relocations, necessary for the works shall be in charge of the Contracting Party.

In case of delays in the expropriations, the Administration could make a partial delivery of one or several sections to execute the work. These executed investments shall be recognized, although the section would not be completed because of the cause aforementioned.

The Hiring Administration shall be in charge of the delays and cost overruns derived from delays in the expropriations or relocations.

#### **17 CONTROL OF THE CONTRACT FULFILLMENT**

The Hiring Administration shall be the competent one to control and monitor the performance of the contract, in conformity with the normative in force.

At the same time of the self-control tasks executed by the Contractor, the supervision tasks stated herein shall be made.

The Contracting Party shall designate the members who will constitute the Control Body of the contract; at least one of the members of the Control Body shall be designated by the State Railways Administration.

This is the maximum hierarchy body in the function of control, the technicians who integrate it shall exercise their functions in a technically independent manner.

The Contract Supervision shall be in charge of the artificial or real person who determines the Hiring Administration.

All the supervision tasks detailed below shall be made by the Contract Supervision or the Control Body, as appropriate, with personnel and equipment of the Hiring Party or by third parties hired for such purpose.

In both cases, the equipment shall be selected considering the opportunity, convenience, suitability and nature of the task to be made.

The supervision complies several functions which change its goals and intensity throughout the contract and they are the following:

#### 1. SUPERVISION OF THE CONSTRUCTION AND RESTORATION WORKS

The supervision of the “construction” and “restoration” works has the goal of ensuring the complete attachment to the conditions that the self-control of the Contracting Company must comply, and it includes the statistical verification of the quality control essays.

This task shall also include the verification of the calibration of the equipment used for the self-control equipment, the personnel aptitude, the compliance with the essay rules, the technical terms and conditions, the essay frequencies and the acceptance and rejection criteria of the materials, processes and finished products; as well as the fulfillment of the stated Work Schedule.

The Work Supervisor shall carry out monthly reports to the Control Body of the Contracting Party and to the Contractor as regards the way the self-control is made specifying the potential deviations, mistakes and omissions, their severity and the measures that have been taken or that will be taken to correct them.

#### 2. BIMONTHLY MONITORING AND ASSESSMENT OF THE SERVICE LEVEL OF THE INFRASTRUCTURE

The supervision shall make a constant monitoring of the functioning and availability of the infrastructure, by means of the procedures he considers appropriate for each case; being able to request all the information available to the Contractor and to all the bodies which are part of the national railway system.

According to the procedure stated in Section 2.5.1 of the Technical Specifications, within a term of fifteen (15) calendar days starting from its reception, the Work Supervisor shall revise the calculations and shall send such revision to the Control Body of the Contracting Party.

#### 3. ANNUAL REPORT ABOUT THE FULFILLMENT OF THE CONTRACT

The Contract Supervision shall make a detailed annual report directed to the Control Body of the Contracting Party.

In this document, apart from the appropriate considerations, he shall inform about the fulfillment of the Contractor as regards the Comprehensive Management of the Infrastructure and the evolution of the different performance indicators; at the same time, he shall execute the definite annual settlement corresponding to the Payment upon Availability.

## 18 CONTROL BODY OF THE CONTRACTING PARTY

The Control Body shall exercise the functions which are stated below:

- **REPORTS OF THE CONTRACT FULFILLMENT**

The Control Body shall execute a detailed annual report directed to the authorities of MTOP, to the Directory of the State Railways Administration, to the OPP and to the Project Unit of PPP of MEF.

In this document, apart from the appropriate considerations, he shall inform about the fulfillment of the Contractor as regards the Comprehensive Management of the Infrastructure and he shall validate and report the definite annual settlement corresponding to the Payment upon Availability.

- **DULY REPORT TO THE AUTHORITIES OF THE CONTRACTING PARTY**

The Control Body of the Contracting Party shall execute a semiannual report directed to the authorities of MTOP, to OPP and to the Project Unit of PPP of MEF, according to what has been stated in Section 66 et seq. of the Decree 17/012 of January 26th of 2012, complementary and modifying rules and that stated in the “Guide for the submission of control and monitoring reports” published in <http://ppp.mef.gub.uy/10000/2/areas/guia-de-mejores-practicas-recomendadas.html>.

The report shall include:

1. an assessment of the functioning of such contract and, if any, the problems and violations which may have affected the Contractor warning, if this is the case, of the difficulties that, in case of continuation of these facts, could have lead for the Contracting Party.

- **EXECUTE AUDITS TO THE COMPREHENSIVE MANAGEMENT TEAM OF THE CONTRACTOR**

The Control Body of the Contracting Party shall audit the process of the Comprehensive Management of Infrastructure of the Contractor and eventually, he shall recommend his substitution in case the conditions expected in the bid specifications for this case are verified.

- **CARRY OUT SUPERVISION AUDITS**

The Control Body of the Contracting Party could audit the management of the supervision, either it has been made by the own personnel or hired for such purpose and eventually he shall recommend its substitution.

## 19 PENALIZING SYSTEM FOR VIOLATIONS

The determination of the applicable sanctions shall become effective according to the principles of legality, due process, equality, proportionality, generality and adaptation to the purpose.

The sanctions shall become effective immediately, without prejudice to the actions to which the Contractor is entitled within the framework of the procedures of controversies’ solution and resources expected in the LCPPP, in its regulatory decrees or in the contract, as well as regardless of the compliance of the administrative resolution which may impose to the Contractor a certain obligation to provide, make or not make according to regulation the normative.

The application of such sanctions shall proceed without prejudice to the administrative, civil or legal responsibilities which may belong to the Contractor towards the Contracting Party or third parties, who have been affected as a consequence of the violation.

#### **19.1 INFRINGEMENTS**

The following tasks are considered infringements for the purposes of these bid specifications:

- A) Carry out activities without having obtained the corresponding permissions, licenses or authorizations.
- B) Fail to provide the Contract Supervision with the payment proof of the obligations in labor and social security matter according to Section 8 of this contract.
- C) Fail to send the required documentary information, in due time and proper form, or send partial information or with a modified content.
- D) Fail to comply with any of the terms stated in Sections 5.1 y 5.2 of this contract.
- E) Fail to comply with the terms stated in Section 8.4 of this contract.
- F) Fail to submit the financial statements audited within a term of six (6) months starting from the closure of each fiscal year.
- G) Fail to control the costs and expenses of the activity so that the Contracting Party could know the financial statement of the Contractor in any moment of the term of the contract.
- H) Non-compliance of any other obligation, in due time and proper form, stated in this contract, in the Administrative Conditions, in the Technical Specifications or in any other document of a contractual character.
- I) Being in default as regards the payment of owed premiums on account of required insurances and guarantees.
- J) Non-compliances defined in Section "2.4.2 Penalties" of the Technical Specifications which belong to the contract documents.

#### **19.2 FINES**

The infringements aforementioned, except the paragraphs I) and J), would be subject to the application of a fine of 8,000 IU (eight thousand indexed unities) by continuous day, starting from the date in which the infringement is produced until the date in which the purpose which caused the infringement was solved.

The infractions I) "Being in default as regards the payment of owed premiums on account of required insurances and guarantees" and J) "Non-compliances defined in Section "2.4.2 Penalties" of the



Technical Specifications” which shall subject to a fine of 15,000 IU (fifteen thousand indexed units) by continuous day, starting from the date in which the infringement is produced until the date in which the purpose which caused the infringement was solved.

### **19.3 PROCEDURE TO IMPOSE SANCTIONS**

The application of such sanctions shall proceed without prejudice to the administrative, civil or legal responsibilities which may belong to the Contractor Company towards the Hiring Administration or third parties, who have been affected as a consequence of the violation.

The determination of the applicable fines shall become effective according to the principles of legality, due process, equality, proportionality, generality and adaptation to the purpose. The Contract Supervision shall irrevocably communicate to the Contractor Company when it has incurred in a fine and its amount.

The sanctions shall become effective immediately, without prejudice to the actions to which the Contractor Company is entitled within the framework of the procedures of controversies’ solution and resources expected in the legal, regulatory and contractual regulation, as well as regardless of the compliance of the administrative resolution which may impose to the Contractor Company a certain obligation to provide, make or not make according to regulation the normative.

If the payment is not made at 20 calendar days of having informed the fine, the interests stated in Section 8.5 will start to be taken into account, until the effective payment date of the fine. Once the term of 40 days has expired, the Hiring Administration shall execute the proportional part of the Performance Bond of the Contract for the total of the owed amount.

## **20 ASSIGNMENT, MODIFICATION AND RENEGOTIATION OF THE CONTRACT**

### **20.1 ASSIGNMENT OF THE CONTRACTOR**

The Contractor Company could assign total or partially the contractor to a third party, previous express authorization of the Hiring Administration, complying with the requirements stated in the regulatory law and decrees, in conformity with the procedure expected.

As long as all the formalities related to the assignment and constitution of guarantees are not fulfilled, the Contractor Company who is the assignor shall keep all his obligations to the Hiring Administration.

Once the assignment is made, the assignee shall be surrogated in all the rights and obligations belonging to the assignor.

During the last three years of the contract assignments shall not be allowed.

### **20.2 MODIFICATION OF THE CONTRACT BY THE ADMINISTRATION**

The Hiring Administration could not make a modification of the contract until the term of the twelve months starting from its execution has elapsed.

No contract modification could be made without the previous report to the Office of Budget and Planning and to the Ministry of Economy and Finances according to what has been stated in Section 71 of Decree 0017/012 in the writing given by Section 3 of the Decree 251/015 of September 14th of 2015.

In case the Hiring Administration considers that it is necessary to make a modification in the contract, such modification shall comply with all the requirements demanded by the Act No 18.786, of July 19th of 2011 and its regulation.

If it is an extension of the obligations, the maximum accumulated amount of the new investments required by the modifications could not exceed in no case 2% of the total value of the works of this contract.

The Contractor Company shall have the right to a monetary compensation which corresponds for the additional net costs incurred in the original contract, as well as any other damage or injury which may result from such modification. For the calculation of this compensation, the Hiring Administration shall resort to the unit prices for the construction stage and to the maintenance costs which are of the Annex 1 of this Contract.

The reduction or increase of the maximum Payment upon Availability as a result of the contract obligation by the Public Administration of the Hiring Party shall be calculated in such a way that the present value of the flows which result from the modification is null, according to the following formula:

$$VPN = -I + \sum_{t=1}^T \frac{PPDM + INGR_t - C_t}{(1+r)^t} = 0$$

Where:

- VPN: net current value of the cash flow which shows the effects of the contract modification.
- I: investment required for the contract modification.
- PPDM: marginal Payment upon Availability required annually so that the VPN is equal to zero.
- INGR<sub>t</sub>: additional incomes or savings in the costs resulting from the contract modification, for the *t* period.
- C<sub>t</sub>: additional costs resulting from the modification of the contract, for the period *t*.
- T=1 it shall be the first year of the infrastructure start-up.
- T : it is the quantity of years for the payment of PPDM.

The discount rate shall be calculated in the following way:

$$r = k_E * R_E + (1 - k_E) * R_D * (1 - tx)$$

Where:

- $k_E$  = the proportion of the investment which comes from the Contractor's capital, data obtained from the Financial-Economic Plan of the Bid.
- $R_E$  = rate of the own capital cost stated in the economic offer

$R_D$  = it is the rate of the debt cost incurred with third parties, it arises as a weighted average of the interest rates of the different debts incurred with third parties.

$tx$  = income tax rate in force for the Contractor at the moment of the renegotiation.

### 20.3 MODIFICATIONS BY MUTUAL CONSENT

After twelve months of the execution of this contractor, the Contractor Company and the Hiring Administration could agree on the modification of the characteristics or the quantity of the works or services which are the subject matter of this contractor. The contract modification could not be made without the previous pronouncement of the Office of Budget and Planning and of the Ministry of Economy and Finances.

A new or extraordinary work or service is that work or service which couldn't be expected in the initial contract and, therefore, it doesn't appear explicitly, nor it could be deduced implicitly from the contract documents; however, later it becomes essential and it would supplement the work or service which was initially hired. It also includes the work or service required by the Hiring Administration and which is related to the subject matter of this contract and which affects an area different from the one which was originally hired.

Those works which, although they are not explicit in the contract documents, are necessary and inherent to the execution of the hired obligations are not included in these concepts.

The valuation of these works or services shall be determined, jointly, according to the following:

- A. For the valuation of new or extraordinary works or services, the Contractor Company shall prepare a detailed budget, with a breakdown of the unit prices which shall be determined on the basis of the unit prices or criteria stated in the contract, which could be updated with the corresponding ratio.
- B. In the case of new supplies which don't have unit prices in the contract documents, the parties shall agree on the corresponding prices, which in no case, could be higher than the market prices of the date involved.
- C. The valuation of the new or extraordinary works and services shall include the expenses incurred by the Contractor Company, apart from the corresponding utility on the basis of the documents of the financial bid.

The Public Administration of the Hiring Party and the Contractor Company could agree on lower prices, as long as they comply with the quality indicators and the work design.

If no agreement is arrived between the parties, the Hiring Party reserves the right to hire and execute the works with a third party, for which the Contractor Company shall provide the facilities or information he requires. The Contractor shall not be responsible for the delays and cost overruns of this contract caused by such third party.

The terms for the new works or services shall be agreed between the parties on the basis of the characteristics typical of the new projects.

In any case, any increase or reduction of the costs of the contract price shall be materialized in a contractual modification subscribed by the parties.

The monetary compensation which corresponds to provide to the Contractor Company for the costs incurred as a consequence of the contractual modification agreed between the parties, shall be based on an increase of the Payment upon Availability (PPD) in those modifications produced before the start-up of the infrastructure. Likewise, they could agree on an increase of the contractual term for the restoration stage and its corresponding increase to the total term of the contract.

In the case of modifications produced after the start-up of the infrastructure, the payments for the reference monetary compensation shall be made in conformity to what has been agreed between the parties. The compensation could be arranged on the basis of a lump sum, an increase of the Payment upon Availability (PPD), an increase of the contractual term or a combination of these which is agreed between the parties, according to the criteria duly determined by the Hiring Administration.

As of the fifteenth (15) year of validity of the Contract, the parties could agree on the extension of the maintenance term, as well as its associated payment; in the same technical conditions and for a minimum period of 7 years.

#### **20.4 RENEGOTIATION OF THE CONTRACT**

Any of the parties could demand to the other the renegotiation of the contract, when one of the following hypothesis occurs:

- A) When the Hiring Administration modifies, for purposes of public interest, the costs and benefits parameters which were expected when hiring, and all the following requirements are complied:
  - 1. That the modification occurs after the signature of the contract and it couldn't be reasonably projected by the Contractor Company at the moment of its execution.
  - 2. That the modification changes significantly the economic-financial equation resulting from the contract at its execution.
  - 3. That the modification is relevant particularly in the field of the contract, and it isn't produced by measures which seek an economic-financial effect of general scope.
- B) When causes of force majeure directly determine the substantial break of the economic-financial equation resulting from the contract at its execution.
- C) When any of the suppositions expected as a condition of its revision according to Section 48 of the Act No 18.786 occurs and the parties do not come to an agreement about the modifications of the contract.
- D) If the load flow by the track section to which this contract refers to, exceeds the two thousand two hundred and fifty (2,250) millions of tons/kilometers in a period of 12 consecutive months (value verified by the National Directorate of Railway Transport).

In the case of the paragraph A) of this Clause, the reestablishment of the economic-financial equation of the contract shall be calculated in the following way:

The costs or income resulting from the event which originated the renegotiation of the contract shall be specified using the market criteria. In order to determine the value of the costs incurred to the Contractor Company, it shall propose a budget which shall be approved by the Hiring Administration.

In case the event results in extraordinary income for the Contractor and they decide to make a renegotiation, the Administration shall be the one who propose the amount.

Once the flows resulting from the event are determined and once an agreement between the parties is reached, they shall proceed to calculate the impact of the renegotiation, using the following formula:

$$VPN = \sum_{t=1}^T \frac{PPDM + INGR_t - C_t}{(1 + r)^t} = 0$$

Where:

VPN: net current value of the cash flow which shows the effects of the events which originated the contract renegotiation.

PPDM: marginal Payment upon Availability (positive or negative) required annually so that the VPN is equal to zero.

additional incomes or savings in the costs resulting from the events which originated the contract renegotiation, for the *t period*.

C<sub>t</sub>: additional costs resulting from the events which originated the contract renegotiation, for the *t period*.

t=1 it shall be the first year in which a marginal Payment upon Availability is made.

T: last year in which the marginal PPD becomes effective.

r: discount rate. The discount rate shall be calculated in the following way:

$$r = k_E * R_E + (1 - k_E) * R_D * (1 - tx)$$

Where:

k<sub>E</sub> = the proportion of the investment which comes from the Contractor Company's capital, data obtained from the financing documents.

R<sub>E</sub> = rate of the own capital cost stated in the economic offer.

R<sub>D</sub> = it is the mean interest rate in force at the moment of calculating the rebalance, published by the BCU for large and medium-sized companies in Indexed Units, which corresponds according to the amount and term stated in the financing documents.

tx: income tax rate in force at the moment of the renegotiation.

The new amount for the maximum daily Payment upon Availability for all the clauses of this contract shall be the same as the amount in force before the rebalance, without VAT, plus PPDM/365,25,

where PPDM is the amount calculated as the previous paragraphs say. The appropriate Value Added Tax (VAT) shall be added to this amount.

The Hiring Administration shall choose the best way to implement the renegotiation, reserving its right to make effective a marginal Payment upon Availability, either within the original period of the contract or once the validity was extended.

If the term of the contract is extended due to this cause, the parties could agree modifications in the obligations of the Contractor for the extension period, which shall be taken into account when calculating the PPDM.

The non-request of the implementation of the contract renegotiation, shall imply the waiver of this right to request it after one year as from the events which may have caused this renegotiation. In the case of the events which occurred before the start-up, such term shall be counted starting from the day of the start-up.

For the purposes of the paragraph B) of this clause, those events of Act of God or force majeure that at the moment when occurred were an insurable risk in Uruguay or abroad, shall not give rise to the reestablishment of the financial conditions of the contract. The macroeconomic conditions and strikes are not considered causes of force majeure.

The Contractor shall not have the right of an indemnification for loss, damage and other prejudices occurred in his facilities, materials and work tools, irrespectively of which were these prejudices and their causes, even in the case they are made for force majeure.

In case of force majeure events which at the moment of their occurrence do not constitute an insurable risk and which do not prevent the fulfillment of the contract, the parties shall agree if they accept a recomposition of the financial and economic balance of the contract or if they prefer its termination.

The parties promise to use all the necessary measures and actions so as to minimize the effects generated by the force majeure events.

Si any of the parties do not accept the renegotiation or the parties do not come to an agreement in the negotiations, any of them could claim jurisdictionally an indemnification in conformity with Section 54 of the Act No 18.786.

The party who requests renegotiate the contract shall report it to the counterpart stating the clauses which are object of renegotiation, the causes which justify it as well as the solutions suggested in such sense and they shall proceed according to Section 73 of the Decree 17/12.

The Contractor could not require or accept renegotiation requests of the contract before the start-up of the infrastructure.

## **21 TERMINATION OF THE CONTRACT**

### **21.1 TERMINATION CAUSES OF THE CONTRACT**

The termination causes of the contract are the following:

- A) Compliance of the contract according to its terms.
- B) Expiration of the term stated for its validity or of its extensions.

- C) Unilateral and anticipated resolution of the contract due to a serious default of the Contractor:
1. When the amount corresponding to the Payment upon Availability in three consecutive four-month period is less than 80% of the maximum amount stated in the contract for such concept for the same period.
  2. When the amount corresponding to the Payment upon Availability in six consecutive four-month period is less than 85% of the maximum amount stated in the contract for such concept for the same period.
  3. Reduction of the capital of the Contractor Company without the express authorization of the Hiring Administration.
  4. Non-authorized delays in the start-up of the works which are the subject matter of the contract, of more than one hundred and eighty days, without prejudice of the application of the fines stated herein.
  5. When in the operation stage, they generate fines for an amount equal or higher than 50% of the Performance Bond of the Contract in a period of four years.
  6. Do not keep the performance bond of the contract in its required levels or not renovate it timely.
  7. Do not keep the validity of the insurance policies.
  8. Because of the beginning of a division, merging or transformation process of the Contractor Company without the authorization of the Hiring Administration.
  9. To have the goods of the concession or reversible property in a different way from what has been expected in this contract.
  10. For non-fulfillment of the financial closure in the term stated by the Administration.
  11. Delivery of required information, with data or records maliciously false or incomplete, when from this result the commission of acts which deserve the accusation for swindle or fraud committed against the state.
- D) Recovery stated by the Hiring Administration for reasons of public interest.
- E) Impossibility to comply with the contract as a consequence of measures taken by the State.
- F) Insolvency of the Contractor Company.
- G) Impossibility of the contract compliance as a consequence of a bankruptcy process as regards the Contractor Company.
- H) Occurrence of any cause which disqualify the Contractor Company the effective compliance of the contract.
- I) Absolute impossibility of contract compliance by the Contractor Company as a consequence of the existence of causes of force majeure or Act of God. If the Act of God or force majeure event would affect only the compliance of some obligations of the contract or the ones related to a part of the committed investment, and as long as the other obligations of the contract are subject to an independent compliance, the parties shall agree, according to the contract documents, the adjustment of the legal, technical and economical specifications of the contract, in order to adapt it to the compliance of the surviving obligations.
- J) Mutual agreement between the Hiring Administration and the Contractor Company.

- K) Payment default by the Hiring Administration of three consecutive periods and/or a registry of 10 payment defaults in a period of 5 mobile years.
- L) Do not respect the arbitration award by any of the parties.

The termination of the contract, in all the cases, will cause the definite settlement with an adjustment of the conditions stated in the clause 21.5 the charge of the discounts which could correspond for any cause and the civil and legal responsibilities which may derive from the breach of the contract.

The APC could consider the contract as terminated within full rights and automatically notifying his decision with at least 30 days in advance at the termination of efficacy of the contract and in any moment of its validity, basing on the breach of the Contractor Company, if he has incurred in the causes stated in the paragraphs c) or l).

The APC could rescind, previous demand for the fulfillment for a term of at least 30 consecutive days, if the causes stated in paragraphs e), f) or g) occur.

The Contractor Company could request the termination of the contract previous demand for the fulfillment for a term of 30 consecutive days if the APC would incur in a cause stated in the paragraphs d), h), k) or l).

If the contract terminates by mutual consent, paragraph j), the parties shall leave proof of their decision of terminating in which they shall specify the effective date of the termination. The parties shall communicate their decision to the creditors who have set a pledge about the rights emerging from the contract and/or its termination, at least 30 days before the termination.

If the pledgees understand that a cause of serious default could be stated, they could ask the Hiring Administration to act about the effective existence of such default.

## **21.2 CONSEQUENCES OF THE EARLY TERMINATION**

### **21.2.1 FOR CAUSES ATTRIBUTABLE TO THE CONTRACTOR COMPANY**

#### **A. PROCEDURE BEFORE THE TERMINATION OF THE CONTRACT**

In case of breach of contract by the Contractor Company, they shall proceed according to the following:

1. The Hiring Administration shall notify the Contractor Company, and its due case, to the creditors which have the pledge constituted in their favor, over the non-fulfillment of the contract and other relevant antecedents.
2. The Contractor Company could present in a term of thirty days a report with the measures to rectify the offenses or avoid their occurrence in the future, informing the pledgees and assignees.



3. The report could address, among others, the following matters: management measures and changes in the administration of the Company. Besides, an implementation schedule of the proposed actions shall be specified.
4. The Hiring Administration, based on such report, shall state a term to implement measures, which in no case could be lower than 30 days nor higher than 90 days. The appropriate implementation of the proposed measures shall be verified by the Contract Supervision.

If the Hiring Administration understands that the damage caused by the breach of the contract could not be rectified by the Contractor Company or that the measures she proposes are not enough or even when the measures are accepted, if in the term set by the Administration the non-fulfillment situation is not reverted, the Hiring Administration shall notify the Contractor Company, and in its case, to the pledgee about her decision to terminate the contract.

If the pledgee notifies the Hiring Administration in a term of 10 days his aspiration to execute the pledge, the Hiring Administration shall publicly convene the interested parties to participate in the auction, according to Section 58 of the Act No 18.786, of July 19th of 2011 and Sections 82 et seq. of the Decree No 017/2012.

#### **B. AS REGARDS THE CONTRACT INTERVENTION**

If the Administration would take the decision to resolve unilaterally and early the Contract due to a breach of the Contractor Company or if she abandons the project or due to any other cause stated in the Act 18.786 and as long as the public interest requires it, the Hiring Administration shall be in charge of the recovery or exploitation of the infrastructure in order to ensure the efficient, effective and continuously provision of the service. For such effects, the Hiring Administration shall designate an auditor, in conformity with that stated in the current regulations.

Once the intervention was verified, one or more assignees could be presented according to Section 80 of the Decree 17/12. In that case, the Hiring Administration shall dispose a term of 90 days to verify that the proposed assignee, complies with the necessary requirements and conditions to continue with the compliance of the contract.

If an assignee approved by the Hiring Administration doesn't appear according to the regulation within a year, the Contracting Administration shall resolve the continuation or interruption of the activities which are the subject matter of the Contract. If they decide the continuation, the Administration shall proceed to a new adjudication according the Sections 19 et seq. of the Act No 18.786 of Public-Private Participation, to a public auction or, failing that, it shall assume by itself the activities which are the subject matter of the Contract.

The intervention by the Hiring Administration doesn't preclude the right of the Contractor Company to continue perceiving the Payment upon Availability, in the conditions stated in the contract documents, as long the compensations are kept.

#### **C. TERMINATION OF THE CONTRACT FOR CAUSES ATTRIBUTABLE TO THE CONTRACTOR COMPANY**

In case the public auction is made, either in accordance with Section 82 of the Decree No 17/012 at the request of pledgee or at the request of the Hiring Administration, once deduced the expenses, fines and damages produced, that produced shall be directed to the payment of credits of the pledgee/s. In case of a remains it shall be at the disposal of the native contractor. In case of an unpaid amount of the credit of the pledgee, the successful bidder shall assume its payment.

If no interested party is authorized to participate in the public auction for founded reasons or when there are not interested parties or if the Hiring Administration would decide the interruption of the contract activities or if he decides to carry out himself the activities or he decides to make a new adjudication according to Section 18 et seq. of the Act 18.786, they shall proceed as it is explained below, depending of the extinction, if it is produced in the recovery stage or in the exploitation stage.

In any of the cases, if the resulting amount to be paid by the Hiring Administration, once deduced the expenses, fines, damages and prejudices occasioned, is higher than the amount owed by the Contractor Company to the pledgees, the Hiring Administration shall first pay them and the remains shall be at the disposal of the native contractor. If, on the contrary, such amount is lower than the amount owed to the pledgee, the latter could exercise his right through the corresponding jurisdictional process against the Contractor Company.

#### **C1. TERMINATION BEFORE THE START-UP OF THE INFRASTRUCTURE SERVICE**

If the early termination of the contract would have occurred during the stage previous to the Start-Up of the Infrastructure, the Hiring Administration shall pay to the Contractor the investments made in the framework of the contract, discounting the amount paid as an advance, according to the Clause 8.1 of this contract. For such purposes, the investments made are the ones which have been approved by the Contract Supervision. If the Contract Supervision has approved investments made in the framework of the Clause 20.2, they shall be considered as part of the investments effectively made in the framework of the contract. The base information in order to make this valuation of the investment made shall be the one included in the progress reports mentioned in the Clause 8.1 of this Contract. The Contract Supervision shall make a final report of the work progress for the period which includes from the last progress report until the moment of the cause of the early termination, so as to verify the investment effectively made by the contractor. The investments shall be valued according to what has been stated in the PEF of the bid. In no case, cost overruns in which the Contractor Company would have incurred nor price increase in which he would have incurred after the presentation of the bid will be considered.

If the conditions of the facilities at the moment of the early termination of the contract would have suffered from any type of deterioration, to the aforementioned they shall subtract the estimated amount of the cost that the works to be made have so that the conditions reached will be approved by the Contract Supervision. The Hiring Administration shall agree on the amount of such costs.

The performance bonds of the contract shall be executed corresponding to the goal of making effective the charge of fines, expenses, penalties and deductions which may correspond, as well as for the damages produced. If this is not sufficient, he could discount from the appropriate payment to the Contractor, the amount which exceeds the value of the executed bond.

The sanction for damages that shall be paid to the Hiring Administration shall be of 180 days of the maximum daily Payment upon Availability stated for this contract, plus VAT.

#### **C2. TERMINATION AFTER THE START-UP OF THE INFRASTRUCTURE SERVICE**

If the early termination of the contract would have occurred after the Start-Up of the Infrastructure, they shall resort to the arbitration procedure to define the amount that the Hiring Administration owes to the Contractor Company. For such purposes, the arbitrator will be requested to estimate the cost which would have in this moment, at market values, to carry out the investments required by the documents of the call which gave rise to this contract, including the studies and projects, and to this amount he shall discount the quantities corresponding by the state in which is located the infrastructure.

If the Hiring Administration would have chosen the termination of the contract activities, such circumstance shall not be taken into account for the asset valuation.

The arbitration procedures mentioned in the above paragraphs could have initiated by the Contractor Company or by a pledgee.

If the Hiring Administration would take the decision to settle the Contract, unilaterally and early, due to a violation of the Contractor Company or if he has abandoned the project, the original contractor shall pay to the Administration on account of damages the following:

- 120 days of the maximum daily payment stated in this contract, plus VAT, if at the termination date would remain forty-eight (48) months or more of validity of the contract.
- 60 days of the maximum daily payment stated in this contract, plus VAT, if at the termination date would remain less than forty-eight (48) months of validity of the contract.

For such purposes, the maintenance bonds of the contract shall be executed and if it is not enough, the amount exceeding such bonds shall be discounted from the payment which corresponds to be made to the contractor.

#### 21.2.2 FOR CAUSES ATTRIBUTABLE TO THE HIRING ADMINISTRATION

The causes attributable to the APC are the ones stated in paragraphs d), e), k) and l) in case of breach of the contract of the contracting party of the Clause 21.1. In case of redemption, the Public Administration of the Hiring Party shall formally notify the Contractor, the Resolution of the Executive Power, at least six months in advance.

If the termination was attributable to the Hiring Administration, it has to pay the value of the investments made in conformity with the contract documents and, specially, in that stated in the Clause 21.3 of this contract; besides, it shall be indemnified for the damages it may suffer, calculated according to the Clause 21.4 of this contract; subtracting the amounts of fines which were unpaid.

The method of payment shall be stated in the clause 21.5 of this contract.

#### 21.2.3 REDEMPTION

The redemption shall proceed for reasons of public interest duly founded and it shall be resolved by the Executive Power.

The Hiring Administration shall formally notify the Contractor Company of such Resolution of the Executive Power, at least six months in advance, of the decision to redeem the contract.

When the termination is made by the redemption of the Hiring Administration, she shall pay to the Contractor Company the value of the investments made in conformity with that stated in the contract documents, and specially, in that stated in the Clause 21.3 of this contract; besides, he shall indemnify him for the damages he may suffer, calculated according to the Clause 21.4 of this contract; subtracting the amount of fines which may be unpaid and the estimation of cost that the works to be made would have so that the delivery conditions of the facilities comply with what has been stated in the contract documents.

The payment shall be made once determined the contract termination.

#### 21.2.4 FORCE MAJEURE

In case of impossibility of the contract compliance as a consequence of the existence of causes of Act of God o Force Majeure, the contract shall extinguish and the Hiring Administration shall pay to the Contractor Company the value of the investments made in the framework of this Contract, in conformity with the clause 21.3.

The method of payment shall be the one stated in the clause 21.5 of this contract.

The APC shall receive the indemnification corresponding for the insurances taken by the Contractor in the framework of this contract.

#### 21.2.5 TERMINATION OF THE CONTRACT BY MUTUAL CONSENT

The contract could be terminated at any moment by mutual consent of the parties, with the consequences convened by both parties in the corresponding document. Likewise, they shall obtain the written consent of the creditors who have a pledge constituted over the rights emerging from the contract and/or its assignment.

In no case, the Hiring Administration shall pay to the Contractor Company a sum higher than the investments made and agreed in conformity with this contract, discounting their amortization degree and the cost calculation that the works would have so that the delivery conditions of the facilities comply with that stated in the contract documents.

### 21.3 ASSESSMENT OF THE INVESTMENT MADE

#### 21.3.1 BEFORE THE START-UP

If due to causes attributable to the Hiring Administration, either for non-fulfillment or redemption, the contract would terminate before the start-up of the work, the value of the infrastructure for the purposes of this clause shall be determined in the following way:

- a) The quantities stated in the Annex 1 of this Contract corresponding to the concepts of Previous Stages and Studies and Projects in which he would have incurred at the time of the contract termination.
- B) Plus the sum of these products:
  - The percentage of physical progress at the moment of termination, for each of the items of the Construction concepts.
  - multiplied by the total investment, in Indexed Units without VAT, expected for such item in the adjudicated bid.
- C) If appropriate, they shall add the reached value of the additional investments that the Hiring Administration would have requested, or the parties would have agreed upon, according to that stated in the contract documents,
- d) If appropriate, they shall subtract the value of the defects attributable to the Contractor Company which imply a reduction of the hired provisions and which weren't solved, by which it would be appropriate to recognize a cost in the execution of the works which is lower than the one stated in the bid
- e) If appropriate, they shall subtract the value of the damages caused in the works for deterioration.

The base information in order to make this valuation of the investment made shall be the one included in the monthly reports of physical progress mentioned in the Clause 8.1 of this contract. If the parties do not come to an agreement, the controversy shall be subject to arbitration.

Additionally, they shall pay the cost of the capital and of the credits incurred by the Contractor Company until the termination, which shall be calculated in the following way:

$$CC = \left[ \sum_{i=1}^{s-1} I_i * \prod_{j=i}^{s-1} (1 + r_j) \right] - \sum_{i=1}^{s-1} I_i$$

Where:

**$I_i$ :** it is the investment made in the “i” month, documented by the Contract Supervision in the manner stated before in this same clause.

**$s$ :** it is the month in which the termination of the contract produces, starting from the signature of the contract.

**$r_j$ :** it is the rate of weighted average capital cost in the “j” month, which for these effects it shall be calculated with the following formula:

$$r_j = k_j \cdot r_k + (1 - tx) \cdot d_j \cdot r_d$$

Where:

**$k_j$ :** It is the percentage of the investment of the “j” month which comes from the capital of the Contractor Company, obtained from the Financial-Economic Plan presented in the bid.

**$r_k$ :** It is the monthly return to the capital of the Contractor Company, it complies with the equation  $(1+r_k)^{12} = [\bullet]$  [the TIR of the shareholder mentioned in the bid].

**$d_j$ :** It is the percentage of the investment of the “j” month which comes from the debt of the Contractor Company, obtained from the Financial-Economic Plan presented in the bid.

**$r_d$ :** It corresponds to the monthly interest rate, which complies with the condition that  $((1+r_d)^{12}) - 1$ , would be equal to the annual interest rate in US dollars of the debt incurred by the Contractor Company for the execution of the work which is the subject matter of this contract. It only corresponds to the interest rate and it doesn't include any type of commissions. If the Contractor Company would have more than one type of financing, it corresponds to the average of the weighted rated by the amount of each type of debt.

**$tx$ :** It is the income tax rate applied to the Contractor Company of this project in the recovery stage.

### 21.3.2. As from the start-up

If due to causes attributable to the Hiring Administration, either for non-fulfillment or redemption, the contract would terminate early in the infrastructure maintenance stage, its valuation for the purposes of this clause shall be the non-amortized part of the Acknowledged Final Price, minus the repair cost which may be necessary, as it is detailed below.

The amortization shall be lineal for all the maintenance stage. That is to say, the investment valuation shall be given by:  $PFR \cdot (1 - t/m)$  where:

**PFR** : it is the Acknowledged Final Price

**T** : it is the number of the month, starting from the Start-Up, in which the termination of the contract occurs.

**m** : it is the quantity of months of the contract validity, starting from the Start-Up of the infrastructure

If the infrastructure is not in a good condition, to this amount they will discount the costs of the works to be made so that the infrastructure complies with the conditions stated in the contract documents.

Additionally, the quantity **CC\*F** shall be paid, where:

**CC**: It corresponds to the cost of the capital and of the credits incurred by the Contractor Company before receiving the payments of the Hiring Administration (construction period), that shall be calculated with:

$$CC = \left[ I_n + \sum_{i=1}^{n-1} I_i * \prod_{j=i}^{n-1} (1 + r_j) \right] - PFR$$

Where:

**$I_i$** : it is the investment made in the month “i”, stated in the PEF.

**n** : it is the month in which the Start-Up of the works produces, starting from the signature of the contract.

**$r_j$**  : it is the rate of weighted average capital cost in the “j” month, which for these effects it shall be calculated in the way stated in the Clause 21.3.1 of this contract.

**PFR**: it corresponds to the Acknowledged Final Price of the works, stated in the Clause 8.2 of this contract.

**F**: It is the proportion of the Acknowledged Final Price pending to be amortized at the early termination of the contract. With the purpose of determining the amortization degree, the

percentage which arises from the sum of the PPD which would be paid shall be considered (if the availability would be of 100%) in relation to the all the PPD.

If at the moment of the termination, they would have made additional investments approved by the Hiring Administration in the framework of what has been stated in the Contract, they shall be considered as stated in this clause, replacing in the formulas the months corresponding to the beginning and end of such investments.

#### **21.4 QUANTIFICATION OF DAMAGES**

If the termination causes of the contract occur for causes attributable to the Hiring Administration or by redemption, the indemnification for damages perceived by the Contractor Company shall be calculated in the corresponding way among the following options:

- 180 times the value of the maximum daily Payment upon Availability stated for this Contract, plus VAT, if the termination occurs before the Start-Up.
- 180 times the daily average of the Payment upon Availability recognized at the termination date (the sums of the Payment upon Availability which were recognized to the Contractor Company, divided by the number of days which have elapsed between the Start-Up and the date of the contract termination), plus VAT, if this occurs after the Start-Up but before three complete four-month periods of payment
- 180 times the daily average of the Payment upon Availability of the last three complete four-month periods of payment, plus VAT, if at the termination date would remain forty-eight (48) months or more of the validity of the contract.
- 120 times the daily average of the Payment upon Availability of the last three complete four-month periods of payment, plus VAT, if at the termination date would remain less than forty-eight (48) months of the validity of the contract.

#### **21.5 METHOD OF PAYMENT**

During the process of termination of the contract and until its verification, the Contractor Company could not be deprived from the Payment upon Availability, as long as the compensations stated in the contract are kept in execution or the ones eventually agreed upon with the Hiring Administration, corresponding in this case, the proportion associated to the Payment upon Availability.

Once determined the quantity that the Hiring Administration has to pay, if there are pending debts of the Contractor Company with his financial backers, the Hiring Administration shall pay, firstly, to the pledgees, and if there is a remains, it shall be paid to the Contractor Company. If, on the contrary, such amount is less than the owed amount to the pledgee, the latter could exercise his rights through the corresponding jurisdictional process against the Contractor Company.

In case of an early termination of the contract due to a Contractor's breach or of a termination for a cause attributable to the Hiring Administration, the payment could not be made in a term greater than the one remaining of execution of the contract. If the payment is made in installments, they shall be annual and of the same amount; for this calculation, to the owed amounts the following interest rates will be applied:

- In case of an early termination due to a Contractor's breach, the legal interest rate expected in Section 4 of the Decree, Act 14.500.

- In case of termination for a cause attributable to the Public Administration, the  $R_c$  interest rate; where  $R_c$  shall be the lower value which results from comparing: a) the interest rate of a senior debt in Indexed Units (IU) as it arises from the financing operation made by the Contractor in order to cover the financing needs of the initial works; b) an interest rate for a term of 10 years of the CUI curve made by BEVSA, which arises from the simple average for the last three days before the concretion date of the financing operation made by the Contractor so as to cover the financing needs of the initial works, expressed in percentage points, more 2.5 percent. In any of the two cases mentioned before, the resulting interest rate shall be set on the concretion date of the financing operation and it shall be kept unchanged throughout the time, regardless of the moment in which the early termination occurs.

## **21.6 REVERSION OF THE WORKS**

At the end of the contract, for any of the causes expected in this clause, as well as in the applicable regulation, the work shall revert the Hiring Administration. The Contractor Company, in the term stated by the Hiring Administration, shall deliver the infrastructures related to the subject matter of the contract and in the conditions stated in the following clause, unless otherwise agreed by the parties. For such purposes, the inventory mentioned in Clause 4.1 of the Technical Specifications which belong to the contract documents shall be used.

## **22 DELIVERY OF THE INVESTMENT AT THE END OF THE CONTRACT**

### **22.1 DELIVERY OF THE INVESTMENT**

The Contractor Company shall deliver to the Hiring Administration all the works, facilities as well as any other investment made in the framework of this contract at its termination. The Hiring Administration shall be the holder of all the rights as regards the projects, executed works, facilities and existing improvements in the area of public domain, without paying for this any value, unless that stated in this contract.

### **22.2 PROCEDURE FOR THE INVESTMENT DELIVERY**

The Contractor Company shall adopt, at the moment of the investment delivery, all the necessary measures which allow an appropriate continuity of the service, having to deliver all the infrastructure, facilities, equipment, services and other works included in the subject matter of the contract, in the conditions stated in the contract documents.

At least twelve months before the compliance of the contract term, the Contract Supervision shall stipulate that they should write a record of the works that shall be made by the Contractor Company, so the delivery conditions comply with what has been stated in the contract documents and he shall deliver to it, officially, a memorandum in which the following will be stated:

- a) All the repairs that shall be made by the Contractor Company and their terms for completion for the purposes of the delivery.
- b) All the necessary maintenance works and their terms for completion, so that at the moment of receipt the works and the other investments are absolutely operative in conformity with the standards stated in the contractual documentation.

The fail to submit such memorandum, does not release the Contractor Company from the obligations imposed in this clause.



At least 60 days before the termination of the contract, the APC shall designate the person or persons who will be in charge of receiving the Contract.

Such Commission shall submit its report specifying the state of the Contract in a term which doesn't exceed the thirty days starting from the date of notification of its designation. Once verified the appropriate compliance of the contract, the APC shall initiate its finalization document and the Delivery Certificate.

In case of confirming contractual defaults by the Contractor Company, the Hiring Administration could execute the performance bond of the contract stated for the maintenance stage, without prejudice to the damages which may be claimable. At the moment of elaboration of the report aforementioned, the Hiring Administration could decide to retain the payments of the last year of the contract in the case he understands that the amount of the performance bond of the contract is not enough to cover the necessary investments to comply with the conditions of the infrastructure delivery.

## **23 SOLUTION OF CONTROVERSIES**

The controversies which may arise as a consequence of the execution of this contract shall be resolved in conformity with what has been stated in the applicable resolution and in this clause.

### **23.1 ARBITRATION**

For the solution of the conflicts which may arise as a consequence of the application, interpretation, execution, compliance and termination of this contract, the parties shall resort to the arbitration.

For the arbitration mentioned in the Clause 21.2.1, item C2 of this contract, as well as for the solution of controversies which may arise in relation to the early termination, they shall be definitely resolved by means of an arbitration, according to the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL). There shall be three arbitrators, designated according to such Rules. The arbitration headquarters will be in Montevideo, Uruguay and it shall be made in Spanish. The arbitration board shall issue its judgment according to law and it shall be governed by the law in force of the Oriental Republic of Uruguay.

For the solution of other controversies, the arbitrators shall be designated by mutual consent by the parties, or otherwise, according to what has been stated by Section 480 of the General Code of the Process and they shall rule according to the law. The award of the Arbitration Board shall be unappealable.

The party who resorts to an arbitration shall notify it to the counterpart by certified telegram with a delivery notice.

Once elapsed the term of thirty days of having received by the counterpart the arbitration request sent by the applicant, without any of the parties designating an arbitrator, the designation shall be made by a competent judge according to the procedure stated in Sections 480 and 494 of the General Code of the Process.

The arbitration convention is autonomous in relation to the base contract. The non-existence or disablement of this, doesn't imply the nullity of the arbitration convention. The issues related to the existence and validity of the arbitration convention shall be resolved by an arbitration board, designed by the Court or at the request of the interested party.

As regards the matters that weren't expected, the Sections 480 to 507 of the General Code of the Process shall be applicable.

## **23.2 APPLICABLE LAW**

The applicable law and the competent jurisdiction in all the matters related to this public-private participation contract shall be the ones of the Oriental Republic of Uruguay.

**Annex 1: Adjudicated Economic Bid**

**Annex 2: Financial-Economic Plan**

### **Annex 3: MODEL OF BANK GUARANTEE IN THE PERFORMANCE BOND OF THE CONTRACT IN THE CONSTRUCTION AND RECOVERY STAGE**

Montevideo, [...] of [...] of [20...]

Sirs.

Ministry of Transportation and Public Works

Present.

We hereby inform you that at the request and on behalf of [.....] (the Contractor Company), we have found in our records an irrevocable credit in your favor up to the total maximum amount of U\$S 90,000,000 (ninety million of US dollars) in the performance bond of the contract of the Central Railway, between the Ministry of Transportation and Public Works of the Oriental Republic of Uruguay and [.....] (the Contractor Company) with a date of [.....], in the terms and conditions stated therein.

Such amount is at your disposal in this Bank on sole written requirement by a duly authorized representative and as it arises from the Notarial Attestation which should include the requirement, mentioning this document, and it shall not require a special process or a discussion to make effective the payment, in a term of 72 working days following the submission of the payment requirement.

The payment shall become effective in our offices of [.....INCLUDE THE OFFICES OF THE BANK...] against delivery of the corresponding receipt and devolution of such. Under this bond, they could only request one disbursement and they exclusively attend the first requirement the Bank receives.

This bond shall be effective from [...] of [...] of [20..] and until (i) the [...] of [...] of [...], (ii) until the contract would have rescinded for causes attributable to the Hiring Administration, or (iii) until the contract would have rescinded for causes non-attributable to the parties according to what has been stated in Clauses 21.2.4 and 21.5.5 of the contract, whichever comes first of (i), (ii), or (iii). As of the date stated in (i) or as of the time when that stated in (ii) or (iii) happens, whichever comes first, we will not owe nothing, nor we guarantee, nor we pay to you any concept derived from this Bond, unless that in the case (ii) or (iii) you have objected in good faith the termination of the contract; in this case, this bond shall remain effective until thirty (30) days after the corresponding arbitral decision.

All the obligations related to this document are payable only in and for [...NAME OF THE BANK....] subject to the laws (including any act, order, decree and/or governmental regulation) of the Oriental Republic of Uruguay.

This bond is a Performance Bond of the Contract to which they make reference and they define in the Contract between the parties.

