



GRANT AGREEMENT

This Grant Agreement is entered into between the Government of the United States of America, acting through the U.S. Trade and Development Agency (“USTDA”), and the Instituto Rui Barbosa (the “Grantee”). USTDA and the Grantee are each referred to herein as a “Party”, and collectively as the “Parties”. USTDA agrees to provide the Grantee, subject to the terms and conditions of this Grant Agreement, one million one hundred and thirty-six thousand and one hundred United States Dollars (US\$ 1,136,100) (“Grant Funds”) to fund the cost of services required in connection with the delivery of technical assistance (the “TA”) to the Grantee in Brazil (the “Host Country”).

1. USTDA Grant Funding

The Grant Funds to be provided by USTDA under this Grant Agreement shall be used to fund the costs of an agreement of understanding between the Grantee and the U.S. firm to be selected by the Grantee (the “U.S. Firm”) (the “Agreement of Understanding”), under which the U.S. Firm will deliver the TA. In no event will the amounts contributed by USTDA for the TA exceed the amount of the Grant Funds. Payment to the U.S. Firm will be made directly by USTDA on behalf of the Grantee with the Grant Funds provided under this Grant Agreement.

2. Terms of Reference

The terms of reference for the TA (the “Terms of Reference”) are attached as Annex I to this Grant Agreement. The Grantee shall include these Terms of Reference for the TA as Annex I to the Agreement of Understanding.

The Grantee acknowledges and understands that the U.S. Firm’s performance of the TA must comply with the entirety of the Terms of Reference, and any modification of the Terms of Reference set forth in Annex I to the Agreement of Understanding or deviation from their terms must be approved in writing by USTDA in accordance with the procedures for amendments or other modifications under the Agreement of Understanding. The Grantee acknowledges and understands that any performance by the U.S. Firm of work not included in, or not in compliance with, the Terms of Reference, or any failure by the U.S. Firm to perform any work set forth under the Terms of Reference (in compliance with those terms), will be ineligible for approval or payment, absent an amendment or other modification in accordance with such procedures. Consequently, the Grantee shall not approve any U.S. Firm work performed under the Agreement of Understanding that does not comply with or that otherwise is not in accordance with the Terms of Reference. The Grantee acknowledges and understands that any failure to obtain prior written approval for any modifications or deviations from the Terms of Reference may result in forfeiture by the U.S. Firm of payment for work performed that is not in compliance with the Terms of Reference and/or a significant delay in payment of the final invoice.

3. Standards of Conduct

USTDA and the Grantee recognize the existence of standards of conduct for public officials and commercial entities in their respective countries. Therefore, USTDA and the Grantee shall fully comply with all United States and Host Country laws relating to corruption or bribery, and shall not directly or indirectly provide, offer or promise to provide money or anything of value to any public official in violation of any United States or Host Country laws relating to corruption or bribery.

4. Grantee Responsibilities

The Grantee shall use its best efforts to (a) promptly reply to notices and other communications, requests for information and requests for approvals of Invoices or other documents submitted to it by the U.S. Firm or USTDA, (b) provide reasonable support for the U.S. Firm, such as local transportation, office space and secretarial support, and (c) promptly notify USTDA in the event that the Grantee (i) no longer seeks to complete the TA and/or (ii) would like to terminate this Grant Agreement. The Grantee also agrees to select and confirm the final composition of the members of the “Committee” (as defined under Annex I, Terms of Reference) prior to the Kick-off Call as described under Task 1 of the Terms of Reference.

5. Agreement of Understanding Matters and USTDA’s Rights as Financier

(A) Grantee Competitive Selection Procedures

Selection of the U.S. Firm shall be carried out by the Grantee according to its established procedures for competitive selection, with advance notice of the procurement published online through Federal Business Opportunities (www.fedbizopps.gov). Upon request, the Grantee shall submit these procedures and related documents to USTDA for information and/or acceptance.

(B) USTDA’s Right to Object to U.S. Firm Selection

The Grantee shall notify USTDA at the address of record set forth in Article 15 below upon selection of the U.S. Firm to deliver the TA. USTDA shall then review the Grantee’s selection of U.S. Firm, and if USTDA does not object to Grantee’s selection, USTDA shall so notify the Grantee by issuing a “no objection” letter. Upon receipt of USTDA’s “no objection” letter, the Grantee shall (i) notify in writing the selected U.S. Firm that its proposal has been accepted by the Grantee, and (ii) notify in writing the U.S. firms that submitted unsuccessful proposals to deliver the TA that they were not selected. The Grantee shall then use commercially reasonable efforts to negotiate an Agreement of Understanding with the U.S. Firm for the delivery of the TA.

(C) USTDA’s Right to Approve Agreement of Understanding Between Grantee and U.S. Firm

(1) Agreement of Understanding

USTDA will provide to the Grantee an electronic copy of USTDA’s standard agreement of understanding form, and the Grantee shall, in conjunction with the U.S. Firm, utilize this standard

agreement of understanding form as the basis for drafting the Agreement of Understanding. Once the Agreement of Understanding has been negotiated between the Grantee and the U.S. Firm, the Grantee shall transmit to USTDA (or shall request that the U.S. Firm transmit to USTDA on the Grantee's behalf) a final negotiated draft version of the Agreement of Understanding in an editable electronic format for USTDA review at the email address set forth in Article 15 below. USTDA shall advise the Grantee and the U.S. Firm as to whether the draft Agreement of Understanding is ready for execution, on the understanding that USTDA's approval may be contingent upon certain modifications being made to the Agreement of Understanding.

(2) Amendments and Assignments of the Agreement of Understanding

The Grantee understands and acknowledges that no amendment or other modification to the Agreement of Understanding (or any annex to the Agreement of Understanding) shall be valid unless formally agreed upon in a written instrument signed by the Grantee and the U.S. Firm and approved by USTDA in a signed approval letter. The Grantee or the U.S. Firm may submit any proposed amendment or other modification to the Agreement of Understanding, including any proposed amendment or other modification to any Agreement of Understanding annex, or any proposed assignment of the Agreement of Understanding, to USTDA for review and comment at the address set forth in Article 15 below.

(D) USTDA Not a Party to the Agreement of Understanding

The Parties understand and agree that USTDA as a financing entity reserves to itself certain rights under the Agreement of Understanding, including, but not limited to: (i) the right to approve the terms of the Agreement of Understanding and any amendments to the Agreement of Understanding, including assignments, the selection of the U.S. Firm and all Subcontractors, the Terms of Reference, the Final Report, and any and all documents related to the Agreement of Understanding or any Subcontract funded under this Grant Agreement, (ii) the right to require the parties to the Agreement of Understanding to suspend performance of the Terms of Reference upon reasonable prior written notice to such parties, and upon U.S. Firm's receipt of such written notice, any further work performed in connection with the Terms of Reference will be at the U.S. Firm's risk, (iii) the right to suspend disbursements of Grant Funds under Clause 3 of the Agreement of Understanding upon reasonable prior written notice to the parties to the Agreement of Understanding, and (iv) the right to demand, upon written notice to the U.S. Firm, a refund from the U.S. Firm of an appropriate amount of any Grant Funds that have been previously disbursed to the U.S. Firm under Clause 3 of the Agreement of Understanding in the event that (a) the U.S. Firm or any Subcontractor fails to comply in all material respects with the Terms of Reference or the terms and conditions of the Agreement of Understanding (including the Mandatory Agreement of Understanding Clauses attached to the Agreement of Understanding), or (b) the Agreement of Understanding and/or the TA is terminated, and the amount of Grant Funds disbursed to the U.S. Firm prior to such termination exceeds the value of the work performed under the Agreement of Understanding in accordance with its terms.

The Parties further understand and agree that USTDA, in reserving any or all of the foregoing rights, has acted solely as a financing entity to ensure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these rights will be

made as a financier in the course of funding the TA and will not be construed as making USTDA a party to the Agreement of Understanding. The Parties understand and agree that USTDA may, from time to time, exercise the foregoing rights, or discuss matters related to these rights and the TA with the parties to the Agreement of Understanding or to any Subcontract, jointly or separately, without thereby incurring any responsibility or liability to such parties. Any approval or failure to approve by USTDA will not bar the Grantee or USTDA from asserting any right that it might have against the U.S. Firm, or relieve the U.S. Firm of any liability which the U.S. Firm might otherwise have to the Grantee or USTDA.

(E) Grant Agreement Controlling

Regardless of USTDA approval, the rights and obligations of any party to the Agreement of Understanding or any Subcontract thereunder must be consistent with this Grant Agreement (including Annex I and Annex II). In the event of any inconsistency between this Grant Agreement and the Agreement of Understanding or any Subcontract funded by this Grant Agreement, this Grant Agreement shall control.

(F) Subcontractors and Subcontracts

For purposes of this Grant Agreement, (a) the term “Subcontractor” means an individual, corporation, partnership or other legal entity having a contract, purchase order or other agreement with the U.S. Firm or with any other Subcontractor for delivery of any part of the TA, and (b) the term “Subcontract” means any such contract, purchase order or other agreement with a Subcontractor.

6. Disbursement Procedures

(A) USTDA Approval of Agreement of Understanding Required

USTDA will make disbursements of Grant Funds directly to the U.S. Firm only after USTDA approves the Grantee’s Agreement of Understanding with the U.S. Firm.

(B) U.S. Firm Invoice Requirements

For purposes of this Grant Agreement, the term “Invoice” means any invoice submitted (or to be submitted) to USTDA by either the Grantee or the U.S. Firm for payment of Grant Funds. The Grantee shall not approve any Invoice submitted to it by the U.S. Firm unless such Invoice, and all work performed by the U.S. Firm (or any Subcontractor) in connection with such Invoice, complies with the Terms of Reference and the Mandatory Agreement of Understanding Clauses. Following review and approval by the Grantee of any Invoices submitted by the U.S. Firm under the Agreement of Understanding, the Grantee may request disbursement of funds by USTDA to the U.S. Firm for delivery of the TA by submitting such approved Invoices in accordance with the procedures set forth in the Mandatory Agreement of Understanding Clauses.

7. Effective Date

The effective date of this Grant Agreement (the “Effective Date”) shall be the date of signature by both Parties or, if the Parties sign on different dates, the date of the last signature. In the event that only one signature is dated, such date shall constitute the Effective Date.

8. TA Schedule

(A) TA Completion Date

The TA Completion Date is 18 months from the kick-off of the TA, as further described in the Terms of Reference under Annex I.

(B) Time Limitation on Disbursement of USTDA Grant Funds

Except as USTDA may otherwise agree, (i) no Grant Funds may be disbursed under this Grant Agreement for goods and services which are provided prior to the Effective Date, and (ii) no Grant Funds may be disbursed other than during the period set forth in Clause K(2) of the Mandatory Agreement of Understanding Clauses.

9. USTDA Mandatory Agreement of Understanding Clauses

The Agreement of Understanding to be funded under this Grant Agreement shall include the USTDA Mandatory Agreement of Understanding Clauses set forth in Annex II to this Grant Agreement (the “Mandatory Agreement of Understanding Clauses”). The Grantee shall use commercially reasonable efforts to ensure that the U.S. Firm complies with the Mandatory Agreement of Understanding Clauses in all material respects and shall promptly notify USTDA of any breach of the Mandatory Agreement of Understanding Clauses on the part of the U.S. Firm of which the Grantee becomes aware.

10. Nationality, Source and Origin

For purposes of this Grant Agreement, the term “U.S. Firm” means:

- (i) a privately owned firm or partnership that is formed, incorporated or organized in the U.S., with its principal place of business in the U.S., and which is:
 - (a) more than fifty percent (50%) owned by U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States; or
 - (b) satisfies each of the following criteria:
 - (I) has been incorporated or organized in the U.S. for more than three (3) years prior to the issuance date of the request for proposals;
 - (II) has performed similar services in the U.S. for that three (3) year period;

- (III) employs U.S. citizens in more than half of its permanent full-time positions in the U.S.; and
 - (IV) has the existing capability in the U.S. to perform the work in question; or
- (ii) a nonprofit organization that is incorporated in the U.S. and managed by a governing body, a majority of whose members are U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States.

In addition, the term “Source” means the country from which a shipment is made, and the term “Origin” means (x) the place of production of a good, whether through manufacturing, assembly or otherwise, or (y) the place from which delivery of a service is administered, as applicable.

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and professional services funded by Grant Funds under this Grant Agreement:

- (A) the U.S. Firm and all Subcontractors that are legal entities must be U.S. Firms;
- (B) all natural persons who deliver any part of the TA as the U.S. Firm, as a Subcontractor, or as an employee of the U.S. Firm or any Subcontractor, in each case, must be (i) U.S. citizens, (ii) non-U.S. citizens lawfully admitted for permanent residence in the United States, or (iii) non-U.S. citizens lawfully admitted to work in the United States;
- (C) notwithstanding the provisions of Articles 10(A) and 10(B), up to twenty percent (20%) of the Grant Funds may be used to pay for work performed in connection with the TA by (i) Subcontractors that are organized as legal entities under the laws of the Host Country, and/or (ii) natural persons working as a Subcontractor, or as employees of the U.S. Firm or any Subcontractor, in each case, who are citizens of the Host Country;
- (D) a Host Country Subcontractor may only be used for specific services from the Terms of Reference identified in the Subcontract;
- (E) no part of the Grant Funds disbursed in connection with the delivery of the TA may be used to pay (i) any legal entity that is incorporated or organized under the laws of a jurisdiction other than one of the United States or the Host Country, or (ii) a natural person who is a citizen of a country other than the United States (except as expressly provided in Article 10(B)) or the Host Country; and
- (F) goods purchased for the delivery of the TA and associated delivery services (*e.g.*, international transportation and insurance) must have their nationality, Source and Origin in the United States; provided, however, that goods and services incidental to TA support (*e.g.*, local lodging, food and transportation) in the Host Country are not subject to the foregoing restrictions.

11. Taxes

Grant Funds provided under this Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in the Host Country, except for taxes of a *de*

minimis nature imposed on local lodging, food, transportation or airport arrivals or departures. The Grantee may not seek reimbursement from USTDA for any such taxes, tariffs, duties, fees or other levies.

12. USTDA Activity Evaluation

The Parties shall cooperate to ensure that the purposes of this Grant Agreement are accomplished. For five (5) years following receipt by USTDA of the Final Report (the “Evaluation Period”), the Grantee agrees to respond to any reasonable inquiries from USTDA at least annually about the results of the TA. Inquiries will include, but will not be limited to, (a) whether the Final Report recommendations have been implemented partially or totally; (b) any updated anticipated implementation timeline; (c) any initiatives, procurements from the U.S.A. or from other countries of origin, and other actions taken because of the Final Report recommendations; and (d) information on the development indicators included in the table USTDA Development Indicators (below). In addition, the Grantee agrees to notify USTDA any time the Grantee selects a new primary contact person for the Grantee during the Evaluation Period.

USTDA Development Indicators:

Category	Indicator	Description	Anticipated Outcome
Human Capacity Building	Procurement Workforce Professionalization	It is anticipated that staff trained during the TA will in turn train other state and municipal audit courts on performance-based auditing and how to assess value for money in public procurement.	This indicator is measured as follows: None/Partial/Substantial
Human Capacity Building	Human Capacity Development	A primary component of the TA will be to train IRB and the state audit courts’ staff on performance-based auditing and how to assess value for money in public procurement.	Number of IRB and state and municipal audit court staff trained by the U.S. Firm.
Promoting Effective Markets and Governance	International Best Practices	The TA will promote international best practices in performance-based auditing to assess value for money and the use of LCCA that may lead to changes in or adoption of procurement auditing policies and procedures.	IRB and TCU performance-based auditing processes/procedures altered to reflect best-value methodologies. This indicator is measured as follows: No Application/ Minimal (Applications in small-scale non-infrastructure tenders)/ Moderate (Application in large-scale non-infrastructure or small-scale infrastructure

			tenders)/ Substantial Application in large-scale infrastructure tenders
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13. Grantee Recordkeeping and Audit

The Grantee agrees to maintain books, records and other documents relating to the TA, the Agreement of Understanding and this Grant Agreement adequate to demonstrate implementation of its responsibilities under this Grant Agreement and the Agreement of Understanding, including the selection of the U.S. Firm and Subcontractors, receipt and approval of Agreement of Understanding deliverables, and approval or disapproval of Invoices for payment by USTDA. Such books, records and other documents shall be separately maintained for a period of three (3) years after the date of the final disbursement by USTDA. The Grantee shall afford USTDA or its authorized representatives the opportunity at reasonable times to review such books, records and other documents relating to the TA, the Agreement of Understanding and this Grant Agreement.

14. Representation of Parties

For all purposes relevant to this Grant Agreement, the Government of the United States of America will be represented by the U.S. Ambassador to the Host Country or USTDA, and the Grantee will be represented by its Coordinator at the address of record set forth in Article 15 below. The Parties may, by written notice to the other Party, designate additional representatives for all purposes under this Grant Agreement.

15. Addresses of Record for Parties

Any notice, request, document or other communication submitted by either Party to the other under this Grant Agreement shall be in writing or sent through an electronic medium that produces a tangible record of the transmission, such as a facsimile or email message, and will be deemed duly given or sent when delivered to such Party at the following address of record, as applicable:

(A) For the Grantee:

To: Ms. Crislayne Cavalcante de Moraes
Title: IRB Coordinator and TCE-PR External Control Auditor
Instituto Rui Barbosa
Address: Praça Nossa Senhora da Salette, s/n, (TCE)
Curitiba, PR, Brazil, 80530-910
Phone: + 55-41-3350-1992
Email: crislayne.moraes@tce.pr.gov.br

(B) For USTDA:

To: U.S. Trade and Development Agency
Address: 1101 Wilson Boulevard, Suite 1100
Arlington, VA 22209-2275

USA
Phone: (703) 875-4357
Fax: (703) 997-2392
Email: USTDA_Worldwide@ustda.gov

All such communications shall be in the English language, unless the Parties otherwise agree in writing. In addition, the Grantee shall provide the Commercial or Economic Section of the U.S. Embassy in the Host Country with a copy of each notice, request, document or other communication sent to USTDA.

Any communication relating to this Grant Agreement shall include the following fiscal data:

Appropriation No.: 11 21/22 1001
Activity No.: 2021-91009A
Reservation No.: 2021217
Grant No.: 1131PL21GH91217

16. Implementation Letters

To assist the Grantee and the U.S. Firm in the implementation of the TA, USTDA may, from time to time, issue implementation letters that will provide additional information about matters covered by this Grant Agreement or correct immaterial errors. Without limiting the generality of the foregoing, USTDA may issue implementation letters, among other reasons, to: (a) extend the estimated completion date set forth in Clause K(1) in Annex II, (b) extend the availability period of Grant Funds set forth in Clause K(2) in Annex II, (c) change the fiscal data set forth in Article 15, (d) change a Party's address of record or point of contact, (e) make immaterial changes to the Terms of Reference, and (f) correct scrivener's errors. The Parties may also use jointly agreed upon implementation letters to confirm, clarify and/or record their mutual understanding of matters covered by this Grant Agreement.

17. Amendments and Assignments of this Grant Agreement

Either Party may submit to the other Party at any time a proposed amendment to this Grant Agreement (including Annex I and Annex II). Any proposed amendment to this Grant Agreement will be effective only if it has been signed by both Parties. Any proposed assignment of this Grant Agreement must be approved by both Parties in writing in order to be effective.

18. Termination

(A) Termination Events

Either Party may terminate this Grant Agreement at any time by giving the other Party prior written notice thereof. Notwithstanding the foregoing provision, if the U.S. Office of Foreign Assets Control determines that either of the Grantee or the government of the Host Country has acted in violation of any sanctions laws or executive orders established by the United States Government,

this Grant Agreement will terminate immediately without need for further action or notice on the part of either Party.

(B) Effect of Termination

The termination of this Grant Agreement will end any obligations of the Parties to provide financial or other resources for the TA (including, without limitation, any obligation of USTDA to provide the Grant Funds), except for payments that may be made by USTDA to the U.S. Firm pursuant to Clause H of the Mandatory Agreement of Understanding Clauses set forth in Annex II to this Grant Agreement. This Article and Articles 5, 11, 12, 13, and 20 of this Grant Agreement shall survive termination of this Grant Agreement.

19. Waiver

No provision of this Grant Agreement may be modified, waived or discharged unless such modification, waiver or discharge is agreed to in writing and signed by each Party. No waiver by either Party of any breach of, or of compliance with, any condition or provision of this Grant Agreement by the other Party will be considered a waiver of any other condition or provision or a waiver of the same condition or provision at another time. No delay in exercising any right or remedy accruing to either Party in connection with this Grant Agreement shall be construed as a waiver of such right or remedy.

20. Governing Law

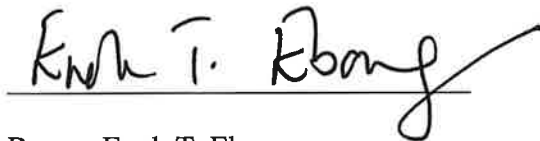
This Grant Agreement is governed by, and construed in accordance with, the applicable laws of the United States of America. In the absence of applicable federal law, the laws of the State of New York shall apply.

21. Counterparts; Language

This Grant Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Grant Agreement. Counterparts may be delivered via email or other transmission method and any counterpart so delivered shall be deemed to be valid and effective for all purposes. This Grant Agreement may be executed in two or more languages, but in the event of any conflict or inconsistency between the English language version of this Grant Agreement and any other version, the English language version of this Grant Agreement will control.

IN WITNESS WHEREOF, by signing below, each of the signatories hereby certifies that it is a duly authorized representative of the applicable Party, and the Parties, each acting through its duly authorized representative, have caused this Grant Agreement to be signed in their names and delivered as of the date written below.

For the Government of the United States
of America:



By: Enoch T. Ebong
Acting Director, U.S. Trade and
Development Agency

Date: August 13, 2021

For the Instituto Rui Barbosa:

IVAN LELIS Assinado de forma digital
por IVAN LELIS BONILHA
BONILHA Dados: 2021.08.12
15:33:29 -03'00'

By: Ivan Lelis Bonilha
President, Instituto Rui Barbosa

Date:

Annex I – Terms of Reference

Annex II – USTDA Mandatory Agreement of Understanding Clauses

Annex I

Terms of Reference

These terms of reference (“Terms of Reference” or “TOR”) in this Annex I set forth the terms, conditions, provisions and specifications for the performance of technical advisory services (“TA”) for the Brazilian Association of Subnational Audit Courts - "Rui Barbosa Institute" (Instituto Rui Barbosa, or “IRB” or the “Grantee”). The U.S. firm selected to perform the TA (the “U.S. Firm”) shall perform the TA in accordance with these Terms of Reference pursuant to the Agreement of Understanding between the U.S. Firm and IRB, of which Agreement of Understanding this Annex I is a part.

The TA will support state and municipal level (collectively referred to as “subnational”) audit courts as well as the Federal Court of Accounts (Tribunal de Contas da União, or “TCU”) by developing key guidance and recommendations on how to perform best value-based procurement auditing and performance-based auditing, in alignment with Law n° 14,133/2021, the Administrative Contracts and Bidding Law (“Law 14,133”), first at the subnational but potentially at all levels of government. The TA will support the Grantee’s efforts to promote sound, quality-based, fair and transparent auditing practices that assess quantitative and qualitative value for money (VfM) and tools to achieve best-value, in alignment with Law 14,133, before, during and after procurement processes take place, including but not limited to life-cycle cost analysis (“LCCA”) and Public Sector Comparator (“PSC”); contribute to the sustainability of infrastructure investments; support economic growth; improve technical capacity and auditing practices; and, further the Government of Brazil’s practices as an ethical and reliable business partner (together, the “Goals” of this TA).

TCU is the supreme audit institution for the Government of Brazil, responsible for external controls, financial and external audits, and supporting good public governance. In addition, state and some municipal level governments have their own independent audit courts with similar level of authority as TCU within their areas of jurisdiction. TCU’s work is supported by IRB, a civil association with the goal of improving the activities carried out by TCU and the subnational audit courts. IRB will be responsible for all Grantee duties on the TA as described below, as well as for coordinating with its network of member subnational courts, involving TCU as needed and appropriate for the purposes of this TA. IRB will also be responsible for disseminating lessons learned to all applicable audit courts in the country, as well as advising the U.S. Firm on any feedback received from them. For the purposes of this TA, IRB will select up to four subnational auditing courts to serve as the main contributors to this technical assistance. These entities would share details on their existing auditing processes, answer U.S. Firm inquiries and, led by IRB, exercise their best efforts to contribute to the success of the TA. This group will be hereby referred to as the “Committee”.

The period of performance for this TOR is eighteen months in duration, beginning from the date of the Kick-Off Call (as described below) and ending on such date that is 548 days after the date of the Kick-Off Call (or, if such date is not a business day, on the following business day) (the “TOR Performance Period”). The U.S. Firm shall confirm the exact end day of the TOR Performance Period in writing immediately following the Kick-Off Call.

The U.S. Firm shall submit all reports, Task deliverables and invoices to the Grantee (and, after Grantee approval, to USTDA), in all cases in accordance with the invoice and payment requirements under the Agreement of Understanding (including the instructions under Annex II to the Agreement of Understanding) before the completion of the TOR Performance Period. Unless expressly agreed in writing by USTDA in advance, the U.S. Firm shall not be entitled to receive any payment for any work performed after the completion of the TOR Performance Period.

All deliverables under these Terms of Reference shall include both an English-language and a Portuguese-language version. The U.S. Firm’s delivery of the TA must comply with the entirety of these Terms of Reference, and any modification of or deviation from these Terms of Reference must be approved in writing by USTDA in accordance with the procedures for amendments or other modifications under this Agreement of Understanding. The U.S. Firm acknowledges and agrees that (i) any performance by the U.S. Firm of work not included in, or not in compliance with, these Terms of Reference, or any failure by the U.S. Firm to perform any work set forth under these Terms of Reference (in compliance with those terms), will be ineligible for approval or payment, absent an amendment or other modification in accordance with such procedures, and (ii) failure to obtain prior written approval from USTDA for any modifications or deviations from these Terms of Reference may result in forfeiture of payment for work performed that is not in compliance with these Terms of Reference and/or a significant delay in payment of the final invoice.

Any meetings or other actions or work set forth under these Terms of Reference that are indicated to occur in-person, on-site or otherwise in a specified location may, if agreed by both the Grantee and the U.S. Firm (and with advance notice to and written agreement from USTDA), be conducted remotely, including online, by teleconference, by videoconference, or by other means, provided that the U.S. Firm shall clearly document in the corresponding deliverable report the date on which such agreement was reached and approved by USTDA, and shall describe the alternative means of accomplishing the relevant work, along with the rationale for such decision.

Further, if the Grantee and the U.S. Firm propose to apply such a change to any tasks or subtasks in part (i.e., to change portions of a task/subtask from in-person to remote, while maintaining other portions as in-person, including the “breaking up” of a task or subtask in order to separate remote from in-person work), then: (i) the Grantee and/or the U.S. Firm shall notify USTDA in advance of such a proposal, and USTDA may, in its discretion, approve of such proposal and formalize the

proposed modification through an implementation letter to the Agreement of Understanding; and (ii) USTDA may, at its discretion, modify the Payment Schedule under the Agreement of Understanding in order to separate such remote and in-person work into separate payments, as appropriate, again through an implementation letter to the Agreement of Understanding. Notwithstanding the foregoing under this paragraph, USTDA reserves the right to make any appropriate adjustments to the total Grant Amount (and therefore the Agreement of Understanding value) that may result from any such modifications.

Tasks

Task 1 – Kick-Off Call and Procurement Audit Practices Review

The U.S. Firm shall conduct a kick-off call with the Grantee, the Committee and USTDA (“Kick-Off Call”). Prior to the Kick-Off Call, the Grantee shall select the four subnational auditing courts that will, along with the Grantee, comprise the Committee. Once the Grantee has confirmed the final composition of the Committee for the TA, the Grantee shall notify the U.S. Firm as to the composition of the Committee members. The U.S. Firm shall not hold the Kick-Off Call until the Grantee has confirmed the final composition of the Committee members.

Prior to the Kick-Off Call, the U.S. Firm shall provide to the Grantee a draft Kick-Off Call meeting agenda and presentation for Grantee review and any comments. At the Kick-Off Call, the U.S. Firm shall present and review the TA objectives and scope (according to these Terms of Reference), discuss and clarify any issues or questions relating to the TA, and confirm the schedule of TA activities, timing for key deliverables and presentations and any additional data required from the Grantee and/or the Committee in order to perform the TA.

The U.S. Firm shall review any existing documents and programs provided by the Grantee and Committee related to procurement audit processes, policies, capacity-building, and modernization efforts. The U.S. Firm shall catalogue international best practices and principles for value-based auditing in categories and in alignment with Law n° 14,133/2021, the Administrative Contracts and Bidding Law (“Law 14,133”).

Task 1 Deliverable: The U.S. Firm shall provide a report on all items, clarifications, conclusions, takeaways, and next steps discussed during the Kick-Off Call, including the final composition of the Committee members and the final Kick-Off Call meeting agenda and presentations. The U.S. Firm shall also provide a summary of U.S. Firm’s review of the Grantee’s and Committee’s documentation provided as described above, noting the individual documents provided and any additional information that is needed.

Task 2 – Grantee Assessment

The U.S. Firm shall conduct a needs assessment (“Procurement Audit Needs Assessment” or “PANA”) of the Committee members’ procurement audit policies and practices in relation to international guidelines regarding economic, efficiency and effectiveness criteria relating to procurement audits consistent with the International Organization of Supreme Audit Institutions (“INTOSAI”) International Standards for Supreme Audit Institutions (“ISSAI”) or an alternative internationally accepted methodology pre-approved by the Grantee. The U.S. Firm shall obtain and review relevant Committee members’ policies, compare them to international best practices, compare them to requirements under Law 14,133, and provide an assessment and any recommendations needed in these policies or practices to improve and/or to better align current subnational auditing practices with international best practices and Law 14,133, and to identify areas where subnational audit courts can strengthen policies, procedures, and skills to achieve best-value before, during and after procurement processes take place, including but not limited to LCCA and PSC.

Task 2 Deliverables: PANA Assessment Report, as described above.

Task 3 – Procurement Audit Modernization Recommendations

The U.S. Firm shall develop a Procurement Audit Modernization Recommendations (“Recommendations”). The Recommendations shall address the short and long-term goals of the Grantee and the Committee members, to be identified in collaboration with the Grantee and the Committee, to improve procurement auditing policies and practices and align current practices with international best practices and Law 14,133. In the Recommendations, the U.S. Firm shall:

- a. summarize the key findings of the PANA Assessment Report or alternative methodology as agreed to by the Grantee, as described under Task 2; and,
- b. identify specific changes to the Grantee and Committee members’ procurement audit systems necessary to achieve the Goals of this TA throughout the duration of this TA and to be undertaken by the Grantee and the Committee members following the conclusion of the period of the performance of this TA.

Task 3 Deliverable: The Procurement Audit Modernization Recommendations, as described above. The U.S. Firm shall provide a draft of the Recommendations to the Grantee for review. The Grantee shall review and provide comments to the Recommendations, and the U.S. Firm shall then submit a final draft Procurement Audit Modernization Recommendations report for review and final approval by IRB’s project manager.

Task 4 – Implementation of the Procurement Audit Modernization Recommendations

4a. The U.S. Firm shall develop a stepwise implementation plan, including specific milestones and completion dates, to effectuate the identified changes to be accomplished during this TA. In consultation with the Grantee, the U.S. Firm shall work with the Committee members to obtain their priorities from the Procurement Audit Modernization Recommendations developed in Task 3 and the stepwise implementation plan to effectively support subnational audit courts in aligning their procurement systems to meet the Goals of the TA.

4b. The U.S. Firm shall develop a midway report to describe the implementation of the stepwise implementation plan. The midway report shall be delivered to the Grantee and Committee members and describe the work accomplished from the beginning of the stepwise implementation plan to the halfway point of the stepwise implementation plan. The U.S. Firm shall deliver the midway report to the Grantee, and shall obtain Grantee approval of the midway report, at approximately the midway point between the start and the completion of this Task 4. Further, at the time of such midway point, and after obtaining Grantee approval of the midway report, the U.S. Firm shall provide USTDA with a copy of the approved midway report for reference.

4c. The U.S. Firm shall work with the Grantee and the Committee members to implement the priorities as identified in Task 4a under the Procurement Audit Modernization Recommendations. The subsequent implementation of the Recommendations may include some or all of the following activities:

- a. Revise policies, regulations and guidelines that govern procurement audit functions, specifically in alignment with Law 14,133;
- b. Draft and subsequently support implementation of revisions to Process Manuals, Audit Planning Guides, and Performance Audit Methodologies and Criteria Guides;
- c. Improve the integration of procurement audit processes with monitoring and financial management functions;
- d. Recommend modifications in organizational relationships to ensure that procurement-related organizations have sufficient independence and authority to perform their responsibilities in compliance with applicable law and free of conflicts of influence;
- e. Align levels of staffing and funding to match the volume of work and facilitate the achievement of the Goals;
- f. Enhance processes, policies, and practices to achieve best-value before, during and after procurement processes take place, including but not limited to LCCA and PSC;
- g. Enhance conflict-of-interest, ethics, anti-corruption and business-integrity policies and associated implementation and enforcement mechanisms;
- h. Enhance policies and mechanisms related to external control components and principles, including how to operationalize requirements and examples of red flags that could indicate deficiencies;

- i. Recommend investments in information technology systems to improve the efficiency, effectiveness, and economy (“three Es”);
- j. Increase human capital development programs with regards to procurement audit management trainings; specifically, outline ways to increase investments in procurement audit training programs for employees, updating job descriptions, enhancing the professionalization of the procurement audit function, and providing career paths for audit professionals;
- k. Improve the collection, analysis and reporting of data on the audit body’s volume of work, efficiency, effectiveness and achievement of the Goals;
- l. Improve public access to procurement audit information and awareness of auditing actions;
- m. Improve and standardize system for monitoring and evaluating audit performance; and,
- n. Recommend enhancements to the procurement auditing training program (e.g., authority, resources, institutional arrangements, etc.).

Task 4 Deliverable: The U.S. Firm shall provide a comprehensive report on all work performed under this Task, including the stepwise implementation plan and a copy of the approved midway report on the status of implementation of priorities, as described above.

Task 5 – Procurement Audit Modernization Training Program

The U.S. Firm shall plan, develop, and conduct training sessions to Grantee and Committee members’ staff, selected by the Committee, to enable them to effectively implement Procurement Audit Modernization Recommendations as described under Task 4. The U.S. Firm, in collaboration with the Grantee, shall determine the number of trainings needed based upon the status of implementation of Task 4. For each training, the U.S. Firm shall design appropriate presentations and exercises to make each training as relevant and helpful as possible to the participants. The U.S. Firm shall ensure that the Procurement Modernization Training Program assists the Grantee in aligning performance audits with Law 14,133.

Task 5 Deliverables: The U.S. Firm shall provide a comprehensive report on all trainings delivered and of all work performed under this Task, as well as an analysis of the impacts of the training program and recommendations for further training development. The U.S. Firm shall provide any work product(s) that the U.S. Firm has prepared for the Grantee under this Task, including (without limitation) the date of each training and presentations and/or exercises, and other training/teaching materials, and a summary of questions asked, and answers provided, as well as a participant list with contact information.

Task 6 – Report on Recommendations

The U.S. Firm shall prepare and deliver a Report on Recommendations to the Grantee, to serve as a reference and resource for the Grantee and the Committee members, specifically after the U.S. Firm’s period of performance concludes. The Report on Recommendations shall consist of recommendations for how the Grantee and the Committee members can strengthen performance-based systems and capacity-building policies and programs, including costs associated with implementing the Recommendations, following the conclusion of the period of the performance of this TA.

Task 6 Deliverable: The U.S. Firm shall develop and deliver the Report on Recommendations, as described above.

Task 7 – Development Impact Assessment

The U.S. Firm shall assess the anticipated development impacts associated with the TA, including both the impacts realized during the performance of the TA and the impacts anticipated after the conclusion of the TA. The purpose of the development impact assessment is to provide the Grantee and other interested parties with a broader view of the potential impacts of the TA, and particularly the potential impacts of the Implementation of the Procurement Audit Modernization Recommendations and Procurement Audit Modernization Training Program. The U.S. Firm shall provide quantitative and qualitative assessments of the potential impacts of the TA, with specific attention to the following indicators:

Category	Indicator	Description	Anticipated Outcome
Human Capacity Building	Procurement Workforce Professionalization	It is anticipated that staff trained during the TA will in turn train other state and municipal audit courts on performance-based auditing and how to assess value for money in public procurement.	This indicator is measured as follows: None/Partial/Substantial
Human Capacity Building	Human Capacity Development	A primary component of the TA will be to train IRB and the state audit courts’ staff on performance-based auditing and how to assess value for money in public procurement.	Number of IRB and state and municipal audit court staff trained by the U.S. Firm.
Promoting Effective Markets and Governance	International Best Practices	The TA will promote international best practices in performance-based auditing to assess value for money and the use of LCCA that may lead to	IRB and TCU performance-based auditing processes/procedures

		changes in or adoption of procurement auditing policies and procedures.	altered to reflect best-value methodologies. This indicator is measured as follows: No Application/ Minimal (Applications in small-scale non-infrastructure tenders)/ Moderate (Application in large-scale non-infrastructure or small-scale infrastructure tenders)/ Substantial Application in large-scale infrastructure tenders
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For the qualitative assessment, the U.S. Firm shall provide narrative descriptions of (i) impacts realized during performance of the TA; and (ii) how the TA is anticipated to impact each of the above indicators after completion of the TA. For the quantitative assessment, the U.S. Firm shall quantify the outcomes of the indicators wherever possible, including, but not limited to, providing the total number of procurement officials trained during the course of the TA. The U.S. Firm shall obtain input and feedback from the Grantee in performing these assessments to the greatest extent practicable.

Task 7 Deliverables: The U.S. Firm shall deliver to the Grantee a report that contains all work performed under Task 7, including, but not limited to the development impact assessment.

Task 8 – Final Report

The U.S. Firm shall prepare and deliver to the Grantee and USTDA a substantive and comprehensive final report of all work performed under these Terms of Reference (the “Final Report”), which must conform to the requirements under Clause I of the Mandatory Agreement of Understanding Clauses (as defined in Annex II). The U.S. Firm shall organize the Final Report into chapters and sections with clear labels corresponding to each of the above tasks and sub-tasks of these Terms of Reference, and the U.S. Firm shall include in the Final Report all deliverables and documents that have been provided to the Client under these Terms of Reference. The U.S. Firm shall incorporate into the Final Report (i) all of the findings, recommendations, and conclusions of the TA under these Terms of Reference, and (ii) all other documents and/or reports provided pursuant to the tasks noted above, in each case clearly organized and labeled according to each task and sub-task under these Terms of Reference. The U.S. Firm shall also include an

executive summary to the Final Report as a whole, and provide a summary for each task under the Terms of Reference.

Annex II

USTDA Mandatory Agreement of Understanding Clauses

A. Grant Agreement; Subcontracts; USTDA Mandatory Agreement of Understanding Clauses Controlling

The Agreement of Understanding Parties acknowledge that this Agreement of Understanding is funded in whole or in part by the U.S. Trade and Development Agency (“USTDA”) under the Grant Agreement between the Government of the United States of America, acting through USTDA, and Instituto Rui Barbosa (the “Client”), dated as of _____ (the “Grant Agreement”). Terms used but not defined in this Agreement of Understanding shall have the meanings as set forth in the Grant Agreement. The Client has selected _____ (the “U.S. Firm”) to deliver technical assistance (the “TA”) in Brazil (the “Host Country”). Each of the Client and the U.S. Firm is referred to herein as a “Agreement of Understanding Party”, and collectively as the “Agreement of Understanding Parties”.

All work performed under this Agreement of Understanding must be performed either by the U.S. Firm or otherwise pursuant to a written Subcontract. All Subcontracts entered into by the U.S. Firm that are funded or partially funded with Grant Funds shall include these USTDA Mandatory Agreement of Understanding Clauses (these “Mandatory Agreement of Understanding Clauses”), except for Clauses B(1), G, H, I and S. The U.S. Firm shall provide USTDA with a copy of each Subcontract that it enters into, along with an English translation of any such Subcontract that is executed in a language other than English, which translation must be certified by the U.S. Firm as being complete and accurate. For purposes of this Agreement of Understanding, (a) the term “Subcontractor” means an individual, corporation, partnership or other legal entity having a contract, purchase order or other written agreement with the U.S. Firm or with any other Subcontractor for delivery of any part of the TA, and (b) the term “Subcontract” means any such contract, purchase order or other written agreement with a Subcontractor.

In addition, (i) in the event of any inconsistency between the terms and provisions of the Grant Agreement and those of this Agreement of Understanding or any Subcontract hereunder, the Grant Agreement shall be controlling, and (ii) in the event of any inconsistency between the terms and provisions of these Mandatory Agreement of Understanding Clauses and any other terms and provisions of this Agreement of Understanding or any Subcontract hereunder, these Mandatory Agreement of Understanding Clauses shall be controlling.

B. USTDA as Financier

(1) USTDA Approval of Agreement of Understanding

USTDA will not authorize the disbursement of Grant Funds until this Agreement of Understanding conforms to modifications required by USTDA during the Agreement of Understanding review process and this Agreement of Understanding has been formally approved by USTDA. To perform this review in a timely fashion, USTDA must receive from either the Client or the U.S. Firm an English language version of a final negotiated draft version of the Agreement of Understanding

(in an editable electronic format) sent to the email address listed in Clause M below, or to such other email address as specified by USTDA.

(2) USTDA Not a Party to This Agreement of Understanding

The Agreement of Understanding Parties understand and agree that USTDA as a financing entity reserves to itself certain rights under this Agreement of Understanding, including, but not limited to: (a) the right to approve the terms of this Agreement of Understanding and amendments to this Agreement of Understanding, including assignments, the selection of the U.S. Firm and all Subcontractors, the Terms of Reference, the Final Report, and any and all documents related to this Agreement of Understanding or any Subcontract funded under the Grant Agreement, (b) the right to require the Agreement of Understanding Parties to suspend performance of the Terms of Reference upon reasonable prior written notice to the Agreement of Understanding Parties, and any further work performed in connection with the Terms of Reference following the U.S. Firm's receipt of such written notice will be at the U.S. Firm's risk, (c) the right to suspend disbursements of Grant Funds under Clause 3 for cause upon reasonable prior written notice to the Agreement of Understanding Parties, and (d) the right to demand, upon written notice to the U.S. Firm, a refund from the U.S. Firm of an appropriate amount of any Grant Funds that have been previously disbursed to the U.S. Firm under Clause 3 of this Agreement of Understanding in the event that (i) the U.S. Firm or any Subcontractor fails to comply in all material respects with the Terms of Reference or the terms and conditions of this Agreement of Understanding (including these Mandatory Agreement of Understanding Clauses), or (ii) this Agreement of Understanding and/or the TA is terminated, and the amount of Grant Funds disbursed to the U.S. Firm prior to such termination exceeds the value of the work performed under this Agreement of Understanding in accordance with its terms. The Agreement of Understanding Parties shall comply with all written notices, instructions and requests issued by USTDA in connection with USTDA's exercise of its rights under this Clause B(2).

The Agreement of Understanding Parties further understand and agree that USTDA, in reserving any or all of the foregoing rights, has acted solely as a financing entity to ensure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these rights will be made as a financier in the course of funding the TA and will not be construed as making USTDA a party to this Agreement of Understanding. The Agreement of Understanding Parties understand and agree that USTDA may, from time to time, exercise the foregoing rights, or discuss matters related to these rights and the TA with the Agreement of Understanding Parties or the parties to any Subcontract, jointly or separately, and in consideration of USTDA's role as financier, the Agreement of Understanding Parties further agree that USTDA's rights may be exercised without thereby incurring any responsibility or liability, in contract, tort or otherwise, to the Agreement of Understanding Parties or the parties to any Subcontract. Any approval or failure to approve by USTDA will not bar the Client or USTDA from asserting any right that it might have against the U.S. Firm, or relieve the U.S. Firm of any liability which the U.S. Firm might otherwise have to the Client or USTDA.

(3) Implementation Letters

To assist the Client and the U.S. Firm in the implementation of the TA, USTDA may, from time to time, issue implementation letters that will provide additional information about matters covered by this Agreement of Understanding or correct immaterial errors. Without limiting the generality of the foregoing, USTDA may issue implementation letters, among other reasons, to: (a) extend the estimated completion date set forth in Clause K(1), (b) extend the availability period of Grant Funds set forth in Clause K(2), (c) change the fiscal data set forth in Clause M, (d) change a Party's address of record or point of contact, (e) make immaterial changes to the Terms of Reference, and (f) correct scrivener's errors. Subject to the provisions of Clause J, the Agreement of Understanding Parties and USTDA may also use jointly agreed upon implementation letters to confirm, clarify and/or record their mutual understanding of matters covered by this Agreement of Understanding, including without limitation, modifications to the personnel specified in Annex III of this Agreement of Understanding.

C. Nationality, Source and Origin

For purposes of this Agreement of Understanding, the term "U.S. Firm" means:

- (i) a privately owned firm or partnership that is formed, incorporated or organized in the U.S., with its principal place of business in the U.S., and which is:
 - (a) more than fifty percent (50%) owned by U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States; or
 - (b) satisfies each of the following criteria:
 - (I) has been incorporated or organized in the U.S. for more than three (3) years prior to the issuance date of the request for proposals;
 - (II) has performed similar services in the U.S. for that three (3) year period;
 - (III) employs U.S. citizens in more than half of its permanent full-time positions in the U.S.; and
 - (IV) has the existing capability in the U.S. to perform the work in question; or
- (ii) a nonprofit organization that is incorporated in the U.S. and managed by a governing body, a majority of whose members are U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States.

In addition, the term "Source" means the country from which a shipment is made, and the term "Origin" means (x) the place of production of a good, whether through manufacturing, assembly or otherwise, or (y) the place from which delivery of a service is administered, as applicable.

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and professional services funded by Grant Funds under the Grant Agreement:

- (1) the U.S. Firm and all Subcontractors that are legal entities must be U.S. Firms;

- (2) all natural persons who deliver any part of the TA as the U.S. Firm, as a Subcontractor, or as an employee of the U.S. Firm or any Subcontractor, in each case, must be (a) U.S. citizens, (b) non-U.S. citizens lawfully admitted for permanent residence in the United States, or (c) non-U.S. citizens lawfully admitted to work in the United States;
- (3) notwithstanding the provisions of Clauses C(1) and C(2), up to twenty percent (20%) of the Grant Funds may be used to pay for work performed in connection with the TA by (a) Subcontractors that are organized as legal entities under the laws of the Host Country, and/or (b) natural persons working as a Subcontractor, or as employees of the U.S. Firm or any Subcontractor, in each case, who are citizens of the Host Country;
- (4) a Host Country Subcontractor may only be used for specific services from the Terms of Reference identified in the Subcontract;
- (5) no part of the Grant Funds disbursed in connection with the delivery of the TA may be used to pay (a) any legal entity that is incorporated or organized under the laws of a jurisdiction other than one of the United States or the Host Country, or (b) a natural person who is a citizen of a country other than the United States (except as expressly provided in Clause C(2)) or the Host Country; and
- (6) goods purchased for the delivery of the TA and associated delivery services (*e.g.*, international transportation and insurance) must have their nationality, Source and Origin in the United States; provided, however, that goods and services incidental to TA support (*e.g.*, local lodging, food and transportation) in the Host Country are not subject to the foregoing restrictions.

D. U.S. Firm Recordkeeping and Audit

The U.S. Firm and Subcontractors funded under the Grant Agreement shall maintain, in accordance with generally accepted accounting procedures, books, records and other documents (including without limitation all bank statements, and receipts or proofs of purchase for all goods and services acquired in connection with the TA) sufficient in form, content and level of detail to reflect properly all transactions under or in connection with this Agreement of Understanding. These books, records and other documents shall clearly identify and track the use and expenditure of Grant Funds separately from other funding sources. Such books, records and documents must be maintained during the period of performance of work commencing on the Effective Date, and continuing until the date that is three (3) years following the final disbursement of Grant Funds by USTDA. The U.S. Firm and its Subcontractors shall (i) afford USTDA or its authorized representatives the opportunity at reasonable times for inspection and audit of such books, records and other documentation, and (ii) in the event of an audit of such books, records and other documentation, reasonably cooperate with, and promptly respond to information requests from, any USTDA-appointed auditors.

E. U.S. Carriers

(1) Air

Transportation by air of persons or property funded under the Grant Agreement shall be on U.S. flag carriers in accordance with the Fly America Act, 49 U.S.C. § 40118, to the extent service by such carriers is available, as provided under applicable U.S. Government regulations.

(2) Marine

Transportation by sea of property funded under the Grant Agreement shall be on U.S. carriers in accordance with U.S. cargo preference laws, including (without limitation) the Cargo Preference Act of 1954, 46 U.S.C. § 55305.

F. Workman's Compensation Insurance

The U.S. Firm shall provide adequate workman's compensation insurance coverage for work performed under this Agreement of Understanding.

G. Disbursement Procedures

(1) USTDA Approval of Agreement of Understanding

Disbursement of Grant Funds will be made only after USTDA approval of this Agreement of Understanding. Any work performed by the U.S. Firm or any Subcontractor in connection with the TA prior to USTDA's approval of the Agreement of Understanding will be at the U.S. Firm's risk.

(2) Payment Schedule Requirements

A payment schedule for disbursement of Grant Funds to the U.S. Firm is included in this Agreement of Understanding under Clause 3. Such payment schedule must conform to the following USTDA requirements: (a) the U.S. Firm must provide reasonable justification for the amount of the mobilization payment, which in any event may not exceed ten percent (10%) of the total Grant Funds; (b) all other payments, with the exception of the final payment, must be based upon completion of one or more tasks under the Terms of Reference as set forth in Clause 3; and (c) the final payment must be no less than fifteen percent (15%) of the total Grant Funds amount, payable upon approval by USTDA of a Final Report that has been (i) prepared and submitted in accordance with the requirements set forth in Clause I below, and (ii) approved in writing by the Client in the manner provided for by Clause G(4)(b)(iii) below.

(3) Invoice Approval Procedures

The U.S. Firm shall submit Invoices meeting the requirements set forth in Clause G(4) to the Client for approval. The Client shall not approve any Invoice submitted to it by the U.S. Firm unless such Invoice, and all work performed by the U.S. Firm (or any Subcontractor) in connection with

such Invoice, complies with the Terms of Reference and these Mandatory Agreement of Understanding Clauses.

(4) Invoice Requirements

For purposes of this Agreement of Understanding, the term “Invoice” means any invoice submitted (or to be submitted) to USTDA by either the Client or the U.S. Firm for payment of Grant Funds. USTDA will make all disbursements of Grant Funds directly to the U.S. Firm. The U.S. Firm must provide USTDA with an ACH Vendor Enrollment Form (available from USTDA) with the first Invoice. Either the Client or the U.S. Firm may request disbursement of Grant Funds by USTDA to the U.S. Firm for performance of the Terms of Reference by submitting the following to USTDA:

(a) U.S. Firm’s Invoice

The Invoice from the U.S. Firm shall include reference to the applicable performance milestone listed in the Agreement of Understanding payment schedule, the requested payment amount, and an appropriate certification to USTDA by the U.S. Firm, as follows:

(i) For a mobilization payment (if any):

“As a condition for this mobilization payment, the U.S. Firm certifies to USTDA that it will perform all work in accordance with the terms of its Agreement of Understanding with the Client. To the extent that the U.S. Firm does not comply with the terms and conditions of the Agreement of Understanding, including the USTDA Mandatory Agreement of Understanding Clauses contained therein, it will, upon USTDA’s request, make an appropriate refund to USTDA.”

(ii) For Agreement of Understanding performance milestone payments:

“The U.S. Firm certifies to USTDA that it has performed the work described in this invoice in accordance with the terms of its Agreement of Understanding with the Client and is entitled to payment thereunder. To the extent the U.S. Firm has not complied with the terms and conditions of the Agreement of Understanding, including the USTDA Mandatory Agreement of Understanding Clauses contained therein, it will, upon USTDA’s request, make an appropriate refund to USTDA.”

(iii) For final payment:

“The U.S. Firm certifies to USTDA that it has performed the work described in this invoice in accordance with the terms of its Agreement of Understanding with the Client and is entitled to payment thereunder. Specifically, the U.S. Firm has submitted the Final Report to the Client, as required by the Agreement of Understanding, and received the Client’s

approval of the Final Report. To the extent the U.S. Firm has not complied with the terms and conditions of the Agreement of Understanding, including the USTDA Mandatory Agreement of Understanding Clauses contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA.”

(b) Client's Approval of the U.S. Firm's Invoice

(i) The Invoice for a mobilization payment must be approved in writing by the Client on the Invoice or separately.

(ii) For Agreement of Understanding performance milestone payments, the following certification to USTDA by the Client must be provided on the Invoice or separately:

“The Client certifies to USTDA that the services for which disbursement is requested by the U.S. Firm have been performed satisfactorily, in accordance with applicable Agreement of Understanding provisions, including the USTDA Mandatory Agreement of Understanding Clauses contained therein, and the terms and conditions of the USTDA Grant Agreement.”

(iii) For final payment, the following certification to USTDA by the Client must be provided on the Invoice or separately:

“The Client certifies to USTDA that the services for which disbursement is requested by the U.S. Firm have been performed satisfactorily, in accordance with applicable Agreement of Understanding provisions, including the USTDA Mandatory Agreement of Understanding Clauses contained therein, and the terms and conditions of the USTDA Grant Agreement. The Final Report submitted by the U.S. Firm has been reviewed and approved by the Client.”

(c) USTDA Address for Invoices

Invoices shall be submitted to the attention of the Finance Department by email to invoices@ustda.gov.

(5) Payment Disclaimer

The Agreement of Understanding Parties understand and agree that payment by USTDA of an Invoice does not constitute (a) acceptance or approval by USTDA, whether express or implied, of (i) any materials, documents, reports or other deliverables prepared or delivered by the U.S. Firm or any Subcontractor, or (ii) any work performed under the Terms of Reference or otherwise by the U.S. Firm or any Subcontractor, in each case, in connection with the TA, or (b) confirmation or agreement by USTDA, whether express or implied, as to whether any work performed by the U.S. Firm or any Subcontractor in connection with the TA has been performed in accordance with

the terms and conditions of this Agreement of Understanding, including the Terms of Reference or these Mandatory Agreement of Understanding Clauses.

H. Termination

(1) Effect of Termination

In the event that this Agreement of Understanding and/or the TA is terminated prior to completion of all tasks under the Terms of Reference, the U.S. Firm will be eligible for payment for the value of the work performed pursuant to the terms of this Agreement of Understanding; provided, however, that such eligibility is subject to (a) compliance by the U.S. Firm with the terms and conditions of this Agreement of Understanding (including the Terms of Reference and these Mandatory Agreement of Understanding Clauses), and (b) USTDA approval. Likewise, in the event of such termination, USTDA may be entitled to receive a refund of Grant Funds from the U.S. Firm pursuant to Clause B(2)(d)(ii).

(2) Survivability

Clauses A, B, D, G, H, N, Q, and R of these Mandatory Agreement of Understanding Clauses shall survive the termination of this Agreement of Understanding.

I. USTDA Final Report

(1) Definition

“Final Report” shall mean the Final Report described in the attached Annex I Terms of Reference or, if no such “Final Report” is described therein, “Final Report” shall mean a substantive and comprehensive report of all work performed by the U.S. Firm and any Subcontractors in accordance with the attached Annex I Terms of Reference, including any documents delivered to the Client.

(2) Final Report Submission Requirements

The U.S. Firm shall provide the following documents and materials to USTDA collectively as one single submission:

(a) One (1) CD-ROM containing a complete electronic copy of the Final Report for USTDA’s records. This version of the Final Report shall have been approved by the Client in writing and must be in the English language. It is the responsibility of the U.S. Firm to ensure that confidential information, if any, contained in this version of the Final Report be clearly marked. USTDA will maintain the confidentiality of such information in accordance with applicable law. The electronic files on the CD-ROM shall be submitted in a commonly accessible read-only format (such as .pdf format), and the CD-ROM shall be clearly labeled in accordance with the requirements of Clause I(3)(c) below.

(b) One (1) CD-ROM containing an electronic copy of the Final Report suitable for public distribution (the “Public Version”). The Public Version shall have been approved by the Client in writing and must be in the English language. As the Public Version will be available for public distribution, it must not contain any confidential information. It is the responsibility of the U.S. Firm to ensure that no confidential information is contained on the Public Version of the CD-ROM. If the report in Clause I(2)(a) above contains no confidential information, it may be used as the Public Version. The electronic files on the CD-ROM shall be submitted in a commonly accessible read-only format (such as .pdf format), and the CD-ROM shall be clearly labeled in accordance with the requirements of Clause I(3)(c) below.

(c) A cross-walk document (the “Cross-walk”), delivered separately from the Final Report, that references the evidence of the completion of each requirement under each task and each sub-task in the Terms of Reference within the Final Report, presented in a table format. The Cross-walk must be organized chronologically by task and sub-task from the Terms of Reference, and for each such task the Cross-walk must provide (i) the language of the requirement set forth in the Terms of Reference (in sentence, bullet or subtask form), and (ii) the associated page number(s) on which the evidence establishing the completion of such requirement is included within the version of the Final Report delivered to USTDA under Clause I(2)(a).

and

(d) The U.S. Firm’s final Invoice, prepared and submitted in accordance with Clause G.

(3) Final Report Presentation

All Final Reports submitted to USTDA must be paginated and include the following:

(a) The front cover of every Final Report shall contain the name of the Client, the name of the U.S. Firm who prepared the report, a report title, USTDA’s logo, and USTDA’s address. If the complete version of the Final Report contains confidential information, the U.S. Firm shall be responsible for labeling the front cover of that version of the Final Report with the term “Confidential Version”. The U.S. Firm shall be responsible for labeling the front cover of the Public Version of the Final Report with the term “Public Version”. The front cover of every Final Report shall also contain the following disclaimer:

“This report was funded by the U.S. Trade and Development Agency (USTDA), an agency of the U.S. Government. The opinions, findings, conclusions or recommendations expressed in this document are those of the author(s) and do not necessarily represent the official position or policies of USTDA. USTDA makes no representation about, nor does it accept responsibility for, the accuracy or completeness of the information contained in this report.”

(b) The inside front cover of every Final Report shall contain (i) USTDA’s logo, USTDA’s address, and USTDA’s mission statement, and (ii) a written statement from the U.S. Firm affirming that the Client, USTDA, and the Commercial and/or Economic Section(s) of the U.S.

Embassy in the Host Country shall have irrevocable, perpetual, transferrable, worldwide, royalty-free, non-exclusive rights to use and distribute the Final Report.

(c) The U.S. Firm shall affix to the top side of each CD-ROM containing any version of the Final Report a label identifying the Host Country, the USTDA Activity Number set forth among the fiscal data in Clause M, the name of the Client, the name of the U.S. Firm who prepared the Final Report and a report title. In the case of each CD-ROM containing a confidential or non-public version of the Final Report, the U.S. Firm shall include the term “Confidential Version” on such label. In the case of each CD-ROM containing the Public Version of the Final Report, the U.S. Firm shall include the term “Public Version” on such label, along with the following language:

“The U.S. Firm certifies to USTDA that this CD-ROM contains the Public Version of the Final Report and that all contents are suitable for public distribution.”

(d) The U.S. Firm and any Subcontractors that perform work pursuant to the Grant Agreement must be clearly identified in the Final Report. Business name, point of contact, address, telephone and email address shall be included for the U.S. Firm and each Subcontractor.

(e) The Final Report shall be accompanied by a letter or other notation by the Client which states that the Client approves the Final Report. A certification to USTDA by the Client to this effect provided on or with the Invoice for final payment will meet this requirement.

(4) Final Report Disclaimer

The Agreement of Understanding Parties understand and agree that acceptance by USTDA of the Final Report does not constitute (a) approval, validation or endorsement by USTDA, whether express or implied, of (i) the Final Report or any of its contents, or (ii) the quality, characteristics or nature of any work performed under the Terms of Reference or otherwise by the U.S. Firm or any Subcontractor in connection with the TA, or (b) confirmation or agreement by USTDA, whether express or implied, as to whether any work performed by the U.S. Firm or any Subcontractor in connection with the TA has been performed in accordance with the terms and conditions of this Agreement of Understanding, including the Terms of Reference and these Mandatory Agreement of Understanding Clauses.

J. Modifications

All changes, amendments, assignments or other modifications to this Agreement of Understanding, including the Annexes to this Agreement of Understanding, will be made effective only by written instrument signed by the Agreement of Understanding Parties and approved in writing by USTDA. Either Agreement of Understanding Party may submit to USTDA, as the address set forth in Clause M, a final negotiated draft version (in an editable electronic format) of any proposed change, amendment, assignment or other modification to this Agreement of Understanding for USTDA review. USTDA will advise the Agreement of Understanding Parties as to whether the draft Agreement of Understanding is ready for execution, on the understanding that USTDA’s approval may be contingent upon certain modifications being made to such draft.

K. TA Schedule

(1) TA Completion Date

The TA Completion Date is 18 months from the kick-off of the TA, as further described in the Terms of Reference under Annex I.

(2) Time Limitation on Disbursement of USTDA Grant Funds

Except as USTDA may otherwise agree, (a) no Grant Funds may be disbursed under this Agreement of Understanding for goods and services which are provided prior to the Effective Date of the Grant Agreement, and (b) no Grant Funds may be disbursed more than four (4) years after the Effective Date of the Grant Agreement.

L. Business Practices; Conflicts of Interest

(1) Business Practices

The Agreement of Understanding Parties recognize the existence of standards of conduct for public officials and commercial entities in their respective countries. Therefore, the Agreement of Understanding Parties shall fully comply with all United States and Host Country laws relating to corruption or bribery, and shall not directly or indirectly provide, offer or promise to provide money or anything of value to any public official in violation of any United States or Host Country laws relating to corruption or bribery. For example, the U.S. Firm and its Subcontractors shall fully comply with the requirements of the U.S. Foreign Corrupt Practices Act, as amended (15 U.S.C. §§ 78dd-1 et seq.). Each Agreement of Understanding Party agrees that it shall require that any Subcontractor, agent or representative hired to represent it in connection with the TA will comply with this Clause L and all laws which apply to activities and obligations of that Agreement of Understanding Party, including, but not limited to, those laws and obligations referenced above.

(2) Conflicts of Interest

(a) Except as otherwise agreed in writing by USTDA, no Agreement of Understanding Party, or any employee, executive, director, officer or other staff member of a Agreement of Understanding Party, may either directly or indirectly engage in any activity or maintain any relationship (any such activity or relationship, a "Conflict of Interest") which might adversely affect the TA or the rights of USTDA, including but not limited to (i) ownership of a material interest in the other Agreement of Understanding Party, any supplier, contractor, distributor, Subcontractor, customer or other entity involved in the delivery of the TA, (ii) acceptance of any material payment, service, loan, gift, trip, entertainment, or other favor from the other Agreement of Understanding Party, a supplier, contractor, distributor, Subcontractor, customer or other entity involved in the delivery of the TA, (iii) any employee, executive, director, officer or other staff member of one Agreement of Understanding Party holding a position as an employee, executive, director, officer or other staff member of the other Agreement of Understanding Party or any supplier, contractor, distributor, Subcontractor, customer or other entity involved in the delivery of the TA, and (iv) any condition or circumstance that would reasonably be expected to (A) cause one or more of the

Agreement of Understanding Parties to be unable or potentially unable to render impartial assistance or advice, (B) impair the objectivity of the U.S. Firm or any Subcontractor in delivering the TA, or (C) create an unfair competitive advantage for any entity wherein either Agreement of Understanding Party has a material interest.

(b) Neither the Client nor the employees, executives, directors, officers or other staff members of the Client may receive payment from the Grant Funds.

(c) Any Agreement of Understanding Party shall promptly notify USTDA of any Conflict of Interest of which it becomes aware.

M. USTDA Address and Fiscal Data

Any communication with USTDA regarding this Agreement of Understanding shall be sent to the following contact information and include the fiscal data listed below:

To: U.S. Trade and Development Agency
Address: 1101 Wilson Boulevard, Suite 1100
Arlington, VA 22209-2275
USA
Phone: (703) 875-4357
Fax: (703) 997-2392
Email: USTDA_Worldwide@ustda.gov

Fiscal Data:

Appropriation No.: 11 21/22 1001
Activity No.: 2021-91009A
Reservation No.: 2021217
Grant No.: 1131PL21GH91217

N. Taxes

Grant Funds provided under the Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in the Host Country, except for taxes of a *de minimis* nature imposed on local lodging, food, transportation or airport arrivals or departures. Neither the Client nor the U.S. Firm may seek reimbursement from USTDA for any such taxes, tariffs, duties, fees or other levies, other than such taxes of a *de minimis* nature referenced above to the extent that the amounts of such *de minimis* taxes are included on expense receipts maintained by the U.S. Firm in accordance with Clause D.

O. Export Licensing

The U.S. Firm and all Subcontractors are responsible for compliance with U.S. export licensing requirements, if applicable, in the performance of all work in connection with the Terms of Reference.

P. Change of Control

Each Agreement of Understanding Party shall provide USTDA with written notice of any anticipated change of control or ownership of such Agreement of Understanding Party, whether direct or indirect, prior to the effective date of such change, which notice must identify (i) the persons or legal entities that are gaining control or ownership over such Agreement of Understanding Party, and (ii) the persons or legal entities that are losing control or ownership over such Agreement of Understanding Party.

Q. Liability

This Agreement of Understanding may include a clause that limits the liability of the Agreement of Understanding Parties, provided that such a clause does not (i) disclaim liability for damages that are natural, probable and reasonably foreseeable as a result of a breach of this Agreement of Understanding, or (ii) limit the total amount of damages recoverable to an amount less than the total amount disbursed to the U.S. Firm pursuant to this Agreement of Understanding. If any clause set forth in this Agreement of Understanding is inconsistent with either or both of these limitations, such clause will be invalid and unenforceable to the extent of the inconsistency.

R. Arbitration

If the Agreement of Understanding Parties submit any dispute arising under this Agreement of Understanding for arbitration, the scope of any such arbitration shall be limited to the Agreement of Understanding Parties' rights and/or obligations under this Agreement of Understanding and may not extend to any right or obligation of USTDA. The arbitrator(s) shall not arbitrate issues directly affecting the rights or obligations of USTDA.

S. U.S. Firm Independence and Impartiality

The U.S. Firm shall perform the TA for the benefit of the Grantee, and the U.S. Firm's services, advice and recommendations shall be formulated to advance the goals and objectives of the Grantee (including, without limitation, the goal of establishing value-based procurement guidelines to achieve value for money in infrastructure investments and public works projects). To this end, the U.S. Firm's services, advice and recommendations shall promote the use of international best practices and standards in procurement, and shall not favor goods or services from any specific country of origin.

T. Grantee Confidential Information

If, in connection with the TA, the U.S. Firm receives access to any confidential information of the Grantee, the U.S. Firm will safeguard and protect such confidential information, subject to applicable law, policy and procedures. For the purposes of this Agreement of Understanding, confidential information means private or secret information, including, without limitation, information that is marked as confidential, and that is customarily kept private or closely held.