

OCS Nº 442/2015 - ANEXO I

TERMO DE REFERÊNCIA

Contrato OCS nº 442/2015



TERMO DE REFERÊNCIA		
Descrição do material ou serviço	Unidade	Quantidade
Hospedagem de servidor dedicado de simulação, próximo à Bolsa de Chicago, compatível com a plataforma de simulação NinjaTrader, com sistema operacional Windows, processador Xeon, 16GB de memória RAM e 1TB de armazenamento	ano	1
Local de execução / entrega	O servidor será hospedado em Chicago, 350E Cermark rd. e será acessado via remote desktop dos computadores do BNDES.	
Prazo de entrega / execução	O serviço será disponibilizado em até 15 dias úteis após a assinatura do contrato	
Prazo de vigência	O contrato terá vigência de 13 (treze) meses a partir da data da sua assinatura. O serviço será prestado por 12 (doze) meses, a contar da sua disponibilização pelo fornecedor.	
Obrigações especiais e penalidades	Não se aplica	
Garantia do material ou serviço	Não se aplica	
Condições de pagamento	O pagamento será efetuado em 12 (doze) parcelas mensais, pela gerência de câmbio (AF/DEFIX/GCAM), por meio de wire transfer (transferência internacional), de acordo com a invoice (fatura internacional) a ser enviada pelo fornecedor. O pagamento será efetuado no prazo de 5 (cinco) dias a contar do recebimento da invoice.	
Emitente		
Data: __/__/__	_____ AF/DEPOL/GPOL3	



BNDES
Banco Nacional de Desenvolvimento Econômico e Social
Brasília, DF

OCS Nº 442/2015 - ANEXO II

PROPOSTA DA CONTRATADA

ALGORDIEN S.A.R.L.
539996365 RCS Rennes

DEVIS

Devis D - 1087
Date: 01/09/2015

Devis à :

BNDES

100 Av. República do Chile
Rio de Janeiro
Brésil

Livraison (si l'adresse est différente) :

ACHETEUR	DATE LIVRAISON	LIVRAISON PAR	CONDITIONS
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QUANTITE	DESCRIPTION	PRIX UNITAIRE	TOTAL
1	Location MENSUELLE Xeon E3-1230/16 GB/ Windows 2008 R2 Std / 1 X 1Tb SATA drive	260,00 EUR	260,00 EUR

SOUS -TOTAL 0.00 €

T.V.A.

TRANSPORT & MANUTENTION

TOTAL 0,00 EUR

BNDES

Monsieur [Nom] [Adresse]
[Ville]

**OCS (SERVICE ORDER) AGREEMENT N°. 442/2015
SAP AGREEMENT N°. 4400001526****SERVICE AGREEMENT ENTERED INTO BY AND
BETWEEN THE BRAZILIAN DEVELOPMENT
BANK (BNDES) AND ALGORDIEN S.A.R.L., AS
FOLLOWS:**

The **BRAZILIAN DEVELOPMENT BANK (BNDES)**, a federally-owned corporation, headquartered in Brasília, Federal Capital, and services in the city of Rio de Janeiro (RJ), at Av. República do Chile, n° 100, enrolled on the Corporate Taxpayer Registry (CNPJ) under N°. 33.657.248/0001-89, herein represented in accordance with its Articles of Association, and **ALGORDIEN S.A.R.L.**, headquartered at Le Rheu, France, 3 Allée des Cygnes, 35650, hereinafter referred to as **CONTRACTOR**, herein represented in accordance with its bylaws, pursuant to the Waiver of Competitive Bidding n°. 146/2015, pursuant to Article 24, II and §1º, of Act n°. 8,666/93, authorized on 09/25/2015, through IP AF/DEPOL n°. 18/2015, of 09/15/2015, in accordance with budget forecasting under SAP n°. 3101700090 - D Op/D Adm /Proc Dados/Desp Software – Outros, cost center BN30005000 (ATI/DESET), in compliance with the Federative Republic of Brazil's current legislation, particularly Act n°. 8,666/93, do hereby agree as follows:

CLAUSE ONE - SUBJECT MATTER

The subject matter of this Agreement is the rendering of services of dedicated server hosting, near Chicago Mercantile Exchange (CME), compatible with NinjaTrader simulation platform, with Windows 2008 R2 operating system, Xeon E3-1230 3.2 Ghz processor, 16GB of RAM and 1TB of storage, in accordance with specifications outlined in the Term of Reference and the Bid submitted by **CONTRACTOR**, respectively Attachments I and II hereto.

CLAUSE TWO - TERM

The Agreement shall be effective for thirteen (13) months, starting on the date of signature of this agreement.

CLAUSE THREE – LOCATION, TERM AND CONDITIONS FOR PERFORMANCE

The services shall be rendered at 350E Cermak rd., Chicago and accessed via remote desktop of BNDES computers within fifteen (15) business days from the signature date of this agreement and shall be provided for twelve (12) months thereafter, pursuant to the conditions provided in the Term of Reference, Attachment I, and the Bid submitted by **CONTRACTOR**, Attachment II.

CLAUSE FOUR - PRICING

The **BNDES** shall pay to **CONTRACTOR**, for performing the subject matter hereof, the total amount

of three thousand and one hundred and twenty Euros (3.120 €), for the rendering of the subject matter for 12 (twelve) months, in compliance with the Bid submitted, Attachment II. and in compliance with the provisions in the Payment Clause hereof. This amount will be paid in monthly installments of two hundred and sixty Euros (260 €).

First Paragraph

The **BNDES** shall pay all taxes directly or indirectly levied, currently or in the future, in the Federative Republic of Brazil, on the Agreement and the subject matter hereof, including social security contributions.

Second Paragraph

CONTRACTOR shall pay all taxes directly or indirectly levied, currently or in the future, in its country of origin, on the Agreement and the subject matter hereof, and the **BNDES** may, at any moment, demand **CONTRACTOR** provide proof of such payments.

CLAUSE FIVE - PAYMENT

The **BNDES** shall make the payment for the subject matter hereof in twelve monthly payments of 260 €, through credit held in a bank account, within five (5) business days as of the date the invoice is submitted, provided that the Agreement Manager attests to **CONTRACTOR**'s compliance of contractual obligations herein.

First Paragraph

The amounts shall be paid by the **BNDES**, in Euros, through a deposit into a bank account abroad duly identified in the invoice to be submitted by **CONTRACTOR**.

Second Paragraph

The invoice shall be sent to the e-mail address nfe@bndes.gov.br, with a copy to the Agreement Manager, containing detailed description of the subject matter fulfilled, the amounts corresponding to the reference period, and the following identification:

- BANCO NACIONAL DE DESENVOLVIMENTO ECONÔMICO E SOCIAL – BNDES
- CNPJ Nº 33.657.248/0001- 89
- PROTOCOLO GERAL DO BNDES – TÉRREO
- AV. REPÚBLICA DO CHILE, N.º 100
- CEP 20031-917 – RIO DE JANEIRO/RJ
- Contrato OCS nº 442/2015 / Contrato SAP nº 4400001526

Third Paragraph

In the event the **BNDES** fails to make the payments under this **CLAUSE**, for reasons that are not attributable to **CONTRACTOR**, the **CONTRACTOR** is allowed to terminate the service if the payment has not been received 30 days after having sent the invoice.

Fourth Paragraph

In the event of discrepancies, the **BNDES** shall return the invoice to **CONTRACTOR** or request it be corrected, as applicable, interrupting the payment term until **CONTRACTOR** provides the remedial measures or proves the correctness of the data challenged by the **BNDES**.

Fifth Paragraph

In addition to other events provided for by Law or the Agreement, the **BNDES** may discount, from the amounts due to **CONTRACTOR**, amounts related to penalties, indemnification determined by administrative proceedings, and any obligation arising from noncompliance with the Law by **CONTRACTOR**.

CLAUSE SIX – ECONOMIC AND FINANCIAL EQUILIBRIUM IN THE AGREEMENT

The **BNDES** and **CONTRACTOR** are entitled to economic and financial equilibrium in the Agreement, pursuant to the provisions in Article 37, item XXI, of the Federative Republic of Brazil's Constitution, to be achieved by revising prices.

First Paragraph

Price revision, subject to the provisions in Act N^o. 8,666/93, may be called by the **BNDES** or upon request by **CONTRACTOR**, provided that an unpredictable or predictable matter with incalculable consequences, occurs, excessively burdening or relieving the obligations of either party to this Agreement.

Second Paragraph

CONTRACTOR may request a price revision up to the termination of the Agreement, in which case the financial effects shall be retroactively applied as of the triggering factor, and **CONTRACTOR** agrees that, by failing to comply with these terms, it shall not be entitled to the retroactive effects, or, in case the Agreement is terminated, it shall waive the revision.

CLAUSE SEVEN - CONTRACTOR'S OBLIGATIONS

In addition to other obligations set forth herein, in Attachments I and II, or in the Law, particularly Act n^o 8,666/93, **CONTRACTOR** shall also:

- I. Correct all and any shortcomings detected during the implementation of the subject matter hereof, at no additional charge, complying with all the requirements established by the **BNDES**;
- II. Repair all damage and losses caused to the **BNDES**, which are proven to be **CONTRACTOR's** obligation, as well as errors or failures in performing or administrating the Agreement herein;
- III. Delegate one (01) employee to take responsibility for the Agreement entered into with the **BNDES**, to participate in any meetings, and to be **CONTRACTOR's** liaison, indicating phone number and e-mail address for contact, ensuring the full compliance with the obligations



- contractually established herein;
- IV. Notify the **BNDES** of any changes to aforesaid contacts;
 - V. Ensure that the subject matter hereof does not infringe upon any copyrights, patents or registrations, including trademarks, know-how or trade-secrets, taking responsibility or losses, including attorney's fees, costs and expenses arising from any lawsuit or administrative proceedings against the **BNDES**, for such claims; and **CONTRACTOR** may be required to intervene in the proceedings;
 - VI. Maintain confidentiality related to data, materials, documents and confidential information to which, due to the performance of the subject matter hereof, it may have access, directly or indirectly, and instruct professionals to fulfill this obligation, in compliance with the guidelines and standards established in the **BNDES'** Corporate Policy on Information Security;
 - VII. Oblige its legal representative and the professionals who have access to sensitive information to sign the Non-disclosure Agreement to be provided by the **BNDES**, when requested by the Agreement Manager;
 - VIII. Not to transfer any credits arising from this Agreement or to issue any security bond thereof; and
 - IX. Not to subcontract third parties to perform the subject matter hereof.

CLAUSE EIGHT – THE BNDES' OBLIGATIONS

In addition to other obligations set forth herein, in Attachments I and II, or in the Law, particularly Act N° 8.666/93, the **BNDES** shall also:

- I. Make the payments due to **CONTRACTOR**, under the conditions set forth in this Agreement.
- II. Designate Julio Costa Leite as Agreement Manager, who currently holds the position of Manager in the Financial Policy Financial Division of **BNDES** and who shall be in charge of monitoring, inspecting and assessing services rendered, as well as covering expenses and attesting to compliance with obligations hereunder;
- III. Designate Felipe Provençano as a deputy for the Agreement Manager, to act in their absence, who currently holds the position of Coordinator in the Financial Policy Financial Division of **BNDES**;
- IV. Replace, when appropriate, the Agreement Manager and/or their deputy with another professional, upon written notice to **CONTRACTOR**;
- V. Notify **CONTRACTOR** in writing of:
 - a) any instructions or procedures on matters related to the Agreement herein;
 - b) any administrative procedure filed to investigate misconduct by **CONTRACTOR**, providing enough time to present defense;
 - c) the application of any penalty hereunder.

CLAUSE NINE – LIQUIDATED DAMAGES

Total or partial failure to perform the Contract, including noncompliance with any requirement expressly set forth by the **BNDES** or breach of any legal obligation, or in the event of arrears, with no



justifiable reason, **CONTRACTOR** shall be subject to the penalties provided for in the Bidding Law, including the fine of up to thirty percent (30%), on the total amount of the Agreement, for any breach or noncompliance with the provisions established in this Agreement or with the specifications outlined in the Basic Design and the Bid submitted by **CONTRACTOR**, respectively Attachments I and II hereto, calculated according to the severity of the breach.

First Paragraph

Liquidated damages specified in the Clause herein can only be applied after administrative proceedings, and provided that the right to dispute and the opportunity to be heard are granted, and **CONTRACTOR** shall have the option to present preliminary defense within five (5) business days.

Second Paragraph

CONTRACTOR may bring an appropriate appeal against the decision to apply a penalty, within the manner and term established in Act n°. 8,666/93.

Third Paragraph

Penalties applied on **CONTRACTOR** and the burden the **BNDES** incurred shall be deducted from any credits due to the former, as well as from the guarantees provided, except for the possibility of judicially collecting all and any difference not covered by aforesaid credits.

CLAUSE TEN - TERMINATION

The Agreement herein may be unilaterally terminated by the **BNDES**, in the event of noncompliance or irregular compliance by the **CONTRACTOR** with the Clauses herein or legal provisions, or terminated by agreement between the parties.

CLAUSE ELEVEN - MISCELLANEOUS

The Agreement herein constitutes the entire agreement between the parties with respect to the subject matter hereof. Any other adjustment that creates or changes the rights or obligations established hereunder shall be agreed upon in writing and signed by the duly authorized representatives of both parties.

First Paragraph

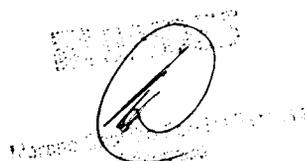
The Term of Reference, the Bid submitted by **CONTRACTOR**, respectively Attachments I and II are an integral part of this Agreement.

Second Paragraph

In the event of inconsistencies and/or conflict between the terms of this Agreement and those in Attachment II, the terms of the Agreement herein shall prevail.

Third Paragraph

Any omission or tolerance regarding strict compliance with the obligations hereunder, or exercising



rights arising as a result of the Agreement herein, shall not be deemed as a waiver or novation, nor shall it prohibit either party from enforcing their rights at any time.

CLAUSE TWELVE - VENUE

The parties hereto elect the Courts of the city of Rio de Janeiro as the venue to settle any disputes that may arise herefrom, waiving all others, no matter how privileged.

The instrument herein is written in Portuguese and in English, with two (02) copies of each version. In the event of differing interpretations, the text in Portuguese shall prevail.

This Agreement is deemed a signed document on the latest date below.

The sheets of this Agreement are initialed by Moreno Castilho Pereira Peralles, BNDES' lawyer, under authorization of the undersigned legal representative(s).

IN WITNESS WHEREOF, the parties sign this instrument in the presence of the undersigned witnesses.

Rio de Janeiro, 04 de novembro de 2015.

Francisco R. Salgado
Francisco R. Salgado R1220
Advogado

THE BRAZILIAN DEVELOPMENT BANK (BNDES)

La Hien, October 6th, 2015.

ALGORDIEN S.A.R.L.

Witnesses:

Name:
CPF (Individual Taxpayer Number):

Francis Romeira Ferreira de M...
Name: Francis Romeira Ferreira de M...
CPF (Individual Taxpayer Number): (50...)

Moreno Castilho Pereira Peralles
Advogado

OCS N° 442/2015 - ATTACHMENT I

TERM OF REFERENCE



Classificação: Controlada até a data da aprovação - Lei 12.527/11, art. 7º, §3º

Restrição de acesso: Empresas do Sistema BNDES

Unidade Gestora: AF/DEPOL

TERM OF REFERENCE		
Service Description	Unity	Quantity
Rendering of services of dedicated server hosting, near Chicago Mercantile Exchange (CME), compatible with NinjaTrader simulation platform, with Windows 2008 R2 operating system, Xeon E3-1230 3.2 Ghz processor, 16GB of RAM and 1TB of storage	year	1
Service rendering location	The services shall be rendered at 350E Cermark rd., Chicago and accessed via remote desktop of BNDES computers	
Service Rendering Term	The server will be available for use within fifteen (15) working days after the signature of the contract	
Contract Term	The Agreement shall be effective for thirteen (13) months, starting on the date of signature of this agreement. The services shall be provided for twelve (12) months, starting on the date of the availability of the service by the CONTRACTOR.	
Special obligations and penalties	Not applicable	
Service Guarantee	Not applicable	
Payment Conditions	BNDES shall make twelve monthly payments for the subject matter, through credit held in a bank account, within five (5) business days as of the date the invoice is submitted, provided that the Agreement Manager attesting to CONTRACTOR's compliance of contractual obligations herein.	
Issuer		
Date: __/__/__	_____ AF/DEPOL/GPOL3	

[Handwritten signature and stamp]

OCS N° 442/2015 - ATTACHMENT II

CONTRACTOR'S BID

Agreement OCS n° 442/2015



ALGORDIEN S.A.R.L.
539996365 RCS Rennes

DEVIS

Devis D - 1087
Date: 01/09/2015

Devis à :

Livraison (si l'adresse est différente) :

BNDES

100 Av. República do Chile
Rio de Janeiro
Brésil

ACHETEUR	DATE LIVRAISON	LIVRAISON PAR	CONDITIONS	
QUANTITE	DESCRIPTION	PRIX UNITAIRE	TOTAL	
1	Location MENSUELLE Xeon E3-1230/16 GB/ Windows 2008 R2 Std / 1 X 1Tb Sata drive	260,00 EUR	260,00 EUR	
		SOUS -TOTAL	0.00 €	
		T.V.A.		
		TRANSPORT & MANUTENTION		
		TOTAL	0,00 EUR	

ALGORDIEN

Signature