

**ANNEX III**

**BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON D.C.**



**CONTRACT ~~XX~~/CABW/2020**

**BID #205194/CABW/2020  
(PAG 67102.205194/2020-12)**



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CONTRACT DRAFT

PAG Nº: **67102.205194/2020-12**

CONTRACT Nº **XX/CABW/2020**

CONTRACT FOR THE ACQUISITION OF LOGISTICS SERVICES, WHICH THE BRAZILIAN GOVERNMENT HEREBY ENTERS INTO, THROUGH THE BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON, AND THE COMPANY **XXXXXXXXXXXXX**.

The Brazilian Government, through the Brazilian Aeronautical Commission in Washington, with main offices located at **1701 22<sup>nd</sup> St N.W. Washington, D.C. 20008**, represented herein by **Col Roberto Martire Pires**, in the use of his legal attributions, as per Directive No. 50, issued by the Ministry of Aeronautics on January 29, 1953, and as per Art.61 of Brazilian Federal Law No. 8,666/93, hereinafter referred to as the CONTRACTING PARTY, and the company **XXXX**, with main offices located at **XXXX**, ZIP **XXXX**, in the Municipality **XXXX**, hereinafter the CONTRACTED PARTY, represented herein by Mr. **XXXX**, bearer of ID No. **XXXX**, and bearing in mind the content of **PAG No. 67102.205194/2020-12**, and the final result of the **Invitation for Bid No. 205194/CABW/2020**, based on the principles of the Brazilian Federal Law No. 8,666/93, and related legislation, hereby decide to enter into this agreement and execute this instrument, in accordance with the following terms and conditions:

**1 CLAUSE – OBJECT**

**1.1.** Hiring of a specialized company for the air transportation of goods acquired to be used in KC-390 aircrafts, according to the presented modules, to Galeão International Airport (GIG), with the rights and duties governed by DPU - INCOTERMS 2020.

**1.1.1.** In the above mentioned INCOTERMS cargo insurance (cost definition) shall not be taken into account, as the CONTRACTING PARTY already has such a contract in place.

**1.1.2.** For logistical purposes, the object of this BASIC PROJECT shall be divided into HAZMAT shipments divided by weight range in passenger aircraft or cargo



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aircraft, in accordance to transportation regulations, and NON-HAZMAT shipments divided by weight range in passenger aircraft or cargo aircraft, as per the following table:

1.2. The following annexes are integral parts of this contract, regardless of whether or not they are herein transcribed:

**ANNEX A – BASIC PROJECT;**

**ANNEX B - PRICE PROPOSAL FROM THE CONTRACTED PARTY;**

**ANNEX C - PHYSICAL AND FINANCIAL SCHEDULE.**

## **2 CLAUSE – PERFORMANCE**

2.1. The contract shall be performed on the basis of indirect execution of Lowest Unit Price.

## **3 CLAUSE – LANGUAGE**

3.1 It is hereby agreed by the parties that the language of this CONTRACT, for the purpose of documentation, correspondence, and any other interests shall be **English**.

## **4 CLAUSE – CONDITIONS TO PROVIDING SERVICE**

4.1 The services shall be performed by the CONTRACTED PARTY as described herein and in accordance with the BASIC PROJECT, Annex A.

4.2 The CONTRACTED PARTY shall maintain all the conditions for qualification during the bidding process throughout the validity of this CONTRACT.

## **5 CLAUSE – OBLIGATIONS**

5.1 In addition to that set forth in the Basic Project, Annex I, the **CONTRACTED PARTY** shall be required to:

5.1.1 Perform services in accordance with the specifications in the BASIC PROJECT and its proposal with the resources necessary for full compliance with the provisions of the CONTRACT;

5.1.2 Strictly observe specifications and instructions contained in the Invitation for Bid;

5.1.3 Take full responsibility for the supply of contracted materials;

5.1.4 Ensure supply of all material and equipment required for full and perfect fulfillment of contractual obligations;



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**5.1.5** Take responsibility for the selection, qualification, transportation, meals, lodging, contracting and termination of its employees, as well as for their legal situation with labor, transit, insurance, health and welfare authorities. The CONTRACTED PARTY's failure to fulfill the obligations set forth herewith does not make the CONTRACTING PARTY responsible for payment;

**5.1.6** Take responsibility, furthermore, for damages directly caused to the CONTRACTING PARTY, arising from culpability or deceitfulness in the performance of services by CONTRACTED PARTY'S employees or appointed agents;

**5.1.7** Provide all clarification requested by the CONTRACTING PARTY, immediately addressing any complaints;

**5.1.8** Replace, at no cost to the CONTRACTING PARTY, all material or equipment provided suffering from any type of damage caused by poor use by its employees, or which has been rejected during inspection tests;

**5.1.9** Take necessary measures to ensure the safety, protection and wellbeing of building and apartment dwellers, placing signs in restricted areas, and preventing transit through hazardous areas;

**5.1.10** Transport, handle and store with the greatest possible care –avoiding shocks, blows or breakage- various materials to be used during service, taking into account that those materials which are subject to damage by heat, light, humidity or rain must be stored in adequate environment for their protection until they are utilized; and

**5.1.11** The CONTRACTED PARTY is prohibited from disclosing to third parties any information regarding the nature or progression of material delivery contemplated by this Contract, as well as from notifying the written or oral press, including television and/or any other means of public disclosure, except with explicit consent of the CONTRACTING PARTY.

**5.1.12** Bear all civil liability for each and every material and for damages caused by action or omission on the part of CONTRACTED PARTY'S employees, workers, agents, or representatives, whether intentionally or not, before the Brazilian Government (Brazilian Air Force Command) and other third parties;

**5.1.13** Use qualified employees who have essential knowledge of the services that will be performed in accordance with the rules and regulations in effect;



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- 5.1.14** Be responsible for all labor, social, and tax obligations, as well as for any other duties or obligations provided for under specific legislation, the violation of which shall not carry a liability to the CONTRACTING PARTY;
- 5.1.15** Instruct its employees on the need to follow the guidelines provided by the CONTRACTING PARTY, including with regard to Internal Regulations, if any;
- 5.1.16** Maintain throughout the term of the Contract, consistent with the obligations assumed, all conditions of eligibility and qualification required in the bidding process;
- 5.1.17** Not transfer to third parties, in any way, not even partially, any of the responsibilities assumed;
- 5.1.18** Be responsible for any costs resulting from any possible mistakes made in calculating the quantitative items in its proposal, including with regard to variable costs associated with future and uncertain facts, being responsible for covering those items should what was initially provided for in its proposal not be enough to perform the object of the bidding process, except should any of the events be listed under items of § 1, Article 57, of Law nº 8,666/93 (Brazil);
- 5.1.19** All services performed by the CONTRACTED PARTY shall be the responsibility of the CONTRACTED PARTY and shall be performed in accordance with the CONTRACT;
- 5.1.20** The CONTRACTED PARTY shall not perform any extra service without first providing an estimated budget, which is to be formally authorized by the CONTRACTING PARTY;
- 5.1.21** The CONTRACTED PARTY shall appoint a Manager for the purpose of overall management of the activities/services, following up on the CONTRACT and representation with the CONTRACT Supervisor;
- 5.1.22** The CONTRACTED PARTY shall comply with all the deadlines provided in the CONTRACT;
- 5.1.23** Comply with all the CONTRACTING PARTY's requirements, especially those related to deadlines, performance and conclusion of the contracted services, as well as the requirements related to the services under special deadline, priority and emergency;
- 5.1.24** Abide by BACW's business hours, and according to its convenience or need for any change, communicate the change to the CONTRACT Supervisor, with at least 24 (twenty four) hours in advance;



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- 5.1.25** Be responsible for any claims and financial burden that may arise from any law suits, or damage caused directly or indirectly by the CONTRACTED PARTY, and that may possibly be argued against BACW, by third parties;
- 5.1.26** Promptly communicate, in writing to BACW, any and all information related to any errors, mistakes or flaws found in the BASIC PROJECT;
- 5.1.27** Use of adequate equipment and tools, to allow for proper execution of the services, and utilize efficient and safe work methods;
- 5.1.28** The containers provided by the CONTRACTED PARTY must be in good hygiene and cleanliness conditions, free from holes, with doors in good working condition, thus enabling closing and placement of seal. If these conditions are not met, the CONTRACTING PARTY may reject and return the container. The cost for the return shall be borne by the CONTRACTED PARTY and the timeframe for the supply and uploading of cargo shall be maintained, per initial schedule.
- 5.1.29** The containers` transportation vehicle must possess adequate height and length to enable CONTAINERIZATION through the Warehouse`s dock doors, whose measurements are as follows: **7.8 ft. (seven point eight feet) width and 9.5 ft. (nine point five feet) height.**
- 5.2** The CONTRACTING PARTY shall be required to:
- 5.2.1** The CONTRACTING PARTY, through the assistance of the CONTRACT Supervisor, duly designated for that function, shall:
- 5.2.1.1** Appoint a RECEIVING, through Internal document, to carry out receipt of the qualitative and quantitative object of the CONTRACT;
- 5.2.1.2** Provide all the conditions for the CONTRACTED PARTY to be able to perform its services in accordance with the provision of the CONTRACT, the Invitation to Bid and its Annexes, and particularly the Basic Project;
- 5.2.1.3** Require compliance with all obligations assumed by the CONTRACTED PARTY in accordance with the provisions of the CONTRACT and the terms and conditions of its proposal;
- 5.2.1.4** Provide supervision of services by an official specifically designated for that purpose, who shall record in his own log any flaws found;
- 5.2.1.5** Notify the CONTRACTED PARTY in writing of the occurrence of any irregularities



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during the performance of services, and establish a deadline for their correction;

**5.2.1.6** Pay the CONTRACTED PARTY the amount due for the provision of services, as established in the CONTRACT through the receipt and acceptance of an INVOICE; and

**5.2.1.7** See to it that, throughout the term of the CONTRACT, all conditions of eligibility and qualifications required in the bidding process are maintained, consistent with the obligations assumed by the CONTRACTED PARTY.

## **6 CLAUSE – DISCRIMINATION OF SERVICE**

**6.1** The CONTRACT shall be performed by the CONTRACTED PARTY as described herein and in the BASIC PROJECT, Annex I.

## **7 CLAUSE – AMOUNT OF THE CONTRACT**

**7.1** The maximum total amount of the CONTRACT is **US\$ XXXX (XXXX)**, being initially provided the value of **US\$ XXXX (XXXX)** through the Purchase Order n° **XXXXXXXX**, being the remaining **US\$ XXXX (XXXX)**, the complement for the above mentioned Purchase Order.

**7.2** The For HAZMAT shipments, UN Code cost for cargo aircraft and UN Code cost for passenger aircraft shall be submitted by the bidder in the bidding process, as per price proposal mode.

**7.3** For HAZMAT shipments, **FIXED PACKAGING/DOCUMENTATION FEES** shall be submitted by the bidder in the bidding process, as per price proposal mode.

**7.4** The winning bid shall be the bid with the **LOWEST UNIT PRICE**.

**7.4.1** The **UNIT PRICE** must be obtained by adding the **COST PER RANGE (CPR)** for HAZMAT and NON-HAZMAT range, multiplied by its referred **WEIGHT FACTOR (WF)**, resulting in the **WEIGHTED UNIT PRICE PER RANGE (WUPR)**.

**7.4.2** The **WUPR** arithmetic average plus the cost per **UN CODE** for cargo aircraft plus the cost per **UN CODE** for passenger aircraft and the cost of **FIXED PACKING/DOCUMENTATION FEE** shall be the **UNIT PRICE** of the bidder, as per the mathematical demonstration below:

**7.4.3** **COST PER RANGE (CPR)**.

**7.4.3.1**  $CPR_n = RCH_n + RPH_n + RP_n + RC_n$





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RANGE		Range 1	Range 2	Range 3	Range 4	Range 5	Range 6
		<i>Up to 45 Kg</i>	<i>46 Kg to 100 Kg</i>	<i>101 Kg to 300 Kg</i>	<i>301 Kg to 500 Kg</i>	<i>501 Kg to 1.000 Kg</i>	<i>1.001 Kg or more</i>
Material Type	Aircraft / Truck Type						
<b>HAZMAT</b>	Cargo						
	Passenger						
	Domestic (Truck)						
<b>NON-HAZMAT</b>	Passenger						
	Cargo						
	Domestic (Truck)						
<b>Cost Per Range</b>							

#### 7.4.4 WEIGHT FACTOR (WF)

Weight Factor (WF)					
Range 1 (W1)	Range 2 (W2)	Range 3 (W3)	Range 4 (W4)	Range 5 (W5)	Range 6 (W6)
<i>Up to 44 Kg</i>	<i>45 Kg to 99 Kg</i>	<i>100 Kg to 299 Kg</i>	<i>300 Kg to 499 Kg</i>	<i>500 Kg to 999 Kg</i>	<i>1.000 Kg or more</i>
0.6	0.2	0.029	0.029	0.029	0.029

#### 7.4.5 WEIGHTED UNIT PRICE PER RANGE (WUPR):

7.4.5.1  $WUPR = CPR_n * W_n$

7.4.6 The arithmetic average of the WUPR:

$$Average\ WUPR = \frac{(WUPR1) + (WUPR2) + (WUPR3) + (WUPRn)}{n}$$

#### 7.4.7 UNIT PRICE OF THE BIDDER:



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UNIT PRICE = Average WUPR + ONU Code per cargo aircraft + ONU Code per passenger + DOCUMENTATION FEE/FIXED PACKAGING.

**7.4.8** It is important to highlight that during the performance of the CONTRACT the amounts to be paid shall be shown by range in the RCH, PRG, RP, and RC fields, according to the weights in kilograms of the cargo to be shipped.

**7.4.8.1** Bidders must submit a fixed price for Range 1, and a price per kilogram in Ranges 2 to 9.

**7.4.9** Bidders must submit their price proposal in accordance with the PRICE PROPOSAL MODEL as provided in the Invitation for Bid.

## **8 CLAUSE – FINANCIAL GUARANTEE**

**8.1** Financial Guarantee is not required for this Contract.

## **9 CLAUSE – TERM, EXTENSION, AND DEADLINES**

### **9.1** Term of Validity

**9.1.1** The validity of the Contract will start after execution by BACW's Chief on Contract and shall be in effect for a period of 12 (twelve) months, and may be renewed by an additional 12 (twelve) months for a maximum overall duration of 60 (sixty) months upon the execution of a written amendment by both parties.

### **9.2** Start of the service

**9.2.1** The execution of the service will start only after CONTRACTED PARTY receives a Service Order signed by BACW's Chief.

### **9.3** Extending the Contract

**9.3.1** The CONTRACTED PARTY does not have a right to unilaterally extend the Contract. The Contract may only be extended by agreement between the parties and the signing of an Amendment.

## **10 CLAUSE – PAYMENT**

**10.1** The deadline for payment shall be within **thirty (30) calendar days** from the date the term of receipt is issued by the RECEIVING COMMISSION



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**10.2** An Invoice shall be issued by the CONTRACTED PARTY in accordance with the following procedures:

**10.2.1** Payment shall only be made, after the appropriate official's "approval" of the Invoice provided by the CONTRACTED PARTY.

**10.2.2** The "approval" of the Invoice is contingent upon verification of compliance of the Invoice submitted by the CONTRACTED PARTY with the services/services that were actually performed; and

**10.2.3** In the event of any mistake in submitting any of the documents required under the previous sub-items or of a situation that prevents fees from being paid, the payment shall remain pending until the CONTRACTED PARTY takes steps to remedy the situation. In this case, the deadline for payment shall take effect after it is verified that the situation has been solved, without any costs to the CONTRACTING PARTY.

**10.3** Payment shall be made through a bank order of credit, deposit in a bank account, at the branch or bank agency indicated by the CONTRACTED PARTY, or through any other means provided for under the legislation in effect.

**10.4** The date of payment shall be considered the date when the bank order of payment is actually made.

**10.5** The CONTRACTING PARTY shall not be responsible for any expenses that may be made by the CONTRACTED PARTY that have not been agreed to in the Contract.

## **11 CLAUSE – PRICE ADJUSTMENT**

**11.1** All installments of the price may be renegotiated. A formal proposal of one of the Parties mentioned in the CONTRACT must be submitted and it will only be valid if done after 12 months from the deadline for the initial submission of the proposals or the last renegotiation. Moreover, the renegotiations must be preceded of indexes/indicators supporting the new updated prices, as well as a cost spreadsheet.

**11.2** In the renegotiations that follow, the annuality will be counted from the date of the last renegotiation occurred.

**11.3** The renegotiations will be preceded by a request from the CONTRACTED PARTY, accompanied by an analytical demonstration of the change in costs, through presentation



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of the cost and price formation spreadsheet and the new collective agreement that underlies the renegotiation.

- 11.4** It is prohibited the inclusion, on the occasion of the renegotiation, of benefits not foreseen in the initial proposal, except when they become mandatory by virtue of a legal instrument, normative sentence, or collective agreement.
- 11.5** When the renegotiation is requested, it will only be granted through negotiation between the parties, considering:
- 11.5.1** The market prices and other contracts in the administration;
  - 11.5.2** The peculiarities of the current contract;
  - 11.5.3** New collective agreement in the professional field;
  - 11.5.4** New spreadsheet with the variation of costs presented;
  - 11.5.5** Sectorial indicators, manufacturer tables, official reference values, government tariffs or other equivalent; and
  - 11.5.6** The CONTRACTED PARTY's budget availability.
- 11.6** The decision on the renegotiation request must be made within a maximum period of sixty days, counting from the request and the delivery of proof of variation in costs.
- 11.7** In the case of renegotiation, an addendum to the current contract will be drawn up.
- 11.8** The term referred to in the previous paragraph will be suspended as long as the CONTRACTED PARTY does not comply with the acts or present the documentation requested by the CONTRACTED PARTY to prove the variation in costs.
- 11.9** The CONTRACTING PARTY may verify the variation in costs claimed by the CONTRACTED PARTY.
- 11.10** The presentation of the renegotiation proposal by the CONTRACTED PARTY does not require acceptance by the CONTRACTING PARTY, who may choose not to extend the contract for the next 12-month period.
- 11.10.1** If the CONTRACTED PARTY does not present other duly justified indexes, the maximum renegotiation value shall pertain to the variation of the CPI (Customer Price Index, issued by the Bureau of Labor Statistics - BLS - According to the North American Ministry of Labor).



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## **12 CLAUSE – BUDGETARY APPROPRIATION**

**12.1** Expenses arising from this contract shall be borne in accordance with the following budget classification: Program 0621 - Air Force Preparation and Employment, Action 2048 - Maintenance and Supply of Aeronautical Material, in the Nature of Expense 339039, or other Programs and Actions that may provide such support, taking into account that the costs of transportation and customs clearance in question serve the systems of the Brazilian Air Force.

## **13 CLAUSE – SUPERVISION AND RECEIVING**

### **13.1 SUPERVISION**

**13.1.1** The performance of the CONTRACT will be subject to follow up, monitoring, and assessment by the Supervisor/Monitor of the CONTRACTING PARTY.

**13.1.2** Following up, monitoring and assessing, as described in this item, does not exclude the CONTRACTED PARTY's responsibility, nor does it confer upon the CONTRACTING PARTY due responsibility, including vis-à-vis third parties, for any irregularities or damages in the performance of the contracted services.

**13.1.3** The CONTRACTING PARTY reserves the right to reject, in whole or in part, the services contracted that are not provided in accordance with the Invitation for Bid, its Annexes, and the Contract.

**13.1.4** The determinations and requests made by the Supervisor/Monitor of the CONTRACTING PARTY in charge of supervising the Contract shall be immediately met by the CONTRACTED PARTY, or otherwise justified in writing.

**13.1.5** Verification of adequacy in the provision of service shall be carried out based on the criteria provided for in the Basic Project.

### **14.2 RECEIPT OF THE OBJECT**

**14.1.1** The services that are the object of the CONTRACT shall be received by COMREC;

**14.1.2** It is the responsibility of the Receiving Commission to:

- a) Ensure that the CONTRACTED PARTY will follow the description of all the material that are the object of the BASIC PROJECT;
- b) Receive services or reject them according to the specifications set forth in the



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BASIC PROJECT, in up to ten (10) calendar days;

- c) Once approved, the invoices are sent to BACW's Contract Department, followed by a Statement of Receipt, within 5 (five) days. If there is any discrepancy, the invoice shall be returned to the CONTRACTED PARTY for corrections, along with a letter explaining the reasons why it was returned, and
- d) All proposals, questions, discrepancies and difficulties encountered during the execution of the CONTRACT, or that require an evaluation shall be presented to the CONTRACT Supervisor for approval and/or a determination must be approved by the Chief of BACW.

## **14 CLAUSE – CHANGES TO THE CONTRACT**

**14.1** Pursuant to Article 65, § 1, of Law nº 8.666/93 (Brazil), a CONTRACTED PARTY is required to accept, under the same terms and conditions, any changes involving addition or subtraction, that may be necessary, up to the limit of twenty-five percent (25%) of the original total amount of the Contract.

**14.1.1** The set of increases and the set of decreases shall be calculated based on the original total amount of the Contract.

**14.1.2** Increase above 25% can never be accepted, but the total amount of the CONTRACT may decrease by more than 25% (twenty five percent) given the possibility of execution being less than the amount estimated by BACW, due to the needs of the CONTRACTING PARTY. The submission of the proposal in the Bidding Process constitutes acceptance of this condition by both parties, providing that the CONTRACTED PARTY accepts that the value of the Contract may so decreased by the CONTRACTING PARTY at its discretion and that such decrease may be more than 25%.

## **15 CLAUSE – UNFORESEEABLE EVENTS OF FORCE MAJEURE**

**15.1** Unforeseeable – or force majeure – events shall be notified in writing to the Chief of the BACW, so that he may decide appropriate course of action, provided it has been proven that such events affect the services/material supplied in connection with the Subject of this CONTRACT.



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**15.2** For the purposes of this Contract, events shall be considered unforeseeable or caused by force majeure if they fit legal description provided in single paragraph of article 393 of the Brazilian Civil Code, or terms of line II, § 1º, Art. 57 of Law nº 8.666/93.

## **16 CLAUSE – VIOLATIONS AND ADMINISTRATIVE SANCTIONS**

**16.1** Failure to complete the Contract as a whole or in part or any violation of the obligations listed in the Invitations to Bid and in the Contract shall subject the CONTRACTED PARTY, notwithstanding other criminal and civil liability, to any and all damages and remedies available to CONTRACTING PARTY under this Contract or applicable law, while ensuring due process, to the following penalties:

**16.1.1** A warning for minor violations, which for this purposes mean those that do not result in significant losses to the object of the contract;

**16.1.2** Suspension from participating in a bidding process and entering into an agreement with the Administration (BACW) for two (2) years; and

**16.1.3** Declaration of bad standing to participate in a bidding process and enter into an agreement with the Public Administration (Brazil) for as long as the reasons resulting in the punishment remain and until when it is rehabilitated by the Administration (BACW), which shall be granted provided that the CONTRACTED PARTY compensates the Administration (BACW) for the losses resulting from its violations, provided the suspension time described in the previous sub item has elapsed.

**16.2** The penalties provided for will be applied through an administrative proceeding that ensures due process and ample defense, while following the procedure provided for under Law nº 8,666/93 (Brazil), and also Law nº 9.784/99 (Brazil).

**16.3** While applying the penalties, the authority shall take into account the seriousness of the violation, the educational character of the penalty as well as the damage that was caused to the administration (BACW) , following the principle of proportionality.

## **17 CLAUSE – LINKAGE**

**17.1** This Contract is hereby linked to Invitation to Bid No. **205194/CABW/2020**, and the Commercial Proposal of the CONTRACTED PARTY, submitted by company **XXXXX** to BACW.



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## **18 CLAUSE – TERMINATION**

**18.1** Pursuant to the provisions of Article 78 of Lei nº 8,666/93 (Brazil), the following are cause for terminating this Contract:

- I.** Failure to comply with CONTRACT clauses, specifications, projects and deadlines;
- II.** Inappropriate compliance with CONTRACT clauses, specifications, projects and deadlines;
- III.** Slowness in its compliance which may lead the CONTRACTING PARTY to find it impossible to complete the services within the established deadlines;
- IV.** Unjustifiable delay in initiating service;
- V.** Stoppage in the service, without cause, and without providing previous notice to the CONTRACTING PARTY;
- VI.** Subcontracting as a whole or part of the object, association on the part of the CONTRACTED PARTY with a third party, assigning or transferring, as a whole or in part, as well as mergers and acquisitions, is prohibited;
- VII.** Failure to comply with orders from the authority designated to follow up and supervise the performance of services, or higher authorities;
- VIII.** Repeatedly making errors in the performance of services, duly recorded pursuant to § 1 of Article 67 of Law nº 8,666/93 (Brazil);
- IX.** Bankruptcy;
- X.** Dissolution of company or death of the CONTRACTED PARTY;
- XI.** Corporate change or alteration of purpose or business of the CONTRACTED PARTY that hinders the performance of the CONTRACT;
- XII.** Reasons of public interest (Brazil) that are of high importance, broadly publicized, justified and ordered by a higher executive authority with jurisdiction over CONTRACTING PARTY, based on an administrative case referred to in the CONTRACT;
- XIII.** Suspension of services on the part of the CONTRACTING PARTY that will cause changes in the original amount of the CONTRACT in excess of the limits provided for under § 1 of Article. 65 of Law nº 8,666/93 (Brazil);
- XIV.** Suspension of service, through a written order of the CONTRACTING PARTY, for more than one hundred twenty (120) days, in the event of a disasters, domestic disturbances or war, or also repeated suspensions that add up to 120 days. In addition to the required payment of indemnification to the CONTRACTED PARTY, it is also entitled in





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these cases to suspend complying with its obligations until normalcy is achieved;

**XV.** A delay for more than ninety (90) days in making payments due by the CONTRACTING PARTY, for services, supply and work already received and performed, except in the event of a disasters, domestic disturbances or war. The CONTRACTED PARTY shall be entitled to suspend compliance with its obligations until normalcy is achieved;

**XVI.** Failure of the CONTRACTING PARTY to release the object for the performance of services within the established deadlines;

**XVII.** Acts of God or force majeure that prevents performance of the CONTRACT, which is to be duly demonstrated; and

**XVIII.** Violation of the provisions of items V of Article 27 of Law nº 8,666/93 (Brazil), notwithstanding the applicable criminal sanctions.

**18.2** Termination will be formally recorded under the law, with the right of due process and ample defense ensured.

**18.3** Termination of this CONTRACT may be:

**18.3.1** Decided unilaterally and in writing by the CONTRACTING PARTY in the event listed under in items I to XII, XVII, and XVIII of this CLAUSE;

**18.3.2** Agreeable, through an agreement between the parties, entered as an addendum in the process, provided it is convenient to the CONTRACTING PARTY; and

**18.3.3** Judicially, pursuant to applicable legislation.

**18.4** The Administrative or agreeable termination shall be preceded by written and well-grounded authorization by the appropriate authority.

**18.5** When termination is based on Items XII through XVII of this CLAUSE, without fault of the CONTRACTED PARTY, it shall be entitled to receive payments due for the performance of the CONTRACT up to the date of termination. Under no circumstances shall CONTRACTED PARTY be entitled to any indirect or consequential damages, including lost profits, due to termination.

**18.6** Termination for failure to comply with contractual clauses shall cause warranty to be forfeited to compensate the CONTRACTING PARTY for the fines and indemnifications that are due. Any credits arising from the CONTRACT shall be withheld up to the limits of the losses caused to the CONTRACTING PARTY, in addition to the sanctions provided for herein.

**18.7** The term of terminations shall include, as appropriate:



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**18.7.1** Assessment of contract services provided and those that have been fully completed;

**18.7.2** List of payments made and payments due; and

**18.7.3** Indemnifications and fines.

## **19 CLAUSE – JURISDICTION AND CHOICE OF LAW**

**19.1** This Contract shall be construed and interpreted in accordance with the **principles** of Brazilian Law N° 8,666/93 and the Brazilian laws and regulations set forth in §23, and shall be governed by the laws of the District of Columbia, including the Uniform Commercial Code as adopted in the District of Columbia, without regard to any choice of law or conflict of laws doctrines that might otherwise be applied. The UN Convention on Contracts for the International Sale of Goods shall have no application to this Contract.

**19.2** The parties hereto agree to make a diligent, good-faith attempt to amicably resolve all disputes before either party commences litigation pursuant to this Clause 22 of this Contract.

**19.3** Any dispute or claim arising out of or relating to this Contract, with a breach thereof, shall be submitted to the District of Columbia Superior Court or the United States District Court for the District of Columbia, to the exclusive jurisdiction of which the parties hereby irrevocably submit.

## **20 CLAUSE – SUBCONTRACTING**

**13.1.** In case there is sub-contracting, it shall abide by the following guidelines:

**20.1.2** Sub-contracting may be authorized by the BACW's Chief, through the Contract Supervisor/Monitor.

**20.2.2** Sub-contractor shall prove having the technical qualification to perform the services, even though, the responsibility for the quality of such services lies on the CONTRACTED PARTY.

**20.3.2** In the event of sub-contracting, the CONTRACTED PARTY shall still bear full responsibility for full performance of the Contract, being responsible for supervising and coordinating the activities of the sub-contractor, as well as responding before the CONTRACTING PARTY for strict compliance with the Contract agreements related to the object that was subcontracted.



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## **21 CLAUSE – APPLICABLE LEGISLATION**

**21.1** This CONTRACT shall be interpreted in accordance with the principles of the Brazilian legislation, particularly the principles of Law nº 8,666/93 (Brazil) and its amendments.

**21.2** In addition all rules and regulations of Brazilian Public Law pertaining to administrative contracts shall apply to this CONTRACT and in its interpretation by the courts and under applicable law in accordance herein, particularly:

**21.2.1** MCA 172-3, Module 16, of October 13, 2010 – Approval, signing and registration of contracts; and

**21.2.2** RCA 12-1, of January 1, 2005 – Air Force Administrative Regulation (RADA);

**21.2.3** Any other legal Laws pertaining to this matter.

## **22 CLAUSE – CORRESPONDENCE AND NOTIFICATION**

**22.1** All correspondence, reports and notifications arising from the execution of this CONTRACT shall be made in writing and shall only be considered to be received by the CONTRACTING PARTY and the CONTRACTED PARTY, if delivered to the addresses indicated below by one party to the other party or to any other addresses that may be communicated by the PARTIES, throughout the term of this Contract.

### **CONTRACTING PARTY:**

BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON

Attn: Contract Department

1701 22<sup>nd</sup> Street NW, Washington, D.C. 20008 - USA

Phone: 202/518-7359

Fax: 202/483-4684

E-mail: [chf.dlc.cabw@fab.mil.br](mailto:chf.dlc.cabw@fab.mil.br)

### **CONTRACTED PARTY:**

Name of the CONTRACTED PARTY

Attn: Mr. /Mrs. Name of Legal representative

ADDRESS

ADDRESS

Phone:

Fax

E-mail:



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**23 CLAUSE – NUMBER OF THE COPIES**

**23.1** It is hereby agreed that this CONTRACT shall be issued in two (2) originals, with same content and form, as follows:

**23.1.1** (One) original for the CONTRACTING PARTY; and

**23.1.2** (One) original for the CONTRACTED PARTY.

In witness whereof, the parties have executed this CONTRACT in two (2) equal counterparts, of equal content, in the presence of the witnesses subscribed below.

Washington DC, **MM/DD/2014.**

**For the CONTRACTING PARTY:**

\_\_\_\_\_  
Roberto Martire Pires, Col  
Chief of BACW

**For the CONTRACTED PARTY:**

\_\_\_\_\_  
NAME

**WITNESSES:**

\_\_\_\_\_  
Rodrigo Otavio Correa Sampaio, Lt. Col  
Chief of BACW's Fiscal Division

\_\_\_\_\_  
NAME  
Contract Supervisor

**WITNESSES for the CONTRACTED PARTY:**

\_\_\_\_\_  
NAME: .....ID nº .....



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## ANNEX A

## BASIC PROJECT



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## ANNEX B

## PRICE PROPOSAL



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**ANEXO C**  
**PHYSICAL AND FINANCIAL SCHEDULE**

<b>PHASE</b>	<b>DESCRIPTION</b>	<b>VALUE (US\$)</b>	<b>TERM FOR EXECUTION</b>	<b>TERM FOR PAYMENT</b>
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
<b>TOTAL</b>		<b>XXXXXX</b>		



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## ANNEX D

### SHIPPING AND EXPORT COMPLIANCE