

ANNEX III



BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON D.C.



CONTRACT [CT]/CABW/2021

**INVITATION FOR BID No. 215083/CABW/2021
PAG No. 67102.215083/2021-03**



-----MINUTA / CONTRACT DRAFT-----

CONTENT

1. DEFINITIONS	4
2. CLAUSE – OBJECT	4
3. CLAUSE – PERFORMANCE	5
4. CLAUSE – LANGUAGE	5
5. CLAUSE – CONDITIONS TO PROVIDING SERVICE	5
6. CLAUSE – OBLIGATIONS	5
7. CLAUSE – DISCRIMINATION OF SERVICE	8
8. CLAUSE – AMOUNT OF THE CONTRACT	8
9. CLAUSE - BUDGETARY ALLOCATION	8
10. CLAUSE - SUBCONTRACTING	8
11. CLAUSE - TERMS	8
12. CLAUSE - FINANCIAL GUARANTEE	9
13. CLAUSE - CHANGES TO THE CONTRACT	9
14. CLAUSE - PRICE ADJUSTMENT	9
15. CLAUSE - PAYMENT	10
16. CLAUSE - MONITORING	10
17. CLAUSE - RECEIPT OF THE OBJECT	11
18. ACTS OF GOD OR FORCE MAJEURE	12
19. CLAUSE – VIOLATIONS AND ADMINISTRATIVE SANCTIONS	12
20. CLAUSE – LINKAGE	15
21. CLAUSE – TERMINATION	15
22. CLAUSE – JURISDICTION AND CHOICE OF LAW	16
23. CLAUSE – CORRESPONDENCE AND NOTIFICATION	17
24. CLAUSE – NUMBER OF THE COPIES	17



-----MINUTA / CONTRACT DRAFT-----

PAG N°: 67102.215083/2021-03
CONTRACT N° [CT#]/CABW/2021

CONTRACTING OF A SPECIALIZED COMPANY FOR 75 HOURS OF FLIGHT SIMULATOR TRAINING SERVICES OUTSIDE BRAZIL, FOR THE AIRPLANE **HAWKER 800XP (H25B)**, WHICH THE BRAZILIAN FEDERAL GOVERNMENT HEREBY ENTERS INTO, THROUGH THE BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON, AND THE COMPANY **[COMPANY'S NAME]**.

The Brazilian Government, through the Brazilian Aeronautical Commission in Washington, with main offices located at **1701 22nd St N.W. Washington, D.C. 20008**, represented herein by **Col ROBERTO MARTIRE PIRES**, in the use of his legal attributions, as per Directive n° 50, issued by the Ministry of Aeronautics on January 29, 1953, and as per Art. 61 of the Brazilian Federal Law n° 8,666/93, hereinafter referred to as the CONTRACTING PARTY, and the company **[COMPANY'S NAME]**, with main offices located at **[CITY]**, ZIP **[POSTAL CODE]**, in the Municipality **[STATE/MUNICIPALITY]**, hereinafter the CONTRACTOR, represented herein by Mr. **[LEGAL REPRESENTATIVE'S NAME]**, bearer of ID n° **[ID NUMER]**, and bearing in mind the content of the PAG n° **67102.215083/2021-03**, and the final result of the **Invitation for Bid n° 215083/CABW/2021**, based on the principles of the Brazilian Federal Law n° 8,666/93, Decree n° 2.271, of 1997, and Normative Instruction SLTI/MPOG n° 2, of April 30, 2008, and related legislation, hereby decide to enter into this agreement and execute this instrument, in accordance with the following terms and conditions:



-----MINUTA / CONTRACT DRAFT-----

1. DEFINITIONS

1.1. In order to facilitate the comprehension of terminology and to simplify text composition, the following abbreviations and expressions were adopted, followed by their definitions hereafter:

1.2. COMAER – Brazilian Aeronautical Command;

1.3. COMREC - Goods and Services Receiving Commission;

1.4. CONTRACTOR – the natural person or legal entity contracted to perform the services;

1.5. CONTRACTING PARTY- Brazilian Aeronautical Commission in Washington, DC (BACW);

1.6. EXPENSE CONTRACT or CONTRACT- The Agreement which the Public Administration (CONTRACTING PARTY), acting as such, signs with a private person or other Administrative Entity (CONTRACTOR), for the performance of the services in question and under the conditions set forth by the Public Administration itself.

1.7. EXPENSES SUPERVISOR- Administration Agent with the authority to perform acts resulting in funds citations, authorize payment, supply of funds, estimate approval, among other actions.

1.8. FAB – Brazilian Air Force

1.9. ICA – Aeronautical Command Directive;

1.10. INVOICE – Commercial document formalizing an act of purchase and sale, which must contain- among other information- the following data: supply quantity, supply unit, price, payment terms, taxes, duties and FAB Purchase Order Number.

1.11. MO - Military Organization;

1.12. MONITOR- the individual or commission representing the CONTRACTING PARTY before the CONTRACTOR, appointed to systematically monitor the fulfillment of contractual terms and complementary orders issued by the Government, in all their aspects;

1.13. PAAI – Formal internal administrative procedure which consists in the registration of all acts to determine the administrative facts necessary to clarify and review judgments of the competent authority, allowing due process, which will culminate in the implementation or not of the administrative sanctions provided for in the Law (ICA 12-23);

1.14. PAG – Administrative Management Process;

1.15. TECHNICAL SPECIFICATION- As per Brazilian Law 8.666, dated June 21, 1993, the set of necessary and sufficient elements, with the necessary degree of precision, to define the project, service or body of work, which will constitute the Bid Subject. It is drafted based on the suggestions drawn from preliminary technical studies, which ensure technical feasibility and adequate treatment of the project's environmental impact, as well as evaluating the project or service's costs, defining the methods and terms for its performance.

1.16. TERM OF RECEIPT – Document issued by the COMREC attesting and accepting services performed.

2. CLAUSE – OBJECT



-----MINUTA / CONTRACT DRAFT-----

2.1. The Contracting of **75 hours** of Flight Simulator training services outside Brazil, for the airplane **IU-93A HAWKER 800XP (H25B)**, according to terms, quantities, price limits and other applicable requirements established in the Technical Specifications, Annex A.

2.2. The estimates detailed in this CONTRACT do not imply any obligation by the CONTRACTING PARTY.

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

ANNEX A – TECHNICAL SPECIFICATION;

ANNEX B – PRICE PROPOSAL FROM THE CONTRACTOR; and

ANNEX C – PHYSICAL AND FINANCIAL SCHEDULE.

3. CLAUSE – PERFORMANCE

3.1. The CONTRACT shall be performed on the basis of indirect execution of Lowest Global Price.

4. CLAUSE – LANGUAGE

4.1. 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.

5. CLAUSE – CONDITIONS TO PROVIDING SERVICE

5.1. The services shall be performed by the CONTRACTOR as described herein and in accordance with the TECHNICAL SPECIFICATION, Annex A.

5.2. The CONTRACTOR shall maintain all the conditions for qualification during the bidding process throughout the validity of this CONTRACT.

6. CLAUSE – OBLIGATIONS

6.1. In addition to that set forth in the TECHNICAL SPECIFICATION, the **CONTRACTOR** shall be required to:

6.1.1. Perform services in accordance with the specifications in the TECHNICAL SPECIFICATION and its proposal with the resources necessary for full compliance with the provisions of the CONTRACT;

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

6.1.3. Take full responsibility for the performance of the contracted services;

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

6.1.5. 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 CONTRACTOR's failure to fulfill the obligations set forth herewith does not make the CONTRACTING PARTY responsible for payment;



-----**MINUTA / CONTRACT DRAFT**-----

- 6.1.6.** Take responsibility, furthermore, for damages directly caused to the CONTRACTING PARTY, arising from the performance of services by CONTRACTOR'S employees or appointed agents;
- 6.1.7.** Provide all clarification requested by the CONTRACTING PARTY, immediately addressing any complaints;
- 6.1.8.** 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;
- 6.1.9.** The CONTRACTOR is prohibited from disclosing to third parties any information regarding the nature or progression of service performance 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.
- 6.1.10.** Bear all civil liability for each and every performed services and for damages caused by action or omission on the part of CONTRACTOR'S employees, workers, agents, or representatives, whether intentionally or not, before the Brazilian Government (Brazilian Air Force Command) and other third parties;
- 6.1.11.** Use qualified employees who have essential knowledge of the services that will be performed in accordance with the rules and regulations in effect;
- 6.1.12.** 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;
- 6.1.13.** Instruct its employees on the need to follow the guidelines provided by the CONTRACTING PARTY, including with regard to CONTRACTING PARTY'S internal regulations, if any;
- 6.1.14.** Maintain throughout the term of the Contract, consistent with the obligations assumed, all conditions of eligibility and qualification required in the bidding process;
- 6.1.15.** Not transfer to third parties, in any way, not even partially, any of the responsibilities assumed without the express prior written approval of the BACW in accordance with the terms of this CONTRACT;
- 6.1.16.** 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.
- 6.1.17.** All services performed by the CONTRACTOR shall be the responsibility of the CONTRACTOR and shall be performed in accordance with the CONTRACT;
- 6.1.18.** The CONTRACTOR shall not perform any extra service without first providing an estimated budget, which is to be formally authorized by the CONTRACTING PARTY;



-----MINUTA / CONTRACT DRAFT-----

6.1.19. The CONTRACTOR shall appoint a Manager for the purpose of overall management of the activities/services, following up on the CONTRACT and representation with the CONTRACT MONITOR;

6.1.20. 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;

6.1.21. Abide by BACW's business hours, and according to its convenience or need for any change, communicate the change to the CONTRACT MONITOR, with at least 24 (twenty four) hours in advance;

6.1.22. Be responsible for any claims and financial burden that may arise from any law suits, or damage caused directly or indirectly by the CONTRACTOR, and that may possibly be argued against BACW, by third parties;

6.1.23. Promptly communicate, in writing to BACW, any and all information related to any errors, mistakes or flaws found in the TECHNICAL SPECIFICATION;

6.1.24. Use of adequate equipment and tools, to allow for proper execution of the services, and utilize efficient and safe work methods;

6.2. The CONTRACTING PARTY shall be required to:

6.2.1. The CONTRACTING PARTY, through the assistance of the CONTRACT MONITOR, duly designated for that function, shall:

Appoint a RECEIVING COMMISSION (COMREC), through Internal document, to carry out receipt of the qualitative and quantitative object of the CONTRACT;

Provide all the conditions for the CONTRACTOR 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 TECHNICAL SPECIFICATION;

Require compliance with all obligations assumed by the CONTRACTOR in accordance with the provisions of the CONTRACT and the terms and conditions of its proposal;

Provide monitoring of services by an official specifically designated for that purpose, who shall record in his own log any flaws found;

Notify the CONTRACTOR in writing of the occurrence of any irregularities during the performance of services, and establish a deadline for their correction;

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

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 CONTRACTOR.



-----MINUTA / CONTRACT DRAFT-----

7. CLAUSE – DISCRIMINATION OF SERVICE

7.1. The CONTRACT shall be performed by the CONTRACTOR as described herein and in the TECHNICAL SPECIFICATION, Annex A.

8. CLAUSE – AMOUNT OF THE CONTRACT

8.1. The maximum total amount of the CONTRACT is US\$ [AMOUNT], being initially provided the value of US\$ [AMOUNT] through the Purchase Order nº [PO NUMBER], being the remaining US\$ [AMOUNT], the complement for the above mentioned Purchase Order.

8.1.1. The price per hour of the object of this contract is US\$ [AMOUNT], in accordance with the price proposal, Annex B

9. CLAUSE - BUDGETARY ALLOCATION

9.1. Financial resources shall be drawn from Program 2916 or similar, Expenditure Item 33.90.39.

10. CLAUSE - SUBCONTRACTING

10.1. Sub-contracting is not authorized under this CONTRACT.

11. CLAUSE - TERMS

11.1. Term of Validity

11.1.1. The Contract's period of validity shall be 12 (twelve) months, starting on the date of its Signature, including its performance time, acceptance time and term established for the final payment.

11.1.2. The validity may be extended by mutual agreement between the parties for an additional equal period of 12 months, if it is in the CONTRACTING PARTY's interest, up the overall limit of 60 months.

11.2. Term of Execution

11.2.1. The period of execution of the CONTRACT shall be 11 months for the first 12 months period, starting at the SERVICE ORDER issuance.

11.3. Acceptance Timeframe

11.3.1. The services shall be definitively received by COMREC, through a TERM OF RECEIPT, signed by the parties within 10 (ten) days of written notification by the CONTRACTOR.

11.3.2. Final acceptance does not exclude civil responsibility for the reliability and safety of the service, or ethical/professional responsibility for the perfect performance of the contract.

11.4. Payment Processing Time

11.4.1. Payment processing time for Commercial Invoices shall not exceed 30 consecutive days, starting on the date on which the TERM OF RECEIPT is issued, signed by COMREC.

11.4.2. This term shall renew automatically for a 10 (ten) business days if there is any discrepancy noted by the MONITOR and mandatorily notified in writing to the CONTRACTOR.



-----MINUTA / CONTRACT DRAFT-----

12. CLAUSE - FINANCIAL GUARANTEE

12.1. The provision of a performance guarantee is not required for this contracting.

13. CLAUSE - CHANGES TO THE CONTRACT

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

13.1.1. Since the demands are estimated due to the characteristics of the OBJECT of this CONTRACT, reductions in the amount that exceeds the limit of twenty-five percent (25%) of the Contract may occur during the performance of the CONTRACT at CONTRACTING PARTY'S sole discretion.

13.1.2. The set of increases and the set of decreases shall be calculated based on the original shipments of, or services to be provided under, the Contract, on a case by case basis, without any sort of compensation up to the limits established above.

14. CLAUSE - PRICE ADJUSTMENT

14.1. After the first 12 (twelve) months of contract performance, in case of being renewed for additional 12 (twelve) months, an adjustment may be applied, to reestablish the financial relation initially agreed upon between the parties at contract signature, thus ensuring adequate compensation for services, if and only if the increase in input costs associated with BID Object is proved to the satisfaction of the BACW Chief.

14.2. When requesting the price adjustment, after 12 (twelve) months period, the CONTRACTOR must supply within a rationale proving the cost variation by means of cost analysis and appropriated spreadsheets individually by each services of operation with supporting documentation.

14.3. The deadline for requesting price adjustment is aligned with the contract expiration date.

14.4. If the contract period has been extended, new price adjustment can only be pleaded after the new course of twelve (12) months.

14.5. Inclusion of unanticipated benefits not foreseen in the initial proposal at the bidding process is forbidden, except when they become compulsory under legal instrument.

14.6. The CONTRACTING PARTY may perform diligences in order to assure the cost variation proposed by the CONTRACTOR.

14.7. Should the CONTRACTOR not submit other factors without proper justification, the maximum adjustment amount shall be equivalent to CPI variation (*Customer Price Index, issued by the Bureau of Labor Statistics – BLS*).

14.8. Submission of an adjustment proposal by the CONTRACTOR does not imply its acceptance by the CONTRACTING PARTY, which may choose not to renew the contract for the next 12-month period.



-----MINUTA / CONTRACT DRAFT-----

15. CLAUSE - PAYMENT

15.1. The deadline for payment shall be within thirty (30) calendar days from the date the term of receipt is issued by the Receipt Commission

15.2. An Invoice shall be issued by the CONTRACTOR in accordance with the following procedures:

15.2.1. Payment shall only be made, after the appropriate official's "approval" of the Invoice provided by the CONTRACTOR.

15.2.2. The "approval" of the Invoice is contingent upon verification of compliance of the Invoice submitted by the CONTRACTOR with the services that were actually performed;

15.2.2.1. The CONTRACTOR must submit with its invoice, the proof of training containing at least:

15.2.2.1.1. The Equipment in which the training was performed;

15.2.2.1.2. Amount of training hours;

15.2.2.1.3. Squadron which performed the training

15.2.2.1.4. Date and Time of training;

15.2.2.1.5. Signature of the officers who performed training;

15.3. 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 CONTRACTOR 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.

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

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

16. CLAUSE - MONITORING

16.1. The MONITOR must be an agent or agents of the Administration, specifically appointed by the Administration, in accordance with the precepts established by Law N° 8.666/1993 (Brazil), ICA n° 65-8/2009 (Attributions of MONITOR and Receiving Commission), and of ICA n° 12-23/2014 (Inspection and Receiving Goods, Services and Administrative Sanctions Application), so as to monitor and inspect the fulfillment of the contract to be executed.

16.2. Monitoring of contractual fulfillment consist in verifying the conformity of the services and the allocation of the necessary resources.

16.3. Verification of adequate contractual fulfillment must be performed based on the criteria established in the TECHNICAL SPECIFICATION and in accordance with contractual terms.

16.4. Contractual performance must be monitored and inspected through oversight instruments including monitoring of the fulfillment of the obligations arising from this CONTRACT.

16.5. The MONITOR shall note in his records all events related to the performance of the Contract.



-----MINUTA / CONTRACT DRAFT-----

16.6. The monitoring of contractual performance carried out by the CONTRACTING PARTY does not eliminate the CONTRACTOR'S responsibility, also before third parties, due to any irregularity, even if arising from technical imperfections, flaws or inadequate use of equipment, and when these incidents occur, they do not imply shared responsibility by the CONTRACTING PARTY, its representatives or employees.

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

16.8. The MONITOR should, additionally, abide by the following processes:

16.8.1. Observe and perform, when applicable, all procedures established in ICA 65-8/2009 and ICA 12-23/2014;

16.8.2. Monitor the development of all services requests issued to the CONTRACTOR;

16.8.3. Monitor the development of all services until their receipt by CTLA and CABW;

16.8.4. Submit for evaluation by the EXPENSE SUPERVISOR all proposals, questioning, discrepancies and difficulties encountered during contractual performance or those requiring approval and/or decision;

16.8.5. Receive INVOICES, compare them with the amounts established in the CONTRACT, certify them and forward them to the EXPENSE SUPERVISOR for approval;

16.8.6. All INVOICES must be service invoices, detailing- at the very least- unit and total amounts for each cost, duty amounts charged, PROCESSING costs and discounts offered, cargo weight and volume and FAB's request number. All supporting documentation must be attached to the INVOICE for validation by COMREC;

16.8.7. If there are other inputs which may influence cost, these must be detailed;

16.8.8. Issue, until the fifth day of the following month, a Contract Status Report, in accordance with 65-8/2009 and ICA 12-23 for the Administration.

17. CLAUSE - RECEIPT OF THE OBJECT

17.1. The services that are the object of the CONTRACT shall be received by the Receiving Commission in accordance with the specifications set forth in the TECHNICAL SPECIFICATION, Annex I of this Bid Announcement.

17.2. It is the responsibility of the RECEIVING COMMISSION to:

17.2.1. Ensure that the CONTRACTOR will follow the description of all the services that are the object of the TECHNICAL SPECIFICATION;

17.2.2. Receive services or reject them according to the specifications set forth in the TECHNICAL SPECIFICATION, in up to ten (10) calendar days;

17.2.3. Once approved, the invoices are sent to BACW's Contract Department, and

17.2.4. All proposals, questions, discrepancies and difficulties encountered during the execution of the CONTRACT, or that require an evaluation shall be presented to the CONTRACT MONITOR for approval and/or a determination must be approved by the Chief of BACW.



-----MINUTA / CONTRACT DRAFT-----

18. ACTS OF GOD OR FORCE MAJEURE

18.1. Acts of God or force majeure events shall be notified in writing to the Chief of the BACW, through the MONITOR, so that he may decide appropriate course of action, provided it has been proven that such events affect the services performed in connection with the object of this CONTRACT.

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

19. CLAUSE – VIOLATIONS AND ADMINISTRATIVE SANCTIONS

19.1. For the application of administrative sanctions it should be considered the following: the seriousness of the offense; recidivism; damage to the public interest; and the injury to the Administration.

19.2. Failure to comply with the CONTRACT in whole or in part or any breach of the obligations contained in the CONTRACT and in this bidding document will subject the CONTRACTOR, without prejudice to other civil and criminal penalties, to any and all damages and remedies available to CONTRACTING PARTY under the CONTRACT or applicable law, ensuring due process, to the following penalties:

19.2.1.1. Warning is the administrative penalty imposed when the CONTRACTOR infringes, for the first time, obligations related to delayed contractual terms or invoice presentation for mistakes, or for breach of supervision guidelines within 48 (forty eight) hours from the date of notification of the MONITOR. For the purposes of warning one PAAI should be instructed.

19.2.1.1.1. The warning should not be proposed for recurrence in the same kind of failure cases.

19.2.1.2. Fines referred to in item II of Art. 87 (fine for total or partial non-performance of CONTRACT) of Federal Law nº 8.666 / 93 (Brazil) may be defined and implemented as follow:

19.2.1.2.1. A fine may be applied for partial non-performance in the amount of 0.2% of the total amount of the CONTRACT if the CONTRACTED PARTY fails to comply with any condition set in the CONTRACT; and

19.2.1.2.2. If the CONTRACTOR causes termination of the contract, a fine will be imposed, for non-performance, in the amount of 10% (ten percent) of the current value of the CONTRACT, subject to late-payment penalty or other sanctions pursuant to art. 87 of Federal Law 8.666/93 (Brazil).

19.3. Provided prior defense of the person concerned within five (5) business days, the fine for the total or partial non-performance of the CONTRACT, referred to in item II of art. 87 of Federal Law nº 8.666/93 (Brazil), may be applied along with other administrative sanctions provided for in items I, III and IV of art. 87 of Federal Law nº 8.666/93 (Brazil).

19.4. BACW must inform the CONTRACTOR the amount to be collected, exhausted all administrative remedies and the right to legal defense, should the CONTRACTOR discount the value of future payments.



-----MINUTA / CONTRACT DRAFT-----

19.5. After the actions mentioned in the previous items, if it persists the denial of payment of the fine, the Expenses Authority (holder or delegate) of BACW, as appropriate, will forward the process to the Brazilian Attorney General of the National Treasury (PGFN) for analysis and description of the company sanctioned in Active Debt of the Union (DAU) and / or initiate the judicial execution, depending on the amount involved.

19.6. The fine will not relieve the CONTRACTOR of repairing the damages caused to the Administration, nor rule out the possibility of the imposition of other administrative penalties.

19.7. The application of the fines provided for in the preceding items may be appealed within 5 (five) business days, as provided in item "f", I, art. 109 of Federal Law nº 8.666/93 (Brazil).

19.8. The temporary suspension of participation in bidding processes and the prohibition to contract with the Administration, pursuant to subsection III of Article 87 of Federal Law nº 8.666/93 (Brazil), combined with Article 9 of Federal Law nº 10.520/2002 (Brazil), will be applied in MOs under the jurisdiction of the COMAER, with the following:

19.8.1. For up to 30 (thirty) days:

19.8.1.1. In noncompliance of the deadline for taking corrective measures during the application of the warning sanction; and

19.8.1.2. The disruption of any act of public bidding session.

19.8.2. For up to three 3 (three) months:

19.8.2.1. The withdrawal of the proposal, without just cause due to supervening fact;

19.8.2.2. The complaint of the unenforceability of the prices presented; and
In presentation of frivolous appeal.

19.8.3. For up to six (6) months:

19.8.3.1. The refusal of the winning bidder, convened within the period of validity of its proposal, to sign or accept the contract or withdraw any equivalent instrument;

19.8.3.2. The absence of financial guarantee submission under this CONTRACT, if applicable;

19.8.3.3. The recurrence of punishable illicit practice in the form of letters "19.8.1" and "19.8.2" of this item, in less than 24 (twenty four) months;

19.8.3.4. The application of the second administrative sanction accompanied by a fine;

19.8.3.5. The implementation of two administrative sanctions warning and a fine under the COMAER with in 12 (twelve) months, unless the supplier has taken corrective action within the period determined by the Administration; and

19.8.3.6. The implementation of two administrative sanctions fine under the COMAER with in 12 (twelve) months, unless the supplier has taken corrective action within the period determined by the Administration;

19.8.4. For up to twelve (12) months:

19.8.4.1. When the CONTRACTOR delays unreasonably the execution of the service, which implies termination;



-----MINUTA / CONTRACT DRAFT-----

19.8.4.2. When the CONTRACTOR does not pay the fine within the period prescribed in situations where you cannot discount the value of collateral or receivables from performed installments; and

19.8.4.3. The recurrence of punishable default practice in the form of the letter "19.8.3" of this item, within less than 36 (thirty six) months.

19.8.5. Up to 24 (twenty four) months:

19.8.5.1. In the commission of an unlawful act, seeking to frustrate the objectives of this Bidding, such as the formation of collusion or cartel;

19.8.5.2. In the presentation of "fraudulent" documents "adulterated", "false" or "fake";

19.8.5.3. In the issue of "false declaration";

19.8.5.4. In the definitive conviction for willful practice of tax fraud in the collection of taxes related to the CONTRACT;

19.8.5.5. In the shutdown of the service without good cause and without prior notice to the Administration;

19.8.5.6. In the delivery of material "fake" or "adulterated", using trickery to deceive the Administration;

19.8.5.7. In the contractual non-performance resulting in serious damage to the Administration; and

19.8.5.8. In the recurrence of punishable default practice in the form of item "19.8.4" term of less than 48 (forty eight) months.

19.9. For the purposes of this INVITATION FOR BID, as regards to the application of the administrative penalty of temporary suspension of participation in bidding and obstruction to CONTRACT with the Administration, the term "Administration" refers to the COMAER.

19.10. It is understood by failure in the performance of the CONTRACT, means to not complete the provision of the service in accordance with the technical specifications contained in this CONTRACT.

19.11. It is understood by disreputable behavior, means the intentional conduct of trying to deceive or corrupt the Administration, or any of its agents, to obtain undue advantage.

19.12. The PAAI application of declaration of unfitness will be forwarded to the State Defense Minister, through the chain of command and the opinion of COJAER, given the exclusive competence of the sanction by the Minister of State. The application of this penalty will occur in any of the situations below:

19.12.1. The CONTRACTOR has suffered definitive conviction for tax fraud;

19.12.2. A business or professional committed unlawful act aimed at frustrating the objectives of the tender;

19.12.3. The Administration may find that the company or professional does not have competence to be hired because of committed unlawful acts; or

19.12.4. Finding, by the Court of the Union, the occurrence of fraud in connection with the Bid.

19.13. The criteria to revoke the Certificate Good Standing, which may not exceed 5 (five) years under the current legislation, will be defined by the Ministry of Defense. Rehabilitation for this



-----MINUTA / CONTRACT DRAFT-----

sanction may be required by the person concerned after the expiry of two (2) years of its application.

19.14. In the event the Certificate of Good Standing is revoked, it will be suggested the application of the penalty which should indicate in their PAAI to the purpose of to provide rehabilitation of the amount to be reimbursed, with due legal charges and any obligations.

20. CLAUSE – LINKAGE

20.1. This Contract is hereby linked to Invitation for Bid n° **215083/CABW/2021**, and the Commercial Proposal of the CONTRACTOR, submitted by company **[COMPANY'S NAME]** to BACW.

21. CLAUSE – TERMINATION

21.1. Pursuant to the provisions of Article 78 of Lei n° 8,666/93 (Brazil), the following are causes for terminating this Contract:

- 21.1.1.** Failure to comply with CONTRACT clauses, specifications, projects and deadlines;
- 21.1.2.** Inappropriate compliance with CONTRACT clauses, specifications, projects and deadlines;
- 21.1.3.** Slowness in its compliance which may lead the CONTRACTING PARTY to find it impossible to complete the services within the established deadlines;
- 21.1.4.** Unjustifiable delay in initiating service;
- 21.1.5.** Stoppage in the service, without cause, and without providing previous notice to the CONTRACTING PARTY;
- 21.1.6.** Failure to comply with orders from the authority designated to follow up and supervise the performance of services, or higher authorities;
- 21.1.7.** Repeatedly making errors in the performance of services, duly recorded pursuant to § 1 of Article 67 of Law n° 8,666/93 (Brazil);
- 21.1.8.** Bankruptcy;
- 21.1.9.** Dissolution of company or death of the CONTRACTOR;
- 21.1.10.** Corporate change or alteration of purpose or business of the CONTRACTOR that hinders the performance of the CONTRACT;
- 21.1.11.** 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;
- 21.1.12.** 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 CONTRACTOR, it is also entitled in these cases to suspend complying with its obligations until normalcy is achieved;
- 21.1.13.** 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,



-----MINUTA / CONTRACT DRAFT-----

except in the event of a disasters, domestic disturbances or war. The CONTRACTOR shall be entitled to suspend compliance with its obligations until normalcy is achieved;

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

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

21.1.16. Violation of the provisions of items V of Article 27 of Law n° 8,666/93 (Brazil), notwithstanding the applicable criminal sanctions.

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

21.3. Termination of this CONTRACT may be:

21.3.1. Decided unilaterally and in writing by the CONTRACTING PARTY in the event listed under in items 1 to 10, and 16, of this CLAUSE;

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

21.3.3. Judicially, pursuant to applicable legislation.

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

21.5. When termination is based on Items 11 through 15 of this CLAUSE, without fault of the CONTRACTOR, it shall be entitled to receive payments due for the performance of the CONTRACT up to the date of termination. Under no circumstances shall CONTRACTOR be entitled to any indirect or consequential damages, including lost profits, due to termination.

21.6. Termination for failure to comply with contractual clauses shall cause warranty to be forfeited to be applied toward compensating 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.

21.7. The term of terminations shall include, as appropriate:

21.7.1. Assessment of contract services provided and those that have been fully completed;

21.7.2. List of payments made and payments due; and

21.7.3. Indemnifications and fines.

22. CLAUSE – JURISDICTION AND CHOICE OF LAW

22.1. This Contract shall be construed and interpreted in accordance with the **principles** of Brazilian Law N° 8,666/93, and shall be governed by and enforced in accordance with 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.



-----**MINUTA / CONTRACT DRAFT**-----

22.2. 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.

22.3. 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.

23. CLAUSE – CORRESPONDENCE AND NOTIFICATION

23.1. 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 CONTRACTOR, 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 22nd Street NW, Washington, D.C. 20008 - USA

Phone: 202/518-7348

Fax: 202/483-4684

E-mail: chf.dlc.cabw@fab.mil.br

CONTRACTOR:

Name of the CONTRACTOR

Attn: Mr. /Mrs. Name of Legal representative

ADDRESS

ADDRESS

Phone:

Fax

E-mail:

24. CLAUSE – NUMBER OF THE COPIES

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

24.1.1. (One) original for the CONTRACTING PARTY; and

24.1.2. (One) original for the CONTRACTOR.

24.2. 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.



-----**MINUTA / CONTRACT DRAFT**-----

Washington, DC, **MM/DD/2021**.

For the CONTRACTING PARTY:

Roberto Martire Pires, Col
Commanding Officer
BACW

For the CONTRACTOR:

NAME

WITNESSES:

Valdinei Fagundes de Souza, Lt Col
Head of BACW's Internal Control

Thiago Dellazari Melo, Lt Col
Head of BACW's Bidding and Contract Division

WITNESSES for the CONTRACTOR:

NAME:ID n°



~~MINUTA / CONTRACT DRAFT~~

ANNEX A

TECHNICAL SPECIFICATION



-----**MINUTA / CONTRACT DRAFT**-----

ANNEX B

PRICE PROPOSAL



MINUTA / CONTRACT DRAFT

ANEXO C
PHYSICAL AND FINANCIAL SCHEDULE

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