

**ANNEX III**

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



**CONTRACT No. XXX/CABW/2021**

**INVITATION FOR BID No. 213937/CABW/2021**

**PAG No. 67102.213937/2021-17**



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

**CONTENT**

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



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

PAG Nº: **67102.213937/2021-17**  
CONTRACT Nº **XXX/CABW/2021**

APPROVED ON: **XX/XX/2021**

Brig. Ar RODRIGO FERNANDES SANTOS

CELOG'S Director

CONTRACT FOR THE SUPPLY OF KEROSENE-TYPE JET FUEL, ON DEMAND, TO SUPPLY AIRCRAFTS AND EQUIPMENT OF INTEREST TO THE BRAZILIAN AERONAUTICAL COMMAND IN MISSIONS OUTSIDE THE BRAZILIAN TERRITORY, WHICH THE BRAZILIAN GOVERNMENT HEREBY ENTERS INTO, THROUGH THE BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON, AND THE COMPANY **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

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. 89, § 1º of the Brazilian Federal Law No. 14,133/21, 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 or CONTRACTOR, represented herein by Mr. **XXXX**, bearer of the ID nº **XXXX**, and bearing in mind the content of PAG nº **67102.213937/2021-17**, and the final result of the **Invitation for Bid IFB No. 213937/CABW/2021**, based on the principles of the Brazilian Federal Law No. 14,133, of April 1<sup>st</sup>, 2021, the Decree No. 2.271, of 1997, and the Normative Instruction SLTI/MPOG nº 2, of April 30, 2008, and any other 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:

**1.1.1. FUELING CARD-** Plastic card with an electromagnetic chip, barcode or any other means of electronically tracking fueling, and thereafter issuing reports, to be used for the purpose of processing fueling at the CONTRACTED PARTY's fueling stations;

**1.1.2. COMAER** – Aeronautical Command

**1.1.3. COMREC** – Goods and Services Receiving Commission

**1.1.4. CONTRACTED PARTY** – the natural person or legal entity contracted to supply the PRODUCTS;

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

**1.1.6. ICA** – Brazilian Aeronautical Command Directive;

**1.1.7. MO-** Military Organization;

**1.1.8. OPIS** – Oil Price Information Service;

**1.1.9. PAG** – Administrative Management Process;

**1.1.10. PLATTS** – PLATTS benchmark price assessments for the commodity market;

**1.1.11. PUBLISHED PRICE/PUBLICATION-** Commercial publication showing price variations as per OPIS/PLATTS

**1.1.12. PRODUCT-** Aeronautical Fuel, as per Contract Subject.

**1.1.13. SUPERVISOR** – Administrative Employee appointed by the Military Organization via internal bulletin to the task of overseeing and inspecting CONTRACT implementation;

**1.1.14. SUPERVISION-** the individual or commission –representing the CONTRACTING PARTY before the CONTRACTED PARTY, appointed to systematically monitor the fulfillment of contractual terms and complementary orders issued by the Government, in all their aspects

## **2. CLAUSE – OBJECT**

**2.1.** Acquisition of fuel, Aviation Kerosene type, on demand, to supply aircrafts and equipments of interest to the Aeronautical Command in missions outside the Brazilian territory, according to the conditions, quantities and requirements established in this instrument, and in accordance with the following specifications:



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

- 2.1.1.** The fuel must comply with both ASTM Specification D 1655 (Standard Specification for Aviation Turbine Fuels) and MIL-DTL-83133 (Turbine Fuel, Aviation, Kerosene Type); and
- 2.1.2.** The fuel, in both specifications, according to the operational need, must be composed of corrosion inhibitors of the MIL-I-25017 and AFQRJOS Standards, and anti-icing of the Def Stan 68-252 Standards, MIL -A-85470(B) and MIL-I-27686.
- 2.2.** The fuel must be supplied Into Plane, with all its logical consequences, such as the detanking services and, when the case of prioritizing flight safety, the disposal of contaminated fuel.
- 2.3.** The contractual period is 12 months, renewable up to 60 months, counted from the signing of the contract.
- 2.4.** The quantities are established in the ANNEX A – BASIC PROJECT, "LIST OF LOCALITIES BY AREA AND QUANTITIES TO BE BIDDED" of this Contract.
- 2.5.** Considering the characteristic of the object of the bidding, the established quantities are estimated, and may, therefore, be changed upwards or downwards, within the limits established by Law, according to the operational needs of COMAER
- 2.6.** It is noted that kerosene jet fuel must comply with the specifications set forth by the International Regulations JIG 1 Into-plane (Issue 11)<sup>1</sup>, and US Regulation ATA Specification 103<sup>2</sup> must be followed, as well as ASTM D 1655<sup>3</sup>.
- 2.7.** The fuel may be supplied for use with or without anti-freeze, at the Aircraft Captain's discretion.
- 2.8.** The estimates detailed in this CONTRACT do not imply any obligation by the CONTRACTING PARTY. With regard to the demand estimated for each module, the CONTRACTED PARTY is required to supply the PRODUCTS in the countries specified by the Modules. Furthermore, the estimated quantity for 12 months of contractual activity, respectively for MODULES aforementioned, is based on the services performed in recent activities and expectation of future demand. However, it does not guarantee any right to the CONTRACTED PARTY, that this quantity will be met. In case the CONTRACTING PARTY requires, during the 12 months period, less fuel than was estimated, the CONTRACTED PARTY will only be paid for services rendered.

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<sup>1</sup> <http://www.jigonline.com/jig-products/>

<sup>2</sup> <http://www.equimec-rgse.com.br/images/stories/ata-103.pdf>

<sup>3</sup> <http://www.astm.org/Standards/D1655.htm>



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

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

**ANNEX A – BASIC PROJECT (LOCATIONS AND DEMAND);**

**ANNEX B – PRICE PROPOSAL SUBMISSION TEMPLATE; 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 Unit Price per Item.

**3.2.** The CONTRACT may undergo quantitative increases or decreases in the estimated amounts and values. However, such increases may not exceed 25% of initial contract amount.

**3.3.** Given the characteristics of the Contract subject, fueling will meet COMAER's demand. Therefore, the amounts to be contracted are consumption estimates, and consequently do not imply any obligation by the CONTRACTING PARTY.

### **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 CONTRACTED PARTY as described herein and in accordance with the BASIC PROJECT, Annex A.

**5.2.** The CONTRACTED PARTY 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 Basic Project, the **CONTRACTED PARTY** shall be required to:

**6.1.1.** 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;

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



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

- 6.1.3.** Take full responsibility for the supply of contracted materials;
- 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 CONTRACTED PARTY's failure to fulfill the obligations set forth herewith does not make the CONTRACTING PARTY responsible for payment;
- 6.1.6.** Take responsibility, furthermore, for damages directly caused to the CONTRACTING PARTY, arising from the performance of services by CONTRACTED PARTY'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.** 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;
- 6.1.10.** 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
- 6.1.11.** 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.
- 6.1.12.** 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;



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

- 6.1.13.** Use qualified employees who have essential knowledge of the services that will be performed in accordance with the rules and regulations in effect;
- 6.1.14.** 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;
- 6.1.15.** Instruct its employees on the need to follow the guidelines provided by the CONTRACTING PARTY, including with regard to Internal Regulations, if any;
- 6.1.16.** Maintain throughout the term of the Contract, consistent with the obligations assumed, all conditions of eligibility and qualification required in the bidding process;
- 6.1.17.** Not transfer to third parties, in any way, not even partially, any of the responsibilities assumed without the express prior approval of the BACW in accordance with the terms of this CONTRACT;
- 6.1.18.** 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.
- 6.1.19.** All services performed by the CONTRACTED PARTY shall be the responsibility of the CONTRACTED PARTY and shall be performed in accordance with the CONTRACT;
- 6.1.20.** 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;
- 6.1.21.** 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;
- 6.1.22.** The CONTRACTED PARTY shall comply with all the deadlines provided in the CONTRACT;
- 6.1.23.** 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;





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

**6.1.24.** 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;

**6.1.25.** 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;

**6.1.26.** Promptly communicate, in writing to BACW, any and all information related to any errors, mistakes or flaws found in the BASIC PROJECT;

**6.1.27.** 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 Supervisor, duly designated for that function, shall:

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

**6.2.1.2.** 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;

**6.2.1.3.** 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;

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

**6.2.1.5.** Notify the CONTRACTED PARTY in writing of the occurrence of any irregularities during the performance of services, and establish a deadline for their correction;

**6.2.1.6.** 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



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

**6.2.1.7.** 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.

## **7. CLAUSE – DISCRIMINATION OF SERVICE**

**7.1.** The CONTRACT shall be performed by the CONTRACTED PARTY as described herein and in the BASIC PROJECT AND TECHNICAL SPECIFICATION, Annex A.

## **8. CLAUSE – AMOUNT OF THE CONTRACT**

**8.1.** The maximum total amount of the CONTRACT is **US\$ XXXX (XXXX)**, being initially provided the value of **US\$ XXXX (XXXX)** through the **Purchase Order nº XXXXXXXX**, being the remaining **US\$ XXXX (XXXX)**, the complement for the above-mentioned Purchase Order.

**8.2.** The price per gallon or liter to be paid upon this CONTRACT is the AIRPORT UNIT PRICE as presented in the CONTRACTED PARTY PRICE PROPOSAL, attached to this CONTRACT.

**8.3.** In accordance with item 12 of the BASIC PROJECT, the airport unit price shall be readjusted as described in the BASIC PROJECT, ANNEX A of the Contract.

**8.3.1.** The estimated quantity for 12 months of contractual activity, respectively for the ITEMS aforementioned, is based on the services performed and in the recent activities and expectation of future demand. However, it does not guarantee any right to the CONTRACTED PARTY, that this quantity will be met. In case the CONTRACTING PARTY requires, during the 12 months period, less fuel than was estimated, the CONTRACTED PARTY will only be paid for services rendered.

**8.3.2.** The global quoted amount includes all costs arising from the performance of the CONTRACT, whether direct or indirect, not being limited to what it is described below: all inputs such as fees and/or taxes of invoice, social contributions, expenses, insurance, transportation, social security, fiscal, and commercial amounts that are due, administration fees, materials, insurance, and all other fees necessary for full compliance with the object of the CONTRACT, in accordance with the Basic Project.

## **9. CLAUSE - BUDGETARY ALLOCATION**

**9.1.** The expenses associated with this Contract shall be covered by specifically allocated resources from the Country's General Budget within this Organization, in accordance with the following budget classification:



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

**Management/Unit:** 00001;  
**VGR:** 120071;  
**PTRES:** 168896;  
**Source:** 0100000000 or similar ;  
**Expenditure Item:** 33.90.30 ;  
**Action:** 2868.

## **10. CLAUSE - SUBCONTRACTING**

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

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

**10.1.2.** 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.

**10.1.3.** 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.

## **11. CLAUSE - TERMS**

### **11.1. Term of Validity**

**11.1.1.** This project details the supply of PRODUCTS over 12 months, in accordance with this Administration's requirements.

**11.1.2.** The validity may be extended for an additional 48 months if determined to be in the Administration's interest.

### **11.2. Term of Execution**

**11.2.1.** Delivery time shall be 365 consecutive days, starting on the day on which the contract is published in the Brazilian Official Gazette ['Diário Oficial da União'].

### **11.3. Acceptance Timeframe**

**11.3.1.** The PRODUCTS supplied must be accepted by the Administration through an adequately qualified Commission, referred to as COMREC.

**11.3.2.** Acceptance timeframes shall be defined by the CONTRACTING PARTY, in accordance with each step completed in the supply process, not to exceed 30 (thirty) consecutive days.



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

**11.3.3.** The CONTRACTED PARTY may issue weekly reports for the purposes of oversight and invoice payment.

**11.4. Payment Processing Time**

**11.4.1.** The payment processing time shall be up to 30 days, starting on the date on which the term of receipt is issued.

**12. CLAUSE - FINANCIAL GUARANTEE**

**12.1.** The provision of a Contract guarantee shall be required from the CONTRACTED PARTY, in the amount of 1% (one) percent of the total amount of the Contract, within 10 business days of the signature of the Contract, in order that the Service Order may be signed, and consequently, the execution of the Contract can begin. The CONTRACTED PARTY can provide the Contract guaranty in the following modalities in CONTRACTING PARTY's reasonable discretion:

**12.1.1.** Security Deposit in the form of monies or bonds;

**12.1.2.** Insurance guaranty; or

**12.1.3.** Bank guaranty.

**12.1.3.1.** A guaranty that does not cover all the possible risks and losses associated with the performance of the Contract shall not be accepted.

**12.2.** A guaranty that is provided as bank guaranty or insurance guaranty must be valid throughout the term of the Contract.

**12.3.** If the amount of the guaranty is used, in whole or in part, by the CONTRACTING PARTY, as compensation for any losses caused by the CONTRACTED PARTY's conduct during the performance of the Contract, the CONTRACTED PARTY shall proceed to replenish that respective amount within **five (5) business days**, from the date it is notified.

**12.4.** After the completion of the Contract, when regular compliance of all obligations of the CONTRACTED PARTY is verified, the guaranty provided by the CONTRACTED PARTY shall be released and returned.

**13. CLAUSE - CHANGES TO THE CONTRACT**

**13.1.** Pursuant to Article 125 of the Brazilian Federal Law No. 14,133/21, a CONTRACTED PARTY is required to accept, under the same terms and conditions, any changes involving addition or subtraction of products, that may be necessary, at the discretion of the BACW, up to the limit of twenty-five percent (25%) of the original total amount of the Contract.



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

**13.1.1.** Since that the demands are estimated due to the characteristics of the OBJECT of this CONTRACT, deductions in the amount that exceeds the limit of twenty-five percent (25%) of the Contract may occur during the performance of the CONTRACT.

**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 VARIATION**

**14.1.** Taking into account the unique characteristics of this hiring, fueling prices may undergo variations beyond the CONTRACTING PARTY'S and the CONTRACTED PARTY'S control. Therefore, variations shall affect the price in the following manner:

**14.1.1.** Prices paid through the CONTRACT must be adjusted via increases or decreases, to reflect the variations in price including cents. The relevant price shall be as listed in an OPIS/PLATTS PUBLICATION, on the date of fueling during CONTRACT implementation.

**14.1.2.** Price variations noted in the PUBLICATION shall be applied to the price contemplated by the bid solely on the day of- or the day after- the price change in the market, in accordance with the PUBLICATION; and provided that the CONTRACTED PARTY notifies the SUPERVISOR within 15 days of the market price variation, attaching proof.

**14.2.** Market price adjustment rate will be reviewed by the CONTRACTED PARTY (PUBLICATION) if the PUBLICATION is discontinued, or if the CONTRACTED PARTY'S means of obtainment should drastically change for reasons beyond CONTRACTED PARTY'S control. In either case, the CONTRACTED PARTY must present documentation supporting this situation for analysis.

**14.3.** The CONTRACTED PARTY must give the CONTRACTED PARTY access to the OPIS and/or PLATTS systems for verification and monitoring of price variations.

**14.4.** The market price adjustment index assigned during the Bid by the CONTRACTED PARTY shall change if the CONTRACT SUPERVISOR should reasonably demonstrate that the market price index failed to represent market price consistently or substantially.

**14.5.** There will be no price adjustment if caused by delays or faults by the CONTRACTED PARTY.



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

**14.6.** When issuing an INVOICE, the CONTRACTED PARTY must show the price presented at Bid and price variation on PUBLICATION, while also citing the relevant PUBLICATION, as presented during the Bid.

## **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 RECEIVING COMMISSION

**15.2.** An Invoice shall be issued by the CONTRACTED PARTY 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 CONTRACTED PARTY.

**15.2.2.** 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

**15.2.3.** 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.

**15.3.** 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.

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

**15.5.** 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.

## **16. CLAUSE - SUPERVISION**

**16.1.** The SUPERVISOR must be a Federal Administrative Employee, specifically appointed by the Administration, in accordance with the precepts established by the Brazilian Federal Law No. 14,133/21, by the ICA nº 65-8/2009, and the ICA nº 12-23/2014, so as to monitor and inspect the fulfillment of the contract to be executed.



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

**16.2.** Monitoring of contractual fulfillment consists in verifying the conformity of the PRODUCT supply and the allocation of the necessary resources, thereby ensuring the perfect application of adjustment, and must be performed by the SUPERVISOR.

**16.3.** The CONTRACTING PARTY'S representative must have the necessary experience to monitor the supply of the contracted fuel.

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

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

**16.6.** The SUPERVISOR shall note in his records all events related to the performance of the Contract, taking the necessary measures for the complete fulfillment of contractual clauses. The measures exceeding his competence must be notified to the relevant authority in a timely manner.

**16.7.** The monitoring of contractual performance carried out by the CONTRACTING PARTY does not eliminate the CONTRACTED PARTY'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.

## **17. CLAUSE - RECEIPT OF THE OBJECT**

**17.1.** The services/material that are the object of the BASIC PROJECT shall be received by the Receiving Commission in accordance with the specifications set forth in the Basic Project, Annex I of this Contract.

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

**17.2.1.** Ensure that the CONTRACTED PARTY will follow the description of all the material that are the object of the BASIC PROJECT;

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

**17.2.3.** 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





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

**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 Supervisor for approval and/or a determination must be approved by the Chief of BACW.

**18. CLAUSE – UNFORESEEABLE EVENTS OF FORCE MAJEURE**

**18.1.** 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.

**18.2.** 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 Art. 124, item II, subitem “d” of the Brazilian Federal Law No. 14,133/21.

**19. CLAUSE – VIOLATIONS AND ADMINISTRATIVE SANCTIONS**

**19.1.** 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, contractual 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:

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

**19.1.2.** Compensatory fine of up to one percent (1%) of the total amount of the Contract;

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

**19.1.4.** 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.





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

**19.2.** 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 the Brazilian Federal Law No. 14,133/21, and also the Brazilian Law No. 9.784/99.

**19.3.** While applying the penalties, BACW 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.

## **20. CLAUSE – LINKAGE**

**20.1.** This Contract is hereby linked to the Invitation for Bid No. **213937/CABW/2021**, and the Price Proposal of the CONTRACTED PARTY, submitted by company **XXXXX** to the BACW.

## **21. CLAUSE – TERMINATION**

**21.1.** Pursuant to the provisions of Art. 137 of the Brazilian Federal Law No. 14,133/21, the following are cause for terminating this Contract:

- 21.1.1.** Non-compliance or irregular compliance with notices or contractual clauses, specifications, projects or deadlines;
- 21.1.2.** Failure to comply with the regular orders issued by the authority designated to monitor and inspect their execution or by a higher authority;
- 21.1.3.** Social change or modification of the purpose or structure of the company that restricts its ability to complete the contract;
- 21.1.4.** Bankruptcy or civil insolvency, dissolution of the company or the death of the contractor;
- 21.1.5.** Act of God or force majeure, regularly proven, impeding the performance of the contract;
- 21.1.6.** Delay in obtaining the environmental license, or impossibility of obtaining it, or substantial alteration of the preliminary project that results from it, even if obtained within the prescribed period;
- 21.1.7.** Delay in the release of areas subject to expropriation, eviction or administrative easement, or impossibility of releasing these areas;
- 21.1.8.** Reasons of public interest, justified by the highest authority of the contracting body or entity;



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

**21.1.9.** Non-compliance with obligations relating to the reservation of positions provided for by law, as well as other specific rules, for people with disabilities, for Social Security rehabilitated or for apprentices.

**21.2.** The cases of extinction referred to in items II, III and IV of § 2 of Art. 137 of the Brazilian Federal Law No. 14,133/21, shall observe the following provisions:

**21.2.1.** They will not be admitted in case of public calamity, serious disturbance of the internal order or war, as well as when they result from an act or fact that the contractor has practiced, in which he has participated or to which he has contributed;

**21.2.2.** Shall ensure the contracted party the right to opt for the suspension of compliance with the obligations assumed until the situation is normalized, assuming the re-establishment of the economic-financial balance of the contract, in the form of subparagraph "d" of item II of the caput of art. 124 of the Brazilian Federal Law No. 14,133/21.

**21.2.3.** The issuers of the guarantees provided for in art. 96 of the Brazilian Federal Law No. 14,133/21 must be notified by the contracting party as to the beginning of the administrative process to determine non-compliance with contractual clauses.

**21.3.** The termination of the contract may be:

**21.4.** Determined by unilateral and written act of the Administration, except in the case of non-compliance resulting from its own conduct;

**21.5.** Consensual, by agreement between the parties, by conciliation, by mediation or by a dispute resolution committee, provided that there is an interest of the Administration;

**21.6.** Determined by arbitration decision, as a result of an arbitration clause or arbitration commitment, or by court decision.

**21.7.** The extinction determined by a unilateral act of the Administration and the consensual extinction must be preceded by written and substantiated authorization from the competent authority and reduced to term in the respective process.

**21.8.** When the extinction arises from the exclusive fault of the Administration, the contractor will be compensated for the regularly proven damages he has suffered and will be entitled to:

**21.8.1.** Warranty return;

**21.8.2.** Payments due for the execution of the contract until the date of termination;

**21.8.3.** Payment of the cost of demobilization.

**21.9.** The extinction determined by a unilateral act of the Administration may entail, without prejudice to the sanctions provided for in the Law 14,133/21, the following consequences:



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

**21.9.1.** Immediate assumption of the object of the contract, in the state and place in which it is found, by the Administration's own act;

**21.9.2.** Occupation and use of the premises, facilities, equipment, material and personnel employed in the execution of the contract and necessary for its continuity;

**21.9.3.** Execution of the contractual guarantee for:

**21.9.3.1.** Compensation to the Public Administration for damages arising from non-execution;

**21.9.3.2.** Payment of labor, land and social security funds, when applicable;

**21.9.3.3.** Payment of fines due to the Public Administration;

**21.9.3.4.** Requirement for the insurer to assume the execution and completion of the object of the contract, when applicable;

**21.10.** Retention of credits arising from the contract up to the limit of damages caused to the Public Administration and fines applied.

**21.10.1.** The application of the measures provided for in items I and II of the caput of Art. 139 of the Law 14,133/21, will be at the discretion of the Administration, which may continue the work or service by direct or indirect execution.

**21.10.2.** In the event of item II of the caput of the Art. 139 of the Law 14,133/21, the act must be preceded by the express authorization of the Minister of State, the State Secretary or the competent municipal secretary, as the case may be.

## **22. CLAUSE – JURISDICTION AND CHOICE OF LAW**

**22.1.** This Contract shall be construed and interpreted in accordance with the **principles** of the Brazilian Federal Law No. 14,133/21, 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.

**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.



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

**23. CLAUSE – CORRESPONDENCE AND NOTIFICATION**

**23.1.** All correspondence, reports and notifications related to 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: +1-202-518-7348  
Fax: +1-202-483-4684  
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 1:  
ADDRESS 2:  
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 CONTRACTED PARTY.

**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.

Washington, D.C., **MM/DD/2021.**

For the **CONTRACTING PARTY:**

\_\_\_\_\_  
Roberto Martire Pires, Col.  
Commanding Officer, BACW



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

For the **CONTRACTED PARTY**:

\_\_\_\_\_  
NAME

**WITNESSES:**

\_\_\_\_\_  
Valdinei Fagundes de Souza, Ten Cel  
Chief of BACW's Fiscal Division

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

**WITNESSES** for the **CONTRACTED PARTY**:

\_\_\_\_\_  
NAME: .....ID n° .....



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

## **ANNEX A**

## **BASIC PROJECT**



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## **ANNEX B**

## **PRICE PROPOSAL**



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**ANNEX 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>		