

**ANNEX IV**

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



**CONTRACT No. XXX/CABW/2023**

**BIDDING PROCESS No. 230668/CABW/2023**

**PAG No. 67102.230668/2023-15**

**[CONTRACT DRAFT]**



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PAG No.: **67102.230668/2023-15**  
CONTRACT No.: **XXX/CABW/2023**

CONTRACTING OF A SPECIALIZED TRANSPORT COMPANY TO MOVE MATERIAL FROM THE BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON, DC (BACW) TO BRAZIL, BY SEA, 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 office located at 1701 22<sup>nd</sup> St NW, Washington, D.C. 20008, represented herein by **Col Av WILSON PAULO CORRÊA MARQUES**, in the use of its legal attributions, and in the terms of § 1° of the article 89 of the Federal Law No. 14,133/2021, hereafter called CONTRACTING PARTY, and the company **[NAME OF COMPANY]**, with head office at **[STREET]**, ZIP CODE **[POSTAL CODE]**, **[STATE / MUNICIPALITY]**, hereafter called CONTRACTED PARTY, herein represented by Mr./Mrs. **[NAME OF LEGAL REPRESENTATIVE]**, bearer of ID **[ID no.]**, and bearing in mind the content of PAG No. 67102. 230668/2023-15, and the final result of Bidding Process No. 230668/CABW/2023, based on the premises contained in article 1, of Annex III, of Ordinance GM-MD No. 5,175, of December 15, 2021, Decree No. 9,507, 2008, and Normative Instruction SLTI/MPOG No. 5/2017, and related legislation, hereby decide to enter into this contract agreement, in accordance with the following terms and conditions:

## **1. FIRST CLAUSE - 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. THE ADMINISTRATION** - The Brazilian Federal Government, represented by the Brazilian Aeronautical Commission in Washington;

**1.3. COMAER** - The Brazilian Air Force Command;

**1.4. CONTRACTED PARTY** - The individual or legal organization contracted to perform the required services;

**1.5. CONTRACTING PARTY** - The 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 individual or other Administrative Organization (CONTRACTED PARTY), for the performance of the services required and under the conditions set forth by the Brazilian Public Administration;

**1.7. EXPENSES SUPERVISOR** - A Public Administration Agent with the authority to perform acts resulting in funds citations, payments authorization, funds supply, approvals estimation, among other duties;

**1.8. FAB** - The Brazilian Air Force;

**1.9. INVOICE** - A commercial document formalizing a purchase and sale abroad, which must contain - among other information - the following data: supply quantity, supply unit, price, payment terms, taxes, duties and the FAB Purchase Order Number;

**1.10. OM** - Military Organization;



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**1.11. MONITOR** - The individual or commission representing the CONTRACTING PARTY to the CONTRACTED PARTY, appointed to systematically monitor the fulfillment of contractual terms and complementary orders issued by the Brazilian Federal Government, in all their aspects;

**1.12. PAAI** - A 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;

**1.13. PAG** - Administrative Management Process;

**1.14. TERM OF REFERENCE** - According to Law No. 14,133 of April 1, 2021, is the document required for contracting goods and services, which must contain the parameters and elements set forth in item XXIII of article 6. It is prepared based on suggestions taken from preliminary technical studies, which ensure the technical feasibility and adequate treatment of the project's environmental impact, as well as the evaluation of the project's or service's costs, defining the methods and deadlines for its execution;

**1.15. TERM OF RECEIPT** - A document issued by the COMREC attesting and accepting the services performed;

**1.16. AES** - Automated Export SYSTEM;

**1.17. ANSI** - American National Standards Institute;

**1.18. BL (Bill of Lading)** - Document issued by the forwarding agent or by the transport company itself. It indicates the owner of the exported cargo and its consignee;

**1.19. BACW** - Brazilian Aeronautical Commission in Washington;

**1.20. CFR (Cost and Freight)** - It defines that once within the main transport, the risks arising from the merchandise become entirely the responsibility of the CONTRACTING PARTY, including the contracting of Cargo Insurance. INCOTERMS 2020;

**1.21. CAPACITY** - Cargo movement activity in port facilities;

**1.22. COMREC** - Reception Committee;

**1.23. CTLA (Air Force Logistics Transport Center)** - Located at Estrada Alfredo Rocha, 495 - Ilha do Governador - Rio de Janeiro - RJ - Brazil, CEP 21941-580;

**1.24. DDTC or Directorate of Defense Trade Controls** - American Government body responsible for controlling the Import and Export of defense materials and services, which are included in the USML (United States Munitions List);

**1.25. DEMURRAGE** - Fine for delay in returning the container. It is applied by the SHIPPER to the customer who is using a container, during the import process;

**1.26. DOT** - Department of Transportation;

**1.27. EADI** - Interior Customs Station or Porto Seco;

**1.28. IMO** - International Maritime Organization;

**1.29. INCOTERMS 2020 (International Commercial Terms)** - International sales terms with the purpose of allowing standardization regarding cost and risk responsibilities, signed between exporters and importers;

**1.30. INVOICE** - Document that formalizes a purchase or service provision transaction;



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**1.31. SHEDULE B NUMBER** - 10 (ten) digit number used, in the United States to classify materials destined for Export;

**1.32. US CENSUS BUREAU** - American government agency in charge of the census in the United States; and

**1.33. USML or UNITED STATES MUNITIONS LIST** - American Government list listing articles, services and technologies designated for use in defense and space.

## **2. SECOND CLAUSE - OBJECT**

**2.1.** Hiring a transportation company to move material from the Brazilian Aeronautical Commission in Washington, DC (BACW) to Brazil, by sea, with the purpose of performing the continued services described below, for a period of 12 months with the possibility of extension up to ten (10) years:

**Module 1:** hiring a company to carry out the **land/sea transportation service of non-dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Santos**, located in the State of São Paulo, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the maritime mode, in INCOTERMS 2020, CFR modality, in **40 feet containers**, of the **High Cubage type (40' HC)** - The estimated quantity for 12 months will be **50 (fifty) units**;

**Module 2:** hiring a company to perform the **land/sea transportation service of dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Santos**, located in the State of São Paulo, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the maritime mode, in INCOTERMS 2020, CFR modality, in **40 feet containers**, of the **High Cubage type (40' HC)** - The estimated quantity for 12 months will be **10 (ten) units**;

**Module 3:** hiring a company, to perform the **land/sea transportation service of non-dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Rio de Janeiro**, located in the State of Rio de Janeiro, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the maritime mode, in INCOTERMS 2020, CFR modality, in **40 feet containers**, of the **High Cubage type (40' HC)** - The estimated quantity for 12 months will be **50 (fifty) units**;

**Module 4:** hiring a company, to perform the **land/sea transportation service of dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Rio de Janeiro**, located in the State of Rio de Janeiro, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the modal maritime, in INCOTERMS 2020, CFR modality, in **40 feet containers**, of the **High Cubage type (40' HC)** - The estimated quantity for 12 months will be **10 (ten) units**;

**Module 5:** hiring a company, to perform the **land/sea transportation service of non-dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Santos**, located in the State of São Paulo, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the maritime mode, in INCOTERMS 2020, CFR modality, in **40 feet containers, Open Top type** - The estimated quantity for 12 months will be **08 (eight) units**; and



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**Module 6:** hiring a company, to perform the **land/sea transportation service of dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the Port of Rio de Janeiro, located in the State of Rio de Janeiro, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the modal maritime, in INCOTERMS 2020, CFR modality, in **40 feet containers, Open Top** type - The estimated quantity for 12 months will be **03 (three) units**.

**2.2.** The destination port to be used, Santos or Rio de Janeiro, will be defined by the CONTRACTING PARTY, taking into account the logistical aspects of interest of the Administration.

**2.3.** The CONTRACTED PARTY shall pay a minimum period of 10 (ten) days for unloading at the port of destination, in relation to DEMURRAGE.

**2.4.** The estimated quantity for 12 (twelve) months of contractual activity, respectively for the mentioned modules. Therefore, there is no right to the CONTRACTED PARTY that this quantity will be fulfilled. The CONTRACTING PARTY will only pay for the services provided:

Module	Service	Estimated Quantity of CONTAINER for 12 months
MODULE 1	Land/sea transportation service of <b>non-dangerous cargo</b> from the BACW's Warehouse to the <b>Port of Santos</b> , using the maritime mode, in INCOTERMS 2020, CFR modality, in 40 feet containers, <b>High Cubage</b> type ( <b>40' HC</b> )	50
MODULE 2	Land/sea transportation service of <b>dangerous cargo</b> from the BACW's Warehouse to the <b>Port of Santos</b> , using the maritime mode, in INCOTERMS 2020, CFR modality, in 40 feet containers, <b>High Cubage</b> type ( <b>40' HC</b> )	10
MODULE 3	Land/sea transportation service of <b>non-dangerous cargo</b> from the BACW's Warehouse to the <b>Port of Rio de Janeiro</b> , using the maritime mode, in INCOTERMS 2020, CFR modality, in 40 feet containers, <b>High Cubage</b> type ( <b>40' HC</b> )	50
MODULE 4	Land/sea transportation service of <b>dangerous cargo</b> from the BACW's Warehouse to the <b>Port of Rio de Janeiro</b> , using the maritime mode, in INCOTERMS 2020, CFR modality, in 40 feet containers, <b>High Cubage</b> type ( <b>40' HC</b> )	10
MODULE 5	Land/sea transportation service of <b>non-dangerous cargo</b> from the BACW's Warehouse to the <b>Port of Santos</b> , using the maritime mode, in INCOTERMS 2020, CFR modality, in 40 feet containers, <b>Open Top</b> type	8
MODULE 6	Land/sea transportation service of <b>dangerous cargo</b> from the BACW's Warehouse to the <b>Port of Rio de Janeiro</b> , using the maritime mode, in INCOTERMS 2020, CFR modality, in 40 feet containers, <b>Open Top</b> type	3

**2.5.** The following documents are legally binding on this contract, regardless of transcription:

**2.5.1.** the Terms of Reference;

**2.5.2.** the Public Bidding Notice;

**2.5.3.** the CONTRACTED PARTY's Price Proposal;

**2.5.4.** any annexes to the aforementioned documents.



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

**ANNEX A** - TERM OF REFERENCE;

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

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

### **3. THIRD CLAUSE - VALIDITY AND EXTENSION**

**3.1.** The term of the contract is 12 (twelve) months from the signing of the contract, renewable for the same period for a maximum of ten (10) years.

**3.2.** The extension referred to in this item is conditional on the competent authority certifying that the conditions and prices remain advantageous for the Administration, allowing for negotiation with the CONTRACTED PARTY, and also taking into account compliance with the following requirements:

**3.2.1.** it be formally demonstrated in the file that the manner in which the services are to be provided is of a continuing nature;

**3.2.2.** a report is attached on the execution of the contract, with information that the services have been provided on a regular basis;

**3.2.3.** a written justification and reason are enclosed to show that the Administration is interested in carrying out the service;

**3.2.4.** the CONTRACTED PARTY expressly states its interest in the extension;

**3.2.5.** proof that the CONTRACTED PARTY maintains the initial qualification conditions.

**3.3.** The CONTRACTED PARTY has no subjective right to a contract extension.

**3.4.** Contract extensions must be carried out by means of an addendum.

**3.5.** The contract cannot be extended when the CONTRACTED PARTY has been penalized by the sanctions of being declared ineligible or impeded from bidding and contracting with Brazilian public authorities, observing the scope of application.

### **4. FOURTH CLAUSE - EXECUTION AND MANAGEMENT OF THE CONTRACT**

**4.1.** The CONTRACT shall be performed on the basis of indirect execution of Lowest Unit Price.

**4.2.** The services shall be performed by the CONTRACTED PARTY as described herein and in accordance with the TERM OF REFERENCE, Annex A.

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

**4.4.** The contractual execution regime, the management and execution models, as well as the terms and conditions for completion, delivery, observation and receipt of the object are set out in the Term of Reference, attached to this Contract.

### **5. FIFTH CLAUSE - SUBCONTRACTING**

**5.1.** Partial subcontracting of the object is permitted, up to a limit of 70% (seventy percent) of the total value of the contract, under the conditions stipulated in this clause.

**5.1.1.** The sea transportation of the container can be subcontracted in full; and



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**5.1.2.** The container to be used does not have to be owned by the CONTRACTED PARTY, but may be owned by a third party.

**5.2.** Complete subcontracting or subcontracting of the primary portion of the obligation, detailed below, is prohibited:

**5.2.1.** Ground transportation of the Container.

**5.3.** In any case of subcontracting, the CONTRACTED PARTY remains fully responsible for the perfect execution of the contract, and is responsible for supervising and coordinating the activities of the subcontractor, as well as being accountable to the CONTRACTING PARTY for strict compliance with the contractual obligations corresponding to the subcontracted object.

**5.4.** Subcontracting depends on the prior authorization of the CONTRACTING PARTY, which is responsible for assessing whether the subcontractor meets the technical qualification requirements necessary to carry out the contract.

**5.5.** The CONTRACTED PARTY shall provide the Administration with documentation proving the subcontracted technical capacity, which will be assessed and attached to the corresponding file.

**5.6.** Subcontracting to a natural or legal person is prohibited if that person or its managers have a technical, commercial, economic, financial, labor or civil relationship with a manager of the contracting body or entity or with a public agent who performs a function in the contracting or acts in the supervision or management of the contract, or if they are their spouse, partner or relative in a direct or collateral line, or by affinity, up to the third degree.

## **6. SIXTH CLAUSE - PRICE**

**6.1.** The total amount of the contract is **US\$..... (.....)**.

**6.2.** The above amount includes all the ordinary direct and indirect expenses arising from the execution of the object, including taxes, social, labor, social security, tax and commercial charges, administration fees, freight, insurance and others necessary for full compliance with the object of the contract.

**6.3.** The above value is merely an estimate, so that payments due to the CONTRACTED PARTY will depend on the quantities actually supplied.

## **7. SEVENTH CLAUSE - PAYMENT**

**7.1.** Payment will be made within 30 (thirty) calendar days of receipt of the invoice, having been certified by the designated Commission.

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

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

**7.2.2.** The "approval" of the Invoice is contingent upon verification of compliance of the Invoice submitted by the CONTRACTED PARTY with the services that were actually performed.

**7.3.** In the event of any mistake in submitting any of documents required that prevents payment, 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.





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

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

## **8. EIGHTH CLAUSE - PRICE ADJUSTMENT**

**8.1.** The contracted price for the provided services is fixed and cannot be changed within the first 12 (twelve) months of the Contract performance.

**8.2.** After a period of one year, the initial price may be readjusted, upon request of the CONTRACTED PARTY, through the application by the CONTRACTING PARTY of the Consumer Price Index for All Urban Consumers (CPI-U) - Expense Category - All Items, issued by the Bureau of Labor Statistics - BLS, exclusively for obligations initiated and concluded after a period of 12 (twelve) months.

**8.2.1.** The readjustment rate shall be requested by the CONTRACTED PARTY, limited to the variation in the CPI-U, as long as the economic and financial equilibrium of the contract is maintained.

**8.3.** In the readjustments subsequent to the first one, the minimum interval of 12 (twelve) months will be counted from the financial effects of the last readjustment.

**8.4.** In the event of delay or non-disclosure of the readjustment index, the CONTRACTING PARTY will pay the CONTRACTED PARTY the amount calculated by the last known variation, if it is the case, settling the corresponding difference as soon as the definitive index is released.

**8.5.** In the final measurements, the index used for readjustment will necessarily be the definitive one.

**8.6.** If the index established for readjustment becomes extinct or in any way can no longer be used, it will be adopted, in substitution, the one that will be determined by the Brazilian legislation then in force.

**8.7.** In the absence of legal provision regarding the substitute index, the parties will elect a new official index, to readjust the price of the remaining value, by means of an amendment.

**8.8.** The readjustment will be carried out by an agreement term ("Termo de Apostilamento") document.

**8.9.** The inclusion of benefits not provided for in the initial price proposal is prohibited, except when they become mandatory by legal instrument.

**8.10.** The CONTRACTING PARTY may perform diligences in order to assure the cost variation proposed by the CONTRACTED PARTY.

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

## **9. NINTH CLAUSE - CONTRACTING PARTY OBLIGATIONS**

**9.1.** In addition to the established in the Term of Reference, the CONTRACTING PARTY, through the assistance of the CONTRACT MONITOR, duly designated for that function, shall:



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- 9.1.1. Appoint a RECEIVING COMMISSION (COMREC), through Internal document, to carry out receipt of the qualitative and quantitative object of the CONTRACT;
- 9.1.2. Provide all the conditions for the CONTRACTED PARTY to be able to perform its services in accordance with the provisions of the CONTRACT, the Invitation to Bid and its Annexes, and particularly the Term of Reference;
- 9.1.3. 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;
- 9.1.4. Provide monitoring of services by an official specifically designated for that purpose, who shall record in his own log any flaws found;
- 9.1.5. Notify the CONTRACTED PARTY in writing of the occurrence of any irregularities during the performance of services, and establish a deadline for their correction;
- 9.1.6. 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
- 9.1.7. 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.

## 10. TENTH CLAUSE - CONTRACTED PARTY OBLIGATIONS

10.1. In addition to that set forth in the TERM OF REFERENCE, the **CONTRACTED PARTY** shall be required to:

- 10.1.1. Perform services in accordance with the specifications in the TERM OF REFERENCE and its proposal, with the resources necessary for full compliance with the provisions of the CONTRACT;
- 10.1.2. Strictly observe specifications and instructions contained in the Invitation for Bid;
- 10.1.3. Take full responsibility for the performance of the contracted services;
- 10.1.4. Ensure supply of all material and equipment required for full and perfect fulfillment of contractual obligations;
- 10.1.5. 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, employment taxes and withholdings, 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;
- 10.1.6. Take responsibility, furthermore, for damages caused to the CONTRACTING PARTY, arising from the performance of services by CONTRACTED PARTY'S employees or appointed agents;
- 10.1.7. Provide all clarifications requested by the CONTRACTING PARTY, immediately addressing any complaints;
- 10.1.8. Replace, at no cost to the CONTRACTING PARTY, all material or equipment provided that suffers from any type of damage caused by poor use by its employees, or which has been rejected during inspection tests;
- 10.1.9. The CONTRACTED PARTY 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 press or media, including print, television, radio, internet



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and/or any other means of public disclosure, except with explicit consent of the CONTRACTING PARTY;

**10.1.10.** Bear all civil liability for each and every performed services 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;

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

**10.1.12.** 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;

**10.1.13.** 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;

**10.1.14.** Maintain throughout the term of the Contract, consistent with the obligations assumed, all conditions of eligibility and qualification required in the bidding process;

**10.1.15.** 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;

**10.1.16.** 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;

**10.1.17.** All services performed by the CONTRACTED PARTY shall be the responsibility of the CONTRACTED PARTY and shall be performed in accordance with the CONTRACT;

**10.1.18.** 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;

**10.1.19.** 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 MONITOR;

**10.1.20.** 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;

**10.1.21.** 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;

**10.1.22.** Promptly communicate, in writing to BACW, any and all information related to any errors, mistakes or flaws found in the Term of Reference; and

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

## **11. ELEVENTH CLAUSE - FINANCIAL GUARANTEE**

**11.1.** The CONTRACTED PARTY shall be required to provide a financial guarantee in the amount of 5% (five percent) of the total value of the Contract, within 10 (ten) business days, which may be



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extended for an equal period at the discretion of the Administration, counting from the signing the CONTRACT. The CONTRACTED PARTY shall provide a financial guarantee in US dollars, as follows:

**11.1.1.** Irrevocable Letter of Credit, Guarantee Insurance or Bank Guarantee, payable on demand, issued by a reputable bank or insurance company, for the benefit of the CONTRACTING PARTY;

**11.2.** The financial guarantee must be valid for the entire duration of the CONTRACT.

**11.3.** In the event of a change in the value of the contract, or extension of its term, the guarantee must be adjusted or renewed, following the same parameters used when the contract was signed.

**11.4.** The guarantee will ensure, whichever method is chosen, the payment of:

**11.4.1.** any losses arising from failure to fulfill the purpose of the contract and failure to comply with the other obligations set out therein;

**11.4.2.** any fines and penalties imposed by the Administration on the CONTRACTED PARTY.

**11.5.** Any guarantee that does not cover all possible risks and damages associated with the execution of the contract will not be accepted.

**11.6.** If the value of the guarantee is used up, in whole or in part, the CONTRACTED PARTY must replace it within 20 (twenty) business days from the date of receipt of notification.

**11.7.** Upon completion of the CONTRACT, following the issuance of the final Term of Receipt, and verification of full compliance with the CONTRACTED PARTY's obligations, the guarantee shall be released and returned.

## **12. TWELFTH CLAUSE - VIOLATIONS AND ADMINISTRATIVE SANCTIONS**

**12.1.** The CONTRACTED PARTY commits an administrative infraction if:

- a) gives rise to partial non-performance of the contract;
- b) gives rise to partial non-performance of the contract which causes serious damage to the Administration or to the operation of public services or to the collective interest;
- c) gives rise to total non-performance of the contract;
- d) delaying the execution or delivery of the contract without justifiable reason;
- e) submitting false documentation or making false statements during the performance of the contract;
- f) commits a fraudulent act in the performance of the contract;
- g) behaving in an unfit manner or committing fraud of any kind;
- h) committing the harmful act provided for in article 5 of Law No. 12,846, of August 1, 2013, to wit:

I - Promising, offering or giving, directly or indirectly, an undue advantage to a public official, or to a third party related to them;

II - Proving to finance, fund, sponsor or in any way subsidize the practice of the illegal acts provided for in this Law;

III - Proven use of an individual or legal entity to conceal or disguise their real interests or the identity of the beneficiaries of the acts carried out;



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IV - With regard to tenders and contracts:

- a) frustrate or defraud, by means of an arrangement, combination or any other expedient, the competitive nature of a public bidding procedure;
- b) prevent, disturb or defraud the performance of any act of a public bidding procedure;
- c) removing or seeking to remove a bidder, by means of fraud or offering an advantage of any kind;
- d) defrauding a public tender or contract arising from it;
- e) fraudulently or irregularly creating a legal entity in order to participate in a public bidding process or enter into an administrative contract;
- f) fraudulently obtaining an undue advantage or benefit from modifications or extensions to contracts entered into with the public administration, without authorization by law, in the public bid invitation or in the respective contractual instruments; or
- g) manipulating or defrauding the economic and financial balance of contracts entered into with the public administration;

V - hindering the investigation or inspection activities of public bodies, entities or agents, or interfering in their activities, including within the scope of regulatory agencies and national financial system inspection bodies.

**12.2.** The following sanctions will be applied to the CONTRACTED PARTY who incurs the infractions described above:

- i) Warning, when the CONTRACTED PARTY causes the contract not to be partially performed, whenever the imposition of a more serious penalty is not justified;
- ii) Impediment to bidding and contracting, when the conduct described in subparagraphs "b", "c" and "d" of the above sub-item of this Contract is practiced, whenever the imposition of a more serious penalty is not justified;
- iii) Declaration of ineligibility to bid and contract, when the conduct described in subparagraphs "e", "f", "g" and "h" above of this Contract, as well as in sub-paragraphs "b", "c" and "d", justifies the imposition of a more serious penalty;
- iv) Fine:
  - (1) Moratorium of 0.5% (five tenths of a percent) per day of unjustified delay on the value of the defaulted installment, up to a limit of 30 (thirty) days.
  - (2) A penalty of 0.05% (five hundredths of a percent) of the total value of the contract per day of unjustified delay, up to a maximum of 2% (two percent), for failure to comply with the deadline set for submitting, supplementing or replacing the guarantee.
    - a) a delay of more than 60 days authorizes the Administration to terminate the contract for non-compliance or irregular compliance with its clauses.
  - (3) Compensatory, for the infractions described in subparagraphs "e" to "h" of sub-item 12.1, of 10% of the value of the Contract.
  - (4) Compensatory, for total non-performance of the contract as described in sub-item 12.1 "c", of 10% of the value of the Contract.
  - (5) For infractions described in sub-item 12.1 "b", the fine will be 5% of the Contract value.
  - (6) For infractions described in sub-item 12.1 "d", the fine will be 2% of the Contract value.



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(7) For the infraction described in sub-item 12.1 "a", the fine will be 5% of the Contract value.

**12.3.** The application of the sanctions provided for in this Contract does not, under any circumstances, exclude the obligation to make full reparation for the damage caused to the CONTRACTING PARTY.

**12.4.** All the sanctions provided for in this Contract may be applied cumulatively with a fine.

**12.4.1.** Before a fine is imposed, the interested party shall be entitled to a defense within 15 (fifteen) business days from the date of notification.

**12.5.** If the fine imposed and any compensation due are greater than the amount of any payment due by the CONTRACTING PARTY to the CONTRACTED PARTY, in addition to the loss of this amount, the difference will be deducted from the guarantee provided or will be charged in court.

**12.6.** Prior to the fine being sent to the courts, it may be paid administratively within a maximum of 5 (five) business days from the date of receipt of the communication sent by the competent authority.

**12.7.** The application of sanctions will be carried out in an administrative process that ensures that the CONTRACTED PARTY has the right to an adversarial hearing and a full defense.

**12.8.** When imposing sanctions, consideration will be given to:

- a) the nature and seriousness of the infraction committed;
- b) the peculiarities of the specific case;
- c) aggravating or mitigating circumstances;
- d) the damage caused to the CONTRACTING PARTY;
- e) the implementation or improvement of an integrity program, in accordance with the rules and guidelines of the control bodies.

**12.9.** The CONTRACTED PARTY's debts to the contracting administration, resulting from administrative fines and/or indemnities, which are not registered as active debt, may be offset, in whole or in part, against the credits owed by the said body arising from this same contract or from other administrative contracts that the CONTRACTED PARTY has with the same contracting body.

### **13. THIRTEENTH CLAUSE - TERMINATION OF CONTRACT**

**13.1.** The contract will be terminated when the term stipulated therein has expired, regardless of whether or not the obligations of both contracting parties have been fulfilled.

**13.2.** The contract may be terminated before the deadline set out therein, at no cost to the CONTRACTING PARTY, when the latter does not have the budget credits to continue it or when it considers that the contract no longer offers any advantage.

**13.3.** Termination in this case will take place on the next anniversary date of the contract, provided that the CONTRACTING PARTY notifies the CONTRACTED PARTY to this effect at least 2 (two) months before that date.

**13.4.** If notice of non-continuation of the contract referred to in this sub-item is given less than 2 (two) months before the anniversary date, the contract will be terminated 2 (two) months after the date of notice.

**13.5.** The contract may be terminated before the obligations stipulated therein have been fulfilled, or before the period stipulated therein has elapsed, unilaterally for failure or non-performance by



-----**CONTRACT DRAFT**-----

the contracted party, or amicably, with the right to an adversarial hearing and a full defense being ensured.

**13.6.** Corporate changes or changes to the company's purpose or structure will not result in termination if they do not restrict the company's ability to conclude the contract.

**13.7.** If the operation entails a change in the contracted legal entity, an addendum must be drawn up for the subjective change.

#### **14. FOURTEENTH CLAUSE - BUDGETARY ALLOCATION**

**14.1.** The expenses arising from this contract will be covered by specific funds set aside in the Union's General Budget for this financial year, in the appropriation detailed below:

- I. Management/Unit:
- II. Source of Funds:
- III. Work Program:
- IV. Expenditure Element:
- V. Internal Plan:
- VI. Purchase Order:

#### **15. FIFTEENTH CLAUSE - CHANGES TO THE CONTRACT**

**15.1.** The CONTRACTED PARTY 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 25% (twenty-five percent) of the original total amount of the Contract.

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

**15.1.2.** 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.

**15.2.** The contract may be amended, with due justification and evidence, to restore the initial economic and financial balance of the contract in the event of force majeure, unforeseeable circumstances or events of incalculable consequences, which make it impossible to perform the contract as agreed, respecting, in any case, the objective distribution of risk established in the contract.

#### **16. SIXTEENTH 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 No. 14,133/2021 (Brazil), ICA No. 65-8/2009 (Attributions of the MONITOR and Receiving Commission), and ICA No. 12-23/2019 (Inspection and Receipt of 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 consists in verifying the conformity of the services and the allocation of the necessary resources.



-----**CONTRACT DRAFT**-----

**16.3.** Verification of adequate contractual fulfillment must be performed based on the criteria established in the TERM OF REFERENCE 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.

**16.6.** 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 any responsibility by the CONTRACTING PARTY, its representatives or employees.

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

**16.7.1.** Observe and perform, when applicable, all procedures established in ICA No. 65-8/2009 and ICA No. 12-23/2019;

**16.7.2.** Monitor the development of all services requests issued to the CONTRACTED PARTY;

**16.7.3.** Monitor the development of all services until their receipt by CTLA;

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

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

**16.7.6.** 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;

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

**16.7.8.** Issue, until the fifth day of the following month, a Contract Status Report, in accordance with ICA No. 65-8/2009 and ICA No. 12-23/2019 for the Administration.

## **17. SEVENTH 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 TERM OF REFERENCE, Annex A 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 services that are the object of the TERM OF REFERENCE;

**17.2.2.** Receive services or reject them according to the specifications set forth in the TERM OF REFERENCE, in up to 15 (fifteen) calendar days;

**17.2.3.** Once approved, the invoices are sent to BACW's Bidding and Contract Division accompanied by the Statement of Receipt within 5 (five) days. If there are any discrepancies, the invoice must be returned to the CONTRACTED PARTY so that the necessary corrections can be made, with a letter explaining the reasons for the return; and





-----**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 MONITOR for approval and/or a determination must be approved by the Head of the BACW.

## **18. EIGHTEENTH CLAUSE - ALTERATION TO CONTRACTED'S PARTY**

**18.1.** The merger, divestiture, or incorporation of the CONTRACTED PARTY with/within another entity is permitted, provided that all the qualifications set forth in the Public Notice continue to be satisfied, all the Contract clauses are maintained, there is no prejudice to the contract execution, and the CONTRACTING PARTY in its discretion formally accepts the foregoing in order to continue with the contract execution.

## **19. NINETEENTH CLAUSE - ACTS OF GOD OR FORCE MAJEURE**

**19.1.** Acts of God or force majeure events shall be notified in writing to the Head 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.

**19.2.** For the purposes of this CONTRACT, neither party shall be liable for damages resulting from acts of God or force majeure if it has not expressly accepted responsibility for them.

**19.3.** 19.3 Acts of God or force majeure occur in the event of a necessary event, the effects of which could not be avoided or prevented.

## **20. TWENTYTH CLAUSE - LANGUAGE**

**20.1.** 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**.

## **21. TWENTY-FIRST CLAUSE - JURISDICTION AND CHOICE OF LAW**

**21.1.** This Contract shall be construed and interpreted in accordance with the principles of Brazilian Law No. 14,133/2021, 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.

**21.2.** 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.

**21.3.** 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.

## **22. TWENTY-SECOND 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.



-----**CONTRACT DRAFT**-----

**CONTRACTING PARTY:**

BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON  
Attn: Bidding and Contracts Division  
1701 22<sup>nd</sup> St 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:

In witness whereof, the parties have executed this CONTRACT in the presence of the witnesses subscribed below.

Washington, DC, **MM/DD/2023.**

**FOR THE CONTRACTING PARTY:**

\_\_\_\_\_  
\*MINUTA/DRAFT\*  
WILSON PAULO CORRÊA MARQUES, Col Av  
Head of the BACW

**FOR THE CONTRACTED PARTY:**

\_\_\_\_\_  
\*MINUTA/DRAFT\*  
NAME

**WITNESSES:**

\_\_\_\_\_  
\*MINUTA/DRAFT\*  
MICHLE DE SOUZA SIQUEIRA, Lt Col  
Head of the BACW's Fiscal Division



-----**CONTRACT DRAFT**-----

\_\_\_\_\_  
\*MINUTA/DRAFT\*  
**LUCIANO BARBOSA DOS SANTOS, Maj QOE SUP**  
Monitor of Contract

**WITNESSES for the CONTRACTED PARTY:**

\_\_\_\_\_  
\*MINUTA/DRAFT\*  
NAME: ..... ID n° .....

DRAFT



**CONTRACT DRAFT**

**ANNEX A**

**TERM OF REFERENCE**

**DRAFT**



**CONTRACT DRAFT**

**ANNEX B**

**PRICE PROPOSAL**

**DRAFT**



**-----CONTRACT DRAFT-----**

**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 (US\$)</b>		<b>XXXXXX</b>		



MINISTÉRIO DA DEFESA  
COMANDO DA AERONÁUTICA

CONTROLE DE ASSINATURAS ELETRÔNICAS DO DOCUMENTO

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Este documento foi assinado e conferido eletronicamente com fundamento no artigo 6º, do Decreto nº 8.539 de 08/10/2015 da Presidência da República pelos assinantes abaixo:

Assinado via ASSINATURA CADASTRAL por Ten Cel Int ROBERTA GRAZIELLY COSTA SOUZA no dia 05/12/2023 às 08:19:39 no horário oficial de Brasília.

Assinado via ASSINATURA CADASTRAL por Ten Cel Int MICHELE DE SOUZA SIQUEIRA no dia 05/12/2023 às 08:42:05 no horário oficial de Brasília.

Assinado via ASSINATURA CADASTRAL por Cel WILSON PAULO CORREA MARQUES no dia 05/12/2023 às 13:43:38 no horário oficial de Brasília.