**DRAFT AGREEMENT**



**MINISTRY OF FOREIGN AFFAIRS OF BRAZIL**

**BRAZILIAN FINANCIAL OFFICE**

(Administrative Process no. 09051.200096/2024-08)

SERVICE AGREEMENT NO. /2024, ESTABLISHED BETWEEN THE BRAZILIAN FEDERAL GOVERNMENT THROUGH THE BRAZILIAN FINANCIAL OFFICE OF THE MINISTRY OF FOREIGN AFFAIRS AND .............................................................

The Brazilian Federal Government, through the Brazilian Financial Office (BFO), located at 1180 Avenue of the Americas, 17th floor, in the City of New York / State of New York, herein represented by its Head, Pedro Gustavo Ventura Wollny, appointed by Decree dated December 30, 2021, published in the Official Gazette of Brazil on December 31, 2021, bearer of Functional Registration No. 6460732, hereinafter referred to as CONTRACTING PARTY, and .............................., located at ..................................., in ............................. hereinafter referred to as CONTRACTED PARTY, herein represented by .................................. (name and position in the Contracted Party), according to the Contracted Party’s acts of incorporation **OR** power of attorney presented in the records, in view of the documentation contained in Process No. 09051.200096/2024-08 and in compliance with the applicable legislation,agree to enter into this Service Agreement (hereinafter “Agreement”), resulting from Request for Proposal no. 4/2024, under the following clauses and conditions.

1. CLAUSE ONE – PURPOSE
   1. The object of this instrument is the hiring of consulting and brokerage services (hereinafter “the Services”) for health insurance contracts in the U.S market, under the conditions established in the Terms of Reference.
   2. Object of this Agreement:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **SPECIFICATION** | **UNIT OF MEASURE** | **QUANTITY** | **UNIT VALUE** | **TOTAL VALUE** |
| 1 | CONSULTANCY, REPORT PREPARATION, PARTICIPATION IN MEETINGS OR TELE/VIDEOCONFERENCES | HOURS | 150 |  |  |
| 2 | CONSULTANCY AND BROKERAGE FOR A REQUEST FOR INFORMATION (RFI) | - | 1 |  |  |
| 3 | CONSULTANCY AND BROKERAGE FOR A REQUEST FOR PROPOSAL (RFP) | - | 1 |  |  |
| **TOTAL** | | | | |  |

* 1. This Agreement incorporates by reference the following documents:
     1. The Terms of Reference;
     2. The RFP;
     3. The Contracted Party’s proposal;
     4. Any Attachments of the Aforementioned Documents.

1. CLAUSE TWO – TERM AND RENEWAL
   1. The contract term is 36 (thirty-six) months starting from \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, with the possibility of extension for up to two equal and successive periods, with the Agreement being terminable without penalty for either party at the end of each contractual period.
   2. The renewal referenced in this clause is contingent upon certification by the Head of the BFO that the conditions and prices remain favorable for the Ministry of Foreign Affairs of Brazil, negotiations with the Contracted Party being permitted, with due consideration given to meeting the following requirements:

a) It must be formally demonstrated in the records that the nature of the service provision is continuous;

b) A report must be attached detailing the execution of the Services, with information indicating that the Services have been provided regularly;

c) A written justification and reason must be provided indicating that the Ministry of Foreign Affairs of Brazil maintains an interest in the continuation of the Services;

d) An explicit statement must be submitted by the Contracted Party indicating interest in the renewal. Written notice of intent not to renew must be provided by the Contracted Party to the Contracting Party at least 180 days prior to the end of the renewal term.

e) It must be proven that the Contracted Party continues to meet the initial qualification requirements.

* 1. The Contracted Party has no subjective right to contract renewal.
  2. Any contract renewal must be formalized through an endorsement.
  3. In any contractual renewal, non-renewable costs already paid or amortized during the initial contract term must be reduced or eliminated as a condition for renewal.

2.6. This Agreement may not be renewed if the Contracted Party has been penalized with sanctions such as a declaration of ineligibility or prohibition from bidding and contracting with the Brazilian federal government.

1. CLAUSE THREE – EXECUTION AND SUPERVISION OF THE SERVICES
   1. The service execution regime and the supervision model are contained in the Terms of Reference, attached to this Agreement.
2. CLAUSE FOUR - SUBCONTRACTING

4.1. Full subcontracting or subcontracting of the main portion of the obligation, specified below, is prohibited:

4.1.1. Consulting and brokerage services for health insurance contracts in the U.S market.

4.2. In any case of subcontracting, the Contracted Party retains full responsibility for the proper execution of this Agreement, including supervision and coordination of the subcontractor's activities. The Contracted Party is also liable to the Contracting Party for the strict fulfillment of contractual obligations related to the subcontracted work.

4.3. The subcontracting of an individual or legal entity is prohibited if this individual or entity or the executives of the latter have a technical, commercial, economic, financial, labor or civil relationship with officials of the Contracting Party, or with any public agent involved in contracting, overseeing, or managing this Agreement. Subcontracting is also prohibited if they are spouses, domestic partners, or relatives in a direct line, collateral, or by affinity, up to the third degree.

1. CLAUSE FIVE - PRICING

5.1. The value of each contracted service is as indicated in the table in item 1.2, totaling US$ ....... (.......).

5.2. The above amount includes all ordinary direct and indirect expenses arising from the execution of this Agreement's scope, including taxes and/or fees, social, labor, pension, fiscal, and commercial charges, administrative fees, freight, insurance, travel and any other costs necessary for the complete fulfillment of this Agreement's objectives.

5.3. The above amount is merely an estimate, therefore the payments due to the Contracted Party will depend on the services actually provided.

1. CLAUSE SIX - PAYMENT
   1. The payment terms and other related conditions are defined in the RFP, attached to this Agreement.
   2. Payments due will be made only after the definitive receipt by the contract manager of the service order or of the portion of the Services that has been effectively completed.
      1. Advance payment is permitted exceptionally if it results in cost savings or represents an essential condition for the execution of the service, in which case it must be justified.
      2. As a condition for advance payment, a significant portion of the payment to be settled should be specified and scheduled to be paid only after the definitive receipt of the complete service.
      3. The Contracted Party shall have to return, with monetary correction, the full amount of the advance in the event of non-performance of the service.
      4. For the service "Consulting, report production, participation in meetings or tele/videoconferences," payment for each agreed task will be allowed after receipt, up to the limit of contracted hours.
2. CLAUSE SEVEN – PRICE ADJUSTMENT

7.1. The initially contracted prices are fixed and non-adjustable for a period of 36 (thirty-six) months, starting from this Agreement’s effective date on \_\_/\_\_/\_\_ (DD/MM/YYYY).

7.2. After the 36-month period, the initial prices may be adjusted after negotiation, exclusively for obligations that begin and are completed after the end of the initial contract term.

7.3. For subsequent adjustments after the first, the minimum period of 36 (thirty-six) months will be counted from the financial effects of the last adjustment.

7.4. The adjustment will be carried out by an endorsement, following the rules established in the Terms of Reference, attached to this Agreement.

1. CLAUSE EIGHT – CONTRACTING PARTY’S OBLIGATIONS
   1. The obligations of the Contracting Party are as follows:
   2. Demand the fulfillment of all obligations assumed by the Contracted Party, in accordance with this Agreement and its appendixes;
   3. Receive the Services within the deadlines and conditions established in the Terms of Reference;
   4. Notify the Contracted Party in writing of any defects, flaws, or inaccuracies found in the Services, so that they are replaced or corrected, in whole or in part, at the Contracted Party's expense when the Contracting Party determines the error is the Contracted Party's responsibility;
   5. Monitor and oversee the execution of the Services and the Contracted Party's fulfillment of contractual obligations;
   6. Notify the Contracted Party to issue an invoice for the undisputed portion of the Services’ execution, for the purpose of settlement and payment, in cases where there is a dispute over the quality or quantity of the Services;
   7. Make the payment to the Contracted Party for the amount corresponding to the execution of the Services, in the deadlines, manner, and conditions established in this Agreement and in the Terms of Reference;
   8. Explicitly decide on all requests and complaints from the Contracted Party related to the execution of the Services, except for requests that are manifestly irrelevant, merely delaying, or of no interest to the proper execution of the Services;
      1. The Contracting Party will have a period of 15 days from the date of receipt of the request to make a decision, with the possibility of a motivated extension for an equal period;
   9. Respond to any requests for reestablishment of the economic-financial balance made by the Contracted Party within a maximum period of 30 days;
   10. The Contracting Party will not be liable for any commitments made by the Contracted Party with third parties, even if related to the execution of the Services, nor for any damage caused to third parties as a result of acts by the Contracted Party, its employees, representatives, or subordinates;
   11. Provide the necessary documents and information for the development of the Services.
2. CLAUSE NINE – CONTRACTED PARTY’S OBLIGATIONS
   1. The Contracted Party must fulfill all obligations contained in this Agreement and its appendixes, assuming as solely its own the risks and expenses arising from the proper and perfect performance of the Services, while also observing the following obligations:
   2. After this Agreement is signed, designate one or more representatives to respond to the Contracting Party's demands. These representatives should be reachable via email and phone, and available for in-person meetings or tele/videoconferences, subject to scheduling;
   3. Provide all clarifications or information requested by the contract supervisor or higher authority;
   4. Allocate the necessary employees for the proper fulfillment of the terms of this Agreement, with appropriate skills and knowledge;
   5. Correct or replace, at its own expense, in whole or in part, within a time frame agreed upon with the Contracting Party, any services that are found to have defects or inaccuracies that the Contracting Party determines to be the Contracted Party's responsibility, at no additional cost to the Contracting Party;
   6. Be responsible for any flaws or damages arising from the performance of the Services, as well as for any and all damage caused to the Contracting Party or third parties. This responsibility is not reduced by the Contracting Party's supervision or monitoring of the Services’ execution, and the Contracting Party is authorized to deduct from the payments due the amount corresponding to the damages incurred;
   7. Not hire, during the contract term, a spouse, partner, or a relative in direct line, collateral, or by affinity up to the third degree of any official of the Contracting Party, or the contract supervisor or manager;
   8. Be responsible for fulfilling obligations under any Agreement, Convention, Collective Bargaining Agreement, or similar, related to the categories covered by this Agreement, as well as all labor, social, social security, tax, and other obligations stipulated by specific legislation. The non-compliance with these obligations does not transfer responsibility to the Contracting Party;
   9. Provide any clarification or information requested by the Contracting Party or its representatives, ensuring them access at any time to documents related to the performance of the Services;
   10. Conduct work with strict adherence to the applicable legislation, complying with the directives of public authorities;
   11. Not allow the use of any labor by minors under the age of sixteen, except in the capacity of apprentices for those over the age of fourteen, nor allow the use of labor by minors under the age of eighteen for night work, hazardous or unhealthy work;
   12. Maintain, throughout the contract term, all conditions required for qualification in the bidding process, in line with the obligations undertaken;
   13. Maintain confidentiality regarding all information obtained as a result of fulfilling this Agreement, except in cases provided for by law;
   14. Bear the burden resulting from any errors in the quantification of its proposal, including variable costs arising from future and uncertain factors, and make up for them if the initially proposed amount is insufficient to meet this Agreement's objectives, except in cases of force majeure, unforeseen circumstances, or acts of the sovereign, or due to unpredictable or foreseeable events with incalculable consequences that make the execution of the Services as agreed impossible, while respecting, in any case, the objective risk allocation established in this Agreement;
   15. Cooperate in any contractual transition to the new service provider, including knowledge transfer as permitted by applicable legislation, and ensure that no information is lost;
   16. Ensure to the Contracting Party:
       1. The intellectual property rights of the developed products, allowing the Contracting Party to distribute, modify, and use them without limitations on use and application;
       2. The copyright of the documentation produced and similar materials, and of all other products generated during the execution of the Services, with their use prohibited without the express authorization of the Contracting Party;
   17. Provide the Services within the established parameters and routines, adhering to recommendations accepted by the industry’s best practices, standards, and legislation.
3. CLAUSE TEN – PERSONAL DATA PROTECTION

10.1. The parties must comply with the Health Insurance Portability and Accountability Act (HIPAA) regarding all protected health information, as defined in 45 CFR 160.103, to which they have access due to the bidding process or this Agreement, starting from the submission of the proposal in the bidding process, regardless of declaration or express acceptance. The parties must also comply with applicable law regarding any personal identifiable information that does not constitute protected health information.

10.2. The Contracted Party must require subcontractors and sub-operators to comply with the obligations in this clause and will remain fully responsible for ensuring their adherence.

1. CLAUSE ELEVEN – DAMAGE ASSESSMENT AND LOSS PROTECTION
   1. This Agreement includes a loss guarantee, in the amount corresponding to 2% (two percent) of the fees for each business day of delay in delivering tasks, in the event of non-compliance with agreed deadlines.
      1. The usual deadline for producing analysis reports on quotations and proposals, as well as for other studies requested by the Contracting Party, will be 20 business days.
      2. In exceptional cases, due to the complexity of the demand, the contract manager may grant an additional period if requested by the Contracted Party.
      3. The items to be included in the reports and studies will be defined on a case-by-case basis and will be in line with industry standards.
      4. Communications between the Contracted Party and the carriers must be forwarded to the Contracting Party within 5 (five) business days to allow for verification of the brokerage tasks carried out by the Contracted Party.
      5. If there is a delay in the provision of the Services exceeding 30 days, the Contracting Party has the right to unilaterally terminate the Agreement, without prejudice to the assessment of damages caused.
   2. In the case of continuous non-compliance with the required quality of the Services, in addition to the penalties previously specified, the Contracting Party has the right to unilaterally terminate the Agreement.
   3. Furthermore, the Contracted Party will be responsible for compensating the Contracting Party for:
      1. Losses arising from the failure to fulfill this Agreement's objectives and the non-performance of other obligations outlined herein;
      2. Direct losses caused to the Contracting Party due to negligence or willful misconduct during the execution of the Services.
2. CLAUSE TWELVE - TERMINATION OF AGREEMENT
   1. This Agreement will be terminated at the end of its term, but the obligations incurred during the contract term will remain binding for both parties.

12.2. This Agreement may be terminated before the obligations stipulated therein are met, or before the term set forth therein expires, for any of the following reasons, as well as amicably, provided that observation of adversary proceeding and legal defense is ensured:

a) Repeated failure to meet the deadlines agreed upon with the Contracting Party for correcting defects, flaws, or irregularities in the performance of the Services;

b) Change in the articles of incorporation or modification of the Contracted Party's purpose or structure that restricts its ability to perform the Services;

c) Declaration of bankruptcy, balance-sheet insolvency, or dissolution of the Contracted Party; and

d) A fortuitous event or case of force majeure, regularly proven, that prevents the performance of the Services.

12.2.1. This Agreement may be terminated during a term:

a) upon written notice provided by the Contracting Party at least 30 days prior to the termination date;

b) through mediation or arbitration by a dispute resolution committee, if mutually agreed upon by the parties.

12.2.1.1 In the latter case, the offended party shall send a written notice of intent to mediate to the offending party and representatives from both parties shall meet within 30 days to attempt to reach a resolution.

12.2.1.2 The mediation is not binding.

12.2.2. Change in the articles of incorporation, change in the purpose or structure of the Contracted Party, shall not result in termination unless it prevents the Contracted Party from performing its obligations under this Agreement.

12.2.2.1. If there is a change to the contracted legal entity, an addendum for shall be executed to duly record such change.

12.3. The notice of termination, whenever possible, shall be preceded by:

12.3.1.1. a balance of completely or partially fulfilled contractual events;

12.3.1.2. a list of the payments already made and still due;

12.3.1.3. payment of all losses (including but not limited to indemnification obligations) set.

12.4. Termination of this Agreement does not preclude the recognition of economic-financial imbalance, in which case compensation will be granted through an indemnity endorsement.

12.5. This Agreement may be terminated with written notice from the Contracting Party if it is found that the Contracted Party maintains a technical, commercial, economic, financial, labor, or civil relationship with an official of the Contracting Party, a public official who has played a role in the bidding process, or is involved in the contract supervision or management, or who is their spouse, partner, or relative in a direct line, collateral, or by affinity, up to the third degree.

1. CLAUSE THIRTEEN – BUDGET ALLOCATION
   1. The expenses arising from this Agreement will be covered by specific resources allocated in the General Fiscal Budget of the Brazilian Federal Government under the budget item detailed below:
   2. Management/Unit: DSS - Division of Health and Safety of the Civil Servant;
   3. Resource Source: 1000 – Federal Free Resources;
   4. Work Program: 07.301.2118.2004.0002.0006 – Medical Assistance for the Foreign Service;
   5. Expense Element: 3390.35 01 – Other Third-Party Services – Legal Entities;
   6. Summary Work Plan: 216181;

The allocation for subsequent fiscal years will be indicated after the approval of the respective Budget Law and the release of the corresponding credits, through an annotation to this Agreement.

1. CLAUSE FOURTEEN – OMISSIONS
   1. The omissions and contingencies not covered herein will be decided in accordance with local law.
2. CLAUSE FIFTEEN – AMENDMENTS
   1. This Agreement may be amended, with due justification, by mutual agreement between the Parties:

a) when modification of the service execution regime is necessary due to technical verification of the inapplicability of the original contractual terms;

b) when modification of the payment method is necessary due to supervening circumstances;

c) to restore the initial economic-financial balance of the Agreement in cases of force majeure, unforeseen circumstances, acts of the sovereign, or due to unpredictable or foreseeable events with incalculable consequences that make the execution of the Services as agreed impossible, while respecting, in any case, the objective risk allocation established in the Agreement.

15.2. Additions or reductions of the Services deemed necessary may be negotiated between the parties under the same contractual conditions, up to a limit of twenty-five percent (25%) of the initial updated contract value.

15.3. Contract amendments must be implemented through the execution of an endorsement, subject to prior approval by the Contracting Party’s legal consultancy, except if there is a justified need for the effects of the amendment to be brought forward. In such cases, the formalization of the endorsement must occur within a maximum period of one (1) month.

15.4. Notes that do not constitute an amendment to this Agreement may be made through a simple annotation, with no need for the execution of an endorsement.

1. CLAUSE SIXTEEN – PUBLICATION
   1. It shall be incumbent upon the Contracting Party to disclose this instrument and any eventual endorsements on its official website, as well as publish an abstract of those documents in the Official Gazette of Brazil.
2. CLAUSE SEVENTEEN – LAW AND COURT
   1. Notwithstanding any provision herein to the contrary, this Agreement shall be governed by the laws of the State of New York, without giving effect to conflict of laws unless otherwise provided in this Agreement.
   2. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY INSTRUMENT EXECUTED PURSUANT HERETO OR IN CONNECTION WITH OR RELATED TO THE ACTIONS CONTEMPLATED BY THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING.
   3. Any claim or dispute arising out of or relating to this Agreement shall be governed by the laws of the State of New York and settled by binding arbitration in the state of New York in accordance with the then-current rules or regulations of the American Arbitration Association. The parties hereto agree to be bound by the award in such arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
   4. In no event will Contracting Party’s liability arising out of or related to this Agreement, whether in contract, tort, or under any other theory of liability, exceed the aggregate amount of fees due pursuant to this Agreement and left unpaid.

New York, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2024.

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Tarcisio Lumack de Moura

Head, *ad interim*, of the BFO

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CONTRACTED PARTY’S LEGAL REPRESENTATIVE

WITNESSES:

1-

2-