SERVICE AGREEMENT

SERVICE AGREEMENT Nº \_\_\_\_\_\_\_/\_\_\_\_\_\_\_ ESTABLISHED BETWEEN THE BRAZILIAN FEDERAL GOVERNMENT THROUGH THE BRAZILIAN FINANCIAL OFFICE OF THE MINISTRY OF FOREIGN AFFAIRS AND THE COMPANY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE FEDERATIVE REPUBLIC OF BRAZIL, HEREIN REPRESENTED BY THE BRAZILIAN FINANCIAL OFFICE OF THE MINISTRY OF FOREIGN AFFAIRS (the “CONTRACTING PARTY”), with headquarters at 1180 Avenue of Americas, 17th floor, New York, NY 10036, United States of America, herein represented by its head, Ambassador Pedro Gustavo Ventura Wollny, and \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “CONTRACTED PARTY”), a company duly organized and existing under the laws of the United States of America, headquartered at \_\_\_\_\_\_\_\_\_\_\_\_, herein represented by their \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, considering the provisions of Process no. \_\_\_\_\_\_\_\_\_\_, decide to enter into the present Agreement (the “Agreement”), resulting from Request for Proposal no.\_\_\_\_\_\_, by means of the clauses and conditions stated hereafter.

# CLAUSE ONE – PURPOSE

## The purpose of this Agreement is the acquisition and door-to-door delivery of an armored vehicle for the Brazilian Embassy in Port-au-Prince, Haiti, according to the specifications and quantities established in the Terms of Reference, attached to the Request for Proposal (“RFP”).

## This Agreement is bound to the RFP identified in the preamble and its attachments, and to the winning proposal, regardless of transcription.

## Object of this Agreement:

|  |  |  |
| --- | --- | --- |
| **ITEM** | **DESCRIPTION/SPECIFICATION** | **UNITS** |
| **1** | Armored vehicle | 1 |

# CLAUSE TWO - VALIDITY

## The term of this Agreement is the one established in the RFP, with start date of **\_\_\_\_/\_\_\_\_/\_\_\_\_\_\_** and ending on **\_\_\_\_/\_\_\_\_/\_\_\_\_\_\_,** extendable as per art. 57, §1º, of Law no. 8.666, of 1993.

# CLAUSE THREE – PRICE

## The total contract value is estimated at $ \_\_\_\_\_\_\_\_\_\_.

## The above amount includes all direct and indirect ordinary expenses arising from the performance of the object, including duties and/or taxes, social, labor, social security, fiscal and commercial charges, administration fee, freight, insurance, and others necessary for the full compliance with the object of the Agreement.

# CLAUSE FOUR – BUDGET ALLOCATION

## For compliance purposes with Brazilian law by the Brazilian Financial Office, the cost of expenses resulting from this contract is programmed under specific budget allocation, provided for in the Brazilian Annual Budget Law of 2024, according to the classification below:

Management/Unit: DAEX - Divisão de Acompanhamento dos Postos no Exterior;

Source of Funds: 1000 – Recursos Livres da União;

Work Program: 35101.07.211.2216.20WW.0002.000F;

Expense Element: 449052 – Equipamentos e Material Permanente.

# CLAUSE FIVE – PAYMENT

## The date for payment to the CONTRACTED PARTY and other related conditions are set forth in the Terms of Reference.

# CLAUSE SIX – PRICE ADJUSTMENT

## The rules on readjustment of the contract value are those set forth in the Terms of Reference.

# CLAUSE SEVEN – LIQUIDATED DAMAGES

## The Contracting Party and the Contracted Party agree that if the Contracted Party does not deliver the object in accordance with the specifications delineated in this RFP, inclusive of failing to deliver the vehicle to the correct address, the Contracting Party shall assess liquidated damages in the amount of $XXXXX. The parties agree that while damages are difficult to ascertain the $XXX in liquidated damages is a fair, proportionate and reasonable pre-breach estimate.

# CLAUSE EIGHTH – DELIVERY AND RECEIPT OF THE OBJECT

## The conditions of delivery and receipt of the object are those foreseen in the Terms of Reference, attached to the RFP.

# CLAUSE NINE - LIQUIDATED DAMAGES IN CASE OF DELAY IN THE DELIVERY OR NON-DELIVERY OF THE VEHICLE

## The conditions of liquidated damages in case of delay in the delivery of the vehicle are those foreseen in the Terms of Reference, attached to the RFP.

## The Brazilian Financial Office and Contracted Party agree that if the Contracted Party does not deliver the object in accordance with the specifications delineated in this RFP, inclusive of failing to deliver the vehicle to the correct address, the Brazilian Financial Office shall assess liquidated damages in the amount of $XXXXX. The parties agree that while damages are difficult to ascertain the $XXX in liquidated damages is a fair, proportionate and reasonable pre-breach estimate.

# CLAUSE TEN – SUPERVISION OF THE AGREEMENT

## The supervision of the execution of the object will be done by a representative designated by the CONTRACTING PARTY, in the form established in the Terms of Reference, attached to the RFP.

# CLAUSE ELEVEN – OBLIGATIONS OF THE CONTRACTED PARTY AND OF THE CONTRACTING PARTY

## The obligations of the CONTRACTING PARTY and the CONTRACTED PARTY are those provided for in the Terms of Reference.

## Confidentiality

### The receiving Party will keep the other Party’s Confidential Information confidential and will not use the other Party’s Confidential Information or disclose the other Party’s Confidential Information to any person or entity, except in connection with services required to be provided or otherwise as expressly provided by this Agreement or as required by applicable law. Without limiting the generality of the foregoing, the receiving Party will not, without the prior written consent of the disclosing Party:

#### use any portion of the Confidential Information for any purpose other than as necessary to carry out its obligations under this contract, including the Terms of Reference;

#### disclose any portion of the Confidential Information to any persons or entities other than the receiving Party’s Representatives who reasonably need to have access to the Confidential Information as set forth herein;

#### disclose any Confidential Information to any of the receiving Party’s Subcontractors or other third parties unless the Subcontractors or third parties have agreed to the same restrictions and conditions set forth herein, and then only as otherwise permitted herein;

#### promptly notify the other party if an unauthorized use, access or disclosure of the other Party’s confidential information is discovered by the receiving Party and to provide the information reasonably known to the receiving Party with respect to such unauthorized use, access or disclosure.

### The receiving Party will safeguard the other Party’s Confidential Information using a reasonable degree of care, but not less than the degree of care used by the receiving Party to safeguard its own Confidential Information.

### If the receiving Party is required to disclose the other Party’s Confidential Information by court order or other legal or administrative process, the receiving Party will immediately notify the other Party and cooperate with the other Party in any effort it may make to obtain a protective order or otherwise contest such disclosure.

### Upon termination of this Agreement the receiving Party may retain one copy of the other Party’s Confidential Information solely as it deems reasonably necessary for determining its rights and obligations under this Agreement or as required by law.

### “Confidential Information” means any of the following:

####  any information relating to a Party’s business, including but not limited to the Party’s proposed products and services and current and past financial information;

#### any information marked confidential, restricted, or proprietary.

### Confidential Information does not include information independently known by the receiving Party at the time of disclosure by the furnishing Party:

#### information which is independently developed by the receiving Party without any knowledge of the Confidential Information received from the disclosing Party;

#### information which is or becomes generally available to the public without the wrongful act or breach of this Agreement;

#### information which is received by the receiving Party from a third party on a non-confidential basis

# CLAUSE TWELVE - TERMINATION

## This Agreement may be terminated:

### by unilateral and written act of the CONTRACTING PARTY, in the following situations:

#### non-compliance with contractual clauses, specifications, projects or deadlines and subsequent failure by the CONTRACTED PARTY to cure the material non-compliance as soon as reasonably possible but in no event later than thirty (30) days following notice from the CONTRACTING PARTY of the non-compliance;

#### failure to comply with reasonable requests from the contract supervisor or manager, to be designated by the head of the BFO among the Brazilian Ministry of Foreign Affairs’ employees, as well as from their superiors, with respect to failures in performance;

#### the repeated commitment of absences in its performance, noted in the form of § 1st of Article 67 of Law 8.666;

#### bankruptcy or civil insolvency;

#### dissolution of the Company or death of the CONTRACTED PARTY;

#### alteration of articles of incorporation or modification of the purpose or structure of the Company, which impairs the performance of the contract;

#### reasons of public interest, of high relevance and wide knowledge, justified and determined by the maximum authority of the administrative sphere to which the CONTRACTING PARTY is subject and stated in the administrative process referred to in the contract;

#### notwithstanding the CONTRACTING PARTY’s rights set forth in item 11.1.1.7 above, the occurrence of a fortuitous or force majeure case, regularly proven, preventing the performance of the contract.

##### For purposes of this contract, force majeure is any delay or failure to perform the obligations hereunder to the extent that such delay or failure is caused by an unforeseeable event beyond the reasonable control of such Party, including, but not limited to: fire, flood, earthquake, pandemic, acts of God, unusually severe elements of nature, riots and civil disorder, war or terrorism, provided that the non-performing Party is without fault in causing such default or delay and such default or delay could not have been prevented by reasonable precautions, and provided the non-performing Party takes commercially reasonable steps (i) to inform the other Party of the situation excusing performance, (ii) to limit and mitigate any adverse effects of nonperformance, and (iii) to resume performance as soon as reasonably practicable.

#### The consequences of the termination referred to in this clause, without prejudice to the application of the penalties provided in the Terms of Reference, attached to the RFP, are the forfeiture of the contractual guarantee, to reimburse the Administration, and the amounts of fines and indemnities due to it and the retention of the credits arising from the contract to the limit of the losses caused to the Administration.

### amicably, by mutual agreement between the Parties.

## The cases of contractual termination will be formally motivated, assuring the CONTRACTED PARTY the right to prior and due defense.

## The termination, where possible, shall be preceded by:

## 11.3.1 Balance sheet of contractual tasks already fulfilled or partially fulfilled;

## 11.3.2 A statement of payments already made and still due;

## 11.3.3 Claimed indemnities and fines.

# CLAUSE THIRTEEN - PROHIBITION

## The CONTRACTED PARTY is forbidden to interrupt the performance of the services on grounds of default by the CONTRACTING PARTY, except in the cases provided for by law.

# CLAUSE FOURTEEN - AMENDMENTS

## Eventual contractual amendments may occur as follows:

### unilaterally by the Administration:

1. when there is a modification of the product or specifications, for better technical adequacy to its objectives;
2. when it is necessary to modify the contract value as a result of a quantitative increase or decrease of its object, up to the limit of 25% (twenty-five percent) of the contract's initial updated value;

### by agreement of the parties:

* 1. when it is convenient to substitute the execution guarantee;
	2. when it is necessary to modify the arrangements for the performance of the service, as well as the form of supply, in face of the technical verification of the inapplicability of the original contractual terms;
	3. where it is necessary to change the form of payment, due to the imposition of supervening circumstances, keeping the updated initial value, payments in advance, in relation to the established financial schedule, being prohibited without the corresponding compensation for the supply of goods or the performance of service;
	4. to re-establish the relationship that the parties initially agreed upon between the CONTRACTED PARTY’s expenses and the administration’s retribution for the fair remuneration of the service or supply, aiming at maintaining the initial economic-financial balance of the contract, in the event of unforeseeable facts, or foreseeable facts, but with incalculable consequences, delaying or preventing the performance of the contract, or, further, in case of force majeure, act of God or factum principis, characterizing extraordinary and extra-contractual economic facts.

## The CONTRACTED PARTY is obliged to accept, under the same contractual conditions, the additions or suppressions made to the services or purchases, up to 25% (twenty-five percent) of the updated initial value of the contract.

## No addition or suppression may exceed the limits set out in the preceding item, except for suppressions resulting from an agreement concluded between the CONTRACTING and the CONTRACTED parties.

#  CLAUSE FIFTEEN - OMISSIONS

## The omissions and contingencies not covered will be decided in accordance with the legislation of the state of New York.

# CLAUSE SIXTEEN – PUBLICATION

## The CONTRACTING PARTY shall see to the publication of this instrument, by excerpt, in the Brazilian Federal Official Gazette, within the period foreseen in Brazilian Law no. 8666, of 1993.

# CLAUSE SEVENTEEN – LAW AND COURT

## This Agreement was drafted based on the applicable laws of the state of New York, and in light of the principles of Brazilian Law no. 8666, of June 21st, 1993.

## Notwithstanding any provision herein to the contract, 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.

## The federal courts of the Southern District of New York shall have exclusive jurisdiction over any dispute arising out of the construction, interpretation, or application of this Agreement.

## EACH PARTY, ACTING ON ITS OWN ACCOUNT AND ITS AFFILIATES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT OF TRIAL BY JURY OR ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER SERVICE PROVIDED BY THE CONTRACTING AUTHORITY OR ITS AFFILIATES. THIS INSTRUMENT IS APPLIED TO ANY OTHER LEGAL OR ACTION PROCEEDINGS, WHETHER RELATED TO THIS AGREEMENT, DAMAGES OR OTHERWISE. EACH PARTY AGREES NOT TO INCLUDE ANY AGENT, ADMINISTRATOR, DIRECTOR, OR REPRESENTATIVE OF THE OTHER PARTY AS PART OF ANY ACTION, PROCESS OR REQUEST FOR RECONVENTION RELATED TO SUCH CONFLICT.

# CLAUSE EIGHTEEN – GENERAL PROVISIONS

## If any term or other provision of this Agreement is considered invalid, illegal or impossible to be executed by a court of the United States or regulatory authority with proper jurisdiction, or if such provision is held invalid by the Brazilian government in relation to the CONTRACTING PARTY in any respect, or under any circumstances, such term or provision shall be modified, deleted or construed in accordance with such judgment and all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

## All notices shall be in writing in English. Notices must be (a) delivered personally, (b) transmitted by facsimile, (c) sent by an express mail service or (d) by registered or certified mail to the addresses listed below. Any change of address must be communicated in writing. Notices will be valid (a) upon delivery, if delivered personally; (b) upon confirmation of transmission, if sent by facsimile; and (c) two (2) business days after sending, if sent via express mail. The addresses for receiving messages for the parties are:

BRAZILIAN FINANCIAL OFFICE

1180 Avenue of the Americas, 17th floor

New York, NY 10036

Phone: (646) 487-2652

CONTRACTED PARTY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## This Agreement may be executed in two (2) or more copies, each of which shall be deemed to be an original, but which together shall be deemed to be one and the same instrument IN WITNESS WHEREOF, and each of the parties execute this Agreement by their respective authorized representatives, together with the two (2) witnesses below.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal representative of the CONTRACTING PARTY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal representative of the CONTRACTED PARTY

WITNESSES:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_