

NCIA/ACQ/2021/7414

12 November 2021

To : See Distribution List

Subject : **INVITATION FOR BID**

**Enterprise License Agreement for VEEAM Software**

**IFB-CO-115496-Veeam**

Reference(s) : A. BC/D(2014)0126 819, Military Budget Procurement Guidance, dated 4 July 2014

B. NCI Agency NOI NCIA/ACQ/2021/6941, dated 10 June 2021

Dear Nominated Bidders,

1. Your firm is hereby invited to participate in an International Competitive Bid for a NATO-wide Enterprise License Agreement (ELA) for VEEAM software.
2. The scope of the project is described in the prospective Contract – Book II of this IFB.
3. The NCI Agency intends to place one contract to cover the entire scope of the project. No partial bidding will be allowed.
4. Contract award will be based on the proposal evaluated as the lowest priced bid in compliance with the requirements of this IFB and in accordance with the selection criteria set forth in the Bidding Instructions (Book I) and which follow the procedures for Lowest Price, Technically Compliant Bidding as described in this IFB.
5. The reference for the Invitation for Bid is **IFB-CO-115496-VEEAM**, and all correspondence concerning the IFB should reference this number.
6. The **closing time for submission of bids** in response to this invitation for bid is **12:00 pm / 1200 hours (Central European / Brussels time) on Friday, 3 December 2021**.

7. This Invitation for Bid consists of the following:
- Book I: Bidding Instructions, including Administrative Certificates and Bidding Sheets
  - Book II: Prospective Contract:
    - Part I: The Schedule of Supplies and Services;
    - Part II: The Contract Special Provisions;
    - Part III: The Contract General Provisions;
    - Part IV: The Statement of Work (SOW). The SOW and the Annexes thereto set forth detailed specifications governing the performance requirements of the Contract.
8. The overall security classification of this bid is “NATO UNCLASSIFIED”. This Invitation for Bid remains the property of the NCI Agency and shall be protected in accordance with the applicable national security regulations.
9. You are requested to complete and return the enclosed acknowledgement of receipt (Attachment A) as soon as possible, informing this Agency of your intention to bid. Your firm is not bound by its initial decision, and if you decide to reverse your stated intention at a later date, you are requested to advise us by a separate letter.
10. Prospective Bidders are advised that the NCI Agency reserves the right to cancel this IFB at any time in its entirety and bears no liability for bid preparation costs incurred by firms or any other collateral costs if bid cancellation occurs.
11. The NCI Agency point of contact for all information concerning this IFB is:
- NCI Agency  
Boulevard Léopold III  
1110 Brussels, Belgium  
Attention: Dorina Cani – Principal Contracting Assistant  
E-mail: [dorina.cani@ncia.nato.int](mailto:dorina.cani@ncia.nato.int)

For the Director of Acquisition:

Daniel K. Gaertner  
Senior Contracting Officer

**Attachment:**

A) Acknowledgement of Receipt of IFB-CO-115496-VEEAM

**ATTACHMENT A**

**ACKNOWLEDGEMENT OF RECEIPT OF INVITATION FOR BID**

**IFB-CO-115496-VEEAM**

Please complete and return by e-mail to  
Dorina Cani at: [dorina.cani@ncia.nato.int](mailto:dorina.cani@ncia.nato.int)

We hereby advise that we have received the Invitation for Bid and have accessed the bidding documentation related to IFB-CO-115496-VEEAM on \_\_\_\_\_(date), together with all enclosures listed in the Table of Contents.

PLEASE CHECK ONE:

- ☐ As of this date and without commitment on our part, we do intend to submit a bid.
- ☐ We do not intend to submit a bid.
- ☐ We are reviewing the requirements of the IFB and will notify you of our decision as soon as possible.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

**Distribution List for IFB-CO-115496-VEEAM**

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**All NATEXs**

**NCI Agency – Internal**



NATO Communications and Information Agency  
Agence OTAN d'information et de communication

**IFB-CO-115496-Veeam**

**Enterprise License Agreement for  
Veeam Software**

**BOOK I**

**BIDDING INSTRUCTIONS**

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## **SECTION 1 INTRODUCTION**

### **1.1. Purpose and Scope**

The purpose of this solicitation is to invite bids for a new Enterprise License Agreement (ELA) for Veeam software.

This ELA will consolidate all of NATO's Veeam software requirements into one Veeam Cloud & Service Provider (VCSP) agreement. This will support Veeam requirements throughout NATO – at headquarters, commands, agencies and other NATO organisations.

Bidders responding to this IFB must be Veeam Aggregators.

### **1.2. Overview of the Prospective Contract**

The prospective Contract (Book II) requires the selected Contractor to deliver Veeam Rental Agreement (VRA) points that can be used to provide Veeam cloud services. The Contractor shall perform all activities required in Book II Part IV (Statement of Work – SOW) and shall deliver the associated deliverables listed in Book II Part I (Schedule of Supplies and Services – SSS).

The Contract will be governed by Book II, Part II (Contract Special Provisions), Part III (Contract General Provisions) and Book II, Part IV (Statement of Work).

### **1.3. Governing Rules, Eligibility, and Exclusion Provisions**

This solicitation is an International Invitation for Bid (IFB) and is issued in accordance with the procedures for International Competitive Bidding set forth in NATO document BC-D(2018)0004, Military Budget Procurement Guidance, dated 16 January 2018.

Pursuant to these procedures, bidding is restricted to companies from participating NATO member countries for which a Declaration of Eligibility has been issued by their respective government authorities.



**1.4. Security**

The security classification of this IFB is “NATO UNCLASSIFIED”.

Contractor personnel that will work at NATO sites are required to hold a security clearance of “NATO SECRET”. Contractor personnel without such a clearance, confirmed by the appropriate national security authority and transmitted to the cognisant NATO security officer in accordance with the specific instructions contained in this IFB, will be denied access to the site. Denial of such access by the Purchaser may not be used by the Contractor as the basis for a claim of adjustment or an extension of the schedule, nor can the denial of access be considered a mitigating circumstance in the case of an assessment of Liquidated Damages or a determination of Termination for Default by the Purchaser under the Prospective Contract.

All NATO classified material entrusted to the Contractor under the Prospective Contract shall be handled and safeguarded in accordance with applicable security regulations.

Bidders are advised that Contract signature will not be delayed in order to allow the processing of security clearances for personnel or facilities and, should the otherwise successful Bidder not be in a position to accept the offered Contract within a reasonable period of time, due to the fact that its personnel or facilities do not possess the appropriate security clearance(s), the Purchaser may determine the Bidder’s Offer to be non-compliant and offer the Contract to the next ranking Bidder.

**1.5. Bidders Conference**

There will be no Bidders Conference held for this procurement.

**1.6. Documentation**

All documentation, including the IFB itself, all applicable documents and any reference documents provided by the Purchaser are solely to be used for the purpose of preparing a response to this IFB. They are to be safeguarded at the appropriate level according to their classification.

## **SECTION 2                    GENERAL BIDDING INFORMATION**

### **2.1.        Definitions**

In addition to the definitions and acronyms set forth in the Contract Special Provisions (Part II) and Contract General Provisions (Part III) of the prospective Contract, the following terms and acronyms, as used in this Invitation for Bid shall have the meanings specified below:

- 2.1.1.1. "Bidder": a firm, consortium, or joint venture which submits an offer in response to this solicitation. Bidders are at liberty to constitute themselves into any form of Contractual arrangements or legal entity they desire, bearing in mind that in consortium-type arrangements a single judicial personality shall be established to represent that legal entity. A legal entity, such as an individual, Partnership or Corporation, herein referred to as the "Principal Contractor", shall represent all members of the consortium with the NCI Agency and/or NATO. The "Principal Contractor" shall be vested with full power and authority to act on behalf of all members of the consortium, within the prescribed powers stated in an irrevocable Power of Attorney issued to the "Principal Contractor" by all members associated with the consortium. Evidence of authority to act on behalf of the consortium by the "Principal Contractor" shall be enclosed and sent with the Bid. Failure to furnish proof of authority shall be a reason for the Bid being declared non-compliant.
- 2.1.1.2. "Compliance": strict conformity to the requirements and standards specified in this IFB and its attachments.
- 2.1.1.3. "Contractor": the awardee of this solicitation of offers, who shall be responsible for the fulfilment of the requirements established in the prospective Contract.
- 2.1.1.4. "Firm of a Participating Country": a firm legally constituted or chartered under the laws of, and geographically located in, or falling under the jurisdiction of a Participating Country.
- 2.1.1.5. "IFB": Invitation for Bid.
- 2.1.1.6. "Participating Country": any of the NATO nations, namely, (in alphabetical order): Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark,

Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Montenegro, The Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, The United Kingdom and The United States.

2.1.1.7. “Purchaser”: NATO Communications and Information Agency (NCI Agency) or its legal successor.

2.1.1.8. “Quotation” or “Bid”: a binding offer to perform the work specified in the attached prospective Contract (Book II).

## **2.2. Eligibility and Origin of Equipment and Services**

Only firms from Participating Countries (as specified in paragraph 2.1.1.6), which have been nominated to the NCI Agency by their respective National Delegations, are eligible to engage in this competitive bidding process. In addition, all contractors, sub-contractors and manufacturers, at any tier, must be from Participating Countries.

None of the work, including project design, labour and services shall be performed other than by firms from and within Participating Countries.

No materials or items of equipment down to and including identifiable Sub-assemblies shall be manufactured or assembled by a firm other than from and within a Participating Country.

Unless otherwise authorised by the terms of the prospective Contract, the Intellectual Property Rights to all design documentation and related system operating software shall reside in NATO member countries, and no license fees or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member community.

## **2.3. Bid Delivery and Bid Closing**

All Bids shall be in the possession of the Purchaser at the email address given below on or before **noon / 12h00 hours (Central European/Brussels Time) on Friday, 3 December 2021**, at which time and date bidding shall be closed.

Bids shall be delivered to the following e-mail address:

IFB-CO-115496-Veeam.Bids@ncia.nato.int

All bids shall adhere to the format and delivery requirements of SECTION 3.

#### Late Bids

- 2.3.1.1. Bids which are delivered to the Purchaser after the specified time and date set forth above for Bid Closing are "Late Bids" and shall not be considered for award. Such Bids will remain unopened unless the Purchaser can determine that the Bid in question meets the criteria for consideration as specified below.
- 2.3.1.2. *Consideration of Late Bid* – The Purchaser considers that it is the responsibility of the Bidder to ensure that the Bid submission arrives by the specified Bid Closing time. A late Bid shall only be considered for award under the following circumstances:
- 2.3.1.3. A Contract has not already been awarded pursuant to the Invitation for Bid, and;
- 2.3.1.4. The Bid was sent to the email address specified in the IFB and the delay was solely the fault of the Purchaser.

## **2.4. Requests for Extension of Bid Closing Date**

Requests for extensions of the Bid Closing Date may be submitted to the Purchaser only by the Delegation of a nation where the bidder is located, or by that country's Embassy.

Any such request for extension must be submitted by the respective Delegation or Embassy to the Purchaser Point of Contact identified in paragraph 2.5 below no later than ten (10) calendar days prior to the established Bid Closing Date.

Bidders are advised to submit their request to their respective NATO Delegation or Embassy in sufficient time as to allow for delivery of the formal request to the Purchaser within the above time limit.

Extension(s) of the Bid Closing Date will be notified through issuance of formal Amendments to the IFB.

## **2.5. Purchaser's Point of Contact**

The Purchaser point of contact for all information concerning this IFB is:

NATO Communications and Information Agency  
Acquisition Directorate  
Boulevard Léopold III  
1110 Brussels, Belgium  
Attention: Ms. Dorina Cani, Principal Contracting Assistant  
Email: [IFB-CO-115496-Veeam.Bids@ncia.nato.int](mailto:IFB-CO-115496-Veeam.Bids@ncia.nato.int)

## **2.6. Request for IFB Clarifications**

Bidders, during the solicitation period, are encouraged to query and seek clarification of any matters of a contractual, administrative and technical nature pertaining to this IFB.

All requests for clarification shall be forwarded to the Purchaser using the Clarification Request Forms provided at Annex D of this Book I. Bidders are required to keep the classification of their request NATO Unclassified. Such requests shall be emailed to the point of contact specified in paragraph 2.5 above and shall arrive not later than fourteen (14) calendar days prior to the stated "Bid Closing Date". The Purchaser is under no obligation to answer requests for clarification submitted after this time.

Requests for clarification must address the totality of the concerns of the Bidder, as the Bidder will not be permitted to revisit areas of the IFB for additional clarification except as noted in 2.6.4 below.

Additional requests for clarification are limited only to the information provided as answers by the Purchaser to Bidder requests for clarification. Such additional requests shall arrive not later than ten (10) calendar days before the established Bid Closing Date. The Purchaser is under no obligation to answer requests for clarification submitted after this time.

The Purchaser may provide for a re-wording of questions and requests for clarification where it considers the original language ambiguous, unclear,

subject to different interpretation or revelatory of the Bidder's identity.

Bidders are advised that subsequent questions and/or requests for clarification included in a Bid shall neither be answered nor considered for evaluation.

Except as provided above, all questions will be answered by the Purchaser and the questions and answers (but not the identity of the questioner) will be issued in writing to all prospective Bidders.

Where the extent of the changes implied by the response to a clarification request is of such a magnitude that the Purchaser deems necessary to issue revised documentation, the Purchaser will do so by the means of the issuance of a formal IFB amendment and in accordance with paragraph 2.8 below.

The Purchaser reserves the right to reject questions and clarification requests clearly devised or submitted for the purpose of artificially obtaining an extension of the bidding time (i.e. clarifications re-submitted using different wording where such wording does not change the essence of the clarification being requested).

The published responses issued by the Purchaser shall be regarded as the authoritative interpretation of the Invitation for Bid. Any amendment to the language of the IFB included in the answers will be issued as an IFB Amendment and shall be incorporated by the Bidder in his offer.

## **2.7. Requests for Waivers and Deviations**

Bidders are informed that requests for alteration to, waivers or deviations from the terms and conditions of this IFB and attached prospective Contract (Book II) will not be considered after the request for clarification process. Requests for alterations to the other requirements, terms or conditions of the Invitation for Bid or the prospective Contract may only be considered as part of the clarification process set forth in paragraph 2.6 above. Requests for alterations to the specifications, terms and conditions of the Contract which are included in a Bid as submitted may be regarded by the Purchaser as a qualification or condition of the Bid and may be grounds for a determination of non-compliance.

**2.8. Amendment of the Invitation for Bid**

The Purchaser may amend the IFB at any time prior to the Bid Closing Date. Any and all changes will be transmitted to all Bidders by an official amendment designated as such and signed by the Purchaser. This process may be part of the clarification procedures set forth in paragraph 2.6 above or may be an independent action on the part of the Purchaser.

All such IFB amendments issued by the Purchaser shall be acknowledged by the Bidder in its Bid by completing the "Acknowledgement of Receipt of IFB Amendments" certificate at Annex B-2. Failure to acknowledge receipt of all amendments may be grounds to determine the Bid to be administratively non-compliant.

The Purchaser will consider the potential impact of amendments on the ability of prospective Bidders to prepare a Bid within the allotted time. The Purchaser may extend the "Bid Closing Date" at its discretion and such extension will be set forth in the amendment.

**2.9. Modification and Withdrawal of Bids**

Bids, once submitted, may be modified by Bidders, but only to the extent that the modifications are in writing, conform to the requirements of the IFB, and are received by the Purchaser prior to the Bid Closing Date as detailed in paragraph 2.3. Such modifications will be considered as an integral part of the submitted Bid.

Modifications to Bids which arrive after the Bid Closing Date will be considered as "Late Modifications" and will be processed in accordance with the procedure detailed in paragraph 2.3.4, except that unlike a "Late Bid", the Purchaser will retain the modification until a selection is made. A modification to a Bid which is determined to be late will not be considered in the evaluation and selection process. If the Bidder submitting the modification is determined to be the successful Bidder on the basis of the unmodified Bid, the modification may then be opened. If the modification makes the terms of the Bid more favourable to the Purchaser, the modified Bid may be used as the basis of Contract award. The Purchaser, however, reserves the right to award a Contract to the apparent successful Bidder on the basis of the Bid submitted and disregard the late modification.

A Bidder may withdraw its Bid at any time prior to Bid Opening without penalty. In order to do so, an authorised agent or employee of the Bidder must provide an original statement of the firm's decision to withdraw the Bid and subsequently remove the Bid from the Purchaser's premises.

## **2.10. Bid Validity**

Bidders shall be bound by the term of their Bid for a period of ninety (90) days starting from the Bid Closing Date specified in paragraph 2.3.1 above.

In order to comply with this requirement, the Bidder shall complete the Certificate of Bid Validity set forth in Annex B-4. Bids offering less than the period of time referred to above for acceptance by the Purchaser may be determined to be non-compliant.

The Purchaser will endeavour to complete the evaluation and make an award within the period referred to above. However, should that period of time prove insufficient to render an award, the Purchaser reserves the right to request an extension of the period of validity of all Bids which remain under consideration for award.

Upon notification by the Purchaser of such a request for a time extension, the Bidders shall have the right to:

- 2.10.1.1. Accept this extension of time in which case Bidders shall be bound by the terms of their offer for the extended period of time and Certificate of Bid Validity extended accordingly; or
- 2.10.1.2. Refuse this extension of time and withdraw the Bid.

Bidders shall not have the right to modify their Bids due to a Purchaser request for extension of the Bid validity unless expressly stated in such request.

## **2.11. Bid Guarantee**

Due to the short bidding phase for this IFB, no Bid Guarantee is required.

## **2.12. Cancellation of Invitation for Bid**

The Purchaser may cancel, suspend or withdraw for re-issue at a later date this IFB at any time prior to Contract



award. No legal liability on the part of the Purchaser for payment of any sort shall arise and in no event will any Bidder have cause for action against the Purchaser for the recovery of costs incurred in connection with preparation and submission of a Bid in response to this IFB.

#### **2.13. Electronic Transmission of Information and Data**

The Purchaser will communicate answers to requests for clarification and amendments to this IFB to the prospective Bidders as soon as practicable.

Bidders are cautioned that electronic transmission of documentation which contains classified information is not permissible.

#### **2.14. Supplemental Agreements**

Bidders are required, in accordance with the certificate at Annex B-7 of these Instructions to Bidders, to disclose any prospective Supplemental Agreements that are required by national governments to be executed by NATO/ NCI AGENCY as a condition of Contract performance.

Supplemental Agreements are typically associated with, but not necessarily limited to, national export control regulations, technology transfer restrictions and end user agreements or undertakings.

Bidders are cautioned that failure to provide full disclosure of the anticipated requirements and the terms thereof, to the best of the Bidder's knowledge and experience, may result in the Purchaser withholding award of the Contract or cancelling an executed Contract if it is discovered that the terms of such Supplemental Agreements contradict salient conditions of the Prospective Contract to the extent that either key objectives cannot be accomplished or basic Contract principles and Purchaser rights have been abridged.

#### **2.15. Notice of Limitations on Use of Intellectual Property Delivered to the Purchaser**

Bidders are instructed to review Article 9, *Intellectual Property*, of the Contract Special Provisions set forth in Part II of Book II herein and Clause 30, *Intellectual Property*, of the Contract General Provisions set forth in

Part III of Book II herein. These Clauses set forth the definitions, terms and conditions regarding the rights of the Parties concerning Intellectual Property developed and/or delivered under this Contract or used as a basis of development under this Contract.

Bidders are required to disclose, in accordance with Annex B-10 and Annex B-11, the Intellectual Property proposed to be used by the Bidder that will be delivered with either Background Intellectual Property Rights or Third Party Intellectual Property Rights. Bidders are required to identify such Intellectual Property and the basis on which the claim of Background or Third Party Intellectual Property is made.

Bidders are further required to identify any restrictions on Purchaser use of the Intellectual Property that is not in accordance with the definitions and rights set forth in Clause 30 of the Contract General Provisions, or any other provision of the Contract concerning use or dissemination of such Intellectual Property.

Bidders are reminded that restrictions on use or dissemination of Intellectual Property conflicting with Article 9 of the Contract Special Provisions, Clause 30 of the Contract General Provisions or with the objectives and purposes of the Purchaser as stated in the Prospective Contract shall result in a determination of a non-compliant Bid.

## **2.16. Mandatory Quality Assurance and Quality Control Standards**

Bidders are requested to note that, in accordance with the Certificate at Annex B-8 hereto, Bidders shall provide documentary evidence that the Bidder possesses a current certification that is compliant with the requirements of Allied Quality Assurance Publication (AQAP) 2110, ISO 9001:2008, or an equivalent QA/QC regime.

Bidders shall further demonstrate that such regime is applied within the Bidder's internal organisation, as well as extended to its relationships with Subcontractors.

If the Bidder is offering a QA/QC regime that is claimed to be equivalent to AQAP 2110 or ISO 9001:2008, the burden of proof of such equivalency shall be on the Bidder and such evidence of equivalency shall be

submitted with the Certificate at Annex B-8 in the Bid Administration Volume.

Failure to execute this Certificate, or failure to provide documentary evidence of compliance with this requirement may result in a determination of non-compliance for the submitted Bid.

**SECTION 3****BID PREPARATION INSTRUCTIONS****3.1. General**

Bidders shall prepare and submit their bid in accordance with the requirements and format set forth in this IFB. Compliance with all bid submission requirements is mandatory. Failure to submit a bid in conformance with the stated requirements may result in a determination of non-compliance by the Purchaser and the elimination of the bid from further consideration.

Bidders shall not simply restate the IFB requirements. A bid shall demonstrate that a Bidder understands the terms, conditions and requirements of the IFB and its ability to provide all the services and deliverables listed in the Schedules of the prospective contract.

Bidders are informed that the quality, thoroughness and clarity of the Bid will affect the overall scoring of the bid. Although the Purchaser may request clarification of the bid, it is not required to do so and may make its determination on the content of the bid as written. Therefore, Bidders shall assume that inconsistencies, omissions, errors, lack of detail and other qualitative deficiencies in the submitted Bid will have a negative impact on the evaluation.

Partial bids and/or bids containing conditional statements will be declared non-compliant.

Bidders are advised that the Purchaser reserves the right to incorporate the successful Bidder's offer in whole or in part by reference in the resulting contract.

The specific format for each volume is stated in paragraph 3.2.1.

All documentation submitted as part of the bid shall be classified no higher than "NATO UNCLASSIFIED".

All notices and communications regarding this IFB shall be written and conducted in English. All documentation submitted as part of the bid shall be in English.

**3.2. Bid Package Content**

The complete bid submission shall consist of three distinct volumes, delivered together in one email, as shown in the following table.

<b>Volume</b>	<b>Format and Quantity Details</b>
I: Bid Administration	<ul style="list-style-type: none"> <li>1 PDF file, submitted by email. No encryption, no password protection.</li> <li>➤ All of the required contents are outlined in Section 3.4</li> </ul>
II: Price	<ul style="list-style-type: none"> <li>1 Excel file, submitted by email, using the Bidding Sheets template provided. No encryption, no password protection.</li> <li>➤ All of the required contents are outlined in Section 3.5</li> </ul>
III: Technical	<ul style="list-style-type: none"> <li>1 PDF file, submitted by email. No encryption, no password protection.</li> <li>➤ All of the required contents are outlined in Section 3.6</li> </ul>

All emails submitted shall be less than 15 MB.

**3.3. Package Marking**

The bid shall be consolidated into one e-mail and sent to the email address specified in section 2.5. The e-mail shall have the following subject line:

- 115496-Veeam Official Bid for *Company Name*

In the event the bid must be submitted in two emails to stay under the size limit stated in Section 3.2.2, the bidder shall add “Part 1 of 2” and “Part 2 of 2” to the subject line of the email:

- 115496-Veeam Official Bid for *Company Name* – Part 1 of 2

The individual electronic files attached to the email shall have the following names:

- 115496-Veeam-*Company Name*-Vol I–Admin
- 115496-Veeam-*Company Name*-Vol II–Price
- 115496-Veeam-*Company Name*-Vol III–Tech

*“Company Name”* – In the subject line of the email, and in the names of the individual PDF and Excel files, the name of the bidder shall be abbreviated to no more than 10 characters. For example, if a company’s name is *“Computer and Technology Research Company”*, the company name could be shortened to *CTRC* in the email and file names.

Detailed requirements for the structure and content of each of these volumes are contained in these Bidding Instructions.

**3.4. Volume I: Bid Administration**

This volume is comprised of:

- One emailed PDF file inclusive of all of the required documents, which either include an electronic signature, or are physically signed and then scanned.

No information disclosing or contributing to disclose the bid price shall be made as part of the Bid Administration volume. Failure to abide to this prescription may result in the bid being declared non-compliant.

The volume shall include the certificates set forth in the Annex to these Bidding Instructions, signed in the original by an authorised representative of the Bidder. The text of the certificates must not be altered in any way. The certificates are as follows:

- 3.4.1.1. Annex B-1 (Certificate of Legal Name of Bidder)
- 3.4.1.2. Annex B-2 (Acknowledgement of Receipt of IFB Amendments)
- 3.4.1.3. Annex B-3 (Certificate of Independent Determination)
- 3.4.1.4. Annex B-4 (Certificate of Bid Validity)
- 3.4.1.5. Annex B-5 (Certificate of Exclusion of Taxes, Duties and Charges)
- 3.4.1.6. Annex B-6 (Comprehension and Acceptance of Contract Special and General Provisions)
- 3.4.1.7. Annex B-7 (Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements) with the prospective text of such Agreements, as applicable.
- 3.4.1.8. Annex B-8 (Certificate of Compliance AQAP 2110 or ISO 9001:2008 or Equivalent) with a copy of the relevant quality certification attached to it.
- 3.4.1.9. Annex B-9 (List of Prospective Subcontractors)
- 3.4.1.10. Annex B-10 (Bidder Background IPR)
- 3.4.1.11. Annex B-11 (List of Subcontractor IPR)
- 3.4.1.12. Annex B-12 (Certificate of Origin of Equipment, Services, and Intellectual Property)

- 3.4.1.13. Annex B-13. Disclosure of Involvement of Former NCI Agency Employment

### **3.5. Volume II: Price**

This volume is comprised of the completed Bidding Sheets, submitted by email. The Bidding Sheets are provided as an Excel file with this IFB as “03-IFB-CO-115496-Veeam-Book I-Bidding Sheets – Schedule of Supplies and Services

#### **General Rules**

- 3.5.1.1. Bidders shall prepare their Price Quotation by completing the Bidding Sheets referred to in paragraph 3.5.1 above, in accordance with the instructions specified in Annex A.
- 3.5.1.2. The structure of the Bidding Sheets shall not be changed, other than as indicated elsewhere, nor should any quantity or item description in the Bidding Sheets. The currency(ies) of each Contract Line Item and sub-item shall be shown. The prices provided shall be intended as the comprehensive total price offered for the fulfilment of all requirements as expressed in the IFB documentation including but not limited to those expressed in the SOW.
- 3.5.1.3. Bidders shall furnish Firm Fixed Prices for all required items in accordance with the format set forth in the Instructions for preparation of the Bidding Sheets.
- 3.5.1.4. Offered prices shall not be conditional in nature. Any comments supplied in the Bidding Sheets which are conditional in nature, relative to the offered prices, may result in a determination that the Bid is non-compliant.
- 3.5.1.5. Bidders are responsible for the accuracy of their Price Quotations. Price Quotations that have apparent computational errors may have such errors resolved in the Purchaser's favour or, in the case of gross omissions, inconsistencies or errors, may be determined to be non-compliant.
- 3.5.1.6. Bidders shall quote in their own national currency or in EURO. Bidders may also submit bids in multiple currencies including other NATO member states' currencies under the following conditions:



- 3.5.1.6.1. The currency is of a "participating country" in the project, and
- 3.5.1.6.2. The Bidder can demonstrate, either through sub-contract arrangements or in its proposed work methodology, that it will have equivalent expenses in that currency. All major subcontracts and their approximate anticipated value should be listed on a separate sheet and included with the Price Quotation.
- 3.5.1.7. The Purchaser, by virtue of his status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct and indirect taxes (incl. VAT) and all customs duties on merchandise imported or exported.
- 3.5.1.8. Bidders shall therefore exclude from their price Bid all taxes, duties and customs charges from which the Purchaser is exempted by international agreement and are required to certify that they have done so through execution of the Certificate at Annex B-5.
- 3.5.1.9. Unless otherwise specified in the instructions for the preparation of Bidding Sheets in Annex A, all prices quoted in the bid shall be on the basis that all deliverable items shall be delivered "Delivery Duty Paid (DDP)" in accordance with the International Chamber of Commerce INCOTERMS ® 2010.
- 3.5.1.10. The Bidder's attention is directed to the fact that the Price Volume shall contain no document and/or information other than the priced copies of the Bidding Sheets. Any other document will not be considered for evaluation.

**3.6. Volume III: Technical**

This volume is comprised of one .PDF file submitted by email, which contains all of the various parts described in this section.

No information disclosing or contributing to disclose the bid price shall be made part of the Technical Volume. Failure to abide to this prescription shall result in the bid being declared non-compliant.

Font Type and Size: “Times New Roman” fonts in size 12 shall be used for normal text, and “Arial Narrow” fonts not smaller than size 10 for tables and graphics.

**Part 1: Executive Summary**

- 3.6.1.1. Bidders shall provide an overview of the salient features of their technical volume in form of an executive summary. This summary shall demonstrate the Bidder understands the software license environment at NATO and the risks involved.

**Part 2: Bidder Qualifications**

- 3.6.1.2. Corporate experience

The Bidder shall detail relevant and successful Veeam software licensing experience in at least one contract within the last three years for which the Bidder provided similar services in scope and size for a previous customer. The Bidder shall provide for each reference at least: a description of the contract; the purchaser and end-users of the licenses; the Contract number; the start and end dates of the Contract. The Purchaser may request a point of contact for verification purposes.

- 3.6.1.3. Aggregator: The Bidder shall include evidence that it is an authorized Veeam Aggregator, authorized to sell VRA points.

**SECTION 4****BID EVALUATION PROCESS AND CRITERIA****4.1. General**

The evaluation of bids will be made by the Purchaser solely on the basis of the requirements specified in this IFB.

The evaluation of Bids and the determination as to the compliance or technical adequacy of the supplies and services offered will be based only on that information furnished by the Bidder and contained in his Bid. The Purchaser shall not be responsible for locating or securing any information which is not included in the Bid. Documents included by reference only will not be considered.

To ensure that sufficient information is available, the Bidder shall furnish with his Bid all information appropriate to provide a complete description of the work which will be performed and/or the supplies to be delivered. The information provided shall be to a level of detail necessary for the Purchaser to determine exactly what the Bidder proposes to furnish and whether the offer meets the technical, administrative and contractual requirements of this IFB. Significant omissions and/or cursory submissions may result in a determination of non-compliance without recourse to further clarification.

During the evaluation, the Purchaser may request clarification of the Bid from the Bidder and the Bidder shall provide sufficient detailed information in connection with such requests as to permit the Purchaser to make a final determination based upon the facts. The purpose of such clarifications will be to resolve ambiguities in the Bid and to permit the Bidder to state his intentions regarding certain statements contained therein. The Bidder is not permitted any cardinal alteration of the Bid regarding technical matters and shall not make any change to its price quotation at any time.

The Bidder's prompt response to the Purchaser's clarification requests is important and therefore failure to provide the requested clarifications within the time-limits set forth in the specific Clarification Requests (minimum 24 hours next working day) may cause the Bid to be deemed non-compliant.

The Purchaser reserves the right, during the evaluation and selection process, to verify any statements made

concerning experience and facilities, by making a physical inspection of the Bidder's facilities and capital assets and by interviewing Bidders proposed Key Personnel. Physical inspections and interviews shall also apply to assertions in the Bid made on behalf of proposed Subcontractors. The Bidder shall be responsible for providing prompt access to his own or Subcontractors' facilities and personnel.

The contract resulting from this IFB will be awarded to the Bidder whose offer, as evaluated by the Purchaser, is the lowest priced Bid in compliance with the requirements of this IFB. Evaluation of this IFB will be conducted in accordance with the "One Envelope" procedure in which the Bid Administration and Price Volumes of each Bidder are evaluated first, and only the Technical Volume of the apparent lowest priced Bid is evaluated for compliance with the technical requirements of the IFB. Bidders that are determined to have submitted non-compliant Bids will be so notified and will have an opportunity, via their National Delegation, to challenge such a determination in accordance with the NATO Infrastructure Bidding Procedures. In such a case the Technical Volume of the Bidder who has submitted the apparent second lowest priced Bid will be evaluated. If necessary, this procedure will be repeated until a fully compliant Bid has been determined. The compliant Bidder who has been determined to have offered the lowest priced, technically compliant Bid will be offered the Contract for award.

Failure to satisfy any of the Bidding requirements may result in a determination of non-compliance for the entire Bid.

## **4.2. Evaluation Procedure**

The evaluation will be done in a three-step process, as summarized below and elaborated on in sections 4.3 - 4.5.

### **4.2.1.1. Step 1: Administrative Compliance**

Bids received will be reviewed for compliance with the mandatory administrative requirements specified in section 4.4. Bids not meeting all of the mandatory administrative requirements may be determined to be non-compliant and not considered for further evaluation.

### **4.2.1.2. Step 2: Price Evaluations**

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The Price volumes will be opened and evaluated in accordance with section 4.6.

#### 4.2.1.3. Step 3: Technical Evaluation

In order for a Bid to be determined to be compliant, the Bidder shall have submitted a Bid which has addressed all requirements as detailed in the Bidding Instructions at section 3.6 and subsequently has fully met, after evaluation by the Purchaser, all the criteria thereof. In particular, the Technical Volume will be reviewed for compliancy of all Sections of the IFB which shall contain sufficient details to make a positive determination of compliancy.

### 4.3. Evaluation Step 1 – Bid Administration

Bids will be reviewed for compliance with the formal requirements for Bid submission as stated in this IFB and the content of the Bid Administration Volume. The evaluation of the Bid Administration Volume will be made on its completeness, conformity and compliance to the requested information. Specifically, the following requirements shall be verified:

- 4.3.1.1. The Bid was received by the Bid Closing Date and Time,
- 4.3.1.2. The Bid is packaged and marked properly,
- 4.3.1.3. The Bid Administration Volume contains the documentation listed in paragraph 3.4 above and complies with the formal requirements established in paragraph 3.1.
- 4.3.1.4. The Bidder has not taken exception to the Terms and Conditions of the Prospective Contract or has not qualified or otherwise conditioned his offer on a modification or alteration of the Terms and Conditions or the language of the Statement of Work.

A Bid that fails to conform to the above requirements may be declared non-compliant and may not be evaluated further by the Purchaser.

Bids that are determined to be administratively compliant will proceed to Step 2, Price Evaluation.

Notwithstanding paragraph 4.3.3, if it is later discovered in the evaluation of the Technical Volume or the Price Volume that the Bidder has taken exception to the Terms and Conditions of the Prospective Contract, or has qualified and/or otherwise conditioned his offer on a modification or alteration of the Terms and Conditions or

the language of the Statement of Work, the Bidder may be determined to have submitted a non-compliant Bid.

#### **4.4. Evaluation Step 2 – Price**

The Bidder's Price Quotation will be first assessed for compliance against the requirements for preparation and submission of the Price Quotation set forth in the Bid Preparation Section and the Instructions for Preparation of the Bidding Sheets in Annex A.

- 4.4.1.1. The Bidder has furnished Firm-Fixed Prices for all items listed.
- 4.4.1.2. All pricing data, i.e., quantities, unit prices, has been provided as reflected in the Bidding Sheets, as well as compliance with the requirements for preparation and submission of the Price Quotation as set forth in Section 3 and Annex A.
- 4.4.1.3. Bid prices include all costs for items supplied, delivered, and supported.
- 4.4.1.4. All prices have been accurately entered into appropriate columns, and accurately calculated.
- 4.4.1.5. The Bidder has provided accurate unit prices (where required) and total prices for each line item and each of the sub-items it added (if any).
- 4.4.1.6. The grand total is accurate.
- 4.4.1.7. The currency (€, \$, £, etc.) of all line items has been clearly indicated.
- 4.4.1.8. The Bidder has quoted in his own national currency or in the host nation currency, Euros. Where multiple currencies including other NATO member states' currencies are quoted, the conditions of section 3.5.2.6 are met.
- 4.4.1.9. The Bidder has indicated that in accordance with the treaties governing the terms of business with NATO, he has excluded from his prices all taxes, duties and customs charges from which the Purchaser has been exempted (note sections 3.5.2.6 and 3.5.2.7).
- 4.4.1.10. Price quotes for each individual item(s), and totalled prices are accurate and realistic (based on historic data,

and/or market and competitive trends in the specified industrial sector(s)).

Detailed pricing information has been provided and is current, adequate, accurate, traceable, and complete.

The Price Quotation meets requirements for price realism and balance as described below in paragraph 4.6.5.

A Bid which fails to meet the compliance standards defined in this section may be declared non-compliant and may not be evaluated further by the Purchaser.

#### Basis of Price Comparison / Determination of Lowest Price

- 4.4.1.11. The Purchaser will convert all prices quoted into EURO for purposes of comparison and computation of price scores. The exchange rate to be utilised by the Purchaser will be the average of the official buying and selling rates of the European Central Bank at close of business on the last working day preceding the Bid Closing Date.
- 4.4.1.12. The determination of the lowest Firm-Fixed Price bid will be based on the total of all CLINs in the Bidding Sheets. The total evaluated price includes the base contract (CLIN 1) and the options (CLINs 2-4).
- 4.4.1.13. The "Weighting Applied" column J in the Bidding Sheets is used for bid evaluation purposes only. The purpose of this to ensure that each price level is weighted appropriately when evaluating the bids.

#### Price Balance and Realism

- 4.4.1.14. In those cases in which the prices quoted in response to this Invitation for Bid appear to be unbalanced, either between CLINs or between the base and optional periods (artificially raising the price on some CLINs and lowering it on others, or artificially moving costs from the optional period into the base period) the Purchaser reserves the right to request the Bidder clarifications aimed to demonstrate the rationale for such circumstances. In a situation where the Contractor is clearly attempting to circumvent the intent of establish reasonable prices for all CLINs for all years, the Purchaser reserves the right to determine the Contractor to be non-compliant without requesting clarifications.

- 4.4.1.15. In those cases in which the prices quoted in relation with this Invitation for bid appear to be unreasonably low in relation to the performance required under the prospective Contract and/or the level of effort associated with the tasks, the Purchaser will reserve the right to request the Bidder clarifications aimed to demonstrate the rationale for such circumstances.
- 4.4.1.16. Indicators of an unrealistically low bid may be, for example, numerous Line Item prices for supplies and services that are provided at no cost or at nominal prices.
- 4.4.1.17. If the Purchaser has reason to suspect that a Bidder has artificially debased its prices in order to secure Contract award, the Purchaser reserves the right to request clarification of the Bid in this regard and the Bidder shall provide explanation on one of the following bases:
- 4.4.1.17.1. An error was made in the preparation of the price quotation. In such a case, the Bidder must document the nature of the error and show background documentation concerning the preparation of the price quotation that makes a convincing case that a mistake was made by the Bidder. In such a case, the Bidder shall petition the Purchaser to either remain in the competition or accept the Contract at the offered price, or to withdraw from the competition.
- 4.4.1.17.2. The Bidder has a competitive advantage due to prior experience or industrial/technological processes that demonstrably reduce the costs of Bidder performance and therefore the price offered is realistic. Such an argument must support the technical approach offered and convincingly and objectively describe the competitive advantage and the net savings achieved by this advantage over standard market practices and technology.
- 4.4.1.17.3. The Bidder recognises that the submitted price quotation is unrealistically low compared to its cost of performance and, for business reasons, the Bidder is willing to absorb such a loss. Such a statement can only be made by the head of the business unit submitting the Bid and will normally be made at the level of Chief Operating Officer or Chief Executive Officer. In such a case, the Bidder shall estimate the potential loss and show that the financial resources of the Bidder are adequate to withstand such reduction in revenue.



- 4.4.1.18. If a Bidder fails to submit a comprehensive and compelling response on one of the bases above, the Purchaser may determine the Bid submitted as non-compliant. If the Bidder responds on the basis of 4.4.6.4.1 above and requests to withdraw from the competition, the Purchaser may, depending on the nature and gravity of the mistake, allow the Bidder to withdraw.
- 4.4.1.19. If the Purchaser accepts the Bidder's explanation of mistake in paragraph 4.4.6.4.1 and allows the Bidder to accept the Contract at the offered price, or the Purchaser accepts the Bidder's explanation pursuant to paragraph 4.4.6.4.3 above, the Bidder shall agree that the supporting pricing data submitted with his Bid will be incorporated by reference in the resultant Contract. The Bidder shall agree as a condition of Contract signature, that the pricing data will be the basis of determining fair and reasonable pricing for all subsequent negotiations for modifications of or additions to the Contract and that no revisions of proposed prices will be made.
- 4.4.1.20. If the Bidder presents a convincing rationale pursuant to paragraph 4.4.6.4.2 above, no additional action will be warranted. The Purchaser, however, reserves its right to reject such an argument if the rationale is not compelling or supporting/enabling an objective analysis. In such a case the Bid may be determined to be non-compliant.

#### 4.5. Evaluation Step 3 – Technical

In order for a Bid to be determined to be compliant, the Bidder shall have submitted a Bid which has addressed all requirements as detailed in the Bidding Instructions at Section 3.6 and subsequently has fully met, after evaluation by the Purchaser, all the criteria thereof. In particular, the Technical Volume will be reviewed for compliancy against all technical specifications in the IFB which shall contain sufficient details to make a positive determination of compliancy.

##### Part 1: Executive Summary

- 4.5.1.1. The Bidder has provided a summary of the entire technical volume in the form of an executive summary.
- 4.5.1.2. A “compliant” Executive Summary is a document that demonstrates the Bidder’s experience and expertise as required by Section 3.6.5.

##### Part 2: Bidder Qualifications

The Bidder has included the following parts as described below:

##### 4.5.1.3. Corporate Experience

The Bidder provides relevant and successful corporate experience in the form of at least one contract within the last three years for which the Bidder provided similar services in scope and size for a previous customer.

##### 4.5.1.4. The Bidder provides for this reference at least:

- 4.5.1.4.1. The description of the contract;
- 4.5.1.4.1. The purchaser(s) of these systems;
- 4.5.1.4.1. The end-user(s) of these systems;
- 4.5.1.4.1. The Contract number(s);
- 4.5.1.4.1. The start date and end date of the Contract;
- 4.5.1.4.1. A point of contact for verification purposes.

#### 4.5.1.5. Aggregator Status

The Bidder provides a sub-section which demonstrates that it is a valid, recognized aggregator of Veeam points. This can be in the form of certifications from Veeam, past experience selling Veeam points, or other suitable evidence.

## **Annex A Bidding Sheets**

### **A-1 Introduction**

1. Bid pricing requirements as addressed in this Annex are mandatory. Failure to abide to the bid pricing requirements included in this section may lead to the Bid being declared non-compliant and not being taken into consideration for award.
2. No alteration of the Bidding sheets – including, but not limited to quantity indications, descriptions, titles or pre-populated Not-to-Exceed amounts – are allowed with the sole exception of those explicitly indicated as allowed in this document or in the instructions embedded in the Bidding Sheets file.
3. Additional price columns may be added if multiple currencies are Bid, including extra provisions for all totals.

### **A-2 General Requirements**

1. Bidders are required, in preparing their Price Quotation to utilise the electronic file provided as part of this IFB and referenced in Annex A-3.
2. This Excel file includes detailed instructions on each tab that will facilitate bidders' preparation of the bid pricing. These instructions are mandatory.
3. The prices and quantities entered on the document shall reflect the total items required to meet the Contractual requirements. The total price shall be indicated in the appropriate columns.
4. In preparing the Bidding Sheets, Bidders shall ensure that the prices of the Sub-items total the price of the major item of which they constitute a part.
5. All metrics (e.g., cost associated with labour) will be assumed to be standard or normalised to 7.6 hour/day, for a five-day working week at NATO and National sites and Contractor facilities.
6. Should the Lowest Price Technically Compliant Bid be in other than Euro currency, the award of the Contract will be made in the currency or currencies of the bid.
7. Bidders are advised that formulae designed to ease evaluation of the Bid have been inserted in the electronic copies of the Bidding Sheets. Notwithstanding this, the Bidder remains responsible for ensuring that their figures are correctly calculated and should not rely on the accuracy of the formulae electronic copies of the Bidding Sheets.

8. If the Bidder identifies an error in the spreadsheet, it should notify the Purchaser through process described section 2.6. The Purchaser will then make a correction and notify all the Bidders of the update.
9. Prices shall not include any provision for taxes or duties for which the Purchaser is exempt.

### **A-3 Bidding Sheets**

1. Bidders are required, in preparing their Price Quotation to utilise the following electronic file provided as part of this IFB.

“03\_IFB-CO-115496-Veeam-Book I-Bidding Instructions-Schedule of Supplies and Services.xls”
2. Bidders shall include this file with its Bid in the same Excel format in which it is provided in this IFB.

## **Annex B Prescribed Administrative Forms and Certificates**

**Annex B-1. Certificate of Legal Name of Bidder**

This Bid is prepared and submitted on behalf of the legal corporate entity specified below:

FULL NAME OF CORPORATION: \_\_\_\_\_

DIVISION (IF APPLICABLE): \_\_\_\_\_

SUB DIVISION (IF APPLICABLE): \_\_\_\_\_

OFFICIAL MAILING ADDRESS

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

POINT OF CONTACT REGARDING THIS BID:

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

ALTERNATIVE POINT OF CONTACT:

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**Annex B-2. Acknowledgement of Receipt of IFB Amendments**

I confirm that the following amendments to Invitation for Bid CO-115496-Veeam have been received and the Bid, as submitted, reflects the content of such amendments.

Amendment No.	Date of Issue	Date of Receipt	Initials

---

Date

---

Signature of Authorised Representative

---

Printed Name

---

Title

---

Company



**Annex B-3. Certificate of Independent Determination**

It is hereby stated that:

- a. We have read and understand all documentation issued as part of this IFB. Our Bid submitted in response to the referred solicitation is fully compliant with the provisions of the IFB and the prospective Contract.
- b. Our Bid has been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, with any other Bidder or with any competitor;
- b. The contents of our Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to award, directly or indirectly to any other Bidder or to any competitor; and
- c. No attempt has been made, or will be made by the Bidder to induce any other person or firm to submit, or not to submit, a Bid for the purpose of restricting competition.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**Annex B-4. Certificate of Bid Validity**

I, the undersigned, as an authorised representative of the firm submitting this Bid, do hereby certify that the pricing and all other aspects of our Bid will remain valid for a period of sixty (60) days from the Bid Closing Date of this Invitation for Bid.

---

Date

---

Signature of Authorised Representative

---

Printed Name

---

Title

---

Company

**Annex B-5. Certificate of Exclusion of Taxes, Duties and Charges**

I hereby certify that the prices offered in the price quotation of this Bid exclude all taxes, duties and customs charges from which the Purchaser has been exempted by international agreement.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**Annex B-6. Comprehension and Acceptance of Contract  
Special and General Provisions**

The Bidder hereby certifies that he has reviewed the Contract Special Provisions and the NCI Agency Contract General Provisions set forth in the Prospective Contract, Book II, of this Invitation for Bid. The Bidder hereby provides his confirmation that he fully comprehends the rights, obligations and responsibilities of the Contractor as set forth in the Articles and Clauses of the Prospective Contract. The Bidder additionally certifies that the offer submitted by the Bidder is without prejudice, qualification or exception to any of the Terms and Conditions and he will accept and abide by the stated Contract Special Provisions and Contract General Provisions if awarded the Contract as a result of this Invitation for Bid.

---

Date

---

Signature of Authorised Representative

---

Printed Name

---

Title

---

Company

**ANNEX B-7. Disclosure of Requirements for NCI Agency  
Execution of Supplemental Agreements**

I, the undersigned, as an authorised representative of \_\_\_\_\_, certify the following statement:

All supplemental agreements, defined as agreements, documents and/or permissions outside the body of the Contract but are expected to be required by my Government, and the governments of my Subcontractors, to be executed by the NCI Agency or its legal successor as a condition of my firm's performance of the Contract, have been identified, as part of the Bid.

These supplemental agreements are listed as follows: *(insert list here or specify "none")*

Examples of the terms and conditions of these agreements have been provided in our Offer. The anticipated restrictions to be imposed on NATO, if any, have been identified in our offer along with any potential conflicts with the terms, conditions and specifications of the Prospective Contract. These anticipated restrictions and potential conflicts are based on our knowledge of and prior experience with such agreements and their implementing regulations. We do not certify that the language or the terms of these agreements will be exactly as we have anticipated.

The processing time for these agreements has been calculated into our delivery and performance plans and contingency plans made in the case that there is delay in processing on the part of the issuing government(s).

We recognise that additional supplemental agreements, documents and permissions presented as a condition of Contract performance or MOU signature after our firm would be selected as the successful Bidder may be cause for the NCI Agency to determine the submitted Bid to be non-compliant with the requirements of the IFB;

We accept that should the resultant supplemental agreements issued in final form by the government(s) result in an impossibility to perform the Contract in accordance with its schedule, terms or specifications, the Contract may be terminated by the Purchaser at no cost to either Party.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**Annex B-8.**

**Certificate of Compliance AQAP 2110 or ISO  
9001:2008 or Equivalent**

I hereby certify that \_\_\_\_\_ (name of Company) possesses and applies Quality Assurance Procedures/Plans AQAP 2110 or ISO 9001:2008 or equivalent as evidenced through the attached documentation<sup>1</sup>.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
<sup>1</sup> Bidders must attach copies of any relevant quality certification.

**Annex B-9. List of Prospective Subcontractors**

Name and Address of Sub-Bidder	DUNS Number <sup>2</sup>	Primary Location of Work	Items/Services to be Provided	Estimated Value of Sub-Contract

---

Date

---

Signature of Authorised Representative

---

Printed Name

---

Title

---

Company

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<sup>2</sup> Data Universal Numbering System (DUNS). Bidders are requested to provide this data in order to help NCI AGENCY to correctly identify Subcontractors. If a Subcontractor's DUNS is not known this field may be left blank.

**Annex B-10. Bidder Background IPR**

I, the undersigned, as an authorised representative of Bidder  
\_\_\_\_\_, warrant, represent, and undertake that:

- a. The Contractor Background IPR specified in the table below will be used for the purpose of carrying out work pursuant to the prospective Contract.

ITEM	DESCRIPTION

- b. The stated Bidder has and will continue to have, for the duration of the prospective Contract, all necessary rights in and to the Background IPR specified above.
- c. The Background IPR stated above complies with the terms specified in Article 9 of the Contract Special Provisions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company



**Annex B-11. List of Subcontractor IPR**

I, the undersigned, as an authorised representative of Bidder  
\_\_\_\_\_, warrant, represent, and undertake that:

- a. The Subcontractor IPR specified in the table below will be used for the purpose of carrying out work pursuant to the prospective Contract.

ITEM	DESCRIPTION

- b. The stated Bidder has and will continue to have, for the duration of the prospective Contract, all necessary rights in and to the IPR specified above necessary to perform the Contractor's obligations under the Contract.
- c. The Subcontractor IPR stated above complies with the terms Clause 30 the Contract General Provisions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**Annex B-12. Certificate of Origin of Equipment, Services,  
and Intellectual Property**

The Bidder hereby certifies that, if awarded the Contract pursuant to this solicitation, he will perform the Contract subject to the following conditions:

(a) None of the work, including project design, labour and services shall be performed other than by firms from and within participating NATO member countries;

(b) No material or items of equipment down to and including identifiable sub-assemblies shall be manufactured or assembled by a firm other than from and within a participating NATO member country. (A sub-assembly is defined as a portion of an assembly consisting of two or more parts that can be provisioned and replaced as an entity); and

(c) The intellectual property rights to all design documentation and related system operating software shall reside in NATO member countries, and no license fees or royalty charges shall be paid by the Bidder to firms, individuals or Governments other than within the NATO member countries.

---

Date

---

Signature of Authorised Representative

---

Printed Name

---

Title

---

Company

### **Annex B 13. Disclosure of Involvement of Former NCI Agency Employment**

The Bidder hereby certifies that, in preparing its Bid, the Bidder did not have access to solicitation information prior to such information been authorized for release to Bidders (e.g. draft statement of work and requirement documentation).

The Bidder hereby acknowledges the post-employment measures applicable to former NCI Agency Personnel as per the NCI Agency Code of Conduct.

The Bidder hereby certifies that:

- ☐ Its personnel, at any tier, working as part of the company's team preparing the Bid have not held employment with NCI Agency within the last two years.
- ☐ It has obtained a signed statement from the former NCI Agency personnel below, who departed the NCI Agency within the last two years, that they were not previously involved in the project under competition (as defined in the extract of the NCI Agency Code of Conduct provided in Annex B-17 of this IFB):

Employee Name	Former NCI Agency Position	Current Company Position

The Bidder also hereby certifies that it does not employ and/or receive services from former NCI Agency Personnel at grades A5 and above or ranks OF-5 and above, who departed the NCI Agency within the last 12 months. This prohibitions covers negotiations, representational communications and/or advisory activities.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

NATO UNCLASSIFIED

IFB-CO-115496-VEEAM  
Book I – Instructions to Bidders

## **Annex C Clarification Request Form**

Company Name \_\_\_\_\_

Submission Date \_\_\_\_\_

### **INVITATION FOR BID IFB-CO-115496-Veeam**

### **CLARIFICATION REQUEST FORM**

NATO UNCLASSIFIED

Company Name \_\_\_\_\_

Submission Date \_\_\_\_\_

ADMINISTRATION or CONTRACTING				
Serial No.	IFB Ref.	Bidder's Question	NCI Agency Answer	Status
A.1				
A.2				
A.3				
A.4				
A.5				

Company Name \_\_\_\_\_

Submission Date \_\_\_\_\_

PRICE				
Serial No.	IFB Ref.	Bidder's Question	NCI Agency Answer	Status
P.1				
P.2				
P.3				
P.4				
P.5				

Company Name \_\_\_\_\_

Submission Date \_\_\_\_\_

TECHNICAL				
Serial No.	IFB Ref.	Bidder's Question	NCI Agency Answer	Status
T.1				
T.2				
T.3				
T.4				
T.5				

## Bidding Sheets Instructions

### INTRODUCTION & IMPORTANT NOTES

**Bidders should note that NCIA has recently updated its bidding sheet template and are encouraged to read the instructions in full for this new version before completing the bidding sheets.**

All bidders are required to submit pricing details to demonstrate the Purchaser's Pricing Principles are being applied as part of their bids. All data submitted in these sheets shall be complete, verifiable and factual and include the required details. Any exclusions may render the bid as non compliant thus removing the bidder from the bidding process.

Bidders are **REQUIRED** to complete the following tabs:

- "Offer Summary",
- "CLIN Summary",

**Note that input cells in the "Offer Summary" and the "CLIN Summary" tabs are colour coded YELLOW.**

**Note: any information found within GREEN boxes throughout the entire document is provided as an instruction and/or example only.**

Any formulas provided in these bidding sheets are intended only to assist the bidder. Any changes in formula can be made at the bidder's discretion, as long as the detailed costs are clear, traceable and accurate as required. Ultimately the bidder is responsible for **ALL** values, formulas and calculations within the bidding sheets that are submitted to the Agency.

**Bids in MULTIPLE CURRENCIES should follow the following instructions:**

- For the "Offer Summary" tab bidders must add "Evaluated Price" column to the right of the current table for each additional currency.
- For the "CLIN Summary" tab, Bidders have 2 options: A) Two columns "Unit Price" and "Total Evaluated Price" may be added to the right of the current table for each additional currency of the bid; B) Bidders may duplicate the CLIN Summary tab for each currency bid.



CLIN Number	CLIN DESCRIPTION	Firm Fixed Price
	Declare Currency =>	

Grand Total Evaluated Price - Base Contract	-
Grand Total Evaluated Price - Base Contract + Evaluated Options	-

CLIN 1	CLIN 1 (BASE-EVALUATED) - Veeam Rental Agreement (VRA) Points 2022	-
Total Evaluated Price Base Contract		-
CLIN 2	CLIN 2 (OPTION-EVALUATED) - Veeam Rental Agreement (VRA) Points 2023	-
CLIN 3	CLIN 3 (OPTION-EVALUATED) - Veeam Rental Agreement (VRA) Points 2024	-
CLIN 4	CLIN 4 (OPTION-EVALUATED) - Veeam Rental Agreement (VRA) Points 2025	-
Total Evaluated Price Evaluated Options		-

IFB-CO-115496-VEEAM CLIN Summary											
BASE CONTRACT						For Bid Evaluation Purposes Only		For Bid Evaluation Purposes Only			
CLIN	Description	Required Completion Date	Delivery Destination	Delivery Form	Unit of measure	Quantity (monthly)	Unit Price per point	Weighting applied	Number of months	Total Evaluated Price (yearly)	Optional Comments (Mandatory for zero costs lines)
						Declare Currency =>					
1	CLIN 1 (BASE-EVALUATED) - Veeam Rental Agreement (VRA) Points 2022										
1.1	2022 Price Level 4 (up to 99,999 points monthly)	31-Dec-22	NCIA	Electronic	Points	95,000		100%	12	-	
TOTAL PRICE CLIN 1								100%		-	
Total Evaluated Price- Base Contract										-	
EVALUATED OPTIONS											
CLIN	Description	Required Completion Date	Delivery Destination	Delivery Form	Unit of measure	Quantity (monthly)	Unit Price per point	Weighting applied	Number of months	Total Evaluated Price (yearly)	Optional Comments (Mandatory for zero costs lines)
						Declare Currency =>					
2	CLIN 2 (OPTION-EVALUATED) - Veeam Rental Agreement (VRA) Points 2023										
2.1	2023 Price Level 1 (up to 70,000 points monthly)	31-Dec-23	NCIA	Electronic	Points	70,000		15%	12	-	
2.2	2023 Price Level 2 (up to 79,999 points monthly)	31-Dec-23	NCIA	Electronic	Points	75,000		15%	12	-	
2.3	2023 Price Level 3 (up to 89,999 points monthly)	31-Dec-23	NCIA	Electronic	Points	85,000		15%	12	-	
2.4	2023 Price Level 4 (up to 99,999 points monthly)	31-Dec-23	NCIA	Electronic	Points	95,000		20%	12	-	
2.5	2023 Price Level 5 (up to 109,999 points monthly)	31-Dec-23	NCIA	Electronic	Points	105,000		15%	12	-	
2.6	2023 Price Level 6 (up to 119,999 points monthly)	31-Dec-23	NCIA	Electronic	Points	115,000		10%	12	-	
2.7	2023 Price Level 7 (120,000 + points monthly)	31-Dec-23	NCIA	Electronic	Points	120,000		10%	12	-	
TOTAL PRICE CLIN 2								100%		-	
3	CLIN 3 (OPTION-EVALUATED) - Veeam Rental Agreement (VRA) Points 2024										
3.1	2024 Price Level 1 (up to 70,000 points monthly)	31-Dec-24	NCIA	Electronic	Points	70,000		15%	12	-	
3.2	2024 Price Level 2 (up to 79,999 points monthly)	31-Dec-24	NCIA	Electronic	Points	75,000		15%	12	-	
3.3	2024 Price Level 3 (up to 89,999 points monthly)	31-Dec-24	NCIA	Electronic	Points	85,000		15%	12	-	
3.4	2024 Price Level 4 (up to 99,999 points monthly)	31-Dec-24	NCIA	Electronic	Points	95,000		20%	12	-	
3.5	2024 Price Level 5 (up to 109,999 points monthly)	31-Dec-24	NCIA	Electronic	Points	105,000		15%	12	-	
3.6	2024 Price Level 6 (up to 119,999 points monthly)	31-Dec-24	NCIA	Electronic	Points	115,000		10%	12	-	
3.7	2024 Price Level 7 (120,000 + points monthly)	31-Dec-24	NCIA	Electronic	Points	120,000		10%	12	-	
TOTAL PRICE CLIN 3								100%		-	
4	CLIN 4 (OPTION-EVALUATED) - Veeam Rental Agreement (VRA) Points 2025										
4.1	2025 Price Level 1 (up to 70,000 points monthly)	31-Dec-25	NCIA	Electronic	Points	70,000		15%	12	-	
4.2	2025 Price Level 2 (up to 79,999 points monthly)	31-Dec-25	NCIA	Electronic	Points	75,000		15%	12	-	
4.3	2025 Price Level 3 (up to 89,999 points monthly)	31-Dec-25	NCIA	Electronic	Points	85,000		15%	12	-	
4.4	2025 Price Level 4 (up to 99,999 points monthly)	31-Dec-25	NCIA	Electronic	Points	95,000		20%	12	-	
4.5	2025 Price Level 5 (up to 109,999 points monthly)	31-Dec-25	NCIA	Electronic	Points	105,000		15%	12	-	
4.6	2025 Price Level 6 (up to 119,999 points monthly)	31-Dec-25	NCIA	Electronic	Points	115,000		10%	12	-	
4.7	2025 Price Level 7 (120,000 + points monthly)	31-Dec-25	NCIA	Electronic	Points	120,000		10%	12	-	
TOTAL PRICE CLIN 4								100%		-	
Total Evaluated Price- Evaluated Options										-	

CO-115496-VEEAM Schedule of Supplies and Services								
CLIN	Description	Subscription License Term	License Type	Unit of measure	Quantity [Points per month]	Monthly Unit Price	Number of Points Ordered	Contract Value
Base Year								
1.0	Veeam Rental Agreement (VRA) Points 2022	1 Jan - 31 Dec 2022	Subscription	Points	90,000 - 99,999		TBD at contract award	
Total Contract Value								
Price List for Option Years								
2.0	Veeam Rental Agreement (VRA) Points 2023	1 Jan - 31 Dec 2023	Subscription					
2.1	2023 Price Level 1			Points	up to 70,000			
2.2	2023 Price Level 2			Points	70,001 - 79,999			
2.3	2023 Price Level 3			Points	80,000 - 89,999			
2.4	2023 Price Level 4			Points	90,000 - 99,999			
2.5	2023 Price Level 5			Points	100,000 - 109,999			
2.6	2023 Price Level 6			Points	110,000 - 119,999			
2.7	2023 Price Level 7			Points	120,000 +			
2.0	Veeam Rental Agreement (VRA) Points 2024	1 Jan - 31 Dec 2024	Subscription					
2.1	2024 Price Level 1			Points	up to 70,000			
2.2	2024 Price Level 2			Points	70,001 - 79,999			
2.3	2024 Price Level 3			Points	80,000 - 89,999			
2.4	2024 Price Level 4			Points	90,000 - 99,999			
2.5	2024 Price Level 5			Points	100,000 - 109,999			
2.6	2024 Price Level 6			Points	110,000 - 119,999			
2.7	2024 Price Level 7			Points	120,000 +			
2.0	Veeam Rental Agreement (VRA) Points 2025	1 Jan - 31 Dec 2025	Subscription					
2.1	2025 Price Level 1			Points	up to 70,000			
2.2	2025 Price Level 2			Points	70,001 - 79,999			
2.3	2025 Price Level 3			Points	80,000 - 89,999			
2.4	2025 Price Level 4			Points	90,000 - 99,999			
2.5	2025 Price Level 5			Points	100,000 - 109,999			
2.6	2025 Price Level 6			Points	110,000 - 119,999			
2.7	2025 Price Level 7			Points	120,000 +			



NATO Communications and Information Agency  
Agence OTAN d'information et de communication

**IFB-CO-115496-VEEAM**

**Enterprise License Agreement for VEEAM Software**

BOOK II

PART II

CONTRACTSPECIAL PROVISIONS

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## **1 ALTERATIONS, MODIFICATIONS AND DELETIONS OF THE NCIA CONTRACT GENERAL PROVISIONS**

- 1.1 Article 3 “Order of Precedence” modifies Clause 1 “Order of Precedence” of the Contract General Provisions.
- 1.2 Article 6 “Participating Countries” supplements Clause 9 “Participating Countries” of the Contract General Provisions.
- 1.3 Article 8 “Security” supplements Clause 11 “Security” of the Contract General Provisions.
- 1.4 Article 9 “Intellectual Property” supplements Clause 30 “Intellectual Property” of the Contract General Provisions.
- 1.5 Article 11 “Pricing of Changes, Modifications, Follow-on Contracts and Claims” supplements Clause 19 “Pricing of Changes, Amendments and Claims” of the Contract General Provisions.
- 1.6 Article 17 “Place and Terms of Delivery” replaces sub-Clause 20.1 of Clause 20 “Notice of Shipment and Delivery” of the Contract General Provisions.

## **2 SCOPE**

- 2.1 This ELA will support VEEAM license requirements throughout NATO – at headquarters, commands, agencies and other NATO organisations. This ELA will consolidate all of NATO’s VEEAM software requirements into one VEEAM Cloud & Service Provider (VCSP) agreement. Through the ELA, the NCI Agency will procure an initial quantity of points, which correspond to specific Veeam products.

### **3 ORDER OF PRECEDENCE**

3.1 Clause 1 of the Contract General Provisions is modified to read as follows;

“In the event of any inconsistency in language, terms or conditions of the various parts of this Contract, precedence will be given in the following order:

- 3.1.1 The signature page
- 3.1.2 Part I – Schedule of Supplies and Services
- 3.1.3 Part II – Contract Special Provisions,
- 3.1.4 Part III – Contract General Provisions,
- 3.1.5 Part IV – Statement of Work
- 3.1.6 The Purchaser’s provided clarifications, issued throughout the bidding period relevant to IFB-CO-115496-VEEAM.
- 3.1.7 Any sections of the Contractor’s proposal (Technical Proposal and Price Quotation) in response to IFB-CO-115496-VEEAM, dated [date to be inserted at Contract award] and any clarifications thereto, specifically incorporated by reference.

#### **4 TERM OF COMMITMENT for BASE AND OPTIONAL PERIODS**

##### **4.1 Base Contract (CLIN 1)**

4.1.1 The points purchased under CLIN 1 of the SSS cover the base period of this agreement.

4.2.2 The unit price per point in CLIN 1 shall not increase for the duration of the Contract.

4.2.3 The Purchaser may issue a purchase order for additional points at the same unit prices shown in the SSS.

4.2.4 Any support shall be included in the price per point.

##### **4.2 Optional Periods**

4.2.1 Optional years are included in CLIN 2- CLIN 4 of the SSS.

4.2.2 The unit price per point in CLINS 2- 4 shall be in accordance with the price list included in the SSS.

4.2.3 The Purchaser may issue a purchase order for additional points at the same unit prices shown in the SSS.

4.2.4 The options may be exercised one year at a time, for the period of 1 January 2023 – 31 December 2023; 1 January 2024 – 31 December 2024; and 1 January 2025 – 31 December 2025

4.2.5 The Purchaser may exercise each option year for a different volume of VRA points than the year before.

4.2.6 The Contractor understands that there is no obligation under this Contract for the Purchaser to exercise any portion of the option and that the Purchaser bears no liability should it decide not to exercise the options (totally or partially).

4.2.7 The optional period will not be considered to be exercised until a written amendment to the Contract has been signed by the Purchaser. This amendment may be issued on a unilateral basis. The Purchaser may exercise the optional period at any point up to the start of that period.

4.2.5 Any support shall be included in the price per point.



**5 SCHEDULE OF PAYMENTS**

- 5.1 The Contractor shall submit to the Purchaser an invoice prepared in accordance with Clause 25 – “Invoices and Payment” of the Contract General Provisions upon achievement of the Project Milestones listed below. The invoice shall be calculated on the basis of the total price of the Basic Contract excluding the exercise of any options.
- 5.2 Payment shall be made in the currency specified following purchaser acceptance of the supplies and services to be furnished. The price to be charged is the total firm fixed price stated in the Contract Schedule of Supplies and Services. The total firm fixed price is an overall price including expenses. No payment shall be made with respect to undelivered supplies, works not performed and/or services not rendered.
- 5.3 Payment will be made by the Purchaser to the Contractor's financial institution as indicated on the invoice within forty-five (45) calendar days of receipt of a properly prepared invoice.
- 5.4 Invoices shall be submitted to [accountspayable@ncia.nato.int](mailto:accountspayable@ncia.nato.int).
- 5.5 Invoice shall be prepared for each Milestone in accordance with the Milestones Payment Schedule as indicated below:

Milestone #	Invoice Date	Calculation of Invoice Value	Amount (currency) <i>(to be completed at Contract award)</i>
1	January 15, 2022	100% of Base Contract	
2	February 1, 2023	100% of 2023 Optional Support (if exercised)	
3	February 1, 2024	100% of 2024 Optional Support (if exercised)	
4	February 1, 2025	100% of 2025 Optional Support (if exercised)	

**6 PARTICIPATING COUNTRIES**

- 6.1 This Article supplements Clause 9 of the Contract General Provisions.
- 6.2 The Contractor may issue sub-contracts to firms and purchase from qualified vendors in any of the 30 NATO member nations. None of the work, including project design, labour and services, shall be performed other than by firms from and within participating countries as per NATO policy.
- 6.3 The Contractor shall notify in writing to the Purchaser immediately upon being informed of any change in the nationality of its Sub-contractor(s) which would prevent the Contractor from further complying with Clause 6.2 above. Upon receipt of this information from the Contractor, the Purchaser may, within three months from this notification, require the Contractor to find an alternate subcontractor, complying with the requirements set out in Clause 6.2 above.
- 6.4 Unless authorised by NATO Policy, no material or items of equipment down to and including identifiable sub-assemblies delivered under this Contract shall be manufactured or assembled by a firm other than from and within a participating country.
- 6.5 The Intellectual Property Rights to all designed documentation and system operating software shall reside in NATO member countries, and no license fee, or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member community.

**7 CONTRACT ADMINISTRATION**

- 7.1 The Purchaser is the NATO Communications and Information Agency (NCI Agency). The Contracting Officer is the Point of Contact for all Contractual and Technical issues. The Contractor shall accept Contract modifications only in writing from the Purchaser's Contracting Authority
- 7.2 All notices and communications between the Contractor and the Purchaser shall be written and conducted in English. Contract modifications only become valid when received in writing from the General Manager, NCI Agency, or his authorised representative.
- 7.3 Formal letters and communications shall be personally delivered or sent by mail, registered mail, email, courier or other delivery service, to the official points of contact quoted in this Contract.
- 7.4 Informal notices and informal communication may be exchanged by any other means, including telephone.
- 7.5 All notices and communication shall be effective upon receipt.
- 7.6 Official Points of Contact are:

**PURCHASER**

NCI Agency  
Boulevard Léopold III  
B-1110 Brussels  
Belgium  
Contractual issues:  
POC:  
Tel:  
E-mail

Technical issues:  
POC:  
Tel:  
E-mail:

**CONTRACTOR**

*Company*  
*Address*  
*Address*  
Contractual issues  
POC:  
Tel:  
E-mail

Technical issues:  
POC:  
Tel:  
E-mail:

## **8 SECURITY**

- 8.1 This Article supplements Clause 11 of the Contract General Provisions.
- 8.2 The security classification of this Contract and its annexes is “NATO UNCLASSIFIED”.
- 8.3 Contractor's personnel visiting or working at Purchaser's facilities in connection with this Contract shall hold a NATO SECRET security clearance valid for the duration of the Contract. This requirement applies to all subcontracts issued by the Contractor for the effort under this prime Contract.
- 8.4 It is the responsibility of the Contractor to ensure that its personnel obtain the required security clearances and transmit this information to the sites to be visited in adequate time that the site may perform the appropriate administration.
- 8.5 The Contractor is advised that the personnel security process may be lengthy. The Purchaser bears no responsibility for the failure of the Contractor to secure the required clearances for its personnel within the necessary time.
- 8.6 Failure of the Contractor to obtain proper security clearances to have access to any NATO sites, and any attendant delay in the project which results from this access refusal, is not the basis for excusable delay under the terms of the Contract concerning default. The Contractor bears full responsibility and liability under the Contract for delays arising from the failure of the Contractor to adhere to the security requirements.
- 8.7 If during the performance of the Contract, Contractor's personnel need to be escorted because of non-availability of the security clearance required by the Site, the Contractor shall pay to the Purchaser a compensatory fee of 800 Euro per day of escort.
- 8.8 In the absence of valid security clearances for the Contractor's personnel at Contract signature, the Purchaser reserves the right to terminate the Contract for “Default”.

**9 INTELLECTUAL PROPERTY**

- 9.1 This Clause supplements Clause 30 (Intellectual Property) of the Contract General Provisions.
- 9.2 The Contractor grants the Purchaser the right to transfer the licenses or services procured under this Contract within NATO to be used by other NATO agencies, commands or other NATO organizations, and by NATO nations for NATO purposes.
- 9.3 The Contractor grants the Purchaser the right to use or deploy the licenses or services procured under this Contract in any NATO nation, any NATO partner nation, or the location of any NATO mission or operation.
- 9.4 The Purchaser acknowledges that although there may be nation-specific laws governing the use of licenses, there shall be no restrictions applied by the Contractor on using the licenses or services in any location described in Section 3.

**10 PRICE BASIS**

- 10.1 This is a Firm Fixed Price contract.
- 10.2 The Priced Schedule of Supplies and Services of this contract, organized into major Contract Line Items (CLINs) shall list all services and/or deliverables, their period of performance, the place of delivery and their firm fixed Contract line item price.
- 10.3 The Firm Fixed Price of this Contract includes all travel and accommodation, between NATO Locations and the Contractor's own premises, wherever it executes the contract, that the Contractor considers necessary to execute his tasking, or that is required for the execution of the Contract shall be included in the total Contract price and per diem costs associated with the Contractor's performance of the Statement of Work.
- 10.4 Option Prices: The rates given in Part I – Schedule of Supplies and Services, Options, are fixed for the duration of the Contract and are not subject to any adjustment on the basis of the Contractor's incurred costs in performing the Contract.

**11 PRICING OF CHANGES, MODIFICATIONS, FOLLOW-ON CONTRACTS AND CLAIMS**

- 11.1 This Article supplements Clause 19 of the Contract General Provisions.
- 11.2 The Purchaser may at any time, by written order designated or indicated to be a change order if any, make changes within the scope of any Contractor Task Order, in accordance with Clause 16 (Changes) of the Contract General Provisions.
- 11.3 Changes, modifications, follow-on Contracts of any nature, and claims shall be priced in accordance with Clause 19 (Pricing of Changes, Amendments and Claims) of the Contract General Provisions, and with the "Purchaser's Pricing Principles" as set out in the Annex to the Contract General Provisions.

**12 INDEMNITY**

- 12.1 The Contractor will indemnify and hold harmless NATO, its servants or agents, against any liability, loss or damage arising out of or in connection of the Supplies and Services under this Contract.
- 12.2 NATO will give the Contractor immediate notice of the making of any claim or the bringing of any action to which the provisions of this Article may be relevant and will consult with the Contractor over the handling of any such claim and conduct of any such action and will not without prior consultation and without the consent of the Contractor settle or compromise any such claim or action.

**13 INDEPENDENT CONTRACTOR**

- 13.1 The Personnel provided by the Contractor are at all times employees of the Contractor and not the Purchaser. In no case shall Contractor personnel act on behalf of or as an agent for NATO or any of its bodies. In no way shall the Contractor personnel claim directly or indirectly to represent NATO in an official capacity or claim themselves to be NATO employees.
- 13.2 The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. Consultants employed under this Contract are not eligible for any diplomatic privileges or NATO employee benefits

**14 COTS PRODUCT REPLACEMENT**

- 14.1 The contractor shall ensure throughout the entire contract period that the purchaser has access to the latest versions of the licenses being procured.

**15 PLACE AND TERMS OF DELIVERY**

- 15.1 This Article replaces Clause 20.1 of the Contract General Provisions.
- 15.2 All software licenses and other deliverables are delivered electronically.

**16 SUPPLEMENTAL AGREEMENT(S), DOCUMENTS AND PERMISSIONS**

- 16.1 The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to Contract award, the execution of which by the Purchaser is/are required by national law or regulation. If any supplemental agreements, documents and permissions are introduced after Contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to Contract signature, the Purchaser may terminate this Contract for default in accordance with Clause 29 – “Termination for Default” of the Contract General Conditions.
- 16.2 Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by national law or regulation and that have been identified by the Contractor prior to the signature of this contract, but have not yet been finalised and issued by the appropriate governmental authority, are subject to review by the Purchaser. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Purchaser and the appropriate governmental authority cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate

this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

## **17 COMPREHENSION OF CONTRACT AND SPECIFICATIONS**

- 17.1 The Contractor warrants that he has read, understood and agreed to each and all terms, clauses, specifications (including drawings) and conditions specified in the Contract and that this signature of the Contract is an acceptance, without reservations, of the said Contract terms within their normal and common meaning.
- 17.2 The Contractor hereby acknowledges that he has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this Contract:
  - 17.2.1 based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or;
  - 17.2.2 otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- 17.3 Notwithstanding the “Changes” Clause or any other Clause of the Contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor’s proposed work shall entitle the Contractor either to any increase in the fixed price as set forth in this Contractor to any extension of the delivery times for the work beyond the period of performance in the Schedule of Supplies and Services.

## **18 PURCHASER RIGHT TO CONTRACT WITH THIRD PARTIES IN CASE OF CONTRACTOR DEFAULT**

- 18.1 This Clause supplements Clause 39 (Termination for Default) of the Contract General Provisions.
- 18.2 In the event that the Contractor fails to deliver or make progress on the provision of any components of this project in accordance with the milestones and delivery dates stipulated in the SSS and SOW, and is notified by the Purchaser in writing that the Contractor is in a state of default in accordance with Clause 39 of the Contract General Provisions (Termination for Default), the Purchaser reserves the right to enter directly into contracts with any third party, including commercial entities, and Contractor’s Subcontractors for provision of the Contract Work Package.



- 18.3 The provisions of this Article are in addition to and in no way limit the rights of the Purchaser contained in other applicable clauses of this Contract, including but not limited to, Clause 21 (Inspection and Acceptance of Work) and Clause 39 (Termination for Default) of the Contract General Provisions.

## **19 EXPORT AGREEMENT AND LICENSE**

- 19.1 It is the Contractor's responsibility to ensure that all necessary national export provisions are complied with executing all work under this contract. Copies of the documentation will be supplied to the Purchaser on request.

**ANNEX A. CONTRACTOR BACKGROUND IPR**

- a. The Contractor Background IPR specified in the table below will be used for the purpose of carrying out work pursuant to the Contract.

Item	Description / IP Ownership	Indicate if COTS <sup>1</sup>

- b. The Contractor represents that it has and will continue to have, for the duration of this Contract, all necessary rights in and to the IPR specified above necessary to meet the Contractor's obligations under the Contract.
- c. The Contractor Background IPR stated above complies with the terms specified in the Contract Special Provisions and shall be licensed to the Purchaser according to the terms and conditions specified therein and in Clause 30 of the Contract General Provisions.

**ANNEX B. SUBCONTRACTOR AND THIRD PARTY IPR**

- a. The Subcontractor and Third Party Background IPR specified in the table below will be used for the purpose of carrying out work pursuant to the Contract.

Item	Description / IP Ownership	Indicate if COTS <sup>1</sup>

- b. The Contractor represents that it has and will continue to have, for the duration of this Contract, all necessary rights in and to the IPR specified above necessary to meet the Contractor's obligations under the Contract.
- c. The Subcontractor and Third Party Background IPR stated above complies with the terms specified in the Contract Special Provisions and shall be licensed to the Purchaser according to the terms and conditions specified therein and in Clause 30 of the Contract General Provisions.



NATO Communications and Information Agency  
Agence OTAN d'information et de communication

**IFB-CO-115496-VEEAM**

**Enterprise License Agreement  
For  
Veeam Software and Services**

**BOOK II – PART III**

**CONTRACT GENERAL PROVISIONS**

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ANNEX: PURCHASER'S PRICING PRINCIPLES

## **1. ORDER OF PRECEDENCE**

In the event of any inconsistency in language, terms or conditions of the various parts of this Contract, precedence will be given in the following order:

- 1.1. The Signature Page;
- 1.2. The Contract Schedules, Part I;
- 1.3. The Contract Special Provisions, Part II;
- 1.4. The Contract General Provisions, Part III;
- 1.5. The Statement of Work, Part IV of the Contract;
- 1.6. The Annexes to the Statement of Work.

## **2. DEFINITIONS OF TERMS AND ACRONYMS**

### **2.1. Assembly**

An item forming a portion of equipment that can be provisioned and replaced as an entity and which normally incorporates replaceable parts or groups of parts.

### **2.2. Acceptance**

Acceptance is the act by which the Contracting Authority recognises in writing that the delivered Work meets the Contract requirements.

### **2.3. Claims**

A written demand or written assertion by one of the Parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or in relation to this Contract.

### **2.4. Clause**

A provision of the Special or General Provisions of this Contract.

### **2.5. Codification Authority**

The National Codification Bureau (NCB) or authorised agency of the country in which the Work is produced.

### **2.6. Commercial Off-the-Shelf Items (COTS)**

The term “Commercially Off-the-Shelf Item (COTS)” means any item that:

- is a commercial item, customarily used by the general public, that has been sold, leased, or licensed to the general public or has been offered

for sale, lease or license to the general public;

- is sold in substantial quantities in the commercial marketplace; and
- is offered to the Purchaser, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

## **2.7. Component**

A part or combination of parts, having a specific function, which can be installed or replaced only as an entity.

## **2.8. Contractor Background IPR**

Any IPR owned by the Contractor or licensed by a third party to the Contractor which is not created in relation to or as the result of work undertaken for any purpose contemplated by the Contract and which is needed for the performance of the Contract or for the exploitation of Foreground IPR.

## **2.9. Correction**

Elimination of a Defect.

## **2.10. Contract**

The agreement concluded between the Purchaser and Contractor, duly signed by both contracting parties. The Contract includes the documents referred to in Clause 1 (Order of Preference).

## **2.11. Contracting Authority**

The General Manager of the NCI Agency, the Director of Acquisition, the Chief of Contracts of the NCI Agency or the authorised representatives of the Chief of Contracts of the NCI Agency.

## **2.12. Contractor**

The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.

## **2.13. Day**

A calendar day

## **2.14. Defect**

Any condition or characteristic in any Work furnished by the Contractor under the Contract that is not in compliance with the requirements of the Contract.

## **2.15. Deliverable**



Any and all goods (including movable and immovable goods) to be delivered pursuant to the terms of this Contract including, without limitation, building, raw materials, components, intermediate Assemblies, Parts, end products, equipment, documentation, data, software.

**2.16. Design Defect**

Defect attributable to incompatibility, unsuitability or erroneous application of theory, drawings or formulae.

**2.17. Effective Date of Contract (or “EDC”)**

The date upon which this Contract is deemed to start. Unless otherwise specified, a Contract enters into force on the date of the last signature of the Contract by the Parties.

**2.18. Failed Component**

A part or combination of parts, having a specific function, which can be installed or replaced only as an entity which ceases to perform in a manner consistent with its intended use and specifications of the Contract.

**2.19. Foreground IPR**

Any IPR created by the Contractor or any subcontractor of the Contractor in the course of or as the result of work undertaken for any purpose contemplated by the Contract.

**2.20. IPR**

Any intellectual property rights of any qualification irrespective of their stage of development or finalisation, including but not limited to patents, trademarks (registered or not), designs and models (registered or not) and applications for the same, copyright (including on computer software), rights in databases, know-how, confidential information and rights in records (whether or not stored on computer) which includes technical and other data and documents.

**2.21. Manufacturing Defect**

Defect attributable to improper manufacturing processes, testing or quality control procedures.

**2.22. NATO**

The North Atlantic Treaty Organisation. For the purpose of this contract, the term NATO includes NATO bodies, agencies, NATO nations and non-NATO nations to the extent that non-NATO nations are engaged in NATO Purposes.

**2.23. NCI AGENCY (NCIA)**

The NATO Communications and Information Agency. The NCIA is part of the NCIO. The General Manager of the Agency is authorised to enter into contracts on behalf of the NCI Organisation.

## **2.24. NATO COMMUNICATIONS AND INFORMATION ORGANISATION (NCIO)**

The NATO Communications and Information Organisation. The NCI Organisation constitutes an integral part of the North Atlantic Treaty Organisation (NATO). The NCI Organisation is the legal personality from whence flows the authority of its agent, the NCI Agency, to enter into contracts.

## **2.25. NATO Purposes**

Activities conducted by or on behalf of NATO to promote the common defence and common interests of NATO, such as, among others, NATO operations, NATO procurement, NATO training and NATO maintenance.

## **2.26. Part**

An item of an assembly or sub-assembly, which is not normally further broken down.

## **2.27. Participating Country**

A NATO member country that participates in financing the effort.

## **2.28. Parties**

The Contracting Parties to this Contract, i.e., the Purchaser and the Contractor.

## **2.29. Purchaser**

The NCI Organisation, as represented by the General Manager, NCI Agency. The Purchaser is the legal entity who awards and administers the Contract on behalf of NATO and stands as one of the Contracting Parties.

## **2.30. Purchaser Background IPR**

Any IPR owned by the Purchaser as of the Effective Date of Contract and which has been developed by, assigned to or licensed to the Purchaser prior to the Effective Date of Contract.

## **2.31. Purchaser Furnished Property**

Any item of equipment, material, document, technical data, information and Software or any other item of property furnished by the Purchaser to the Contractor required or useful for the performance of the Contract. The Purchaser Furnished Property, if any, shall be detailed in the Contract.

**2.32. Software (Computer Software)**

A computer program comprising a series of instructions, rules, routines regardless of the media in which it is recorded, that allows or cause a computer to perform a specific operation or a series of operations.

**2.33. Software Defect**

Any condition or characteristic of Software that does not conform with the requirements of the Contract.

**2.34. Sub-Assembly**

A portion of an Assembly consisting of two or more parts that can be provisioned and replaced as an entity. The definition purposely excludes Components and/or Parts.

**2.35. Sub-contract**

Any agreement made by the Contractor with any third party in order to fulfil any part of the obligations under this Contract. Sub-contracts may be in any legal binding form, *e.g.*, contract, purchase order, etc.

**2.36. Sub-contractor**

Any person or legal entity directly or indirectly under Sub-contract to the Contractor in performance of this Contract.

**2.37. Third Party IPR**

Any IPR owned by a third party not being the Purchaser or the Contractor or its Subcontractor, which is needed for the performance of the Contract or for the exploitation of Foreground IPR. This includes, for example, third party software, including open source software.

**2.38. Work**

Any deliverable, project design, labour or any service or any other activity to be performed by the Contractor under the terms of this Contract.

**3. AUTHORITY**

3.1. All binding contractual instruments and changes, including amendments, additions or deletions, as well as interpretation of and instructions issued pursuant to this Contract shall be valid only when issued in writing by the Purchaser and signed by the Contracting Authority only.

3.2. No direction which may be received from any person employed by the

Purchaser or a third party shall be considered as grounds for deviation from any of the terms, conditions, specifications or requirements of this Contract except as such direction may be contained in an authorised amendment to this Contract or instruction duly issued and executed by the Contracting Authority. Constructive change may not be invoked by the Contractor as a basis for Claims under this Contract.

- 3.3. The entire agreement between the Parties is contained in this Contract and is not affected by any oral understanding or representation, whether made previously to or subsequently to this Contract.
- 3.4. Personal notes, signed minutes of meetings, comments to delivered documentation and letters, e-mails and informal messages from project or other Purchaser staff which may indicate the intent and willingness to make changes to the Contract, do not implement the change to the Contract and shall not be used as a basis for claiming change to the Contract by the Contractor.

#### **4. APPROVAL AND ACCEPTANCE OF CONTRACT TERMS**

- 4.1. By his signature of the Contract, the Contractor certifies that he has read and unreservedly accepts and approves of all terms and conditions, specifications, plans, drawings and other documents which form part of and/or are relevant to the Contract. The Contractor further agrees that the terms of the Contract take precedence over any proposals or prior commitments made by the Contractor in order to secure the Contract. Contractor also hereby waives any and all rights to invoke any of the Contractor's general and special terms and conditions of sales and/or supply.

#### **5. LANGUAGE**

- 5.1. All written correspondence, reports, documentation and text of drawings delivered to the Purchaser by the Contractor shall be in the English language.

#### **6. AUTHORISATION TO PERFORM/CONFORMANCE TO NATIONAL LAWS AND REGULATIONS**

- 6.1. The Contractor warrants that he and his Sub-contractors are duly authorised to operate and do business in the country or countries in which this Contract is to be performed and that he and his Sub-contractors have obtained or will obtain all necessary licences and permits required in connection with the Contract. No claim for additional monies with respect to any costs or delay to obtain the authorisations to perform shall be made by the Contractor.
- 6.2. The Contractor acknowledges that he and his Sub-contractors are responsible during the performance of this Contract for ascertaining and complying with all applicable laws and regulations, including without limitation: labour standards, environmental laws, health and safety regulations and export controls laws and regulations in effect at the time of Contract signature or scheduled to go into effect during Contract performance. Failure to fully ascertain and comply with such laws, regulations or standards shall not be the basis for claims for

change to the specifications, terms, conditions or monetary value of this Contract.

**7. FIRM FIXED PRICE CONTRACT**

- 7.1. This is a Firm Fixed Price Contract. The Firm Fixed Price of this Contract is as stated on the signature page of the Contract or any amendments thereto. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as may be authorised under certain provisions of this Contract.

**8. PERFORMANCE GUARANTEE**

- 8.1. As a guarantee of performance under the Contract, the Contractor shall deposit with the Purchaser within thirty (30) calendar days from the Effective Date of Contract a bank guarantee (the "Performance Guarantee") denominated in the currency of the Contract, to the value of ten per cent (10%) of the total Contract price.
- 8.2. The Performance Guarantee, the negotiability of which shall not elapse before the expiration of the warranty period, or such other period as may be specified in the Contract, shall be made payable to the Purchaser and shall be in the form of certified cheques or a Standby Letter of Credit subject to the agreement of the Purchaser. In the case of a Standby Letter of Credit, payment shall be made to the Purchaser without question and upon first demand by the Purchaser against a certificate from the Purchaser's Contracting Authority that the Contractor has not fulfilled its obligations under the Contract. The Contractor shall have no right to enjoin or delay such payment.
- 8.3. Certified Cheques issued to fulfil the requirements of the Performance Guarantee will be cashed by the Purchaser upon receipt and held in the Purchaser's account until the term of the Performance Guarantee has expired.
- 8.4. The standby letter of credit shall be subject to Belgian Law and shall be issued by (i) a Belgian bank, (ii) the Belgian subsidiary of a foreign bank licensed to provide financial services in Belgium; or (iii) an insurance company licensed to do business in Belgium and belonging to a Belgian banking institution provided the banking institution guarantees explicitly the demand for payment, unless otherwise specified by the Purchaser.
- 8.5. The Contractor shall request in writing relief from the Performance Guarantee upon expiration of the warranty period or such other period as may be specified in the Contract and such relief may be granted by the Purchaser.
- 8.6. The Contractor shall be responsible, as a result of duly authorised adjustments in the total contract price and/or period of performance by the Purchaser, for obtaining a commensurate extension and increase in the Performance Guarantee, the value of which shall not be less than ten per cent (10%) of the total contract price (including all amendments), and for depositing such

guarantee with the Purchaser, within thirty (30) calendar days from the effective date of aforesaid duly authorised adjustment.

- 8.7. The failure of the Contractor to deposit and maintain such Performance Guarantee with the Purchaser within the specified time frame, or any extension thereto granted by the Purchaser's Contracting Authority, is a material breach of the Contract terms and conditions subject to the provisions of the Contract regarding Termination for Default.
- 8.8. The rights and remedies provided to the Purchaser under the present Clause are in addition to any other rights and remedies provided by law or under this Contract. The certificate described in Clause 8.2 above shall not be regarded as a Termination for Default and this Clause is in addition to and separate from the Clause of the Contract detailing termination for default.
- 8.9. If the Contractor elects to post the Performance Guarantee by Standby Letter of Credit, the form of the document shall be substantially as follows:

**PERFORMANCE GUARANTEE STANDBY LETTER OF CREDIT**

Standby Letter of Credit Number: \_\_\_\_\_

Issue Date: \_\_\_\_\_

Initial Expiry Date: \_\_\_\_\_

Final Expiry Date: \_\_\_\_\_

Beneficiary: NCI Agency, Financial Management,  
Boulevard Leopold III, B-1110, Brussels  
Belgium

1. We hereby establish in your favour our irrevocable standby letter of credit number {number} by order and for the account of (NAME AND ADDRESS OF CONTRACTOR) in the amount of \_\_\_\_\_ We are advised this undertaking represents fulfilment by (NAME OF CONTRACTOR) of certain performance requirements under Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between the NCI Agency ("NCIA and (NAME OF CONTRACTOR).
2. We hereby engage with you that drafts drawn under and in compliance with the terms of this letter of credit will be duly honoured upon presentation of documents to us on or before the expiration date of this letter of credit.
3. Funds under this letter of credit are available to you without question or delay against presentation of a certificate signed by the NCI Agency Contracting Officer which states:

“(NAME OF CONTRACTOR) has not fulfilled its obligations under Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between NCI Agency and (NAME OF CONTRACTOR) (herein called the

“Contract”), and the NCI Agency, as beneficiary, hereby draws on the standby letter of credit number \_\_\_\_\_ in the amount denominated in the currency of the Contract, Amount up to the maximum available under the LOC, such funds to be transferred to the account of the Beneficiary number \_\_\_\_\_ (to be identified when certificate is presented).”

Such certificate shall be accompanied by the original of this letter of credit.

4. This Letter of Credit is effective the date hereof and shall expire at our office located at \_\_\_\_\_ (Bank Address) \_\_\_\_\_ on \_\_\_\_\_. All demands for payment must be made prior to the expiry date.
5. It is a condition of this letter of credit that the expiry date will be automatically extended without amendment for a period of one (1) year from the current or any successive expiry date unless at least 90 (ninety) calendar days prior to the then current expiry date we notify you by registered mail and notify (NAME OF CONTRACTOR) that we elect not to extend this letter of credit for such additional period. However, under no circumstances will the expiry date extend beyond \_\_\_\_\_ (“Final Expiry Date”) without amendment.
6. We may terminate this letter of credit at any time upon 90 (ninety) calendar days notice furnished to both (NAME OF CONTRACTOR) and the NCI Agency by registered mail.
7. In the event we (the issuing bank) notify you that we elect not to extend the expiry date in accordance with paragraph 6 above, or, at any time, to terminate the letter of credit, funds under this credit will be available to you without question or delay against presentation of a certificate signed by the NCI Agency Contracting Officer which states:

“The NCI Agency has been notified by {issuing bank} of its election not to automatically extend the expiry date of letter of credit number {number} dated {date} pursuant to the automatic renewal clause (or to terminate the letter of credit). As of the date of this certificate, no suitable replacement letter of credit, or equivalent financial guarantee has been received by the NCI Agency from, or on behalf of (NAME OF CONTRACTOR). (NAME OF CONTRACTOR) has, therefore, not fulfilled its obligations under Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between NCI Agency and (NAME OF CONTRACTOR), and the NCI Agency, as beneficiary, hereby draws on the standby letter of credit number \_\_\_\_\_ in the amount of (Amount up to the maximum available under the LOC), such funds to be transferred to the account of the Beneficiary number \_\_\_\_\_ (to be identified when certificate is presented).”

Such certificate shall be accompanied by the original of this letter of credit and a copy of the letter from the issuing bank that it elects not to automatically extend the standby letter of credit, or terminating the letter of credit.

8. The Beneficiary may not present the certificate described in paragraph 7 above until 20 (twenty) calendar days prior to a) the date of expiration of the letter of credit should {issuing bank} elect not to automatically extend the expiration date of the letter of credit, b) the date of termination of the letter of credit if {issuing bank} notifies the Beneficiary that the letter of credit is to be terminated in accordance with paragraph 6 above.
9. Multiple partial drawings are allowed to the maximum value of the standby letter of credit.
10. This letter of credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, or amplified by reference to any document, instrument, or agreement referred to herein (except the International Standby Practices (ISP 98) hereinafter defined) or in which this letter of credit is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.
11. This Letter of Credit is subject to The International Standby Practices-ISP98 (1998 Publication) International Chamber of Commerce Publication No.590.

## **9. PARTICIPATING COUNTRIES**

- 9.1. Unless prior written authorisation of the Purchaser has been obtained, none of the Work, shall be performed other than by firms from and within NATO Participating Countries. Unless otherwise specified in the Contract Special Provisions, the Participating Countries are the twenty-eight (28) Member Nations of the North Atlantic Treaty Organisation.
- 9.2. Unless prior written authorisation of the Purchaser has been obtained, no material or items of equipment down to and including identifiable Sub-Assemblies shall be manufactured or assembled by a firm other than from and within a NATO Participating Country.
- 9.3. The Contractor shall not place any Sub-contracts outside the NATO Participating Countries without the prior written authorisation of the Purchaser.
- 9.4. Unless prior written authorisation of the Purchaser has been obtained, the intellectual property rights for all software and documentation incorporated by the Contractor and/or its Sub-contractors into the Work shall vest with persons or legal entities from and within NATO participating nations and no royalties or licence fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a NATO participating nation.
- 9.5. Any modification in the nationality, ownership and/or change of control of the Contractor and/or its Sub-contractor(s) shall be immediately notified in writing to the Purchaser with all necessary details to allow the Purchaser to determine whether or not the Contractor and/or its Sub-contractors continue to comply with the Clauses above. Non-compliance with the Clauses above, by the Contractor and/or its Subcontractor may constitute ground for termination of



this Contract under Clause 39 (Termination for Default).

## **10. SUB-CONTRACTS**

- 10.1. The Contractor shall place and be responsible for the administration and performance of all Sub-contracts including terms and conditions which he deems necessary to meet the requirements of this Contract in full.
- 10.2. Prior to the Sub-contractors being given access to any classified information, the Contractor shall ensure that any Sub-contractor that has a need to access classified information for the performance of any part of this Contract has been granted the appropriate facility and personnel security clearances by the Sub-contractor's national authorities and that such clearances are still in effect at the time the information is disclosed and remains in effect throughout the performance of the work to be carried out under the Sub-contract concerned.
- 10.3. The Contractor shall seek the approval in writing of the Purchaser prior to the placing of any Sub-contract if:
  - 10.3.1. the Sub-contract was not part of the Contractor's original proposal; and
  - 10.3.2. the value of the Sub-contract is known or estimated to exceed 15 per cent of the total Contract value; or
  - 10.3.3. the Sub-contract is one of a number of Sub-contracts with a single Sub-contractor for the same or related Work under this Contract that in the aggregate are known or expected to exceed 15 per cent of the total Contract value.
- 10.4. The Contractor shall inform the Purchaser of any change in Sub-contractors for Sub-contracts of a value known or estimated to exceed 15 per cent of the total Contract value.
- 10.5. The Contractor shall submit a copy of any such proposed Sub-contract when seeking approval to the Contracting Authority but such approval by the Contracting Authority shall in no way relieve the Contractor of his responsibilities to fully achieve the contractual and technical requirements of this Contract.
- 10.6. The Contractor shall, as far as practicable, select Sub-contractors on a competitive basis consistent with the objectives and requirements of the Contract.

## **11. SECURITY**

- 11.1. The Contractor shall comply with all security measures as are prescribed by the Purchaser and the national security authority or designated security agency of each of the NATO countries in which the Contract is being performed. The Contractor shall be responsible for the safeguarding of

classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of the Contract.

11.2. In particular the Contractor undertakes to:

- 11.2.1. appoint an official responsible for supervising and directing security measures in relation to the Contract and communicating details of such measures to the Purchaser on request;
- 11.2.2. maintain, preferably through the official responsible for security measures, a continuing relationship with the national security authority or designated security agency charged with ensuring that all NATO classified information involved in the Contract is properly safeguarded;
- 11.2.3. abstain from copying by any means, without the authorisation of the Purchaser, the national security authority or designated security agency, any classified documents, plans, photographs or other classified material entrusted to him;
- 11.2.4. furnish, on request, information to the national security authority or designated security agency pertaining to all persons who will be required to have access to NATO classified information;
- 11.2.5. maintain at the work site a current record of his employees at the site who have been cleared for access to NATO classified information. The record should show the date of issue, the date of expiration and the level of clearance;
- 11.2.6. deny access to NATO classified information to any person other than those persons authorised to have such access by the national security authority or designated security agency;
- 11.2.7. limit the dissemination of NATO classified information to the smallest number of persons ("need to know basis") as is consistent with the proper execution of the Contract;
- 11.2.8. comply with any request from the national security authority or designated security agency that persons entrusted with NATO classified information sign a statement undertaking to safeguard that information and signifying their understanding both of their obligations under national legislation affecting the safeguarding of classified information, and of their comparable obligations under the laws of the other NATO nations in which they may have access to classified information;
- 11.2.9. report to the national security authority or designated security agency any breaches, suspected breaches of security, suspected sabotage, or other matters of security significance which would include any changes that may occur in the ownership, control or management of the facility or any changes that affect the security arrangements and security status of the facility and to make such other reports as may

be required by the national security authority or designated security agency, e.g. reports on the holdings of NATO classified material;

- 11.2.10. apply to the Purchaser for approval before Sub-contracting any part of the work, if the Sub-contract would involve that the Sub-contractor would have access to NATO classified information, and to place the Sub-contractor under appropriate security obligations no less stringent than those applied to his own contract;
- 11.2.11. undertake not to utilise, other than for the specific purpose of the Contract, without the prior written permission of the Purchaser or his authorised representative, any NATO classified information furnished to him, including all reproductions thereof in connection with the Contract, and to return all NATO classified information referred to above as well as that developed in connection with the Contract, unless such information has been destroyed, or its retention has been duly authorised with the approval of the Purchaser. Such NATO classified information will be returned at such time as the Purchaser or his authorised representative may direct;
- 11.2.12. classify any produced document with the highest classification of the NATO classified information disclosed in that document.

## **12. RELEASE OF INFORMATION**

- 12.1. Except as otherwise specified elsewhere in the Contract and to the extent that it is demonstratively unavoidable and without prejudice to the Clause 11 (Security), the Contractor and/or his employees shall not, without prior authorisation from the Purchaser, release to third parties any information pertaining to this Contract, its subject matter, performance there under or any other aspect thereof.
- 12.2. The Contractor shall seek the prior written approval of the Purchaser before publishing any press release or disclosing any other information, orally or in writing, in relation to the Contract. The approval of the Purchaser shall be required for both the opportunity and the content of the information.
- 12.3. This provision shall remain in effect after the termination of the Contract and shall cease to apply to any particular piece of information once that information becomes public knowledge other than through an act, default or omission of the Contractor or its Sub-contractors.

## **13. PURCHASER FURNISHED PROPERTY**

- 13.1. The Purchaser shall deliver to the Contractor, for use only in connection with this Contract, the Purchaser Furnished Property at the times and locations stated in the Contract. In the event that Purchaser Furnished Property is not delivered by such time or times stated in the Schedule, or if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates the Purchaser shall, upon timely written request made by the

Contractor, and if the facts warrant such action, equitably adjust any affected provision of this Contract pursuant to Clause 16 (Changes).

- 13.2. In the event that Purchaser Furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall immediately notify the Purchaser. The Purchaser shall within a reasonable time of receipt of such notice replace, re-issue, authorise repair or otherwise issue instructions for the disposal of Purchaser Furnished Property agreed to be unsuitable. The Purchaser shall, upon timely written request of the Contractor, equitably adjust any affected provision of this Contract pursuant to Clause 16 (Changes).
- 13.3. Title to Purchaser Furnished Property will remain in the Purchaser. The Contractor shall maintain adequate property control records of Purchaser Furnished Property in accordance with sound industrial practice and security regulations.
- 13.4. Unless otherwise provided in this Contract, the Contractor, upon delivery to him of any Purchaser Furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereof except for reasonable wear and tear, and except to the extent that Purchaser Furnished Property is consumed in the performance of this Contract.
- 13.5. Upon completion of this Contract, or at such earlier dates as may be specified by the Purchaser, the Contractor shall submit, in a form acceptable to the Purchaser, inventory schedules covering all items of Purchaser Furnished Property.
- 13.6. The inventory shall note whether:
  - 13.6.1. The property was consumed or incorporated in fabrication of final deliverable(s);
  - 13.6.2. The property was otherwise destroyed;
  - 13.6.3. The property remains in possession of the Contractor;
  - 13.6.4. The property was previously returned
- 13.7. The Contractor shall prepare for shipment, deliver DDP at a destination agreed with the Purchaser, or otherwise dispose of Purchaser Furnished Property as may be directed or authorised by the Purchaser. The net proceeds of any such disposal shall be credited to the Contract price or paid to the Purchaser in such other manner as the Purchaser may direct.
- 13.8. The Contractor shall not modify any Purchaser Furnished Property unless specifically authorised by the Purchaser or directed by the terms of the Contract.
- 13.9. The Contractor shall indemnify and hold the Purchaser harmless against claims for injury to persons or damages to property of the Contractor or others

arising from the Contractor's possession or use of the Purchaser Furnished Property. The Contractor shall indemnify the Purchaser for damages caused by the Contractor to the Purchaser, its property and staff and arising out of the Contractor's use of the Purchaser Furnished Property.

**14. CONTRACTOR'S PERSONNEL WORKING AT PURCHASER'S FACILITIES**

- 14.1. The term "Purchaser Facilities" as used in this Clause shall be deemed to include sites, property, utilities, ships or vessels and the term "Facility Representative" shall be deemed to refer to the authority designated by the Purchaser responsible for the site, property, utility, ship or vessel.
- 14.2. The Facility Representative shall provide such available administrative and technical facilities for Contractor's personnel working at Purchaser's Facilities for the purpose of the Contract as in the opinion of the Facility Representative may be necessary for the effective and economical discharge of Work. The Facility Representative shall also determine whether these facilities will be provided free of charge to the Contractor or determine what charges are payable. The Contractor shall have no claim against the Purchaser for any such additional cost or delay or any additional cost or delay occasioned by the closure for holidays of said facilities, or other reasons, where this is generally published or made known to the Contractor by the Purchaser or his authorised representatives.
- 14.3. The Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Purchaser, pay compensation for all damage occurring to any Purchaser's Facilities occasioned by the Contractor, his servants, agents or Sub-contractors, arising from his or their presence and activities in, and use of, the Purchaser's Facilities; provided that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to, by his neglect, or default or the neglect or default of his servants, agents or Sub-contractors, or by any circumstances within his or their control.
- 14.4. All property of the Contractor while at a Purchaser Facility shall be at the risk of the Contractor, and the Purchaser shall accept no liability for any loss or damage, except to the extent that any loss or damage is the result of a wilful act or gross negligence on the part of the Purchaser's employees or agents.

**15. HEALTH, SAFETY AND ACCIDENT PREVENTION**

- 15.1. If the Purchaser notifies the Contractor in writing of any non-compliance in the performance of this Contract with safety and health rules and requirements prescribed on the date of this Contract by applicable national or local laws, ordinances and codes, and the Contractor fails to take immediate corrective action, the Purchaser may order the Contractor to stop all or part of the Work until satisfactory corrective action has been taken. Such an order shall not

entitle the Contractor to an adjustment of the Contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule.

## **16. CHANGES**

- 16.1. The Purchaser may at any time, by written order of the Contracting Authority designated or indicated to be a change order (“Change Order”) make changes within the general scope of this Contract, including, without limitation, in any one or more of the following:
  - 16.1.1. Specifications (including drawings and designs);
  - 16.1.2. Method and manner of performance of the work, including engineering standards, quality assurance and configuration management procedures;
  - 16.1.3. Marking and method of shipment and packing;
  - 16.1.4. Place of delivery;
  - 16.1.5. Amount, availability and condition of Purchaser Furnished Property.
- 16.2. The Purchaser shall submit a proposal for Contract amendment describing the change to the Contract.
- 16.3. If any such Change Order causes an increase in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Contractor shall submit a written proposal for adjustment to the Purchaser describing the general nature and amount of the proposal for adjustment. The Contractor shall submit this proposal for adjustment within thirty (30) days after receipt of a written Change Order under 16.1 above unless this period is extended by the Purchaser.
- 16.4. If any such Change Order causes a decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Purchaser shall submit a proposal for adjustment within thirty (30) days from the issuance of the Change Order by submitting to the Contractor a written statement describing the general nature and amount of the proposal for adjustment.
- 16.5. Where the cost of property made obsolete or in excess as a result of a change is included in the Contractor's claim for adjustment, the Purchaser shall have the right to prescribe the manner of disposition of such property.
- 16.6. The Purchaser reserves the right to reject the introduction of the change, after the evaluation of the change proposal, even if the Purchaser initiated such change.

- 16.7. Failure to agree to any requested adjustment shall be a dispute within the meaning of the Clause 41 (Disputes). However, nothing in this Clause shall excuse the Contractor from proceeding with the Contract as changed.
- 16.8. No proposal for adjustment by the Contractor for an equitable adjustment shall be allowed if asserted after final payment and acceptance under this Contract.
- 16.9. Any other written or oral order (which, as used in this paragraph includes direction, instruction, interpretation, or determination) from the Purchaser that causes a change shall be treated as a Change Order under this Clause, provided, that the Contractor gives the Purchaser a written notice within thirty (30) Days after receipt of such order stating (i) the date, circumstances, and source of the order; (ii) that the Contractor regards the order as a Change Order; and (iii) a detailed cost and time analysis of the impact of the change, and that the Order is accepted in writing by the Purchaser as a Change Order. The timely written notice requirement, as detailed above, remains in force in all cases, even where, for example, the Purchaser has positive knowledge of the relevant facts.
- 16.10. All tasks and activities carried out by the Contractor in relation to the processing of the Change Order or in relation to this Clause shall form part of the Contractor's routine work and cannot be charged as additional work.

**17. STOP WORK ORDER**

- 17.1. The Purchaser may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work called for by this Contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the Parties may agree.
- 17.2. Any such stop work order shall be specifically identified as a stop work order issued pursuant to this Clause (the "Stop Work Order"). The Stop Work Order may include a description of the Work to be suspended, instructions concerning the Contractor's issuance of further orders for material or services, guidance to the Contractor on actions to be taken on any Sub-contracts and any suggestion to the Contractor for minimizing costs.
- 17.3. Upon receipt of such a Stop Work Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimise costs incurred allocable to the Work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the Parties shall have agreed, the Purchaser shall either:
- 17.3.1. cancel the Stop Work Order; or
- 17.3.2. terminate the Work covered by such Stop Work Order as provided in Clause 40 (Termination for Convenience of the Purchaser).
- 17.4. If a Stop Work Order issued under this Clause is cancelled or the period of

the Stop Work Order or any extension thereof expires, the Contractor shall resume work.

- 17.5. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract shall be modified in writing accordingly, if:
- 17.5.1. the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract, and
  - 17.5.2. the Contractor asserts a Claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Purchaser decides the facts justify such action, he may receive and act upon any such claim asserted at a later date but prior to final payment under this Contract.
- 17.6. If a Stop Work Order is not cancelled and the Work covered by such Stop Work Order is terminated for the convenience of the Purchaser the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement.

**18. CLAIMS**

- 18.1. The Contractor shall specifically identify the Contract Clause(s) under which the Claim(s) is/are based.
- 18.2. Claims shall be specifically identified as such and submitted:
- 18.2.1. within the time specified in the Clause under which the Contractor alleges to have a Claim. If no time is specified in the Clause under which the Contractor intends to base his Claim, the time limit shall be sixty (60) days from the date the Contractor has knowledge or should have had knowledge of the facts on which he bases his Claim; and
  - 18.2.2. before final payment, pursuant to and with the exceptions specified in Clause 33 of these General Provisions entitled "Release from Claims".
  - 18.2.3. Section 18.2.2 above shall only apply to those Claims for which the Contractor could not have had earlier knowledge and were not foreseeable.
- 18.3. The Contractor shall be foreclosed from his Claim unless he presents complete documentary evidence, justification and costs for each of his Claims within ninety (90) calendar days from the assertion date of such Claims. Claims shall be supported by specifically identified evidence (including applicable historical and planned cost and production data from the Contractor's books and records). Opinions, conclusions or judgmental assertions not supported by such evidence will be rejected by the Purchaser.
- 18.4. An individual breakdown of cost is required for each element of Contractor's Claims at the time of claim submission or for any material revision of the Claim.



- 18.5. The Contractor shall present, at the time of submission of a Claim, an attestation as follows:

I .....the responsible senior company official authorised to commit the ..... with respect to its claims dated ..... being duly sworn, do hereby depose and say that: (i) the facts described in the claim are current, complete and accurate; and (ii) the conclusions in the claim accurately reflect the material damages or contract adjustments for which the Purchaser is allegedly liable.

.....

.....

SIGNATURE

Date

- 18.6. Failure to comply with any of the above requirements shall result in automatic foreclosure of the Claim. This foreclosure takes effect in all cases and also where, for example, the Claim is based on additional orders, where the facts are known to the Purchaser, where the Claim is based on defective specifications of the Purchaser or an alleged negligence in the pre-contractual stage.
- 18.7. Claims submitted by the Contractor will be reviewed by the Contracting Authority. The Contracting Authority will respond within sixty (60) days with a preliminary decision, based on an assessment and evaluation of the facts presented by the Parties, as to whether the Contracting Authority considers the Claim to have merit for consideration. If the preliminary decision of the Contracting Authority is that the Claim, as submitted is without merit, the Contractor shall have fourteen (14) days to present a rebuttal to the Contracting Authority and request reconsideration of the Contracting Authority's decision. Within thirty (30) days receipt of the Contractor's request for reconsideration, the Contracting Authority will issue a decision. The time requirements stated herein may be extended by the Contracting Authority in order to accommodate additional preparation efforts and fact finding discussions but the Contracting Authority may not unreasonable extend such a period. A decision that the submitted claim is without merit will be identified as such, will be issued in writing by the Contracting Authority and will be conclusive. A decision may only be challenged by the Contractor through the Disputes provisions described herein.
- 18.8. A decision by the Purchaser that the claim has merit will result in a Contracting Authority request to enter into negotiations with the Contractor to arrive at a mutually agreed fair and equitable settlement. The Contracting Authority's decision will contain a target date for the commencement and conclusion of

such operations. If the Parties are unable to arrive at an agreement on a fair and reasonable settlement by the target date for conclusion, or any extension thereto made by the Contracting Authority, the latter may declare that negotiations are at an impasse and issue a preliminary decision as to the fair and reasonable settlement and the reasons supporting this decision. The Contractor shall have a period of thirty (30) days to present a rebuttal to the Contracting Authority and request reconsideration of the Contracting Authority's decision. Within sixty (60) days of receipt of the Contractor's request for reconsideration, the Contracting Authority will issue its decision on the request for reconsideration. This timeframe will be respected unless an authorisation is needed from a NATO or other authority, the schedule for which is beyond the Contracting Authority's control. A decision of the Contracting Authority on the reconsideration of the matter will be identified as such, will be issued in writing by the Contracting Authority and will be conclusive. A decision on the reconsideration may only be challenged by the Contractor through the Disputes provisions described herein.

- 18.9. No Claim arising under this Contract may be assigned by the Contractor without prior approval of the Purchaser.
- 18.10. The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim appeal, or action arising under the Contract, and comply with any decision of the Contracting Authority.

**19. PRICING OF CHANGES, AMENDMENTS AND CLAIMS**

- 19.1. Contractor's pricing proposals for Changes, amendments and Claims shall be priced in accordance with the Purchaser's Pricing Principles (Annex 1 hereto and the sample spreadsheet and its "Instructions to Complete" at Appendix 1) or the national government pricing rules and regulations for the Contractor's own country, where in force. The Contractor shall provide cost information accompanied by appropriate substantiation as required by the Purchaser in accordance with Purchaser's Pricing Principles, or such other format as may be agreed between the Contractor and the Purchaser.
- 19.2. With respect to Clause 19.1 above, when the price or price adjustment is based on adequate price competition, established catalogue or market price of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contractor shall be responsible for substantiation of such cases to the satisfaction of the Purchaser.
- 19.3. For the purposes of verifying that the cost or pricing data submitted in conjunction with Clause 19.1 above are accurate, complete and current, the Purchaser or any Purchaser authorised representative shall have the right of access to the Contractor's facilities to examine, until the expiration of three (3) years from the date of final payment of all sums due under the Contract:
- 19.3.1. those books, records, documents and other supporting data which will permit adequate evaluation and verification of the cost or pricing data submitted; and/or
- 19.3.2. the computations and projections which were available to the

Contractor as of the date of the Contractor price proposal.

- 19.4. The Contractor, subject to the provisions of this Clause, shall require Sub-contractors to provide to the Purchaser, either directly or indirectly:

- 19.4.1. cost or pricing data;
- 19.4.2. access to Sub-contractor's facilities and records for the purposes of verification of such cost or pricing data; and
- 19.4.3. a Certificate of Current Cost or Pricing Data, when required.

- 19.5. If any price, including profit, negotiated in connection with this Contract was proposed, taking any of the following into account: :

- 19.5.1. the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data provided in accordance with Clause 19.6 below;
- 19.5.2. a Sub-contractor, pursuant to Clause 19.4 above or any Sub-contract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the Sub-contractor's Certificate of Current Cost or Pricing Data;
- 19.5.3. a Sub-contractor or prospective Sub-contractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a Sub-contract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- 19.5.4. the Contractor or a Sub-contractor or prospective Sub-contractor furnished any data, not within 19.5.1 through 19.5.3 above, which, as submitted, was not complete, accurate and current;

then the price and/or cost shall be adjusted accordingly and the Contract shall be modified in writing as may be necessary to reflect such.

- 19.6. At the time of negotiating any price, including profit, which is based upon the submission of cost or pricing data by the Contractor, the Contractor shall be required to submit a certificate of current cost or pricing data ("Certificate").

- 19.6.1. Such Certificates will certify that, to the best of the Contractor's knowledge and belief, cost or pricing data submitted to the Purchaser in support of any proposal for a price, price adjustment or claim, are accurate, complete and current, as per the completion of the negotiations or, in the case of a claim, as per the submission date of the claim.
- 19.6.2. All such Certificates shall be in the format shown below and shall be dated and signed by a responsible officer of the company:

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that cost or pricing data as submitted, either actually or by specific identification in writing to the Purchaser or his representative in support of.....(*Claim, Amendment, ECP#, etc.*) are accurate, complete and current as of .....(*Date*).

By submitting the price proposal, the Contractor/sub-Contractor or prospective sub-Contractor grant the Purchaser or his authorized representative(s) the right to examine those records, data and supporting information, used as a basis for the pricing submitted.

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*Name of Company*

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*Signature*

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*Printed Name of Signatory*

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*Title of Signatory*

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*Date of Signature*

19.6.3. The Contractor shall insert the substance of this Clause 19.7 in each Sub-contract.

- 19.7. For all additional or follow-up agreements which are made for Work which are furnished to the Purchaser without competition, the Contractor shall offer prices on a "Preferred Customer" basis, that is offer prices which are as favourable as those extended to any Government, Agency, Company, Organisation or individual purchasing or handling like quantities of equipment and/or Parts covered by the Contract under similar conditions. In the event that prior to completing delivery under this Contract the Contractor offers any of such items in substantially similar quantities to any customer at prices

lower than those set forth herein, the Contractor shall so notify the Purchaser and the prices of such items shall be correspondingly reduced by a supplement to this Contract. Price in this sense means "Base Price" prior to applying any bonus, export tax reduction, turn-over tax exemptions and other reductions based on National Policies.

## **20. NOTICE OF SHIPMENT AND DELIVERY**

- 20.1. Except as may be specified in the Special Contract Provisions, delivery of all items under this Contract shall be made by the Contractor on the basis of "Delivery Duty Paid" (DDP) as defined by the INCOTERMS 2000 (International Chamber of Commerce Publication No. 560). It shall be noted, however, that because the Purchaser is exempted from direct taxes and duty as set forth in Clause 26 (Taxes and Duties), there is no duty to be paid by the Contractor.
- 20.2. "Delivery" of required Work by the Contractor does not constitute "Acceptance" by the Purchaser for purposes of meeting the requirements of the Contract Schedule where Purchaser acceptance is the stated payment or schedule milestone.
- 20.3. Thirty (30) Days, or such other period as specified in the Contract, prior to the delivery of any shipment of Work, the Contractor shall give prepaid notice of shipment to the Purchaser. The Notice of Shipment shall contain, as appropriate, the request for customs form 302, or equivalent document, which shall enable any carrier to conduct duty free import/export clearance through customs for the Purchaser on behalf of NATO.
- 20.4. The customs form 302 is an official customs clearance declaration issued in advance of shipment by the Purchaser to provide certified information as to the duty free import, export, or transit of NATO consignments between NATO countries.
- 20.5. The Notice of Shipment and request for Form 302 or equivalent document shall contain the following information:
  - 20.5.1. Purchaser's Contract number;
  - 20.5.2. Contract item number, designation and quantities;
  - 20.5.3. destination;
  - 20.5.4. number and description of the packages (gross and net weight);
  - 20.5.5. description of the goods and their value (for custom purpose only, not commercial value)
  - 20.5.6. consignor's name and address;
  - 20.5.7. consignee's name and address;
  - 20.5.8. method of shipment (i.e. road, rail, sea, air, etc.);
  - 20.5.9. name and address of freight forwarder.
- 20.6. Forwarding Agents, Carriers or other responsible organisations shall be

informed by the Contractor of the availability of Form 302 or equivalent document and how the form shall be utilised to avoid the payment of custom duties. Form 302 or equivalent document shall be incorporated in all shipping documents provided to the carrier.

- 20.7. Upon receipt of the Notice of Shipment from the Contractor, the Purchaser may require the Contractor to send copies of the Notice of Shipment to the receiving parties and the Contractor shall comply with this requirement.

## **21. INSPECTION AND ACCEPTANCE OF WORK**

- 21.1. For the purposes of this Clause, Work does not include documentation which is addressed in Clause 22 (Inspection and Acceptance of Documentation) hereafter.
- 21.2. Unless otherwise specifically provided for in the Contract, all Work and all Parts and equipment incorporated in the Work are to be new and of the most suitable grade of their respective kinds for the purpose, notwithstanding the requirements for testing, inspection and performance as required under this Contract. All workmanship shall be as specified under the Contract or, if no workmanship standards are specified, best commercial or “state of the art” complying with relevant (National and International) standards.
- 21.3. All Work may be subject to inspection and test by the Purchaser or his authorised representative(s) to the extent practicable at all times and places prior to Acceptance, including the period of manufacture, or after delivery or as otherwise specified in the Contract. For the purposes of inspection and testing the Purchaser may delegate as his representative the authorised National Quality Assurance Representative (NQAR) in accordance with STANAG 4107.
- 21.4. No representative or NQAR appointed by the Purchaser for the purpose of determining the Contractor's compliance with the technical requirements of the Contract shall have the authority to change any of the specifications. Such changes may only be made by the Contracting Authority in writing in accordance with Clause 16 (Changes).
- 21.5. The presence or absence of an NQAR or other Purchaser representative shall not relieve the Contractor from conforming to the requirements of this Contract.
- 21.6. Acceptance or rejection of the Work shall be made as promptly as practicable after delivery, except as otherwise provided in the Contract. Failure to timely accept or reject the Work shall neither relieve the Contractor from responsibility for such Work nor impose liability on the Purchaser.
- 21.7. In the event that any Work, or lots thereof, or services are defective in design, material, workmanship or manufacturing quality, or as a result of undue wear and tear or otherwise not in conformity with the requirements of this Contract, including any characteristic or condition which is or becomes at variance to the performance specifications, to the intended function of the Work or the function to which it could reasonably be expected that the Work would perform, the Purchaser shall have the right either to reject them (with or

without instructions as to their disposition) or to require their correction or replacement. Work which has been rejected or required to be corrected or replaced shall, at the expense of the Contractor, be removed, or, if permitted or required by the Contracting Authority, corrected in place by the Contractor promptly after notice, and shall not thereafter be tendered for acceptance by the Contractor unless the former rejection or requirement of correction or replacement is withdrawn. If the Contractor fails promptly to remove, replace or correct such Work the Purchaser may either:

21.7.1. by contract or otherwise return, replace or correct such Work or services and charge to the Contractor the cost incurred by the Purchaser; and/or

21.7.2. terminate this Contract for default as provided in Clause 39 (Termination for Default).

- 21.8. When NQAR is not applicable based on the scale of the project, the Purchaser reserves the right to perform inspections through his own staff in accordance with the latest ISO standard at the time of inspection.
- 21.9. Unless the Contractor corrects or replaces such Work within the delivery schedule, the Purchaser may require the delivery of such Work at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute within the meaning of Clause 41 (Disputes).
- 21.10. If any inspection or test is made by the Purchaser's representatives on the premises of the Contractor or Sub-contractor, the Contractor, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Purchaser's representatives in the performance of their duties. The NQAR or other Purchaser representatives shall have the right of access to any area of the Contractor's or his Sub-contractor's premises where any part of the contractual work is being performed.
- 21.11. If Purchaser inspection or test is made at a point other than the premises of the Contractor or Sub-contractor, it shall be at the expense of the Purchaser except as otherwise provided in this Contract; provided, that in case of rejection the Purchaser shall not be liable for any reduction in value of samples used in connection with such inspection or test.
- 21.12. All inspections and tests by the Purchaser shall be performed in such a manner as not to unduly delay the Work.
- 21.13. The Purchaser reserves the right to charge to the Contractor any additional cost of Purchaser inspection and test when Work is not ready at the time such inspection and test is requested by the Contractor or when re-inspection or retest is necessitated by prior rejection.
- 21.14. Acceptance or rejection of the Work shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract, but failure to inspect and accept or reject Work shall neither relieve the Contractor from responsibility for such Work as are not in accordance with the Contract requirements nor impose liability on the Purchaser thereof.

- 21.15. The inspection and test by the Purchaser of any Work or lots thereof, or services, does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements which may be discovered prior to acceptance.
- 21.16. Acceptance of Work shall take place when the Contracting Authority confirms acceptance in writing of the Work in accordance with the procedure specified in the Contract, or if none is so specified then the Contracting Authority shall be deemed to have accepted the Work without prejudice to any other remedies, when and as soon as any of the following events have occurred:
- 21.16.1. the Purchaser has taken the Work into use, except as specifically provided by Clause 23 (Use and Possession Prior to Acceptance);
  - 21.16.2. the Purchaser has not exercised its right of rejection of the Work within any period specified for that purpose in the Contract;
  - 21.16.3. there being no period for exercising the right of rejection specified in the Contract, a reasonable time, all the circumstances having been taken into account, has elapsed since inspection of the Work was effected in accordance with the Contract.
- 21.17. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.
- 21.18. Unless otherwise specified in this Contract, the Contractor shall have or establish, implement and maintain an effective and economical quality control system necessary to satisfy the Contract requirement. The system shall provide for the early and prompt detection of deficiencies, trends and conditions which could result in unsatisfactory quality and for timely and effective corrective action. Objective evidence that the system is effective shall be readily available to the Purchaser and its authorised representatives. Records of all inspection and testing work by the Contractor shall be kept complete and available to the Purchaser's representatives during the performance of this Contract and for such longer periods as may be specified elsewhere in this Contract.

## **22. INSPECTION AND ACCEPTANCE OF DOCUMENTATION**

- 22.1. The Contractor shall provide to the Purchaser a draft version of the required documentation as provided by the Contract Schedule and the Statement of Work. Review of draft documentation under this Contract will be made by the Purchaser upon the delivery of these items by the Contractor. The review will be conducted by the Purchaser through duly authorised representatives.
- 22.2. Upon delivery of the draft documentation, the Purchaser will have a period of review as provided by the Statement of Work. At the end of the review period or before if deemed practical by the Purchaser, the Purchaser's comments will be presented to the Contractor in writing. The substance of such comments will pertain to items of error, non-conformity, omission and guidance in relation



to the requirements of the Statement of Work.

- 22.3. Purchaser Review of the delivered items will emphasise the conformity with the requirements of the Statement of Work, thoroughness of analysis, logical bases of conclusions and models and coherence and completeness of presentation. The review process will also examine editorial and grammatical correctness and the suitability and accuracy of graphics supporting the text.
- 22.4. The Contractor shall, after receipt of Purchaser comments, incorporate changes, revisions and corrections required by the Purchaser and present the revised documentation in final form to the Purchaser for inspection in accordance with the delivery date specified in the Schedule.
- 22.5. During the review process the Contractor is not required to halt efforts on further tasks as identified in the Statement of Work. The Purchaser, however, shall not be held liable for any work carried out by the Contractor which is based on draft documentation yet to be reviewed.
- 22.6. Upon receipt of the items in final form, the Purchaser will inspect the items for a period not exceeding two weeks (or as otherwise stated in the Statement of Work). At the end of the inspection, the Purchaser will notify the Contractor that:
- 22.6.1. the items have been accepted;
- 22.6.2. the acceptance of the items is deferred pending further revision; or
- 22.6.3. the items are rejected and significantly fail to meet Contract requirements.
- 22.7. In the case of Clause 22.6.2 above, the Contractor shall only be responsible for those revisions and corrections requested by the Purchaser and the Purchaser may not request additional revisions during inspection after required revisions have been made. However, if the Purchaser determines that a directed revision has not been made or if such directed revision was cause for revision of other portions of content which were not made by the Contractor, the Purchaser may withhold acceptance until such revisions are made by the Contractor.
- 22.8. The Contractor shall provide to the Purchaser on request supporting technical data, computer software, databases and background analyses in order to validate findings contained in the delivered items.
- 22.9. Purchaser acceptance shall be made in writing by the Contracting Authority.

## **23. USE AND POSSESSION PRIOR TO ACCEPTANCE**

- 23.1. Except as otherwise provided in the Special Contract Provisions, the Purchaser shall have the right to take possession of, or use, any completed or partially completed Work under the Contract at any time, when notified by

the Contracting Authority, however such possession or use shall not constitute Acceptance by the Purchaser, as defined in the Contract.

- 23.2. While the Purchaser has such use or is in such possession, the Contractor shall be relieved of the responsibility for loss or damage to the Work concerned other than that resulting from the Contractor's fault, negligence or defect to the Work.
- 23.3. If such prior possession or use by the Purchaser delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of delivery will be made, in accordance with the Clause 16 (Changes), and the Contract shall be modified in writing accordingly.

#### **24. OWNERSHIP AND TITLE**

- 24.1. Except as may be otherwise stated in the Contract Special Provisions and Clause 23 (Use and Possession prior to Acceptance), ownership and title to all Work will pass to the Purchaser only upon Acceptance by the Contracting Authority in writing. Where the Contract provides for Provisional Acceptance and Final Acceptance, ownership and title will pass to the Purchaser upon written notification of Final Acceptance.

#### **25. INVOICES AND PAYMENT**

- 25.1. Unless otherwise specified in the Contract Special Provisions, invoices shall only be submitted after delivery and Acceptance of the Work and for the total prices and currency(ies) as set out under the Schedule of Work.
- 25.2. Invoices in respect of any Work or services shall be prepared and submitted to the Purchaser and shall contain all of the elements listed below:
- 25.2.1. Contract number;
  - 25.2.2. Purchaser's Purchase Order number ;
  - 25.2.3. accounting codes (as specified in this Contract);
  - 25.2.4. item number (as defined in the Contract);
  - 25.2.5. Contract description of Work or services, sizes, quantities, unit prices, and extended totals (exclusive of taxes and duties for which relief is available);
  - 25.2.6. Details of Bills of Lading or Freight Warrant numbers and weight of shipment shall be identified on each invoice as appropriate.
- 25.3. In addition, documentary evidence of Acceptance including copies of certificates of conformity shall be submitted together with each invoice. Invoices shall not be submitted to the Purchaser without Acceptance having been previously made by the Purchaser.

- 25.4. Each copy of the invoice shall contain the following certificate which shall be signed by a duly authorised company official on the designated original invoice:

*"I certify that the above invoice is true and correct, that the delivery of the above described items has been duly carried out and the payment thereof has not been received.*

*Order placed for official use. Exemption from VAT Article 42, §3&3\*of VAT Code for Belgium or Article 151, §1b of the Council Directive 2006/112/EC dd. 28 November 2006 on intra-community purchases and/or services."*

- 25.5. All invoices shall be submitted to:

[accountspayable@ncia.nato.int](mailto:accountspayable@ncia.nato.int).

In the event the Contractor needs to submit the invoice to a physical address, it shall be submitted to:

NCI Agency – Accounts Payable  
Boulevard Léopold III  
B-1110 Brussels  
Belgium

- 25.6. Invoices will be settled by the Purchaser within sixty (60) days of receipt of a properly prepared and submitted invoice.
- 25.7. The Purchaser shall not bear any cost relating to financial guarantees which the Contractor is required to provide under this contract. The Purchaser is released from any interest resulting from any reason whatsoever.

## **26. TAXES AND DUTIES**

- 26.1. The Purchaser, by virtue of his status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct taxes (incl. VAT) and all customs duties on merchandise imported or exported. The Contractor, therefore, certifies that the prices stipulated in this Contract do not include amounts to cover such direct taxes or customs duties.
- 26.2. The Contractor shall be responsible for ensuring that his respective Sub-contractors are aware that the Purchaser is exempt from taxes and customs duties. The Contractor (and his respective Sub-contractors) shall be responsible for complying with all applicable national and local legal and administrative procedures to ensure that authorities do not attempt to assess taxes and customs duties on goods and property imported or exported through NATO member nation frontiers under this Contract nor assess direct taxation (VAT) on goods sold to the NCIA under this Contract.
- 26.3. The Purchaser shall give reasonable assistance in providing

evidence/documents which might be required by the Contractor to ensure that NCIA receives tax exemption by virtue of its status under the Ottawa Agreement.

- 26.4. If, after complying with all national and local legal and administrative procedures, the authorities persist in attempting to impose taxes or duties on goods provided under this Contract, the Contractor shall inform the Contracting Authority providing the particulars of the situation, the procedures which have been followed and the point of contact at the national authority which is attempting to impose taxation or duty. The Contracting Authority will examine the situation and attempt to clarify the legal and administrative basis of the difficulty. If the Contracting Authority so directs, the Contractor shall pay the required taxes and duties and file for reimbursement or rebate from the national authorities in accordance with national legislative and administrative procedures.
- 26.5. In the event that the petition for reimbursement or rebate is denied by the national authorities concerned and providing that the Contractor and/or his Sub-contractor have complied with the national legislative and administrative procedures, the Purchaser shall reimburse the full amount of the payment(s) upon receipt of the Contractor's invoice indicating such tax or duty as a separate item of cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced. The Contractor shall offer assistance and execute any such document that may be useful or required to ensure that Purchaser obtains the reimbursement of any tax or duty retained by a national authority.
- 26.6. In the event of the Contractor and/or Sub-contractor not complying with national legislative or administrative procedures, taxes and duties paid by the Contractor and/or Sub-contractors shall not be reimbursed by the Purchaser.
- 26.7. Following payment by the Purchaser of the taxes and/or duties pursuant to Clause 26.4 above, should the Contractor subsequently receive a rebate of any amount paid by the Purchaser, the Contractor shall immediately notify the Purchaser and the amount of such rebate shall be credited or reimbursed to the Purchaser, as directed. The Contractor shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.
- 26.8. The Contractor shall be liable for all other taxes, assessments, fees, licences, administrative charges or other Government assessments or charges which are applicable to the performance of this Contract. It is the Contractor's responsibility to inform himself of his liability in each country where such liability may arise.

**27. WARRANTY OF WORK (exclusive of Software)**

- 27.1. For the purpose of this Clause:

27.1.1. "Acceptance" shall mean the act of an authorised representative of the Purchaser by which the Purchaser assumes title and ownership of delivered Work rendered as partial or complete performance of the

Contract. "Acceptance" in this regard, unless specifically provided otherwise in the Contract Special Provisions, means final Acceptance where the Contract provides for Provisional or Partial Acceptance;

27.1.2. "Correction" shall mean the elimination of a defect;

27.1.3. "Work" shall not include software.

- 27.2. The Contractor shall not be responsible under this Clause for the Correction of Defects in Purchaser Furnished Property, except for Defects in Contractor performed installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on Purchaser Furnished Property. In that event, the Contractor shall be responsible for Correction of Defects that result from the modifications or other Work.
- 27.3. Unless another period of time is indicated in the Contract Special Provisions, the duration of the warranty provided by the Contractor and its Subcontractors shall be twelve (12) months from the date of Acceptance under this Contract as notified in writing by the Contracting Authority.
- 27.4. Any Work or parts thereof corrected or furnished in replacement and any services re-performed shall also be subject to the conditions of this Clause 27 to the same extent as Work initially accepted. The warranty, with respect to these Work, or parts thereof shall be equal in duration to that set forth in Clause 27.3, and shall run from the date of delivery of the corrected or replaced Work.
- 27.5. If the Contractor becomes aware at any time before Acceptance by the Purchaser (whether before or after tender to the Purchaser) or at a later time, that a Defect exists in any Work, the Contractor shall either promptly correct the Defect or promptly notify the Purchaser, in writing, of the Defect, using the same procedures prescribed in Clause 27.8.
- 27.6. The Purchaser will notify in writing the Contractor of the existence of a Failed Component and return to the Contractor the Failed Component within thirty (30) Days of the discovery of such failure. The transport of the Failed Component shall be at the expense of the Purchaser. The notification of the failure will include as much information as practicable about the circumstances and operating environment at the time of the failure. Upon receipt of such notification by the Purchaser (which may precede receipt of the Failed Component), the Contractor shall ship to the location of the Failed Component an identical component for installation by Purchaser personnel. The Contractor shall ship such replacement component(s) Delivery Duty Paid. Such transportation and replenishment charges are included in the cost of line item of the Contract identified as the warranty.
- 27.7. In such rare cases where the Failed Component is either too large to be easily transported or the Failed Component cannot be readily identified and isolated within the larger entity, the Contractor shall be notified by the Purchaser of the failure immediately by telephone, fax or e-mail. The Contractor shall provide technical support to the Purchaser personnel in identifying the Failed Component so as to afford the Purchaser the opportunity to return the Failed Component. In such a case where the Failed Component cannot be identified

or is not cost effective or practical to ship to the Contractor's facility, the Contractor may elect to send field service personnel to the site of the failure and repair such equipment on location. In this event, such field service personnel shall be dispatched to the site of the failure within forty-eight (48) hours of initial notification. The expense of the technical support and field service shall be borne by the Contractor.

- 27.8. The Contractor shall conduct analysis of all Failed Components which are returned to him by the Purchaser or repaired in the field by Contractor field service personnel to determine the cause of the failure. The Contractor shall issue a report to the Purchaser within thirty (30) days of receipt of a returned item or field repair which contains the results of the analysis. The report shall contain the conclusion of the Contractor as to whether the cause of the failure was due to a Manufacturing Defect or a Design Defect and declare what course of remedial action the Contractor shall implement to prevent further failures of a similar nature. Repetitive failures of the same component may be grounds for a de facto determination by the Purchaser that a Design Defect exists.
- 27.9. If the Purchaser determines that a Design Defect exists in any of the Work accepted by the Purchaser under this Contract, the Purchaser shall promptly notify the Contractor of the Defect, in writing, within ninety (90) days after discovery of the Defect. Upon timely notification of the existence of a Defect, or if the Contractor independently discovers a Design Defect or Manufacturing Defect in accepted Work, the Contractor shall submit to the Purchaser, in writing within thirty (30) days, a recommendation for corrective actions, together with supporting information in sufficient detail for the Purchaser to determine what corrective action, if any, shall be undertaken.
- 27.10. The Contractor shall also prepare and furnish to the Purchaser data and reports applicable to any Correction required under this Clause (including revision and updating of all other affected data and already accepted documentation called for under this Contract) at no increase in the Contract price.
- 27.11. In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within forty-five (45) days to amend the Contract to permit Acceptance of the affected Work in accordance with the revised requirement, and an equitable reduction in the Contract price shall promptly be negotiated by the Parties and be reflected in a supplemental agreement to this Contract.
- 27.12. Within thirty (30) days after receipt of the Contractor's recommendations for corrective action and adequate supporting information in accordance with Clause 27.9, the Purchaser using sole discretion, shall give the Contractor written notice not to correct any Defect, or to correct or partially correct any Defect within a reasonable time.
- 27.13. The Contractor shall promptly comply with any timely written direction from the Purchaser to correct or partially correct a manufacturing or Design Defect, at no increase in the Contract price.
- 27.14. The Purchaser shall give the Contractor a written notice specifying any failure

or refusal of the Contractor to:

- 27.14.1. conduct analyses of Failed components and implement a course of remedial action as required by Clauses 27.7 and 27.8;
  - 27.14.2. provide replacement components, technical support or on-location field repair service in accordance with Clauses 27.6 and 27.7; or
  - 27.14.3. prepare and furnish data and reports as required by Clause 27.10.
- 27.15. The notice referred to in Clause 27.14 shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.
- 27.16. If the Contractor does not comply with the Purchaser's written notice in Clause 27.14, the Purchaser may by Contract or otherwise:
- 27.16.1. Obtain detailed recommendations for corrective action from its own resources or third parties and either:
    - 27.16.1.1. correct the Work;
    - 27.16.1.2. replace the Work, and if the Contractor fails to furnish timely disposition instructions, the Purchaser may dispose of the non-confirming Work for the Purchaser's account in a reasonable manner, in which case the Purchaser is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;
    - 27.16.1.3. obtain applicable data and reports; and/or
    - 27.16.1.4. charge the Contractor for the costs incurred by the Purchaser.
- 27.17. In no event shall the Purchaser be responsible for any extension or delays in the scheduled deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct Defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the Correction of Defects unless provided by a supplemental agreement with adequate consideration.
- 27.18. The rights and remedies of the Purchaser provided in this Clause shall not be affected in any way by any terms or conditions of this Contract concerning the conclusiveness of inspection and Acceptance and are in addition to, and do not limit, any rights afforded to the Purchaser by any other Clause of this Contract or applicable law.

**28. RIGHT OF ACCESS, EXAMINATION OF RECORDS**

- 28.1. The Contractor shall give to the Purchaser and/or his representative(s) full and free access to his premises as and when required for the purpose of this Contract and shall ensure the same right of access to the premises of his Sub-contractors, by the inclusion in any such Sub-contracts of a provision substantially as set forth in this Clause.
- 28.2. The Purchaser and/or his representative(s) shall continue to have such right of access and examination of records as set forth in Clause 28.1 above until final payment under the Contract or the end of the warranty provisions under the Contract, whichever occurs later.
- 28.3. The expiration of the Purchaser's rights as set forth in Clause 28.2 is further subject to the provisions of Clause 19 (Pricing of Changes, Amendments and Claims), where a three (3) year right is established following the agreement of contractual amendments or the settlement of claims based upon the submission of cost and pricing data.
- 28.4. The period of access and examination described in Clause 28.1 above for records not related to cost aspects of a dispute or claim but which relate to issues of fact arising under either proceedings under Clause 41 (Disputes) or Clause 42 (Arbitration), or the settlement of claims made by either Party pursuant to the performance of this Contract, shall continue until such appeals, litigation or claims have been disposed of.

## **29. PATENT AND COPYRIGHT INDEMNITY**

- 29.1. The Contractor shall assume all liability against any and all third party claims that the services, Work and/or parts thereof, in whole or in part, infringe(s) an IPR in force in any countries, arising out of the manufacture, import, export, performance of the services or delivery of Work and/or out of the use or disposal by, or for the account of, the Purchaser of such Services and/or Work. The Contractor shall reimburse and/or indemnify the Purchaser, its officers, agents, employees and/or consultants: (i) for all costs, fees, damages, awards, settlement amounts and any other expenses awarded to the third party right holder against Purchaser and/or the final beneficiaries of the Work in relation to said third party claim; and (ii) for the costs and expenses incurred by the Purchaser in relation to said third party claims, including attorney fees. The Contractor shall be responsible for obtaining any licences necessary for the performance of this Contract and for making all other arrangements required to indemnify the Purchaser from any liability for IPR infringement in said countries.
- 29.2. Each Party shall immediately notify the other of any intellectual property infringement claims of which he has knowledge and which pertain to the Work under this Contract.
- 29.3. This indemnity shall not apply under the following circumstances:
- 29.3.1. Patents or copyright which may be withheld from issue by order of the applicable government whether due to security regulations or



otherwise;

- 29.3.2. An infringement resulting from specific written instructions from the Purchaser under this Contract;
- 29.3.3. An infringement resulting from changes made to the Work by the Purchaser without the Contractor prior written consent, or;
- 29.3.4. An infringement resulting from changes or additions to the Work subsequent to final delivery and Acceptance under this Contract

### **30. INTELLECTUAL PROPERTY**

#### **30.1. Purchaser Background IPR**

- 30.1.1. The Contractor is licensed to use, non-exclusively and royalty-free any Purchaser Background IPR that is or will be made available for the sole purpose of carrying out the Work.
- 30.1.2. The Contractor shall not use any Purchaser Background IPR other than for the purpose of carrying out the Work without the prior written agreement of the Purchaser. Any such agreement shall include the terms relating to such use.
- 30.1.3. The Purchaser gives no warranty as to the validity of any Purchaser Background IPR. The Contractor shall not do anything or act in any way which is inconsistent with or prejudicial to the ownership by the Purchaser of any Purchaser Background IPR.

#### **30.2. Contractor Background IPR**

- 30.2.1. Any use of Contractor Background IPR for the purpose of carrying out the Work pursuant to the Contract shall be free of any charge to Purchaser. The Contractor hereby grants to NATO a non-exclusive, royalty-free and irrevocable licence to use and authorise others to use any Contractor Background IPR for the purpose of exploiting or otherwise using the Foreground IPR.
- 30.2.2. Any use of Contractor Background IPR is not limited to the number of users or the number of licenses required by the Contract for the use of system. The Purchaser reserves the right to use the Contractor Background IPR for any number of users and number of licenses as required, at no additional cost to the Purchaser.

#### **30.3. Foreground IPR**

- 30.3.1. All Foreground IPR is the property of the Purchaser on behalf of NATO. Consequently, no statement shall be made restricting the rights of the Purchaser in the Foreground IPR.
- 30.3.2. The Contractor shall ensure that suitable arrangements are in place

between its employees, agents, consultants and itself regarding Foreground IPR generated by said employees, agents, Subcontractors and consultants to allow the Contractor to fulfil its obligations under Clause 30.3.1 above.

- 30.3.3. The Contractor shall be entitled to use Foreground IPR on a non-exclusive, royalty free basis solely for the purpose of carrying out the Work.
- 30.3.4. The Contractor shall not use any Foreground IPR other than for the purpose of carrying out the Work without the Purchaser's prior written agreement. Any such agreement shall include terms relating to such use.
- 30.3.5. The Contractor shall provide the Purchaser, at the latest upon delivery of the Work and thereafter for the duration of the warranty and any purchased CLS agreement period, with full documented records of information in relation to the Work, including but not limited to, all drawings, specifications and other data that is necessary or useful to further develop, maintain and operate the Work.
- 30.3.6. The Contractor shall:
  - 30.3.6.1. do all things necessary and sign all necessary or useful documents to enable the Purchaser to obtain the registration of the Foreground IPR as the Purchaser may require and select; and
  - 30.3.6.2. to execute any formal assignment or other documents as may be necessary or useful to vest title to any Foreground IPR in the Purchaser.
- 30.3.7. The Contractor undertakes:
  - 30.3.7.1. to notify the Purchaser promptly of any invention or improvement to an invention or any design conceived or made by the Contractor; and
  - 30.3.7.2. to provide the Purchaser with such information as the Purchaser may reasonably request in order to: (i) determine the patentability of such invention or improvement; (ii) assess the need for registering such invention or improvement; and (iii) evaluate the potential value to the Purchaser of such a patent or registration if issued.
- 30.3.8. If the Purchaser determines that it wishes to apply for one or more patents for the disclosed invention or improvement or for a registration for the disclosed design, it will prosecute such application(s) at its own

expense. The Contractor undertakes to provide the Purchaser, at the Purchaser's expense, with such information and assistance as the Purchaser shall reasonably require prosecuting such application(s).

#### 30.4. Third Party IPR

- 30.4.1. Any use of Third Party IPR for the purpose of carrying out the Work pursuant to the Contract shall be free of any charge to the Purchaser. The Contractor hereby grants to NATO a non-exclusive, royalty-free and irrevocable licence to use and authorise others to use any Third Party IPR for the purpose of exploiting or otherwise using the Foreground IPR.
- 30.4.2. With the exception of COTS items, any use of Third Party IPR is not limited to the number of users or the number of licences required by the Contract for the use of system. With the exception of COTS items, the Purchaser reserves the right to use the Third Party IPR for any number of users and number of licences as required, at no additional cost to the Purchaser.
- 30.4.3. For COTS items, the Contractor shall be responsible for obtaining licences from the Third Party in line with requirements of the Statement of Work (including number and locations of licences).
- 30.4.4. Where Third Party IPR is the subject of a licence or other agreement between the third party and the Purchaser or the Contractor, the Contractor shall not use any Third Party IPR for the purposes of carrying out work pursuant to the Contract without the prior written approval of the Purchaser. Contractor shall inform Purchaser in advance of any restrictions on the Purchaser's use.
- 30.4.5. If, after the award of the Contract, the Contractor becomes aware of the existence of any Third Party IPR which the Contractor is using or believes is needed for the performance of the Contract, the Contractor shall immediately give the Purchaser a written report identifying such IPR and if they are compliant with the other provisions in the Contract. Any Third Party IPR under this clause is subject to the prior written approval by the Purchaser.
- 30.4.6. The Purchaser may consider open source solutions alongside proprietary ones in developments provided that such solution are fully compliant with the requirements of this Contract. The Contractor shall disclose in advance the open source license associated with the complemented open source solution. The Purchaser reserves the right to refuse the incorporation of open source solutions that are deemed inadequate for incorporation in a NATO application (e.g. post-back obligations).

#### 30.5. Subcontractor IPR

- 30.5.1. When placing a Sub-contract which is concerned with or involves the creation of IPR, the Contractor shall ensure that the Sub-contractor enters into the same agreement for the use of the IPR as stipulated in this Contract in such a way that the Purchaser will be entitled to use the IPR as agreed between the Purchaser and the Contractor. The Contractor shall include in the Sub-contract the content of the provisions of this Clause.

### **31. SOFTWARE WARRANTY**

#### **31.1. Statement of the Warranties**

- 31.1.1. The Contractor warrants that each Software delivered under this Contract will conform to all requirements specified in the Contract. This will also include Software design specifications, including software configuration.
- 31.1.2. Regardless of the Purchaser initiation of or participation in developing Software design or specifications, each Software delivered under this Contract will conform to the essential Performance requirements set forth in this Contract, as those essential Performance requirements measured, tested, and verified by tests and procedures set forth in this Contract.

#### **31.2. Notification Requirement**

- 31.2.1. The Contractor agrees to notify the Purchaser in writing immediately after he first discovers that a defect(s) may exist in Software delivered under this Contract, unless the Purchaser has first notified the Contractor, in writing, of the same defect(s).
- 31.2.2. The Purchaser shall notify the Contractor upon discovery that a defect(s) may exist in any Software accepted by the Purchaser under this Contract, unless the Contractor has first notified the Purchaser, in writing of the same defect(s).

#### **31.3. Duration of the Warranty**

- 31.3.1. For each Software delivered under this Contract, the Contractor Warranties stated in paragraph 31.1 above shall extend to all defects discovered within 12 months from the date of acceptance of the Software by the Purchaser.

#### **31.4. Purchaser Remedies for Breach**

- 31.4.1. The rights and remedies of the Purchaser under this Software Warranty:

- 31.4.1.1. Are in addition to any rights and remedies of the Purchaser under

any other provision of this Contract, including, but not limited to, the Purchaser's rights in relation to latent defects, fraud, or gross mistakes that amount to fraud; and

- 31.4.1.2. Shall apply notwithstanding inspection, acceptance, or any other clauses or terms of this Contract;
- 31.4.2. In the event of any defect as defined herein with respect to a Software delivered under this Contract, the Purchaser, in its sole discretion may:
  - 31.4.2.1. Require the Contractor to take such action as may be necessary to eliminate the defect, at no additional cost to the Purchaser for materials, labour, transportation, or otherwise;
  - 31.4.2.2. Require the Contractor to supply, at no additional cost to the Purchaser, all materials and instructions necessary for the Purchaser to eliminate the defect and to pay costs reasonably incurred by the Purchaser in taking such action as may be necessary to eliminate the defect, or;
  - 31.4.2.3. Equitably reduce the contract price
- 31.4.3. The Purchaser may elect the remedies provided in paragraph 31.4.2.1 or 31.4.2.2 above notwithstanding any dispute respecting the existence of or responsibility for any alleged defect as defined herein with respect to any Software delivered under this contract, provided that the Contractor will not be required to pay costs incurred by the Purchaser under paragraph 31.4.2.2 until final determination of the defect. In the event that the alleged defect is subsequently determined not to be a defect subject to this warranty but the Contractor has incurred costs under paragraph 31.4.2.1 and 31.4.2.2 as required by the Contract by virtue of this paragraph 31.4.3, the contract price under this contract shall be equitably adjusted.
- 31.4.4. Election by the Purchaser of the remedy provided under paragraph 31.4.2.1 and 31.4.2.2 above shall not preclude subsequent election of a different remedy under paragraph 31.4.2 if the defect is not successfully eliminated under the prior election with one month of the notification under paragraph 31.2 above.
- 31.5. Limitations and Exclusions from Warranty Coverage
  - 31.5.1. This Software Warranty shall not apply to alleged defects that the Contractor demonstrates to be in or otherwise attributable to the Purchaser furnished property as determined, tested, and verified by the tests and procedures set forth in this Contract. Notwithstanding this paragraph, a defect is not attributable to Purchaser furnished property if it is the result of installation or modification of Purchaser furnished property by the Contractor or of the integration of Purchaser furnished property into any Software delivered under this Contract.

- 31.5.2. Any Purchaser Furnished Property needs to be checked and approved by the Contractor. Approval is implied once the Contractor starts using the Purchaser Furnished Property.

31.6. Markings

- 31.6.1. All Deliverables under this Contract will identify the owner of the Deliverable and if applicable will prominently include, notice of the existence of this warranty, its substance, its duration, and instructions to notify the Purchaser promptly if the Software is found to be defective. The markings should also be included in the operating and/or maintenance manuals or instructions accompanying such Software.
- 31.6.2. All Deliverables regardless of the media they are delivered onto and which are subject to export control restrictions shall be clearly marked indicating the type and nature of restriction as well as the national law imposing such restrictions. Nothing in this provision is intended to invalidate, void or otherwise limit the rights of the Purchaser under this Contract.

**32. NATO CODIFICATION**

- 32.1. For the purposes of this Clause "Technical Data" means the drawings, specifications and technical documentation of those items designated by the Purchaser to support the equipment covered by the Contract, and required to fully identify the items and, if applicable, draft item identifications to the extent and in the form to be agreed between the Codification Authority and the Contractor.
- 32.2. In order to ensure the orderly identification of equipment, the Contractor shall furnish at the request of the Codification Authority the Technical Data required for the identification of the items of supply to the NATO codification system in the time scale stated in this Contract.
- 32.3. A recommended spare parts list or a similar data carrier prepared in accordance with instructions provided by the Purchaser as the basis for codification shall be supplied by the Contractor by the date established in this Contract.
- 32.4. The Contractor shall supply or require his Sub-contractor(s)/supplier(s) to supply on request for the period of time specified in the Contract the relevant Technical Data for all items and sub-contracted items to the Codification Authority and the Purchaser. The Contractor shall require that each Sub-contractor/supplier shall include identical conditions in any subsequent order which he may place.
- 32.5. The drawings, specifications, related documentation and, if applicable, draft item identifications, prepared when possible by the true manufacturer of the item, shall be supplied by the Contractor or his Sub-contractor(s)/supplier(s)

direct to the Codification Authority and, if required, to the Purchaser as and when they become available or, at the latest within the time limits specified in the Contract. The Contractor shall inform the Codification Authority and Purchaser within twenty-one (21) Days of receipt of the request if the required Technical Data are not immediately available, and shall impose a similar obligation upon his Sub-contractor(s)/supplier(s)

- 32.6. Except as hereinafter provided, the Contractor shall require the Sub-contractor(s)/supplier(s) to furnish on request the information direct to the Codification Authority in the Sub-contractor(s)/supplier(s)' country, but the Contractor shall remain responsible for ensuring that the information is so furnished. In the event of a Sub-contract order being placed with a manufacturer in a non-NATO country, the Contractor shall be responsible for obtaining Technical Data from the Sub-contractor/supplier and furnishing it to the Purchaser.
- 32.7. Technical Data relating to any Sub-contractor's/supplier's items shall include but not be limited to the name and address of the true manufacturer(s), his/their true reference number(s), drawing or item Part number(s) and applicable data in addition to any Part or reference number(s) allocated by the Contractor, plus draft item identification(s) if required by the Codification Authority.
- 32.8. The Contractor shall provide the Technical Data required for codification of those items ordered with this Contract and also for the pertaining support items ordered with future contracts, including updating information regarding all agreed modifications, design or drawing changes made to the equipment or detailed Parts.
- 32.9. If the Contractor has previously supplied Technical Data (for the purpose stated in Clause 31.2), the Contractor is to state this fact and indicate to whom they were supplied and the Contractor shall not under normal circumstances be required to make a further supply of the Technical Data already provided. The Technical Data furnished by the Contractor and Sub-contractor(s)/supplier(s) are to be presented in accordance with the requirements for the preparation of item identification(s) as outlined in the Guide for Industry provided by the Codification Authority.
- 32.10. The Contractor should contact the Codification Authority for any information concerning the NATO codification system. This information is to be found at:

["http://www.nato.int/structur/ac/135/ncs\\_guide/e\\_guide.htm"](http://www.nato.int/structur/ac/135/ncs_guide/e_guide.htm)

### **33. RELEASE FROM CLAIMS**

- 33.1. Prior to final payment under this Contract, the Contractor and each assignee under this Contract shall execute and deliver a release discharging the Purchaser, its officers, agents and employees from all liabilities, obligations and claims arising out of or under this Contract subject only to the following exceptions:

- 33.1.1. specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
- 33.1.2. claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Purchaser against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this Contract relating to patents.
- 33.1.3. a patent infringement resulting from specific written instructions from the Purchaser under this Contract.
- 33.1.4. a patent infringement resulting from changes or additions to the goods and services subsequent to final delivery and acceptance under this Contract.

#### **34. ASSIGNMENT OF CONTRACT**

- 34.1. The Purchaser reserves the right to assign this Contract, in whole or in part, to another NATO body, agency or representative within NATO or NATO Nations. In such a case, the Purchaser shall notify the Contractor accordingly in writing.
- 34.2. NATO shall remain responsible for its obligations under the Contract and for the actions of the body, agency or representative to which this Contract may be assigned.

#### **35. TRANSFER AND SUB-LETTING**

- 35.1. The Contractor shall not give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the prior written consent of the Purchaser.

#### **36. PURCHASER DELAY OF WORK**

- 36.1. If the performance of all or any part of the Work is delayed or interrupted by an act of the Purchaser in the administration of this Contract, which act is not expressly or implicitly authorised by this Contract, or by the Purchaser's failure to act within the time specified in this Contract (or within a reasonable time if no time is specified), an adjustment shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the Contract modified in writing accordingly.
- 36.2. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this Clause for any delay or interruption:
  - 36.2.1. to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor;  
or



36.2.2. for which an adjustment is provided or excluded under any other provision of this Contract.

36.3. No claim under this Clause shall be allowed:

36.3.1. if the Contractor has failed to notify the Purchaser in writing of the act or failure to act, indicating that this act or failure to act will result in a delay or increased costs;

36.3.2. for any costs incurred more than twenty (20) Days before the Contractor shall have notified the Purchaser in writing of the act or failure to act involved; and

36.3.3. unless the monetary claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

### **37. CONTRACTOR NOTICE OF DELAY**

37.1. In the event that the Contractor encounters difficulty in complying with the Contract schedule date(s) for whatever reason, including actual or potential labour disputes, the Contractor shall immediately notify the Contracting Authority in writing, giving pertinent details. This data shall be deemed to be informational in character and shall not be construed as a waiver by the Purchaser of any schedule or date, or of any rights or remedies provided by law or under this Contract.

37.2. Notwithstanding the above the Contractor shall be deemed to be in delay without notice from the Purchaser and only by simple expiry of the due date.

### **38. LIQUIDATED DAMAGES**

38.1. If the Contractor:

38.1.1. fails to meet the delivery schedule of the Work or any performance milestones specified in the Schedule of Work to this Contract, or any extension thereof, or

38.1.2. fails to obtain acceptance of the delivered Work as specified in the Contract, or, if no time for acceptance is specified in the contract within a reasonable time after work is delivered,

the actual damage to the Purchaser for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages the Contractor shall pay to the Purchaser, for each day of delinquency in achieving the deadline or milestone, fixed and agreed liquidated damages of 1.0% (one per cent) per day of the associated payment set forth in the Schedule of Payments provided in the Special Contract Provisions. If no Schedule of Payments is specifically set forth in the Special Contract Provisions, the liquidated damages will be assessed against the price of the applicable contract line item (CLIN) of the Schedule of Supplies, Services and Prices.

- 38.2. In addition to the liquidated damages referred to above, the Purchaser shall have the possibility of terminating this Contract in whole or in part, as provided in Clause 39 (Termination for Default). In the event of such termination, the Contractor shall be liable to pay the excess costs provided in Clause 38.5.
- 38.3. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in Clause 39.6 (Termination for Default). In such event, subject to the provisions of Clause 41 (Disputes), the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the Contract when in his judgement the findings of the fact justify an extension.
- 38.4. Liquidated damages shall be payable to the Purchaser from the first day of delinquency and shall accrue at the rate specified in Clause 38.1 to 20% of the value of each line item individually and an aggregate sum of all delinquent items not to exceed 15% of the value of the total Contract. These liquidated damages shall accrue automatically and without any further notice being required.
- 38.5. The rights and remedies of the Purchaser under this clause are in addition to any other rights and remedies provided by law or under this Contract.

### **39. TERMINATION FOR DEFAULT**

- 39.1. The Purchaser may, subject to Clause 39.6 below, by written notice of default to the Contractor, terminate the whole or any part of this Contract if the Contractor, inclusive but not limited to:
- 39.1.1. fails to make delivery of all or part of the Work within the time specified in the contract or any agreed extension thereof;
  - 39.1.2. fails to make progress as to endanger performance of this Contract in accordance with its terms;
  - 39.1.3. fails to meet the technical requirements or the Specifications of the Contract;
  - 39.1.4. fails to comply with Clause 11 (Security);
  - 39.1.5. transfer this Contract without the Purchaser's prior written consent;
  - 39.1.6. breaches any provision of this Contract; or
- 39.2. In the case of any of the circumstances set forth in Clause 39.1 above, the Purchaser shall issue a letter to the Contractor stating that an actual or potential default exists and requiring a response from the Contractor within ten (10) Days that identifies:

- 39.2.1. in the case of late delivery of Work, when the Contractor shall deliver the Work and what circumstances exist which may be considered excusable delays under Clause 39.6.
- 39.2.2. in the case of the other circumstances identified in Clause 39.1 above, what steps the Contractor is taking to cure such failure(s) within a period of ten Days (or such longer period as the Purchaser may authorise in writing) after receipt of notice in writing from the Purchaser specifying such failure and identifying any circumstances which exist which may be considered excusable under Clause 39.6.
- 39.3. The Purchaser shall evaluate the response provided by the Contractor or, in the absence of a reply within the time period mentioned in Clause 39.2, all relevant elements of the case, and make a written determination within a reasonable period of time that:
- 39.3.1. sufficient grounds exist to terminate the Contract in whole or in part in accordance with this Clause and that the Contract is so terminated;
- 39.3.2. there are mitigating circumstances and the Contract should be amended accordingly; or
- 39.3.3. the Purchaser will enter a period of forbearance in which the Contractor must show progress, make deliveries, or comply with the Contract provisions as specified by the Purchaser. The Purchaser may apply other remedial actions as provided by this Contract during such period of forbearance. This period of forbearance shall in no event constitute a waiver of Purchaser's rights to terminate the Contract for default.
- 39.4. At the end of the period of forbearance, which may be extended at the Purchaser's discretion, the Purchaser may terminate this Contract in whole or in part as provided in Clause 39.1 if the Contractor has not made adequate progress, deliveries or compliance with the Contract provisions which were the terms of the period of forbearance.
- 39.5. In the event the Purchaser terminates this Contract in whole or in part, as provided in Clause 39.1, the Purchaser may procure, upon such terms and in such manner as the Purchaser may deem appropriate, Work similar to those so terminated, and the Contractor shall be liable to the Purchaser for any excess costs for such similar Work; however, the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.
- 39.6. Except with respect to the default of Sub-contractors, the Contractor shall not be held liable for a termination of the Contract for default if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor.
- 39.6.1. Such causes may include, but are not restricted to, acts of God, acts of the public enemy, acts of the Purchaser in its contractual capacity, acts of sovereign governments which the Contractor could not

reasonably have anticipated, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

- 39.6.2. If the failure to perform is caused by the default of a Sub-contractor, and if such default arises out of causes beyond the control of both the Contractor and Sub-contractor, without the fault or negligence of either of them, the Contractor shall not be held liable for a termination for default for failure to perform unless the Work to be furnished by the Sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- 39.7. If this Contract is terminated as provided in Clause 39.1, the Purchaser, in addition to any other rights provided in this Clause and the Contract, may require the Contractor to transfer title and deliver to the Purchaser, in the manner and to the extent directed by the Purchaser:
- 39.7.1. any completed Work with associated rights ;
- 39.7.2. such partially completed Work, materials, Parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (hereinafter called "Manufacturing materials") with associated rights as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated;
- 39.8. In addition to Clause 39.7, the Contractor shall, upon direction of the Purchaser, protect and preserve property in the possession of the Contractor in which the Purchaser has an interest.
- 39.9. Payment for completed Work delivered to and accepted by the Purchaser shall be at the Contract price.
- 39.10. Payment for manufacturing materials delivered to and accepted by the Purchaser and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Purchaser, failure to agree to such amount shall be a dispute within the meaning of Clause 41 (Disputes).
- 39.11. The Purchaser may withhold from amounts otherwise due to the Contractor for such completed Work or manufacturing materials such sum as the Purchaser determines to be necessary to protect the Purchaser against loss because of outstanding liens or claims of former lien holders.
- 39.12. If, after notice of termination of this Contract under the provisions of this Clause, it is determined for any reason that the Contractor was not in default under the provisions of this Clause, or that the default was excusable under the provisions of this Clause, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Clause 40 (Termination for the Convenience of the Purchaser).
- 39.13. If after such notice of termination of this Contract under the provisions of this Clause, it is determined for any reason that the Contractor was not in default

under the provisions of this Clause and that the Parties agree that the Contract should be continued, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly. Failure to agree to any such adjustment shall be a dispute within the meaning of Clause 41 (Disputes).

- 39.14. The rights and remedies of the Purchaser provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**40. TERMINATION FOR THE CONVENIENCE OF THE PURCHASER**

- 40.1. The performance of Work under this Contract may be terminated by the Purchaser in accordance with this Clause in whole, or from time to time in part, whenever the Purchaser shall determine that such termination is in the best interest of the Purchaser.

- 40.2. Any such termination shall be effected by delivery to the Contractor of a written notice of termination, signed by the Contracting Authority, specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

- 40.3. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Authority, the Contractor shall:

40.3.1. stop the Work on the date and to the extent specified in the notice of termination;

40.3.2. place no further orders or Sub-contracts for Work, Parts, materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;

40.3.3. terminate all orders and Sub-contracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;

40.3.4. assign to the Purchaser, in the manner, at the times and to the extent directed by the Purchaser, all of the right, title and interest of the Contractor under the orders and Sub-contracts so terminated, in which case the Purchaser shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and Sub-contracts;

40.3.5. settle all outstanding liabilities and all claims arising out of such termination of orders and Sub-contracts, with the approval or ratification of the Purchaser to the extent he may require, which approval or ratification shall be final for all the purposes of this Clause;

40.3.6. transfer title and deliver to the Purchaser in the manner, at the times, and to the extent, if any, directed by the Contracting Authority of:

- 40.3.6.1. the fabricated parts, work in process, completed work, Work, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the notice of termination, and
- 40.3.6.2. the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Purchaser;
- 40.3.7. use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorised by the Contracting Authority, any property of the types referred to in Clause 40.3.6 above. However, the Contractor:
  - 40.3.7.1. shall not be required to extend credit to any Buyer; and
  - 40.3.7.2. may acquire any such property under the conditions prescribed by and at a price or prices approved by the Purchaser; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Purchaser to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work or paid in such manner as the Contracting Authority may direct;
- 40.3.8. complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
- 40.3.9. take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Purchaser has or may acquire an interest.
- 40.4. The Contractor may submit to the Purchaser a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorised by the Purchaser, and may request the Purchaser to remove such items or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Purchaser upon removal of the items, or if the items are stored, within forty-five (45) Days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- 40.5. After receipt of a notice of termination, the Contractor shall submit to the Purchaser his termination Claim for the Work covered by the notice of termination, in the form and with certification prescribed by the Purchaser. Such claim shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless one or more extensions

are granted in writing by the Purchaser, upon request of the Contractor made in writing within such six-month period or authorised extension thereof. However, if the Purchaser determines that the facts justify such action, the Purchaser may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Purchaser may determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

- 40.6. Subject to the provisions of Clause 40.5, the Contractor and the Purchaser may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this Clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts exclusive of settlement costs shall not exceed total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of the Work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the amount agreed.
- 40.7. In the event of the failure of the Contractor and the Purchaser to agree as provided in Clause 40.6 upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to Clause 40, the Purchaser shall pay to the Contractor the amounts determined by the Purchaser as follows, but without duplication of any amounts agreed upon in accordance with Clause 40.6 the total of:
- 40.7.1. for completed Work accepted by the Purchaser (or sold or acquired as provided in Clause 40.3 above) and not therefore paid for, a sum equivalent to the aggregate price for such Work computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;
  - 40.7.2. the costs incurred in the performance of the Work terminated including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to Work paid or to be paid for under Clause 40.7.1;
  - 40.7.3. the cost of settling and paying claims arising out of the termination of work under Sub-contracts or orders, as provided in Clause 40.3.5, which are properly chargeable to the terminated portion of the Contract, exclusive of amounts paid or payable on account of Work or materials delivered or services furnished by Sub-contractors or vendors prior to the effective date of the notice of termination, which amounts shall be included in the costs payable under Clause 40.7.2; and
  - 40.7.4. a sum, as profit on Clause 40.7.1 above, determined by the Purchaser to be fair and reasonable; provided, however, that if it appears that the

Contractor would have sustained a loss on the entire Contract, had it been completed, no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

- 40.7.5. the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of Sub-contracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection, or disposition of property allocable to this Contract.
- 40.8. The total sum to be paid to the Contractor under Clause 40.7 shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated.
- 40.9. Except for normal spoilage, and except to the extent that the Purchaser shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Clause 40.7 above, the fair value, as determined by the Purchaser, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Purchaser, or to a buyer pursuant to Clause 40.3.7 above.
- 40.10. The Contractor shall have the right to dispute, under the Clause 41 (Disputes), any determination made by the Purchaser under Clauses 40.5 and 40.7, except that if the Contractor has failed to submit his claim within the time provided in Clause 40.5 and has failed to request extension of such time, the Contractor shall be foreclosed from his right to dispute said determination. In any case where the Purchaser has made a determination of the amount due under Clauses 40.5 and 40.7, the Purchaser shall pay the Contractor the following:
  - 40.10.1. if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Purchaser, or
  - 40.10.2. if an appeal has been taken, the amount finally determined on such appeal.
- 40.11. In arriving at the amount due to the Contractor under this Clause there shall be deducted:
  - 40.11.1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
  - 40.11.2. any claim which the Purchaser may have against the Contractor in connection with this Contract; and



- 40.11.3. the agreed price for, or the proceeds of the sale of, any materials, Work, or other things acquired by the Contractor or sold, pursuant to the provisions of this Clause, and not otherwise recovered by or credited to the Purchaser.
- 40.12. If the termination hereunder is partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Purchaser, in accordance with Clause 16 (Changes), a request in writing for an equitable adjustment of the price or prices relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- 40.13. The Purchaser may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Purchaser the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payment is in excess of the amount finally agreed or determined to be due under this Clause, such excess shall be payable by the Contractor to the Purchaser upon demand, together with interest calculated using the average of the official base rate(s) per annum of the deposit facility rate as notified by the European Central Bank or such other official source as may be determined by the Purchaser, for the period from the date the excess is received by the Contractor to the date such excess is repaid to the Purchaser, provided, however, that no interest shall be charged with respect to any such excess payment attributed to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition or such later date as determined by the Purchaser by reason of the circumstances.
- 40.14. Unless otherwise provided for in this Contract, the Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the Purchaser at all reasonable times at the office of the Contractor, but without direct charge to the Purchaser, all his books, records, documents, computer files and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or, to the extent approved by the Purchaser, photographs, micro-photographs, or other authentic reproductions thereof.

#### **41. DISPUTES**

- 41.1. Except to the extent to which special provision is made elsewhere in the Contract, all disputes, differences or questions which are not disposed of by agreement between the Parties to the Contract with respect to any matter arising out of or relating to the Contract, other than a matter as to which the decision of the Contracting Authority under the Contract is said to be final and conclusive, shall be decided by the Contracting Authority. The Contracting Authority shall reduce his decision to writing and mail or otherwise furnish a

copy thereof to the Contractor.

- 41.2. The Contracting Authority shall not proceed with the evaluation and decision in respect of any claim until and unless the Contractor has submitted the attestation as foreseen in Clause 18 (Claims), as well as the complete proof and evidence of the claim (either by submission or by identification of the relevant documentation).
- 41.3. The Contracting Authority's decision shall be final and conclusive unless, within 30 Days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Authority his decision to open arbitration proceedings in accordance with the Clause 42 (Arbitration). The burden of proof for both receipt and delivery of such documentation shall be by signed and dated registered mail receipt or by hand receipt as acknowledged and signed by the Contracting Authority.
- 41.4. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the Contract, unless otherwise instructed by the Contracting Authority.

## **42. ARBITRATION**

- 42.1. Within a period of thirty days from the date of receipt of the notification referred to in Clause 41.3 above, the Parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by the Purchaser, another by the other contracting party and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the Parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the Party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration at The Hague.
- 42.2. Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.
- 42.3. Any arbitrator must be of the nationality of any one of the member states of NATO and shall be bound by the rules of security in force within NATO.
- 42.4. Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO. If he is of another nationality, no NATO classified documents or information shall be communicated to him.
- 42.5. An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator,

shall be replaced under the procedure laid down in Clause 42.1 above.

- 42.6. The Contractor agrees to submit to the Arbitration Tribunal only such issues, facts, evidence and proof which the Contractor had beforehand identified and submitted to the Contracting Authority for decision in accordance with Clause 41 (Disputes). The jurisdictional authority of the Arbitration Tribunal shall be restricted to consider only those identical issues, facts, evidence and proof so identified and submitted to the Contracting Authority.
- 42.7. The Purchaser likewise agrees to restrict its submissions only to the information on which the Contracting Authority based its decision and not to introduce new information and arguments which cannot reasonably be deduced or inferred from the written decision of the Contracting Authority in response to the original dispute.
- 42.8. The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of signature of the present Contract.
- 42.9. The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.
- 42.10. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the Contract, unless otherwise instructed by the Contracting Authority.

#### **43. SEVERABILITY**

- 43.1. If one or more of the provisions of this Contract is declared to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected. Each of the Parties shall use its best efforts to immediately and in good faith negotiate a legally valid replacement provision.

#### **44. APPLICABLE LAW**

- 44.1. This Contract shall be governed, interpreted and construed in accordance with the private contract law of the Kingdom of Belgium.

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**ANNEX 1 TO GENERAL PROVISIONS****PURCHASER'S PRICING PRINCIPLES****A. General**

1. With regard to all actions included in Clause 19, 'Pricing of Changes, Amendments and Claims', the Purchaser will honour the accounting standards and pricing principles to which the Contractor is required to conform by the national defence authority (or other governing national authority, as applicable) in the country of origin of the Contractor. Where such accounting standards are non-existent or incomplete, or where the Contractor is not required to conform to such standards and principles, the Parties agree that the Purchaser's Pricing Principles contained herein shall govern.
2. As may be requested by the Purchaser, the Contractor shall provide documentation that the standards or principles employed in the submission of cost or pricing data are in conformance with governing national policies and regulation. The Contractor, when submitting a price proposal based upon national standards and regulations, shall provide a point of contact within the national body governing such standards and regulations in order to allow Purchaser verification and audit.
3. Where such conformance cannot be demonstrated to the satisfaction of the Purchaser, the Purchaser's Pricing Principles will govern.
4. The Contractor shall clearly state whether national standards and rules or the Purchaser's Pricing Principles and formats are the basis for the price proposal.
5. Whether national standards or Purchaser pricing principles are applied, all cost and pricing data shall be verifiable, factual and include information reasonably required to explain the estimating process.
6. The Contractor shall also incorporate provisions corresponding to those mentioned herein in all sub-contracts, and shall require price and cost analysis provisions be included therein.

## B. Purchaser's Pricing Principles

### 1. Allowable cost

A cost is allowable for consideration by the Purchaser if the following conditions are fulfilled:

- (a) it is incurred specifically for the Contract or benefits both the Contract and other work or is necessary to the overall operation of the business although a direct relationship to any particular product or service cannot be established and is allocated to them in respective proportion according to the benefit received;

- i. Direct Costs

A direct cost is any cost which can be identified specifically with a particular cost objective as generally accepted. Direct costs are not limited to items which are incorporated in the end product as material or labour.

- ii. Indirect Costs

An indirect cost is one which is not readily subject to treatment as a direct cost. When presented these costs shall be accumulated in logical cost groupings in accordance with sound accounting principles and the Contractor's established practices. An indirect cost may be allocated to more than one final cost objective. An indirect cost shall not be allocated to a final cost objective if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Such costs shall be presented as overhead rates and be applied to each related direct cost grouping as presented in sub- paragraph 5 hereafter.

- (b) The Contractor shall specify the allocation of costs to either of the cost groupings. The method by which costs are accumulated and distributed as part of direct or indirect costs cannot be modified during the duration of the Contract.
- (c) it is reasonable and expedient in its nature and amount and does not exceed that which would be incurred by an ordinary prudent person in the conduct of competitive business;
- (d) it is not liable to any limitations or exclusion as to types or amounts of cost items as set forth herein.
- (e) The Purchaser will review other costs presented against the contract and will determine if they would be allowable.

## 2. Unallowable Costs

In general all costs which cannot be shown by the contractor to be directly or indirectly of benefit to the Contract are totally unallowable. Examples of such costs are, among others:

- (a) Advertising costs
- (b) Costs of remuneration, having the nature of profit sharing.
- (c) Costs of maintaining, repairing and housing idle and excess facilities.
- (d) Fines and penalties as well as legal and administrative expenses resulting from a violation of laws and regulations.
- (e) Losses on other contracts or on expected follow-on contracts
- (f) Costs incurred for the creation of reserves for general contingencies or other reserves (e.g. for bad debts, including losses).
- (g) Losses on bad debts, including legal expenses and collection costs in connection with bad debts.
- (h) Costs incurred to raise capital.
- (i) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property.
- (j) Taxes on profits.
- (k) Contractual penalties incurred.
- (l) Commissions and gratuities.
- (m) Interest on borrowings.

## 3. Rates and Factors

- (a) The Contractor shall inform the Purchaser of his rates and factors the basis upon which they were computed.
- (b) If the Contractor's rates and factors for similar contracts placed with national or international public services have not been established or approved by a government agency or an agency accepted by his government, the Contractor shall provide the necessary data to support

the proposed rates.

- (c) The term "provisional " used in the title of a rate or factor means a tentative rate established for interim billing purposes pending negotiation and agreement to the final rate or factor.
- (d) A rate or factor is pre-determined if it is fixed before or during a certain period and based on (estimated) costs to be incurred during this period. A rate or factor is post-determined if it is fixed after a certain period and based on costs actually incurred during this period. Pre-determined rates or factors shall be agreed upon as final rates whenever possible; otherwise the provisions of paragraph 3c above shall apply pending agreement to post-determined rates or factors.
- (e) Such rates or factors shall be determined on the basis of Contractor's properly supported actual cost experience.
- (f) If the rates or factors of the Contractor for similar contracts placed by national or international public services have been established or approved by a government agency or an agency accepted by his government and the Contractor proposes the application of these rates, he shall state the name and address of the agency which has accepted or approved the rates and the period for which they were established. If he proposes rates which vary from the rates mentioned above, he shall furthermore provide a justification for the difference.

#### 4. Profit/Benefit

- (a) Over the entire life cycle of a given acquisition, Profit and/or Benefit may be subject to negotiation.
- (b) Subcontracting profit/benefit amounts are dependent upon the size, nature and oversight needs of the subcontract(s) the prime contractor will use for work performance period.
- (c) Profit/benefit is considered by the Purchaser to be directly related to the anticipated risk of the Contractor during the performance of the Contract.

**CO-115496-VEEAM**

**VEEAM Cloud & Service Provider Agreement For  
VEEAM Software**



**BOOK II, PART IV - STATEMENT OF WORK**



## STATEMENT OF WORK

### 1. Introduction

- 1.1. This document details the Contractor's obligations with respect to the performance of work under the Contract.
- 1.2. The intent of this Contract is to consolidate all of NATO's VEEAM software requirements into one VEEAM Cloud & Service Provider Agreement (VCSP).
- 1.3. This VCSP will support VEEAM requirements throughout NATO – at headquarters, commands, agencies and other NATO organisations. The objective is to consolidate all of NATO's VEEAM requirements into one contract vehicle to achieve cost savings, more flexibility and a simpler way to manage the licenses.

### 2. VEEAM Cloud Service Provider Agreement (VCSP)

- 2.1. The VEEAM Cloud & Service Provider Agreement (VCSP) offers a flexible way to acquire both VEEAM Perpetual Licenses and VEEAM Subscription Services in the form of single Volume Rental Agreement points (VRA points).
- 2.2. VEEAM licenses are denominated in points – the VEEAM transaction currency.
- 2.3. The VRA products list – showing the monthly costs in VRA points of each license – is incorporated as Annex A. To calculate the number of points required for a year, the point amount per product is multiplied by the number of instances (units) for that product, and again multiplied by 12 months to calculate a yearly cost.
- 2.4. The VRA points are valid for the term of the VCSP.
- 2.5. Products within the VCSP shall be covered by the support level "Production Support" as described in VEEAM Customer Support Policy.
- 2.6. The points required for the existing Install base within NATO including support from the time the VCSP is activated throughout the remainder of the one-year term of the VCSP, are calculated as follows:
  - 2.6.1. Change socket licensing model to instance licensing model
  - 2.6.2. Take a ratio of 10 Virtual Machines (VMs) per socket (10:1)

- 2.6.3. Use fix monthly reporting for initial year (this contract) (vs real usage reporting for potential follow up years)

### **3. Deployment Rights**

- 3.1. The VCSP provides global deployment rights to NATO. The VEEAM licenses procured through this VCSP may be used anywhere in the world.

### **4. Usage reporting**

A quarterly report on the usage shall be provided. The report shall contain remaining VRA points, as well as the detailed consumption over the reporting period including user details.

### **5. Increase / Decrease to Quantity of Licenses**

- 5.1. The Purchaser may procure additional VRA points at the same unit prices shown in the Schedule of Supplies and Services (SSS) either during the 1-year base contract, or during the option years.
- 5.2. The Purchaser may increase or decrease the volume of VRA points from one year to the next, by exercising the next year's option at a different volume of points. Additionally, during the year, the Purchaser may increase the volume VRA points through the remainder of that year.

## Annex A

Product SKU	Product Family	Licensed Unit	Veeam Product Description	Monthly Cost per product, in VRA Points (Each unit costs ____ points per month.)
H-VASPLS-VV-R0000-00	Veeam Availability Suite	VM	Veeam Availability Suite Enterprise Plus - Includes 24/7 support.	13 points
H-VASPLS-SS-R0000-00	Veeam Availability Suite	SAP Server	Veeam Availability Suite Enterprise Plus - Includes 24/7 support.	11 points
H-VASPLS-OS-R0000-00	Veeam Availability Suite	Oracle DB Server	Veeam Availability Suite Enterprise Plus - Includes 24/7 support.	11 points
H-VASENT-VV-R0000-00	Veeam Availability Suite	VM	Veeam Availability Suite Enterprise - Includes 24/7 support.	11 points
H-VBRPLS-VV-R0000-00	Veeam Backup & Replication	VM	Veeam Backup & Replication Enterprise Plus - Includes 24/7 support.	11 points
H-VBRPLS-SS-R0000-00	Veeam Backup & Replication	SAP Server	Veeam Backup & Replication Enterprise Plus - Includes 24/7 support.	11 points
H-VBRPLS-OS-R0000-00	Veeam Backup & Replication	Oracle DB Server	Veeam Backup & Replication Enterprise Plus - Includes 24/7 support.	11 points
H-VBRPLS-0R-R0000-00	Veeam Backup & Replication	Server	Veeam Backup & Replication Enterprise Plus - Includes 24/7 support.	11 points
H-VBRPLS-0W-R0000-00	Veeam Backup & Replication	Workstation	Veeam Backup & Replication Enterprise Plus - Includes 24/7 support.	4 points
H-VBRPLS-NS-R0000-00	Veeam Backup & Replication	File Share	Veeam Backup & Replication Enterprise Plus - Includes 24/7 support.	10 points
H-VBRPLS-CV-R0000-00	Veeam Backup & Replication	Cloud VM	Veeam Backup & Replication Enterprise Plus - Includes 24/7 support.	11 points
H-VBRENT-VV-R0000-00	Veeam Backup & Replication	VM	Veeam Backup & Replication Enterprise - Includes 24/7 support.	9 points
H-VBRENT-0R-R0000-00	Veeam Backup & Replication	Server	Veeam Backup & Replication Enterprise - Includes 24/7 support.	11 points
H-VBRENT-0W-R0000-00	Veeam Backup & Replication	Workstation	Veeam Backup & Replication Enterprise - Includes 24/7 support.	4 points
H-VBRENT-NS-R0000-00	Veeam Backup & Replication	File Share	Veeam Backup & Replication Enterprise - Includes 24/7 support.	10 points
H-VBRENT-CV-R0000-00	Veeam Backup & Replication	Cloud VM	Veeam Backup & Replication Enterprise - Includes 24/7 support.	11 points
H-VBRSTD-VV-R0000-00	Veeam Backup & Replication	VM	Veeam Backup & Replication Standard - Includes 24/7 support.	5 points

H-VBRSTD-0R-R0000-00	Veeam Backup & Replication	Server	Veeam Backup & Replication Standard - Includes 24/7 support.	11 points
H-VBRSTD-0W-R0000-00	Veeam Backup & Replication	Workstation	Veeam Backup & Replication Standard - Includes 24/7 support.	4 points
H-VBRSTD-NS-R0000-00	Veeam Backup & Replication	File Share	Veeam Backup & Replication Standard - Includes 24/7 support.	10 points
H-VBRSTD-CV-R0000-00	Veeam Backup & Replication	Cloud VM	Veeam Backup & Replication Standard - Includes 24/7 support.	11 points
H-ONE000-VV-R0000-00	Veeam ONE	Workload	Veeam ONE - Includes 24/7 support.	2 points
H-VAN000-0V-R0000-00	Veeam Availability for Nutanix AHV	VM (vSphere, Hyper-V, AHV)	Veeam Availability for Nutanix AHV - Includes 24/7 support.	11 points
H-VMPPLS-VS-R0000-00	Veeam Management Pack for Microsoft System Center	Socket	Veeam Management Pack for Microsoft System Center Enterprise Plus - Includes 24/7 support.	45 points
H-VAGAIX-0R-R0000-00	Veeam Agent for IBM AIX	Server	Veeam Agent for IBM AIX - Includes 24/7 support.	11 points
H-VAGSLR-0R-R0000-00	Veeam Agent for Oracle Solaris	Server	Veeam Agent for Oracle Solaris - Includes 24/7 support.	11 points
H-VBO365-0U-R0000-00	Veeam Backup for Microsoft Office 365	User	Veeam Backup for Microsoft Office 365 - Includes 24/7 support.	1.5 points
H-VAO000-0V-R0000-00	Veeam Availability Orchestrator	VM	Veeam Availability Orchestrator - Includes 24/7 support.	11 points
H-K10ENT-0N-R0000-00	Veeam KASTEN K10	Node	Kubernetes Backup and DR with Kasten by Veeam. Kasten K10 Enterprise Platform - Per node license for Kasten Enterprise K10 Data Management Platform - Includes 24/7 support.	320 points
H-CCEBCK-0V-R0000-00	Veeam Cloud Connect Backup	VM	Veeam Cloud Connect Backup - Includes 24/7 support.	5 points
H-CCEBCK-0R-R0000-00	Veeam Cloud Connect Backup	Server	Veeam Cloud Connect Backup - Includes 24/7 support.	7 points
H-CCEBCK-0W-R0000-00	Veeam Cloud Connect Backup	Workstation	Veeam Cloud Connect Backup - Includes 24/7 support.	3 points
H-CCEREP-0V-R0000-00	Veeam Cloud Connect Replication	VM	Veeam Cloud Connect Replication - Includes 24/7 support.	10 points