



Acquisition Directorate

Boulevard Léopold III
B-1110 Brussels, Belgium

NCIA/ACQ/2022/06944

18 August 2022

To : See Distribution List

Subject : **INVITATION FOR BID (IFB) IFB-CO-115715-ITC**

PROVISION OF SOFTWARE DEVELOPMENT SUPPORT TO PROJECT
"INTEGRATED TRAINING CAPABILITY (ITC) UPGRADE 2022" & ANNUAL
SIMULATION ENHANCEMENTS.

Reference(s) : A. AC/337-D(2016)0014 dated 16 March 2016; NCIO Financial Rules and Regulations
B. BC-D(2018)0004-FINAL dated 29 January 2018; Budget Committee (BC) Budget Procurement Guidance
C. C-M(2002)49 – NATO Security Policy
D. NCI Agency, Notification of Intent (NOI), NCIA/ACQ/2022/06932, dated 21 June 2022

Dear Nominated Bidders,

1. Your firm is hereby invited to participate in an International Competitive Bid for the Provision of Software Development Support to Project "Integrated Training Capability (ITC) Upgrade 2022" & Annual Simulation Enhancement.
2. The scope of the project is described in the Prospective Contract – Book II of this IFB.
3. NATO 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 technically compliant 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 Compliant Bidding as described in this IFB.
5. The reference for the Invitation for Bid is **IFB-CO-115715-ITC**, 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 15:00 HOURS (BRUSSELS TIME) ON THURSDAY, 08 SEPTEMBER 2022.**

NATO Communications
and Information Agency
Agence OTAN d'information
et de communicationwww.ncia.nato.int

7. This Invitation For Bid consists of the following documents:

- a. **Book I:** Bidding Instructions. Book I provides the general bidding information and includes the following annexes:
 - i. Annex A: Bidding Sheets;
 - ii. Annex B: Prescribed Administrative Forms and Certificates;
 - iii. Annex C: Clarification Requests Forms;
 - iv. Annex D: Cross Reference/Compliance Table.
- b. **Book II:** Prospective Contract. Book II contains the following sections:
 - i. Signature Sheet
 - ii. Part I: The Schedule of Supplies and Services;
 - iii. Part II: The Contract Special Provisions;
 - iv. Part III: The Contract General Provisions;
 - v. Part IV: The Statement of Work (SOW).

- 8. The overall security classification of this bid is "NATO UNCLASSIFIED". This Invitation for Bid remains property of the NCI Agency and shall be protected in accordance with the applicable national security regulations.
- 9. Bidders have the right to request IFB clarifications as outlined in section 2.7 of the Bidding Instructions (Book I).
- 10. Bidders will be required to declare a bid validity of six (6) months from closing date for receipt of bids. Should the selection and award procedure exceed the six (6) months after the Bid Closing Date, firms will be requested to voluntarily extend the validity of their bids. Bidders may decline to do so, in which case their bids will be withdrawn from the award procedure.
- 11. Prospective Bidders are requested to complete and return the enclosed acknowledgement of receipt (Attachment A), 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.
- 12. Prospective Bidders are advised that the NCI Agency reserves the right to withdraw, or suspend 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 IFB cancellation, withdrawal, or suspension occurs.
- 13. This Invitation for Bid does not constitute either a financial or a contractual commitment at this stage.

14. Your Point of Contact (POC) for all information concerning this IFB is Mrs. Emira Kapetanovic, Principal Contracting Assistant. E-mail: IFBCO115715ITC@ncia.nato.int.

For the Chief of Acquisition:



Emira Kapetanovic
Principal Contracting Assistant

Attachment(s):

- A) Acknowledgement of Receipt of IFB-CO-115715-ITC
- B) Bidders List for IFB-CO-115715-ITC
- C) IFB-CO-115715-ITC

ATTACHMENT A

ACKNOWLEDGEMENT OF RECEIPT OF INVITATION FOR BID

IFB-CO-115715-ITC

Please complete and return by e-mail within 5 days (scanned to PDF) by e-mail to

Emira Kapetanovic at: IFBCO115715ITC@ncia.nato.int

We hereby advise that we have received the Invitation for Bid and have accessed the bidding documentation related to **IFB-CO-115715-ITC** 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: _____

ATTACHMENT B

IFB-CO-115715-ITC

BIDDERS LIST

COUNTRY	COMPANY
BEL	ATOS
	BREVCO SERVICES
CAN	Compusult Limited
	ADGA Group Consultants Inc.
ESP	NTTDATA
ITA	NETGROUP
POL	Vector Synergy Sp.z.o.o.
	HyperView Sp. Z.o.o.
SLOVAKIA	Aliter Technologies, a.s.
TUR	TUBİTAK BİLGEM TÜRKİYE BİLİMSEL VE TEKNOLOJİK ARAŞTIRMA KURUMU BAŞKANLIĞI
USA	Ternion Corporation

Distribution List

IFB-CO-115715-ITC

All Nominated Prospective Bidders (Attachment B)

NATO Delegations (Attn: Infrastructure Adviser):

Albania
Belgium
Bulgaria
Canada
Croatia
Czech Republic
Denmark
Estonia
France
Germany
Greece
Hungary
Iceland
Italy
Latvia
Lithuania
Luxembourg
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Attn: Infrastructure Assistant

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HQ SACT Attn: R&D Contracting Office
ACO

NCI Agency – NATEXs
All NATEXs



IFB-CO-115715-ITC

**PROVISION OF SOFTWARE DEVELOPMENT
SUPPORT TO PROJECT**

**"INTEGRATED TRAINING CAPABILITY (ITC)
UPGRADE 2022 & ANNUAL SIMULATION
ENHANCEMENTS"**

AC/337-D(2016)0014 dated 16 March 2016
BC-D(2018)0004-FINAL dated 29 January 2018
SRV017723

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Part II Contract Special Provisions

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Part IV Statement of Work (SOW)



IFB-CO-115715-ITC

BOOK I

BIDDING INSTRUCTIONS

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SECTION 1 INTRODUCTION

1.1. Purpose and Scope

- 1.1.1.** The purpose of this Invitation For Bid (IFB) is to establish a Contract for the Provision of Software Development Support to Project “Integrated Training Capability (ITC) Upgrade 2022” & Annual Simulation Enhancements.

1.2. Overview of the Prospective Contract

- 1.2.1.** The Contractor shall perform all activities required in Book II Part I (Schedule of Supplies and Services – SSS) and shall deliver the associated deliverables listed in Book II Part IV (Statement of Work – SOW).
- 1.2.2.** The Contract will be governed by Book II, Part II (Contract Special Provisions), and Part III (Contract General Provisions).

1.3. Governing Rules, Eligibility, and Exclusion Provisions

- 1.3.1.** This Solicitation is an International Invitation for Bid (IFB) and is issued in accordance with the NATO procedures: BC-D(2018)0004-FINAL, BC Budget Procurement Guidance dated 29 January 2018 and AC337-D(2016)0014, NCIO Financial Rules and Procedures dated 16 March 2021.
- 1.3.2.** 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.
- 1.3.3.** This Invitation For Bid (IFB) will not be the subject of a public Bid opening.
- 1.3.4.** Award of the resulting Contract will be made on a Firm Fixed Price Basis to the Lowest Priced, Technically Compliant Bidder.
- 1.3.5.** The solicitation, evaluation and award processes will be conducted in accordance with the terms and conditions contained herein.
- 1.3.6.** The Bidder shall refer to the Purchaser all queries for a resolution of conflicts found in information contained in this document in accordance with the procedures set forth in Paragraph 2.7 of Section II of the Bidding Instructions entitled “Requests for IFB Clarifications”.

1.4. Security

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

1.5. Documentation

- 1.5.1.** 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 and reference documents are provided “as is”, without any warranty as to quality or accuracy.
- 1.5.2.** The target date for contract award is November 2022.

SECTION 2 GENERAL BIDDING INFORMATION

2.1. NOTICE TO BIDDERS OF CONTRACT DISTRIBUTION AND DISCLOSURE OF INFORMATION

- 2.1.1.** The resulting Contract is subject to release to the applicable NATO Resource Committee through the NATO Office of Resources (NOR).
- 2.1.2.** The resulting Contract may be subject to release to (i) NATO Resource Committees for audit purposes (including audits carried out using third party companies - See Book II, Special Provisions Article entitled, "Notice of Authorized Disclosure of Information for Mandated NATO Third Party Audits by Resource Committees"; and (ii) to the customer holding a Service Level Agreement with the Agency related to this requirement, upon request from that customer.

2.2. Definitions

- 2.2.1.** 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:
 - 2.2.1.1.** "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 vis-a-vis 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.
 - 2.2.1.2.** "Compliance": strict conformity to the requirements and standards specified in this IFB and its attachments.
 - 2.2.1.3.** "Contractor": the awardee of this solicitation of offers, who shall be responsible for the fulfilment of the requirements established in the prospective Contract.

- 2.2.1.4.** “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.
- 2.2.1.5.** “IFB”: Invitation for Bid.
- 2.2.1.6.** “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, NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, TÜRKIYE, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, UNITED KINGDOM, UNITED STATES OF AMERICA.
- 2.2.1.7.** “Purchaser”: NATO Communications and Information Agency (NCI Agency) or its legal successor.
- 2.2.1.8.** “Quotation” or “Bid”: a binding offer to perform the work specified in the attached prospective Contract (Book II).
- 2.3. Eligibility and Origin of Equipment and Services**
- 2.3.1.** Only firms from Participating Countries (as specified in paragraph 2.2.1.6), 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.
- 2.3.2.** None of the work, including project design, labour and services shall be performed other than by firms from and within Participating Countries.
- 2.3.3.** 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.
- 2.3.4.** 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 Participating Countries.
- 2.4. Bid Delivery and Bid Closing**
- 2.4.1.** All Bids shall be in the possession of the Purchaser at the email address given below on or before noon / **1500 hours (Brussels Time) on 08 SEPTEMBER 2022**, at which time and date bidding shall be closed.
- 2.4.2.** Bidders are requested to submit their bid electronically to the email address specified in Paragraph 2.4.3.
- 2.4.3.** The complete Bid shall be e-mailed to the following address **ONLY**: IFBCO115715ITC.BIDS@ncia.nato.int.

- 2.4.3.1.** The files should be submitted as either MS Excel or PDF as listed in Section 3.2.1 of the Bidding Instructions.
- 2.4.3.2.** The files should be attached directly to the email(s). Do not send any .ZIP files.
- 2.4.4.** The complete Bid shall consist of three (3) separate subject e-mails to above address, as follows:
 - 2.4.4.1.** For the first e-mail the subject line shall read: "IFB-CO-115715-ITC– Official Bid for [company name] – Part 1 – Bid Admin". The e-mail content shall be as described in Paragraph 3.2.1 below.
 - 2.4.4.2.** For the second e-mail the subject line shall read: "IFB-CO-115715-ITC – Official Bid for [company name] – Part 2 - Price Proposal". The e-mail content shall be as described in Paragraph 3.2.1below.
 - 2.4.4.3.** For the third e-mail the subject line shall read: "IFB-CO-115715-ITC – Official Bid for [company name] – Part 3 – Technical Proposal". The e-mail content shall be as described in Paragraph 3.2.1 below.
- 2.4.5.** Late Bids
 - 2.4.5.1.** 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.
 - 2.4.5.2.** 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:
 - 2.4.5.2.1.** A Contract has not already been awarded pursuant to the Invitation for Bid, and;
 - 2.4.5.2.2.** The Bid was sent to the email address specified in the IFB and the delay was solely the fault of the Purchaser.
 - 2.4.5.3.** If a Bid received by electronic means is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained, or due to Bidder's submission, in contravention of these bidding instructions, of electronic files that are encrypted or which contain passwords, the Purchaser will immediately notify the Bidder that the Bid will be rejected unless the Bidder provides clear and convincing evidence:
 - 2.4.5.3.1.** Of the content of the Bid as originally submitted; and,

2.4.5.3.2. That the unreadable condition of the Bid was caused by Purchaser software or hardware error, malfunction, or other Purchaser mishandling.

2.4.5.4. A bid that fails to conform to the above requirements may be declared noncompliant and may not be evaluated further by the Purchaser.

2.4.5.5. If it is discovered, during either the Administrative, Price or Technical evaluation, that the Bidder has submitted an unreadable electronic bid, the Bidder may be determined to have submitted a non-compliant bid.

2.5. Requests for Extension of Bid Closing Date

2.5.1. The Purchaser does not accept, except in exceptional cases, Bidder requests to extend the Bid Closing Date. In any event, requests for extensions of the Bid Closing Date must be submitted to the Purchaser **only** by the respective NATO Delegation of a nation where the bidder is located, or by that country's Embassy.

2.5.2. Any such request for extension must be submitted by the respective Delegation or Embassy to the Purchaser Point of Contact identified in paragraph 2.6 below **no later than ten (10) calendar days** prior to the Bid closing date.

2.5.3. 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. Extensions to the Bid Closing Date are at the sole discretion of the Purchaser.

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

2.6. Purchaser's Point of Contact

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

NATO Communications and Information Agency
Acquisition Directorate
Attention: Emira Kapetanovic – Principal Contracting Assistant

2.6.1.1 Bid Delivery: IFBCO115715ITC.BIDS@ncia.nato.int

2.6.1.2 Questions/Clarifications: IFBCO115715ITC@ncia.nato.int

2.7. Request for IFB Clarifications

2.7.1. 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.

2.7.2. All requests for clarification shall be forwarded to the Purchaser using the Clarification Request (CR) Form provided at Annex C of this Book I. Bidders are required to keep the classification of their request NATO Unclassified. All questions and requests must reference the Section(s) in the IFB subject for clarifications. Such requests shall be emailed to the

point of contact specified in paragraph 2.6.1.2 above and shall arrive **not later than ten (10) calendar days** prior to the stated "Bid Closing Date". The Purchaser is under no obligation to answer requests for clarification submitted after this time.

- 2.7.3. 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 2.7.4 below.
- 2.7.4. 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 five (5) calendar days before the established** Bid Closing Date. The Purchaser is under no obligation to answer requests for clarification submitted after this time.
- 2.7.5. 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.
- 2.7.6. Bidders are advised that subsequent questions and/or requests for clarification included in a Bid shall neither be answered nor considered for evaluation.
- 2.7.7. 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.
- 2.7.8. 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 2.9 below.
- 2.7.9. 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).
- 2.7.10. 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 their offer.

2.8. Requests for Waivers and Deviations

- 2.8.1. 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 2.7 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.

2.9. Amendment of the Invitation for Bid

- 2.9.1.** 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 2.7 above or may be an independent action on the part of the Purchaser.
- 2.9.2.** 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.
- 2.9.3.** 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.

2.10. Modification and Withdrawal of Bids

- 2.10.1.** 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 2.4. Such modifications will be considered as an integral part of the submitted Bid.
- 2.10.2.** 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 2.4.5, 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.
- 2.10.3.** 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.

2.11. Bid Validity

- 2.11.1.** Bidders shall be bound by the term of their Bid for a period of six (6) months starting from the Bid Closing Date specified in paragraph 2.4.1 above.
- 2.11.2.** 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.

2.11.3. 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.

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

2.11.4.1. 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

2.11.4.2. Refuse this extension of time and withdraw the Bid.

2.11.5. 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.

2.12. Supplemental Agreements

2.12.1. Bidders are required, in accordance with the certificate Annex B-10 at 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.

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

2.12.3. 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.

2.13. Cancellation of Invitation for Bid

2.13.1. 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.

2.14. Electronic Transmission of Information and Data

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

- 2.14.2.** All bidders are strongly encouraged to provide accurate email addressing information and notify the Purchaser at the earliest practicable date should any changes occur.
- 2.14.3.** Bidders are cautioned that electronic transmission of documentation which contains classified information is not permissible.

SECTION 3 BID PREPARATION INSTRUCTIONS

3.1. General

- 3.1.1.** 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.
- 3.1.2.** 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.
- 3.1.3.** 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.
- 3.1.4.** Partial bids and/or bids containing conditional statements will be declared non-compliant.
- 3.1.5.** 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.
- 3.1.6.** The specific format for each volume is stated in paragraph 3.2.1.
- 3.1.7.** All documentation submitted as part of the bid shall be classified no higher than "NATO UNCLASSIFIED".
- 3.1.8.** 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

- 3.2.1.** The complete bid submission shall consist of three (3) distinct parts, delivered by email, as shown in the following table.

Part	Format and Quantity Details
I: Bid Administration	<p>✓ 1 PDF file that includes:</p> <ul style="list-style-type: none"> ○ The completed, signed certificates found in Annex B, provided as a single PDF file. ○ no password protection <p>All of the required contents are outlined in Section 3.4</p>

II: Price Proposal	<p>✓ The Price Quotation shall contain two(2) files in total:</p> <ul style="list-style-type: none"> ○ one (1) electronic copy in Microsoft Excel file (readable and searchable) of the completed Bidding Sheets provided in Annex A and ○ 1 PDF file: The Offer Summary sheet of the Bidding Sheets ○ no password protection <p>All of the required contents are outlined in Section 3.5</p>
III: Technical Proposal	One (1) PDF file with content as specified in Section 3.6.2 with no password protection

3.2.2. All emails submitted shall be less than 10 MB.

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

3.2.4. Where no specific format is mandated, electronic bid documentation shall be delivered in Adobe PDF format without limitations of printing or “copy & paste”. The Purchaser reserves the right to request native formats electronic files of the proposal to facilitate the evaluation process.

3.2.5. The Purchaser does NOT accept hard copies of bids, CDs, thumb drives, or zip files.

3.2.6. Bidders are advised that the Purchaser reserves the right to incorporate the Bidders Technical Proposal in whole or in part in the resulting Contract.

3.2.7. The Bid language shall be English.

3.3. Package Marking

3.3.1. The proposal shall be sent via three separate e-mails to the Bid Delivery email address specified in section 2.4.3.

3.3.2. The individual emails shall have the following names:

- IFB-CO-115715-ITC Official Bid for *Company Name*, Part I – Bid Admin
- IFB-CO-115715-ITC Official Bid for *Company Name*, Part II – Price Proposal
- IFB-CO-115715-ITC Official Bid for *Company Name*, Part III – Technical Proposal

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

- IFB-CO-115715-ITC Official Bid for Generic, Part I – Bid Admin

or

- IFB-CO-115715-ITC Official Bid for GCTR, Part I – Bid Admin

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

3.4. Preparation of the Bid Administration (Part I)

3.4.1. This volume is comprised of:

- One emailed PDF file inclusive of all of the required documents;

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

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

3.4.3.1. Annex B-1 (Certificate of Legal Name of Bidder);

3.4.3.2. Annex B-2 (Acknowledgement of Receipt of IFB Amendments);

3.4.3.3. Annex B-3 (Certificate of Independent Determination);

3.4.3.4. Annex B-4 (Certificate of Bid Validity);

3.4.3.5. Annex B-5 (Certificate of Exclusion of Taxes, Duties and Charges);

3.4.3.6. Annex B-6 (Comprehension and Acceptance of Contract Special and General Provisions);

3.4.3.7. Annex B-7 (Bidder Background IPR);

3.4.3.8. Annex B-8 (List of Subcontractor IPR);

3.4.3.9. Annex B-9 (Certificate of Understanding);

3.4.3.10. Annex B-10 [(Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements) with the prospective text of such Agreements, as applicable];

3.4.3.11. Annex B-11 (Disclosure of Involvement of Former NCI Agency Employment).

3.4.4. Concerning Certificate B-10, Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements, Bidders shall note especially the following:

- 3.4.4.1.** If supplemental agreements, such as End-User Certificates or Technical Assistance Agreements, are required by national regulations, these must

be submitted with the Bidders Bid. Supplemental agreements submitted after the Bid Closing Date shall not be considered.

3.4.4.2. The terms of supplemental agreements, if necessary, are the Bidders / Contractors responsibility and shall be totally consistent with the terms of the (Prospective) Contract, and shall not duplicate, negate, or further interpret any provisions of this Contract. The terms of the (Prospective) Contract shall take precedence over the Supplemental Agreement.

3.4.4.3. A problem with the supplemental agreement in any of the areas mentioned previously in this provision may result in a determination that the Bid is not compliant with the terms of the IFB, and in rejection of the Bid, or termination for default of the Contract if the supplemental agreement is submitted after Contract award.

3.5. Preparation of the Price Proposal (Part II)

3.5.1. This volume is comprised of:

- The completed Bidding Sheets (Excel)
- The Offer Summary sheet of the Bidding Sheets (Pdf)

3.5.1.1. The Bidding Sheets submitted by email must contain the completed Excel file provided with this IFB as “02_IFB-CO-115715-ITC Book I- Bidding Sheets”.

3.5.1.2. The Schedule of Supplies and Services will be completed by the Purchaser prior to Contract award and does not need to be completed as part of the Bid.

3.5.2. General Rules

3.5.2.1. Bidders shall prepare their Price Quotation by completing the Bidding Sheets referred to in paragraph 3.5.1.1 above, in accordance with the instructions specified in the Bidding Sheets tab “Instructions”

3.5.2.2. 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.

3.5.2.3. 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. This includes Firm Fixed Prices for all optional CLINs.

3.5.2.4. 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.

- 3.5.2.5.** 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.
- 3.5.2.6.** 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.
- 3.5.2.7.** Bidders shall prepare their Price Proposal by submitting one (1) electronic copy in Microsoft Excel (readable and searchable) of the Bidding Sheets and one (1) PDF copy of the Offer Summary sheet of Bidding Sheets in the format enclosed herein (BOOK I Annex A). The Bidder shall propose an accurate and complete price quotation in completing the Bidding Sheets as defined in these Bidding Instructions.
- 3.5.2.8.** Bidders shall prepare their Price Quotation by completing the yellow highlighted sections of the Bidding Sheets referred in paragraph 3.5.1.1 above, in accordance with the instructions specified in the Bidding Sheets.
- 3.5.2.9.** No alteration of the form and pre-filled content of the Bidding Sheets is allowed, unless otherwise specified. The prices entered shall reflect the amount of the total items required to meet the contractual requirements.
- 3.5.2.10.** 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:
- 3.5.2.10.1.** The currency is of a "participating country" in the project, and
- 3.5.2.10.2.** 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.
- 3.5.2.11.** 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.
- 3.5.2.12.** 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.
- 3.5.2.13.** The Bidder's attention is directed to the fact that the Price Part shall contain no document and/or information other than the priced copies of

the Bidding Sheets, and a PDF copy of the Offer Summary tab. Any other document will not be considered for evaluation.

- 3.5.2.14.** When completing the Bidding Sheets, a unit price and total fixed price for each specified element needs to be supplied on each CLIN line item. Bidders are required to insert price information in all cells marked in yellow in the Bidding Sheets. Prices should not be grouped. 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 and in the currency quoted. If the price of a line item is expressed in different currencies, these shall be identified, and there shall be as many totals on that line item as there are currencies. In preparing the Price Quotation, Bidders shall ensure that the prices of the Sub-items total the price of the major item of which they constitute a part. The accuracy of the inputs of the Bidding Sheets is the responsibility of the Bidder. The Purchaser in its favour may resolve ambiguous computation of prices.
- 3.5.2.15.** The Bidder shall furnish firm fixed price quotations, for all proposed items (CLINs 1 through 6) including optional CLIN provided for in this IFB with any and all appropriate additions. Partial quotations shall be rejected.
- 3.5.2.16.** The Bidder understands that there is no obligation under this contract for the Purchaser to exercise any of the optional line items and that the Purchaser bears no liability should it decide not to exercise the options (totally or partially). Further, the NCI Agency reserves the right to order another Contractor (or the same), to perform the tasks described in the optional line items of the current Contract through a new Contract with other conditions.
- 3.6. Preparation of the Technical Proposal (Part III)**
- 3.6.1.** Bidders shall submit their Technical Proposal in an electronic package containing all the information addressing the technical specifications and requirements of the Statement of Work (SOW). The Technical Proposal shall have a confirmation that all requirements in SOW A-2 are included in the proposed solution.
- 3.6.2.** This volume is comprised of one PDF file submitted by email, which contains all of the various parts described in this section:
- 3.6.2.1.** Executive Summary, as described in section 3.6.5.
- 3.6.2.2.** Technical Proposal Cross-Reference/Compliance Table as described in section 3.6.6 below.
- 3.6.2.3.** Bidder Qualifications, as described in section 3.6.7 below.
- 3.6.2.4.** Technical Requirements, as described in section 3.6.8 below.
- 3.6.3.** 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.

- 3.6.4.** 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.

3.6.5. Executive Summary

- 3.6.5.1.** Bidders shall provide in an executive summary an overview of their understanding of the project objective and its execution over multiple years. The summary shall contain a description of their experience with distributed software development, with developing simulation software with the FLAMES simulation framework and with their experience in working with other teams using the English language. It may include a short overview of their experience of air and joint operations and of software development approach of their technical proposal in form of an executive summary. This summary shall demonstrate the Bidder has an understanding of the NATO air domain and the use of simulation for training and exercise support.

3.6.6. Technical Proposal Cross-Reference/Compliance Table

- 3.6.6.1.** The Bidder shall include the completed Technical Proposal Cross-Reference Table from Annex D of Book I. The Bidder shall complete the Column marked “BID REFERENCE” of the Table, citing the appropriate section of the Technical Proposal that corresponds to each paragraph of these instructions for the Preparation of the Technical Proposal. The completed Table serves as an index for the Purchaser’s Technical Evaluation Panel and also as an aide memoire to the Bidder to ensure that all the required information has been provided in the Technical Proposal.

3.6.7. Bidder Qualifications

- 3.6.7.1.** The Bidder shall have qualifications demonstrating that they have the technical and managerial skills to guarantee success.
- 3.6.7.2.** The Bid shall include the CVs for the Key Personnel. The Purchaser may choose to conduct interviews with the lead engineer and development team (see SOW §4) for the definitions and the skillsets for these roles during the Bid evaluation, informing the Contractor one week in advance. The interviews shall be conducted face to face in the Agency location (The Hague), or via Skype.

3.6.7.3. The proposed Key Personnel must satisfy the skillset requirements in SOW §4. In order to verify that this is the case, the following information shall be included in the CVs:

3.6.7.3.1. Length and period of experience in developing code with the FLAMES simulation framework and the C/C++ language on tasks relating to model, service, and interface development and testing.

3.6.7.3.2. Length and period of experience of developing code with the FLAMES simulation framework Application Programming Interfaces.

3.6.7.3.3. English language proficiency.

3.6.7.3.4. NATO security clearance currently held and expiration date.

3.6.8. Technical Requirements

3.6.8.1. The Bidder shall provide a copy of SOW Annex A along with a description of their proposed solution to satisfy the priority 1 requirements in the SOW and an estimation of the associated effort by the Development Lead Engineer and by the development team members. Additional materials such as brochures, sales literature, product endorsements and unrelated technical or descriptive narratives shall not be included in the Technical Proposal.

SECTION 4 BID EVALUATION PROCESS AND CRITERIA

4.1. General

- 4.1.1.** The evaluation of bids will be made by the Purchaser solely on the basis of the requirements specified in this IFB. Failure to address any of the bidding requirements in this IFB or omission of the critical information may result in a determination of non-compliance for the entire Bid
- 4.1.2.** 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.
- 4.1.3.** 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.
- 4.1.4.** 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 nor restate the SOW.
- 4.1.5.** 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.
- 4.1.6.** 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 proposal made on behalf of proposed Subcontractors. The Bidder shall be responsible for providing prompt access to his own or Subcontractors' facilities and personnel.
- 4.1.7.** 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 Proposal 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 Proposal 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.

4.1.8. All administrative compliant Bids will be evaluated strictly against the evaluation criteria and factors, and shall only be evaluated on a comparative basis for the purposes of the Price Evaluations.

4.1.9. The compliant Bidder who has been determined to have offered the lowest priced, technically compliant Bid will be offered the Contract for award.

4.2. Evaluation Procedure

4.2.1. 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 4.3. 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

The Price volumes will be opened and evaluated in accordance with section 4.4

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 Proposal 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 Proposal will be reviewed for compliancy of all Sections of the Proposal which shall contain sufficient details to make a positive determination of compliancy.

4.3. Evaluation Step 1 – Bid Administration

4.3.1. 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 Part. The evaluation of the Bid Administration Part 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 as per Section 3.4.
- 4.3.1.3.** The Bid Administration Part 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.
- 4.3.2.** A Bid that fails to conform to the above requirements may be declared non-compliant and may not be evaluated further by the Purchaser.
- 4.3.3.** Bids that are determined to be administratively compliant will proceed to Step 2, Price Evaluation.
- 4.3.4.** Notwithstanding paragraph 4.3.3, if it is later discovered in the evaluation of the Bid Administration Part, Technical Part or the Price Part 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

- 4.4.1.** 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 3.5.2.10 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 3.5.2.11 and 3.5.2.12).

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)).

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

4.4.3. The Price Quotation meets requirements for price realism and balance as described below in paragraph 4.4.6.

4.4.4. 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.

4.4.5. Basis of Price Comparison / Determination of Lowest Price

4.4.5.1. 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.

4.4.5.2. 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 (CLINs 1) and evaluated options (CLINs 2-6).

4.4.6. Price Balance and Realism

4.4.6.1. 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.

4.4.6.2. 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.

4.4.6.3. If the Purchaser has reason to suspect that a Bidder has artificially debased its prices in order to secure Contract award, the Purchaser will request clarification of the Bid in this regard and the Bidder shall provide explanation on one of the following bases:

4.4.6.3.1. 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.

- 4.4.6.3.2.** 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 proposal offered and convincingly and objectively describe the competitive advantage and the net savings achieved by this advantage over standard market practices and technology.
- 4.4.6.3.3.** 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.
- 4.4.6.4.** 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 4.4.6.3.1 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.
- 4.4.6.5.** If the Purchaser accepts the Bidder's explanation of mistake in paragraph 4.4.6.3.1 and allows the Bidder to accept the Contract at the offered price, or the Purchaser accepts the Bidder's explanation pursuant to paragraph 4.4.6.3.3 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.
- 4.4.6.6.** If the Bidder presents a convincing rationale pursuant to paragraph 4.4.6.3.2 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 capable of objective analysis. In such a case the Bid may be determined to be non-compliant.

4.5. Evaluation Step 3 – Technical Proposal

- 4.5.1.** In order for a Bid to be determined to be compliant, the Bidder shall have

submitted a Proposal 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 Proposal will be reviewed for compliancy of all Sections of the Proposal which shall contain sufficient details to make a positive determination of compliancy.

- 4.5.2.** Upon determination of the lowest-priced Bid as described above, the Bid shall be evaluated to confirm compliance with the criteria in Table 1 associated with the respective sections of the Technical Proposal.

EVALUATION CRITERIA	IFB REFERENCE
Executive Summary Bidders shall provide in an executive summary an overview of their understanding of the project objective and its execution over multiple years. The summary shall contain a description of their experience with distributed software development, with developing simulation software with the FLAMES simulation framework and with their experience in working with other teams using the English language. It may include a short overview of their experience of air and joint operations and of the use of simulation for training and exercise support.	Book I, 3.6.5
Technical Proposal Cross-Reference/Compliance Table The Bidder shall have provided the completed Technical Proposal Cross- Reference Table from Annex D of Book I.	Book I, 3.6.6
Bidder Qualifications The Bidder shall have provided the Qualifications (experience and Key Personnel CVs) as described in SOW §4. The Purchaser may conduct short interviews with the Key Personnel during the evaluation demonstrating that they have the required skillsets and experience.	Book I, 3.6.7
Compliance with Technical Requirements The Bidder shall have provided a copy of SOW Annex A along with a description of their proposed solution to satisfy the priority 1 requirements in the SOW and an estimation of the associated effort by the Development Lead Engineer and by the development team members.	Book I, 3.6.8

Table 1 – Criteria for Technical Evaluation

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 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 Bidders proposal, 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 in the 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.

“02_ IFB-CO-115715-ITC_Book I-Bidding Sheets.xls”

2. Bidders shall include this file in its proposal 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 IFB-CO-115715-ITC 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 six (6) months 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. 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-8. 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-9. Certificate of Understanding

I certify that

.....
.....(Company Name) has read
and fully understands the requirements of this Invitation for Bid (IFB) and that the Bid
recognises these requirements in total.

I also certify to the best of my expert knowledge that this Bid is within the "state of
art" boundaries as they exist at the time of bidding for this project.

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

**Annex B-10. 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 of supplemental agreements 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. 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-11. 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 working as part of the company's team, at any tier, preparing the Bid:

- ☐ Have not held employment with NCI Agency within the last two years.
- ☐ 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 below):

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:

Name & Title:

Company:

Excerpt of NCI Agency AD. 05.00, Code of Conduct dated May 2017**Article 14 PROCUREMENT AND CONTRACTORS**

- 14.1 NCI Agency Personnel are required to maintain unquestionable integrity and impartiality in relation to procurements initiated by the NCI Agency.
- 14.2 NCI Agency Personnel shall not disclose any proprietary or contract related information regarding procurement directly or indirectly to any person other than a person authorized by the NCI Agency to receive such information. NCI Agency Personnel shall not disclose any documentation related to a procurement action to any third party without a need to know (e.g., draft statement of work, statement of requirements) unless this is expressly provided under NATO Procurement Regulations or authorized in writing by the Chief of Acquisition. During an on-going selection, NCI Agency Personnel shall not disclose any information on the selection procedure unless authorized by the Chairman of the award committee/board. The NCI Agency Personnel concerned will ensure that proper access controls are put in place to prevent disclosure of procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations.
- 14.3 NCI Agency Personnel will not participate in a source selection if an offer has been provided by a friend, family member, a relative, or by a business concern owned, substantially owned, or controlled by him/her or by a friend, family member or a relative. NCI Agency Personnel appointed as part of an evaluation shall report such links to the Chief of Acquisition immediately upon becoming aware of it.
- 14.4 Contractors and consultants shall not be allowed to participate in the drafting of the statement of work or in the source selection process unless they and their company/employer will be excluded from competition of the related contract. The same will apply to contractors and consultants involved in the definition and development of requirements.
- 14.5 Contractors will be given specific and coherent statements of work, providing precise explanation of how she/he is going to be employed. Tasks to be performed and minimum qualifications are to be well defined from the start. In addition, supervisors will ensure that contractors do not occupy managerial positions within the Agency.
- 14.6 NCI Agency Personnel shall not enter into authorized commitments in the name of NCI Agency or NATO unless specifically authorized. NCI Agency Personnel must abstain from making promises or commitment to award or amend a contract or otherwise create the appearance of a commitment from the NCI Agency unless properly authorized by the NCI Agency.
- 14.7 NCI Agency Personnel shall not endorse directly or indirectly products from industry. Therefore, NCI Agency Personnel shall not name or make statements endorsing or appearing to endorse products of specific companies.
- 14.8 Industry partners will need to abide with the post-employment measures under this Directive upon submission of their Quotation / proposals to the NCI Agency. As part of the selection process, industry will be requested to agree with an ethical statement.

15 INDUSTRY INITIATIVES

- 15.1 Industry initiatives may include loans, displays, tests or evaluation of equipment and software, requesting NCI Agency speakers at industry gatherings and conferences,

inviting speakers from industry to NCI Agency events, consultancy or studies of technical or organizational issues, etc. These initiatives are usually at no cost to the NCI Agency and take place at a pre-contractual phase or before the development of requirements and specifications. While there are benefits associated with the early involvement of industry in the definition of requirements and specifications, this also raises the potential for unfair treatment of potential competitors.

- 15.2 Industry initiatives which go beyond routine interaction in connection with on-going contracts must be reported to and coordinated by the NCI Agency Acquisition Directorate for approval. Industry initiatives shall be properly documented and governed by written agreements between the NCI Agency and the company concerned where relevant. Such agreements may contain provisions describing the nature of the initiative, the non-disclosure of NCI Agency/NATO information, NCI Agency ownership of any resulting work, the NCI Agency's right to release such work product to future competitors for any follow-on competition or contract, the requirement that any studies must provide non-proprietary solutions and/or an acknowledgement that the participating companies will not receive any preferential treatment in the contracting process.
- 15.3 Any authorized industry initiatives must be conducted in such a way that it does not confer an unfair advantage to the industry concerned or create competitive hurdles for potential competitors.

16 POST EMPLOYMENT MEASURES

- 16.1 The NCI Agency will not offer employment contracts to former NCI Agency Personnel who departed less than 2 years earlier, unless prior approval by the General Manager has been received.
- 16.2 Former NCI Agency Personnel will not be accepted as consultants or commercial counterpart for two (2) years after finalization of their employment at NCI Agency, unless the General Manager decides otherwise in the interest of the Agency and as long as NATO rules on double remuneration are observed. Such decision shall be recorded in writing. Commercial counterparts include owners or majority shareholders, key account managers, or staff member, agent or consultant of a company and/or subcontractors seeking business at any tier with the NCI Agency in relation to a procurement action in which the departing NCI Agency staff member was involved when he/she was under the employment of the NCI Agency. As per the Prince 2 Project methodology, a Project is defined as a "temporary organization that is created for the purpose of delivering one or more business products according to an agreed business case". For the purpose of this provision, involvement requires (i) drafting, review or coordination of internal procurement activities and documentation, such as statement of work and statement of requirement; and/or (ii) access to procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations; and/or (iii) being appointed as a representative to the Project governance (e.g., Project Board) with access to procurement information as per (ii) above; and/or (iv) having provided strategic guidance to the project, with access to procurement information as per (ii) above.
- 16.3 In addition to Section 16.2 above, former NCI Agency Personnel at grades A5 and above or ranks OF-5 and above are prohibited during twelve months following the end of their employment with the NCI Agency to engaging in negotiations, representational communications and/or advisory activities with the NCI Agency on

behalf of a private entity, unless this has been agreed in advance by the NCI Agency General Manager and notified to the ASB.

- 16.4 NCI Agency Personnel leaving the Agency shall not contact their former colleagues in view of obtaining any information or documentation about procurement activities not yet authorized' release. NCI Agency Personnel shall immediately report such contacts to the Chief of Acquisition.
- 16.5 The ASB Chairman will be the approving authority upon recommendation by the Legal Adviser when the NCI Agency Personnel concerned by the above is the NCI Agency General Manager and will notify the ASB.
- 16.6 NCI Agency Personnel leaving the Agency shall sign a statement that they are aware of the post-employment measures set out in this Directive.
- 16.7 The post-employment measures set out in this Directive shall be reflected in the NCI Agency procurement documents, such as RFQs, and contract provisions.

Annex C Clarification Request Form

Company Name _____ Submission Date _____

**INVITATION FOR BID
IFB-CO-115715-ITC**

CLARIFICATION REQUEST FORM

Company Name _____

Submission Date _____

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

Company Name _____

Submission Date _____

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

Company Name _____

Submission Date _____

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

Annex D Cross Reference/Compliance Table

Bidders shall complete column “BID REFERENCE” with Bid references that locate the technical proposal documentation required by the IFB, e.g. section, paragraph, table (if applicable), page number etc. Copy of the duly completed Cross Reference/ Compliance Table is to be included in the Bid Technical Proposal Package. The Bid shall follow the instructions in Section 3.6, and will be evaluated according to the instructions in Section 4.5.

Bidding Instructions Requirement Ref.	SoW Requirement Ref.	REQUIREMENT DESCRIPTION	BID REFERENCE
3.6.5 Executive Summary		Bidders shall provide in an executive summary an overview of their understanding of the project objective and its execution over multiple years. The summary shall contain a description of their experience with distributed software development, with developing simulation software with the FLAMES simulation framework and with their experience in working with other teams using the English language. It may include a short overview of their experience of air and joint operations and of the use of simulation for training and exercise support.	<i>Bidder to complete</i>
3.6.6 Technical Proposal Cross-Reference/Compliance Table	-	The Bidder shall include the completed Technical Proposal Cross- Reference Table from Annex D of Book I. The Bidder shall complete the Column marked “BID REFERENCE” of the Table, citing the appropriate section of the Technical Proposal that corresponds to each paragraph of these instructions for the Preparation of the Technical Proposal. The completed Table serves as an index for the Purchaser’s Technical Evaluation	<i>Bidder to complete</i>

		Panel and also as an aide memoire to the Bidder to ensure that all the required information has been provided in the Technical Proposal.	
3.6.7 Bidder Qualifications	SoW 4	The Bidder shall have provided qualifications (experience and Key Personnel CVs) demonstrating that they have the essential skills to guarantee project success.	<i>Bidder to complete</i>
3.6.8 Technical Requirements	SoW 5	The Bidder shall have provided a copy of SOW Annex A along with a description of their proposed solution to satisfy the priority 1 requirements in the SOW and an estimation of the associated effort by Development Lead Engineer and by the development team members.	<i>Bidder to complete</i>

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",
- "Labour",
- "Material",
- "Travel",
- "ODC",
- "Rates".

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

The instructions for the detailed tabs can be found below, as well as in the green boxes within each detailed tab. G&A, Overhead, material handling and other indirect rates do not need to be separately calculated in the detail sheets but must be included in the totals for each category (Labour/Material/Travel/ODC) as appropriate. A list of the direct and indirect rates applied in the bid must also be provided in the "Rates" tab, although they do not need to be linked to any and the detailed calculations. The list of these rates will be requested in pre-contract award from the winning bidder.

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 "Firm Fixed 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 Firm Fixed 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.
- For the Detailed tabs Bidders have 2 options: A) Provide all the detailed data for all currencies in the table provided, selecting the individual currencies from the dropdown lists and summing only common currencies together in CLIN Summary/Offer Summary Sheets B) Duplicate the CLIN Summary tab for each currency bid.

DETAILED TABs	DESCRIPTION
MATERIAL LABOUR TRAVEL ODCs	<p>The detailed tables are to be completed by the bidder with all columns populated, and shall be expanded to include as many rows as necessary to provide the detail requested. The bidder is required to identify for each item the CLIN it is associated with from the drop down menu. Each column should then be populated using the column- specific instructions in the first row. Bidder may not delete columns within tables, or omit information from columns, but may add columns if necessary, although it's not anticipated this will be needed.</p> <p>Note CLINs with no costs associated with that item should also be selected within the table, and noted that there is no cost within that table for the CLIN. For example, if there is no labour associated with CLIN X.1, Select CLIN X.1 in the first column and then in the second column note "No Labour is associated with this CLIN". This will help to ensure that all the proper detail has been accounted for and properly allocated.</p> <p>Important Note: The Total sum of the "fully burdened" cost column should equal the grand total cost for each category (Labour, Material, etc.) to include profit as well as all indirect rates (G&A/Overhead/Material handling/etc.) associated with that category. These indirect rates must be included in the total firm fixed price on the appropriate detailed tab but are no longer required to be shown as separate calculations at the bidding stage. However, the bidder is required to include the associated indirect costs in the totals of the detailed tab in the base unit costs. Alternatively, the bidder may choose to show these as separate calculations by expanding the table columns to show the additional costs due to these indirect rates (similar to the way profit is calculated). Note again although the detailed indirect rate calculations are not required at the bidding stage, this information will be requested from the winning bidder during pre-contract award discussions.</p>

RATES	As discussed previously in these instructions, the detailed indirect rate calculations are not required to be included in the bidding sheets, although the bidders may chose to do so. However, ALL bidders are required to state the G&A/OH/Material handling and any other indirect rates that they have applied to the bid.
--------------	--

CLIN Number	CLIN DESCRIPTION	Firm Fixed Price
Declare Currency =>		
Grand Total Firm Fixed Price - Base Contract		-
Grand Total Firm Fixed Price - Base Contract + Evaluated Options		-
CLIN 1	CLIN 1 (BASE-EVALUATED) - WP1 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2022	-
Total Firm Fixed Price Base Contract		-
CLIN 2	CLIN 2 (EVALUATED-OPTION) - WP2 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2023	-
CLIN 3	CLIN 3 (EVALUATED-OPTION) - WP3 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2024	-
CLIN 4	CLIN 4 (EVALUATED-OPTION) - WP4 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2025	-
CLIN 5	CLIN 5 (EVALUATED-OPTION) - WP5 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2026	-
CLIN 6	CLIN 6 (EVALUATED-OPTION) - WP6 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2027	-
Total Firm Fixed Price Evaluated Options		-

IFB-CO-115715-ITC CLIN Summary											
BASE CONTRACT											
CLIN	Description	SOW Reference	Required Completion Date	Delivery Destination	Delivery Form	Unit of measure	Quantity	Unit Price	Total Firm Fixed Price	Investment or O&M	Optional Comments (Mandatory for zero costs lines)
								Declare Currency =>			
1	CLIN 1 (BASE-EVALUATED) - WP1 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2022										
1.1	Management										
1.1.1	Report and documentation (status summary, list of planned activities,...)	5.1	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Set of documents	1	-	-	O&M	
1.2	Tasks-Priority 1 (Must be done)										
1.2.1	Task 1 - Code Merger	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.2.2	Task 2 - On-line support to the NCI Agency developers (one person-week)	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Service	person-hour	40	-	-	O&M	
1.2.3	Task 3 - Upgrade of the ITC code to work with the latest FLAMES official release.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.2.4	Task 4 - Integration and testing event (one week duration)	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.2.5	Task 5 - Adjustment of the ITC code to accept a vector command to cancel the target run.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.2.6	Task 6 - Implement realistic ORBIT behaviour/patterns based on mission types and roles.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.2.7	Task 7 - Development and release of automated test pipelines.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.2.8	Task 8 - Development of a "MAGIC MOVE" like command to relocate A/C to another airspace.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.2.9	Task 9 - Development of a script to create new aircraft in an existing unit on a specified airspace.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.3	Tasks-Priority 2 (Should be done)										
1.3.1	Task 10 - ITC FLAMES Relational Database models documentation	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.3.2	Task 11 - Implement simulation capability for missions to enter and exit corridors at defined points	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.3.3	Task 12 - Implement features regarding JoJo refueling, track number of JoJo aircraft. To vector the remaining on station aircraft while one aircraft is going for AAR.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.3.4	Task 13 - Creation of new air unit with airframes.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.3.5	Task 14 - Enhance the ground vehicle models to use the 'Enhanced Ground Vehicle' model.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.4	Tasks-Priority 3 (Could be done)										
1.4.1	Task 15 - Enhance the feedback service in ITC to use KAFKA in parallel to the current mechanism.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.4.2	Task 16 - Implement J series messages like J Series messages (J13.x, J14.x, J7.x, J3.6, J10.x, J12.x), both using the JSON method as well as TDL tracks	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
1.4.3	Task 17 - Update Mission classes to conform to FLAMES standards.	A.2	EDC to 31 December 2022	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
TOTAL PRICE CLIN 1									-		
Total Firm Fixed Price- Base Contract									-		
EVALUATED OPTIONS											
								Declare Currency =>			
2	CLIN 2 (EVALUATED-OPTION) - WP2 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2023										
2.1	Tasks-Priority 1 (Must be done)										
2.1.1	Task 1 - Code Merger	A.2	01.01.2023-31.12.2023	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
2.1.2	Task 2 - On-line support to the NCI Agency developers (one person-week)	A.2	01.01.2023-31.12.2023	NATO Software Factory (NSF)	Service	person-hour	40	-	-	O&M	
2.1.3	Task 3 - Upgrade of the ITC code to work with the latest FLAMES official release.	A.2	01.01.2023-31.12.2023	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
2.1.4	Task 4 - Integration and testing event (one week duration)	A.2	01.01.2023-31.12.2023	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
2.2	Software Development Support Services for tasks TBD (including delivery of reports and documentation)										
2.2.1	Priority 2 (Should be done)-Priority 3 (Could be done) TBD annually at the initial requirement and design meeting	A.1,A.2	01.01.2023-31.12.2023	NATO Software Factory (NSF)	Service	person-hour	1.000	-	-	O&M	
TOTAL PRICE CLIN 2									-		
3	CLIN 3 (EVALUATED-OPTION) - WP3 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2024										
3.1	Tasks-Priority 1 (Must be done)										
3.1.1	Task 1 - Code Merger	A.2	01.01.2024-31.12.2024	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
3.1.2	Task 2 - On-line support to the NCI Agency developers (one person-week)	A.2	01.01.2024-31.12.2024	NATO Software Factory (NSF)	Online	person-hour	40	-	-	O&M	
3.1.3	Task 3 - Upgrade of the ITC code to work with the latest FLAMES official release.	A.2	01.01.2024-31.12.2024	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
3.1.4	Task 4 - Integration and testing event (one week duration)	A.2	01.01.2024-31.12.2024	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
3.2	Software Development Support Services for tasks TBD (including delivery of reports and documentation)										
3.2.1	Priority 2 (Should be done)-Priority 3 (Could be done) TBD annually at the initial requirement and design meeting	A.1,A.2	01.01.2024-31.12.2024	NATO Software Factory (NSF)	Service	person-hour	1.000	-	-	O&M	
TOTAL PRICE CLIN 3									-		
4	CLIN 4 (EVALUATED-OPTION) - WP4 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2025										
4.1	Tasks-Priority 1 (Must be done)										
4.1.1	Task 1 - Code Merger	A.2	01.01.2025-31.12.2025	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
4.1.2	Task 2 - On-line support to the NCI Agency developers (one person-week)	A.2	01.01.2025-31.12.2025	NATO Software Factory (NSF)	Online	person-hour	40	-	-	O&M	
4.1.3	Task 3 - Upgrade of the ITC code to work with the latest FLAMES official release.	A.2	01.01.2025-31.12.2025	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
4.1.4	Task 4 - Integration and testing event (one week duration)	A.2	01.01.2025-31.12.2025	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
4.2	Software Development Support Services for tasks TBD (including delivery of reports and documentation)										
4.2.1	Priority 2 (Should be done)-Priority 3 (Could be done) TBD annually at the initial requirement and design meeting	A.1,A.2	01.01.2025-31.12.2025	NATO Software Factory (NSF)	Service	person-hour	1.000	-	-	O&M	
TOTAL PRICE CLIN 4									-		
5	CLIN 5 (EVALUATED-OPTION) - WPS Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2026										
5.1	Tasks-Priority 1 (Must be done)										
5.1.1	Task 1 - Code Merger	A.2	01.01.2026-31.12.2026	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
5.1.2	Task 2 - On-line support to the NCI Agency developers (one person-week)	A.2	01.01.2026-31.12.2026	NATO Software Factory (NSF)	Online	person-hour	40	-	-	O&M	

5.1.3	Task 3 - Upgrade of the ITC code to work with the latest FLAMES official release.	A.2	01.01.2026-31.12.2026	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
5.1.4	Task 4 - Integration and testing event (one week duration)	A.2	01.01.2026-31.12.2026	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
5.2	Software Development Support Services for tasks TBD (including delivery of reports and documentation)										
5.2.1	Priority 2 (Should be done)-Priority 3 (Could be done) TBD annually at the initial requirement and design meeting	A.1,A.2	01.01.2026-31.12.2026	NATO Software Factory (NSF)	Service	person-hour	1.000	-	-	O&M	
TOTAL PRICE CLIN 5										-	
6	CLIN 6 (EVALUATED-OPTION) - WP6 Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements - 2027										
6.1	Tasks-Priority 1 (Must be done)										
6.1.1	Task 1 - Code Merger	A.2	01.01.2027-31.12.2027	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
6.1.2	Task 2 - On-line support to the NCI Agency developers (one person-week)	A.2	01.01.2027-31.12.2027	NATO Software Factory (NSF)	Online	person-hour	40	-	-	O&M	
6.1.3	Task 3 - Upgrade of the ITC code to work with the latest FLAMES official release.	A.2	01.01.2027-31.12.2027	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
6.1.4	Task 4 - Integration and testing event (one week duration)	A.2	01.01.2027-31.12.2027	NATO Software Factory (NSF)	Online	Task	1	-	-	O&M	
6.2	Software Development Support Services for tasks TBD (including delivery of reports and documentation)										
6.2.1	Priority 2 (Should be done)-Priority 3 (Could be done) TBD annually at the initial requirement and design meeting	A.1,A.2	01.01.2027-31.12.2027	NATO Software Factory (NSF)	Service	person-hour	1.000	-	-	O&M	
TOTAL PRICE CLIN 6										-	
Total Firm Fixed Price- Evaluated Options										-	

Note: Please see also the **Rates** tab where any and all rates included in this bid need to

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Rate Name	Rate description*	Percentage
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[Insert Rate Name]		0%



PROSPECTIVE CONTRACT

IFB-CO-115715-ITC

**PROVISION OF SOFTWARE DEVELOPMENT
SUPPORT TO PROJECT
"INTEGRATED TRAINING CAPABILITY (ITC)
UPGRADE 2022 & ANNUAL SIMULATION
ENHANCEMENT"**

SIGNATURE SHEET

NCI Agency PURCHASE ORDER		
1. Original Number: 1	2. PO Number : <i>To be inserted at contract award</i>	
3. Contract Number: CO-115715-ITC	4. Effective date (EDC): See Block 17	
5. Contractor: <i>To be Inserted at contract award</i>	6. Purchaser: The NCI Agency Boulevard Leopold III B-1110 Bruxelles Tel: +31(0)70 374 3174	
7. CONTRACT SCOPE: This is a Contract for the Provision of Software Development Support to Project “Integrated Training Capability (ITC) Upgrade 2022” & Annual Simulation Enhancement.		
8. TOTAL AMOUNT OF CONTRACT :		
9. PERIOD OF PERFORMANCE As stated in Schedule of Supplies and Services and Special Provisions	10. DELIVERY SITE As stated in Schedule of Supplies and Services and Special Provisions	
11. CONTRACT This Contract consists of the following parts and named documents: <ul style="list-style-type: none"> a) Part I. Schedule of Supplies and Services b) Part II. Special Contract Provisions c) Part III. Contract General Provisions d) Part IV. Statement of Work e) Contractor’s proposal dated <i>[to be inserted at contract award]</i> 2022 and subsequent clarifications. In the event of any conflict or inconsistencies between or among any of the documents comprising this Contract, the order of priority specified in Clause 2 of Part II shall apply.		
12. Signature of Contractor	13. Signature of Purchaser	
14. Name and Title of Signer	15. Name and Title of Signer	
16. Date signed by the Contractor	17. Date signed by the Purchaser	

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Book II – The Prospective Contract
IFB-CO-115715-ITC

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2. Part II, Contract Special Provisions
3. Part III, Contract General Provisions
4. Part IV, Statement of Work

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Book II – The Prospective Contract
IFB-CO-115715-ITC



**PROVISION OF SOFTWARE DEVELOPMENT SUPPORT TO
PROJECT
"INTEGRATED TRAINING CAPABILITY (ITC) UPGRADE 2022
& ANNUAL SIMULATION ENHANCEMENT"**

CO-115715-ITC

**PART I - CONTRACT SCHEDULES OF SUPPLIES AND
SERVICES**

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IFB-CO-115715-ITC

THE PROSPECTIVE CONTRACT

Part II. Special Provisions

**PROVISION OF SOFTWARE DEVELOPMENT SUPPORT TO
PROJECT
"INTEGRATED TRAINING CAPABILITY (ITC) UPGRADE 2022" &
ANNUAL SIMULATION ENHANCEMENT**

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PART II – CONTRACT SPECIAL PROVISIONS

1. DEFINITIONS

- 1.1 For the purpose of this Contract and unless otherwise explicitly indicated, the following definitions shall apply:
- 1.2 Acceptance: The act of an authorized representative of the Purchaser by which the Purchaser assumes title and ownership of delivered Works 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.
- 1.3 Contracting Authority: The General Manager of the NCI Agency, the Director of Acquisition of the NCI Agency, the Chief of Contracts of the NCI Agency or the authorised representatives of the Chief of Contracts of the NCI Agency.
- 1.4 Contractor: The person or legal entity from a Participating Country, which has signed this Contract and is a Party thereto.
- 1.5 Purchaser: NCI Agency, as represented by the General Manager, NCI Agency. The Purchaser is the legal entity who awards and administers the Contract and stands as one of the Contracting Parties.

2. ORDER OF PRECEDENCE

- 2.1. In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
 - a. Part I - The Schedule of Supplies and Services
 - b. Part II - The Contract Special Provisions
 - c. Part III. Contract General Provisions
 - d. Part III – The Statement of Work
 - e. Contractor's proposal dated *XX Month 2022*

3. SCOPE OF WORK

- 3.1. The purpose of this Contract is to develop the modelling and behaviour capabilities within FLAMES and ITC in support of the specific tasks defined at Statement of Work Annex A – Work Details.
- 3.2. The acceptance of this Contract by the Parties neither implies an obligation on the Purchaser to extend the Contract beyond the specified scope or terms nor to prohibit the Parties from mutually negotiating modifications thereto.

4. PERIOD OF PERFORMANCE

- 4.1. The Period of Performance of the Base Contract shall be from the Effective Date of Contract to 31 December 2022.

5. TECHNICAL DIRECTION

- 5.1. The Contract will be administered by the NCI Agency in accordance with the Article of these Special Provisions of Purchase Order entitled "Contract Administration".
- 5.2. The Purchaser will assign an ITC Task Leader who will provide the Contractor's personnel with instruction and guidance (within the general scope of work) in performance of its duties and working schedule. The ITC Task Leader does not have the authority to change the terms of the Contract or to increase the overall cost, duration or level of effort of the Contract. The ITC Task Leader does have the authority to interpret the Statement of Work and provide direction to the Contractor's personnel in performance of their duties. In addition, the ITC Task Leader will monitor Contractor performance and recommend whether the services provided by the Contractor's personnel are satisfactory and acceptable for payment.

6. FIRM FIXED PRICE

- 6.1. This is a Firm Fixed Price Contract. Firm Fixed Prices are established for the supplies and services defined in Part I - Schedule of Supplies and Services.
- 6.2. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as provided under other provisions of this Contract.
- 6.3. Under no circumstances shall the Purchaser assume liability for costs incurred by the Contractor in excess of the Total Firm Fixed Price.
- 6.4. The Total Contract price is inclusive of all expenses related to the performance of the present Contract. The rates are fully loaded with all indirect and fringe charges, profit, etc.

7. COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 7.1. The Contractor warrants that he has read, understood and agreed to each and all terms, clauses, specifications 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.
- 7.2. The specifications set forth the performance requirements for the Contractor's proposed work as called for under this Contract. Accordingly, notwithstanding any

conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that the work to be delivered will meet or exceed the performance requirements of the said specifications.

- 7.3. 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.
- a. Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or
 - b. Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- 7.4. Notwithstanding Clause 16 ("Changes") of the Contract General Provisions 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 firm fixed price as set forth in this Contract or to any extension of the delivery times for the work beyond the period of performance in the Schedule of Supplies and Services.

8. PLACE AND TERMS OF DELIVERY

- 8.1. Deliverables under this Contract shall be delivered at such times as set forth in the Schedule of Supplies and Services.

9. CONTRACT STATUS REVIEW AND BREAKPOINTS

- 9.1. The following events are considered critical progress milestones upon which successful completion of the contracted effort depends:
- 9.1.1. Acceptance in writing by the Purchaser of the project deliverables as specified in the Schedule of Supplies and Services and SOW §5 & §A-2.
- 9.2. At each of these milestones, the Purchaser will review the overall Contract status and progress in order to determine if continuation of the Contract remains in the best interest of NATO.

10. PURCHASE OPTIONS

- 10.1. Work Package 2 (WP2) is an option to the Contract, Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements – 2023, and it can be exercised unilaterally by a written notice from the Purchaser

to the Contractor, subsequently confirmed in a Contract amendment. The WP2 option would require an approval from the Military Budget Committee.

- 10.2. Work Package 3 (WP3) is an option to the Contract, Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements – 2024, and it can be exercised unilaterally by a written notice from the Purchaser to the Contractor and a Contract amendment. The WP3 option would require an approval from the NATO Investment Committee.
- 10.3. Work Package 4 (WP4) is an option to the Contract, Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements – 2025, and it can be exercised unilaterally by a written notice from the Purchaser to the Contractor and a Contract amendment. The WP4 option would require an approval from the Military Budget Committee.
- 10.4. Work Package 5 (WP5) is an option to the Contract, Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements – 2026, and it can be exercised unilaterally by a written notice from the Purchaser to the Contractor and a Contract amendment. The WP5 option would require an approval from the Military Budget Committee.
- 10.5. Work Package 6 (WP6) is an option to the Contract, Integrated Training Capability (ITC) In Service Support (ISS) Annual Simulation Enhancements – 2027, and it can be exercised unilaterally by a written notice from the Purchaser to the Contractor and a Contract amendment. The WP6 option would require an approval from the Military Budget Committee.
- 10.6. The Purchaser, at his sole and exclusive discretion, shall have the right to exercise any or all of the Options so identified in Part I Schedule of Supplies and Services, at the prices and terms and conditions listed in this Contract, for the duration of the Contract period. If the Purchaser exercises such options, the Contractor shall deliver such specified quantities of services at such times and to such destinations as instructed by the Purchaser.
- 10.7. The Contractor understands that there is no obligation under this Contract for the Purchaser to exercise any of the optional line items and that the Purchaser bears no liability should it decide not to exercise the options (totally or partially). Further, the Purchaser reserves the right to order another Contractor (or the same), to perform the tasks described in the optional line items of the current Contract through a new Contract with other conditions.

11. PARTICIPATING COUNTRIES

- 11.1. The Contractor may issue subcontracts to firms and purchase from qualified vendors in any contributory NATO nations in the project, namely, (in alphabetical order):

ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC, DENMARK, ESTONIA, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO,

NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, TÜRKIYE, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, UNITED KINGDOM, UNITED STATES OF AMERICA.

- 11.2. None of the work, including project design, labour and services, shall be performed other than by firms from and within Participating Countries.
- 11.3. 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 Country.
- 11.4. The Intellectual Property Rights for all software and documentation used by the Contractor in the performance of the Contract shall vest with firms from and within Participating Countries and no royalties or license fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a Participating Country.

12. INSPECTION AND ACCEPTANCE

- 12.1. Acceptance is the action by which the Purchaser formally acknowledges that the Contractor has fully demonstrated that Contract Deliverables are complete or have been performed according to the requirements set in the Contract.
- 12.2. The supplies and services to be provided by the Contractor's personnel under this Contract shall conform to the highest professional and industry standards and practices. Inspection of the services provided will be made by the Purchaser's Technical representatives or another authorised designee in accordance with the specifications in Part IV - Statement of Work. Services performed by the Contractor which do not conform to the highest professional and industry standards may result in the Purchaser requesting that such work be performed again at no increase in the price of the Contract. Repeated instances of work performed which fails to meet the standards and practices may result in termination of the Contract for Default.
- 12.3. The Purchaser reserves the right to charge to the Contractor any additional cost incurred by the Purchaser for 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.
- 12.4. Testing and Acceptance procedures are described in Clause 21 ("Inspection and Acceptance of Work") of the Contract General Provisions.

13. LIQUIDATED DAMAGES

- 13.1. If the Contractor fails to:
 - a) successfully meet the required performance dates as defined in the Schedule of Supplies and Services, or any extension thereof, or

- b) deliver and obtain acceptance of the Deliverables or to acceptably perform the services as specified in the Schedule of Supplies and Services to this Contract,

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 requirements of Clauses 13.1.a and 13.1.b, fixed and agreed liquidated damages of 0.1% (one tenth of one per cent) per day of the total amount for each CLIN.

- 13.2. Liquidated damages shall be payable to the Purchaser from the first day of delinquency in delivery and shall accrue at the rate specified in the paragraph above to an aggregate sum of all delinquent items not to exceed Fifteen Percent (15%) of the total value of the Contract. These liquidated damages shall accrue automatically and without any further notice being required.
- 13.3. 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") of the Contract General Provisions. In such event, subject to the provisions of Clause 41 (Disputes) of the Contract General Provisions, the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the Contract when in its judgment the findings of fact justify an extension.
- 13.4. In addition, the Purchaser may terminate this Contract in whole or in part as provided in Clause 39 ("Termination for Default") of the Contract General Provisions. In the event of such a termination, the Contractor shall be liable to pay the excess costs provided in Clause 39.5 (Termination for Default) of the Contract General Provisions. The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:
 - a. By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
 - b. By proceeding against any surety or deducting from the Performance Guarantee if any
 - c. By reclaiming such damages through appropriate legal remedies.

14. BACKGROUND IPR

- 14.1. This Clause hereby supplements Clause 30.2 ("Contractor Background IPR") of the Contract General Provisions.
- 14.2. The Purchaser's rights in FLAMES are governed by the Flames Development Suite Licence Agreement and/or the Flames Runtime Products License Agreement, as appropriate.
- 14.3. Para 30.2 of the Contract General Provisions is not applicable. Any use of Contractor Background IPR by the Contractor for the purpose of carrying out the Work pursuant to the Contract shall be free of any charge to Purchaser. This clause does not grant the Purchaser any licence to use or authorise others to use

any Contractor Background IPR for the purpose of exploiting or otherwise using the Foreground IPR.

15. FOREGROUND IPR

15.1. With regard to Flames, Para 30.3, "Foreground IPR", of the Contract General Provisions is not applicable. The Purchaser's rights in all Work, including all software, data, and documentation, delivered under this contract – in relation to Flames – remained governed by the Flames Development Suite Licence Agreement and/or the Flames Runtime Products License Agreement, as appropriate.

16. CHANGES

16.1. The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Contract or Task Order, as described in Clause 16 ("Changes") of the Contract General Provisions.

16.2. Except as otherwise provided for in this Contract, prices quoted for the changes, modifications, etc. shall have a minimum validity period of 6 months from submission.

17. BASIS OF COMPENSATION

17.1. The Contractor will be paid, provided the confirmation from the Purchaser's ITC Task Leader and recommendation that the services provided are satisfactory and acceptable for payment. This confirmation will be provided through the submission of a timesheet by the Contractor's personnel to the Purchaser's Technical Representative for his/her signature. The Contractor's personnel shall comply with any timesheet requirements in accordance with the Purchaser's applicable time accounting processes, if and when applicable. Payment shall be made at the hourly rate specified in the Schedule of Services and Rates up to the maximum number of hours.

17.2. Overtime, work at weekends and holiday premiums are not permitted, except when agreed with the Purchaser and formalized through Contract Amendment.

17.3. The reimbursement will be made on a monthly basis for the number of hours worked during the preceding month.

18. INVOICES AND PAYMENT

18.1. Clause 17 (Invoices and Payment Terms) supplements and partly replaces Clause 25 (Invoices and Payment) of the Contract General Provisions.

18.2. Payment for services furnished under this Contract shall be made in the currency quoted by the Contractor for the relevant portion of the Contract.

- 18.3. Payments shall be made to the Contractor on achievement and prior written acceptance by the Purchaser of the CLINs as aggregated in the total price CLIN listed in the SSS.
- 18.4. CLIN 1 may be invoiced at the end of the calendar quarter.
- 18.5. CLINs 1.2-1.4 shall be invoiced and paid when the services under the task are rendered/delivered and accepted.
- 18.6. Where Optional CLINs are exercised, payments shall be made when the optional CLINs are accepted and all related documentation has been delivered and accepted. Payments will be made to the Contractor on achievement/delivery and prior written acceptance by the Purchaser of the CLINs as listed in the SSS.
- 18.7. The term of the Contract may not be exceeded without prior approval of the Purchaser. In no case will the Purchaser make payment above the total of the corresponding CLINs.
- 18.8. No payment shall be made with respect to undelivered supplies; works not performed, tasks not rendered and/or incorrectly submitted invoices.
- 18.9. No payment shall be made for additional items delivered that are not specified in the contractual document.
- 18.10. Evidence of the acceptance by the Purchaser shall be attached to all invoices.
- 18.11. The invoice amount shall be exclusive of VAT and exclusive of all Taxes and Duties as per Clause 26 ("Taxes and Duties") of the Contract General Provisions.
- 18.12. The Contractor shall render all invoices in a manner, which shall provide a clear reference to the Contract. Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain:
- 18.12.1. Contract number CO-115715-ITC;
- 18.12.2. Purchase Order number: [XXXXXXXXX];
- 18.12.3. Contract Amendment number (if any);
- 18.12.4. Contract Line Item(s) (CLIN) as they are defined in the priced Schedule of Supplies and Services;
- 18.12.5. Bank Account details for International wire transfers.
- 18.13. The invoice shall contain the following certificate: *"I certify that the above invoice is true and correct, that the delivery of the above described items has been duly effected and/or that the above mentioned services have been rendered and the payment therefore has not been received."* The certificate shall be signed by a duly authorised company official on the designated original.

- 18.14. Invoices referencing "CO-115715-ITC / PO (TBD at Contract Award)" shall be submitted in electronic format to:

accountspayable@ncia.nato.int

An Electronic copy shall be sent to the Contracting Officer, at the email address specified in Clause 19.6 of the Special Contract Provisions.

- 18.15. NCI Agency will make payment within 45 days of receipt by NCI Agency of a properly prepared and documented invoice.

19. SUPPLEMENTAL AGREEMENTS, DOCUMENTS AND PERMISSIONS

- 19.1. 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 39 ("Termination for Default") of the Contract General Provisions hereafter.
- 19.2. 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 finalized and issued by the appropriate governmental authority, are subject to review by the Purchaser.
- 19.3. 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.
- 19.4. For the purpose of this Contract, the following National mandatory Supplemental Agreements are identified:

Type of Agreement	National Authority of Reference	Subject
TBD	TBD	TBD

20. CONTRACT ADMINISTRATION

- 20.1. The Purchaser reserves the right to re-assign this Contract to a representative(s) for administrative purposes, in whole or in part, provided that the Purchaser shall always be responsible for its obligations under the Contract and for actions or lack of actions of its assigned administrator. The Purchaser undertakes to advise the Contractor in writing whenever this right is to be exercised.
- 20.2. All notices and communications between the Contractor and the Purchaser shall be written and conducted in the English language. Contract modifications shall only be valid when received in writing from the General Manager, NCI Agency, and/or the NCI Agency Contracting Authority.
- 20.3. Formal letters and communications shall subsequently be personally delivered or sent by mail, registered mail, courier or other delivery service, to the official points of contact quoted in this Contract. Facsimile and e-mail may be used to provide an advance copy of a formal letter or notice which shall subsequently be delivered through the formal communication means.
- 20.4. Informal notices and informal communications may be exchanged by all communication means, including telephone and e-mail. All informal communication must be confirmed by a formal letter or other formal communication to be contractually binding.
- 20.5. All notices and communications shall be effective on receipt.
- 20.6. Official Points of Contact:

Purchaser	Contractor
NCI Agency	TBD
For contractual matters: Attn: Emira Kapetanovic Principal Contracting Assistant E-mail: Emira.Kapetanovic@ncia.nato.int	For contractual matters: Attn: TBD Tel: +XXXXXX E-mail: XXXXXX xxxxx.xxxxx@xxxxxx.xxx
For project management matters: Attn. Clive Wood Project Manager, Senior Scientist, Command and Control Centre Tel: +31 70 374 3774 E-mail: Clive.Wood@ncia.nato.int	

For Technical Matters (Technical Representative/ Agency Liaison): Attn: Jan Ramaker, Chief Scientific Assistant, Command and Control Centre Telephone: +31 70 374 3738 E-mail: Jan.Ramaker@ncia.nato.int	
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or to such address as the Purchaser may from time to time designate in writing.

21. SUB-CONTRACTORS

21.1. 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.

21.2. The Contractor shall not place sub-contracts outside the NATO member Nations unless the prior authorisation of the Purchaser has been obtained. Such authorisation will not be granted when the sub-contract involves the carrying out of classified work.

22. OWNERSHIP AND TITLE

22.1. Ownership and title to all deliverables shall not modify the ownership and title as they exist at EDC as captured as “adjustment” in the SOW. Ownership and title of any deliverable considered by the Purchaser and by the Contractor as being entirely new under this Contract as captured as “creation” in the SOW shall pass to the Purchaser unless otherwise agreed by the Purchaser at EDC, or at the start of an annual option.

23. SECURITY

23.1. This Article supplements Clause 11 (“Security”) of the Contract General Provisions.

23.2. The Contractor and all sub-Contractors are responsible, in accordance with NATO and National Security regulations, for the proper handling, storage and control of any classified documents and information as may be furnished to the Contractor in relation to the performance of the present Contract.

23.3. The security classification of this Contract is “NATO UNCLASSIFIED”.

23.4. 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.

- 23.5. 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.
- 23.6. All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance applicable security regulations.
- 23.7. Personnel working under this Contract must possess a NATO SECRET security clearance as a minimum. It is possible that personnel may be required with a different level of clearance; any such requirements will be indicated in a Contract Amendment.
- 23.8. It shall be the Contractor's responsibility to obtain the necessary clearances and to have such clearances confirmed to the Purchaser when requested.
- 23.9. In the absence of valid security clearances for the Contractor's personnel during the performance of the Contract, the Purchaser reserves the right to terminate the Contract for Default as per Clause 39 ("Termination for Default") of the Contract General Provisions.
- 23.10. In the performance of all works under this Contract it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the Host Nation and by the local Headquarters.

24. PURCHASER FURNISHED ITEMS

- 24.1. This Article supplements Clause 13 (Purchaser Furnished Property and Services) of the General Contract Provisions.
- 24.2. The Purchaser will provide the Contractor with the property and services for the performance of the Contract as specified in Section 3 of the SOW.

25. CONTRACTOR FURNISHED ITEMS

- 25.1. In the performance of all works under this Contract it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the Host Nation and by the local Headquarters.
- 25.2. For Purchaser performance at the Contractor's facilities, the Contractor shall provide, or arrange to be provided, office space and equipment (desks, chairs, and basic office equipment) to support Purchaser performance when on Contractor site.

26. RIGHTS IN TECHNICAL DATA AND DATA LEGENDS

- 26.1. All rights in the results of work undertaken for or on behalf of the Purchaser for the purposes of this Contract, including any technical data specifications, report, drawings, computer software data, computer programmes, computer databases,

computer software, documentation including software documentation, design data, specifications, instructions, test procedures, training material produced or acquired in the course of such work and, in particular, all rights, including copyright therein, shall vest in and be the sole and exclusive property of the Purchaser. Third Party Rights and any existing Contractor's right must be disclosed to the Purchaser before Contract signature.

- 26.2. All reports, presentations, etc. produced for the Purchaser under this Contract are to include the following data legend on the title page:

"This material is the property of NATO and may not be reproduced without written permission."

27. KEY PERSONNEL

- 27.1. The key personnel proposed by the Contractor that satisfy the personnel requirements laid down in the SOW is considered to be key to the performance of this Contract and may not be replaced by the Contractor with substitute personnel without the prior written approval of the Purchaser.
- 27.2. If any options are exercised, the Key Personnel provisions will apply to the option period from the effective date of the Contract.
- 27.3. The following personnel are considered to be Key Personnel for successful Contract performance and are subject to the provisions of this Clause as set forth in the following paragraphs:

Key Personnel	Name	Function within organisation
Development Lead Engineer	TBD	TBD

- 27.4. Under the terms of this Clause, Key Personnel may not be voluntarily diverted by the Contractor to perform work outside the Contract, as this may be a cause of Termination for Default. In cases where the Contractor has no control over the individual's non-availability (e.g., resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser of a change of key personnel within 10 days of the date of knowledge of the prospective vacancy and offer a substitute with equivalent qualifications with no additional costs for the Purchaser.
- 27.5. The Purchaser has the right to refuse any proposed substitution. The Purchaser will confirm any consent given to a substitution in writing through an Amendment to the Contract stating the effective date of change of personnel and only such written consent shall be deemed as valid evidence of Purchaser consent.
- 27.6. Any replacement of Contractor personnel shall not commence work for the Purchaser until he has fully acquired and understood all knowledge of the work already performed by the existing Contractor personnel. The Contractor shall ensure full transfer of knowledge from the existing Contractor personnel to the

replacement Contractor personnel at no cost to the Purchaser. There should be a 1 week overlap between the old and new Key Personnel.

- 27.7. Contractor personnel proposed in substitution of previously employed Contractor Key Personnel shall be interviewed and approved by the Purchaser Project Manager before substitution acceptance is granted in writing by the Purchaser contracting Authority.
- 27.8. In the event of a substitution of any key personnel listed in Clause 26.3 and prior to commencement of performance, the Contractor shall provide a CV for the personnel proposed. The CV shall clearly stipulate:
- 27.8.1. Full details of professional and educational background;
- 27.8.2. Evidence that the personnel is qualified in pertinent Contract related areas per the SOW.
- 27.9. The Contractor shall take all reasonable steps to avoid changes to Key Personnel assigned to this project except where changes are unavoidable or are of a temporary nature. Any replacement personnel shall be of a similar grade, standard and experience as the individual to be substituted. The Contractor shall endeavour to have an overlap of one week for knowledge transfer in case such a change is requested and approved. The cost of this overlap period shall be borne by the Contractor.
- 27.10. Furthermore, even after acceptance of a Contractor's staff member on the basis of his/her CV and/or interview, the Purchaser reserves the right to reject the Contractor's staff member, if the individual is not meeting the required level of competence. The Purchaser will inform the Contractor, in writing, including the cause of rejection, in cases where such a decision is taken; and the Contractor shall propose and make another staff member available within fifteen working days after the written notification. The Purchaser shall have no obligation to justify the grounds of its decision and its acceptance of staff members shall in no way relieve the Contractor of its responsibility to achieve the contractual and technical requirements of this Contract nor imply any responsibility to the Purchaser.
- 27.11. After acceptance in writing by the Purchaser of a substitution of staff, based on a CV and/or interview, paragraph shall be applicable again, if necessary.
- 27.12. The Purchaser may at any time require the Contractor immediately to cease to employ the above named Key Personnel under the present Contract if, in the opinion of the Purchaser, his/her employment is undesirable. The Contractor shall replace any such employee in accordance with Clauses 25.5-25.8.
- 27.13. In those cases where, in the judgment of the Purchaser, the inability of the Contractor to provide a suitable replacement in accordance with the terms of this Clause may potentially endanger the progress under the Contract, the Purchaser shall have the right to terminate the Contract in accordance with the terms of Clause 39 ("Termination for Default") of the Contract General Provisions.

- 27.14. Any change of status or reorganization of the Contractor's practice, or any change in the responsibility for the execution of the Contract shall be reported to the Purchaser immediately when the change or reorganization is promulgated.
- 27.15. The Contractor's Key Personnel required to interface directly with the Purchaser's counterparts, shall have the capability to readily communicate (oral and written fluency) in English and to provide, if requested official documents destined for distribution during the course of the Contract in English.
- 27.16. The Purchaser may, for just cause, require the Contractor to remove its employee. Notice for removal will be given to the Contractor by the Purchaser in writing and will state the cause justifying the removal. The notice will either demand substitution for the individual involved and/or contain a notice for default and the remedies to be sought by the Purchaser.

28. PERSONNEL SECURITY

- 28.1. The Contractor shall ensure that all Contractor and Subcontractor personnel that shall work on a NATO site or access operational data have a valid NS clearance as required by NATO policy. The Contractor shall provide proof that each team member is in possession of a valid NS security clearance prior to Contract Award. Although staff working in the back office do not need clearances, they would need a clearance to access or use any NATO system.
- 28.2. The Contractor shall process all Contractor and Subcontractor personnel through NATO security at each site, adhering to their procedures for clearances, to obtain security badges for the duration of the on-site activities. Different sites could have different rules and procedures.
- 28.3. The only exemption is for other Contractor staff who would be only visiting as needed, such as Contractor's Contracting Officer or other management staff. These visits would require escorting in the absence of security clearances and as such shall be limited to short meetings at NATO premises.

29. INDEPENDENT CONTRACTOR

- 29.1. The Contractor is at all times an independent actor and not a member of NATO. In no case shall the Contractor act on behalf of or as an agent for NATO or any of its bodies. In no way shall the Contractor claim directly or indirectly to represent NATO in an official capacity or claim themselves to be NATO employees.

30. FORCE MAJEURE CLAUSE

- 30.1. Force Majeure" means the occurrence of an event or circumstance that prevents a Party (the "Affected Party") from performing one or more of its contractual obligations under the Contract, provided that: (i) it renders performance impossible; (ii) it is beyond the Affected Party's reasonable control and without the Affected Party's cause, fault or negligence; (iii) by its nature it

could not have been reasonably foreseen at the time of conclusion of the Contract; and (iv) the effects of it could not reasonably have been avoided or overcome by the Affected Party.

30.2. Examples of Force Majeure, provided conditions (i)-(iv) of paragraph [1] are all fulfilled, include:

- 30.2.1. war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation;
- 30.2.2. civil war, riot, rebellion and revolution, usurped power, insurrection, act of terrorism, sabotage or piracy;
- 30.2.3. currency and trade restriction, embargo, sanction;
- 30.2.4. act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;
- 30.2.5. plague, epidemic, natural disaster or extreme natural event;
- 30.2.6. explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; and
- 30.2.7. general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

30.3. The Affected Party must give the other party to the Contract (the "Other Party") written notice without delay detailing the occurrence and its expected duration. The Other Party shall within a reasonable time respond, stating whether it accepts or rejects the occurrence as Force Majeure.

30.4. If the Other Party accepts the occurrence as Force Majeure, the Contract shall remain in force but the Parties will be relieved from performance of their obligations (including payment) under Contract, from the date at which the Other Party received written notice, for so long as the effects of Force Majeure continue or for ninety (90) days, whichever is the shorter, provided that:

- 30.4.1. the Affected Party makes all reasonable efforts to limit the effects of Force Majeure upon performance and to avoid or overcome the effects of Force Majeure;
- 30.4.2. the suspension of performance is of no greater scope than is necessitated by Force Majeure;
- 30.4.3. the Affected Party continues to furnish weekly updates by email while the effects of Force Majeure continue detailing reasonable efforts made in accordance with [4.1], and notifies the Other Party immediately when the effects of Force Majeure are avoided or overcome, or cease, and resumes performance immediately thereafter.

- 30.5. Neither Party shall be in breach of the Contract nor liable for delay in performing, or for failing to perform, its obligations under the Contract, due to Force Majeure.
- 30.6. Unless otherwise agreed by the Parties, if Force Majeure continues for more than ninety (90) days, the Parties may agree: (a) to a revised delivery schedule at no cost; (b) to a reduction of scope terminating part of the Contract at no cost; or (c) to terminate the whole of the Contract at no cost.

31. APPLICABLE REGULATIONS

- 31.1. The Contractor shall be responsible for obtaining permits or licenses to comply with national codes, laws and regulations or local rules and practices in the country of performance under this Contract.
- 31.2. The Contractor shall take any necessary measure to protect the life and health of persons working or visiting the work area occupied by him. These measures include compliance with the country of performance's safety provisions.

32. CODE OF CONDUCT

- 32.1. NCI Agency Personnel are required to maintain unquestionable integrity and impartiality in relation to procurements initiated by the NCI Agency.
- 32.2. NCI Agency Personnel shall not disclose any proprietary or Contract related information regarding procurement directly or indirectly to any person other than a person authorized by the NCI Agency to receive such information. NCI Agency Personnel shall not disclose any documentation related to a procurement action to any third party without a need to know (e.g., draft statement of work, statement of requirements) unless this is expressly provided under NATO Procurement Regulations or authorized in writing by the Director of Acquisition. During an on-going selection, NCI Agency Personnel shall not disclose any information on the selection procedure unless authorized by the Chairman of the award committee/board. The NCI Agency Personnel concerned will ensure that proper access controls are put in place to prevent disclosure of procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations.
- 32.3. NCI Agency Personnel will not participate in a source selection if an offer has been provided by a friend, family member, a relative, or by a business concern owned, substantially owned, or controlled by him/her or by a friend, family member or a relative. NCI Agency Personnel appointed as part of an evaluation shall report such links to the Director of Acquisition immediately upon becoming aware of it.
- 32.4. Contractors will be given specific and coherent statements of work, providing precise explanation of how she/he is going to be employed. Tasks to be performed and minimum qualifications are to be well defined from the start. In

addition, supervisors will ensure that Contractors do not occupy managerial positions within the Agency.

- 32.5. NCI Agency Personnel shall not enter into authorized commitments in the name of NCI Agency or NATO unless specifically authorized. NCI Agency Personnel must abstain from making promises or commitment to award or amend a Contract or otherwise create the appearance of a commitment from the NCI Agency unless properly authorized by the NCI Agency.
- 32.6. NCI Agency Personnel shall not endorse directly or indirectly products from industry. Therefore, NCI Agency Personnel shall not name or make statements endorsing or appearing to endorse products of specific companies.
- 32.7. Industry partners will need to abide with the post-employment measures under this Directive upon submission of their bids / proposals to the NCI Agency. As part of the selection process, industry will be requested to agree with an ethical statement.
- 32.8. Industry initiatives may include loans, displays, tests or evaluation of equipment and software, requesting NCI Agency speakers at industry gatherings and conferences, inviting speakers from industry to NCI Agency events, consultancy or studies of technical or organizational issues, etc. These initiatives are usually at no cost to the NCI Agency and take place at a pre-contractual phase or before the development of requirements and specifications. While there are benefits associated with the early involvement of industry in the definition of requirements and specifications, this also raises the potential for unfair treatment of potential competitors.
- 32.9. Industry initiatives which go beyond routine interaction in connection with on-going contracts must be reported to and coordinated by the NCI Agency Acquisition Directorate for approval. Industry initiatives shall be properly documented and governed by written agreements between the NCI Agency and the company concerned where relevant. Such agreements may contain provisions describing the nature of the initiative, the non-disclosure of NCI Agency/NATO information, NCI Agency ownership of any resulting work, the NCI Agency's right to release such work product to future competitors for any follow-on competition or Contract, the requirement that any studies must provide non-proprietary solutions and/or an acknowledgement that the participating companies will not receive any preferential treatment in the contracting process.
- 32.10. Any authorized industry initiatives must be conducted in such a way that it does not confer an unfair advantage to the industry concerned or create competitive hurdles for potential competitors.
- 32.11. The NCI Agency will not offer employment Contracts to former NCI Agency Personnel who departed less than 2 years earlier, unless prior approval by the General Manager has been received.
- 32.12. Former NCI Agency Personnel will not be accepted as consultants or commercial counterpart for two (2) years after finalization of their employment at

NCI Agency, unless the General Manager decides otherwise in the interest of the Agency and as long as NATO rules on double remuneration are observed. Such decision shall be recorded in writing. Commercial counterparts include owners or majority shareholders, key account managers, or staff member, agent or consultant of a company and/or subcontractors seeking business at any tier with the NCI Agency in relation to a procurement action in which the departing NCI Agency staff member was involved when he/she was under the employment of the NCI Agency. As per the Prince 2 Project methodology, a Project is defined as a “temporary organization that is created for the purpose of delivering one or more business products according to an agreed business case”. For the purpose of this provision, involvement requires (i) drafting, review or coordination of internal procurement activities and documentation, such as statement of work and statement of requirement; and/or (ii) access to procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations; and/or (iii) being appointed as a representative to the Project governance (e.g., Project Board) with access to procurement information as per (ii) above; and/or (iv) having provided strategic guidance to the project, with access to procurement information as per (ii) above.

- 32.13. In addition to Clause 27.12, former NCI Agency Personnel at grades A5 and above or ranks OF-5 and above are prohibited during twelve months following the end of their employment with the NCI Agency to engaging in negotiations, representational communications and/or advisory activities with the NCI Agency on behalf of a private entity, unless this has been agreed in advance by the NCI Agency General Manager and notified to the Agency Supervisory Board (ASB).
- 32.14. NCI Agency Personnel leaving the Agency shall not contact their former colleagues in view of obtaining any information or documentation about procurement activities not yet authorized release. NCI Agency Personnel shall immediately report such contacts to the Director of Acquisition.
- 32.15. The ASB Chairman will be the approving authority upon recommendation by the Legal Adviser when the NCI Agency Personnel concerned by the above is the NCI Agency General Manager and will notify the ASB.
- 32.16. NCI Agency Personnel leaving the Agency shall sign a statement that they are aware of the post-employment measures set out in this Directive.
- 32.17. The post-employment measures set out in this Directive shall be reflected in the NCI Agency procurement documents, such as IFBs, and Contract provisions.

33. NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR MANDATED NATO THIRD PARTY AUDITS BY RESOURCE COMMITTEES

- 33.1. This Clause hereby supplements General Provisions Article 28, Right of Access, Examination of Records
- 33.2. (a) Definitions. As used in this clause:

- 33.2.1. Resource Committees means committees under the North Atlantic Council (NAC) that are responsible, within the broad policy guidance provided by the Resource Policy and Planning Board (RPPB) on matters of resource allocation, for the implementation of the NATO Security Investment Programme (NSIP) or Budget/Civil budgets.
- 33.2.2. Mandated Third Party Audits means audits mandated by a resource committee.
- 33.2.3. Third Party Auditor means an independent, external audit body for NATO such as the International Board of Auditors for NATO (IBAN) or an appointed private Contractor (including its experts, technical consultants, subcontractors, and suppliers) providing audit support under a Resource Committee Appointment based on an agreed mandate.
- 33.2.4. Sensitive information means information of a commercial, financial, technical, proprietary, or privileged nature. The term does not include information that is lawfully, publicly available without restriction.
- 33.3. (b) The Purchaser may disclose to a mandated third party auditor, for the sole purpose of audit support activities, any information, including sensitive information, received -
- 33.3.1. (1) Within or in connection with a bid, quotation or offer; or
- 33.3.2. (2) In the performance of or in connection with a Contract.
- 33.4. (c) Flowdown. Include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items.



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

IFB-CO-115715-ITC

Software Development Support to Project "Integrated Training Capability (ITC) Upgrade 2022"& Annual Simulation Enhancements

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

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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:

Ithe 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.

Name of Company

Signature

Printed Name of Signatory

Title of Signatory

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.

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”

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.

* *

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.

IFB-CO-115715-ITC

THE PROSPECTIVE CONTRACT

Part IV. Statement of Work

**Software Development Support to Project
"Integrated Training Capability (ITC) Upgrade 2022" &
Annual Simulation Enhancements**

(SRV017723)



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1) INTRODUCTION

The Integrated Training Capability (ITC) supports training of the NATO Air Command and Control process on NATO Air C2 systems. The currently most used NATO Air C2 System is NATO-wide Integrated Command and Control Software for Air Operations (ICC). ICC provides functional support for the most critical Air Command and Control functions at the Combined Air Operations Centre (CAOC) level, such as Planning and Tasking, Air Task Order generation, Current Offensive and Defensive Operations and Recognized Air Picture Display. In addition, ICC supports the dissemination of orders, reports and imagery between the CAOC and the Headquarters above and below the CAOC. ITC has been originally developed as an integrated exercise capability for ICC. Hence its implementation is closely linked to the evolution of ICC. The simulation suite for ITC utilizes the Flexible Analysis Modelling and Exercise System (FLAMES™) simulation framework developed by Ternion Corporation, Huntsville, Alabama, US. Since many of the simulation models included in ITC have been developed through Ternion Corporation, Ternion retains the ownership of all FLAMES-based ITC software components. Through the FLAMES License Agreement (FLA), NATO has access to ITC source code for review and maintenance under the terms of a FLAMES Development License. Under the terms of the FLA, NATO can share the ITC source code with other parties who hold a FLAMES development license. A FLAMES development license is required on each workstation where ITC source code is accessed for reading, modification and compilation. ITC execution for exercise purposes is achieved under the terms of a FLAMES runtime license.

The services required by the resulting contract will support the development of a modularized version of ITC compatible with ICC version 3.5.0 initially and with subsequent versions of ICC through the annual options included in this Contract.

The NATO Communications and Information Agency (NCI Agency) supports the complete software lifecycle of ITC and provides ITC as a service to the commands in the NATO Command Structure (NCS). NATO performs corrective and adaptive maintenance of ITC with a yearly maintenance release in order to remain synchronized with the changes in the operational version of ICC and to simulate air operations according to changing concepts of operation. After operational validation, ITC is formally tested for fielding which includes cyber security testing and upon accreditation for use on NATO operational networks, the service baseline is updated and the service is transitioned for the user community. In addition, the ITC architecture for C2 interoperability and exercise control is gradually being transformed to comply with the architecture used for the other training simulations that are used in NATO. ITC is planned to form the basis for a NATO Air and Missile Defence (AMD) exercise simulation able to interact with various air-and missile defence related Command and Control systems used by NATO. The work associated with the AMD simulation is performed under other contracts and is outside of the scope of this contract.

ITC is listed on the NATO Approved Fielded Product List (AFPL) and downloadable from the Electronic Definitive Media Library (EDML) website. Users outside the NCS can execute the ITC simulation through FLAMES runtime licenses.

2) OBJECTIVE

The overall objective of this contract is to maintain and adapt the modelling and simulation behaviour capabilities within ITC in support of the specific tasks defined at Annex A. The Contractor shall accomplish the specific priority 1 tasks at Annex A in the order specified by the numbering of the tasks. Additional priority 2 and 3 tasks may be added prior to Contract Award or subsequently by agreement between Purchaser and Contractor. The list and priority of tasks will be updated annually.

A progress review meeting to track the achievement of the tasks shall be conducted with the NCI Agency Project Manager on a weekly basis. The NCI Agency ITC Task Leader will be supported by the operational personnel forming the ITC User Specialist Team (UST). The tasks at Annex A are tailored towards delivering an upgraded ITC for use with ICC 3.5.0 by the end of 2022. The tasks and priorities have been discussed and agreed by the NCI Agency ITC service delivery team and the ITC UST.

3) SCHEDULE AND PRACTICAL ARRANGEMENTS

The period of performance for the work under the Base Contract is from the date of Contract Award until end December 2022. Work will commence with an Initial Requirement and Design Meeting conducted via teleconference. The meeting will be held within two weeks from Effective Date of Contract (EDC). During the first quarter of each subsequent year, the scope of the required prioritised maintenance tasks will be determined by the NCI Agency and an extension of the Contract will be negotiated with the Contractor. Each extension will commence like the Base Contract and be completed by the end of December of the calendar year.

Unless otherwise specified or approved by the Purchaser, the main effort for this Contract shall be carried out on the Contractor's premises and at all times physically located in a NATO member nation.

The collaboration environment between the NCI Agency service maintenance team and the Contractor shall be based on the integrated use of the Microsoft Teams and of the Azure DevOps services. The Contractor shall provide the necessary networking facilities and supporting software to connect to this environment

The software development environment shall be based on the Azure DevOps services and on Visual Studio 2019 as employed in the NATO Software Factory (NSF). The NCI Agency will provide up to 4 (four) named development accounts to the Contractor. In addition, the NCI Agency will be able to provide a single development virtual machine including a FLAMES Development License. The Contractor shall be responsible for providing the physical development workstations to connect to the NSF. The Contractor may request to use physical machines to perform the work under this Contract. In this case, the Contractor may request a FLAMES development license for a single identified workstation to be provided by the NCI Agency. If a physical workstation is utilised to perform development activities under this Contract, it shall provide an encrypted volume for the storage of source or any other proprietary information and use a 64-bit operating system with McAfee Endpoint

Security software or comparable. Software patching shall be applied at least on a weekly basis.

The NCI Agency shall be able to provide one (1) license that includes the following FLAMES runtime and development features:

- Checkpoint/Restart
- DIS
- HLA
- 3D
- Multi-threaded execution
- Analysis
- Interactive Simulation
- Core

The Contractor shall be responsible for providing additional FLAMES licenses for any additional workstations used by the Contractor's team for FLAMES ITC code review, design, modification and test.

The software development support by the Contractor shall be accomplished by a qualified development team, composed of a Development Lead Engineer and Development Team Members. The team and its Lead Engineer shall have proven simulation development experience using the FLAMES simulation framework and preferably ITC model development experience. The Contractor shall ensure that this team experience is maintained for the entire period of performance of this Contract.

4) CONTRACTOR TEAM QUALIFICATIONS

The Contractor shall provide all necessary manpower to meet the objectives of the project, including taking all reasonable steps to ensure continuity of Contractor's personnel assigned to work on this project. This section outlines essential and desirable experience qualifications for the members of the development team and identifies Key Personnel. The Contractor shall demonstrate that the availability of Key Personnel can be ensured throughout the period of performance of this Contract.

4.1 Development Lead Engineer - Assessment Parameters

The Contractor development team requires a **Development Lead Engineer** considered Key Personnel with the following essential qualifications:

- A minimum of five (5) years recent experience developing code with the FLAMES simulation framework and the C/C++ language on tasks relating to model, service, and interface development and testing.
- A minimum of three (3) years recent experience developing code with the FLAMES simulation framework Application Programming Interfaces.
- Fluency in Business English -3333 (speaking and writing).
- Hold at least a NATO SECRET security clearance.

As desirable qualifications, the Development Lead Engineer shall have:

- At least five (5) years of experience modelling and understanding military operations command and control using FLAMES with working knowledge of military unit tactics and doctrine as well as impact of environmental conditions on military operations.
- Specific experience in and understanding of air and joint operations, where knowledge of maritime and ground force equipment and procedures is highly desired.

4.2 Individual Development Team Members Assessment Parameters:

Individual development team members are not considered as Key Personnel. Proposed team members must have the following essential qualifications:

- A minimum of two (2) years recent experience developing code with the FLAMES simulation framework and the C/C++ language on tasks relating to model, service, and interface development and testing. Because of the tasking in Appendix A, expert knowledge of FLAMES application programming interfaces is necessary;
- A minimum of one (1) year recent experience developing code with the FLAMES simulation framework Application Programming Interfaces;
- Fluency in Business English - 3333 (speaking and writing).

An understanding of the existing ITC models and applications is required by NCI Agency to accomplish the tasks in Annex A. The Contractor should plan for an introductory week between EDC and the Initial Requirement and Design Meeting to gain the necessary understanding of the existing ITC FLAMES-based models.

It is also desirable that the Contractor demonstrate the ability to reach back to FLAMES developers to ensure that the more complex tasks identified in Appendix A can be completed in an efficient and effective manner.

Any change in the assignment of the Contractor resources at 4.1 and 4.2 shall be subject to approval from the Purchaser Contracting authority. The Contractor shall propose candidates which meet the requirements listed in these sections, satisfying the essential requirements stated for the requested category. The Purchaser may choose to conduct interviews with the proposed candidate to verify if the candidate meets the requirements. The interviews shall be conducted face to face in the Agency location (The Hague) or via video-conference .

5) DELIVERABLES

A weekly Progress Review meeting between the Contractor and NCI Agency. The Contractor will make an agenda in coordination with NCI Agency.

A monthly status summary and list of planned activities for the upcoming month must be forwarded on the first of each calendar month the work is in progress.

All models and software changes agreed to by NCI Agency will be built using the FLAMES simulation framework and included in the standard ITC model libraries delivered to NCI Agency via electronic means for testing. The Purchaser will test the software and accept it

if it successfully implements the specified end state in Annex A. Any defects will be reported to the Contractor within 10 working days after receipt by the NCI Agency. The Contractor shall remedy the reported defects within 10 working days. The Purchaser shall repeat the tests a maximum of three (3) times. In the event that a test fails three (3) times, the requirement shall be definitively considered as unfulfilled and shall not be accepted.

This SOW requires the Contractor to provide documentation defining all model functions, capabilities and parameters entered into the ITC system and sources. On-line documentation and/or electronic versions are acceptable. Model versions for designated equipment and entities will be Unclassified. All models will be delivered in a functional state as part of a complete ITC release. All efforts will be performed in coordination with related NCI Agency ITC modelling efforts and previously defined work orders. The precise sharing of work and responsibilities and a precise listing of included models will be agreed upon following the objective definition teleconference.

5.1 Documentation Requirements

Expected documentation on events and tasks is listed below.

Documentation – Per Task

Implementation Document	Electronic version submitted	Per task: Implementation report in NATO Software Factory (NSF), with a minimum of 1 report
Documents explaining the ITC FLAMES Relational Database	Electronic version submitted	For 2022 Task 10: Explanation report in NSF, with a minimum of 1 report

Table 1 DOCUMENTATION – Per Task

Reports

Status summary	Electronic version submitted	Monthly, provided by the Contractor
List of planned activities	Electronic version submitted	Monthly, provided by the Contractor

Table 2 REPORTING A-2) – TASKS

For all reports delivered under this Contract, the Contractor shall ensure the following standards are met:

- The report shall be candid, forthright, and complete. Material that is unflattering to the Purchaser or Contractor, but relevant to the purposes of process improvement, must be included;
- The report shall contain only material that can be supported by evidence;
- The report shall provide evidence to support or justify the conclusions reached;

- The report shall be concise. If necessary, supporting data shall be placed in appendices or referenced as backup material.

5.2 Meetings

Initial Requirement and Design Meeting	Objective definition teleconference conducted	Initial meeting within two weeks from EDC This meeting shall include the ITC Project Manager, the ITC Task Leader and the Contractor Development Lead Engineer.	<p>The Contractor shall provide, no later than fifth business day after the meeting, a Summary Report on the Initial Requirement and Design Meeting.</p> <p>The Summary Report shall include the following information:</p> <ul style="list-style-type: none"> • Time and date of the event • Participants • Comments raised • Decisions taken <p>The Summary Report shall not be used as a mechanism to change the terms, conditions or specifications of the Contract. Such changes shall only be made by agreement, amendment or by authorised mechanisms as set forth in the Contract.</p>
Progress Review meeting	Teleconference conducted	Weekly	<ul style="list-style-type: none"> • The Contractor will make an agenda in coordination with NCI Agency. • The Contractor shall provide a short weekly summary

Table 3 MEETINGS A-2) - TASKS

6) WORK ORDER MANAGEMENT

NCI Agency Management

Purchasing/Contracting Officer: Emira Kapetanovic + 32 02 707 8582

The Purchaser Contracting Officer (PCO) is the only person in the project who can sign any commercial contracts, instructions or transactions. Any other NATO personnel may not make changes to the terms and conditions of the Contract. They

may only provide the Purchaser's interpretation of technical matters. All changes to the Contract shall be made through the PCO only.

ITC Project Manager	Mr. Clive Wood	+31 70 374 3774
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ITC Task Leader	Mr Jan Ramaker	+31 70 374 3738
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Provides coordination of the work objectives and interacts directly with the Contractor in the planning and day-to-day supervision of personnel work assignments, subtask activity definitions and work quality assurance.

ANNEX A – WORK DETAILS**A-1) BACKGROUND**

Since its first use in Exercise Current Opus 2003 the steady development of the ITC methodology and software has resulted in a capable and reliable product and is a proven and valuable air Computer Assisted eExercise (CAX) model fully interoperable with ICC. As ITC defects are identified during the preparation or conduct of exercises, ICC versions are updated to meet operational requirements or changes in technology and the actual way of conducting air operations changes, the ITC simulation needs to be adapted as a part of its maintenance to remain an effective exercising tool for the NATO Air commands. The list of required changes is generated from three basic sources:

- 1) Identified Defects during exercise preparation and conduct
- 2) Inputs from the ITC UST arising from ITC usage in many exercises.
- 3) Observations reported by other ITC users. .
- 4) Outstanding change requirements.

As part of the maintenance for ITC in 2022 version enhancements to ITC 1.5.x are planned.

Software development on ITC is divided between the NCI Agency ITC service maintenance team and supporting Contractors. The NCI Agency service maintenance team is responsible for the development and maintenance of the user interface and of the interface to the ICC database while contracted support is employed to maintain and update ITC model behaviours and simulation functionality.

The tasks below therefore shall require a coordinated work effort by the NCI Agency service maintenance team and by the Contractor. The division of work scope shall reflect the responsibilities outlined in the previous paragraph. For 2022 the following tasks shall be executed in order of priority:

A-2) TASKS

The following 2022 **tasks** shall be executed in order of priority.

Task	Priority
1	1
2	1
3	1
4	1
5	1
6	1
7	1
8	1
9	1
10	2
11	2

12	2
13	2
14	3
15	2
16	3
17	3

The tasks will be accepted based on the completed documentation per task and the testing after each pull request in the NSF per task.

1. Priority 1: Code Merger. The developed code must be merged with the current baseline held at the NCI Agency. End state of this task is that both the Contractor as well as NCI Agency have the same code baseline stored in the NATO Software Factory (NSF).
2. Priority 1: One person week of effort must be reserved in the contract to answer questions from the NCI Agency developers.
3. Priority 1: The version of FLAMES used by ITC is 20.0. The FLAMES code in ITC must be **adjusted** to work with the latest FLAMES official release. The upgraded code should make full use of the enhancements in the intermediate and last version of FLAMES. The decision on the appropriate version of FLAMES for the ITC simulation will be made during the initial requirement and design meeting. The end state of this task is that the current ITC FLAMES baseline works and behaves as before with the latest FLAMES version.
4. Priority 1 A one (1) week integration and testing event shall be held at the Contractor's premises in November or December 2022 with 2 (two) NCI Agency service maintenance team attending. The end state of this task is an integration of all work performed by the Contractor into the ITC frontend baseline. All implemented work by the Contractor must be understood by and, where necessary, explained to the NCI Agency staff. Each implemented task from the agreed task list (see paragraph 2 and ANNEX A A-2) must be accompanied with an implementation document stored in the NSF.
5. Priority 1: When missions are engaging a ground target the missions do not respond to any other scripts anymore. **Adjust** the code to accept a vector command to cancel the target run. The end state of this task is the capability to interrupt engagement runs to ground targets.
6. Priority 1: **Adjust** ORBIT code to implement realistic ORBIT behavior/patterns based on mission types and mission roles. During the status meetings the desired ORBIT behavior will be exposed as captured in a document initiated by the ITC UST. As part of the proper ORBIT behavior the operator must be allowed to enter the threat heading. The end state of this task is that missions with a certain mission role and type will fly in an ORBIT area as indicated in A-3). In the examples in A-3) nicely shaped areas are drawn, however the missions must stay in the areas even when the ORBIT areas are oddly shaped.

7. Priority 1: The ITC project development is conducted in the NSF, an environment based on Azure. In the NSF automated build and automated test pipelines need to be developed. On successful build and test pipelines an automated release pipeline needs to be created.
The end state of this task is an automated production pipeline that can run on scheduled times or on request. The production process includes the build pipeline, test pipeline. Both pipelines must report success or failure, with explanation.
8. Priority 1: A simple, MAGIC_MOVE like, command must be **created** to relocate A/C to another airbase. The command must be sent to the CAOC. It happens in exercises that the response cell operators accidentally land the missions on a wrong airbase. At the moment the ITC response cell must make an alert mission, pull that mission in the simulation, ROLLEX immediate, scramble the mission, once airborne, do an instant RTB to the right airbase. The end state of this task is a script that allows response cell operators to relocate aircraft by tail number or just a number of aircraft of unit to another base. The AIRSTAR must report the correct status for all units and aircraft in the unit.
9. Priority 1: During the run of an exercise the training audience requests to add airframes to a unit while the simulation is running. The aircraft type unit must exist. Like in the FAST tool from Ternion Corporation the operator must have the option of saving the aircraft/units in a dataset so that it can be loaded automatically the next time the scenario is executed. It must be possible to deploy the airframes to another airbase. The end state of this task is to **create** a script to create new aircraft in an existing unit on a specified airbase. The AIRSTARs for the bases must report the appropriate unit and aircraft status. When the scenario is restarted the newly created aircraft must still exist.
10. Priority 2: Provide documentation on the data model of the ITC FLAMES Relational Database that can be queried using SQL inside the code. The end state of this task is a set of documents explaining the ITC FLAMES Relational Database models in total and detail.
11. Priority 2: Implement a new mechanism to support the Air Command and Control requirement to enter and exit corridors at certain points in the corridor. The end state of this task is to **adjust** the simulation capability for missions to enter and exit corridors at defined points.
12. Priority 2: **Adjust** the air-to-air refueling behavior to implement JoJo refueling, one A/C at the time at the tanker. The other aircraft(s) remain on station. It must be possible to vector the remaining on station aircraft while one aircraft is going for AAR. The end state of this task is to show all aircraft on the recognized air picture (RAP) the remaining on station aircraft keep the already existing track number, while the JoJo aircraft gets a new track number. When the JoJo aircraft returns on station and joins the original mission the track number for the JoJo aircraft must disappear. The remaining on station mission must behave and react as before.

13. Priority 2: A possibility is needed to create a new air unit with airframes. When the unit is created all airframes will be on one airbase. The end state of this task is to **create** a script to create a new unit with aircraft on a specified airbase. The AIRSTARs for the bases must report the appropriate unit and aircraft status. When the scenario is restarted, the newly created unit must still exist.
14. Priority 2: **Adjust** and enhance the ground vehicle models to use the 'Enhanced Ground Vehicle' model. In order to allow the ground models to follow roads. The end state of this task is that all ground movers in the simulation use the 'Enhanced Ground Vehicle' model allowing the ground movers to drive on roads, bridges if required. A Terra Vista originated ESRI file must be imported by the FACT importer and provided as a dataset with the task.
1. Priority 3: **Adjust** and enhance the feedback service in ITC to use KAFKA in parallel to the current mechanism. The end state of this task is that all data that is provided to web services is available in KAFKA. This includes the feedback data, ground truth data, plot data, track data, TBM data and app update data. The data must be available in KAFKA using JSON format.
1. Priority 3: **Create** code to implement J series messages like J Series messages (J13.x, J14.x, J7.x, J3.6, J10.x, J12.x), both using the JSON method as well as TDL tracks. The end state of this task is to provide detailed information on all units in the scenario involved in TBM play and (T)BMD play. The following list of J-series message must be implemented:
 - J13.0 Air field Status messages,
 - J13.2 Air platform and system status message,
 - J13.3 Surface platform and system status message,
 - J13.4 Subsurface platform and system status message,
 - J13.5 Land platform and system status message,
 - J14.0 Parametric information message,
 - J14.2 EW control and coordination message,
 - J7.1 Data update request
 - J7.2 Correlation
 - J7.3 Pointer
 - J7.4 Track identifier
 - J7.5 IFF/SIF management
 - J7.6 Filter management
 - J3.6 Ballistic missile track report
 - J10.3 Handover message
 - J10.5 Controlling unit report message
 - J10.6 Pairing message

- J12.0 Mission assignment
 - J12.1 Vector
 - J12.2 Precision aircraft direction
 - J12.3 Flight path
 - J12.4 Controlling unit change
 - J12.5 Target/track correlation
 - J12.6 Target sorting
 - J12.7 Target bearing
2. Priority 3: **Adjust** and update Mission classes to conform to FLAMES standards. The end state of this task will ensure that the ITC FLAMES-related code is ready for future enhancements. The behavior and execution of the models must remain the same as before updating the mission classes for use by the operational community.

A-3) ORBIT explanation

