

NATO UNCLASSIFIED



**IFB-CO-115240-HPE-CLS**

**CONTRACTOR LOGISTIC SUPPORT FOR THE NATO CI  
AGENCY SERVICES HEWLETT PACKARD ENTERPRISE  
(HPE) HARDWARE AND SOFTWARE**

**PART II**

**CONTRACT SPECIAL PROVISIONS**

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**CONTRACT SPECIAL PROVISIONS  
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Book II – Part II  
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**ARTICLE 1 ORDER OF PRECEDENCE**

- 1.1 In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
- a. Signature sheet
  - b. Part I - The Schedule of Supplies and Services
  - c. Part II - The Contract Special Provisions
  - d. Part III – NCI Agency General Provisions
  - e. Part IV – The Statement of Work
  - f. The Contractor’s Bid including any clarifications thereto, incorporated by reference, and the formal documentation of pre-Contract discussions agreed by both parties.

**ARTICLE 2 DISPOSITION OF CHANGES TO THE CONTRACT GENERAL PROVISIONS**

- 2.1 Article 7 “Firm Fixed Price Contract” of the Contract General Provisions is replaced by Article 4 “Firm Fixed Price” of the Special Provisions.
- 2.2 Article 8 “Performance Guarantee” of the Contract General Provisions is not applicable.
- 2.3 Article 9 “Participating Countries” of the Contract General Provisions is supplemented by Article 7 “Participating Countries” of the Special Provisions.
- 2.4 Article 10 “Sub-Contracts” of the Contract General Provisions is supplemented by Article 15 “Sub-Contractors” of the Special Provisions.
- 2.5 Article 11 “Security” of the Contract General Provisions is supplemented by Article 20 “Security” of the Special Provisions.
- 2.6 Article 13 “Purchaser Furnished Property” of the Contract General Provisions is supplemented by Article 26 “Purchaser Furnished Equipment/Services”
- 2.7 Article 21 “Inspection and Acceptance of Work” of the Contract General Provisions is supplemented by Article 10 “Inspection and Acceptance” of the Special Provisions.
- 2.8 Articles 27 “Warranty of Work” and 31 “Software Warranty” of the Contract General Provisions are supplemented by Article 13 “Warranty” of the Special Provisions.

**ARTICLE 3 SCOPE**

- 2.1 The scope of this Contract is to provide support in terms of HP services, including maintenance and training (option) related to the HP Active Devices and Software installed at the NATO sites listed in this Contract and as specified in Part I Schedule of Supplies and Services (SSS) and in Part IV Statement of Work (SOW) for the firm fixed prices stated in this Contract.
- 2.2 The Agreement and Acceptance of this Contract by the Parties neither implies an obligation on either part to extend the Contract beyond the specified scope or terms, nor to prohibit the Parties from mutually negotiating modifications thereto.

**ARTICLE 4 FIRM FIXED PRICE**

- 4.1 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.
- 4.2 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.
- 4.3 The Total Contract price is inclusive of all expenses related to the performance of the present Contract.
- 4.4 The Total Contract price in this Contract is Delivered Duty Paid (INCOTERMS 2010).

**ARTICLE 5 TERM OF CONTRACT**

- 5.1 The term of this Firm Fixed Price framework Contract will be from the Effective Date of Contract until 31 December 2021 with five (5), twelve (12)-month option periods if/when exercised.

**ARTICLE 6 ADDITIONAL CONTRACT TASKS AND OPTIONS**

- 6.1 The tasks identified in the Contract Schedule of Supplies and Services as Options (if any) are to be intended as options to be exercised by the Purchaser and at his sole discretion. The Purchaser shall have unilateral right to exercise any of the listed priced options multiple times at his discretion any time during the performance of the Contract and up to its conclusion at the unit prices listed in the Schedule of Supplies and Services.
- 6.2 Should any options be exercised, the Purchaser will increase the firm fixed price of the Contract via a formal Contract Amendment by the amount of the line items so exercised and the period of performance of the Contract will be extended as mutually agreed when necessary.
- 6.3 The Purchaser may increase the quantity of supplies and services as set forth in any line item of Part I - Schedule of Supplies and Services at the prices stated therein any time during the period of performance of the Contract.
- 6.4 This right can be exercised multiple times for any of the line items, by increasing the firm fixed price of the Contract via a formal Contract Amendment, or by issuing a new contractual instrument.
- 6.5 In this case the Contractor shall honour such right at the same rates and conditions as stated in Part I - Schedule of Supplies and Services. If this right is exercised, delivery of the added items shall be to the same destination as specified in the basic Contract; unless otherwise specified on the written notice.
- 6.6 If the Contract provides for multiple destinations, the Purchaser will specify to which destination(s) the additional quantities are to be shipped. If the Purchaser specifies a destination that is not part of the basic Contract requirements, the Parties will agree to an equitable adjustment as may be required to reflect any additional costs incurred by the Contractor in making such delivery.
- 6.7 In no event shall the Contractor engage in the performance of any options or part thereof without the written consent of the Purchaser Contracting Authority.

- 6.8 In addition to the specific Contract options as identified above, the Purchaser reserves the right to order any foreseeable or additional Contract tasks or service deliverables, listed or not, either occasionally or at a further stage in the life of the project, which it deems necessary for the successful completion of the project. The additional tasks and/or deliverables shall be priced consistently with the rates provided by the Contractor as part of its proposal and included in this Contract by reference.
- 6.9 Except as otherwise provided for in this Contract, Contractor's price quotations for contract changes or modifications shall be provided at no cost to the Purchaser and shall have a minimum validity period of six (6) months from submission.
- 6.10 The Purchaser may, in writing, place an order for such additional tasks throughout the entire Contract period. Such an order may be placed within the framework of this Contract via the issuance of a Contract Amendment or be formulated via the issuance of a new contractual instrument
- 6.11 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.

#### **ARTICLE 7 PARTICIPATING COUNTRIES**

- 7.1 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, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, UNITED KINGDOM, UNITED STATES OF AMERICA.
- 7.2 None of the work, including project design, labor and services, shall be performed other than by firms from and within Participating Countries.
- 7.3 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.
- 7.4 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.

#### **ARTICLE 8 COMPREHENSION OF CONTRACT AND SPECIFICATIONS**

- 8.1 The Contractor warrants that it 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.

- 8.2 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.
- 8.3 The Contractor hereby acknowledges that it 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.
- 8.4 Notwithstanding the "Changes" Article of 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.

## **ARTICLE 9 PLACE AND TERMS OF DELIVERY**

- 9.1 Deliverables under this Contract shall be delivered DDP (Delivered Duty Paid) in accordance with the International Chamber of Commerce INCOTERMS 2010 to the destination(s) and at such times as set forth in the Schedule of Supplies and Services or as specified otherwise in Part IV - Statement of Work.

## **ARTICLE 10 INSPECTION AND ACCEPTANCE**

- 10.1 Article 21 "Inspection, Acceptance of Work" in General Provisions is hereby supplemented with this Article:
- 10.2 The work 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 authorized 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.
- 10.3 Under the terms of this Contract, Acceptance will be made as follows and as specified in Part IV, Statement of Work (SOW):

1. Successful Service Delivery:
  - a. Written approval by the Purchaser of the monthly Reports and Maintenance Acceptance Reports.
  - b. Written approval by the Purchaser of the bi-annual Reports.
2. On-site Consultancy Services (optional): Written confirmation by the Purchaser of successful provision of the respective Services.
3. Training Services: Post training survey results as described under Part IV - SOW
4. Special Events: Written acceptance by the Purchaser of successful delivery

**ARTICLE 11 INVOICES AND PAYMENT**

- 11.1 Following Purchaser acceptance, in writing, payment for supplies and services furnished shall be made in the currency specified for the relevant portion of the Contract.
- 11.2 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.
- 11.3 Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain:
  - a) Contract number CO-115240-HPE-CLS
  - b) Contract Amendment number (if any),
  - c) Purchase Order number PO [...],[TBC]
  - d) The identification of the performance rendered in terms of Contract Line Item Number (CLIN),
  - e) Bank account details for international wire transfers (SWIFT, BIC, IBAN).
- 11.4 The Contractor shall be entitled to submit invoices in accordance with the following payment events schedule:

CLIN(s)	Payment Milestone	Upon	Payment of CLIN value
1	Successful Service Delivery	Acceptance of the report	100%
3	Optional CLINs	Subject to Contract Amendment(s)	

- 11.5 The invoice amount shall be exclusive of VAT and exclusive of all Taxes and Duties as per Article 26 “Taxes and Duties” of the NCI Agency General Provisions.
- 11.6 No payment shall be made with respect to undelivered supplies, works not performed, services not rendered and/or incorrectly submitted invoices.
- 11.7 No payment shall be made for additional items delivered that are not specified in the contractual document.

- 11.8 Payments for services and deliverables shall be made in the currency stated by the Contractor for the relevant Contract Line Item.
- 11.9 The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 11.10 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.”*
- 11.11 The certificate shall be signed by a duly authorised company official on the designated original.
- 11.12 Invoices referencing : **CO-115240-HPE-CLS** and **PO [TBD at Contract award]** shall be submitted in electronic format only to:  
accountspayable@ncia.nato.int
- Whilst copying the Contracting Officer as well, as specified in Article 13 “Contract Administration” below.
- 11.13 NCI Agency will make payment within 45 days of receipt by the NCI Agency of a properly prepared and documented invoice.

## **ARTICLE 12 SUPPLEMENTAL AGREEMENTS, DOCUMENTS AND PERMISSIONS**

- 12.1 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 the Article 39 of the General Provisions hereafter.
- 12.2 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.
- 12.3 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.
- 12.4 For the purpose of this Contract the following National mandatory Supplemental Agreements are identified:

Type of Agreement	National Authority of Reference	Subject

**ARTICLE 13            WARRANTY**

- 13.1 Articles 27 “Warranty of Work” and 31 “Software Warranty” of the NCI Agency General Provisions hereafter, are supplemented with the following:
- 13.2 The Contractor shall warrant that the services provided by the Contractor staff shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature. The Contractor shall therefore possess a certification that is compliant with the requirements of Allied Quality Assurance Publication (AQAP) 2110, ISO 9001:2015, or an equivalent QA/QC regime.
- 13.3 In the event of any breach of the foregoing warranty, the Contractor shall, at its own expense, in its discretion either: (1) re-perform the non-conforming services to conform to this standard; or (2) pay to Purchaser an amount equal to a fixed daily fee of EUR 500 for the number of man-days that would have been lost due to inadequate performance. In order for a warranty claim to be effective, the Purchaser will give the Contractor written notice specifying in detail the non-conformities within 60 days after performance of the non-conforming services.
- 13.4 The Contractor shall warrant the work and the performance thereof by its sub-Contractors and shall incur liability for such performance.
- 13.5 On-site interventions and related timelines shall be in line with the specifications in the Statement of Work.

**ARTICLE 14            CONTRACT ADMINISTRATION**

- 14.1 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.
- 14.2 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.
- 14.3 Formal letters and communications shall be sent by e-mail to the official Points of Contact quoted in this Contract.
- 14.4 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.
- 14.5 All notices and communications shall be effective on receipt.

14.6 Official Points of Contact:

Purchaser	Contractor
NATO Communications and Information Agency (NCI Agency) Boulevard Leopold III B-1110 Brussels Belgium	
For contractual matters: Attn: TBD Title: Tel: E-mail:	For contractual matters: Attn: TBD Title: Tel: Mobile: E-mail:
For technical/project management matters (Purchaser Technical Representative): Attn: TBD Title: Tel: E-mail: TBD@ncia.nato.int	For technical/project management matters: Attn: Title: Tel: Mobile: E-mail:

or to such address as the Purchaser may from time to time designate in writing.

**ARTICLE 15 SUB-CONTRACTORS**

- 15.1 The Contractor shall place and be responsible for the administration and performance of all sub-contracts including terms and conditions which it deems necessary to meet the requirements of this Contract in full.
- 15.2 The Contractor shall not place sub-contracts outside the Participating Countries unless the prior authorization of the Purchaser has been obtained. Such authorization will not be granted when the sub-contract involves the carrying out of classified work.

**ARTICLE 16 CONTRACTOR COTS RESPONSIBILITY**

- 16.1 The Contractor shall monitor changes and/or upgrades to commercial off the shelf (COTS) software or hardware to be utilized under subject Contract as defined in the SOW.
- 16.2 For COTS items which are or could be impacted by obsolescence issues, as changes in technology occur, the Contractor will propose substitution of new products/items for inclusion in this Contract. The proposed items should provide at least equivalent performance and/or lower life-cycle support costs, or enhanced performance without a price or cost increase.

- 16.3 The Contractor will provide evidence with respect to performance of the equipment being proposed as well as data proving an improvement in performance and/or a reduction in price and/or life-cycle support costs. If necessary for evaluation by the Purchaser, the Contractor shall provide a demonstration of the proposed items. In case of price reduction, an equitable price adjustment shall be negotiated and included in the Contract through a formal Contract Amendment.
- 16.4 The Contractor shall notify the Purchaser of any proposed changes in the commercial off the shelf software or hardware to be utilized. Such notification shall provide an assessment of the changes and the impact to any other items to be delivered under this Contract.

**ARTICLE 17           LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD- PARTY  
CONTRACTOR REPORTED CYBER INCIDENT INFORMATION**

- 17.1 Definitions. As used in this clause:

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Controlled technical information means technical information with NATO military application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. The term does not include information that is lawfully publicly available without restrictions.

- 17.2 Covered defence information means unclassified controlled technical information and is :

Marked or otherwise identified in the contract, purchase order, or delivery order and provided to the contractor by or on behalf of NCIA in support of the performance of the contract; or,

Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

Technical information means technical data or computer software such as research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

Restrictions

- 17.3 The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a cyber incident:

The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Purchaser in support of the Purchaser's activities, and shall not be used for any other purpose.

The Contractor shall protect the information against unauthorized release or disclosure.

The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Purchaser and Contractor.

A breach of these obligations or restrictions may subject the Contractor to:

Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies; and

Civil actions for damages and other appropriate remedies by the third party that reported the cyber incident, as a third party beneficiary of this clause.

## **ARTICLE 18 SERVICE PERFORMANCE AND SERVICE CREDITS**

- 18.1 This Article applies to the Service Deliverables as defined in the Statement Of Work.

18.2 If the Contractor fails to meet the SLA response/restoration time and Site availability commitments as described in the Statement Of Work, the Purchaser will be entitled to claim Service Credits:

27.1.1 Response/resolution time below 95%: 2% of yearly fee credit

18.3 Service performance status shall align per the review periods as described in the SOW.

18.4 Charged penalties shall be deducted from the invoices covering the service period to which the penalties apply or shall be used as credit for future services.

## **ARTICLE 19 SERVICE MODIFICATIONS**

19.1 The Purchaser shall have the right to increase or decrease the services by item and by service flavour as he deems necessary.

19.2 The Purchaser shall inform the Contractor about a change in the services by issuing a service request. Each change in services shall be formalized by means of a Contract Amendment in accordance with Clause 16 “Changes” of the Contract General Provisions.

19.3 The delivery date for a new service / effective date of reduction of services will be stipulated in the service request and shall become contractually binding by means of the relevant Contract Amendment.

## **ARTICLE 20 SECURITY**

20.1 This Article supplements Article 11 “Security” of the NCI Agency General Provisions hereafter.

20.2 The Contractor is 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.

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

20.4 Contractor's personnel visiting or working at Purchaser's facilities in connection with this Contract shall hold a confirmed NATO SECRET security clearance valid for the duration of the Contract at the Effective Date of Contract (EDC). This requirement applies to all sub-Contracts issued by the Contractor for the effort under this prime Contract.

20.5 It is the responsibility of the Contractor to ensure that its personnel obtain the required security clearances and transmit this information to the purchaser and to the sites to be visited at least 3 weeks before personnel deployment that the site may perform the appropriate administration.

20.6 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 or sub-Contractor's personnel within the necessary time.

- 20.7 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.
- 20.8 Delay caused by non-compliance of the Security clearance requirements under this Contract, may not be used by the Contractor as the basis for a claim of adjustment or an extension of schedule nor can the denial of access be considered a mitigating circumstance in the case of an assessment of penalties or a determination of Termination for Default by the Purchaser.
- 20.9 All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance applicable security regulations.
- 20.10 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 the "Termination for Default" Article of the NCI Agency General Provisions.
- 20.11 Contractor's personnel acting as Privileged Users shall also be required to comply with the regulations described under the Code of Conduct for NATO CIS Privileged Users.
- 20.12 The Contractor shall be required to handle and may be required to store classified material to the level of "NATO SECRET" in his facility. The Contractor shall have the appropriate facility and personnel clearances.
- 20.13 The Contractor shall note that there are restrictions regarding the carriage and use of electronic devices (e.g. laptops) in Purchaser secured locations. The Contractor shall be responsible for satisfying and obtaining from the appropriate site authorities the necessary clearance to bring any such equipment into the facility.

**ARTICLE 21 KEY PERSONNEL**

- 21.1 The key personnel proposed by the Contractor that satisfy the personnel requirements laid down in the SOW are 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.
- 21.2 If any options are exercised, the Key Personnel provisions will apply to the option period from the effective date of the Contract.
- 21.3 The following personnel are considered to be Key Personnel for successful contract performance and are subject to the provisions of this Article as set forth in the following paragraphs:

<b>Key Personnel</b>	<b>Name</b>	<b>Function within organisation</b>

- 21.4 Under the terms of this Article, Key Personnel may not be voluntarily diverted by the Contractor to perform work outside the Contract. 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 five (5) days of the date of knowledge of the prospective vacancy and offer a substitute with equivalent qualifications with no additional costs for the Purchaser.
- 21.5 Contractor personnel proposed in substitution of previously employed Contractor Key Personnel shall be interviewed and approved by Purchaser Project Manager before substitution acceptance is granted in writing by the Purchaser contracting Authority.
- 21.6 In the event of a substitution of any key personnel listed in paragraph 20.3 above and prior to commencement of performance, the Contractor shall provide a CV for the personnel proposed. The CV shall clearly stipulate:
- Full details of professional and educational background;
  - Evidence that the personnel is qualified in pertinent contract related areas per the SOW.
- 21.7 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.
- 21.8 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 in cases where such a decision is taken and the Contractor shall propose and make another staff member available within ten (10) 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.
- 21.9 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.
- 21.10 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 paragraph 20.5 and 20.6 above.
- 21.11 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 Article may potentially endanger the progress under the Contract, the Purchaser shall have the right to terminate the Contract in accordance with the terms of the General Provisions Article entitled “Default”.

- 21.12 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.
- 21.13 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.
- 21.14 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.
- 18.15 Each of the Contractor’s Key Personnel shall be required to sign Annex A to these Contract Special Provision: “NCI Agency Non-disclosure declaration.”

**ARTICLE 22 NON DISCLOSURE AGREEMENT**

- 22.1 Notwithstanding Key Personnel shall sign Annex A, all Contractor and Subcontractor personnel working at any NATO Organization / Commands premises or having access to NATO classified / commercial-in-confidence information must certify and also sign the Declaration attached hereto at Annex A and provide it to the Purchaser’s Contracting Officer prior to the commencement of any performance under this Contract.
- 22.2 The Contractor shall not apply any Contractor restrictive marking on information assigned or owned by the Purchaser.

**ARTICLE 23 CONFLICT OF INTEREST**

- 23.1 A conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Purchaser, or the Contractor’s objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Conflict of interest includes situations where the capacity of a Contractor (including the Contractor’s executives, directors, consultants, subsidiaries, parent companies or subcontractors) to give impartial, technically sound advice or objective performance is or may be impaired or may otherwise result in a biased work product or

performance because of any past, present or planned interest, financial or otherwise in organizations whose interest may substantially affected or be substantially affected by the Contractor's performance under the Contract.

- 23.2 The Contractor is responsible for maintaining and providing up-to-date conflict of interest information to the Contracting Officer. If, after award of this Contract or Purchase Order herein, the Contractor discovers a conflict of interest with respect to this Contract which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the Contracting Officer.
- 23.3 If, after award of this Contract herein, the Purchaser discovers a conflict of interest with respect to this Contract or Purchase Order, which has not been disclosed by the Contractor, the Purchaser may at its sole discretion request additional information to the Contractor, impose mitigation measures or terminate the Contract for default in accordance with Clause 39 (Termination for Default) of the Contract General Provisions.
- 23.4 The Contractor's notice called for in Article 23.2 above shall describe the actual, apparent, or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Contracting Officer in analysing the situation. Any changes to the Contractor's Conflict of Interest Mitigation Plan, if any is incorporated in the contract, should be also detailed.
- 23.5 The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the Contracting Officer, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest.
- 23.6 If the Contracting Officer in his/her discretion determines that the Contractor's actual, apparent, or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the Contracting Officer will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of Contract performance, the Contracting Officer has the discretion to terminate the Contract for Default.
- 23.7 The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractor's failure to disclose a conflict of interest as required shall be a basis for default termination of this contract.

**ARTICLE 24            OPTIMISATION**

- 24.1 The Contractor is encouraged to examine methods and technology that may increase efficient operation and management of the system(s) on which the required services are provided to the Purchaser, thus reducing operating and manpower costs and the overall cost to the Purchaser
- 24.2 The Contractor may, at any time during the Period of Performance, introduce Change Proposals offering innovations and/or technology insertion with a view towards reducing the overall cost to the Purchaser.
- 24.3 Any such Proposal submitted shall cite this Clause as the basis of submission and provide the following information:
- 24.4 A detailed description of the technical changes proposed, the advantages, both long and short term, and an analysis of the risks of implementation;
- 24.5 A full analysis of the prospective savings to be achieved in both equipment and manpower, including, as appropriate, NATO manpower, travel, energy consumption, etc.; A full impact statement of changes that the Purchaser would be required to make, if any, to its operational structure and management procedures;
- 24.6 A fully detailed proposal of any capital investment necessary to achieve the savings;
- 24.7 A schedule of how the changes would be implemented with minimal negative impact to on-going performance and operations.

## **ARTICLE 25 SOFTWARE**

- 25.1 The Purchaser reserves the right to exclude from the awarded Contract the purchase of software licenses for which NATO has established centralized contracts. In this case, the Contract terms, schedule and prices will be modified accordingly, and the software licenses will be provided to the Contractor in the form of "Purchaser Furnished Equipment".

## **ARTICLE 26 PURCHASER FURNISHED EQUIPMENT/SERVICES**

- 26.1 Contract General Provision 13 "Purchaser Furnished Property" is herewith supplemented by the following:
- 26.2 The Purchaser may deliver Purchaser Furnished Equipment and/or Services (PFE/PFS) to the Contractor at any time during the period of performance of the Contract. Such services shall become part of the services scope to be managed by the Maintenance Manager. Notwithstanding managing these services shall be part of the Maintenance Manager responsibilities, any penalties thereof will be charged to the respective PFE/PFS Contractor directly by the Purchaser.

## **ARTICLE 27 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE**

- 27.1 Subject to the rights of third parties, all rights in the results of work undertaken by or on behalf of the Purchaser for the purposes of this Contract, including any technical data specifications, report, drawings, computer software data, computer programs, 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.

**ARTICLE 28 INDEMNITY**

- 28.1 The Contractor will indemnify and hold harmless NATO, its servants or agents, against any liability, loss or damage arising out of or in connection of the Deliverables and Services under this Contract, including the provisions set out in Articles 29 "Patent and Copyright indemnity" and 30 "Intellectual Property" of the NCI Agency General Provisions.
- 28.2 The parties will indemnify each other against claims made against the other by their own personnel, and their sub-Contractors (including their personal representatives) in respect of personal injury or death of such personnel or loss or destruction of or damage to the property of such personnel.
- 28.3 NATO will give the Contractor immediate notice of the making of any claim or the bringing of any action to which the provisions of this Article may be relevant and will consult with the Contractor over the handling of any such claim and conduct of any such action and will not without prior consultation and without the consent of the Contractor settle or compromise any such claim or action.
- 28.4 In the event of an accident resulting in loss, damage, injury or death arising from negligence or willful intent of an agent, officer or employee of NATO for which the risk has been assumed by the Contractor, the cause of the accidents will be investigated jointly by the Parties and the extent to which NATO will be liable to recompense the Contractor will be determined together.

**ARTICLE 29 TECHNICAL DIRECTION**

- 29.1 At the site of efforts, the Purchaser may assign Technical Representatives who will monitor work in progress and provide Contractor personnel with instruction and guidance (within the general scope of work) in performance of their duties and working schedule. The Technical Representatives do not have the authority to change the terms of the Contract or to increase the overall cost, duration or level of effort or services of the Contract. The Technical Representatives do have the authority, within the general scope of work, to provide direction to the Contractor personnel in performance of their duties.

- 29.2 In case the Contractor believes that any technical direction received from the Technical Representative constitutes a change to the terms, conditions and/or specifications of the Contract, it shall immediately inform in writing the Purchaser Contracting Authority, who will either confirm or revoke such direction. If such direction is confirmed as a change, this change will be formalized by written amendment to the Contract.
- 29.3 Failure of the Contractor to notify the Purchaser Contracting Authority of direction constituting change of the Contract will result in a waiver of any claims pursuant to such change.

### **ARTICLE 30 CARE AND DILIGENCE OF PROPERTY**

- 30.1 The Contractor shall use reasonable care to avoid damaging buildings, walls, equipment and vegetation (such as trees, shrubs and grass) on the work site. If the Contractor damages any such buildings, walls, equipment or vegetation, it shall repair the damage as directed by the Purchaser and at no expenses to the Purchaser. If it fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.
- 30.2 The Purchaser shall exercise due care and diligence for Contractor's furnished equipment, tools and materials on site premises. The Purchaser will not assume any liability except for gross negligence and willful misconduct on the part of the Purchaser's personnel or agents.
- 30.3 The Contractor shall, at all times, keep the site area, including storage areas used by the Contractor, free from accumulations of waste. On completion of all work the Contractor is to leave the site area and its surroundings in a clean and neat condition.

### **ARTICLE 31 INDEPENDENT CONTRACTOR**

- 31.1 The Personnel provided by the Contractor in response to this Contract are at all times employees of the Contractor and not the Purchaser. In no case shall Contractor personnel act on behalf of or as an agent for NATO or any of its bodies. In no way shall the Contractor personnel claim directly or indirectly to represent NATO in an official capacity or claim themselves to be NATO employees.

### **ARTICLE 32 APPLICABLE REGULATIONS**

- 32.1 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.
- 32.2 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 health and safety provisions.

- 32.3 In the performance of all work under this Contract, it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the local Headquarters' Security Officer.

**ARTICLE 33 AUDITING AND ACCOUNTING**

- 33.1 The Contractor's accounting and auditing procedures under this Contract shall be in compliance with the applicable Contractor National standards governing national defense contracts.
- 33.2 The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with the prescription of Article 14 "Invoices and Payment" of the Contract Special Provisions.
- 33.3 In the event of this Contract being terminated in accordance with Article 40 "Termination for Convenience of the Purchaser" of General Provisions, the Contractor shall provide within ninety (90) days of the formal date of termination a detailed statement of all costs incurred since the initiation of the programme, together with the statement of all outstanding commitments for which the Contractor is legally liable.

**ARTICLE 34 RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT**

- 34.1 The Contractor shall inform its employees under this Contract of the terms of the Contract and the conditions of the working environment.
- 34.2 Specifically, Contractor personnel shall be made aware of all risks associated with the performance under this Contract, the conditions of site in which the performance is to take place and living conditions while performing within the boundaries of the Contract.
- 34.3 The selection of adequate personnel shall remain sole the responsibility of the Contractor.

**ARTICLE 35 ASSIGNMENT**

- 35.1 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.
- 35.2 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.

**ARTICLE 36 TRANSPORTATION OF EQUIPMENT**

- 36.1 All supplies covered under this Contract shall be transported from and to final destination at the responsibility of the Contractor. The Purchaser shall not be liable for any storage, damage, accessorial or any other charges involved in such transporting of supplies.

- 36.2 All transportation costs of repaired/replaced items shall be at cost to the Contractor.

**ARTICLE 37 CONTRACTOR'S PERSONNEL WORKING AT PURCHASER FACILITIES**

- 37.1 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.
- 37.2 Purchaser reserves the right to provide Purchaser Facilities for Contractor Key Personnel. In the event Purchaser does provide Purchaser Facilities, 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 under the Contract. These facilities may be provided free at the discretion of the Facility Representative. The Contractor shall be responsible for ascertaining what necessary facilities will be available and whether they will be provided free of charge, or determining what charges are payable.
- 37.3 The Contractor shall have no claim against the Purchaser for any such additional cost of delay occasioned by the closure for holidays, or other reasons, where this is generally published or made known to the Contractor by the Purchaser or his authorized representatives.
- 37.4 Notwithstanding the provisions of the "Purchaser Furnished Facilities" Clauses above, where those conditions form part of the Contract, 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, or by his servants, agents or sub-contractors, arising from his or their presence on Purchaser Facilities in connection with the Contract; provided that this Conditions 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 of sub-contractors, or by any circumstances within his or their control.
- 37.5 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.

**ANNEX A: NCI AGENCY NON-DISCLOSURE DECLARATION**

We, the undersigned..... (Company) duly represented by ..... (hereinafter "Contractor") do hereby certify that we shall ensure that the following conditions be accepted and observed by all (Contractor) employees working under CO-115240-HPE-CLS

_Date	Full name (in block capitals)	Signature
=====		

TO BE SIGNED BY THE CONTRACTOR'S EMPLOYEES WORKING IN THE NATO'S PREMISES UPON COMMENCEMENT OF THEIR WORK.

I UNDERSTAND:

That I must preserve the security of all classified /commercial-in-confidence Information which comes to my knowledge as a result of this contract with NATO and that I undertake to comply with all relevant security regulations.

That I must not divulge to any unauthorised person, any classified/commercial-in confidence information gained by me as a result of my contract with NATO, unless prior permission for such disclosure has been granted by the General Manager of the NCI Agency or by his designated representative.

That I must not, without the approval of the General Manager of the NCI Agency, publish (in any document, article, book, CD, video, film, play, or other form) any classified /commercial-in-confidence information which I have acquired in the course of my work under CO-115240-HPE-CLS.

That, at the end of contract and after performance of all required tasks, I must surrender any official document or material made or acquired by me in the course of my work under CO-115240-HPE-CLS, save such as I have been duly authorised to retain.

That the provisions of the above Declaration apply not only during the period of work under CO-115240-HPE-CLS, but also after my contract has ceased and that I am liable to prosecution if either by intent or negligence I allow classified/commercial-in-confidence information to pass into unauthorised hands.