



PROSPECTIVE CONTRACT

IFB-CO-115893-MAIN

**Provision of Support and Maintenance of the
NCI Agency Dell Hardware and Software**

BOOK II



NCI AGENCY CONTRACT – SIGNATURE SHEET	
1. Original Number _ of 1	2. Purchase Order Number : TBD
3. Contract Number: IFB-CO-115893-MAIN	4. Effective date: TBD
5. Contractor:	6. Purchaser: The General Manager NATO Communications and Information Agency Boulevard Leopold III 1110 Brussels Belgium
7. Contract Scope: The Contractor shall deliver maintenance and Dell software support, as detailed in the attached Schedule of Supplies and Services and the Statement of Work.	
8. FIRM FIXED PRICE : Currency []	
9. Delivery: See attached Schedule of Supplies and Services.	10. Ship to/ Mark for: See attached Schedule of Supplies and Services and Statement of Work Purchaser is exempt from VAT and Customs Duties.
11. Contract Agreement: The Contractor agrees to furnish all items and perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. This agreement supersedes all previous communications, representations or understandings, either written or oral, and shall constitute the sole and only agreement between the Contractor and the Contracting Authority with respect to the subject matter hereof. The rights and obligations of the parties to this Contract shall be subject to and governed by the Special Provisions and the General Provisions attached to this Signature sheet.	
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

NATO UNCLASSIFIED

PROVISION TO SUPPORT NATO NCI AGENCY WITH DELL
HARDWARE AND SOFTWARE SERVICES

IFB- CO- 115893-MAIN



CONTRACT SPECIAL PROVISIONS

NATO UNCLASSIFIED

CONTRACT SPECIAL PROVISIONS
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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-Contractual 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 9 "Participating Countries" of the Contract General Provisions is supplemented by Article 6 "Participating Countries" of the Special Provisions.
- 2.3 Article 10 "Sub-Contracts" of the Contract General Provisions is supplemented by Article 15 "Sub-Contractors" of the Special Provisions.
- 2.4 Article 11 "Security" of the Contract General Provisions is supplemented by Article 19 "Security" of the Special Provisions.
- 2.5 Article 21 "Inspection and Acceptance of Work" of the Contract General Provisions is supplemented by Article 9 "Inspection and Acceptance" of the Special Provisions.
- 2.6 Article 22 "Inspection and Acceptance of Documentation" of the Contract General Provisions is supplemented by Article 10 "Review and Acceptance of Documentation" of the Special Provisions.
- 2.7 Articles 27 "Warranty of Work" and 31 "Software Warranty" of the Contract General Provisions are supplemented by Article 13 "Warranty" of the Special Provisions.
- 2.8 Article 38 – "Liquidated Damages" of the Contract General Provisions is supplemented by Article 17 "Service Performance and Service Credits" of the Special Provisions.

ARTICLE 3 SCOPE

- 3.1 The scope of this project covers the Hardware and Software service requirements on NATO SECRET/MISSION SECRET, NATO RESTRICTED, and on NATO UNCLASSIFIED networks. The Contractor's personnel will be required to work unescorted in Class II Security areas, and shall have clearances to be able to perform the various Contractor Logistic Support (CLS) services for a selection of NATO-owned, NATO operated Dell Hardware.

- 3.2 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 Framework Agreement for Support and Maintenance of Dell Hardware and Software. The Contract grants the Contractor(s) the right to operate and exploit the office relocation areas granted under this Contract as mentioned in the Statement of Work. The majority of work shall take place at NCI Agency in the following six (6) Member locations: Belgium, Italy, Portugal Republic Of Türkiye, United Kingdom, United States of America , but services could occur in any NATO Member Nations as required.
- 4.2 Firm Fixed Prices are established for the supplies and services defined in Part I - Schedule of Supplies and Services.
- 4.3 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.
- 4.4 The Total Contract price is inclusive of all expenses related to the performance of the present Contract.
- 4.5 The Total Contract price in this Contract is Delivered Duty Paid (INCOTERMS 2010).

ARTICLE 5 ADDITIONAL CONTRACT TASKS AND OPTIONS

- 5.1 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 the right to unitarily 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.
- 5.2 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.
- 5.3 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.
- 5.4 This right can be unitarily 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.
- 5.5 In this case the Contractor shall honor such right at the same rates and conditions as stated in Part I - Schedule of Supplies and Services and as detailed in Part IV – the Statement of Work. 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.

- 5.6 If the Contract provides for multiple destinations, the Purchaser will specify to which destination(s) the additional quantities are to pertain and 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 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 6 PARTICIPATING COUNTRIES

- 6.1 Any of the 31 NATO nations contributing to the project, namely, (in alphabetical order): Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Montenegro, The Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Republic of Türkiye, The United Kingdom, and The United States. None of the work, including project design, labor and services, shall be performed other than by firms from and within Participating Countries.
- 6.2 The Contract shall perform all on site services furnished under this Contract at any NATO-Facility in any of the below six (6) NATO member nations listed in this Contract:
- Belgium
 - Italy
 - Portugal
 - Republic of Türkiye

- United Kingdom
- United States of America

- 6.3 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.
- 6.4 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 7 COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 7.1 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.
- 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 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.
- 7.4 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 8 RESERVED

ARTICLE 9 INSPECTION AND ACCEPTANCE

- 9.1 Article 21 "Inspection, Acceptance of Work " in General Provisions is hereby supplemented with this Article:

- 9.2 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 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.
- 9.3 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 Quarterly Maintenance Support Performance Reports (MSPR)
 - b. Written approval by the Purchaser of the meeting minutes of the Quarterly Maintenance Support Performance review meetings.
- 9.4 Review and Acceptance of documentation is specified in below Article 10 of the Contract Special Provisions.

ARTICLE 10 REVIEW AND ACCEPTANCE OF DOCUMENTATION

- 10.1 Article 22 "Inspection and Acceptance of Documentation" in General Provisions hereafter, is hereby supplemented with this Article.
- 10.2 Unless otherwise specified in the Statement of Work:
- 10.3 Upon delivery of the Draft Deliverable items, the Purchaser will have a period of two (2) weeks to review the items. 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 within the Scope of Work. When applicable, a presentation of the deliverable item including the Purchaser's comments will be made by the Contractor to the Purchaser, at a time which coincides with a progress meeting.
- 10.4 During the review, if the specific Item requires proposal of dates for delivery or reviews, the Purchaser will either accept or adjust the proposed dates.
- 10.5 Within one (1) week after receipt of the Purchaser's comments (and associated progress meeting if appropriate), the Contractor shall incorporate changes, revisions and corrections required by the Purchaser and present the revised deliverable in Final Form to the Purchaser for inspection and acceptance in accordance with the SOW.
- 10.6 The Contractor shall not have the right to ask for additional periods if the delivered draft is considered not satisfactory by the Purchaser and therefore requires many changes and/or corrections.
- 10.7 The Purchaser has the right to reject non-conforming deliverables. The Purchaser, in addition to any other rights or remedies provided by law, or under the provisions of this Contract, shall have the right to require the

Contractor at no increase in Contract price, to correct or replace non-conforming work, and in accordance with a reasonable delivery schedule as may be agreed by the Purchaser and the Contractor following the receipt of the Purchaser's notice of defects or non-conformance.

- 10.8 The acceptance by the Purchaser of the Contractor's documentation required by this Contract signifies that the documents delivered appear logical and consistent. The acceptance does not constitute an endorsement or approval of the design or proposed implementation by the Purchaser and does not relieve the Contractor of the obligation to meet the schedule and the performance requirements of this Contract in the event that the design eventually proves to be non-compliant in factory or field testing.

ARTICLE 11 INVOICES AND PAYMENT

- 11.1 Following Purchaser acceptance, in writing, Quarterly 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 No paper invoices will be accepted. Invoices shall be sent electronically to: accountspayable@ncia.nato.int, with the Contracting Officer in copy as specified in Article 14 "Contract Administration" below.
- 11.4 Each invoice shall include:
- a) the Purchase Order number;
 - b) the following statement: "*This invoice is certified as true and correct, and the delivery of the above described items has been duly carried out and the payment therefore has not been received.*";
 - c) currency of the Purchase Order
 - d) description of 'Hardware'/'Services'/'Software/Licence';
 - e) quantities;
 - f) the unit, extended, and total prices;
 - g) Contractor's bank name, address, and account number;
 - h) VAT identification number; and
 - i) the appropriate VAT information as required by Clause 9 of the Core Terms and Conditions (Taxes and Duties).
- 11.5 The invoice amount shall be exclusive of VAT and all Taxes and Duties as per Article 26 "Taxes and Duties" of the NCI Agency General Provisions.
- 11.6 Any fees charged by a bank in the receiving of an international payment for a Contractor, shall be borne solely by the Contractor and shall not be reflected on invoices nor charged to the Purchaser.
- 11.7 No payment shall be made with respect to undelivered supplies, works not performed, services not rendered and/or incorrectly submitted invoices.

- 11.8 No payment shall be made for additional items delivered that are not specified in the contractual document.
- 11.9 Payments for services and deliverables shall be made in the currency stated by the Contractor for the relevant Contract Line Item.
- 11.10 The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 11.11 The certificate shall be signed by a duly authorised company official on the designated original.
- 11.12 NCI Agency will make payment within 30 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.

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 in section REQ 70.

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	TBC

For contractual matters: Attn: Lise Vieux-Rochat Title: Contracting Officer Tel: E-mail:IFB-CO-115893-MAIN@ncia.nato.int	For contractual matters: Attn: Title: Tel: Mobile: E-mail:
For technical/project management matters (Purchaser Technical Representative): Attn: (TBC) Title: Tel: E-mail:	For technical/project management matters: Attn: Title: Tel: 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 and/or services 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 and/or services 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 SERVICE PERFORMANCE AND SERVICE CREDITS

- 17.1 This Article applies to the Service Deliverables as defined under CLINs # 1.5, 1.6, 2.5, 2.6, 3.5, 3.6, 4.5, 4.6, 5.5, 5.6, 6.5 and 6.6 (and optional related CLIN)_ of the Schedule of Supplies and Services and any options items, if and when exercised.
- 17.2 If the Contractor fails to deliver or to perform the services within the prescribed performance levels specified in the SOW, the Contractor shall be charged with penalties as described and calculated in the relevant section of the SOW as the Purchaser's remedy for the damages directly arising out of the failure to deliver or perform the Services as specified in the SOW without prejudice of Clause 39 "Termination for Default" of the Contract General Provisions.
- 17.3 Service performance status shall align per the review periods as described in the SOW.
- 17.4 Charged penalties shall be deducted from the invoices covering the service period to which the penalties apply.
- 17.5 This Article applies to the specific circumstances described above. The Contract General Provision pertaining to Liquidated damages shall apply in all other circumstances.

ARTICLE 18 SERVICE MODIFICATIONS

- 18.1 The Purchaser shall have the right to increase or decrease the services by category and by item, as he deems necessary.
- 18.2 The Purchaser shall inform the Contractor about a change in the services by issuing a service request and in accordance with the SOW. Each change in services shall be formalized by means of a Contract Amendment in accordance with Article 5 "Additional Contract Task and Options" and Clause 16 "Changes" of the Contract General Provisions.
- 18.3 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 19 SECURITY

- 19.1 This Article supplements Article 11 "Security" of the NCI Agency General Provisions hereafter.
- 19.2 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.
- 19.3 The security classification of this Contract is "NATO UNCLASSIFIED".
- 19.4 Contractor's personnel visiting or working at Purchaser's facilities and working in connection with this Contract shall hold a confirmed NATO SECRET security clearance and/or may require specific security clearance requirements in accordance with the SOW specifications, 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.

- 19.5 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 two (2) weeks before personnel deployment that the site may perform the appropriate administration.
- 19.6 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.
- 19.7 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.
- 19.8 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.
- 19.9 All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance applicable security regulations.
- 19.10 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.
- 19.11 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.
- 19.12 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.
- 19.13 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 20 KEY PERSONNEL SECURITY REQUIREMENTS

- 20.1 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.
- 20.2 It shall be the Contractor responsibility to secure that all Contractor personnel working on the present contract has a clean criminal record and a valid work permit necessary to perform work in the country and place of performance.

- 20.3 Only members of Contractor personnel that are nationals from one of the NATO Member Nations shall be allowed to work on the present contract.
- 20.4 Based on the information available at NATO, the Site Security Manager has the right to refuse members of the Contractor personnel without having to provide a justification. The Contractor(s) shall not hold the Contracting Authority, the Purchaser or NATO liable for the consequences of such a decision.
- 20.5 Contractor personnel whose presence at NATO is not accepted or becomes undesirable shall immediately leave the NATO compound.
- 20.6 If any options are exercised, the Key Personnel provisions will apply to the option period from the effective date of the Contract.
- 20.7 The Contractor must provide the Site Security Manager with the following information on Contractor personnel and equipment that must access/be brought within NATO compounds: full personal particulars of Contractor(s) personnel (including security clearance information), a duty roster, vehicles' registration numbers and a list of all equipment and machinery. Information must be provided at least three working days before site access can be granted.
- 20.8 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.
- 20.9 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.
- 20.10 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".
- 20.11 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.
- 20.12 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.
- 20.13 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.

- 20.14 The Contractor shall inform his staff about the access control and emergency procedures at NATO i.e. search of individuals, their luggage and vehicles, fire and emergency drills.
- 20.15 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 21 NON DISCLOSURE AGREEMENT

- 21.1 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.
- 21.2 The Contractor shall not apply any Contractor restrictive marking on information assigned or owned by the Purchaser.

ARTICLE 22 OPTIMISATION

- 22.1 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.
- 22.2 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.
- 22.3 Any such Proposal submitted shall cite this Clause as the basis of submission and provide the following information:
- 22.4 A detailed description of the technical changes proposed, the advantages, both long and short term, and an analysis of the risks of implementation;
- 22.5 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;
- 22.6 A fully detailed proposal of any capital investment necessary to achieve the savings;
- 22.7 A schedule of how the changes would be implemented with minimal negative impact to on-going performance and operations.

ARTICLE 23 SOFTWARE

- 23.1 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 Property".

ARTICLE 24 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

- 24.1 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 25 INDEMNITY

- 25.1 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.
- 25.2 The Contractor will indemnify NATO and its servants or agents, against claims made against NATO and its servants or agents, by their 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.
- 25.3 The Contractor will consult with the Agency over the handling of any claim or action to which the provisions of this Article may be relevant and will consult with the Agency over the handling of any such claim and conduct of any such action and will not without prior consultation and without the concurrence of the Agency settle or compromise any such claim or action.
- 25.4 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 Contractor shall involve the Agency in any investigation into the cause of the accident.

ARTICLE 26 TECHNICAL DIRECTION

- 26.1 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.
- 26.2 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.

- 26.3 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 27 CARE AND DILIGENCE OF PROPERTY

- 27.1 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.
- 27.2 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.
- 27.3 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 28 INDEPENDENT CONTRACTOR

- 28.1 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 29 APPLICABLE REGULATIONS

- 29.1 The Contractor(s) and all his sub-contractor(s) working on the present contract shall comply at all times with the following rules, regulations, policies and directives, listed in order of precedence:
- i. Local Site(s) Security and Health and Safety Regulations
 - ii. CM(2002)49 and all supporting directives, and specifically AC/35-D/2002-REV5 and AC/35-D2001-REV3
 - iii. Annex II on Security measures
- 29.2 Whenever required by the Site Security Manager or if the operational situation changes, security measures may need to be re-assessed and amended as necessary.
- 29.3 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.

- 29.4 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.
- 29.5 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 30 AUDITING AND ACCOUNTING

- 30.1 The Contractor's accounting and auditing procedures under this Contract shall be in compliance with the applicable Contractor National standards governing these type of contracts.
- 30.2 The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with the prescription of Article 11 "Invoices and Payment" of the Contract Special Provisions.
- 30.3 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 31 RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT

- 31.1 The Contractor shall inform its employees under this Contract of the terms of the Contract and the conditions of the working environment.
- 31.2 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.
- 31.3 The selection of adequate personnel shall remain sole the responsibility of the Contractor.

ARTICLE 32 FORCE MAJEURE

- 32.1 "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.
- 32.2 Examples of Force Majeure include:
- 32.2.1 war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization;

- 32.2.2 civil war, riot, rebellion and revolution, usurped power, insurrection, act of terrorism, sabotage or piracy;
 - 32.2.3 currency and trade restriction, embargo, sanction;
 - 32.2.4 act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization;
 - 32.2.5 plague, epidemic, natural disaster or extreme natural event; explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; and
 - 32.2.6 general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 32.3 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.
- 32.4 33.4 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:
- 32.2.7 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;
 - 32.2.8 the suspension of performance is of no greater scope than is necessitated by Force Majeure;
 - 32.2.9 the Affected Party continues to furnish weekly updates by email while the effects of Force Majeure continue detailing reasonable efforts made in accordance with [33.2], and notifies the Other Party immediately when the effects of Force Majeure are avoided or overcome, or cease, and resumes performance immediately thereafter.
- 32.5 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.
- 32.6 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.

ARTICLE 33 RESERVED**ARTICLE 34 CONTRACTOR'S PERSONNEL WORKING AT
PURCHASER FACILITIES**

- 34.1 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.
- 34.2 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.
- 34.3 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 of his authorized representatives.
- 34.4 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.
- 34.5 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.

ARTICLE 35 NCI AGENCY SUPPLIER CODE OF CONDUCT

- 35.1 The NCI Agency has a Supplier Code of Conduct (SCoC) located at <https://www.ncia.nato.int/business/do-business-with-us/code-of-conduct.html> and it constitutes part of this contract.
- 35.2 This SCoC sets standards and practices for suppliers and their subcontractors to adhere to when doing business with the NCI Agency in the areas of labour rights, human rights, data protection, ethical conduct and the environment. It contains fundamental, basic principles that any supplier based in a NATO country should already be operating in compliance with.

- 35.3 In the event of any inconsistency in language, terms or conditions with the Contract General Provisions, the Contract General Provisions takes precedence.

ARTICLE 36 PHYSICAL SECURITY

- 36.1 NATO security personnel is responsible for maintaining the security of the perimeter and for access control to the various NATO buildings.
- 36.2 In addition to the administrative zones, two security areas exist in NATO premises.
- i. A Class I Security Area is an area in which information classified NATO CONFIDENTIAL and above is handled and stored in such a way that entry into the area constitutes, for all practical purposes, access to this classification of information.
 - ii. A Class II Security Area is an area in which information classified NATO SECRET and above is handled and stored in such a way that it can be protected from access by unauthorized individuals by controls established internally.
- 38.3 The Contractor will be responsible for ensuring that all Contractor personnel (including sub-contractors) adhere to the perimeter security and access control regulations as promulgated in these security measures as well as any additional site security regulations that will apply to the current location and the destination location.

ARTICLE 37 HEALTH & SAFETY

- 37.1 The Contractor shall comply with all applicable local laws and regulations, including health and safety regulations.
- 37.2 The Contractor shall provide evidence of a trained workforce and the competence of key staff for the activities, including all the required certifications as per the local laws and regulations. The contractor shall nominate a Health and Safety representative as a point of contact for any Health and Safety matters.
- 37.3 Each week before start of the works and upon arrival at the Purchasers' compound, the Contractor shall contact the Purchaser's site lead first and provide him with a plan for the works that shall be executed the week ahead. Along with the one week ahead plan, the Contractor shall prepare and discuss the updated risk assessment and the proposed mitigations measures to be implemented.
- 37.4 The Contractor shall propose a Risk assessment methodology to assess the associated risks and define the respective acceptability levels and control needs in accordance with applicable legal requirements and prevention of any harm. A template for risk assessment, specifying hazard, potential injuries or damage, mitigation measures taken, number of people at risk, additional mitigation measures, assigned responsibilities, applicable legal and other requirements and color coding, identifying risk factors, shall be proposed.

- 37.5 Works shall be subject to Purchaser full Health and Safety assessment. The Health and Safety assessment shall result in a list of risk logs and risk mitigations that shall be added to the design/execution plan of the works. The Risk register and the proposed mitigation measures shall be submitted to and approved by the Purchaser Health and Safety Department.
- 37.6 Safety Operating Procedures (SOP) for all the activities shall be prepared, submitted to and approved by the Purchaser Health and Safety Department.
- 37.7 The Contractor shall demonstrate compliance with the latest ISO 45001 standard requirements.

ARTICLE 38 BASIC SAFEGUARDING OF CONTRACTOR COMMUNICATION AND INFORMATION SYSTEMS (CIS)

38.1 Definitions. As used in this clause—

owned or operated by a contractor that processes, stores, or transmits NATO Information.

“NATO Information” means all information, classified and unclassified, circulated within NATO, whether such information originates in NATO Civil or Military bodies or is received from member nations or from non-NATO sources to include but not limited to:

NATO Information that is provided by or generated for the Purchaser under a contract to develop or deliver a product or service to NATO, but not including information provided by the Purchaser to the public (such as on public websites) or simple transactional information, such as necessary to process payments. Examples of NATO Information are:

NATO technical information that is subject to controls on its access, use, reproduction, modification, performance, display, release, disclosure, or dissemination that is technical data or computer software in nature; 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, executable code and source code, design details, or formulae and related material that would enable the software to be reproduced, recreated, or recompiled.

NATO infrastructure information such as Emergency Management, Infrastructure Security Information, Information Systems Vulnerability Information, Physical Security.

NATO security information such as Internal Data or Operations Security, Security Agreement Information, Security Enforcement Information, Transportation Arrangements, Personnel Security Information, Privacy Information, or Sensitive Personally Identifiable Information.

“*Information*” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

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

“*Safeguarding*” means measures or controls that are prescribed to protect information systems.

- 38.2 **Safeguarding requirements and procedures.** The Contractor shall provide adequate security on all contractor CIS. To provide adequate security, the Contractor shall implement, at a minimum:

For contractor CIS that are part of a cloud computing service or an Information Technology (IT) service or system developed or operated on behalf of NATO shall be subject to the security requirements specified elsewhere in this contract.

For contractor CIS storing, processing, or transmitting NATO RESTRICTED Information the security requirements specified in SoW clause, “Safeguarding of NATO Restricted Information” as mandated in NATO’s Security Committee reference document number, AC/35-D/2003-REV5, dated 13 May 2015, entitled, “Directive on Classified Project and Industrial Security” shall apply.

For contractor CIS storing, processing, or transmitting NATO UNCLASSIFIED Information that are not part of a cloud computing service or IT service or system operated on behalf of NATO, the Contractor shall apply the minimum mandatory security measures as prescribed for NU controls for national systems in the NATO’s Consultation, Command and Control Board (C3B) reference document number AC/322-D/0048-REV3 (INV) dated 18 November 2019, entitled, “Technical and Implementation Directive on CIS Security”.

Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified elsewhere in this contract or of other applicable NATO or national regulatory requirements.

A breach of these obligations may subject the Contractor to contractual actions in law and equity for penalties, damages, and other appropriate remedies by the Purchaser.

Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (1.1.2.6), in subcontracts under this contract (including subcontracts for the acquisition of commercial products or services in which the subcontractor may have NATO Information residing in or transiting through its CIS.

ARTICLE 39 CYBER INCIDENT REPORTING**39.1 Definitions.**

“Contractor attributional/proprietary Information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“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.

“NATO Information” means as defined in clause, Basic Safeguarding of Contractor Communication Information Systems (CIS).

“Cyber incident” means any detected anomaly compromising, or that has the potential to compromise, communication, information or other electronic systems or the information that is stored, processed or transmitted in these systems.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

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

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“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 NATO Information is recorded, stored, or printed within a contractor CIS.

39.2 Cyber incident reporting requirement.

When the Contractor discovers a cyber incident that affects a contractor CIS or NATO Information residing therein, or that affects the contractor's ability to perform the requirements of the contract, the Contractor shall—

Conduct a review for evidence of compromise of the NATO Information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing contractor CIS that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised NATO Information, or that affect the Contractor's ability to perform the requirements of the contract; and,

Report the cyber incident(s) to the Contracting Officer within 72 hours of discovery of any cyber incident.

Cyber incident report. The cyber incident report shall be treated as information created by or for the Purchaser and shall include, at a minimum, the following content:

- Company name
- Facility Clearance Level
- Company point of contact information (name, position, telephone, email)
- NCI Agency Project Manager point of contact (name, position, telephone, email)
- Contract number(s) or other type of agreement affected or potentially affected
- Contracting Officer or other type of agreement point of contact (address, position, telephone, email)
- Contract or other type of agreement classification level
- Impact to NATO Information and/or provided products/services
- Ability to provide operational support
- Date incident discovered
- Location(s) of compromise
- NATO programs, platforms or systems involved
- Classification of the systems involved
- Type of compromise (unauthorized access, unauthorized release (includes inadvertent release), unknown, not applicable)
- Description of technique or method used in the cyber incident

- Incident outcome (successful compromise, failed attempt, unknown)
- Incident/Compromise narrative (Ex: Chronological explanation of event/incident, threat actor TTPs, indicators of compromise, targeting, mitigation strategies, and any other relevant information to assist in understanding what occurred) Include in this section what actions have been taken to mitigate the risk/damage of both hardware and software assets.
- Confirm whether news media are already aware/informed of the incident
- Any additional information

Subject to the Purchaser's consultation with the contractor's national cyber defence authority and/or as prescribed in the contractor's nation's Memorandum of Understanding (MoU) on Cyber Defence with NATO, the Purchaser reserves the right to request the following:

Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, inform the Contracting Officer to allow the Purchaser to request the malicious software or decline interest. Do not send the malicious software to the Contracting Officer.

Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraphs of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow the Purchaser to request the media or decline interest.

Access to additional information in support of an incident investigation. Upon request by the Purchaser, the Contractor shall provide the Purchaser with access to additional information that is necessary to conduct an incident investigation

Cyber incident damage assessment activities. If the Purchaser elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph below.

Information Handling. The Purchaser shall protect information reported or otherwise provided to the Purchaser under this clause that includes contractor attributional/proprietary information in accordance with applicable NATO policies. To the maximum extent practicable, the Contractor shall identify and mark contractor attributional/proprietary information. The Purchaser may use contractor attributional information and disclose it only for purposes and

activities consistent with this clause. The Purchaser will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such an authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

The Contractor shall conduct activities under this clause in accordance with applicable NATO regulations and contractor national laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

Other reporting requirements. The cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other cyber incident reporting as required by other applicable clauses of this contract, or as a result of other applicable NATO regulations or contractor national law or regulatory requirements.

Subcontracts. The Contractor shall—

Include this clause in subcontracts, or similar contractual instruments, for which subcontract performance will involve NATO Information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as NATO Information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and,

Require subcontractors to provide a copy of the incident report to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to the Purchaser as required in this clause.

ARTICLE 40 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION

40.1 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 pursuant to the NCI Agency's Cyber Incident Reporting clause (or derived from such information obtained under that clause):

- 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 NATO activities related to stipulated clause 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 NCI Agency and the Contractor, as required by paragraph above of this clause.
- 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 by NATO.

- Subcontracts. The Contractor shall include this clause, including this paragraph, in subcontracts, or similar contractual instruments, for services that include support for NATO activities related to cyber incident reporting, including subcontracts for commercial items, without alteration, except to identify the parties.

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- 115893-MAIN

Full name (in block capitals)

Date

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- 115893-MAIN.

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- 115893-MAIN, 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- 115893-MAIN, 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.

NATO UNCLASSIFIED

NATO COMMUNICATIONS AND INFORMATION AGENCY



CONTRACT GENERAL PROVISIONS

V 1.0 dated 16 Oct 2014

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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 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;
 - a) is sold in substantial quantities in the commercial marketplace; and
 - b) 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.

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- 2.8 **Contractor Background IPR-** Any IPR owned by the Contractor and/or any Sub-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 formula.
- 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.

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- 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, the NATO military command structure, agencies and NATO nations.
- 2.23 **NCI AGENCY-** The NATO Communications and Information Agency. The NCI Agency is part of the NCIO. The General Manager of the Agency is authorised to enter into contracts on behalf of the NATO CI 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.

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- 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

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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, Finance, Accounting & Operations
Boulevard Leopold III, B-1110, Brussels
Belgium

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

"(NAME OF CONTRACTOR) has not fulfilled its obligations under Contract No. _____ dated _____ between NCI Agency and (NAME OF CONTRACTOR) (herein called the "Contract"), and the NCI Agency, as beneficiary, hereby draws on the standby letter of credit number _____ in the amount denominated in the currency of the Contract, Amount up to the maximum available under the LOC), such funds to be transferred to the account of the Beneficiary

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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

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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

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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 including prices 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

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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.

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- 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);

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- 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

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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.

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- 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 (a) 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

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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 entitled "Release of 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.

.....

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.....
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

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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.

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- 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;
 - 19.5.5 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

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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 Contract Special 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

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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

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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

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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 Contract Special 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

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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); and
 - 25.2.6 extended totals. 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 addressed to the NCI Agency - Financial Management

Either at the following addresses:

NCI Agency * If used for NCI Agency Brussels

NATO Communications and Information Agency
Finance, Accounting & Operations
Batiment Z
Av du Bourget 140
B-1140 Belgium

OR

shall be addressed to Financial Management at the following electronic address:

["NCIA-CAPDEV-FMU-BEL_E-INVOICES@NCIA.NATO.INT"](mailto:NCIA-CAPDEV-FMU-BEL_E-INVOICES@NCIA.NATO.INT) (note there is an underscore between BEL and E-INVOICES)

Note: When used for NCI Agency The Hague or Mons the addresses shall be dictated in the Contract Special Provisions

Once the manner of forwarding the invoice is chosen, the contractor shall keep this manner throughout the contract.

- 25.6 All invoices submitted shall include the address of the bank to which payment shall be made, together with **either** pertinent information concerning the International Bank Account Number (IBAN) and BIC/SWIFT address **or** pertinent information concerning transit number/sort code, account number and SWIFT address. The Purchaser makes payment only by wire transfer and therefore wire transfer particulars shall be included on the invoice.
- 25.7 Invoices will be settled by the Purchaser within sixty (60) days of receipt of a properly prepared and submitted invoice.
- 25.8 The Contractor shall mention on the invoice the payment conditions in line with the Contract.

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 NCI Agency 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 NCI Agency 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

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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

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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 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 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

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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

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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:
 - 27.16.2 correct the Work;
 - 27.16.3 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;
 - 27.16.3.1 obtain applicable data and reports; and/or
 - 27.16.3.2 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;

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.

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- 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.

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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 to prosecute 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 licenses 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 licenses 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 the requirements of the Statement of Work (including numbers 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

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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 solutions are fully compliant with the requirements of this Contract. Contractor shall disclose in advance the open source license associated with the contemplated 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,

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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:
- 31.4.2 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
- 31.4.3 Shall apply notwithstanding inspection, acceptance, or any other clauses or terms of this Contract;
- 31.4.4 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:
 - 31.4.4.1 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;
 - 31.4.4.2 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

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may be necessary to eliminate the defect, or;

31.4.4.3 Equitably reduce the contract price

31.4.5 The Purchaser may elect the remedies provided in paragraph 31.4.4.1 or 31.4.4.2 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 31.4.4.2 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 31.4.4.1 and 31.4.4.2 as required by the Contract by virtue of this paragraph 31.4.3, the contract price under this contract shall be equitably adjusted.

31.4.6 Election by the Purchaser of the remedy provided under paragraph 31.4.4.1 and 31.4.4.2 above shall not preclude subsequent election of a different remedy under paragraph 31.4.4 if the defect is not successfully eliminated under the prior election with one month of the notification under paragraph 31.4.2 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 its 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

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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 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).

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- 32.6 Except as hereinafter provided, the Contractor shall require the Sub-contractor(s)/supplier(s) to furnish on request the information direct to the Codification Authority in the Sub-contractor(s)/supplier(s)' country, but the Contractor shall remain responsible for ensuring that the information is so furnished. In the event of a Sub-contract order being placed with a manufacturer in a non-NATO country, the Contractor shall be responsible for obtaining Technical Data from the Sub-contractor/supplier and furnishing it to the Purchaser.
- 32.7 Technical Data relating to any Sub-contractor's/supplier's items shall include but not be limited to the name and address of the true manufacturer(s), his/their true reference number(s), drawing or item Part number(s) and applicable data in addition to any Part or reference number(s) allocated by the Contractor, plus draft item identification(s) if required by the Codification Authority.
- 32.8 The Contractor shall provide the Technical Data required for codification of those items ordered with this Contract and also for the pertaining support items ordered with future contracts, including updating information regarding all agreed modifications, design or drawing changes made to the equipment or detailed Parts.
- 32.9 If the Contractor has previously supplied Technical Data (for the purpose stated in Clause 31.2), the Contractor is to state this fact and indicate to whom they were supplied and the Contractor shall not under normal circumstances be required to make a further supply of the Technical Data already provided. The Technical Data furnished by the Contractor and Sub-contractor(s)/supplier(s) are to be presented in accordance with the requirements for the preparation of item identification(s) as outlined in the Guide for Industry provided by the Codification Authority.
- 32.10 The Contractor should contact the Codification Authority for any information concerning the NATO codification system. This information is to be found at: ["http://www.nato.int/structur/ac/135/ncs_guide/e_guide.htm"](http://www.nato.int/structur/ac/135/ncs_guide/e_guide.htm)

32.11 Markings

- 32.11.1 All Deliverables under this Contract will identify the owner of the Deliverable and, if applicable, will prominently include notice of the existence of its 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.
- 32.11.2 All Deliverables regardless of the media they are delivered onto

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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.

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

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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.

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- 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% (one tenth of per cent) per day of the associated payment set forth in the Schedule of Payments provided in the Contract Special Provisions. If no Schedule of Payments is specifically set forth in the Contract Special 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 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

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- 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;

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- 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

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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

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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:

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- 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

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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

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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

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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

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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

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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 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.

- (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. An 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.

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PART II

STATEMENT OF WORK

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INTRODUCTION

[1] The NATO Communications & Information Agency (NCI Agency) is responsible for the in-service support of major NATO Communications and Information Systems. NATO has Datacentres within multiple locations, operated and monitored by the NATO Infrastructure Service Centre Business area.

1.1 Purchaser's intent

[2] This Statement of Work (SoW) covers the Hardware support and firmware/software version management required to operate and maintain the existing Dell server and storage products used in NATO sites deployed in multiple locations and in multiple countries. The agency currently has several operational Dell Hardware instances; on the NATO SECRET/MISSION SECRET network, NATO RESTRICTED and in the NATO UNCLASSIFIED network. These instances are deployed with different versions.

[3] This SoW defines Contractor tasks and deliverables for providing limited Contractor Logistic Support (CLS) services for a selection of NATO-owned, NATO-operated Dell Hardware.

[4] This Contract will be structured in the form of a framework contract. The framework will define a set of basic, mandatory CLS services as well as optional CLS services. Optional services will be exercised by the Purchaser through the issuing of separate Task Orders.

[5] The following CLS services are covered by this SOW:

- a) Development and delivery of a CLS Plan (CLSP) including CLS programme planning and management;
- b) Delivery and management of the Support Contracts in accordance with the CLS Plan.
- c) Hardware maintenance;
- d) Firmware and Software revision management;
- e) Provision of on-site training;
- f) Provision of remote technical assistance;
- g) Provision of on-site technical support;
- h) CLS performance reporting and reviews.

[6] The Contractor performance period will be one base period, starting from contract start date to end of calendar year, followed by optional years of CLS as specified in the Schedule of Supplies and Services (SSS).

1.2 Interpretation of the SoW

REQ 1. The term "Contractor" shall be interpreted to include the entire Contractor/ Sub-contractors team. All requirements in this SoW, which would apply to a Contractor activity, shall apply equally to sub-contractor activities.

REQ 2. "Shall" and "Shall not" statements shall be interpreted as requirements and are contractually binding. "Should" and "Should not" statements shall be interpreted as requirements that hold a recommendation, only to be ignored by the Contractor with valid

reasons. “May” statements shall be interpreted as optional requirements of which the Contractor shall decide whether to implement the requirement or not. “Will” statements are not requirements, but clarifications that explain intent on the part of the Purchaser.

REQ 3. The order of the SoW requirements shall not be interpreted to specify the order in which they must be carried out unless explicitly stated; i.e. the SoW defines all the activities the Contractor’s process should cover. The Contractor’s CLS Plan shall include where and when these occur.

REQ 4. Whenever reference is made to a section, task, or paragraph, the reference shall be construed to include all subordinate and referenced paragraphs.

REQ 5. Whenever requirements are stated herein to “include” a group of items, parameters, or other considerations, “include” shall be construed to mean “include, but not limited to.”

SECTION 2 SCOPE OF WORK

[7] This chapter contains the clarifications and requirements concerning the scope of work required from the Contractor, as well as the scope of equipment, software and work locations. In addition, the scope of Contractor responsibility for support is defined.

2.1 Equipment / hardware

REQ 6. The following Dell equipment shall be in the scope of this Contract:

- a) All hardware listed in Annex A shall be in scope of this Contract.
- b) All equipment procured by the Purchaser during the CLS performance period shall be included in the scope of this Contract (on-boarding). Respectively, all equipment removed by the Purchaser during the CLS performance period shall be removed from the scope of this Contract (off-boarding). The Purchaser's hardware inventory list in Annex A shall be updated by the Purchaser and communicated to the Contractor on a quarterly basis, so off-boarding and on-boarding can be handled in a cost efficient manner. On-boarded items should be supported as they become operational and not wait for the quarterly cycle.

2.2 Locations

REQ 7. The Contractor shall perform all on-site services furnished under this Contract at any NATO-facility in any NATO member nation listed in this Contract.

LOT 1 Belgium

LOT 2 Republic Of Türkiye

LOT 3 Italy

LOT 4 United Kingdom

LOT 5 Portugal

LOT 6 United States of America

2.3 CLS services

[8] The Purchaser is responsible for HW Maintenance in the scope of this Contract, including failure identification/isolation and equipment replacement*, testing and activation, installation of patches and releases, configuration, security accreditation and activation. The Contractor shall be responsible for HW Maintenance Level 4 including disassembly and repair of equipment. This responsibility will be carried out by the Purchaser's maintenance organisation, supported by the CLS services procured through this Contract.

**Refer to REQ 22 for equipment under warranty.*

[9] The Purchaser is also responsible for all levels of IT operations (i.e. service management and control), including service desk functions, incident management, problem

management, release & deployment management, change management and configuration management. This responsibility will be carried out by the Purchaser's service management and control (SMC) organisation, supported by the *CLS services procured through this Contract.

**Refer to point [12].*

REQ 8. The Contractor shall provide the following CLS services in support of the Purchaser's operation and maintenance activities, and IT operations:

- a) management of the CLS programme, in accordance with the CLS Plan and the requirements of this Contract, including development and maintenance of a CLS Plan, as defined in Section 4.1, and including end of contract activities as defined in Section 4.3;
- b) procurement, delivery and management of Support Contracts for Dell equipment for all hardware listed in Appendix A, as defined in Section 3.1;
- c) on-boarding of additional Dell Support Contracts for hardware procured during performance period, as defined in Section 3.2;
- d) hardware maintenance as defined in section 3.3;
- e) provision of on-site technical support as defined in Section 3.4;
- f) per Task Order, provision of on-site training as defined in Section 3.5;
- g) provision of remote technical assistance as defined in Section 3.6;
- h) completion of CLS performance reporting and reviews as defined in Section 4.2.

REQ 9. The Contractor shall provide the above services for the period covering the start date (given on the Contract Award) until the end of the calendar year; the option years will cover calendar years. All of the above CLS services are solely the responsibility of the Contractor unless indicated otherwise.

REQ 10. The Contractor shall provide all necessary knowledge, expertise, and resources - to include facilities, services, personnel, materials, tools, software, data, and documentation - needed to accomplish the CLS services requested in this SoW, unless stated otherwise in the requirements of this Contract.

REQ 11. The Contractor shall ensure that all CLS services are conducted in the English language.

REQ 12. The Contractor shall ensure that all CLS services are coordinated with, and approved by, the Purchaser's organisation for operation and maintenance, and IT operations, in accordance with the Purchaser's policies and regulations, and without disrupting the Purchaser's operational, maintenance and support activities.

[10] At date of Contract Award, the Purchaser will provide contact details of all personnel involved in coordination and approval, as well as personnel authorised to exercise task orders.

SECTION 3 CLS SERVICES

[11] This chapter includes the clarifications and requirements for all CLS services. The clarifications and requirements address procurement and management of Dell support contracts, software and software licenses, maintenance of software, on-site training, on-site technical support and remote technical assistance.

[12] The Contractor shall be an accredited Dell service provider/partner. It is understood that the Purchaser will interface and log requests through the Dell Online support system procured by the Contractor through the support contract and that the request will be channelled to the Contractor.

REQ 13. The Contractor shall be Dell Certified and shall maintain its certification throughout the Contract performance period. Certificates shall be provided before each option year.

REQ 14. All Contractor personnel involved in the delivery of the CLS services shall be citizens of NATO-member nations.

REQ 15. All Contractor activities to deliver the CLS services shall be undertaken in a NATO-member nation.

REQ 16. The Contractor shall notify the Purchaser of any products in scope of this Contract that become obsolete as soon as that information is received from the manufacturer. The notification shall address products that are no longer offered but still supported (i.e. end-of-sales), as well as products that are no longer supported (i.e. end-of-support), specifying the date from which this will happen.

3.1 Dell ProSupport Plus Support Contracts

REQ 17. At the beginning of the Contract performance period, the Contractor shall procure and deliver Dell ProSupport Plus support Contracts for all hardware and related software listed in Appendix A.. The Contractor shall ensure that the period of performance of each Dell ProSupport Plus support Contract covers the CLS period of performance, entirely. For items already covered by a support contract, the Contractor shall procure a new Support Contract only to cover the remaining time in the CLS performance period.

REQ 18. During the Contract performance period, the Contractor shall procure and deliver additional Dell ProSupport Plus support Contracts requested by the Purchaser through a Support Contract Task Order. The Contractor shall ensure that the period of performance of additional Dell ProSupport Plus support Contracts cover the remainder of the CLS performance period or a period as indicated in the Task Order.

REQ 19. The Contractor shall include the hardware, for which the additional, optional support contracts have been procured, in the scope of this Contract (on-boarding).

[13] The Purchaser will describe in the Support Contract Task Order in detail for which hardware instance and which type of Dell ProSupport Plus support Contract is required and

for which period. The Purchaser will request the following Dell ProSupport Plus support Contract containing the following elements from Dell:

Dell ProSupport Plus support Contracts (24/7/365);

- a. Proactive Deliverables, categorized as release and change management type of activities (Dell eng, 1 day per week, during working hours).
- b. Reactive Deliverables, HW repair and SW support service.

3.2 Dell Equipment

REQ 20. During the Contract performance period, additionally procured equipment shall be included in the scope of this Contract for the duration of the Contract performance period (on-boarding). At the start of each calendar year, the Purchaser shall update the list of equipment (Annex A), to reflect which equipment has been added (on-boarded), and which equipment is no longer under the support contract (off-boarded).

3.3 Hardware maintenance

REQ 21. During the CLS period, the Contractor shall provide hardware maintenance for all hardware in the scope of this Contract from his off-site premises. The Contractor shall execute hardware maintenance through exercising services covered by the applicable Support Contract.

REQ 22. The Contractor shall be required to replace faulty equipment under warranty, as well as the installation, testing and activation of new equipment at all of the locations under this support contract. If specifically requested by the Purchaser, the Contractor shall provide RMA (Return Material Authorisation) instructions to the Purchaser for the return of faulty items to the Contractor.

REQ 23. The Support Contract provided by the Contractor shall include provisions to advance temporary or additional equipment, if the demand requires replacement or extension of the current infrastructure.

REQ 24. Through exercising the item's Support Contract, the Contractor shall repair failed equipment or provide a replacement item, at the highest priority, and through this action restore the hardware to its intended function and performance. For this purpose, the Contractor shall, among other activities, interact with Dell directly, ship faulty equipment to Dell, receive repaired or replacement equipment, and dispatch repaired/ replaced equipment back to the Purchaser's designated final destination.

[14] The Contractor shall ensure that all services offered in the pertinent Dell Support Contract can be exercised by the Purchaser via the Contractor; it is understood that the Purchaser will interface and log requests through the Dell Online support system and that the request will be channelled to the Contractor.

REQ 25. This includes:

- a) direct access to the Dell self-help support, such as Dell support web sites, web tools, web resources and technical documentation;
- b) direct access to the Dell support portal, Support Community, and Social Media;
- c) direct access to the Dell support centre, twenty-four (24) hours per day, seven (7) days per week;
- d) registered access to dell.com;
- e) provision of Dell updates and upgrades to Dell supported products.

REQ 26. Upon reception of an equipment item, the Contractor shall investigate the item to the depth required to establish appropriate action, in compliance with the item's associated Dell Support Contract, as soon as possible. The Contractor shall then inform the Purchaser of his plan to have the item repaired or replaced, including an estimate of the turnaround time.

REQ 27. In case an advance replacement item is provided by the Contractor, the faulty items shall not be returned to the Purchaser, but returned to Dell. In such case, the Purchaser will remove the faulty item from its inventory and add the advanced replacement item to its inventory, instead.

REQ 28. Before the Contractor returns a repaired or replacement item back to the Purchaser, the Contractor shall load the item with the same options and software versions to ensure that the returned item retains all licenses, features and software of the original item.

REQ 29. The Contractor shall ensure that the response times for repaired/ replacement items are in accordance with the applicable Dell Support Contracts.

REQ 30. Defect magnetic, solid state and electronic media storage devices (e.g. solid state drives and hard drives) shall remain NATO property, and will not be returned to the Contractor when being replaced. Any such defect storage devices shall be replaced by the Contractor with new storage devices at no additional cost to the Purchaser. Defective Media retention shall be included for each item in the Dell Support.

REQ 31. The Contractor shall deliver repaired/ replacement equipment in accordance with the Packaging, Handling, Storage and Transportation (PHS&T) requirements in Appendix B.

3.4 On-site technical support

REQ 32. During the CLS performance period, the Contractor shall include provision for fourteen (14) on-site interventions per calendar year. These 14 interventions are considered 'per-Ticket', and shall be exercised on request of the Purchaser and included in the support contract with no additional cost. On-site interventions may be requested for any of the locations covered by this support contract and are considered inclusive of expenses (travel, subsistence etc.). Interventions not-used during a calendar year shall accumulate into the following year with a maximum of 28 days. Additional on-site support requested by the Purchaser, once the inclusive interventions have been consumed shall be optional and exercised through an On-Site Technical Support Task Order.

[15] The optional On-Site Technical Support Task Order shall be prepared by the Purchaser and include details of software/hardware instance, type of support required and for which period. The Contractor shall provide intervention costs for one (1) work-day and for one (1) weekend day, inclusive of all costs.

REQ 33. The on-site support shall be delivered by Contractor Dell certified engineers, fully qualified to perform any and all support tasks required to restore the software/hardware, in scope of this Contract, to its intended function and performance.

REQ 34. Contractor's personnel on-site shall have the security clearances required by the pertinent NATO and national authorities. The Contractor shall ensure that a sufficient number of his staff holds a NATO SECRET security clearance to perform on-site support.

REQ 35. The Contractor shall ensure that on-site support is provided within two (2) working days after receipt of the Purchaser's request or at such point in time as requested by the Purchaser.

REQ 36. The on-site support shall be provided at any location in scope of this Contract.

REQ 37. When on-site, the Contractor's on-site personnel shall support the Purchaser during the Purchaser's working hours, Monday to Friday, 0830hrs to 1730hrs, Purchaser's timezone, excluding Purchaser's holidays. In exceptional cases, to be agreed by the Contractor, the on-site Contractor personnel shall support special operational and business needs, outside Purchaser's working hours without additional cost to the Purchaser.

REQ 38. The Contractor's on-site personnel shall coordinate with the Purchaser and seek approval from the Purchaser for all his support activities before such activities are commenced.

REQ 39. The Contractor's on-site personnel shall perform support tasks on software/hardware in scope of this Contract, as instructed by the Purchaser, including:

- a) supporting the Purchaser's IT operations activities, including incident and problem investigation, diagnosis, recovery and resolution;
- b) supporting the Purchaser's corrective maintenance activities, including fault identification and isolation, bug fixing, (re-)configuration, verification, accreditation and activation;
- c) Installation/replacement of equipment under warranty.
- d) supporting the Purchaser's preventive maintenance activities;
- e) performing administrative activities;
- f) supporting documentation activities;
- g) providing hands-on training, as specified in Section 3.5.

REQ 40. Prior to arrival on-site, the Contractor shall provide the Purchaser the following information regarding the person who will perform the on-site support.

Scheduled visits should be notified 5 days in advance. Unscheduled/emergency interventions shall be co-ordinated as needed.

- a) full name;

- b) date and place of birth;
- c) passport or national ID-card number;
- d) nationality;
- e) NATO secret security clearance and expiration date;
- f) vehicle make, model, colour and licence plate (if applicable).

REQ 41. The Contractor shall report to the Purchaser by e-mail within one (1) week after completing the on-site support. This report shall provide the following information:

- a) report ID;
- b) date of reception of the task order;
- c) date of the report;
- d) PoC details of the Contractor's engineer performing the on-site support;
- e) details of the Purchaser's on-site PoC managing the Contractor's on-site support effort;
- f) account of activities performed during on-site support;
- g) account of time spent;
- h) description of specific problems encountered;
- i) description of solutions implemented;
- j) proposal for follow-on work required;
- k) suggestions for improvement of the system, system operation, system maintenance, or system support;
- l) additionally, the activity shall be tracked on the Dell Ticket system.

3.5 On-site training (Optional)

REQ 42. During the Contract performance period, the Contractor shall deliver optional, on-site, hands-on training, requested by the Purchaser through an On-Site Training Task Order. The Contractor shall provide pricing options for this activity.

[16] The Purchaser will describe in the On-Site Training Task Order in detail:

- a. how many days of on-site, hands-on training are required;
- b. which hardware products from Appendix A will be the subject of training;
- c. at which in-scope location the training is to be provided;
- d. details and prerequisites of the intended students;
- e. resources the Purchaser can bring to bear in support of the training.

REQ 43. The Contractor shall ensure that the training will enable students to perform operation and maintenance of the subject software/hardware product, as is feasible within the number of days requested.

REQ 44. The Contractor shall provide adequate training material, such as student handbooks, learning guides, quick reference cards and evaluation/feedback forms. Training materials shall reuse and reference existing COTS documentation to the maximum extent possible.

REQ 45. The Contractor's personnel delivering the training shall meet a minimum English language proficiency equivalent to SLP 4444, in accordance with NATO STANAG 6001.

REQ 46. The Contractor's personnel delivering the training shall be regarded as on-site support personnel, which shall be subject to the same requirements as contained in Section 3.4.

REQ 47. The Contractor shall ensure that each student is instructed at the end of training to complete and return the evaluation/feedback form. Student feedback shall be consolidated and forwarded to the Purchaser in the form of an e-mail report as specified in Section 3.4.

REQ 48. The Contractor shall produce Training Certificates (certifying attendance) for each training session and student. The certificates shall be delivered to the students at the end of the training session.

[17] The purchaser will organise the training session, provide training equipment and supply general training resources, such as rooms, power, laptops, writing utensils, white boards, projectors, as necessary and when available.

3.6 Remote technical assistance

REQ 49. During the CLS period, the Contractor shall provide remote, technical assistance from Contractor's off-site premises or through the Dell Ticket system which will channel the request to the Contractor. Technical assistance shall be provided at the request of the Purchaser and in the form of provision of subject matter expertise by a Contractor employee fully qualified to answer detailed engineering and technical questions regarding the function, performance, design and resolution of problems of the products in scope of this Contract.

REQ 50. In response to the Purchaser's request for technical assistance, the Contractor shall provide expert knowledge, opinion or advice within two (2) hours the same day after reception of the Purchaser's request, or if the request is placed outside the Contractor's working hours, or within two (2) hours before Contractor's close of business, within the next working day. Outside of working hours, or within one (2) hour before Contractor's close of business, provide expert knowledge, opinion or advice within the next working day. In all cases, the Contractor's response times shall not be longer than those stipulated by the Dell agreement. The assistance shall be provided remotely, through the Dell interface (off-site premises), to a Purchaser designated contact person.

REQ 51. The Contractor shall establish a call centre (*It is understood that the Purchaser will interface and log requests through the Dell call centre/online support, and that requests will be channelled to the Contractor*) to handle and manage all of the Purchaser's service requests and incident notifications. This call centre shall act as the Contractor's single and central point of contact for all matters concerning the services furnished under this CLS Contract. The Purchaser will use this call centre to invoke any and all services in scope of this Contract.

The Contractor stipulated call centre shall be reachable by phone or e-mail, twenty-four (24) hours a day, seven (7) days per week. The call centre shall be English-speaking under STANAG 3333. The call centre shall confirm reception of the request within 30 minutes, the same day after reception of the Purchaser's request. Contractors response times shall not be longer than those stipulated by the Dell agreement

REQ 52. The Contractor shall provide the Purchaser with a unique reference number for each service request and incident notification to allow the Purchaser to monitor the status of each request or incident and to escalate if needed.

REQ 53. The Contractor shall offer a web-based service request and incident management tracking tool, the Contractor shall provide access to the personnel authorised by the Purchaser, only. It shall provide continuous tracking of the service requests and incident management, based on a unique reference number/request, clear guidelines in case of service rupture, and one dedicated webpage / customised view per key account. Direct extract available to customer. Self-export to authorised requester. Format of exports must be MS Excel (cvs or xls) and fully editable (no protection).

REQ 54. Direct extract shall be made available to customer. Self-export to authorised requester. Format of exports must be MS Excel (cvs or xls) and fully editable (no protection). Alternatively, implement (and make available) an automated solution, which allows to receive this information the next business day via email. In this case the Contractor shall perform on request, within the Service Support Contract, actions to adjust the output (format, order, content, etc.) to the needs of the Purchaser.

REQ 55. All relevant documents shall be updated on the portal / webpage on a weekly basis:

- POCs (Account Manager, Support Engineers)
- Basic Support Information (support times)
- Open cases (INC, RMAs, Support Requests)
- Shipment details (tracking) for equipment in transfer
- Statistics (open cases, resolved tickets, etc.)
- Availability to receive electronic versions of above described documentation via email

The Web Page shall not have down time for more than 5 hours per month.

[18] An initial list of authorised Purchaser personnel will be provided by the Purchaser at Contract Award and will be updated by the Purchaser during the CLS performance period, as necessary.

REQ 56. The Contractor stipulated call centre shall record all service requests and incidents from the Purchaser. The Contractor shall make accessible and available, through its web-based service, any and all recorded data to the Purchaser in such a way that the Purchaser can remotely and continuously monitor the status of every service request and incident. The Purchaser will require this data in support of the Purchaser's own IT operation processes.

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SECTION 4 CLS PROCESS

[19] This chapter contains the clarifications and requirements pertaining to the CLS process, addressing CLS planning, performance reporting and evaluation, and end-of-Contract activities.

4.1 CLS planning and management

REQ 57. At the start of the CLS-period, the Contractor shall develop, provide and implement a CLS Plan (CLSP). The CLSP shall explain in detail how the Contractor intends to fulfil all requirements in this SoW.

REQ 58. The CLS Plan shall include:

- a) a description of the Contractor's CLS organisation;
- b) a description of how the contractor will interface with the purchaser, including pertinent communication channels, points of contact and contact details;
- c) a description of the CLS product baseline;
- d) a description of the Contractor's pertinent procedures for initiation, execution and closure of each of the CLS services specified in this SoW.

REQ 59. The Contractor shall conduct CLS activities in accordance with the Purchaser accepted CLS Plan. Acceptance of the CLS Plan shall not in any manner change the requirements of this contract.

REQ 60. The CLS Plan shall be considered a living document and as such shall be updated as necessary by the Contractor, with the Purchaser's concurrence, throughout the contracted CLS period.

4.2 Performance reporting and evaluation

REQ 61. During the CLS-period, the Contractor shall provide the Purchaser with a CLS performance report once per quarter.

REQ 62. The quarterly CLS Report shall describe in detail all work performed under this contract, in the preceding quarter, including

- an account of all service requests placed by the Purchaser through the Contractor's call centre;
- an account of all incidents of failed hardware transmitted to the Contractor;
- an account of all task orders received from the Purchaser;
- an account of all Dell support contracts ordered by the Purchaser and procured by the Contractor;
- an account of all Dell support services invoked by the Contractor and performed by Dell;
- an account of all hardware maintenance activities performed by the Contractor;
- an account of all on-site support activities ordered by the Purchaser and performed by the Contractor;

- an account of all on-site training ordered by the Purchaser and performed by the Contractor;
- an account of all technical assistance activities performed by the Contractor.

REQ 63. During the CLS performance period, the Contractor shall organise two CLS performance reviews. The first review shall be at the half-way point of the contracted CLS period. The second review shall be no later than two (2) months before the end of the contracted CLS period.

[20] Invoices shall be edited by the Contractor and received upon completion of each performance review, that is to say twice during the CLS period.

REQ 64. The first CLS performance review shall be conducted face-to-face at a Purchaser designated NATO facility. The second review shall be through teleconferencing or in front of the Purchaser, at the Contractor's premises or at a NATO facility, to be determined by the Purchaser.

REQ 65. Each CLS performance review shall evaluate the CLS performance of the Contractor during the preceding period and discuss future activities as may be determined by the Contractor and the Purchaser.

REQ 66. The Purchaser will chair the CLS performance review. The Contractor shall initiate and organise the review meeting, provide the agenda, and record and produce the minutes of the meeting for approval by the Purchaser.

REQ 67. The performance evaluation shall be based on the thresholds stipulated by the Dell Service Level Agreement (SLA); non-compliances shall be reported in the quarterly CLS Report and discussed during the CLS Performance reviews.

REQ 68. The Contractor shall ensure that the response and resolution times are in accordance, and shall not exceed those defined in the applicable SLA.

REQ 69. On-site response time for installation, replacement or technical support shall not exceed 24 hours from time of request.

REQ 70. Remote/on-line support response times shall conform to the Dell 4-hour call to restoration commitment.

REQ 71. Compliancy will be evaluated on response/resolution times equal and above 85% of the Dell SLA.

REQ 72. Non-compliancy will be evaluated on response/resolution times below 85% of the Dell SLA.

REQ 73. Non-conformancies are subject to penalties and credits as described in the special provisions of the contract.

4.3 End of contract activities

REQ 74. Within two (2) weeks after the end of this CLS Contract, but only at the request of the Purchaser, the Contractor shall provide a final CLS report. The Final CLS report shall

be a summary of all preceding CLS performance reports and describe in detail all work performed under this contract.

4.4 NATO Information Protection

The Contractor shall identify all NATO Information associated with the execution and performance of this contract. At the post-award conference, the Contractor and Purchaser Project Manager shall identify and affirm marking requirements for all NATO Information to be provided to the Contractor, and/or to be developed by the Contractor, associated with the execution and performance of this contract.

The Contractor shall track all NATO Information associated with the execution and performance of this contract. The Contractor shall document, maintain, and upon request, provide to the Purchaser, a record of subcontractors, vendors, and/or suppliers who will receive or develop NATO Information and associated with the execution and performance of this contract.

The Contractor shall restrict unnecessary sharing and/or flow down of NATO Information associated with the execution and performance of this contract – in accordance with NATO marking and dissemination requirements and based on a ‘need-to-know’ to execute and perform the requirements of this contract.

The contractor shall develop and store all NATO technical data (e.g., source code) in a secure facility. The contractor shall prevent computer software, in the possession or control of non-NATO entities on non-NATO information systems, from having connections to the network through segregation control (e.g., firewall, isolated network, etc.).

The Contractor shall flow down the requirements of this clause to their subcontractors, vendors, and/or suppliers.

4.5 Contractor Cyber Incident Management Plan

The contractor shall be required to deliver a Cyber Incident Management Plan (CIMP) that is aligned to cyber security controls in line with NATO Security Policy and its supporting directives.

The Contractor shall create, maintain and operate a formal incident response and forensic capability for protection of NATO Information residing on non-NATO Information Systems. The Contractor shall include the subcontractors and suppliers that perform support work that involves NATO Information.

The Contractor shall establish an incident-handling capability plan that consists of:

- 1) incident response policy and plan,
- 2) procedures for performing incident handling and reporting
- 3) guidelines for communicating with outside parties regarding incidents
- 4) incident team structure and staffing model
- 5) relationships and lines of communication between the incident response team and other groups, both internal and external
- 6) services the incident response team should provide, and
- 7) staffing and training the incident response team

The final Program CIMP shall be in Adobe Acrobat format with a digital signature from the contractor cognizant authority.

If no approved Program CIMP currently exists between the contractor and NATO, then one must be created and submitted. If an approved Program CIMP already exists and sufficiently satisfies the CIMP requirements for the contract, then no new CIMP delivery is required. In such cases, the Contractor in consultation with the Purchaser shall only submit a Contract Letter to the Contracting Officer stating that all CIMP requirements are satisfied by the existing Program CIMP.

The Contactor shall report cyber incidents that result in an actual or potentially adverse effect on the Contractor CIS and/or NATO Information residing therein, or on a contractor's ability to deliver on the requirement.

The Contractor shall report status of the incident-handling capability including plan-of actions for capabilities not at full operational status, and periodic operational status.

The Contractor shall provide status of a cyber-incident from first identification to closure as described in the CIMP.

The contractor shall report cyber incidents for all section of the SoW to the Purchaser as described in the NCI Agency Special Provisions Clause, Cyber Incident Reporting.

The Contractor shall establish and document a digital forensics readiness plan, and upon an incident execute the plan on the Contractor CIS to include the collection, examination, analysis, and reporting.

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APPENDIX A. HARDWARE LIST

[21] The complete list of all Dell hardware (inclusive of part-numbers and serial numbers) in the scope of this Contract is contained in Annex A to this SoW and in the Schedule of Supplies and Services tab Hardware Maintenance.

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**APPENDIX B. PACKAGING, HANDLING, STORAGE AND
TRANSPORTATION (PHS&T)**

REQ 75. Regarding PHS&T, the Contractor shall interact with the Purchaser through e-mail regarding Notices of Shipment, Packing lists, Warranty instructions, ShipmentInstructions and Requests for Forms 302. Purchaser POC details will be provided at Contract Award.

REQ 76. The Contractor shall be responsible for transportation of procured/ repaired/ replacement equipment from its site in a NATO nation to the Purchaser's designated final destination in a NATO nation. The Contractor shall also be responsible for any shipments from and to VTC. The Contractor shall be responsible for any packaging, handling, storage, customs clearance and insurance covering these shipments.

[22] The Purchaser will be responsible for shipment of faulty equipment to the Contractor's designated central receipt and dispatch location in a NATO nation.

REQ 77. The Contractor shall, for the purpose of transportation, package, crate, or otherwise prepare items in accordance with the best commercial practices for the types of equipment involved, giving due consideration to shipping and other hazards associated with the transportation of consignments overseas.

REQ 78. The Contractor shall use packaging materials that are reusable by the Purchaser for sending failed items of the same type.

REQ 79. The packages, pallets and/or containers in which equipment are shipped to the Purchaser, in addition to normal mercantile marking, shall show on a separate nameplate the designation:

"NISC Equipment"

<<CLS Contract number>>

"Building"

"Street"

"Place"

"Country"

REQ 80. Packing lists shall accompany each shipment. Each packing list shall include:

- a) the designation "NISC Equipment";
- b) the Purchaser's CLS Contract number;
- c) names and addresses of the Contractor and the Purchaser;

- d) names and addresses of the Carrier, Consignor and Consignee (if applicable and different from Contractor or Purchaser);
- e) Accounting code (to be provided by the Purchaser);
- f) PoC details and address of final destination (to be provided by the Purchaser);
- g) for each item shipped: nomenclature; part number and serial number;
- h) for each box, pallet and container: box/pallet/container identification number and number of boxes/pallets/containers; weight; dimensions.

REQ 81. Two (2) copies of the packing lists shall be fastened in a weather-proof, sealed envelope on the outside of each box, palette and/ or container, and one packing list shall be put inside each container/box.

REQ 82. The Contractor shall provide the Purchaser with a Notice of Shipment in advance of each shipment to the Purchaser. One copy of the packing list shall be attached to this notice. All shipments shall be carried out in close co-ordination with the Purchaser's PoC at final destination.

REQ 83. In the case of hazardous substances, such as Li-ion batteries, and goods requiring export licenses the Contractor shall ensure that all required forms and certificates are provided and that all procedures for such goods are followed.

[23] All shipments received by the Purchaser at final destination will be inspected visually to ensure that no damage has occurred during transport and that all packages, boxes and containers detailed in the packing list have been accounted for. The Purchaser will inform the Contractor immediately if any visual damage is encountered or if the shipment is incomplete. In such case, the Purchaser will not accept the shipment and await further instruction from the Contractor.

REQ 84. The Contractor shall be responsible for customs clearance of all shipments to the Purchaser. It is the Contractor's responsibility to take into account delays at customs. He shall therefore consider eventual delays and arrange for shipment in time. Under no circumstances can the Purchaser be held responsible for delays incurred, even when utilising Purchaser provided Customs Form 302.

REQ 85. Prior to a shipment by the Contractor, the Purchaser will upon request issue a Customs form 302, which in some cases supports the duty free import/export of goods. The Contractor shall be responsible for requesting the issue of a form 302 at least ten (10) working days prior to shipment. The request is normally processed by the Purchaser within three (3) working days. The requested 302 forms will be sent by courier.

REQ 86. If a country refuses to accept the Form 302 and requires the payment of customs duties, the Contractor shall pay these customs duties and the Purchaser will reimburse the Contractor at actual cost against presentation of pertinent supporting documents. Should such an event occur, the Contractor shall immediately inform the Purchaser by the fastest means available and before paying, obtain from the Customs Officer a written statement establishing that his Country refuses to accept the Form 302.

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APPENDIX C. QUALIFICATIONS FOR ON-SITE PERSONNEL

REQ 87. Required qualifications for the on-site intervention personnel for software support:

- Five (5) years practical experience in the design, development, implementation, testing and maintenance of Dell solutions, in particular server and storage Technologies;
- Dell certified engineer qualification (in relevant discipline)
- broad knowledge as a system manager of IT Environments lifecycle maintenance;
- experience of on-line performance, accounting, fault, security and configuration management of digital networks and associated transmission systems; including routing and switching systems in support of data and voice;
- experience of business process re-engineering;
- experience in the production of Standard Operating Procedures;
- Spoken and written English (3333, as defined in STANAG 6001);
- National Security clearance (NATO secret).

Additional required qualifications for the training personnel:

- Experience of providing Dell Software Training to technical and non-technical staff in English.

[24] Desirable Skills for the on-site intervention and training personnel:

- recent experience in working with NATO and be familiar with the Organisation's method of operation, or have multi-national experience;
- a wide breath of knowledge of Secure information systems and their management;
- experience of working within a Secure Military Environment;
- proven knowledge of service driven environments.

REQ 88. Required qualifications for the on-site intervention personnel for equipment support:

- Five (5) years practical experience in the design, development, implementation, testing and maintenance of Dell solutions.
- Dell certified engineer qualification (in relevant discipline)

- broad knowledge as a system manager of IT Environments lifecycle maintenance;
- experience of business process re-engineering;
- experience in the production of Standard Operating Procedures;
- Spoken and written English (3333, as defined in STANAG 6001).
- Proven field service engineer service experience, ability to troubleshoot, test, repair and service technical (Dell) equipment;
- National Security clearance (NATO secret).

Additional required qualifications for the training personnel:

- Experience of providing Dell Software Training to technical and non-technical staff in English.

[25] Desirable Skills for the on-site intervention and training personnel:

- recent experience in working with NATO and be familiar with the Organisation's method of operation, or have multi-national experience;
- a wide breath of knowledge of Secure information systems and their management;
- experience of working within a Secure Military Environment;
- proven knowledge of service driven environments.

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Annex A – Lots

This Annex will be distributed upon request and subject to signed Non-Disclosure Undertaking.

Annex B – SLA: Key Performance Indicators, Targets for Support**Services and Service Credits**

This section describes the Key Performance Indicators (KPI) that the Purchaser and the Contractor shall use to measure the Contractor's performance. These KPIs shall only be in force from 3 months after Contract signature, to allow the Contractor to have all procedures in place and optimized.

The KPIs described in this annex shall be applicable 24 hours per day, 7 days per week, 365 days of the year regardless of vacation or leave except during scheduled outages.

Examples of scheduled outages:

- Time taken by Purchaser or its subcontractor to resolve non-active devices incidents, which affect Contractor support arrangements.
- Scheduled outages initiated by the Purchaser.

On-site Incident Support

The On-site Service Support KPIs are related to the delivery of on-site incident support and availability of parts related to incident resolution.

Title	Description	Key Performance indicators	Targets for support services	Service Credits (maximum cumulated service credit: 10% of value of contract for the respective period)	Reporting
On-site response time. Available 7 days per week 24 hours per day.	Technician arrives on site within 4 hours after completion of telephone based troubleshooting.	P1: within 4 hours	P1 within 4 hours	Per hour exceeding the allowed maximum accumulated delay time as specified under the Targets for Support Service: 1% of on-site incident support costs for billing period.	Quarterly
		P2-P3: within 24 hours	P2-P3: within 24 hours		
Parts locations.	Parts locations stock essential operational components.	P1: Essential stock items delivered within 4 hours.	P1: Essential stock items delivered within 4 hours.	Per hour exceeding the allowed maximum accumulated delay time as specified under the Targets for Support Service: 1% of on-site	Quarterly
		P2-3: Essential stock items delivered within	P2-P3: Essential stock items delivered		

		24 hours.	within 24 hours.	incident support costs for billing period.	
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Service Support

The Service Support KPIs are the Incident Resolution Time and the Incident Response Time.

Incident Response time

Incident response time is counted as follows:

- from the time the Purchaser notifies the Contractor of an incident
- to the time the Contractor notifies the Purchaser that he has started to work on the incident (an automated response email is not considered an acceptable notification from the Contractor).

Targets for Incident Response Time are assigned to each level of Priority. The response time of each incident shall be assessed by the Contractor and verified by the Purchaser as compliant or non-compliant. The sum of compliant incidents shall not be lower than the applicable KPI target (99.5%). Service Credits shall be applied for each non-compliant incident.

Incident resolution time

Incident Resolution time is counted as follows:

- from the time the Contractor notifies the Purchaser that he has started to work on the incident (an automated response email is not considered an acceptable notification from the Provider).
- to the time the incident has been resolved and acknowledged as resolved by the Purchaser.

The acknowledgement will be agreed through written and signed confirmation from the Purchaser that support has been given by the Contractor.

Targets for Incident Resolution Time are assigned to each level of Priority. The response time of each incident shall be assessed by the Contractor and verified by the Purchaser as compliant or non-compliant. The sum of compliant incidents shall not be lower than the applicable KPI target (99.5%). Service Credits shall be applied for each non-compliant incident.

The sum of compliant incidents shall not be lower than the applicable KPI target (95%).

Service Credits shall be applied for each non-compliant incident.

Priority

The following paragraph defines the priority levels and related targets.

The priority of an incident is graded using the following thresholds:

- 1 – If Level 3 support is required to solve an incident, impacting availability of a server / storage configuration item
- 2 – If Level 3 support is required as to solve an incident, impacting degraded performance of a server / storage configuration item
- 3 - All other incidents.

Targets**Incident Response Time Targets****Priority Incident Response Time Target**

- 1 99.5% of Priority 1 tickets within 30 minutes
- 2 99.5% of Priority 2 tickets within 60 minutes
- 3 99.5% of Priority 3 tickets within 120 minutes

Priority Incident Resolution Time Target

- 1 95% Compliancy based on contracted restoration targets per item

Service Credits

Service Credits are fixed as a percentage as defined in the Key Performance Indicator targets, covering response time targets, incident time targets, on-site intervention time targets related for all HW/SW covered under this contract.

Per calendar year, service credits on maintenance services and staffing shall be limited to 10% of the total value of the contract for the contracted service period. Applied service credits, if any, will be deducted from the respective quarterly invoice.