

RFQ-CO-115745-UOMM

- PROVISION OF -

CP120 WP0.5 – URGENT OBSOLESCENCE MANAGEMENT – MITIGATION (UOMM) FOR CIS SECURITY SERVICES

EXTENDED WARRANTIES FOR DELL AND IXIA

(TECHNOLOGY REFRESH)

BOOK II, PART II

SPECIAL PROVISIONS



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1. ORDER OF PRECEDENCE

- 1.1.** In the event of any inconsistency in language, terms and conditions of the various parts of this Contract, precedence will be given in the following order:
 - 1.1.1. The Contract Signature Page (Basic + any amendment)
 - 1.1.2. Part I – The Schedule of Supplies and Services
 - 1.1.3. Part II – The Contract Special Provisions
 - 1.1.4. Part II – The Contract General Provisions
 - 1.1.5. Part IV – The Statement of Work and its Annexes
 - 1.1.6. The Contractor's proposal (Technical Proposal and Price Quotation) dated XX and any clarification thereto, incorporated herein by reference.

2. CONTRACT TYPE

- 2.1.** This is a Firm-Fixed Price type of contract for the supplies and services defined in Part I – SSS and Part IV – SOW.
- 2.2.** The FFP include all expenses related to the performance of the prospective Contract to include travel. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated FFP except as provided under other provisions of this Contract.
- 2.3.** The Total Contract price is inclusive of all expenses related to the performance of the present contract.

3. PROJECT OVERVIEW

- 3.1.** The NCI Agency is seeking the acquisition extended warranties for RSA and Keysight equipment the NCI Agency intends to use as Purchaser Furnished Equipment (PFE) under a separate contract action
- 3.2.** The full requirements, Contractor Deliverables and scope is as per the SOW.

4. PERIOD OF PERFORMANCE

- 4.1.** The contractor shall be able to deliver the required extended warranties upon contract award.

5. PARTICIPATING COUNTRY

- 5.1.** The following NATO member nations have agreed to fund this acquisition effort: (in alphabetical order): ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC, DENMARK, ESTONIA, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, UNITED KINGDOM, UNITED STATES OF AMERICA.
- 5.2.** The Contractor may issue sub-contracts to firms and purchase from qualified vendors in any NATO member nation. None of the work, shall be performed other

than by firms from and within participating countries, as per NATO policy

6. SECURITY

- 6.1. The security classification of this Contract is NATO UNCLASSIFIED.
- 6.2. All documentation, including the RFQ itself, all applicable documents and any reference documents provided by the Purchaser are solely to be used for the purpose of preparing a response to this RFQ. They are to be safeguarded at the appropriate level according to their classification. Any Reference Documents are provided "as is, without any warranty" as to quality or accuracy.

7. PRICING OF CHANGES, AMENDMENTS TO CONTRACT, FOLLOW-ON CONTRACTS AND CONTRACT CLAIMS

- 7.1. All amendments to this Contract shall be serially numbered, in writing, and issued by the Purchaser's Contracts Officer.
- 7.2. The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Contract.
- 7.3. Changes, amendments, follow-on Contracts of any nature, and claims shall be priced in accordance with BOA General Provisions.
- 7.4. Except otherwise provided for in this Contract, prices quoted for the above-mentioned changes, modifications, etc. shall have a minimum validity period of twelve (12) months from the date of purchaser acceptance of proposal.
- 7.5. The pricing information contained in the cost breakdown sheets submitted with the Bidding sheets, as part of the Contractor's proposal, and especially the forward labour rates provided, will constitute the basis for any future negotiations related to possible future amendments to this Contract.

8. WAIVER

- 8.1. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- 8.2. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

9. THIRD PARTY RIGHTS

- 9.1. Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have

no intention to grant any such right.

10. ENTIRE AGREEMENT

10.1. This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation.

11. NON DISCLOSURE

11.1. The Contractor's performance under this Contract may require access to third party data and information. The Contractor shall exercise the same degree of care for such third party data and information that it undertakes to preserve and protect its own data and information.

11.2. All Contractor and Sub Contractor personnel working at any NATO Organisations/ Commands premises or having access to NATO classified/commercial-in-confidence information must certify and sign the Non-Disclosure Declaration at Annex A hereto and provide it to the Purchaser's Contracting Authority prior to the commencement of any performance under this contract.

11.3. The Contractor and Subcontractors may be reasonably required to sign subject to their review other non-disclosure agreements or certificates for access to specific information to complete tasks.

11.4. The Contractor shall ensure that its officers, employees, agents and Sub-Contractors shall have been made aware of the requirements of confidentiality and shall not cause or permit the data and/or information to be either totally or partially disclosed to any unauthorised Contractor personnel or third party personnel.

11.5. The Contractor shall be liable for all damages resulting from the non-authorised use of the data and/or information by the Contractor's personnel.

12. ADVERTISEMENTS, PUBLICIZING AWARDS, NEWS RELEASES AND CONFERENCES

12.1. All press releases or announcements about any contract award hereunder shall be approved by the Purchaser's Contracting Authority prior to release. Under no circumstances shall the Contractor, subcontractor, teaming partner, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity news release or commercial advertising without first obtaining explicit written consent to do so from the Purchaser's Contracting Authority. The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Purchaser or is

considered by the Purchaser to be superior to other products or services.

- 12.2.** Any presentation, white paper, article et cetera written, submitted or presented by Contractor personnel shall be reviewed and approved by the Purchaser's Contracting Authority prior to delivery. This special requirement shall apply whether the Contractor personnel is acting on behalf of the company or unofficially on behalf of himself or herself.

13. EQUALITY

- 13.1.** Without prejudice to Article 8 above:

- 13.1.1. the Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender, sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 13.1.2. the Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Article 16 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.
- 13.1.3. the Contractor agrees to take reasonable efforts to reflect this Article 16 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Article 16 in their subcontracts that they enter into to satisfy the requirements of the Contract.

14. CONFLICT OF INTEREST

- 14.1.** A conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Purchaser, or the Contractor's objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Conflict of interest includes situations where the capacity of a Contractor (including the Contractor's executives, directors, consultants, subsidiaries, parent companies or Subcontractors) to give impartial, technically sound advice or objective performance is or may be impaired or may otherwise result in a biased work product or performance because of any past, present or planned interest, financial or otherwise in organizations whose interest may substantially affected or be substantially affected by the Contractor's performance under the Contract.
- 14.2.** The Contractor is responsible for maintaining and providing up-to-date conflict of interest information to the Purchaser's Contracting Authority. If, after award of this Contract herein, the Contractor discovers a conflict of interest with respect to this Contract which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the Purchaser's Contracting Authority as set forth below.
- 14.3.** If, after award of this Contract herein, the Purchaser discovers a conflict of interest with respect to this Contract, which has not been disclosed by the

Contractor, the Purchaser may at its sole discretion request additional information to the Contractor, impose mitigation measures, or terminate the Contract for default.

14.4. The Contractor's notice called for in Article 18.2 above shall describe the actual, apparent, or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Purchaser's Contracting Authority in analyzing the situation. Any changes to the contractors Conflict of Interest Mitigation Plan, if any is incorporated in the Contract, should be also detailed.

14.5. The Contractor has the responsibility of formulating and forwarding a proposed conflict of interest mitigation plan to the Purchaser's Contracting Authority, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest.

14.6. If the Purchaser's Contracting Authority in his/her discretion determines that the Contractor's actual, apparent, or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the Purchaser's Contracting Authority will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of Contract performance, the Purchaser's Contracting Authority has the discretion to terminate the Contract for default or alternatively refrain from exercising any further Option or Work Package under the contract.

14.7. The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractors failure to disclose a conflict of interest as required shall be a basis for default termination of this contract.

15. MERGERS, ACQUISITIONS, NOVATIONS AND CHANGE-OF-NAME AGREEMENTS

15.1. If a Contractor merges, is acquired, or recognizes a successor in interest to Purchaser contracts when Contractor assets are transferred; or, recognizes a change in a Contractor's name; or, executes novation agreements and change-of-name agreements by a Contracting Officer other than the Purchaser's Contracting Authority named in Article 23 of these Contract Special Provisions, the Contractor must notify the Purchaser's Contracting Authority at least thirty (30) days in advance and provide a copy of the novation or other any other agreement that changes the status of the Contractor for signature by the Purchaser. Any successor must be in full compliance with all terms and conditions of this contract.

16. INDEPENDENT CONTRACTOR

16.1. 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.

16.2. The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. Contractor's personnel employed under this Contract are not eligible for any diplomatic privileges or for NATO employee benefits.

16.3. 16.3. The Contractor is responsible for providing the necessary insurance for his personnel and equipment as needed in the area of operations and for performing the contract.

17. DISRUPTION

17.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Purchaser, its employees or any other contractor employed by the Purchaser.

18. INVOICES AND PAYMENT

18.1. Following Purchaser acceptance, in writing, payment for supplies and services furnished shall be made in the currency specified for the relevant portion of the Contract. Invoices shall be accompanied by a copy of the letter of acceptance issued by the Purchaser. It shall be the responsibility of the Contractor to ensure such letter is provided.

18.2. 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 CLIN.

18.3. No payment will be made if CLIN items agreed for delivery before milestones are not complete as described in bidding sheets, SSS and SOW.

18.4. No payment shall be made with respect to undelivered supplies; works not performed, services not rendered and/or incorrectly submitted invoices.

18.5. No payment will be made for additional items delivered that are not specified in the contractual document.

18.6. The invoice amount is exclusive of VAT and exclusive of all Taxes and Duties as per BOA General Provisions.

18.7. The CLINs will be paid as below based on Purchaser milestone approval in writing.

18.8. The Purchaser is released from paying any interest resulting from any reason whatsoever.

18.9. The Contractor shall render all invoices in a manner, which shall provide a

clear reference to the Contract. Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain:

18.9.1. Contractor's VAT number

18.9.1. Contractor's VAT number

18.9.2. Contract number

18.9.3. Purchase Order number

18.9.4. Contract Amendment number (if any)

18.9.5. CLINs as they are defined in the priced SSS.

18.9.6. Bank Account details for International wire transfers.

18.10. The invoice shall contain the following certificate:

"I certify that the above invoice is true and correct, that the delivery of the above described items has been duly effected and/or that the above mentioned services have been rendered and the payment therefore has not been received."

The certificate shall be signed by a duly authorised company official on the designated original.

18.11. Invoices shall be submitted to:

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:
accountspayable@ncia.nato.int

AND

An electronic copy of the invoice shall be sent to the Purchaser's Contracting Authority, at the email address specified in the Article 123 of the Contract Special Provisions.

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

18.13. The approval for payment of a valid and undisputed invoice by the Purchaser shall not be construed as acceptance by the Purchaser of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this

Contract.

- 18.14.** The Contractor shall be entitled to submit an invoice upon completion of the contract.

19. LIQUIDATED DAMAGES

- 19.1.** If the Contractor fails to:

19.1.2. meet the delivery date as specified in the Schedule of Supplies and Services to this Contract, or any extension thereof, or

19.1.3. deliver and obtain acceptance of the Deliverables, 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 percent) per day of the associated payment set forth in the schedule of payments provided in Article 9 of the Contract Special Provisions.

- 19.2.** In addition to the liquidated damages, the Purchaser shall have the possibility of terminating this Contract in whole or in part, as provided in BOA General Provisions. In the event of such termination, the Contractor shall be liable to pay the excess costs provided in BOA General Provisions.

- 19.3.** 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 BOA General Provisions. In such event, subject to the provisions of Article 41 "Disputes" of Part III - The BOA General Provisions, the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the Contract when in his judgement the findings of the fact justify an extension.

- 19.4.** Liquidated damages shall be payable to the Purchaser from the first day of delinquency and shall accrue at the rate specified in Article 21.2.2 above to 15% of the value of each line item individually and an aggregate sum of all delinquent items not to exceed 15% of the value of the total Contract. These liquidated damages shall accrue automatically and without any further notice being required.

- 19.5.** The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:

- a. By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
- b. By proceeding against any surety or deducting from the Performance Guarantee, if any
- c. By reclaiming such damages through appropriate legal remedies.

- 19.6.** . The rights and remedies of the Purchaser under this Article are in addition to

any other rights and remedies provided by law or under this Contract.

20. TECHNICAL DIRECTION

- 20.1.** The Contract will be administered by the NATO CI Agency in accordance with Article 36 of these Contract Special Provisions entitled "Contract Administration".
- 20.2.** The individuals working on this Contract shall perform the effort within the general scope of work identified in the Contract Part IV - SOW. This effort will be directed on a more detailed level by the Purchaser's Project Manager who will provide detailed tasking and instruction on how to proceed.
- 20.3.** The Purchaser reserves its right to assign a Technical Representative who will provide the Contractor personnel with instruction and guidance, within the general scope of work, in performance of their duties and working schedule.
- 20.4.** Neither the Purchaser's Project Manager, as identified in Article 36 of these Contract Special Provisions, nor any Technical Representative has the authority to change the terms and conditions of the Contract. If the Contractor has reason to believe that the Project Manager/Technical Representative is requesting effort on terms inconsistent with that in the scope of the Contract, the Contractor shall immediately inform the Purchaser's Contracting Authority for confirmation of the actions. Failure to obtain confirmation that the action of the Project Manager is outside of the authority of the Contract shall render any subsequent claim null and void.
- 20.5.** Upon receipt of such notification above, the Purchaser's Contracting Authority will:
- a. Confirm the effort requested is within scope, or;
 - b. Confirm that the instructions received constitute a change and request a quotation for a modification of scope and/or price, or;
 - c. Rescind the instructions.
- 20.6.** Failure of the Contractor to notify the Purchaser of direction constituting change of the Contract will result in waiver of any claims pursuant to such change.

21. CONTRACT ADMINISTRATION

- 21.1.** 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.
- 21.2.** Formal letters and communications shall be subsequently be sent by e-mail to the official points of contact quoted in this Contract. Physical copies may be delivered through the following formal communication means; personal delivery sent by mail/registered mail/courier/or other delivery service.

- 21.3.** Informal notices and 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.
- 21.4.** All notices and communications shall be effective upon receipt.
- 21.5.** Official points of contact

PURCHASER

Contractual issues:

NATO CI Agency
Acquisition Directorate
Boulevard Léopold III
B-1110 Brussels
Belgium

POC: Leonora Alushani

E-mail: Leonora.alushani@ncia.nato.int

Technical issues:

NATO Communications and Information Agency
NATO Cyber Security Centre
Oude Waalsdorperweg 61
2597 AK The Hague
Netherlands

POC: Aaron Allen

E-mail: Miles.Knight@ncia.nato.int

CONTRACTOR

Contractual issues:

To be added at Contract award

Technical issues:

To be added at Contract award

22. REQUEST FOR CHANGES

- 22.1.** The Purchaser intends to manage changes to this Contract using the change management procedure described below:
- 22.1.1. Request For Change (RFC) is a proposal for changes relevant to the specifications of the items, their market availability, their obsolescence, or any other technological changes
- 22.1.2. The Contractor shall submit the RFCs in written form only upon prior confirmation from the Purchaser that such changes are necessary in light of varied facts or circumstances which prevent the execution of the Contract in its then current form.
- 22.1.3. Any RFC submitted by the Contractor to the Purchaser shall, in any case contain as a minimum the RFC identification number, the rationale for the changes, effected CLIN, new CLIN proposal for newly added items, and any effect to the Schedules, technical solutions, and pricing.

- 22.1.4. The Contractor shall provide the RFC template prior to the Kick-off Meeting, and shall update the template based on Purchaser feedback.
- 22.1.5. The Contractor shall release RFCs in following conditions and within noted timelines:
- a) Items are no longer available to order due to obsolescence (immediately),
 - b) replacement items are required due to the changing Purchaser requirements (as requested)
- 22.1.6. The Purchaser will provide written confirmation if the RFC is authorized. In case of RFC rejection, the Contractor shall proceed with the performance in accordance with the Contract.
- 22.1.7. Except as otherwise provided for in this Contract, prices quoted for the changes, modifications, etc. shall remain valid for the entire period of performance validity of this contract.

23. NCI AGENCY SUPPLIER CODE OF CONDUCT

- 23.1.** The NCI Agency has a Supplier Code of Conduct located at <https://www.ncia.nato.int/business/do-business-with-us/code-of-conduct.html> and it constitutes part of this contract.
- 23.2.** This Supplier Code of Conduct 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 environment. It contains fundamental, basic principles that any supplier based in a NATO country should already be operating in compliance with.
- 23.3.** In the event of any inconsistency in language, terms or conditions with the Contract General Provisions, the Contract General Provisions take precedence.

24. FORCE MAJEURE

- 24.1.** "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.
- 24.2.** Examples of Force Majeure, provided conditions (i) – (iv) of paragraph [16.1] are all fulfilled include:
- 24.2.1. War (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization;
 - 24.2.2. Civil war, riot, rebellion and revolution, usurped power, insurrection, act of terrorism, sabotage or piracy;

- 24.2.3. Currency and trade restriction, embargo, sanction;
- 24.2.4. Act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization;
- 24.2.5. Plague, epidemic, natural disaster or extreme natural event;
- 24.2.6. Explosion, fire, destruction of equipment, prolonged break down of transport, telecommunication, information system or energy; and
- 24.2.7. General labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 24.3.** 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.
- 24.4.** 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 for ninety (90) days, whichever is the shorter, provided that:
- 24.5.** 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;
- 24.6.** The suspension of performance is of no greater scope than is necessitated by Force Majeure;
- 24.7.** the Affected Party continues to furnish weekly updates by email while the effects of Force Majeure continue detailing reasonable efforts made in accordance with [16.4.1], and notifies the Other Party immediately when the effects of Force Majeure are avoided or overcome, or cease, and resumes performance immediately thereafter.
- 24.8.** Neither party shall be in breach of the Contract nor liable for delay in performing or for failint to perform, its obligations under the Contract, due to Force Majeure.
- 24.9.** 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.

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

- 25.1.** This Article supplements Article 28 Right of Access, Examination of Records of the NCI Agency, Part III - General Provisions.
- 25.2.** Definitions. As used in this Article:
- 25.3.** Resource Committees means committees under the North Atlantic Council (NAC) that are responsible, within the broad policy guidance provided by the Resource Policy and Planning Board (RPPB) on matters of resource allocation, for the implementation of the NATO Security Investment Programme (NSIP) or Budget/Civil budgets.
- 25.4.** Mandated Third Party Audits means audits mandated by a resource committee
- 25.5.** Third Party Auditor means an independent, external audit body for NATO such as the International Board of Auditors for NATO (IBAN) or an appointed private Contractor (including its experts, technical consultants, subcontractors, and suppliers) providing audit support under a Resource Committee Appointment based on an agreed mandate.
- 25.6.** Sensitive information means information of a commercial, financial, technical, proprietary, or privileged nature. The term does not include information that is lawfully, publicly available without restriction.
- 25.7.** The Purchaser may disclose to a mandated third party auditor, for the sole purpose of audit support activities, any information, including sensitive information, received:
- 25.7.1. Within or in connection with a bid, quotation or offer; or
- 25.7.2. In the performance of or in connection with a Contract.
- 25.8.** 17.7.3. Flowdown. Include the substance of this Article, including this paragraph (c), in all subcontracts, including subcontracts for commercial items

26. LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION

- 26.1.** Definitions. As used in this Article:
- 26.1.1. 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.

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

26.1.3. Covered defense information means unclassified Controlled Technical Information and is:

26.1.3.1. Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of the NCI Agency in support of the performance of the contract; or,

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

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

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

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

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

26.2. Restrictions

26.2.1. 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: 22.2.1.1. The Contractor shall access and use the information only for furnishing advice or technical assistance directly to the Purchaser in support of the Purchaser's activities, and shall not be used for any other purpose.

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

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

- 26.2.1.3. The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this Article prior to the employees being provided access to or use of the information.
- 26.2.1.4. The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Purchaser and Contractor.
- 26.2.1.5. A breach of these obligations or restrictions may subject the Contractor to:
 - 26.2.1.5.1. Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies; and
 - 26.2.1.5.2. Civil actions for damages and other appropriate remedies by the third party that reported the cyber incident, as a third party beneficiary of this Article.

ANNEX A: NATO CI AGENCY NON-DISCLOSURE DECLARATION

We, the undersigned(Company) duly represented by the named individual below (hereinafter "Contractor") do hereby certify that we shall ensure that the following conditions be accepted and observed by all (Contractor) employees working under CO-115745-UOMM-1.

Date	Full name (in block capitals)	Signature
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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 unauthorized 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-115745-UOMM.

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-115745-UOMM, save such as I have been duly authorized to retain.

That the provisions of the above Declaration apply not only during the period of work under CO-115745-UOMM, 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 unauthorized hands.