



IFB-CO-115751-NCI CLS

NATO Communication Infrastructure (NCI) Contractor Logistics Support (CLS)

Book II

THE PROSPECTIVE CONTRACT

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Book II, The Prospective Contact

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GENERAL INDEX

BOOK II - THE PROSPECTIVE CONTRACT

Signature Sheet
Part I Schedule of Supplies and Services
Part II Contract Special Provisions
Part III General Provisions
Part IV Statement of Work

SIGNATURE SHEET

NCI Agency PURCHASE ORDER	
1. Original Number __ of	2. PO Number : TBD
3. Contract Number: CO-115751-NCI CLS	4. Effective date (EDC): SEE BLOCK 17
5. Contractor: TBD	6. Purchaser: The General Manager NATO Communications and Information Agency Boulevard Leopold III B-1110 Bruxelles Tel: +32(0) 6544 6103
7. CONTRACT SCOPE: To establish a Contract for NATO Communication Infrastructure (NCI) Contractor Logistics Support (CLS) for a Base Period of One (1) Year (Effective Date of Contract {EDC} plus 12 months) and Four (4) Option Years, 12 months each if/when exercised. This requirement addresses the integration of logistics and service support functions for operational requirements of NCI in order to enable the availability and resiliency of existing NCI projects for hardware, software and license maintenance and support for the complete Domain Specific Management System (DSMS). The Contractor shall deliver the items specified in the Schedule of Supplies and Services in the manner and at the time and location specified in the terms of this Contract and the Statement of Work.	
8. TOTAL AMOUNT OF CONTRACT : Firm Fixed Price (Currency – Excluding VAT): _____	
9. PERIOD OF PERFORMANCE As stated in Schedule of Supplies and Services and Special Provisions	10. DELIVERY SITE As stated in Schedule of Supplies and Services and Special Provisions INCOTERMS 2020
11. CONTRACT This Contract consists of the following parts and named documents: <ul style="list-style-type: none"> a) Part I Schedule of Supplies and Services b) Part II Special Contract Provisions and Annexes c) Part III NCI Agency General Provisions d) Part IV Statement of Work and Annex 	
12. Signature of Contractor	13. Signature of Purchaser
14. Name and Title of Signer	15. Name and Title of Signer
16. Date signed by the Contractor	17. Date signed by the Purchaser

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NATO Communication Infrastructure (NCI) Contractor Logistics Support (CLS)

Book II, Part I

Schedule of Supplies and Services (SSS)

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NCI - CLS CLIN Summary							
BASE CONTRACT - 2023/2024							
CLIN	Description	SOW Reference	Delivery Destination	Delivery Form	Quantity	Unit Price	Total Firm Fixed Price
Declare Currency =>							
1.0	CLIN 1 (BASE-EVALUATED) - CLS MANAGEMENT	Section 2, 3 and 4					
1.1	CLS Management	REQ 10-36, 84-89, 99-121	All CLS locations	Service	1		-
TOTAL PRICE CLIN 1							-
2.0	CLIN 2 (BASE-EVALUATED) - HARDWARE MAINTENANCE	Section 3					
2.1	Hardware maintenance and support	Section 3.3	All CLS locations	Service			
2.1.1	Cisco Support	Section 3.3	All CLS locations	Service	1		-
2.1.2	HP DSMS Hardware Support	Section 3.3	All CLS locations	Service	1		-
2.1.3	DELL DSMS Hardware Support	Section 3.3	All CLS locations	Service	1		-
2.1.4	Palo Alto DSMS Hardware Support	Section 3.3	All CLS locations	Service	1		-
2.1.5	Other	Section 3.3	All CLS locations	Service	1		-
2.2	Advanced Exchange/Return for Repair	Section 3.3	All CLS locations	Service	1		-
2.3	Non-returned RMA items due to security restrictions	Section 3.3, REQ41	All CLS locations	Service	1		-
2.4	Updated inventory and EoX HW information	Section 3.3	NCI Agency	Digital Document	1		-
TOTAL PRICE CLIN 2							-
3.0	CLIN 3 (BASE-EVALUATED) - SOFTWARE MAINTENANCE	Section 3					
3.1	Software maintenance and Support	Section 3.4	All CLS locations	Service			
3.1.1	Cisco Support	Section 3.4	All CLS locations	Service	1		-

3.1.2	VMWare Software Support	Section 3.4	All CLS locations	Service	1		-
3.1.3	Broadcom Software Support	Section 3.4	All CLS locations	Service	1		-
3.1.4	Microsoft Support	Section 3.4	All CLS locations	Service	1		-
3.1.5	SPLUNK	Section 3.4	All CLS locations	Service	1		-
3.1.6	Veeam	Section 3.4	All CLS locations	Service	1		-
3.1.7	Entrust	Section 3.4	All CLS locations	Service	1		-
3.1.8	Other	Section 3.4	All CLS locations	Service	1		-
3.2	Updated inventory and EoX SW information	Section 3.4	NCI Agency	Digital Document	1		-
TOTAL PRICE CLIN 3							-
4.0	CLIN 4 (BASE-EVALUATED) - ON-SITE TECHNICAL SUPPORT	Section 3					
4.1	550 days on-site technical support and consultancy (1xNetwork and 2xDSMS Engineers)	Section 3.5	NCI Agency	Service	550		-
TOTAL PRICE CLIN 4							-
5.0	CLIN 5 (BASE-EVALUATED) - REMOTE TECHNICAL SUPPORT	Section 3					
5.1	Remote Technical Support via an existing Technical Support Center	Section 3.6	NCI Agency	Service	1		-
5.2	Support via Customer Technical Advocate / Tech Lead	Section 3.6	NCI Agency	Service	1		-
TOTAL PRICE CLIN 5							-
6.0	CLIN 6 (BASE-EVALUATED) - CLS PERFORMANCE REVIEW	Section 4					
6.1	Performance Reporting and Evaluation	Section 4.2	NCI Agency	Meeting	4		-
TOTAL PRICE CLIN 6							-

7.0	CLIN 7 (BASE-EVALUATED) - PACKAGING, HANDLING, STORAGE AND TRANSPORTATION (PHS&T)	Section 5					
7.1	Packaging, Handling, Storage and Transportation (PHS&T)	Section 5	NCI Agency	Service	1		-
TOTAL PRICE CLIN 7							-
8.0	CLIN 8 (BASE-EVALUATED) - BI-PRODUCTS	Section 3.7					
8.1	Cisco Learning Credits	REQ 80	NCI Agency	Service	300		-
8.2	CISCO High-Touch Operations Management (HTOM) Service	REQ 81	NCI Agency	Service	1		-
8.3	CISCO Asset Management Service	REQ 81	NCI Agency	Service	1		-
8.4	Training Package - Remote or Onsite	REQ 82	NCI Agency	Service	20		-
8.5	Participation to major vendor events	REQ 83	NCI Agency	Service	10		-
TOTAL PRICE CLIN 8							-
9.0	CLIN 9 (BASE-EVALUATED) - OPTIONS	Section 7	NCI Agency	Service			
9.1	10 (or multiples of 10) on-site consultancy days at Belgium	Section 7	NCI Agency	Service	10		-
9.2	HW replacement due to obsolescence	Section 7	NCI Agency	Service	1		-
TOTAL PRICE CLIN 9							-
Total Firm Fixed Price- Base Contract							-

EVALUATED OPTIONS							
CLIN	Description	SOW Reference	Delivery Destination	Delivery Form	Quantity	Unit Price	Total Firm Fixed Price
						Declare Currency =>	
10.0	CLIN 10 (OPTION-EVALUATED) - OPTIONAL YEAR 1 2024/2025						
10.1	CLIN 1 - CLS Management	Section 2, 3 and 4	All CLS locations	Service	1		-

10.2	CLIN 2 - Hardware Maintenance	Section 3	All CLS locations	Service	1		-
10.3	CLIN 3 - Software Maintenance	Section 3	All CLS locations	Service	1		-
10.4	CLIN 4 - On-site technical support	Section 3	NCI Agency	Service	550		-
10.5	CLIN 5 - Remote Technical Support	Section 3 and 4	NCI Agency	Service	1		-
10.6	CLIN 6 - CLS Performance Review	Section 4	NCI Agency	Meeting	4		-
10.7	CLIN 7 - Packaging, Handling, Storage and Transportation (PHS&T)	Section 5	NCI Agency	Service	1		-
10.8	CLIN 8 - Bi-Products	Section 3.7	NCI Agency	Service	1		-
10.9	CLIN 9.1 - Optional On-site technical support	Section 7	NCI Agency	Service	10		-
10.10	CLIN 9.2 - Obsolescence HW Replacement	Section 7	NCI Agency	Service	1		-
TOTAL PRICE CLIN 10							-
11.0	CLIN 11 (OPTION-EVALUATED) - OPTIONAL YEAR 2 2025/2026						
11.1	CLIN 1 - CLS Management	Section 2, 3 and 4	All CLS locations	Service	1		-
11.2	CLIN 2 - Hardware Maintenance	Section 3	All CLS locations	Service	1		-
11.3	CLIN 3 - Software Maintenance	Section 3	All CLS locations	Service	1		-
11.4	CLIN 4 - On-site technical support	Section 3	NCI Agency	Service	550		-
11.5	CLIN 5 - Remote Technical Support	Section 3 and 4	NCI Agency	Service	1		-
11.6	CLIN 6 - CLS Performance Review	Section 4	NCI Agency	Meeting	4		-
11.7	CLIN 7 - Packaging, Handling, Storage and Transportation (PHS&T)	Section 5	NCI Agency	Service	1		-
11.8	CLIN 8 - Bi-Products	Section 3.7	NCI Agency	Service	1		-
11.9	CLIN 9.1 - Optional On-site technical support	Section 7	NCI Agency	Service	10		-
11.10	CLIN 9.2 - Obsolescence HW Replacement	Section 7	NCI Agency	Service	1		-

TOTAL PRICE CLIN 11							-
12.0	CLIN 12 (OPTION-EVALUATED) - OPTIONAL YEAR 3 2026/2027						
12.1	CLIN 1 - CLS Management	Section 2, 3 and 4	All CLS locations	Service	1	-	-
12.2	CLIN 2 - Hardware Maintenance	Section 3	All CLS locations	Service	1	-	-
12.3	CLIN 3 - Software Maintenance	Section 3	All CLS locations	Service	1	-	-
12.4	CLIN 4 - On-site technical support	Section 3	NCI Agency	Service	550	-	-
12.5	CLIN 5 - Remote Technical Support	Section 3 and 4	NCI Agency	Service	1	-	-
12.6	CLIN 6 - CLS Performance Review	Section 4	NCI Agency	Meeting	4	-	-
12.7	CLIN 7 - Packaging, Handling, Storage and Transportation (PHS&T)	Section 5	NCI Agency	Service	1	-	-
12.8	CLIN 8 - Bi-Products	Section 3.7	NCI Agency	Service	1	-	-
12.9	CLIN 9.1 - Optional On-site technical support	Section 7	NCI Agency	Service	10	-	-
12.10	CLIN 9.2 - Obsolescence HW Replacement	Section 7	NCI Agency	Service	1	-	-
TOTAL PRICE CLIN 12							-
13.0	CLIN 13 (OPTION-EVALUATED) - OPTIONAL YEAR 4 2027/2028						
13.1	CLIN 1 - CLS Management	Section 2, 3 and 4	All CLS locations	Service	1	-	-
13.2	CLIN 2 - Hardware Maintenance	Section 3	All CLS locations	Service	1	-	-
13.3	CLIN 3 - Software Maintenance	Section 3	All CLS locations	Service	1	-	-
13.4	CLIN 4 - On-site technical support	Section 3	NCI Agency	Service	550	-	-
13.5	CLIN 5 - Remote Technical Support	Section 3 and 4	NCI Agency	Service	1	-	-
13.6	CLIN 6 - CLS Performance Review	Section 4	NCI Agency	Meeting	4	-	-
13.7	CLIN 7 - Packaging, Handling, Storage and Transportation (PHS&T)	Section 5	NCI Agency	Service	1	-	-
13.8	CLIN 8 - Bi-Products	Section 3.7	NCI Agency	Service	1	-	-

13.9	CLIN 9.1 - Optional On-site technical support	Section 7	NCI Agency	Service	10		-
13.10	CLIN 9.2 - Obsolescence HW Replacement	Section 7	NCI Agency	Service	1		-
TOTAL PRICE CLIN 13							-
Total Firm Fixed Price- Evaluated Options							-



IFB-CO-115751-NCI CLS

**NATO Communication Infrastructure (NCI)
Contractor Logistics Support (CLS)**

Part II

CONTRACT SPECIAL PROVISIONS

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ARTICLE 1 ALTERATIONS, MODIFICATIONS AND DELETIONS OF THE NCI AGENCY GENERAL PROVISIONS

1.1. Alterations, Modifications, and Deletions of the NCI Agency Contract General Provisions

1.1.1. The definition of "Purchaser" for the purposes of this Contract is hereby modified from the definition of Contract General Provisions Clause 2 "Definitions of Terms and Acronyms" to "NATO C&I Organisation, as represented by the General Manager, NCI Agency. The Purchaser is the legal entity who awards and administers the Contract and stands as one of the Contracting Parties. The definition of Purchaser encompasses any legal successor to the NATO C&I Organisation and its designated representative, as may be agreed by the NATO member Nations."

1.1.2. The following Clauses are hereby removed/modified/supplemented:

1.1.2.1. CLAUSE 1, "Order Of Precedence" is hereby modified and supplemented by Special Provision Clause 2.

1.1.2.2. CLAUSE 4 "Participating Countries" supplements Clause 9, "Participating Countries" of the General Provisions.

1.1.2.3. CLAUSE 8, "Performance Guarantee" of the General Provisions does not apply to this contract and is hereby removed.

1.1.2.4 CLAUSE 10, "Sub-Contractors" of the General Provisions is hereby modified by Special Provision Clause 20.

1.1.2.5 CLAUSE 11, "Security" of the General Provisions is hereby supplemented by Special Provision Clause 32.

1.1.2.6 CLAUSE 16, "Changes" of the General Provisions is hereby supplemented by Special Provision Clause 15.

1.1.2.7 CLAUSE 19 "Pricing of Changes, Amendments and Claims" of the General Provisions is hereby supplemented by Special Provision Clause 18.

1.1.2.8 CLAUSE 25, Invoices And Payment of the General Contract Provisions is hereby supplemented by Special Provision Clause 19.

1.1.2.9 CLAUSE 28, "Right of Access, Examination of Records" is supplemented by Special Provision Clause 26.

1.1.2.10 CLAUSE 38, "Liquidated Damages" is modified and supplemented by Special Provision Clause 29.

- 1.1.2.11 CLAUSE 39, "Termination for Default" of the General Provision is hereby supplemented by Special Provision Clause 30.
- 1.1.2.12. CLAUSE 27 "Warranty of Work (Exclusive of Software)" and CLAUSE 31 "Software Warranty" of the Contract General Provision is hereby supplemented by Special Provision Clause 38.

ARTICLE 2 ORDER OF PRECEDENCE

- 2.1. In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
- a. The Signature sheet
 - b. Part I - The Schedule of Supplies and Services
 - c. Part II - The Contract Special Provisions
 - d. Part III -The Contract General Provisions
 - e. Part IV -The Statement of Work and Annexes

ARTICLE 3 COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 3.1. 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.
- 3.2. 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.
- 3.3. 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.
- 3.4. Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or;
- 3.5. Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- 3.6. Notwithstanding the "Changes" clause or any other clause of the Contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor's proposed work shall entitle the Contractor either to any increase in the 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 4 PARTICIPATING COUNTRIES

- 4.1. This Article supplements Clause 9, "Participating Countries" of the Contract General Provisions.
- 4.2. The Contractor may issue subcontracts to firms and purchase from qualified vendors from and within NATO Countries. The Participating NATO Countries are listed below 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, REPUBLIC OF TÜRKIYE, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, UNITED KINGDOM, UNITED STATES OF AMERICA.

- 4.3 None of the work, including project design, labour and services, shall be performed other than by firms from and within participating NATO Countries.
- 4.4 No material or items of equipment down to and including identifiable sub-assemblies shall be manufactured or assembled by a firm other than from and within a participating NATO Country.
- 4.5 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 NATO 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 NATO Country.

ARTICLE 5 SCOPE OF WORK

- 5.1. The purpose of this Contract is to operate and maintain the existing NCI project's scope for hardware, software and associated licenses, for network devices as well as for the complete Domain Specific Management System (DSMS).
- 5.2. The NCI CLS services includes:
- a) development, delivery and implementation of a CLS Plan (CLSP) including CLS programme planning and management;
 - b) delivery and management of the Support Contract in accordance with the CLS Plan.
 - c) provision of Level 4 hardware maintenance and support;
 - d) provision of Level 4 software maintenance and support;
 - e) provision of licenses support and maintenance (both for software and hardware);
 - f) provision of on-site technical support;
 - g) provision of remote technical support;
 - h) conducting CLS performance reporting and reviews;
 - i) Advanced Exchange (RMA) – Break and Fix;
 - j) End-of-Life Product Management.
- 5.3 The Contractor shall provide the supplies and services indicated in the Schedule of Supplies and Services and perform the work described in the Statement of Work (Part IV) and the Contractor furnished CLS Plan following NCI Agency approval for the implementation of the NCI CLS contract.

ARTICLE 6 TYPE OF CONTRACT

- 6.1. This is a Firm Fixed Price (FFP) Contract established for the supplies and services defined in Part I - Schedule of Supplies and Services and Part IV – Statement of Work.
- 6.2. The Base Year and Four Option Years shall not exceed 6,500,000 € per year (32,500,000.00 € total).
- 6.3. 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. The total

Contract price is inclusive of all expenses related to the performance of the present contract.

- 6.4. The total price in this Contract is Delivered Duty Paid (INCOTERMS 2020). It shall be noted; however, that because the Purchaser is exempted from direct taxes and duties as set forth in Clause 26 (Taxes and Duties) of the NCI Agency Contract General Provisions, there is no duty to be paid by the Contractor.

ARTICLE 7 TERM OF CONTRACT

- 7.1. The term of this Firm Fixed Price Contract will be from the Effective Date of Contract for a Period of Performance of One (1) Base Year (12 months) and Four (4) Option Years (12 months each) if/when exercised.

ARTICLE 8 LANGUAGE OF WORK

- 8.1. The working language is English and the associated technical documents are written in English. Accordingly, all Contractor personnel shall be competent to converse and write in English. Failure to satisfy this requirement may be the basis for Purchaser's request of change of personnel.

ARTICLE 9 OPTIONS

- 9.1. The options are available for exercise by the Purchaser prior to the end of a period of performance. If the Purchaser exercises such options, the Contractor shall deliver such specified quantities of additional or alternative supplies and services as specified in the Schedule of Supplies and Services.
- 9.2. Prices for all optional line items shall have a validity period that corresponds to the option exercise period cited above.
- 9.3. 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 he decide not to exercise the options (totally or partially). Further, the Purchaser reserves the right to request 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.
- 9.4. Any options exercised shall be exercised by written Amendment to the Contract by the Purchaser's Contracting Officer.

ARTICLE 10 Reserved

ARTICLE 11 PLACE AND TERMS OF DELIVERY

- 11.1. Deliverables under this Contract shall be delivered DDP (Delivered Duty Paid) in accordance with the International Chamber of Commerce INCOTERMS 2020 to the destination(s) and at such times as set forth in the Schedule of Supplies and Services. The Contractor shall note that the Purchaser is exempt from customs duties and VAT. The Purchaser shall not be liable for any storage, damage, accessorial or any other charges involved in such transporting of supplies.

ARTICLE 12 KEY PERFORMANCE INDICATORS (KPIs)

- 12.1. The Contractor shall define and deliver support contracts and license maintenance and support from the vendors, adhering to the following service support levels as per Section 3.1 of the SoW:
- Cisco Hardware
 - Hardware for DSMS solution
 - Software for DSMS solution.
- 12.2 Services penalties per Section 4.3 of the SoW shall be applied should the service support levels described in Section 3.1 of the SoW are not met by the Contractor.

ARTICLE 13 OBSOLESCENCE REPLACEMENT

- 13.1. If any COTS products specified in the Contract are upgraded or discontinued by their original providers for commercial or technological reasons, the Contractor shall propose their substitution by the new versions that are intended as market replacement of the original products. The proposed items shall provide an equivalent or enhanced performance without a price or life-cycle support cost increase.
- 13.2. The Contractor shall provide price and performance data to support 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. Should the Purchaser decide that the proposed item(s) should be included in the Contract, an equitable price adjustment will be negotiated and the proposed item(s) shall be added to the Contract by bilateral modification under the authority of this Article.
- 13.3. All changes will be formalized in a Contract Amendment, as described in the "Changes" Clause of these Special Provisions.

ARTICLE 14 CONTRACTOR'S RESPONSIBILITY

- 14.1. The Contractor shall monitor changes and/or upgrades to commercial off the shelf (COTS) software or hardware to be utilized under subject Contract.
- 14.2. For COTS items which are or could be impacted by obsolescence issues, as changes in technology occur, the Contractor will propose substitution of new products/items for

inclusion in this Contract. The proposed items should provide at least equivalent performance and/or lower life-cycle support costs, or enhanced performance without a price or cost increase.

- 14.3. The Contractor will provide evidence with respect to price and performance of the equipment being proposed as well as data proving an improvement in performance and/or a reduction in price and/or life-cycle support costs. If necessary for evaluation by the Purchaser, the Contractor shall provide a demonstration of the proposed items. Should the Purchaser decide that the proposed item(s) should be included in the Contract, an equitable price adjustment will be negotiated and the proposed item(s) shall be added to the Contract by bilateral modification under the authority of this Article.
- 14.4. 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 15 CHANGES

- 15.1. This Article supplements Clause 16, "Changes" of the General Provisions.
- 15.2. 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 or Purchase Order, in accordance with Clause 16 (Changes) of the Contract General Provisions.
- 15.3. Changes, modifications, follow-on Contracts of any nature, and claims shall be priced in accordance with Clause 19 (Pricing of Changes, Amendments and Claims) of the Contract General Provisions, and with the "Purchaser's Pricing Principles" as set out in the Annex 1 to the Contract General Provisions.
- 15.4. 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

ARTICLE 16 CONTRACT ADMINISTRATION DATA

- 16.1. Formal letters and communications shall be personally delivered, sent by mail, registered mail, courier or other delivery services, to the official points of contact cited in this Contract. Without prejudice to Clause 16.4 below, e-mail may be used to provide an advance copy of a formal letter or notice that shall subsequently be delivered through the formal communications means.
- 16.2. Informal notices and informal communications may be exchanged by any other communications means including telephone and e-mail, where the classification of the information permits such mean of communication.

These communications must be confirmed through the formal means set forth above to be considered to be formal communication.

- 16.3. Any discussion, negotiation with Contractor representatives shall be recorded in minutes which shall be generated and coordinated by the Contractor, and signed by authorised representatives of both Contractor and Purchaser. All minutes are considered to be a summary record of discussions and specific actions to be undertaken by the parties as a result of meetings. If the contents of these minutes fall within the scope of the Contract or specifications, then no amendment action will be initiated by the Purchaser. If, however, it is considered by either party that certain discussions and decisions have taken place at meetings that fall outside the scope of these documents, then this fact shall be recorded at the time and brought to the immediate attention of the Purchasing Authority for resolution via amendment to the Contract.

- 16.4. All notices and communications will be effective upon receipt.

Official Points of Contact:

Purchaser	Contractor
NATO Communications and Information Agency ACQ Directorate NATO HQ Boulevard Leopold III B-1110 Brussels, Belgium	[To Be Determined]
For contractual matters: Attn: Ms. Eva Benson Title: Senior Contracting Officer E-mail: eva.benson@ncia.nato.int	For contractual matters: TBD Attn: Title: Tel: Fax: E-mail:
For technical/project management matters: Attn: Mr. Dimitrios Chatziamanetoglou Title: Service Delivery Manager Tel: +32 2337 2135 E-mail: Dimitrios.Chatziamanetoglou@ncia.nato.int	For technical/project management matters: TBD Attn: Title: Tel: Fax: E-mail:

ARTICLE 17 TECHNICAL DIRECTION

- 17.1. The Purchaser may assign Technical Representatives who will monitor work in progress and provide Contractor personnel with 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, including the Statement of Work, or to increase the overall cost, duration or level of effort of the Contract. The Technical Representatives do have the authority to interpret the Statement of Work and provide direction to the Contractor personnel in performance of their duties.
- 17.2. 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, he shall immediately inform in writing the NCI Agency Contracting Authority, who will either confirm or revoke such direction within two weeks after notification by the Contractor. If such direction is confirmed as a change, this change will be formalised by written amendment to the Contract pursuant to Clause 16, "Changes", of the Contract General Provisions.
- 17.3. Failure of the Contractor to notify the NCI Agency Contracting Authority of direction constituting change of the Contract, within the timelines specified in Clause 16.9 of the Contract General Provisions, will result in a waiver of any claims pursuant to such change.
- 17.4. Neither the Purchaser's Serviced Line Manager nor any Technical Representative as identified in Clause 16.4 of these Contract Special Provisions has the authority to change the terms and conditions of the Contract. If the Contractor has reason to believe that the Service Line Manager/Technical Representative is requesting products and services 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 Service Line Manager is under the authority of the Contract shall render any subsequent claim null and void.

ARTICLE 18 PRICING OF CHANGES, AMENDMENTS AND CLAIMS

- 18.1. Clause 19 "Pricing of Changes, Amendments and Claims") of the General Provisions is hereby supplemented as follows:
- 18.1.1. The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Contract or Task Order, in accordance with Clause 16 (Changes) of the Contract General Provisions.

- 18.1.2. Changes, modifications, follow-on Contracts of any nature, and claims shall be priced in accordance with Clause 19 (Pricing of Changes, Amendments and Claims) of the Contract General Provisions, and with the "Purchaser's Pricing Principles" as set out in the Annex 1 to the Contract General Provisions.
- 18.1.3. Except otherwise provided for in this Contract, prices quoted for the above-mentioned changes, modifications, etc. shall have a minimum validity period of six (6) months from submission.

ARTICLE 19 INVOICES AND PAYMENT

- 19.1. This Article supplements Clause 25 (Invoices and Payment) of the Contract General Provisions as follows:
- 19.2. The Contractor shall submit invoices either at the completion and acceptance of all services or in accordance with the payment plan indicated in the Task/Purchase Order.
- 19.3. Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain:
- a) Contract number CO-115751-NCI CLS
 - b) Contract Amendment number (if any),
 - c) Task/Purchase Order number PO [...],
 - d) The identification of the performance rendered in terms of Contract Line Item Number (CLIN),
 - e) Bank account details for international wire transfers (SWIFT, BIC, IBAN).
- 19.4. The invoice amount shall be exclusive of VAT and exclusive of all Taxes and Duties.
- 19.5. No payment shall be made with respect to undelivered supplies, works not performed, services not rendered and/or incorrectly submitted invoices.
- 19.6. No payment shall be made for additional items delivered that are not specified in the contractual document.
- 19.7. Payments for services and deliverables shall be made in the currency stated by the Contractor for the relevant Contract Line Item.
- 19.8. The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 19.9. The invoice shall contain the following certificate:
- 19.9.1 "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”.

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

19.10 Invoices referencing “CO-115751-NCI CLS / PO [...]” shall be submitted in electronic format only to:

accountspayable@ncia.nato.int

19.11 NCI Agency will make payment within 30 days of receipt by the NCI Agency of a properly prepared and documented invoice.

19.12 The Contractor shall be entitled to submit invoices in accordance with the following payment events schedule:

No.	Payment Milestone	CLIN	Percentage of Total Contract CLIN Price	Delivery NLT (Not Later Than)
CLS Support Base Year 2023/2024	CLS progress review meeting	CLIN 6.1	25% at CLS Progress Review Meeting	EDC +12,24,36,52 weeks
CLS Support Option YR 1 2024/2025	CLS progress review meeting	CLIN 10.6	25% at CLS Progress Review Meeting	EDC +12,24,36,52 weeks
CLS Support Option YR 2 2025/2026	CLS progress review meeting	CLIN 11.6	25% at CLS Progress Review Meeting	EDC +12,24,36,52 weeks
CLS Support Option YR 3 2026/2027	CLS progress review meeting	CLIN 12.6	25% at CLS Progress Review Meeting	EDC +12,24,36,52 weeks
CLS Support Option YR 4 2027/2028	CLS progress review meeting	CLIN 13.6	25% at CLS Progress Review Meeting	EDC +12,24,36,52 weeks

ARTICLE 20 SUB-CONTRACTORS

20.1. 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.

20.2. 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.

- 20.3. The Contractor shall seek the approval in writing of the Purchaser prior to the placing of any Sub-contract if:
- 20.3.1. the Sub-contract was not part of the Contractor's original proposal; and
 - 20.3.2. the value of the Sub-contract is known or estimated to exceed 15 per cent of the total Contract value; or
 - 20.3.3. 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.
- 20.4. 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.
- 20.5. The Contractor shall submit a copy of any such proposed Sub-contract when seeking approval to the Contracting Authority but such approval by the Contracting Authority shall in no way relieve the Contractor of his responsibilities to fully achieve the contractual and technical requirements of this Contract.
- 20.6. The Contractor shall, as far as practicable, select Sub-contractors on a competitive basis consistent with the objectives and requirements of the Contract.

ARTICLE 21 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD- PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION

- 21.1. Definitions. As used in this clause:
- 21.1.1. 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.
 - 21.1.2. 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.
- 21.2. Covered defence information means unclassified controlled technical information and is :

- 21.2.1 Marked or otherwise identified in the contract, purchase order, or delivery order and provided to the contractor by or on behalf of NCIA in support of the performance of the contract; or,
- 21.2.2 Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract;
- 21.2.3 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;
- 21.2.4 Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;
- 21.2.5 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;
- 21.2.6. 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.
- 21.2.7. Restrictions
- 21.2.7.1. 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:
- 21.2.7.1.1. The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Purchaser in support of the Purchaser's activities, and shall not be used for any other purpose.
- 21.2.7.1.2. The Contractor shall protect the information against unauthorized release or disclosure.
- 21.2.7.1.3. 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.
- 21.2.7.1.4. The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Purchaser and Contractor.

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

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

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

ARTICLE 22 KEY PERSONNEL

22.1. The key personnel proposed by the Contractor in its Project Management Plan and 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.

22.2. If any options are exercised, the Key Personnel provisions will apply to the option period from the effective date of the Contract.

22.3. The following personnel are considered to be Key Personnel for successful contract performance and are subject to the provisions of this Article as set forth in the following paragraphs:

Key Personnel	Name	Function within organisation
Network Engineer (1)		
DSMS Engineers (3)		
DSMS Engineers		
DSMS Engineers		
Technical Lead (1)		

22.4. Under the terms of this Article, Key Personnel may not be voluntarily diverted by the Contractor to perform work outside the Contract. In cases where the Contractor has no control over the individual's non-availability (e.g., resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser of a change of key personnel within 10 days of the date of knowledge of the prospective vacancy and offer a substitute with equivalent qualifications with no additional costs for the Purchaser.

22.5. Contractor personnel proposed in substitution of previously employed Contractor Key Personnel shall be interviewed and approved by Purchaser Project Manager before substitution acceptance is granted in writing by the Purchaser contracting Authority.

- 22.6. In the event of a substitution of any key personnel listed in paragraph 22.3 above and prior to commencement of performance, the Contractor shall provide a CV for the personnel proposed. The CV shall clearly stipulate: • Full details of professional and educational background;
- 22.7. Evidence that the personnel is qualified in pertinent contract related areas per the SOW.
- 22.8. 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.
- 22.9. Furthermore, even after acceptance of a Contractor's staff member on the basis of his/her CV and/or interview, the Purchaser reserves the right to reject the Contractor's staff member, if the individual is not meeting the required level of competence. The Purchaser will inform the Contractor, in writing in cases where such a decision is taken and the Contractor shall propose and make another staff member available within ten working days after the written notification. The Purchaser shall have no obligation to justify the grounds of its decision and its acceptance of staff members shall in no way relieve the Contractor of its responsibility to achieve the contractual and technical requirements of this Contract nor imply any responsibility to the Purchaser.
- 22.10. After acceptance in writing by the Purchaser of a substitution of staff, based on a CV and/or interview, paragraph shall be applicable again, if necessary.
- 22.11. The Purchaser may at any time require the Contractor immediately to cease to employ the above named Key Personnel under the present Contract if, in the opinion of the Purchaser, his/her employment is undesirable. The Contractor shall replace any such employee in accordance with paragraph 22.5 and 22.6 above.
- 22.12. 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 Clause entitled "Termination for Default".
- 22.13. 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.
- 22.14. 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.

22.15. 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.

ARTICLE 23 SUPPLEMENTAL AGREEMENT(S), DOCUMENTS AND PERMISSIONS

23.1. The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to contract award, the execution of which by the Purchaser is/are required by national law or regulation. If any supplemental agreements, documents and permissions are introduced after contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to contract signature, the Purchaser may terminate this Contract for Default, in accordance with Clause 39 "Termination for Default" of the Contract General Provisions.

23.2. Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by national law or regulation and that have been identified by the Contractor prior to the signature of this Contract, but have not yet been finalised and issued by the appropriate governmental authority, are subject to review by the Purchaser. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Parties 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. For the purpose of this Contract the following National mandatory Supplemental Agreements are identified:

Type of Agreement	National Authority of Reference	Subject

ARTICLE 24 INDEPENDENT CONTRACTOR

24.1 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 25 APPLICABLE REGULATIONS

- 25.1. The Contractor shall be responsible for obtaining permits or licenses to comply with national codes, laws and regulations or local rules and practices in the country of performance under this Contract.
- 25.2. The Contractor shall take any necessary measure to protect the life and health of persons working or visiting the work area occupied by him. These measures include compliance with the country of performance's safety provisions.
- 25.3. In the performance of all work under this Contract, it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the local Headquarters' Security Officer.

ARTICLE 26 AUDITING AND ACCOUNTING

- 26.1. The Contractor's accounting and auditing procedures under this Contract shall be in compliance with the applicable Contractor National standards governing national defense contracts.
- 26.2. The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with the prescription of Article 19 "Invoices and Payment" of the Contract Special Provisions.
- 26.3. In the event of this Contract being terminated in accordance with Clause 40 "Termination for Convenience of the Purchaser" of the Contract 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 27 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR MANDATED NATO THIRD PARTY AUDITS BY RESOURCE COMMITTEES

Clause 28 "Right Of Access, Examination of Records" of the NCI Agency General Provisions is hereby supplemented as follows:

(a) Definitions. As used in this clause -

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.

Mandated Third Party Audits means audits mandated by a resource committee. 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.

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.

ARTICLE 28 FORCE MAJEURE

- 28.1. **“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.
- 28.2. Examples of Force Majeure, provided conditions (i)-(iv) of paragraph [1] are all fulfilled, include:
- 28.2.1. war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation;
- 28.2.2. civil war, riot, rebellion and revolution, usurped power, insurrection, act of terrorism, sabotage or piracy;
- 28.2.3. currency and trade restriction, embargo, sanction;
- 28.2.4. act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;
- 28.2.5. plague, epidemic, natural disaster or extreme natural event;
- 28.2.6. explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; and
- 28.2.7. general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 28.3. 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.
- 28.4. 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:
- 28.4.1. the Affected Party makes all reasonable efforts to limit the effects of Force Majeure upon performance and to avoid or overcome the effects of Force Majeure;
- 28.4.2. the suspension of performance is of no greater scope than is necessitated by Force Majeure;

- 28.4.3. the Affected Party continues to furnish weekly updates by email while the effects of Force Majeure continue detailing reasonable efforts made in accordance with [4.1], and notifies the Other Party immediately when the effects of Force Majeure are avoided or overcome, or cease, and resumes performance immediately thereafter.
- 28.4.4. 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.
- 28.5. 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 29 Liquidated Damages

Clause 38 “Liquidated Damages” of the NCI Agency General Provisions is hereby supplemented as follows:

- 29.1. If the Contractor fails to:
 - 29.1.1. Successfully meet the required performance dates as defined in the Schedule of Supplies and Services, or any extension thereof, or;
 - 29.1.2. Deliver and obtain acceptance of the deliverables or to acceptably perform the Services as specified in the Schedule of Supplies and Services, Statement of Work and applicable Purchase Orders.
- 29.2. 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 per Section 4.3 of the Statement of Work (REQ 100 Service Penalties) shall apply in which a percentage of the total CLS annual value shall be deducted from total payment amount for each Payment Event as scheduled in the “Invoices and Payment Terms” Clause of these Contract Special Provisions:

Support for HW replacement or on-site fix (depending on the vendors support model)	
Service Level	Service Penalty
2hrs	0.1% of the total CLS annual value for every 2 hrs of delay
4hrs	0.1% of the total CLS annual value for every 4 hrs of delay
NCD	0.25% of the total CLS annual value for every Calendar Day of delay
NBD	0.25% of the total CLS annual value for every Business Day of delay

*For example, if a device is under a 24/7/2hrs level support, and the CLS total cost is x EUR, then in case of a 2hr delay of replacement, the penalty y will be $y=0.001*x$ EUR.

SW support requests (depending on the vendors support model)	
Service Level	Service Penalty
During working hrs (8/5 or 12/5)	0.01% of the total CLS annual value for every 1 business day of delay
24/7	0.01% of the total CLS annual value for every 4 hrs of delay

*For example, if a software request is responded in 9 hrs under a 24/7 level support, and the CLS total cost is x EUR, then the penalty y will be $y=0.0001*x*2$ EUR.

- 29.3. Liquidated Damages shall be payable to the Purchaser and shall accrue at the rate specified in the paragraph above to an aggregate sum of all delinquent items not to exceed fifteen percent (15%) of the total value. The sum will be applied as a discount and shall be applied to the total CLS annual value Purchaser Order. An amendment shall be issued to the Purchase Order applying the discount.
- 29.4. 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. In such event, subject to the provisions of the "Disputes" and "Arbitration" Clauses of the NCI Agency General Provisions, the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for Performance of the Contract when in its judgment the findings of fact justify an extension.
- 29.5. In addition, the Purchaser may terminate this Contract in whole or in part as provided in the "Termination for Default" Clause of the NCI Agency General Provisions. In the event of such a termination, the Contractor shall be liable for Liquidated Damages accruing to the date of termination, as well as the excess costs stated in the referred Clause.
- 29.6. The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:
 - 29.6.1. By deducting such Liquidated Damages from the amounts due to the Contractor against the Contractor's invoices.
 - 29.6.2. By reclaiming such Liquidated Damages through appropriate legal remedies. This clause shall be deemed to apply to each issued Purchase Order.

ARTICLE 30 Termination for Default

Clause 39 "Termination for Default" of the NCI Agency General Provisions is hereby supplemented as follows:

- 30.1. The Purchaser reserves the right to, by written notice of default to the Contractor, terminate the whole or any part of this Contract for continuous poor performance, if the Contractor does not meet the "Key Performance Indicators (KPI's)" Clause of these Special Provisions, in the following case:
 - 30.1.1. Contractor's total number of breached tickets exceeds 5% based on the KPIs as stated in Seciton 3.1 of the SoW to be identified during the quarterly CLS performance period. Hardware and Software support activities tickets will not be combined but will separate.
- 30.2. After receipt of a Notice of Termination, the Contractor shall:
 - 30.2.1. stop work on the date and to the extent specified in the Notice of Termination;
 - 30.2.2. place no further orders or Sub-contracts, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
 - 30.2.3. terminate all orders and Sub-contracts to the extent that they relate to the performance of Work terminated by the Notice of Termination.
- 30.3. In the event of a situation as described in Sub-Clause 39.6 of the NCI Agency General Provisions, the Contractor shall provide proof in writing no later than 5 business days after receipt of the Notice of Termination described above.
- 30.4. Continuous poor performance as illustrated above is understood to be an objective reality, based on facts and mutual understanding, and is therefore not open for disputes under the "Disputes" or "Arbitration" Clauses of the NCI Agency General Provisions.

ARTICLE 31 NCI AGENCY SUPPLIER CODE OF CONDUCT

- 31.1. 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.
- 31.2. 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 the environment. It contains fundamental, basic principles that any supplier based in a NATO country should already be operating in compliance with.

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

ARTICLE 32 SECURITY

- 32.1. This Clause supplements Clause 11 (Security) of the Contract General Provisions.
- 32.2. The security classification of this Contract is NATO UNCLASSIFIED.
- 32.3. In the performance of all works under this Contract it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO and National security regulations as implemented by the Purchaser and by the local authorities.
- 32.4. Contractor and /or Subcontractor personnel employed under this Contract that will require access to locations, such as sites and headquarters, where classified material and information up to and including "NATO SECRET" are handled shall be required to have a NATO security clearance up to this level. Contractor personnel who need System Administrator or Operator privileges when working on NATO SECRET systems shall be required to hold NATO SECRET Clearances.
- 32.5. All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance with applicable security regulations.
- 32.6. It shall be the Contractor's responsibility to obtain the appropriate personnel and facility clearances to the levels stated in the preceding paragraphs and to have such clearances confirmed to the Purchaser by the relevant National security authority for the duration of the Contract in its entirety.
- 32.7. Failure to obtain or maintain the required level of security for Contractor personnel and facilities for the period of performance of this Contract shall not be grounds for any delay in the scheduled performance of this Contract and may be grounds for termination under Clause 39 (Termination for Default) of the Contract General Provisions.
- 32.8. The Contractor shall note that there are restrictions regarding the carriage and use of electronic device (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.
- 32.9. At the end of the Contract, the Contractor shall deliver all the documentation and information collected and generated in support of this Contract to the Purchaser. This includes a certificate that no copies are retained at the Contractor's facilities. Additionally, any equipment that had been connected to a classified network during this Contract shall be returned to the Purchaser (i.e. laptops, USB-keys, etc.).
- 32.10. The Statement of Work defines the level of security of information exchanged and used for performance of the Contract.
- 32.11. In particular, the Contractor undertakes to:

- 32.11.1. 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;
- 32.11.2. 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;
- 32.11.3. Abstain from copying by any means, without the authorization of the Purchaser, the national security authority or designated security agency, any classified documents, plans, photographs or other classified material entrusted;
- 32.11.4. 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;
- 32.11.5. 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;
- 32.11.6. Deny access to NATO classified information to any person other than those persons authorized to have such access by the national security authority or designated security agency;
- 32.11.7. 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;
- 32.11.8. Comply with any request from the national security authority or designated security agency that persons entrusted with NATO classified information sign a statement undertaking to safeguard that information and signifying their understanding both of their obligations under national legislation affecting the safeguarding of classified information, and of their comparable obligations under the laws of the other NATO nations in which they may have access to classified information;
- 32.11.9. 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;
- 32.11.10. Apply to the Purchaser for approval before Sub-contracting any part of the work, if the Sub- contract would involve that the Subcontractor 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;

- 32.11.11. Undertake not to utilize, other than for the specific purpose of the Contract, without the prior written permission of the Purchaser or his authorized 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 authorized with the approval of the Purchaser. Such NATO classified information will be returned at such time as the Purchaser or his authorized representative may direct;
- 32.11.12. Classify any produced document with the highest classification of the NATO classified information disclosed in that document.
- 32.12. The Contractor's Team Members shall possess a valid passport or ID Card and is required to maintaining its validity for the duration of the contract.

ARTICLE 33 INDEMNITY

- 33.1 The Contractor will indemnify and hold harmless NATO and 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.
- 33.2. 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.
- 33.3 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.
- 33.4 In the event of an accident resulting in loss, damage, injury or death arising from negligence or wilful 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 34 INTELLECTUAL PROPERTY

- 34.1. This Article supplements Clause 30 of the Contract General Provisions.
- 34.1.1. 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.
- 34.1.2. 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.
- 34.1.3. 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.
- 34.2. Contractor Background IPR
- 34.2.1. 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.
- 34.2.2. 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.
- 34.3. Foreground IPR
- 34.3.1. 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.
- 34.3.2. 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.
- 34.3.3. 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.
- 34.3.4. 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.
- 34.3.5. 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.

34.3.6. The Contractor shall:

34.3.6.1. 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

34.3.6.2. to execute any formal assignment or other documents as may be necessary or useful to vest title to any Foreground IPR in the Purchaser.

34.3.7. The Contractor undertakes:

34.3.7.1. to notify the Purchaser promptly of any invention or improvement to an invention or any design conceived or made by the Contractor; and

34.3.7.2. 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.

34.3.8. If the Purchaser determines that it wishes to apply for one or more patents for the disclosed invention or improvement or for a registration for the disclosed design, it will prosecute such application(s) at its own expense. The Contractor undertakes to provide the Purchaser, at the Purchaser's expense, with such information and assistance as the Purchaser shall reasonably require prosecuting such application(s).

34.4. Third Party IPR

34.4.1. Where Third Party IPR is the subject of a licence or other agreement between the third party and the Purchaser or the Contractor, the Contractor shall not use any Third Party IPR for the purposes of carrying out work pursuant to the Contract without the prior written approval of the Purchaser. Contractor shall inform Purchaser in advance of any restrictions on the Purchaser's use.

34.4.2. 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.

34.4.3. For COTS equipment, 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).

- 34.4.4. 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 purpose of carrying out work pursuant to the Contract without the prior written approval of the Purchaser. The Contractor shall inform the Purchaser in advance of any restrictions on the Purchaser's use.
- 34.4.5. 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.
- 34.4.6. The Purchaser may consider open source solutions alongside proprietary ones in developments provided that such solution are fully compliant with the requirements of this Contract. The Contractor shall disclose in advance the open source license associated with the complemented open source solution. The Purchaser reserves the right to refuse the incorporation of open source solutions that are deemed inadequate for incorporation in a NATO application (e.g. post-back obligations).

34.5. Subcontractor IPR

- 34.5.1. 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.

ARTICLE 35 INTELLECTUAL PROPERTY RIGHT INDEMNITY AND ROYALTIES

- 35.1. This Clause supplements Clauses 29 of the Contract General Provisions.
- 35.2. The Contractor shall assume all liability and indemnify the Purchaser, its officers, agents and employees against liability, including costs for the infringement of any patents or copyright in force in any countries arising out of the manufacture, services performed or delivery of supplies, or out of the use or disposal by or for the account of the Purchaser of such supplies. The Contractor shall be responsible for obtaining any patent or copyright licences necessary for the performance of this Contract and for making all other arrangements required to indemnify the Purchaser from any liability for patent or copyright infringement in said countries.
- 35.3. The Contractor shall exclude from his prices any royalty pertaining to patents which in accordance with agreements reached between NATO countries may be utilised free of charge by member nations of NATO and by NATO organisations.
- 35.4. The Contractor shall report in writing to the Purchaser during the performance of this Contract:

- 35.4.1. The royalties excluded from his price for patent utilised under the agreements mentioned in Para 35.2 above;
- 35.4.2. The amount of royalties paid or to be paid by the Contractor directly to others in performance of this Contract.

ARTICLE 36 PURCHASER FURNISHED PROPERTY

- 36.1. 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).
- 36.2. 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).
- 36.3. 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.
- 36.4. 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.
- 36.5. 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.
- 36.6. The inventory shall note whether:
 - 36.1.1. The property was consumed or incorporated in fabrication of final deliverable(s);
 - 36.1.2. The property was otherwise destroyed;
 - 36.1.3. The property remains in possession of the Contractor;
 - 36.1.4. The property was previously returned.
- 36.7. 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.

- 36.8. The Contractor shall not modify any Purchaser Furnished Property unless specifically authorised by the Purchaser or directed by the terms of the Contract.
- 36.9. 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.

ARTICLE 37 REACH CAPABILITY

- 37.1. The purpose of this Article is to define the conditions under which specific Purchaser provided NROI capability (newly called REACH) is made available to the Contractor in the course of this Contract.
- 37.2. The provision of the REACH capability is governed by the standard Article 13 of the NCI Agency, Part III - General Provisions (Purchaser Furnished Property), Article 36 of the Special Provisions and Annex B to the Special Provisions.
- 37.3. Should the Purchaser not be able to meet the SLA related to the provision of the REACH capability as laid down in Annex B of these Special Provisions, the Contractor shall not be entitled to claim an excusable delay nor any compensation against any Articles for the Performance of this Contract and its Amendments.

ARTICLE 38 WARRANTY

- 38.1. This Article supplements Clauses 27 and 31 of the Contract General Provisions.
- 38.2. The Contractor shall warrant that all equipment and software furnished under this Contract and all installation work performed under this Contract conform to the requirements and is free of any defect in material, code or workmanship for a period until the end of the contract's period of performance including option years.
- 38.3. The Contractor shall fix/repair/replace all items received as per his internal procedures with the highest priority allocated.
- 38.4. If the Contractor becomes aware at any time before acceptance by the Purchaser that a defect exists in any supplies, the Contractor shall coordinate with the Purchaser and promptly correct the defect.
- 38.5. Defect magnetic, solid state and electronic media storage devices (e.g. CD-ROM's, DVD's, USB sticks, solid state storage drives, hard drives) shall remain NATO property, at no additional cost, and 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.

- 38.6. The Contractor shall be responsible for the provision of any alternative or superseding items, should the original part be no longer available, ensuring compliance with the original design provided by this Contract.
- 38.7. During the warranty period, the Contractor shall be responsible for supplying all COTS hardware and software upgrades and updates. The availability of COTS hardware and software upgrades and updates shall be made known to the Purchaser and, if proposed for introduction by the Contractor for whatever reason, including any corrective action for an identified fault, shall always be subject to Purchaser approval.
- 38.8. The Contractor shall not be responsible for the correction of defects in Purchaser furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

ARTICLE 39 SOFTWARE EXCLUSIONS

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

ARTICLE 40 CYBERSECURITY

- 40.1. The Contractor shall report to Purchaser without delay and take remedial action upon discovery or awareness of cyber incidents.

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

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 or external networks may have occurred.

- 40.2. Cyber incidents are considered cybersecurity issues. The Contractor shall establish and maintain a process for identifying, tracking, reviewing, reporting, and resolving cybersecurity issues. The Contractor shall provide all relevant information on cybersecurity issues from this process to Purchaser without delay. Without delay for the purposes of this article means one working day or as soon as possible under the

circumstances.

- 40.3. This provision is in addition to any other requirements placed upon the Contractor, and does not replace or modify any other requirement.

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-115751-NCI CLS

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

To be signed by the Contractor's Employees working in the NATO's premises upon commencement of their WORK.

I UNDERSTAND:

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

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

That I must not, without the approval of the General Manager of the NCI Agency, publish (in any document, article, book, CD, video, film, play, or other form) any classified /commercial- in-confidence information which I have acquired in the course of my work under CO-115751-NCI CLS.

That, at the end of contract and after performance of all required tasks, I must surrender any official document or material made or acquired by me in the course of my work under CO-115751-NCI CLS save such as I have been duly authorised to retain.

That the provisions of the above Declaration apply not only during the period of work under CO-115751-NCI CLS, but also after my contract has ceased and that I am liable to prosecution if either by intent or negligence I allow classified/commercial-in-confidence information to pass into unauthorised hands.

That by accepting the position of Support Contractor for NATO corresponding to the tasks and duties described in the present Contract, I will be considered as a Key personnel as specified in Contract Special Provision Article 22.

That I commit to fulfil my obligations for the period of performance mentioned in the Schedule of Supplies and Services (including the optional periods) unless major events beyond my reasonable control happen.

That shall I decide for personal interest to leave the position, I will do my best effort to fulfil my obligations until the Company that is currently employing me has provided

NATO with an acceptable suitable substitute in accordance with Special Provision – Article 22.

That I solemnly undertake to exercise in all loyalty, discretion and conscience the functions entrusted to me and to discharge these functions with the interests of NATO and the Host Nation only in view. I undertake not to seek or accept instructions in regard to the performance of my duties from any government, company or from any authority other than that of NCI Agency or the Host Nation.

That within the next two weeks I shall acquaint myself with Host Nation security regulations and security operating instructions.

Date

Full name (in block capitals)

Signature

ANNEX B: SERVICE LEVEL AGREEMENT (SLA) FOR THE PROVISION OF REACH LAPTOPS IN ACCORDANCE WITH ARTICLE 37 OF THE CONTRACT SPECIAL PROVISIONS

Introduction

To improve collaboration between the Contractor and the Purchaser teams, a collaborative environment for the two teams will be established that will provide the ability to process, store and handle information up to and including NATO RESTRICTED. Access to the collaborative environment is provided to the Contractor's Team via the Purchaser NR capability (informally called REACH). This capability will be complemented by a limited access to Purchaser Project Portal.

Parties

The REACH capability will be provided by the Purchaser to support the Contractor Team under Contract No CO-115751-NCI CLS.

General Overview

This is an agreement between the Purchaser and the Contractor under this Contract to establish the:

- Provision of REACH capability for the Contractor Team;
- General levels of response, availability, and maintenance associated with the REACH capability;
- Respective responsibilities of the Purchaser and the Contractor Team.

These provisions shall be in effect for an initial period of three years from the effective date of the Contract or until the end of Contract No CO-115751-NCI CLS, whichever occurs first. It can be extended based on a mutual agreement between the Parties.

Provided Capability

References

<https://dnbl.ncia.nato.int/Pages/ServiceCatalogue/CPSList.aspx>
(WPS006, WPS003, WPS008 services)

The Purchaser accepts no liability and provides no warranty in respect of the third party software mentioned above. It is emphasized that the REACHs can only be used by the Contractor's Team within the limits set out in this project description.

Scope

- As described in reference Service Descriptions above

Aim

The REACH capability enables exchanges of information and collaboration up to and including NATO Restricted classification.

Limitations

- The use of the REACH capability requires a NATO Security clearance at NATO SECRET level. Proof of the users' security clearances will be provided to the Purchaser.
- The exchange and collaboration of information is provided through e-mail and Instant Messaging.
- Direct printing capability is not provided, but can be arranged through an extension of this contract requested by the Contractor's Team.
- In case of any problems which cannot be solved remotely from the service desk (The Hague, NLD), the equipment shall be sent to NCIA, The Hague at the Contractor's expenses. Any damages resulting from inappropriate operation or operation in harsh environment or adverse weather conditions, as well as a loss of the system shall be compensated by the Contractor.

Assumptions

The following assumptions apply to this Agreement:

- Any support provided by Purchaser is documented in the service descriptions above
- Security violations of the non-NCIA REACH users are investigated through their local security officers/managers applying NATO rules (CM(2002)49, NCIA (CapDev)AD3-2, and NCIA(CapDev)NR SECOPS).
- Required changes to this Agreement and/or the provision of the REACH capability will be jointly assessed and the implementation agreed between the Parties. The implementation of changes may have an impact on the charges which will be handled through an update of this Agreement.

Roles and Responsibilities

The roles and responsibilities for the provision of the REACH capability are defined in the referenced Service Description, but summarized also herein:

- Contractor Team will receive one (1) REACH terminal.
- The Purchaser will provide the REACH capability and related services.

Points of Contact

- As described in the service descriptions above (WPS008 Service Desk).

Purchaser's responsibilities

The Purchaser will:

- Provide to the Purchaser the necessary documentation required for the activation of user accounts and certifications.
- Provide the REACH capability including basic end-user training (1.5-hour duration) and deliver 1 Initial REACH, 2 Additional REACHs.
- Set up and maintain the project web-portal at NR level,
- Provide introduction to the management of the portal (1-2 hours) and service desk for the portal on-site at NCIA, The Hague or through electronic media,
- Grant temporary use of REACH hardware and the software licences for the contracted period,

Contractor Team Responsibilities

The Contractor Team shall:

- Sign and return to the Purchaser the required security documentation.
- Provide the internet access required for Remote Access via NCIA REACH,
- Be responsible for the backup of files and data of the REACH on NR accredited media on an authorized Removable Storage Device provided by service provider,
- Ensure that Contractor personnel operating the REACH units possess security clearance of a minimum of NS,
- Provides Security clearance for up to and including NS for the personnel using the REACH capability,
- Provides the contact details of the local Security Officer/Manager and the commitment to apply NATO rules as defined in (CM(2002)49, NCIA (CapDev)AD3-2, and NCIA(CapDev)NR SECOPS)for the investigation.

- Return the equipment at the end of the Agreement at its expenses to the Purchaser,
- Not use the equipment for any other purposes than the purpose set out herein,
- Not lend, rent, lease and/or otherwise transfer the equipment to a third party,
- Not copy or reverse engineer the equipment.

Hours of Coverage, Response Times & Escalation

- As described in the service descriptions above.

Incidents

- As described in the service descriptions above.
- Resolution of disagreements

In case of disagreements, all disputes shall be resolved by consultation between the Parties and shall not be referred to any national or international tribunal or other third party for settlement.

Changes

- For any changes of the REACH capability which will be required to be made during the term of this Agreement, the Purchaser will notify the Contractor CISA Team at least one week prior to the event and inform about the required consequences.
- Any changes concerning the elements provided by the Contractor Team shall be communicated to the NCIA Service Desk at least one week prior to the event.

Maintenance

Use of the REACH capability and/or related components require regularly scheduled maintenance ("Maintenance Window") performed by the Purchaser. These activities will render systems and/or applications unavailable for normal user interaction as published in the maintenance calendar. Users will be informed of the maintenance activities with sufficient notice.

NATO UNCLASSIFIED



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.

The Contract General Provisions

- 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.

- 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

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.

.....

.....
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,

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).

- 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"

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

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

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 PRINCIPLESA. 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.



**NATO Communication Infrastructure (NCI)
Contractor Logistics Support (CLS) Framework**

**IFB-CO-115751-NCI CLS
Statement of Work (SoW)**

version 1.7
21 November 2022

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SECTION 1 INTRODUCTION

[1] This Statement of Work (SoW) defines the Contractor's support required to operate and maintain the existing NCI project's scope for hardware, software and associated licenses, for network devices as well as for the complete Domain Specific Management System (DSMS).

1.1 Interpretation of the SoW

[2] This SoW defines Contractor tasks and deliverables for providing Contractor Logistic Support (CLS) services for NATO-owned NATO-operated hardware and software delivered by the NCI Project.

[3] This Contract will be structured in the form of a framework contract. The framework will define a set of mandatory CLS services as well as optional CLS services. Optional services will be exercised by the Purchaser via an amendment to the Contract.

REQ 1. The term "Contractor" shall be interpreted to include the entire Contractor/ Sub-contractors team.

REQ 2. All requirements in this SoW, which would apply to a Contractor activity, shall apply equally to sub-contractor activities in a way transparent to the Purchaser.

REQ 3. "Shall" and "Shall not" statements shall be interpreted as requirements and are contractually binding.

REQ 4. "Should" and "Should not" statements shall be interpreted as requirements that hold a recommendation, only to be ignored by the Contractor with valid reasons.

REQ 5. "May" statements shall be interpreted as optional requirements of which the Contractor can decide whether to implement the requirement or not.

[4] "Will" statements are not requirements, but clarifications that explain intent on the part of the Purchaser

REQ 6. The order of the SoW requirements shall not be interpreted to specify the order in which they must be carried out unless explicitly stated.

REQ 7. The Contractor's CLS Plan shall include who, what, where, when, why and how aspects.

REQ 8. Whenever reference is made to a section, task, or paragraph, the reference shall be construed to include all subordinate and referenced paragraphs.

REQ 9. 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."

- [5] The requested CLS services include:
- a) Development, delivery and implementation of a CLS Plan (CLSP) including CLS programme planning and management;
 - b) delivery and management of the Support Contract in accordance with the CLS Plan.
 - c) provision of Level 4 hardware maintenance and support;
 - d) provision of Level 4 software maintenance and support;
 - e) provision of licenses support and maintenance (both for software and hardware);
 - f) provision of on-site technical support;
 - g) provision of remote technical support;
 - h) conducting CLS performance reporting and reviews;
 - i) Advanced Exchange (RMA) – Break and Fix;
 - j) End-of-Life Product Management.

SECTION 2 SCOPE OF WORK

[6] This chapter contains the scope of work requirements and details; as well as, support contract responsibilities of the Contractor.

2.1 Hardware

REQ 10. All hardware listed in Appendix A shall be considered part of the CLS scope, including the software, licences, firmware and any non-tangible embedded or unilaterally linked item.

REQ 11. All additional related hardware procured by the Purchaser during the CLS performance period shall be included in the scope of this Contract (on-boarding).

REQ 12. Respectively, all hardware removed by the Purchaser during the CLS performance period shall be removed from the scope of this Contract (off-boarding).

REQ 13. The hardware inventory list in Appendix A shall be validated/updated in coordination and after the approval of the Purchaser during the contract performance review meetings and on an ad-hoc basis, when and if required.

2.2 Software - Licenses

REQ 14. All software and Licences listed in Appendix B shall be considered part of the CLS scope.

REQ 15. All additional related software and licenses procured by the Purchaser during the CLS performance period shall be included in the scope of this Contract (on-boarding).

REQ 16. Respectively, all software and licences removed by the Purchaser during the CLS performance period shall be removed from the scope of this Contract (off-boarding).

REQ 17. The software and license inventory list in Appendix B shall be updated in coordination and after the approval of the Purchaser during the contract performance review meetings and on an ad-hoc basis, when and if required.

REQ 18. Licenses shall be considered part of the software, unless explicitly stated differently.

2.3 Locations

[7] The hardware and software in scope of this Contract are located at NATO facilities in 30 NATO-member nations and 2 additional locations in Bosnia and Herzegovina and Kosovo, as listed in Appendix A.

REQ 19. The Contractor shall perform all services furnished under this Contract at any of the CLS locations as listed in Appendix A, in one or multiple locations

simultaneously, except for the on-site support, the services of which, shall be exercised at the locations as specifically stated in Section 3.5.

SECTION 3 CLS SERVICES

[8] This chapter includes the clarifications and requirements for all CLS services. The clarifications and requirements address procurement, delivery and management of support contracts, hardware, software and licenses; maintenance of hardware and software; on-site technical support and remote technical assistance for all hardware, software and licenses in scope of the CLS.

[9] The Purchaser is responsible for Level 1-2-3 of IT operations, including service desk functions, incident management, problem management, release & deployment management, security management, change management and configuration management. This responsibility will be carried out by the Purchaser and supported by the CLS services Contractor. An outline of support level activities, is described below:

- Level 0 support comprises the support activities that can be carried out by the end-user without interaction with any professional IT staff. It is limited to solutions that require only end-user permissions.
- Level 1 support is user facing and is the first line of all technical support. At this level all incidents and service requests will be logged, categorized, prioritized, diagnosed and managed. Incidents and service requests will be resolved within the boundaries of Level 1 support staff competence and administrator permissions limited to end-user devices.
- Level 2 support applies specialist skills to provide technical support, beyond that available at Level 1, to service requests and incident investigation, diagnosis and resolution. This level performs proactive end-to-end service monitoring and takes actions to resolve incidents and recover the services impacted. This level of support requires full administrator permissions to both end-user and back-end systems.
- Level 3 support provides the highest level of specialist skills available performing advanced incident resolution and problem management. This level will liaise and work with external product and service suppliers as required.
- Level 4 support provides specialist skills outside of the organization, mainly from vendors and business partners via contracted support and services, for issues and problems which cannot be resolved by Level 3 support.

REQ 20. The Contractor shall carry out Level 4 activities on the hardware and software under the scope of this contract.

REQ 21. The Contractor shall provide the following CLS services, during the whole period of the Contract:

- a) managing 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 4.5;

- b) procurement, delivery and management of Support Contracts for all hardware and software listed in Appendix A and B, as defined in Section 3.2;
- c) hardware maintenance and support as defined in Section 3.3;
- d) software maintenance and support as defined in Section 3.4;
- e) license maintenance and support as defined in Section 3.4;
- f) provision of on-site technical support as defined in Section 3.5;
- g) provision of remote technical assistance as defined in Section 3.6;
- h) CLS performance reporting and reviews as defined in Section 4.3.
- i) Advanced Exchange (RMA) – Break and Fix
- j) End-of-Life Product Management (in a consultancy context, monitoring and reporting obsolescence, recommendation on replacements of hardware or software items)

REQ 22. The Contractor shall provide to the Purchaser all necessary knowledge, expertise, and resources needed to accomplish the CLS services requested in this SoW, unless stated otherwise in the requirements of this Contract.

REQ 23. The Contractor shall ensure that all CLS services are conducted in the English language.

REQ 24. The Contractor shall hold an Advanced or Expert Certification either as a Value Added Reseller (VAR) or as a Service Provider Partner in the scope of Service Delivery, Support and Maintenance, under the scope of the CLS.

REQ 25. The Contractor shall maintain the above accreditations/ certifications throughout the Contracts performance period.

REQ 26. All Contractor personnel involved in the delivery of the CLS services shall be citizens of NATO-member nations.

REQ 27. Contractor personnel involved in direct support shall have valid and relevant to the CLS activities approved certifications of the vendor(s) for the products in the scope of the CLS, as described in Section 6.

REQ 28. During the CLS period, the Contractor shall be responsible for the management, provision, and implementation of any alternative or superseding hardware items, software items and hardware support contracts. In the event that the original item is no longer available or supported, shall ensure compliance with the original design provided for in this Contract. The availability of and the need for superseding items and contracts shall be made known to the Purchaser and, if proposed for introduction by the Contractor for whatever reason, including any corrective action for an identified fault, shall always be subject to Purchaser approval.

REQ 29. Each CLS performance review shall evaluate the CLS performance of the Contractor during the preceding period and discuss future activities including upcoming obsolescence of any equipment, documentation reviews and updates, CM status and other topics as may be determined by the Contractor and the Purchaser.

REQ 30. The Purchaser will chair the CLS performance review. The Contractor shall initiate and organize the review, provide the agenda, and record and produce the minutes of the reviews for approval by the Purchaser.

REQ 31. The Contractor shall ensure that the Purchaser can interact directly with the Original Equipment Manufacturer, so that the Purchaser is capable to exercise all aspects foreseen under the CLS for efficient restoration of services and maintenance.

3.1 Key Performance Indicators (KPIs)

REQ 32. The Contractor shall define and deliver support contracts and license maintenance and support from the vendors, adhering to the following service support levels as described below:

Cisco Hardware:

Site Type	Component	SNTC* Service Level	Description
Cap 0	PCA	24x7x2	2-hour response, 24 hours a day, 7 days per week, including holidays
	CCA NS	24x7x2	2-hour response, 24 hours a day, 7 days per week, including holidays
	CCA NR	24x7x2	2-hour response, 24 hours a day, 7 days per week, including holidays
	CCA NU	24x7x2	2-hour response, 24 hours a day, 7 days per week, including holidays
	MMA NU	24x7x2	2-hour response, 24 hours a day, 7 days per week, including holidays
Cap 1	PCA	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NS	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NR	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NU	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	MMA NU	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
Cap 2	PCA	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NS	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NR	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NU	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	MMA NU	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
Cap 3	PCA	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NS	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NR	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	CCA NU	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays
	MMA NU	24x7x4	4-hour response, 24 hours a day, 7 days a week, including holidays

*SNTC: SmartNet Total Care NCD: Next Calendar Day NBD: Next Business Day

Hardware for DSMS solution:

Component	Manufacturer	Service Level	Description
Servers (Hardware & Software)	Dell	24x7	ProSupport
Servers (Hardware & Software)	HP	24x7	HPE Foundation Care 24/7 Service
Storage (Hardware & Software)	HP	24x7	HPE Foundation Care 24/7 Service
Firewalls (Hardware & Software)	Palo Alto	24x7x4	Premium Support 24x7 support with 4 hours of RMA

Software for DSMS solution:

Component	Manufacturer	Service Level	Description
Virtual Hosting vCenter 6 Standard	VMware	Business Critical Response Times	Severity 1: 24/7, 30 minutes Severity 2: 8/5, 4 business hrs Severity 3: 8/5, 8 business hrs Severity 4: 8/5, 12 business hrs
Veeam Backup & Replication	Veeam	Production Support	Severity 1: 24/7, 1 hr Severity 2: 24/7, 3 hrs Severity 3: 24/7, 6 hrs Severity 4: 24/7, 8 hrs
Quality Center Enterprise Edition	Microfocus	8x5	Standard Care local business hours local business days
DX NetOps Spectrum	Broadcom	Broadcom® Software Maintenance	Severity 1: 24/7/365 Severity 2-4: 12/5 Telephone/Support Portal
DX NetOps Performance Management	Broadcom	Broadcom® Software Maintenance	Severity 1: 24/7/365 Severity 2-4: 12/5 Telephone/Support Portal
DX NetOps Network Flow Analysis	Broadcom	Broadcom® Software Maintenance	Severity 1: 24/7/365 Severity 2-4: 12/5 Telephone/Support Portal
CA Service Management SDM Package	Broadcom	Broadcom® Software Maintenance	Severity 1: 24/7/365 Severity 2-4: 12/5 Telephone/Support Portal
CA Process Automation	Broadcom	Broadcom® Software Maintenance	Severity 1: 24/7/365 Severity 2-4: 12/5 Telephone/Support Portal
Authority Security Manager	ENTRUST	Silver Support	Severity 1 - Incidents: 8 hours Severity 2 - Service Requests: 2 Business Days Severity 3 - Service Requests: 3 Business Days
Identity Services Engine	CISCO	SmartNet	24/7
Prime Collaboration	CISCO	SmartNet	24/7
Security Information and Event Management	SPLUNK	Standard	P1: 24/7/2hrs Response time, Restoration 1 Business Week (BW) P2: 8/5/NBD Response time, Restoration 1 BW P3/P4: 8/5/2BD Response time, Restoration Next Release

3.2 Support Contract Management

REQ 33. The Contractor shall procure and deliver Support Contracts for all hardware and software in the scope of the SoW.

REQ 34. The Contractor shall ensure that the period of performance of each Support Contract covers the CLS period of performance.

REQ 35. The Contractor shall ensure that the period of performance of additional Support Contracts cover the remainder of the CLS performance period or a period as indicated in the Task Order.

REQ 36. The Contractor shall include the hardware and software, for which the additional, optional support tasks have been procured, in the scope of this Contract (on-boarding).

3.3 Hardware Maintenance and Support

REQ 37. During the CLS period, the Contractor shall provide Level 4 hardware maintenance of all hardware in scope of this Contract, maintaining also an inventory updated list.

REQ 38. Furthermore, the IOS/firmware updates/upgrades/patches of the under-support HW devices are included and shall be conducted by the Contractor, under the planning of the Purchaser, in the scope and limitations of Section 3.5.

REQ 39. Hardware maintenance shall be provided for any equipment in scope of this Contract, received by the Contractor or sent to the Contractor's designated central receipt and dispatch location for repair/replacement by its own cost, as described in Section 5.

REQ 40. The Contractor shall provide RMA (Return Material Authorization) instructions to the Purchaser.

[10] Classified data processing items (magnetic, solid state and electronic devices with media storage e.g.EEPROM, flash drives, solid state drives and hard drives) used above NATO RESTRICTED will not be returned to the vendor and will remain as NATO property. Those items will be destroyed by the Purchaser according to the NATO Information Security requirements, and a "Destruction Certificate" will be prepared. All destruction and related certificate preparations for RMA of the tangible classified materials mentioned in this SoW are under the responsibility of the Purchaser.

REQ 41. The Contractor shall ensure that all RMA items not returned back to the vendor due to Security restrictions mentioned above, are covered by the CLS contact.

REQ 42. All storage media devices removed from the different items under the activities and scope of the SoW, shall be replaced with new items by the Contractor at no additional cost for the Purchaser.

REQ 43. The Contractor shall ensure the hardware supports the KPIs in Section 3.1.

REQ 44. The Contractor shall deliver repaired / replacement equipment in accordance with the Packaging, Handling, Storage and Transportation (PHS&T) requirements in Appendix C.

REQ 45. The Contractor shall keep-up-to-date information of the End-of-X (where X stands for sale, life or support) of the hardware in the scope of the CLS.

3.4 Software Maintenance and Support

REQ 46. During the CLS period, the Contractor shall provide Level 4 maintenance and support of all software in scope of this Contract on the Purchacer's premises.

REQ 47. Under the CLS, the Contractor shall include upgrades, updates and patches of the management tools and all software, in the scope and limitations of Section 3.5, maintaining also an updated inventory list. Under this scope, the IOS/firmware of the under-support HW devices is included.

REQ 48. The Contractor shall ensure that the response times for software maintenance are in accordance with the KPIs mentioned in Section 3.1.

REQ 49. The software maintenance shall be provided at the request of the Purchaser or in case of regular or emergency/critical updates and maintenance releases, shall be initiated by the Contractor.

REQ 50. The Contractor shall report any vendor's software changes within 2 weeks after the manufacturer has released the change. Subsequently, the Contractor shall deliver the change release, including the appropriate release notes, supporting documentation to the Purchaser for verification, accreditation, implementation and validation.

REQ 51. Workarounds, fixes, patches, updates, upgrades and maintenance releases, together with release notes and supporting documentation, shall be supplied to the Purchaser on physical media, such as CD-ROM or DVD, or made available as downloads from the Contractor's or Vendor's repositories or other authorised by the Purchaser web portals within 2 weeks after the manufacturer's official release.

REQ 52. The Contractor shall contribute to the Purchaser's internal software authorisation process, including the Agency Approved Software List (A2SL) process, by providing supporting documentation and data requested by the Purchaser, and in a format specified by the Purchaser.

REQ 53. The Contractor shall ensure that past change releases for software in scope of this Contract, are available to the Purchaser online.

REQ 54. The Contractor shall maintain keep-up-to-date information of the End-of-X (where X stands for sale, life or support) of the software in the scope of the CLS.

3.5 On-site Technical Support

REQ 55. During the CLS performance period, the Contractor shall provide advanced on-site technical support and consultancy on a yearly basis, the man-days of which are referenced at the SSS.

REQ 56. Any remainder out of those days not used during a year period, shall be carried forward to the next year of the CLS performance period.

REQ 57. The on-site support shall be delivered by certified network and DSMS engineers (as described in Section 6), who are fully qualified to perform any and all support tasks required by the Purchaser, in the scope of this Contract.

REQ 58. The Contractor shall ensure that designated on site support staff holds the required security clearance to perform on-site support, as specified in Section 6.

REQ 59. The Contractor's on-site support shall be provided mainly (90%) at the locations of Mons, Braine-l'Alleud or Evere (Belgium) and on exceptional cases when required, at The Hague (The Netherlands) (5%) or at any other location (5%) in the scope of the CLS.

REQ 60. The Contractor shall be the sole responsible for all transport, travel, accomodation, coordination and arrangements required for Contractor personnel, spares and tools to provide CLS on-site services.

REQ 61. When on-site, the Contractor's on-site personnel shall support the Purchaser during the Purchaser's working hours, Monday to Friday, 8h30 to 17h30, Purchaser's timezone, excluding Purchaser's holidays. In exceptional cases, the on-site Contractor personnel shall support special operational and business needs, outside Purchaser's working hours, respecting the daily 8hr working window.

REQ 62. 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 63. The Contractor's on-site personnel, during any on-site support activity, shall only use equipment furnished by the Purchaser.

REQ 64. The Contractor's on-site personnel shall perform support tasks, on hardware and software in scope of this Contract, as instructed by the Purchaser, including (not in order of importance and not limited to):

- 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, repair and replacement, bug fixing, (re-) configuration, verification and activation;
- c) supporting the Purchaser's preventive maintenance activities;
- d) software and hardware upgrades and obsolescence replacements;
- e) licencing management;
- f) supporting documentation activities;
- g) providing ad-hoc, hands-on training and knowledge transfer;
- h) liaising with the Contractor's Technical Support Center to retrieve and coordinate information flow on behalf of the Purchaser.

REQ 65. The Contractor shall ensure that a regularly updated list of on-site support personnel, is provided so that the Contractor's on-site support obligations start within

five (5) working days after receipt of the Purchaser's request or at the time of Purchaser's request, beyond that period, including the following information:

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

[11] The Purchaser will expedite the on-site arrival arrangements of the Contractor's workforce if required, on a case-by-case basis.

[12] The Purchaser will be responsible for ensuring all documentation and tools, required for the Contractor's on-site personnel to carry out the requested support activities, are available on site.

REQ 66. 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 request;
- c) date of the report;
- d) Point of Contact (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.

3.6 Remote Technical Support

[13] The Purchaser will have the capability to contact directly the vendors providing support in the scope of this CLS contract. Furthermore, the Purchaser will have the option to contact the Contractor's Technical Support Center to initiate service requests, incidents or problems, for services furnished under this CLS contract.

REQ 67. During the CLS period, the Contractor shall make available a Technical Support Center capability, providing remote technical assistance from off-site premises via an existing technical support center.

REQ 68. The Contractor shall operate the technical support center 8x5, during working hrs of the Purchaser on its main location in Belgium.

REQ 69. The Contractor shall operate a dedicated, internet facing and access restricted (need to know basis in the scope of the CLS contract) IT Service Management and Knowledge Management portal, for promoting the efficient collaboration between the Contractor and the Purchaser.

REQ 70. The Contractor shall operate the technical support center in order to track, handle and manage all service requests, incidents and problems in scope of this Contract.

REQ 71. The Contractor shall ensure that the Purchaser have the capability to contact the CLS support vendors directly and request technical assistance and support in the scope of the CLS contract.

REQ 72. The Contractor shall ensure to keep full track of the service requests, incidents, and/or problems lifecycle management, based on unique reference numbers.

REQ 73. The Contractor shall track, handle and manage all Purchaser's service requests and incidents, as the Purchaser's single and central point of contact for matters concerning the services provided under this CLS Contract, for rapid response, troubleshooting and effective resolution of technical issues, regardless if any of those tickets or requests have been submitted directly to the Vendors.

REQ 74. The Contractor's Technical Support Center shall be reachable also by phone, or e-mail.

REQ 75. The Contractor shall make available any and all recorded data related to the CLS contract, at the request of the Purchaser.

REQ 76. The Contractor's Technical Support Center recorded data shall include:

- a) Date and time of the request;
- b) Name of the requester;
- c) Name of the actionee/s;
- d) Detailed actions taken, results and time for completion;
- e) Detailed life cycle management information.

REQ 80. Remote technical assistance shall be provided at the request of the Purchaser and in the form of provision of subject matter expert by the Contractor's workforce, fully qualified to answer detailed engineering and technical questions regarding the function, performance, design and resolution of incidents and problems of the products in scope of this Contract.

REQ 77. The Contractor shall arrange and provide technical advice and assistance related to operational issues, incidents, known problems and available solutions for the maintained products, via teleconference, telephone or email by product specialists or via the on-site support personnel, within one business day after the request from the Purchaser.

REQ 78. The Contractor shall appoint Customer Technical Advocate/Tech Lead (CTA/TL) as a point of contact to provide information on hardware/software releases and features, coordinate engineering challenges, support upgrade strategy, and provide technology evolution support.

REQ 79. The CTA/TL assigned by the Contractor shall:

- a) Act as a liaison on technical issues with vendors.
- b) Act as PoC between the Purchaser and the Contractor.
- c) Assist with data collection and analysis.
- d) Provide insights to Customer requests on hardware and software configurations, system capacity and engineering issues.
- e) Provide support for identification and resolution of technical, administrative or management problems that occur in supplied services.

3.7 Bi-Products of Support Contract

REQ 80. The Contractor shall provide to the Purchaser Cisco Learning Credits as referenced in the SSS.

REQ 81. The Contractor shall provide to the Purchaser CISCO Professional Services as follows:

- a) CISCO High-Touch Operations Management Services
- b) CISCO Asset Management Services

REQ 82. During the Period of Performance, the Contractor shall provide upon Purchaser's request and explicit specifications, on-site (Belgium) or remote training days as referenced at the SSS (including vendor's official training materials such as syllabus, manuals, access to vendor's remote training material etc) for each one of the following training portfolios:

- a. Advanced Commercial Cisco courses, such as SDWFND, SDWOTS, SPMBL302, SPCOR, SPRI etc ;
- b. Network Configuration Management and Automation course such as Cisco SPAUI, DNAPUC, NSO300, DNACAM etc;
- c. Advanced Domain Specific Management System courses such as DX NetOps Performance Management, Spectrum, Network Flow Analysis, CA Service Desk Manager with CMDB functionalities etc.

REQ 83. A number of seats per year (as referenced at the SSS) for participation to major annual vendor events (including access to sessions, labs and training for the utilised solutions under this contract), not including travel and accomodation costs.

SECTION 4 CLS PROCESS

[14] 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

REQ 84. The Contractor shall deliver a CLS Plan not later than the Effective Date of Contract (EDC) + 4 weeks, ensuring the coverage of all items under the CLS contract starting at the EDC.

REQ 85. 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.

REQ 86. The CLS Plan shall explain in detail how the Contractor intends to fulfil all requirements in this SoW.

REQ 87. The CLS Plan shall describe and detail the following:

- 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 detailed description of the CLS service 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 88. The Contractor shall conduct CLS activities in accordance with the Purchaser's accepted CLS Plan.

REQ 89. Acceptance of the CLS Plan shall not in any manner change the requirements of this contract.

4.2 Performance Reporting and Evaluation

REQ 90. During the CLS performance period, the Contractor shall organise four (4) CLS performance reviews meetings per fiscal year (on a quarterly basis).

REQ 91. The CLS performance evaluation will be in accordance with all requirements of the present SoW, including (but not limited to) the KPIs in Section 3 in regards to the hardware and software maintenance and support, result-driven evaluation of the on-site and remote technical support.

REQ 92. The CLS performance review meetings shall be conducted either by physical presence or via teleconference at a Purchaser designated web platform or location.

REQ 93. The CLS performance review meeting shall evaluate the CLS performance during the preceding period and plan future activities as determined by the the Purchaser.

REQ 94. The Purchaser will chair the CLS performance review meeting. 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 95. During the CLS Performance Review Meetings, the Contractor shall provide the Purchaser with a CLS performance report.

REQ 96. The CLS Performance Report shall describe in detail all work performed under this contract, in the preceding period, including (but not limited to):

- service requests placed by the Purchaser either directly to the vendors or through the Contractor's Technical Support Center.
- incidents of failed hardware and software;
- percentage of breached tickets against total number of tickets, per category (hardware support or software support)
- problems raised by the Purchaser;
- task orders received from the Purchaser;
- hardware maintenance activities performed by the Contractor, and response / resolution time;
- software maintenance activities performed by the Contractor, and response / resolution time;
- support services invoked by the Contractor and performed by respective vendors;
- on-site support activities ordered by the Purchaser and performed by the Contractor;
- remote technical assistance activities performed by the Contractor and response / resolution time.
- detailed and updated inventory list and EoX vendor's official information (obsolescence report)
- details about obsolescence replacement activities that will be optionally exercised by the Purchaser (Section 7), such as HW type and modules, dates of actions (order, procurement, delivery, installation, configuration), issues encountered, date and proof of written authorization from the Purchaser.
- remaining on-site support days and learning credits.

REQ 97. The CLS performance reporting shall address the performance related to the contract SLA KPIs and shall be subject to Service Credits/Penalties.

REQ 98. The obsolescence report which is part of the quarterly report, shall address items that are no longer offered but still supported (i.e. end-of-production/ end-of-sales); as well as, items that are no longer supported (i.e. end-of-support, end-of-life), covering a rolling time window for the following 2 years. The EoX dates shall be clearly stated in this report, and referencing official vendor release of related information.

4.3 Service Penalties

REQ 99. Service Penalties shall apply when KPIs mentioned in Section 3.1 of the SoW are breached.

REQ 100. The applicable Service Penalties shall equal to the following table breakdown for the Period of Performance of the Contract:

Support for HW replacement or on-site fix (depending on the vendors support model)	
Service Level	Service Penalty
2hrs	0.1% of the total CLS annual value for every 2 hrs of delay
4hrs	0.1% of the total CLS annual value for every 4 hrs of delay
NCD	0.25% of the total CLS annual value for every Calendar Day of delay
NBD	0.25% of the total CLS annual value for every Business Day of delay

*For example, if a device is under a 24/7/2hrs level support, and the CLS total cost is x EUR, then in case of a 2hr delay of replacement, the penalty will be $y=0.001*x$ EUR.

SW support requests (depending on the vendors support model)	
Service Level	Service Penalty
During working hrs (8/5 or 12/5)	0.01% of the total CLS annual value for every 1 business day of delay
24/7	0.01% of the total CLS annual value for every 4 hrs of delay

*For example, if a software request is responded in 9 hrs under a 24/7 level support, and the CLS total cost is x EUR, then the penalty will be $y=0.0001*x*2$ EUR.

4.4 End of Contract Activities

REQ 101. A draft CLS report shall be provided at the end of each period of performance annually.

REQ 102. Within two weeks after the end of this CLS Contract, the Contractor shall provide a final CLS report.

REQ 103. The Final CLS report shall be a summary of all preceding CLS performance reports and describe in detail all work performed under this contract.

SECTION 5 PACKAGING, HANDLING, STORAGE AND TRANSPORTATION (PHS&T) – ADVANCED EXCHANGE – BREAK & FIX

REQ 104. Regarding PHS&T, the Contractor shall interact with the Purchaser through the e-mail address listed below. This includes delivery of Notices of Shipment, Packing lists, Warranty instructions, shipment instructions and Requests for Forms 302.

NCICLS@ncia.nato.int

REQ 105. The Contractor shall be responsible for transportation and related costs of procured/ repaired/ replacement equipment from its site in a NATO nation to the Purchaser's designated final destination.

REQ 106. The Contractor shall be responsible for any shipments from and to mentioned vendors and items in Appendix A.

REQ 107. The Contractor shall be responsible for any payment, packaging, handling, storage, customs clearance and insurance covering these shipments.

REQ 108. 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 109. The Contractor shall use packaging materials that are reusable by the Purchaser for sending failed items of the same type.

REQ 110. The packages, palettes 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:

“NCIA Equipment”

<<CLS Contract number>>

“Building”

“Street”

“Place”

“Country”

REQ 111. Packing lists shall accompany each shipment. Each packing list shall include:

- a) the designation “NCIA 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 112. 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 (1) packing list shall be put inside each container/box.

REQ 113. The Contractor shall provide the Purchaser with a Notice of Shipment in advance of each shipment to the Purchaser. One (1) 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 114. 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.

[15] 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 115. 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.

REQ 116. The Contractor shall therefore consider eventual delays and arrange for shipment in time.

[16] Under no circumstances can the Purchaser be held responsible for delays incurred, even when utilising Purchaser provided Customs Form 302.

[17] 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.

REQ 117. The Contractor shall be responsible for requesting the issue of a form 302 at least ten (10) working days prior to shipment.

[18] The request is normally processed by the Purchaser within three (3) working days. The requested 302 forms will be sent by courier.

[19] The original 302 forms shall accompany the shipment and therefore no fax or electronic copy will be used, nor provided to the Contractor.

REQ 118. If a country custom 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 pertaining documents.

REQ 119. 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.

REQ 120. Forwarding agents shall be informed of the availability of Form 302 and how this form is utilised to avoid the payment of customs duties.

REQ 121. The Form 302 shall be added to the shipping documents to be provided to the carrier.

SECTION 6 KEY PERSONNEL LIST AND QUALIFICATIONS

REQ 122. The Contractor shall provide all necessary qualified manpower and resources to conduct on-site support requirement of the CLS contract which shall include (but not limited to) the following required qualifications:

Network Engineer

- CCNP valid certification and above
- Minimum experience of 10 years in configuration and troubleshooting IP routing, MPLS, OSPF, IS-IS, BGP, IPsec, VPLS, L2/L3 VPNs and QoS, in environments using IP encryptors for security domain segregation
- Minimum experience of 8 years with Cisco ASR, ISR, Catalyst, ASA product line and services architecture
- Minimum experience of 3 years in Network Automation and Network Management concepts and protocols
- Proven experience in Configuration Changes performed in Ansible and good knowledge of scripting languages such as Python
- Minimum experience of 5 years in Testing / Lab environment with familiarity with Routing Test tools and Test Equipment
- Very good and proven knowledge with minimum experience of 3 years in adjacent enabling network elements and functions such as firewalls, domain specific management systems and virtualization platforms
- Knowledge of packet monitoring and analysis tools such as Wireshark and NETSCOUT nGeniusOne.
- Proven experience in working for service provider organizations for at least 3 years
- Spoken and written English (3333, as defined in STANAG 6001)
- Valid Security Clearance: NATO COSMIC TOP SECRET (CTS)

DSMS Engineer 1 (Tools)

- Minimum experience of 5 years in configuration and troubleshooting IP routing, MPLS, OSPF, L2/L3 VPNs and QoS, in environments using IP encryptors for security domain segregation

- Minimum experience of 8 years with Network Management and Monitoring tools such as Broadcom DX NetOps and CA Service Desk Manager products and SIEM such as SPLUNK
- Minimum experience of 8 years of virtualisation products such as VMWare, back-up and storage solutions.
- Minimum experience of 5 years in Network Automation and Network Management concepts and protocols
- Minimum experience of 3 years in Testing / Lab environment
- Very good and proven knowledge with minimum experience of 3 years in adjacent enabling network elements and functions such as firewalls, domain specific management systems
- Knowledge of packet monitoring and analysis tools such as Wireshark and NETSCOUT nGeniusOne.
- Knowledge of BMC Remedy (IT Service Management tool)
- Proven experience in working for service provider organizations for at least 3 years
- Spoken and written English (3333, as defined in STANAG 6001)
- Valid Security Clearance: NATO COSMIC TOP SECRET (CTS)

DSMS Engineer 2 (IT Infrastructure)

- VMWare Certified Professional Certification (VCP)
- Extensive knowledge of SAN, NAS, hyper-converged infrastructure (HCI), infrastructure, engineering, virtualization, configuration, Fibre Channel, Fibre Channel over Ethernet, iSCSI, SAN-Based Backup and Recovery activities
- Extensive practical experience of 8 years architecture, design, implementation, support, testing and maintenance of Virtualization Platforms (VMWare based architectures and networks), Windows Environments, Linux Environments (Red Hat, Oracle Linux), IaaS (Infrastructure as a Service), large environment design and optimization
- Demonstrate at least 3 years of recent and relevant experience in design and engineering of including multiple OS flavors and maintenance/operating..), Automation and securing Linux OS

- Very good knowledge of Enterprise Systems Management services, methods and tools and service provisioning of infrastructure systems and standards
- Sound practical experience in one or more of Enterprise data protection products and/or all-in-one or hyperconverged backup appliances such as Veeam, Commvault HyperScale, Netbackup, PowerProtect DP Appliances/Data Manager, Avamar, Networker Rubric, etc. and their integration with VMware vCenter
- Sound practical experience for consistent backups and restore of operating systems (Windows, Linux-like, Solaris), databases and application
- Sound practical experience in hypervisor-based replication technologies and products (VMware SRS, Veeam replication, Zerto Replication)
- Minimum experience of 3 years in Testing / Lab environment
- Proven experience in working for service provider organizations for at least 3 years
- Spoken and written English (3333, as defined in STANAG 6001)
- Valid Security Clearance: NATO SECRET

DSMS Engineer 3 (Platform as a Service)

- Microsoft MCSA/MCSE certified
- Minimum 5 years of experience in Directory, Identity and Access Management consisting of multiple interconnected and federated Active Directory Domains and Forests
- Minimum 5 years of experience in DNS, server hardening, AD troubleshooting and GPO development and deployment
- Very good knowledge and experience in server side scripting (Microsoft PowerShell and Linux bash shell)
- Minimum 5 years of experience in MS SQL Server administration and RDBMS technologies.
- Sound experience on Disaster Recovery and High Availability, Backup/Restore/ Recovery
- Sound and proven experience SQL scripting (T-SQL, SQL)
- Experience with data management and storage facilities, including practical analytical experience of IT servers and system architecture implementations

- Very good and recent experience on Microsoft Windows Server management
- Good awareness of access security with knowledge of how to implement security policies, with a good understanding and knowledge of systems usability
- Recent experience with server clustering technology, storage systems and backup systems
- Minimum experience of 3 years in Testing / Lab environment
- Proven experience in working for service provider organizations for at least 3 years
- Spoken and written English (3333, as defined in STANAG 6001)
- Valid Security Clearance: NATO COSMIC TOP SECRET (CTS)

REQ 123. The Contractor shall provide a Customer Technical Advocate / Tech Lead (CTA/TL) for the CLS contract, which shall include (but not limited to) the following required qualifications:

- CCNP valid certification and above
- In depth knowledge of IP products and solutions with minimum proven experience of 8 years in a Service Provider organization
- In depth knowledge of Software and Licence management activities
- In depth knowledge and minimum 3 years of experience in Network Automation, Network Management and Virtualised Networking Function concepts and protocols
- Very good and proven knowledge with minimum experience of 3 years in adjacent enabling network elements and functions such as firewalls, domain specific management systems and virtualization platforms.
- Minimum experience of 5 years in Testing / Lab environment with familiarity with Routing Test tools and Test Equipment
- In depth knowledge and understanding of Key Performance Indicators definition, reporting and analysis with a minimum 10 years of related experience.
- Spoken and written English (3333, as defined in STANAG 6001)

- Valid Security Clearance: NATO SECRET

REQ 124. The Contractor shall provide the resources only after submitting CVs of the proposed personnel and accepted by the Purchaser.

SECTION 7 EVALUATED OPTIONS

REQ 125. During the Period of the CLS, the Contractor shall accept the right of the Purchaser to exercise the Options in the Schedule of Supplies and Services (SSS) and as stated below.

REQ 126. NCIA Agency reserves the right to modify the services during the life of this Contract for the following evaluated options:

Option 1: Additional on-site support days in Belgium (10 or multiples of 10)

Option 2: HW replacement due to obsolescence with the following requirements (applicable only for the HW which become End-of-Support (EoS) during each yearly performance period of the CLS contract which can be exercised by the Purchaser retrospectively):

REQ 127. The Contractor shall replace the near-to-obsolescence HW before the EoS date of each item (under the scope of the CLS).

REQ 128. The EoS dates must be officially communicated from the official vendors and the Contractor shall ensure that full replacement will take place before the actual EoS date.

REQ 129. Under this option, all the requirements of the present SoW shall remain applicable.

REQ 130. The Contractor shall ensure the service delivery continuity and shall act only after the written authorization of the Purchaser.

REQ 131. The Contractor shall ensure that the new HW which replace obsolete ones, are the official vendor's replacements candidates.

REQ 132. The Contractor shall ensure that the new HW is fully operational while performing all functions at the same level of performance as the replaced ones.

REQ 133. All obsolescence replacement activities covering ordering, procurement, delivery and installation and initial configuration for remote access shall be resourced by the Contractor with the coordination of the Purchaser.

[20] The follow-on configuration will be responsibility of the Purchaser, utilising also the workforce provided under Section 3.5.

SECTION 8 PURCHASER FURNISHED EQUIPMENT (PFE)

[21] The Purchaser will provide to the Contractor on-site support personnel (1 Network Engineer and 2-3 DSMS Engineers) and to the CTA/TL, 1 NR (NATO Restricted, otherwise called REACH) classified laptop for each (in total 4 max 5), in order to facilitate classified at the NATO Restricted level communication, coordination between the teams, maintenance of the Purchaser's related portals and any other CLS related activity authorised by the Purchaser.

REQ 134. The Contractor shall maintain, store and process all (NATO Restricted and below) CLS related documentation, deliverables, Performance Review reports and meetings minutes and all CLS related documents in a specific portal or any other shared resources, as directed and authorised by the Purchaser.

REQ 135. The Contractor shall ensure that any documentation delivered to the Purchaser has been properly peer reviewed with the Purchaser.

REQ 136. The Contractor shall not rely on the Purchaser review to fill in deficiencies or obtain missing information. In such cases, all information shall be digitally marked, stored and further processed according to the Purchaser's guidelines, either marked in draft or in final status.

REQ 137. The Contractor shall provide an updated version of any document within two weeks of receipt of the Purchaser's comments on the revised version.

REQ 138. The Contractor shall perform only activities related to the scope of this CLS contract.

REQ 139. The Contractor shall adhere to the security regulations and restrictions applied to the use of the PFE.

SECTION 9 WARRANTY

REQ 140. The warranties activities described in this section shall start immediately after the formal acceptance of each relevant CLS service.

REQ 141. All support activities required to keep operational the items listed in Appendix A beyond the responsibilities of the Purchaser, including the provision of consumables/repairs/tools, shall be under the responsibility of the Contractor until the end of CLS period(s) and be covered by warranty as per REQ 142 and REQ 144.

REQ 142. The warranty to the provided support services shall cover the provision of spares, repairs, on site and remote activities, adaptations, changes, analyses, documentation, software (updates, upgrades, patches), firmware, licenses and the equipment specifically provided by the Contractor for the purposes of the current CLS services.

REQ 143. The hardware and software licenses shall cover at least the entire CLS period(s) and shall be issued and registered under the NCI Agency name.

REQ 144. The Contractor shall warrant that all equipment, firmware and software provided/delivered and all work performed under this Contract conform to the requirements and are delivered in a 'new' condition, free of any defect in material, malicious SW/FW code and workmanship during the CLS period(s) to ensure overall security of the System and its supply chain.

REQ 145. Should a longer warranty duration be provided for certain products to the Contractor by the OEMs, for those products the extended warranty duration for the purchaser shall be applied.

REQ 146. The Contractor shall assign a PoC within its organization for the warranty claims and shall not delegate such responsibility to its suppliers (e.g. OEMs) unless agreed by the Purchaser on a case by case basis for practicality reasons.

REQ 147. The support services and their warranty shall be usable/evocable in all NATO locations, without any restrictions to the country of the supplier or the delivery locations.

REQ 148. The Contractor shall provide detailed handling instructions, including help-desk and Point of Contact information, to be contacted in case of a warranty claim for each type of Support service.

REQ 149. All warranty communications shall be conducted in English.

REQ 150. Shipment/Transportation of unserviceable items to the Contractor for repair/replacement and the return to sender shall be under responsibility and cost of the Contractor.

REQ 151. Return of unserviceable equipment to Contractor facility for warranty repair/replacement shall be directly to the Contractor's facility at the address which shall be indicated by the Contractor.

REQ 152. If the original part is no longer available for repairs or replacements, the Contractor shall provide the alternatives or superseding items, ensuring quality and form, fit and functional requirements.

REQ 153. The Contractor shall propose the alternative part with the related part information (OEM P/N, OEM NCAGE Code) for Purchaser approval, including details of the relevant FW, if any.

REQ 154. The Contractor shall provide Software patches and software/ hardware/ firmware upgrades, if applicable, whenever a specific issue is reported by the Purchaser until and beyond the end of the CLS period to include the warranty period, at no additional cost for the Purchaser.

REQ 155. Any new SW (patch, upgrade), FW or HW element shall be covered by the Warranties defined in this section.

APPENDIX A. HARDWARE, SOFTWARE & LICENSE LIST

Please see Appendix A attached as a separate Excel document