



NCIA/ACQ/2023/06920
05 June 2023

To : See Distribution List

Subject : **BOA PLUS INVITATION FOR BID – IFB-CO-115800-NHQ**
Provision of Level 3 IT Support at NATO HQ

Reference(s) : A. AC/337-D(2016)0014 dated 16 March 2016
B. BC-D(2018)0004-FINAL dated 29 January 2018
C. BC-D(2019)0129-ADD2 (INV) dated 9 July 2019
D. C-M(2002)49
E. NCI Agency Notification of Intent (NOI), NCIA/ACQ/2022/07426 dated 19 December 2022

Dear Sir/Madam

1. Your firm is herewith invited to participate in a BOA Plus Invitation for Bid for the Provision of Level 3 IT Support at NATO Campus.
2. The NCI Agency intends to place one contract to cover the entire scope of the project. Partial bidding is not allowed.
3. The scope of the envisaged project is described in the prospective Contract (Book II), attached to this letter.
4. Contract award will be based on the proposal evaluated as the lowest price, technically compliant bid in accordance with the selection criteria set forth in the Bidding Instructions (Book I) attached to this letter.
5. The reference for the Invitation for Bid is **IFB-CO-115800-NHQ** and all correspondence concerning the IFB should reference this number.
6. **THE CLOSING TIME FOR SUBMISSION OF BIDS IN RESPONSE TO THIS INVITATION FOR BID IS 16:00 HOURS (BRUSSELS TIME) ON 30 June 2023.**
7. This Invitation for Bid consists of a Book I: Bidding Instructions, including Administrative Certificates and a Book II: The Prospective Contract. The Prospective Contract contains the Signature Sheet, the Schedule of Supplies and Services (Part I), Contract Special Provisions (Part II), Contract General Provisions (Part III), and the Statement of Work (Part IV). The Statement of Work thereto sets forth detailed specifications governing the performance requirements of the Contract. Bidding sheets will be distributed by email, upon request and subject to receiving a signed Non-Disclosure Undertaking (Attachment B). Bidders with intention to submit an offer are invited to request the Bidding sheets as soon as

possible and return NDU signed accordingly. Late Bidding Sheets requests will not constitute grounds for bid closing date extensions.

8. The overall security classification of this bid is "NATO UNCLASSIFIED". This Invitation for Bid remains the property of the NCI Agency and shall be protected in accordance with the applicable national security regulations.
9. The successful Bidder will be required to handle and store classified information up to the level of "NATO RESTRICTED". In addition, Contractors' personnel working on NATO sites will be required to hold "NATO SECRET" individual security clearances. Contractor will be required to handle and store classified material to the level of "NATO RESTRICTED" and the Contractor shall have the appropriate facility and personnel clearances of "NATO SECRET". Should a Contractor be unable to perform the Contract due to the fact that the facility clearance has not been provided by their respective national security agency, this lack of clearance cannot be the basis for a claim of adjustment or an extension of schedule, nor the lack of clearance be considered a mitigating circumstance in the case of an assessment of Liquidated Damages or a determination of Termination For Default by the Purchaser.
10. Bidders have the right to request IFB clarifications as outlined in Section 2.6 of the Bidding Instructions (Book I).
11. Bidders are requested to complete and return the enclosed acknowledgement of receipt within ten (10) days of receipt of this IFB, informing the NCI Agency of their intention to bid/not to bid. Firms are not bound by their initial decision, and if a firm decides to reverse their stated intention at a later date, it is requested to advise the NCI Agency via e-mail.
12. This Invitation for Bid does not constitute either a financial or contractual commitment at this stage. Prospective Bidders are advised that the NCI Agency reserves the right to cancel this IFB at any time in its entirety and bears no liability for bid preparation costs incurred by firms or any other collateral costs if bid cancellation occurs.
13. The Contracting Officer responsible for this solicitation is Mrs. Lise Vieux-Rochat, all correspondence regarding this IFB should solely be addressed to IFBCO115800NHQ@ncia.nato.int.
14. As specified in the Bidding Instructions (Book I), Bidders will be required to declare a bid validity of nine (9) months from closing date for receipt of bids.

FOR THE CHIEF OF ACQUISITION:

Lise Vieux-Rochat
Contracting Officer

Attachment(s):

- A. Acknowledgement of Receipt
- B. Non-Disclosure Undertaking
- C. Book I – Bidding Instructions, Certificates and Bidding Sheets
- D. Book II – Prospective Contract
 - Signature Page
 - Part I Schedule of Supplies and Services
 - Part II Contract Special Provisions
 - Part III Contract General Provisions
 - Part IV Statement Of Work and annexes



ATTACHMENT A

ACKNOWLEDGEMENT OF RECEIPT OF INVITATION FOR BID

IFB-CO-115800-NHQ

Please complete and return within 10 days after receipt of the IFB
(via e-mail to IFBCO115800NHQ@ncia.nato.int):

We hereby advise that we have received Invitation for Bid **IFB-CO-115800-NHQ**
on _____, together with all enclosures listed in the Table of Contents.

CHECK ONE

- { } As of this date and without commitment on our part, we do intend to submit a bid.
- { } We do not intend to submit a bid.
- { } We are reviewing the requirements of the IFB and will notify you of our decision as soon as possible.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Address: _____



ATTACHMENT B

Non-Disclosure Undertaking

1. COMPANY SIGNING THE UNDERTAKING

[Insert name of Company], located in(address)..... (hereinafter referred to as “**Company**”) and its officers, directors and employees (being permanent, temporary, full-time, part-time, or staff that has been hired as consultants by the said company) agree to be bound by the terms of this undertaking (the “**Undertaking**”).

2. BACKGROUND

In order to allow potential bidders to prepare a bid under IFB-CO-115800-NHQ, Confidential Information, as defined below, will be released to potential Bidders that have duly executed this Undertaking.

3. CONFIDENTIAL INFORMATION

For the purposes of this Undertaking, Confidential Information shall include the following items, regardless of the classification marked on the documents :

- All Documentation and materials included in IFB Package

4. RIGHT OF USE

4.1 Company is authorised to use the Confidential Information for the sole purpose of preparing a bid for IFB-CO-115800-NHQ and for a limited period not to exceed the completion of the bid evaluation period (as notified by the Purchaser) for IFB-CO-115800-NHQ. This period shall be extended automatically if Company is determined to be the Successful Bidder until the effective date of Contract CO-115800-NHQ, which shall then govern the terms of use and disclosure of the Confidential Information.

4.2 The Confidential Information will be delivered “as is”. Company acknowledges that the Confidential Information is released without any acceptance of liability for damages of any kind including but not limited to

incidental, special or consequential damages sustained by the Company as a result of the usage of the Confidential Information.

4.3 Any cost involved with the use of the Confidential Information is the sole responsibility of the Company.

4.4 On completion of the bidding process in relation to Invitation For Bid IFB-CO-115800-NHQ and at the latest five (5) working days after notification that Company is not the successful Bidder, Company shall return to NCI Agency, or destroy, the Confidential Information and provide NCI Agency with a written statement that Company has returned the original Confidential Information and all copies or destroyed the original Confidential Information and all copies.

5. NON-DISCLOSURE

5.1. Company shall not disclose the Confidential Information to any third party and shall limit the disclosure internally to those of its officers, directors, employees (being permanent, temporary, full-time, part-time, or staff that has been hired as consultants by the said company) on a need to know basis and provided that these officers, directors, employees (being permanent, temporary, full-time, part-time, or staff that has been hired as consultants by the said company) are bound by a non-disclosure agreement or an adequate confidentiality clause covering the Confidential Information disclosed on the basis of this Undertaking.

5.2 Should any portion of the Confidential Information falls within any of the following provisions, such portion of the Confidential Information is released from the protection provided under this Undertaking from the date such provision becomes effective:

- Information which is or becomes part of the public domain without breach of this Undertaking;
- Information which is received after the signature of this Undertaking by Company from a third party who did not obtain or disclose it in violation of any rights of the NCI Agency;
- Information which is already known by Company, which is legally allowed to use it, at the time of signature of this Undertaking, which the Company can substantiate by written evidence;
- Information which is publicly disclosed with the prior written approval of the NCI Agency; and Information which is independently developed by an employee of the Company who did not have access to the Confidential Information and independent development is substantiated by sufficient evidence.

6. DISPUTE RESOLUTIONS

All disputes arising as a result of this Undertaking shall be subject to the dispute resolution procedure as detailed below:

6.1. Dispute resolution shall be governed, interpreted and construed in accordance with the private contract law of the Kingdom of Belgium.

6.2. All disputes arising under, or which are related to this Undertaking or with respect to its effectiveness shall be resolved by consultation. If no agreement can be found, either NCI AGENCY or the Company may open arbitration proceedings in accordance with the following arbitration provisions.

6.3. The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty (30) days from the date of receipt of this letter, NCI AGENCY and the Company shall jointly appoint an arbitrator. In the event of failing to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NCI AGENCY, another by the Company and the third, who shall act as President of the Tribunal, by these two arbitrators. Should NCI AGENCY or the Company fail to appoint an arbitrator during the fifteen (15) days following the expiration of the said first period, the appointment shall be made, within twenty-one (21) days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration at The Hague.

6.4. 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. Any arbitrator must be of the nationality of any one of the member states of the NATO and shall be bound by the rules of security in force within NATO.

6.5. 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 the 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.

6.6. An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph 6.3. above.

6.7. 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 Undertaking. 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 appointment of the arbitration expenses.

7. GENERAL PROVISIONS

7.1. Nothing in this Undertaking shall be construed as granting or conferring any proprietary rights to the Company on the Confidential Information.

7.2 This Undertaking shall enter into effect on the date of signature. The confidentiality obligation under this Undertaking shall remain in effect for a period of 5 years following completion of the evaluation of IFB-CO-115800-NHQ.

On behalf of Company

Name:

Title:

Date:

Distribution List for IFB-CO-115800-NHQ

Bidders List

NATO Delegations (Attn: Infrastructure Adviser)

Embassies in Brussels (Attn: Commercial Attaché)

NCI Agency – All NATEXs

NCI Agency Internal Distribution (not disclosed)



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

IFB- CO-115800-NHQ

LEVEL 3 IT SUPPORT AT NATO HQ CAMPUS

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Section IV Bid Evaluation

Annexes

BOOK II - THE PROSPECTIVE CONTRACT

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Part I Schedule of Supplies and Services

Part II Contract Special Provisions

Part III Contract General Provisions

Part IV Statement of Work

NATO UNCLASSIFIED

IFB-CO-115800-NHQ
Book I – Bidding Instructions



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

IFB-CO-115800-NHQ

BOOK I

BIDDING INSTRUCTIONS

NATO UNCLASSIFIED

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SECTION 1 INTRODUCTION

1.1. Purpose and Scope

- 1.1.1. The purpose of this solicitation is to invite Bids and to establish a Contract for the provision of Level 3 ICT services, including maintenance and training related to the Active Devices and Software installed at NATO Headquarters.
- 1.1.2. The Level 3 ICT support consists of a) Hardware replacement, b) Software updates and bug fixes and c) Technical Assistance. The Level 3 IT support services will be delivered at the NATO Headquarters, located in Brussels.

1.2. Overview of the Prospective Contract

- 1.2.1. The prospective Contract (Book II) requires the selected Contractor to deliver the Level 3 IT services. The Contractor shall perform all activities required in Book II Part IV (Statement of Work – SOW) and shall deliver the associated deliverables listed in Book II Part I (Schedule of Supplies and Services – SSS).
- 1.2.2. The Contract will be governed by Book II, Part II (Contract Special Provisions), and Part III (Contract General Provisions).
- 1.2.3. The target date for Contract Award is September 2023.

1.3. Governing Rules, Eligibility, and Exclusion Provisions

- 1.3.1. This solicitation is a BOA + Competition and is issued in accordance with the NATO BOA procedures: AC-4-D(20019)0004(INV). Pursuant to these procedures, bid submittal is restricted to companies from participating NATO member nations in accordance with paragraph 2.1.5 of Section II of the Bidding Instructions. The overall security classification of this solicitation is “NATO UNCLASSIFIED”.
- 1.3.2. This IFB will not be subject of a public bid opening.
- 1.3.3. The evaluation method to be used in the selection of the successful Bidder under this solicitation will follow the Lowest Compliant Bid Competition.
- 1.3.4. The Bid evaluation criteria and the detailed evaluation procedures are described in SECTION 4
- 1.3.5. In the event any information contained in this IFB conflicts with other information in this IFB, the bidder shall refer to the Purchaser all queries

for resolution in accordance with the procedures set forth in paragraph 2.6 "Request for IFB Clarifications".

1.4. Security

- 1.4.1. This Invitation for Bid has been classified as NATO UNCLASSIFIED.
- 1.4.2. However, Contractor and if applicable, Subcontractor personnel will be required to possess a security clearance at least to the level "NATO SECRET" (NS) level for the performance of the Contract.
- 1.4.3. All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance with applicable security regulations. The Contractor shall be able to handle and store material of "NATO RESTRICTED" classification in his facility in the conduct of work under this Contract.
- 1.4.4. The Contractor shall have the appropriate facility and personnel clearances at the date of Contract Signature. Should the Contractor be unable to perform the Contract due to the fact that the facility/security clearances have not been provided by their respective national security agency, this lack of clearance cannot be the basis for a claim of adjustment or an extension of schedule, nor the lack of clearance be considered a mitigating circumstance in the case of an assessment of Liquidated Damages or a determination of Termination For Default by the Purchaser.
- 1.4.5. Contractor personnel working at the NATO HQ site without such a clearance confirmed by the appropriate national security authority and transmitted to the cognisant NATO or National security officer, will be denied access to the site. Denial of such access by the Purchaser may not be used by the Contractor as the basis for a claim of adjustment or an extension of schedule nor can the denial of access be considered a mitigating circumstance in the case of an assessment of Liquidated Damages, Penalties or a determination of Termination for Default by the Purchaser.
- 1.4.6. Bidders are advised that Contract signature will not be delayed in order to allow the processing of NS security clearances for personnel or facilities and, should the otherwise successful Bidder not be in a position to accept the offered Contract within a reasonable period of time, due to the fact that its personnel or facilities do not possess the appropriate security clearance(s), the Purchaser may determine the Bidder's Offer to be non-compliant and offer the Contract to the next ranking Bidder. In such a case, the Bidder who would not sign the Contract shall be liable for forfeiture of the Bid Guarantee.

1.5. Bidders Conference

1.5.1. There will be no Bidders Conference held for this procurement.

1.6. Documentation

1.6.1. All documentation, including the IFB itself, all applicable documents and any reference documents provided by the Purchaser are solely to be used for the purpose of preparing a response to this IFB. They are to be safeguarded at the appropriate level according to their classification and reference documents are provided “as is”, without any warranty as to quality or accuracy.

SECTION 2 GENERAL BIDDING INFORMATION

2.1. Definitions

2.1.1. In addition to the definitions and acronyms set forth in the Contract Special Provisions (Part II) and Contract General Provisions (Part III) of the prospective Contract, the following terms and acronyms, as used in this Invitation for Bid shall have the meanings specified below:

- 2.1.1.1. "Bidder": a firm, consortium, or joint venture which submits an offer in response to this solicitation. Bidders are at liberty to constitute themselves into any form of Contractual arrangements or legal entity they desire, bearing in mind that in consortium-type arrangements a single judicial personality shall be established to represent that legal entity. A legal entity, such as an individual, Partnership or Corporation, herein referred to as the "Principal Contractor", shall represent all members of the consortium with the NCI Agency and/or NATO. The "Principal Contractor" shall be vested with full power and authority to act on behalf of all members of the consortium, within the prescribed powers stated in an irrevocable Power of Attorney issued to the "Principal Contractor" by all members associated with the consortium. Evidence of authority to act on behalf of the consortium by the "Principal Contractor" shall be enclosed and sent with the Bid. Failure to furnish proof of authority shall be a reason for the Bid being declared non-compliant.
- 2.1.1.2. "Compliance": strict conformity to the requirements and standards specified in this IFB and its attachments.
- 2.1.1.3. "Contractor": the awardee of this solicitation of offers, who shall be responsible for the fulfilment of the requirements established in the prospective Contract.
- 2.1.1.4. "Firm of a Participating Country": a firm legally constituted or chartered under the laws of, and geographically located in, or falling under the jurisdiction of a Participating Country.
- 2.1.1.5. "IFB": Invitation for Bid.
- 2.1.1.6. "Participating Country": any of the NATO nations, namely, (in alphabetical order): ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC, DENMARK, ESTONIA, FINLAND, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, THE NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, REPUBLIC OF TÜRKIYE, THE UNITED KINGDOM and THE UNITED STATES.

- 2.1.1.7. “Purchaser”: NATO Communications and Information Agency (NCI Agency) or its legal successor.
- 2.1.1.8. “Quotation” or “Bid”: a binding offer to perform the work specified in the attached prospective Contract (Book II).

2.2. Eligibility and Origin of Equipment and Services

- 2.2.1. All Contractors, Subcontractors and manufacturers, at any tier, must be from Participating Countries.
- 2.2.2. None of the work, including project design, labour and services shall be performed other than by firms from and within Participating Countries.
- 2.2.3. No materials or items of equipment down to and including identifiable Sub-assemblies shall be manufactured or assembled by a firm other than from and within a Participating Country.
- 2.2.4. Unless otherwise authorised by the terms of the prospective Contract, the Intellectual Property Rights to all design documentation and related system operating software shall reside in NATO member countries, and no license fees or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member community.

2.3. Bid Delivery and Bid Closing

- 2.3.1. All Bids shall be in the possession of the Purchaser at the email address given below on or before **16:00 pm / 1600 hours (Brussels Time) on 30 June 2023**, at which time and date bidding shall be closed.
- 2.3.2. Due to the COVID-19 restrictions imposed by some governments and organisations within the NATO alliance, Offerors are requested to submit their quotation electronically to the following email address:

IFBCO115800NHQ@ncia.nato.int

- 2.3.3. The Quotation shall consist of three (3) separate subject emails:
 - 2.3.3.1. For the first e-mail the subject line shall read: “IFB-CO-115800-NHQ Official Bid for [company name] – Part 1 - Administrative Envelope”. The e-mail content shall be as described in Paragraph 3.2.1(a) below, with no password protection to the file and shall be not larger than 20MB total.
 - 2.3.3.2. For the second e-mail the subject line shall read: “IFB-CO-115800-NHQ Official Bid for [company name] – Part 2 - Price Quotation”. The e-mail content shall be as described in Paragraph 3.2.1(b) below, with no password protection to the file, and shall be not larger than 20MB total.

2.3.3.3. For the third e-mail the subject line shall read: "IFB-CO-115800-NHQ – Official Bid for [company name] – Part 3 – Technical Proposal". The e-mail content shall be as described in Paragraph 3.2.1(c) below, with no password protection to the file, and shall be not larger than 20MB total per e-mail. For large Technical Proposals, multiple e-mails may be required to submit the entire package. In such case, Bidders shall clearly indicate the correct order in the e-mail subject line.

2.3.4. Late Bids

2.3.4.1. Bids which are delivered to the Purchaser after the specified time and date set forth above for Bid Closing are "Late Bids" and shall not be considered for award. Such Bids will remain unopened unless the Purchaser can determine that the Bid in question meets the criteria for consideration as specified below.

2.3.4.2. Consideration of Late Bid – The Purchaser considers that it is the responsibility of the Bidder to ensure that the Bid submission arrives by the specified Bid Closing time. A late Bid shall only be considered for award under the following circumstances:

2.3.4.2.1. A Contract has not already been awarded pursuant to the Invitation for Bid, and;

2.3.4.2.2. The Bid was sent to the email address specified in the IFB and the delay was solely the fault of the Purchaser.

2.4. Requests for Extension of Bid Closing Date

2.4.1. The Purchaser does not anticipate, except in exceptional cases, accepting Bidder requests to extend the Bid Closing Date. Bidders are informed that requests for extension to the closing date for the IFB shall be submitted only via the point of contact indicated in paragraph 2.5 below. Any request for extension shall be submitted by the Bidder no later than fourteen (14) days prior to the established Bid closing date. Extensions to the Bid Closing Date are at the sole discretion of the Purchaser.

2.5. Purchaser's Point of Contact

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

NATO Communications and Information Agency
Mrs Lise Vieux-Rochat, Contracting Officer

Email: IFBCO115800NHQ@ncia.nato.int

IFB Clarifications:

IFBCO115800NHQ@ncia.nato.int

Bid Guarantee:

IFBCO115800NHQ@ncia.nato.int

2.6. Request for IFB Clarifications

- 2.6.1. Bidders, during the solicitation period, are encouraged to query and seek clarification of any matters of a contractual, administrative and technical nature pertaining to this IFB.
- 2.6.2. All requests for clarification shall be forwarded to the Purchaser using the Clarification Request Forms provided at Annex D of this Book I. Bidders are required to keep the classification of their request NATO Unclassified. Such requests shall be emailed to the point of contact specified in paragraph 2.5 above and shall arrive **not later than fourteen (14) calendar days before the closing date of the bid**. The Purchaser is under no obligation to answer requests for clarification submitted after this time. Requests for clarification must address the totality of the concerns of the Bidder, as the Bidder will not be permitted to revisit areas of the IFB for additional clarification except as noted in 2.6.3 below.
- 2.6.3. Additional requests for clarification are limited only to the information provided as answers by the Purchaser to Bidder requests for clarification. Such additional requests shall arrive in accordance with the date specified in the respective IFB Amendment.
- 2.6.4. The Purchaser may provide for a re-wording of questions and requests for clarification where it considers the original language ambiguous, unclear, subject to different interpretation or revelatory of the Bidder's identity.
- 2.6.5. Bidders are advised that subsequent questions and/or requests for clarification included in a Bid shall neither be answered nor considered for evaluation.
- 2.6.6. Except as provided above, all questions will be answered by the Purchaser and the questions and answers (but not the identity of the questioner) will be issued in writing to all prospective Bidders.
- 2.6.7. Where the extent of the changes implied by the response to a clarification request is of such a magnitude that the Purchaser deems necessary to issue revised documentation, the Purchaser will do so by the means of the issuance of a formal IFB in accordance with paragraph 2.8 below.
- 2.6.8. The Purchaser reserves the right to reject questions and clarification requests clearly devised or submitted for the purpose of artificially

obtaining an extension of the bidding time (i.e. clarifications re-submitted using different wording where such wording does not change the essence of the clarification being requested).

- 2.6.9. The published responses issued by the Purchaser shall be regarded as the authoritative interpretation of the Invitation for Bid. Any amendment to the language of the IFB included in the answers will be issued as an IFB Amendment and shall be incorporated by the Bidder in his offer.

2.7. Requests for Waivers and Deviations

- 2.7.1. Bidders are informed that requests for alteration to, waivers or deviations from the terms and conditions of this IFB and attached prospective Contract (Book II) will not be considered after the request for clarification process. Requests for alterations to the other requirements, terms or conditions of the Invitation for Bid or the prospective Contract may only be considered as part of the clarification process set forth in paragraph 2.6 above. Requests for alterations to the specifications, terms and conditions of the Contract which are included in a Bid as submitted may be regarded by the Purchaser as a qualification or condition of the Bid and may be grounds for a determination of non-compliance.

2.8. Amendment of the Invitation for Bid

- 2.8.1. The Purchaser may revise, amend or correct the IFB at any time prior to the Bid Closing Date. Any and all changes will be transmitted to all Bidders by an official amendment designated as such and signed by the Purchaser. This process may be part of the clarification procedures set forth in paragraph 2.6 above or may be an independent action on the part of the Purchaser.
- 2.8.2. All such IFB amendments issued by the Purchaser shall be acknowledged by the Bidder in its Bid by completing the "Acknowledgement of Receipt of IFB Amendments" certificate at Annex B-2. Failure to acknowledge receipt of all amendments may be grounds to determine the Bid to be administratively non-compliant.
- 2.8.3. The Purchaser will consider the potential impact of amendments on the ability of prospective Bidders to prepare a Bid within the allotted time. The Purchaser may extend the "Bid Closing Date" at its discretion and such extension will be set forth in the amendment.

2.9. Modification and Withdrawal of Bids

- 2.9.1. Bids, once submitted, may be modified by Bidders, but only to the extent that the modifications are in writing, conform to the requirements of the IFB, and are received by the Purchaser prior to the Bid Closing Date as

detailed in paragraph 2.3. Such modifications will be considered as an integral part of the submitted Bid.

- 2.9.2. Modifications to Bids which arrive after the Bid Closing Date will be considered as "Late Modifications" and will be processed in accordance with the procedure detailed in paragraph 2.3.3, except that unlike a "Late Bid", the Purchaser will retain the modification until a selection is made. A modification to a Bid which is determined to be late will not be considered in the evaluation and selection process. If the Bidder submitting the modification is determined to be the successful Bidder on the basis of the unmodified Bid, the modification may then be opened. If the modification makes the terms of the Bid more favourable to the Purchaser, the modified Bid may be used as the basis of Contract award. The Purchaser, however, reserves the right to award a Contract to the apparent successful Bidder on the basis of the Bid submitted and disregard the late modification.
- 2.9.3. A Bidder may withdraw its Bid at any time prior to Bid Opening without penalty. In order to do so, an authorised agent or employee of the Bidder must provide an original statement of the firm's decision to withdraw the Bid and subsequently remove the Bid from the Purchaser's premises.
- 2.9.4. Except as provided in paragraph 2.10.4.2 below, a Bidder may withdraw its Bid after Bid Opening only by forfeiture of the Bid Guarantee.

2.10. Bid Validity

- 2.10.1. Bidders shall be bound by the term of their Bid for a period of nine (9) months starting from the Bid Closing Date specified in paragraph 2.3.1 above.
- 2.10.2. In order to comply with this requirement, the Bidder shall complete the Certificate of Bid Validity set forth in Annex C-4. Bids offering less than the period of time referred to above for acceptance by the Purchaser may be determined to be non-compliant.
- 2.10.3. The Purchaser will endeavour to complete the evaluation and make an award within the period referred to above. However, should that period of time prove insufficient to render an award, the Purchaser reserves the right to request an extension of the period of validity of all Bids which remain under consideration for award.
- 2.10.4. Upon notification by the Purchaser of such a request for a time extension, the Bidders shall have the right to:
- 2.10.4.1. Accept this extension of time in which case Bidders shall be bound by the terms of their offer for the extended period of time and the Bid Guarantee and Certificate of Bid Validity extended accordingly; or

- 2.10.4.2. Refuse this extension of time and withdraw the Bid, in which case the Purchaser will return to the Bidder its Bid Guarantee in the full amount without penalty.
- 2.10.5. Bidders shall not have the right to modify their Bids due to a Purchaser request for extension of the Bid validity unless expressly stated in such request.
- 2.11. Bid Guarantee**
- 2.11.1. The Bid Guarantee shall be submitted by email to the Purchaser, either directly by a banking institution or from the Bidder, to the email address specified in section 2.5. In either case, the Bidder shall provide an additional copy of the Bid Guarantee in the Bid Administration Volume.
- 2.11.2. The Bidder shall furnish with his Bid a guarantee in an amount equal to Three Hundred Thousand Euro (€300,000). The Bid Guarantee shall be substantially similar to Annex C as an irrevocable, unqualified and unconditional Standby Letter of Credit (SLC) issued by a Belgian banking institution fully governed by Belgian legislation or issued by a non-Belgian financial institution and confirmed by a Belgian banking institution fully governed by Belgian legislation. In the latter case signed original letters from both the issuing institution and the confirming institution must be provided. The confirming Belgian bank shall clearly state that it will guarantee the funds, the drawing against can be made by the NCI AGENCY at its premises in Belgium. Bid Guarantees shall be made payable to the Treasurer, NATO CI Agency.
- 2.11.3. Alternatively, a Bidder may elect to post the required Guarantee in cash (via direct bank deposit, referencing IFB-CO-115800-NHQ) or by certified cheque to be submitted in the Bidders Bid Administration package. If the latter method is selected, Bidders are informed that the Purchaser will cash the cheque on the Bid Closing Date or as soon as possible thereafter.
- 2.11.4. If the Bid Closing Date is extended after a Bidder's financial institution has issued a Bid Guarantee, it is the obligation of the Bidder to have such Bid Guarantee (and confirmation, as applicable) extended to reflect the revised Bid Validity date occasioned by such extension.
- 2.11.5. Failure to furnish the required Bid Guarantee in the proper amount, and/or in the proper form and/or for the appropriate duration by the Bid Closing Date may be cause for the Bid to be determined non-compliant.
- 2.11.6. The Purchaser will make withdrawals against the amount stipulated in the Bid Guarantee under the following conditions:
- 2.11.6.1. The Bidder has submitted a Bid and, after Bid Closing Date (including extensions thereto) and prior to the selection the compliant Bid

- determined to represent the lowest compliant, withdraws his Bid, or states that he does not consider his Bid valid or agree to be bound by his Bid, or
- 2.11.6.2. The Bidder has submitted a compliant Bid determined by the Agency to represent the lowest compliant, but the Bidder declines to sign the Contract offered by the Agency, such Contract being consistent with the terms of the Invitation for Bid.
 - 2.11.6.3. The Purchaser has offered the Bidder the Contract for execution but the Bidder has been unable to demonstrate compliance with the security requirements of the Contract within a reasonable time,
 - 2.11.6.4. The Purchaser has entered into the Contract with the Bidder but the Bidder has been unable or unwilling to provide the Performance Guarantee required under the terms of the Contract within the time frame required.
- 2.11.7. Bid Guarantees will be returned to Bidders as follows:
- 2.11.7.1. To non-compliant Bidders forty-five (45) days after notification by the Purchaser of a non-compliant Bid (except where such determination is challenged by the Bidder; in which case the Bid Guarantee will be returned forty-five (45) days after a final determination of non-compliance);
 - 2.11.7.2. To all other unsuccessful Bidders within thirty (30) days following the award of the Contract to the successful Bidder;
 - 2.11.7.3. To the successful Bidder upon submission of the Performance Guarantee required by the Contract or, if there is no requirement for such a Performance Guarantee, upon Contract execution by both parties.
 - 2.11.7.4. pursuant to paragraph 2.10.4.2 above.
- 2.11.8. "Standby Letter of Credit" or "SLC" as used herein, means a written commitment by a Belgian financial institution either on its own behalf or as a confirmation of the Standby Letter of Credit issued by a non-Belgian bank to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Purchaser of a written demand therefore. Neither the financial institution nor the Contractor can revoke or condition the Standby Letter of Credit. The term "Belgian financial institution" includes non-Belgian financial institutions licensed to operate in Belgium.

2.12. Cancellation of Invitation for Bid

- 2.12.1. The Purchaser may cancel, suspend or withdraw for re-issue at a later date this IFB at any time prior to Contract award. No legal liability on the part of the Purchaser for payment of any sort shall arise and in no event will any Bidder have cause for action against the Purchaser for the recovery of costs incurred in connection with preparation and submission of a Bid in response to this IFB.

2.13. Electronic Transmission of Information and Data

- 2.13.1. The Purchaser will endeavour to communicate answers to requests for clarification and amendments to this IFB to the prospective Bidders as soon as practicable.
- 2.13.2. Bidders are cautioned that electronic transmission of documentation which contains classified information is not permissible. Except for those cases in which electronic transmission of documentation is not permissible (i.e. documents with security classification mandating specific transmission methods) the Purchaser will rely exclusively on electronic means to manage all correspondence related to this IFB, including IFB amendments and clarifications.

2.14. Supplemental Agreements and Export Controlled Information

- 2.14.1. Bidders are required, in accordance with the certificate at Annex B-7 of these Instructions to Bidders, to disclose any prospective Supplemental Agreements that are required by national governments to be executed by the NCI Agency as a condition of Contract performance.
- 2.14.2. Supplemental Agreements are typically associated with, but not necessarily limited to, national export control regulations, technology transfer restrictions and end user agreements or undertakings.
- 2.14.3. Bidders are cautioned that failure to provide full disclosure of the anticipated requirements and the terms thereof, to the best of the Bidder's knowledge and experience, may result in the Purchaser withholding award of the Contract or cancelling an executed Contract if it is discovered that the terms of such Supplemental Agreements contradict salient conditions of the Prospective Contract to the extent that either key objectives cannot be accomplished or basic Contract principles and Purchaser rights have been abridged.

2.15. Mandatory Quality Assurance and Quality Control Standards

- 2.15.1. Bidders are requested to note that, in accordance with the Certificate at Annex B-8 hereto, Bidders shall provide documentary evidence that the Bidder possesses a current certification that is compliant with the

requirements of Allied Quality Assurance Publication (AQAP) 2110, ISO 9001:2015, or an equivalent QA/QC regime.

- 2.15.2. Bidders shall further demonstrate that such regime is applied within the Bidder's internal organisation, as well as extended to its relationships with Subcontractors.
- 2.15.3. If the Bidder is offering a QA/QC regime that is claimed to be equivalent to AQAP 2110 or ISO 9001:2015, the burden of proof of such equivalency shall be on the Bidder and such evidence of equivalency shall be submitted with the Certificate at Annex C-8 in the Bid Administration Volume.
- 2.15.4. Failure to execute this Certificate, or failure to provide documentary evidence of compliance with this requirement may result in a determination of non-compliance for the submitted Bid.

SECTION 3 BID PREPARATION INSTRUCTIONS**3.1. General**

- 3.1.1. Bidders shall prepare and submit their bid in accordance with the requirements and format set forth in this IFB. Compliance with all bid submission requirements is mandatory. Failure to submit a bid in conformance with the stated requirements may result in a determination of non-compliance by the Purchaser and the elimination of the bid from further consideration.
- 3.1.2. Bidders shall not simply restate the IFB requirements in confirmatory terms only. The Bidder must clearly describe what is being offered and how the Bidder will meet all IFB requirements. Statements in confirmatory terms only will be sufficient grounds for determining the bid to be non-compliant. A bid shall demonstrate that a Bidder understands the terms, conditions and requirements of the IFB and its ability to provide all the services and deliverables listed in the Schedules of the prospective contract.
- 3.1.3. Although the Purchaser may request clarification of the bid, it is not required to do so and may make its determination on the content of the bid as written. Therefore, Bidders shall assume that inconsistencies, omissions, errors, lack of detail and other deficiencies in the submitted bid may render the bid to be determined non-compliant.
- 3.1.4. Partial bids and/or bids containing conditional statements will be declared non-compliant.
- 3.1.5. Bidders are advised that the Purchaser reserves the right to incorporate the successful Bidder's offer in whole or in part by reference in the resulting contract.
- 3.1.6. The specific format for each volume is stated in paragraph 3.2.1.
- 3.1.7. All documentation submitted as part of the bid shall be classified no higher than "NATO UNCLASSIFIED".
- 3.1.8. All notices and communications regarding this IFB shall be written and conducted in English. All documentation submitted as part of the bid shall be in English.

3.2. Bid Package Content

3.2.1. The complete bid submission shall consist of three (3) **separate** volumes as shown in the following table.

Volume	Format and Quantity Details
I: Administrative envelope	<u>Submitted by Email:</u> Scanned PDF copies of the certificates with signatures of the prescribed certifications as detailed in §3.2. No Password Protection.
II: Price envelope	<u>Submitted by Email:</u> one (1) ZIP file containing one (1) electronic copy in Microsoft Excel(readable and searchable) of the completed Bidding Sheets and one (1) PDF copy of the completed Bidding Sheets as detailed in § 3.3. No Password Protection.
III: Technical envelope	<u>Submitted by Email:</u> <ul style="list-style-type: none"> · Part 1, Maintenance Services, text document: 1 PDF file · Part 2, Staffing, text document: 1 PDF file · Part 3, Reporting Services : 1 PDF file · Part 4, Other requirements, text document: 1 PDF file · Part 5, Cross Reference/Compliance table and Past Performance documents, text document: 1 PDF file <p>Ø If necessary, the technical volume may be separated into more than one email.</p> <p>Ø All of the required contents are detailed in Section 3.6</p>
Bid Guarantee	<u>1 PDF File, Submitted by Email directly to the Purchaser as detailed under Sections 2.5 and 2.11.</u>

3.2.2. All emails submitted shall be less than 20MB.

3.3. Package Marking

3.3.1. The proposal shall be sent via three (3) **separate** e-mails to the Bid Delivery email address specified in section 2.5. The e-mails shall have the following subject lines:

- “IFB-CO-115800-NHQ Official Bid for *[Company Name]*, Volume I – Bid Administration”
- “IFB-CO-115800-NHQ Official Bid for *[Company Name]*, Volume II – Price”

- "IFB-CO-115800-NHQ Official Bid for *[Company Name]*, Volume III – Technical (*if necessary: email 1 of 2 / email 2 of 2*)"
- 3.3.2. The Bid Guarantee shall be sent by email before Bid Closing Date to the email address specified in section 2.5. This email should clearly reference the company name and IFB number.
- 3.3.3. The individual electronic files sent by email shall have the following names:
- 3.3.3.1. Volume I:
 - IFB-CO-115800-NHQ Official Bid for *Company Name*, Volume I – Administrative envelope
 - 3.3.3.2. Volume II:
 - IFB-CO-115800-NHQ Official Bid for *Company Name*, Volume II – Price envelope
 - 3.3.3.3. Volume III:
 - IFB-CO-115800-NHQ Official Bid for *Company Name*, Volume III – Technical envelope, Part 1 – Maintenance Services
 - IFB-CO-115800-NHQ Official Bid for *Company Name*, Volume III – Technical envelope, Part 2 – Staffing
 - IFB-CO-115800-NHQ Official Bid for *Company Name*, Volume III – Technical envelope, Part 3 – Reporting Services
 - IFB-CO-115800-NHQ Official Bid for *Company Name*, Volume III – Technical envelope, Part 4 – Other requirements
 - IFB-CO-115800-NHQ Official Bid for *Company Name*, Volume III – Technical envelope, Part 5 - Cross Reference/Compliance table and Past Performance documents
- 3.3.4. Detailed requirements for the structure and content of each of these volumes are contained in these Bidding Instructions.

3.4. Volume I: Administrative envelope

- 3.4.1. Contents: One (1) ZIP file submitted by email, containing one PDF file comprised of all of the required documents; and one copy of the Bid Guarantee submitted directly to the Purchaser Treasury office.
- 3.4.2. As explained in section 2.11, the Bid Guarantee shall be sent directly to the Purchaser email address specified in section 2.5. Additionally, a copy of the Bid Guarantee shall be included in this volume. Bidders are reminded that the Bid Guarantee shall reflect any extensions to the Bid Validity Date due to extensions in the Bid Closing Date.
- 3.4.3. No information disclosing or contributing to disclose the bid price shall be made part of the Bid Administration volume. Failure to abide to this prescription shall result in the bid being declared non-compliant.
- 3.4.4. The volume shall include the certificates set forth in the Annex to these Bidding Instructions, signed in the original by an authorised representative of the Bidder. The text of the certificates must not be altered in any way. The certificates are as follows:
- 3.4.4.1. Annex C-1 (Certificate of Legal Name of Bidder)
 - 3.4.4.2. Annex C-2 (Acknowledgement of Receipt of IFB Amendments and Responses to Clarification Requests)
 - 3.4.4.3. Annex C-3 (Certificate of Independent Determination)
 - 3.4.4.4. Annex C-4 (Certificate of Bid Validity)
 - 3.4.4.5. Annex C-5 (Certificate of Exclusion of Taxes, Duties and Charges)
 - 3.4.4.6. Annex C-6 (Comprehension and Acceptance of Contract Special and General Provisions)
 - 3.4.4.7. Annex C-7 (Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements) with the prospective text of such Agreements, as applicable.
 - 3.4.4.8. Annex C-8 (Certificate of Compliance AQAP 2110 or ISO 9001:2015 or Equivalent) with a copy of the relevant quality certification attached to it.
 - 3.4.4.9. Annex C-9 (List of Prospective Subcontractors)
 - 3.4.4.10. Annex C-10 (Bidder Background IPR)
 - 3.4.4.11. Annex C-11 (List of Subcontractor IPR)
 - 3.4.4.12. Annex C-12 (Certificate of NATO Member Country Origin of Delivered Equipment, Services, Materials and Intellectual Property Rights)

- 3.4.4.13. Annex C-13 (List of Proposed Key Personnel)
- 3.4.4.14. Annex C-14 (Disclosure of Involvement of Former NCI Agency employment)
- 3.4.4.15. Annex C-15 (NCI Agency AD.05.00, Code of Conduct: Post Employment Measures)

3.5. Volume II: Price envelope

- 3.5.1. Contents: One (1) ZIP file submitted by email, containing the completed Bidding Sheets (in MS Excel) provided with this IFB as “3_IFB-CO-115800-NHQ – Book I – Bidding Sheets”.
- 3.5.2. General Rules
- 3.5.2.1. Bidders shall prepare their Price Quotation by completing the Bidding Sheets referred in paragraph 3.5.1 above, in accordance with the instructions specified in Annexes A and B.
- 3.5.2.2. The structure of the Bidding Sheets shall not be changed, other than as indicated elsewhere, nor should any quantity or item description in the Bidding Sheets. The currency(ies) of each Contract Line Item and sub-item shall be shown. The prices provided shall be intended as the comprehensive total price offered for the fulfilment of all requirements as expressed in the IFB documentation including but not limited to those expressed in the SOW.
- 3.5.2.3. Bidders shall furnish Firm Fixed Prices for all required items in accordance with the format set forth in the Instructions for preparation of the Bidding Sheets. This includes Firm Fixed Prices for all optional CLINs.
- 3.5.2.4. Offered prices shall not be “conditional” in nature. Any comments supplied in the Bidding Sheets which are conditional in nature, relative to the offered prices, may result in a determination that the Bid is non-compliant.
- 3.5.2.5. Bidders are responsible for the accuracy of their Price Quotations. Price Quotations that have apparent computational errors may have such errors resolved in the Purchaser’s favour or, in the case of gross omissions, inconsistencies or errors, may be determined to be non-compliant.
- 3.5.2.6. Bidders shall quote in their own national currency or in EURO. Bidders may also submit bids in multiple currencies including other NATO member states' currencies under the following conditions:
- 3.5.2.6.1. The currency is of a "participating country" in the project, and
- 3.5.2.6.2. The Bidder can demonstrate, either through sub-contract arrangements or in its proposed work methodology, that it will have equivalent expenses in that currency. All major subcontracts and their approximate anticipated value should be listed on a separate sheet and included with the Price Quotation.

- 3.5.2.7. The Purchaser, by virtue of his status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct and indirect taxes (incl. VAT) and all customs duties on merchandise imported or exported.
- 3.5.2.8. Bidders shall therefore exclude from their price Bid all taxes, duties and customs charges from which the Purchaser is exempted by international agreement and are required to certify that they have done so through execution of the Certificate at Annex B-5.
- 3.5.2.9. Unless otherwise specified in the instructions for the preparation of Bidding Sheets in Annex A, all prices quoted in the proposal shall be on the basis that all deliverable items shall be delivered “Delivery Duty Paid (DDP)” in accordance with the International Chamber of Commerce INCOTERMS ® 2010.
- 3.5.2.10. The Bidder’s attention is directed to the fact that the Price Volume shall contain no document and/or information other than the priced copies of the Bidding Sheets. Any other document will not be considered for evaluation and may cause for a determination of non-compliance by the Purchaser.

3.6. Volume III: Technical

- 3.6.1. Contents: One (1) ZIP file submitted by email, containing the 5 files listed in Section 3.2.1.
- 3.6.2. The Technical Volume is comprised of five (5) parts. Each of the parts shall be self-contained as a separate electronic file, named as described in section 3.3.4.
- 3.6.2.1. Part 1: Maintenance Services Proposal, as described in section 3.6.7
 - 3.6.2.2. Part 2: Staffing Proposal, as described in section 3.6.8
 - 3.6.2.3. Part 3: Reporting Services Proposal, as described in section 3.6.9
 - 3.6.2.4. Part 4: Other requirements Proposal, as described in section 3.6.10
 - 3.6.2.5. Part 5: Cross Reference matrix and past performance documents, as described in section 3.6.11
- 3.6.3. No information disclosing or contributing to disclose the bid price shall be made part of the Technical Volume. Failure to abide to this prescription shall result in the bid being declared non-compliant.
- 3.6.4. It is of utmost importance that Bidders respond to all of the technical requirements contained in the IFB Statement of Work (including all Annexes) and all the bidding instructions, not only with an affirmation of compliance but also with an explanation of how each requirement will be met.
- 3.6.5. Font Type and Size
- 3.6.5.1. “Times New Roman” fonts in size 12 shall be used for normal text, and “Arial Narrow” fonts not smaller than size 10 for tables and graphics.
- 3.6.6. The Technical Volume shall include a Table of Contents (No page limit): which lists not only the section headings but also the major sub-sections, and topic headings required set forth in these Instructions or implicit in the organisation of the Technical Volume
- 3.6.7. Part 1: Maintenance Services Proposal
- 3.6.7.1. All areas of the Maintenance Services proposal shall comprehensively demonstrate feasibility, logic and reasonableness of the proposed solution and shall include sub-contract activities, detailing the responsibilities of any/all sub-contractors, defining which tasks the sub-contractors shall be responsible, shall address the relationship

associated control mechanisms to support quality, change and configuration procedures in delivering products.

- 3.6.7.2. The Bidder shall provide proof of partnership status for the vendors as described in the SOW.
- 3.6.7.3. The bidder shall provide proof how restoration of services will be provided.
- 3.6.7.4. The Bidder has provided an offer for each unit of equipment using the requested service flavour as per the list under Annex D of the SOW. If the Bidder identifies end of life item listed in the Bidding sheets evaluated portion, she/he shall raise a Clarification Request to the Purchaser.
- 3.6.7.5. The Bidder shall provide a draft CLS Plan (CLSP) in accordance with SOW paragraph MS3. The draft CLSP shall clearly describe how the Bidder intends to address in detail all requirements in this SOW. A full CLSP is not required as part of the Bid. However, the Bidder shall provide sufficient detail in the Draft CLSP such that the Purchaser will be capable of assessing the feasibility of the solution.
- 3.6.7.6. The Bidder shall detail its approach and shall demonstrate the maturity of the solution.
- 3.6.7.7. The CLSP shall contain a confirmation that all requirements of the SOW are met by the proposed solution.
- 3.6.7.8. The Bidder shall provide evidence of a helpdesk functionality through provision of a helpdesk manual/procedures and helpdesk 24/7 phone number.
- 3.6.7.9. The Bidder shall provide manual(s), print screens and a description of functionalities as evidence of an on-line ticketing system.
- 3.6.7.10. The Bidder shall provide an example of an acceptance document which is to be issued to the Contractor to confirm acceptance of replacement device
- 3.6.7.11. The Bidder shall provide proof on how End of Sales/End of Support will be announced during the contract period.
- 3.6.7.12. The Bidder will provide an example on how the assessment (engineering evaluation) is done with regards to the replacement of parts technically compatible with the existing device/parts
- 3.6.7.13. The Bidder shall provide an example of how a Cisco device is updated in the OEM Vendors Maintenance Support database.

- 3.6.7.14. The Bidder shall provide an example of logistics data it will provide to the Purchaser related to removal and replacement of equipment, taking into account the Purchaser's defective media retention policy (DMR).
- 3.6.7.15. The Bidder shall provide detailed process with regards to the RMA (Return Material Authorization) instructions for faulty items (for both NATO UNCLASSIFIED/NATO RESTRICTED and NATO SECRET items)
- 3.6.7.16. The Bidder shall provide the process on how information on the availability of software upgrades for any item covered within the scope of the Contract and support access to vendor software will be provided to the Purchaser.
- 3.6.7.17. The Bidder shall provide an example of how license management with the relevant OEMs is performed. This includes reporting.
- 3.6.7.18. The Bidder shall provide an example of how software is updated in the OEM Vendors Maintenance Support database.
- 3.6.7.19. The Bidder shall provide a detailed process of how to engage with the OEM Technical Assistance for Hardware and Software under scope of this Contract.
- 3.6.8. Part 2: Staffing Proposal
 - 3.6.8.1. The Bidder shall provide named individuals of key personnel and agree to comply to requirements stated in the SOW concerning staffing.
 - 3.6.8.2. The Bidder shall provide the Curriculum Vitae (CV) or resume of the all personnel and the profiles of the proposed personnel. The Bidder shall detail compliancy to the minimum skills identified in SOW.
 - 3.6.8.3. The Bidder shall provide a detailed process on how on-site incident intervention will be initiated and acceptance criteria.
 - 3.6.8.4. The Bidder shall provide detailed overview on how on-site consultancy services will be initiated, the details on provisioning timelines, mitigation actions and acceptance criteria.
 - 3.6.8.5. The Bidder shall provide detailed proof of extra support that will be provided in case the Purchaser decides to exercise the Special Events optional support.
- 3.6.9. Part 3: Reporting Proposal
 - 3.6.9.1. The Bidder shall provide a detailed example of the reports concerning the OEM technical documentation or updates to existing OEM technical documentation, in scope of the SOW.

- 3.6.9.2. The Bidder shall provide an example of the quarterly and annual reports with information as stated within the SOW.
- 3.6.9.3. The Bidder shall provide statement agreeing to provide quarterly and annual reports before respectively the end of the first month after the quarter or the end of calendar year.
- 3.6.9.4. The Bidder shall provide statement agreeing to execute corrective actions within 15 calendar days in case of unacceptance by the Purchaser of the reports.
- 3.6.9.5. The Bidder shall provide three (3) detailed examples of how the Bidder intends to provide and maintain a documentation library on the internal Purchaser's provided MS Sharepoint. Thorough knowledge of MS SharePoint needs to be proven.

- 3.6.10. Part 4: Other requirements Proposal
 - 3.6.10.1. The Bidder shall provide a list of all key personnel with a valid NATO Personal Security Clearance at least to the NATO SECRET level.
 - 3.6.10.2. The Bidder shall provide agreement that access process to NATO HQ areas will follow guidelines as set out in SOW.
 - 3.6.10.3. The Bidder shall provide named individuals as point of contact as stipulated in SOW.

- 3.6.11. Part 5: Cross Reference Matrix and past performance documents
 - 3.6.11.1. The bidder shall provide a fully completed Cross reference/Compliance table.
 - 3.6.11.2. The bidder shall provide the Past Performance Documents (Questionnaire and References).

SECTION 4 BID EVALUATION AND CONTRACT AWARD**4.1. General**

- 4.1.1. The evaluation of bids will be made by the Purchaser solely on the basis of the requirements specified in this IFB.
- 4.1.2. All bids will be evaluated solely using the evaluation criteria contained herein. Technical Proposals will be evaluated strictly against the technical criteria and not against other Technical Proposals submitted.
- 4.1.3. The evaluation of Bids and the determination as to the compliance or technical adequacy of the supplies and services offered will be based only on that information furnished by the Bidder and contained in his bid. The Purchaser shall not be responsible for locating or securing any information that is not identified in the Bid.
- 4.1.4. The Bidder shall furnish with his Bid all information requested by the Purchaser in Book I, Section 3, Bid Preparation Instructions. Significant omissions and/or cursory submissions may result in a determination of non-compliance without recourse to further clarification. The information provided shall be to a level of detail necessary for the Purchaser to determine exactly what the Bidder proposes to furnish and whether the offer meets the technical, administrative and contractual requirements of this IFB.
- 4.1.5. During the evaluation, the Purchaser may request clarification of the bid from the Bidder and the Bidder shall provide sufficient detailed information in connection with such requests as to permit the Purchaser to make a final assessment of the bid based upon the facts. The purpose of such clarifications will be to resolve ambiguities in the Bid and to permit the Bidder to state his intentions regarding certain statements contained therein. The purpose of the clarification stage is not to elicit additional information from the Bidder that was not contained in the original submission unless specified differently in this document or to allow the Bidder to supplement cursory answers or omitted aspects of the Bid. The Bidder is not permitted any cardinal alteration of the bid regarding technical matters and shall not make any change to his price quotation at any time.
- 4.1.6. The Bidder's prompt response to the Purchaser's clarification requests is important and therefore failure to provide the requested clarifications within the time-limits set forth in the specific Clarification Requests (minimum 24 hours next working day) may cause the Bid to be deemed non-compliant.
- 4.1.7. The Purchaser reserves the right, during the evaluation and selection process, to verify any statements made concerning experience, facilities,

or existing designs or materials by making a physical inspection of the Bidder's facilities and capital assets and by interviewing Key Personnel. This includes the right to validate, by physical inspection, the facilities and assets of proposed subcontractors. The Bidder shall be responsible for providing access to his own or Subcontractors' facilities and personnel.

- 4.1.8. The evaluation will be conducted in accordance with NATO Financial Rules and Procedures.
- 4.1.9. Evaluation of this IFB will be conducted in accordance with the "One Envelope" procedure in which the Price Proposal of each administratively compliant Bidder is evaluated first, and only the Technical Proposal of the apparent lowest priced bid is then evaluated for compliance with the technical requirements of the IFB.
- 4.1.10. The Bidder who has offered the lowest priced, technically compliant bid will be offered the contract for award.

4.2. Evaluation Procedure

4.2.1. The evaluation will be done as described below:

4.2.1.1. Step 1: Administrative Compliance

4.2.1.1.1. Bids received will be reviewed for compliance with the mandatory administrative requirements specified in paragraph 4.3. Bids not meeting all of the mandatory administrative requirements may be determined to be non-compliant and not considered for further evaluation.

4.2.1.2. Step 2: Price Evaluation

4.2.1.2.1. In Step 2, the Price Quotations of all bids not considered non-compliant under the previous step will be opened and evaluated in accordance with paragraph 4.4.

4.2.1.3. Step 3: Technical Evaluation

4.2.1.3.1. In Step 3, the Technical Proposal of the lowest-priced Bid will be opened and evaluated in accordance with paragraph 4.5.

4.3. Evaluation Step 1 - Administrative Compliance

4.3.1. Bids will be reviewed for compliance with the formal requirements for Bid submission as stated in this IFB and the content of the Administrative Envelope. The evaluation of the Bid Administration Volume will be made on its completeness, conformity and compliance to the requested information. The following requirements shall be verified:

4.3.1.1. The Bid was received by the Bid Closing Date and Time,

- 4.3.1.2. The Bid is packaged and marked properly,
- 4.3.1.3. The Bid Administration Volume contains the documentation listed in paragraph 3.4 and complies with the formal requirements established in paragraph 3.1 through 3.2.
- 4.3.1.4. The Bidder has not taken exception to the Terms and Conditions of the Prospective Contract or has not qualified or otherwise conditioned his offer on a modification or alteration of the Terms and Conditions or the language of the Statement of Work.
- 4.3.1.5. **Receipt of an unreadable electronic bid.** If a bid received at the Purchaser's facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained, the Contracting Officer shall immediately notify the Bidder that the bid will be rejected unless the Bidder provides clear and convincing evidence:
 - 4.3.1.5.1. Of the content of the bid as originally submitted; and,
 - 4.3.1.5.2. That the unreadable condition of the bid was caused by Purchaser software or hardware error, malfunction, or other Purchaser mishandling.
- 4.3.2. A Bid that fails to conform to the above requirements may be declared non-compliant and may not be evaluated further by the Purchaser.
- 4.3.3. Bids that are determined to be administratively compliant will proceed to Step 2, Price Evaluation.
- 4.3.4. Notwithstanding paragraph 4.3.1.4, if it is later discovered during either the Price or Technical evaluation, that the Bidder has taken exception to the Terms and Conditions of the Prospective Contract, or has qualified and/or otherwise conditioned his offer on a modification or alteration of the Terms and Conditions or the language of the Statement of Work, the Bidder may be determined to have submitted a non-compliant bid.

4.4. Evaluation Step 2 – Price Evaluation

- 4.4.1. The Bidder's Price Quotation will be first assessed for compliance against the following standards:
 - 4.4.1.1. The Price Quotation meets the requirements for preparation and submission of the Price Quotation set forth in the Bid Preparation Section and the Instructions for Preparation of the Bidding Sheets in Annex A-1 in particular.
 - 4.4.1.2. The Bidder has furnished Firm Fixed Prices for all items listed. Not having provided a price for all items as required per the Bidding sheets,

i.e. to fill out **all** yellow fields, may render the bid non-compliant. Prices cannot be embedded/included in other prices.

- 4.4.1.3. All pricing data, i.e., quantities, unit prices, has been provided as reflected in the Bidding Sheets.
- 4.4.1.4. Bid prices include all costs for items supplied, delivered, and supported.
- 4.4.1.5. All prices have been accurately entered into appropriate columns, and accurately totalled.
- 4.4.1.6. The Bidder has provided accurate unit price (where required) and total price for each line item.
- 4.4.1.7. The Bidder has provided accurate unit prices and total prices of each of the sub-items she/he added (if any).
- 4.4.1.8. The currency of all line items has been clearly indicated.
- 4.4.1.9. The Bidder has quoted in his own national currency or in the host nation currency, Euros. Where multiple currencies including other NATO member states' currencies are quoted, the conditions of Section III, paragraph 3.5.2.6 are met.
- 4.4.1.10. The Bidder has indicated that in accordance with the treaties governing the terms of business with NATO, he has excluded from his prices all taxes, duties and customs charges from which the Purchaser has been exempted.
- 4.4.1.11. Price quotes for each individual item(s), and totalled prices are accurate and realistic (based on historic data, and/or market and competitive trends in the specified industrial sector(s)).
 - 4.4.1.11.1. Detailed pricing information has been provided and is adequate, accurate, traceable, and complete.
 - 4.4.1.11.2. The Price Quotation meets requirements for price realism and balance as described below in paragraph 4.4.4.
- 4.4.2. A Bid which fails to meet the compliance standards defined in this section may be declared non-compliant and may not be evaluated further by the Purchaser.
- 4.4.3. Basis of Price Comparison to determine lowest compliant bid
 - 4.4.3.1. The Purchaser will convert all prices quoted into EURO for purposes of comparison. The exchange rate to be utilised by the Purchaser will be the average of the official buying and selling rates of the European Central Bank at close of business on the last working day preceding the Bid Closing Date.

- 4.4.3.2. The total sum to determine the lowest price compliant bid will be equal to the sum of the following CLIN items: CLIN 1-Service Flavor- Base Period years 2024-26, CLIN 2 - Staffing - Base Period years 2024-26, CLIN 3 - Reporting - Base Period years 2024-26 and CLIN 4 - On-site Consultancy Services - Base Period years 2024-26.
- 4.4.3.3. The Total Sum as detailed in the Bidding sheets is used solely for the purpose of determining the lowest price compliant bid.
- 4.4.4. Price Realism
- 4.4.4.1. Should a Bidder submit a price proposal that it is not a realistic reflection of the objective cost of performance of the associated technical proposal, this may be considered by the Purchaser to be an unrealistic price and may be determined to be non-compliant.
- 4.4.4.2. Possible indicators of an unrealistic price proposal may include, but are not limited to:
- 4.4.4.2.1. Labour costs that, when amortised over the expected or proposed direct labour hours, indicate average labour rates far below those prevailing in the Bidder locality for the types of labour proposed.
- 4.4.4.2.2. Material costs that are considered to be too low for the amounts and types of material proposed, based on prevailing market prices for such material.
- 4.4.4.2.3. Line item prices for supplies and services that are provided at no cost or at nominal prices
- 4.4.4.3. If the Purchaser suspects that a Bidder has proposed an unrealistic price, the Purchaser will request clarification of the proposal in this regard and the Bidder shall provide explanation. If a Bidder fails to submit a comprehensive and compelling response the Purchaser may determine the proposal submitted as non-compliant. Alternatively, the Bidder may respond and request to withdraw from the competition.
- 4.4.4.4. If the Purchaser accepts the Bidder's explanation, the Bidder shall agree that any supporting pricing data submitted with its proposal will be incorporated by reference in the resultant Contract. The Bidder shall agree as a condition of Contract signature, that the pricing data will be the basis of determining fair and reasonable pricing for all subsequent negotiations for modifications of or additions to the Contract and that no revisions of proposed prices will be made.

4.5. Evaluation Step 3 – Technical Evaluation/Criteria

- 4.5.1. Upon determination of the lowest-priced Bid as described above, the Bid shall be evaluated to confirm compliance with the requirements stated in Book I, Section 3.6 and Book II, Part IV - Statement of Work (SOW).
- 4.5.2. In order for a Bid to be determined to be technically compliant, the Bidder shall have submitted a Proposal which has addressed all requirements as detailed in the Bidding Instructions at Section 3.6 and subsequently has fully met, after evaluation by the Purchaser, all the criteria thereof. In particular, the Technical Proposal will be reviewed for compliancy of all Sections of the Proposal, including the draft CLSP, containing sufficient details necessary to make a positive determination of compliancy.
- 4.5.3. As well, the Cross Reference/ Compliance Table as detailed in Annex E-1 shall clearly indicate full compliance with all listed project technical requirements.
- 4.5.4. Within the Cross Reference / Compliance Table, item 9, evaluation shall be done by assessing compliancy for the listed question against a scale of 1 to 5, in which 1 is very poor and 5 is excellent. An average score below 3 may result in a non-compliancy. For each question the scoring of the evaluators will be averaged.

Annex B Bidding Sheets

A-1 Introduction

1. Bid pricing requirements as addressed in this Annex are mandatory. Failure to abide to the bid pricing requirements included in this section may lead to the Bid being declared non-compliant and not being taken into consideration for award.
2. No alteration of the Bidding sheets – including, but not limited to quantity indications, descriptions, titles or pre-populated Not-to-Exceed amounts – are allowed with the sole exception of those explicitly indicated as allowed in this document or in the instructions embedded in the Bidding Sheets file.
3. Additional price columns may be added if multiple currencies are Bid, including extra provisions for all totals.

A-2 General Requirements

1. Bidders are required, in preparing their Price Quotation to utilise the electronic Excel file provided as part of this IFB and referenced in Annex A-3.
2. This Excel file includes detailed instructions on each tab that will facilitate bidders' preparation of the bid pricing. These instructions are mandatory.
3. Materials – Hardware & Software per Service Flavour

Gold, Silver and Bronze service flavours are **not** necessarily equal to industry defined packages but are as defined in the SOW.

4. Labour – Staffing, Reporting, Special Events

As depicted in Book II of IFB-CO-115800-NHQ, SOW, Section 5 Staffing, Section 6 Reporting, , the Agency has defined requirements that each Bidder must provide a price for the majority of which will be labour effort (and possibly potential support contracts) each Bidder must provide realistic prices for in accordance with Sections 4.4.3 & 4.4.4 of this document. The prices and quantities entered on the document shall reflect the total items required to meet the Contractual requirements.

5. In preparing the Bidding Sheets, Bidders shall ensure that the prices of any Sub-items total the price of the major item of which they constitute a part.

6. All metrics (e.g., cost associated with labour) will be assumed to be standard or normalised to 7.6 hour/day, for a five day working week at NATO and National sites and Contractor facilities, unless indicated differently in the SOW.
7. Should the Apparent Lowest Compliant bid be in other than Euro currency, the award of the Contract will be made in the currency or currencies of the bid.
8. Bidders are advised that formulae are designed to ease evaluation of the Bidders proposal have been inserted in the electronic copies of the Bidding Sheets. Notwithstanding this, the Bidder remains responsible for ensuring that their figures are correctly calculated and should not rely on the accuracy of the formulae electronic copies of the Bidding Sheets.
9. If the Bidder identifies an error in the spreadsheet, it should notify the Purchaser through the process described under Section 2.6 above. The Purchaser will then make a correction and notify all the Bidders of the update.
10. Prices shall not include any provision for taxes or duties for which the Purchaser is exempt.

A-3 Bidding Sheets

1. Bidders are required, in preparing their Price Quotation to utilise the following electronic file provided as part of this IFB.

“3_IFB-CO-115800-NHQ - Book I - Bidding Sheets.xls”
2. Bidders shall include this file in its proposal in the same Excel format in which it is provided in this IFB.

Annex A *Bidding Sheets*

**Provided under separate MS Excel File:
“IFB-CO115800-NHQ_Bidding-sheets.xls”**

Annex B INSTRUCTIONS FOR THE PREPARATION OF BIDDING SHEETS

1. INTRODUCTION

Bid pricing requirements as addressed in this Annex are mandatory. Failure to abide to the prescriptions of bid submission referred in this section may lead to the bid being declared non-compliant and not being taken into consideration for award.

No alteration of the bidding sheets including but not limited to quantity indications, descriptions or titles are allowed with the sole exception of those explicitly indicated as allowed in this document. Additional price columns maybe added or tabs may be duplicated if multiple currencies are bid, including extra provisions for all totals. All currencies must be clearly indicated in the appropriate cells and the firm fixed price grand totals shall refer to each currency used.

2. GENERAL REQUIREMENTS

Bidders shall follow the specific instructions provided in each worksheet.

Bidders shall insert information in all **yellow cells**.

The prices and quantities entered on the document shall reflect the total items required to meet the contractual requirements. The total price shall be indicated in the appropriate columns.

In preparing the Bidding Sheets, Bidders shall ensure that the prices of the Sub-items total the price of the major item of which they constitute a part.

Should the bid be in other than Euro currency, the award of the contract will be made in the currency or currencies of the bid.

Bidders are advised that formulas are designed to ease evaluation of the bidders proposal and have been inserted in the electronic copies of the Bidding Sheets. Notwithstanding this the Bidder remains responsible for ensuring that their figures are correctly calculated and should not rely on the accuracy of the formulae electronic copies of the Bidding Sheets.

If the Bidder identifies an error in the spreadsheet, it should notify the Purchaser who will make a correction and notify all the bidders of the update.

Any discounted or reduced prices offered by the bidder must be traceable to a CLIN or CLINs at the lowest level. Prices and detail of the traceability of application of the discount shall be clearly identified in the supporting detail sheets and applied at the unit price level.

3. STRUCTURE OF BIDDING SHEETS.

The Bidding Sheets provided in MS Office Excel format include detailed instructions and are organised according to the following structure:

3.1 Offer Summary

3.2 BASE PERIOD-Service Flavor

3.3 BASE PERIOD-Other

3.6 BASE PERIOD- Options non eval.

4. COMPLETING “Offer Summary” Sheet

The “Offer Summary” sheet is intended to summarize all CLINs. All prices included in the “Offer Summary” sheet shall be linked to the “BASE PERIOD-Service Flavor”, “BASE PERIOD-Other” and “BASE PERIOD- Options non eval.” sheets. For multiple currencies, additional columns may be inserted, or the sheet may be replicated for each currency.

5. COMPLETING “BASE PERIOD-Service Flavor”, “BASE PERIOD-Other” and “BASE PERIOD- Options non eval.” sheets.

Please refer to the Bidding Sheets themselves where any information found within GREEN boxes throughout the entire document is provided as an instruction

Annex C Prescribed Administrative Forms and Certificates

Annex C-1. Certificate of Legal Name of Bidder

This Bid is prepared and submitted on behalf of the legal corporate entity specified below:

FULL NAME OF CORPORATION: _____

DIVISION (IF APPLICABLE): _____

SUB DIVISION (IF APPLICABLE): _____

OFFICIAL MAILING ADDRESS

E-MAIL ADDRESS: _____

POINT OF CONTACT REGARDING THIS BID:

NAME: _____

POSITION: _____

TELEPHONE: _____

ALTERNATIVE POINT OF CONTACT:

NAME: _____

POSITION: _____

TELEPHONE: _____

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-2. Acknowledgement of Receipt of IFB Amendments and Responses to Clarification Requests (if applicable)

I confirm that the following amendments to Invitation for Bid CO-115800-NHQ have been received and the Bid, as submitted, reflects the content of such amendments.

Amendment no.	Date of Issued	Date of receipt	Initials

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-3. Certificate of Independent Determination

1. Each Bidder shall certify that in connection with this procurement:
 - a. This Bid has been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, with any other Bidder or with any competitor;
 - b. The contents of this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to award, directly or indirectly to any other Bidder or to any competitor, and
 - c. No attempt has been made, or will be made by the Bidder to induce any other person or firm to submit, or not to submit, a Bid for the purpose of restricting competition.

2. Each person signing this Bid shall also certify that:
 - a. He/she is the person in the Bidder's organisation responsible within that organisation for the decision as to the bid and that he/she has not participated and will not participate in any action contrary to 1(a) through 1(c) above, or
 - b. (i) He/she is not the person in the Bidder's organisation responsible within that organisation for the bid but that he/she has been authorised in writing to act as agent for the persons responsible for such a decision in certifying that such persons have not participated, and will not participate in any action contrary to 1(a) through 1(c) above, and as their agent does hereby so certify, and
(ii) He/she has not participated and will not participate in any action contrary to 1(a) through 1(c) above.

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

NOTE: IF THE BIDDER DELETES OR MODIFIES SUBPARAGRAPH (1B) OF THIS ANNEX, THE BIDDER MUST FURNISH WITH ITS OFFER A SIGNED STATEMENT SETTING FORTH IN DETAIL THE CIRCUMSTANCES OF THE DISCLOSURE.

Annex C-4. Certificate of Bid Validity

I, the undersigned, as an authorised representative of the firm submitting this Bid, do hereby certify that the pricing and all other aspects of our Bid will remain valid for a period of nine (9) months from the Bid Closing Date of this Invitation for Bid.

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-5. Certificate of Exclusion of Taxes, Duties and Charges

I hereby certify that the prices offered in the price quotation of this Bid exclude all taxes, duties and customs charges from which the Purchaser has been exempted by international agreement.

Date

Signature of Authorised Representative

Printed Name

Title

Company

**Annex C-6. Comprehension and Acceptance of Contract
Special and General Provisions**

The Bidder hereby certifies that he has reviewed the Contract Special Provisions and the NCI Agency Contract General Provisions set forth in the Prospective Contract, Book II, of this Invitation for Bid. The Bidder hereby provides his confirmation that he fully comprehends the rights, obligations and responsibilities of the Contractor as set forth in the Articles and Clauses of the Prospective Contract. The Bidder additionally certifies that the offer submitted by the Bidder is without prejudice, qualification or exception to any of the Terms and Conditions and he will accept and abide by the stated Contract Special Provisions and Contract General Provisions if awarded the Contract as a result of this Invitation for Bid.

Date

Signature of Authorised Representative

Printed Name

Title

Company

ANNEX C-7. Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements

I, the undersigned, as an authorised representative of _____, certify the following statement:

All supplemental agreements, defined as agreements, documents and/or permissions outside the body of the Contract but are expected to be required by my Government, and the governments of my Subcontractors, to be executed by the NCI Agency or its legal successor as a condition of my firm’s performance of the Contract, have been identified, as part of the Bid.

These supplemental agreements are listed as follows:
(insert list of supplemental agreements or specify “none”)

Examples of the terms and conditions of these agreements have been provided in our Offer. The anticipated restrictions to be imposed on NATO, if any, have been identified in our offer along with any potential conflicts with the terms, conditions and specifications of the Prospective Contract. These anticipated restrictions and potential conflicts are based on our knowledge of and prior experience with such agreements and their implementing regulations. We do not certify that the language or the terms of these agreements will be exactly as we have anticipated.

The processing time for these agreements has been calculated into our delivery and performance plans and contingency plans made in the case that there is delay in processing on the part of the issuing government(s).

We recognise that additional supplemental agreements, documents and permissions presented as a condition of Contract performance or MOU signature after our firm would be selected as the successful Bidder may be cause for the NCI Agency to determine the submitted Bid to be non-compliant with the requirements of the IFB;

We accept that should the resultant supplemental agreements issued in final form by the government(s) result in an impossibility to perform the Contract in accordance with its schedule, terms or specifications, the Contract may be terminated by the Purchaser at no cost to either Party.

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-8. Certificate of Compliance AQAP 2110 or ISO 9001:2015 or Equivalent

I hereby certify that _____(name of Company) possesses and applies Quality Assurance Procedures/Plans AQAP 2110 or ISO 9001:2015 or equivalent as evidenced through the attached documentation¹.

Date

Signature of Authorised Representative

Printed Name

Title

Company

¹ Bidders must attach copies of any relevant quality certification.

Annex C-9. List of Prospective Subcontractors

Name and Address of Sub-Bidder	DUNS Number ²	Primary Location of Work	Items/Services to be Provided	Estimated Value of Sub-Contract

Date

Signature of Authorised Representative

Printed Name

Title

Company

² Data Universal Numbering System (DUNS). Bidders are requested to provide this data in order to help NCI AGENCY to correctly identify Subcontractors. If a Subcontractor’s DUNS is not known this field may be left blank.

Annex C-10. Bidder Background IPR

I, the undersigned, as an authorised representative of Bidder _____, warrant, represent, and undertake that:

- a. The Contractor Background IPR specified in the table below will be used for the purpose of carrying out work pursuant to the prospective Contract.

ITEM	DESCRIPTION

- b. The stated Bidder has and will continue to have, for the duration of the prospective Contract, all necessary rights in and to the Background IPR specified above.
- c. The Background IPR stated above complies with the terms specified in Article 8 of the Contract Special Provisions.

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-11. List of Subcontractor IPR

I, the undersigned, as an authorised representative of Bidder
_____, warrant, represent, and undertake that:

- a. The Subcontractor IPR specified in the table below will be used for the purpose of carrying out work pursuant to the prospective Contract.

ITEM	DESCRIPTION

- b. The stated Bidder has and will continue to have, for the duration of the prospective Contract, all necessary rights in and to the IPR specified above necessary to perform the Contractor’s obligations under the Contract.
- c. The Subcontractor IPR stated above complies with the terms Clause 30 the Contract General Provisions.

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-12. Certificate of NATO Member Country Origin of Delivered Equipment, Services, Materials and Intellectual Property Rights

The Bidder hereby certifies that, if awarded the Contract pursuant to this solicitation, it will perform the contract subject to the following conditions:

- (a) none of the work, including project design, labour and services shall be performed other than by firms from and within participating NATO member countries;
- (b) 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 member country (a sub-assembly is defined as a portion of an assembly consisting of two or more parts that can be provided and replaced as an entity)*; and
- (c) the intellectual property rights to all design documentation and related system operating software shall reside in NATO member countries, and no license fees or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member countries.

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

*This definition purposely excludes components and/or parts (as defined in AcodP-1), which are not subject to this certification.

Annex C-13. List of Proposed Key Personnel

Key Personnel are not necessarily required to work full-time in that position. Therefore, it is possible for an individual to fill more than one Key Personnel role at the same time, assuming the person is qualified to perform both roles.

Personal Data Protection

Although NATO, as an international organization, is not subject to GDPR and national data protection law, it is committed to protecting the personal data that it processes. All processing of personal data will be done in accordance with applicable NATO policies and regulations.

Position	SOW Reference	Labour Category	Name	Designation Period
<i>Maintenance Manager</i>				

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-14. Disclosure of Involvement of Former NCI Agency Employment

Disclosure of Involvement of Former NCI Agency Employment

The Bidder hereby certifies that, in preparing its Bid, the Bidder did not have access to solicitation information prior to such information been authorized for release to Bidders (e.g., draft statement of work and requirement documentation).

The Bidder hereby acknowledges the post-employment measures applicable to former NCI Agency Personnel as per the NCI Agency Code of Conduct.

The Bidder hereby certifies that its personnel working as part of the company’s team, at any tier, preparing the Bid:

- Have not held employment with NCI Agency within the last two years.
- Has obtained a signed statement from the former NCI Agency personnel below, who departed the NCI Agency within the last two years, that they were not previously involved in the project under competition (as defined in the extract of the NCI Agency Code of Conduct provided in Annex C-15 of this IFB):

Employee Name	Former NCIA Position	Current Company Position

The Bidder also hereby certifies that it does not employ and/or receive services from former NCI Agency Personnel at grades A5 and above or ranks OF-5 and above, who departed the NCI Agency within the last 12 months. This prohibition covers negotiations, representational communications and/or advisory activities.

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex C-15. NCI Agency AD. 05.00, Code of Conduct: Post Employment Measures

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

5. The ASB Chairman will be the approving authority upon recommendation by the Legal Adviser when the NCI Agency Personnel concerned by the above is the NCI Agency General Manager and will notify the ASB.
6. NCI Agency Personnel leaving the Agency shall sign a statement that they are aware of the post-employment measures set out in this Directive.
7. The post-employment measures set out in this Directive shall be reflected in the NCI Agency procurement documents, such as IFBs, and contract provisions.

Date

Signature of Authorised Representative

Printed Name

Title

Company

Annex D Bid Guarantee - Standby Letter of Credit

Standby Letter of Credit Number:

Issue Date: _____

Beneficiary: NATO CI Agency,
Financial Management Resource Centre,
Boulevard Leopold III,
B-1110 Brussels,
Belgium

Expiry Date: _____

1. We, (issuing bank) hereby establish in your favour our irrevocable standby letter of credit number {number} by order and for the account of (NAME AND ADDRESS OF BIDDER) in the original amount of €300,000.00 (Three Hundred Thousand Euro). We are advised this Guarantee fulfils a requirement under Invitation for Bid IFB-CO-115800-NHQ dated _____.

2. Funds under this standby letter of credit are available to you upon first demand and without question or delay against presentation of a certificate from the NATO CI Agency Contracting Officer that:

a) (NAME OF BIDDER) has submitted a Bid and, after Bid Closing Date (including extensions thereto) and prior to the selection of the lowest priced, technically compliant Bid, has withdrawn his Bid, or stated that he does not consider his Bid valid or agree to be bound by his Bid, or

b) (NAME OF BIDDER) has submitted a Bid determined by the Agency to be the lowest priced, technically compliant Bid, but (NAME OF BIDDER) has declined to execute the Contract offered by the Agency, such Contract being consistent with the terms of the Invitation for Bid, or

c) The NATO CI Agency has offered (NAME OF BIDDER) the Contract for execution but (NAME OF BIDDER) has been unable to demonstrate compliance with the security requirements of the Contract within a reasonable time, or

d) The NATO CI Agency has entered into the Contract with (NAME OF BIDDER) but (NAME OF BIDDER) has been unable or unwilling to provide the Performance Guarantee required under the terms of the Contract within the time frame required.

3. 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.

4. It is a condition of this letter of credit that the expiry date will be automatically extended without amendment for a period of sixty (60) calendar days from the current or any successive expiry date unless at least thirty (30) calendar days prior to the then current expiry date the NATO CI Agency Contracting Officer notifies us that the Letter of Credit is not required to be extended or is required to be extended for a shorter duration.

5. We may terminate this letter of credit at any time upon sixty (60) calendar days notice furnished to both (NAME OF BIDDER) and the NATO CI Agency by registered mail.

6. In the event we (the issuing bank) notify you that we elect not to extend the expiry date in accordance with paragraph 4 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 NATO CI Agency Contracting Officer which states

“The NATO CI 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 NATO CI Agency from, or on behalf of (NAME OF BIDDER), and the NATO CI 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.

7. The Beneficiary may not present the certificate described in paragraph 6 above until 20 (twenty) calendar days prior to a) the date of expiration of the letter of credit should {issuing bank} elect not to automatically extend the expiration date of the letter of credit, b) the date of termination of the letter of credit if {issuing bank} notifies the Beneficiary that the letter of credit is to be terminated in accordance with paragraph 6 above.

8. Multiple drawings are allowed.

9. Drafts drawn hereunder must be marked, “Drawn under {issuing bank} Letter of Credit No. {number}” and indicate the date hereof.

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. 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.

12. This Letter of Credit is subject to The International Standby Practices-ISP98 (1998 Publication) International Chamber of Commerce Publication No.590.

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IFB-CO-115800-NHQ
Book I – Instructions to Bidders

Annex E Clarification Request Form

Company Name _____ Submission Date _____

**INVITATION FOR BID
IFB-CO-115800-NHQ**

CLARIFICATION REQUEST FORM

NATO UNCLASSIFIED

Company Name _____

Submission Date _____

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

Company Name _____

Submission Date _____

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

Company Name _____

Submission Date _____

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

Annex F Technical Evaluation documents

F-1 CROSS REFERENCE / COMPLIANCE TABLE

Bidders shall complete column “BID REFERENCE” with Bid references that locate the technical proposal documentation required by the RFQ, e.g. section, paragraph, table (if applicable), page number etc.

One copy each of the duly completed Cross Reference/ Compliance Table is to be included in the Bid Administration Package, as well as the Technical Proposal Package.

Item	Bidding Instructions Ref	SOW Reference	EVALUATION CRITERIA	BID REFERENCE
1	3.6.2.5 – Annex F-1		The bidder has provided a fully completed Cross reference/Compliance table	<i>Bidder to complete</i>
	3.6.2.5 – Annex F-2-3		The bidder has provided the Past Performance Documents (Questionnaire and References)	
2		MS1	The bidder has provided proof of partnership status for the vendors as described in the SOW.	
3		MS2	The bidder has provided proof how restoration of services will be provided.	
4		MS3	The Bidder has provided a draft CLS Plan which clearly describes how the Bidder intends to address in detail how the Contractor intends to fulfil all requirements in this SOW.	
5		MS4	The Bidder has provided an offer for each unit of equipment using the requested service flavour as per the list under Annex D of the SOW.	

Item	Bidding Instructions Ref	SOW Reference	EVALUATION CRITERIA	BID REFERENCE
6		MS5 – SR1	The Bidder has provided evidence of a helpdesk functionality through provision of a helpdesk manual/procedures and helpdesk 24/7 phone number.	
7		MS6	The Bidder has provided manual(s), print screens and a description of functionalities as evidence of an on-line ticketing system.	
8		MS7	The Bidder has explained how it plans to support proactive maintenance on well identified parts of the Purchaser's ICT systems and infrastructure. Such pro-active maintenance shall support preventive measures in order to reduce the risk on outages or degradations of quality or performance.	
9	4.5.4	MS3, SR 1, TS 1-15 (one example)	Has the Bidder provided sufficient level of confidence with regards to the requirements in stated SOW references.	
10		MS8	The Bidder has provided an example of an acceptance document.	
11		MS9	The Bidder has provided proof on how End of Sales/End of Support will be announced during the contract period.	
12		MS10	The Bidder will provide an example on how the assessment (engineering evaluation) is done with regards to the replacement of parts technically compatible with the existing device/parts.	
13		MS11	The Bidder has provided example of how a Cisco device is updated in the OEM Vendors Maintenance Support database.	

Item	Bidding Instructions Ref	SOW Reference	EVALUATION CRITERIA	BID REFERENCE
14		MS12-13	The Bidder has provided an example of logistics data it will provide to the Purchaser related to removed and replaced equipment, taking in account the Purchaser's defective media retention policy (DMR).	
15		MS14-15	The Bidder has provided detailed process with regards to the RMA (Return Material Authorization) instructions for faulty items (for both NU/NR and NS items)	
16		MS16-21-22	The Bidder has provided the process on how information on the availability of software upgrades for any item covered within the scope of the Contract and support access to vendor software will be provided to the Purchaser.	
17		MS17-18-19	The Bidder has provided example of how license management with the relevant OEMs is performed. This includes a reporting.	
18		MS20	The Bidder has provided example of how software is updated in the OEM Vendors Maintenance Support database.	
19		MS23	The Bidder has provided a detailed process of the OEM Technical Assistance for Hardware and Software under scope of this Contract.	
20		SR2-SR3- SR4	The Bidder has provided named individuals of key personnel and agrees to comply to requirements.	
21		SR13	The Bidder has provided the Curriculum Vitae (CV) or resume of the all personnel and the profiles of the proposed personnel are compliant to the minimum	

Item	Bidding Instructions Ref	SOW Reference	EVALUATION CRITERIA	BID REFERENCE
			skills identified in SOW (SR5, SR6, SR7, SR8, SR9, SR10, SR12).	
22		SR14-SR15	The Bidder has provided a detailed process on how on-site incident intervention will be initiated.	
23		SR16-SR17-SR18-SR19-SR20	The Bidder has provided detailed overview on how on-site consultancy services will be initiated, the details on provisioning timelines, mitigation actions and acceptance criteria.	
24		SR21-SR22	The Bidder has provided detailed proof of extra support that will be provided in case the Purchaser decides to exercise the Special Events optional support.	
25		RS1	The Bidder has provided a detailed example of the reports concerning the OEM technical documentation or updates to existing OEM technical documentation, in scope of this Contract.	
26		RS2-RS3-RS7	The Bidder has provided an example of the quarterly and annual reports with information as stated within the SOW.	
27		RS4-RS5-RS8	The Bidder has provided statement agreeing to provide quarterly and annual reports before respectively the end of the first month after the quarter or the end of calendar year.	
28		RS6	The Bidder has provided statement agreeing to execute corrective actions within 15 calendar days in case on unacceptance by the Purchaser of the reports.	

Item	Bidding Instructions Ref	SOW Reference	EVALUATION CRITERIA	BID REFERENCE
29		DS1	The Bidder has provided detailed examples (3) of how it intends to provide and maintain a documentation library on the internal Purchaser's provided Sharepoint. Thorough knowledge of Sharepoint has to be provided.	
30		SC1-SC2	The Bidder has provided a list of all key personnel with a valid NATO Personal Security Clearance at least to the NATO SECRET level.	
31		AR1-AR2	The Bidder has provided agreement that access process to NATO HQ areas will follow guidelines as set out in SOW.	
32		POC1-POC2	The Bidder has provided named individuals as point of contact as stipulated in SOW.	

F-2 PAST PERFORMANCE QUESTIONNAIRE

Bidders shall ask 3 previous customers to complete the “Past Performance Questionnaire” and submit these as part of their technical proposal.

Questionnaire is included in the Bidding Instructions.

PAST PERFORMANCE QUESTIONNAIRE

<p>1. Contractor's Details <i>(the name, address, etc of the company that has <u>provided</u> the goods/services)</i></p>
<p>2. Customer's Details <i>(the name, address, etc of the company which has <u>received</u> the goods/services)</i></p>
<p>3. Customer's POC:</p> <p>Name: _____ Tel: _____</p> <p>Email: _____ Fax: _____</p>
<p>4. Contract reference/Title:</p>
<p>5. Contract type:</p> <p>() Firm Fixed Price* () Cost Reimbursement*</p> <p>() Best Value* () Other* (Please specify)</p> <p><i>(*) Mark with a cross</i></p>
<p>6. Period of Performance:</p> <p>From _____ to _____</p>
<p>7. Contract amount:</p> <p>- at the time of award: _____</p> <p>- after modifications: _____</p>
<p>8. Description of Contract Service:</p>
<p>9. Complexity of Work: () Difficult* () Routine* <i>(*) Mark with a cross</i></p>

10. Evaluation Factor	11. Comments (Attach additional sheets, if necessary.)	12. Rating ¹
a. Quality of Work		
b. Personnel		
c. Subcontractor Mgmt		
d. Business Relations		
e. Timeliness of Performance		
f. Customer Satisfaction		
g. Cost/Budget Control		
<p>13. Considering all of the information provided above, please rate the contractor's performance overall (*):</p> <p>() Excellent () Good () Fair () Poor () Unsatisfactory</p> <p>(*) <i>Mark with a cross</i></p>		
<p>14. Would you select this firm again? Please explain. (Attach additional sheet if necessary.)</p>		
<p>15. Name & Date</p> <p>16. Title</p>	<p>17. Signature</p>	

Past Performance Rating Guidelines:
Summarise Contractor Performance In each of the rating areas.
Assign each area a rating of Unsatisfactory, Poor, Fair, Good, Excellent.
Use the following instructions as guidance in making these evaluations.

There is no corresponding guidance for “Customer Satisfaction”.
Please use the comments area on the preceding form to justify the rating given “Customer Satisfaction”

Ratings	Quality of Work/Personnel/Service Compliance w/contract requirements Accuracy of reports Appropriateness of personnel Technical excellence	Cost Control Cost efficiencies Change orders issued	Timeliness of Performance Reliable Responsive to technical direction Completed on time	Business Relations/Sub Contractor Management Effective Mgmt Businesslike correspondence Responsive to contract requirements
Unsatisfactory	Non conformances are compromising the achievement of contract requirements	Cost issues are compromising performance	Delays are compromising achievement of contract requirements	Response is not effective
Poor	Non conformances require major customer resources to ensure achievement of contract requirements	Cost issues require major customer resources to ensure achievement of contract requirements	Delays require major customer resources to ensure achievement of contract requirements	Response is marginally effective
Fair	Non conformances require	Cost issues require minor customer	Delays require minor customer resources to	Response is somewhat effective

	minor customer resources to ensure achievement of contract requirements	resources to ensure achievement of contract requirements	ensure achievement of contract requirements	
Good	Non conformances do not impact achievement of contract requirements	Cost issues do not impact achievement of contract requirements	Delays do not impact achievement of contract requirements	Response is usually effective
Excellent	There are no quality problems	There are no cost issues	There are no delays	Response is effective

F-3 PAST PERFORMANCE REFERENCE

Please indicate 3 current or recent contracts with substantially similar scope and magnitude to the requirements.

Please provide evidence of your experience in the domain of the scope of this IFB by providing:

List of main expert, engineering and maintenance services provided in relation to three (3) different Purchasers over the past three (3) years, with details of the values, dates and indication of type of Purchaser (public or private sector). The three (3) Purchaser examples must have multiple hardware and software vendors such as is the case for NATO HQ. Please also provide certificates of good execution of maintenance support, duly signed and dated by the Purchasers.

1st reference:

Contract reference (if applicable)	
Start date of contract	
End date of contract	
Value of contract	
Customer's name	
Customer's Point of Contact capable of providing information giving name, telephone and email.	

2nd reference:

Contract reference (if applicable)	
Start date of contract	
End date of contract	
Value of contract	
Customer's name	
Customer's Point of Contact capable of providing information giving name, telephone and email.	

3rd reference:

Contract reference (if applicable)	
Start date of contract	
End date of contract	
Value of contract	
Customer's name	

Customer's Point of Contact capable of providing information giving name, telephone and email.	
--	--



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

BOOK II

PROSPECTIVE CONTRACT

CO-115800-NHQ

LEVEL 3 IT SUPPORT AT NATO CAMPUS



NCI AGENCY CONTRACT – SIGNATURE SHEET	
1. Original Number ___ of 2	2. Purchase Order Number :
3. Contract Number: CO-115800-NHQ	4. Effective date:
5. Contractor:	6. Purchaser: NCI Organisation represented by: The General Manager NATO Communications and Information Agency Boulevard Leopold III 1110 Brussels Belgium
7. Contract Scope: The Contractor shall deliver the Supplies and Services pertaining to the Level 3 ICT services in the NATO Campus (NNHQ), as detailed in the attached Schedule of Supplies and Services and the Statement of Work.	
8. Total Amount of Contract :	[CURR] __ (Firm Fixed Price) [CURR] __ (Not To Exceed)
9. Delivery: See attached Schedule of Supplies and Services. Purchaser is exempt from VAT and Customs Duties.	10. Ship to/ Mark for: See attached Schedule of Supplies and Services.
11. Contract Agreement: The Contractor agrees to furnish all items and perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. This agreement supersedes all previous communications, representations or understandings, either written or oral, and shall constitute the sole and only agreement between the Contractor and the Contracting Authority with respect to the subject matter hereof. The rights and obligations of the parties to this Contract shall be subject to and governed by the Special Provisions and the General Provisions attached to this Signature sheet.	
12. Signature of Contractor	13. Signature of Purchaser
14. Name and Title of Signer	15. Name and Title of Signer
16. Date signed by the Contractor	17. Date signed by the Purchaser

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IFB-CO-115800-NHQ

CONTRACT SPECIAL PROVISIONS

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**CONTRACT SPECIAL PROVISIONS
INDEX OF CLAUSES**

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ARTICLE 1 ORDER OF PRECEDENCE

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

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

- 2.1 Article 7 "Firm Fixed Price Contract" of the Contract General Provisions is replaced by Article 4 "Contract Type" of the Special Provisions.
- 2.2 Article 8 "Performance Guarantee" of the Contract General Provisions is supplemented by Article 33 "Performance Guarantee" of the Special Provisions.
- 2.3 Article 9 "Participating Countries" of the Contract General Provisions is supplemented by Article 7 "Participating Countries" of the Special Provisions.
- 2.4 Article 10 "Sub-Contracts" of the Contract General Provisions is supplemented by Article 16 "Sub-Contractors" of the Special Provisions.
- 2.5 Article 11 "Security" of the Contract General Provisions is supplemented by Article 20 "Security" of the Special Provisions.
- 2.6 Article 21 "Inspection and Acceptance of Work" of the Contract General Provisions is supplemented by Article 10 "Inspection and Acceptance" of the Special Provisions.
- 2.7 Article 22 "Inspection and Acceptance of Documentation" of the Contract General Provisions is supplemented by Article 11 "Review and Acceptance of Documentation" of the Special Provisions.
- 2.8 Articles 27 "Warranty of Work" and 31 "Software Warranty" of the Contract General Provisions are supplemented by Article 14 "Warranty" of the Special Provisions.
- 2.9 Article 38 – "Liquidated Damages" of the Contract General Provisions is replaced by Article 18 "Service Performance and Service Credits" of the Special Provisions.

ARTICLE 3 SCOPE

- 3.1 The scope of this Contract is to provide support in terms of Level 3 ICT services, including maintenance and training related to the Active Devices and Software installed at NATO Headquarters, as specified in Part I Schedule of Supplies and Services (SSS) and in accordance with Part IV Statement of Work (SOW) for the firm fixed prices stated in this Contract.
- 3.2 The Agreement and Acceptance of this Contract by the Parties neither implies an obligation on either part to extend the Contract beyond the specified scope or terms, nor to prohibit the Parties from mutually negotiating modifications thereto.
- 3.3 The Base period of performance is from 01 Jan 2024 until 31 Dec 2026. There are 5 x 1 optional year (Years 2027, 2028, 2029, 2030 and 2031).

ARTICLE 4 CONTRACT TYPE

- 4.1 This is a Firm-Fixed-Price (FFP) contract subject to Economic Price Adjustment (EPA).
- 4.2 From the Effective Date of Contract (EDC) to end of Year 3, the contract shall be FFP.
- 4.3 From Year 4 until the end of contract period of performance, the contract type becomes Fixed-Price with Economic Price Adjustment (FP-EPA), where price variation shall be applied.
- 4.4 The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as provided under other provisions of this Contract.
- 4.5 The Total Contract price is inclusive of all expenses related to the performance of the present Contract.
- 4.6 The Total Contract price in this Contract is Delivered Duty Paid (INCOTERMS 2010).

ARTICLE 5 ECONOMIC PRICE ADJUSTMENT

- 5.1 The price of this contract is subject (upwards or downwards) to adjustment within the limits defined herein:
 - i. All base period years 2024-26 for all CLINs are FFP, therefore shall not be subject to EPA.
 - ii. Price for Annual support starting after the base period (as of year 4) shall be adjusted (upwards or downwards), in accordance with the formula in paragraph 5.4 below at the time the options are exercised.

The labour (L) and material (M) indexes, shall be the ones published no later than 3 months before the start date of the performance of the option period.

- iii. The revision shall be based on the evolution of the Labour Cost Index and the Material (Producer Price) index, as published by OECD statistics (see paragraph [5.4.ii]).

5.2 The labour (L) and material (M) allocations and the portion of the contract price subject to price adjustment have been established, they remain fixed through the life of the contract and shall not be modified except in the event of significant changes to the scope of the contract.

5.3 When a price adjustment is due (i.e. at the beginning of yearly support option – starting with Year 4), the Contractor shall: (i) submit a revised Schedule of Supplies and Services in accordance with this EPA clause, (ii) show the total cumulated amount of price indexations implemented to date. The revised price (i.e. P) per the EPA formula becomes the new contract price. Contract amendment shall be executed to reflect the final contract prices as adjusted.

5.4 Economic Price Adjustment Formula

i.
$$P = P_{n-1} * (0.2 + (0.4 * (L_n / L_{n-1})) + (0.4 * (M_n / M_{n-1})))$$

In which

P_n Revised price for the yearly support applicable after EPA

P_{n-1} SSS prices at Year n-1

L_n Labour index value published for Q4 of Year n or the most recent available.

L_{n-1} Basic index for Labour value at Year n-1

M_n Material (Producer Price) index published for Q4 of Year n or the most recent available

M_{n-1} Basic index for Material (Producer Price) value at Year n-1.

ii. Indices

Labour (P & P_o)

OECD Stats – Unit labour costs and labour productivity, total economy (ULC_EEQ)

Subject – Unit Labour Costs

Measure – Index, seasonally adjusted

https://stats.oecd.org/viewhtml.aspx?datasetcode=ULC_EEQ&lang=en

Material (M & M_o)

OECD Stats – Producer Prices (MEI_PRICES_PPI)

Subject – Economic activities – Total producer prices - Manufacturing

Measure – Index

https://stats.oecd.org/viewhtml.aspx?datasetcode=MEI_PRICES_PPI&lang=en

- iii. The Contractor shall calculate the price adjustment and present in writing the calculation and revised prices for the subsequent year for approval.
- iv. Where any index figure published is stated to be a provisional figure, the contractor may opt
 - either: to use that provisional figure in its calculation and present an appropriate invoice,
 - or: to delay presentation of its invoice until a definitive index figure is published.
- v. No further adjustment will be allowed, up or down, following revision of any index figure if an invoice is presented using provisional indices.
- vi. The index applicable to the revision formula and to be read from the OECD website mentioned above, shall be the one from the country where the task is performed, provided that the currency applicable to the Quarterly support payment is the one from that country. In case the task is performed in a non-euro currency country but the Contractor initially bid in euro (Host Nation currency), the index to be used shall be the one from the Host Nation (Belgium).

ARTICLE 6 ADDITIONAL CONTRACT TASKS AND OPTIONS

- 6.1 The tasks identified in the Contract Schedule of Supplies and Services as Options (if any) are to be intended as options to be exercised by the Purchaser and at his sole discretion. The Purchaser shall have the right to exercise any of the listed priced options multiple times at his discretion any time during the performance of the Contract and up to its conclusion at the unit prices listed in the Schedule of Supplies and Services.
- 6.2 Should any options be exercised, the Purchaser will increase the firm fixed price of the Contract via a formal Contract Amendment by the amount of the line items so exercised and the period of performance of the Contract will be extended as mutually agreed when necessary.
- 6.3 The Purchaser may increase the quantity of supplies and services as set forth in any line item of Part I - Schedule of Supplies and Services at the prices stated therein any time during the period of performance of the Contract.
- 6.4 This right can be exercised multiple times for any of the line items, by increasing the firm fixed price of the Contract via a formal Contract Amendment, or by issuing a new contractual instrument.
- 6.5 In this case the Contractor shall honour such right at the same rates and conditions as stated in Part I - Schedule of Supplies and Services. If this right is exercised, delivery of the added items shall be to the same destination as specified in the basic Contract; unless otherwise specified on the written notice.

- 6.6 If the Contract provides for multiple destinations, the Purchaser will specify to which destination(s) the additional quantities are to be shipped. If the Purchaser specifies a destination that is not part of the basic Contract requirements, the Parties will agree to an equitable adjustment as may be required to reflect any additional costs incurred by the Contractor in making such delivery.
- 6.7 In no event shall the Contractor engage in the performance of any options or part thereof without the written consent of the Purchaser Contracting Authority.
- 6.8 In addition to the specific Contract options as identified above, the Purchaser reserves the right to order any foreseeable or additional Contract tasks or service deliverables, listed or not, either occasionally or at a further stage in the life of the project, which it deems necessary for the successful completion of the project. The additional tasks and/or deliverables shall be priced consistently with the rates provided by the Contractor as part of its proposal and included in this Contract by reference.
- 6.9 Except as otherwise provided for in this Contract, Contractor's price quotations for contract changes or modifications shall be provided at no cost to the Purchaser and shall have a minimum validity period of six (6) months from submission.
- 6.10 The Purchaser may, in writing, place an order for such additional tasks throughout the entire Contract period. Such an order may be placed within the framework of this Contract via the issuance of a Contract Amendment or be formulated via the issuance of a new contractual instrument
- 6.11 The Contractor understands that there is no obligation under this Contract for the Purchaser to exercise any of the optional line items and that the Purchaser bears no liability should it decide not to exercise the options (totally or partially). Further, the Purchaser reserves the right to order another Contractor (or the same), to perform the tasks described in the optional line items of the current Contract through a new Contract with other conditions.

ARTICLE 7 PARTICIPATING COUNTRIES

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

ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC, DENMARK, ESTONIA, FINLAND, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, NORTH MACEDONIA, NETHERLANDS, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TÜRKIYE, UNITED KINGDOM, UNITED STATES OF AMERICA.

- 7.2 None of the work, including project design, labor and services, shall be performed other than by firms from and within Participating Countries.
- 7.3 No material or items of equipment down to and including identifiable sub-assemblies shall be manufactured or assembled by a firm other than from and within a Participating Country.
- 7.4 The Intellectual Property Rights for all software and documentation used by the Contractor in the performance of the Contract shall vest with firms from and within Participating Countries and no royalties or license fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a Participating Country.

ARTICLE 8 COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 8.1 The Contractor warrants that it has read, understood and agreed to each and all terms, clauses, specifications and conditions specified in the Contract and that this signature of the Contract is an acceptance, without reservations, of the said Contract terms within their normal and common meaning.
- 8.2 The specifications set forth the performance requirements for the Contractor's proposed work as called for under this Contract. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that the work to be delivered will meet or exceed the performance requirements of the said specifications.
- 8.3 The Contractor hereby acknowledges that it has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this Contract.
 - a. Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or
 - b. Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- 8.4 Notwithstanding the "Changes" Article of General Provisions or any other clause of the Contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor's proposed work shall entitle the Contractor either to any increase in the firm fixed price as set forth in this Contract or to any extension of the delivery times for the work beyond the period of performance in the Schedule of Supplies and Services.

ARTICLE 9 PLACE AND TERMS OF DELIVERY

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

ARTICLE 10 INSPECTION AND ACCEPTANCE

- 10.1 Article 21 "Inspection, Acceptance of Work " in General Provisions is hereby supplemented with this Article:
- 10.2 The work to be provided by the Contractor's personnel under this Contract shall conform to the highest professional and industry standards and practices. Inspection of the services provided will be made by the Purchaser's Technical representatives or another authorised designee in accordance with the specifications in Part IV - Statement of Work. Services performed by the Contractor which do not conform to the highest professional and industry standards may result in the Purchaser requesting that such work be performed again at no increase in the price of the contract. Repeated instances of work performed which fails to meet the standards and practices may result in termination of the contract for Default.
- 10.3 Under the terms of this Contract, Acceptance will be made as follows and as specified in Part IV, Statement of Work (SOW):
1. Successful Service Delivery:
 - a. Written approval by the Purchaser of the Quarterly Reports and Maintenance Acceptance Reports.
 - b. Written approval by the Purchaser of the Annual Reports.
 2. On-site Consultancy Services: Written confirmation by the Purchaser of successful provision of the respective Services.
 3. Special Events: Written acceptance by the Purchaser of successful delivery
- 10.4 Review and Acceptance of documentation is specified in below Article 10 of the Contract Special Provisions.

ARTICLE 11 REVIEW AND ACCEPTANCE OF DOCUMENTATION

- 11.1 Article 22 "Inspection and Acceptance of Documentation" in General Provisions hereafter, is hereby supplemented with this Article.
- 11.2 Unless otherwise specified in the Statement of Work:
- 11.3 Upon delivery of the Draft Deliverable items, the Purchaser will have a period of two (2) weeks to review the items. At the end of the review period or before if deemed practical by the Purchaser, the Purchaser's comments will be presented to the Contractor in writing. The substance of such comments will pertain to items of error, non-conformity, omission and guidance within the Scope of Work. When applicable, a presentation of the deliverable item including the Purchaser's comments will be made

- by the Contractor to the Purchaser, at a time which coincides with a progress meeting.
- 11.4 During the review, if the specific Item requires proposal of dates for delivery or reviews, the Purchaser will either accept or adjust the proposed dates.
- 11.5 Within one (1) week after receipt of the Purchaser's comments (and associated progress meeting if appropriate), the Contractor shall incorporate changes, revisions and corrections required by the Purchaser and present the revised deliverable in Final Form to the Purchaser for inspection and acceptance in accordance with the SOW.
- 11.6 The Contractor shall not have the right to ask for additional periods if the delivered draft is considered not satisfactory by the Purchaser and therefore requires many changes and/or corrections.
- 11.7 The Purchaser has the right to reject non-conforming deliverables. The Purchaser, in addition to any other rights or remedies provided by law, or under the provisions of this Contract, shall have the right to require the Contractor at no increase in Contract price, to correct or replace non-conforming work, and in accordance with a reasonable delivery schedule as may be agreed by the Purchaser and the Contractor following the receipt of the Purchaser's notice of defects or non-conformance.
- 11.8 The acceptance by the Purchaser of the Contractor's documentation required by this Contract signifies that the documents delivered appear logical and consistent. The acceptance does not constitute an endorsement or approval of the design or proposed implementation by the Purchaser and does not relieve the Contractor of the obligation to meet the schedule and the performance requirements of this Contract in the event that the design eventually proves to be non-compliant in factory or field testing.

ARTICLE 12 INVOICES AND PAYMENT

- 12.1 Following Purchaser acceptance, in writing, payment for supplies and services furnished shall be made in the currency specified for the relevant portion of the Contract.
- 12.2 The term of the Contract may not be exceeded without prior approval of the Purchaser. In no case will the Purchaser make payment above the total of the corresponding CLINs.
- 12.3 Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain:
- a) Contract number CO-115800-NHQ
 - b) Contract Amendment number (if any),
 - c) Purchase Order number PO [...],[*TBD at Contract Award*]
 - 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).

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

CLIN(s)	Payment Milestone	Upon	Payment of CLIN value
1	Successful Service Delivery per Quarter	Acceptance of the quarterly report	25% of related year CLINs 1, 2 and 3
2	Optional CLINs	Subject to Contract Amendment(s)	

12.5 The invoice amount shall be exclusive of VAT and exclusive of all Taxes and Duties as per Article 26 "Taxes and Duties" of the NCI Agency General Provisions.

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

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

12.8 Payments for services and deliverables shall be made in the currency stated by the Contractor for the relevant Contract Line Item.

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

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

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

12.12 Invoices referencing : **CO-115800-NHQ and PO [TBD at Contract award]** shall be submitted in electronic format only to:

accountspayable@ncia.nato.int whilst copying the Contracting Officer as well, as specified in Article 13 "Contract Administration" below.

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

ARTICLE 13 SUPPLEMENTAL AGREEMENTS, DOCUMENTS AND PERMISSIONS

13.1 The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to Contract award, the execution of which by the Purchaser is/are required by national law or regulation. If any supplemental agreements, documents and permissions

are introduced after Contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to Contract signature, the Purchaser may terminate this Contract for Default, in accordance with the Article 39 of the General Provisions hereafter.

- 13.2 Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by national law or regulation and that have been identified by the Contractor prior to the signature of this Contract, but have not yet been finalized and issued by the appropriate governmental authority, are subject to review by the Purchaser.
- 13.3 If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Purchaser and the appropriate governmental authority cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.
- 13.4 For the purpose of this Contract the following National mandatory Supplemental Agreements are identified:

Type of Agreement	National Authority of Reference	Subject

ARTICLE 14 WARRANTY

- 14.1 Articles 27 “Warranty of Work” and 31 “Software Warranty” of the NCI Agency General Provisions hereafter, are supplemented with the following:
- 14.2 The Contractor shall warrant that the services provided by the Contractor staff shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature. The Contractor shall therefore possess a certification that is compliant with the requirements of Allied Quality Assurance Publication (AQAP) 2110, ISO 9001:2015, or an equivalent QA/QC regime.
- 14.3 In the event of any breach of the foregoing warranty, the Contractor shall, at its own expense, in its discretion either: (1) re-perform the non-conforming services to conform to this standard; or (2) pay to Purchaser an amount equal to a fixed daily fee of EUR 500 for the number of man-days that would have been lost due to inadequate performance. In order for a warranty claim to be effective, the Purchaser will give the Contractor

written notice specifying in detail the non-conformities within 60 days after performance of the non-conforming services.

- 14.4 The Contractor shall warrant the work and the performance thereof by its sub-Contractors and shall incur liability for such performance.
- 14.5 On-site interventions and related timelines shall be in line with the specifications in the Statement of Work.

ARTICLE 15 CONTRACT ADMINISTRATION

- 15.1 The Purchaser reserves the right to re-assign this Contract to a representative(s) for administrative purposes, in whole or in part, provided that the Purchaser shall always be responsible for its obligations under the Contract and for actions or lack of actions of its assigned administrator. The Purchaser undertakes to advise the Contractor in writing whenever this right is to be exercised.
- 15.2 All notices and communications between the Contractor and the Purchaser shall be written and conducted in the English language. Contract modifications shall only be valid when received in writing from the General Manager, NCI Agency, and/or the NCI Agency Contracting Authority.
- 15.3 Formal letters and communications shall be sent by e-mail to the official Points of Contact quoted in this Contract.
- 15.4 Informal notices and informal communications may be exchanged by all communication means, including telephone and e-mail. All informal communication must be confirmed by a formal letter or other formal communication to be contractually binding.
- 15.5 All notices and communications shall be effective on receipt.
- 15.6 Official Points of Contact:

Purchaser	Contractor
NATO Communications and Information Agency (NCI Agency) Boulevard Leopold III B-1110 Brussels Belgium	
For contractual matters: Attn: Title: Tel: E-mail:	For contractual matters: Attn: Title: Tel: Mobile: E-mail:

For technical/project management matters (Purchaser Technical Representative): Attn: Title: Tel: E-mail:	For technical/project management matters: Attn: Title: Tel: Mobile: E-mail:
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or to such address as the Purchaser may from time to time designate in writing.

ARTICLE 16 SUB-CONTRACTORS

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

ARTICLE 17 CONTRACTOR COTS RESPONSIBILITY

- 17.1 The Contractor shall monitor changes and/or upgrades to commercial off the shelf (COTS) software or hardware to be utilized under subject Contract as defined in the SOW.
- 17.2 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 support cost increase.
- 17.3 The Contractor will provide evidence with respect to performance of the equipment being proposed as well as data proving an improvement in performance and/or a reduction in price and/or life-cycle support costs. If necessary for evaluation by the Purchaser, the Contractor shall provide a demonstration of the proposed items. In case of price reduction, an equitable price adjustment shall be negotiated and included in the Contract through a formal Contract Amendment.
- 17.4 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 18 SERVICE PERFORMANCE AND SERVICE CREDITS

- 18.1 This Article applies to the Service Deliverables – Level 3 as defined in the Schedule of Supplies and Services.

- 18.2 If the Contractor fails to deliver or to perform the services within the prescribed performance levels specified in the SOW, the Contractor shall be charged with penalties as described and calculated in the relevant section of the SOW as the Purchaser's remedy for the damages directly arising out of the failure to deliver or perform the Services as specified in the SOW without prejudice of Clause 39 "Termination for Default" of the Contract General Provisions.
- 18.3 Service performance status shall align per the review periods as described in the SOW.
- 18.4 Charged penalties shall be deducted from the invoices covering the service period to which the penalties apply unless specified otherwise.
- 18.5 If corresponding value is not deducted from the quarterly invoice or from the total Contract amount but converted into a commensurate EUR value being transposed into the provision of specific additional support, agreed by both parties, the exchange rate to be used is the Euro foreign exchange reference rates of the Quarterly report date.

ARTICLE 19 SERVICE MODIFICATIONS

- 19.1 The Purchaser shall have the right to increase or decrease the services by item and by service flavour as he deems necessary.
- 19.2 The Purchaser shall inform the Contractor about a change in the services by issuing a service request. Each change in services shall be formalized by means of a Contract Amendment in accordance with Clause 16 "Changes" of the Contract General Provisions.
- 19.3 The delivery date for a new service / effective date of reduction of services will be stipulated in the service request and shall become contractually binding by means of the relevant Contract Amendment.

ARTICLE 20 SECURITY

- 20.1 This Article supplements Article 11 "Security" of the NCI Agency General Provisions hereafter.
- 20.2 The Contractor is responsible, in accordance with NATO and National Security regulations, for the proper handling, storage and control of any classified documents and information as may be furnished to the Contractor in relation to the performance of the present Contract.
- 20.3 The security classification of this Contract is "NATO UNCLASSIFIED".
- 20.4 Contractor's personnel visiting or working at Purchaser's facilities in connection with this Contract shall hold a confirmed NATO SECRET security clearance valid for the duration of the Contract at the Effective Date of Contract (EDC). This requirement applies to all sub-Contracts issued by the Contractor for the effort under this prime Contract.
- 20.5 It is the responsibility of the Contractor to ensure that its personnel obtain the required security clearances and transmit this information to the purchaser and to the sites to be visited at least 3 weeks before personnel deployment that the site may perform the appropriate administration.

- 20.6 The Contractor is advised that the personnel security process may be lengthy. The Purchaser bears no responsibility for the failure of the Contractor to secure the required clearances for its personnel or sub-Contractor's personnel within the necessary time.
- 20.7 The Contractor bears full responsibility and liability under the Contract for delays arising from the failure of the Contractor to adhere to the security requirements.
- 20.8 Delay caused by non-compliance of the Security clearance requirements under this Contract, may not be used by the Contractor as the basis for a claim of adjustment or an extension of schedule nor can the denial of access be considered a mitigating circumstance in the case of an assessment of penalties or a determination of Termination for Default by the Purchaser.
- 20.9 All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance applicable security regulations.
- 20.10 In the absence of valid security clearances for the Contractor's personnel during the performance of the Contract, the Purchaser reserves the right to terminate the Contract for Default as per the "Termination for Default" Article of the NCI Agency General Provisions.
- 20.11 Contractor's personnel acting as Privileged Users shall also be required to comply with the regulations described under the Code of Conduct for NATO CIS Privileged Users.
- 20.12 The Contractor shall be required to handle and may be required to store classified material to the level of "NATO SECRET" in his facility. The Contractor shall have the appropriate facility and personnel clearances.
- 20.13 The Contractor shall note that there are restrictions regarding the carriage and use of electronic devices (e.g. laptops) in Purchaser secured locations. The Contractor shall be responsible for satisfying and obtaining from the appropriate site authorities the necessary clearance to bring any such equipment into the facility.

ARTICLE 21 KEY PERSONNEL

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

- 21.4 Under the terms of this Article, Key Personnel may not be voluntarily diverted by the Contractor to perform work outside the Contract. In cases where the Contractor has no control over the individual's non-availability (e.g., resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser of a change of key personnel within five (5) days of the date of knowledge of the prospective vacancy and offer a substitute with equivalent qualifications with no additional costs for the Purchaser.
- 21.5 Contractor personnel proposed in substitution of previously employed Contractor Key Personnel shall be interviewed and approved by Purchaser Project Manager before substitution acceptance is granted in writing by the Purchaser contracting Authority.
- 21.6 In the event of a substitution of any key personnel listed in paragraph 20.3 above and prior to commencement of performance, the Contractor shall provide a CV for the personnel proposed. The CV shall clearly stipulate:
- Full details of professional and educational background;
 - Evidence that the personnel is qualified in pertinent contract related areas per the SOW.
- 21.7 The Contractor shall take all reasonable steps to avoid changes to Key Personnel assigned to this project except where changes are unavoidable or are of a temporary nature. Any replacement personnel shall be of a similar grade, standard and experience as the individual to be substituted.
- 21.8 Furthermore, even after acceptance of a Contractor's staff member on the basis of his/her CV and/or interview, the Purchaser reserves the right to reject the Contractor's staff member, if the individual is not meeting the required level of competence. The Purchaser will inform the Contractor, in writing in cases where such a decision is taken and the Contractor shall propose and make another staff member available within ten (10) working days after the written notification. The Purchaser shall have no obligation to justify the grounds of its decision and its acceptance of staff members shall in no way relieve the Contractor of its responsibility to achieve the contractual and technical requirements of this Contract nor imply any responsibility to the Purchaser.
- 21.9 After acceptance in writing by the Purchaser of a substitution of staff, based on a CV and/or interview, paragraph shall be applicable again, if necessary.
- 21.10 The Purchaser may at any time require the Contractor immediately to cease to employ the above named Key Personnel under the present contract if, in the opinion of the Purchaser, his/her employment is undesirable. The Contractor shall replace any such employee in accordance with paragraph 20.5 and 20.6 above.
- 21.11 In those cases where, in the judgment of the Purchaser, the inability of the Contractor to provide a suitable replacement in accordance with the terms of this Article may potentially endanger the progress under the

Contract, the Purchaser shall have the right to terminate the Contract in accordance with the terms of the General Provisions Article entitled "Default".

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

ARTICLE 22 NON DISCLOSURE AGREEMENT

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

ARTICLE 23 OPTIMISATION

- 23.1 The Contractor is encouraged to examine methods and technology that may increase efficient operation and management of the system(s) on which the required services are provided to the Purchaser, thus reducing operating and manpower costs and the overall cost to the Purchaser
- 23.2 The Contractor may, at any time during the Period of Performance, introduce Change Proposals offering innovations and/or technology insertion with a view towards reducing the overall cost to the Purchaser.
- 23.3 Any such Proposal submitted shall cite this Clause as the basis of submission and provide the following information:

- 23.4 A detailed description of the technical changes proposed, the advantages, both long and short term, and an analysis of the risks of implementation;
- 23.5 A full analysis of the prospective savings to be achieved in both equipment and manpower, including, as appropriate, NATO manpower, travel, energy consumption, etc.; A full impact statement of changes that the Purchaser would be required to make, if any, to its operational structure and management procedures;
- 23.6 A fully detailed proposal of any capital investment necessary to achieve the savings;
- 23.7 A schedule of how the changes would be implemented with minimal negative impact to on-going performance and operations.

ARTICLE 24 SOFTWARE

- 24.1 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 25 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

- 25.1 Subject to the rights of third parties, all rights in the results of work undertaken by or on behalf of the Purchaser for the purposes of this Contract, including any technical data specifications, report, drawings, computer software data, computer programs, computer databases, computer software, documentation including software documentation, design data, specifications, instructions, test procedures, training material produced or acquired in the course of such work and, in particular, all rights, including copyright therein, shall vest in and be the sole and exclusive property of the Purchaser.

ARTICLE 26 INDEMNITY

- 26.1 The Contractor will indemnify and hold harmless NATO, its servants or agents, against any liability, loss or damage arising out of or in connection of the Deliverables and Services under this Contract, including the provisions set out in Articles 29 "Patent and Copyright indemnity" and 30 "Intellectual Property" of the NCI Agency General Provisions.
- 26.2 The parties will indemnify each other against claims made against the other by their own personnel, and their sub-Contractors (including their personal representatives) in respect of personal injury or death of such personnel or loss or destruction of or damage to the property of such personnel.

- 26.3 NATO will give the Contractor immediate notice of the making of any claim or the bringing of any action to which the provisions of this Article may be relevant and will consult with the Contractor over the handling of any such claim and conduct of any such action and will not without prior consultation and without the consent of the Contractor settle or compromise any such claim or action.
- 26.4 In the event of an accident resulting in loss, damage, injury or death arising from negligence or willful intent of an agent, officer or employee of NATO for which the risk has been assumed by the Contractor, the cause of the accidents will be investigated jointly by the Parties and the extent to which NATO will be liable to recompense the Contractor will be determined together.

ARTICLE 27 TECHNICAL DIRECTION

- 27.1 At the site of efforts, the Purchaser may assign Technical Representatives who will monitor work in progress and provide Contractor personnel with instruction and guidance (within the general scope of work) in performance of their duties and working schedule. The Technical Representatives do not have the authority to change the terms of the Contract or to increase the overall cost, duration or level of effort or services of the Contract. The Technical Representatives do have the authority, within the general scope of work, to provide direction to the Contractor personnel in performance of their duties.
- 27.2 In case the Contractor believes that any technical direction received from the Technical Representative constitutes a change to the terms, conditions and/or specifications of the Contract, it shall immediately inform in writing the Purchaser Contracting Authority, who will either confirm or revoke such direction. If such direction is confirmed as a change, this change will be formalized by written amendment to the Contract.
- 27.3 Failure of the Contractor to notify the Purchaser Contracting Authority of direction constituting change of the Contract will result in a waiver of any claims pursuant to such change.

ARTICLE 28 CARE AND DILIGENCE OF PROPERTY

- 28.1 The Contractor shall use reasonable care to avoid damaging buildings, walls, equipment and vegetation (such as trees, shrubs and grass) on the work site. If the Contractor damages any such buildings, walls, equipment or vegetation, it shall repair the damage as directed by the Purchaser and at no expenses to the Purchaser. If it fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.
- 28.2 The Purchaser shall exercise due care and diligence for Contractor's furnished equipment, tools and materials on site premises. The Purchaser will not assume any liability except for gross negligence and willful misconduct on the part of the Purchaser's personnel or agents.

28.3 The Contractor shall, at all times, keep the site area, including storage areas used by the Contractor, free from accumulations of waste. On completion of all work the Contractor is to leave the site area and its surroundings in a clean and neat condition.

ARTICLE 29 INDEPENDENT CONTRACTOR

29.1 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 30 APPLICABLE REGULATIONS

30.1 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.

30.2 The Contractor shall take any necessary measure to protect the life and health of persons working or visiting the work area occupied by him. These measures include compliance with the country of performance's health and safety provisions.

30.3 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 31 AUDITING AND ACCOUNTING

31.1 The Contractor's accounting and auditing procedures under this Contract shall be in compliance with the applicable Contractor National standards governing national defense contracts.

31.2 The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with the prescription of Article 12 "Invoices and Payment" of the Contract Special Provisions.

31.3 In the event of this Contract being terminated in accordance with Article 40 "Termination for Convenience of the Purchaser" of General Provisions, the Contractor shall provide within ninety (90) days of the formal date of termination a detailed statement of all costs incurred since the initiation of the programme, together with the statement of all outstanding commitments for which the Contractor is legally liable.

ARTICLE 32 RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT

32.1 The Contractor shall inform its employees under this Contract of the terms of the Contract and the conditions of the working environment.

32.2 Specifically, Contractor personnel shall be made aware of all risks associated with the performance under this Contract, the conditions of

site in which the performance is to take place and living conditions while performing within the boundaries of the Contract.

- 32.3 The selection of adequate personnel shall remain sole the responsibility of the Contractor.

ARTICLE 33 PERFORMANCE GUARANTEE

- 33.1 As a guarantee of performance under the Contract, the Contractor shall deposit with the Purchaser within ten (10) calendar days from the Effective Date of Contract, a bank guarantee to the value of ten per cent (10%) of the total Contract Price.
- 33.2 Such guarantee, the validity of this shall not elapse before the expiration of the warranty period as specified in Article 14 shall be made payable to the Purchaser and may be delivered in the form of:
- a) A certified cheque;
 - b) An irrevocable letter of credit; or
 - c) A bank guarantee such as a performance bond or promissory note.
- 33.3 The terms of the guarantee shall allow for payment to 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.
- 33.4 Certified cheques issued to fulfil the requirements of the 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.
- 33.5 The irrevocable letter of credit, performance bond or promissory note shall be subject to Belgian Law and financial practices and shall be issued by a Belgian bank or a Belgian affiliate of a non-Belgian bank licensed to operate in Belgium unless otherwise authorized by the Purchaser.
- 33.6 The Contractor shall request in writing relief from the performance guarantee upon expiration of the service period as specified in the Contract and, where appropriate, such relief will be granted by the Purchaser.
- 33.7 The Contractor shall be responsible, as a result of duly authorized adjustment in the total Contract price and/or period of performance by the Purchaser, for obtaining a commensurate extension and increase of the performance guarantee, the value of which shall not be less than ten per cent (10%) of the Contract Price (including all amendments), and for depositing such guarantee with the Purchaser within ten (10) calendar days from the effective date of the aforesaid duly authorized adjustment.
- 33.8 The failure of the Contractor to deposit such performance guarantee with the purchaser within the specified time frame, or any extension thereto granted by the Purchaser's Contracting Authority will constitute material

breach of the Contract and shall be subject to Article 39 "Termination for Default for Default" of the NCI Agency General Provisions.

- 33.9 The rights and remedies provided to the Purchaser under this Article are in addition to any other rights and remedies provided by law or under this Contract. The certificate described in this Article at 32.3 above shall not be regarded as a Termination for Default and this Clause is in addition to and separate from Article 39 "Termination for Default" of the NCI Agency General Provisions.

ARTICLE 34 ASSIGNMENT

- 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.

ARTICLE 35 TRANSPORTATION OF EQUIPMENT

- 35.1 All supplies covered under this Contract shall be transported from and to final destination at the responsibility of the Contractor. The Purchaser shall not be liable for any storage, damage, accessorial or any other charges involved in such transporting of supplies.
- 35.2 All transportation costs of repaired/replaced items shall be at cost to the Contractor.

ARTICLE 36 CONTRACTOR'S PERSONNEL WORKING AT PURCHASER FACILITIES

- 36.1 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.
- 36.2 Purchaser reserves the right to provide Purchaser Facilities for Contractor Key Personnel. In the event Purchaser does provide Purchaser Facilities, the Facility Representative shall provide such available administrative and technical facilities for Contractor's personnel working at Purchaser's Facilities for the purpose of the Contract as in the opinion of the Facility Representative may be necessary for the effective and economical discharge of work under the Contract. These facilities may be provided free at the discretion of the Facility Representative. The Contractor shall be responsible for ascertaining what necessary facilities will be available and whether they will be provided free of charge, or determining what charges are payable.
- 36.3 The Contractor shall have no claim against the Purchaser for any such additional cost of delay occasioned by the closure for holidays, or other

reasons, where this is generally published or made known to the Contractor by the Purchaser or his authorized representatives.

- 36.4 Notwithstanding the provisions of the "Purchaser Furnished Facilities" Clauses above, where those conditions form part of the Contract, the Contractor shall except as otherwise provided for in the Contract, make good or, at the option of the Purchaser, pay compensation for all damage occurring to any Purchaser's Facilities occasioned by the Contractor, or by his servants, agents or sub-contractors, arising from his or their presence on Purchaser Facilities in connection with the Contract; provided that this Conditions shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to, by his neglect, or default or the neglect or default of his servants, agents of sub-contractors, or by any circumstances within his or their control.
- 36.5 All property of the Contractor while at a Purchaser Facility shall be at the risk of the Contractor, and the Purchaser shall accept no liability for any loss or damage, except to the extent that any loss or damage is the result of a wilful act or gross negligence on the part of the Purchaser's employees or agents.

ANNEX A: NCI AGENCY NON-DISCLOSURE DECLARATION

We, the undersigned..... (Company) duly represented by (hereinafter "Contractor") do hereby certify that we shall ensure that the following conditions be accepted and observed by all (Contractor) employees working under CO-115800-NHQ

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-115800-NHQ.

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-115800-NHQ, 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-115800-NHQ, 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.

ANNEX B: PERFORMANCE GUARANTEE STANDBY LETTER OF CREDIT

Standby Letter of Credit Number: _____

Issue Date: _____

Initial Expiry Date: _____

Final Expiry Date: _____

Beneficiary: NATO Communications and Information Agency,
Financial Management,
Boulevard Leopold III, B-1110, Brussels
Belgium

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

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

Such certificate shall be accompanied by the original of this letter of credit.

4. This Letter of Credit is effective the date hereof and shall expire at our office located at _____ (Bank Address) on _____. All demands for payment must be made prior to the expiry date.
5. It is a condition of this letter of credit that the expiry date will be automatically extended without amendment for a period of one (1) year from the current or any successive expiry date unless at least 90 (ninety) calendar days prior to the then current expiry date we notify you by registered mail and notify (NAME OF CONTRACTOR) that we elect not to extend this letter of credit for such additional period. However, under no circumstances

will the expiry date extend beyond _____ (“Final Expiry Date”) without amendment.

6. We may terminate this letter of credit at any time upon 90 (ninety) calendar days’ notice furnished to both (NAME OF CONTRACTOR) and the NCI Agency by registered mail.
7. In the event we (the issuing bank) notify you that we elect not to extend the expiry date in accordance with paragraph 6 above, or, at any time, to terminate the letter of credit, funds under this credit will be available to you without question or delay against presentation of a certificate signed by the NCI Agency Contracting Officer which states:

“The NCI Agency has been notified by {issuing bank} of its election not to automatically extend the expiry date of letter of credit number {number} dated {date} pursuant to the automatic renewal clause (or to terminate the letter of credit). As of the date of this certificate, no suitable replacement letter of credit, or equivalent financial guarantee has been received by the NCI Agency from, or on behalf of (NAME OF CONTRACTOR). (NAME OF CONTRACTOR) has, therefore, not fulfilled its obligations under Contract No. _____ dated _____ between NCI Agency and (NAME OF CONTRACTOR), and the NCI Agency, as beneficiary, hereby draws on the standby letter of credit number _____ in the amount of (Amount up to the maximum available under the LOC), such funds to be transferred to the account of the Beneficiary number _____ (to be identified when certificate is presented).”

Such certificate shall be accompanied by the original of this letter of credit and a copy of the letter from the issuing bank that it elects not to automatically extend the standby letter of credit, or terminating the letter of credit.

8. The Beneficiary may not present the certificate described in paragraph 7 above until 20 (twenty) calendar days prior to a) the date of expiration of the letter of credit should {issuing bank} elect not to automatically extend the expiration date of the letter of credit, b) the date of termination of the letter of credit if {issuing bank} notifies the Beneficiary that the letter of credit is to be terminated in accordance with paragraph 6 above.
9. Multiple partial drawings are allowed to the maximum value of the standby letter of credit.
10. This letter of credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, or amplified by reference to any document, instrument, or agreement referred to herein (except the International Standby Practices (ISP 98) hereinafter defined) or in which this letter of credit is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.
11. This Letter of Credit is subject to The International Standby Practices-ISP98 (1998 Publication) International Chamber of Commerce Publication No.590.

NATO UNCLASSIFIED

**NATO COMMUNICATIONS AND INFORMATION
AGENCY**



CONTRACT GENERAL PROVISIONS

V 1.0 dated 16 Oct 2014

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ANNEX 1 TO GENERAL PROVISIONS: PURCHASER'S PRICING PRINCIPLESA1-1

1. ORDER OF PRECEDENCE

In the event of any inconsistency in language, terms or conditions of the various parts of this Contract, precedence will be given in the following order:

- 1.1. The Signature Page;
- 1.2. The Contract Schedules, Part I;
- 1.3. The Contract Contract Special Provisions, Part II;
- 1.4. The Contract General Provisions, Part III;
- 1.5. The Statement of Work, Part IV of the Contract;
- 1.6. The Annexes to the Statement of Work.

2. DEFINITIONS OF TERMS AND ACRONYMS

- 2.1 **Assembly-** An item forming a portion of equipment that can be provisioned and replaced as an entity and which normally incorporates replaceable parts or groups of parts.
- 2.2 **Acceptance-** Acceptance is the act by which the Contracting Authority recognises in writing that the delivered Work meets the Contract requirements..
- 2.3 **Claims-** A written demand or written assertion by one of the Parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or in relation to this Contract.
- 2.4 **Clause-** A provision of the Special or General Provisions of this Contract.
- 2.5 **Codification Authority-** The National Codification Bureau (NCB) or authorised agency of the country in which the Work is produced.
- 2.6 **Commercial Off-the-Shelf Items (COTS)-** The term “Commercially Off-the-Shelf Item (COTS)” means any item that:is a commercial item, customarily used by the general public, that has been sold, leased, or licensed to the general public or has been offered for sale, lease or license to the general public;
 - a) is sold in substantial quantities in the commercial marketplace; and
 - b) is offered to the Purchaser, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.
- 2.7 **Component-** A part or combination of parts, having a specific function, which can be installed or replaced only as an entity.

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- 2.8 **Contractor Background IPR-** Any IPR owned by the Contractor and/or any Sub-contractor or licensed by a third party to the Contractor which is not created in relation to or as the result of work undertaken for any purpose contemplated by the Contract and which is needed for the performance of the Contract or for the exploitation of Foreground IPR.
- 2.9 **Correction-** Elimination of a Defect.
- 2.10 **Contract-** The agreement concluded between the Purchaser and Contractor, duly signed by both contracting parties. The Contract includes the documents referred to in Clause 1 (Order of Preference).
- 2.11 **Contracting Authority-** The General Manager of the NCI Agency, the Director of Acquisition, the Chief of Contracts of the NCI Agency or the authorised representatives of the Chief of Contracts of the NCI Agency.
- 2.12 **Contractor-** The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.
- 2.13 **Day-** A calendar day
- 2.14 **Defect-** Any condition or characteristic in any Work furnished by the Contractor under the Contract that is not in compliance with the requirements of the Contract.
- 2.15 **Deliverable-** Any and all goods (including movable and immovable goods) to be delivered pursuant to the terms of this Contract including, without limitation, building, raw materials, components, intermediate Assemblies, Parts, end products, equipment, documentation, data, software.
- 2.16 **Design Defect-** Defect attributable to incompatibility, unsuitability or erroneous application of theory, drawings or formula.
- 2.17 **Effective Date of Contract (or "EDC")-** The date upon which this Contract is deemed to start. Unless otherwise specified, a Contract enters into force on the date of the last signature of the Contract by the Parties.
- 2.18 **Failed Component-** A part or combination of parts, having a specific function, which can be installed or replaced only as an entity which ceases to perform in a manner consistent with its intended use and specifications of the Contract.
- 2.19 **Foreground IPR -** Any IPR created by the Contractor or any subcontractor of the Contractor in the course of or as the result of work undertaken for any purpose contemplated by the Contract.
- 2.20 **IPR-** Any intellectual property rights of any qualification irrespective of their stage of development or finalisation, including but not limited to patents, trademarks (registered or not), designs and models (registered or not) and applications for the same, copyright (including on computer software), rights in databases, know-how, confidential information and rights in records (whether or not stored on computer) which includes technical and other data and documents.

- 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).

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

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

The Contract General Provisions

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

IFB-CO-115800-NHQ
Provision of Level 3 IT Support at NATO Campus
Statement of Work (SOW)

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Provision of Level 3 IT Support at NATO Headquarters

1. Introduction

NCI Agency CIS Support Unit (CSU) Brussels, located in Brussels (BEL) is the primary Information, Communications and Technology (ICT) service provider for 24/7 support to the Secretary General, the International Staff (IS), the International Military Staff (IMS), the NATO Enterprise and other Customers in the NATO Headquarters in Brussels. CSU Brussels enables end-to-end CIS services as it installs, operates, maintains and supports the full range of CIS capabilities.

There are multiple suppliers used in the ICT component of the Headquarters and each component requires vendor support arrangements for maintenance support.

The document describes the detailed requirements for the provision of Coordination, Operation and Maintenance services covering the vendor support arrangements for maintenance support.

2. Scope

The Contract Scope of Work concerns the support of Level 3 ICT services, including maintenance and training related to the Active Devices and Software installed at NATO Headquarters. Service provisioning shall take place at NATO Headquarters campus (Brussels, Belgium).

The objective of the support arrangement is to provide a centralized framework contract covering Level 3 IT Support in niche areas, such as for example Servers, Storage, Networking, Security, Software, and more and arrange for the underpinning support contract with a Contractor and/or the OEM vendors. The activities shall include hardware repairs and replacement, adequate supply support for maintenance activities, software support, consultancy, training, incident support and all other 3rd level support beyond the Purchaser's staff expertise.

The management of the respective Level 3 IT Support Agreements shall be led by a Level 3 Maintenance Manager, and organized as such to enable the NCI Agency and NATO to receive Level 3 support on a 24/7 basis, if and where required and as further specified in the Statement of Work. The requested support services will be subject to key operational and logistics performance targets. The Contractor shall assist the NATO IT organization in managing the maintenance and support services provided by the OEM vendors by having representation on

site and embedded within the Purchaser's IT Organization. As the NCI Agency and NATO have unique security and language requirements, the Contractor shall ensure to meet the Level 3 IT Support security restrictions and regulations and shall present a solution that is supportable without direct connections to other systems.

3. Management and Implementation: Levels of Support

Support is organised in three levels. The first and second level of support is executed by the Purchaser. The Contractor shall offer third level of support, and maintain a log of all actions carried out by the Contractor and periodically report. The Purchaser shall be able to access all logs at all times.

3.1. Level 1 Support

The support level provides first-line support for incidents when they occur by following the Purchaser incident management process. This support is embedded within the different functional departments within Operations Centre, Customer Support Units (CSUs) and Service Lines. Responsibilities include:

- Recording all incidents.
- Analysing for correct categorization and prioritization in accordance with Service Level Agreements.
- Routing incidents to support specialist groups when required.
- Providing resolution and recovery of incidents not assigned to resolver groups.
- Closing incidents once confirmed by user that service has been returned to normal operation.
- Providing leadership, monitoring, tracking and communication of incidents.
- Keeping users and the Service Desk informed about incident progress.
- Escalating incidents to level 2 as necessary per established escalation policies or as per SLA.

3.2. Level 2 Support

Provides specialist technical support to incident investigation and diagnosis. This level performs end-to-end (e2e) service monitoring and takes pre-defined actions to resolve the incident and recover the services impacted. This level is offered by the NCI Agency Operations Centre and by the NCI Agency Service Lines; the work is performed by network and system engineers. They are responsible for escalating incidents and identified problems to the next level of support at the third line. They are further responsible for:

- Accepting incidents that require additional technical expertise from Level 1.
- Providing timely updates to incidents records commensurate with their assigned priority.

- Providing accurate post incident resolution statements for the knowledge database.

3.3. Level 3 Support

This level provides specialist service and resource support for individual services and systems. They are the service or system manager or subject matter experts (SMEs). This level liaises with external product and service suppliers in pursuit of incident resolution when required. They are also responsible for:

- Accepting incidents that require additional technical expertise from Level 2.
- Be the Incident Manager
- Providing timely updates to incidents records commensurate with their assigned priority.
- Providing accurate post incident resolution statements for the knowledge database (Known Error Data Base).

This third level of support shall constitute remediation of software bugs as well as hardware failures, include patching and upgrades. This level shall include vendor and Original Equipment Manufacturer (OEM) Technical Assistance and maintenance in order to address above mentioned Software and Hardware errors.

If a certain type of failure has an important impact on the Purchaser's users or operations because of its frequency of occurrence, or because of the large number of users that is impacted by it, this type of failure can be categorized as "problem" by the Purchaser. The Purchaser Level 1 and 2 support will drive Problem Management in identifying root cause, mitigation actions and remediation. The Contractor shall support resolution of the root cause of the problem within its role as contract maintenance supplier.

Categorization of a failure as a "problem" shall be the sole responsibility of the Purchaser, taking into account the professions best practices:

- occurrence rate of the same type of failure;
- number of users impacted by the failure.

4. Service Deliverables – Level 3

4.1. Maintenance services - General

The Contractor shall provide Service Support to the NATO Head Quarters Campus installed baseline by instigating active OEM vendor service contracts, which provide hardware replacement, software upgrades, technical assistance to incident support and 3rd level support required to ensure operational performance of ICT services at NATO Head Quarters Campus. The Contractor shall provide Service Support in accordance with the Service Flavours indicated

in the Schedule of Supplies and Services (SSS) – also detailed per item under the SSS sub-sheets.

In particular, the Contractor shall achieve incident resolution targets as detailed in [Annex A](#). This can be achieved through a combination of pro-active support, site interventions, technical assistance, and spare parts selection and provision.

The Purchaser defines three (3) Service flavours as follows:

	Service flavours		
	Gold (4 hrs)	Silver (Next Business Day)	Bronze (Next Business Day)
Hardware replacement	x	x	spares solution
Software support (bug fixes, updates, etc)	x	x	x
Technical Assistance	x	x	x

Concerning the Bronze service flavour, the Contractor shall also ensure hardware replacement. However this does not imply a maintenance service contract with the OEM vendor.

The Purchaser shall hold back-up copies of the software and data on its work stations and servers. The Contractor shall be liable for possible damage caused by the loss, deterioration or destruction of such data or for the expense of rebuilding or replacing destroyed or corrupted data, of which he is directly responsible for.

The Contractor shall be responsible for the maintenance services limited to the individual items of equipment and shall not be responsible for integration of supplied equipment in NATO's environment. The Contractor must ensure that the replaced item returns to the same original operational functionality.

MS1 The Contractor shall ensure partnership status will be in place with those vendors as necessary under this Contract.

MS2 The Contractor shall be required to intervene to support restoration of services regardless of the incident origin, where services need to be restored as quickly as possible, and whatever the cause and in complex situations, where Purchaser's operations teams require the support of the specialists of the contract.

However, only if the Purchaser does not manage to restore services through its own teams, for whatever reason, the Purchaser will call for on-site intervention by the OEM through the Contractor. Calls for on-site intervention should be the exception. The

Contractor is expected to contribute to the minimization of the number of on-site interventions.

MS3 At the start of the Level 3 IT support period, the Contractor shall further develop and complete, provide and implement a Contractor Logistics Support CLS Plan (CLSP). The CLSP shall explain in detail how the Contractor intends to fulfil all requirements in this SOW. The CLS Plan shall clearly address (as a minimum but not limited to) the following:

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

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

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.

The Contractor shall describe per equipment how the support requirements will be offered. Per OEM equipment, location and type, the information shall contain:

- Certification of the Contractor by OEM equipment and type (Gold Partner Certification,...);
- Tier-1 (buying active maintenance services directly from the OEM) or Tier-2 (buying through a distributor of the OEM) distributor;

Added value of the partnership agreement the Contractor has with the OEM in the context of this Contract. The Contractor shall include any relevant documentation (statements from OEM, certificates, agreements,...).

MS4 Support arrangements per service flavor and location, as specified under this Contract, shall be provided by the Contractor for each unit of equipment (or its replacement item).

The equipment community field is used only for purchaser tracking information. It needs to be maintained by the Contractor but has no direct impact on service delivery.

MS5 Some of the items are certified TEMPEST products and require special procedures and may also require TEMPEST certified subcontractors in order to maintain.

MS6 The Contractor shall provide access to their Helpdesk 24 / 7, year-round, ensuring that the Purchaser can:

- Initiate Level 3 support requests outside of agreed office hours (as stated in SR6 in the SOW) or in absence of the Contractor Maintenance Manager;
- Request status updates on the Level 3 support incidents;

MS7 The Contractor shall provide web-access to an on-line ticketing system, showing updated information and status on the raised Level 3 incidents and shall be available for meetings if required.

MS8 The Contractor shall support pro-active maintenance on well identified parts of the Purchaser's ICT systems and infrastructure. Such pro-active maintenance support shall be scheduled in advance in agreement with the Purchaser every 6 months (June and December), and shall support preventive measures in order to reduce the risk on outages or degradations of quality or performance.

4.2. Hardware Maintenance

The Contractor shall support the replacement of vendor hardware when necessary to restore the services.

MS9 The Contractor shall ensure that all faulty equipment covered by this Contract, which needs to be replaced, is safely and securely processed by the NATO Office of Security (NOS) and destroyed when appropriate within the agreed and contracted Service Level Agreement under Annex A of this SOW. An acceptance document shall accompany the new equipment that needs to be replaced. This document shall be dated and signed by both the Contractor and the Purchaser, which in turn will be used for reporting purposes during the quarterly Service Level Review meetings.

MS10 The Contractor shall notify the Purchaser at least one year in advance should any item would be announced End-of-Sales and/or End of Support during the contracted period of performance. The Contractor shall indicate the proposed replacement item, meeting same functionality as well as the proposed support plan covering the contracted period of performance.

MS11 If failed equipment subject to this Contract cannot be adequately supported (including obsolescence issues on HW or combined HW/SW) any longer, the contractor shall perform the necessary engineering evaluation and shall provide replacement parts technically compatible with the existing device at no additional cost to the Purchaser.

MS12 The Contractor shall ensure that the current item and replacement item is registered in the OEM Vendors Maintenance Support database, to ensure that service support entitlement is maintained accordingly.

MS13 The Contractor shall support the Purchaser's Asset Management Process by providing logistics data related to removed and replaced equipment.

- MS14 The Contractor shall ensure awareness and compliance of Purchaser's defective media retention policy (DMR) whereby Purchaser will never return Defective Storage Media. The Contractor shall take into account the following: Due to NATO security constraints all equipment comprising non-volatile memory or storage (e.g. hard drives) connected to the NATO Networks will not be returned to the OEM. Repairs (if applicable) of such components can only be performed on site. Defect magnetic and electronic media storage devices/ (i.e. Compact Discs (CD), Disk Array, diskettes, hard drives, USB memory devices) will therefore be destroyed on-site by the Purchaser.
- MS15 The Contractor shall provide RMA (Return Material Authorization) instructions to the Purchaser for the return of faulty items to the Contractor.
- MS16 The Contractor shall comply with the procedure and requirements laid out in [Annex B](#) for any delivery of equipment to NATO HQ. An example of the application form that the Contractor would need to use for delivery of equipment to NHQ can be found under [Annex E](#).

4.3. Software Maintenance

- MS17 During the contracted period of performance, the Contractor shall inform the availability of software upgrades for any item covered within the scope of the Contract and support access to vendor software. All new software versions and bug fixes of software within this scope of this contract shall be provided.
- the version number (minor and major upgrades);
 - the list of improvements included in the upgrade;
 - including changes of name of the product;
 - description of the hardware requirements of the software upgrade, with emphasis on changes with respect to hardware requirements of the former software version;
 - integration of the product functionality into other more complete products;
- MS18 The Contractor shall perform license management with the relevant OEMs and shall notify the Purchaser at least 6 months before the expiry dates of the licenses needed for proper functioning of items of equipment under maintenance and ensure the quantities are appropriate. Loss of functionality due to late renewal of licenses covered by the maintenance contract will not be accepted.
- MS19 The Contractor shall provide a quarterly information report on software faults and failures, in scope of this Contract, at the highest priority and provide guidance on possible workarounds and patches that shall restore the software to its intended function and performance. The execution itself will remain the responsibility of the Purchaser.

- MS20 The Contractor shall notify the Purchaser at least one year in advance should any Software would be announced End-of-Sales and/or End of Support during the contracted period of performance. The Contractor shall indicate the proposed replacement item, meeting same functionality as well as the proposed support plan covering the contracted period of performance.
- MS21 The Contractor shall ensure that the current Software version and updates are registered in the OEM Vendors Maintenance Support database, to ensure that service support entitlement is maintained accordingly.
- MS22 The Contractor shall identify, verify, communicate and provide workarounds, patches and maintenance releases (with the pertinent release notes) to the Purchaser as to assess any impact on function, performance or support.
- MS23 The Contractor shall contribute to the Purchaser's internal authorisation process by providing in writing supporting software documentation and data as requested by the Purchaser and to the Purchaser Technical Representative.

4.4. Technical Assistance

- MS24 The Contractor shall provide Technical Assistance and Expertise for Hardware and Software under scope of this Contract. Such Technical Assistance and Expertise shall consist of the provision of subject matter expertise by an OEM employee (remote), capable of providing the necessary information pertaining to detailed engineering and technical function, performance and design of the system. The assistance shall be provided to a Purchaser designated contact person.

5. Staffing

5.1. General

- SR1 To ensure that knowledge and performance of the Contractor's staff will support safe and reliable service delivery, the Contractor shall:
- Provide a Contractor Service Desk (whether the organization's or other 3rd party) manning level sufficient to meet the demands of the requirements of this contract;
 - Provide a Contractor Service Desk staff that has the required technical expertise to meet the demands of the requirements of this contract
 - Provide sufficient manning levels to meet the Purchaser KPIs.
- SR2 The Contractor shall only use duly qualified staff with knowledge of the installed equipment, the OEMs and operation of the ICT systems and infrastructures.

5.2. Maintenance Manager

- SR3 For the entire duration of the maintenance contract, the Contractor shall appoint key personnel to fulfill the role of a “Maintenance Manager” or “manager of the maintenance contract(s)”. The manager of the maintenance contract shall be the Purchaser’s single point of contact for all matters related to the maintenance and Level 3 services.
- SR4 The Maintenance Manager’s role shall be fulfilled by key personnel duly authorised by the Contractor to take any technical or organisational decision related to the execution of the maintenance services entrusted to him or her by the Purchaser.
- SR5 The Maintenance Manager shall manage all support contracts and provide the interface to L3 vendor support for incidents, consultancy and training as required under the Contract or any Amendment thereto. The provided Key Personnel for this position shall have a proven working technical understanding at the senior management level of areas of Service Desk, Workstation Support, Networks, Voice and Data Communications, Cyber Security Systems, Database, Servers, Programmers and Private Cloud Technologies. The incumbent and its alternate shall also have ITIL¹ Foundation qualification.

Among others, the Maintenance manager shall also:

- take responsibility for the quarterly reports;
 - Lead incident management as required
 - Attend Purchasers routine operations and management meetings
 - prepare, assist to and report on the quarterly steering committee meetings where quarterly reports will be discussed;
 - take responsibility for all offers and contract signatures;
 - timely review of the list of installed equipment, as input allowing Purchaser to decide on the list of equipment under maintenance;
 - organisation of the L3 maintenance;
 - production of essential documentation related to the maintenance services, such as the helpdesk coordinates, a description of delivery and repair procedures, a list of persons authorised to have access to NATO and the administrative responsibilities this entails.
- SR6 The Maintenance Manager shall be a role that will be executed from NATO Headquarters (NATO HQ) between Mondays to Fridays, from 7h30 CET to 18h00 CET on NATO HQ working days.

¹ Information Technology Infrastructure Library (ITIL) Methodologies

- SR7 For the entire duration of the maintenance contract(s), the manager of the maintenance contract(s) shall have an alternate whose knowledge of the maintenance contract(s) shall at least equal his own knowledge. In case of unexpected unavailability of the primary Maintenance Manager, an alternate must be available next business day.
- SR8 Each of the Key Personnel, shall be able to effectively communicate in English. Such ability shall be demonstrated by providing one of the below certificates or providing proof of a Bachelor's Degree from an institution with English as the language of instruction:
- English at Proficient user Level C1 CEFR²
 - Test of English as a Foreign Language (TOEFL) Internet-based Test (iBT) with minimum score of 80.
 - Cambridge English Language Assessment CPE CAE grade B or C / FCE grade A.
 - IELTS with minimum score of 6 points.
 - NATO standards STANAG
- The Maintenance Contract Manager shall have a demonstrated proficiency level in English at a minimum level of 3333 as defined in STANAG 6001. French language skills would be an asset.
- SR9 Academic qualifications: Vocational training at a higher level in a relevant discipline, or equivalent combination of qualifications and experience. At least 8 years extensive and progressive expertise in the duties related to the function of the post.
- SR10 In-depth knowledge of the maintenance of both hardware and software aspects of the system and all its sub-systems, ancillary systems, and support systems.
- SR11 The Contractor shall ensure that on-site support is provided according to service levels defined in [Annex A](#) after receipt of the Purchaser's request or else ifs otherwise instructed.
- SR12 The Contractor shall provide a total number of Contractor staff to ensure service levels are met and that is qualified to execute this function.
- SR13 In accordance with the respective Contract Special Provision, the Contractor shall provide Curriculum Vitae (CV) and the Purchaser reserves the right to interview

5.3. Remote access

- SR14 Remote connections to infrastructure for maintenance and trouble shooting from sites external to NATO HQ is not allowed.

² CEFR stands for "Common European Framework of Reference for Languages: Learning, Teaching, Assessment"

5.4. On-site Incident Support

- SR15 To ensure the Contract can meet the Targets set out per the chosen Service Flavor, the Contractor shall at the request of the Purchaser, after analysis has requested an escalation to L3 support, initiate on-site incident intervention needed to restore services in those cases when the Purchaser is unable to solve an incident.
- SR16 The Contractor (whether the organization's or other 3rd party) shall intervene on site depending on the priority level (as stated in Annex A of SOW), from Monday 07h30 to Friday 18h00, on all days of the year except Saturday, Sunday, 1 January, Easter Monday, 1 May, Ascension day, Whit Monday, 15 August, 1 November, 25 and 26 of December.

5.5. On-site Consultancy Services

- SR17 The Contractor shall provide OEM on-site consultancy support at the specific request of the Purchaser. The Contractor will bill those on-site consultancy services only on a cost reimbursable basis (i.e. on-site consultancy days requested/used). These On-site consultancy services are reflected and costed in the predefined packages of 5 to 20 working/service days under CLIN 4 of the Schedule of Supplies and Services. The number of service days is limited to the maximum quantities specified in the SSS, unless a new package of service days is incorporated in the Contract through a formal Contract Amendment.
- SR18 The Contractor shall ensure that OEM on-site support can be provided within five (5) working days after receipt of the Purchaser's written notice. The exact requested time of the on-site support will be specified by the Purchaser.
- SR19 The on-site support shall be delivered by staff of the OEMs, fully qualified to perform any and all support tasks required to restore the hardware and software, in scope of this Contract, to its intended function and performance.
- SR20 For optional years, the Contractor shall include between 5 and 20 working days per year of On-site Consultancy Services per OEM as set out in the Schedule of Supply and Services under CLIN items 4. Days that are not taken within the calendar year will be transmitted to the following year.
- SR21 The OEM staff shall perform support tasks on hardware and/or software in scope of this Contract, as instructed by the Purchaser through the IT Service Support Contractor, including:
- Providing on-site support at any location in scope of the Contract;

- Support the Purchaser during the Purchaser's working hours, Monday to Friday, 7h30 to 18h00, Purchaser's timezone, excluding Purchaser's holidays;
- Support special operational and business needs, outside Purchaser's working hours without additional cost to the Purchaser (on exceptional basis);
- Coordinate on-site intervention consultancy services through the embedded Maintenance Manager and seek approval from the Purchaser for all his support activities before such activities are commenced.
- Supporting the Purchaser's IT operations activities, including incident and problem investigation, diagnosis, recovery and resolution;
- Supporting the Purchaser's corrective maintenance activities, including fault identification and isolation, reassemble and disassemble, repair and replace, configuration and verification;
- Supporting the Purchaser's preventive maintenance and property accounting (inventory) activities, including servicing tasks, on-condition tasks, failure-finding tasks and removal tasks.
- Acceptance criteria of the work to be performed will be agreed upon upfront, depending on scope of activities requested by the Purchaser. Post service delivery, a written acceptance will be issued by the Contractor and signed by the Purchaser for delivered services against the agreed scope.

5.6. Special Events - option

Special Events

Ministerial meetings

As NATO is a security organization, there are special considerations that must be taken into account in the context of Level 3 support planning. NATO schedules 4-6 Ministerial meetings each year that take place over a two day period and involve either Defense Ministers or Foreign Ministers from each of the NATO members. Additionally, NATO partner nations may also send representatives. Each of these events carry with it a three-week "no maintenance" window whereby network changes are not allowed and access to the NATO HQ is more difficult. These events are always planned at least three months in advance and are generally repetitive in terms of how they are executed.

Expectations during these periods and especially during the two-day sessions is that network outages are dealt with on an exceptional basis. Any outage must be treated with utmost priority and restoral times must be kept to absolute minimums.

Cleared individuals and those possessing security badges will be allowed on site during these periods. Those not having these prearrangements must be processed under Agency representation and constant escort. It is with this in mind that suppliers are

encouraged to prescreen as many individuals as possible to alleviate access issues during these times.

NATO Summits

NATO Summits are generally every two years but can result in more frequent meetings involve a pre and post event low maintenance window. These events involve Heads of State along with their respective ministers and involve the highest security procedures the NATO Headquarters enacts. Level 3 support during these windows, especially in the week before and the week after the event is absolutely essential. NHQ

SR22 Option - The Purchaser may optionally exercise one of the Special event requirements as specified under CLIN 9 of the Schedule of Supplies and Services. Special events in NATO, as identified under SOW 5.5, will require specific measures. The Purchaser will announce these Special events to the Contractor as far in advance as possible to allow proper preparation and staff on-duty planning. Exercising such option will be subject to formal validation through a Contract Amendment.

SR23 If formally exercised through Contract Amendment, during Special Events, the Contractor shall provide technical staff on-site who shall directly contact Level 3 Vendor staff when needed.

6. Reporting

6.1. Quarterly reporting

RS1 On a quarterly basis, the Contractor shall provide the Purchaser with OEM technical documentation or updates to existing OEM technical documentation, resulting from changes in capability of OEM hardware and/or software within scope of this Contract. The first quarterly report shall cover the period up through 31 March 2024. . All other quarterly reports shall cover a period of 3 months each following the following scheme: January-March, April-June, July-September, and October-December of each calendar year.

RS2 The Contractor shall provide a quarterly report with information on hardware replacements, software faults and failures that occurred within the previous quarter, in scope of this Contract, and provide guidance on possible workarounds that could be taken to restore Purchaser operations to its intended function and performance. The execution itself of the hardware replacement will remain the responsibility of the Purchaser.

RS3 On quarterly basis, the contractor shall produce a report with following content:

- Report on Contractor Logistics Performance review. The review shall evaluate the performance of the Contractor during the preceding period based on the Key Performance Indicators as set out in [Annex A](#)): The report shall state the KPI's, the underlying calculation and the performance outcome. In case of non-compliance with the KPI targets, relevant service credits shall be calculated. Any amount due (if any) will be applied at the next upcoming payment cycle.

The report shall specify:

- number and date/hour of opening of the ticket;
 - date/hour of start of the Contractor intervention;
 - date/hour of service restoration (ticket closing)
 - description of the technical failure that was detected;
 - description of the action taken to restore service;
 - description of the root cause of the failure, if known. If the origin of the incident is due to modifications applied by the Purchaser or by a third party, this shall be clearly indicated and documented in the report;
 - certificate that any equipment that has been installed and activated is also visible by NATO's management systems;
 - in annex: a copy of the ticket.
- Report on evolution of equipment per OEM:
 - Recommendation for renewal of equipment currently under maintenance contract with NATO under the agreed scope; including hardware that will be end of life/support in the next 12 month time period and end of life/support for software in the next six months.
 - List of the equipment covered by the NATO maintenance contract with:
 - End of Support date for each equipment or software.
 - Proposal of new equipment model or new equipment models that can replace the equipment approaching End of Support.
 - Update on evolution of equipment in use at NATO and equipment proposed in the initial tender. Particular attention will be paid to: evolution of the equipment used by NATO:
 - equipment roadmaps;
 - evolution of equipment following changes of telecommunications standards;
 - evolution of equipment towards lower energy consumption;
 - evolution of equipment towards lower overall ecological footprint throughout the manufacturing and usage life-cycle.
 - Opportunities to gain efficiency: reduction of space, operational and maintenance gains, performance gains, pro-active maintenance, etc. Report on maintenance services delivered over the past quarter
 - List of on-site interventions

- Summary of intervention reports will be in the form of a table:
Ticket number / date and hour of opening of ticket; of on-site intervention (if applicable); of service restoration / subject of the intervention / action taken
 - Origin of the incident.
If the origin of the incident is due to modifications applied by NATO or by a third party, this shall be clearly indicated in the list.
- RS4 The quarterly report (draft) shall be made available to NATO before the 15th of the first month following the quarter:
- Report on January-February-March: to be made available before mid-April;
 - Report on April-May-June: to be made available before mid-July;
 - Report on July-August-September: to be made available before mid-October;
 - Report on October-November-December: to be made available before mid-January.
- RS5 The quarterly Maintenance Report shall be presented in person at NATO HQ by the Contractor and shall be attended by at least the Contractor Account Delivery Manager, Service Delivery Manager, Contractor Maintenance Manager, Contractor Service desk representative and Contracting Officer representative
- RS6 The contractor shall send the quarterly Maintenance Report to the Purchaser's technical representative. Acceptance of these reports will be done in writing by the Purchaser after review as per timelines in the Contract Special Provisions, Article 10, and will be a condition to allow the Purchaser to submit the respective invoice(s).
- RS7 Should the Purchaser be unable to declare acceptance of the maintenance services of the past quarter because the quarterly report is incomplete or incorrect, or because of other non-compliance with the conditions of the contract, a statement of objections shall be drawn up before end of the month after that quarter, and forwarded to the Contractor. In such case, the Contractor shall take corrective actions within 7 calendar days. In case of acceptance, the Purchaser will sign three copies of the Maintenance Acceptance Report, send two of them to the Contractor, and keep the third original.

6.2. Annual reporting

- RS8 The Contractor shall provide a complete list of the installed base on at the end of each calendar year. This shall include the serial numbers of all active hardware and/or software, including the replaced hardware.
- RS9 The annual report shall be made available to the Purchaser before the end of January the following year. The first annual report will be prepared for 2024 and given in January 2025.

6.3. Other

DS1 Throughout the Contracted period of performance the Contractor shall:

- Deliver all documentation in electronic format allowing changes to be captured and clearly and rapidly identified as such. The changes shall be captured in an outage report and shall be in Excel format.
- Provide and maintain a documentation library on the internal Purchaser's provided Sharepoint portal where the Purchaser can find all documentation developed by the Contractor under this contract.

NHQ

7. Transition Activities

TS1 At the start of the contract the contractor is responsible for taking over all of the support contracts from the previous contractor. The contractor must create a transition plan and report progress on the execution of this plan to the Purchaser.

TS2 The transition plan must ensure no interruption in service during the transition period.

TS3 At the end of the contract the contractor is responsible for working with the successor to transition the support contracts and inventory.

8. Impact of Contractor activities on NATO HQ

LR1 The Contractor shall ensure that none of the activities performed by the Contractor under this contract modify or damage in any way the physical premises of NATO HQ nor any other service available in NATO HQ.

9. Other requirements

9.1. Staff Clearance

SC1 The Contractor shall ensure that all Contractor staff or anyone working under the remit of the Contractor (such as OEM staff), requiring recurring access to NATO HQ for the

performance of this contract, have a valid NATO Personal Security Clearance at least to the NATO SECRET level. The Contractor shall maintain appropriate staff and facilities clearances at all time during the duration of this contract.

- SC2 In the absence of a valid NATO Security Clearance as stated above, staff sent by the Contractor pertaining to the entire scope of this Contract, will have to be treated as an escorted visitor by the Purchaser. Delay caused by non-compliance of the Security clearance requirements under this Contract, may not be used by the Contractor as the basis for a claim of adjustment or an extension of schedule nor can the denial of access be considered a mitigating circumstance in the case of an assessment of service credits or a determination of Termination for Default by the Purchaser.

9.2. Access to NATO HQ areas

- AR1 The Contractor shall ensure the applicable NATO HQ visitor regulations are followed. There are 2 possibilities in accessing NATO HQ: escorted and non-escorted.

The escorted pass shall require the Contractor to provide details of the contractor or sub-contractor staff as a minimum three working days in advance for access to NATO HQ.

A non-escorted pass shall require the Contractor to provide details of the contractor or sub-contractor staff during the pre-contractual meeting who are required to access NATO HQ involved in the on-site interventions or permanent presence. In addition to a valid NATO Personal Security Clearance (PSC), NHQ pass requesters (except visitors) are obliged to complete an online Computer Based Training (CBT), provided by the NCI Agency.

If the Contractor requires to bring in Portable Electronic Devices (PEDs), the applicable "Portable Electronic Device Registration" form shall be completed in advance of accessing NATO HQ.

- AR2 NATO HQ comprises of different areas which are controlled by NATO, NATO Agencies and NATO member National Delegations.

If the Contractor is to carry out work within the NATO HQ areas as part of the On-site Consultancy Services, the Contractor shall seek Purchaser permission to entering NATO controlled areas, at least 3 working days before access is necessary. The Purchase shall in turn arrange the necessary visitor request.

If the Contractor is to carry out work within the NATO HQ areas as part of the On-site Incident Services, the Contractor shall coordinate Purchaser permission to entering NATO controlled areas. The Purchaser shall in turn arrange the necessary visitor request.

AR3 If the Contractor is to carry out work within a National Delegation area and as part of the On-site Consultancy Services, the Contractor shall seek Purchaser permission to entering NATO HQ and the National Delegation area at least 5 working days for before access is necessary. The Contractor shall in turn, in close coordination with the local Purchaser contact, arrange the necessary visitor request.

9.3. Point of Contact

POC1 The Purchaser and the Contractor shall nominate points of contact, for the execution of this contract:

	Contractor POC 1	Contractor POC 2	Purchaser
Level 3 IT Support POC			
Service Reviews			

POC2 Changes to these Points of Contact shall be notified by the Contractor before coming into force.

List of annexes

Annex A - [Key Performance Indicators and Targets for Services and Service Credits](#)

Annex B – [Procedures for the delivery of equipment to the NATO HQ site](#)

Annex C – [Description of the existing situation](#)

Annex D - [Reserved](#)

Annex E - [NHQ Delivery Application Form](#)

Annex F – [Service Delivery process](#)

Annex G – [Definitions and Acronyms](#)

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

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

These KPIs described in this annex shall be applicable Monday to Friday, from 07h30 CET to 18h00 CET, 52 weeks a year regardless of vacation or leave except during scheduled outages. Examples of scheduled outages:

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

Title	Description	Key Performance Indicators	Targets for Support Services	Service Credits (maximum cumulated service credit: 10% of value of contract for the respective service period)	Reporting
On-site Consultancy Services		Non respect of the delay of 5 working days for On-site Consultancy Service	Maximum of 5 calendar days	Per calendar day past the deadline of 5 working days: 10% of the related OEM On-site Consultancy Service costs as specified in the SSS, CLIN 1.2.3	Q

On-site Incident Support	On-site technical assistance to be provided	P1: within 8 hours	P1: within 8 hours	Per hour exceeding the allowed maximum accumulated delay time as specified under the Targets for Support Service: 1% of on-site incident support costs as specified in the SSS CLIN 1.2.2	Q
		P2-P4: within 24 hours	P2-P4: within 24 hours		
Response time	Response time driven by the service prioritisation as per table 1	Response time per incident based on prioritisation	Response time as defined per table 1	1% of the quarterly Maintenance Service costs (total of CLIN 1.1 to 1.1.3.5)	Q
Restoration time	Restoration time driven by the chosen service flavour	Restoration time per incident within service flavour target	95% of incidents restored within the targets	3% of the quarterly Maintenance Service costs (total of CLIN 1.1 to 1.1.3.5)	Q

On-site Incident Support

The Contractor shall fulfil the following requirements for On-site Incident Support Service Request:

- Maximum Intervention time for on-site support in case of P1 critical failures 8 hours

This is the maximum delay that can be accumulated by the Contractor for each service request for P1 critical intervention on-site. The delay time will be measured starting at the time & date of the opening of the on-site support Service Request and will stop when Contractor personnel arrives on site (Service Request proposed as “completed”).

- Maximum Intervention time for on-site support in case of failures categorized P2 to P4 24 hours

This is the maximum delay that can be accumulated by the Contractor for each service request for non-critical intervention on-site. The delay time will be measured starting at the time & date of the opening of the on-site support Service Request and will stop when Contractor personnel arrives on site (Service Request proposed as “completed”).

Resolution and Response times

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

Incident Response time is counted as follows:

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

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

Incident Resolution time is counted as follows:

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

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

Incident Resolution time targets are measured against the performance targets of the contracted “Service Flavor”. The resolution time of each incident shall be evaluated as compliant or non-compliant. The sum of compliant incidents shall not be lower than the applicable KPI target (95%). Service Credits shall be applied for each non-compliant incident.

The following paragraph defines the priority levels and related targets.

Priority

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

- 1 – If Level 3 support is required as to solve an incident, impacting operations for all users at NATO HQ;

- 2 – If Level 3 support is required as to solve an incident, impacting operations for all users within a floor at NATO HQ;
- 3 - All other incidents.

Priority Code/Description	Guidance
P1 – Critical	<ul style="list-style-type: none"> • A vital Service is denied causing very serious operational impact to NATO; there is no immediate work around available. • An immediate functional response with a sustained effort using any and all available resources at the disposal NCI Agency. • Managerial escalation is paramount, an incident officer may be appointed. • A Service that is denied to an operational commander (VIP).
P2 – High	<ul style="list-style-type: none"> • Essential Services denied that have a medium operational impact. • There is no work around available but NATO can sustain a minimal outage of Services. • An immediate functional response is required during normal working hours to ensure limited downtime.
P3 – Medium	<ul style="list-style-type: none"> • Important Services affected but limited operational impact • Service whose interruption will not affect NATO’s mission.
P4 – Low	<ul style="list-style-type: none"> • Normal Services affected – no operational impact. • Services whose interruption will not affect NATO’s mission and will cause no operational impact.
P5 – Planned	<ul style="list-style-type: none"> • Scheduled Outage – at least five working days’ notice – see Section 4.6 • Continuity plans should be implemented when vital Services are affected.

Targets

Incident Response Time Targets

Priority	Incident Response Time Target
1	99.5% of Priority 1 tickets within 30 minutes
2	99.5% of Priority 2 tickets within 60 minutes
3-4	99.5% of Priority 3 tickets within 120 minutes

Table 1: Incident Response Time Targets

During Special events – if and when the respective optional CLIN(s) is exercised – the Purchaser reserves the right to set the Incident Response Time to 30 minutes only (in the time window 07:30 – 22:00 CET) on a case by case basis and whatever the priority needed.

Incident Resolution Time Targets

Priority	Incident Resolution Time Target
1	95% Compliancy based on contracted restoration targets per item
2	
3	
4	Not applicable

Table 2: Incident Resolution Time Targets

During Special events – if and when the respective optional CLIN(s) is exercised – the Purchaser reserves the right to set the Incident Resolution Time to 4 hours only (in the time window 07:30 – 22:00 CET) on a case by case basis and whatever the priority needed.

The Purchaser envisions three (3) Incident Resolution related service flavours:

	Service flavours		
	Gold (4 hrs)	Silver (NBD)	Bronze (NBD)
Hardware replacement	x	X	spares solution
Software support (bug fixes, updates, etc)	x	X	X
Technical Assistance (OEM)	x	X	X

NCI Agency highly values quick and swift restoration of services with regards to Infrastructure Services, Cyber Security and Edge Devices, as to support the internal KPIs from NATO HQ.

Service Credits

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

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

Annex B - Procedures for the delivery of equipment to the NATO HQ site

For all equipment shipped to NATO HQ, the Contractor shall provide Material Data Sheets (MDS), the NHQ Delivery Application Form (Annex G) and adhere to the transportation requirements laid out below:

Packaging, Handling, Storage, and Transportation (PHS&T)

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.

Any special packaging materials required for the shipment of items shall be provided by the Contractor at no extra cost to the Purchaser.

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

The packages, palletes and/or containers in which equipment are transported shall, in addition to normal mercantile marking, show on a separate nameplate the designation:

NATO Headquarters
Industrial Infrastructure Building
Reception Service
Attn: [TBD upon Contract Award]
Rue Arthur Maes 1
B-1130 Brussels
Belgium

All deliveries must arrive only at the North entrance of the site on Rue Arthur Maes. All incoming vehicles and deliveries will be screened unless special conditions apply (e.g. diplomatic parcels).

The handling of incoming and outgoing deliveries will be performed by the Infrastructure and Facilities Management service. Requests for incoming and outgoing deliveries must be planned, preferably in advance, by informing the Infrastructure and Facilities Management service.

Any deliveries or the collection of Hardware has to be requested minimum 3 days in advance providing following details:

- a) Company Name
- b) Delivery and time of delivery
- c) Driver Name and First Name
- d) License Plate No
- e) Destination Drop off/Collection

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

- a) the designation
- 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) PoC details and address of final destination
- f) for each item shipped: nomenclature; part number and serial number;
- g) for each box, pallet and container: box/pallet/container identification number and number of boxes/pallets/containers; weight; dimensions.

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

The Contractor shall utilise NATO Stock Numbers (NSN) when they are available. The Contractor shall be responsible for transportation of repaired equipment (or NFF or BER equipment) from its site to NATO HQ. The Contractor shall be responsible for any insurance covering these shipments.

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

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.

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

Prior to a shipment by the Contractor, the Purchasers Integrated Project Support (IPS) Branch will upon request issue a Customs form 302, which in some cases is required for the duty free import/export of goods. The Contractor shall be responsible for requesting the issue of a form 302 and provide the shipping details required to complete the form. This must be requested at least ten (10) working days prior to shipment. The request is normally processed by the Purchaser within three (3) working days. The requested 302 forms will be sent by courier. The original 302

forms shall accompany the shipment and therefore no fax or electronic copy will be used, nor provided to the Contractor.

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

System Inventory / Material Data Sheet (MDS)

The Contractor shall provide the Purchaser’s Integrated Project Support (IPS) Branch with a Site Specific Material Data Sheet (MDS), in electronic format, ten (10) working days³ before the shipment to CSU Brussels logistics team.

In case of urgent shipment of replacement parts impacting System performance, the MDS data required shall be provided at the earliest possibility. The MDS, as a minimum, shall include the data elements marked with an “M” in the mandatory column, if applicable.

The provided MDS can be used by the Purchaser for acceptance purposes and to create data element entries in relevant NATO Accounting systems ahead of delivery of the Final System Inventory.

Field	Description	Mandatory
CLIN/Purchase Order number	Contract Line Item Number (number-10 digits maximum). Sequence number assigned to a particular line item in a given contract. The combination CLIN-Contract No. shall always be unique. Also NCIA Purchase Number can be used if no specific Contract Number has been assigned.	M
NATO Stock Number	NATO Stock Number (number-13 digits) (if available). Identifies an item codified by one of the NATO countries' National Codification Bureaus. It shall always be linked to at least one part number with the corresponding OEM code. It is recommended that the Provider system integrator requests codification from the National Codification Bureau of the original OEM's country. If NSN is known prior to system delivery it shall be added in this field.	

³ 10 days is relevant to standard deliveries

Field	Description	Mandatory
Nomenclature	Short Item Description (text- 35 digits). Should always start with the main item name followed if possible by a technical specification, followed by the next higher assembly names in hierarchical order, separated by commas. E.g. for a coax connector of a television cable the nomenclature should read: CONNECTOR, COAX, CABLE, TELEVISION.	M
EQRE (XB/ND)	Code (text-2 digits). Defines whether an item is repairable (ND) or not (Expendable) (XB) from a technical point of view.	M
True Manufacturer Part Number	True OEM P/N (text-32 digits). Part Number given to this item by the original OEM.	M
True Manufacturer Code (or complete name and address)	True OEM Code (text-5 digits). Code of the Company that has manufactured this item. This is an internationally recognized 5-digit code which is unique to that company. It corresponds to the "cage code" in the USA. OEM Codes and Cage Codes are obtainable from the national governmental authorities or, if it already exists, from the "NATO Master Cross-Reference List" (NMCRL) obtainable from NSPA. In case the code cannot be obtained, it will be sufficient to enter the complete name and address information of the true OEM.	M
Vendor/Contractor Code (or complete name and address)	Vendor (Provider) (text-5 digits). Company which sells the item or the complete system to which this item belongs. The vendor is the company with which the contract is placed but is not necessarily the true OEM of the item. If the vendor company has also designed and integrated the complete system it is also known as OEM. The company code is an internationally recognized 5-digit code which is unique to that company. It corresponds to the "cage code" in the USA. OEM Codes and Cage Codes are obtainable from the national governmental authorities or, if it already exists, from the "NATO Master Cross-Reference List" (NMCRL) obtainable from NSPA. In case the code cannot be obtained, it will be sufficient to enter the complete name and address information.	M

Field	Description	Mandatory
Vendor/Provider Part Number	Vendor (Provider) P/N (text-32 digits). Part Number given to this item by the company which sells the item or the complete system to which this item belongs. The vendor is the company with which the contract is placed but is not necessarily the true OEM of the item.	M
Qty ordered	Item Quantity (number-5 digits). Shows the quantity of this item ordered as individual item in this contract, i.e. if it is not delivered built-in in another unit. In case the item is not ordered as individual item or as spare unit but is built-in in another assembly, enter "0" (zero) in this field and complete fields: "Part Number of next higher assembly" and "Qty in next higher assembly". Serialized items shall only have a quantity of 1.	M
Order Unit	Order Unit (text-2 digits). Unit under which the item is sold, e.g. each, set, meter, etc.	M
Serialized Item Tag	Serialized Items Tag (text-1 digit). Add a "Y" if the item carries a serial number independently whether serial numbers is already known or not. If known, complete column "Serial Number".	M
Serial Number (Vendor Serial Number or other unique identifiers like IMEI Number)	Serial Number. If Serialized Item Tag is "Y" (yes) then add serial number here. (1 serial number per line). If system is already installed, then the Provider shall indicate here the serial numbers installed at user site. For items to be delivered to depots the Provider may not know the serial number in advance, in that case it will be completed by the receiving site.	M
Serial Number Software Revision Level	Software Revision Level (text- 30 digits but can be expanded as necessary) If item carries a serial number and field "serial number" is completed, add SW revision level / version here if appropriate.	
Serial Number Hardware Revision Level	Hardware Revision Level (text- 30 digits but can be expanded as necessary) If item carries a serial number and field "serial number" is completed, add HW revision level / version here if appropriate.	

Field	Description	Mandatory
Other Serial Number attributes	Other Serial Number Attributes (text-to be defined). This field will be used and defined on a case by case basis to be decided by NCIA System Manager, NCIA and the Provider for other attributes which might be required for a particular system.	
Subject to Property Accounting	ORACLE-CNAFS (text-1 digit). NCI Agency will decide whether or not item is subject to property accounting and is to appear on the Purchaser balance lists. This field will be completed Y or N by NCI Agency.	
Currency	Currency (text-3 digits). International 3-digit code (ISO) representing the currency in which the item purchase price (or the estimated value) is expressed.	M
Price	Item Price (number-11 digits). Unit price with 2 decimals.	M
Warranty Expiration Date	Warranty Expiration Date (date: DD/MM/YY). Shows the date on which the warranty of this item expires, which is usually N days after delivery of the item. If delivery is scheduled for a certain date, warranty expiration date = delivery date + warranty period in days.	M
Receiving / Inspection Depot	Receiving / Inspection Depot (TXT-2 digits). Information will be provided to Provider by the Purchaser's CSU Brussels / ACQ Officer. This is the depot to where the vendor ships the material. Normally this depot will receive, inspect and put the material in stock against Dues-In to be created in accordance with Qty in column "Qty Ordered". In case of a deviation from this rule, the Purchaser will inform the Provider of the correct final Depot and through which depot the items shall have to transit.	
Issue to Purchaser	Purchaser Code (text-4 digits - to be completed by NCI Agency). Code representing the Purchaser to which the item(s) shall be shipped by the receiving/ inspecting depot.	

Field	Description	Mandatory
Extended Line Item Description	Extended Line Item Description (text-no limit). Any additional information concerning this item shall be entered here, e.g. technical specifications, configuration, reference to technical drawings or manuals etc.	
Part Number of next higher assembly	Part-Number of Next Higher Assembly (text-32 digits) If item is built-in another assembly, indicate part number of that assembly here.	
Qty in next higher assembly	Quantity in Next Higher Assembly (number-3 digits max). This field shows the built-in quantity of the item in the next higher assembly. This information shall be provided for configuration control purposes.	
Qty installed at Operating Unit (Purchaser Site)	Quantity installed. This field is only applicable when the delivery is direct to an operating unit (Purchaser site). However in that case it is mandatory. For non-serialized items it shows total quantity installed. For serialized items quantity shall only be one per serial number. Use a new line for each serial number.	

Annex C - Description of the existing situation

Public LAN:

- **Public:**
 - The Public Network provides Non Classified network access to the internet, via a Public Information Access (PIA) Gateway. The Public Network offers both cable and wireless network connectivity giving the possibility to access some specific services, like internet access. The Public wireless network is available throughout the NHQ except for the some delegations spaces. The Public wireless network can be blocked in the Conference Area, during special events. In fact the Public domain has a simplified architecture for local HQ use only, providing user service coverage of only a part of the HQ premise, and offering only a limited range of end-user services including web access, and offering application hosting services. To this respect the Public LAN is split into two parts: U946 (aka Public LAN) for the physical and wireless network connection from the NHQ campus that also support visitors/journalists, and U950 (aka Public DMZ) for the Public Hosting of applications that are either published over the Internet or that require Internet access to work with. In addition to its (limited) end-user services it provides IPTV and voice UNCLASSIFIED access services throughout the building.
- **Public NU:**

The Public NU provides access to the NATO NU Wide Area Network (WAN) and access to services hosted in there.

NR LAN (aka Magellan):

The Magellan network serves as the primary Internet-connected network in the NHQ, providing a local area network capability to be used up to and including the NATO RESTRICTED (NR) classification level in system high mode (currently the Magellan network can only processed up to and including NU data). This network may also provide connectivity to other NR networks in NATO and does provide connectivity to the Internet and extranet services, through a number of Cross Domain Gateways (CDGWs) and via the PIA Gateway. The Magellan network is segregated into secured separated logical network zones also for its management and provides core AIS, email, collaboration and Building Management Services (BMS), residing on the network and delivered over both cable and wireless infrastructure.

ESS LAN:

This LAN contains a set of Electronic Security Services (ESS) that are provided to maintain a very high level of security awareness and to enforce the physical security rules and policies that are necessary to support NATO's business. Facilities for Automated Access Control (AAC), Visitor Handling (VH), Intruder Detection System (IDS), Video Surveillance and Assessment (VSA) (i.e. Area & Space monitoring via CCTV) are provided as a 'connected' set of services that interact

and integrate with other building services and systems as needed. This network hosts the Identity and Access Management System (IdAMS).

AVI LAN:

The Audio Visual Infrastructure (AVI) is an independent network that includes all active and passive components that are needed for the processing and display of information, and the recording of such information (where necessary), in support of NATO HQ collaboration, consultation and cooperation activities that take place mainly in the NHQ Conferences Centre. Examples of this includes audio and video recording equipment, simultaneous translation facilities, electronic displays, conference audio systems, projectors, screens and video 'streaming' servers. This network can be connected to either the Magellan or the Athena networks, when needed and authorized, via a control system and process.

PRN LAN:

The Partner Restricted Network (PRN or P08) host a limited number of services to support the collaboration needs between NATO and its partner nations, up to and including NATO RESTRICTED (NR). The electronic exchange is enabled via the CDGW8 and limited to informal e-mail services for the time being.

NS LAN (aka Athena):

The Athena network serves as the primary business network in the NHQ, providing a local area network capability to be used up to and including the NATO SECRET (NS) classification level in system high mode. This network may also provide connectivity to other NS networks and extranet hosted in the NS Wide Area Network (WAN), through the CDGW1. The Athena network provides core AIS, email, collaboration and Enterprise Information Management (EIM) services, residing on the network and delivered over the LAN and across the WAN. Also the Athena network is segregated into secured separated logical network zones including a dedicated secure zone for its management.

PSN LAN:

The Partner Secret Network (PSN or P01) host a limited number of services to support the collaboration needs between NATO and its partner nations, up to and including NATO SECRET (NS). The electronic exchange is enabled via the CDGW4 and limited to informal e-mail services for the time being.

Annex D - Reserved

Annex E – NHQ Delivery Application Form

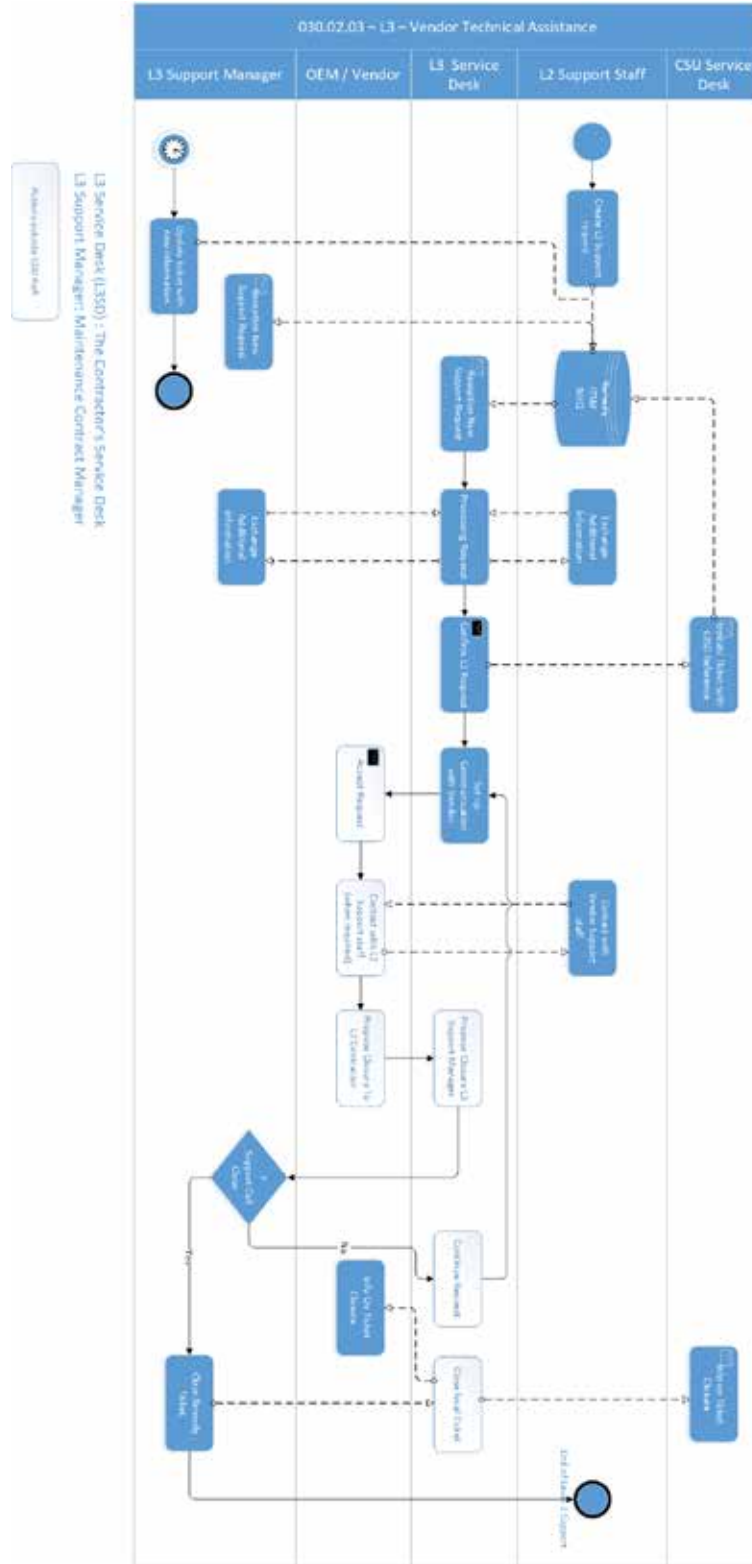
POINT OF CONTACT											DETAILS DRIVER OR CONTRACTOR							DELIVERY DETAILS				
LAST NAME		FIRST NAME		TELEPHONE NUMBER		LAST NAME	FIRST NAME	NATIONALITY	PASSPORT NO	LICENSE PLATE	COMPANY/ MANUFACTURER	COMPANY/ MANUFACTURER LOCATION	ANNUAL DELIVERY DATE & TIME	DESTINATION	REMOVAL ELEVATOR SUPPORT NEEDED	ELEVATOR OPERATOR SUPPORT NEEDED	DESCRIPTION	UNIT OF MEASURE	TOTAL QUANTITY	COMMENTS		

Annex F – Service Delivery process

Delineation of responsibilities and ticket handling

The Support Services requires interactions between the Purchaser, the Contractor, the OEM and the end-users.

- Purchase Support staff will perform Level 1 and Level 2 investigation and diagnostics on the incident.
- When required, NHQ Support L2 Staff will log a L3 Support ticket (Incident or Request) in the NHQ IT Service Management (ITSM) System. The following actions are activated in parallel:
 - o An automated email is sent to the Contractor's Service Desk. This message contains all relevant information about the incident/request such as, OEM, equipment, description, etc.
 - o The Maintenance Contract Manager receives the NHQ Internal ticket.
- The Contractor's Service Desk receives the message with the incident/request and will reply to the mail message with the Contractor's ticket reference after potential request for additional information. An *auto reply* will not be accepted as official ticket response time KPI.
- The Maintenance Contract Manager will follow up with OEM and the Purchaser on remediation activities.
- The Maintenance Contract Manager will update the assigned tickets in NHQ ITSM system with relevant information, until Contractor and/or OEM support staff bring the operations back to normal.
- At the end of the process,
 - o Maintenance Contract Manager will close the ticket in NHQ ITSM system.
 - o Purchaser Service Desk staff is closing the ticket on their local systems, and an (automated) email to NHQ Service Desk to announce the official closure.



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Annex G –Definitions and Acronyms

Definitions:

Consultancy Services: *Services by IT consultants, providing advisory and technical skills to a Customer. Throughout the duration of this Contract, Consultancy Services are those skills provided by the OEMs within scope of the Contract.*

Incident: *an unplanned interruption to an IT Service or reduction in the quality of an IT service. Failure of a configuration item that has not yet affected service is also an incident — for example, failure of one disk from a mirror set. The ITIL incident management process ensures that normal service operation is restored as quickly as possible and the business impact is minimized.*

Key Performance Indicator: *a metric that is used to help manage a Process, IT Service or Activity. Many Metrics may be measured, but only the most important of these are defined as KPIs and used to actively manage and report on the Process, IT Service or Activity. KPIs should be selected to ensure that Efficiency, Effectiveness, and Cost Effectiveness are all managed. See also Critical Success Factor.*

Maintenance: *Actions necessary for retaining or restoring a piece of equipment, machine, or system to the specified operable condition to achieve its maximum useful life.*

OEM active maintenance contracts: *Maintenance contracts from OEMs which provide support in the areas of hardware replacement, software updates and fixes, and technical assistance against Customer priority levels. These contracts set expectations on Mean Time to Resolve (MTTR) and are a way of mitigating risks for operational services.*

Support Integrator: *an entity charged with integrating all sources of hardware and/or software support, both private and public, defined within the scope of a Contract.*

Priority: *a Category used to identify the relative importance of an Incident, Problem or Change. Priority is based on Impact and Urgency, and is used to identify required times for actions to be taken. For example, the SLA may state that Priority 2 Incidents must be resolved within 12 hours.*

Problem: *a condition often identified as a result of multiple incidents that exhibit common symptoms. Problems can also be identified from a single significant incident, indicative of a single error, for which the cause is unknown, but for which the impact is significant.*

Quality: *the ability of a product, Service, or Process to provide the intended value. For example, a hardware Component can be considered to be of high Quality if it performs as expected and delivers the required Reliability. Process Quality also requires an ability to monitor Effectiveness and Efficiency, and to improve them if necessary.*

Service Level Agreement: *an Agreement between an IT Service provider and a Customer. The SLA describes the IT Service, documents Service level targets, and specifies the responsibilities of the IT Service provider and the Customer. A single SLA may cover multiple IT Services or multiple Customers.*

Service Level target: *a commitment that is documented in a Service Level Agreement. Service level targets are based on Service Level Requirements, and are needed to ensure that the IT Service Design is Fit for Purpose. Service level targets should be SMART, and are usually based on KPIs.*

System: *a number of related things that work together to achieve an overall Objective. For example:*

- *A computer System including hardware, software and Applications;*
- *A management System, including multiple Processes that are planned and managed together. For example, a Quality Management System;*
- *A Database Management System or Operating System that includes many software modules that are designed to perform a set of related Functions.*

Technical Assistance: *the provision of advice, assistance, and training pertaining to the installation, operation, and maintenance of equipment or software by the OEM.*

Warranty: *the date of shipment of Hardware/Software to Purchaser, and continuing for a period defined by the OEM. This implies that the equipment is free from defects in material and workmanship under normal use.*

Working Hours: *agreed working hours normally Monday through Friday, excluding official holidays. Note that working hours might not be the same as Service hours and are further defined by there being a trained technician available to initiate/ carry out Service restoration.*

Acronyms:

BER: Beyond economical repair

CLS: Contractor Logistics Support

NFF: No fault found

OEM: Original Equipment Manufacturer

PEDs: Portable Electronic Devices

SLA: *Service Level Agreement*

SSS: Schedule of Supplies and Services