

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

IFB- CO- 115893-MAIN

AMENDMENT 2



CONTRACT SPECIAL PROVISIONS

CONTRACT SPECIAL PROVISIONS
INDEX OF CLAUSES

ARTICLE 1	ORDER OF PRECEDENCE.....	4
ARTICLE 4	FIRM FIXED PRICE.....	5
ARTICLE 5	ADDITIONAL CONTRACT TASKS AND OPTIONS	5
ARTICLE 6	PARTICIPATING COUNTRIES	6
ARTICLE 7	COMPREHENSION OF CONTRACT AND SPECIFICATIONS.....	7
ARTICLE 8	RESERVED.....	8
ARTICLE 9	INSPECTION AND ACCEPTANCE.....	8
ARTICLE 10	REVIEW AND ACCEPTANCE OF DOCUMENTATION	8
ARTICLE 11	INVOICES AND PAYMENT	9
ARTICLE 12	SUPPLEMENTAL AGREEMENTS, DOCUMENTS AND PERMISSIONS.....	10
ARTICLE 13	WARRANTY.....	10
ARTICLE 14	CONTRACT ADMINISTRATION.....	11
ARTICLE 15	SUB-CONTRACTORS.....	12
ARTICLE 16	CONTRACTOR COTS RESPONSIBILITY	12
ARTICLE 17	SERVICE PERFORMANCE AND SERVICE CREDITS	13
ARTICLE 18	SERVICE MODIFICATIONS	13
ARTICLE 19	SECURITY	13
ARTICLE 20	KEY PERSONNEL SECURITY REQUIREMENTS	14
ARTICLE 21	NON DISCLOSURE AGREEMENT	16
ARTICLE 22	OPTIMISATION.....	16
ARTICLE 23	SOFTWARE.....	17
ARTICLE 24	RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE.....	17
ARTICLE 25	INDEMNITY.....	17
ARTICLE 26	TECHNICAL DIRECTION.....	17
ARTICLE 27	CARE AND DILIGENCE OF PROPERTY	18
ARTICLE 28	INDEPENDENT CONTRACTOR.....	18
ARTICLE 29	APPLICABLE REGULATIONS	18
ARTICLE 30	AUDITING AND ACCOUNTING.....	19
ARTICLE 31	RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT	19
ARTICLE 32	FORCE MAJEURE.....	19
ARTICLE 33	RESERVED.....	21
ARTICLE 34	CONTRACTOR'S PERSONNEL WORKING AT PURCHASER FACILITIES	21
ARTICLE 35	NCI AGENCY SUPPLIER CODE OF CONDUCT	22
ARTICLE 36	PHYSICAL SECURITY	22

ARTICLE 37	HEALTH & SAFETY.....	22
ARTICLE 38	BASIC SAFEGUARDING OF CONTRACTOR COMMUNICATION AND INFORMATION SYSTEMS (CIS).....	23
ARTICLE 39	CYBER INCIDENT REPORTING.....	25
ARTICLE 40	LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD- PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION.....	28
ANNEX A:	NCI AGENCY NON-DISCLOSURE DECLARATION.....	29

ARTICLE 1 ORDER OF PRECEDENCE

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

ARTICLE 2 DISPOSITION OF CHANGES TO THE CONTRACT GENERAL PROVISIONS

- 2.1 Article 7 "Firm Fixed Price Contract" of the Contract General Provisions is replaced by Article 4 "Firm Fixed Price" of the Special Provisions.
- 2.2 Article 9 "Participating Countries" of the Contract General Provisions is supplemented by Article 6 "Participating Countries" of the Special Provisions.
- 2.3 Article 10 "Sub-Contracts" of the Contract General Provisions is supplemented by Article 15 "Sub-Contractors" of the Special Provisions.
- 2.4 Article 11 "Security" of the Contract General Provisions is supplemented by Article 19 "Security" of the Special Provisions.
- 2.5 Article 21 "Inspection and Acceptance of Work" of the Contract General Provisions is supplemented by Article 9 "Inspection and Acceptance" of the Special Provisions.
- 2.6 Article 22 "Inspection and Acceptance of Documentation" of the Contract General Provisions is supplemented by Article 10 "Review and Acceptance of Documentation" of the Special Provisions.
- 2.7 Articles 27 "Warranty of Work" and 31 "Software Warranty" of the Contract General Provisions are supplemented by Article 13 "Warranty" of the Special Provisions.
- 2.8 Article 38 – "Liquidated Damages" of the Contract General Provisions is supplemented by Article 17 "Service Performance and Service Credits" of the Special Provisions.

ARTICLE 3 SCOPE

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

- 3.2 The Agreement and Acceptance of this Contract by the Parties neither implies an obligation on either part to extend the Contract beyond the specified scope or terms, nor to prohibit the Parties from mutually negotiating modifications thereto.

ARTICLE 4 FIRM FIXED PRICE

- 4.1 This is a Firm Fixed Price Framework Agreement for Support and Maintenance of Dell Hardware and Software. The Contract grants the Contractor(s) the right to operate and exploit the office relocation areas granted under this Contract as mentioned in the Statement of Work. The majority of work shall take place at NCI Agency in the following seven (7) Member locations: Belgium, Italy, Portugal Republic Of Türkiye, United Kingdom, United States of America and The Netherlands, but services could occur in any NATO Member Nations as required.
- 4.2 Firm Fixed Prices are established for the supplies and services defined in Part I - Schedule of Supplies and Services.
- 4.3 The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as provided under other provisions of this Contract.
- 4.4 The Total Contract price is inclusive of all expenses related to the performance of the present Contract.
- 4.5 The Total Contract price in this Contract is Delivered Duty Paid (INCOTERMS 2010).

ARTICLE 5 ADDITIONAL CONTRACT TASKS AND OPTIONS

- 5.1 The tasks identified in the Contract Schedule of Supplies and Services as Options (if any) are to be intended as options to be exercised by the Purchaser and at his sole discretion. The Purchaser shall have the right to unitarily exercise any of the listed priced options multiple times at his discretion any time during the performance of the Contract and up to its conclusion at the unit prices listed in the Schedule of Supplies and Services.
- 5.2 Should any options be exercised, the Purchaser will increase the firm fixed price of the Contract via a formal Contract Amendment by the amount of the line items so exercised and the period of performance of the Contract will be extended as mutually agreed when necessary.
- 5.3 The Purchaser may increase the quantity of supplies and services as set forth in any line item of Part I - Schedule of Supplies and Services at the prices stated therein any time during the period of performance of the Contract.
- 5.4 This right can be unitarily exercised multiple times for any of the line items, by increasing the firm fixed price of the Contract via a formal Contract Amendment, or by issuing a new contractual instrument.
- 5.5 In this case the Contractor shall honor such right at the same rates and conditions as stated in Part I - Schedule of Supplies and Services and as detailed in Part IV – the Statement of Work. If this right is exercised, delivery

of the added items shall be to the same destination as specified in the basic Contract; unless otherwise specified on the written notice.

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

ARTICLE 6 PARTICIPATING COUNTRIES

- 6.1 Any of the 31 NATO nations contributing to the project, namely, (in alphabetical order): Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Montenegro, The Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Republic of Türkiye, The United Kingdom, and The United States. None of the work, including project design, labor and services, shall be performed other than by firms from and within Participating Countries.
- 6.2 The Contract shall perform all on site services furnished under this Contract at any NATO-Facility in any of the below seven (7) NATO member nations listed in this Contract:

- Belgium

- Italy
- Portugal
- Republic of Türkiye
- United Kingdom
- United States of America
- The Netherlands

- 6.3 No material or items of equipment down to and including identifiable sub-assemblies shall be manufactured or assembled by a firm other than from and within a Participating Country.
- 6.4 The Intellectual Property Rights for all software and documentation used by the Contractor in the performance of the Contract shall vest with firms from and within Participating Countries and no royalties or license fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a Participating Country.

ARTICLE 7 COMPREHENSION OF CONTRACT AND SPECIFICATIONS

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

ARTICLE 8 RESERVED**ARTICLE 9 INSPECTION AND ACCEPTANCE**

- 9.1 Article 21 "Inspection, Acceptance of Work " in General Provisions is hereby supplemented with this Article:
- 9.2 The work to be provided by the Contractor's personnel under this Contract shall conform to the highest professional and industry standards and practices. Inspection of the services provided will be made by the Purchaser's Technical representatives or another authorised designee in accordance with the specifications in Part IV - Statement of Work. Services performed by the Contractor which do not conform to the highest professional and industry standards may result in the Purchaser requesting that such work be performed again at no increase in the price of the contract. Repeated instances of work performed which fails to meet the standards and practices may result in termination of the contract for Default.
- 9.3 Under the terms of this Contract, Acceptance will be made as follows and as specified in Part IV, Statement of Work (SOW):
1. Successful Service Delivery:
 - a. Written approval by the Purchaser of the Quarterly Maintenance Support Performance Reports (MSPR)
 - b. Written approval by the Purchaser of the meeting minutes of the Quarterly Maintenance Support Performance review meetings.
- 9.4 Review and Acceptance of documentation is specified in below Article 10 of the Contract Special Provisions.

ARTICLE 10 REVIEW AND ACCEPTANCE OF DOCUMENTATION

- 10.1 Article 22 "Inspection and Acceptance of Documentation" in General Provisions hereafter, is hereby supplemented with this Article.
- 10.2 Unless otherwise specified in the Statement of Work:
- 10.3 Upon delivery of the Draft Deliverable items, the Purchaser will have a period of two (2) weeks to review the items. At the end of the review period or before if deemed practical by the Purchaser, the Purchaser's comments will be presented to the Contractor in writing. The substance of such comments will pertain to items of error, non-conformity, omission and guidance within the Scope of Work. When applicable, a presentation of the deliverable item including the Purchaser's comments will be made by the Contractor to the Purchaser, at a time which coincides with a progress meeting.
- 10.4 During the review, if the specific Item requires proposal of dates for delivery or reviews, the Purchaser will either accept or adjust the proposed dates.
- 10.5 Within one (1) week after receipt of the Purchaser's comments (and associated progress meeting if appropriate), the Contractor shall incorporate changes, revisions and corrections required by the Purchaser and present the revised deliverable in Final Form to the Purchaser for inspection and acceptance in accordance with the SOW.

- 10.6 The Contractor shall not have the right to ask for additional periods if the delivered draft is considered not satisfactory by the Purchaser and therefore requires many changes and/or corrections.
- 10.7 The Purchaser has the right to reject non-conforming deliverables. The Purchaser, in addition to any other rights or remedies provided by law, or under the provisions of this Contract, shall have the right to require the Contractor at no increase in Contract price, to correct or replace non-conforming work, and in accordance with a reasonable delivery schedule as may be agreed by the Purchaser and the Contractor following the receipt of the Purchaser's notice of defects or non-conformance.
- 10.8 The acceptance by the Purchaser of the Contractor's documentation required by this Contract signifies that the documents delivered appear logical and consistent. The acceptance does not constitute an endorsement or approval of the design or proposed implementation by the Purchaser and does not relieve the Contractor of the obligation to meet the schedule and the performance requirements of this Contract in the event that the design eventually proves to be non-compliant in factory or field testing.

ARTICLE 11 INVOICES AND PAYMENT

- 11.1 Following Purchaser acceptance, in writing, Quarterly payment for supplies and services furnished shall be made in the currency specified for the relevant portion of the Contract.
- 11.2 The term of the Contract may not be exceeded without prior approval of the Purchaser. In no case will the Purchaser make payment above the total of the corresponding CLINs.
- 11.3 No paper invoices will be accepted. Invoices shall be sent electronically to: accountspayable@ncia.nato.int, with the Contracting Officer in copy as specified in Article 14 "Contract Administration" below.
- 11.4 Each invoice shall include:
- a) the Purchase Order number;
 - b) the following statement: *"This invoice is certified as true and correct, and the delivery of the above described items has been duly carried out and the payment therefore has not been received."*;
 - c) currency of the Purchase Order
 - d) description of 'Hardware'/'Services'/'Software/Licence';
 - e) quantities;
 - f) the unit, extended, and total prices;
 - g) Contractor's bank name, address, and account number;
 - h) VAT identification number; and
 - i) the appropriate VAT information as required by Clause 9 of the Core Terms and Conditions (Taxes and Duties).

- 11.5 The invoice amount shall be exclusive of VAT and all Taxes and Duties as per Article 26 "Taxes and Duties" of the NCI Agency General Provisions.
- 11.6 Any fees charged by a bank in the receiving of an international payment for a Contractor, shall be borne solely by the Contractor and shall not be reflected on invoices nor charged to the Purchaser.
- 11.7 No payment shall be made with respect to undelivered supplies, works not performed, services not rendered and/or incorrectly submitted invoices.
- 11.8 No payment shall be made for additional items delivered that are not specified in the contractual document.
- 11.9 Payments for services and deliverables shall be made in the currency stated by the Contractor for the relevant Contract Line Item.
- 11.10 The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 11.11 The certificate shall be signed by a duly authorised company official on the designated original.
- 11.12 NCI Agency will make payment within 30 days of receipt by the NCI Agency of a properly prepared and documented invoice.

ARTICLE 12 SUPPLEMENTAL AGREEMENTS, DOCUMENTS AND PERMISSIONS

- 12.1 The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to Contract award, the execution of which by the Purchaser is/are required by national law or regulation. If any supplemental agreements, documents and permissions are introduced after Contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to Contract signature, the Purchaser may terminate this Contract for Default, in accordance with the Article 39 of the General Provisions hereafter.
- 12.2 Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by national law or regulation and that have been identified by the Contractor prior to the signature of this Contract, but have not yet been finalized and issued by the appropriate governmental authority, are subject to review by the Purchaser.
- 12.3 If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Purchaser and the appropriate governmental authority cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

ARTICLE 13 WARRANTY

- 13.1 Articles 27 "Warranty of Work" and 31 "Software Warranty" of the NCI Agency General Provisions hereafter, are supplemented with the following:

- 13.2 The Contractor shall warrant that the services provided by the Contractor staff shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature. The Contractor shall therefore possess a certification that is compliant with the requirements of Allied Quality Assurance Publication (AQAP) 2110, ISO 9001:2015, or an equivalent QA/QC regime.
- 13.3 In the event of any breach of the foregoing warranty, the Contractor shall, at its own expense, in its discretion either: (1) re-perform the non-conforming services to conform to this standard; or (2) pay to Purchaser an amount equal to a fixed daily fee of EUR 500 for the number of man-days that would have been lost due to inadequate performance. In order for a warranty claim to be effective, the Purchaser will give the Contractor written notice specifying in detail the non-conformities within 60 days after performance of the non-conforming services.
- 13.4 The Contractor shall warrant the work and the performance thereof by its sub-Contractors and shall incur liability for such performance.
- 13.5 On-site interventions and related timelines shall be in line with the specifications in the Statement of Work in section REQ 70.

ARTICLE 14 CONTRACT ADMINISTRATION

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

Purchaser	Contractor
-----------	------------

NATO Communications and Information Agency (NCI Agency) Boulevard Leopold III B-1110 Brussels Belgium	TBC
For contractual matters: Attn: Lise Vieux-Rochat Title: Contracting Officer Tel: E-mail:IFB-CO-115893-MAIN@ncia.nato.int	For contractual matters: Attn: Title: Tel: Mobile: E-mail:
For technical/project management matters (Purchaser Technical Representative): Attn: (TBC) Title: Tel: E-mail:	For technical/project management matters: Attn: Title: Tel: E-mail:

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

ARTICLE 15 SUB-CONTRACTORS

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

ARTICLE 16 CONTRACTOR COTS RESPONSIBILITY

- 16.1 The Contractor shall monitor changes and/or upgrades to commercial off the shelf (COTS) software or hardware to be utilized under subject Contract as defined in the SOW.
- 16.2 For COTS items which are or could be impacted by obsolescence issues, as changes in technology occur, the Contractor will propose substitution of new products/items and/or services for inclusion in this Contract. The proposed items should provide at least equivalent performance and/or lower life-cycle support costs, or enhanced performance without a price or cost increase.
- 16.3 The Contractor will provide evidence with respect to performance of the equipment and/or services being proposed as well as data proving an improvement in performance and/or a reduction in price and/or life-cycle support costs. If necessary for evaluation by the Purchaser, the Contractor shall provide a demonstration of the proposed items. In case of price

reduction, an equitable price adjustment shall be negotiated and included in the Contract through a formal Contract Amendment.

- 16.4 The Contractor shall notify the Purchaser of any proposed changes in the commercial off the shelf software or hardware to be utilized. Such notification shall provide an assessment of the changes and the impact to any other items to be delivered under this Contract.

ARTICLE 17 SERVICE PERFORMANCE AND SERVICE CREDITS

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

ARTICLE 18 SERVICE MODIFICATIONS

- 18.1 The Purchaser shall have the right to increase or decrease the services by category and by item, as he deems necessary.
- 18.2 The Purchaser shall inform the Contractor about a change in the services by issuing a service request and in accordance with the SOW. Each change in services shall be formalized by means of a Contract Amendment in accordance with Article 5 "Additional Contract Task and Options" and Clause 16 "Changes" of the Contract General Provisions.
- 18.3 The delivery date for a new service / effective date of reduction of services will be stipulated in the service request and shall become contractually binding by means of the relevant Contract Amendment.

ARTICLE 19 SECURITY

- 19.1 This Article supplements Article 11 "Security" of the NCI Agency General Provisions hereafter.
- 19.2 The Contractor is responsible, in accordance with NATO and National Security regulations, for the proper handling, storage and control of any classified documents and information as may be furnished to the Contractor in relation to the performance of the present Contract.

- 19.3 The security classification of this Contract is "NATO UNCLASSIFIED".
- 19.4 Contractor's personnel visiting or working at Purchaser's facilities and working in connection with this Contract shall hold a confirmed NATO SECRET security clearance and/or may require specific security clearance requirements in accordance with the SOW specifications, valid for the duration of the Contract at the Effective Date of Contract (EDC). This requirement applies to all sub-Contracts issued by the Contractor for the effort under this prime Contract.
- 19.5 It is the responsibility of the Contractor to ensure that its personnel obtain the required security clearances and transmit this information to the purchaser and to the sites to be visited at least two (2) weeks before personnel deployment that the site may perform the appropriate administration.
- 19.6 The Contractor is advised that the personnel security process may be lengthy. The Purchaser bears no responsibility for the failure of the Contractor to secure the required clearances for its personnel or sub-Contractor's personnel within the necessary time.
- 19.7 The Contractor bears full responsibility and liability under the Contract for delays arising from the failure of the Contractor to adhere to the security requirements.
- 19.8 Delay caused by non-compliance of the Security clearance requirements under this Contract, may not be used by the Contractor as the basis for a claim of adjustment or an extension of schedule nor can the denial of access be considered a mitigating circumstance in the case of an assessment of penalties or a determination of Termination for Default by the Purchaser.
- 19.9 All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance applicable security regulations.
- 19.10 In the absence of valid security clearances for the Contractor's personnel during the performance of the Contract, the Purchaser reserves the right to terminate the Contract for Default as per the "Termination for Default" Article of the NCI Agency General Provisions.
- 19.11 Contractor's personnel acting as Privileged Users shall also be required to comply with the regulations described under the Code of Conduct for NATO CIS Privileged Users.
- 19.12 The Contractor shall be required to handle and may be required to store classified material to the level of "NATO SECRET" in his facility. The Contractor shall have the appropriate facility and personnel clearances.
- 19.13 The Contractor shall note that there are restrictions regarding the carriage and use of electronic devices (e.g. laptops) in Purchaser secured locations. The Contractor shall be responsible for satisfying and obtaining from the appropriate site authorities the necessary clearance to bring any such equipment into the facility.

ARTICLE 20 KEY PERSONNEL SECURITY REQUIREMENTS

- 20.1 The key personnel proposed by the Contractor that satisfy the personnel requirements laid down in the SOW are considered to be key to the

performance of this Contract and may not be replaced by the Contractor with substitute personnel without the prior written approval of the Purchaser.

- 20.2 It shall be the Contractor responsibility to secure that all Contractor personnel working on the present contract has a clean criminal record and a valid work permit necessary to perform work in the country and place of performance.
- 20.3 Only members of Contractor personnel that are nationals from one of the NATO Member Nations shall be allowed to work on the present contract.
- 20.4 Based on the information available at NATO, the Site Security Manager has the right to refuse members of the Contractor personnel without having to provide a justification. The Contractor(s) shall not hold the Contracting Authority, the Purchaser or NATO liable for the consequences of such a decision.
- 20.5 Contractor personnel whose presence at NATO is not accepted or becomes undesirable shall immediately leave the NATO compound.
- 20.6 If any options are exercised, the Key Personnel provisions will apply to the option period from the effective date of the Contract.
- 20.7 The Contractor must provide the Site Security Manager with the following information on Contractor personnel and equipment that must access/be brought within NATO compounds: full personal particulars of Contractor(s) personnel (including security clearance information), a duty roster, vehicles' registration numbers and a list of all equipment and machinery. Information must be provided at least three working days before site access can be granted.
- 20.8 Under the terms of this Article, Key Personnel may not be voluntarily diverted by the Contractor to perform work outside the Contract. In cases where the Contractor has no control over the individual's non-availability (e.g., resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser of a change of key personnel within five (5) days of the date of knowledge of the prospective vacancy and offer a substitute with equivalent qualifications with no additional costs for the Purchaser.
- 20.9 The Contractor shall take all reasonable steps to avoid changes to Key Personnel assigned to this project except where changes are unavoidable or are of a temporary nature. Any replacement personnel shall be of a similar grade, standard and experience as the individual to be substituted.
- 20.10 In those cases where, in the judgment of the Purchaser, the inability of the Contractor to provide a suitable replacement in accordance with the terms of this Article may potentially endanger the progress under the Contract, the Purchaser shall have the right to terminate the Contract in accordance with the terms of the General Provisions Article entitled "Default".
- 20.11 Any change of status or reorganization of the Contractor's practice, or any change in the responsibility for the execution of the Contract shall be reported to the Purchaser immediately when the change or reorganization is promulgated.
- 20.12 The Contractor's Key Personnel required to interface directly with the Purchaser's counterparts, shall have the capability to readily communicate

(oral and written fluency) in English and to provide, if requested official documents destined for distribution during the course of the Contract in English.

- 20.13 The Purchaser may, for just cause, require the Contractor to remove its employee. Notice for removal will be given to the Contractor by the Purchaser in writing and will state the cause justifying the removal. The notice will either demand substitution for the individual involved and/or contain a notice for default and the remedies to be sought by the Purchaser.
- 20.14 The Contractor shall inform his staff about the access control and emergency procedures at NATO i.e. search of individuals, their luggage and vehicles, fire and emergency drills.
- 20.15 Each of the Contractor's Key Personnel shall be required to sign Annex A to these Contract Special Provision: "NCI Agency Non-disclosure declaration."

ARTICLE 21 NON DISCLOSURE AGREEMENT

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

ARTICLE 22 OPTIMISATION

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

- 22.7 A schedule of how the changes would be implemented with minimal negative impact to on-going performance and operations.

ARTICLE 23 SOFTWARE

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

ARTICLE 24 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

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

ARTICLE 25 INDEMNITY

- 25.1 The Contractor will indemnify and hold harmless NATO, its servants or agents, against any liability, loss or damage arising out of or in connection of the Deliverables and Services under this Contract, including the provisions set out in Articles 29 "Patent and Copyright indemnity" and 30 "Intellectual Property" of the NCI Agency General Provisions.
- 25.2 The Contractor will indemnify NATO and its servants or agents, against claims made against NATO and its servants or agents, by their personnel, and their sub-Contractors (including their personal representatives) in respect of personal injury or death of such personnel or loss or destruction of or damage to the property of such personnel.
- 25.3 The Contractor will consult with the Agency over the handling of any claim or action to which the provisions of this Article may be relevant and will consult with the Agency over the handling of any such claim and conduct of any such action and will not without prior consultation and without the concurrence of the Agency settle or compromise any such claim or action.
- 25.4 In the event of an accident resulting in loss, damage, injury or death arising from negligence or willful intent of an agent, officer or employee of NATO for which the risk has been assumed by the Contractor, the Contractor shall involve the Agency in any investigation into the cause of the accident.

ARTICLE 26 TECHNICAL DIRECTION

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

cost, duration or level of effort or services of the Contract. The Technical Representatives do have the authority, within the general scope of work, to provide direction to the Contractor personnel in performance of their duties.

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

ARTICLE 27 CARE AND DILIGENCE OF PROPERTY

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

ARTICLE 28 INDEPENDENT CONTRACTOR

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

ARTICLE 29 APPLICABLE REGULATIONS

- 29.1 The Contractor(s) and all his sub-contractor(s) working on the present contract shall comply at all times with the following rules, regulations, policies and directives, listed in order of precedence:
- i. Local Site(s) Security and Health and Safety Regulations
 - ii. CM(2002)49 and all supporting directives, and specifically AC/35-D/2002-REV5 and AC/35-D2001-REV3
 - iii. Annex II on Security measures

- 29.2 Whenever required by the Site Security Manager or if the operational situation changes, security measures may need to be re-assessed and amended as necessary.
- 29.3 The Contractor shall be responsible for obtaining permits or licenses to comply with national codes, laws and regulations or local rules and practices in the country of performance under this Contract.
- 29.4 The Contractor shall take any necessary measure to protect the life and health of persons working or visiting the work area occupied by him. These measures include compliance with the country of performance's health and safety provisions.
- 29.5 In the performance of all work under this Contract, it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the local Headquarters' Security Officer.

ARTICLE 30 AUDITING AND ACCOUNTING

- 30.1 The Contractor's accounting and auditing procedures under this Contract shall be in compliance with the applicable Contractor National standards governing these type of contracts.
- 30.2 The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with the prescription of Article 11 "Invoices and Payment" of the Contract Special Provisions.
- 30.3 In the event of this Contract being terminated in accordance with Article 40 "Termination for Convenience of the Purchaser" of General Provisions, the Contractor shall provide within ninety (90) days of the formal date of termination a detailed statement of all costs incurred since the initiation of the programme, together with the statement of all outstanding commitments for which the Contractor is legally liable.

ARTICLE 31 RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT

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

ARTICLE 32 FORCE MAJEURE

- 32.1 “Force Majeure” means the occurrence of an event or circumstance that prevents a Party (the “Affected Party”) from performing one or more of its contractual obligations under the Contract, provided that: (i) it renders performance impossible; (ii) it is beyond the Affected Party’s reasonable control and without the Affected Party’s cause, fault or negligence; (iii) by its nature it could not have been reasonably foreseen at the time of conclusion of the Contract; and (iv) the effects of it could not reasonably have been avoided or overcome by the Affected Party.
- 32.2 Examples of Force Majeure include:
- 32.2.1 war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization;
 - 32.2.2 civil war, riot, rebellion and revolution, usurped power, insurrection, act of terrorism, sabotage or piracy;
 - 32.2.3 currency and trade restriction, embargo, sanction;
 - 32.2.4 act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization;
 - 32.2.5 plague, epidemic, natural disaster or extreme natural event; explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; and
 - 32.2.6 general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 32.3 The Affected Party must give the other party to the Contract (the “Other Party”) written notice without delay detailing the occurrence and its expected duration. The Other Party shall within a reasonable time respond, stating whether it accepts or rejects the occurrence as Force Majeure.
- 32.4 If the Other Party accepts the occurrence as Force Majeure, the Contract shall remain in force but the Parties will be relieved from performance of their obligations (including payment) under Contract, from the date at which the Other Party received written notice, for so long as the effects of Force Majeure continue or for ninety (90) days, whichever is the shorter, provided that:
- 32.4.1 the Affected Party makes all reasonable efforts to limit the effects of Force Majeure upon performance and to avoid or overcome the effects of Force Majeure;
 - 32.4.2 the suspension of performance is of no greater scope than is necessitated by Force Majeure;

- 32.4.3 the Affected Party continues to furnish weekly updates by email while the effects of Force Majeure continue detailing reasonable efforts made in accordance with [33.2], and notifies the Other Party immediately when the effects of Force Majeure are avoided or overcome, or cease, and resumes performance immediately thereafter.
- 32.5 Neither Party shall be in breach of the Contract nor liable for delay in performing, or for failing to perform, its obligations under the Contract, due to Force Majeure.
- 32.6 Unless otherwise agreed by the Parties, if Force Majeure continues for more than ninety (90) days, the Parties may agree: (a) to a revised delivery schedule at no cost; (b) to a reduction of scope terminating part of the contract at no cost; or (c) to terminate the whole of the Contract at no cost.

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

- 34.1 The term "Purchaser Facilities" as used in this clause shall be deemed to include sites, property, utilities, ships or vessels and the term "Facility Representative" shall be deemed to refer to the authority designated by the Purchaser responsible for the site, property, utility, ship or vessel.
- 34.2 Purchaser reserves the right to provide Purchaser Facilities for Contractor Key Personnel. In the event Purchaser does provide Purchaser Facilities, the Facility Representative shall provide such available administrative and technical facilities for Contractor's personnel working at Purchaser's Facilities for the purpose of the Contract as in the opinion of the Facility Representative may be necessary for the effective and economical discharge of work under the Contract. These facilities may be provided free at the discretion of the Facility Representative. The Contractor shall be responsible for ascertaining what necessary facilities will be available and whether they will be provided free of charge, or determining what charges are payable.
- 34.3 The Contractor shall have no claim against the Purchaser for any such additional cost of delay occasioned by the closure for holidays, or other reasons, where this is generally published or made known to the Contractor by the Purchaser of his authorized representatives.
- 34.4 Notwithstanding the provisions of the "Purchaser Furnished Facilities" Clauses above, where those conditions form part of the Contract, the Contractor shall except as otherwise provided for in the Contract, make good or, at the option of the Purchaser, pay compensation for all damage occurring to any Purchaser's Facilities occasioned by the Contractor, or by his servants, agents or sub-contractors, arising from his or their presence on Purchaser Facilities in connection with the Contract; provided that this Conditions shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to, by his neglect, or default or the neglect or default of his servants, agents of sub-contractors, or by any circumstances within his or their control.

- 34.5 All property of the Contractor while at a Purchaser Facility shall be at the risk of the Contractor, and the Purchaser shall accept no liability for any loss or damage, except to the extent that any loss or damage is the result of a wilful act or gross negligence on the part of the Purchaser's employees or agents.

ARTICLE 35 NCI AGENCY SUPPLIER CODE OF CONDUCT

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

ARTICLE 36 PHYSICAL SECURITY

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

ARTICLE 37 HEALTH & SAFETY

- 37.1 The Contractor shall comply with all applicable local laws and regulations, including health and safety regulations.
- 37.2 The Contractor shall provide evidence of a trained workforce and the competence of key staff for the activities, including all the required

certifications as per the local laws and regulations. The contractor shall nominate a Health and Safety representative as a point of contact for any Health and Safety matters.

- 37.3 Each week before start of the works and upon arrival at the Purchasers' compound, the Contractor shall contact the Purchaser's site lead first and provide him with a plan for the works that shall be executed the week ahead. Along with the one week ahead plan, the Contractor shall prepare and discuss the updated risk assessment and the proposed mitigations measures to be implemented.
- 37.4 The Contractor shall propose a Risk assessment methodology to assess the associated risks and define the respective acceptability levels and control needs in accordance with applicable legal requirements and prevention of any harm. A template for risk assessment, specifying hazard, potential injuries or damage, mitigation measures taken, number of people at risk, additional mitigation measures, assigned responsibilities, applicable legal and other requirements and color coding, identifying risk factors, shall be proposed.
- 37.5 Works shall be subject to Purchaser full Health and Safety assessment. The Health and Safety assessment shall result in a list of risk logs and risk mitigations that shall be added to the design/execution plan of the works. The Risk register and the proposed mitigation measures shall be submitted to and approved by the Purchaser Health and Safety Department.
- 37.6 Safety Operating Procedures (SOP) for all the activities shall be prepared, submitted to and approved by the Purchaser Health and Safety Department.
- 37.7 The Contractor shall demonstrate compliance with the latest ISO 45001 standard requirements.

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

38.1 Definitions. As used in this clause—

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

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

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

NATO technical information that is subject to controls on its access, use, reproduction, modification, performance, display, release, disclosure, or dissemination that is technical data or computer software in nature; such as, research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets,

manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, executable code and source code, design details, or formulae and related material that would enable the software to be reproduced, recreated, or recompiled.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 39 CYBER INCIDENT REPORTING

39.1 Definitions.

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

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

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

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

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

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

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan

horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which NATO Information is recorded, stored, or printed within a contractor CIS.

39.2 Cyber incident reporting requirement.

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

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

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

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

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

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

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

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

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

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

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

Information Handling. The Purchaser shall protect information reported or otherwise provided to the Purchaser under this clause that includes contractor attributional/proprietary information in accordance with applicable NATO policies. To the maximum extent practicable, the Contractor shall identify and mark contractor attributional/proprietary information. The Purchaser may use contractor attributional information and disclose it only for purposes and activities consistent with this clause. The Purchaser will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such an authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

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

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

Subcontracts. The Contractor shall—

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

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

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

40.1 The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a cyber incident pursuant to the NCI Agency's Cyber Incident Reporting clause (or derived from such information obtained under that clause):

- The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Purchaser in support of the NATO activities related to stipulated clause and shall not be used for any other purpose.
- The Contractor shall protect the information against unauthorized release or disclosure.
- The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.
- The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the NCI Agency and the Contractor, as required by paragraph above of this clause.
- A breach of these obligations or restrictions may subject the Contractor to—

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

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

ANNEX A: NCI AGENCY NON-DISCLOSURE DECLARATION

We, the undersigned _____ (Company) duly represented by _____ (hereinafter "Contractor") do hereby certify that we shall ensure that the following conditions be accepted and observed by all (Contractor) employees working under CO- 115893-MAIN

Full name (in block capitals)

Date

Signature

=====

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

I UNDERSTAND:

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

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

That I must not, without the approval of the General Manager of the NCI Agency, publish (in any document, article, book, CD, video, film, play, or other form) any classified /commercial-in-confidence information which I have acquired in the course of my work under CO- 115893-MAIN.

That, at the end of contract and after performance of all required tasks, I must surrender any official document or material made or acquired by me in the course of my work under CO- 115893-MAIN, save such as I have been duly authorised to retain.

That the provisions of the above Declaration apply not only during the period of work under CO- 115893-MAIN, but also after my contract has ceased and that I am liable to prosecution if either by intent or negligence I allow classified/commercial-in-confidence information to pass into unauthorised hands.

