

NATO UNCLASSIFIED

IFB-CO-14974-BMD

**PROVISION OF Integration Test Bed Build 6
Open Frame Services
(ITB OFS)**

PROJECT SERIAL 2018/0VA03020



**BOOK II
PROSPECTIVE
CONTRACT**

NATO UNCLASSIFIED

NATO UNCLASSIFIED

Page intentionally left blank

NATO UNCLASSIFIED

NATO UNCLASSIFIED

SIGNATURE SHEET

CONTRACT CO-14974-BMD
Between
NCI Organisation, as
represented by the General Manager NCI Agency
(Purchaser)

and

XXXXXXX.

(Contractor)

IN WITNESS HEREOF the parties hereto have caused this agreement to be executed by their duly authorised officers on the date shown hereunder:

Signature of Contractor:

Name of Signer:

Title of Signer:

Date:

Signature of Purchaser:

Name of Signer:

Title of Signer:

Date:

EFFECTIVE DATE OF CONTRACT:

CONTRACT VALUE: **XXXXXXXXXX**

NATO UNCLASSIFIED

Page intentionally left blank

NATO UNCLASSIFIED

TABLE OF CONTENTS

SIGNATURE SHEET..... 3

1. INTERPRETATION, DEFINITIONS, AND ACRONYMS..... 1

2. DISPOSITION OF NCIO CONTRACT GENERAL PROVISIONS 1

3. ORDER OF PRECEDENCE..... 2

4. SCOPE OF WORK 2

**5. TOTAL SYSTEM PERFORMANCE RESPONSIBILITY AND
COMPREHENSION 3**

6. CONTRACT TYPE..... 4

7. INVOICES AND PAYMENT TERMS 4

8. INTELLECTUAL PROPERTY..... 5

9. OWNERSHIP AND TITLE 6

10. WARRANTY..... 6

**11. PURCHASER RIGHT TO CONTRACT WITH THIRD PARTIES IN
CASE OF CONTRACTOR DEFAULT..... 6**

**12. CONTRACT STATUS REVIEW AND PERFORMANCE
MILESTONES 7**

13. ACTIVATION OF WORK..... 8

14. PRICING OF CHANGES, AMENDMENTS AND CLAIMS 9

15. OPTIONS..... 10

16. COMMERCIAL OF THE SHELF (COTS) SOFTWARE 11

17. ACCEPTANCE PROCEDURES..... 11

18. RISK OF LOSS OR DAMAGE..... 12

19. COTS PRODUCTS REPLACEMENT 12

20. CONTRACT ADMINISTRATION..... 13

21. LIQUIDATED DAMAGES..... 14

22. CONTRACTOR’S EMPLOYEES..... 15

23. KEY PERSONNEL..... 16

24. INDEPENDENT CONTRACTOR..... 17

25. CONTRACTOR BACKGROUND IPR 17

26. CONFIDENTIALITY AND NON-DISCLOSURE..... 18

27. CONFLICT OF INTEREST 19

28. PURCHASER FURNISHED PROPERTY AND SERVICES..... 20

29. SOFTWARE WARRANTY..... 20

30. PERFORMANCE GUARANTEE 21

31. SECURITY..... 21

32. SUPPLEMENTAL AGREEMENTS..... 22

33. SL AND SERVICE CREDITS..... 22

**34. TRANSPARENCY OF CONTRACTOR PERSONNEL IN
ACCORDANCE WITH PURCHASER CODE OF CONDUCT..... 23**

ANNEX A. NCI AGENCY NON-DISCLOSURE DECLARATION 1

ANNEX B. KEY PERSONNEL..... 1

ANNEX C. LIST OF SUBCONTRACTORS..... 1

ANNEX D. CONTRACTOR AND SUBCONTRACTOR BACKGROUND IPR 1

ANNEX E. THIRD PARTY IPR 1

**ANNEX F. SCHEDULE OF MAJOR PERFORMANCE MILESTONES AND
PAYMENTS..... 1**

ANNEX G. CERTIFICATE OF COMPLETION..... 1

NATO UNCLASSIFIED

Page intentionally left blank

NATO UNCLASSIFIED

NATO UNCLASSIFIED

CO-14974-BMD

**PROVISION OF
INTEGRATION TEST BED BUILD 6 OPEN FRAMEWORK
SERVICES FOR NATO BALLISTIC MISSILE DEFENSE
(ITB OFS)**

PROJECT SERIAL 2018/0VA03020

PART I

SCHEDULE OF SUPPLIES AND SERVICES

*(THIS SECTION WILL BE DERIVED FROM THE BIDDING
SHEETS SUBMITTED BY THE SUCCESSFUL BIDDER)*

NATO UNCLASSIFIED

NATO UNCLASSIFIED

IFB-CO-14974-BMD
Schedule of Supplies and Services

PAGE INTENTIONALLY LEFT BLANK

NATO UNCLASSIFIED

NATO UNCLASSIFIED

CO-14974-BMD

**PROVISION OF INTEGRATION TEST BED BUILD 6
OPEN FRAMEWORK SERVICES
FOR NATO BALLISTIC MISSILE DEFENSE
(ITB OFS)**

PROJECT SERIAL 2018/0VA03020

PART II

SPECIAL CONTRACT PROVISIONS

NATO UNCLASSIFIED

1. INTERPRETATION, DEFINITIONS, AND ACRONYMS

- 1.1. This Clause supplements Clause 2 of the NCIO Contract General Provisions.
- 1.2. As used throughout this Contract, the following terms shall have the meanings specified below unless otherwise specified in the Contract:
- 1.3. "Installation Sites": the NATO premises as set out in Contract Schedules and the Statement of Work (Statement of Work) and or such other sites as the Purchaser shall from time to time notify to the Contractor through a Contract Amendment;
- 1.4. "NATO Participating Country": any NATO nation that has undertaken to share the cost of the project, namely, (in alphabetical order): ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC, DENMARK, ESTONIA, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, THE NETHERLANDS, MONTENEGRO, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, THE UNITED KINGDOM and THE UNITED STATES OF AMERICA.
- 1.5. "Technical Solution": the Contractor's specification for the project provided as part of his bid and included in this Contract by reference.
- 1.6. "Service": A non-material equivalent of a good that is part of the activity performed under the Contract.

2. DISPOSITION OF NCIO CONTRACT GENERAL PROVISIONS

- 2.1. For the purposes of this Contract, the NCIO Contract General Provisions are modified, supplemented, or deleted as follows.
- 2.2. Clause 1 (Order of Precedence) is replaced by Clause 3 (Order of Precedence) of the Contract Special Provisions.
- 2.3. Clause 2 (Definitions) is supplemented by Clause 1 (Interpretation, Definition, and Acronyms) of the Contract Special Provisions.
- 2.4. Clause 7 (Firm Fixed Price Contract) is replaced by Clause 6 (Contract Type) of the Contract Special Provisions.
- 2.5. Clause 8 (Performance Guarantee) is supplemented by Clause 30 (Performance Guarantee) of the Contract Special Provisions.
- 2.6. Clause 11 (Security) is supplemented by Clause 31 (Security) of the Contract Special Provisions.
- 2.7. Clause 13 (Purchaser Furnished Property) is supplemented by Clause 28 (Purchaser Furnished Property and Services) of the Contract Special Provisions.
- 2.8. Clause 19 (Pricing of Changes, Amendments and Claims) is supplemented by Clause 14 (Pricing of Changes Amendment and Claims) of the Contract Special Provisions.
- 2.9. Clauses 21 (Inspection and Acceptance of Work) and 22 (Inspection and Acceptance of Documentation) are supplemented by Clause 17 (Acceptance Procedures) of the Contract Special Provisions.
- 2.10. Clause 24 (Ownership and Title) is supplemented by Clause 18 (Risk of Loss or Damage) and Clause 9 Ownership and Title) of the Contract Special Provisions.
- 2.11. Clause 25 (Invoices and Payment) is supplemented by Clause 7 (Invoices and Payment Terms) of the Contract Special Provisions.
- 2.12. Clause 30 (Intellectual Property) is supplemented by Clause 8 (Intellectual Property) and Clause 26 (Contractor Background IPR) of the Contract Special Provisions.
- 2.13. Clause 31 (Software Warranty) is supplemented by Clause 29 (Software Warranty) of the Contract Special Provisions.
- 2.14. Clause 38 Liquidated Damages is replaced by Clause 22 (Liquidated Damages) of the Contract Special Provisions.
- 2.15. Clause 39 (Termination for Default) is supplemented by Clause 11 (Purchaser's Right to Contract with Third Party in Case of Contractor Default) of the Contract Special Provisions.

3. ORDER OF PRECEDENCE

- 3.1. This Clause supersedes Clause 1 of the NCIO Contract General Provisions.
- 3.2. In case of conflict between the clauses, the schedules and any annexes to the schedules and any other documents referred to in this Contract, the conflict shall be resolved in accordance with the following order of precedence:
 1. The Signature Page
 2. Part I (Contract Schedule of Supplies and Services)
 3. Part II (Special Contract Provisions) and Annexes
 4. Part III (NCIO Contract General Provisions) and Annexes
 5. Part IV – Statement of Work
 6. Annex A to Part IV – Statement of Work, List of Requirements

4. SCOPE OF WORK

- 4.1. This Contract is for the provision of Integration Test Bed Build 6 Open Framework Services for NATO Ballistic Missile Defense, short name "ITB OFS".
- 4.2. ITB OFS contractor will implement its solution based on the existing components found in BMD ITB Build 5 [R41] of the Part IV SOW, with entirely new components or a combination of existing and new components.
- 4.3. The work will be split as follow:
 - CLIN 1:** Project Management
This CLIN covers all project management effort required to perform all CLINs under the Contract until its termination.
 - CLIN 2 :** Systems Development
This CLIN covers all engineering effort to develop ITB OFS capabilities in accordance with the ITB OFS System Requirements Specification (SRS).
 - CLIN 3:** Test and acceptance
This CLIN covers all test and acceptance related activities.
 - CLIN 4:** ILS
This CLIN covers Integrated Logistic Support and training related activities.
 - CLIN 5:** Options
This CLIN covers the yearly extended warranty, additional training and intervention for additional warranty scope.
- 4.4. The Contractor shall be responsible for the following:
 - a. Organize, schedule and conduct the work to execute the identified CLINs defined in SSS;

- b. Undertake the project management activities required to ensure delivery of the contract scope on time and to the quality standards specified in the Part IV, Statement of Work (SOW).
- c. Undertake the system design, development, provision, configuration, installation, integration and testing of the BMD ITB OFS, while meeting the functional and non-functional requirements provided in the Annex A of Part IV, SOW and to be detailed in SRS developed by the Contractor.
- d. Conduct,
 - System Requirements Analysis. Through this stage, the Contractor shall refine and update the requirements identified in Annex A of Statement of Work to ensure proper understanding of requirements within the various stakeholder communities (the Contractor, the Purchaser and the User) The SRS updates will go through a System Requirement Review (SRR). Upon Purchaser's acceptance of the updated SRS, the design stage will start.
 - System Design. Through this stage, the Contractor shall propose a design which meets the SRS requirements. This design will be submitted during the System Design Review. Upon Purchaser's approval of the System Subsystem Design Description (SSDD), the development stage will start.
 - Development and Integration. Through this stage, the Contractor shall develop new software (if required), implement and integrate COTS in accordance with SSDD. During this period. The Contractor shall grant access all data regarding his Developmental Baseline to the Purchaser. At the end of this stage, the Contractor shall deliver a Product Baseline.
 - Testing. Through this stage, the Candidate Product Baseline of ITB OFS component shall go through different tests to support authorisation for deployment of the ITB OFS components into NATO operational network environment.
- e. Install/integrate/verify three identical instances of ITB OFS on the three HW platforms provided by the Purchaser, described in section 1.3.2 of Statement of Work.
- f. Integrate ITB OFS solution with other ITB TE components provided as PFI.
- g. Deliver all the documentation required as stated in Schedule of Supplies and Services (SSS) and SOW.
- h. Support. Through this stage, the Contractor shall provide corrective maintenance and on-site support at Purchaser's facilities until the end of support & maintenance period.

5. TOTAL SYSTEM PERFORMANCE RESPONSIBILITY AND COMPREHENSION

- 5.1. The Contractor warrants that he has read, understood and agreed to implement

each and all terms, clauses, specifications (including interfaces), conditions and requirements specified in this Contract and that his signature of the Contract is an acceptance, without reservations, of the said Contract terms within their normal and common meaning.

- 5.2. The Statement of Work (Statement of Work) and its Annex A, "List of Requirements" of Part IV of this Contract 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 Deliverables will meet the performance requirements of the said Statement of Work and List of Requirements.
- 5.3. The Contractor shall be fully responsible for the integration of all its sub-systems and components, and hereby agrees to make certain that any or all required inspection and Acceptance test procedures are accomplished and are sufficient to meet the requirements of the Statement of Work and List of Requirements. Further, the Contractor agrees that all subsystems and components will be installed and integrated into the systems to be delivered under this Contract.

6. CONTRACT TYPE

- 6.1. This Clause supersedes Clause 7 of the NCIO Contract General Provisions.
- 6.2. This is a Firm Fixed Price Contract.
- 6.3. The total Firm Fixed Price of this Contract is stated on the Signature page of the Contract and is based on the price of CLINs 1 through 4 established in the Part I, Contract Schedule of Supplies (SSS), unless revised by the Purchaser through formal Amendment to the Contract.
- 6.4. CLIN 5 constitutes contract options for additional maintenance, training and intervention for additional warranty scope for a period of up to 5 years after FSA.
- 6.5. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Total Price.

7. INVOICES AND PAYMENT TERMS

- 7.1. This Clause supplements Clause 25 of the NCIO Contract General Provisions.
- 7.2. Payment for supplies and services furnished under this Contract shall be made in the currency quoted by the Contractor for the relevant portion of the Contract.
- 7.3. The Contractor shall be entitled to submit invoices and payment will be made as soon as all CLINs associated with a given Payment Milestone identified in Annex G, have been accepted by the Purchaser in writing. Where appropriate the Contractor may combine multiple Payment Milestones under one invoice.

- 7.4. Where Optional CLINs 5.1 is exercised, payments shall be made semi-annual after each period of performance of six months. Other optional CLINs will be paid accordance with the stipulations of the relevant amendment providing for the exercise of such Options.
- 7.5. No payment shall be made with respect to undelivered supplies, works not performed, services not rendered and/or incorrectly submitted invoices.
- 7.6. The Purchaser shall not be liable for any amount resulting from the performance of services or the delivery of equipment outside the scope of this Contract.
- 7.7. Payment to the Contractor will be made within sixty (60) days of receipt of properly supported and documented invoices and upon acceptance in writing by the Purchaser.
- 7.8. Invoices referencing CO-14974-BMD Purchase Order Number XXXXXXXX shall be addressed to :
 - NCI Agency – Accounts Payable
 - Boulevard Leopold III
 - 1110 Brussels, Belgium
 - Electronic address: accountspayable@ncia.nato.int

8. INTELLECTUAL PROPERTY

- 8.1. This Clause supplements Clause 30 (Intellectual Property) of the NCIO Contract General Provisions and covers the ITB 5 Component.
- 8.2. As the Purchaser intends to reuse the ITB 5 Component as detailed in paragraph 4 above, all Intellectual Property of the ITB 5 Component, both object and source code, shall be considered Foreground Intellectual Property Rights (IPR) in accordance with Clause 2.19 and 30.3 of the NCIO Contract General Provisions. As a consequence, all IPR of the IFB OFS Product Baseline shall be the property of the Purchaser on behalf of NATO.
- 8.3. Notwithstanding Clause 8.2 above, the Purchaser recognizes that the Contractor may require the use of Third Party Commercial of the Shelf (COTS) products for the purpose of developing the IFB OFS Product Baseline pursuant to this Contract. In such case, the Contractor shall state the proposed COTS products in ANNEX E hereto. For such COTS items, the Contractor shall be responsible for obtaining all licenses in line with the requirements of the Statement of Work and its annexes. No IPR other than Foreground and Third Party COTS shall govern the deliverables of the CLINs 1 through 4 and the delivery of the IFB OFS Product Baseline. With the exception of licencing terms for COTS to be provided, if any, no statement limiting the use of the IFB OFS Product Baseline shall be accepted.
- 8.4. The Contractor shall ensure that suitable arrangements are in place between its employees, agents, consultants and itself regarding the IPR of the IFB OFS Product Baseline generated by said employees, agents, Subcontractors and

consultants to allow the Contractor to fulfil its obligations under Clause 8 above.

- 8.5. The Contractor shall be entitled to use the Foreground IPR of the IFB OFS Product Baseline on a non-exclusive, royalty free basis solely for the purpose of carrying out the Work.
- 8.6. The Contractor shall not use any Foreground IPR of the IFB OFS Product Baseline (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.
- 8.7. The Contractor shall provide the Purchaser, at the latest upon delivery of the IFB OFS Product Baseline and thereafter for the duration of the warranty and any purchased CLS (Contractor Logistics Support) agreement period, with full documented records of information in relation to the IFB OFS Product Baseline, including but not limited to, all drawings, specifications and other data that is necessary or useful to further develop, maintain and operate the IFB OFS Product Baseline.
- 8.8. The Contractor shall take all necessary actions and sign all necessary documents to;
 - 8.8.1. Enable the Purchaser to obtain the registration, if applicable, of the IFB OFS Product Baseline IPR as the Purchaser may require and select; and
 - 8.8.2. Execute any formal assignment or prepare other documents as may be necessary or useful to vest title to any IFB OFS Product Baseline IPR in the Purchaser.

9. OWNERSHIP AND TITLE

- 9.1. This Clause supplements Clause 24 (Ownership and Title) of the NCIO Contract General Provisions.
- 9.2. All IPR of the IFB OFS Product Baseline is immediately and exclusively transferred and assigned to the Purchaser as from their coming into existence upon which point in time the Purchaser assumes ownership and title to such IPR.

10. WARRANTY

- 10.1. Notwithstanding the ownership and title provisions of Clause 9, the warranty period for the ITB 5 shall start upon Purchaser acceptance of the FSA milestone in accordance with the Part IV, Statement of Work paragraph 5.6.

11. PURCHASER RIGHT TO CONTRACT WITH THIRD PARTIES IN CASE OF CONTRACTOR DEFAULT

- 11.1. This Clause supplements Clause 39 (Termination for Default) of the NCIO

Contract General Provisions.

- 11.2. In the event that the Contractor fails to deliver or make progress on the provision of ITB OFS in accordance with the Performance Milestones and delivery dates stipulated in the Schedule of Supplies and Services and Statement of Work, and is notified by the Purchaser in writing that the Contractor is in a state of default in accordance with Clause 39 of the NCIO Contract General Provisions (Termination for Default), the Purchaser reserves the right to enter directly into contracts with any third party, including commercial entities, and Contractor's Subcontractors for provision of the IFB OFS Product Baseline or any other Contract CLIN.
- 11.3. The provisions of this Article are in addition to and in no way limit the rights of the Purchaser contained in other applicable clauses of this Contract, including but not limited to, Clause 21 (Inspection and Acceptance of Work) and Clause 39 (Termination for Default) of the NCIO Contract General Provisions.

12. CONTRACT STATUS REVIEW AND PERFORMANCE MILESTONES

- 12.1. The Contract schedule is divided into the following four sequential Performance Milestones which are described in Part IV, Statement of Work 1.3.3 :
- Performance Milestone 1: System Requirement Analysis (EDC until SRR)
 - Check point PMR
 - Check point SRR
 - Performance Milestone 2: System Design (PDR until CDR)
 - Check point PDR
 - Check point CDR
 - Performance Milestone 3: System Development and verification (FAT until SAT)
 - Check point FAT
 - Check point SAT
 - Performance Milestone 4: System Acceptance (PSA until FSA)
 - Check point PSA
 - Check point FSA
- 12.2. Each Performance Milestone contains individual Checkpoints to enable the Purchaser to assess the status of the project.
- 12.3. Performance Milestones are the stepping stones from one Contract Phase into the next and their purpose is to validate associate the deliverables, to ascertain that the project schedule is on track and to assess Contractor performance under the Contract. As such, Performance Milestones are considered "Critical Progress Markers" upon which successful completion of the contracted effort depends.
- 12.4. All four Performance Milestones have success criteria pre-defined by the Purchaser against which the Purchaser will measure Contractor's

performance. The default success criteria for all four (4) Performance Milestones are listed in Statement of Work paragraphs 4.4.2, 4.4.3, 4.4.3 and 5.3.1.

- 12.5. At each Performance Milestone, the Purchaser will review the overall Contract status and progress and Contractor performance in order to determine if continuation of the overall Contract remains in the best interest of NATO.
- 12.6. The Purchaser will take into account in his decision the following considerations which include, but are not limited to:
 - The number and types of changes made to the Contractor's technical solution, or expected to be made and their impact on project cost and schedule of the present contract,
 - Operational, environmental, or technological changes in the requirements
 - Level of satisfaction with the product(s) delivered by the Contractor up to the Performance Milestone.
- 12.7. Nothing in this Clause 12 shall be construed as or interpreted to limit the rights and obligations of the parties with respect to those established by virtue of Clauses 39 ("Termination for Default") and 40 ("Termination for the Convenience of the Purchaser") of the NCIO Contract General Provisions.

13. ACTIVATION OF WORK

- 13.1. In accordance with the Performance Milestones described in Clause 12 above, this Contract will be executed through a staged approach with the scope of work structured into a series each associated with a set of Performance Milestones and Checkpoints. Activation of each Checkpoint will be done by the Purchaser in writing.
- 13.2. Performance Milestones are specific events held over the course of the Contract and provide reference points to the Purchaser during the execution of the Contract.
- 13.3. Checkpoints are selected events identified in the clause 12.1 that are used by the Purchaser as formal review points in the course of the execution of this Contract to ensure that the project is on schedule. During the Major Review, the Purchaser will assess the status of all Checkpoints associated with the respective Performance Milestone.
- 13.4. The Purchaser will assess the overall status of the Checkpoints as one of the following:
 - Success: All associated deliverables are on schedule.
 - Provisional Success: One or more deliverables are not fully achieved, but the Purchaser recognises them to be in good progress and to be completed within a mutually agreed schedule. These pending deliverables will be reassessed during subsequent Checkpoints/Major Reviews.
 - Fail: One or more deliverables have not been achieved, and the Purchaser does not recognise them to be in good progress. The assessment of the

Checkpoints/Major Reviews will be repeated on a mutually agreed date and the Purchaser reserves the right to take remedial action.

- 13.5. If the Contractor fails to meet a Checkpoint on which activation of one or more succeeding CLIN depend, the Purchaser is not obligated to extend the dates of these Checkpoints in order to accommodate the Contractor delay, if the failure to meet the Checkpoint is attributable solely to the Contractor.
- 13.6. The Contractor is advised that if the Contractor elects to begin work on a CLIN prior to its activation, the Purchaser bears no liability for costs incurred by the Contractor for work conducted prior to activation in the case that the Contract is terminated.

14. PRICING OF CHANGES, AMENDMENTS AND CLAIMS

- 14.1. This Clause supplements Clause 19 of the NCIO General Contract Provisions.
- 14.2. The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Contract, in accordance with Clause 16 (Changes) of the NCIO Contract General Provisions.
- 14.3. Changes, modifications, or follow-on Contracts of any nature, and claims shall be priced in accordance with Clause 19 (Pricing of Changes, Amendments, and Claims) of the NCIO Contract General Provisions, and with the "Purchaser's Pricing Principles" as set out in Annex 1 to the NCIO Contract General Provisions.
- 14.4. Contractor's pricing proposals for Changes, Amendments and Claims shall be priced in accordance with the Schedule of Forward Labour Rates and Schedule of COTS Software and Licenses established in the Contract Schedule of Supplies and Services, or, if not defined in the latter, which were submitted in the Contractor's bid incorporated in the Contract by reference.
- 14.5. The Contractor shall be bound by the stated labour rates and COTS components prices till 31 December [year EDC + 6 years]. At the beginning of each following calendar year that the Contract is effective, the labour rates of the Schedule of Forward Labour Rates in Section 2 of the Schedule of Supplies and Services will be subject to an annual revision.
- 14.6. The stated revision shall be based on the evolution of the Labour Cost Index in Belgium for NACE section C – Index (2000=100) (LCI), as published by the Belgian Ministry of Economy (<http://statbel.fgov.be/en/statistics/figures/>) or shall be based on the evolution of the Contractor's national Labour Cost Index.
- 14.7. The revised rates shall be obtained through the following formula:
$$P = P_o * (0.2 + 0.8 L/L_o).$$
where:

- P : Revised daily labour rate applicable to the considered labour category during the following 12 months.
- Po : Effective rate applicable to the same labour category in year 2021 according to the SSS, Section 2.
- L : LCI value registered in 4th quarter of the year prior to the revision.
- Lo : LCI value registered in 4th quarter of 2020.

15. OPTIONS

- 15.1. The Purchaser's liabilities and obligations under this Contract at the time of its signature, and unless a formal Contract Amendment is issued in accordance with the terms of this Clause and Clause 16 (Changes) of the NCIO General Contract Provisions, are limited in scope and amount to performance and deliverables associated to ITB OFS, CLINs 1 through 4, as described in Part IV, Statement of Work.
- 15.2. CLIN, 5 is optional and are available for unilateral exercise by the Purchaser at any time and in any combination from Effective Date of Contract until end of the period of validity indicated in 15.3 through 15.8 below.
- 15.3. CLIN 5.1.1 may be exercised 1 year after FSA until 2 years after FSA after which the option will be deemed to have expired.
- 15.4. CLIN 5.1.2 may be exercised 2 years after FSA until 3 years after FSA after which the option will be deemed to have expired.
- 15.5. CLIN 5.1.3 may be exercised 3 years after FSA until 4 years after FSA after which the option will be deemed to have expired.
- 15.6. CLIN 5.1.4 may be exercised 4 years after FSA until 5 years after FSA after which the option will be deemed to have expired.
- 15.7. CLIN 5.2 and SubCLINs 5.2.1, 5.2.2, 5.2.3., 5.2.4 may be exercised between FSA and 5 years after FSA after which the option will be deemed to have expired.
- 15.8. CLIN 5.3 and SubCLINs 5.3.1, 5.3.2 may be exercised between FSA and 5 years after FSA after which the option will be deemed to have expired.
- 15.9. If the Purchaser exercises such options, the Contractor shall deliver such specified quantities of additional or alternative supplies and services at the times and to the destinations as specified in the Contract.
- 15.10. The Contractor understands that there is no obligation under this Contract for the Purchaser to exercise any of the optional line items and that the Purchaser bears no liability should he decide not to exercise the options either totally or partially. Further, the Purchaser reserves the right to request another Contractor (or the same) to perform the tasks described in the optional Contract line items of the current Contract with other conditions.

- 15.11. Any Contract option shall be exercised by written amendment to the Contract.
- 15.12. Any options for additional equipment and services may be exercised multiple times within the stated time period.
- 15.13. If an option is exercised, the Contractor will have a minimum period of forty-five (45) days between notification and the required Performance Start Date (PSD).

16. COMMERCIAL OF THE SHELF (COTS) SOFTWARE

- 16.1. The Purchaser reserves the right to exclude from the awarded Contract the purchase of software licenses for which NATO has established centralized Contracts. The Contractor will be notified by the Purchaser in writing as to which software licenses will be removed from the contract scope (as well as its associated contract value) to be provided to the Contractor in the form of "Purchaser Furnished Property" in accordance with Clause 13 (Purchaser Furnished Property) of the NCIO Contract General Provisions. The Contract terms, schedule will be modified and the prices subsequently deducted from the contractual value accordingly through an amendment to the Contract.

17. ACCEPTANCE PROCEDURES

- 17.1. This Clause supplements Clauses 21 (Inspection and Acceptance of Work) and 22 (Inspection and Acceptance of Documentation) of the NCIO General Contract Provisions.
- 17.2. Acceptance is the action by which the Purchaser formally acknowledges that the Contractor has fully demonstrated that Contract Deliverables are complete or have been performed according to the requirements set in the Contract.
- 17.3. Upon completion of services and provided that all deliverables allocated to a payment Milestone, the Contractor shall provide a Milestone Certificate of Completion (Annex G) to the Purchaser for verification and signature. The Purchaser, if agrees with the successful delivery, will provide acceptance of the Milestone Certificate of Completion in writing within seven (7) calendar days after receipt, thereby enabling the Contractor to submit the invoice for the respective payment Milestone.
- 17.4. The Purchaser has the right to withhold acceptance of a payment Milestone in case of Deliverables not furnished in accordance with the Schedule of Supplies and Services. Under such circumstances, the Contractor shall be required to resubmit the required Deliverable. The Contractor shall not claim an adjustment in the price of this Contract due to this requirement.
- 17.5. Where a delivered or performed Contract Line Item Number (CLIN) fails to meet all Contract requirements but such a failure is not material or fundamental, the Purchaser may, at its sole discretion, declare the Acceptance provisional. In this case, the Purchaser will make an assessment of the nature of the deficiencies and if minimum 50% of the delivery is deemed successful, than may pay the Contractor an amount commensurate with the importance of

the stated deficiencies. This amount shall be between fifty percent (50%) and ninety percent (90%) of the total price of the CLIN that covers the deficient services or deliverables and will be deducted from the payment during the next due payment Milestone. Full payment will not be made until all deficiencies have been cleared at which point in time the Acceptance shall become final.

- 17.6. Acceptance by the Purchaser will indicate that the Contractor's documents, plans, design or other aspects of the Contractor's work demonstrated during the event appear sound and can be used for further work. Such Acceptance shall not discharge the Contractor from any of his responsibilities under this Contract, including future necessary re-work, re-design, modification or adjustment of Contractor work based upon a Contractor design or plan from an earlier date regardless of its approval by the Purchaser.

18. RISK OF LOSS OR DAMAGE

- 18.1. This Clause supplements Clause 24 of the NCIO Contract General Provisions.
- 18.2. Risk of loss or damage to Deliverables covered by this Contract shall remain with the Contractor until, and shall pass to the Purchaser upon Acceptance by the Purchaser or receipt of the supplies by the Purchaser at the destination specified in the Contract, whichever is the later.
- 18.3. Notwithstanding paragraph 18.2 above, the risk of loss or damage to supplies which fail to conform to the requirements of the Contract shall remain with the Contractor until cure and Acceptance, at which time 18.2 above shall apply.
- 18.4. Notwithstanding paragraph 18.2 above the Contractor shall not be liable for the loss of or damage to supplies caused by the negligence of officers, agents or employees of the Purchaser acting within the scope of their employment.

19. COTS PRODUCTS REPLACEMENT

- 19.1. If any COTS products specified in the Contract are upgraded or discontinued by their original providers for commercial or technological reasons, the Contractor shall propose their substitution by the new versions that are intended as market replacement of the original products. The proposed items shall provide an equivalent or enhanced performance without a price or life-cycle support cost increase.
- 19.2. The Contractor shall provide price and performance data to support an improvement in performance and/or a reduction in price and/or life-cycle support costs. If necessary for evaluation by the Purchaser, the Contractor shall provide a demonstration of the proposed items. Should the Purchaser decide that the proposed item(s) should be included in the Contract, an equitable price adjustment will be negotiated and the proposed item(s) shall be added to the Contract by bilateral modification under the authority of this Clause.

20. CONTRACT ADMINISTRATION

- 20.1. 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 his 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.
- 20.2. 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.
- 20.3. Formal letters and communications shall subsequently be personally delivered or sent by mail, registered mail, courier or other delivery service, to the official points of contact quoted in this Contract. E-mail may be used to provide an advance copy of a formal letter or notice which shall subsequently be delivered through the formal communication means.
- 20.4. 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.
- 20.5. All notices and communications shall be effective on receipt.
- 20.6. Official Points of Contact:

Purchaser	Contractor
NCI Agency	Company
For contractual matters: Attn: Mr Martin Steenwege Senior Contracting Officer Tel: +32 2 707 8335 E-mail: Martin.Steenwege@ncia.nato.int	For contractual matters: Attn: Tel: E-mail:
Project Manager for technical/project management matters: Attn. ... Tel: E-mail: ...	Project Manager for technical/project management matters: Attn: Tel: E-mail:

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

- 20.7. The Purchaser may designate other staff elements as technical focal points for the execution of specific tasks.

- 20.8. Notwithstanding the prescriptions of this Clause, neither the Purchaser's Project Manager, nor any Technical Representative has the authority to change the terms and conditions of the Contract. If the Contractor has reason to believe that the Project Manager/Technical Representative is requesting work inconsistent with that in the scope of the Contract, the Contractor shall immediately inform the Purchaser's contracting Authority for confirmation of the actions. Failure to obtain confirmation that the action of the Project Manager is under the authority of the Contract shall render any subsequent claim null and void.
- 20.9. Upon receipt of such notification above, the Purchaser's Contracting Authority will:
- confirm the effort requested is within scope, or
 - confirm that the instructions received constitute a change and request a quotation for a modification of scope and/or price, or
 - rescind the instructions.
- 20.10. All changes to the project management documentation, including the implementation schedules, agreed between the parties shall bear a formal version number and a date from which the change applies.
- 20.11. Notwithstanding the above, project management documentation, particularly any implementation schedule such as Project Management Schedule and PIP, shall not affect the original major performance milestone dates as specified in the SSS nor waive the associated Liquidated Damages.
- 20.12. The Purchaser will bear no liability for changes to the Contract which are not expressly authorized by the Contracting Officer in writing.
- 20.13. Similarly, the Purchaser shall not be liable for costs incurred by the Contractor resulting from changes in Contract performance authorized by other than the Contracting Officer.

21. LIQUIDATED DAMAGES

- 21.1. This Clause replaces Clause 38 (Liquidated Damages) of the NCIO Contract General Provisions.
- 21.2. If the Contractor;
- 21.3. Fails to meet the delivery schedule of the Work or any Performance Milestones specified in the Schedule SSS to this Contract, or any extension thereof, or
- 21.4. 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 zero point five percent (0.5%) per day of the associated Payment Milestone.

- 21.5. 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 of the NCIO Contract General Provisions (Termination for Default). In the event of such termination, the Contractor shall be liable to pay the excess costs provided in Clause 39.5 of the NCIO Contract General Provisions.
- 21.6. 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 of the NCIO Contract General Provisions (Termination for Default). In such event, subject to the provisions of Clause 41 of the NCIO Contract General Provisions (Disputes), the Purchaser shall extend the time for performance of the Contract when in his judgement the findings of the fact justify an extension.
- 21.7. Liquidated damages shall be payable from the first day of delinquency and shall accrue at the rate specified in Clause 21.4 above to fifteen percent (15%) of the value of each payment milestone individually, not to exceed ten percent (10%) of the total value of the Contract. These liquidated damages shall accrue automatically and without any further notice being required.
- 21.8. 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.
- 21.9. The Contractor acknowledges that any sums payable under this clause are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.
- 21.10. The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:
- By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
 - By drawing from the performance guarantee.
 - By reclaiming such damages through appropriate legal remedies.

22. CONTRACTOR'S EMPLOYEES

- 22.1. The Contractor shall provide and pay, as required, qualified personnel as needed for the proper performance of the services required under this Contract; it shall strictly comply with all Host Nation Labour Laws, tariffs and social security and other regulations applicable to the employment of its personnel.
- 22.2. The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. Contractor's employees, agents, or representatives are not eligible for any diplomatic privileges nor NATO employee benefits.
- 22.3. The Contractor shall inform his employees, agents, and representatives under this Contract of the terms of the Contract and the conditions of the working

environment.

23. KEY PERSONNEL

- 23.1. Contractor's employees or agents specifically identified in ANNEX B shall be considered as key personnel for the performance of the Contract. Without prejudice to other applicable stipulations of the contract, key personnel shall be subject to the terms and conditions specified below.
- 23.2. A key personnel assigned to this Contract shall remain working on the Contract for as long as required by the terms of the present Contract unless the Purchaser agrees to a replacement who is equal or better qualified. Such a replacement will be in accordance with article 23.5 and is without extra cost to the Purchaser.
- 23.3. The Contractor shall guarantee that suitable backup personnel will be available to promptly remedy situations of key personnel non-availability that may endanger the performance of services or deliverables set in the contract.
- 23.4. The Purchaser reserves the right to reject a Contractor's staff member after prior acceptance if the Purchaser determines during Contract performance that the individual is not providing the required level of support. The Purchaser will inform the Contractor in writing in case such a decision is taken, and the Contractor shall propose a replacement within fifteen (15) days after the Purchaser's written notification.
- 23.5. The Purchaser shall approve any replacement or additional key personnel according to the following procedure:
 - 23.5.1. The Contractor shall provide the name(s) and qualifications statement(s) of a nominee(s) for review by the Purchaser a least twenty (20) days before the intended date of replacement or the date when the nominee(s) is/are required to start work under the contract. If the Purchaser accepts the nominations, this acceptance will be notified in writing to the Contractor, who will be authorized to assign the nominated personnel to the Contract on the date(s) established in the stated notification.
 - 23.5.2. If the Purchaser considers a nominee or nominees to be inappropriate for the required services, the Contractor will be so notified and shall have not more than ten (10) days to submit alternate nominees.
- 23.6. If the Contractor fails to provide in due time a compliant candidate, the Purchaser may terminate this Contract in whole or in part as provided in the first paragraph of the clause 39 entitled "Termination For Default" of the NCIO General Contract Provisions, and in that event the Contractor shall be liable, in addition to the excess costs provided in second paragraph of the "Termination For Default" clause, for such liquidated damages accruing until such time as the Purchaser may reasonably obtain delivery or performance of similar services.

- 23.7. The delay stated above shall be counted from the day the Purchaser notifies the Contractor, in accordance with paragraph 23.5.2 above, that the alternate nominees are considered to be non-compliant or inappropriate for the required services according to the requirements of the Contract.

24. INDEPENDENT CONTRACTOR

- 24.1. The Contractor's status shall be that of an independent Contractor and it is expressly understood that neither the Contractor and its personnel nor Sub-Contractors shall be considered in any respect as being employees, servants or agents of the Purchaser.

25. CONTRACTOR BACKGROUND IPR

- 25.1. The Contractor warrants, undertakes, and represents that any derivative product created under this Contract from the stated Background IPR shall be considered as Foreground IPR and, therefore, shall be governed by the terms and conditions specified in Clause 30.3 (Foreground IPR) of the NCIO General Contract Provisions.
- 25.2. The Purchaser shall consider open source solutions alongside proprietary ones in developments provided that such solutions are fully compliant with the requirements of this Contract and, particularly, Clauses 9 (Participating Countries) and 30 (Intellectual Property) of the NCIO Contract General Provisions. The Contractor shall disclose in advance the open source licence 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.
- 25.3. Any use of Background IPR for the purpose of carrying out work pursuant to the Contract shall, subject to any obligation on the part of the Contractor to make payments to any third party in respect of IPR which is licensed from such third party, be free of any charge to Purchaser. The Contractor hereby grants to NATO a perpetual, non-exclusive, royalty-free and irrevocable licence to use and authorise others to use any Background IPR for the purpose of exploiting or otherwise using the Foreground IPR, including national purposes by NATO member nations.
- 25.4. In addition, this license shall allow the Purchaser to further re-transfer this Background IPR free of charge to companies eligible for NATO procurements to further develop the Foreground IPR, including without limitation, developing, maintaining and operating future iterations of ITB OFS.
- 25.5. Any use of Contractor and Third Party Background IPR as stated in ANNEX D and ANNEX E, and unless specifically applicable to COTS items, is not limited to the number of users or the number of licenses required by the Contract for use of the system. With the exception of COTS items, the Purchaser reserves the right to use or authorise NATO members to use the Background IPR as stated in ANNEX D and ANNEX E for any number of users and number of

licenses as required, at no additional cost to the Purchaser.

- 25.6. All Software, except COTS, delivered under this Contract shall not be marked with corporate logos, proprietary information or contain warnings limiting the rights to use or reproduction nor shall those markings be included in the operating and/or maintenance manuals or instructions accompanying such software.
- 25.7. The Purchaser will inform the Contractor of any transfer of Contractor Background IPR in accordance with Clause 26.3 and 26.4 of this Article 26, in order for the Contractor to obtain all necessary export licenses.
- 25.8. The Contractor shall promptly notify the Purchaser of any refusal or rejection by national authorities for transfer of Contractor Background IPR in accordance with Clause 26.3 and 26.4 of this Article 26. In the case of such rejection or refusal, the Contractor shall not be held accountable for any failure to perform if the refusal is solely due to restrictions imposed by supplemental agreements and not due to negligence on the side of the Contractor.

26. CONFIDENTIALITY AND NON-DISCLOSURE

- 26.1. For purposes of this clause, "Confidential Information" shall include all information pertaining to any part of this Contract or any program related to this Contract that is not marked "Non-Confidential".
- 26.2. Confidential Information does not include information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Contractor; (b) discovered or created by the Contractor before disclosure by the Purchaser; (c) learned by the Contractor through legitimate means other than from the Purchaser or its representatives; or (d) is disclosed by the Contractor with the Purchaser's prior written approval.
- 26.3. Without prejudice to other obligations imposed by NATO Security regulations, the Contractor shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Purchaser. The Contractor shall carefully restrict access to Confidential Information to employees, sub-contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this contract. The Contractor shall not, without prior written approval of the Purchaser, use for the Contractor's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Purchaser, any Confidential Information. The Contractor shall return to the Purchaser any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if the Purchaser requests it in writing.
- 26.4. The provisions of this clause and the associated Contractor's duties shall survive the termination of this Contract and remain in effect until the Purchaser sends the Contractor written notice releasing the Contractor from the obligations imposed by this clause, or for a further period of three (3) years

after Contract close-out, whichever occurs first, and without prejudice to other obligations imposed by applicable NATO Security regulations.

- 26.5. The Contractor shall include the substance of the language of this clause in any subcontract/Contract issued for the purpose of the fulfillment of the obligations contracted under this Contract regardless of the legal nature of the entity subscribing such subcontract. Additionally, Contractor's key personnel mentioned in clause 23 (Key Personnel) above shall be required to sign the Non-Disclosure Declaration at ANNEX A.
- 26.6. The Contractor agrees that compliance with the obligations imposed by the terms of this clause is of the essence and that failure to abide to these terms shall constitute sufficient grounds for the termination of the Contract for default.

27. CONFLICT OF INTEREST

- 27.1. A conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Purchaser, or the Contractor's objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Conflict of interest includes situations where the capacity of a Contractor (including the Contractor's executives, directors, consultants, subsidiaries, parent companies or subcontractors) to give impartial, technically sound advice or objective performance is or may be impaired or may otherwise result in a biased work product or performance because of any past, present or planned interest, financial or otherwise in organizations whose interest may substantially affected or be substantially affected by the Contractor's performance under the Contract.
- 27.2. The Contractor is responsible for maintaining and providing up-to-date conflict of interest information to the Contracting Officer. If, after award of this Contract herein, the Contractor discovers a conflict of interest with respect to this Contract which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the Contracting Officer as set forth below.
- 27.3. If, after award of this Contract herein, the Purchaser discovers a conflict of interest with respect to this Contract, which has not been disclosed by the Contractor, the Purchaser may at its sole discretion request additional information to the Contractor, impose mitigation measures or terminate the Contract for default in accordance with Clause 39 (Termination for Default) of the NCIO Contract General Contract Provisions.
- 27.4. The Contractor's notice called for in paragraph 27.2 above shall describe the actual, apparent, or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Contracting Officer in analysing the situation. Any changes to the Contractor's Conflict of Interest Mitigation Plan, if any is incorporated in the

contract, should be also detailed.

- 27.5. The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the Contracting Officer, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest.
- 27.6. If the Contracting Officer in his/her discretion determines that the Contractor's actual, apparent, or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the Contracting Officer will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of Contract performance, the Contracting Officer has the discretion to terminate the Contract for default or alternatively refrain from exercising any further Option or Work Package under the contract.
- 27.7. The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractor's failure to disclose a conflict of interest as required shall be a basis for default termination of this contract.

28. PURCHASER FURNISHED PROPERTY AND SERVICES

- 28.1. This Clause hereby supplements Clause 13 of the NCIO General contract Provisions.
- 28.2. The Purchaser shall provide the Contractor with the following property and services for the performance of the contract:
 - Items and Services as specified in Annex C of the Part IV, Statement of Work.
 - Access to laboratories at its premises in The Hague, Netherlands.
 - ITB OFS Hardware.
 - REACH Laptops limited to the number identified in CLIN 1 and 5.3 of the Part I, SSS.

29. SOFTWARE WARRANTY

- 29.1. The following Clause 29.2 supplements Clause 31.3.1 of the NCIO Contract General Provisions:
- 29.2. For each Software delivered under this Contract, the Contractor Warranties stated in paragraph 31.1 of the NCIO General Provisions shall extend to all defects discovered within twelve (12) months from Final System Acceptance (FSA) declared in writing by the Purchaser's Contracting Authority.

30. PERFORMANCE GUARANTEE

- 30.1. This Clause hereby supplements Clause 8 of the NCIO General Contract Provisions.
- 30.2. The Purchaser may allow reductions in the amount of the Performance Guarantee in accordance with the Purchaser's cost estimate of the work remaining to be completed under the Contract. In order to benefit from such reductions, the Contractor must provide the Purchaser with an updated copy of the Project Master Schedule for completion of the remaining work, and detailed cost breakdowns, prepared in accordance with the pricing principles and standards established in the Contract, which indicate the percentage of work completed for each Contract line item. These requests for reduction shall be submitted in writing to the point of contact established in paragraph 20.6 above.
- 30.3. The reductions specified in paragraph 30.2 above shall be treated as a concession to the Contractor and, therefore, shall be supported by sufficient consideration. Further, the decision to accept or reject an application for reduction of Performance Guarantee shall be a unilateral decision made solely at the discretion of the Purchaser.

31. SECURITY

- 31.1. This Clause hereby supplements Clause 11 of the NCIO General Contract Provisions.
- 31.2. Contractor's personnel working at the Purchaser's facilities shall possess a valid security clearance up to the level of "NATO COSMIC TOP SECRET" ("CTS").
- 31.3. The Contractor shall ensure that Contractor personnel has a valid "NATO SECRET" ("NS") Security Clearance when it is required to work on a NATO site or facility in order to have unescorted access to classified security areas where work will be performed.
- 31.4. The Contractor shall ensure that Contractor personnel identified as the Field Engineer that shall perform the role of ITB Build 6 System Administrator, shall have a valid NATO CTS security clearance in accordance with the SOW-14 set forth in Annex D (Personnel Qualification) to Part IV, Statement of Work (SOW).
- 31.5. The Contractor shall provide proof that each team member has a valid CTS or NS Security Clearance before contract signature.
- 31.6. Without prejudice to other Purchaser's rights, failure to comply with the requirements stated in 31.2 and 32.3 above shall constitute grounds for Contract termination under the clause 39 "Termination For Default" of the NCIO General Contract Provisions and entitle the Purchaser to collect liquidated damages in case of delay as specified in Clause 21 above and Clause 8 of the NCIO General Contract Provisions.

- 31.7. Notwithstanding paragraph 31.6 above, if the Contractor fails to comply with the requirement stated in paragraph 31.2 and 32.3 of this Clause, the Purchaser may opt for providing escorts to allow Contractor's personnel to perform work in a classified area without being in possession of the prerequisite security clearance. In such cases, the Contractor agrees that the Purchaser shall be entitled to collect an amount equivalent to EUR one thousand (€1000) per escort assigned to supervise Contractor's personnel and per day of escorting. This compensation shall be collected through the same mechanisms established in Clause 21 above for the case of liquidated damages.
- 31.8. Contractor's staff members shall hold a valid passport and are required to maintain its validity for the duration of the contract.
- 31.9. The Contractor shall note that there are restrictions regarding the carriage and use of electronic devices (e.g. laptops) in NATO designated Security Areas. The Contractor shall be responsible for satisfying and obtaining from the appropriate NCI Agency Authorities the necessary clearance to introduce and utilize any such equipment into the facility.

32. SUPPLEMENTAL AGREEMENTS

- 32.1. 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 Clause 39 (Termination For Default) of the NCIO Contract General Contract Provisions.
- 32.2. Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by National Law or regulation and that have been identified by the Contractor prior to the signature of this contract, but have not yet been finalised and issued by the appropriate governmental authority, are subject to review by the Purchaser. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Parties and the appropriate governmental authority cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

33. SL AND SERVICE CREDITS

- 33.1. If the Contractor fails to deliver or to perform the services or fails to meet the availability within the prescribed performance levels specified in the Statement

of Work – Section 6.6.1, the Contractor shall be charged with Service Credits as described and calculated below as the Purchaser’s remedy for the damages directly arising out of the failure to deliver or perform the Services as specified without prejudice of Clause 39 (Termination for Default) of the Contract General Provisions.

- 34.2 Every six months (before payment of the Contract Option exercised), the Contractor’s performance will be measured using the maintenance records as activity log, trouble tickets and monitoring the availability of the system as described in SOW – Section 6.7. In case of a breach of the contracted reaction time on the Contractor’s support or availability of the system, Service Credits in the amount of 1% of the semi-annual associated CLIN value per day shall be charged and shall not exceed 100% of the respective total value of services in the six months concerned. These service credits shall accrue automatically and without any further notice being required.
- 34.3 The amount of Service Credits due by the Contractor shall be recovered by the Purchaser by deducting such Service Credits from the amounts due to the Contractor against the Contractor’s invoices.
- 34.4 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.

34. TRANSPARENCY OF CONTRACTOR PERSONNEL IN ACCORDANCE WITH PURCHASER CODE OF CONDUCT

- 34.1. Contractor acknowledges that the Purchaser’s Code of Conduct contains post-employment measures that may prevent former staff members from participating in certain projects. Contractor shall ensure that its employees, managers or any other type of personnel involved in the Contract, at any tier, comply with the NCI Agency Code of Conduct Post-Employment measures applicable to them.

ANNEX A. NCI AGENCY NON-DISCLOSURE DECLARATION

To be signed by the Contractor's key personnel designated under CO-14974-BMD

I UNDERSTAND:

That I must preserve the security of all information (including but not limited to classified/commercial-in-confidence information) which comes to my knowledge as a result of the Contract with the NCI Agency stated above and that I undertake to comply with all relevant security regulations.

That I must not divulge to any unauthorised person even within my own company, any classified/commercial-in confidence information gained by me as a result of my Contract with the NCI Agency, unless prior permission for such disclosure has been granted by the General Manager of the NCI Agency.

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 official duties for the NCI Agency.

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 official duties, save such as I have been duly authorised to retain.

That if I violate prescribed security practices either intentionally or accidentally, my Contract shall be immediately terminated.

That the provisions of the above Declaration apply not only during the period of the referred Contract with the NCI Agency, but also after the stated Contract has ceased and that I am liable to prosecution if either by intent or negligence I allow classified/commercial-in-confidence information to pass into unauthorised hands.

That I will be considered as a key personnel as specified in Clause 23 of the Special Provisions of Contract CO-14974-BMD, and therefore, shall comply with all regulations and restrictions applicable to key personnel.

That I commit to fulfil my obligations for the period of performance mentioned in the Contract Schedules and the Special Provisions of the Contract referred above (including the optional periods) unless major events beyond my reasonable control happen.

That should I decide for personal interest to leave the position, I will do my best effort to fulfil my obligations until the Company that is currently employing me has provided NATO with an acceptable suitable substitute in accordance with Clause 23 of the Special Provisions of the aforementioned Contract.

Full name (in block capitals)

Date

Signature

ANNEX B. KEY PERSONNEL

The following Key Personnel shall be subject to the stipulations contained in Clause 23 (Key Personnel) of the Contract Special Provisions for the period of designation indicated below:

Position	Statement of Work/WP Reference	Labour Category	Name	Designation Period
Project Manager		Project Manager		
Technical Lead		Senior Engineer		
Test Director		Senior Test Engineer		

ANNEX C. LIST OF SUBCONTRACTORS

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

¹ Data Universal Numbering System (DUNS). Contractor is requested to provide this data in order to help the NCI Agency to correctly identify Subcontractors. If a Subcontractor's DUNS is not known this field may be left blank.

**ANNEX D. CONTRACTOR AND SUBCONTRACTOR
BACKGROUND IPR**

IPR Description	IPR Owner	Remarks / Restrictions ²

- a. The Contractor represents that it has and will continue to have, for the duration of this Contract, all necessary rights in and to the IPR specified above necessary to meet the Contractor's obligations under the Contract.
- b. The Contractor Background IPR stated above complies with the terms specified in Clause 25 of the Special Contract Provisions and shall be licensed to the Purchaser according to the terms and conditions specified in the Contract.

² Indicate whether the IPR is applicable to a COTS product

ANNEX E. THIRD PARTY IPR

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

Item	IPR Description	IPR Owner	Remarks / Restrictions ³
1			
2			
3			
4			
5			

- b. The Contractor represents that it has and will continue to have, for the duration of this Contract, all necessary rights in and to the IPR specified above necessary to meet the Contractor’s obligations under the Contract.
- c. The Subcontractor and Third Party Background IPR stated above complies with the terms specified in Clause 8 and 25 of the Special Contract Provisions and shall be licensed to the Purchaser according to the terms and conditions specified in the Contract.

³ May only be COTS in accordance with Clause 8.3 of the Contract Special Provisions. Indicate whether the IPR is applicable to a COTS

ANNEX F. SCHEDULE OF MAJOR PERFORMANCE MILESTONES AND PAYMENTS

Payment Milestone number	Description	Payment amount in Bid Currency	Major Performance Milestones Delivery following successful Acceptance at latest EDC (or PSD) + x weeks	CLINs to be delivered
M1	System Requirement Analysis			
M1.1	PMR	5% of contract value	EDC+5 weeks	CLIN1.1: Project Management Review CLIN1.2: Project Website CLIN1.3: Project Kick-off Meeting and Minutes CLIN1.4: PMR Minutes CLIN1.6: Project Management Plan CLIN1.7: Risk Management Plan CLIN1.8: Responsibility assignment matrix CLIN1.9: Project Master Schedule CLIN1.10: Project Product Breakdown Structure CLIN1.11: Project Work Breakdown Structure CLIN1.12: Quality Assurance Plan CLIN1.14: Risk Register CLIN1.15: Issue Management Plan CLIN1.16: Issue Register CLIN1.17: Quality Register CLIN1.19: Lessons Learned Register CLIN 1.20: Project Management Review Report CLIN1.23: Configuration Management Plan CLIN1.32: NATO NR REACH Laptop YEAR 1 CLIN2.1: System Development Plan
M1.2	SRR	10% of contract value	EDC+12 weeks	CLIN2.2: System Requirements Specification CLIN2.3 System Requirements Review CLIN3.1: Project Master Test Plan
M2	System Design			
M2.1	PDR	10% of contract value	EDC+24 weeks	CLIN2.4: System Subsystem Design Description CLIN2.6 Preliminary Design Review CLIN2.9: User Interface Specification CLIN2.10: Interface Control Description
M2.2	CDR	10% of contract value	EDC+36 weeks	CLIN2.4: System Subsystem Design Description CLIN2.5: HMI Prototype CLIN2.7 Critical Design Review CLIN4.3: System Transition Plan CLIN4.16: Training Needs Analysis Report CLIN4.17: Training Plan
M3	System Development			
M3.1	FAT	5% of contract value	FAT + 1 Week	CLIN3.3: Factory Acceptance Test Plan CLIN3.4: FAT Test Description Document CLIN3.5: Factory Acceptance Test Report
M3.2	SAT	15% of contract value	SAT + 1 Week	CLIN3.6 Release and Deployment Plan CLIN3.7: Site Acceptance Test Plan CLIN3.8: SAT Test Description Document - ITB Core CLIN3.9: SAT Test Description Document - ITB Ops CLIN3.10: SAT Test Description Document - ITB Portable CLIN3.11: System Acceptance Test Report CLIN3.12 System Integration Test Plan CLIN3.13 SIT Test Description Document - ITB Core CLIN3.14 SIT Test Description Document - ITB Ops CLIN3.15 SIT Test Description Document - ITB Portable CLIN3.16 System Integration Test Report

NATO UNCLASSIFIED

IFB-CO-14974-BMD

Annexes to Contract Special Provisions

Payment Milestone number	Description	Payment amount in Bid Currency	Major Performance Milestones Delivery following successful Acceptance at latest EDC (or PSD) + x weeks	CLINs to be delivered
				CLIN3.17 User Acceptance Test Plan CLIN3.18 UAT Test Description Document - ITB Core CLIN3.19 UAT Test Description Document - ITB Ops CLIN3.20 UAT Test Description Document - ITB Portable CLIN3.21 User Acceptance Test Report CLIN3.23: System Transition Plan CLIN3.24: Site Installation Procedures CLIN3.25: Roll-Back/Contingency Plan CLIN1.33: NATO NR REACH Laptop YEAR 2
M4	System Acceptance			
M4.1	PSA	30% of contract value	EDC+97 weeks	CLIN1.5 Ad-Hoc Meeting and Minutes CLIN1.13 Project Highlight Report CLIN1.18 Communication Register CLIN1.21 Project Checkpoint Review Report CLIN1.24 Change Request CLIN1.25: Engineering Release Record CLIN1.26 Deficiency Report CLIN1.27 Configuration Audit Report CLIN1.28 Configuration Status Accounting CLIN1.29 Requests for Deviation CLIN1.30 Project Checkpoint Review CLIN1.31 Requests for Waiver CLIN2.8 Joint Review Minutes CLIN2.11 Requirements Traceability Matrix CLIN3.2 Development Test Report CLIN3.22: Verification Cross Reference Matrix CLIN3.26: Provisional System Acceptance Report CLIN3.28 OFS Product Baseline PSA CLIN4.1 Integrated Logistics Support Plan CLIN4.2 In-Service Support Plan CLIN4.4 System Transition Manual CLIN4.5 Software Version Description CLIN4.6 Software Installation Guide CLIN4.7 System Support Manual CLIN4.8 System Maintenance Manual CLIN4.9 System User Manual CLIN4.10 Quick User Guide CLIN4.11 Briefing Material CLIN4.12 System Administrator Manual CLIN4.14 Level 2, Level 3 support and maintenance, Level 4 Maintenance from PSA to FSA CLIN4.15 Level 3 support and maintenance, Level 4 Maintenance CLIN4.18 Training Materials (course Syllabus, Instructor Presentations, training hand-outs, assessment and evaluation, database) CLIN4.19 Training
M4.2	FSA	15% of contract value	EDC+109 weeks	CLIN1.22: Certificate of Conformity CLIN3.27: Final System Acceptance Report CLIN3.29 OFS Product Baseline FSA CLIN4.13 Monthly Maintenance Review Report

ANNEX G. CERTIFICATE OF COMPLETION

Contractor Name
Contractor Address

NCI Agency
Boulevard Leopold III
1110 Brussels
Belgium

Subject: **Contract CO-14974-BMD**
Certificate Of Completion Performance Milestone # ...

Milestone #	Description	Submission Ref/Date	Acceptance Ref/Date	Comments

Place:
Date:

Name	For the Purchaser	For the Contractor
Title	Project Manager	Project Manager

Attachment: 1: Outstanding Action Items (AIs) Status

Attachment 1 - Outstanding Action Items (AIs) Status

- (1) The status of all Action Items related to Minutes of Meetings included in this Certificate of Completion and any Action Items that were indicated as outstanding in previous related Certificates of Completion are presented in the following table. This table will be reviewed during each milestone completion. For more information on the rationale for the closure or the on-going progress, refer to the comments in the shared Action Item register

Action Identifier	Origin	Description	Priority	Responsible	Due Date	Closure date	Status

NATO UNCLASSIFIED

**NATO COMMUNICATIONS AND INFORMATION
AGENCY**



CONTRACT GENERAL PROVISIONS

V 1.0 dated 16 Oct 2014

Index of Clauses

1.	ORDER OF PRECEDENCE	1
2.	DEFINITIONS OF TERMS AND ACRONYMS.....	1
3.	AUTHORITY	4
4.	APPROVAL AND ACCEPTANCE OF CONTRACT TERMS	5
5.	LANGUAGE	5
6.	AUTHORISATION TO PERFORM/CONFORMANCE TO NATIONAL LAWS AND REGULATIONS	5
7.	FIRM FIXED PRICE CONTRACT	5
8.	PERFORMANCE GUARANTEE	6
9.	PARTICIPATING COUNTRIES.....	9
10.	SUB-CONTRACTS.....	10
11.	SECURITY.....	11
12.	RELEASE OF INFORMATION.....	12
13.	PURCHASER FURNISHED PROPERTY.....	13
14.	CONTRACTOR'S PERSONNEL WORKING AT PURCHASER'S FACILITIES	14
15.	HEALTH, SAFETY AND ACCIDENT PREVENTION.....	15
16.	CHANGES	15
17.	STOP WORK ORDER	17
18.	CLAIMS	18
19.	PRICING OF CHANGES, AMENDMENTS AND CLAIMS	20
20.	NOTICE OF SHIPMENT AND DELIVERY	23
21.	INSPECTION AND ACCEPTANCE OF WORK.....	24
22.	INSPECTION AND ACCEPTANCE OF DOCUMENTATION	27
23.	USE AND POSSESSION PRIOR TO ACCEPTANCE.....	28
24.	OWNERSHIP AND TITLE	28
25.	INVOICES AND PAYMENT	28
26.	TAXES AND DUTIES.....	30
27.	WARRANTY OF WORK (Exclusive of Software)	31
28.	RIGHT OF ACCESS, EXAMINATION OF RECORDS	35
29.	PATENT AND COPYRIGHT INDEMNITY	35
30.	INTELLECTUAL PROPERTY	36
	<i>Purchaser Background IPR</i>	36
	<i>Foreground IPR</i>	37
	<i>Third Party IPR</i>	38
	<i>Subcontractor IPR</i>	39
31.	SOFTWARE WARRANTY.....	39
	<i>Notification Requirement</i>	40

The Contract General Provisions

Duration of the Warranty 40
Purchaser Remedies for Breach 40
Limitations and Exclusions from Warranty Coverage 41
Markings 41
32. NATO CODIFICATION 42
 Markings..... 43
33. RELEASE FROM CLAIMS 44
34. ASSIGNMENT OF CONTRACT 44
35. TRANSFER AND SUB-LETTING 44
36. PURCHASER DELAY OF WORK 45
37. CONTRACTOR NOTICE OF DELAY 45
38. LIQUIDATED DAMAGES 46
39. TERMINATION FOR DEFAULT 46
40. TERMINATION FOR THE CONVENIENCE OF THE PURCHASER 50
41. DISPUTES 55
42. ARBITRATION 55
43. SEVERABILITY 57
44. APPLICABLE LAW 57
ANNEX 1 TO GENERAL PROVISIONS: PURCHASER'S PRICING PRINCIPLES A1-1

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.

- 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.

The Contract General Provisions

- 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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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.

The Contract General Provisions

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);

The Contract General Provisions

- 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

The Contract General Provisions

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.

The Contract General Provisions

- 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

The Contract General Provisions

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.

The Contract General Provisions

- 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

The Contract General Provisions

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

The Contract General Provisions

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

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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.

The Contract General Provisions

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.

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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).

The Contract General Provisions

- 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

The Contract General Provisions

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.

The Contract General Provisions

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

The Contract General Provisions

- 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;

The Contract General Provisions

- 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

The Contract General Provisions

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:

The Contract General Provisions

- 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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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

The Contract General Provisions

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.