

# NCI Agency (former NCSA) GENERAL PROVISIONS for CONSULTANT SERVICES CONTRACTS

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# 1. ACRONYMS – DEFINITIONS

As used throughout this contract, the following terms shall have meanings as set forth below:

- a. "Bidder" shall refer to the bidding entity that has submitted a bid in response to an IFB, RFP, IFIB or IFIP.
- b. "CNAFS" refers to Centralised NATO Financial Management System.
- c. "Consultants" are personnel provided to the Purchaser by the Contractor for on site, day-to-day support.
- d. "NCI AGENCY (FORMER NCSA) Contracting Officer" means the person executing and managing this contract or IF(I)B on behalf of NCI AGENCY (FORMER NCSA). Only duly designated Contracting Officers have the authority to obligate NCI AGENCY (FORMER NCSA).
- e. "Contractor" means the entity (firm or person) to whom the contract is awarded and on whose behalf duly authorised persons shall execute it.
- f. "CSD" shall refer to the Contract performance Start Date.
- g. "COTR" is the Contracting Officer Technical Representative or his designated alternate.
- h. "Days" shall be interpreted as meaning calendar days.
- i. "EDC" shall refer to the Effective Date of Contract. The effective date of the Contract is the date of last signature by the Parties, or a specific date set forth in the Contract.
- j. "IT" shall refer to Information Technology.
- k. "NCI AGENCY (FORMER NCSA)" means the NATO COMMUNICATION & INFORMATION SYSTEMS SERVICES AGENCY headquartered at B-7010 SHAPE, BELGIUM.
- l. "NCI AGENCY (FORMER NCSA) HQ" shall refer to the NCI AGENCY (FORMER NCSA) Headquarters located at SHAPE.
- m. "North Atlantic Treaty Organisation" is hereafter referred to as "NATO".
- n. "Prospective Bidder" shall refer to the entity that has completed and returned the Enclosure of the transmittal letter of an IFB, RFP, IFIB or IFIP, and has indicated thereon its intention, without commitment, to participate in the bidding.
- o. "Purchaser" is the legal entity awarding the Contract (i.e. NCI AGENCY (FORMER NCSA)) represented by the Contracting Authority.
- p. "Quality Assurance Evaluator (QAE)". Upon the award of a contract, the QAE is charged with monitoring the daily performance of contractors. QAEs are generally appointed by the technical/receiving organisation and assigned to the contract by the Contracting Officer.
- q. "SHAPE" shall refer to the Supreme Headquarters Allied Powers Europe, located at 7010 SHAPE, Belgium.

r. "SOW" shall refer to Statement Of Work.

s. "TOR" stands for Terms Of Reference.

## **2. ACCEPTANCE OF THE CONTRACT OR CONTRACT MODIFICATION BY THE SUPPLIER**

a. The Supplier's acceptance is expressly limited to the written terms of this order. No additional or different term shall be binding. NCI AGENCY (FORMER NCSA) hereby objects to any additional or different terms contained in Supplier's acceptance, such as a contractor's standard terms and conditions.

b. Any of the following acts by the Supplier will constitute acceptance:

- Signing and returning a copy of the purchase order;
- Commencing performance of any effort required to complete this purchase order;
- Informing NCI AGENCY (FORMER NCSA) of commencement of any effort required to complete the order; or
- Shipping of any products in performance of the purchase order or of the contract.

## **3. ACCEPTANCE AND INSPECTION**

a. Acceptance (when applicable, after inspection in accordance with the "Inspection clause" of this contract) shall be made in writing by the NCI AGENCY (FORMER NCSA) COTR and shall be subject to, and shall be construed in a manner that is fully in accordance with all the terms and conditions of the Contract.

b. The Contractor shall only tender for acceptance items conforming to the requirements of this contract.

c. Acceptance or rejection of the supplies or works shall be made as promptly as practicable after delivery or completion, except as otherwise provided in this contract.

d. NCI AGENCY (FORMER NCSA) reserves the right to inspect or test any supplies or services tendered for acceptance

e. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or otherwise stated in the Contract. It is the action by which NCI AGENCY (FORMER NCSA) acknowledges that the Contractor has fully demonstrated that the deliveries or works are complete and operational. The formal acceptance will take place when the following requirements have been met:

- Availability at final destination of all deliverables or completion of all the works
- Successful completion of acceptance testing or inspection.
- Verification of the inventory or of all required certificates and Technical documents.
- Satisfactory completion of all training or other services, if any, required by that date.
- Agreement between the Contracting Officer and the Contractor on a discrepancy list (if necessary) and corresponding clearance dates.

f. When discrepancies exist and if these do not prevent satisfactory use or operation of the supplies, the Contracting Officer may declare the acceptance provisional. In this case he will withhold from payment an amount commensurate with the importance of the discrepancies but in any case not less than ten (10) percent of the total contract value and this until all discrepancies have been cleared; at that time the acceptance becomes final.

g. NCI AGENCY (FORMER NCSA) may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. NCI AGENCY (FORMER NCSA) must exercise its post acceptance right:

- Within a reasonable time after the defect was discovered or should have been discovered; and,
- Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

## **4. APPLICABLE LAW**

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with the private contract law of the Kingdom of Belgium. When performing at NATO Installations, the Contractor and his personnel (including also the sub-contractor's personnel, if any) shall comply with all applicable laws of the Host Nation and all relevant official NATO, NCI AGENCY (FORMER NCSA) and local installation directives.

## **5. ASSIGNMENT OF CLAIM**

No assignment of claim will be made by the Contractor without prior written authorisation from the Contracting Officer.

## **6. AUDITING AND ACCOUNTING BY NCI AGENCY (FORMER NCSA)**

- a. For purposes of this clause, the Contractor's standard national accounting and auditing procedures shall apply.
- b. All Contractor expenditures incurred in relation to performance of this contract shall be subject to audit.
- c. The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with "Payments and Invoices" hereunder.
- d. The Contractor shall maintain comprehensive records of costs incurred in carrying out this Contract, in accordance with his national established accounting procedures. This record and relevant supporting documentation shall be made available for review upon request by the International Board of Auditors for NATO or authorised representatives of the NCI AGENCY (FORMER NCSA) Financial Controller
- e. In the event of this Contract being terminated in accordance with the clause "Termination for Convenience of NCI AGENCY (FORMER NCSA)" hereunder, the Contractor shall provide within ninety days of the formal date of termination a detailed statement of all costs incurred since the initiation of the programme, together with the statement of all outstanding commitments for which the Contractor is legally liable..

## **7. CONFIGURATION MANAGEMENT**

Configuration Management will be implemented by the Contractor for all configuration items that will include hardware, software and documentation. Configuration Management is to be carried out by the Contractor within the firm fixed price of the contract, up to the end of the warranty period or the time when all discrepancies have been cleared, whichever is the later.

## **8. CONSULTANT CONTRACT PERFORMANCE REQUIREMENTS AND EVALUATION**

Contractor's performance of the aforementioned tasks shall be subject to continuous evaluation by NCI AGENCY (FORMER NCSA) through the appointed COTR as specified in the SOW.

## **9. CONSULTANT GENERAL WORKING CONDITIONS**

- a. Consultants will be primarily located at NCI AGENCY (FORMER NCSA) premises in Casteau, Belgium or at another location designated in the Contract as "the primary place of work or the primary site location" and will be tasked by the NCI AGENCY (FORMER NCSA) COTR.

b. The point of origin for all missions to other static sites will be the NCI AGENCY (FORMER NCSA) Headquarters, located on the SHAPE Installation, unless exceptional arrangements are agreed in advance with the COTR in accordance with the clause "Consultants Place of Work and Travel for Duty" hereafter.

c. The provisions of the clause RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE hereafter fully apply. Consultants shall not take part in activities related or pursuant to contracts other than this one.

d. Consultants must be in possession of a current and valid passport at all times.

e. The Purchaser (represented by NCI AGENCY (FORMER NCSA) or other NATO Site authorities) shall provide, free of charge, to the Consultant, while at NATO sites:

- Work space.
- Standard issue office furniture.
- Computer and access to all software elements associated with performance of the contract.
- Any other software required to perform the work.
- Expendable office supplies.
- Local and long distance telephone service for performance of official business.
- Utility services within the work area.

f. The Purchase Order will specify a number of days or hours to be performed by the Consultants during the contractual services period. This period prevails over the quantity of services allotted.

g. Working hours and other arrangements, unless differently specified in the contract Special Conditions and/or the Statement of Work, shall be as follows.

(1) Working hours shall be as follows:

- The work shall be performed on weekdays in accordance with the official working hours of NCI AGENCY (FORMER NCSA): 08:30H till 17:30H (Fridays: 15:30H). The Contractor shall obtain from the COTR the list of NCI AGENCY (FORMER NCSA) holidays during the period of performance for the contract.
- Special requests shall be made to the COTR for permission to work outside normal NCI AGENCY (FORMER NCSA) working hours, on weekends, or on NCI AGENCY (FORMER NCSA) or other NATO Static Site holidays. Start times and planning of various stages of the work shall be co-ordinated with the COTR and these times shall be adhered to.

(2) Remark: The COTR has the authorisation to accommodate the working hours as follows without referring to the Contracting Officer:

- The Consultant working at any of the sites shall work a standard 38 hour work week normally consisting of approximately 8 hour days, the beginning and start times set by the COTR.

- Overtime and weekend work shall neither be ordered by the Purchaser nor performed by the Contractor. When specific tasks or other activities require Contractor personnel to work beyond the approximately 8-hour duty day, compensatory accommodations will be made to ensure the Contractor personnel working week will not exceed 38 hours.

(3) In the event of the Consultant's absence from duty for a period exceeding fourteen (14) consecutive days and without prejudice to the clause set forth in the clause Force Majeure, the Contractor shall propose a substitute Consultant starting not later than the fifteenth (15) day of such absence and in the event of failure of the Contractor to do so the clause DEFAULT AND TERMINATION FOR DEFAULT hereafter may apply.

In this regard, back-up Consultants identified as "Contractor Key Personnel" in the Special Contract provisions shall be proposed in priority order.

(4) If the absence is planned after mutual agreement between the Contractor and the Purchaser, the supplier shall assure handover between the two consultants at no cost for the Purchaser.(i.e. no billable hours for both consultants during this handover).

(5) Vacation leave shall be taken at time(s) to be mutually agreed between the Contractor, the Consultants and the COTR. This vacation time shall not be billable. In case of a long vacation leave that would require replacement of the Consultant during his absence, the clauses 17.e.(3) and 17.e.(4) apply.

(6) All non-official travel by Consultants including travel to their country/place of origin at weekends will be at no cost to NATO.

## **10. CONSULTANTS PLACE OF WORK AND TRAVEL FOR DUTY**

a. The Contractor/Consultant must be prepared to travel and be at sites other than their "primary on site location" for extended periods.

b. The place of work will normally be at NCHQ, Mons, Belgium or any other primary "on-site" location designated in the contract as the "primary place of work". However Consultants could be required to work at other NATO static sites. Other than the initial and return travel of consultant personnel to and from their "primary place of work", all travel and other expenses incurred while on task will be authorized in advance and sufficient funds to cover such costs will be included in the Purchase Order.

c. The Contractor shall make all arrangements and pay all costs associated with the requirement for travel. In this connection the following rules shall apply:

(1) All travel outside NCI AGENCY (FORMER NCSA) shall be requested by the COTR only if previously authorized in advance in writing by the Contracting Officer.

(2) Per Diem for stays outside of the “primary place of work” and expenses shall be converted to the currency of the Contract at current rates on the date of settlement. The rules for Mode of travel, Per Diem and other allowances shall correspond to rules applicable for NATO personnel.

d. Travel may be required in hazardous areas (i.e. NATO theatres of operations like Afghanistan, the Balkans or other Crisis Operations areas). Unless additional arrangements are made in the Special Contract provisions, the Purchaser accepts no liability for any loss or damages whatsoever caused as result of Purchaser directed travel. However the Special Contract provisions may provide for additional arrangements to be made to cover travel costs, allowances, and appropriate insurance on a case-by-case basis. Such arrangements will be modelled on those normally provided to NATO's civilian employees.

e. Per Diem will not be paid for one day trips between NCI AGENCY (FORMER NCSA) (SHAPE) and Brussels, Belgium and vice versa, but travel costs in accordance with the foregoing Articles may be claimed.

f. All travel, other than Purchaser directed travel under this Article, is included in the fully loaded rates detailed in the Schedule of Supplies and Services or as detailed in the Purchase Order. In this context, Consultants travelling on weekends or public holidays will not be entitled to charge those days as workdays.

g. Intermittent Tasks: where task orders may be issued that require the consultant to make a significant break in the work and it is deemed most cost effective for the consultant to return to his contractor's facility, the NCI AGENCY (FORMER NCSA) will pay for travel costs to and from his home base to enable the consultant to continue the work at a later time.

## **11. CONTRACT ADMINISTRATION AND COMMUNICATIONS**

a. The Contractor shall direct all inquiries, notices and communications regarding this Contract to the Contracting Officer, which may be personally delivered or mailed to the following address:

<b>NATO COMMUNICATIONS AND INFORMATION AGENCY / SERVICE PROVISION INTERIM STRUCTURE / DIR.RES / BAF / PURCHASING AND CONTRACTING BRANCH / B-7010 SHAPE-BELGIUM Telephone: +32 (0)65.44 6160 Facsimile: +32 (0)65.44 7892</b>
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b. All inquiries, notices and communications between the Contractor and NCI AGENCY (FORMER NCSA) shall be written in English and in all correspondence the Contract number shall be mentioned.

## **12. CONTRACT CHANGES AND MODIFICATIONS**

a. The NCI AGENCY (FORMER NCSA) Contracting Officer may at any time, by a written order, submit changes, within the general scope of the contract, for consideration by the Contractor.

b. All changes, modifications, additions or deletions to the contract are considered to be modifications hereto, must be prepared in writing as formal amendments and must be agreed and signed by both parties in the same manner as the contract.

c. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the contract, a negotiated adjustment shall be made to the contract, which shall be modified in writing accordingly as part of the process of agreeing upon the amendment.

d. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the Clause titled "DISPUTES – RESOLUTION OF DISAGREEMENTS - ARBITRATION" herein. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

### **13. CONTRACT DURATION**

The duration of this Contract is stated in the Part I of the contract.

However, notwithstanding the above, NCI AGENCY (FORMER NCSA) may terminate this Contract immediately without compensation or advance notice if it is unable by reason of Force Majeure to perform its obligations under this Contract, or if NATO were to undergo a major reorganisation or cease to occupy the current premises in its actual location.

### **14. CONTRACT REASSIGNMENT**

NCI AGENCY (FORMER NCSA) reserves the right to assign this contract, in whole or in part, to another authorized NATO body, agency or representative. In such a case, NCI AGENCY (FORMER NCSA) shall notify the Contractor in writing.

### **15. CONTRACTOR EMPLOYEES**

a. The term "employee(s)" stands for "Consultant(s) whether or not the Consultant services are provided directly by the Contractor or by Sub-contractor. In this latter case (the Contractor sub-contracting the services), in accordance with the clause "SUBCONTRACTS" hereafter, it remains the prime Contractor's responsibility to make sure all terms and conditions of the present Contract are met. In any case the Purchaser will not be contractually directly involved with a sub-contractor.

b. Unless differently specified in the Contract Special Provisions, for the performance of the contract, Contractor's personnel working at NATO facilities shall be required to possess a NATO SECRET clearance as specified at Para 17 below.

c. 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 applicable labour laws, tariffs and social security and other regulations applicable to the employment of its personnel. Regarding this, the Contractor will be required to provide a copy upon request of the employment contracts of those personnel.

d. Important remark:

The Contractor shall inform the Consultant of the fact that all legal obligations of the Host Nation governing performance of works or services are to be met at all times.

e. Privileges and Immunities extended to NCI AGENCY (FORMER NCSA) personnel under international agreements are an exclusive right and as such not transferable to the Contractor and its employees. This includes the right to access and use the facilities managed and/or operated by NCI AGENCY (FORMER NCSA) or other NATO Headquarters Community Services.

f. The employees shall be authorised to make use of those commercial services operating on NCI AGENCY (FORMER NCSA) / SHAPE premises that provide for the payment of taxes and duties, as applicable.

## **16. CONTRACTOR KEY PERSONNEL CONDITIONS**

a. The personnel (listed at Part I of the contract or at other contract enclosures or Consultants accepted as the basis of the Purchaser's issuance of a Task Order) are considered to be key personnel for successful contract performance and are subject to the provisions of this article as set forth in the following paragraphs. As such the contractor shall keep them assigned full time to this contract until fully discharged. The Contractor shall not re-assign these personnel to other duties without the prior written approval of the Purchaser.

b. Consultants shall perform duties in the English language, in both the oral and written form. In that context NATO Standardisation Agreement STANAG 6001 last version shall apply and the Purchaser has the right but is not obligated to submit the offered consultants to a language test prior to commencement of services. The oral (listening and speaking) and written proficiency (reading and writing) level to be reached is minimum 3333.

c. In cases where the Contractor has no control over the individual's non-availability (e.g., resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser of a change of key personnel the day after the date of knowledge of the prospective vacancy and offer a substitute with equivalent qualifications. The Purchaser has the right to refuse any proposed substitution as not meeting the qualifications and request the Contractor to offer another qualified individual in lieu thereof. The Purchaser will confirm any consent given to a substitution in writing and only such written consent shall be deemed as valid evidence of Purchaser consent.

d. In cases of the non-availability of key personnel beyond the control of the Contractor, if the Contractor cannot offer a candidate acceptable to the Purchaser within 21 days of the occurrence of non-availability, the Purchaser shall have the right to cite the Contractor for failure to perform in accordance with the clause "DEFAULT AND TERMINATION FOR DEFAULT" hereafter and take the appropriate remedial actions.

e. Replacement and Substitution

(1) The NCI AGENCY (FORMER NCSA) Contracting Officer shall be entitled to require the Contractor to replace Consultants if:

- The Consultant fails to properly perform his/her duties;
- His/her command of the English language is insufficient (see requirements in Para 16.b. above).
- The Consultant is denied access to a NATO site for reasons related to security, misconduct, or inappropriate behaviour, or the Consultant is otherwise deemed undesirable in accordance with the clause "SECURITY" hereafter;
- His/her absences impede the timely completion of the assigned work. Unscheduled or unjustified absences totalling more than five (5) consecutive work days or more than twenty (20) days in total per year will automatically be considered as impeding the timely completion of the work;
- The Contractor fails to comply with the clause "APPLICABLE LAW" herein.

(2) Only the NCI AGENCY (FORMER NCSA) Contracting Officer is authorised to request the replacement of one or more Consultants. The reasons for such replacement shall be communicated in writing to the Contractor.

(3) Whenever it becomes necessary for the Contractor to provide a replacement or a substitute, the Contractor shall first propose a Consultant from the list of key personnel identified in the contract. In case of unavailability the Contractor shall ensure that the replacement or substitute meets all the requirements. He/she shall provide a resume (CV) to demonstrate compliance with the required qualifications, experience and security clearance.

(4) The NCI AGENCY (FORMER NCSA) Contracting Officer shall have the unilateral right to approve/reject any proposed Consultant replacement or substitution.

(5) The contractor must provide a replacement Consultant not later than fourteen (14) days after receipt of Purchaser's request for replacement.

## **17. CONTRACTOR NATIONALITY, CLEARANCES, INSURANCE AND REGULATIONS**

- a. The contractor must remain in possession of a current NATO Secret security clearance during the execution period of this contract (including the period for the options)
- b. Consultants shall be a national of a NATO member country and hold a current NATO Secret security clearance. The security clearance must be available prior to the start of each consultant's services and shall be documented to the NCI AGENCY (FORMER NCSA) Contracting Officer through the normal national administrative processes not later than thirty (30) days before the start of the performance period. The clearance should be valid for the duration of the period of performance at NCI AGENCY (FORMER NCSA) or at other NATO static sites.
- c. The attention of the Contractor is especially drawn on the fact that all legal obligations governing performance of works or services in the nation where the contract is to be performed are to be met at all times. This includes compliance with applicable laws regarding residency and work permits. In this context failure by the Contractor may render him liable to cancellation of the contract. As regards Consultants, Paragraph 16. d. shall apply.
- d. Without prejudice to other insurance-related clauses elsewhere herein or in the contract Special provisions or SOW, the Contractor:
  - (1) agrees to procure and maintain, without any cost to NATO, any employer's liability or other type of insurance required.
  - (2) shall, at own expense, procure and maintain during the entire performance period of the contract a suitable third party civil liability insurance against on the one hand damage which could be caused by his employees to NATO premises, (e.g. by fire), and on the other, injury to persons.
- e. The Contractor and the Consultants shall sign, prior to commencement of services, a certificate of non-disclosure for all proprietary data to which they shall have access.
- f. The provisions of this Paragraph also apply to possible sub-contractors.

## **18. CONTRACTOR NOTICE OF DELAY**

- a. In the event the Contractor encounters difficulty in meeting performance requirements, or when it anticipates difficulty in complying with the Contract delivery schedule or date, it shall immediately notify the Contracting Officer in writing, giving pertinent details. This data shall be deemed to be information only in character and this provision shall not be construed as a waiver by NCI AGENCY (FORMER NCSA) of any delivery schedule or date, or of any rights or remedies provided by law or under this Contract.

b. When such delay has been caused by the occurrence of any cause constituting Force Majeure and as soon as possible, the Contractor shall give notice and full particulars in writing to the Contracting Officer of such occurrence, as well as its claim for a reasonable extension in time for completion of its obligations under this Contract. If the Contractor, in despite of that extension, remains unable by reason of Force Majeure to perform its obligations and meet its responsibilities under this Contract, NCI AGENCY (FORMER NCSA) has the right to suspend or terminate this Contract on the same terms and conditions as are provided for in the clause titled "DEFAULT" herein.

c. Notice of Labour Disputes: Whenever the Contractor has knowledge that an actual or potential labour dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

## **19. CONTRACTOR EMPLOYEE'S PRIVACY**

Personal data of contractor employees will be handled with due respect for the confidentiality and privacy rights of the employee .

## **20. CONTRACTOR STATUS, OBLIGATIONS, PRIVILEGES AND RESPONSIBILITIES**

a. 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 NATO.

b. In accordance with the provisions set forth in the clause "SUBCONTRACTS" hereafter, it remains the Contractor's responsibility to make sure all terms and conditions of the present Contract are met. In any case the Purchaser will not be contractually directly involved with any sub-contractor.

c. The Contractor's contractual obligations towards its employees shall not constitute an excuse for non-performance of this contract, and shall not justify a conflict with NATO's requirements as stated herein.

d. The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. Consultants employed under this Contract are not eligible for any diplomatic privileges nor NATO employee benefits. The Purchaser will not provide the Consultants with any additional rights or privileges.

e. All Consultant's contacts with external governmental authorities/agencies for the purpose of obtaining information necessary for performance shall only be made through or by the CO(T)R. In no way shall the Contractor personnel claim directly or indirectly to represent NATO in an official capacity or claim themselves to be NATO employees.

f. When several Consultants are hired concurrently, at the COTR's discretion, one Consultant may be designated by the COTR as the Senior Consultant who shall act as the liaison between the COTR and the Consultants work force. An alternate may be designated to replace the Senior Consultant during absences.

## **21. CORRUPTION AND ILLICIT GRATUITIES**

a. The Contractor certifies that neither it nor its agents or representatives have offered or given any gratuity whatsoever to any NCI AGENCY (FORMER NCSA) personnel, with a view to securing a contract or favourable treatment with regard to the award, modification or execution of this Contract.

b. NCI AGENCY (FORMER NCSA) may, by registered letter, terminate this Contract without notice if it is found, after an investigation instituted by NCI AGENCY (FORMER NCSA), that gratuities (in the form of entertainment, gifts or others) were offered or given by the Contractor to NCI AGENCY (FORMER NCSA) personnel with respect to the award of this Contract or to the taking of any decision regarding its execution.

## **22. DEFAULT AND TERMINATION FOR DEFAULT**

a. NCI AGENCY (FORMER NCSA) may, subject to the provisions of paragraphs below, by Contracting Officer's written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

(1) if the Contractor fails to provide or perform the services or to deliver the supplies within the time and as specified herein or in any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Contracting Officer may, terminate the whole or any part of the contract by written Notice of Default to the Contractor.

b. In the event that NCI AGENCY (FORMER NCSA) terminates this Contract in whole or in part as provided in the paragraph above, NCI AGENCY (FORMER NCSA) may procure services similar to those so terminated and the Contractor shall be liable to NCI AGENCY (FORMER NCSA) for any excess costs for such similar services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Clause. In such cases, NCI AGENCY (FORMER NCSA) shall pay to the Contractor the contract price for completed supplies or services delivered and accepted less any excess costs.

c. Except with respect to defaults of Sub-contractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Sub-contractor, and if such default arises from 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 liable for any excess costs for failure to perform unless the services to be provided by the Sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to perform the Contract.

d. If this contract is terminated as provided in the first paragraph of this clause, NCI AGENCY (FORMER NCSA), in addition to any other rights provided in the clause, may require the Contractor to transfer title and deliver to NCI AGENCY (FORMER NCSA) in the manner and to the extent directed by the Contracting Officer:

(1) any completed supplies and

(2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which NCI AGENCY (FORMER NCSA) has an interest. Payment for completed supplies delivered to and accepted by NCI AGENCY (FORMER NCSA) shall be at the contract price. Payment for manufacturing materials delivered to and accepted by NCI AGENCY (FORMER NCSA) and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute". NCI AGENCY (FORMER NCSA) may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect NCI AGENCY (FORMER NCSA) against loss because of outstanding liens or claims of former lien holders.

e. 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, if the Contract contains a clause providing for termination for convenience of NCI AGENCY (FORMER NCSA), be the same as if the notice of termination had been issued pursuant to such Clause.

f. Failure to agree on a termination settlement shall be considered a dispute subject to the "DISPUTES – RESOLUTION OF DISAGREEMENTS - ARBITRATION" clause.

## **23. DISCLAIMER CLAUSE**

In accordance with Paragraph "Contract changes and modifications" of these NCI AGENCY (FORMER NCSA) GENERAL CONTRACT PROVISIONS any modifications, including changes, additions or deletions and instructions under the contract shall not be binding unless issued in writing by the NCI AGENCY (FORMER NCSA) Contracting Officer. Should the Contractor follow directions other than from the NCI AGENCY (FORMER NCSA) Contracting Officer in the performance of the contract, the risk taken will be solely that of the Contractor.

## **24. DISPUTES - RESOLUTION OF DISAGREEMENTS – ARBITRATION**

Any disagreements regarding the interpretation or application of this Contract shall be resolved by negotiations and, in case no resolution is found, through binding arbitration in accordance with the following:

a. 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 Purchaser under the Contract is 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(s).

b. The Contracting Authority shall not proceed with the evaluation and decision in respect of any claim until and unless the Contractor(s) has submitted an attestation that states as follows:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes NATO is liable; and that I am duly authorized to certify the claim on behalf of the contractor." In addition, the Contractor must submit complete proof and evidence of the claim (either by submission or by identification of the relevant documentation).

c. The Contracting Authority's decision shall be final and conclusive unless, within 30 days from the date of receipt of the notification letter of such a decision, the Contractor(s) mails or otherwise furnishes to the Contracting Authority a notification of his decision to open arbitration proceedings in accordance with the arbitration provisions at paragraph 24.d. through 24.i. below. 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 provided by the Purchaser.

d. Pending final decision of a dispute, the Contractor(s) shall proceed diligently with rendering the services of the Contract, unless otherwise authorised to do so by the Purchaser.

e. The Contractor(s) agrees to submit to the Arbitration Tribunal only such issues, facts, evidence and proof which the Contractor(s) had beforehand identified and submitted to the Contracting Authority for decision in accordance with paragraph 24.a. above. 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.

f. Within a period of thirty days from the date of receipt of the Contractor's notification at paragraph 24.c. above, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator the dispute or disputes shall be 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.

g. 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.

h. 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.

i. 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.

j. An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph 24.f. above.

k. 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.

l. 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.

## **25. DOCUMENTATION**

a. Any document which is required to be submitted for NCI AGENCY (FORMER NCSA) review and approval shall be categorised by NCI AGENCY (FORMER NCSA) as follows:

(1) Approved

(2) Conditionally approved subject to the incorporation by the Contractor of NCI AGENCY (FORMER NCSA) comments

(3) Not approved for the reasons stated by NCI AGENCY (FORMER NCSA)

b. No contractual relief shall be granted for documents not approved.

c. All documents to be submitted by the contractor, unless specified differently in the contract, shall be submitted in three (3) hardcopies and on machine readable magnetic media (one copy), the latter if available in a form to be agreed between the Contractor and NCI AGENCY (FORMER NCSA).

d. NCI AGENCY (FORMER NCSA) reserves the right without further payment to reproduce and/or translate, in whole or in part, for sole use in NCI AGENCY (FORMER NCSA), any or all documentation supplied by the Contractor under the contract.

e. The applicability of the clauses "CONFIGURATION MANAGEMENT" is extended to include information submitted in a machine readable form e.g. on magnetic media.

## **26. FORCE MAJEURE**

Neither party shall be responsible for any failure to perform or delay in performing any of the provisions of the contract where such failure or delay arises due to causes (such as any acts of God, war, floods, epidemics, etc.) outside the reasonable control of the party required to perform such provisions, except to the extent provided in clauses 18 and 22 of this contract.

## **27. FURNITURE AND EQUIPMENT**

The Contractor may furnish, install and maintain its own furniture and equipment without any cost or expense to NCI AGENCY (FORMER NCSA). Approval from the Contracting Officer or his representatives is required prior to the installation of any major item of Contractor equipment. The equipment, furniture and fixtures provided by the Contractor shall not be removed without prior written approval of NCI AGENCY (FORMER NCSA) and, in the event of removal all costs and expenses thereof shall be borne by the Contractor.

## **28. HEALTH, SAFETY AND ACCIDENT PREVENTION**

a. The Contractor shall comply with applicable Host Nation laws and regulations on safety at work, health protection and hygiene.

b. If the Contracting Officer notifies the Contractor in writing of any non-compliance in the performance of this Contract, with regard to safety and health rules and requirements prescribed by applicable national or local laws, ordinances and codes, and the Contractor fails to take immediate corrective action, then the Contracting Officer may order the Contractor to stop all or part of the work until satisfactory corrective action has been taken. Such an order to stop work shall not entitle the

Contractor to an adjustment of the Contract price or other reimbursement for resulting increased costs or losses.

c. At any time, the NCI AGENCY (FORMER NCSA) Safety Officer will be entitled to inspect any Contractor's activities in order to guarantee that this clause is enforced.

## **29. INCONSISTENCE BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT**

In the event of inconsistency between any terms of this Contract and any translation thereof into another language, the English language meaning shall prevail.

## **30. LEGAL STATUS OF THE PARTIES**

The NATO CIS Services Agency and the Contractor shall also each be referred to as a "Party" hereunder, and:

a. NCI AGENCY (FORMER NCSA), including its subsidiary organs, has full juridical personality and enjoys privileges and immunities as are necessary for the independent fulfilment of its purpose.

b. The Contractor shall have the legal status of an independent contractor and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect of being the employees or agents of the other Party and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

## **31. LICENSES AND PERMITS - AUTHORISATION TO PERFORM**

The Contractor warrants that:

- it and its Sub-contractors have been duly authorised to provide the required services and do business in the place where the contract is to be performed.
- it and its Sub-contractors have obtained or will obtain all necessary licenses and permits required in connection with the Contract.
- it and its Sub-contractors will fully comply with all applicable laws, decrees, labour standards and regulations of the place where the contract is to be performed during the performance of this Contract, and that

- no claim for additional moneys with respect to any authorisations to perform will be made upon NCI AGENCY (FORMER NCSA).

## **32. LIQUIDATED DAMAGES**

- a. For each calendar day of delay in the performance of any relevant task or duty under the contract, and in lieu of actual damage, the Contractor shall pay to NCI AGENCY (FORMER NCSA) as fixed, agreed, and liquidated damages of 0.1% of the total contract price, less handling, transportation and taxes, to a maximum of 10% of the contract price.
- b. Alternatively, NCI AGENCY (FORMER NCSA) may terminate this contract in whole or in part as provided in the first paragraph of the "DEFAULT AND TERMINATION FOR DEFAULT" clause HEREIN and in that event the Contractor shall be liable, in addition to the excess costs provided in second paragraph of the "DEFAULT AND TERMINATION FOR DEFAULT" clause, for such liquidated damages accruing until such time as NCI AGENCY (FORMER NCSA) may reasonably obtain delivery or performance of similar supplies or services.
- c. 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 third paragraph of the "DEFAULT AND TERMINATION FOR DEFAULT" clause and in such event, subject to the "DISPUTES - RESOLUTION OF DISAGREEMENTS - ARBITRATION" clause, the Contracting Officer 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 fact justify an extension.

## **33. MAINTENANCE OF NCI AGENCY (FORMER NCSA) PREMISES AND FIXTURES**

- a. The Contractor undertakes to maintain the premises in a clean and attractive state to a level specified by the Contracting Officer or such other supervisory authority as the Contracting Officer may designate; it shall also assume all expenses of repair caused by its negligence, that of its employees, or any other deed for which he may be held responsible.
- b. Maintenance of fixtures and facilities is a responsibility of NCI AGENCY (FORMER NCSA). The Contractor will not bear any charge regarding this matter, except in case of negligence or improper use as stated in paragraph above.
- c. The premises shall be available for inspection at any time by NCI AGENCY (FORMER NCSA)'s authorized representatives.
- d. The Contractor shall not make any alterations to the premises and fixtures without prior written approval of NCI AGENCY (FORMER NCSA). This does not prohibit the Contractor from providing suitable decoration for the facility at his own expense, with the previous approval of NCI AGENCY (FORMER NCSA).

e. Failure by the Contractor to fulfil any of the provisions in the above paragraphs, after appropriate written notice by the Contracting Officer, shall give NCI AGENCY (FORMER NCSA) the right to cause these provisions to be fulfilled to NCI AGENCY (FORMER NCSA)'s requirements and to pass the full costs of such fulfilment to the Contractor for immediate reimbursement to NCI AGENCY (FORMER NCSA) without regard to any actions the Contractor may plan to take to obtain reimbursement from any other party or parties.

### **34. MISCELLANEOUS - ENTIRE AGREEMENT**

a. The entire agreement between the Contracting parties is contained in this contract or order and is not affected by any oral understanding or representation whether made previous to or subsequent to this Contract.

b. The Contractor has fully read all terms, clauses, specifications and detailed General and any Special conditions stipulated in this order. He unreservedly accepts all terms thereof.

c. If any term of this contract is held to be invalid or unenforceable for any reason, the validity and enforceability of the remaining provisions shall not be affected.

d. The Contractor shall comply with all applicable laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In additions, the Contractor shall maintain compliance with all applicable obligations relating to its registration as qualified vendor of goods or services to the NCI AGENCY (FORMER NCSA); as such obligations are set forth in the NCI AGENCY (FORMER NCSA) vendor registration procedures.

e. Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of NCI AGENCY (FORMER NCSA), including its subsidiary organs.

### **35. NCI AGENCY (FORMER NCSA) DELAY OF WORK**

a. If the performance of all or any part of the work is delayed or interrupted by an act of NCI AGENCY (FORMER NCSA) in the administration of this contract, which act is not expressly or implicitly authorized by this contract, or by his 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. 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 (i) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this contract.

b. No claim under this clause shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) unless the 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.

c. No claim under this clause shall be allowed for any delay resulting from the restriction of access to NCI AGENCY (FORMER NCSA) facilities as a consequence of the conduct of security or safety exercises provided that such restrictive measures do not exceed five (5) working days over a year period, and that the access restrictions are notified by the Contracting Officer, in writing, to the Contractor at least 7 days prior to their implementation.

### **36. NCI AGENCY (FORMER NCSA) FURNISHED PROPERTY**

a. NCI AGENCY (FORMER NCSA) shall deliver to the Contractor, for the use only in connection with this contract, the property (if any) stated in the Part II or III of this contract (hereinafter referred as "NCI AGENCY (FORMER NCSA) furnished property"), at the times and locations stated therein.

b. Title to NCI AGENCY (FORMER NCSA) furnished property shall remain vested in NCI AGENCY (FORMER NCSA). The Contractor shall maintain adequate property control records of NCI AGENCY (FORMER NCSA) furnished property.

c. Contractor, upon delivery to him of any NCI AGENCY (FORMER NCSA) furnished property shall assume the risk of, and shall be responsible for, any loss thereof or damage thereto, except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

d. The Contractor shall not modify any NCI AGENCY (FORMER NCSA) furnished property unless specifically authorised by the Contracting Officer.

### **37. NCI AGENCY (FORMER NCSA) REGULATIONS**

The Contractor shall comply with the applicable provisions of NCI AGENCY (FORMER NCSA) and NCI AGENCY (FORMER NCSA) regulations and directives as communicated to it by the Contracting Officer. This includes NCI AGENCY (FORMER NCSA) Directive 40-7 (NCI AGENCY (FORMER NCSA) Standards of Conduct).

### **38. NON DISCLOSURE AGREEMENT**

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

b. The Contractor and all Sub-contractors may be required to sign non disclosure agreements or certificates for access to specific information to complete tasks. Any such requirements will be indicated in the Contract Special provisions.

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

d. Notwithstanding to above all officers, employees, agents and subcontractors working on-site at NATO or, under circumstances where the TOR warrants, shall sign a Non Disclosure Agreement (NDA).

e. The Contractor shall be liable for all damages resulting from the non-authorized use of the data and/or information.

### **39. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

b. In the event of any claim or suit against NCI AGENCY (FORMER NCSA) on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to NCI AGENCY (FORMER NCSA), when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of NCI AGENCY (FORMER NCSA) except where the Contractor has agreed to indemnify NCI AGENCY (FORMER NCSA).

c. This clause shall be included in all sub-contracts.

### **40. ORDER OF PRECEDENCE**

In the event of any inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved giving precedence in the following descending order:

- 1st The Part I of the Contract.
- 2nd The Special Provisions (Part II – Section A) (if provided).
- 3rd The General Provisions (Part II – Section B).
- 4th The Statement Of Work (Part III).
- 5th The Contractor's Bid or Proposal accepted by NCI AGENCY (FORMER NCSA).

The documents listed above form the entirety of the contract.

## 41. ORDERING CONSULTANT SERVICES

If called for in the Special provisions this clause shall apply:

a. Orders to the Contractor for Consultant services will be issued by the Purchaser in writing via Contracts and/or Contract Modifications signed by the NCI AGENCY (FORMER NCSA) Contracting Officer. Contracts and/or Contract Modifications will cover one of two types, either level of effort or completion. Level of effort orders will specify the type of labour to be provided over a specified period of time and the general duties to be performed by the personnel provided by the Contractor. Completion Orders will provide a detailed description of the item or services to be delivered by a specified date.

b. Each Contracts and/or Contract Modifications, regardless of type, will contain as a minimum the following information:

- (1) Order Number
- (2) Type of contract instrument (in the sense of the NCI AGENCY (FORMER NCSA) DIRECTIVE NUMBER 60-70 Para 3-1 f.)
- (3) Effective Date and End Date of Effort
- (4) Total Number of Work-days authorised
- (5) Quantity and Category of Labour Utilised
- (6) Material and Travel authorised
- (7) Statement of Work (including deliverables where applicable)
- (8) Place of Performance or Delivery
- (9) Name and Telephone of Purchaser's Technical Representative
- (10) Total Monetary Value of the Order
- (11) Funding Authority
- (12) Signature of the NCI AGENCY (FORMER NCSA) Contracting Officer

c. Contracts and/or Contract Modifications are the instruments to initiate Contractor activities and obligate funding to the contract.

d. Issuing Procedure

- (1) For level of effort type orders, the Purchaser shall notify the Contractor either by telephone or in writing requesting that the Contractor propose an individual or individuals of specified qualifications to work for a required level of effort within general duties directed by the COTR. Within 5 days of such notification, the Contractor shall provide the name(s) and qualifications statement(s) of a nominee(s) for review by the Purchaser. If the Purchaser accepts the nominations, an order as described in Paragraph a. And b. above will be issued and the Contractor shall furnish the required services.

(2) For completion types orders, the Purchaser shall notify the Contractor in writing and provide a detailed Statement of Work for the proposed effort. Within 15 days of receipt, the Contractor shall prepare and submit a proposal for accomplishing the effort which shall contain the following:

- names and qualifications of proposed personnel,
- proposed work-days for each category of labour
- proposed other direct costs (material and travel) as applicable
- a brief technical proposal featuring proposed methodology and a work breakdown structure of milestones and labour expenditure by milestones projected to be needed to complete the effort on schedule.
- a listing of any proprietary or restricted technical data or computer software to be delivered as part of the end product or service.

e. Limitation on Purchase Orders

In no case will the Purchaser issue a single or aggregate Order(s) requiring the Contractor to furnish more than 30% of the yearly maximum number of work-days under the contract within any three month period unless the Contractor agrees to such tasking.

## **42. PATENT INDEMNITY**

a. Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the items will be manufactured, under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NCI AGENCY (FORMER NCSA) from any liability for patent infringement in said countries. The Contractor will notify NCI AGENCY (FORMER NCSA) of any claims of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

b. The Contractor shall indemnify NCI AGENCY (FORMER NCSA) and its officers, agents and employees against liability, including costs, for infringement of any letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the government which issued the letters patent) arising out of the manufacture or delivery of supplies under this contract, or out of the use or disposal by or for the account of NCI AGENCY (FORMER NCSA) of such supplies. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by NCI AGENCY (FORMER NCSA) of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defence thereof; and further, such indemnity shall not apply to:

- (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used or directing a manner of performance of the Contract not normally used by the Contractor;
- (2) an infringement resulting from an addition to, or change in, such supplies or components furnished which addition or change was made subsequent to delivery or performance by the Contractor; or
- (3) a claimed infringement which is settled without the consent of the Contractor, unless required by a court of competent jurisdiction.

## **43. PAYMENTS AND INVOICES**

a. Payment shall be made within 30 days from receipt of a proper invoice i.e.:

- (1) Certified and duly signed by a duly authorised company official.

Each copy of the invoice shall contain the following certificate "I certify that the above invoice is true and correct and that payment therefore has not been received".

- (2) Supported by a Certificate of Receipt, Inspection and Acceptance duly signed by the Authority to whom the goods/services were delivered and by a Certificate of Inspection and Acceptance duly signed by the Authority assigned by the Contracting Officer to carry out Inspection and testing as specified in the "Inspection" clause here above (COTR, QAE or NQAR).

- (3) Including remittance details.

b. No payment shall be made with respect to undelivered supplies, work not performed and/or services not rendered under this contract.

c. Payment will be effected in the currency or currencies of the contract and the Contractor shall bear all related charges.

d. NCI AGENCY (FORMER NCSA) shall not bear any cost related to financial guarantees, which the Contractor is required to provide under this Contract.

e. Invoices will be submitted in duplicate and give the following information:

- (1) Its reference and issue date.
- (2) The name, address of NCI AGENCY (FORMER NCSA).
- (3) The Contract number.
- (4) Purchase Order number (if applicable)
- (5) The description of services or deliverables
- (6) The quantities and unit prices (exclusive of taxes and duties).
- (7) The total amount to be paid.

(8) The bank account details where the Contractor will receive the payment

- f. For partial payments, indicate the payment number by noting "Partial Payment Number ...".
- g. Invoices shall be sent to the address listed in the "Bill to" block of the contract.
- h. Final Payment: the contractor (consultant) must complete out processing for consultants prior to departure. Failure to properly out-process could result in delay of payment and/or penalty.

#### **44. PENALTY FOR UNSATISFACTORY PERFORMANCE**

- a. When unsatisfactory performance or late completion exists the Contracting Officer will send the Contractor a "Show Cause" letter.
- b. The Contractor will have 5 (five) days to refute the unsatisfactory performance or late completion or correct the unsatisfactory performance or make deliveries.
- c. Failure to refine or correct the situation will result in a penalty equal to one tenth of 10% of the original amount, transportation, loading and unloading fees excluded, for each day of delay after the delivery term date specified in the contract. The total amount of penalty will not exceed the said 10%.
- d. In addition, at the option of the Contracting Officer may decide for a termination for default and the Contractor may be excluded from the supplier list as being a non-responsible and/or a delinquent Contractor. Debarred bidders shall not be offered NATO solicitations for contracts from this Agency.

#### **45. PREFERRED CUSTOMER STATUS**

- a. For all supplemental agreements made for supplies and services furnished to NCI AGENCY (FORMER NCSA) without competition, the Contractor shall offer prices on a "Preferred Customer" basis.
- b. The Contractor shall offer prices as favourable as those extended to any Government, Agency, and Company, Organization or individual purchasing or handling like quantities of supplies or services covered by the contract under similar conditions.
- c. In the event that prior to complete 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 NCI AGENCY (FORMER NCSA) and the prices of such items shall be correspondingly reduced by a contract modification.
- d. 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.

## **46. PRICES**

- a. Prices to be paid for the services performed under the contract are stated in the Part I of the contract. The referred prices include all the expenses in connection with this contract; therefore, no additional sums will be paid to the Contractor for any cost that it could deem as necessary for the performance of the contract, unless otherwise specified in the contract.
- b. Contract Prices are valid for the execution periods specified in the contract.
- c. Unless differently specified in the Special Contract provisions, all prices are firm and fixed and there will be no price revision for the base contract or for the options.

## **47. PROTECTION AND INDEMNIFICATION OF NCI AGENCY (FORMER NCSA)**

- a. The Contractor shall at all times hold NCI AGENCY (FORMER NCSA), its agents, representatives and employees harmless from any and all suits, claims, charges and expenses which arise from acts or omissions of the Contractor, its agents, representatives, employees or Sub-contractors.
- b. The Contractor shall indemnify and hold NCI AGENCY (FORMER NCSA) 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 NCI AGENCY (FORMER NCSA) furnished property, including facilities and utilities.
- c. The Contractor shall pay compensation for all damage occurring to any NCI AGENCY (FORMER NCSA)'s property, facilities and utilities, occasioned by the Contractor, its agents, representatives, employees or Sub-contractors, arising from its or their presence on NCI AGENCY (FORMER NCSA)'s premises in connection with the Contract.
- d. All property of the Contractor while at NCI AGENCY (FORMER NCSA)'s premises shall be at the risk of the Contractor, and NCI AGENCY (FORMER NCSA) 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 NCI AGENCY (FORMER NCSA)'s agents, representatives or employees.

## **48. RELEASE OF NEWS/INFORMATION**

- a. No news release (including photographs and films, public announcements, etc.) on any part of the subject matter of this Contract shall be made by the Contractor without prior written approval by the Contracting Officer.
- b. Furthermore the Contractor shall, in no other manner whatsoever use the name, emblem or official seal of NATO, and/or NCI AGENCY (FORMER NCSA) in connection with its business or otherwise.

## **49. RESPONSIBILITY OF THE COTR (OR DESIGNATED ALTERNATE)**

The CO(T)R, acting on behalf of the Contracting Officer, is responsible for and has the authority to:

- a. Verify the Contractor performs the technical requirements of the contract in accordance with the contract terms, conditions, and specifications and assure that the work stays within the set of technical bounds.
- b. Perform, or cause to be performed, inspections necessary in connection with Para a. above and verify that the Contractor has corrected all deficiencies. Perform provisional acceptance for NCI AGENCY (FORMER NCSA) of services delivered under this contract subject to concurrence by the contracting officer.
- c. Maintain liaison and direct communication with the Contractor. Written communications with the Contractor and other documents pertaining to the contract shall be signed as "Contracting Officer's (Technical) Representative" with a copy furnished to the Contracting Officer.
- d. Monitor the Contractor's performance and notify the Contracting Officer of deficiencies observed during surveillance. Record and report to the Contracting Officer incidents of faulty or non-conforming work, delays, or problems.
- e. Coordinate site entry for Contractor personnel and ensure that any NCI AGENCY (FORMER NCSA)- furnished property is available when required.
- f. For Consultant services contracts:
  - (1) Liaise between the Consultants and any NATO personnel.
  - (2) Assess and co-ordinate the Consultants requirements for the performance of their tasks.
  - (3) Approve Consultants leave and/or absences from NCI AGENCY (FORMER NCSA).
  - (4) Certify the Consultants timesheets.

Limitations:

- g. The COTR is not empowered to award, agree to, or sign any contract (including delivery orders) or modifications thereto, or in any way to obligate the payment of money by NCI AGENCY (FORMER NCSA).
- h. The COTR may not take any action that may impact on the contractor delivery schedules, funds, or scope. You may not make any contractual agreements, commitments, or delivery schedules.

Duration of the COTR mission:

i. The designation as a COTR shall remain in effect through the life of the contract, unless sooner revoked or terminated by the Contracting Officer. Such termination of the designation shall be in writing. If the COTR designation is revoked for any reason before completion of this contract a successor COTR will be designated in writing by the Contracting officer. Accordingly there will be no re-delegation of the COTR authority between the old and the new COTR's.

## **50. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE**

a. Ownership: as between the parties, the parties agree that that portion of the work product as created by operation of this Agreement relating to NCI AGENCY (FORMER NCSA)'s information shall belong exclusively to NCI AGENCY (FORMER NCSA).

b. That portion of the work product as created by operation of this Agreement relating to Contractor's information, pre-existing work or which is generic to Contractor's software products shall belong exclusively to Contractor.

c. Pre-Existing Materials: the Contractor may include in the supplies pre-existing work or materials.

d. With regard to subparagraph (b) above, the Contractor grants to NCI AGENCY (FORMER NCSA) a non-exclusive, non-transferable, non-assignable, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, and distribute (internally) copies of, and prepare derivative works based upon, such work and materials and the right to authorize others to do any of the foregoing solely for NCI AGENCY (FORMER NCSA)'s purposes and benefit under the applicable statement of work.

## **51. SECURITY**

a. Unless otherwise specified in the Special Contract provisions, the Contractor shall assign to this contract personnel who currently hold a valid NATO Secret security clearance, confirmed to the Purchaser by the relevant National Security Authority at Contract signature. If this is not possible, the Contractor shall assign personnel who have already submitted an application for a security clearance. This requirement applies to all Sub-contracts issued by the Contractor for effort under this prime Contract. If during the performance of the Contract, Contractor's Technical Support Personnel need to be escorted because of the non-availability of the security clearance required by the Site, only the actual work time (as recorded) will be considered for payment.

b. 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. He 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. In particular the Contractor undertakes to:

- (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;
- (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;
- (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;
- (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;
- (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 and level of clearance;
- (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;
- (7) Limit the dissemination of NATO classified information to the smallest number of persons as is consistent with the proper execution of the Contract;
- (8) Comply with any request from the National Security Authority or designated security agency that persons entrusted with NATO classified information sign a statement undertaking to safeguard that information and signifying their understanding both of their obligations under national legislation affecting the safeguarding of classified information, and of their comparable obligations under the laws of the other NATO nations in which they may have access to classified information;
- (9) Report to the Purchaser or designated Security Agency any breaches or 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 information;
- (10) Apply to the Purchaser for approval before sub-contracting any part of the work, if the Sub-Contract would involve the sub-contractor in 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) 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; and

(12) Classify any produced document with the highest classification of the NATO classified information disclosed in that document.

## **52. SOFTWARE RELEASES AND UPDATES**

a. All software implemented on or delivered with the supplies shall be at the start of the provisional acceptance, the most recent versions or releases as available.

b. The Contractor shall for duration of minimum five (5) years after acceptance, and upon their availability, offer to NCI AGENCY (FORMER NCSA) all software changes, fixes and new releases. These shall be offered at no cost when they are offered free of charge on the commercial market.

## **53. SPECIAL TERMINATION CLAUSE**

a. If at any time while this Contract is in force either party find itself in one of the following situations:

(1) Death, supervened incapacity or extinction of its legal entity;

(2) Declaration of bankruptcy, reorganisation of debts, take over by a trustee, or any other legal status implying lack of capacity to enter new financial liabilities,

(3) Change of activity in such a manner that it becomes incompatible with the purpose of this Contract,

b. Then the other party shall be entitled to terminate this Contract upon giving written notice of termination under the provisions of this clause to the other party. Such termination shall not be considered as termination for convenience and shall be effective on the date stated on that notice of termination.

c. The settlement of such a special termination shall be in line with the "TERMINATION FOR CONVENIENCE" clause hereafter.

## 54. STOP WORK ORDER

a. The Contracting Officer 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 up to ninety (90) days after the order is delivered to the Contractor and for any further period to which the parties may agree. Any such order shall be specifically identified as Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimise the incidence of costs allocable to the work covered by the 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 the period to which the parties shall have agreed, the Contracting Officer shall either:

(1) cancel the stop work order and determine under which terms the work may be resumed, or

(2) terminate the work covered by such order as provided in the "Termination for Convenience" or the "Termination for default" clause of this contract.

b. If a stop work order issued under this clause is cancelled, or the period of the order or any extension thereof expires, without a decision by the Purchaser, the portion of work related to the stop work order shall be resumed by the Contractor.

c. In any of the above situations, the Contractor shall be entitled to an equitable adjustment if it is found that the reason for the suspension did not arise do to actions attributable to the Contractor but was for the convenience of the Purchaser alone. This equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(1) the stop work order results in an increase in time required for, or in the Contractor's cost properly allowable to, the performance of any part of this contract and

(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 Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

d. If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of NCI AGENCY (FORMER NCSA) the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

## 55. SUB-CONTRACTS

a. The Contractor shall be responsible for the execution of all terms of this Contract delegate, transfer or assign its rights or obligations under the Contract without the prior permission of the Contracting Officer. The Contractor shall consequently apply for Contracting Officer approval prior to subcontracting any part of the work. Such approval, and subsequent performance, is subject to the Clause titled "CONTRACTOR EMPLOYEES" herein.

- b. Even if a sub-contract is placed, the Contractor shall be solely responsible for all services and obligations performed by its subcontractors under this Contract.
- c. In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of the NCI AGENCY (FORMER NCSA). The NCI AGENCY (FORMER NCSA) shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the NCI AGENCY (FORMER NCSA) reasonably considers is not qualified to perform obligations under the Contract. The NCI AGENCY (FORMER NCSA) shall have the right to require any subcontractor's removal from NCI AGENCY (FORMER NCSA) premises without having to give any justification therefore. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuse for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors.
- d. NCI AGENCY (FORMER NCSA) shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that NCI AGENCY (FORMER NCSA) reasonably considers is not qualified to perform obligations under the Contract. NCI AGENCY (FORMER NCSA) shall have the right to require any subcontractor's removal from NCI AGENCY (FORMER NCSA) premises without having to give any justification therefore. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuse for the non-performance, of any of its obligations under the Contract.
- e. Sub-contractors shall be limited to persons and firms of member nations of NATO, participating in the funding of this requirement, unless specifically authorised by the Contracting Officer. The list of participating countries is specified in the Special Provisions.
- f. The Sub-contractor, if any, shall procure all permits and licenses necessary for the execution of the Contract, at no cost to NCI AGENCY (FORMER NCSA).
- g. Cancellation of the present Contract shall automatically terminate all sub-contracts, unless agreed otherwise between NCI AGENCY (FORMER NCSA) and the Sub-contractors.

## **56. TAXES AND DUTIES**

- a. The contract price, including the prices in any sub-contracts hereunder, shall not include any customs charges, taxes or other charges levied by the member nations of NATO, or any political subdivision thereof, from which NCI AGENCY (FORMER NCSA) is exempt, on the work performed by the Contractor or his sub-contractors under this contract.

b. To the extent NCI AGENCY (FORMER NCSA) is not exempt from such charges by virtue of law, regulation or international agreement, payment for all such charges shall be made directly to the concerned member nations of NATO or any political subdivision thereof by NCI AGENCY (FORMER NCSA) and NCI AGENCY (FORMER NCSA) shall hold the Contractor and his sub-contractors harmless there from. In the event such charges are levied against, and must be paid directly by, the Contractor to his sub-contractors, NCI AGENCY (FORMER NCSA) shall reimburse the Contractor the full amount of the charges upon receipt of the Contractor's invoice and appropriate documentation.

c. The present Contract is exempted of V.A.T. according to following regulations:

(1) For Belgian firms : Article 42, §3, 3° du code de la TVA.;

(2) For firms from the EEC countries: Article 15.10 from the EEC Council Directive 77/388/EEC;

(3) For firms from non-EEC countries: Article VIII of Paris Protocol, dated 28 August 1952 and Articles IX and X of the Ottawa Convention of 1951.

d. The Contractor assumes responsibility for and agrees to pay any and all taxes and/or duties, which may normally be levied or imposed by the receiving state and/or its administrative departments or political subdivision upon services, transactions and property.

## **57. TERMINATION FOR CONVENIENCE OF NCI AGENCY (FORMER NCSA)**

a. The performance of work under this Contract may be terminated by NCI AGENCY (FORMER NCSA) in accordance with this Clause, in whole or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of NCI AGENCY (FORMER NCSA). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

b. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) stop work under the Contract on the date and to the extent specified in the Notice of Termination;

(2) place no further orders or sub-contracts for material, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

(3) terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) settle all liabilities and all claims arising from such termination of orders and sub-contracts, with the approval or ratification of the Contracting Officer,

to the extent he may require, which approval or ratification shall be final for all the purposes of this Clause;

(5) transfer title of property and deliver to NCI AGENCY (FORMER NCSA) in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:

(a) The fabricated parts, work in process, completed work, and

(b) The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to NCI AGENCY (FORMER NCSA);

(6) complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

c. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than three months from the effective date of termination. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer 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.

d. When such claim has been submitted, and the Contractor and the Contracting Officer agree upon the whole amount to be paid, the Contracting Officer shall thereupon pay to the Contractor the amount so determined. In the event of failure to agree upon that amount, the Contracting Officer shall pay to the Contractor the amount determined by him. The Contractor will immediately submit any outstanding invoices for supplies or services delivered and accepted prior to termination date for payment.

e. Unless otherwise provided for in this Contract, or by applicable statute, 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 NCI AGENCY (FORMER NCSA) at all reasonable times at the office of the Contractor but without direct charge to NCI AGENCY (FORMER NCSA), all its books, records, documents 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 Contracting Officer, photographs, micro-photographs, or other authenticated reproductions thereof.

## **58. TRAINING AND EDUCATION COSTS**

The costs of training and education determined by the Contracting Officer to be commercially available and within the scope of the contract are not billable to NCI AGENCY (FORMER NCSA). The determination of the Contracting Officer is final.

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