

NATO UNCLASSIFIED



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

IFB-CO-15038-GMT

NATO Wide Global Mobile Telephony Contract

Part II

CONTRACT SPECIAL PROVISIONS

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IFB-CO-15038-GMT
BOOK II PART II
CONTRACT SPECIAL PROVISIONS

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

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

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

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

1.1.2.1. CLAUSE 1 – ORDER OF PRECEDENCE is hereby modified and supplemented by Special Provision Clause 2 to reflect the order of precedence.

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

1.1.2.3. CLAUSE 9 – PARTICIPATING COUNTRIES is hereby modified by Special Provision Clause 4 to reflect that there are thirty (30) Member Nations of the North Atlantic Treaty Organisation.

1.1.2.4. CLAUSE 25 – “INVOICES AND PAYMENT” of the General Contract Provisions is hereby supplemented by Special Provision Clause 20.

1.1.2.5. CLAUSE 30 “INTELLECTUAL PROPERTY” of the General Contract Provisions is hereby supplemented by Special Provision Clause 27.

1.1.2.6. CLAUSE 11 “SECURITY” of the General Contract Provisions is hereby supplemented by Special Provision Clause 24.

1.1.2.7. CLAUSE 13 “PURCHASER FURNISHED PROPERTY” of the General Provisions does not apply to this contract and is hereby removed.

1.1.2.8. CLAUSE 14 “CONTRACTOR’S PERSONNEL WORKING AT PURCHASER’S FACILITIES” of the General Provisions does not apply to this contract and is hereby removed.

1.1.2.9. CLAUSE 29 “PATENT AND COPYRIGHT INDEMNITY” of the General Provisions does not apply to this contract and is hereby removed.

1.1.2.10. CLAUSE 31 “SOFTWARE WARRANTY” of the General Provisions does not apply to this contract and is hereby removed.

1.1.2.11. **CLAUSE 32 “NATO CODIFICATION” of the General Provisions does not apply to this contract and is hereby removed.**

ARTICLE 2 ORDER OF PRECEDENCE

2.1 In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- a. The Signature sheet
- b. Part I - The Schedule of Supplies and Services
- c. Part II - The Contract Special Provisions
- d. Part III - The Contract General Provisions
- e. Part IV - The Statement of Work and its Annexes

ARTICLE 3 COMPREHENSION OF CONTRACT AND SPECIFICATIONS

3.1 The Contractor warrants that it has read, understood and agreed to each and all terms, clauses, specifications and conditions specified in the Contract and that this signature of the Contract is an acceptance, without reservations, of the said Contract terms within their normal and common meaning.

3.2 The specifications set forth the performance requirements for the Contractor's proposed work as called for under this Contract. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that the work to be delivered will meet or exceed the performance requirements of the said specifications.

3.3 The Contractor hereby acknowledges that it has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this Contract.

3.4 Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or;

3.5 Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.

3.6 Notwithstanding the “Changes” clause or any other clause of the Contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor's proposed work shall entitle the Contractor either to any increase in the firm fixed price as set forth in this Contract or to any extension of the delivery times for the work beyond the period of performance in the Schedule of Supplies and Services.

ARTICLE 4 PARTICIPATING COUNTRIES

4.1 The Contractor may issue subcontracts to firms and purchase from qualified vendors from and within NATO Countries. The Participating NATO Countries are listed below in alphabetical order:

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

4.2 None of the work, including project design, labour and services, shall be performed other than by firms from and within participating NATO Countries.

4.3 No material or items of equipment down to and including identifiable sub-assemblies shall be manufactured or assembled by a firm other than from and within a participating NATO Country.

4.4 The Intellectual Property Rights for all software and documentation used by the Contractor in the performance of the Contract shall vest with firms from and within participating NATO Countries and no royalties or license fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a NATO Country.

ARTICLE 5 SCOPE OF WORK

5.1 The Contractor shall provide wireless telecommunications services to 11 NATO Member Nations by issuance of SIM cards with subscriptions plans (voice, data, and/or text) as specified in the Schedule of Supplies and Services and in accordance with Part IV, Statement of Work (SoW) for the firm fixed prices stated in this contract.

5.2 In order to fulfil that purpose the Contractor shall deliver, as per the Contract Prices specified in the Schedule of Supplies and Services in the manner and at the time and location specified in the terms of this Contract, and more particularly, in the SOW.

5.3 This Contract does not imply an obligation on either part to extend the Contract beyond the specified scope or terms, nor prohibits the Parties from mutually negotiating modifications thereto.

ARTICLE 6 TYPE OF CONTRACT

6.1 This is a Firm Fixed Price Contract. Firm Fixed Prices are established for the supplies and services defined in Part I - Schedule of Supplies and Services **for Profile Plans. Additional charges shall be separate charges based on consumption.**

6.2 The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as provided under other provisions of this Contract.

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

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

ARTICLE 7 TERM OF CONTRACT

7.1 The term of this Firm Fixed Price framework Contract will be from the Effective Date of Contract for a base period of 36 months with two, twelve-month option periods if/when exercised.

ARTICLE 8 PURCHASE ORDERS

8.1 Purchase orders must be solicited and awarded prior to the expiration of the Contract (including optional ordering periods, if exercised). Purchase orders will be issued on a firm fixed price basis in accordance with the terms and conditions of this contract.

8.2 The Contractor shall begin contract performance upon issuance of each written purchase order and provide all products or services listed on the schedule in accordance with all terms and conditions of this contract. Each purchase order shall have a ceiling amount. The Contractor may not invoice over the ceiling amount stated per order. The Contractor shall notify the Purchaser prior to the ceiling amount being reached.

8.3 The Contractor is advised that it is not possible to determine the precise types or amounts of services that will be ordered during the term of the contract. There is no limit on the number of orders that may be issued.

8.4 The Purchaser may issue orders requiring delivery to multiple destinations by country.

8.5 Throughout the life of the contract, the Purchaser may add locations, new plans or delete plans in accordance with current market trends, technology changes, agency policy changes, and usage changes. Changes shall be issued via amendments.

8.6 Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Purchaser's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the final period of the final purchase order issued.

8.7 After the GMT Contract term expires, the Contract will remain an active contract until the final purchase order is closed-out and shall govern the terms and conditions with respect to active purchase orders to the same extent as if they were completed during the contract term.

ARTICLE 9 VARIATIONS IN NUMBER OF USER ACCOUNTS

9.1 Prices in this contract are predicated on the services to be provided as described in the Statement of Work, for the locations as specified in the Schedule of Supplies and Services. Fluctuations in the numbers of sites serviced over time, as well as the number of Purchaser user accounts, may vary. The Purchaser may request to expand the scope of the contract to any of the “remaining” 19 NATO Member Nations (see Annex A of this SoW). Such expansion will be discussed as and when needed, and subject to a contract amendment.

9.2 There will be no adjustment to Contract if the number of active user accounts is within (\pm) 20 Percent of active accounts compared to the number of user accounts stated in the Schedule of Supplies and Services.

9.3 Should the number of active user accounts vary outside the range of “number of contracted active user accounts (\pm) 20 Percent”, Article 10 (Options) of the Contract Special Provisions shall apply.

ARTICLE 10 OPTIONS

10.1 CLINs Op1-1.1 to Op8-11.4.1 of the Contract Schedule of Supplies and Services and all subCLINs thereto represent Contract Options and are available for exercise by the Purchaser at any time and in any combination within 36 months from EDC plus option years if/when exercised. If the Purchaser exercises such options, the Contractor shall deliver such specified quantities of additional or alternative supplies and services at such times and to such destinations as specified in the Contract.

10.2 Prices for all optional line items shall have a validity period that corresponds to the option exercise period cited above.

10.3 The Contractor understands that there is no obligation under this Contract for the Purchaser to exercise any of the optional line items and that the Purchaser bears no liability should he decide not to exercise the options (totally or partially). Further, the Purchaser reserves the right to request another Contractor (or the same), to perform the tasks described in the optional line items of the current Contract through a new Contract with other conditions.

10.4 Any options exercised shall be exercised by written amendment to the Contract.

ARTICLE 11 PLACE AND TERMS OF DELIVERY

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

ARTICLE 12 DELIVERIES OR PERFORMANCE

12.1 The Contractor shall provide quarterly reports listing all contracted services by the NATO Member Nation and agreed upon expected reliability detailed in the Section 7.4 of the SoW. The Contractor shall provide reporting services and provision monthly costs, traffic and inventory statistics, ad-hoc reports on demand and yearly service reports. The Contractor shall

provide the Purchaser with a summary report of the mobile communications services on a monthly basis. The Contractor shall maintain all reports for the previous month on the secure web-application. The Contractor shall make available the report of the previous month no later than the 15th of the current month. Each monthly summary report shall contain at a minimum the values specified in Section 7.4.6 of the SoW with the previous months and the total for the last 12 months. If there is no activity during the reporting period, a “no activity” report shall be submitted. If the date the report is due falls on a non-business day, the report shall become due the following business day. The report shall be sent via email to the Service Delivery Manager.

12.2 All deliverables will be inspected for content, completeness, accuracy, and conformance to purchase order requirements by the Purchaser, or as detailed in individual Purchase Orders.

12.3 The basis for acceptance shall be compliant with the requirements set forth in the Statement of Work, the terms and conditions of the GMT Contract or Purchase Order, as applicable. Deliverable items rejected shall be corrected in accordance with the direction found at the Contract or Purchase Order level.

12.3.1 Reports, documents and narrative type deliverables will be accepted when all discrepancies, errors or other deficiencies identified in writing by the Purchaser have been corrected.

12.3.2 In the event the Contractor anticipates difficulty in complying with any delivery schedule, the Contractor shall immediately provide written notice to the Contracting Officer. Each notification shall give pertinent details, including the date by which the Contractor expects to make delivery; provided that this data shall be informational only in character and that receipt thereof shall not be construed as a waiver by the Purchaser of any delivery schedule, or any rights or remedies provided by law or under the contract.

ARTICLE 13 ORDERING PROCEDURES

13.1 All Purchase Orders under the NATO Wide Global Mobile Telephony Contract must:

13.1.1 The contractor shall identify a person and/or dedicated email address to receive Purchase Order Requests or Proposal/Quote. This person shall be available during regular business hours and shall designate a backup during periods of extended absence, more than two business days in a row.

13.1.2 All costs associated with the preparation, presentation, and discussion of the Contractor’s proposal in response to a purchase order solicitation will be at the Contractor’s sole and exclusive expense.

ARTICLE 14 MERGERS, ACQUISITIONS, NOVATIONS, AND CHANGE-OF-NAME AGREEMENTS

14.1 If a Contractor merges, is acquired, or recognizes a successor in interest to the Purchaser contracts when the Contractor assets are transferred; or, recognizes a change

in a Contractor’s name; or, executes novation agreements and change-of-name agreements by a Contracting Officer other than the GMT Contract Contracting Officer, the Contractor must notify the GMT Contracting Officer and provide a copy of the novation or other any other agreement that changes the status of the Contractor. Any successor must be in full compliance with all terms and conditions of this contract.

ARTICLE 15 KEY PERSONNEL

15.1 The key personnel proposed by the Contractor that satisfy the personnel requirements laid down in the SOW are considered to be key to the performance of this Contract and may not be replaced by the Contractor with substitute personnel without the prior written approval of the Purchaser.

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

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

Key Personnel	Name	Function within organisation
CMS Manager		

15.4 Under the terms of this Article, Key Personnel may not be voluntarily diverted by the Contractor to perform work outside the Contract. In cases where the Contractor has no control over the individual’s non-availability (e.g., resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser of a change of key personnel within 5 days of the date of knowledge of the prospective vacancy and offer a substitute with equivalent qualifications with no additional costs for the Purchaser.

15.5 Contractor personnel proposed in substitution of previously employed Contractor Key Personnel shall be interviewed and approved by the Purchaser’s Service Line Manager before substitution acceptance is granted in writing by the Purchaser contracting Authority.

15.6 In the event of a substitution of any key personnel listed in paragraph 15.3 above and prior to commencement of performance, the Contractor shall provide a CV for the personnel proposed. The CV shall clearly stipulate:

- Full details of professional and educational background;
- Evidence that the personnel is qualified in pertinent contract related areas per the SOW.

15.7 The Contractor shall take all reasonable steps to avoid changes to Key Personnel assigned to this project except where changes are unavoidable or are of a temporary nature. Any replacement personnel shall be of a similar grade, standard and experience as the individual to be substituted.

15.8 Furthermore, even after acceptance of a Contractor’s staff member on the basis of his/her CV and/or interview, the Purchaser reserves the right to reject the Contractor’s staff member, if the

individual is not meeting the required level of competence. The Purchaser will inform the Contractor, in writing in cases where such a decision is taken and the Contractor shall propose and make another staff member available within ten working days after the written notification. The Purchaser shall have no obligation to justify the grounds of its decision and its acceptance of staff members shall in no way relieve the Contractor of its responsibility to achieve the contractual and technical requirements of this Contract nor imply any responsibility to the Purchaser.

15.9 After acceptance in writing by the Purchaser of a substitution of staff, based on a CV and/or interview, paragraph shall be applicable again, if necessary.

15.10 The Purchaser may at any time require the Contractor immediately to cease to employ the above named Key Personnel under the present Contract if, in the opinion of the Purchaser, his/her employment is undesirable. The Contractor shall replace any such employee in accordance with paragraph 15.5 and 15.6 above.

15.11 In those cases where, in the judgment of the Purchaser, the inability of the Contractor to provide a suitable replacement in accordance with the terms of this Article may potentially endanger the progress under the Contract, the Purchaser shall have the right to terminate the Contract in accordance with the terms of the General Provisions Clause entitled "Termination for Default".

15.12 Any change of status or reorganization of the Contractor's practice, or any change in the responsibility for the execution of the Contract shall be reported to the Purchaser immediately when the change or reorganization is promulgated.

15.13 The Contractor's Key Personnel required to interface directly with the Purchaser's counterparts, shall have the capability to readily communicate (oral and written fluency) in English and to provide, if requested official documents destined for distribution during the course of the Contract in English.

15.14 The Purchaser may, for just cause, require the Contractor to remove its employee. Notice for removal will be given to the Contractor by the Purchaser in writing and will state the cause justifying the removal. The notice will either demand substitution for the individual involved and/or contain a notice for default and the remedies to be sought by the Purchaser.

ARTICLE 16 ADVERTISEMENTS, PUBLICIZING AWARDS, NEWS RELEASES, AND CONFERENCES

16.1 All press releases or announcements about any contract/purchase order award hereunder shall be approved by the contract/purchase order Contracting Officer prior to release. Under no circumstances shall the Contractor, subcontractor, teaming partner, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity news release or commercial advertising without first obtaining explicit written consent to do so from the contract/ purchase order Contracting Officer. The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Purchaser or is considered by the Purchaser to be superior to other products or services.

ARTICLE 17 CONTRACT ADMINISTRATION DATA

17.1 Formal letters and communications shall be personally delivered, sent by mail,

registered mail, courier or other delivery services, to the official points of contact cited in this Contract. Without prejudice to Clause 17.4 below, e-mail may be used to provide an advance copy of a formal letter or notice that shall subsequently be delivered through the formal communications means.

17.2 Informal notices and informal communications may be exchanged by any other communications means including telephone and e-mail, where the classification of the information permits such mean of communication. These communications must be confirmed through the formal means set forth above to be considered to be formal communication.

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

17.4 All notices and communications will be effective upon receipt.

Official Points of Contact:

Purchaser	Contractor
NCI Agency ACQ Directorate Building 302 Annex, Room 110 7010 SHAPE Belgium	[To Be Determined]
For contractual matters: Attn: Ms. Eva Benson Title: Contracting Officer Tel: +32 6544-6103 E-mail: eva.benson@ncia.nato.int	For contractual matters: [...] Attn: Title: Tel: Fax: E-mail:
For technical/project management matters: Attn: TBD Title: Service Delivery Manager Tel: E-mail:	For technical/project management matters: Attn: Title: Tel: Fax: E-mail:

ARTICLE 18 TECHNICAL DIRECTION

18.1 The Purchaser may assign Technical Representatives who will monitor work in progress and provide Contractor personnel with guidance (within the general scope of work) in performance of their duties and working schedule. The Technical Representatives do not have the authority to change the terms of the Contract, including the Statement of Work, or to increase the overall cost, duration or level of effort of the Contract. The Technical Representatives do have the authority to interpret the Statement of Work and provide direction to the Contractor personnel in performance of their duties.

18.2 In case the Contractor believes that any technical direction received from the Technical Representative constitutes a change to the terms, conditions and/or specifications of the Contract, he shall immediately inform in writing the NCI Agency Contracting Authority, who will either confirm or revoke such direction within two weeks after notification by the Contractor. If such direction is confirmed as a change, this change will be formalised by written amendment to the Contract pursuant to Clause 16, "Changes", of the Contract General Provisions.

18.3 Failure of the Contractor to notify the NCI Agency Contracting Authority of direction constituting change of the Contract, within the timelines specified in Clause 16.9 of the Contract General Provisions, will result in a waiver of any claims pursuant to such change.

ARTICLE 19 PRICING OF CHANGES, AMENDMENTS AND CLAIMS

19.1 This Article supplements Clause 19 (Pricing of Changes, Amendments and Claims) of the Contract General Provisions as follows:

19.2 Except as otherwise provided for in this Contract, Contractor's price quotations for the changes, modifications, etc., shall be provided at no cost to the Purchaser and shall have a minimum validity period of six (6) months from submission.

19.3 The pricing information contained in the cost breakdown sheets submitted with the Bidding sheets, as part of the Contractor's proposal, including the forward labour rates provided, will constitute the basis for any future negotiations related to possible future amendments to this Contract. The Contractor shall be bound by the listed rates for the duration of the Contract.

ARTICLE 20 INVOICES AND PAYMENT

20.1 This Article supplements Clause 25 (Invoices and Payment) of the Contract General Provisions as follows:

20.2 The Contractor shall submit invoices either at the completion and acceptance of all services or in accordance with the payment plan indicated in the Purchase Order.

20.3 Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain:

- a) Contract number CO-15038-GMT
- b) Contract Amendment number (if any),
- c) Purchase Order number PO [...],
- d) The identification of the performance rendered in terms of Contract Line Item Number (CLIN),
- e) Bank account details for international wire transfers (SWIFT, BIC, IBAN).

20.4 The invoice amount shall be exclusive of VAT and exclusive of all Taxes and Duties.

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

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

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

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

20.9 The invoice shall contain the following certificate:

20.9.1 "I certify that the above invoice is true and correct, that the delivery of the above described items has been duly effected and/or that the above mentioned services have been rendered and the payment therefore has not been received."

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

20.10 Invoices referencing "CO-15038-GMT / PO [...]" shall be submitted in electronic format only to:

accountspayable@ncia.nato.int

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

ARTICLE 21 SUB-CONTRACTORS

21.1 The Contractor shall place and be responsible for the administration and performance of all sub-contracts including terms and conditions which it deems necessary to meet the requirements of this Contract in full.

21.2 The Contractor shall not place sub-contracts outside the Participating Countries unless the prior authorization of the Purchaser has been obtained. Such authorization will not be granted when the sub-contract involves the carrying out of classified work.

ARTICLE 22 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD- PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION

22.1 Definitions. As used in this clause:

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

22.1.2 Controlled technical information means technical information with NATO military application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. The term does not include information that is lawfully publicly available without restrictions.

22.2 Covered defence information means unclassified controlled technical information and is :

22.2.1 Marked or otherwise identified in the contract, purchase order, or delivery order and provided to the contractor by or on behalf of NCIA in support of the performance of the contract; or,

22.2.2 Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

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

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

22.2.5 Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

22.2.6 Technical information means technical data or computer software such as research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

22.2.7 Restrictions

22.2.7.1 The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a cyber incident:

22.2.7.1.1 The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Purchaser in support of the Purchaser's activities, and shall not be used for any other purpose.

22.2.7.1.2 The Contractor shall protect the information against unauthorized release or disclosure.

22.2.7.1.3 The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

22.2.7.1.4 The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Purchaser and Contractor.

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

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

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

ARTICLE 23 CONFLICT OF INTEREST

23.1 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.

23.2 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 or Purchase Order 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.

23.3 If, after award of this Contract herein, the Purchaser discovers a conflict of interest with respect to this Contract or Purchase Order, 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 Contract General Provisions.

23.4 The Contractor's notice called for in Article 23.2 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.

23.5 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.

23.6 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.

23.7 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.

ARTICLE 24 SUPPLEMENTAL AGREEMENT(S), DOCUMENTS AND PERMISSIONS

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

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

Type of Agreement	National Authority of Reference	Subject

ARTICLE 25 PURCHASER RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

25.1 Clause 30 "Intellectual Property" of the NCI Agency's Contract General Provisions is replaced as follows:

25.1.1 Subject to the rights of third parties and with due regard to national security regulations, all rights in the results of work undertaken by or on behalf of the Purchaser for the purposes of this contract, including any technical data specifications, report, drawings, computer software data, computer programmes, computer databases, computer software, documentation including software documentation, design data, specifications, instructions,

test procedures, training material produced or acquired in the course of such work and, in particular, all rights, including copyright therein, shall vest in and be the sole and exclusive property of the Purchaser.

ARTICLE 26 INTELLECTUAL PROPERTY RIGHT INDEMNITIES AND ROYALTIES

26.1 The Contractor shall assume all liability and indemnify the Purchaser, its officers, agents and employees against liability, including costs for the infringement of any patents or copyright in force in any countries arising out of the manufacture, services performed or delivery of supplies, or out of the use or disposal by or for the account of the Purchaser of such supplies. The Contractor shall be responsible for obtaining any patent or copyright licenses necessary for the performance of this Contract and for making all other arrangements required to indemnify the Purchaser from any liability for patent or copyright infringement in said countries. The Contractor shall exclude from its prices any royalty pertaining to patents which in accordance with agreements reached between NATO countries may be utilized free of charge by member nations of NATO and by NATO organization.

26.2 The Contractor shall report in writing to the Purchaser during the performance of this Contract:

26.2.1 The royalties excluded from its price for patent utilised under the agreements mentioned in the previous paragraph;

26.2.2 The amount of royalties paid or to be paid by the Contractor directly to others in performance of this Contract.

26.3 Any use of Contractor Background IPR (identified at Book I, Annex B to Contract Special Provisions) 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. 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.

26.4 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. Subcontractor Background IPR used for the purpose of carrying out the Work pursuant to the Contract shall be identified at Book I, Annex B to Contract Special Provisions.

ARTICLE 27 INDEMNITY

27.1 The Contractor will indemnify and hold harmless NATO, its servants or agents, against any liability, loss or damage arising out of or in connection of the Deliverables

and Services under this Contract, including the provisions set out in Article 27 "Intellectual Property Right Indemnities and Royalties" of the Contract Special Provisions.

27.2 The parties will indemnify each other against claims made against the other by their own personnel, and their sub-Contractors (including their personal representatives) in respect of personal injury or death of such personnel or loss or destruction of or damage to the property of such personnel.

27.3 NATO will give the Contractor immediate notice of the making of any claim or the bringing of any action to which the provisions of this Article may be relevant and will consult with the Contractor over the handling of any such claim and conduct of any such action and will not without prior consultation and without the consent of the Contractor settle or compromise any such claim or action.

27.4 In the event of an accident resulting in loss, damage, injury or death arising from negligence or wilful intent of an agent, officer or employee of NATO for which the risk has been assumed by the Contractor, the cause of the accidents will be investigated jointly by the Parties and the extent to which NATO will be liable to recompense the Contractor will be determined together.

ARTICLE 28 INDEPENDENT CONTRACTOR

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

ARTICLE 29 APPLICABLE REGULATIONS

29.1 The Contractor shall be responsible for obtaining permits or licenses to comply with national codes, laws and regulations or local rules and practices in the country of performance under this Contract.

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

29.3 In the performance of all work under this Contract, it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the local Headquarters' Security Officer.

ARTICLE 30 AUDITING AND ACCOUNTING

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

30.2 The invoicing and payment procedures for the amount payable to the Contractor shall be in accordance with the prescription of Article 20 "Invoices and Payment" of the Contract Special Provisions.

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

ANNEX A: NCI AGENCY NON-DISCLOSURE DECLARATION

We, the undersigned.....(Company) duly represented by (hereinafter "Contractor") do hereby certify that we shall ensure that the following conditions be accepted and observed by all (Contractor) employees working under CO-15038-GMT

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

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

I UNDERSTAND:

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

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

That I must not, without the approval of the General Manager of the NCI Agency, publish (in any document, article, book, CD, video, film, play, or other form) any classified /commercial- in-confidence information which I have acquired in the course of my work under CO-15038- GMT.

That, at the end of contract and after performance of all required tasks, I must surrender any official document or material made or acquired by me in the course of my work under CO- 15038-GMT save such as I have been duly authorised to retain.

That the provisions of the above Declaration apply not only during the period of work under CO-15038-GMT, but also after my contract has ceased and that I am liable to prosecution if either by intent or negligence I allow classified/commercial-in-confidence information to pass into unauthorised hands.

That by accepting the position of Support Contractor for NATO corresponding to the tasks and duties described in the present Contract, I will be considered as a Key personnel as specified in Contract Special Provision Article 15.

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

That shall I decide for personal interest to leave the position, I will do my best effort to fulfil my obligations until the Company that is currently employing me has provided NATO with an acceptable suitable substitute in accordance with Special Provision – Article 15.

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

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

Date

Full name (in block capitals)

Signature