

CO-115049-NCOP2

**IMPLEMENT INCREMENT 2
OF NATO COMMON OPERATIONAL PICTURE
(NCOP)**



BOOK II

PROSPECTIVE CONTRACT



CO-115049-NCOP2

**IMPLEMENT INCREMENT 2
OF NATO COMMON OPERATIONAL PICTURE (NCOP)**

**PART I - CONTRACT SCHEDULES OF SUPPLIES AND
SERVICES**

(see file: 5_IFB CO-115049-NCOP2 Book II Part I SSS.xlsx)

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**IMPLEMENT INCREMENT 2
OF NATO COMMON OPERATIONAL PICTURE (NCOP)**

PART II - CONTRACT SPECIAL PROVISIONS

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1. INTERPRETATION, DEFINITIONS, AND ACRONYMS

- 1.1. This Article supplements Clause 2 (Definitions of Terms and Acronyms) of the NATO Communications and Information Agency (NCI Agency) Contract General Provisions.
- 1.2. As used throughout this Contract, the following terms shall have the meanings specified below unless otherwise specified in the Contract:
 - 1.2.1. **“Compliance”**: strict conformity to the requirements and standards of the Prospective Contract.
 - 1.2.2. **“Contractor”**: the awardee which shall be responsible for the fulfilment of the requirements established in the Prospective Contract.
 - 1.2.3. **“Days”**: calendar days.
 - 1.2.4. **“Deliverables”**: the items, features or services to be delivered by Contractor at a Milestone Date or at any other stage during the performance of Contract.
 - 1.2.5. **“NATO Participating Country”**: any of NATO nation that has undertaken to share the cost of the project, namely, (in alphabetical order): ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC, DENMARK, ESTONIA, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, THE NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, THE UNITED KINGDOM and THE UNITED STATES OF AMERICA.
 - 1.2.6. **“Purchaser”**: The Purchaser is defined as the current NCI Agency or its legal successor.
 - 1.2.7. **“Work Packages”**: Divisions of the total Contract work effort into a grouping of tasks/products that the Contractor shall deliver and/or perform as a bundle under the terms of this Contract. A description of all Contract Work Packages is provided in Statement of Work (SOW).

2. ALTERATIONS, MODIFICATIONS AND DELETIONS OF THE NCI AGENCY CONTRACT GENERAL PROVISIONS

- 2.1. For the purposes of this Contract, the Contract General Provisions (CGP) are modified, supplemented, or replaced as follows:
 - 2.1.1. Article 1 (Interpretation, Definitions and Acronyms) supplements Clause 2 (Definitions of Terms and Acronyms) of the CGP.
 - 2.1.2. Article 3 (Order of Precedence) replaces Clause 1 (Order of Precedence) of the CGP.
 - 2.1.3. Article 5 (Contract Type) replaces Clause 7 (Firm Fixed Price Contract) of the CGP.
 - 2.1.4. Article 7 (Invoices and Payments) supplements and replaces Clause 25 (Invoices and Payment) of the CGP.
 - 2.1.5. Article 8 (Pricing of Changes, Amendments and Claims) supplements Clause 19 (Pricing of Changes, Amendments and Claims) of the CGP.
 - 2.1.6. Article 13 (Liquidated Damages) replaces Clause 38 (Liquidated Damages) of the CGP.

- 2.1.7. Article 16 (Intellectual Property) supplements Clause 30 (Intellectual Property) of the CGP.
- 2.1.8. Article 19 (Performance Guarantee) supplements Clause 8 (Performance Guarantee) of the CGP.
- 2.1.9. Article 20 (Security) supplements Clause 11 (Security) of the CGP.

3. ORDER OF PRECEDENCE

- 3.1. This Article replaces Clause 1 (Order of Precedence) of the CGP.
- 3.2. In the event of any inconsistency in language, terms or conditions of the various parts of this Contract, precedence will be given in the following order:
 - The Signature Page
 - Part I (Contract Schedule of Supplies and Services (SSS))
 - Part II (Contract Special Provisions)
 - Part III (Contract General Provisions)
 - Part IV (Statement of Work and Annexes)
 - The Contractor's proposal (Technical Proposal and Price Quotation) in response to IFB-CO-115049-NCOP2 dated [*to be inserted at contract award*] and any clarifications thereto, incorporated herein by reference.

4. SCOPE OF WORK

- 4.1. The scope of the NCOP-2 implementation entails the high level objectives:
 - To plan and carry-out the installation of NCOP-2;
 - To carry out data migration from NCOP1 to NCOP2 for each organisational node
 - To identify and analyse the training needs and prepare the training material
 - To activate each authorised organisational node and deliver training to the users
 - To provide initial support and conduct OT&E to the core organisational nodes of NCOP2 which have been authorised
- 4.2. The scope of NCOP-2 implementation is broken down into the following Work Packages:
 - WP4: Implementation at core sites: This WP comprises activities to engineer the training and training materials, install the system to the core authorised sites, to activate the organisational nodes, to deliver the training, and to conduct the OT&E to the core organisational nodes of NCOP-2 which have been authorised.
 - WP7: Implementation at additional sites: This WP comprises activities to install the system to additional sites, to activate organisational nodes, to deliver training, and to conduct OT&E. This work package is in the bidding scope, but not yet authorised for implementation.
 - BMD WP: This WP comprises activities to install the system to BMD sites and to activate organisational nodes. This work package shall be costed, but not yet authorised for implementation and will not be evaluated.

5. CONTRACT TYPE

- 5.1. This Article replaces Clause 7 (Firm Fixed Price Contract) of the CGP.
- 5.2. This is a Firm Fixed Price Contract. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Total Price.
- 5.3. The prices stated herein are not subject to any adjustment on the basis of the Contractor's cost experience in performing the Contract.
- 5.4. The total Firm Fixed Price of this Contract is stated on the Signature page of the Contract and is based on the price of Contract Line Item Numbers (CLINs) 1 through 4, unless revised by the Purchaser through formal Amendment to the Contract.
- 5.5. The Contract also contains Options. These Options are not part of the fixed price of the Contract. One or more of the Options may be exercised by the Purchaser.

6. CONTRACT TERM

- 6.1. This Contract will begin on the Effective Date (EDC) specified in the Signature Page.
- 6.2. Options shall be exercised through a contractual letter which shall be issued not later than 30 days before the end of the initial Contract term or extensions thereof.

7. INVOICES AND PAYMENT TERMS

- 7.1. This Article supplements and replaces Clause 25 (Invoices and Payment) of the CGP.
- 7.2. Payment for supplies and services furnished under this Contract shall be made in the currency quoted by the Contractor for the relevant portion of the Contract.
- 7.3. Payments will be made to the Contractor within 45 days of receipt of properly supported and documented invoices and after acceptance in writing by the Purchaser of the Milestones, as defined at SSS payment schedule.
- 7.4. Where Optional Work Packages are exercised, payments shall be made in accordance with the stipulations of the relevant contractual letter providing for the exercise of such Options.
- 7.5. No payment shall be made with respect to undelivered supplies, works not performed; services not rendered and/or incorrectly submitted invoices.
- 7.6. The Purchaser shall not be liable for any amount resulting from the performance of services or the delivery of equipment outside the scope of this Contract.
- 7.7. All invoices shall refer to CO-115049-NCOP2 and Purchase Order Number [*to be inserted at contract award*].
- 7.8. Electronic invoices shall be sent to: accountspayable@ncia.nato.int.
Paper invoices shall be sent to:

NATO Communications and Information Agency
Boulevard Leopold III
1110 Brussels Belgium
Attn: Accounts Payable

8. PRICING OF CHANGES, AMENDMENTS AND CLAIMS

- 8.1.** This Article supplements Clause 19 (Pricing of Changes, Amendments and Claims) of the CGP.
- 8.2.** The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Contract or Task Order, in accordance with Clause 16 (Changes) of the CGP.
- 8.3.** Changes, modifications, or follow-on Contracts of any nature, and claims shall be priced in accordance with Clause 19 (Pricing of Changes, Amendments, and Claims) of the CGP.
- 8.4.** Contractor's pricing proposals for Changes, Amendments and Claims shall be priced in accordance with the schedules of forward labour rates and forward prices of COTS components established in the Contract SSS, or, if not defined in the latter, which were submitted in the Contractor's bid incorporated in the Contract by reference.
- 8.5.** Contractor price quotations and technical proposals for potential Contract changes or modifications shall be provided at no cost to the Purchaser and shall have a minimum validity period of six (6) months from Contractor submission to the Purchaser.
- 8.6.** All cost and pricing information contained in the cost breakdown sheets submitted with the Bidding sheets as part of the Contractor's proposal, to include forward pricing, shall constitute the basis of reference for future negotiations related to any amendments to this Contract.
- 8.7.** If new labour categories, not previously specified in are deemed necessary by the Purchaser during the course of this Contract; the prices for the new labour categories shall be within the range of 10% of rates listed for comparable labour services and skills in the Contract SSS. The Contractor shall be bound by the stated labour rates for the whole duration of this Contract.

9. OPTIONS

- 9.1.** The Purchaser's liabilities and obligations under this Contract at the time of its signature, and unless a formal Contract Amendment is issued in accordance with the terms of this Clause and Clause 16 (Changes) of the CGP, are limited in scope and amount to performance and deliverables associated to CLINs 1 through 4 as described in the SSS.
- 9.2.** CLINs 5 thru 12 are optional and are available for unilateral exercise by the Purchaser at any time and in any combination from Effective Date of Contract until the period of validity indicated in the SSS.

- 9.3. The Contractor understands that there are no obligations under this Contract for the Purchaser to exercise any of the Options and that the Purchaser bears no liability should it decide not to exercise them (either totally or partially).
- 9.4. Further, the Purchaser reserves the right to order another Contractor (or the same), to perform the tasks described in the Options of the current Contract through a new Contract with other conditions.
- 9.5. If an option is exercised, the Contractor will have a minimum period of forty-five (45) days between notification and the required Performance Start Date (PSD).

10. CONTRACT ADMINISTRATION

- 10.1. The Purchaser is the NATO Communications and Information Agency. The Purchaser is the Point of Contact for all Contractual and Technical issues.
- 10.2. The Contractor shall accept Contract modifications only in writing from the Purchaser’s Contracting Authority.
- 10.3. The Purchaser reserves the right to re-assign this Contract to a representative(s) for administrative purposes, in whole or in part, provided that the Purchaser shall always be responsible for its obligations under the Contract and for actions or lack of actions of its assigned administrator. The Purchaser undertakes to advise the Contractor in writing whenever this right is to be exercised.
- 10.4. All notices and communications between the Contractor and the Purchaser shall be written in English and may be emailed to the following address:

| | |
|--------------------|--|
| Contractor: | Name: |
| | Attn: |
| | Title |
| | Address: |
| | Telephone: |
| | E-mail: |
| NCI Agency: | 1110 Brussels, Belgium |
| | Acquisition Directorate |
| | Attn: Mr. Radu Munteanu (Contracting Officer) |
| | Telephone: +31 70 374 30 15 |
| | E-mail: Radu.Munteanu@ncia.nato.int |

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

- 10.5. All contractual documentation (e.g. change proposals, invoices, etc.) shall be delivered electronically.

11. TECHNICAL DIRECTION

- 11.1. For the direct official control and coordination of requirements, the Purchaser designates the Project Manager specified below as the staff element that has the authority to coordinate, monitor, and control Contractor’s performance under this Contract:

NCI Agency

Oude Waalsdorperweg 61, 2597 AK The Hague, Netherlands
Attn: David Dufour Project Manager
Telephone: +31 70 374 39 80
E-mail: David.Dufour@ncia.nato.int

- 11.2. The Purchaser may designate other staff elements as technical focal points for the execution of specific tasks and who will provide the Contractor with instruction and guidance, within the general scope of work, in performance of their duties and working schedule.
- 11.3. Notwithstanding the prescriptions of this Article, neither the Purchaser's Project Manager, nor any Technical Representative has the authority to change the terms and conditions of the Contract. If the Contractor has reason to believe that the Project Manager/Technical Representative is requesting work that is inconsistent with the scope of the Contract, the Contractor shall immediately inform the Purchaser's Contracting Authority for confirmation of the actions. Failure to obtain confirmation that the action of the Project Manager is under the authority of the Contract shall render any subsequent claim null and void.
- 11.4. Upon receipt of such notification above, the Purchaser's Contracting Authority will:
 - 11.4.1. confirm the effort requested is within scope, or
 - 11.4.2. confirm that the instructions received constitute a change and request a quotation for a modification of scope and/or price, or
 - 11.4.3. rescind the instructions.

12. LANGUAGE OF WORK

- 12.1. All notices and communications between the Contractor and the Purchaser shall be written and conducted in English.
- 12.2. The working language of the Project Team is English and the associated technical documents are printed in English.

13. LIQUIDATED DAMAGES

- 13.1. This Article replaces Clause 38 (Liquidated Damages) of the CGP.
- 13.2. If the Contractor;
 - 13.2.1. Fails to meet the delivery schedule of milestones specified in the Contract SSS, or any extension thereof, or
 - 13.2.2. Fails to obtain acceptance of the delivered Work as specified in the Contract, or, if no time for acceptance is specified in the contract within a reasonable time after work is delivered;

the actual damage to the Purchaser for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages the Contractor shall pay to the Purchaser, for each day of delinquency in achieving the deadline or milestone, fixed and agreed liquidated damages of 0.5% (zero point five percent) per day of the associated payment set forth in the Schedule of Payments provided in Section II of the Contract SSS.
- 13.3. In addition to the liquidated damages referred to above, the Purchaser shall

have the possibility of terminating this Contract in whole or in part, as provided in Clause 39 (Termination for Default) of the CGP. In the event of such termination, the Contractor shall be liable to pay the excess costs provided in Clause 39.5 of the CGP.

- 13.4.** The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in Clause 39.6 (Termination for Default) of the CGP. In such event, subject to the provisions of Clause 41 (Disputes) of the CGP, the Purchaser shall extend the time for performance of the Contract when in his judgement the findings of the fact justify an extension.
- 13.5.** Liquidated damages shall be payable from the first day of delinquency and shall accrue at the rate specified in Article 13.2 above to 15% (fifteen percent) of the value of each payment milestone individually, not to exceed 10% (ten percent) of the total value of the Contract. These liquidated damages shall accrue automatically and without any further notice being required.
- 13.6.** The rights and remedies of the Purchaser under this Article are in addition to any other rights and remedies provided by law or under this Contract.
- 13.7.** The Contractor acknowledges that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.
- 13.8.** The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:
 - 13.8.1.** By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
 - 13.8.2.** By drawing from the performance guarantee.
 - 13.8.3.** By reclaiming such damages through appropriate legal remedies.

14. INDEPENDENT CONTRACTOR

- 14.1.** The Contractor shall provide and pay, as required, qualified personnel as needed for the proper performance of the services required under this Contract; it shall comply with all Host Nation Labour Laws, tariffs and social security and other regulations applicable to employment of its personnel.
- 14.2.** The Personnel provided by the Contractor are at all times employees of the Contractor and not the Purchaser. In no case shall the 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.
- 14.3.** The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. Contractor's employees, agents, or representatives are not eligible for any diplomatic privileges nor NATO employee benefits.
- 14.4.** The Contractor shall inform its employees, agents, and representatives under this Contract of the terms of the Contract and the conditions of the working environment.

15. KEY PERSONNEL

- 15.1.** Contractor's employees or agents specifically identified in Annex A shall be considered as key personnel for the performance of the Contract. Without prejudice to other applicable stipulations of the contract, key personnel shall be subject to the terms and conditions specified below.
- 15.2.** A key personnel assigned to this Contract shall remain working on the Contract for as long as required by the terms of the present Contract unless the Purchaser agrees to a replacement who is equal or better qualified. Such a replacement will be in accordance with paragraph 15.5 and is without extra cost to the Purchaser.
- 15.3.** The Contractor shall guarantee that suitable backup personnel will be available to promptly remedy situations of key personnel non-availability that may endanger the performance of services or deliverables set in the contract.
- 15.4.** The Purchaser reserves the right to reject a Contractor's staff member after prior acceptance if the Purchaser determines during Contract performance that the individual is not providing the required level of support. The Purchaser will inform the Contractor in writing in case such a decision is taken, and the Contractor shall propose a replacement within fifteen (15) days after the Purchaser's written notification.
- 15.5.** The Purchaser shall approve any replacement or additional key personnel according to the following procedure:
- The Contractor shall provide the name(s) and qualifications statement(s) of a nominee(s) for review by the Purchaser a least twenty (20) days before the intended date of replacement or the date when the nominee(s) is/are required to start work under the contract. If the Purchaser accepts the nominations, this acceptance will be notified in writing to the Contractor, who will be authorized to assign the nominated personnel to the Contract on the date(s) established in the stated notification.
 - If the Purchaser considers a nominee or nominees to be inappropriate for the required services, the Contractor will be so notified and shall have not more than ten (10) days to submit alternate nominees.
- 15.6.** If the Contractor fails to provide in due time a compliant candidate, the Purchaser may terminate this Contract in whole or in part as provided in the first paragraph of Clause 39 (Termination For Default) of the CGP, and in that event the Contractor shall be liable, in addition to the excess costs provided in second paragraph of the "Termination For Default" clause, for such liquidated damages accruing until such time as the Purchaser may reasonably obtain delivery or performance of similar services.
- 15.7.** The delay stated above shall be counted from the day the Purchaser notifies the Contractor, in accordance with paragraph 15.5 above, that the alternate nominees are considered to be non-compliant or inappropriate for the required services according to the requirements of the Contract.

16. INTELLECTUAL PROPERTY

- 16.1.** This Article supplements Clause 30 (Intellectual Property) of the CGP.
- 16.2.** The Contractor intends to use the Background IPR stated in Annexes C and D hereto for the purpose of carrying out work pursuant to this Contract.
- 16.3.** The Contractor warrants, undertakes, and represents that any derivative product created under this Contract from the stated Background IPR shall be considered as Foreground IPR and, therefore, shall be governed by the terms and conditions specified in Clause 30.3 (Foreground IPR) of the CGP.
- 16.4.** The Purchaser shall consider open source solutions alongside proprietary ones in developments provided that such solutions are fully compliant with the requirements of this Contract and, particularly, Clauses 9 (Participating Countries) and 30 (Intellectual Property) of the CGP. The Contractor shall disclose in advance the open source licence associated with the contemplated open source solution. The Purchaser reserves the right to refuse the incorporation of open source solutions that are deemed inadequate for incorporation in a NATO application.
- 16.5.** Any use of Contractor Background IPR for the purpose of carrying out work pursuant to the Contract shall, subject to any obligation on the part of the Contractor to make payments to any third party in respect of IPR which is licensed from such third party, be free of any charge to Purchaser. The Contractor hereby grants to the Purchaser a non-exclusive, royalty-free and irrevocable licence throughout NATO, NATO operations (including out of area operations) and its member nations to use and authorise others to use any Contractor Background IPR for the purpose of exploiting or otherwise using the Foreground IPR for any defence purpose.
- 16.6.** In addition, the Purchaser shall have the right to further re-transfer this software to NATO companies eligible for NATO procurements, subject to an appropriate license agreement.
- 16.7.** Any use of Contractor and Third Party Background IPR as stated in Annexes C and D, and unless specifically applicable to COTS items, is not limited to the number of users or the number of licenses required by the Contract for use of the system. With the exception of COTS items, the Purchaser reserves the right to use or authorise NATO members to use the Background IPR as stated in Annexes C and D for any number of users and number of licenses as required, at no additional cost to the Purchaser.

17. CONFIDENTIALITY AND NON-DISCLOSURE

- 17.1.** For purposes of this Article, "Confidential Information" shall include all information pertaining to any part of this Contract or any program related to this Contract that is not marked "Non-Confidential".

- 17.2.** Confidential Information does not include information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Contractor; (b) discovered or created by the Contractor before disclosure by the Purchaser; (c) learned by the Contractor through legitimate means other than from the Purchaser or its representatives; or (d) is disclosed by the Contractor with the Purchaser's prior written approval.
- 17.3.** Without prejudice to other obligations imposed by NATO Security regulations, the Contractor shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Purchaser. The Contractor shall carefully restrict access to Confidential Information to employees, sub-Contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Contract. The Contractor shall not, without prior written approval of the Purchaser, use for the Contractor's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Purchaser, any Confidential Information. The Contractor shall return to the Purchaser any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if the Purchaser requests it in writing.
- 17.4.** The provisions of this Article and the associated Contractor's duties shall survive the termination of this Contract and remain in effect until the Purchaser sends the Contractor written notice releasing the Contractor from the obligations imposed by this Article, or for a further period of three (3) years after Contract close-out, whichever occurs first, and without prejudice to other obligations imposed by applicable NATO Security regulations.
- 17.5.** The Contractor shall include the substance of the language of this Article in any subcontract/Contract issued for the purpose of the fulfilment of the obligations Contracted under this Contract regardless of the legal nature of the entity subscribing such subcontract. Additionally, all Contractor Key Personnel (per ANNEX A) assigned under this Contract shall be required to sign the Non-Disclosure Certificate at ANNEX B.
- 17.6.** The Contractor agrees that compliance with the obligations imposed by the terms of this Article is of the essence and that failure to abide to these terms shall constitute sufficient grounds for the termination of the Contract for default.

18. CONFLICT OF INTEREST

- 18.1.** 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.

- 18.2.** 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.
- 18.3.** 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 task 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 as set forth below.
- 18.4.** If, after award of this Contract herein, the Purchaser discovers a conflict of interest with respect to this Contract or task 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 CGP.
- 18.5.** The Contractor's notice called for in paragraph 27.2 above shall describe the actual, apparent, or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Contracting Officer in analysing the situation. Any changes to the Contractor's Conflict of Interest Mitigation Plan, if any is incorporated in the Contract, should be also detailed.
- 18.6.** 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.
- 18.7.** If the Purchaser in its 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.
- 18.8.** If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of Contract performance, the Contracting Officer has the discretion to terminate the Contract for default or alternatively refrain from exercising any further Option or Work Package under the Contract.
- 18.9.** 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.

19. PERFORMANCE GUARANTEE

- 19.1.** This Article supplements Clause 8 (Performance Guarantee) of the CGP.
- 19.2.** The amount of the performance Guarantee is established in €300,000 or equivalent in the currency in which this Contract is expressed.
- 19.3.** The Purchaser may allow reductions in the amount of the Performance Guarantee in accordance with the Purchaser's cost estimate of the work remaining to be completed under the Contract. In order to benefit from such reductions, the Contractor must provide the Purchaser with an updated copy of the Project Master Schedule for completion of the remaining work, and detailed cost breakdowns, prepared in accordance with the pricing principles and standards established in the Contract, which indicate the percentage of work completed for each Contract line item. These requests for reduction shall be submitted in writing to the NCI Agency Point of Contact established in paragraph 10.5.
- 19.4.** The reductions specified in paragraph 19.3 shall be treated as a concession to the Contractor and, therefore, shall be supported by sufficient consideration. Further, the decision to accept or reject an application for reduction of Performance Guarantee shall be a unilateral decision made solely at the discretion of the Purchaser.
- 19.5.** The validity of the Performance Guarantee shall be limited in time to the total Period of Performance of the Contract (Base Period plus any exercised options).

20. SECURITY

- 20.1.** This Article supplements Clause 11 (Security) of the CGP.
- 20.2.** Contractor's personnel working at the Purchaser's facilities shall possess a valid security clearance up to the level of "NATO SECR" so as to be able to have unescorted access to classified security areas where work will be performed in accordance with paragraph 3.3.2 of the SOW regarding the submission of personal details security clearance data of Contractor's personnel.
- 20.3.** Without prejudice to other Purchaser's rights, failure to comply with the requirements stated in Article 20.2 above shall constitute grounds for Contract termination under the Clause 39 "Termination For Default" of the CGP and entitle the Purchaser to collect liquidated damages in case of delay as specified in Article 13 above and Clause 38 of the CGP.
- 20.4.** Notwithstanding paragraph 20.3 above, if the Contractor fails to comply with the requirement stated in paragraph 20.2 of this Article, the Purchaser may opt for providing escorts to allow Contractor's personnel to perform work in a classified area without being in possession of the prerequisite security clearance. In such cases, the Contractor agrees that the Purchaser shall be entitled to collect an amount equivalent to €800 per escort assigned to supervise Contractor's personnel and per day (7.6 hours during normal

business hours) of escorting. This compensation shall be collected through the same mechanisms established in Article 13 above for the case of liquidated damages.

- 20.5.** Contractor's staff members shall hold a valid passport and are required to maintain its validity for the duration of the contract.
- 20.6.** The Contractor shall note that there are restrictions regarding the carriage and use of electronic devices (e.g. laptops) in NATO designated Security Areas. The Contractor shall be responsible for satisfying and obtaining from the appropriate NCI Agency Authorities the necessary clearance to introduce and utilize any such equipment into the facility.

21. SUPPLEMENTAL AGREEMENTS

- 21.1.** The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to Contract award, the execution of which by the Purchaser is/are required by National Law or regulation. If any supplemental agreements, documents and permissions are introduced after Contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to Contract signature, the Purchaser may terminate this Contract for Default, in accordance with the Clause 39 (Termination For Default) of the CGP.
- 21.2.** 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 Purchaser and the appropriate governmental authority cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

22. THIRD PARTIES

- 22.1.** Subject to its other obligations under this Contract, the Contractor shall be open, co-operative and provide reasonable assistance to any third party supplier providing services to the Purchaser or to any third party to whom the Purchaser sub-contracts or delegates (or tasks to act in pursuance of) any of its rights and obligations under this Contract (each such third party being a "Purchaser Third Party". This assistance shall include:
 - 22.1.1.** providing such information about the manner in which the Contractor Deliverables are provided as is reasonably necessary for Purchaser Third Parties to provide their services and deliverables to the Purchaser or carry out such activities as have been delegated to them by the Purchaser;
 - 22.1.2.** making available to, or accepting information from, Purchaser Third

Parties (including, where appropriate and agreed with the Purchaser, through the development of interfaces or information exchanges between the Contractor and Purchaser Third Parties);

- 22.1.3.** using its reasonable endeavors to prevent, resolve and limit the impact on the Purchaser of any disputes or disagreements between it and any Purchaser Third Parties; and
- 22.1.4.** meeting with the Purchaser and Purchaser Third Parties to discuss the Contractor Deliverables and the services and deliverables provided by third parties.
- 22.2.** Without limiting the Contractor's obligations, the Contractor shall inform the Purchaser of any disputes or disagreements between it and any of Purchaser Third Parties that may affect the provision of the Contractor Deliverables.

END OF CLAUSES

ANNEX A. KEY PERSONNEL

The following Key Personnel shall be subject to the stipulations contained in Article 15 (Key Personnel) of the Contract Special Provisions for the period of designation indicated below:

| Position | SOW Reference | Labour Category | Name | Designation Period |
|----------------------|----------------------|--|--|-----------------------------|
| Project Manager | 3.5.2 | <i>[To be inserted after Contract award]</i> | <i>[To be inserted after Contract award]</i> | EDC through End of Contract |
| Technical Lead | | <i>[To be inserted after Contract award]</i> | <i>[To be inserted after Contract award]</i> | EDC through End of Contract |
| Training Coordinator | | <i>[To be inserted after Contract award]</i> | <i>[To be inserted after Contract award]</i> | EDC through End of Contract |

EDC: Effective Date of Contract

ANNEX B. NON DISCLOSURE DECLARATION

To be signed by all Contractor personnel assigned under contract CO-115049-NCOP2.

I UNDERSTAND:

That I must preserve the security of all information which comes to my knowledge as a result of the Contract with the NCI Agency stated above and that I undertake to comply with all relevant security regulations.

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

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

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

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

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

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

That should I decide for personal interest to leave the position, I will do my best effort to fulfil my obligations until the Company that is currently employing me has provided NATO with an acceptable suitable substitute (and in accordance with Article 15 of the Contract Special Provisions (for Key Personnel)).

Full name (in block capitals)

Date

Signature

ANNEX C. CONTRACTOR BACKGROUND IPR

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

| Item | Description / IP Ownership | Indicate if COTS ¹ |
|------|----------------------------|-------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

- b. The Contractor represents that it has and will continue to have, for the duration of this Contract, all necessary rights in and to the IPR specified above necessary to meet the Contractor’s obligations under the Contract.
- c. The Contractor Background IPR stated above shall be licensed to the Purchaser according to the terms and conditions specified in Clause 30 of the CGP.

¹Indicate whether the IPR is applicable to a COTS product as defined in the Contract General Provisions.

ANNEX D. SUBCONTRACTOR AND THIRD PARTY IPR

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

| Item | Description / IP Ownership | Indicate if COTS ¹ |
|------|----------------------------|-------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

- b. The Contractor represents that it has and will continue to have, for the duration of this Contract, all necessary rights in and to the IPR specified above necessary to meet the Contractor’s obligations under the Contract.
- c. The Subcontractor and Third Party Background IPR shall be licensed to the Purchaser according to the terms and conditions specified in Clause 30 of the CGP.

¹Indicate whether the IPR is applicable to a COTS product as defined in the Contract General Provisions.

ANNEX E. LIST OF PURCHASER PROVIDED ITEMS

To be defined at Pre-Award stage:

a. Purchaser Furnished Equipment (PFE)

| Equipment title | Equipment description | Number required (exclusive options) | Date required |
|---|---|--|----------------------|
| Collaborative Working Environment (CWE) | The Collaborative Working Environment provides a repository to store and exchange files between the Purchaser and the Contractor, and to develop and test (ref SOW 3.8.2.3) | | PMR |
| Collaborative Working Environment user accounts | User accounts required to access the CWE (ref SOW 3.8.2.3) | | PMR |

b. Purchaser Furnished Documentation (PFD):

| Title | Date required | Provided during IFB | Version |
|----------------------|--|----------------------------|----------------|
| NCOP-1 documentation | NCOP-1 documentation available under the CWE | | PMR |

ANNEX F. STANDBY LETTER OF CREDIT TEMPLATE

Standby Letter of Credit Number:

Issue Date: _____

Beneficiary: NCI Agency, Financial Management Office
Boulevard Leopold III, B-1110, Brussels
Belgium

Expiry Date: _____

We, (issuing bank) hereby establish in your favour our irrevocable standby letter of credit number {number} by order and for the account of (NAME AND ADDRESS OF BIDDER) in the original amount of €300,000.00 (Three Hundred Thousand Euro). We are advised this Guarantee fulfils a requirement under Invitation for Bid CO-115049-NCOP2 dated _____.

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

- a) (NAME OF BIDDER) has submitted a Bid and, after Bid Closing Date (including extensions thereto) and prior to the selection of the lowest priced, technically compliant Bid, has withdrawn its Bid, or stated that it does not consider its Bid valid or agree to be bound by its Bid, or
- b) (NAME OF BIDDER) has submitted a Bid determined by the Agency to be the lowest priced, technically compliant Bid, but (NAME OF BIDDER) has declined to execute the Contract offered by the Agency, such Contract being consistent with the terms of the Invitation for Bid, or
- c) The NCI Agency has offered (NAME OF BIDDER) the Contract for execution but (NAME OF BIDDER) has been unable to demonstrate compliance with the security requirements of the Contract within a reasonable time, or
- d) The NCI Agency has entered into the Contract with (NAME OF BIDDER) but (NAME OF BIDDER) has been unable or unwilling to provide the Performance Guarantee required under the terms of the Contract within the time frame required.

This Letter of Credit is effective the date hereof and shall expire at our office located at (Bank Address) on _____. All demands for payment must be made prior to the expiry date.

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

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

In the event we (the issuing bank) notify you that we elect not to extend the expiry date in accordance with paragraph 4 above, or, at any time, to terminate the letter of credit, funds under this credit will be available to you without question or delay against presentation of a certificate signed by the NCI Agency Contracting Officer which states

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

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

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

Multiple drawings are allowed.

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

This letter of credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, or amplified by reference to any document, instrument, or agreement referred to herein (except the International Standby Practices (ISP 98) hereinafter defined) or in which this letter of credit is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

We hereby engage with you that drafts drawn under and in compliance with the terms of this letter of credit will be duly honoured upon presentation of documents to us on or before the expiration date of this letter of credit.

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

END OF CONTRACT SPECIAL PROVISIONS