



# N A M S A

NATO MAINTENANCE AND SUPPLY AGENCY  
AGENCE OTAN D'ENTRETIEN ET D'APPROVISIONNEMENT

To : **ALL BIDDERS**

Subject : **Request for Proposal (RFP)**  
**APOD Infrastructure and Support Services for  
Kandahar Airfield (KAF), Afghanistan**

Date : **03 MAY 2010**

Collective Number : **FSC100002**

Important Timelines

RFP Response Form : **12 May 2010, 24:00 hrs Luxembourg time**

Bidders' Conference and Site Visit (KAF) : **17 – 21 May 2010**

Bid Closing Date : **05 July 2010, 24:00 hrs Luxembourg time**

Public Bid Opening : **08 July 2010**

Offer Validity : **90 days after Bid Closing Date**

To : **ALL BIDDERS**

**DRAFT CONTRACT – Airport of Debarkation (APOD) Infrastructure and  
Support Services for Kandahar Airfield (KAF), Afghanistan**

**NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

<b>AMENDMENT RECORD</b>
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REVISION / AMENDMENT	PART / PARAGRAPH	DATE OF ISSUE	REMARKS
Version 1	All	03 May 2010	Release

**PART II – DRAFT CONTRACT**

**CONTRACT No:**

...<TBD>.....

Validity period:      From:      ...<TBD>...  
                                 To:      ...<TBD>...

.....  
.....  
Vendor No:      .....  
Attn:      .....  
Fax:      .....

**EFFECTIVE DATE: <TBD>**

**SCOPE OF CONTRACT:**

**Provision of Airport of Debarkation (APOD) Infrastructure and Support Services at  
Kandahar Airfield (KAF), Afghanistan**

**RFP Collective Number: FSC100002**

The Contractor represents that he operates as ☐ an individual ☐ a non-profit organization ☐  
a corporation incorporated in \_\_\_\_\_.

The Contractor agrees to deliver all the services, including the necessary supplies set forth in the attachments to the Terms and Conditions of the Contract for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the Contract and the General Provisions. The order of precedence applicable to the contract is defined in Part 2 of the Terms and Conditions.

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## **TABLE OF CONTENTS**

This Contract consists of:

- Terms and Conditions containing 46 Parts
  - List of Services and Prices (Priced Bill of Services)
  - NAMSA General Provisions for Fixed Price Contracts (Services), dated 19 October 2005
  - Termination for Convenience of NAMSA
  - Instructions to NAMSA Contractors Deployed on NATO Operations
  - Attachment 1: Statement of Work **tbd**
  - Attachment 2: Questions and Answers, version <TBD> dated <TBD>
  - Attachment 3: The Contractor's Proposal
  - Attachment 4: Clarification Questions Asked and Answered, version <TBD> dated <TBD>
- all of which are hereby made a part of the Contract and incorporated herein by reference.

## **TERMS AND CONDITIONS**

AMENDMENT RECORD	2
PART II – DRAFT CONTRACT	3
Part 1 - DEFINITIONS	5
Part 2 - ORDER OF PRECEDENCE	6
Part 3 - SERVICES & SUPPLIES TO BE FURNISHED BY THE CONTRACTOR	7
Part 4 - CONSIDERATION, INVOICING & PAYMENT	8
Part 5 - REVISION OF PRICES / RATES	9
Part 6 - DELIVERY SCHEDULE	10
Part 7 - VALIDITY OF CONTRACT & EXERCISE OF OPTIONS	10
Part 8 - CONTRACT AMENDMENTS & NOTIFICATION OF CHANGES	10
Part 9 - QUALITY CONTROL, INSPECTION AND ACCEPTANCE	11
Part 10 - QUALITY ASSURANCE AND PERFORMANCE MONITORING	12
Part 11 - CONTRACT RISK	13
Part 12 - KEY PERFORMANCE INDICATORS (KPIs)	13
Part 13 - PERFORMANCE AND PAYMENT BONDS	14
Part 14 - LIQUIDATED DAMAGES	15
Part 15 - FORCE MAJEURE	16
Part 16 - CONTRACTOR'S CAPABILITIES	16
Part 17 - SUBCONTRACTS	17
Part 18 - STATUS OF CONTRACTORS & SUBCONTRACTORS EMPLOYEES	17
Part 19 - ROYALTIES & LICENSEE RIGHTS	17
Part 20 - LOSS, DAMAGE & DESTRUCTION OF SUPPLIES	17
Part 21 - PERMITS & CUSTOMS CLEARANCE FORMALITIES	18
Part 22 - NAMSA & NATO REPRESENTATIVES AND VERIFICATION	18
Part 23 - HEALTH, SAFETY & ACCIDENT PREVENTION	18
Part 24 - NAMSA-FURNISHED PROPERTY	18
Part 25 - INTELLECTUAL PROPERTY RIGHTS	19
Part 26 - SITE INVESTIGATION & CONDITIONS AFFECTING THE WORK	20
Part 27 - MATERIAL & WORKMANSHIP	20
Part 28 - THIRD PARTY LIABILITY	20
Part 29 - SECURITY	21
Part 30 - TAXES & DUTIES	22
Part 31 - TERMINATION FOR CONVENIENCE OF NAMSA	22
Part 32 - LANGUAGE	22

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

Part 33 -	REPORTING	22
Part 34 -	PUBLICITY & PUBLIC RELATIONS	23
Part 35 -	PROTECTED INFORMATION	23
Part 36 -	USE OF NAME, EMBLEM OR OFFICIAL SEAL OF NATO / ISAF	23
Part 37 -	ASSIGNMENT OF CONTRACT	23
Part 38 -	PRIVILEGES & IMMUNITIES	23
Part 39 -	PERFORMANCE OF THE CONTRACTOR IN TIME OF ALERT OR WAR	24
Part 40 -	INTERNATIONAL EVENTS	24
Part 41 -	PREVENTION OF SMUGGLING	24
Part 42 -	INTEGRITY / NO BRIBE	24
Part 43 -	EFFICIENCIES/SAVINGS	24
Part 44 -	ESTIMATED QUANTITIES FOR FIRM FIXED PRICE WORK	25
Part 45 -	CONTRACT ADMINISTRATION	25
Part 46 -	CONTRACTOR'S INFORMATION	27

### **Part 1 - DEFINITIONS**

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

1. The North Atlantic Treaty Organisation is hereafter referred to as "NATO".
2. "ISAF" stands for International Security Assistance Force.
3. "NAMSA" stands for the NATO Maintenance and Supply Agency.
4. Any reference to NATO or NAMSA shall be considered synonymous unless clearly specified otherwise.
5. Contracting Officer (CO) means the person executing and managing this contract on behalf of NAMSA in Luxembourg.
6. Administrative Contracting Officer (ACO) means the person appointed by NAMSA who has overall responsibility to administer the contract at the designated theatre operating location. He/she will be the primary NATO contracting officer to facilitate day-to-day contract activities.
7. Technical Officer (TO) means the person designated by NAMSA to be the authorized representative charged with "overall technical supervision" of the contract and measuring/monitoring Contractor performance. While this individual will ensure technical compliance, he/she will **not** have a warrant to obligate NAMSA.
8. Troop Contributing Nations (TCN) means the nations whether NATO or non-NATO that are providing military personnel supporting the ISAF mission and who have established a formal presence in theatre.
9. Sub-contracts mean orders on sub-Contractors for the performance of major categories of services, and the like, all requiring the long-term presence on site.
10. The term "days" shall be interpreted to mean calendar days.
11. The Statement of Work (SOW) defines the overall obligations of the Contractor. The SOW consists in a main section describing general requirements (also referred as the Common SOW), annexes and appendices that describe the specific requirements for each area of work.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

12. The Instructions to NAMSAs Contractors Deployed on NATO Operations (INSTRUCTIONS) provide general guidelines to Contractors including their obligations as well as those of NATO and/or NAMSAs vis à vis the Contractor's deployment. The INSTRUCTIONS contain an Annex(s) which defines the particular requirements for the deployment related to this contract.
13. "Appendix" refers not only to the Appendix itself, but also to its Annexes and Attachments if they exist.
14. The Term "Schedule" in the General Provisions attached to this contract refer to the Terms and Conditions contained herein.
15. The term "data" means all recorded information, regardless of form or media, and includes technical data and software, wherein software means any computer program, computer database, and software associated documentation.
16. Parties to the Contract: This Contract is entered into, by and between ...<TBD>..... (hereinafter called "Contractor") and the NATO Maintenance and Supply Agency (hereinafter called "NAMSAs").
17. The masculine includes the feminine
18. "Person" includes a corporation.
19. The singular includes the plural, and vice versa.
20. "Key Performance Indicators" shall mean a series of clearly defined measurable standards used to determine actual performance against clearly specified targets in key areas of service delivery, throughout the life of the Contract.

### **Part 2 - ORDER OF PRECEDENCE**

The order of precedence between all the documents related to this contract, from the highest precedence to the lowest precedence, is :

1. The contract terms and conditions
2. The general provisions
3. Specific requirements of the relevant annexes/appendix of the SOW
4. The SOW
5. Question & Answers given during the solicitation period and the evaluation period
6. Instructions to NAMSAs Contractors Deployed on NATO Operations (INSTRUCTIONS) and relevant annexes
7. The Contractor's Proposal - To the extent that any of the conditions of the accepted Contractor's proposal are in conflict with the SOW or the specific requirements of the relevant appendices to the SOW, the requirements of the SOW and the relevant appendix to the SOW shall control

**Part 3 - SERVICES & SUPPLIES TO BE FURNISHED BY THE CONTRACTOR**

1. In acceptance of Contractors proposal dated <**TBD at time of contract award**> included herein as an Attachment, the Contractor shall furnish the supplies and services, inclusive of all necessary labour, infrastructure and equipment, listed and priced in accordance with the attached documents entitled, the INSTRUCTIONS, the SOW, the Priced Bill of Services and the Contractor's proposal to the extent that it meets or exceeds the SOW and INSTRUCTIONS.
2. The SOW defines the equipment and facilities that NAMSA makes available to the Contractor for the performance of the work. The Contractor is responsible for providing the additional equipment and facilities that is required to perform the work. The Contractor shall be responsible for the supply (if not provided by NAMSA), transportation, set-up, provision, operation, maintenance and replacement of the necessary infrastructure, materials, equipment, tools, machinery and data to render the services ordered.
3. The focal point of contact will be the ACO and designated TO. The name and contact details of this individual will be communicated to the Contractor as soon as available.
4. NAMSA will ensure the permanent contractual aspects of the application of this Contract and will aim to resolve any arising problem concerning this Contract in good faith and in an amicable manner.
5. NAMSA reserves the right to order additional services of the same type and extend the scope of the contract in the same location, under the pricing arrangements and the conditions provided in this contract and its enclosures. NAMSA will exercise this right and order additional services by the issue of a formal Supplemental Agreement duly executed between the Parties, as set forth in Part 8 - CONTRACT AMENDMENTS & NOTIFICATION OF CHANGES.
6. In case one or more of the key personnel identified in his proposal will no longer be able to provide the required services, the Contractor ensures that this (these) person(s) is (are) replaced without any negative impact on the timely delivery and quality of the services provided to NAMSA. The Contractor shall provide evidence to NAMSA that the replacement offered is at the required standard. NAMSA reserves the right to interview the proposed individual(s) at no cost to NAMSA and to refuse those, which it judges to be below standard.
7. Should any of the Contractor's personnel not perform properly or to the level of expertise required by the SOW, the Contractor shall take immediate action to replace the person with an individual who meets the SOW requirements.
8. The Contractor must have the ability to liaise daily and without delay with individual TCNs / NATO HQs to confirm the actual service strength, to discuss discrepancies, defects, etc.

**Part 4 - CONSIDERATION, INVOICING & PAYMENT**

1. Consideration

The pricing arrangements set forth in the Priced Bill of Services and List of Services cover full and unconditional acceptance by the Contractor of all the requirements and conditions included in the Contract. The aforementioned pricing arrangements satisfy any and all expenses incurred by the Contractor for a satisfactory performance under the Contract.

2. Invoicing

- 2.1. The Contractor will be authorised to invoice rendered services on a monthly basis and will be authorised to submit his first invoice after the first month for which services were rendered. Under no circumstances will NAMSA accept invoices prior to commencement of rendering services or during the Contractor's mobilisation period.
- 2.2. Invoices shall be submitted (electronically) to the Contracting Officer (CO) in theatre with supporting documentation within 3 (three) **calendar days** after the last day of the month for which services were rendered. In return NAMSA will issue a Purchase Order reflecting the actual certified usage under the contract. This will allow for efficient payment of the invoice as submitted and certified by the customers.
- 2.3. Further, the Contractor shall submit his original invoices with supporting documentation to NAMSA attention, LO FF, Capellen, Luxembourg L-8325. It shall bear the Contract number and, if applicable, the Supplemental Agreement number, and a description of the services to which they are related.
- 2.4. Invoices submitted shall include up to a maximum of 90 (ninety) % of the value of all quantities of services performed during the billing period until such time that the Contractor has fully mobilised and is performing all the services to the standards. The Contractor shall invoice the retained 10 (ten) % on the next invoice after the CO has certified compliancy in terms of mobilisation and performance. The retained amount may be reduced from 10 to 5% if the Contractor is performing all the services to the standards and mobilisation is on schedule but not completed.
- 2.5. NAMSA reserves the right to withhold 10% of the value of any invoice, should the Contractor fail to perform any part of the Contracted Services or has failed to correct any identified deficiencies. This retained value will be paid to the Contractor upon satisfactory completion of the service or correction of the deficiencies. No interest shall be paid to the Contractor on the retained amounts. If after 3 months, the Contractor continues to fail in its delivery of the service, NAMSA reserves the right to convert the amount withheld as Liquidated Damages.
- 2.6. In application of the provisions in 2.4 and 2.5 above, NAMSA's judgment as of the acceptability of the services rendered by the Contractor shall be final, subject only to the provisions of the "Disputes" clause of the General Provisions. The payment of an invoice that has been reduced by the retained amount shall in no way be interpreted as reducing the Contractor's responsibility for performing the services under the contract.



## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

- 2.7. The following statement shall be made by the Contractor on each invoice submitted:

*"I certify that this invoice is correct and just, that payment has not been received and that the prices/rates exclude all taxes and duties from which NAMSA / NATO is exempted."*

- 2.8. NAMSA will notify the Contractor of any discrepancy in the content or form of the invoices, within **five (5) calendar days** from receipt of the invoice.
- 2.9. The final invoice under this contract must be annotated as FINAL INVOICE.

### **3. Payment**

- 3.1. Payment will be made contingent to the accomplishment and acceptance of the services performed.
- 3.2. Payment for services performed by the Contractor under the terms of this contract will be made in **<TBD at time of contract award>** within either 20 (twenty) days with a **<TBD at time of contract award>** % prompt payment discount or within 40 (forty) days with a **<TBD at time of contract award>** % prompt payment discount or within 60 (sixty) days net from receipt of the invoice.
- 3.3. NAMSA Finance Division Capellen will pay the net invoice amount and support the charges of its bank. All other charges will be for the Contractor.
- 3.4. The most efficient method of payment is by electronic funds transfer (EFT). Payments will be affected to the following bank account of the Contractor:
- 3.5. Payment will be due in respect of any additional services rendered will only be made, if supported by a separate Purchase Order duly executed by the Parties, separately invoiced and shall be paid on the basis of the agreed prices / rates identified in the Purchase Order itself.
- 3.6. No payment will be due in respect of any work carried out under the contract if it is established that the necessity for such work is the liability of the Contractor. Payment for any additional work that may be requested over and above the requirements of this Contract, will be made only if due under a Supplemental Agreement duly executed by the Parties, and shall be paid on the basis of the Unit Prices for Labour and Materials and / or supplies identified in the Supplemental Agreement itself.

### **Part 5 - REVISION OF PRICES / RATES**

The prices and fees are fixed at economical conditions of the year 2010. Should the Contract be prolonged as per Part 7 - VALIDITY OF CONTRACT & EXERCISE OF OPTIONS below, the economic conditions defined in the Priced Bill of Services shall apply.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

### **Part 6 - DELIVERY SCHEDULE**

Due to the stringent operational requirements, the Contractor must be capable to render the required services as of 01 February 2011.

### **Part 7 - VALIDITY OF CONTRACT & EXERCISE OF OPTIONS**

1. The contract shall be effective for the period commencing with the effective date indicated on the front page of the contract and shall be valid for three years after the start of services.
2. NAMSA reserves the unilateral right to extend the contract for two (2) one year periods with the issue of a Change Order to this contract three (3) months prior to its expiration date.

### **Part 8 - CONTRACT AMENDMENTS & NOTIFICATION OF CHANGES**

1. No modification of, or change in this Contract or waiver of any of its provisions or additional contractual relationship with the Contractor shall be valid and enforceable against NAMSA, unless approved in writing by the Contracting Officer, and evidenced by an amendment to this Contract signed by the Contractor and the Contracting Officer.
2. If at any time during the performance of this contract, the Contractor considers that he has been directed to change or deviate from, in any way, the terms and conditions and/or the scope of this Contract, he shall notify the Contracting Officer immediately. This notification shall, as a minimum contain a cost breakdown of the additional costs to be incurred by the Contractor if he would implement the change/deviation and the related impacts on the contract and/or its terms and conditions. This information must be provided to such level of detail to allow the Contracting Officer to provide a comprehensive response within 14 (fourteen) calendar days after receipt of the notification from the Contractor.
3. Following the submission of this notification, the Contractor shall diligently continue performance of this Contract to the maximum extent possible in accordance with its terms and conditions as originally agreed. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in the General Provisions. Pending arbitration the Contractor shall proceed with the contract as contracted for, without delay.
4. NAMSA shall not bear any responsibility for services performed by the Contractor outside the contract scope and he shall not be compensated in either time or money for such work not specifically authorized or requested by the Contracting Officer in writing and subsequently included in the contract through a Supplemental Agreement.
5. Consequently, the Contractor cannot claim additional money and/or time for services performed during the performance of the contract which has not been identified as part of the scope of this contract.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

6. NAMSAs has the right to order additional services as described in the Statement of Work by the virtue of a Supplemental Agreement to the Contract. Supplemental Agreements shall be in writing, dated and numbered, and shall set forth as a minimum:
  - 6.1. the services to be rendered or supplies to be provided in accordance with the SOW,
  - 6.2. the consideration for the services and / or supplies to be provided,
  - 6.3. the delivery and / or completion date.
7. Upon request of the CO, the Contractor shall submit a detailed Proposal and Priced Bill of Services to the CO within 5 calendar days or at a mutually agreed time. In order to determine the fairness and reasonableness of the prices quoted, the Contractor shall provide a detailed cost-breakdown of the proposed change and include financial data supporting the proposed cost.
8. If NAMSAs considers the prices quoted fair and reasonable and the delivery period specified is acceptable, NAMSAs will issue a Supplemental Agreement duly executed between the Parties. If the financial data provided is not sufficient to determine the price fair and reasonable, NAMSAs may issue a Supplemental Agreement with a "not to exceed price" subject to downward adjustment once the financial data is confirmed.
9. If any such change causes an increase of the time required for the performance of this contract, this will be reflected in the corresponding Supplemental Agreement.
10. The purpose of this Contract is to provide support to NATO operations. Consequently, the timely implementation of changes is crucial to the success of the NATO operation. The Contractor shall provide timely responses to NAMSAs requests for changes. Failure of the Contractor to provide timely change proposals including failure to provide timely and comprehensive financial support data will be considered a deficiency in performance and NAMSAs reserves the right to apply the contract remedies specified within this Contract.
11. The following supplements Clause 15 of the General Provisions:  
NAMSAs reserves the right to perform an audit of the Contractor's financial data supporting any change that has been the subject of a Supplemental Agreement.
12. If the Change required is crucial to NATO operations, the Contractor shall not refuse to implement the additional work unreasonably.

### **Part 9 - QUALITY CONTROL, INSPECTION AND ACCEPTANCE**

1. The Contractor is responsible for maintaining effective control of the quality of the services and of the supplies used / provided in performance of this Contract in accordance with the Statement of Work.
2. If the Contractor himself does not render the contracted services, he shall impose these quality requirements upon his subcontractor.
3. The Contractor shall certify that the services and supplies provided in provision of services conform to the requirements of the SOW.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

4. The requirements of this Contract are subject to acceptance by NAMSA, TCNs and / or NATO representatives. NAMSA shall have access to the Contractor's premises and Quality records at any time to perform the required planned or unplanned Audits/Inspections as part of Contractor's Performance monitoring.
5. Acceptance of the rendered services will be by NAMSA. However, claims based on latent defects, fraud, gross negligence, or such gross mistakes as amount to fraud, shall not be prejudiced thereby, nor shall the guaranteed applicable to the supplies and / or services furnished by the Contractor be affected by such acceptance.

### **Part 10 - QUALITY ASSURANCE AND PERFORMANCE MONITORING**

1. NAMSA will assign suitably qualified staff or delegate external entities to perform periodic (planned and/or Ad-Hoc) inspections/audits and surveillance of the services performed by the Contractor, including evidence that the Contractor is operating according to the Contractors' processes (as specified in Contractor's Quality Management Plan (QMP)/ Quality Plan (QP), their Standard Operating Procedures (SOPs) and according to the ISO 9001:2008 standard also including Contractor's Internal Audits and Training records).  
Such inspections/audits and surveillance shall be carried out in a reasonable manner so as to not unduly delay the timely provision of services.
2. The following describes in the steps that will NAMSA will follow in the application of contract remedies. Where the deficiency requires urgent attention or is of sufficient gravity, NAMSA reserves the right to modify the following steps.
3. A Letter of Concern shall be prepared by NAMSA and sent to the contractor that outlines the deficiency with a recommended date of remedy.
4. The Contractor shall respond formally by letter to NAMSA addressing the recognition of the deficiency and the timeline of remedial action.
5. Where NAMSA deems the Contractor's progress to remedy the deficiency unsatisfactory, NAMSA will issue a Cure Notice to the Contractor. The Contractor shall respond formally to the Cure Notice with a Corrective Action Plan. NAMSA will advise the Contractor formally that the Corrective Action Plan is accepted and when it considers the Contractor has corrected the deficiency. The Cure Notice is then considered closed.
6. If the Contractor fails to correct the deficiency, NAMSA will consider the application of the other contract remedies as a first step, the retention of up to 10% of the Contractor's invoice as described in the Part 4 Consideration, Invoicing and Payment, followed by the application of Liquidated Damages. During the mobilization and initial period of performance, NAMSA may call the Performance Bond in order to rectify Contractor deficiencies.

**Part 11 - CONTRACT RISK**

1. The Contractor acknowledges that any risk assessment, which has been, or may be, undertaken in connection with the Contract has been, or will be, a project management function only. Such risk assessment shall not in any way limit or exclude the Contractor's obligations under the Contract and shall be entirely without prejudice to NAMSA's rights, privileges and powers under the Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by NAMSA except to the extent that NAMSA expressly and unequivocally accepts those risks under the Contract. Any risk assessment questionnaire released was or will be issued by NAMSA solely on this basis.

**Part 12 - KEY PERFORMANCE INDICATORS (KPIs)**

1. Contractors shall provide to NAMSA their internal Key Performance Indicators (KPIs), as required in the SOW, used to self-assess his performance against the pre-defined deliverables of the SOW and, where there are signs of underachievement, take early steps to improve the appropriate aspects of service delivery.
2. The NAMSA KAF Office will monitor Contractor performance using a Contractor Performance Evaluation Table (CPET). The purpose of the CPET is to provide a clear, concise methodology to perform an objective monthly evaluation of the Contractor's performance. The CPET will be used to provide an overall evaluation that will assist in determining the continued services on KAF.
3. The CPET will include:
  - a. Performance Fields – are the only information from the Contractors Performance Evaluation Table (CPET) that shall be provided to the contractor. Performance Fields are broad categories that encompass a full spectrum of areas ensuring that all contractors provide quality services to the KAF APOD
  - b. Assessment Factors – are specific factors that pertain to each individual contract monitored by a dedicated NAMSA functional cell.
  - c. Key Performance Indicators (KPIs) - KPIs are comparative performance metrics used to answer the question of how the contractor is performing in critical areas.

The degree of underachievement against CPET will enable NAMSA and the Contractor to assess areas that need attention. Where the CPET identify recurring underachievement, the Contractor shall produce a mitigation plan (e.g. Corrective Actions needed, Root cause, etc.), in order to correct the underachievement.

4. Assessment Factors as well as KPIs are NAMSA's official internal documents and are considered NAMSA property. Therefore, under no circumstances, KPIs to be disclosed to any third party (i.e. Contractors, Customers).

**Part 13 - PERFORMANCE AND PAYMENT BONDS**

1. Definitions: As used in this clause -

“Contract price” means the award price of the Contract. Contract price does not include the price of any options, except those options exercised at the time of contract award.

2. Amount and duration of required bonds:

2.1. *Performance bonds.* The penal amount of performance bonds at the time of contract award shall be 10 percent of the anticipated contract price for the first year of service.

- 2.2. Additional bond protection.

(i) NAMSA may require additional performance and payment bond protection if the contract price is increased prior to the expiration, as a result of a Contract Change. The increase in protection generally will equal 10 percent of the increase in contract price.

(ii) NAMSA may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

- 2.3. Bond duration: The Performance Bond shall be valid for a period of one year after the start of services.

- 2.4. NAMSA reserves the right to require the Contractor to extend or issue a new Performance Bond for six month periods for the duration of the Contract. NAMSA will provide a formal request to the Contractor with substantiation.

3. Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within 7 calendar days from contract signature or Notice of Contract Award, but in any event, before starting work. Should the Contractor elect to mobilize prior to NAMSA's receipt and approval of required insurance and performance bond, Contractor shall do so at his risk. NAMSA assumes no liability.

4. Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties or banking institutions, individual sureties, or by other acceptable security such as certified check, cashier's check, irrevocable letter of credit.

**Part 14 - LIQUIDATED DAMAGES**

1. The parties to this contract explicitly recognise that the provision of services are particularly challenging. In light of this, it is agreed that the parties will raise issues of concern at the earliest possible time and work closely together to find mutually acceptable solutions to such issues or problems. In those instances where such an approach does not prove to be successful and if the Contractor fails to comply with its obligation set forth in the Contract and/or its amendments, including but not limited to strict compliance with specified quality, quantity, marking and delivery schedule(s), he shall pay NAMSA liquidated damages at the rate of up to ten (10) percent of the total monthly invoice for the services against the applicable Appendix in the SOW.
2. Without prejudice to the final judgment regarding the liquidated damages, NAMSA shall be entitled to deduct imposed liquidated damages when paying invoices, even in the event that claims deriving from submitted invoices have been assigned or otherwise transferred to third parties. The total of the deductions made by NAMSA pursuant to this clause will be considered as full and final satisfaction of all claims received out of the Contractor's non-compliance.
3. During a period of three months after delivery and acceptance of the services, NAMSA, shall have the right to claim the aforementioned liquidated damages even if such right is not reserved at the time when delivery is accepted.
4. The Contractor's performance will be monitored by the NAMSA Office. Should the Contractor's overall performance not meet Contract requirements, the deficiencies shall be communicated to the Contractor as per the procedure described in Parts 10 and 12. The Contractor will be given a reasonable period of time to cure the identified deficiencies / services not rendered under the terms of the contract. Only in case the Contractor will not be able to make good the identified deficiencies during this cure period, liquidated damages as specified in paragraph 1 above shall be applied. The Contractor will be given the opportunity to present his case in writing to the NAMSA Office who will make its recommendation on the percentages of penalties to be applied, if any, to NAMSA Chief Procurement Division. The ruling of NAMSA will be final and will not be disputable by the Contractor except under the Disputes provision of the Contract.
5. These damages will not apply if the Contractor's failure to perform is due to causes beyond his control and without his fault or negligence. Such causes may include but are not limited to Acts of God or of the public enemy, acts of nature, war, hostilities, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, unusually severe weather (as applicable for categories of work subject to the direct influence of atmospheric conditions) and failure or sub-Contractors to perform due to such causes.
6. The foregoing paragraphs 1 through 5 above apply only to delinquencies in deliveries and do not prejudice NAMSA's rights under the provisions of the clause of the General Provisions hereof entitled "Default".

**Part 15 - FORCE MAJEURE**

1. A Force Majeure is an event beyond the reasonable control of the Contractor and without its fault or negligence, has caused a delay in providing services or has precluded the Contractor from performing some or all of the services as provided in the Contract. These include any acts of nature, war, hostilities, acts of the Government in either its sovereign or contractual capacity, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers or of any fire, at any of the Contractor's premises, those of his sub-contractor or where the Contractor is performing work under this Contract.
2. The Contractor shall notify the Contracting Officer as soon as reasonably possible after a Force Majeure event. The notice shall be made in writing, identifying the nature of the occurrence and the expected time period of the delay or the inability to perform services. The NAMSAC Contracting Officer will grant an extension of services or a waiver, whichever is deemed appropriate.
3. The Contractor shall not be entitled to any extension of time or waiver unless he shall at all times have used all reasonable endeavours to prevent or minimise any such delay or inability and to do all that may be reasonably required to proceed with the work.

**Part 16 - CONTRACTOR'S CAPABILITIES**

1. The Contractor warrants possessing all management and supervisory staff, necessary personnel, infrastructure, equipment, financial resources and sources of supply required to render the services under the Contract in the manner and in the time set forth herein.
2. The Contractor shall be prepared to implement all reasonable technical and or management measures to accelerate provision of services to meet the delivery schedule.
3. Moreover, the Contractor warrants that to his best knowledge no limitation exists as to his ability to perform holiday, night-time work or shift work, if so required to meet his contractual obligations with regard to the Delivery Schedule specified herein.
4. Contractor's personnel used in performance of the services shall be skilled in their trade, and all infrastructure and equipment shall be in well maintained, save and operational condition and only be operated by qualified personnel.
5. The Contractor shall be responsible for the professional and technical competence of its personnel and will select, for work under this Contract, reliable persons who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.
6. When performing on the NATO site(s), the Contractor and his personnel shall comply with all applicable National Laws and Regulations and all relevant official Directives of the local NATO Command.
7. If the Contract was awarded on the basis of information found later to have been misleading, NAMSAC may terminate the Contract for default.



## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

### **Part 17 - SUBCONTRACTS**

1. The Contractor shall not enter into any such sub-contract without the written approval of NAMSAs Contracting Officer.
2. For the objective of this contract the Contractor shall enter into the following sub-contracts with the approval of NAMSAs: **TBD at time of contract award**
3. For the purpose of this clause, the procurement, delivery, installation and testing of mechanical, electrical and the like equipment shall not be deemed to be a sub-contract.
4. The Contractor is solely responsible for the performance of the contract. No consent or approval by NAMSAs to any sub-contract or any provisions thereof shall be construed to be a determination of the acceptability of any sub-contract price or of any amount paid under any sub-contract or to relieve the Contractor of any responsibility for performing the Agreement in accordance with its existing terms and conditions, unless such approval or consent specifically provides otherwise.
5. Approval is not required from NAMSAs for the Contractor to make "off-the-shelf" purchases and purchases of standard commercial articles and materials.

### **Part 18 - STATUS OF CONTRACTORS & SUBCONTRACTORS EMPLOYEES**

The legal status of Contractor personnel is defined in the Military Technical Agreement (MTA) between NATO and the Islamic Republic of Afghanistan and the Instructions for NAMSAs Contractors Deployed on NATO Operations.

### **Part 19 - ROYALTIES & LICENSEE RIGHTS**

1. The Contractor agrees to assure himself that original manufacturers have not retained any proprietary rights, before he manufactures items under the Contract. NAMSAs shall not be liable for patent infringements as may be caused by the Contractor.
2. It is the understanding of NAMSAs that no payments of royalties or fees for license rights will be claimed by the prime manufacturer(s) of the items manufactured under this Contract. However, if NAMSAs requests the Contractor to manufacture any item, he agrees to assure himself that the original manufacturer(s) have not retained any proprietary rights, before he manufactures such item(s).
3. Royalties or fees, which the Contractor may have to pay to the prime manufacturer(s), when requested by NAMSAs to manufacture proprietary type items, shall be reimbursed to the Contractor at cost.

### **Part 20 - LOSS, DAMAGE & DESTRUCTION OF SUPPLIES**

Risk of loss, injury or destruction to supplies shall be borne by the Contractor until services have been rendered in accordance with this Contract.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

### **Part 21 - PERMITS & CUSTOMS CLEARANCE FORMALITIES**

1. The Contractor warrants that he has or shall obtain at no cost to NAMSA all necessary licenses and permits required in connection with the contract; also that he shall fully comply with all laws, decrees and regulations of the country or countries concerned during the performance of the contract, including the observance of all applicable rules and regulations governing the site(s) on which services are to be performed.
2. All customs clearance formalities shall be performed by the Contractor at his cost. NAMSA shall in no case be responsible for charges of any nature incurred by the Contractor in effecting such clearance or for any customs infraction committed by the Contractor in connection therewith. The Contractor shall be responsible for compliance with all applicable national import and export customs regulations and formalities, including payment of fees incident thereto and the posting of a customs bond, if required, and further, including all required licenses, customs declarations and other documentation, concerning the entry to and the exit from the Contractor's facility, of all items or material pertinent to the Contractor's performance under this Contract.
3. If required by the Contractor, NATO undertakes to provide the Contractor and his nominated sub-Contractor(s) with the Custom Forms proving final ownership by NATO of the goods to be imported in compliance with the requirements of this Contract (MTA Customs Procedures refers).

### **Part 22 - NAMSA & NATO REPRESENTATIVES AND VERIFICATION**

1. NAMSA, TCNs and / or NATO representative(s) require to have reasonable access to the Contractor's sites and to ensure that similar rights are secured in the terms and condition of all sub-contracts.
2. The Contractor shall make available upon NAMSA's request all relevant documentation, specifications, procedures and records.
3. NAMSA, TCNs and / or NATO representative(s) may perform quality assurance inspection whenever and wherever it is deemed necessary.
4. For contract amendments, the Contractor shall provide full access to its financial data supporting the change

### **Part 23 - HEALTH, SAFETY & ACCIDENT PREVENTION**

The Contractor shall comply with the Health and Safety provisions stipulated in the Instruction to NAMSA Contractors on Deployed Operations and the SOW.

### **Part 24 - NAMSA-FURNISHED PROPERTY**

1. The Contractor shall supply the necessary infrastructure, materials, equipment, tools, machinery and data in fulfilment of his contractual obligations under this Contract as specified in the Statement of Work.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

2. NAMSAs reserves the right to furnish certain infrastructure, materials, equipment, tools, machinery and/or data properties to the Contractor. If NAMSAs executes that right, the sites, as well as the NATO-owned infrastructure, materials, equipment, tools, machinery and/or data handed over to the Contractor in execution of this contract shall be considered as "NAMSAs Furnished Property" and shall be subject to the Provisions of the NAMSAs General Provisions for Fixed Price Contracts (Services), attached hereto and the SOW.
3. If the SOW specifies that NAMSAs executes the right of furnishing NAMSAs property to the Contractor in fulfilment of his contractual obligation, prices in the List of Services reflect this furnishing.
4. All NAMSAs Furnished Property for use in the Contract shall be kept by the Contractor strictly for the use of this Contract and shall not be re-allocated to any other work whatsoever without the prior consent in writing of NAMSAs.
5. All NAMSAs Furnished Property so supplied shall remain the property of NAMSAs and the Contractor shall at all times and places until its return to NAMSAs, use, keep, maintain and protect such property under proper conditions and with all due and reasonable care, all in accordance with sound industrial practice, subject in the case of equipment to fair wear and tear.
6. The Contractor shall be liable for all loss or damage however caused to such NAMSAs Furnished Property throughout the whole of the period during which they are in his custody, notwithstanding this, article 12.8 of the General Provisions for Fixed Price Contracts (Services), dated 19 October 2005 shall govern.
7. Failure by NAMSAs to deliver such NAMSAs Furnished Property, if any, in accordance with the agreed delivery schedule shall relieve the Contractor of his responsibility for the completion of the services for which such NAMSAs / NATO Property shall be used.
8. The contractor acknowledges having taken note of the condition of the equipment made available to the contractor for the performance of the contract. In the event of failure of the equipment, the contractor shall take the necessary measures to ensure continuation of service.

### **Part 25 - INTELLECTUAL PROPERTY RIGHTS**

1. These intellectual property right conditions apply to all data deliverables under this contract.
2. Proprietary and/or user rights of the data package(s) or information developed and furnished under the terms of this contract shall become NAMSAs property for the unique use of NAMSAs requirements.
3. Should the contract be terminated prior to completion of the requirements, the property in all documentation prepared by the Contractor under the terms of this contract inclusive the source code of all completed developments or developments in process will vest in NAMSAs.
4. NAMSAs shall have the right to use, copy, modify, release and re-use data. The rights of NAMSAs to use, copy, modify, release and re-use data shall be free of charge.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

### **Part 26 - SITE INVESTIGATION & CONDITIONS AFFECTING THE WORK**

1. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature of the services and its location, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labour, water, electric power, and roads; (3) uncertainties of weather or physical conditions at the site; (4) the conformation and conditions of the ground; (5) the character of equipment and facilities needed preliminary to and during performance and (6) the security environment. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the services, or for proceeding to successful performance without additional expense to NAMSA.
2. NAMSA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by NAMSA. Nor does NAMSA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

### **Part 27 - MATERIAL & WORKMANSHIP**

1. All equipment, material, and articles incorporated into the services covered by this contract shall be of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalogue number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
2. All services and work under this contract shall be performed in a skilful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

### **Part 28 - THIRD PARTY LIABILITY**

1. In the performance of this contract, the overall liability lies with the Contractor. NAMSA shall not be liable for any damage to properties or bodily injury, including death, owned or sustained by any third party. Moreover the Contractor and its personnel have no claim whatsoever on NAMSA for any damage which may occur to properties or persons.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

2. The Contractor shall indemnify, hold and save harmless and defend at its own expense, NAMSA, TCNs and/or NATO HQs, its officers, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including costs and expenses arising out of acts or omissions of the Contractor or its employees, agents or sub-Contractors in the performance of this Contract, including the use of NATO furnished equipment.
3. This clause shall extend to claims and liability in the nature of workmen compensation, social insurances, personal and/or corporate taxation by any de jure or de facto Governmental Authorities.
4. The Contractor understands and agrees that physical security of the Contractor's personnel and property on site and elsewhere is entirely the liability of the Contractor, and that related risks shall be covered by a specific insurance inclusive also of medical evacuation provisions in case of serious accidents.
5. Without thereby limiting his responsibilities outlined above, the contractor shall take insurance with a reputable insurance company against all loss of and damage to property and bodily injury to persons, including death, arising out of or in consequence of his obligations under the Contract and against all actions, claims, demands, cost and expenses in respect thereof. As a minimum, the insurance amount shall be 2 times the projected contract value including option years or € 10,000,000, whichever is the lower amount.
6. Further, the contractor shall provide and thereafter maintain all appropriate workmen's compensation and liability insurance to cover its employees and any claims for death, bodily injury or damage to property arising from the execution of this Contract.

<b>Part 29 - SECURITY</b>
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1. The following supplements Clause 5 "Security" of the General Provisions:  
In the performance of this contract, the contractor and any subcontractor(s) are required to comply with security measures governing the site where work is to be performed and in accordance with the SOW.
2. The Contractor undertakes to inform NAMSA at the contract award date of the identities and NATO clearances of the members of his staff who may require access under the contract to NATO classified information and/or facilities.
3. The Contractor shall provide the CO with a list of the names of all his personnel and with the registration number of all vehicles that may require access to sites, in order to perform any services under this Contract. This list shall be updated when any change of personnel and/or vehicles becomes necessary.
4. The Contractor has to take the necessary steps to ensure the physical security of his property. No claims for loss or damages to his property due to fire, theft, or actions or omissions of third parties, shall be receivable by NAMSA.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

### **Part 30 - TAXES & DUTIES**

1. Clause 6 "Import and Export Formalities" and 7 "Taxes and Duties" of the General Provisions are supplemented to include the following:

All prices shall be net of taxes and duties from which NAMSA is exempted either by virtue of the aforementioned Military Technical Arrangement (MTA) established between NATO and the Islamic Democratic Republic of Afghanistan or by virtue of its charter.

### **Part 31 - TERMINATION FOR CONVENIENCE OF NAMSA**

1. Clause 11 "Termination for Convenience of NAMSA" of the General Provisions is supplemented to include the following:
  - 1.1. Any termination exercised under the provisions of this clause, will entitle the Contractor to submit a claim for reimbursement of cost and expenses incurred by him for the terminated portion of the services ordered. Should a Termination for Convenience notice be given at least ninety (90) calendar days prior to the termination date specified in the termination notice, the Contractor shall only be entitled to claim for reimbursement of his fixed costs within the Priced Bill of Services, which were foreseen to be equally amortized over the term of the contract, such as the cost for provisioning of infrastructure and equipment.
  - 1.2. Such claim will be submitted to NAMSA not later than six (6) months after receipt of the notice of termination. The Contractor's claim will be fully documented, substantiated and justified. Its settlement will be negotiated between NAMSA and the Contractor.
  - 1.3. Failure to reach agreement on the settlement of the Contractor's claim shall constitute a dispute within the meaning of the clause entitled "Disputes".

### **Part 32 - LANGUAGE**

The English language shall be used by the Parties in all written communications with respect to this contract, and it shall govern over any translation in any other language.

### **Part 33 - REPORTING**

The Contractor shall report any relevant information and data related to the performance of the contract that may be reasonably requested by NAMSA in addition to what is specified in the SOW.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

### **Part 34 - PUBLICITY & PUBLIC RELATIONS**

The Contractor and his Sub-Contractor(s) shall not make any press release or public statement concerning this contract without the prior written approval of NAMSA.

*NAMSA reserves the right to publish information about the performance of the Contractor and/or any other information as it may deem appropriate from time to time subject to giving reasonable prior notice thereof to the Contractor. Information shall not include any item of a commercially confidential nature except with the express written permission of the Contractor.*

### **Part 35 - PROTECTED INFORMATION**

1. All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of NATO and/or NAMSA, shall be protected in accordance with the applicable security regulations and shall be delivered only to the authorized officials of NATO and/or NAMSA on completion of work under this Contract.
2. The Contractor may not communicate at any time in any manner or form to any other person, organization, Government or authority external to NATO/NAMSA, any information known to it by reason of its association with NATO/NAMSA which has not been made public except with the authorization of NATO/NAMSA; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

### **Part 36 - USE OF NAME, EMBLEM OR OFFICIAL SEAL OF NATO / ISAF**

The Contractor shall, in no manner whatsoever use the name, emblem or official seal of the NATO / ISAF or any abbreviation of the name of the NATO / ISAF in connection with its business or otherwise, unless prior authorized in writing by NAMSA.

### **Part 37 - ASSIGNMENT OF CONTRACT**

NAMSA reserves the right to assign in part or in full to another organization, country, or groups of countries, the rights, obligations, title and interest in and to this Contract. Such an assignment will not entitle the Contractor to vary in any way his obligations under this Contract, nor to demand additional costs.

### **Part 38 - PRIVILEGES & IMMUNITIES**

Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of NATO and of its subordinate bodies, such as NAMSA and ISAF HQ.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

### **Part 39 - PERFORMANCE OF THE CONTRACTOR IN TIME OF ALERT OR WAR**

The Contractor warrants that, on the basis of information available to him he is not aware of any national law or regulation, or any circumstances that might prevent him from fulfilling his obligations under this Contract in time of alert or war.

### **Part 40 - INTERNATIONAL EVENTS**

If NATO should cease or suspend its activities or also if it should have its liberty of action restricted or suspended in the event of, or resulting from international events, such as a change in its mandate and /or lack of funding, this Contract may be terminated forthwith by NAMSA.

### **Part 41 - PREVENTION OF SMUGGLING**

1. Upon receipt of reliable information that the Contractor, his servants and sub-Contractors and / or their employees, have been engaged in smuggling activities in relation to this Contract, NAMSA shall have the right to:
  - 1.1. have the goods related to such smuggling seized and, as appropriate in the circumstances, transferred to the criminal authorities for further action as appropriate, and;
  - 1.2. terminate the Contract for default.

### **Part 42 - INTEGRITY / NO BRIBE**

1. NAMSA draws the Contractors' attention to the fact that it is strictly forbidden to offer gifts or other advantages to NAMSA, TCN and / or NATO HQ staff members. This also includes any so-called end-of-year gifts, which cannot be considered to be advertising presents.
2. If NAMSA establishes that this ban has been disregarded, NAMSA may terminate this Contract and the Contractor may be removed from the NAMSA source file after NAMSA has informed the relevant TCNs and NATO authorities.

### **Part 43 - EFFICIENCIES/SAVINGS**

During the performance of the Contract the Contractor may propose changes that provide cost savings in the execution of the Contract. NAMSA will consider such proposals under the following conditions.

- a. the proposed change does not affect the performance of the contract;
- b. the cost savings are shared equally between the Contractor and NAMSA; and
- c. the Contractor has specified the proposed change (to the Contract and/or SOW), the cost impact, the proposed savings and the financial data supporting the proposal.

At its discretion NAMSA may perform an audit of the Contractor's data either prior to NAMSA's acceptance of the change or once it is implemented.



## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

Where a proposal involves a minor deviation in the performance of the contract, the corresponding savings must outweigh the deviation.

### **Part 44 - EQUIPMENT AND FACILITIES QUANTITIES**

The SOW contains comprehensive inventories of equipment and facilities that the Contractor shall take over from the previous contractor.

The actual quantities shall be agreed upon before contract award.

### **Part 45 - CONTRACT ADMINISTRATION**

1. By the Contractor:

- 1.1. The name of the official designated by the Contractor to act as the overall project manager:

Attn : <TBD>  
Telephone : <TBD>  
Fax : <TBD>  
Mobile : <TBD>  
Email : <TBD>

- 1.2. The name of the official designated by the Contractor to administer contractual matters:

Attn : <TBD>  
Telephone : <TBD>  
Fax : <TBD>  
Mobile : <TBD>  
Email : <TBD>

- 1.3. The name of the officials designated by the Contractor to administer technical matters:

Attn : <TBD>  
Telephone : <TBD>  
Fax : <TBD>  
Mobile : <TBD>  
Email : <TBD>

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

2. By NAMSA:

- 2.1. All correspondence and communications pertaining to the contract and its administration shall be sent to the Contracting Authority:

NATO MAINTENANCE AND SUPPLY AGENCY (NAMSA)  
PROCUREMENT DIVISION  
L-8302 CAPELLEN, Luxembourg  
Attn : <TBD>  
Telephone : <TBD>  
Fax : <TBD>  
Email : <TBD>

- 2.2. The Administrative Contracting Officer is:

NATO MAINTENANCE AND SUPPLY AGENCY (NAMSA)  
PROCUREMENT DIVISION  
L-8302 CAPELLEN, Luxembourg  
Attn : <TBD>  
Telephone : <TBD>  
Fax : <TBD>  
Email : <TBD>

- 2.3. For all technical matters, the responsible Technical Authority is:

NATO MAINTENANCE AND SUPPLY AGENCY (NAMSA)  
OPERATIONAL LOGISTICS SUPPORT PROGRAMME  
L-8302 CAPELLEN, Luxembourg  
Attn : <TBD>  
Telephone : <TBD>  
Fax : <TBD>  
Email : <TBD>

- 2.4. For all original invoices, the responsible Financial Authority is:

NATO MAINTENANCE AND SUPPLY AGENCY (NAMSA)  
OPERATIONAL LOGISTICS SUPPORT PROGRAMME  
L-8302 CAPELLEN, Luxembourg  
Attn : LO-FF

1. The Contractor shall acknowledge receipt of this Contract or any amendment of this Contract by signing the form provided to this effect.

**Part 46 - CONTRACTOR'S INFORMATION**

1. The Contractor hereby authorises NAMSA to release the Contract to NATO and/or a Stakeholder Nations as applicable. The Contract prices and the Contractor's proposal will be protected as Commercial in Confidence and will be used solely for the purpose of Managing the Contract.
2. Disclosure to any other party will not be made without the prior authorisation of NAMSA and the Contractor.

**CONTRACTOR**

.....  
.....  
.....

**NORTH ATLANTIC TREATY ORGANISATION,  
represented by NAMSA,  
executive Agency of the  
NATO MAINTENANCE AND SUPPLY  
ORGANISATION (NAMSO)**

Signature:

Signature:

Function:

.....  
.....

Function:

.....  
.....

Date:

.../.../.....

Date:

.../.../.....

**GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS**  
**(SERVICES)**

**Clause I - DEFINITIONS**

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

1.1 The term "NAMSA" means "NATO Maintenance and Supply Agency",  
L - 8302 Capellen, Grand-Duchy of Luxembourg.

1.2 All correspondence and contacts concerning contracts for services shall be with the Contracting Officer/buyer unless otherwise directed.

1.3 The term "NAMSO Member State" means a member state of the NATO Maintenance and Supply Organization (NAMSO).

1.4 The term "Customer Country" means that particular NAMSO member state for which NAMSA is obtaining the services called for under this contract, or a part thereof.

1.5 The term "Contractor" means the party who has entered into this contract with NAMSA.

1.6 The term "Contract" means the contractual instrument to which these General Provisions apply.

1.7 The term "Subcontract" means, except as otherwise provided in this contract, any agreement, contract or subcontract made by the Contractor with any other party in fulfillment of any part of this contract, and any agreement, contract or subcontract thereunder.

**Clause 2 - CHANGES**

2.1 Except as otherwise provided in this contract, NAMSA may at any time, within the general scope of this contract, by a written order make changes in any one or more of the following:

2.1.1 specifications, or make additions thereto, issue additional instructions, require modified or additional services, within the scope of this contract; or change the amount of NAMSA furnished property;

2.1.2 marking, method of shipment or packing;

2.1.3 place of delivery; and

2.1.4 place of inspection and acceptance.

2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NAMSA, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.

2.3 Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, NAMSA shall have the right to prescribe the manner of disposition of such property.

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

### Clause 3 - ASSIGNMENT

Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NAMSA in writing. No such assignment shall become effective until the assignee has received written approval from NAMSA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NAMSA will not unreasonably withhold any such approval of assignment.

### Clause 4 - PATENT INDEMNITY

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the services will be performed under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NAMSA from any liability for patent infringement in said countries. The Contractor will notify NAMSA of any claim of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

### Clause 5 - SECURITY

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

5.1 ensuring that no such document is accessible to any person not entitled to knowledge of such document;

5.2 complying with the national security regulations currently in force in its country;

5.3 complying with any special NATO or NAMSA security regulations which may be supplied by NAMSA.

**Clause 6 - IMPORT AND EXPORT FORMALITIES**

The Contractor shall be responsible for compliance with all applicable national import and export customs regulations and formalities, including payment of fees incident thereto and the posting of a customs bond, if required, and further, including all required licenses, customs declarations and other documentation, concerning the entry to and the exit from the Contractor's facility, including delivery to final destination, of all items or materiel pertinent to the Contractor's performance under this contract except as otherwise provided herein.

**Clause 7 - TAXES AND DUTIES**

7.1 NAMSA, as a subsidiary body of NATO is, by application of the Ottawa Agreement, dated 20 September 1951, exempt from all taxes and duties.

7.2 Services sold to or through NAMSA are to be considered as exports. Consequently, the Contractor is responsible for obtaining any documentation required to permit NAMSA and its customers to benefit from the fiscal regime applicable to exports.

7.3 However, if the Contractor is compelled by application of any governmental law or regulation to pay any readily identifiable tax or duty in relation to this contract, he will indicate such tax or duty as a separate item of cost on his invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

7.4 Following payment by NAMSA of the amount(s) for taxes and/or duties pursuant to paragraph 7.3 above, should the Contractor receive a rebate or rebates, of any part or all of the said amount(s) so paid by NAMSA, the Contractor shall notify NAMSA promptly and the amount(s) of such rebate(s) shall be credited or paid over by the Contractor to NAMSA at NAMSA's option. The Contractor shall take any action that could be reasonably required in order to obtain such rebate(s) whenever he is aware of the possibility of obtaining it (them).

7.5 The submission of an invoice for taxes and/or duties under the provisions of this Clause shall constitute the Contractor's guarantee that such taxes have or will be paid. If for any reason, the taxes and/or duties are not paid, they shall be refunded in full with any interest earned while the funds for such payment(s) were held by the Contractor.

**NOTE:** If the contract is to be performed in Luxembourg, the foregoing clause is to be made inapplicable to the contract by mention to that effect in the Schedule and the following clause added in lieu thereof in the same Schedule provision:

**"Taxes and Duties**

The Agreement between NAMSA and the Government of Luxembourg, dated 19 June 1968, entitled 'Agreement regarding exemption from taxes, duties and rates granted to NAMSO by the Luxembourg Authorities' is applicable to this contract and is made a part hereof by reference."

# **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

## **Clause 8 - SPECIAL AREAS**

8.1 Except as otherwise provided in this contract, the Contractor shall not acquire for use in the performance of this contract any materiel and/or services originating from sources in countries which are:

- 8.1.1 subject to a formal trade embargo to be observed by NATO;
- 8.1.2 known to disregard international trade conventions in respect of copyright;
- 8.1.3 under communist control:
  - China (PRC)
  - Cuba
  - Laos
  - North Korea
  - Vietnam.

8.2 Except as otherwise provided in this contract, the Contractor agrees to insert the provisions of this clause in subcontracts hereunder.

## **Clause 9 - WARRANTY**

9.1 Contractor hereby guarantees that he will perform all services under this contract in a good and workmanlike manner, in accordance with any technical orders or other instructions as specified in the Schedule of this contract and that the items on which the work is performed will be guaranteed for the period of time specified in such Schedule, as more fully set forth in the Schedule of this contract.

9.2 If Contractor supplies any spare parts hereunder, unless otherwise specified in this contract, such items shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship.

9.3 If any equipment incident to services or component thereof to which this guarantee applies, fails to provide such service due to defective services of the Contractor or defective spare parts furnished by the Contractor, the Contractor agrees either to repair the equipment, or component, at its own expense, including any transportation costs, or reach an agreement with NAMSA for an equitable settlement. The Contractor shall undertake, if he chooses to carry out the repair work, to grant the same guarantee for the repaired equipment as was applied to the original equipment. Failure to reach such an agreement shall be a dispute within the meaning of the clause entitled "Disputes" in these General Provisions.

## **Clause 10 - DEFAULT**

If the Contractor fails to perform the services within the time specified, becomes bankrupt, or otherwise fails to comply with his obligations under this contract, NAMSA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NAMSA. Thereafter, NAMSA may procure or otherwise obtain the services so terminated, and the Contractor shall be liable to NAMSA for any excess costs for such services, unless Contractor's failure to perform is due to causes beyond his control and without his fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

**Clause 11 - TERMINATION FOR CONVENIENCE OF NAMSA**

In the event NAMSA determines that services ordered hereunder are no longer required, the Contractor agrees to cease its work hereunder and cancel any subcontracts hereunder and will use its best endeavours to effect such stoppage and/or cancellation on terms as favourable to NAMSA as can be granted or obtained, or as may be more fully set forth in the Schedule of this contract.

**Clause 12 - NAMSA FURNISHED PROPERTY**

12.1 It is the policy of NAMSA that the Contractor shall furnish all property, including spare parts, necessary for the successful and timely performance of the services required under its maintenance contracts. Therefore, the following provisions are applicable to this contract only if NAMSA furnishes NAMSA property to the Contractor for his use in the performance of this contract, or requires the Contractor to acquire property, to which NAMSA will assume title, for such use.

12.2 **NAMSA Furnished Property**

NAMSA shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as NAMSA furnished property in the Schedule, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "NAMSA furnished property"). The delivery or performance dates for the materiel or services to be furnished by the Contractor under this contract are based upon the expectation that NAMSA furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that NAMSA furnished property is not delivered to the Contractor by such time or times, NAMSA shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor hereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes". In the event NAMSA furnished property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify NAMSA of such fact and, as directed by NAMSA, either (i) return such property at the NAMSA expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, NAMSA upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes". The foregoing provisions for adjustment are exclusive and NAMSA shall not be liable for breach of contract by reason of any delay in delivery of NAMSA furnished property or delivery of such property in a condition not suitable for its intended use.

12.3 **Changes in NAMSA Furnished Property**

12.3.1 By notice in writing, NAMSA may (i) decrease the property provided or to be provided by NAMSA under this contract, or (ii) substitute other NAMSA property for property to be provided by NAMSA, or to be acquired by the Contractor for NAMSA under this contract. The Contractor shall promptly take such actions as NAMSA may direct with respect to the removal and shipment of property covered by such notice.



12.3.2 In the event of any decrease in or substitution of property pursuant to paragraph (a) above, or any withdrawal of authority to use property provided under any other contract, which property NAMSA had agreed in the Schedule to make available for the performance of this contract, NAMSA, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

#### 12.4 Title

12.4.1 Title to all property furnished by NAMSA shall remain in NAMSA. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling acquired by the Contractor for NAMSA pursuant to this contract shall pass to and vest in NAMSA when it has been fully paid for by NAMSA either through amortization under this contract or otherwise.

12.4.2 All NAMSA furnished property, together with all property acquired by the Contractor title to which vests in NAMSA under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "NAMSA property". Title to NAMSA property shall not be affected by the incorporation or attachment thereof to any property owned or leased by the Contractor, nor shall such NAMSA property or any part thereof be or become a fixture or lose its identity as a personality by reason of affixation to any realty. For the purposes of this clause, it shall be assumed that title to property furnished under this contract is vested in NAMSA even though it may, in actuality, be owned by one or more NAMSA customers or NATO member countries.

#### 12.5 Property Administration

The Contractor shall comply with the provisions of this contract identified in the Schedule as "Property Administration".

#### 12.6 Use of NAMSA Property

NAMSA property shall, unless otherwise provided herein or approved by NAMSA be used only for the performance of this contract.

#### 12.7 Utilization, Maintenance and Repair of NAMSA Property

The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with any other applicable provision as may be specified in the Schedule, a program for the utilization, maintenance, repair, protection and preservation of NAMSA property, until disposed of by the Contractor, in accordance with this clause. In the event that any damage occurs to NAMSA property the risk of which had been assumed by NAMSA under this contract, NAMSA shall replace such items or the Contractor shall make such repair of the property as NAMSA directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by NAMSA. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which NAMSA is responsible and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of NAMSA property made at the direction of NAMSA, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

12.8 Risk of Loss

12.8.1 Except for losses, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of NAMS property as required by paragraph 12.7 hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction or damage to the NAMS property provided under this contract:

12.8.1.1 caused by any peril while the property is in transit off the Contractor's premises; or

12.8.1.2 caused by any of the following perils while the property is on the Contractor's or subcontractor's premises or on any premises where such property may properly be located, or by removal therefrom because of any of the following perils, called "excepted perils":

- fire, lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks; excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; nuclear reaction, nuclear radiation or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority or forces; or,

- other peril, of a type not listed above, as may be specified in the Schedule.

12.8.2 If the Contractor transfers NAMS property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of NAMS, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all NAMS property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

12.8.3 The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

- all or substantially all of the Contractor's business;
- all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed;
- a separate and complete major industrial operation in connection with the performance of this contract.

12.8.4 The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to NAMSA, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the NAMSA property caused by any excepted peril.

12.8.5 Upon the happening of loss or destruction of or damage to any NAMSA property caused by an excepted peril, the Contractor shall notify NAMSA thereof and shall take all reasonable steps to protect the NAMSA property from further damage, separate the damaged and undamaged NAMSA property, put all the NAMSA property in the best possible order, and furnish to NAMSA a statement of:

- the lost, destroyed and damaged NAMSA property;
- the time and origin of the loss, destruction, or damage;
- all known interests in commingled property of which the NAMSA property is a part; and
- the insurance, if any, covering any part of or interest in such commingled property.

12.8.6 The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph 12.8.5 in accordance with the procedures provided for in the "Changes" clause of this contract.

12.8.7 With the approval of NAMSA after loss or destruction of or damage to NAMSA property, and subject to such conditions and limitations as may be imposed by NAMSA, the Contractor may, in order to minimize the loss to NAMSA or in order to permit resumption of business or the like, sell for the account of NAMSA any item of NAMSA property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor's, that separation is impracticable.

12.8.8 Except to the extent of any loss or destruction of or damage to NAMSA property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the NAMSA property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to NAMSA property, and such property (other than that which is permitted to be sold) shall be returned to NAMSA in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph 12.7 above.

12.8.9 In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the NAMSA property, caused by an excepted peril, he shall equitably reimburse NAMSA. The Contractor shall do nothing to prejudice NAMSA's rights to recover against third parties for any such loss, destruction or damage and, upon the request of NAMSA, shall at NAMSA's expense, furnish to NAMSA all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favour of NAMSA) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to NAMSA property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the NAMSA property, for the benefit of NAMSA.

12.9 Access

NAMSA and any person designated by it, shall at all reasonable times have access to the premises wherein any NAMSA property is located, for the purpose of inspecting the NAMSA property.

12.10 Final Accounting and Disposition of NAMSA Property

Upon the completion of this contract, or at such earlier dates as may be fixed by NAMSA, the Contractor shall submit, in a form acceptable to NAMSA inventory schedules covering all items of NAMSA property not consumed in the performance of this contract (including any resultant scrap) or not theretofore delivered to NAMSA, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the NAMSA property, as may be directed or authorized by NAMSA. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as NAMSA may direct.

12.11 Restoration of Contractor's Premises and Abandonment

Unless otherwise provided herein, NAMSA:

12.11.1 may abandon any NAMSA property in place, and thereupon all obligations of NAMSA regarding such abandoned property shall cease; and

12.11.2 has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment of property, disposition thereof on completion of need of the Contractor, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph 12.8.5 above.

12.12 Communications

All communications issued pursuant to this clause shall be in writing.

**Clause 13 - DISPUTES**

13.1 Any dispute arising out of this contract shall be settled by arbitration.

13.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NAMSA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration in the Hague.

13.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

## **NATO UNCLASSIFIED - COMMERCIALLY SENSITIVE**

13.4 Any arbitrator must be of the nationality of any one of the member states of NATO and shall be bound by the rules of security in force within NATO.

13.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO, if he is of another nationality, no NATO classified documents or information shall be communicated to him.

13.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

13.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

13.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

### **Clause 14 - GOVERNING LAW**

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

### **Clause 15 - EXAMINATION OF RECORDS**

15.1 This clause is applicable to this contract only:

15.1.1 if the price, or any of the prices, to be paid for the supplies and/or services to be furnished hereunder is/are other than (a) firm fixed price(s);

15.1.2 if this contract is terminated by NAMSA, in whole or in part, and the Contractor submits a termination claim as a result thereof, or

15.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

15.2 The Contractor agrees that NAMSA or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

15.3 The Contractor further agrees to include in all his subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

15.4 The period of access and examination described in paragraphs 15.2 and 15.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

**Clause 16 - MISCELLANEOUS**

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

16.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He unreservedly accepts all the terms thereof.

16.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

16.4 All written correspondence and reports by the Contractor to NAMSA shall be in the language in which this contract is written.

**EXHIBIT : TERMINATION FOR CONVENIENCE OF NAMSA**

1. The performance of work under this contract may be terminated by NAMSA in accordance with this PART in whole or from time to time in part, whenever NAMSA shall determine that such termination is in the best interest of NAMSA, or of the customer country. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work under this contract is terminated, and the date upon which such termination becomes effective.

2. After receipt of a Notice of Termination and except as otherwise directed by NAMSA the Contractor shall :

a. Stop work under the contract on the date and to the extent specified in the Notice of Termination;

b. Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

d. Assign to NAMSA in the manner, at the time, and to the extent directed by NAMSA all of the rights, title, and interest of the Contractor under the orders and/or subcontracts so terminated, in which case NAMSA shall have the right, in its discretion to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

e. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts with the approval or ratification of NAMSA, to the extent NAMSA may require, which approval or ratification shall be final and conclusive for all purposes of this Part;

f. Transfer title to NAMSA to the extent that title has not already been transferred and deliver to NAMSA in the manner, at the time, and to the extent, if any, directed by NAMSA :

(1) the fabricated or unfabricated parts, work in process, completed work, supplies and other materiel produced as a part of or acquired in connection with the performance of the work terminated by the Notice of Termination,

(2) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to NAMSA, and,

(3) the jigs, dies and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract, if expressly required by NAMSA, for the cost of which the Contractor has been or will be reimbursed under this contract;

g. Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by NAMSA any property of the types referred to in subparagraph f. above, provided however, that :

(1) the Contractor shall not be required to extend credit to any purchaser,

(2) the Contractor may acquire any such property under the conditions prescribed by and at the price(s) approved by NAMSA, and

(3) the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by NAMSA to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as NAMSA may direct.

h. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination, and

i. Take such action as may be necessary, or as NAMSA may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which NAMSA has or may acquire an interest.

3. a. The Contractor shall submit to NAMSA, not later than sixty (60) days after receipt of a Notice of Termination, a list containing :

(1) the state of the completion of his plans and production under this contract and those of his orders and subcontracts,

(2) actions planned or initiated by the contractor in order to fulfill his obligations under paragraph 2. above.

b. NAMSA shall be entitled to be represented during the Contractor's preparation of the list mentioned in subparagraph a. above.

4. a. After receipt of a Notice of termination, the Contractor shall submit to NAMSA its termination claim, in the form and with the certification prescribed by NAMSA. Such claim shall be submitted promptly but in no event later than nine (9) months from the effective date of termination, unless one or more extensions in writing are granted by NAMSA, upon request of the Contractor made in writing within such nine (9) months period or extension thereof, if NAMSA determines that the facts justify such action.

b. Upon failure of the Contractor to submit his termination claim within the time allowed, NAMSA may, subject to the provisions of paragraph 6. below, determine on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay the Contractor the amount so determined. NAMSA's decision on the amount due to the Contractor shall in such case, be final, subject to no appeal nor arbitration. However, the decision of NAMSA relative to whether an extension of time should be granted shall be subject to appeal as a "dispute" within the meaning of the Clause entitled "Disputes" in the General Provisions.

5. Subject to the provisions of paragraph 4. above, the Contractor and NAMSA agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination or work pursuant to this Part, which amount or amounts may include a reasonable allowance for profit on work done, provided the contract terms do not otherwise prohibit the allowance of profit on items thereunder, and provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount or payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in paragraph 6. below, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and NAMSA to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Part, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph 5.

6. If NAMSA terminates the contract according to this PART and the Contractor and NAMSA fail to agree in whole or in part on the amount to be paid to the Contractor by reason of the termination of work pursuant to this PART as provided in paragraph 5. above, the Contractor shall be entitled to the following reimbursement :

a. For completed supplies accepted by NAMSA (or sold or acquired as provided in paragraph 2.g. above) and not paid for previously, a sum equivalent to the aggregate price of such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges.

b. (1) the costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but exclusively of any costs attributable to supplies and/or services paid, or to be paid for under subparagraph a. above.

(2) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph 2.e. above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (1) above, and,

(3) a sum, as a profit, equal to two percent (2 %) of that part of the amount determined under (1) above, which represents the costs of articles and materials not processed by the Contractor, plus a sum equal to eight percent (8 %) of the remainder of such amount, but the aggregate of such sums shall not exceed six percent (6 %) of the whole of the amount determined under (1) above, which amount for the purpose of this subdivision (3) shall exclude any charges for interest on borrowings, provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (3) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

c. The reasonable costs of settlement including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with protection or disposition of property allocable to this contract;



d. The total sum to be paid to the Contractor under subparagraphs a. and b. of this paragraph 6., shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that NAMSA shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph a. above and paragraph b. (1) above, the fair value, as determined by NAMSA of property which is destroyed, lost, stolen or damaged, so as to become undeliverable to NAMSA, or to a buyer pursuant to paragraph 2.g. above.

e. In arriving at the amount due to the Contractor under this clause there shall be deducted :

(1) all unliquidated advance or other payments on account therefor, previously made to the Contractor, applicable to the terminated portion of this contract.

(2) any claim which NAMSA may have against the Contractor in connection with this contract, and,

(3) the agreed price for, or the proceeds of the sale of, any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to NAMSA.

f. If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract, i.e. the portion not terminated by the Notice of Termination, and such equitable adjustment as may be agreed upon shall be made in such price or prices.

7. NAMSA may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever, in the opinion of NAMSA, the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Part, such excess shall be payable by the Contractor to NAMSA upon demand, together with interest computed at the rate of six percent (6 %) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to NAMSA, provided, however, that no interest shall be charged with respect to any excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by NAMSA by reason of the circumstances.

8. Except as otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three (3) years after final settlement under this contract, shall preserve and make available to NAMSA at all reasonable times at the office of the Contractor but without direct charge to NAMSA, all his books, records, documents and other evidence bearing on work terminated hereunder or to the extent approved by NAMSA, photographs, microphotographs, or other authentic reproduction thereof.