

HQ SACT General Terms & Conditions  
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## **1. Definitions.**

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

- a. "HQ SACT" means the Headquarters Supreme Allied Commander Transformation, located at 7857, Blandy Road, Suite 100, Norfolk, Virginia, United States of America. References to a subordinate command shall have equal meaning and representation as HQ SACT.
- b. Contracting Officer (CO) means the person executing and managing this contract on behalf of HQ SACT.
- c. Contracting Officer Technical Representative (COTR) means a person appointed by the Contracting Officer for the purpose of determining compliance with the technical requirements of the contract.
- d. The North Atlantic Treaty Organization is hereafter referred to as "NATO".
- e. The term "days" shall be interpreted as meaning calendar days.

## **2. Applicable Law.**

Except as otherwise provided in this contract, this contract shall be governed, interpreted, and construed with the laws of the commonwealth of Virginia of the United States of America.

## **3. Assignment.**

This agreement is not assignable by the Contractor either in whole or in part unless agreed in writing by HQ SACT Contracting Officer in accordance with:

- a. Any modifications, including changes, additions or deletions, and instructions under this contract shall not be binding unless issued in writing by the Contracting Officer.
- b. Subcontractors shall be limited to citizens or legal entities of member nations of NATO, unless specifically authorized by the Contracting Officer.
- c. The Contractor shall, consistent with paragraph 8, ensure that any Subcontractor proposed for the furnishing of supplies or services, which involves access to NATO RESTRICTED information and above, holds the appropriate facility security clearance (FSC) granted by the Subcontractor's national authorities, which is still in effect, prior to being given access to such classified information. Such FSC must remain in effect for the duration of the subcontract.

#### **4. Acceptance.**

- a. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract.
- b. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or otherwise stated in the contract. It is the action by which HQ SACT acknowledges that the Contractor has fully demonstrated the deliveries are complete and operational. The formal acceptance will take place when the following requirements have been met:
  - (1) Availability at final destination of all deliverables;
  - (2) Successful completion of acceptance testing;
  - (3) Verification of the inventory;
  - (4) Satisfactory completion of all training or other services, if any, required by that date;
  - (5) Agreement between the Contracting Officer and the Contractor on a discrepancy list (if necessary) and corresponding discrepancy resolution dates.
- c. When discrepancies exist and if these do not prevent satisfactory use or operation of the supplies, the Contracting Officer may declare the acceptance provisional. In this case, the Contracting Officer will withhold from payment an amount commensurate with the importance of the discrepancies but in any case, not less than ten (10) percent of the total contract value until all discrepancies have been cleared; at that time, the acceptance becomes final.

#### **5. Service and Parts Availability.**

Unless as specified otherwise in the Technical Specifications, the Contractor and its Subcontractors will maintain and furnish a source of an adequate supply of services, components, spare parts, and sub-assemblies to properly maintain the supplies for a period of minimum five (5) years from Contract Effective Date.

#### **6. Preferred Customer.**

- a. The Contractor warrants that the prices set forth in this contract are as favourable as those extended to any Government, Agency, Company, Organization or individual purchasing like quantities covered by the contract under similar conditions. In the event that prior to final delivery and acceptance under this contract the Contractor offers any of such supplies in substantially similar quantities to any customer at prices lower than those set



company that possesses its own Facility Security Clearance, whether the company is performing as the Prime Contractor or Subcontractor. Contractors shall clearly identify the current or intended status of individuals serving, or proposed to serve, on a HQ SACT contract (e.g., employees, subcontractors, etc.).

- c. Further, Contractor shall be responsible for safeguarding NATO classified information, material, and equipment entrusted or generated in connection with the performance of the contract, for the duration of the contract.
- d. Any known or suspected breaches of security or other matters of security significance shall be reported immediately by the Contractor to the Contracting Officer and to the National Security Authority or designated security agency.
- e. The Contractor shall request Contracting Officer's approval before subcontracting any part of the work, if the subcontract would involve the Subcontractor in access to classified information. The Contractor shall place the Subcontractor under security obligations no less stringent than those applied to the prime Contractor.

## **9. Inspection.**

Unless otherwise specifically provided for in the specifications, all equipment, materials, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purposes intended, commensurate with accepted practices and industry standards.

- a. All supplies (which terms throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and testing by HQ SACT, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.
- b. In case any supplies are defective in material, workmanship, or otherwise not in conformity with industry standards or the requirements of this contract, HQ SACT shall have the right either to reject them (with or without instructions as to their disposition), or to require their correction, or to accept them against reduction in price which is equitable under the circumstances.
- c. If any inspection or test, made by HQ SACT, on the premises of the Contractor or Subcontractor facility the Contractor, without additional charge, shall provide all reasonable facilities and assistance to inspectors in the performance of their duties. If HQ SACT inspection or testing is made at a point other than on the premises of the Contractor or a Subcontractor facility, it shall be at the expense of HQ SACT except as otherwise provided in this contract. In case of rejection, HQ SACT shall not be liable for any reduction in

value of samples used in connection with such inspection or testing. HQ SACT reserves the right to charge to the Contractor any additional cost of HQ SACT inspection and testing when supplies are not ready at the time such inspection, when testing is requested by Contractor, or when re-inspection, or retesting is necessitated by prior rejection. Failure to inspect supplies shall neither relieve the Contractor from responsibility for such supplies, as are not in accordance with the contract requirements nor impose liability on HQ SACT.

- d. The inspection and testing by HQ SACT of any supplies does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements, which may be discovered prior to acceptance. Except as otherwise provided in the contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

#### **10. Title.**

Unless specified elsewhere in this contract, title to supplies furnished under this contract shall pass to HQ SACT upon acceptance, regardless of when or where HQ SACT takes physical possession.

#### **11. Supply Warranty.**

- a. Notwithstanding inspection and acceptance by HQ SACT of supplies furnished under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that for a period of twelvemonths (12) following the date of acceptance:
  - (1) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with industry standards, the specifications, and other requirements of this contract; and
  - (2) The preservation, packaging, packing, and marking and the preparation for and method of shipment of such supplies will conform to the requirements of this contract.
- b. The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in paragraph a. of this clause within thirty-days (30) after discovery of any defect.
- c. Within a reasonable time after such notice, the Contracting Officer may either:
  - (1) By written notice require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing, and marking) that do not conform with requirements of this contract within the meaning of paragraph a. of this clause; or

- (2) Retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances and the Contractor shall promptly make appropriate payment.
- d. When return, correction, or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's facility and return.
  - e. If the Contractor does not agree as to its responsibility to correct or replace the supplies delivered, they shall nevertheless proceed in accordance with the written request issued by the Contracting Officer, per paragraph c. of this clause, to correct or replace the defective or nonconforming supplies. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted. Failure to agree to such an equitable adjustment of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".
  - f. Any supplies or parts thereof furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered. Corrected parts will be warranted for a period not less than six (6) months starting at the time the part is received back at the user's location.
  - g. In case of a provisional acceptance the warranty period starts at the date of provisional acceptance and ends twelve (12) months after the date of provisional acceptance.
  - h. Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.
  - i. The word "supplies" as used herein includes related services.
  - j. The rights and remedies of HQ SACT provided in this clause are in addition to and do not limit any rights afforded to HQ SACT by any other clause of the contract.

## 12. Invoices.

- a. The Contractor shall submit its invoice via email to the email address below. All invoices shall be submitted no later than thirty-days (30) upon completion of work or services performed. Standard Payment Terms are NET thirty-days (30). An invoice must include:

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Purchase Order number and Purchase Order or Contract Line Item Number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the supplies delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on a bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent: and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

All invoices shall be certified by the signature of a duly authorized company representative. Invoices for Contractor Travel shall include:

- (1) Contractor name;
- (2) Date of Travel;
- (3) Number of days;
- (4) Destinations.

All invoices shall be email submitted to: [invoice@act.nato.int](mailto:invoice@act.nato.int)

- b. Electronic Fund Transfer is the prescribed method of payment for HQ SACT. Contractors are requested to submit copies of banking information available at <https://www.act.nato.int/opportunities/contracting/> under Contractor Information. Such information shall be submitted to HQ SACT fourteen-days (14) prior to any contract award.

### **13. Payment.**

Payment shall be made for supplies accepted by HQ SACT that have been delivered to the delivery destinations set forth in this contract. Payments under this contract may be made by HQ SACT by electronic funds transfer payments and shall submit this designation to the contracting officer as directed.

In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information must be obtained by HQ SACT thirty-days (30) prior to the date such change is to become effective.

The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and Purchase Order number.

Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by HQ SACT, whichever is later. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the specified payment date.

#### **14. Taxes.**

The contract excludes all applicable Federal, State, and local taxes and duties. HQ SACT is a tax-exempt organization. According to the NATO status agreements, performance under the contract is exempt from taxes, duties and similar charges. Where notwithstanding, these are imposed by national regulations, bidders will enclose the list and the amounts of taxes (to include the sales tax or VAT—Value Added Tax), duties, and similar charges which have been included in their bid, with a justification. Authority for this tax and customs exempt status is to include the "Protocol on the Status of International Military HQs Set Up Pursuant to the North Atlantic Treaty" (Article 8), and the relevant Supplementary Agreements concluded pursuant to the referred Protocol.

The Contractor remains liable for all taxes levied on the Contractor and on Contractor's employees, to include responsibilities to report and withhold and/or disburse income tax on payments to Contractor's employees.

#### **15. Indemnity.**

The Contractor shall indemnify HQ SACT and its officers, employees, and agents, and hold HQ SACT harmless from all claims, losses, liabilities, whatsoever, including

but not limited to costs, fees, fines, and expenses for actual, or alleged direct, or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, or other intellectual property right, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

## **16. Disputes.**

Except as otherwise provided, during the period of performance, any dispute between the parties arising out of the performance of this contract, which is not disposed of by agreement, shall be decided by the HQ SACT Contracting Officer, who shall provide a decision in writing and furnish a copy to the Contractor. The decision of HQ SACT shall be final and conclusive unless, within thirty-days (30) from the date of receipt of such copy, the Contractor mails or otherwise furnishes to HQ SACT a written appeal. In connection with any appeal of HQ SACT decision under this paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. A decision shall be rendered within thirty-days (30) of receipt of appeal. HQ SACT Financial Controller decision is final.

## **17. Termination for Convenience.**

HQ SACT reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its Suppliers and Subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of HQ SACT using its standard record keeping system have resulted from the termination. In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give HQ SACT any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

## **18. Termination for Default.**

- a. HQ SACT may, subject to the provisions of paragraph c. below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
  - (1) If the Contractor fails to make delivery of the supplies or to perform the Services within the time specified herein or any extension thereof; or

- (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms and in either of these two (2) circumstances does not cure such failure within a period of ten-days (10) (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.
- b. In the event HQ SACT terminates this contract in whole or in part as provided in paragraph a. of this clause, HQ SACT may procure supplies or services similar to those so terminated and the Contractor shall be liable to HQ SACT for any excess costs for such similar supplies or services. The Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- c. Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- d. If this contract is terminated as provided in paragraph a. of this clause, HQ SACT, in addition to any other rights provided in the clause, may require the Contractor to transfer title and deliver to HQ SACT in the manner and to the extent directed by the Contracting Officer:

(1) Any completed supplies and

(2) Such partially completed supplies and materials, parts, tools, die, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which HQ SACT has an interest. Payment for completed supplies delivered to and accepted by HQ SACT shall be at the contract price. Payment for manufacturing materials delivered to and accepted by HQ SACT and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". HQ SACT may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such

sum as the Contracting Officer determines to be necessary to protect HQ SACT against loss because of outstanding liens or claims of former lien holders.

- e. If, after notice of termination of this contract under the provisions of this clause, it is determined, for any reason, that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of HQ SACT, be the same as if the notice of termination had been issued pursuant to such clause.
- f. If, after such notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of HQ SACT the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

## **19. Export Control.**

Contractor warrants compliance with applicable export control laws prior to the execution date of the contract. It is the responsibility of the Contractor to determine the applicability of national export controls prior to bid submission or agreeing to additional work under an existing contract with HQ SACT. For example, a Technical Assistance Agreement (TAA) may be required for US companies when contracting with organic NATO entities such as HQ SACT. For an export control arrangement requiring the signature of HQ SACT such as a TAA, Contractor shall, post-award (unless otherwise agreed), provide the draft document to the HQ SACT Contracting Officer for review and endorsement PRIOR to the company's submission to its national approval authority. Export control agreements, to include TAAs, do not amend or form part of the contract between the Contractor and HQ SACT.

## **20. Risk of Loss.**

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to HQ SACT upon:

- a. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- b. Delivery of the supplies to HQ SACT at the destination specified in the contract, if transportation is f.o.b. destination.

## **21. Authorization to Perform.**

- a. The Contractor warrants that it and its Subcontractors have been duly authorized to operate and do business in the country or countries in which this contract is to be performed; that it and its Subcontractors have obtained all necessary licenses and permits required in connection with the contract; that Contractors and Subcontractors will fully comply with all the laws, decrees, labour standards and regulations of such country or countries during the performance of this contract; and that no claim for additional moneys with respect to any authorizations to perform will be made upon HQ SACT.
- b. Contractors and subcontractors are required to obtain a Facility Security Clearance if undertaking a contract involving access to and/or generation of Information Classified NATO RESTRICTED and above. The Contractor warrants that it and its subcontractors have obtained, or will initiate upon award, the necessary Facility Security Clearances from their respective National Security Authorities.

## **22. Insurance**

The Contractor and any Subcontractor shall during the entire performance of this Contract and at its own costs hold adequate insurance to meet any liabilities related to the performance of this contract and be compliant with all applicable mandatory insurance requirements. Equally, the Contractor and any Subcontractor are required by this Contract to hold and provide proof of appropriate professional insurance (i.e., worker's compensation or equivalent), and health insurance for their employees, regardless where they perform under this Contract.

## **23. Performance.**

Candidates/Contractors who accept HQ SACT issued contracts, shall, at a minimum, serve in a designated capacity for no less than one hundred eighty (180) calendar days from commencement of contract period of performance. Contracts' with performance periods having less than one hundred eighty (180) days in totality shall require Contractors to serve a minimum of fifty percent (50%) of estimated performance period. Should a candidate vacate the contract in less time than described, HQ SACT reserves the right to cancel the contract in whole or part. Replacement candidates, if acceptable to HQ SACT, shall be reviewed by HQ SACT for compliance, and, or technical acceptance per the original Statement of Work and final acceptance by HQ SACT Contracting Officer. ACT reserves the right to evaluate contractor's performance based on the requirements and expectations of the subject contract. Contractors understand that ACT may share this evaluation within NATO bodies and with NATO nations, and that the resultant evaluation is at the sole discretion of ACT.

## **24. Travel.**

In accordance with ACT Financial Manual Section 24, Contractor Travel, travel by Contractors in support of the HQ SACT mission will only be performed when a member of the approved International HQ SACT Peacetime Establishment is unable to perform the mission. Once Contractor travel has been established under a contract and a Contractor is tasked to travel, the HQ SACT Contractor Travel Request Form shall be filled out and approved prior to any travel being conducted. This form may be found at <https://www.act.nato.int/opportunities/contracting/> under Contractor Information. The in-house Travel Agency will set the Transport Ceiling Cost and at that time, the Contractor may elect to book their transportation with the in-house travel agency.

Transport tickets purchased through the in-house travel agency will be reimbursed by the HQ SACT entity directly to the in-house travel agency, and the applicable travel line of the contract will be charged. These costs will not be invoiced by, or paid to, the Contractor Company. When transport tickets are purchased through another source only the ceiling cost allocated by the in-house travel agency will be reimbursed to the Contractor's company.

Per Diem is based on the Per Diem Rates annex 1 and 2 found at <https://www.act.nato.int/opportunities/contracting/> under Contractor Information. Subsistence allowance, which covers meals, lodging, incidental expenses and any applicable overhead and/or fees. Per Diem reimbursements will only be made at these rate amounts.

## **25. Proposed Candidates.**

No proposals shall be accepted or considered for candidates already assigned to an existing contract with HQ SACT, without the prior permission of the Contracting Officer.

## **26. Partial Awards.**

Will be allowed when determined in the best interests of HQ SACT. The Contracting Awards Board and the Contracting Officer, when deemed prudent and necessary have the authority to make this determination. Partial bidding shall be consistent with released solicitation.

## **27. Contractor Notice Regarding Delay.**

In the event the Contractor encounters difficulty in meeting performance requirements, or when it anticipates difficulty in complying with the contract delivery schedule, or date it shall immediately notify the Contracting Officer in writing, giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by HQ SACT of any delivery schedule or date, or of any rights or remedies provided by law or under this contract.

## **28. Notice and Assistance Regarding Patent and Copyright Infringement.**

- a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- b. In the event of any claim or suit against HQ SACT on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to HQ SACT, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of HQ SACT except where the Contractor has agreed to indemnify HQ SACT.
- c. This clause shall be included in all subcontracts.

## **29. Publicity, Public Relations, and Branding.**

- a. Unless authorized in writing by the Contracting Officer, the Contractor shall not advertise or otherwise make public, including but not limited to photographs, films, or public statements concerning this contract, the fact that it is a Contractor to HQ SACT, or use the name, emblem, logo, official seal, or any abbreviation of the HQ SACT and/or NATO. This obligation shall survive the completion, expiration, cancellation, or termination of the contract.
- b. The Contractor shall ensure that all deliverables in support of the contract are consistent with NATO Approved Branding.

## **30. Health, Safety and Accident Prevention.**

If the Contracting Officer notifies the Contractor in writing of any non-compliance in the performance of this contract, with safety and health rules and requirements prescribed on the date of this contract by applicable national or local laws, ordinances and codes, and the Contractor fails to take immediate corrective action, the Contracting Officer may order the Contractor to stop all or part of the work until satisfactory corrective action has been taken. Such an order to stop work shall not entitle the Contractor to an adjustment of its contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule.

## **31. Patent Indemnity.**

If the amount of this contract is in excess of \$1,000,000 (USD), the Contractor shall indemnify HQ SACT and its officers, agents, and employees against liability, including costs, for infringement of any letters world-wide patent (except letters patent issued upon an application which is now or may hereafter be kept secret or

otherwise withheld from issue by order of the Government that issued the letters patent) arising out of the manufacture or delivery of supplies under this contract, or out of the use or disposal by or for the account of HQ SACT of such supplies. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by HQ SACT of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defence thereof; and further, such indemnity shall not apply to:

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

### **32. Rights in Technical Data and Computer Software.**

- a. Ownership of Work Product. HQ SACT is and shall be the sole and exclusive owner of all right, title, and interest throughout the world in and to all the results and proceeds of the research performed under this agreement, including but not limited to inventions, derivative works, documents, reports, summaries, raw data, algorithms, charts, graphs, research results, methods, models, maps or drawings, tools, software (including source code), and other works which are created due to or as part of the research by HQ SACT, and including all patents, copyrights, trademarks, trade secrets and other work product (all of the above-described results and proceeds of the research are herein referred to as "Work Product") and shall be deemed to be work made for hire. Accordingly, HQ SACT may modify, protect, publish, incorporate into other documents, share with others, or otherwise use without restriction all aspects of the Work Product as HQ SACT deems fit in its sole discretion. Contractor will not in any way use, license, or allow third parties to use the Work Product or any portion thereof without the express prior written consent of HQ SACT.
- b. Technical data and software delivered under this contract shall be marked with the number of this contract, name of Contractor and the rights transferred to HQ SACT.

### **33. Software Releases and Updates.**

- a. All software implemented on or delivered with the supplies shall be at the start of acceptance, the most recent versions or releases as available.
- b. The Contractor shall for a duration of minimum five-years (5) after acceptance, and upon their availability, offer to HQ SACT all software changes, fixes, and new releases. These shall be offered at no cost when they are offered free of charge on the commercial market, and, if charged, and consistent with paragraph 5, at prices as favorable as those extended to any Government, Agency, Company, Organization or individual purchasing under similar conditions.

**34. Inconsistency between English Version and Translation of Contract.**

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

**35. Contract Effective Date (CED).**

The effective date of the contract is the date of last signature by the contracting parties, or a specific date set forth in the contract.

**36. Enforcement.**

Failure by either party to enforce any provision of this contract will not be deemed a waiver of future enforcement of that or any other provision. The invalidity or unenforceability of any provision of this contract shall not affect the other provisions hereof, and this contract shall be construed in all respects if such invalid or unenforceable provisions were omitted.

**37. Order of Precedence.**

Any inconsistencies in the solicitation or contract shall be resolved by giving precedence in the following order:

- a. General Terms and Conditions and Purchase Order terms;
- b. Solicitation provisions if this is a solicitation;
- c. Specification/statement of work;
- d. Other HQ SACT documents, exhibits, attachments references; and
- e. Addenda to this solicitation or contract, including any license agreements for computer software, or other contract agreements.

**38. ACT Code of Conduct.**

- a. The Contractor acknowledge and agree that the Contractor and Contractor's employees, agents, representatives, Subcontractors or any other parties delivering under the contract shall recognize and conduct themselves in a manner suitable for the purpose of this contract and in accordance with Allied Command Transformation (ACT) Standard of Personnel Conduct, directives, orders, and HQ SACT internal regulations.
- b. In particular:
  - 1) The Contractor warrants that it had no unfair advantage nor a conflict of interest when successfully being awarded this contract and shall further exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of HQ SACT.
  - 2) The Contractor certifies that neither it nor its agents, employees, or representatives have offered or given an illicit gratuity whatsoever to any HQ SACT personnel, with a view to securing a contract or favourable treatment with regard to the award, modification or execution of this contract.
  - 3) The Contractor shall not commit fraud as defined by the NATO-wide strategy on the prevention, detection and responses to fraud and corruption.
  - 4) The Contractor shall take all appropriate measures to prevent and respond to sexual exploitation or Sexual Abuse (SEA) and Sexual Harassment (SH) of anyone by its employees or any other persons engaged and controlled by the Contractor, or its Subcontractor, to perform any services under the contract, including but not limited to vetting its potential employees. In the performance of the contract, the Contractor shall comply with the standards of conduct set forth in the "The NATO Policy on Preventing and Responding to Sexual Exploitation and Abuse" of 20 November 2019. In particular, the Contractor and Contractor's employees shall not engage in any conduct that would constitute sexual exploitation or sexual abuse:
    - i. Sexual Exploitation is any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Acts that constitute sexual exploitation include, but are not limited to, the exchange of money, goods or other commodities and or services, employment or any exchange of assistance that is due to the local population in exchange for sex, including sexual favours or other forms of humiliating, degrading or

exploitative behaviour. All such transactional sex, including the exploitation of the prostitution of others, is a form of sexual exploitation. Sexual relationships based on inherently unequal power dynamics are a form of sexual exploitation.

- ii. Sexual abuse is any actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Acts that constitute sexual abuse include, but are not limited to, any action or behaviour of a sexual nature that coerces, threatens or forces a person to engage in a sexual activity, or any unlawful sexual activity with a person under the age of eighteen (18).
- 5) Contractor and Contractor's employees will also not engage in any conduct that would constitute sexual or workplace harassment:
- i. Sexual harassment is any unwelcome and unwanted behaviour of a sexual nature, whether verbal or physical that is offensive and creates a hostile or intimidating work environment.
  - ii. Sexual harassment may include unwelcome sexual advances, unsolicited requests for sexual favours, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to intimidate, cause offense or humiliation to another, when such conduct interferes with work or is made a condition of employment. Sexual harassment is particularly egregious when it is linked with direct or implied threats or promises about career prospects ("quid pro quo" harassment).
  - iii. Sexual harassment may occur between persons of any gender who can be either the target or the perpetrators of Sexual harassment.
- 6) Contractor and Contractor's employees will also not engage in any conduct that would constitute workplace harassment or discrimination (i.e. gender, race or ethnic origin, religion or belief, disability, age or sexual orientation, etc.) and others counter to ACT, HQ SACT and NATO's code of conduct or related policies.
- c. In the performance of the contract, should sufficient information of conduct described above against the Contractor or Contractor's employees be brought to HQ SACT's attention, HQ SACT shall commence a review into the Contractor's or Contractor's employees' conduct in this regard in accordance with HQ SACT and/or NATO regulations, rules, policies and procedures.
  - d. The Contractor acknowledges and agrees that any breach of any of the provisions set forth in this Clause, shall constitute a breach of an essential term of the contract, and, in addition to any other legal rights or remedies available to any person, may give rise to grounds for suspension or termination of the contract. The Contracting Officer may terminate this

contract without notice if it is found, after an inquiry instituted by HQ SACT, that illicit gratuities (in the form of entertainment, gifts or others) were offered or given by the Contractor, its agents, employees or representatives to HQ SACT personnel with respect to the award of this contract or to the taking of any decision regarding its execution.

- e. In addition, nothing herein shall limit the right or obligation of HQ SACT and/or NATO to refer any alleged breach of the foregoing standards of conduct or any other terms of the contract to the relevant national authorities for appropriate (legal) action.

### **39. Entire Agreement.**

This contract sets for the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements or representations, oral or written, regarding such subject matter. HQ SACT shall not be bound by, and specifically objects to any term, condition, or other provision inconsistent with or in addition to any provision of this contract that is submitted by Contractor in any correspondence or any document unless HQ SACT specifically agrees to such provision in a written instrument signed by an authorized representative of HQ SACT.