

**Agreement no. 070.44.5750.43**

**dated mm.dd.2017**

**concerning the maintenance of six Bird Radar Systems**

**The State of the Netherlands, represented in this matter by the Minister of Defence, hereinafter referred to as "the State"**

**and ....., represented in this matter by ....., hereinafter referred to as "the Supplier"**

**Whereas:**

- **Bird strike prevention is an important issue in the Royal Netherlands Air Force**
- **The State and the Supplier have concluded Delivery Agreement 888.15.6020.00 concerning the delivery of six Bird Radar Systems**

**agree as follows:**

**Number of pages: 31**

**Number of annexes: 6**

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## Article 1 - Definitions and abbreviations

### Definitions:

Agreement:	This Agreement, including annexes.
Bird Radar System:	System, comprises of the following subsystems: bird radar with processing unit, ADS-B receiver, vehicle transponders, one portable device for the bird control user, two portable devices for Air Traffic Control and a subscription which enables communication between bird radar, transponders and portable devices.
Ceiling Price:	The price which shall not be exceeded under any circumstances.
Corrective Maintenance:	Maintenance carried out following a malfunction.
Defence Purposes:	Any use by or on behalf of the Netherlands armed forces in the widest sense of the word.
Delivery Agreement:	Agreement 888.15.6020.00, dated dd.mm.2017, concerning the delivery of 6 Bird Radar Systems.
Fixed Price:	Price that is fixed and invariable throughout the duration of the Agreement.
Modification Maintenance:	Maintenance for the purpose of continued improvement to operational usability, safety, reliability or maintainability of a particular type of equipment.
Preventive Maintenance:	Scheduled maintenance aimed to optimise the availability and reliability of a system or component, with due regard for the technical and economic lifespan of that system or component.

### Abbreviation:

CGAS, Defence Cluster:	Central Government Audit Service, Defence Cluster
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## Article 2 – Scope of the supplier’s obligations

1. Under the terms and conditions set out in this Agreement the State hereby places an order with the Supplier, who hereby accepts the same, for the:
  - a. Performance of Preventive Maintenance of the
    - i. bird radar with processing unit
    - ii. ADS-B receiver
    - iii. vehicle transponders
    - iv. portable device (tablet) for the bird control user
    - v. portable devices (tablets) for the air traffic control users
    - vi. laptop for analysis of the bird radar data
    - vii. sheltersdelivered under the terms and conditions of the Delivery Agreement. The services shall be performed as specified in ARTICLE 8 – PREVENTIVE, CORRECTIVE AND MODIFICATION MAINTENANCE;
  - b. Performance of Corrective Maintenance of the goods, stated in paragraph 1a. The services shall be performed as specified in ARTICLE 8 – PREVENTIVE, CORRECTIVE AND MODIFICATION MAINTENANCE;
  - c. Performance of Modification Maintenance, including software updates, of the goods, stated in paragraph 1a. The services shall be performed as specified in ARTICLE 8 - PREVENTIVE, CORRECTIVE AND MODIFICATION MAINTENANCE;
  - d. Provision of technical assistance, as specified in ARTICLE 9 – TECHNICAL ASSISTANCE;
  - e. Provision of logistic support analysis, as specified in ARTICLE 10 – LOGISTIC SUPPORT ANALYSIS;
  - f. Provision of the communication (3G & 4G) between the bird radar and above mentioned portable devices.
2. Under the terms and conditions set out in this Agreement the Supplier shall, at request of the State, perform damage repair of the goods mentioned in paragraph 1a, as specified in ARTICLE 11 - DAMAGE REPAIR.
3. The services provided by the Supplier shall be of that quality, that the goods, mentioned in paragraph 1a, shall continuously meet, throughout its operational service life of ten (10) years, the requirements set forth in ANNEX 1 - PROGRAMME OF REQUIREMENTS of the Delivery Agreement. The provision in the previous sentence implies that the Supplier shall take adequate measures in case of obsolescence of the goods, including its software, parts and components, mentioned in paragraph 1a.
4. Where no further requirements have been given of the services to be provided by the Supplier, these have to be of good quality and meet the customary standards of soundness, safety, suitability and workmanship and be carried out professionally and efficiently.

5. By signing the Agreement the Supplier declares that he has sufficiently familiarised himself with the objectives of the State in acquiring the aforementioned services, that the State has furnished him with adequate and accurate information with respect thereto and that the said services are suitable for the State's purposes.
6. The State's approval of and/or agreement with drawings, specifications, diagrams, documents and other information shall leave the Supplier's responsibility for the conformity of the services with the Agreement fully intact.
7. The Supplier shall point out to the State any unsuitability or defects of the Bird Radar System and/or processes furnished and/or prescribed by or on behalf of the State that the Supplier was or reasonably should have been aware of.
8. The services rendered by the Supplier under the Agreement shall be free from all and any special charges and restrictions, with the exception of charges and restrictions that have been expressly accepted by the State in writing.
9. The Supplier shall be responsible that the work performed or services rendered are in conformity with applicable public law regulations of the Netherlands, especially environmental and labour regulations.

### **Article 3 - Assignment of supplier's obligations and performance of work by third parties**

1. The Supplier's obligations under the Agreement or its legal relationship with the State may only be transferred to a third party with the State's prior consent in writing. Notwithstanding the provisions of ARTICLE 19 - DISSOLUTION, paragraph 1, this situation may arise if the Supplier is declared bankrupt or if the Supplier is granted a court ordered provisional or definitive suspension of payment.
2. The Supplier may only assign work and deliveries to third parties with the prior written consent of the State. [Permission is hereby as granted to the third parties specified in ANNEX 6 - PERFORMANCE OF WORK BY THIRD PARTIES.]
3. The consent referred to in paragraph 2 of this article shall not detract from the Supplier's full responsibility for performance of the Agreement.
4. The consent referred to in paragraphs 1 and 2 of this article may be subject to conditions. To the extent that such conditions concern third parties, the Supplier shall stipulate the same conditions vis-à-vis such third parties on behalf of the State.
5. The Supplier shall include the relevant provisions of the Agreement in any agreements to be concluded by Supplier with third parties in connection with the Agreement. The provisions referred to in the preceding sentence shall in any case include the provisions pertaining to audits, quality assurance and intellectual property. If a third party does not accept any of the relevant provisions or otherwise refuses to cooperate, the Supplier shall immediately consult with the State. The State shall decide whether such third party may nevertheless be engaged by the Supplier.
6. This article does not apply to agreements concluded by the Supplier with third parties for the procurement of items common in commercial practice and for the provision of standard services.

#### **Article 4 - Prices**

1. The prices payable in consideration for the obligations of the Supplier as described in ARTICLE 2 - SCOPE OF THE SUPPLIER'S OBLIGATIONS, paragraph 1 are stated in ANNEX 5 - PRICES. The prices stated in ANNEX 5 - PRICES are Ceiling Prices. The prices comprise all costs of performing the Agreement, the profit, the duties and taxes (with the exception of turnover tax).
2. The price for Corrective Maintenance that is the result of intentionally incorrect and improper use of the goods by the State is considered not to be included in the Ceiling Prices as stated in ANNEX 5 – PRICES. If the Supplier proves that Corrective Maintenance is necessary as a result of intentionally incorrect and improper use of the goods by the State, the State shall pay the price for aforementioned Corrective Maintenance.
3. The prices payable in consideration for the obligations of the Supplier as described in ARTICLE 2 - SCOPE OF THE SUPPLIER'S OBLIGATIONS, paragraph 2 will be agreed between parties after the State has requested the performance of the respective service and the Supplier has submitted an offer for it. The price to be agreed between parties comprises all costs of performing the respective service, the profit, the duties and taxes (with the exception of turnover tax).
4. The prices mentioned in paragraphs 1 and 2 of this article are:
  - Delivered Duty Paid (DDP), INCOTERMS 2010, resp. place of delivery;
  - Fixed Prices.

## Article 5 - Payment

1. At the end of each quarter when services in conformity with ARTICLE 2 – SCOPE OF THE SUPPLIER'S OBLIGATIONS, paragraph 1 have been properly rendered, Supplier may submit an invoice for the same based on the provisions of ARTICLE 4 - PRICES.
2. The Supplier may submit an invoice as long as the respective Ceiling price, stated in ANNEX 5 – PRICES is not exceeded. Costs, if any, which go beyond the respective Ceiling price shall be borne by the Supplier. Excepted from the provision in the previous sentence are the costs for Corrective Maintenance as stated in ARTICLE 4 – PRICES, paragraph 2.
3. When a service mentioned in ARTICLE 2 – SCOPE OF THE SUPPLIER'S OBLIGATIONS, paragraph 2 has been properly performed, the Supplier may submit an invoice for the same based on the provisions of ARTICLE 4 – PRICES.
4. The invoices referred to in paragraph 1, 2 and 3 of this article must be accompanied by ANNEX 4 - DECLARATION OF PERFORMANCE, signed by the State. Invoices shall be paid by the State within 30 days of receipt.
5. The invoice shall at least state the number and date of the Agreement, as well as the VAT identification number NL00.80.78.452.B02. The invoice shall include a description of the service(s) rendered, the name of the airbase/location involved, a currency symbol and the total amount. In addition to the Chamber of Commerce registration number, Suppliers must include their bank account number, the Bank Identification Code (BIC) and the International Bank Account Number (IBAN) of the house banker on the invoice.
6. Prices on the invoice shall be expressed in Euro. Payment shall be made in Euro.
7. Invoices shall be sent electronically to the address stated in paragraph 2 of ARTICLE 21 - CORRESPONDENCE accompanied by the required documents.
8. Only invoices without a late payment surcharge shall be accepted.
9. The State shall in no case be bound to make a payment if it has not received the invoice at the agreed address, if the invoice does not state the number and date of the Agreement or if the invoice does not state the other information or is not accompanied by the documents required pursuant to the Agreement. The State shall inform the Supplier in writing forthwith and request the submission of a correct invoice.
10. In the event of an imputable failure of the State to meet any of its obligations for payment within 30 days of receipt of the invoice, the State shall be in default without notice of default and shall owe the legal interest on the arrears for the period during which the default continues.
11. Upon verification of an invoice, if any invoice amount is found to be incorrect, the State will notify the Supplier in writing. The Supplier shall submit a corrected invoice within 30 days after aforementioned notification. If the difference is to be credited to the State, the Supplier shall owe the legal interest thereon from the date of payment of the original invoice.

## **Article 6 - Audit**

1. The State is authorised to cause an examination to be made by or on behalf of the Central Government Audit Service (CGAS), Defence Cluster of all new calculations and pricings in connection with changes of the Agreement, of the correct compliance in a general sense with the financial terms and terms having financial aspects included in the Agreement and of the acceptability of any deviations from such terms.
2. For the purposes of the examination the Supplier shall promptly grant inspection of all books and records and shall further provide all such additional information as the CGAS, Defence Cluster will deem necessary for properly carrying out its examination. The Supplier shall ensure that the information required by the CGAS, Defence Cluster can be derived from the accounting records in a simple manner.
3. When carrying out its examination the CGAS, Defence Cluster shall be authorised to call in the assistance of experts to be designated by the State. The audit is of a confidential nature and does not extend further than is necessary for the assessment of the elements mentioned in this article.
4. By signing the Agreement, the Supplier declares that, to the best of its ability, all information involving financial aspects that he has presented or will still present to the CGAS, Defence Cluster for assessment in connection with the Agreement was or will be true, complete and valid on the date of its presentation to the CGAS, Defence Cluster.
5. In addition, the CGAS, Defence Cluster may cause examinations to be carried out more or less frequently in order to help the State form a picture of the financial and economic State of affairs in the Supplier's enterprise as a whole, from the point of view of the terms and conditions agreed by the State with the Supplier and the possible risks in connection with the Agreement.

## **Article 7 - Quality assurance**

For the duration of the Agreement, the Supplier must maintain a quality-management system that demonstrably complies with ISO 9001:2015, or an equivalent quality-management system, which applies to the maintenance of radar Bird Radar Systems.

## **Article 8 - Preventive, corrective and modification maintenance**

1. Preventive Maintenance shall be carried out in accordance with the guidelines of the Supplier, as specified in ANNEX 1 – GUIDELINES PREVENTIVE MAINTENANCE.
2. In the last quarter of every year the Supplier shall submit a provisional planning concerning the Preventive Maintenance to be performed in the year to come. In order to agree upon a definite date for the performance of Preventive Maintenance the Supplier shall contact the State about 4 weeks in advance.
3. Corrective Maintenance shall be carried out upon request of the State. The date that Corrective Maintenance is carried out will be agreed between the State and the Supplier.
4. In order to improve the functionality of the Bird Radar System or to keep it up-to-date the Supplier shall perform Modification Maintenance. This Modification Maintenance concerns also software updates. The Supplier shall inform and detail the State in writing (i.e. by e-mail) about the need and/or reasons to perform the Modification Maintenance. The Modification Maintenance may only be performed if the State has confirmed this in writing.
5. In case of modifications, the procedure as stated in ARTICLE 9 – TECHNICAL CHANGES of the Delivery Agreement is applicable.
6. The order for the performance of Preventive and/or Corrective Maintenance and/or Modification Maintenance shall be confirmed by the State in writing (i.e. by e-mail) by means of ANNEX 3 – MAINTENANCE FORM. The goods to be worked on will be put at the Supplier's disposal at the agreed time.
7. As a rule, the Supplier shall carry out the Preventive and/or the Corrective Maintenance and/or Modification Maintenance at location of the State on working days between 07.00 – 23.00 hrs (location Eindhoven) or 08.00 – 17.00 hrs (all other locations of the State). For the work to be carried out on the location of the State, the provisions of ARTICLE 12 – MAINTENANCE AND OTHER WORK CARRIED OUT AT STATE-OWNED LOCATIONS are applicable.
8. In case of replacement of parts and/or components the parts and components to be applied shall be new from the factory.
9. The Supplier shall treat and/or remove all materials and parts produced by the work and to be disposed of with due observance of all the applicable statutory and regulatory rules. The Supplier shall indemnify and hold the State harmless from claims of third parties with respect thereto.

## **Article 9 - Technical assistance**

Throughout the time that the goods delivered under the Delivery Agreement are the property of the State, with a maximum of 10 years after acceptance of the last goods delivered under the Delivery Agreement, the Supplier shall have a helpdesk available. The helpdesk shall consist of technical personnel, that is able to assist and/or advise the State's personnel in case of questions about the functioning (or non-functioning) of the goods delivered under the Delivery Agreement. The helpdesk is available during office hours in the Netherlands (07.00 – 17.00 hrs) and is able to provide the State's personnel with assistance or advise requested within 4 hours. The personnel of the helpdesk shall speak Dutch or English fluently.

## Article 10 - Logistic support analysis

1. In January of each year, the Supplier shall present a Logistic support analysis report (LSA report) in respect of the previous year, which shall at least contain the following:
  - a. General information about the progress with the performance of the Agreement;
  - b. Description of the work done/ services rendered with regard to the Agreement;
  - c. Detailed overview of the deliveries made, the inspection results, the invoices submitted and the payments received with regard to the Agreement.

The Supplier is responsible for ensuring that all data in its reports and notifications is accurate.

2. With respect to paragraph 1b the following information shall be submitted:
  - a. Availability of the bird radar and processing unit:
    - For each of the 6 locations;
    - Measured over the agreed office hours for each location as laid down in ANNEX 1 - PROGRAMME OF REQUIREMENTS of the Delivery Agreement

The Supplier and the State will agree upon a breakdown (up to two levels) of the bird radar and processing unit after the Delivery Agreement has been signed.

- b. Overview of the hours spent on maintenance are broken down into:
  - Preventive Maintenance
  - Corrective Maintenance
  - Modification Maintenanceof each subsystem as stated in paragraph 1a of ARTICLE 2 – SCOPE OF THE SUPPLIER'S OBLIGATIONS

This overview should include both the actual man hours for each type of maintenance as well as the number of hours as specified in the Agreement.

### **Preventive maintenance**

Registration of applied preventive maintenance only include location, date and time.

### **Corrective maintenance**

Each Corrective Maintenance action shall result in the recording of:

- Corrective Maintenance reported by user, or identified during Preventive Maintenance
- Time and date of failure
- Time and date of subsystem return to user
- Description of the failure
- Time to repair, which has to be divided into:
  - Diagnostic Time (DT)
  - Wait for Parts (WFP)
  - Wrench Time (WT)

### **Modification Maintenance**

For modifications at least the following items shall be recorded:

- Type of modification
  - Reason for modification.
  - Expected result of the modification.
3. The (digital, EXCEL) LSA reports shall be sent to the address stated in paragraph 2 of ARTICLE 21 - CORRESPONDENCE.
  4. All correspondence shall include a reference stating the name and number of the Agreement.
  5. In addition to the above mentioned LSA reports, the State and the Supplier will organise a Logistic support analysis meeting at least once a year. During this meeting the State has the right to request adjustments of the contents of the next LSA reports.

## **Article 11 - Damage repair**

1. In case of damage to the goods as mentioned in ARTICLE 2 – SCOPE OF THE SUPPLIER' S OBLIGATIONS, paragraph 1a, caused by the State, the State may request damage repair to be performed by the Supplier.
2. In case of damage repair to be performed by the Supplier, the State will send a request for quotation to the Supplier. Such a request for quotation will at least include the following information:
  - the final date by which the Supplier shall submit the offer;
  - a description of the desired damage repair;
  - whether a valuation report has to be submitted;
  - the additional requirements for damage repair with respect to verification testing, functional testing, warranty.
3. A written proposal from the Supplier for the performance of damage repair will include at least the following information:
  - a description of the damage repair to be performed;
  - a valuation report (if requested by the State);
  - the price for performing damage repair.
4. In case of damage to the goods as mentioned in ARTICLE 2 – SCOPE OF THE SUPPLIER' S OBLIGATIONS, paragraph 1a, caused by the Supplier, the Supplier shall inform the State about the damage. The information (in writing) shall at least include a description of the damage and the final date by which the Supplier shall have repaired the damage. Damaged goods shall be repaired at the expense of the Supplier in case the Supplier caused the damage to the goods.
5. The Supplier may only perform damage repair after the State has issued an order in writing. This order will mention the date that the goods to be repaired are put at the Supplier's disposal.

## **Article 12 - Maintenance and other work carried out at State-owned locations**

1. If the Supplier is required to carry out maintenance or technical/operational support or other work at locations controlled by the State, the following obligations apply:
  - a. Working conditions:
    - the Supplier is responsible for ensuring that the personnel of the Supplier are familiar with the working-conditions regulations of the State;
    - the Supplier is responsible for ensuring that the personnel of the Supplier comply with the working-condition regulations in force;
    - the Supplier is required to inform the State of any conditions that violate the working-condition regulations in force;
    - the Supplier shall indemnify the State for damages caused by the failure of the Supplier or the personnel of the Supplier to comply with the working-condition regulations of the State or the failure of the Supplier to notify the State in good time of any violations of the working-conditions regulations.
  - b. Materials and tools:
    - if specific clothing, materials and tools are required with respect to executing the Agreement, the Supplier is responsible for providing them;
    - the State is authorised to inspect and approve the clothing, materials and tools. Such an inspection or approval or the lack thereof does not absolve the Supplier of its responsibilities for performance of the Agreement or compliance with legal regulations;
    - the Supplier is only authorised to store its materials and tools at the location controlled by the State where such storage is necessary in the opinion of the State. The Supplier bears all risk with respect to the goods stored by the Supplier on the location controlled by the State and the Supplier indemnifies the State against all liability with respect to those goods.
  - c. Order and security:
    - The Supplier is responsible for ensuring that the personnel of the Supplier comply with the guidelines and directives with respect to order and security that are issued by the State, including any security screening investigations of personnel;
    - the State is entitled to deny access to a location controlled by the State to any employee of the Supplier who is employed by the Supplier in the context of the performance of this Agreement if that employee does not grant permission for the State's representative to investigate the objects that are being brought into the location. Such a denial of access does not absolve the Supplier of the Supplier's responsibilities with respect to the performance of the Agreement;
    - every day that work is being done on a location controlled by the State, the Supplier shall ensure that the personnel of the Supplier report in and out to the security personnel on the location;
    - the Supplier is responsible for ensuring that the presence of the Supplier or the personnel of the Supplier on the location controlled by the State does not hinder the undisturbed progress of the daily operations of the State, unless otherwise agreed.

d. Work planning and reporting:

- If the State considers it to be necessary, the Supplier shall, before commencing maintenance or other work, submit a plan for the performance of the maintenance work that complies with the working-time regulations of the State;
- the plan is valid only after having been approved by or on behalf of the State. The approval of the plan does not absolve the Supplier of the Supplier's responsibilities with respect to the performance of the Agreement;
- the Supplier and the State shall, whenever one of the parties so desires, hold consultations with respect to the progress of the maintenance or other work. At the request of the State, the Supplier shall submit a written report with respect to the progress;
- working days and working hours for the Supplier shall be the normal working hours that apply to the personnel of the State on the location controlled by the State. If the State so desires, the personnel of the Supplier shall use a time card, badge or other means of control;
- the Supplier or its designee shall always be present in the immediate vicinity of the work unless absence is coordinated with an authorised representative of the State.

e. Employment relationship of the personnel of the Supplier:

- the Supplier shall ensure that the personnel who are engaged in the performance of the Agreement are able to present documentation signed by the Supplier to show that they are employed by the Supplier; the presentation of such proof of employment to be done whenever the State or its representative so asks;
- the Supplier will notify the State if it wants, for the performance of the Agreement, to engage personnel who are not in its employ. The State is entitled to refuse to allow any such personnel to work on the location controlled by the State. If the State does not object to such personnel working on the location controlled by the State, the Supplier shall ensure that such personnel are in possession of a written, signed proof of employment stating the name of the company that such personnel is employed by.

f. Permits:

- if the Supplier is required by law or regulation to have a permit authorising it to carry out maintenance or other work, the Supplier is required to inform the State of that fact and to present the permits in writing to the State before commencing the work. The Supplier is responsible for ensuring that any steps required to retain such permits are taken. The Supplier is required to inform the State of any change related to such permits. The Supplier shall inform the State of anything that could result in a violation of the law or regulation with respect to the permit;
- if any personnel who are employed in the performance of this Agreement are required by law or regulation to have a permit to carry out such work, the Supplier is required to inform the State of that obligation and to provide a copy of the permit to the State before commencing the maintenance or other work. The Supplier is responsible for ensuring that any steps required to retain such permits are taken. The Supplier will not employ any personnel to do the work if they do not have a required permit or no longer have such a permit. The Supplier shall inform the State of anything that could result in a violation of the law or regulation with respect to the permit;

- If, with respect to the performance of maintenance or other work, the State is designated by or pursuant to law or regulation as a co-employer or is assigned a responsibility as the State, it does not absolve the Supplier of its responsibilities with respect to complying with this regulation. The Supplier shall indemnify the State from claims in this regard.
- g. Obligations arising from anti-abuse legislation:
- the State is entitled to ask the Supplier and any third parties engaged by the Supplier to provide a statement concerning and allow inspection of its payment behaviour vis-à-vis the tax authorities and the social security administration agency;
  - the Supplier shall, at the State's first request, allow the State to conduct a full inspection of the administration that it is required by law or regulation to maintain with respect to the performance of the Agreement;
  - the Supplier indemnifies the State against claims by the tax authorities or the social security administration agency with respect to the performance of the Agreement.
- h. Deferral of VAT:
- if article 24b of the VAT Implementation Decree 1968 applies, the Supplier shall not invoice VAT and will state 'VAT deferred" on the invoice. if a difference of opinion arises between the State and the Supplier with respect to the implementation of this regulation, a ruling will be requested from the tax inspector with responsibility for the Supplier. The parties will act as if the regulation were applicable until a ruling has been issued.

### **Article 13 - Verification**

1. The Supplier shall render the services at the agreed place(s) at the agreed date(s).
2. The State will verify the services rendered in order to ascertain whether the Supplier has rendered these in conformity with ARTICLE 2 – SCOPE OF SUPPLIER'S OBLIGATIONS. Verification of the services must have been completed within 2 working days after they were rendered. Within 2 working days of the expiration of that period, the State shall notify the Supplier which shortcomings have been found.
3. After receiving notification from the State, the Supplier immediately starts carrying out (additional) work in such a way that the shortcomings that were identified no longer occur. The (additional) work in order to remove the shortcomings that were found shall not entail any cost for the State and shall not result in any change of the agreed place(s) and date(s) as stated in paragraph 1. After the necessary (additional) work has been carried out, the services rendered may be subjected to another verification by the State. If shortcomings are again found, the State shall be entitled to invoke any or all of the provisions of ARTICLE 18 - PERFORMANCE and ARTICLE 19 - DISSOLUTION.
4. If the Supplier has rendered the services in conformity with ARTICLE 2 – SCOPE OF SUPPLIER'S OBLIGATIONS, the State will sign ANNEX 4 – DECLARATION OF PERFORMANCE.

## **Article 14 - Warranty**

1. In case of Preventive, Corrective or Modification Maintenance and damage repair the warranty period is 6 months after return of the processed goods to the State. The State shall be authorized to exercise the rights it can derive from any defect as soon as the State holds the opinion that the processed goods do not conform to the Agreement. The State shall not be authorized to exercise such rights if the Supplier proves that the goods do conform to the Agreement. The performance of maintenance will not lead to a change of the warranty period as stated in the Delivery agreement.
2. The State may invoke paragraph 1 regardless of the moment when it discovered or reasonably should have discovered the defect provided that such moment lies within the warranty period.
3. If the State invokes paragraph 1, the resulting costs shall fall on the Supplier with the exception of any costs resulting from the fact that the goods have been moved across the national frontiers subsequent to their return.
4. The preceding paragraphs leave intact the rights or claims which the State can derive from defects both during and after the expiry of the warranty period.

## Article 15 - Penalty clause

1. If at the agreed place and within the agreed time, the Supplier has not performed the Preventive Maintenance conforming to the Agreement, the Supplier shall, without notice of warning or other prior notice, owe the State a penalty that shall be immediately due and payable in the amount of 0.1% of the price, plus Netherlands turnover tax, of the services in question for each day that the failure continues up to a maximum of 10%. If the rendering of services has become permanently impossible, the full penalty shall be immediately payable. If the Agreement is dissolved by the State for grounds other than stated in ARTICLE 19 - DISSOLUTION paragraph 1, the penalty becomes immediately payable in full.
2. If at the agreed place and within the agreed time, the Supplier has not performed the Corrective Maintenance conforming to the Agreement, the Supplier shall, without notice of warning or other prior notice, owe the State a penalty that shall be immediately due and payable in the amount of € 250, plus Netherlands turnover tax for each day that the failure continues up to a maximum of € 25,000 plus Netherlands turnover tax. If the rendering of services has become permanently impossible, the full penalty shall be immediately payable. If the Agreement is dissolved by the State for grounds other than stated in ARTICLE 19 - DISSOLUTION paragraph 1, the penalty becomes immediately payable in full.
3. If the Supplier does not properly render the services as stated in paragraph 1d, 1e or 1f of ARTICLE 2- SCOPE OF THE SUPPLIER'S OBLIGATIONS conforming to the Agreement, the State shall inform the Supplier thereof via a notice of warning. If the Supplier does not give in to the State's objections as stated in the notice of warning within two weeks, the Supplier shall owe the State a penalty in the amount of € 250.00, plus Netherlands turnover tax, of the service in question for each day that the failure continues up to a maximum of € 25,000.00. If the rendering of services has become permanently impossible, the State has the right to dissolve the Agreement in conformity with ARTICLE 19 – DISSOLUTION.
4. The State shall be entitled to payment of the penalty without prejudice to all its other rights or claims, including:
  - a. his right to claim performance of the obligation to render services which conform to the Agreement (in so far as performance has not become permanently impossible);
  - b. his right to claim damages to the extent that the damages exceed the amount of the penalty.
5. The penalty shall be set off against any amounts owed by the State whether or not the claim for payment thereof has passed to a third party.

## **Article 16 - Intellectual property**

1. The services to be rendered under the Agreement shall be free of all restrictions arising from patents, copyrights or other intellectual property rights, with the exception of the restrictions that have been expressly accepted by the State in writing. The Supplier shall indemnify and hold the State harmless against any claims of third parties in respect thereof. If the State is held liable by a third party, the State shall inform the Supplier in writing immediately and make available to the Supplier all information it has at its disposal to enable the Supplier to assess the third party's claim and to take measures or other types of action, if required.
2. The preceding paragraph of this article does not apply to restrictions inherent in a design furnished by the State which must be followed by the Supplier. The State will indemnify the Supplier against claims from third parties, unless the Supplier has accepted them.
3. The indemnification referred to in paragraph 1 of this article shall apply subject to the condition that, without having received written permission in advance, the State shall not make any statement, promise, admission of rights or facts, either verbally or in writing, or give any undertaking to or enter into any arrangement with the third party that is alleging the intellectual property infringement. The preceding sentence shall not apply to witness statements in court proceedings by or on behalf of the State or the party to which the State has granted the use of the goods. The indemnification by the State Authority under paragraph 2 of this article shall be subject to the same conditions.
4. The Supplier grants the State a non-exclusive, transferable right of use for Defence Purposes, free of charge, of the information made available to the State in connection with the Agreement, including software (& software updates) and documentation.
5. The Supplier will use any knowledge contributed by the State for the purposes of the Agreement exclusively in the context of agreements to be concluded with the State, unless such knowledge is public knowledge or can be obtained from other sources without any restrictions on the disposal thereof.

**Article 17 - Non-imputable failures (force majeure)**

To the extent that a failure to perform an obligation cannot be imputed to the Supplier, he shall not be in default nor be liable for damages nor owe any penalty, provided that he has notified the State of the failure and the reason thereof without delay and in any case within the period agreed for the performance of the obligation.

## **Article 18 - Performance**

1. If services that meet the terms of the Agreement are not rendered at the agreed place and the agreed time, the State can require the Supplier to render the services properly. The costs entailed thereby shall be borne by the Supplier.
2. If the Supplier, after receiving a demand notice to such effect from the State, fails to comply with a demand as referred to in paragraph 1 of this article within a reasonable period to be granted for compliance in the demand notice, the State shall be authorised to cause the rendering of services by a third party without prior leave of the court being required, and to recover the costs thereof from the Supplier.
3. The preceding paragraphs of this article do not prejudice any other rights or claims which the State can derive from any failure to perform an obligation.

## Article 19 - Dissolution

1. Without prejudice to all other rights or claims the State may dissolve the Agreement in whole or in part by notice in writing if:
  - a. the Supplier is in default with meeting its obligations arising from the Agreement unless the shortcoming, in view of its specific nature or minor significance, does not justify such dissolution with all the consequences thereof;
  - b. the Supplier is temporarily or permanently unable to meet any obligation that can be claimed under the Agreement;
  - c. the Supplier is declared bankrupt or granted a court-ordered suspension of payments to creditors, whether temporarily or otherwise;
  - d. any benefit is or has been offered or provided by the Supplier or any of its employees to any person forming part of an organ of the State or to any of its employees or representatives.
2. The State is entitled to dissolve the Agreement by giving written notice if in a civil action the court orders the State to do so, or if it is apparent that the State will be ordered by the court to do so, after being called on by a third party to dissolve the Agreement, in which case the Supplier shall receive compensation from the State for any costs reasonably incurred and any obligations reasonably entered into by the Supplier, in so far as these cannot be reversed.
3. If the Agreement is dissolved pursuant to any provision of paragraph 1 or 2 of this article, the Supplier shall refund to the State any and all amounts already paid to him, increased by the legal interest on such amounts from the day on which they were paid. If only part of the Agreement is dissolved, the liability to repay shall exist only with respect to the amounts that relate to the dissolved part of the Agreement.
4. The State may also suspend the performance of the Agreement in whole or in part or dissolve the Agreement in whole or in part in other situations than those provided for by law or in paragraph 1 or 2 of this article, provided that in such cases the State compensates the Supplier for the loss suffered by the latter as a result thereof.

## **Article 20 - Disputes**

1. All disputes in connection with the Agreement or related agreements shall be settled by the competent court in The Hague, the Netherlands.
2. Paragraph 1 of this article shall leave intact:
  - a. the right of the State to choose to have a dispute settled by the court having jurisdiction pursuant to the law;
  - b. the right of the parties to conclude a submission agreement referring a dispute to arbitration.

## Article 21 - Correspondence

1. Unless otherwise provided elsewhere, the Supplier shall send all correspondence relating to the Agreement to: [bhw.heetkamp@mindef.nl](mailto:bhw.heetkamp@mindef.nl).
2. Unless otherwise provided elsewhere, the Supplier shall send all correspondence relating to the performance of the Agreement to: [LCW.PM.ATCenC2@mindef.nl](mailto:LCW.PM.ATCenC2@mindef.nl) and [LPW.vd.Heijden.01@mindef.nl](mailto:LPW.vd.Heijden.01@mindef.nl).
3. Unless otherwise provided elsewhere, the Supplier shall send all correspondence relating to the performance of Preventive and Corrective Maintenance to the point of contact that is stated in ANNEX 3 – MAINTENANCE FORM or order.
4. The Supplier shall send invoices to: [FABK.Digitale.Facturen@mindef.nl](mailto:FABK.Digitale.Facturen@mindef.nl) / [FABK.Buitenlandse.Facturen@mindef.nl](mailto:FABK.Buitenlandse.Facturen@mindef.nl)
5. Unless otherwise provided elsewhere, the State shall send all correspondence relating to the Agreement to:
6. The parties shall state the number and name of the Agreement on all correspondence.
7. All communications by one party to the other party of any nature whatsoever in connection with the Agreement shall be valid only if made in writing.

## Article 22 - Liability

1. A party that imputably fails to comply with its obligations is liable towards the other party for any damage incurred or to be incurred up to a maximum of ..[amount of article 4, par. 1]

The limitation of liability referred to above does not apply:

- a. in case of claims for compensation made by third parties resulting from death or injury;
  - b. in case of wilful misconduct or gross negligence on the part of the party that is imputably in breach or its personnel, subordinates or auxiliary persons;
  - c. in case of infringement of intellectual property rights.
2. A party that imputably fails to comply with its obligations indemnifies and holds harmless the other party against any and all claims for compensation made by third parties resulting from the failure to comply with its obligations referred to in paragraph 1 of this article.
  3. A party can never be held liable for consequential loss or any other indirect loss or damages. Consequential loss or other indirect loss or damages means loss which was reasonably not objectively foreseeable as a result from acts or omissions on the part of the party to which the loss can be imputed.

## **Article 23 - Export control**

1. The Supplier is responsible for submitting applications, or for having applications submitted for the required import and export permits, based on the applicable export control legislation and regulations. The State is responsible for ensuring that the use and/or the onward supply of delivered goods and/or services and/or information by the State complies with all applicable export control legislation and regulations.
2. If so required by the Supplier, the State shall immediately issue a so-called End User statement to the Supplier related to the end use and/or destination of the delivered goods and/or services.
3. The inability to deliver the Bird Radar System and/or to provide the services on the part of the Supplier or subcontractors of the Supplier due to restrictions based on export control legislation and regulations, including decisions based on the aforementioned legislation and regulations, shall solely be regarded as a form of force majeure as described in ARTICLE 17 - NON-IMPUTABLE FAILURES (FORCE MAJEURE) in the Agreement, if the Supplier conducted an adequate investigation into the possibilities for export prior to the Agreement, or if it is the result of a decision of the competent authority and/or relevant government body, or if it is the result of an amendment to export control legislation and/or regulations and/or policy of the government or an international organisation based on such legislation and regulations established after the Agreement was concluded.

#### **Article 24 - Realization, taking effect and duration of the agreement**

1. This Agreement comes to realization on the date it is signed by both parties and takes effect after acceptance of the first delivery of the Bird Radar System by the State in accordance with ARTICLE 10 – DELIVERY, ACCEPTANCE, OWNERSHIP AND RISK of the Delivery Agreement and has a duration of 60 months after the date of acceptance of the last delivery of 6 bird radar Bird Radar Systems.
2. The State has the right to extend this Agreement for a period of 60 months. When the State intends to exercise this right, the State will confirm this in writing not later than 6 months before the termination date of this Agreement. If the State does not exercise its right of extension, this Agreement automatically ends 60 months after the date of acceptance of the last delivery of 6 Bird Radar Systems.

## **Article 25 - General**

1. Amendments to the Agreement shall be valid only if they have been agreed in writing between the State and the Supplier.
2. In the event of a conflict between the contents of this Agreement and agreement 888.15.6020.00, the contents of agreement 888.15.6020.00 shall prevail.
3. In the event of a conflict between the contents of the annexes and the provisions of the articles of the Agreement, the provisions of the articles shall prevail.
4. The Agreement is governed by Dutch law.
5. The general sales conditions of the Supplier shall not apply to the Agreement.
6. The application of the "United Nations Convention on contracts for the International Sale of Goods" (the "Vienna Convention on the Sale of Goods") is excluded.
7. All matters not provided for in the Agreement shall be governed by the regular rules of law.

The State of the Netherlands

For and on behalf of the State of the Netherlands

The Director of the Defence Materiel Organisation

For and on behalf of the Director of the Defence Materiel Organisation

The Supplier

## **Annex**

- 1 Guidelines Preventive Maintenance**  
To be provided by the Supplier. These guidelines are part of the quotation
  
- 2 Description of Corrective and Modification Maintenance**  
To be provided by the Supplier. The description is part of the quotation
  
- 3 Maintenance form**  
To be added later
  
- 4 Declaration of performance**  
To be added later
  
- 5 Prices**  
To be provided by the Supplier. The prices are part of the quotation
  
- 6 Performance of work by third parties**  
To be added later, based on the information to be supplied in the quotation