Section V. Special Conditions of Contract
## Section V. Special Conditions of Contract

<table>
<thead>
<tr>
<th>GCC Clause</th>
<th>Special Conditions of Contract</th>
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<tbody>
<tr>
<td>1.1(g)</td>
<td>The PROCURING ENTITY is Department of National Defense / Armed Forces of the Philippines.</td>
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<tr>
<td>1.1(i)</td>
<td>The Supplier is ________________________________</td>
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<td>1.1(j)</td>
<td>The Funding Source is: The Government of the Philippines (GOP) through the Revised AFP Modernization Program Trust Fund in the amount of FIVE BILLION NINE HUNDRED SEVENTY SIX MILLION PESOS (PhP 5,976,000,000.00) being the Approved Budget for the Contract (ABC).</td>
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<td>1.1(k)</td>
<td>The Delivery Site is: 420TH Supply Wing, PAF, Clark Air Base, Pampanga, Philippines.</td>
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<tr>
<td>5.1</td>
<td>The PROCURING ENTITY’s address for Notices is: Office of the DND Special Bids and Awards Committee 1 Basement Right Wing, DND Building Camp General Emilio Aguinaldo, Quezon City, Philippines 1110 Tel Nr: 911-6001 Loc 8414 Fax Nr: (632) 421-3531</td>
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<td>The Supplier’s address for Notices is: ________________________________</td>
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<td>6.2</td>
<td>Delivery and Documents – For purposes of the Contract, “EXW”, “FOB”, “FCA”, “CIF”, “CIP”, “DDP”, “DAP” and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of INCOTERMS published by the International Chamber of Commerce, Paris. The Delivery terms of this Contract shall be as follows: The delivery terms applicable to the contract is “Delivered At Place” (DAP) and delivered to 420TH Supply Wing, Clark Air Base, PAF, Pampanga, Philippines in accordance with INCOTERMS.</td>
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<td></td>
<td>For GOODS supplied from abroad</td>
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Upon shipment, the Supplier shall notify the PROCURING ENTITY and the insurance company by cable the full details of the shipment, including Contract Number, description of the GOODS, quantity, vessel, bill of lading number and date, port of loading, date of shipment, port of discharge etc. Upon delivery to the Project Site, the Supplier shall notify the PROCURING ENTITY and present the following documents as applicable with the documentary requirements of any letter of credit issued taking precedence:

(i) Original and four copies of the Supplier’s invoice showing GOODS’ description, quantity, unit price, and total amount;

(ii) Original and four copies of the negotiable, clean shipped on board bill of lading marked “freight pre-paid” and five copies of the non-negotiable bill of lading;

(iii) Original Supplier’s factory inspection report;

(iv) Original and four copies of the Manufacturer’s and/or Supplier’s warranty certificate;

(v) Original and four copies of the certificate of origin (for imported GOODS);

(vi) Delivery receipt detailing number and description of items received signed by the PROCURING ENTITY’s representative at the Project Site;

(vii) Certificate of Acceptance/Inspection Report signed by the PROCURING ENTITY’s representative at the Delivery Site; and

(viii) Four copies of the Invoice Receipt for Property signed by the PROCURING ENTITY’s representative at the Delivery Site.

(ix) Four (4) copies of permanent export license for controlled military items, if the GOODS is a controlled military items in the originating country; and

(x) Certificate and four (4) copies of Pre-Delivery Inspection by the Procuring Entity (if applicable).

For purposes of this Clause the PROCURING ENTITY’s Representative at the Delivery Site is:

BGEN RAUL L DEL ROSARIO AFP
Project Manager, Project Management Team
Long Range Patrol Aircraft Acquisition Project

Incidental Services –

The Supplier is required to provide all of the following services, including additional services, if any, as specified in the Section VI. Schedule of Requirements:

(a) six (6) members of PMT shall be part of the flight evaluation of the proposed GOODS.
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(b) repair of defective spare part/item either of the aircraft or sensors, should not take more than forty-five (45) calendar days after the item is sent back to the SUPPLIER.

(c) furnishing of tools required for assembly and/or maintenance of the supplied GOODS;

(d) furnishing of a detailed operations and maintenance manual for each appropriate component of the supplied GOODS;

(e) performance or supervision or maintenance and/or repair of the supplied GOODS, for thirty (30) days, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and

(f) training for a given period as deemed necessary by the end user at the Supplier’s plant and/or on-site for not less than fifty (50) personnel in the assembly, start-up, operation, maintenance, and/or repair of the supplied GOODS shall be completed at least thirty (30) calendar days prior to the delivery of the first Long Range Patrol Aircraft.

(g) supplier to ensure availability of aircraft and sensors spares for the next twenty (20) years

The Contract price for the GOODS shall include the prices charged by the Supplier for incidental services and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

Spare Parts –
The Supplier is required to provide all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

(a) such spare parts as the PROCURING ENTITY may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under this Contract; and

(b) in the event of termination of production of the spare parts:
   i. advance notification to the PROCURING ENTITY of the pending termination, in sufficient time to permit the PROCURING ENTITY to procure needed requirements; and

   ii. following such termination, furnishing at no cost to the PROCURING ENTITY, the blueprints, drawings, and specifications of the spare parts, if requested.

The spare parts required are listed in Section VI. Schedule of Requirements and the cost thereof are included in the Contract Price.

The Supplier shall carry sufficient inventories to assure ex-stock
supply of consumable spares for the GOODS for a period of twenty (20) years.

Other spare parts and components shall be supplied as promptly as possible, but in any case within thirty (30) calendar days upon placing the order.

Packaging (as applicable) –

The Supplier shall provide such packaging of the GOODS as is required to prevent their damage or deterioration during transit to their final destination, as indicated in this Contract. The packaging shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging case size and weights shall take into consideration, where appropriate, the remoteness of the GOODS’ final destination and the absence of heavy handling facilities at all points in transit.

The packaging, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified below, and in any subsequent instructions ordered by the PROCURING ENTITY.

The outer packaging for items that will not be delivered simultaneously with/integrated to the aircraft must be clearly marked on at least four (4) sides as follows:

- Name of the PROCURING ENTITY
- Name of the Supplier
- Contract Description
- Final Destination
- Gross weight
- Any special lifting instructions
- Any special handling instructions
- Any relevant HAZCHEM classifications

A packaging list identifying the contents and quantities of the package is to be placed on an accessible point of the outer packaging if practical. If not practical the packaging list is to be placed inside the outer packaging but outside the secondary packaging.

Insurance –

The GOODS supplied under this Contract shall be fully insured by the Supplier in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery. The GOODS remain at the risk and title of the Supplier.
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until their final acceptance by the PROCURING ENTITY.

Insurance coverage or indemnification for the not less than fifty (50) personnel that will undergo training at the Supplier’s plant and/or on-site in the assembly, start-up, operation, maintenance, and/or repair of the supplied GOODS shall be in the amount equivalent to PHP 1,000,000.00 per personnel in accordance with item Nr 2a, Section VI (Schedule of Requirements).

Transportation (As applicable) –

Where the Supplier is required under Contract to deliver the GOODS CIF, CIP, DDP, DAP, or DAT, transport of the GOODS to the port of destination or such other named place of destination in the Philippines, as shall be specified in this Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

Where the Supplier is required under this Contract to transport the GOODS to a specified place of destination within the Philippines, defined as the Project Site, transport to such place of destination in the Philippines, including insurance and storage, as shall be specified in this Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.

Where the Supplier is required under Contract to deliver the Goods CIF, CIP, DDP, DAP, or DAT, Goods are to be transported on carriers of Philippine registry. In the event that no carrier of Philippine registry is available. Goods may be shipped by a carrier which is not of Philippine registry provided that the supplier obtains and presents to the Procuring Entity certification to this effect from the nearest Philippine consulate to the port of dispatch. In the event that carriers of Philippine registry are available but their schedule delays the Supplier in its performance of this Contract the period from when the Goods were first ready for shipment and the actual date of shipment the period of delay will be considered force majeure in accordance with GCC Clause 22.

The PROCURING ENTITY accepts no liability for the damage of GOODS during transit other than those prescribed by INCOTERMS for DDU Deliveries. In the case of GOODS supplied from within the Philippines or supplied by domestic Suppliers risk and title will not be deemed to have passed to the PROCURING ENTITY until their receipt and final acceptance at the final destination.

In the instance wherein the GOODS shall be delivered through ferry flights, the PROCURING ENTITY accepts no liability for the damage and loss of the GOODS during transit and prior to acceptance despite the fact that a Pre-Delivery Inspection was conducted by the PROCURING ENTITY. The SUPPLIER shall bear all the costs and risks of transport prior to acceptance.
### Patent Rights –

The Supplier shall indemnify the PROCURING ENTITY against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the GOODS or any part thereof.

The Supplier shall provide complete listing of Contractor, Subcontractor and Third Party Intellectual Properties developed under the contract, which should be owned by the DND/AFP.

### Warranty –

Warranty to be applied will be based on the running hours or number of years whichever is longer in terms of time frame as specified by the end user unless the warranty as provided by the supplier is longer for all systems and equipment such as but not limited to:

- a) Aircraft
- b) Aircraft Systems and Components
- c) Mission Sensor Systems and Components
- d) Systems Integration
- e) Mission Support Facility Components

If no warranty is prescribed by the supplier, the end user shall determine the appropriate warranty for machineries and motors.

The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity.

### For the given scope of work in this Contract as awarded, all bid prices are considered fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB in accordance with Section 61 of R.A. 9184 and its IRR.

### Payment shall be made only upon submission of the required auditorial document and issuance of Advise of Payment by the Secretary, Department of National Defense or his duly authorized representative as provided for under Section 12 of DND DO #12/ Executive Order # 423.

The PROCURING ENTITY shall facilitate the opening the Irrevocable Letter of Credit (L/C) in favor of the supplier in accordance with the terms provided below in an Authorized Government Depository Bank after the approval of the Contract by the Secretary of National Defense and the issuance of Notice of Cash Allocation by the
Secretary of Budget and Management, to wit:.

(a) **Mode of Transmission**: Full cable telex/S.W.I.F.T;

(b) **Advising and/or Confirmation**: L/C may be advised and/or confirmed by any bank to be identified by the Supplier, at the latter's sole expense;

(c) **Payee Bank**: The L/C draft (if any) shall be drawn on the confirming Bank;

(d) **Beneficiary**: Inset name and address of Supplier with Point of Contact;

(e) **Currency and Amount of L/C**: L/C shall be in Philippine Peso or in foreign denominated currency, in an amount equivalent to the Total Contract Price;

(f) **Expiration Date**: **1,095 calendar days** from date of receipt of the NTP;

(g) **Payment Scheme/Drawdown Documentary Requirements**: Payment shall be made to the Supplier for every partial delivery of the GOODS made in accordance with the Section VI. Schedule of Requirements, and the submission or presentation of the following documents:

   i. Supplier’s invoice showing GOODS’ description, quantity, unit price, and total amount;

   ii. Negotiable, clean shipped on board Bill of Lading marked “Freight Pre-Paid” and/or “Non-Negotiable Bill of Lading” or “Airway Bill”;

   iii. Certificate of Initial Inspection by the Project Management Team (PMT);

   iv. Certification that the GOODS delivered passed the Final Acceptance Test and Evaluation issued by the AFP TIAC;

   v. Manufacturer’s and/or Supplier’s Warranty Certificate;

   vi. Certificate of Origin (for imported GOODS);

   vii. Delivery Receipt detailing number and description of items received signed by the Procuring Entity’s representative at the Delivery Site;

   viii. Test / Trials Results (For all Testing/ Trials to be conducted)

   ix. Certificate of Final Acceptance by the Technical Inspection and Acceptance Committee (TIAC);

   x. AFP Management and Fiscal Office (AFP MFO) Inspection Report;

   xi. SAO Acceptance Report;
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<td>xii.</td>
<td>Copy of Insurance Policy/ Paid Premium;</td>
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<td>xiii.</td>
<td>Training Certificates;</td>
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<tr>
<td>xiv.</td>
<td>Copy of Warranty Security as per SCC Clause 15; and</td>
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<td>xv.</td>
<td>Advice of Payment by the Secretary of National Defense or his authorized representative.</td>
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<td>xvi.</td>
<td>The L/C shall be payable at Sight.</td>
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(h) Description of Goods: **Two (2) units of Long Range Patrol Aircrafts including its Sensors, Sensors Integration, Mission Support Facilities and ILS Package:**

(i) Delivery Terms: Delivered At Place (DAP)

(j) Latest Date of Delivery: **1,035 days** reckoned from the date of receipt of the NTP

(k) Shipment: Complete and/or Partial Shipment; Transshipment is acceptable.

(l) Negotiability: The L/C shall be irrevocable;

(m) Liquidated Damages: Liquidated damages shall be imposed in Accordance with the GCC clause 19 of the Contract.

(n) Other Instructions:

  i. The cost of the opening, as well as advising, confirmation, extension, and/or amendment, if any, of the L/C, and other bank charges shall be for the account of the Supplier;

  ii. The L/C must be in English;

  iii. No boycott or restrictive language;

10.4 No further instructions.

12 The provisions of Republic Act No. 10349 shall govern the taxes and custom duties involved in this project.

11 Pursuant to Memorandum Order No. 15 dated 09 May 2011, an advance payment not to exceed fifteen percent (15%) of the contract amount shall be allowed and paid within sixty (60) calendar days from signing of the contract upon submission of an irrevocable letter of credit or bank guarantee issued by a universal or commercial bank. The letter of credit or bank guarantee shall be for an equivalent amount, remain valid until delivery of the goods and accompanied by a claim for advance payment.

13.1 No further instructions.
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<td>13.4</td>
<td>No further instructions.</td>
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<td>13.4(c)</td>
<td>No further instructions.</td>
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**The inspections and tests that will be conducted are:**

- **a)** Initial Inspection, Flight Testing, Mission Sensors Testing, and Integration at the Supplier’s facility in state address prior to the shipment of the GOODS to the Philippines to be conducted by at least six (6) members composed of Test Pilot, Aircraft Crew Chief and Sensors operators. The costs include all expenses related to the travel such as but not limited to pre-departure expenses, airfares, travel insurance, board and lodging and meals shall be shouldered by the supplier.

- **b)** Final Acceptance at the 420th Supply Wing, Clark Air Base Pampanga to be conducted by the Technical Inspection and Acceptance Committee (TIAC) in accordance with the procedure specified in Section IX Test and Acceptance Procedure, para 2 (Acceptance Checklist). The PROCURING ENTITY shall issue the following documents after the successful completion of the Final Acceptance Test:
  1. Certificate of Final Acceptance by the TIAC;
  2. AFP MFO Inspection Report;
  3. SAO Acceptance Report;
  4. Advice of Payment from the Secretary of National Defense or his authorized official representative.

- **c)** All costs incidental to inspections and tests, if any, shall be borne by the SUPPLIER. All costs, such as POL requirements and other incidental expenses relative to the final inspection and testing as discussed above shall be borne by the Supplier including the transportation, board and lodging, and meals of the PAF PMT, TWG and TIAC.

- **d)** The SUPPLIER shall furnish the inspectors all the reasonable facilities and assistance, including access to drawings and production dates at no charge to the PROCURING ENTITY.

- **e)** The PROCURING ENTITY may reject any GOODS or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected GOODS or parts thereof at no cost to the PROCURING ENTITY, and shall repeat the test and/or inspection, at no cost to the PROCURING ENTITY, upon giving a notice pursuant to Clause 5.

- **f)** The SUPPLIER agrees that neither the execution of a test and/or inspection of the GOODS or any part thereof, nor the attendance by the PROCURING ENTITY or its representative,
Shall release the SUPPLIER from any warranties or other obligations under this Contract.

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<tr>
<td>17.3 Two (2) years or one thousand five hundred (1500) flying hours warranty on the aircraft and two (2) years warranty on sensors, sensors integration, mission support facility and spare parts from the issuance of the certificate of final acceptance.</td>
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<td>17.4 and 17.5 The period for correction of defects in the warranty period is forty-five (45) calendar days. The warranty should cover any and all defects that may be discovered during the warranty period of two years. The proponent is required to provide a temporary replacement unit or to replace the whole system itself immediately or not later than one month which will be used until the equipment is repaired in the proponent’s facility at no cost to the PAF.</td>
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<td>19.1 The applicable rate is one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay. The maximum deduction shall be ten percent (10%) of the amount of contract. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the PROCURING ENTITY shall rescind the contract, without prejudice to other courses of action and remedies open to it.</td>
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<td>20.4 In the case of a dispute between the PROCURING ENTITY and the SUPPLIER, the dispute shall be resolved in accordance with Republic Act 9285 (“R.A. 9285”), otherwise known as the “Alternative Dispute Resolution Act of 2004.”</td>
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<tr>
<td>21.1 Non-Disclosure Agreement The supplier shall execute a non-disclosure agreement in favor of the Philippine Government wherein the supplier shall warrant that all information and communication, whether oral or written, secured in the course of negotiation with the Department of National Defense/ Armed Forces of the Philippines (DND/AFP) shall not be divulged or disclosed to any other person or entity, without the express written consent of the DND/AFP. It includes non-disclosure of, but not limited, to the following: a) Terms of Reference, b) Technical Specifications of the Project, c) Annual Procurement Plan and related Project Procurement Management Plan and d) Proposals.</td>
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