



**BRAZILIAN ARMY COMMISSION**

4632 Wisconsin Avenue N.W., Washington, D.C. 20016-4622

Phone: (202) 244-5010 Fax: (202) 895-6395

**PURCHASE ORDER**

01. Contract Number: 1159/2016		02. Date: February 21, 2017	
03. Firm (EX1605282) PADTEC NORTH AMERICA LLC 201 St. Charles Avenue Suite 114-474 New Orleans, LA 70170 - United States Tel: +1-407-924-5666		Contact Name: MANUEL ANDRADE Title/Position: CEO E-Mail: manuel.andrade@padtec.com Fax:	
04. Request for Quotation Number RFQ-0121/2016		05. Seller's Quotation Quotation No. PROP 2016-3041 V1, dated	
06. Condition of Price DAT Airport of Manaus, Amazonas, Brazil		07. Delivery Date Final Material Delivery on April 25, 2017. Delivery of services no later than May 15, 2017.	
08. Terms of Payment a. Against Invoice - NET 30 b. Partial payment permitted		09. Documents for Payment See instructions in Clause 10 and 13 of the enclosed Terms & Conditions.	
10. Marking, Delivery Address, and Final Consignee BA AP LOG EX/DIEM - (CNPJ: 00.394.452/0475-92) Av. Brasil, 25540 - Vila Militar - Deodoro Rio de Janeiro, RJ 21615-331-Brazil Tel: 55-21-2457-4302 - Fax: 55-21-2457-4918 PC Nr 1159/2016 OMD: 4° C T A			
11. Shipping Instructions See instructions in Clauses 6, 9, 10 and 12 of the enclosed Terms & Conditions.			
We are ordering the following for the Brazilian Army Commission (BAC). Both, the above firm (hereinafter called the SELLER), and the BAC (hereinafter called the BUYER) agree to the terms and conditions as set forth in the attached TERMS and CONDITIONS. Please return the signed Contract and Acknowledgement within 10 business days.			

12. List of Items						
Item	Part Number, NSN and Description	Unit	Quantity	Unit Price - USD	Total Price - USD	
1	PN: NSN: DWDM Equipment solution for the links between MANAUS/ MANACAPURU, in the state of Amazonas, Brazil, w/ SW licenses if applicable. The link must be delivered fully functional, complying with all technical specifications contained in this RFQ. BAC Ref DCT-059/2016. Item No: 1	UN	1	170,000 0000	170,000 00	
2	PN: NSN: DWDM Equipment solution for the links between MANACAPURU - COARI, in the state of Amazonas, Brazil, w/ SW licenses if applicable. The link must be delivered fully functional, complying with all technical specifications contained in this RFQ.	UN	1	290,000 0000	290,000 00	

**BRAZILIAN ARMY COMMISSION**

Firm: PADTEC NORTH AMERICA LLC	Contract Nr.: 1159/2016	Date: Feb 21, 2017
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12. List of Items

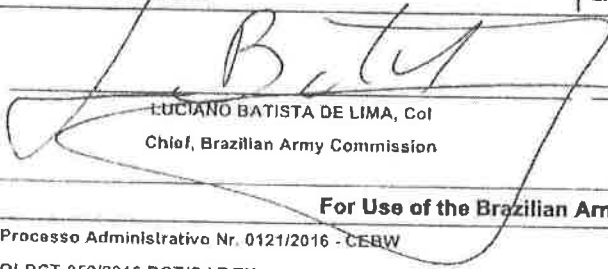
Item	Part Number, NSN and Description	Unit	Quantity	Unit Price - USD	Total Price - USD
	BAC Ref. DCT-059/2016, Item No: 2				
3	PN: NSN: DWDM Equipment solution for the links between MANAUS - NOVO AIRAÓ, in the state of Amazonas, Brazil, w/ SW licenses if applicable. The link must be delivered fully functional, complying with all technical specifications contained in this RFQ. BAC Ref. DCT-059/2016, Item No: 8	UN	1	160,000.0000	160,000.00
4	PN: NSN: DWDM Equipment solution for the links between MANAUS - ITACOATIARA, in the state of Amazonas, Brazil, w/ SW licenses if applicable. The link must be delivered fully functional, complying with all technical specifications contained in this RFQ. BAC Ref. DCT-059/2016, Item No: 12	UN	1	164,500.0000	164,500.00
5	PN: NSN: INSTALLATION SERVICES FOR THE LINKS BETWEEN MANAUS - MANACAPURU. The "Services" comprises the following: _ international transport and cargo insurance from country of origin to Manaus, AM - Brazil. _ onsite installation services executed in Manaus, AM. _ preparation of the equipment inside the site containers before moving them to their destinations. _ configuration services. _ final onsite installation and commissioning of the equipment. _ knowledge transfer after the full site installation at its destination. - operation assisted will be necessary for 3 months on 8x5. BAC Ref. DCT-059/2016, Item No: 15	UN	1	23,000.0000	23,000.00
6	PN: NSN: INSTALLATION SERVICES FOR THE LINKS BETWEEN MANACAPURU - COARI. The "Services" comprises the following: _ international transport and cargo insurance from country of origin to Manaus, AM - Brazil. _ onsite installation services executed in Manaus, AM. _ preparation of the equipment inside the site containers before moving them to their destinations. _ configuration services. _ final onsite installation and commissioning of the equipment. _ knowledge transfer after the full site installation at its destination. - operation assisted will be necessary for 3 months on 8x5. BAC Ref. DCT-059/2016, Item No: 16	UN	1	26,000.0000	26,000.00
7	PN: NSN: INSTALLATION SERVICES FOR THE LINKS BETWEEN MANAUS / NOVO AIRAÓ. The "Services" comprises the following: _ international transport and cargo insurance from country of origin to Manaus, AM - Brazil. _ onsite installation services executed in Manaus, AM. _ preparation of the equipment inside the site containers before moving them to their destinations. _ configuration services. _ final onsite installation and commissioning of the equipment. _ knowledge transfer after the full site installation at its destination. - operation assisted will be necessary for 3 months on 8x5. BAC Ref. DCT-059/2016, Item No: 22	UN	1	23,000.0000	23,000.00
8	PN: NSN:	UN	1	24,000.0000	24,000.00

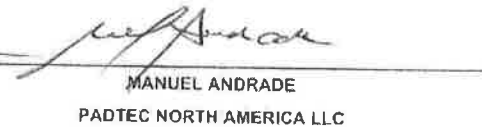
**BRAZILIAN ARMY COMMISSION**

<b>Firm:</b> PADTEC NORTH AMERICA LLC	<b>Contract Nr.:</b> 1159/2016	<b>Date:</b> Feb 21, 2017
INSTALLATION SERVICES FOR THE LINKS BETWEEN MANAUS - ITACOATIARA. The "Services" comprises the following: _ international transport and cargo insurance from country of origin to Manaus, AM - Brazil. _ onsite installation services executed in Manaus, AM. _ preparation of the equipment inside the site containers before moving them to their destinations. _ configuration services. _ final onsite installation and commissioning of the equipment. _ knowledge transfer after the full site installation at its destination. - operation assisted will be necessary for 3 months on 8x5. BAC Ref. DCT-059/2016, Item No: 26		

<b>TOTAL ITEMS IN THIS CONTRACT: 8</b>	<b>SUB-TOTAL</b>	880,500.00
	<b>Discount</b>	0.00
	<b>Estimated Freight Charges</b>	0.00
	<b>Estimated Insurance Charges</b>	0.00
	<b>TOTAL AMOUNT</b>	880,500.00

<b>Points of Contact</b>	
<b>Contract Issuance in the USA</b>	<b>Request Issuance in Brazil</b>
Vitoria Macedo Tel: 202 895-6270 Email: vitoria@cebw.org	1º Ten Fontenelle Tel: 61-3415-7905 Email: fontenelle.gabriel@eb.mil.br
<b>Contract Follow-up in the USA</b>	<b>Contract Follow-up in Brazil</b>
Mirela Lima Tel: 202 895-6262 Email: mirela@cebw.org	1º Ten Nuno Alves Tel: 61-3659-1088 Email: nunoalves.rocha@eb.mil.br

  
 LUCIANO BATISTA DE LIMA, Col  
 Chief, Brazilian Army Commission

  
 MANUEL ANDRADE  
 PADTEC NORTH AMERICA LLC

<b>For Use of the Brazilian Army Commission Only</b>		
Processo Administrativo Nr. 0121/2016 - CEBW		
QI-DCT-059/2016-DCT/C I T E X		
Lei Nr. 10520/02		
Modalidade de Licitação: B - Pregão Eletrônico		
Contrato de Câmbio/ROF	141877904	Data: Dez 29, 2016
		Tipo: 4



**MINISTRY OF DEFENSE  
BRAZILIAN ARMY  
BRAZILIAN ARMY COMMISSION IN WASHINGTON**

**CONTRACT 1159/2016  
Terms and Conditions**

**BUYER:** GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL  
THROUGH THE BRAZILIAN ARMY COMMISSION

**SELLER:** PADTEC NORTH AMERICA LLC

**OBJECT:** DWDM EQUIPMEMNT TO CREATE AN OPTICAL LINK AND  
INSTALLATION

**VALUE OF THE CONTRACT:** USD 880,500.00

The Government of the Federative Republic of Brazil, acting through its Ministry of Defense and the Brazilian Army Commission in Washington (BAC), located at 4632 Wisconsin Avenue, NW - 20016 Washington, DC - USA is herein referred to as the **BUYER**.

**PADTEC NORTH AMERICA LLC**, registered in The United States of America, is herein referred to as the **SELLER**.

The Object of this Contract, **DWDM EQUIPMEMNT TO CREATE AN OPTICAL LINK AND INSTALLATION**, is collectively herein referred to as **Defense Materiel** or **Materiel**; individual components of the Object of this Contract are herein referred to as **item(s)**.

WHEREAS the **BUYER** wishes to buy, and the **SELLER** wishes to sell the Object of this Contract on the terms and conditions set forth herein; and

WHEREAS the **SELLER** acknowledges that the **BUYER** needs the Defense Materiel for use in missions and operations by the Brazilian Army, for which is necessary its reliable operation in conformance with the applicable specifications, as attached hereto; and

WHEREAS the **SELLER** represents that its equipment could meet the **BUYER**'s needs, resulting in the **BUYER**'s selection of the **SELLER** to be its supplier of the Defense Materiel, and its reliance on the **SELLER**'s recommendation of the **DWDM EQUIPMEMNT TO CREATE AN OPTICAL LINK AND INSTALLATION** that the **SELLER** sells hereunder;

THEREFORE, the **BUYER** and the **SELLER** hereby agree to the execution of this Contract and the full and faithful performance of the terms and conditions herein.

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## CLAUSE 1 - OBJECT

The purpose of this Contract is to acquire newly-manufactured **DWDM EQUIPMEENT TO CREATE AN OPTICAL LINK AND INSTALLATION**, in accordance with *Proposal Number PROP 2016-3041 V1 dated December 14<sup>th</sup>, 2016*, Annex B of this Contract and Reverse Bid Auction RFQ-0121/2016, on December 15<sup>th</sup>, 2016 and email dated December 20, 2016, from PADTEC (discount item 12 – RFQ). This Contract will come into force on the latest date when all of the following events have occurred:

- a) Signature of the Contract by both the **SELLER** and the **BUYER**

## CLAUSE 2 – CONFIDENTIALITY

- 2.1 - This Contract, as well as any information related to it provided by the **BUYER** to the **SELLER**, shall be treated by the **SELLER** as confidential. The **SELLER** shall take all reasonable measures to prevent the disclosure of any information related to this Contract to any third party.

## CLAUSE 3 – CONTRACT FORMATION AND REFERENCE NUMBERS

- 3.1 - After reviewing the **SELLER**'s quotation, the **BUYER** has signed this Contract and sent a copy of it to the **SELLER** by email, thereby expressing the **BUYER**'s offer to purchase certain item(s) from the **SELLER** in accordance solely with the terms and conditions herein. To accept this Contract, the **SELLER** shall make a timely acceptance by having one of its authorized officers sign this Contract without making any changes to it and returning the duly-signed Contract to the **BUYER** by email and/or mail (as requested by the **BUYER**) within ten business days. Should the **SELLER** fail to sign the Contract within ten business days, no Contract exists between the parties, unless the **BUYER** waives the **SELLER**'s late signature of the Contract.
- 3.2 - If the **SELLER** wishes to change any of the terms and conditions of this Contract as a condition of the **SELLER**'s agreement to the Contract, then the **SELLER** shall send to the **BUYER**, by email, a request which includes (i) the text of any provisions it proposes to be added to this Contract; and/or (ii) any text it proposes to be deleted from this Contract. The **BUYER** and the **SELLER** may then negotiate whether any of the proposed changes will be incorporated into this Contract. Even with the **BUYER**'s agreement to any proposed changes, no Contract will exist between the **BUYER** and the **SELLER** until the signatures of both parties are affixed to this Contract.
- 3.3 - Once signed by both the **BUYER** and the **SELLER**, this Contract will remain legally binding until August 30<sup>th</sup>, 2019, except in the case of Force Majeure where Clause 18 will apply.
- 3.4 - All documents pertaining to this Contract (such as invoices, packing lists, or any other correspondence) must contain the Contract number. The Contract number must also be included on any and all Air Waybills /Courier receipt, whenever possible.

## CLAUSE 4 – VALUE OF CONTRACT

- 4.1 - The maximum value of this Contract is **US\$ 880,500.00 (eight hundred eighty thousand five hundred US Dollars)**, of which:
  - a) The price for the Defense Materiel is firm and fixed at **USD 784,500.00**

- b) The price for the Services is firm and fixed at **USD 96,000.00**
- e) INCOTERMS: **DAT Airport of Manaus, AM, Brazil**, as defined by INCOTERMS 2010, ICC Publication N° 715E.
- d) The maximum value of the Contract is for the full performance by the **SELLER** of all of its contractual obligations herein, including: the cost of the items ordered in this Contract, packaging, packing, handling, freight, cargo insurance, storage, taxes due in the country of origin and any country other than Brazil, terminal and cargo unloading charges in Brazil and any other applicable expenses incurred during delivery, and post delivery obligations, such as provision of spares and technical assistance.

- 4.2 - Item prices must be exempt from sales taxes, as the Defense Materiel is to be exported to Brazil.
- 4.3 - The Defense Materiel purchased under this Contract is exempt from the Industrialized Products Tax (Imposto de Produtos Industrializados -IPI) and Import Tax (Imposto de Importação - II), as per the terms of Art. 2, Section I and Art. 3, Section I of Brazilian Law N° 8.032, dated April 12, 1990; and Art. 1, Section VII of Brazilian Law N° 8.402, dated January 8, 1992.
- 4.4 - The **BUYER** has the right to increase or decrease the amount of Defense Materiel requested in the Contract at any time, so long as the value of that increase or decrease does not exceed 25% (twenty-five percent) of the original maximum Contract value. For any such increase, the **SELLER** shall maintain the same unit price for each item as noted in Item 12 – List of Items in the Purchase Order. Any changes in obligations or requirements as a result of an increase or decrease in Defense Materiel will take the form of an Amendment, following the procedures in Clause 14 -- Amendments; otherwise, all obligations and requirements will remain as elaborated in this Contract.

#### **CLAUSE 5 - ORIGIN OF FUNDS**

- 5.1 - The financial resources for the acquisition of the Object of this Contract will be provided through credits allocated to the Brazilian Army by the Brazilian Ministry of Defense.
- 5.2 - The expenses for the execution of this Contract will be settled with resources from Project "Amazonia Conectada", Nature of Expense 4.4.90.52 and 4.4.90.39.

#### **CLAUSE 6 - TAXES, DUES, FEES, INSURANCE AND FREIGHT**

- 6.1 - All taxes, duties, fees and any other expenses related to the execution of this Contract in the country of the **SELLER** and any country other than Brazil will be at the expense of the **SELLER**.
- 6.2 - All taxes, dues and fees related to the execution of this Contract in Brazil will be at the expense of the **BUYER**.
- 6.3 - As per DAT - INCOTERMS 2010, the **SELLER** is also responsible for covering all expenses related to inland freight, loading the cargo in The United States of America, international freight charges and insurance premiums during transportation.

- 6.4- The **SELLER** shall obtain an insurance policy in the amount of 110% (one hundred and ten percent) of the value of the Defense Materiel, which shall cover "All Risks", as per INCOTERMS 2010, issued in favor of the Brazilian Army Commission.
- 6.5- The **SELLER** shall bear all risks of loss or damage to the Defense Materiel shipped, as well as its packaging and packing until its arrival at Airport of Manaus, AM, Brazil; then the risk of loss shall be determined in accordance with INCOTERMS 2010 as long as it does not conflict with any other provision, clause or sentence of this Contract.
- 6.6- In the event of any conflict, the terms of this Contract shall prevail over any contrary provision in INCOTERMS 2010.

#### **CLAUSE 7 - ASSURANCE OF QUALITY CONTROL**

- 7.1- The **SELLER** shall execute its work in fulfillment of this Contract in accordance to its quality control manual. Upon the **BUYER**'s request, the **SELLER** shall present to the **BUYER** a copy of its certificates/qualifications, as well as its quality control manual.

#### **CLAUSE 8 - BENEFITS TO BRAZILIAN ARMY PERSONNEL**

- 8.1- The **SELLER** warrants that it has not and will not pay, and has not and will not give any promise, service, or thing of value to any Brazilian military organization or personnel for the purpose of helping the **SELLER** obtain this Contract or perform its obligations required under this Contract. The **SELLER** further warrants that it does not employ any Brazilian military personnel or extended family members of Brazilian military personnel and their spouse (children, parents, grandparents, uncles, aunts, first cousins), and that those personnel and their immediate family members do not sell or promote any of the **SELLER**'s products or serve as an agent or shareholder of the **SELLER**.
- 8.2- For the purposes of this Clause 8, "Brazilian military personnel" means any member of the Brazilian Armed Forces currently serving or who has retired 2 (two) years prior to the effective date of this Contract.

#### **CLAUSE 9 - IMPORT AND EXPORT LICENSES**

- 9.1- All Materiel for this Contract is exempt from a Brazilian import license in accordance with Brazilian law N° 4731 of July 14, 1965.
- 9.2- The **SELLER** is obligated to inform the **BUYER** whether any Materiel is subject to an export license; the **SELLER** shall also provide the **BUYER** with the Export Control Commodity Number (ECCN) the commodities code, and the PDR (for computer materials). Any items subject to an export license cannot be sent to the address indicated in Block 10 (Marking, Delivery Address and Final Consignee) of the Purchase Order until an export license has been granted. The **SELLER** shall send all items not subject to an export license to the designated address in Block 10, along with a declaration by the **SELLER** stating that those items do not require an export license.
- 9.3- The **SELLER** is responsible to apply for any export licenses. Should the **SELLER** be in error as to whether or not any item requires an export license, the **SELLER** shall be responsible for paying any fines incurred for the unlicensed export of the Defense Materiel.



- 9.4 - If necessary, the **BUYER** will provide the **SELLER** with an End-User Certificate for the purpose of obtaining an export license.
- 9.5 - All the Defense Materiel purchased hereunder must be shipped to Brazil from The United States of America. If a shipment of the Defense Materiel is transhipped through any other country, or transported by any means or route that would require export or re-export permits, licenses, or other approvals from any governments other than that of The United States of America, it will be the sole responsibility of the **SELLER** to acquire the necessary documentation and permits. The **SELLER** is under no liability if the export license from the Government of The United States of America is refused, or is withdrawn, provided that the refusal or withdrawal occurs prior to shipment. Should the Government of The United States of America refuse or withdraw the export license, this Contract will be deemed rescinded and neither party is under any obligation to the other, except in regards to Clause 18 – Force Majeure.
- 9.6 - Should the Government of The United States of America withdraw the export license after shipment, the parties agree that the withdrawal would prevent the **BUYER** from the full use of the Defense Materiel as intended herein, and that a partial delivery of the Defense Materiel would constitute a breach of the terms and conditions of this Contract. In that event, the **BUYER** is entitled to return all the Defense Materiel received back to the **SELLER**, who shall send a full refund to the **BUYER** within 15 (fifteen) days of the return of the Defense Materiel. This refund must include all costs associated with the packing, packaging, and shipment of the Defense Materiel to Brazil. The withdrawal of an export license by the Government of The United States of America after shipment of the Materiel does *not* qualify as an event of Force Majeure, unless the withdrawal was precipitated by an event outlined in Clause 18 – Force Majeure.
- 9.7 - Compliance with the agreed delivery schedule is contingent upon the **SELLER**'s timely acquisition of all necessary permits, authorizations, and licenses. The **SELLER** shall exert reasonable effort to obtain necessary permits, authorizations, and licenses as early as possible. The **BUYER** shall promptly deliver to the **SELLER** any supporting documentation related to the delivery schedule when requested to do so by the **SELLER**.

#### CLAUSE 10 – SHIPPING DOCUMENTATION

- 10.1 - In order to comply with Brazilian law, the **SELLER** shall send the following to [procurement@cebw.org](mailto:procurement@cebw.org), at least 15 (fifteen) days prior to shipment:
- a) Commercial invoice or pro forma invoice (1 copy)
  - b) Material Safety Data Sheet – MSDS (“Ficha de Informações de Segurança de Produto Químico - FISPQ”), issued by the **SELLER** and/or the original manufacturer in Portuguese or English, if applicable. Notes:
    - b.1) For air shipment, the Brazilian Customs may accept this document in English.
    - b.2) For ocean shipment, the Brazilian Customs only accepts this document in Portuguese.
    - b.3) This document must be included in the list of documents to be presented to Brazilian customs in order to obtain permission for unloading (1 copy).
- 10.2 - Brazilian law requires that the **BUYER**'s receiving agent in Brazil expeditiously present certain documents to Brazilian customs. In order to assist in this process, the **SELLER** shall send a copy of all listed documents to [procurement@cebw.org](mailto:procurement@cebw.org). The **SELLER** must send the original versions

of these documents via express mail to the Brazilian Army Commission **within 72 (seventy-two) hours of the shipment of the Defense Materiel:**

- a) **COMMERCIAL INVOICE:** The **SELLER's** invoice must conform strictly to this Contract and amendments hereto and include the following: Contract number, corresponding item number in the Purchase Order, part numbers, NATO Stock Number, item description as written in the Purchase Order, quantity shipped, unit prices, and total price (original + 1 copy)
- b) **PACKING LIST** with Schedule B number (original + 1 copy)
- c) **DULY SIGNED MASTER AIR WAYBILL (AWB)**, consigned to the order of **MINISTÉRIO DA DEFESA-EXÉRCITO BRASILEIRO – BA AP LOG EX/DIEM (CNPJ: 00.394.452/0475-92) AVENIDA BRASIL, 25.540, VILA MILITAR, DEODORO, RIO DE JANEIRO-RJ CEP: 21615-331 – BRAZIL, CONTRACT 1159/2015, OMD: 4º CTA**, marked "Freight Prepaid" and "Notify consignee at Tel+55-21-2457-4302 Fax +55-21-2457-4918". The AWB must show the actual airfreight charges declared by the carrier (original + 1 copy)
- d) **INSURANCE CERTIFICATE** in the amount of 110% (one hundred ten percent) of the value of the material and the freight charges in each shipment, covering all risks, issued in favor of the Brazilian Army Commission (original + 2 copy).
- e) **VALIDATED EXPORT LICENSE** issued by the Government of The United States of America (1 copy) **OR** a **DECLARATION** issued by the **SELLER** or original manufacturer stating that the Materiel in this Contract does not require an export license (original + 1 copy)
- f) **MATERIAL SAFETY DATA SHEET – MSDS**, as specified in Sub-clause 10.1 b (1 copy)

10.3 - The mailing address for the Brazilian Army Commission is as follows:

**BRAZILIAN ARMY COMMISSION**  
4632 Wisconsin Avenue, NW  
Washington, D.C. 20016  
PC-1159/2016 - OMD: 4º CTA

10.4 - If the **BUYER** does not receive the above documents from the **SELLER** within **72 (seventy-two) hours** of the shipment of the Materiel, or if the Materiel cannot be cleared through customs by the Brazilian Army and must be kept in storage due to negligence on the part of the **SELLER** regarding shipping documentation, the **SELLER** shall bear responsibility for any warehousing fees charged by the airport/port authorities.

**CLAUSE 11 - DELIVERY CONDITIONS; PROVISIONAL AND DEFINITIVE RECEIVING, – PROOF OF CONCEPT**

The material object of this request shall be delivered by air and made available for customs clearance at the Eduardo Gomes International airport in Manaus-AM. (INCOTERM DAT)



After the Provision Receiving in Manaus, SELLER, at his own expense shall prepare the equipment inside the site containers. Seller shall provide Configuration service, knowledge transfer and operation assisted after complete installation on the final destination.

The knowledge transfer must occur after installation for the team that will operate the NOC of the Brazilian Army in Manaus in a session of at least 16 hours.

The operation assisted will be necessary for 3 months on 8x5, in NOC operated in Brazil to resolve doubts, incidents and problems related to the solution by the technical team, after complete installation on the final destination.

In the event it becomes necessary an upgrade in some DWDM installed, this new installation will be not in Manaus, because the container already will be in operational conditions. This plan can be detailed in executive project.

SELLER shall carry out a site survey during the project implementation phase.

SELLER will develop an executive project, after the realization of the site survey, within 20 days of signing the contract, that must be approved by the Brazilian Army team.

The proposal presented in the executive project will be tested through a POC (proof of concept), which must occur within 25 days of signing the contract.

- 11.1 - The items and respective quantities of the Defense Materiel identified in the List of Items in the Purchase Order must be delivered in **01 (one)** shipment by the **SELLER** to the address indicated in Block 10 of the Purchase Order. The delivery schedule must follow the dates as shown in Box 7, page 1, of the Purchase Order.
- 11.2 - The Defense Materiel must be delivered no later than April 25, 2017, and shall be shipped by the **SELLER** directly to the **BUYER**'s receiving agent in the location indicated in Block 10 of the Purchase Order. Services must be completed by May 15, 2017.
- 11.3 - **The use of any courier service (DHL, UPS, FedEx, etc.) for direct shipment to Brazil is strictly prohibited.**
- 11.4 - The **SELLER** must deliver the Defense Materiel packaged, packed, crated, labeled, and repacked (when applicable) in accordance with the highest standards for international transportation (not merely common carrier requirements) as well as the **International Air Transport Association (IATA) regulations** to ensure its safe arrival at its final destination. If the material is considered **dangerous goods** the cargo must be properly packed for shipment on Passenger aircraft (PAX) if the UN number allows this. If the material is considered for shipment on Cargo aircraft only (CAO) then material must be packed according to those regulations. In case that the defense Materiel includes batteries, the **SELLER** must be responsible for any additional expense related to battery cycling, discharging and/or recharging, and for dangerous goods repacking and labeling. **IMPORTANT: The shipment cannot be consolidated with any other cargo.**
- 11.5 - Concerning wood packaging materials (including dunnage) used in international trade, in order to comply with the International Standard for Phytosanitary Measures (ISPM15), Seller will be required to include on the Bill of Lading (BL) and/or Air Waybill (AWB) and also to provide, if necessary, a Packing Certificate/Declaration stating.

- 1) Wood is being used:  Yes or  No.  
2) Type of wood:  Not applicable, no wood used.  
 Yes, processed wood.  
 Yes, treated/certified (\*).  
 Yes, not treated/not certified.  
3) Type of treatment (\*):  HT, Heat Treated  
 DH, Dielectric Heated  
 MB, Methyl Bromide.

11.6 - If the wooden pallets/boxes used for the cargo originated in China, Japan, South Korea, Taiwan or Hong Kong, the wood must be fumigated and a certificate provided. If the wooden pallets/boxes (i) originated from countries that have adopted the International Standard for Phytosanitary Measures (ISPM-15), (ii) have been treated and identified with the mark IPPC (International Plant Protection Convention), these wooden pallets/boxes will be accepted as certified after inspection to be internalized in Brazil. Type of wood (not treated/not certified) is not accepted by the Brazilian authorities. If the wood materials are not properly marked with the IPPC standard and/or certified, the Brazilian authorities may not approve the import and the cargo will be rejected and sent back to the point of origin.

11.7 - The **SELLER**'s packing list must include: total net and total gross weight of the shipment, number of pieces, and handling information (shipping marks, Contract number, part numbers and method of packing).

11.8 - The **SELLER** shall properly mark any hazardous materials requiring special identification markings from any agency of the US government or a foreign government.

11.9 - The Defense Materiel must be marked in bold letters with the following consignee address:

**MINISTÉRIO DA DEFESA – EXÉRCITO BRASILEIRO**  
**BA AP LOG EX/DIEM (CNPJ: 00.394.452/0475-92)**  
**AVENIDA BRASIL, 25.540 - VILA MILITAR - DEODORO**  
**RIO DE JANEIRO – RJ - CEP: 21.615-331 - BRASIL**  
**PC 1159/2016 OMD: 4° CTA**

11.10 - Notwithstanding the provisions of INCOTERMS 2010, all cargo-unloading charges in Brazil, including the release of documentation, are the responsibility of the **SELLER** or its representative in Brazil.

11.11 - The **SELLER** shall promptly notify the **BUYER** of any change in the expected delivery date. Any delay in the expected delivery date will only be deemed acceptable under the terms of this Contract upon the **SELLER**'s receipt of a written extension from the **BUYER**, which must take the form of an amendment, following the procedures laid out in Clause 14 – Amendments. Should the **SELLER** fail to notify the **BUYER** of any delay in the expected delivery date, or if the **SELLER** fails to complete delivery in accordance with the delivery schedule, the **SELLER** will be in breach of the Contract, and the **BUYER** may terminate the Contract under the provisions of Clause 19 – Contract Termination.

11.12 - Unless the **BUYER** has extended the Contract's delivery date in writing, the **SELLER** shall submit the Proposed Revised Delivery Schedule within 10 (ten) business days of receipt of the **BUYER**'s written request, which the **BUYER** may issue any time it has reason to doubt the

SELLER's ability to meet the current delivery schedule. The BUYER's willingness to take into consideration the proposal will not constitute a waiver of any existing delivery schedule nor a commitment to grant an extension. The BUYER will have up to 30 (thirty) business days after receiving the SELLER's proposal to decide whether to approve or disapprove the request. If the new proposed schedule is approved, the BUYER shall submit a draft amendment reflecting the changes to the SELLER, which will take effect upon signature by both parties. If the BUYER declines the new proposed schedule, which the BUYER may do for any reason, no amendment or modification shall be made, and the SELLER must proceed diligently to complete the Contract within the existing delivery schedule.

- 11.13 - The BUYER will inspect all Defense Materiel within 60 (sixty) days of its arrival at its final destination, per Brazilian Army regulations. During this inspection, the BUYER will determine whether the Materiel shipped conforms to its technical specifications and other requirements in this Contract. If any item in the Materiel is found to not conform to its technical specifications or other requirements in this Contract, the BUYER has the right to reject all or part of the Defense Materiel, and shall notify the SELLER of its intention to do so in a **Discrepancy Report**. The **Discrepancy Report** must be issued within 60 (sixty) days of the termination of the BUYER's inspection of the Materiel.
- 11.14 - Should any Materiel be rejected by the BUYER, the SELLER shall bear the responsibility and costs of the return of that Materiel. In the event of rejection of Materiel for non-conformity, the BUYER has the right to receive repair or replacement of the Material per Clause 15 – Warranty, or may request a refund of the full price of the rejected Defense Materiel.

#### PROVISIONAL AND DEFINITIVE RECEIVING (Sub-clauses 11.27 – 11.32)

- 11.27 - The BUYER, acting through a team of 3 (three) representatives appointed by the CITEX AND/OR BA AP LOG EX/DIEM, Provisional Receiving Team, has the right to inspect the Defense Materiel after its delivery in order to verify the conformity of the quantities delivered to the accompanying shipping documents and provisionally receive the Materiel for later verification of its conformity with the Contract specifications. This procedure will be followed by the Definitive Acceptance Tests (DAT) and Definitive Receiving.
- 11.28 - The Provisional Receiving will take place in 4º CTA, in Manaus, AM, Brazil; the SELLER or its representative, at its own expense, is allowed to witness the inspection. During the Provisional Receiving the Provisional Receiving Team will check the quantity delivered against the accompanying shipping documents and inspect the packaging for signs of damage or any other irregularities. If no delays occur in the customs clearance of the Defense Materiel caused by the negligence of the SELLER, and if no discrepancies are found in the Materiel, the Provisional Receiving team will issue a Provisional Receiving Certificate (PRC) within 10 (ten) business days of the date of Customs clearance of the Defense Materiel.
- 11.29 - If upon inspection the Provisional Receiving Team finds the volumes delivered to not contain the quantities specified in the accompanying shipping documents, or that packaging or packing shows any signs of damage that suggest that the contents are likely damaged or any other irregularities, the Provisional Receiving Team, shall give written notice to the SELLER by delivery of a **Discrepancy Report** requesting the replacement or repair of those items. After receiving the report, the SELLER shall have up to 15 (fifteen) business days to correct, or arrange for correction, of all items identified in the **Discrepancy Report**, and all costs associated with any correction shall be at the expense of the SELLER. The provisional receiving team will not be required to issue a PRC until it is satisfied

that the **SELLER** or its representative has corrected all discrepancies identified in the report.

- 11.30 - The Definitive Acceptance Tests will take place at Manaus, Manacapuru, Coari, Novo Airão, Itacoatiara. During the Definitive Acceptance Tests the Definitive Receiving Team will verify and test the quality, quantity and conformity of the material with the performance and technical specifications as well as any other contractual terms and requirements. If no delays occur in the customs clearance of the Defense Materiel caused by the negligence of the **SELLER**, and if no discrepancies are found in the Materiel, the Provisional Receiving Team will issue a Definitive Receiving Certificate (**DRC**) within 30 (thirty) business days from the date of the issuance of the **PRC** of the Defense Materiel stating that the **BUYER** accepts all or part of the Defense Materiel identified in the **DRC**.
- 11.31 - If the Definitive Receiving Team finds that any Defense Materiel, or component thereof, does not strictly conform to the technical specifications in Annex A , it will issue a **Discrepancy Report** detailing the non-conformance. The **SELLER** shall correct, by repair or replacement, any non-conformities in the Defense Materiel within 60 (sixty) business days of the issuance of the **Discrepancy Report** by the Definitive Receiving Team. All costs associated with the repair or replacement of non-complying Materiel will be of the responsibility of the **SELLER**. No adjustments or replacement of the Defense Materiel will be allowed during the Definitive Receiving.
- 11.32 - After the Definitive Receiving has been completed, the CITEX, after consulting with the BAC, shall notify the **SELLER** of whether it accepts all, part, or none of the Defense Materiel. If the **BUYER** accepts all or part of the Defense Materiel, then within 30 (thirty) business days following the completion of the Definitive Receiving, the CITEX shall issue and deliver to the **SELLER** a Definitive Receiving Certificate (**DRC**) stating its acceptance, which will be considered final and conclusive, except for any latent defects or fraud that may be subsequently discovered. In that case, the **BUYER** reserves the right to revoke its acceptance and to pursue all remedies provided by law or under this Contract. If the **BUYER** decides to accept only part of the Defense Materiel, the **SELLER** shall diligently replace or repair the rejected Defense Materiel within 60 (sixty) business days, by the end of which time the **SELLER** shall have delivered the corrected Defense Materiel to the **BUYER** for inspection. The **BUYER** is not obligated to issue the **DRC** until all discrepancies are resolved. Both parties shall enter into negotiations to determine what portion of the unpaid maximum value of the Contract that the **SELLER** will receive for any accepted Defense Materiel that the **BUYER** accepts after the Definitive Receiving.

## CLAUSE 12 - INSTALLATION OF EQUIPMENT

The "Services" comprises the following:

- international transport and cargo insurance from country of origin to Manaus, AM - Brazil.
- onsite installation services executed in Manaus, AM.
- preparation of the equipment inside the site containers before moving them to their destinations.
- configuration services.
- final onsite installation and commissioning of the equipment.
- knowledge transfer after the full site installation at its destination.
- operation assisted will be necessary for 3 months on 8x5.

### Delivery of Installation and/or Maintenance Services at the End User's facilities

- a. All equipment's installation and/or maintenance shall be carried out at the end user's facilities in MANAUS, AM, Brazil; MANACAPURU, AM, Brazil; COARI, AM, Brazil; NOVO AIRÃO, AM, Brazil; ITACOATIARA, AM, Brazil.

- b. Servicing schedule dates to be negotiated between both parties. Installation is to start the following day after Customs Clearance in Manaus, AM and is to be **completed by May 15, 2017**.
- c. The Buyer shall provide the proper facilities for the equipment's installation/maintenance.
- d. The Seller shall be responsible for all expenses incurred by its own personnel, its representatives in Brazil, if applicable, during the installation/maintenance services.
- e. After completion of the equipment's installation/maintenance, if no discrepancies are reported, the Buyer's representative in Brazil shall issue a **Certificate of Completion of Installation/Maintenance Services**. If a **Report of Discrepancy** is issued, the Seller must solve all problems reported within a period of 10 days from the date of the Report being issued. The Buyer is not obliged to issue said certificate until all discrepancies are solved.

### CLAUSE 13 - PAYMENT CONDITIONS

13.1- Payment will be made by the **BUYER** Against Invoice (Net 30) upon receipt from the **SELLER** of an invoice and all the documents mentioned in Clause 10 - Shipping Documentation; these documents must be sent by the **SELLER** to the address indicated in Sub-clause 10.3.

13.2- Brazilian law prohibits advance payments to any supplier.

13.3- For payment to be processed via wire transfer, the **SELLER** shall send to the **BUYER** via email all necessary instructions for the execution of payment; these instructions must include the bank name and address, IBAN, BIC code, Swift Code, account name, and number. Should the **SELLER** fail to send the **BUYER** the required information in a timely manner, then for each day of delay by the **SELLER**, the **BUYER** will be entitled to an equal extension of the time within which the **BUYER** is required to make the payment.

13.4- Payment will be executed as follows:

**1<sup>st</sup> INSTALLMENT** - after **Shipment of the Defense Materiel** (Items 01 - 04 in Block 12 of the Purchase Order), in the amount of **USD 784,500.00**, representing the total value of those items and including the actual shipping expenses upon the **SELLER's** presentation of the following documents (a full description of the requirements of each document is included in Clause 10 - Shipping Documentation):

- a) **COMMERCIAL INVOICE**
- b) **PACKING LIST**
- c) **DULY SIGNED MASTER AIR WAYBILL (AWB)**
- d) **INSURANCE CERTIFICATE**
- e) **VALIDATED EXPORT LICENSE OR DECLARATION** (see Clause 10 - Shipping Documentation)
- f) **MSDS, if applicable**
- g) **PROVISIONAL RECEIVING CERTIFICATE** issued by 4<sup>o</sup> CTA

**2<sup>nd</sup> INSTALLMENT** - after **Completion of Services** (Items 5 - 8 in Block 12 of the Purchase Order), in the amount of **USD 96,000.00**, representing the total value of those items, upon the **SELLER's** presentation of the following documents:

- a) **COMMERCIAL INVOICE**
- b) **CERTIFICATE OF COMPLETION OF SERVICES - DEFINITIVE RECEIVING CERTIFICATE** issued by 4<sup>o</sup> CTA

13.5 - The **SELLER's** invoice must strictly conform to Box 12 -- List of Items in the Purchase Order, as well as and any associated amendment with regard to the Contract number, item numbers, part numbers and/or NATO Stock Numbers, item description as written in the Purchase Order, quantity shipped, unit prices, and total price. No deviation in the invoice will be accepted by the **BUYER** unless it has been approved and processed in writing by the **BUYER**.

#### CLAUSE 14 - AMENDMENTS

14.1 - Any alteration in the terms and conditions of this Contract will take the form of an amendment, which must be signed by both the **SELLER** and the **BUYER**.

14.2 - The **BUYER** may propose an amendment at any time, issuing additional instructions, requiring modified work or services within the general scope of work of this Contract, increasing or decreasing quantities of items, or changing methods of shipment. Any increase or decrease in the amount of Defense Materiel ordered in any proposed amendment will be subject to the restrictions in Clause 4 -- Value of the Contract.

14.3 - If the **SELLER** is of the opinion that any proposed change requires a change in the delivery schedule, Defense Materiel quality, or in the maximum value of this Contract, the **SELLER** shall inform the **BUYER** in writing no later than 15 (fifteen) days from receipt of a proposed amendment; the document must specify all changes in the **SELLER's** proposal. If the **BUYER** does not accept the **SELLER's** proposal within 30 (thirty) days of receiving it, then the Proposed Amendment and proposal change will be deemed void.

14.4 - If the **SELLER** informs the **BUYER** that the proposed amendment does not require a change in the delivery schedule, Defense Materiel quality, or in the maximum value of this Contract, then the **SELLER** shall promptly implement the proposed changes, and thereby irrevocably waive any right thereafter to claim any increase in the maximum value of the Contract, extension in delivery schedule, or demand any waiver to the technical specifications, quality or testing requirements hereunder.

14.5 - If the **BUYER** does accept at least part of the **SELLER's** proposed amendment, then the parties shall enter into negotiation to agree on equitable adjustments to the delivery schedule, maximum value of the Contract, or technical specifications, as applicable. No change in this Contract altering the delivery schedule, maximum value of the Contract, or technical specifications of the Defense Materiel will become effective unless accompanied by an amendment, signed by the authorized representatives from the **BUYER** and the **SELLER**. The **SELLER** may not proceed with the change order pending the amendment unless otherwise instructed in writing by the **BUYER**.

14.6 - Unless or until the **BUYER** and the **SELLER** agree upon a Contract Amendment to implement the proposed amendment and related proposal change, the **SELLER** shall diligently proceed to perform this Contract as it was originally agreed.

#### CLAUSE 15 - WARRANTY

15.1 - The **SELLER** shall provide a 24 (twenty four) month Warranty for products, parts, services and accessories sold by the **SELLER**, starting from the date the final inspection and acceptance are completed, or 3 (three) months after customs clearance of the Defense Materiel (whichever is



sooner), in which the **SELLER** warrants that the Materiel being supplied under this Contract must:

- a) be new - unused, not remanufactured, modified, or refurbished, or be previously delivered by the **SELLER** to any other customer;
- b) be free from material defect, be manufactured and perform in strict conformance with the **SELLER's** technical specifications for the Materiel, and contain no substituted parts.

15.2 - The **SELLER** shall also include with the Defense Materiel any additional warranties provided by either the original equipment manufacturer or a third-party supplier of an item, part, or component thereof.

15.3 - Should any defects or non-conformities to the technical description and performance specifications be found prior to the expiration of the Technical Warranty, the **BUYER** shall send the **SELLER** a written notice within 30 (thirty) days of the discovery of the nonconformance, and the **SELLER** will be given the opportunity to have the alleged defects or non-conformities inspected by a technician of the **SELLER's** choice; the **SELLER** will be responsible for all costs associated with the inspection.

15.4 - The **SELLER** shall deliver a written notice to the **BUYER** no later than 5 (five) business days after the **SELLER's** appointed technician starts its inspection with its assessment of whether or not it concurs with:

- a) the **BUYER's** claim of alleged defect or non-conformity of the Defense Materiel to its technical specifications
- b) the extent, severity, and consequences of the alleged defects or non-conformities
- c) the practicality of making the required replacements or corrections to the Defense Materiel at the End-User's location

15.5 - The **BUYER's** team responsible for monitoring maintenance activities shall have access to all the information and equipment related to the maintenance of equipment already acquired by the **BUYER** from the **SELLER**.

15.6 - If the technician concurs with the **BUYER's** claim of defect or non-conformity of the Defense Materiel with the technical description and performance specifications of Annex A (even if it does not concur with its extent or severity), and the technician determines that it would be impracticable to correct the defect or non-conformity at the location where the Defense Materiel was delivered, the **BUYER** shall return the defective parts to the **SELLER's** representative in Brazil at the **SELLER's** expense. The **SELLER's** representative shall return the repaired parts to the **BUYER** at the **SELLER's** expense.

15.7 - Within 30 (thirty) days after the **SELLER's** appointed technician has conducted its inspection and delivered the written assessment to the **BUYER**, the **SELLER** must receive from the **BUYER** a notification containing all the details concerning the **BUYER's** claim under the Technical Warranty, in accordance with the provisions hereunder.

15.8 - Within 7 (seven) days of the receipt of the **BUYER's** claim, the **SELLER** shall deliver a signed written notice to the **BUYER** informing where the **SELLER** shall make the required corrections to the Defense Materiel or whether it shall be replaced, as well as advise the **BUYER** of what actions, if any, it shall take to ensure the timely release and transfer of the Defense Materiel to the **SELLER**

for correction. The **SELLER** shall then have a period of 30 (thirty) days from date of return to the **SELLER** of the defective or non-conforming Defense Materiel in which to make the required repairs or replacements; this period may be extended upon a signed written agreement between the parties.

- 15.9 - The **SELLER's** obligations under this clause will not apply to any Defense Materiel or part thereof, or to any part or accessory sold by the **SELLER**, which (i) has been modified or otherwise altered other than according to the **SELLER's** written instructions or written approval; (ii) is normally consumed in operation; (iii) is not properly stored, installed, used, maintained or repaired; (iv) has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident; or (v) has been disabled or adversely affected by any vendor product (other than a vendor product sold or supplied by the **SELLER**).
- 15.10 - Should the **BUYER** request that the **SELLER** replace or repair any defective or deficient item(s) in accordance with this Clause 15, the warranty period for the repaired or replaced items will begin after the repaired or replaced item is inspected by the end-user.
- 15.11 - Should the **SELLER's** technical assessment conclude that the equipment must be sent to the factory, the **SELLER** must provide the **BUYER** with new equipment to be used during the maintenance period. The delivery of the substitute equipment to the End-User should be within 30 (thirty) days of the **SELLER's** technical assessment indicating the need for maintenance at its factory. In this case, the **SELLER** will bear all costs for the shipment, customs clearance and associated duties, and delivery of the new equipment to the End-User.
- 15.12 - The **SELLER's** Warranty will have precedence over other warranties or guarantees expressed or implied, and will constitute the sole liability of the **SELLER** with respect to any defects in Defense Materiel discovered during the warranty period. The Warranty will be interrupted should the Defense Materiel become unserviceable after the **SELLER** has been officially informed of a problem or discrepancy with the Materiel.

#### CLAUSE 16 - TECHNICAL LITERATURE

- 16.1 - The **SELLER** shall provide one set of technical documentation (in Portuguese, Spanish, or English, in that order of preference) per system. The technical documentation shall include system design, installation, operation, management software and maintenance of all components used in the system.
- 16.2 - The **BUYER** reserves the right to reproduce, translate or adapt all the documentation supplied by the **SELLER** pursuant to this Contract for its own use. The software and documentation may only be copied for archive purposes or for purposes expressly authorized by **SELLER** in writing. All copies must bear the same copyright marks as the originals. The **BUYER** agrees that the materials will not be made available, in whole or in part, to third parties and that the programs and documentation will be used and safeguarded in such a way that they can be accessed only by personnel who require the programs and/or documentation in order to perform their tasks. The above provisions apply to any modifications or supplements made to the software or accompanying documentation.

#### CLAUSE 17 - CATALOGUING

- 17.1 - The **SELLER**, within a maximum period of 150 (one hundred fifty) days from the date of

signature of this Contract, shall provide a list of all the Defense Materiel items and components of this Contract, including a short description of each item. The list must be provided in digital media as an Excel spreadsheet (\*.xls).

#### CLAUSE 18 - FORCE MAJEURE

18.1 - Neither party will be in default or assume any liability or responsibility if the full performance of this Contract is interrupted as a result of events including:

- a) Natural disasters;
- b) Epidemics;
- c) Acts of the governments of Brazil, The United States of America, or any other country acting in its sovereign capacity;
- d) Acts of war (declared or undeclared);
- e) Acts of terrorism;
- f) Civil unrest or insurrections;
- g) Conditions that adversely affect the safety of the personnel and/or equipment involved;
- h) Restrictions due to quarantines, blockades, or embargoes;
- i) Accidents causing disruptions to the **SELLER's** premises that are not the result of negligence on the part of the **SELLER** (explosions, fires, breakdown of equipment, etc.);
- j) Loss of the Materiel in transport due to circumstances beyond the control of the **SELLER** (accidents, explosions, breakdowns, etc.);
- k) Sabotage, strikes, go-slows, lockouts, or any other type of labor dispute resulting in work destruction on the **SELLER's** or **BUYER's** premises;
- l) Delay of payment due to failure by the **SELLER** to provide instructions for the wire transfer payments at the time the invoice is issued to the **BUYER**;
- m) Any of the above events which disrupt the work of the **SELLER's** sub-contractors, provided that the event is not the result of negligence on the part of the **SELLER** or one of the **SELLER's** sub-contractors.

18.2 - In order to invoke Force Majeure, the above event cited must **directly impede the SELLER's performance of its duties and obligations as detailed in this Contract**. Any event of Force Majeure will be referred to as an excusable delay.

18.3 - The party whose performance will be delayed by such an event shall notify the other party of an event of Force Majeure in writing no later than 10 (ten) days after the event. The **SELLER** shall include in its written notification to the **BUYER** evidence supporting its claim of Force Majeure. The **BUYER** has the right to reject the **SELLER's** declaration of Force Majeure.

18.4 - The **SELLER** shall still be held responsible for not fulfilling its contractual obligations if notice of an event of Force Majeure is delivered by the **SELLER** at a time when the **SELLER** is already behind in either production or delivery of the Defense Materiel.

#### CLAUSE 19 - CONTRACT TERMINATION

19.1 - Either the **BUYER** or the **SELLER** shall have the right to terminate this Contract upon failure of the other party to perform its contractual obligations hereunder if the aggrieved party has sent a written notice specifying the failure and the correction required, giving the party at fault a period of 60 (sixty) days to correct that failure, and the correction is not implemented within that period. In order to terminate the Contract, the aggrieved party must send the other party a notice of

Termination for Default, detailing the default. The aggrieved party may then pursue all remedies available under this Contract and, in addition, under New York law to the extent not inconsistent with this Contract.

19.2 - The **BUYER** shall have the right to terminate this Contract due to the **SELLER's** default if (i) the **SELLER** seeks protection of a bankruptcy court or other court; (ii) seeks judicial protection based on the **SELLER's** representation that it qualifies to be declared or to declare itself insolvent; or (iii) the **SELLER** is declared by a court to be insolvent or bankrupt.

19.3 - The **SELLER** shall have the right to terminate this Contract if the **BUYER** fails to make a required payment for a period of 30 (thirty) consecutive days for the supply, in whole or in part, of the Defense Materiel received, and the **BUYER** fails to pay within 30 (thirty) days of the receipt of notice from the **SELLER** requesting payment.

19.4 - The termination of this Contract in the event of default by the **SELLER** will result in the following consequences, which do not exhaust the **BUYER's** remedies under law or this Contract:

- a) Blocking of credits related to the payment of the maximum value of the Contract, up to the limit of the damages incurred by the **BUYER**;
- b) Release of the **BUYER** from any obligation to proceed further with performance, including the issuance of any certificates otherwise required hereunder.

19.5 - The right to terminate this Contract (in part or whole) for convenience belongs solely to the **BUYER**, who, in order to do so, shall deliver a Notice of Termination for Convenience to the **SELLER**. The Notice must specify the extent of the work terminated or the quantity of Defense Materiel not to be delivered by the **SELLER**. The **SELLER** shall diligently continue performance of all obligations not terminated, and shall minimize costs for those obligations. The **BUYER**, through a written notice, may also require the **SELLER** to transfer title and deliver to the **BUYER** within 30 (thirty) days, in the quantity and manner directed by the **BUYER**: (i) any completed Defense Materiel and/or partially completed Defense Materiel or components thereof that the **SELLER** has produced or acquired before Contract termination; (ii) all documentation necessary to convey proper and full title of the Materiel to the **BUYER**; and (iii) a memorandum detailing all defects in the Materiel or other non-compliances with this Contract or the **SELLER's** technical specifications that the **SELLER** knows, or has reason to know exist.

19.6 - In the event of termination for convenience and delivery of the requested Defense Materiel, the **BUYER** is entitled to conduct an inspection of all shipped Defense Materiel as provided in Clause 11 herein, as if the delivery were the final delivery of Defense Materiel. The **BUYER** also maintains the right to reject any non-conforming item or later revoke its acceptance of any non-conforming item and exercise its full rights under Clause 15 - Warranty herein for all the items. For any items that the **BUYER** accepts and does not reject nor later revoke its acceptance of, the **BUYER** shall pay the **SELLER** the corresponding amount of the Contract value for the item(s). Any outstanding issues after the **BUYER's** termination for convenience will be resolved according to Clause 23 - Arbitration and Applicable Law.

## CLAUSE 20 - LIABILITY

20.1 - No party will be liable under any circumstances towards the other party, its officers, agents, employees, successors and assigns, for any punitive, special, consequential and incidental/indirect damage of any nature, including without limitation: any losses, costs, damages, loss of use of

covering purchase incurred or suffered by the other party or any third party as a result of, or arising out of any lack or loss of use of any Defense Materiel or information delivered under this Contract, or part thereof or any other property for any reason whatsoever.

20.2 - The foregoing will not affect the right of any party to claim for compensation against the other party with respect to direct damage that the claiming party may suffer as a result of the gross negligence of the other party.

20.3 - "Gross negligence" means an action or omission implying an obvious lack of care of any party (which considering the seriousness of the consequences a cautious man of the art would have anticipated) or an action or omission leading to the presumption of a deliberate refusal to take into consideration these consequences and not only any kind of lack of care or lack of skill.

20.4 - To the extent permitted by applicable law, the **SELLER's** overall liability for any claims including any indemnity obligations arising by reason of or connection with this Contract is limited to a maximum amount of 100% of the maximum value of the Contract.

20.5 - The total liability of the **SELLER**, including its subcontractors and suppliers, on any claim of any kind, whether in the Contract, warranty, tort (including negligence or patent infringement), strict liability, equity, quasi-contract or otherwise, arising out of, related to, or resulting from the performance or breach of any agreement resulting here from the manufacture, sale, delivery, resale, repair, replacement or use of any part or product or the furnishing of any service, may not exceed the price corresponding to the part or product or service which gives rise to the claim. Except as to title, any such liability terminates upon the expiration of the warranty period specified in Clause 15.

#### **CLAUSE 21 – INTELLECTUAL PROPERTY**

21.1 - In order to protect the **SELLER's** proprietary information, the **BUYER** will not disclose, except to its personnel and advisors, any data, specifications or technical documentation furnished by the **SELLER** in its performance of this Contract that are not known to the general public and that contain a label which clearly identifies the document or media as the **SELLER's** confidential and proprietary information. However, the **SELLER** hereby grants the **BUYER** permission to disclose and release any of the **SELLER's** information bearing a proprietary rights mark to a support contractor retained by the **BUYER** for the maintenance or repair of the Defense Materiel, provided the **BUYER** cannot obtain support from the **SELLER** or one of its agents, and provided further that the support contractor will be prohibited from further releasing, disclosing or otherwise using any data except solely in support of the **BUYER** in its use, maintenance, and repair of the Defense Materiel. The **BUYER** is not liable for the disclosure of the **SELLER's** information that:

- a) is or becomes available to the public from a source other than the **BUYER** before or during the period of this Contract;
- b) is lawfully obtained by the **BUYER** from a third party or parties;
- c) the **BUYER** reasonably believes, on the basis of written evidence, was known by the **BUYER** prior to having been furnished by the **SELLER** to the **BUYER**; or
- d) is at any time developed by the **BUYER** or any third party completely independent of this Contract and without breaching any obligation of confidentiality.

21.2 - In order to protect the **BUYER's** confidential and sensitive information, the **SELLER** shall not disclose any information about the **BUYER**, its purchase and intended or actual use of the Defense

Materiel, or the existence of or any terms and conditions contained in this Contract without the **BUYER's** permission. However, the **SELLER** does have the right to reveal sensitive information to any of its affiliated companies, on a need-to-know basis, without the express written consent of the **BUYER**. "Affiliated company" means any entity that directly or indirectly controls the **SELLER** to the extent of at least 50% related to the shareholder or voting rights. The **SELLER** must inform the affiliated company of the restrictions placed on the sensitive information and be bound to keep that information likewise confidential.

- 21.3 - The **SELLER** represents that the Defense Materiel and its constituent components are free from infringement of any patent, copyright, or trademark. The **SELLER** shall indemnify the **BUYER** against any losses and liabilities relating to any infringement or claim of infringement, and, at its own expense, defend any proceedings arising out of any infringement or claimed infringement of any patent, copyright, or trademark registered against the **BUYER**. The **SELLER** shall pay in full any judgments entered in respect to the proceedings, within 30 (thirty) days from the date the judgment is entered.
- 21.4 - The **SELLER's** defense and payments under Sub-clause 21.3 are conditioned upon the following:
- a) The **BUYER's** written notification to the **SELLER** of any claim(s) entered;
  - b) The **SELLER's** control of the defense of any action of the claim and all negotiations for its settlement or compromise, provided, however, that if the Government of Brazil is a named defendant, the **BUYER** will have the right to approve counsel and to cooperate in the defense;
  - c) The **BUYER's** provision of all reasonably required assistance to the **SELLER** in connection with any defense or negotiations.
- 21.5 - Should the **BUYER's** use of any Defense Materiel be enjoined, the **SELLER** shall, at its own expense, either (i) substitute fully-equivalent, non-infringing Defense Materiel in the same quantity of the enjoined Materiel; (ii) modify the Defense Materiel so that is no longer infringes but remains fully equivalent; (iii) obtain for the **BUYER**, at the expense of the **SELLER** or its nominee, the right of continued use of the Defense Materiel; or (iv) refund to the **BUYER** the amount paid to the **SELLER** for the infringing Defense Materiel.
- 21.6 - With respect to any Defense Materiel or component thereof sold by the **SELLER** which is not manufactured by the **SELLER**, only the patent indemnity of the other manufacturer, if any, will apply. The patent warranty and indemnity obligations previously mentioned are in lieu of all other patent warranties and indemnities whatsoever, whether oral, written, expressed, implied or statutory.
- 21.7 - The provisions of this clause will remain enforced after the expiration, realization or termination of the Contract.
- 21.8 - The **BUYER** hereby agrees not to sell, lend, or deliver the Defense Materiel or any component thereof (including manuals and information related to this Contract) to any third party (under any conditions whatsoever) under any circumstance without the prior written agreement of the Government of The United States of America and the **SELLER's** written agreement for its proprietary data.

**CLAUSE 22- COMMUNICATIONS; REPRESENTATIVE IN BRAZIL**

22.1 - All communications between the parties related to this Contract will be in writing, in English, and will be considered effective at the moment at which the correspondence is delivered to the other party. The addresses for the **BUYER** and **SELLER** are found in the letterhead and Box 3, respectively of the Purchase Order. The **BUYER's** points of contact are found on the last page of the Purchase Order. Additional contact information for other parties is as follows:

**END-USER**

**CITEX**

1º Ten Nuno Alves

Tel: 61-3659-1088

Email: [nunoalves.rocha@eb.mil.br](mailto:nunoalves.rocha@eb.mil.br)

**REPRESENTATIVE IN BRAZIL:**

**PADTEC S.A.**

Rua Dr. Ricardo Benetton Martins, S/N,  
Polo II de Alta Tecnologia Campinas-SP -

**Mr. SAMUEL SALVI VICENTINI**

Tel: +55 19 2104-9717

Cell: +55 19 98184-9799

[samuel@padtec.com.br](mailto:samuel@padtec.com.br)

22.2 - The **SELLER** shall maintain a representative legally domiciled in Brazil with power of attorney to receive summons and answer in an administrative and judicial capacity during the validity of this Contract.

**CLAUSE 23- ARBITRATION AND APPLICABLE LAW**

23.1 - The parties shall endeavor to amicably solve any differences that might arise during the execution and interpretation of this Contract. The attempt to reach an amicable settlement will be considered to have failed when one party notifies the other in writing of the failure.

23.2 - All claims between the parties regarding any alleged breach of any substantive obligations created hereunder shall be finally settled by an arbitrator (the "**Board**"), who must be a US citizen and member of the Bar of the State of New York actively engaged in the practice of law or a retired member of the Federal judiciary, pursuant to the rules and regulations of the American Arbitration Association. Arbitration proceedings conducted hereunder shall be confidential, subject to this Contract's security provisions, and conducted in the English language in New York, New York. In rendering its judgment, the Board shall determine the rights and obligations according to the substantive laws of the State of New York (excluding conflict of law principles and doctrine of "constructive change") as though the Board were a court of the State of New York. Any arbitration award must be based on and accompanied by findings of fact and conclusions of law, shall be conclusive as to facts so found and be confirmable by the US District Court for the Southern District of New York, if that award correctly applies the substantive laws of the State of New York (excluding conflict of laws, principles and doctrine of "constructive change"). Unless otherwise directed by the **BUYER**, pending the final disposition of any dispute hereunder, the **SELLER** must proceed diligently to perform this Contract, including delivery of the Defense Materiel in accordance with the **BUYER's** instructions, provided that the **BUYER**

pays the **SELLER** amounts due in accordance with this Contract, subject to adjustment based on final disposition of the dispute.

23.3 - The U.N. Convention on Contracts for the International Sale of Goods does not apply to this Contract. This Contract will be governed, construed, interpreted and applied in accordance with the laws of the State of New York, without reference to its choice of law rules or constructive change doctrine since the **BUYER** has consular offices in New York, and shall pay the **SELLER** with funds drawn from its account with a bank in New York City. Furthermore, the **BUYER** and the **SELLER** seek to take advantage of the stable and sophisticated commercial laws of the State of New York and of their interpretation by its Federal and State Courts. For all purposes with regards to any proceeding arising from or related to this contract, the **SELLER** irrevocably consents to both the personal jurisdiction of the Board pursuant to this clause for its enforcement, as well as to the personal jurisdiction of the US District Court for the Southern District of New York for any matter arising out of that arbitration. The **SELLER** irrevocably waives any objection (including forum non conveniens) to any proceedings as detailed in this clause.

#### CLAUSE 24 - ATTACHMENTS AND ORDER OF PRECEDENCE

24.1 - The following annexes are integrated herein and made an integral part of this Contract:

- a) Annex A - Technical Specifications;
- b) Annex B - Price and Technical Proposal;
- c) Annex C - Provisional Receiving Certificate (PRC);
- d) Annex D - Definitive Receiving Certificate (DRC);

24.2 - In the event of apparent inconsistency between the documents and instruments that constitute the agreement between the **BUYER** to buy and the **SELLER** to sell the Defense Materiel, the following order of precedence set forth from highest to lowest will govern, and the text of the document or instrument with the higher order of precedence will prevail over the text of a document or instrument with a lower order of precedence and be considered the definitive expression of the agreement between the parties with respect to the apparent inconsistency:

- a) This Contract, No. 1159/2016
- b) Annexes A and B

#### CLAUSE 25 - OTHER PROVISIONS

25.1 - The Brazilian Army's computers are compatible with Windows 7, Windows 8 and/or Windows 10.

25.2 - This Contract is not subject to any specific legislation regarding the Financial Compensation Agreement (Offset).

25.3 - No cancellation, modification, amendment, deletion, addition or other change in this Contract or any provision hereof, or waiver of any right or remedy herein provided, will be effective for any purpose unless specifically set forth in a written document signed by the party to be bound thereby. No waiver of any right or remedy in respect of any occurrence or event on one occasion will be deemed a waiver of that right or remedy with respect to the occurrence or event on any other occasion.



- 25.4 - This Contract supersedes all other agreements, oral or written, heretofore made with respect to the subject hereof and the transactions contemplated hereby, and contains the entire agreement between the parties.
- 25.5 - Any provision hereof prohibited by, or that is unlawful or unenforceable under any applicable law of any jurisdiction, will as to that jurisdiction be ineffective without affecting any other provision in this Contract provided, however, that if the provisions of the applicable law may be waived, they are hereby waived until this Contract be deemed to be a valid and binding agreement enforceable in accordance with its terms.
- 25.6 - The **SELLER** is not entitled to assign, transfer, or in any other way relieve itself or delegate any of its obligations under this Contract or any portion or interest herein, or to substitute any successor, without prior written consent of the **BUYER**, which the **BUYER** can withhold for any reason. This prohibition on assignment and transfer applies to any manner by which the **SELLER** seeks to assign or transfer, including assignment or transfer of the **SELLER**'s obligations hereunder by transferring this Contract to a subsidiary that the **SELLER** subsequently spins off and sells, or sale of the **SELLER**'s assets or sale of its shares of stock.
- 25.7 - The provisions of this Contract are binding upon the **BUYER** and the **SELLER** and their respective successors and assigns, but this provision will not expand or otherwise affect the limitation on assignment and transfers set forth in Sub-clause 25.6 herein, and no party is intended to or has any right or interest under this Contract, except as provided above.

#### CLAUSE 26- TEXT, COPIES AND SIGNATURES

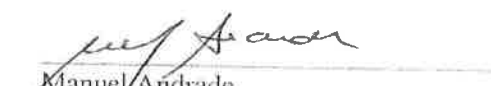
This Contract has been read, approved, and subsequently signed by Colonel LUCIANO BATISTA DE LIMA, Chief of the Brazilian Army Commission, fully representing the **BUYER**, and by Manuel Andrade, representing the **SELLER**.

Washington, D.C., February 21, 2017

For the **BUYER**

  
LUCIANO BATISTA DE LIMA, Col.  
Chief, Brazilian Army Commission

For the **SELLER**

  
Manuel Andrade  
PADTEC NORTH AMERICA, LLC

ANNEX C

PROVISIONAL RECEIVING CERTIFICATE  
(SAMPLE)

Provisional Receiving Certificate (PRC) N° \_\_\_\_\_

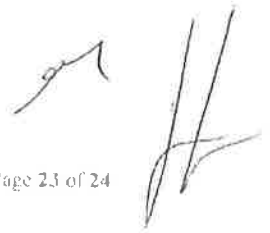
1. We have received from \_\_\_\_\_, the Defense Materiel listed below, object of Contract N° \_\_\_\_\_.

ITEM	P/N or NSN	DESCRIPTION	QUANTITY	UNIT PRICE

2. Defense Materiel received according to INVOICE N° \_\_\_\_\_, dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

3. Remarks:

Manaus, AM, \_\_ of \_\_\_\_\_ of 2017



ANNEX D

CETIFICATE OF COMPLETION OF SERVICES  
DEFINITIVE RECEIVING CERTIFICATE  
(SAMPLE)

Definitive Receiving Certificate (DRC) N° \_\_\_\_\_

1. We have received, according to Art N° \_\_\_\_\_, of the Administrative Army Regulations (RAE-3), the Defense Materiel listed below, object of Contract N° 1159/2016, signed between the GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL, through its MINISTRY OF DEFENSE represented by the BRAZILIAN ARMY COMMISSION IN WASHINGTON.

ITEM	P/N or NSN	DESCRIPTION	QUANTITY	UNIT PRICE

2. Defense Materiel received according to INVOICE N° \_\_\_\_\_, dated \_\_\_\_/\_\_\_\_/\_\_\_\_ or with the Provisional Receiving Certificate N° \_\_\_\_\_, dated \_\_\_\_/\_\_\_\_/\_\_\_\_.

3. Discrepancies:

\_\_\_\_\_, of \_\_\_\_\_ of 2017

\_\_\_\_\_  
President

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

