



NCIA/ACQ/2021/06505
 04 February 2021

To: See Distribution List

Subject: **Request for Quotation RFQ-CO-115370-HSSR
 Hardware Support and Software License (HSSR)
 Renewal of Existing Licenses and Procurement of New Licenses**

Reference(s): **A.** BC/D(2014)0126 819, Military Budget Procurement Guidance, dated 4 July 2014
B. Notification of Intent (NOI), NCIA/ACQ/2020/12965, dated 13 January 2021

Dear Sir/Madam,

1. Your firm is hereby invited to participate in a Request for Quotation (RFQ) under the Basic Ordering Agreement (BOA) Plus (BOA+) bidding procedure for the provision of **“Hardware Support and Software License (HSSR); Renewal of Existing Licenses and Procurement of New Licenses ”**.
2. This RFQ competition is divided into ten separate Lots. One set of 10 lots for Hardware Support and Software License Renewal and New Licenses. All lots are specified in the Bidding Sheet and Technical Specifications.
3. The NCI Agency, therefore, may place more than one contract to cover the entire scope of the project.
4. The award will be based on the proposal which is evaluated as the lowest price and is evaluated as technically compliant in fulfilling all requirements (per Lot offered) expressed in the Technical specifications and SSS. All lots shall be evaluated separately.
5. The resulting contract(s) shall be a Requirements type contract. This means the contract has no intrinsic monetary value. The Agency will instead place definitive Purchase Orders against the contract(s) when requirements are identified and funding is available.
6. **THE CLOSING TIME FOR SUBMISSION OF BIDS IN RESPONSE TO THIS RFQ IS 12:00 HOURS (BRUSSELS TIME) ON Thursday, 18th February 2021.**
7. Your quotation shall be submitted as follows:
 - a. **The Bidding Sheet** with the inserted Firm-Fixed Price for the current year (2021) and the four option years (2022-2025) for all Lots.

The cells that require input from Bidders, are highlighted in yellow. The Firm-Fixed Price shall be intended as the comprehensive total price offered for the fulfilment of all requirements as expressed under the Technical Specifications



and SSS. Bidders shall normally quote the Firm-Fixed Price in their own national currency.

The Contractor shall deliver the required services as per the column "Period of Performance required" under the SSS. The deliverable schedule proposed shall be the same for all Lots.

- b. Attachment B of this letter.** Bidders shall exclude from their Firm-Fixed Price quotation all taxes, duties and customs charges from which the Purchaser is exempted by international agreement.

Bidders are informed that the Purchaser (NCI Agency) is exempted from all direct taxes (including VAT) and all customs duties on merchandise imported or exported, based on Article IX and X of the Ottawa Agreement on the status of the North Atlantic Treaty Organization, National Representative and International Staff.

8. Partial Bidding is authorized. This means Bidders can offer either: (a) all the requirements for the License Renewal and Procurement of New Licenses or (b) separately for one or more of the Lots in either for Hardware Support and Software License Renewal or Procurement of New Licenses.
9. Bidders are requested to complete and return the enclosed acknowledgement of receipt within 5 days of receipt of this RFQ, informing NCI Agency of your intention to bid/not to bid. Your firm is not bound by its initial decision, and if you decide to reverse your stated intention at a later date, you are requested to advise us by a separate letter
10. This RFQ consists of: (a) this Cover Letter, Bidding Sheets and the Prospective Contract (Book II); (b) the Prospective Contract contains the, Signature Page, the Bidding Sheets, (c) Contract Special Provisions (Part II), (d) BOA Terms and Conditions (Part III), and (e) the Technical Specifications (Part IV).
11. The overall security classification of this RFQ is "NATO UNCLASSIFIED".
12. This RFQ remains the property of the NCI Agency and shall be protected in accordance with the applicable national security regulations.
13. Bidders are advised that the NCI Agency reserves the right to cancel this RFQ at any time in its entirety and bears no liability for bid preparation costs incurred by firms or any other collateral costs if bid cancellation occurs.
14. Your point of contact for all information and clarification questions concerning this RFQ is Ms. Leonora Alushani, who may be reached at RFQ-CO-115370-HSSR@ncia.nato.int

For the Director of Acquisition:



Ijeoma Ike-Meertens
Principal Contracting Officer (Acting)

Enclosures:

- Attachment A: Acknowledgement of Receipt of Request for Quotation
- Attachment B: Certificate of Exclusion of Taxes, Duties and Charges

Distribution List for RFQ-CO-115370-HSSR

- **NATO Delegations (Attn: Infrastructure Adviser)**

- Albania
- Belgium
- Bulgaria
- Canada
- Croatia
- Czech Republic
- Denmark
- Estonia
- France
- Germany
- Greece
- Hungary
- Iceland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Montenegro
- The Netherlands
- North Macedonia
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Turkey
- United Kingdom
- United States

- **NATO HQ**

- NATO Office of Resources, Management and Implementation Branch – Attn:
Deputy Branch Chief
Director, NATO HQ C3 Staff, Attn: Executive Co-ordinator
SACTREPEUR, Attn: Infrastructure Assistant
SHAPE, Attn: J3 & J2

- **Strategic Commands**

- HQ SACT Attn: R&D Contracting Office
ACO Liaison Office

- **All NATEXs**

- **NCI Agency – Internal**

Attachment A

Acknowledgement of Receipt of Request for Quotation
RFQ-CO-115370-HSSR

Please complete and return within 5 days by e-mail to:
RFQ-CO-115370-HSSR@ncia.nato.int

We hereby advise that we have received Request for Quotation RFQ-CO-115370-HSSR on, together with all enclosures listed in the Table of Contents.

CHECK ONE

- As of this date and without commitment on our part, we do intend to submit a bid.
- We do not intend to submit a bid.
- We are reviewing the requirements of the RFQ and will notify you of our decision as soon as possible.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Address: _____



Attachment B

CERTIFICATE OF EXCLUSION OF TAXES, DUTIES AND CHARGES

I hereby certify that the Firm-Fixed Priced offered in the price quotation excludes all taxes, duties and customs charges from which the Purchaser has been exempted by international agreement (see paragraph 7.b above).

Date

Signature of Authorised Representative

Printed Name

Title

Company

CO-115370-HSSR

HARDWARE SUPPORT AND SOFTWARE LICENSE RENEWAL OF EXISTING LICENSES AND PROCUREMENT OF NEW LICENSES



NATO Communications and Information Agency
Agence OTAN d'information et de communication

BOOK II

CONTRACT SPECIAL PROVISIONS



Table of Contents

1.	SCOPE OF WORK	2
2.	DEFINITIONS	2
3.	ORDER OF PRECEDENCE	3
4.	CONTRACT TYPE.....	3
5.	REQUIREMENTS CONTRACT	3
6.	PERIOD OF PERFORMANCE	4
7.	OPTIONS	4
8.	PARTICIPATING COUNTRIES.....	5
9.	COMPREHENSION OF CONTRACT AND SPECIFICATIONS	5
10.	NON DISCLOSURE.....	6
11.	ADVERTISEMENTS, PUBLICIZING AWARDS, NEWS RELEASES, AND CONFERENCES	6
12.	CONFLICT OF INTEREST	6
13.	MERGERS, ACQUISITIONS, NOVATIONS, AND CHANGE-OF-NAME AGREEMENTS	7
14.	LIQUIDATED DAMAGES.....	8
15.	INVOICES AND PAYMENT TERMS.....	8
16.	TAXES AND DUTIES	9
17.	TECHNICAL DIRECTION.....	9
18.	CONTRACT ADMINISTRATION.....	10

1. SCOPE OF WORK

- 1.1.** The NCI Agency is seeking to:
 - 1.1.1.** renew hardware support and software license agreements, previously maintained by a service integrator at multiple locations and;
 - 1.1.2.** procure new licenses
- 1.2.** The geographical location within the scope of the Contract is shown in the Schedule of Supplies and Services (SSS).
- 1.3.** The full scope of requirements to include the delivery destination is in the SSS and the Technical Specifications.

2. DEFINITIONS

- 2.1.** For the purpose of this contract and unless otherwise explicitly indicated, the following definitions shall apply:
 - 2.1.1.** Basic Ordering Agreement (BOA): Means the separate agreement the Contractor holds with NCI Agency under the auspices of the NCI Agency BOA Program.
 - 2.1.2.** Contracting Authority: The General Manager of the NCI Agency, or the authorised representatives of the General Manager acting within authority delegated by the General Manager. These authorised representatives are:
 - 2.1.2.1.** The Director of Acquisition of the NCI Agency,
 - 2.1.2.2.** The Chief of Contracts of the NCI Agency,
 - 2.1.2.3.** Principal Contracting Officers, Senior Contracting Officers and Contracting Officers of the NCI Agency

This Contract does not recognise the doctrine of apparent authority.

- 2.1.3.** Contractor: The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.
- 2.1.4.** Effective Date of Contract (EDC): The date upon which this Contract is deemed to start. Unless otherwise specified, a Contract enters into force on the date of the last signature of the Contract by the Contracting Officer.
- 2.1.5.** Purchaser: NCI Agency, as represented by the General Manager, NCI Agency. The Purchaser is the legal entity who awards and administers the Contract and stands as one of the Contracting Parties.

3. ORDER OF PRECEDENCE

3.1. In the event of any inconsistency in language, terms or conditions of the various parts of this Contract, precedence shall be given in the following order:

- 3.1.1.** The Contract Signature Page;
- 3.1.2.** Part I: Schedule of Supplies and Services (SSS);
- 3.1.3.** Purchaser-issued Purchase Orders
- 3.1.4.** Part II: Contract Special Provisions;
- 3.1.5.** Part III: BOA General Provisions;
- 3.1.6.** Part IV: The Technical Specifications;
- 3.1.7.** The Contractor's Offer, any subsequent Amendments, and any clarifications thereto, are incorporated herein by reference.
- 3.1.8.** The Contractor's Orderform(s).

4. CONTRACT TYPE

- 4.1.** This is a Firm Fixed Price Contract.
- 4.2.** The prices stated herein (to include all Purchase Orders) are not subject to any adjustment on the basis of the Contractor's cost experience in performing the Contract.
- 4.3.** The total Firm Fixed Price of this Contract is stated on the Signature page of the Contract and is based on the price of the Purchase Orders issued since the first iteration of the Contract (i.e. since 2012). The full list of all Purchase Orders can be found in the SSS.
- 4.4.** The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Total Price.

5. REQUIREMENTS CONTRACT

- 5.1.** This contract is a Requirements type contract. This means the Contract has no intrinsic monetary value. The Agency will place definitive Purchase Orders against this contract when requirements are identified and funding is available.
- 5.2.** Each Purchase Order will have a monetary obligation for the Contractor to perform and that is within the general scope of this Contract.
- 5.3.** The Purchaser considers this Contract to be the "preferred vehicle" for obtaining the type of work specified in the SSS. Only if the Contractor is unable to meet the requirements within the required timeframe or at the contracted price, will another source be solicited. If the Contractor fails to perform well in executing Purchase Orders under this contract, the Purchaser is under no obligation to continue to use the contract as a preferred vehicle.

- 5.4.** The Contractor recognises Purchase Orders under this Contract are dependent on funding not always under the control of the Purchaser. Consistent with the provisions of paragraph 6.1 above, the Purchaser is not obligated to issue any certain amounts of Purchase Orders under this Contract beyond the initial Purchase Order that activated the Contract.

6. PERIOD OF PERFORMANCE

- 6.1.** The Period of Performance shall be: (a) Basic Period of EDC until 31 December 2021 plus (b) four 12-month Option Periods.

7. OPTIONS

- 7.1.** Any tasks identified in the Contract Schedule of Supplies and Services as Options are to be intended as options to be exercised by the Purchaser and at its sole discretion. The Purchaser shall have the right to exercise any of the listed priced options during the period specified in the schedule of supplies and services.
- 7.2.** Should any options be exercised, the Purchaser will increase the firm fixed price of the Contract via a formal Contract Amendment by the amount of the line items so exercised and the period of performance of the Contract will be extended as specified in the schedule of supplies and services.
- 7.3.** In no event shall the Contractor engage in the performance of any options or part thereof without the written consent of the Purchaser's Contracting Authority.
- 7.4.** In addition to the specific Contract options, the Purchaser reserves the right to order any foreseeable or additional Contract tasks or deliverables, listed or not, either occasionally or at a further stage in the life of the project. The additional tasks and/or deliverables shall be priced in using the rates provided by the Contractor as part of its original proposal and included in this Contract by reference.
- 7.5.** The Purchaser reserves the right to order additional tasks and/or deliverables of listed items included in the base Contract within the calendar year of the Effective Date of Contract, without renegotiation. Such additional order(s) will be subject to an amendment reflecting the same Contract terms and conditions (i.e. including listed prices).
- 7.6.** Except as otherwise provided for in this Contract, Contractor's price quotations for contract changes or modifications shall be provided at no cost to the Purchaser and shall have a minimum validity period of six (6) months from submission.
- 7.7.** The Purchaser may, in writing, place an order for such additional tasks throughout the entire Contract period up until end of Warranty.

Such an order may be placed within the framework of this Contract via the issuance of a Contract Amendment or be formulated via the issuance of a new contractual instrument.

8. PARTICIPATING COUNTRIES

- 8.1.** Unless prior written authorisation of the Purchaser has been obtained, none of the Work, including services, shall be performed other than by firms from and within NATO Participating Countries
- 8.2.** The intellectual property rights to all designed documentation and system operating software shall reside in NATO member countries, and no license fee, or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member community.
- 8.3.** The list of current NATO Participating Countries, can be found here: https://www.nato.int/cps/ie/natohq/topics_52044.htm

9. COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 9.1.** The Contractor warrants that he has read, understood and agreed to each and all terms, articles, specifications and conditions specified in the Contract and that this signature of the Contract is an acceptance through delivery of the said Contract terms within their normal and common meaning.
- 9.2.** The specifications set forth the performance requirements for the Contractor's proposed work as called for under this Contract. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that it shall use reasonable endeavours to ensure that the work be delivered to meet or exceed the performance requirements of the said specifications.
- 9.3.** The Contractor hereby acknowledges that he has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this Contract.
- 9.4.** Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or,
- 9.5.** Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.

- 9.6.** Notwithstanding the “Changes clause of the BOA or any other clause of the Contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor’s proposed work shall entitle the Contractor either to any increase in the firm fixed price as set forth in this Contract or to any extension of the delivery times for the work beyond the period of performance in the Schedule of Supplies and Services.

10. NON DISCLOSURE

- 10.1.** Except as otherwise specified elsewhere in the Contract and to the extent that it is demonstratively unavoidable and without prejudice to the “Security” Clause of the BOA General Provisions, the Contractor or his employees shall not, without prior authorisation from the Purchaser, release any information pertaining to this Contract, its subject matter, its related performance or any other aspect thereof.

11. ADVERTISEMENTS, PUBLICIZING AWARDS, NEWS RELEASES, AND CONFERENCES

- 11.1.** All press releases or announcements about any contract/task order award hereunder shall be approved by the contract/task order CO prior to release. Under no circumstances shall the Contractor, subcontractor, teaming partner, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity news release or commercial advertising without first obtaining explicit written consent to do so from the contract/task order CO. The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Purchaser or is considered by the Purchaser to be superior to other products or services.
- 11.2.** Any presentation, white paper, article et cetera written, submitted or presented by Contractor personnel shall be reviewed and approved by the CO prior to delivery. This special requirement shall apply whether the Contractor personnel is acting on behalf of the company or unofficially on behalf of himself or herself.

12. CONFLICT OF INTEREST

- 12.1.** A conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Purchaser, or the Contractor’s objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Conflict of interest includes situations where the capacity of a Contractor (including the Contractor’s executives, directors, consultants, subsidiaries, parent companies or

subcontractors) to give impartial, technically sound advice or objective performance is or may be impaired or may otherwise result in a biased work product or performance because of any past, present or planned interest, financial or otherwise in organizations whose interest may substantially affected or be substantially affected by the Contractor's performance under the Contract.

- 12.2.** The Contractor is responsible for maintaining and providing up-to-date conflict of interest information to the Contracting Officer. If, after award of this Contract, the Contractor discovers a conflict of interest with respect to this Contract which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the Contracting Officer as set forth below.
- 12.3.** The Contractor's notice called for in Clause 12.2 above shall describe the actual, apparent, or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Contracting Officer in analyzing the situation. Any changes to the contractors Conflict of Interest Mitigation Plan, if any is incorporated in the contract, should be also detailed.
- 12.4.** The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the Contracting Officer, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest.
- 12.5.** If the Contracting Officer in his/her discretion determines that the Contractor's actual, apparent, or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the Contracting Officer will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of Contract performance, the Contracting Officer has the discretion to terminate the Contract for default or alternatively refrain from exercising any further Option or Work Package under the contract.
- 12.6.** The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractors failure to disclose a conflict of interest as required shall be a basis for default termination of this contract.

13. MERGERS, ACQUISITIONS, NOVATIONS, AND CHANGE-OF-NAME AGREEMENTS

- 13.1.** If a Contractor merges, is acquired, or recognizes a successor in

interest to Purchaser contracts when Contractor assets are transferred; or, recognizes a change in a Contractor's name; or, executes novation agreements and change-of-name agreements, the Contractor must notify the Purchaser's at least thirty (30) days in advance and provide a copy of the novation or other any other agreement that changes the status of the Contractor for signature by the Purchaser. Any successor must be in full compliance with all terms and conditions of this contract.

14. LIQUIDATED DAMAGES

- 14.1.** If the Contractor fails to meet the delivery schedule of the items required under this contract at the times specified in the SSS of this Contract, or any agreed extension thereto, the actual damage to the Purchaser for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the Contractor shall pay to the Purchaser fixed and agreed liquidated damages of 0.01% of the associated Delivery Order/CLIN value as set forth in the Schedule of Supplies and Services herein, for each day of delinquency in achieving the milestone. These liquidated damages will begin to accrue on the first day after the date on which delivery was to have been made and/or the milestone was to have been reached.

15. INVOICES AND PAYMENT TERMS

- 15.1.** Payment for supplies and services furnished under this Contract shall be made in the currency quoted by the Contractor for the relevant portion of the Contract.
- 15.2.** Payments will be made after the Contractor successfully delivers the milestones as defined in the SSS and receives written acceptance from the Purchaser.
- 15.3.** Where Optional CLINs are exercised, payments shall be made in accordance with the stipulations of the relevant amendment providing for the exercise of such Options.
- 15.4.** No payment shall be made with respect to undelivered supplies, works not performed; services not rendered and/or incorrectly submitted invoices.
- 15.5.** The Purchaser shall not be liable for any amount resulting from the performance of services or the delivery of equipment outside the scope of this Contract.
- 15.6.** Payment to the Contractor will be made within 45 days of receipt of properly supported and documented invoices and upon acceptance in writing by the Purchaser.

- 15.7. All invoices shall refer to CO-115370-HSSR and the Purchase Order Number.
- 15.8. Invoices shall be properly supported with any necessary reports, certificates, statements, receipts, written evidence of acceptance by the Purchaser and any other required documentation in accordance with the terms of the Contract.
- 15.9. All invoices shall be sent electronically to: accountspayable@ncia.nato.int
- 15.10. No paper invoices will be accepted.

16. TAXES AND DUTIES

- 16.1. NATO, NATO Bodies are exempt from all taxes and all customs duties on Products and Services imported or exported hereunder. The Contractor therefore, certifies that the prices stipulated under this Contract do not include amounts to cover such taxes or customs duties.
- 16.2. In cases where taxes and duties are levied, the Contractor should seek reimbursement directly from the authorities concerned in compliance with the applicable procedures. The Purchaser shall provide reasonable assistance in claiming reimbursement.
- 16.3. In the event that reimbursement is not made by the authorities concerned, and providing that the Contractor has complied with applicable procedures, the Purchaser shall reimburse the full amount of the payments upon receipt of the Contractor's invoice indicating such tax or duty as a separate item or cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced.
- 16.4. Following payment by the Purchaser of the taxes and/or duties pursuant to paragraph 16.3 above, should the Contractor receive a rebate of any amount paid by Purchaser, the Contractor shall immediately notify the Purchaser, and the amount of such rebate shall be credited or reimbursed to the Purchaser, as directed. The Contractor shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.

17. TECHNICAL DIRECTION

- 17.1. For the direct official control and coordination of requirements, the Purchaser designates the Project Manager (per Purchase Order) as the staff element that has the authority to coordinate, monitor, and control Contractor's performance under this Contract:
- 17.2. The individuals working on this Contract shall perform the effort within the general scope of work identified in the SOW. This effort will be

directed on a more detailed level by the Agency's PM who will provide detailed tasking and instruction as to how to proceed and whether deliverables are required under the task.

- 17.3. The Contractor is advised that the Agency's PM has no authority to change the terms and conditions of the Contract. If the Contractor has reason to believe that the Agency's PM is requiring effort on terms inconsistent with that in the Contract, the Contractor shall immediately inform the Purchaser's Contracting Authority for confirmation of the actions of the Agency's PM. Failure to obtain confirmation that the action of the Agency's PM is under the authority of the Contract will render any subsequent claim of change null and void.
- 17.4. Upon receipt of such notification detailed in paragraph 17.3 above, the Purchaser's Contracting Authority will (1) confirm the actions of the Agency's PM as within scope, (2) confirm that the Agency's PM's instructions constitute a change and request a quotation for a modification of scope and/or price or (3) rescind the instructions of the Agency's PM.

18. CONTRACT ADMINISTRATION

- 18.1. The Purchaser is the NATO Communications and Information Agency (NCI Agency). The Purchaser is the Point of Contact for all Contractual and Technical issues.
- 18.2. The Contractor shall accept Contract modifications only in writing from the Purchaser's Contracting Authority.
- 18.3. The Purchaser reserves the right to re-assign this Contract to a representative(s) for administrative purposes, in whole or in part, provided that the Purchaser shall always be responsible for its obligations under the Contract and for actions or lack of actions of its assigned administrator. The Purchaser undertakes to advise the Contractor in writing whenever this right is to be exercised.
- 18.4. All notices and communications between the Contractor and the Purchaser shall be written in English and may be personally delivered, mailed, or emailed at the following address:

18.5.

PURCHASER	
<u>Contractual issues:</u>	<u>Technical issues:</u>
The NCI Agency	The NCI Agency
Acquisition Directorate	NCSC Directorate
Boulevard Léopold III	SHAPE
B-1110 Brussels	B-7010 Mons
Belgium	Belgium
POC: Leonora Alushani	POC: <i>To Be Inserted at Contract Award</i>
Tel: +32 2707 1176	Tel: <i>To Be Inserted at Contract Award</i>

E-mail: Leonora.alushani@ncia.nato.int

E-mail: *To Be Inserted at Contract Award*

CONTRACTOR

Contractual issues:

Name: *To Be Inserted at Contract Award*
Address: *To Be Inserted at Contract Award*
POC: *To Be Inserted at Contract Award*
Tel: *To Be Inserted at Contract Award*
Email: *To Be Inserted at Contract Award*

Technical issues:

Name: *To Be Inserted at Contract Award*
Address: *To Be Inserted at Contract Award*
POC: *To Be Inserted at Contract Award*
Tel: *To Be Inserted at Contract Award*
Email: *To Be Inserted at Contract Award*

N A T O U N C L A S S I F I E D

CO-115370-HSSR

HARDWARE SUPPORT AND SOFTWARE LICENSE RENEWAL (HSSR)



NATO Communications and Information Agency
Agence OTAN d'information et de communication

RFQ-CO-115370-HSSR

BASIC ORDERING AGREEMENT

GENERAL TERMS AND CONDITIONS

N A T O U N C L A S S I F I E D

TABLE OF CONTENTS

SIGNATURE PAGE

BASIC ORDERING AGREEMENT WITH NCIA 1

PART I - SPECIAL PROVISIONS 2

 1. TERM 2

 2. DEFINITIONS 2

 3. ELIGIBLE PURCHASERS 3

 4. ORDERING PROCEDURE 4

 5. DELIVERY 4

 6. PRICES 5

 7. WARRANTY 5

 8. PAYMENTS 5

 9. SUPPLEMENTAL AGREEMENTS 6

 10. MISCELLANEOUS 6

PART II - GENERAL PROVISIONS 1

 1. NOTICE OF SHIPMENT 1

 2. CONTRACTOR PERSONNEL WORKING AT PURCHASER'S FACILITIES .. 1

 3. PURCHASER FURNISHED PROPERTY 2

 4. INDEMNIFICATION 3

 5. TITLE AND RISK OF LOSS 3

 6. TRANSFER REQUIREMENTS 4

 7. INSPECTION, ACCEPTANCE AND REJECTION 4

 8. PREFERRED CUSTOMER 7

 9. PRICE FIXING 7

 10. TAXES AND DUTIES 9

 11. INVOICES 10

 12. CHANGES 10

 13. PURCHASER DELAY OF WORK 11

 14. STOP WORK ORDER 12

 15. ORDER OF PRECEDENCE 13

 16. APPLICABLE LAW 13

 17. DISPUTES AND ARBITRATION 13

 18. DELAYS IN DELIVERY 14

 19. TERMINATION FOR DEFAULT 14

 20. TERMINATION FOR CONVENIENCE OF THE PURCHASER 16

 21. SUB-CONTRACTS 21

 22. PATENT AND COPYRIGHT INDEMNIFICATION 21

 23. CLAIMS 22

 24. RELEASE OF CLAIMS 23

 25. EXTRAS 23

 26. LANGUAGE 23

 27. SECURITY 23

 28. HEALTH, SAFETY AND ACCIDENT PREVENTION 25

 29. RELEASE OF INFORMATION 25

 30. FORCE MAJEURE 25

 31. RIGHTS IN TECHNICAL DATA 26

 32. COMPANY'S RESPONSIBILITY ON ACCURACY OF THE COMPANY'S
 DATA 26

APPENDIX 1 TO PART II - PURCHASER'S PRICING PRINCIPLES 26
EXHIBIT A - ORDERING INFORMATION..... 1
EXHIBIT B - AUTHORISATION TO USE BOA BY NATO CONTRACTORS..... 2
EXHIBIT C - PRODUCTS AND SERVICES 3

BASIC ORDERING AGREEMENT WITH NCIA

COMPANY NAME ("Company") and NATO COMMUNICATIONS AND INFORMATION AGENCY ("NCIA") represented by the General Manager agree that the Terms and Conditions contained in this Agreement ("Agreement"), shall govern the sale or licensing of Products and Engineering Services (as later defined) ordered under this Agreement.

"Company" has entered into this Agreement for and on behalf of itself. The geographic scope of this Agreement shall extend to member countries of the North Atlantic Treaty: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, United States of America.

This Agreement establishes the Terms and Conditions under which Products and Engineering Services may be sold or licensed to Eligible Purchasers (as later defined), but does not obligate "Company" to sell or license or Eligible Purchasers to buy or license any Product or Engineering Service. The following Sections and Exhibits contained in the Agreement form an integral part thereof.

- Part I -- Special Provisions
- Part II -- General Provisions
- Appendix 1 to Part II -- Purchaser's Pricing Principles
- Exhibit A -- Ordering Information
- Exhibit B -- Authorisation to use BOA by NATO Contractors
- Exhibit C -- Products and Services

"Company" and NCIA have read this Agreement, understand it, and agree to be bound by its Terms and Conditions. NCIA and "Company" further agree that this Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior proposals, negotiations, and communications, oral and written between the Parties or their representatives. Deviations from this Agreement shall be binding only when mutually agreed in writing by the Authorised Representatives of NCIA and "Company".

Orders placed referencing this Agreement are subject exclusively to its terms which may only be amended or supplemented by written agreement of "Company" and Eligible Purchasers.

THE NCI AGENCY
Boulevard Leopold III
B-1110 Brussels
Belgium

COMPANY
ADDRESS
ADDRESS

Title: Principal Contracting Officer
Date:

Title: _____
Date:

EFFECTIVE DATE: _____

PART I - SPECIAL PROVISIONS

1. TERM

- 1.1 This Agreement is effective for an Initial Term of one (1) year from the Effective Date which is given on page 1. Thereafter, it will continue unless and until one Party gives to the other a written thirty (30) day notice of its intention to terminate.
- 1.2 Any expiration or termination of this Agreement will not alter the rights, duties and obligations of "Company" or Purchaser, or any discounts granted, for any Orders accepted by "Company" under this Agreement prior to the date of expiration or termination of the Agreement.

2. DEFINITIONS

- 2.1 "Authorised Representative of "Company"" means please specify position.
- 2.2 "Authorised Representative of NATO, NATO Body or NATO Member Nation" means the General Manager, Deputy General Manager or Chief of Contracts of NCIA and any designated representative of an Eligible Purchaser.
- 2.3 "Authorised Representative of NCIA" means the General Manager, Deputy General Manager or Chief of Contracts.
- 2.4 "Contractor" means any entity working on a project for any Eligible Purchaser.
- 2.5 "Effective Date" is the date specified on the signature page when the Initial Term of this Agreement begins.
- 2.6 "Eligible Purchaser" or "Purchaser" means the entity identified in 3.0 below which may benefit of the Terms and Conditions of this agreement, if they express so in any subsequent agreement between them and "Company".
- 2.7 "Engineering Services" means professional services which members of the engineering/computer science profession may logically perform including studies, investigations, test, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications and preparation of operating and maintenance manuals.
- 2.8 "Governmental Agency" means any governmental agency, including military forces, of a NATO Member Nation.
- 2.9 "Member Nation" means any of the 28 Member Nations of NATO.
- 2.10 "NATO" means the North Atlantic Treaty Organisation.

- 2.11 "NATO Body" means any entity created by the North Atlantic Council (or Defence Planning Committee) and to which either the Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff (20 September 1951) or the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (28th August 1952) applies.
- 2.12 "Order" means any instrument/document, e.g. Purchase Order or Task Order, used for the procuring of Products and/or Engineering Services under this Agreement.
- 2.12.1 "Purchase Order" means any agreement concluded between the Purchaser and "Company".
- 2.12.2 "Task Order" means any instrument, in the form of a statement of work to be performed by "Company", as concluded between the Purchaser and "Company".
- 2.13 "Parties" means NCIA and "Company".
- 2.14 "Partnership for Peace (PfP) Countries" means those countries who are signatories to the Partnership for Peace Agreement dated 10 January 1994.
- 2.15 "Products" means Equipment, Software and related Goods and Services, including but not limiting to Training and Documentation.
- 2.15.1 "Equipment" shall mean the hardware components of Products.
- 2.15.2 "Software" shall mean each software program provided by "Company" in machine readable, object, printed or interpreted form.
- 2.16 "Standard Terms and Conditions" are the Terms and Conditions contained in this Agreement.
- 2.17 "Sub-contract" means any Agreement, Contract or Order made by "Company" with any other party in order to fulfil any part of an Order.
- 2.18 "Sub-contractor" means any party directly or indirectly under a "sub-contract".

3. ELIGIBLE PURCHASERS

- 3.1 The following entities are eligible to reference and use the terms and conditions of this Agreement, subject to the provisions specified in paragraph 4 below:
- 3.1.1 NCIA
- 3.1.2 NATO Bodies
- 3.1.3 Governmental Agencies of NATO Member Nations as per 2.8 above
- 3.1.4 Contractors performing work on behalf of the categories mentioned in 3.1.1, 3.1.2 and 3.1.3 above.

- 3.2 Partnership for Peace Countries may be eligible to the Terms and Conditions of this Agreement, subject to a case-by-case agreement between NCIA and "Company".

4. ORDERING PROCEDURE

- 4.1 All Orders under this Agreement shall contain, as a minimum, the information detailed in Exhibit A, and shall be subject to acceptance by "Company".
- 4.1.1 Orders may be placed with "Company" for the Products and/or Engineering Services identified on Exhibit C. Orders may be placed hereunder for Products and/or Engineering Services not included herein, subject to determination of availability and price by "Company".
- 4.1.2 "Company" accepts that NCIA shall not be liable in any form for any Order issued and concluded between a Purchaser, other than by NCIA itself, and "Company".
- 4.2 In the case of the Purchaser being a Governmental Agency or a Contractor performing work on behalf of NATO, NATO Bodies or NATO Member Nations, "Company" may request the Authorised Representative of NATO, NATO Bodies or NATO Member Nations, to verify that the Purchaser is eligible to use the Agreement.
- 4.3 Assignment: Authorised Representatives of NATO, NATO Bodies or NATO Member Nations may assign Orders at their discretion provided there is no further change to the terms of the Order, especially as regards payment. "Company" reserves the right to approve any assignment.
- 4.4 In the case of the Purchaser being a Contractor, "Company" may request the Authorised Representative of NCIA or Eligible Purchaser to verify that the Contractor is in fact performing work on a project or for an Eligible Purchaser of a NATO Member Nation and that the Products and/or Engineering Services are required for such purpose and the Authorised Representative of Eligible Purchaser shall provide such verification in the form of Exhibit B.

5. DELIVERY

- 5.1 "Company" is authorised to accelerate the Requested Products Delivery Schedule or to complete the Performance of each Order issued hereunder prior to the time set forth therein, provided, however that nothing contained herein, or in any said Order obligates the Purchaser to perform any of its obligations at an earlier date than would otherwise be the case.

6. PRICES

- 6.1 All Products prices shall be quoted as firm prices and all Engineering Services' prices shall be quoted as firm rates per particular time units by labour category in accordance with Exhibit C pricing practices as disclosed and agreed to by NCIA or any other Eligible Purchaser.
- 6.2 All Product prices are quoted CIF Destination and all Product shipments and deliveries shall be effected on this basis, notwithstanding any other provision of this Agreement or order placed hereunder.

7. WARRANTY

- 7.1 Hardware Warranty. Unless otherwise agreed between the Purchaser and "Company", or as otherwise specified, "Company" warrants its Equipment against defects in workmanship of materials for one (1) year from the date of either shipment or "Company"-performed installation. The Purchaser should return the Equipment in "Company" packaging and bear the cost of outbound carriage. "Company" will carry out and repair and bear the cost of return carriage to the Purchaser. The repaired unit will be shipped within a maximum of *specify period* working days from the receipt at the repair facility, or as otherwise specified and agreed in the Order.
- 7.2 Software Warranty. "Company" warrants that the licensed Software shall substantially conform to its user's manual, as it exists at the date of delivery, for ninety (90) days from the date of shipment.

8. PAYMENTS

- 8.1 Valid invoices (properly supported and certified) may be submitted to the Purchaser upon acceptance and payment will be made within 45 days from receipt of such invoices, unless otherwise agreed between "Company" and the Purchaser. The payment terms for Engineering Services shall be specified on each Task Order.
- 8.2 Payment of invoices shall be made to the address shown below:

COMPANY

Attn.:

For Electronic Funds Transfer:

Account Name:

Bank Name

Account Number:

ABA/SWIFT Number/Sort Code: |

9. SUPPLEMENTAL AGREEMENTS

- 9.1 The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to contract award, the execution of which by the Purchaser is/are required by national law or regulation. If any supplemental agreements, documents and permissions are introduced after contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to contract signature, the Purchaser may terminate this contract for Default, in accordance with Clause 19 of NCIA Basic Ordering Agreement, General Provisions.
- 9.2 Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by national law or regulation and that have been identified by the Contractor prior to the signature of this contract, but have not yet been finalised and issued by the appropriate governmental authority, are subject to review by the Purchaser. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed contract between the Parties, and the Purchaser and the appropriate governmental authority can not reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

10. MISCELLANEOUS

- 10.1 Failure by either Party to enforce any provision shall not be deemed a waiver of future enforcement of that or any other provision. In the event that any portion or provision of this Agreement shall be held unenforceable or one is declared void, the remaining portions and/or provisions of this Agreement shall remain in full force and effect.
- 10.2 "Company" may re-assign any Order under this Agreement to a third party after prior written approval by Purchaser, which will not be unreasonably withheld. "Company" or his legal successor shall always be responsible for his obligations under this Agreement and for actions of his assigned representatives.
- 10.3 "Company" may sub-contract its responsibilities in relation to this Agreement with the understanding that "Company" shall remain responsible for all obligations under this Agreement.
- 10.4 Purchaser shall have the right to take possession of and to use any partial delivery of an Order for Products and such possession or use shall not of itself constitute acceptance of the Products.
- 10.5 All formal communications as required and specified in the clauses of Part II of this Agreement shall be given by receipted personal delivery or by recorded delivery or registered post, with postage prepaid. The addresses

and nominated personnel of the Parties (until change of notice shall be given) shall be as follows:

Company:

Name:
Title:
Department:
Address:
Tel:
Fax:
e-mail:

NCIA: Mr. Alain Courtois
Chief of Contracts- Principal Contracting Officer,
The NCI Agency
Boulevard Leopold III
B-1110 Brussels,
Belgium
Tel: +32 2 707 8233
E-Mail: Alain.Courtois@ncia.nato.int

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PART II - GENERAL PROVISIONS

1. NOTICE OF SHIPMENT

- 1.1 "Company" shall, as appropriate and prior to the delivery of any shipment, give notice of shipment to the Purchaser and to such other persons as may reasonably be designated by the Purchaser. Unless otherwise specified by the Purchaser, delivery will be made to the address specified in the country of purchase on Purchaser's Order. The scheduled delivery date shall be that date acknowledged by "Company". "Company" shall consider any date requested by the Purchaser.
- 1.2 The Notice of Shipment shall contain, as appropriate, the request for Customs Form 302, or equivalent document, which shall enable any carrier to effect duty free import/export clearance through customs for the Purchaser on behalf of NATO. The Form 302 is an official Customs Clearance Declaration issued in advance of shipment to provide certified information as to the import/export, or transit of NATO Member Nations.
- 1.3 The Notice of Shipment and request for Form 302 shall contain the following information, as appropriate:
- 1.3.1 Purchaser's Order Number;
 - 1.3.2 Order Item Number, Designation and Quantities;
 - 1.3.3 Destination;
 - 1.3.4 Number and Description of Packages (gross and net weight);
 - 1.3.5 Consignor's Name and Address;
 - 1.3.6 Consignee's Name and Address;
 - 1.3.7 Method of Shipment (i.e. road, rail, sea, air, etc.);
 - 1.3.8 Name and Address of Freight Forwarder.
- 1.4 Forwarding Agents, Carriers or other responsible organisations shall be informed by "Company" of the availability of FORM 302 and how the form should be utilised to avoid the payment of custom duties.

2. CONTRACTOR PERSONNEL WORKING AT PURCHASER'S FACILITIES

- 2.1 The term "Purchaser Facilities" as used in this clause shall be deemed to include sites, property, utilities, ships or vessels owned or controlled by NATO, NATO Bodies or NATO Member Nations or NATO Contractor and the term "Facility Representative" shall be deemed to refer to the authority designated by the Representative responsible for such site, property, utility, ship or vessel.

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- 2.2 The Facility Representative shall provide such available administrative and technical facilities for "Company"s personnel working at the Purchaser's Facilities for the purpose of the Agreement as in the opinion of the Facility Representative may be necessary for the effective and economical discharge of work under this Agreement. These facilities may be provided at no cost at the discretion of the Facility Representative. "Company" shall be responsible for ascertaining what necessary facilities may be provided and whether they will be provided free of charge, or determining what charges are payable.
- 2.3 "Company" shall, except as otherwise provided for in the Agreement, make good or, at the option of the Purchaser, pay compensation for all damage occurring to any Purchaser's Facilities occasioned by "Company" or by his servants, agents or subcontractors, arising from his or their presence on Purchaser Facilities in connection with the Agreement; provided that this Condition shall not apply to the extent that "Company" is able to show that any such damage was not caused by "Company"s neglect or default, or the neglect or default of "Company"s servants, agents or subcontractors.
- 2.4 All property of "Company" while at a Purchaser Facility shall be at risk of "Company" and the Purchaser shall accept no liability for any loss or damage, except to the extent that any loss or damage is the result of a wilful act or gross negligence on the part of the Purchaser's employees or agents.

3. PURCHASER FURNISHED PROPERTY

- 3.1 The term "Purchaser Furnished Property" as used in this clause refers to items of equipment, material or property furnished by the Purchaser to "Company" which shall be subject to overhaul, repair, modification, test, embodiment or other work as specified in any Order under this Agreement to be performed by "Company".
- 3.2 The Purchaser shall deliver to "Company", for use only in connection with any Order under this Agreement, the property described in the schedule or specifications (hereinafter referred to as "Purchaser Furnished Property"), at the times and locations stated therein. In the event that Purchaser Furnished Property is not delivered by such time or times stated in the Schedule, or if not so stated, in sufficient time to enable "Company" to meet such delivery or performance dates the Purchaser shall, upon timely written request made by "Company", and if the facts warrant such action, equitably adjust any affected provision of the Order pursuant to the procedures of the "Changes" clause hereof.
- 3.3 In the event that Purchaser Furnished Property is received by "Company" in a condition not suitable for its intended use, "Company" shall immediately notify the Purchaser. The Purchaser shall within a reasonable time of receipt of such notice replace, re-issue, authorise repair or otherwise issue instructions for the disposal of Purchaser Furnished Property agreed to be unsuitable. The Purchaser shall, upon timely written request by "Company", equitably adjust any affected provision of the Order pursuant to the procedures of the "Changes" clause hereof.

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- 3.4 Title to Purchaser Furnished Property shall remain in the Purchaser. "Company" shall maintain adequate property control records of Purchaser Furnished Property in accordance with sound industrial practice.
- 3.5 Unless otherwise provided in the Order, "Company", upon delivery to him of any Purchaser Furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereof except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of the Order.
- 3.6 Upon completion of the Order, or at such earlier dates as may be specified by the Purchaser, "Company" shall submit, in a form acceptable to the Purchaser, inventory schedules covering all items of Purchaser Furnished Property not consumed in the performance of the Order or not theretofore returned to the Purchaser. "Company" shall prepare for shipment, deliver FOB origin, or otherwise dispose of Purchaser Furnished Property as may be directed or authorised by the Purchaser. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Purchaser may direct.
- 3.7 "Company" shall not modify any Purchaser Furnished Property unless specifically authorised by the Purchaser or directed by the terms of the Order.

4. INDEMNIFICATION

- 4.1 "Company" shall indemnify and hold the Purchaser harmless against claims for injury to "Company" employees, agents, or subcontractors, or damages to property of "Company" or others arising from "Company"'s possession or use of Purchaser Furnished Property or Facilities in the performance of work as specified in an Order; except to the extent that "Company" is able to show any such injury or damage was caused by Purchaser's wilful act or negligence.

5. TITLE AND RISK OF LOSS

- 5.1 Unless the Order specifically provides for earlier passage of title, title to supplies covered by the Order shall pass to the Purchaser upon acceptance as specified in the Order, regardless of when or where the Purchaser takes physical possession.
- 5.2 Unless the Order specifically provides otherwise, risk of loss or damage to supplies covered by this Agreement and any Order shall remain with "Company" until, and shall pass to the Purchaser upon:
- 5.2.1 delivery of supplies as specified in accordance with the Agreement; or
- 5.2.2 acceptance by the Purchaser or receipt of supplies by the Purchaser at the destination specified in the Order, whichever is the later.

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5.3 Notwithstanding 5.2 above, the risk of loss or damage to supplies which fail to conform to the requirements of the Order shall remain with "Company" until cure or acceptance, at which time 5.2 above shall apply.

5.4 Notwithstanding 5.2 above "Company" shall not be liable for the loss of or damage to supplies caused by the negligence of officers, agents or employees of the Purchaser acting within the scope of their employment under the terms and conditions of this Agreement.

6. TRANSFER REQUIREMENTS

6.1 "Company" shall not give, bargain, sell, assign, sub-let or otherwise dispose of any order under this Agreement or any part thereof or the benefit or advantage of the Order or any part thereof without the previous consent in writing of the Purchaser.

7. INSPECTION, ACCEPTANCE AND REJECTION

7.1 Unless otherwise specifically provided for in the Order, all equipment, materials and supplies incorporated in the work covered by this Agreement are to be new and of the most suitable grade of their respective kinds for the purpose, notwithstanding the requirements for testing, inspection and performance as required under this Agreement. All workmanship shall be as required under the Order or, if not specified, best commercial (National and International) standard.

7.2 All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, end products, data including software and firmware) and services may be subject to inspection and test by the Purchaser, or his authorised representative to the extent practicable at all times and places prior to acceptance, including the period of manufacture, or after delivery, or as otherwise specified in the Order. For the purposes of inspection and testing the Purchaser may delegate as his representative the authorised National Quality Assurance Representative (NQAR) in accordance with STANAG 4107.

7.3 No representative or NQAR appointed by the Purchaser for the purpose of determining the Contractor's compliance with the technical requirements of the Order shall have the authority to change any of the specifications. Such changes may only be made by the Contracting Authority in writing in accordance with the clause of this Agreement entitled "Changes".

7.4 The presence or absence of an NQAR or other Purchaser representative shall not relieve "Company" from any of the requirements of this Agreement.

7.5 In the event that any supplies, or lots thereof, or services are defective in design, material, workmanship or manufacturing quality, or as a result of undue wear and tear or otherwise not in conformity with the requirements of the order, including any characteristic or condition which is or becomes at variance to the performance specifications and to the intended function of the supplies, the Purchaser shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction or

NATO UNCLASSIFIED

replacement. Supplies, or lots thereof or services which have been rejected or required to be corrected or replaced shall, at the expense of "Company", be removed, or, if permitted or required by the Contracting Authority, corrected in place by "Company" promptly after notice, and shall not thereafter be tendered for acceptance by "Company" unless the former rejection or requirement of correction or replacement is disclosed. If "Company" fails promptly to remove, replace or correct such supplies or lots thereof, or services, the Purchaser either:

- 7.5.1 may by Order or otherwise return, replace or correct such supplies or services and charge "Company" the cost incurred by the Purchaser, or
- 7.5.2 may terminate this Agreement for default as provided in the clause of this Agreement entitled "Termination for Default".
- 7.6 Unless "Company" corrects or replaces such supplies or services within the delivery schedule, the Purchaser may require the delivery of such supplies or services at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes".
- 7.7 If any inspection or test is made by the Purchaser's representatives on the premises of "Company" or sub-contractor, "Company", without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Purchaser's representatives in the performance of their duties. The NQAR or other Purchaser representatives shall have the right of access to any area of "Company"'s or his sub-contractor's premises where any part of the contractual work is being performed. If Purchaser inspection or test is made at a point other than the premises of "Company" or sub-contractor, it shall be at the expense of the Purchaser except as otherwise provided in this Agreement; provided that in case of rejection the Purchaser shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Purchaser shall be performed in such a manner as not to unduly delay the work. The Purchaser reserves the right to charge to "Company" any additional cost of Purchaser inspection and test when supplies or services are not ready at the time such inspection and test is requested by "Company" or when re-inspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies or services shall be made as promptly as practicable after delivery, except as otherwise provided in the Order, but failure to inspect and accept or reject supplies or services shall neither relieve "Company" from responsibility for such supplies or services as are not in accordance with the Order requirements nor impose liability on the Purchaser thereof.
- 7.8 The inspection and test by the Purchaser of any supplies or lots thereof, or services does not relieve "Company" from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in the Order, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

NATO UNCLASSIFIED

- 7.9 Acceptance of supplies or services shall take place when the Purchaser confirms acceptance of the supplies or services in accordance with the procedure specified in the Order, or if none is so specified then the Purchaser shall be deemed to have accepted the supplies or services without prejudice to any other remedies, when and as soon as any of the following events have occurred:
- 7.9.1 The Purchaser has taken the supplies or services into use;
- 7.9.2 The Purchaser has not exercised its right of rejection of the supplies or services within any period specified for that purpose in the Order;
- 7.9.3 There being no period of exercising the right of rejection specified in the Order, a reasonable time, all the circumstances having been taken into account, has elapsed since delivery of the supplies or services was effected in accordance with the Order.
- 7.10 Unless otherwise specified in this Agreement, "Company" shall have or establish, implement and maintain an effective and economical quality control system, planned and developed in conjunction with other contractor functions necessary to satisfy the contract requirement. The system shall be acceptable to the Purchaser and its authorised representatives. The system shall provide for the early and prompt detection of deficiencies, trends and conditions which could result in unsatisfactory quality, and for timely and effective corrective action. Objective evidence that the system is effective shall be readily available to the Purchaser and its authorised representatives. Records of all inspection and testing work by "Company" shall be kept complete and available to the Purchaser's representatives during the performance of any Order under this Agreement and for such longer periods as may be specified elsewhere in the Order.
- 7.11 Product acceptance shall be accomplished by using test procedures and/or programs established by "Company" which are applicable to the Products, unless otherwise agreed in writing by the Purchaser and "Company". Such acceptance shall be at the time of completion of final tests at "Company"'s facilities, except as otherwise specified below. If Purchaser has conveyed in writing its intention to witness final tests in the Order, "Company" will give Purchaser prior notice of the date of such tests. Purchaser shall be responsible for any charges that may be associated with witnessing said tests. If installation by "Company" is included in the purchase price, acceptance will be at any installation site specified by the Purchaser, when "Company" demonstrates that the applicable diagnostic and/or verification programs work properly. If "Company"'s demonstration of the programs at the installation site is delayed for more than fifteen (15) calendar days, except due to the fault of "Company", the Products will be deemed accepted.

NATO UNCLASSIFIED

8. PREFERRED CUSTOMER

8.1 "Company" warrants that the prices set forth in this Agreement, and appendices thereto, are as favourable as those extended to any Government, Agency, Company, Organisation or individual purchasing or handling like quantities of equipment and/or parts covered by the Agreement under similar conditions. In the event that prior to complete delivery under this Agreement "Company" offers any of such items in substantially similar quantities under similar conditions to any customer at prices lower than those set forth herein, "Company" shall so notify the Purchaser and the prices of such items shall be correspondingly reduced by a supplement to this Agreement. Price in this sense means "Base Price" prior to applying any bonus, export tax reduction, turn-over tax exemptions and other reductions based on National Policies.

9. PRICE FIXING

9.1 Offers for sole source procurement, changes, modifications, and claims in excess of \$500,000 shall be priced in accordance with this provision and the Purchaser's Pricing Principles as set out in Appendix 1 to this provision, or the National Government Pricing Rules and Regulations for "Company"'s own country where in force.

9.2 This provision shall also apply to follow-on contracts of any nature including maintenance and supply of spare parts which exceed \$500,000. Should such contracts be placed by NATO, NATO Bodies or Governmental Agencies of NATO Member Nations, such organisations shall be entitled to all rights, powers and privileges that the Purchaser has under this Agreement.

9.3 To the extent the product proposed is a Commercial Off The Shelf (COTS) or COTS derivative item which has been sold to the general public or which is being developed for sale to the general public, including services normally provided for maintenance and installation, and consistent with, for example, the Rules of the Federal Acquisition Regulation (FAR), said items will be defined as "COMMERCIAL" and shall not be subject to paragraphs 9.4 or 9.5.

9.3.1 For the purposes of verifying that cost or pricing data submitted in conjunction with paragraphs 9.1 and 9.2 above are accurate, complete and current, the Purchaser shall, until the expiration of three (3) years from the date of final payment of all sums due under the Agreement, have the right of access to "Company"'s facilities to examine those books, records, documents and other supporting data which will permit adequate evaluation and verification of the cost or pricing data submitted along with the computations and projections used therein which were available to "Company" as of the date of "Company"'s price proposal.

9.4 "Company", when the price exceeds \$500,000, and subject to paragraph 9.3 above, shall require its Subcontractors to provide to the Purchaser, either directly or indirectly:

9.4.1 cost or pricing data or substantiation of commercial product status;

NATO UNCLASSIFIED

- 9.4.2 access to Subcontractor's facilities and records by the National Audit Agency for the purpose of verification of such cost or pricing data; and
- 9.4.3 a Certificate of Current Cost or Pricing Data when required.
- 9.5 Price Reduction for Defective Cost or Pricing Data.
 - 9.5.1 If any price, including profit or fee, negotiated in connection with this Agreement or any cost reimbursable under this Agreement was increased by any significant sums because:
 - 9.5.1.1 "Company" furnished cost or pricing data which was not complete, accurate and current as certified in "Company"'s Certificate of Current Cost or Pricing Data provided in accordance with paragraph 9.6 below.
 - 9.5.1.2 A Subcontractor, pursuant to paragraph 9.4 above or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data.
 - 9.5.1.3 A Subcontractor or prospective Subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a Subcontract cost estimate furnished by "Company" but which was not complete, accurate and current as of the date certified in "Company"'s Certificate of Current Cost or Pricing Data; or
 - 9.5.1.4 "Company" or a Sub-contractor or prospective Subcontractor furnished any data, not within paragraphs 9.5.1.1, 9.5.1.2 or 9.5.1.3 above, which was not accurate as submitted
 - 9.5.2 Then the price or cost shall be reduced accordingly and the Order shall be modified in writing as may be necessary to reflect such reductions.
- 9.6 Certificate of Current Cost or Pricing Data.
 - 9.6.1 At the time of negotiating any price, including profit or fee, "Company" shall be required to submit a Certificate of Current Cost or Pricing Data as required by paragraph 9.4.3.
 - 9.6.2 Such Certificate will certify that, to the best of "Company"'s knowledge and belief, cost or pricing data submitted to the Purchaser in support of any proposal for a price, price adjustment or claim, are accurate, complete and current, as per the completion of the negotiations or, in the case of a claim, as per the submission date of the claim.
 - 9.6.3 All such certificates shall be in the format shown below and shall be dated and signed by a responsible officer of the company.

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CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as submitted, either actually or by specific identification in writing to the Purchaser or his representative in support of _____ are accurate, complete and current as of _____.
day month year

Firm _____

Name _____

Title _____

Date of Execution

9.7 "Company" shall insert the substance of this Clause in each Subcontract where applicable.

10. TAXES AND DUTIES

10.1 NATO, NATO Bodies and certain other Eligible Purchasers are exempt from all taxes and all customs duties on Products and Services imported or exported hereunder. "Company" therefore, certifies that the prices stipulated under this Agreement do not include amounts to cover such taxes or customs duties. "Company" shall be responsible for determining whether such exemptions apply for other Eligible Purchasers, as defined under paragraphs 3.1.3, 3.1.4 and 3.2 of Part I, Special Provisions above.

10.2 In cases where taxes and duties are levied, "Company" should seek reimbursement directly from the authorities concerned in compliance with the applicable procedures. The Purchaser shall provide reasonable assistance in claiming reimbursement.

10.3 In the event that reimbursement is not made by the authorities concerned, and providing that "Company" has complied with applicable procedures, Purchaser shall reimburse the full amount of the payments upon receipt of "Company"'s invoice indicating such tax or duty as a separate item or cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced.

10.4 Following payment by the Purchaser of the taxes and/or duties pursuant to paragraph 10.3 above, should "Company" receive a rebate of any amount paid by Purchaser, "Company" shall immediately notify Purchaser, and the amount of such rebate shall be credited or reimbursed to the Purchaser, as directed. "Company" shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.

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11. INVOICES

- 11.1 Invoices shall be prepared and submitted by "Company" in a manner as agreed with Purchaser and shall contain: BOA number, Order number (if any), description of Products, sizes, quantities, unit prices, and extended totals (exclusive of taxes and duties for which relief is available). Details of Bills of Lading or Freight Warrant numbers and weight of shipment shall be identified on each invoice as appropriate.
- 11.2 In addition, where applicable and on request by Purchaser, documentary evidence of acceptance (as defined in the Agreement) shall be submitted together with each invoice.
- 11.3 All invoices shall be addressed to the designated authority specified by Purchaser.

12. CHANGES

- 12.1 The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Order, in any one or more of the following:
 - 12.1.1 Specifications (including drawings and designs) except to Commercial Products;
 - 12.1.2 Method and manner of performance of the work;
 - 12.1.3 Marking, method of shipment and packing;
 - 12.1.4 Time and place of delivery; and
 - 12.1.5 Purchaser Furnished Property and Facilities (including Equipment, materials, services or sites).
- 12.2 Any other written or oral order (which, as used in this paragraph 12.2, includes direction, instruction, interpretation, or determination) from the Purchaser that causes a change shall be treated as a change order under this clause, provided, that "Company" gives the Purchaser written notice within thirty (30) days after receipt of such change order stating:
 - 12.2.1 the date, circumstances, and source of the order and
 - 12.2.2 that "Company" regards the order as a change order, and that the order is accepted in writing by the Purchaser as a change order. The timely written notice requirement, as detailed above, remains in force in all cases, even where, for example, the Purchaser has positive knowledge of the relevant facts.
- 12.3 Except as provided in this clause, no order, statement, or conduct of the Purchaser shall be treated as a change order under this clause or entitle "Company" to an equitable adjustment.

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- 12.4 If any such change order causes an increase or decrease in "Company"'s cost of, or the time required for the performance of any part of the work under the Order, whether or not changed by any such order, the Purchaser shall make an equitable adjustment and modify the Order in writing accordingly. However, except for a "proposal for adjustment" (hereafter referred to as "proposal") based on defective specifications, no proposal for any change under paragraph 12.2 above shall be allowed for any costs incurred more than thirty (30) days before "Company" gives written notice as required. In the case of defective specifications for which the Purchaser is responsible, the equitable adjustment shall include any increased cost reasonably incurred by "Company" in attempting to comply with the defective specifications. Where the cost of property made obsolete or excess as a result of a change is included in the "Company"'s claim for adjustment, the Purchaser shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes." However, nothing in this clause shall excuse "Company" from proceeding with the Order as changed.
- 12.5 "Company" must submit any proposal under this clause within thirty (30) days after
- 12.5.1 receipt of a written change order under paragraph 12.1 above or
- 12.5.2 the furnishing of a written notice under paragraph 12.2, by submitting to the Purchaser a written statement describing the general nature and amount of the proposal, unless this period is extended by the Purchaser. The statement of proposal for adjustment may be included in the notice under paragraph 12.2 above.
- 12.6 No proposal by "Company" for an equitable adjustment shall be allowed if asserted after final payment and acceptance under the Order.

13. PURCHASER DELAY OF WORK

- 13.1 If the performance of all or any part of the work is delayed or interrupted by an act of the Purchaser in the administration of the Order, which act is not expressly or implicitly authorised by the Order, or by his failure to act within the time specified in the Order (or within a reasonable time if not time is specified), an adjustment shall be made for any increase in the cost of performance of the Order caused by such a delay or interruption and the Order modified in writing accordingly. Adjustments shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption:
- 13.1.1 to the extent that performance would have been delayed or interrupted by any other clause, including the fault or negligence of "Company"; or
- 13.1.2 for which an adjustment is provided under any other provision of this Agreement.
- 13.2 No claim under this clause shall be allowed:

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13.2.1 for any costs incurred more than twenty (20) days before "Company" shall have notified the Purchaser in writing of the act or failure to act involved; and

13.2.2 unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Order.

14. STOP WORK ORDER

14.1 The Purchaser may, at any time, by written order to "Company", require "Company" to stop all, or any part, of the work called for by the Order for a period of ninety (90) days after the order is delivered to "Company", and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, "Company" shall forthwith comply with its terms and take all reasonable steps to minimise costs incurred allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to "Company", or within any extension of that period to which the Parties shall have agreed, the Purchaser shall either:

14.1.1 cancel the stop work order, or

14.1.2 terminate the work covered by such order in accordance with paragraph 20,

TERMINATION FOR CONVENIENCE OF THE PURCHASER.

14.2 If a stop work order issued under this clause is cancelled or the period of the order or any extension thereof expires, "Company" shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Order shall be modified in writing accordingly, if:

14.2.1 the stop work order results in an increase in the time required for, or in "Company"'s cost properly allocable to, the performance of any part of the Order, and

14.2.2 "Company" asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Purchaser decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under any Order.

14.3 If a stop order is not cancelled and the work covered by such order is terminated for the convenience of the Purchaser, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

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15. ORDER OF PRECEDENCE

- 15.1 In the case of any inconsistencies herein, the order of precedence of the contractual documents is as follows:
- 15.1.1 the Special Provisions
 - 15.1.2 the General Provisions
 - 15.1.3 Exhibits and Appendices,
- 15.2 Except where inconsistency between the terms of this Agreement and those contained in any Order have been expressly agreed between the Purchaser and "Company", the terms of this Agreement shall take precedence.

16. APPLICABLE LAW

- 16.1 This Agreement and each subsequent Order under this Agreement between NCIA and "Company" shall be governed by and construed in accordance with the private contract law of the Kingdom of Belgium. Orders signed between "Company" and any other Purchaser under this Agreement shall be governed by the laws applicable to the country of the Purchaser, unless otherwise agreed between the Purchaser and "Company".

17. DISPUTES AND ARBITRATION

- 17.1 In the event of a dispute under this Agreement or any Order issued hereunder, the Parties shall attempt to settle their difference in an amicable manner. However, in the event that a settlement cannot be made under this Agreement within a reasonable period of time, the Parties agree to institute arbitration proceedings in the manner provided in the following Arbitration provision and such disputes shall finally be settled thereby, unless otherwise agreed between the Purchaser and "Company".
- 17.1.1 "Company" agrees to submit to the Arbitration Tribunal only such issues, facts, evidence and proof which "Company" had beforehand identified and submitted to the Purchaser for decision. The jurisdictional authority of the Arbitration Tribunal shall be restricted to consider only those identical issues, facts, evidence and proof so identified and submitted to the Purchaser.
 - 17.1.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by the Purchaser, another by "Company" and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal within thirty days following the expiration of the said first period, the appointment shall be

NATO UNCLASSIFIED

made, within twenty-one days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration at The Hague.

- 17.1.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.
- 17.1.4 Any arbitrator must be of the nationality of any one of the NATO Member Nations and shall be bound by the rules of security in force within NATO.
- 17.1.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the NATO Member Nations, be bound by the rules of security in force within NATO; if he is of another nationality, no NATO classified documents or information shall be communicated to him.
- 17.1.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph 17.1.2 above.
- 17.1.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of signature of the present Agreement.
- 17.1.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.
- 17.2 The place of arbitration shall be Brussels, Belgium, in the case of dispute under this Agreement or under any subsequent Order between "Company" and N CIA, and shall be the country of the Purchaser in the case of a dispute between "Company" and any other Purchaser, unless otherwise agreed between the Purchaser and "Company".

18. DELAYS IN DELIVERY

- 18.1 "Company" agrees to notify Purchaser in the event that it anticipates difficulty in meeting delivery schedule. Receipt of such notice shall not be deemed to be a waiver by Purchaser of rights or remedies which it may have for failure to meet an agreed delivery date. Notwithstanding the above "Company" shall be deemed to be in delay without notice from the Purchaser and only by simple expiry of the due delivery date.

19. TERMINATION FOR DEFAULT

- 19.1 The Purchaser may, subject to the provisions of paragraph 19.3 below, by written notice of default to "Company", terminate the whole or any part of an Order in any one of the following circumstances:
 - 19.1.1 if "Company" fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

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- 19.1.2 if "Company" fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of an Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten days (or such longer period as the Purchaser may authorize in writing) after receipt of notice in writing from the Purchaser specifying such failure.
- 19.2 In the event the Purchaser terminates an Order in whole or in part, as provided in paragraph 19.1 of this clause, the Purchaser may procure, upon such terms and in such manner as the Purchaser may deem appropriate, supplies or services similar to those so terminated, and "Company" shall be liable to the Purchaser for any excess costs for such similar supplies or services. However, "Company" shall continue the performance of an Order to the extent not terminated under the provisions of this clause.
- 19.3 Except with respect to defaults of sub-contractors, "Company" shall not be liable for any excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of "Company". Such causes may include, but are not restricted to, acts of God, or of the public enemy, acts of the Purchaser in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of "Company". If the failure to perform is caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both "Company" and sub-contractor, without the fault or negligence of either of them, "Company" shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit "Company" to meet the required delivery schedule.
- 19.4 If an Order is terminated as provided in paragraph 19.1 of this clause, the Purchaser, in addition to any other rights provided in this clause, may require "Company" to transfer title and deliver to the Purchaser, in the manner and to the extent directed by the Purchaser:
- 19.4.1 any completed supplies, and
- 19.4.2 such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as "Company" has specifically produced or specifically acquired for the performance of such part of an Order as has been terminated;
- and "Company" shall, upon direction of the Purchaser, protect and preserve property in the possession of "Company" in which the Purchaser has an interest. Payment for completed supplies delivered to and accepted by the Purchaser shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Purchaser and for the protection and preservation of property shall be in an amount agreed upon by "Company" and Purchaser. Failure to agree to such amount shall be a dispute within the meaning of the clause of this agreement entitled "Disputes and Arbitration". The Purchaser may withhold from amounts otherwise due to "Company" for

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NATO UNCLASSIFIED

such completed supplies or manufacturing materials such sum as the Purchaser determines to be necessary to protect the Purchaser against loss because of outstanding liens or claims of former lien holders.

- 19.5 If, after notice of termination of an Order under the provisions of this clause, it is determined for any reason that "Company" was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the Parties, shall be the same as if the notice of termination had been issued pursuant to a clause providing for termination of convenience of the Purchaser. If after such notice of termination of an Order under the provisions of this clause, it is determined for any reason that "Company" was not in default under the provisions of this clause and if the Order does not contain a clause providing for termination for convenience of the Purchaser the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly. Failure to agree to any such adjustment shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes".
- 19.6 The rights and remedies of the Purchaser provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement or any Order issued under the present BOA.

20. TERMINATION FOR CONVENIENCE OF THE PURCHASER

- 20.1 The performance of work under an Order may be terminated by the Purchaser in accordance with this clause in whole, or from time to time in part, whenever the Purchaser shall determine that such termination is in the best interest of the Purchaser. Any such termination shall be effected by delivery to "Company" of a Notice of Termination specifying the extent to which performance of work under an Order is terminated, and the date upon which such termination becomes effective.
- 20.2 After receipt of a Notice of Termination and except as otherwise directed by the Purchaser, "Company" shall:
- (i) stop work under the Order on the date and to the extent specified in the Notice of Termination;
 - (ii) place no further orders or sub-contracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Order as is not terminated;
 - (iii) terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (iv) assign to the Purchaser, in the manner, at the times and to the extent directed by the Purchaser, all of the right, title and interest of "Company" under the orders and sub-contracts so terminated, in which case the Purchaser shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts;

NATO UNCLASSIFIED

- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the Purchaser to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (vi) transfer title and deliver to the Purchaser in the manner at the times, and to the extent, if any, directed by the Purchaser:
 - a. the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and
 - b. the completed or partially completed plans, drawings, information, and other property which, if the Order had been completed, would have been required to be furnished to the Purchaser;
- (vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorised by the Purchaser, any property of the types referred to in (vi) above. However, "Company":
 - a. shall not be required to extend credit to any Buyer; and,
 - b. may acquire any such property under the conditions prescribed by and at a price or prices approved by the Purchaser; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Purchaser to "Company" under an Order or shall otherwise be credited to the price or cost of the work covered by an Order or paid in such manner as the Purchaser may direct;
- (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (ix) take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to an Order which is in the possession of "Company" and in which the Purchaser has or may acquire an interest.

20.3 "Company" may submit to the Purchaser a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorised by the Purchaser, and may request the Purchaser to remove such items or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Purchaser upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

NATO UNCLASSIFIED

- 20.4 After receipt of a Notice of Termination, "Company" shall submit to the Purchaser his termination claim, in the form and with certification prescribed by the Purchaser. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the Purchaser, upon request of "Company" made in writing within such six-month period or authorised extension thereof. However, if the Purchaser determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. Upon failure of "Company" to submit his termination claim within the time allowed, the Purchaser may determine on the basis of information available to him, the amount, if any, due to "Company" by reason of the termination and shall thereupon pay to "Company" the amount so determined.
- 20.5 Subject to the provisions of paragraph 20.2 "Company" and the Purchaser may agree upon the whole or any part of the amount or amounts to be paid to "Company" by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts exclusive of settlement costs shall not exceed total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of the work not terminated. The Order shall be amended accordingly and "Company" shall be paid the amount agreed. Nothing in paragraph 20.6 of this clause, prescribing the amount to be paid to "Company" in the event of failure of "Company" and the Purchaser to agree upon the whole amount to be paid to "Company" by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to "Company" pursuant to this paragraph 20.5.
- 20.6 In the event of the failure of "Company" and the Purchaser to agree as provided in paragraph 20.5 upon the whole amount to be paid to "Company" by reason of the termination of work pursuant to this clause, the Purchaser shall pay to "Company" the amounts determined by the Purchaser as follows, but without duplication of any amounts agreed upon in accordance with paragraph 20.5:
- (i) for completed supplies accepted by the Purchaser (or sold or acquired as provided in paragraph 20.2 (vii) above) and not therefore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the Order, appropriately adjusted for any saving of freight or other charges;
 - (ii) the total of:
 - a. the costs incurred in the performance of the work terminated including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph 20.6 (i) hereof;

NATO UNCLASSIFIED

- b. the cost of settling and paying claims arising out of the termination of work under sub-contracts or orders, as provided in paragraph 20.2 (v) above, which are properly chargeable to the terminated portion of the Order, exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by sub-contractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under a. above; and
 - c. a sum, as profit on a. above, determined by the Purchaser to be fair and reasonable; provided, however, that if it appears "Company" would have sustained a loss on the entire Order, had it been completed, no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (iii) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Order and for the termination and settlement of sub-contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection, or disposition of property allocable to the Order.
- 20.7 The total sum to be paid to "Company" under (i) and (ii) of paragraph 20.6 shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Purchaser shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to "Company", as provided in paragraph 20.6 (i) and (ii)(a) above, the fair value, as determined by the Purchaser, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Purchaser or to a buyer pursuant to paragraph 20.2 (vii) above.
- 20.8 "Company" shall have the right of appeal, under the clause of this Agreement entitled "Disputes", from any determination made by the Purchaser under paragraphs 20.4 or 20.6 above, except that if "Company" has failed to submit his claim within the time provided in paragraph 20.4 above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Purchaser has made a determination of the amount due under paragraphs 20.4 or 20.6 above, the Purchaser shall pay "Company" the following:
- (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Purchaser, or
 - (ii) if an appeal has been taken, the amount finally determined on such appeal.
- 20.9 In arriving at the amount due to "Company" under this clause there shall be deducted:

NATO UNCLASSIFIED

- (i) all unliquidated advance or other payments on account theretofore made to "Company", applicable to the termination portion of the Order;
- (ii) any claim which the Purchaser may have against "Company" in connection with the Order, and
- (iii) the agreed price for, or the proceeds of the sale of, any materials, supplies, or other things acquired by "Company" or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Purchaser.

20.10 If the termination hereunder is partial, prior to the settlement of the terminated portion of the Order, "Company" may file with the Purchaser a request in writing for an equitable adjustment of the price or prices specified in the Order relating to the continued portion of the Order (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

20.11 The Purchaser may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by "Company" in connection with the terminated portion of an Order whenever in the opinion of the Purchaser the aggregate of such payments shall be within the amount to which "Company" will be entitled hereunder. If the total of such payment is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by "Company" to the Purchaser upon demand, together with interest calculated using the average of the official base rate(s) per annum as notified by the Banque Nationale de Belgique or such other official source as may be determined by the Purchaser, for the period from the date the excess is received by "Company" to the date such excess is repaid to the Purchaser, provided, however, that no interest shall be charged with respect to any such excess payment attributed to a reduction in "Company"'s claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition or such later date as determined by the Purchaser by reason of the circumstances.

20.12 Unless otherwise provided for in the Order, "Company", from the effective date of termination and for a period of three years after final settlement under the Order, shall preserve and make available to the Purchaser at all reasonable times at the office of "Company", but without direct charge to the Purchaser, all his books, records, documents, and other evidence bearing on the costs and expenses of "Company" under an Order and relating to the work terminated hereunder, or, to the extent approved by the Purchaser, photographs, micro-photographs, or other authentic reproductions thereof.

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21. SUB-CONTRACTS

- 21.1 “Company” shall place and be responsible for the administration and performance of all sub-contracts including terms and conditions which he deems necessary to meet the requirements of the Order in full.
- 21.2 “Company” shall not place sub-contracts outside the NATO member Nations unless the prior authorisation of the Purchaser has been obtained. Such authorisation will not be granted when the sub-contract involves the carrying out of classified work.
- 21.3 “Company” shall determine that any sub-contractor proposed by him for the furnishing of supplies or services which will involve access to classified information in “Company”'s custody has been granted an appropriate facility security clearance by the sub-contractor's national authorities, which is still in effect, prior to being given access to such classified information.
- 21.4 “Company” shall seek the approval in writing of the Purchaser prior to the placing of any sub-contract if:-
- 21.4.1 the value of the sub-contract is known or estimated to exceed € 125,000, or the equivalent currency;
- 21.4.2 the sub-contract is one of a number of sub-contracts with a single sub-contractor for the same or related supplies or services under the Order that in the aggregate are known or expected to exceed € 125,000.
- 21.5 “Company” shall submit a copy of any such proposed contract when seeking approval to the Purchaser but such approval by the Purchaser shall in no way relieve “Company” of his responsibilities to achieve the contractual and technical requirements of the Order.
- 21.6 “Company” shall, as far as practicable, select sub-contractors on a competitive basis consistent with the objectives and requirements of the Order.

22. PATENT AND COPYRIGHT INDEMNIFICATION

- 22.1 Except as otherwise provided in this Agreement, "Company" shall assume all liability and indemnify the Purchaser, its officers, agents and employees against liability, including costs for the infringement of any patents or copyright in force in any countries arising out of the manufacture, services performed or delivery of supplies, or out of the use or disposal by or for the account of the Purchaser of such supplies. "Company" shall be responsible for obtaining any patent or copyright licences necessary for the performance of an Order and of remaking all other arrangements required to indemnify the Purchaser from any liability for patent or copyright infringement in said countries.
- 22.2 "Company" shall immediately notify the Purchaser of any patent or copyright infringement claims of which he has knowledge and which pertain to the goods and services under this Agreement.

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- 22.3 This indemnity shall not apply under the following circumstances:
 - 22.3.1 Patents or copyright which may be withheld from issue by order of the applicable government whether due to security regulations or otherwise;
 - 22.3.2 An infringement resulting from specific written instructions from the Purchaser under this Agreement;
 - 22.3.3 An infringement resulting from changes or additions to the goods and services subsequent to final delivery and acceptance under this Agreement.

23. CLAIMS

- 23.1 "Company" shall assert claims in writing and by registered mail, and in accordance with the terms set out below:
- 23.2 Claims shall be submitted within:
 - 23.2.1 the time specified in the Clause or Article under which "Company" alleges to have a claim. If no time is specified in the clause or Article under which "Company" intends to base its claim, the time limit shall be forty-five (45) days from the date "Company" has knowledge or should have had knowledge of the facts on which it bases its claim;
 - 23.2.2 three (3) months after final payment, release of guarantees or performance bond provided under the Order, whichever occurs last. This shall only apply to those claims for which "Company" could not have had earlier knowledge and were not foreseeable.
- 23.3 "Company" shall be foreclosed unless it presents complete documentary evidence, justification and cost for each of its claims within three months from the assertion date of such claims. Claims shall be supported by specifically identified evidence (including applicable historical and planned cost and production data from "Company"'s books and records). Opinions, conclusions or judgmental assertions not supported by such evidence shall be rejected.
- 23.3.1 An individual breakdown of cost is required for each element of "Company"'s claims at the time of claim submission or for any material revision of the claim.
- 23.4 "Company" shall present, at the time of submission of a claim, an attestation as follows:

"I the responsible senior company official authorised to commit the with respect to its claims dated being duly sworn, do hereby depose and say that: (i) the facts described in the claim are current, complete and accurate; and (ii) the conclusions in the claim accurately reflect the material damages or contract adjustments for which the Purchaser is allegedly liable."

SIGNATURE

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23.5 Failure to comply with any of the above requirements shall result in automatic forfeiture of the claim. This foreclosure takes effect in all cases and also where, for example, the claim is based on additional orders, where the facts are known to the Purchaser, where the claim is based on defective specifications of the Purchaser or an alleged negligence in the precontractual stage.

23.6 No claim arising under this Agreement may be assigned by "Company" without prior approval of the Purchaser.

24. RELEASE OF CLAIMS

24.1 Prior to final payment under this Agreement, "Company" and each assignee under this Agreement shall execute and deliver a release discharging the Purchaser, its officers, agents and employees from all liabilities, obligations and claims arising out of or under this Agreement subject only to the following exceptions:

24.1.1 Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by "Company";

24.1.2 Claims for reimbursement of costs (other than expenses of "Company" by reason of its indemnification of the Purchaser against patent liability) including reasonable expenses incidental thereto, incurred by "Company" under the provisions of this Agreement relating to patents.

24.1.3 An infringement resulting from specific written instructions from the Purchaser under the Order.

24.1.4 An infringement resulting from changes or additions to the goods and services subsequent to final delivery and acceptance under the Order.

25. EXTRAS

25.1 Except as otherwise provided in an Order, no payment for extras shall be made unless such extras and the price therefore have been authorised in writing by the Purchaser.

26. LANGUAGE

26.1 In the event of any inconsistency between the original English text of this Agreement and any translation into another language, the original English text will govern.

26.2 All written correspondence and reports provided by and to "Company" shall be, as a minimum, in English.

27. SECURITY

27.1 "Company" shall comply with all security measures as are prescribed by the Purchaser and the National Security Authority or designated Security Agency of each of the NATO Member Nations in which the Agreement is being

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performed. "Company" shall be responsible for the safeguarding of classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of an Order.

- 27.2 In particular "Company" undertakes to:
- 27.2.1 appoint an official responsible for supervising and directing security measures in relation to the Order and communicating details of such measures to the Purchaser on request;
 - 27.2.2 maintain, preferably through the official responsible for security measures, a continuing relationship with the National Security Authority or designated Security Agency charged with ensuring that all NATO or National classified information involved in the Order is properly safeguarded;
 - 27.2.3 abstain from copying by any means, without the authorisation of the Purchaser, the National Security Authority or designated Security Agency, any classified documents, plans, photographs or other classified material entrusted to "Company";
 - 27.2.4 furnish, on request, information to the National Security Authority or designated Security Agency pertaining to all persons who will be required to have access to NATO or National classified information;
 - 27.2.5 maintain at the work site a current record of its employees at the site who have been cleared for access to NATO or National classified information. The record should show the date and level of clearance;
 - 27.2.6 deny access to NATO or National classified information to any person other than those persons authorised to have such access by the National Security Authority or designated Security Agency;
 - 27.2.7 limit the dissemination of NATO or National classified information to the smallest number of persons as is consistent with the proper execution of the Order;
 - 27.2.8 comply with any request from the National Security Authority or designated Security Agency that persons entrusted with NATO or National classified information sign a statement undertaking to safeguard that information and signifying their understanding both of their obligations under national legislation affecting the safeguarding of classified information, and of their comparable obligations under the laws of the other NATO Member Nations in which they may have access to classified information;
 - 27.2.9 report to the National Security Authority or designated Security Agency any breaches or suspected breaches of security, suspected sabotage, or other matters of security significance which would include any changes that may occur in the ownership, control or management of the facility or any changes that affect the security arrangements and security status of the facility and to make such other reports as may be required by the National Security Authority or designated Security Agency, e.g. reports on the holdings of NATO or National classified information;

NATO UNCLASSIFIED

- 27.2.10 apply to the Purchaser for approval before subcontracting any part of the work, if the subcontract would involve the subcontractor in access to NATO or National classified information, and to place the subcontractor under appropriate security obligations no less stringent than those applied to its own contract;
- 27.2.11 undertake not to utilise, other than for the specific purpose of the Order, without the prior written permission of the Purchaser or its authorised representative, any NATO or National classified information furnished to him, including all reproductions thereof in connection with the Order, and to return all NATO or National classified information referred to above as well as that developed in connection with the Order, unless such information has been destroyed, or its retention has been duly authorised with the approval of the Purchaser. Such NATO or National classified information will be returned at such time as the Purchaser or its authorised representative may direct;
- 27.2.12 classify any produced document with the highest classification of the NATO or National classified information disclosed in that document.

28. HEALTH, SAFETY AND ACCIDENT PREVENTION

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

29. RELEASE OF INFORMATION

- 29.1 Except as otherwise specified elsewhere in the Order, and to the extent that it is demonstratively unavoidable and without prejudice to the "Security" Clause, "Company" or its employees shall not, without prior authorisation from the Purchaser, release any information pertaining to the Order, its subject matter, performance thereunder or any other aspect thereof.

30. FORCE MAJEURE

- 30.1 If the performance of this Agreement, or any obligation hereunder is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other casualty or accident, strikes or labour disputes, war or other violence, including acts of terrorism, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency, or any other act, event or condition whatsoever beyond the reasonable control of the affected Party, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, restriction or interference, provided, however, that the Party so affected shall take all reasonable steps to avoid or remove such cause of

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non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.

31. RIGHTS IN TECHNICAL DATA

31.1 Subject to the rights of third parties and to existing rights of "Company" arising otherwise than by virtue of the Order, and with due regard to national security regulations, all rights in the results of work undertaken by or on behalf of the Purchaser for the purposes of the Order, including any technical data specifications, report, drawings, computer software data, computer programmes, computer databases, computer software, documentation including software documentation, design data, specifications, instructions, test procedures, training material produced or acquired in the course of such work and, in particular, all rights, including copyright therein, shall vest in and shall be the sole and exclusive property of the Purchaser.

32. COMPANY'S RESPONSIBILITY ON ACCURACY OF THE COMPANY'S DATA

32.1 In case of change of any nature in "Company"s data including, but not limited to change(s) in name, ownership, address, and other changes of similar nature, "Company" is obliged to inform NCIA about the change(s) at the earliest possible moment that "Company" becomes aware of the change(s).

32.2 Information about all changes shall be presented in the form of official registered letter, addressed to NCIA Point Of Contact (POC), indicated in Clause 10 - Miscellaneous of the Part I - Special Provisions of the BOA.

32.3 In case if NCIA becomes aware of the change(s) described in para 1 above from any other source than official registered letter received from the "Company", NCIA reserves the right to suspend "Company"s BOA immediately after NCIA becomes aware of the change(s) and until the issue is fully clarified.

APPENDIX 1 TO PART II - PURCHASER'S PRICING PRINCIPLES

The following principles shall apply to all contracts not awarded on the basis of an adequate price competition as well as to all contract modifications.

"Company" shall also incorporate provisions corresponding to those mentioned herein in all subcontracts, and shall require price and cost analysis provisions be included therein.

A. Allowability of Costs

(1) Allowable Cost

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A cost is allowable if the following conditions are fulfilled:

- (a) it is incurred specifically for the Agreement or benefits both the Agreement and other work or is necessary to the overall operation of the business although a direct relationship to any particular product or service cannot be established and is allocated to them in respective proportion according to the benefit received;
- (b) it is reasonable and expedient in its nature and amount and does not exceed that which would be incurred by an ordinary prudent person in the conduct of competitive business;
- (c) it is not liable to any limitations or exclusion as to types or amounts of cost items as set forth herein.

(2) Partially allowable cost

The following cost items are examples of costs which are normally partially allowable only as indirect costs within the limitations described below provided that such costs are reasonable in nature and amount and are allocated as indirect costs to all work of "Company".

- (a) Advertising costs.
- (b) Contributions.
- (c) Bonuses paid pursuant to an agreement entered into before the Order was made or pursuant to a plan established and consistently followed before the Order was concluded.
- (d) Depreciation of plant equipment or other capital assets.
- (e) Costs of normal maintenance and repair of plant, equipment and other capital assets.
- (f) The costs of general research and development work which are not chargeable directly to an Order and which are not aimed at the preparation or development of a specific product.
- (g) Travel costs, except those which, according to the terms of the Order, are to be charged directly to it.
- (h) Pre-contract cost (cost prior to the effective date stated in the Order) in anticipation of the award of the Order or pursuant to its negotiation.

(3) Unallowable costs

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In general all costs which cannot be shown by "Company" to be directly or indirectly of benefit to the Order under this Agreement are totally unallowable. Examples of such costs are:

- (a) Costs of a particular advertising campaign without prior agreement of the Purchaser or which has no connection with the Order under this Agreement.
- (b) Costs of remuneration, having the nature of profit sharing.
- (c) Costs of maintaining, repairing and housing idle and excess facilities.
- (d) Fines and penalties as well as legal and administrative expenses resulting from a violation of laws and regulations.
- (e) Losses on other contracts.
- (f) Costs incurred for the creation of reserves for general contingencies or other reserves (e.g. for bad debts, including losses).
- (g) Losses on bad debts, including legal expenses and collection costs in connection with bad debts.
- (h) Costs incurred to raise capital.
- (i) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property.
- (j) Taxes on profits.
- (k) Contractual penalties incurred.
- (l) Commissions and gratuities.
- (m) Interest on borrowings.

B. Cost Groupings

- (1) In estimating or calculating the costs of the supplies to be furnished and the services to be performed under the Order, "Company" shall distinguish the following cost groupings:

- (a) Direct Costs

A direct cost is any cost which can be identified specifically with a particular cost objective as generally accepted. Direct costs are not limited to items which are incorporated in the end product as material or labour.

- (b) Indirect Costs

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An indirect cost is one which is not readily subject to treatment as a direct cost.

- (2) "Company" shall specify the allocation of costs to either of the cost groupings. The method by which costs are accumulated and distributed as part of direct or indirect costs cannot be modified during the duration of the Order.

C. Overhead Rates

- (1) Indirect costs, which as a rule are to be allocated to all work of "Company", shall be accumulated by logical cost groupings in accordance with sound accounting principles and "Company"'s established practices. Such costs shall be presented as overhead rates and be applied to each related direct cost grouping.
- (2) "Company" shall inform the Purchaser of its overhead rates and the basis upon which they were computed.
- (3) The term "provisional overhead rate" means a tentative overhead rate established for interim billing purposes pending negotiation and agreement to the final overhead rate.
- (4) An overhead rate is pre-determined if it is fixed before or during a certain period and based on (estimated) costs to be incurred during this period. An overhead rate is post-determined if it is fixed after a certain period and based on costs actually incurred during this period.

Pre-determined overhead rates shall be agreed upon as final rates whenever possible; otherwise the provisions of paragraph (3) above shall apply pending agreement to post-determined rates.

- (5) Such rates shall be determined on the basis of "Company"'s properly supported actual cost experience.
- (6) If the overhead rates of "Company" for similar contracts placed by national or international public services have been established or approved by a government agency or an agency accepted by "Company"'s Government and "Company" proposes the application of these rates, "Company" shall state the name and address of the agency which has accepted or approved the rates and the period for which they were established. If "Company" proposes rates which vary from the rates mentioned above, "Company" shall furthermore provide a justification for the difference.
- (7) If the overhead rates of "Company" for similar contracts placed by national or international public services have not been established or approved by a government agency or an agency accepted by "Company"'s government, "Company" shall provide the necessary data to support the proposed rates.

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EXHIBIT A - ORDERING INFORMATION

A ORDERING INFORMATION REQUIRED:

All orders submitted under this Agreement shall contain, as applicable, the following information:

- a. Reference to the BOA.
- b. Identification and details of the Purchaser.
- c. Any special Terms and Conditions applicable to the Order (e.g. Payment, Warranty, etc.)
- d. Description of the Products to be delivered and/or of the Engineering Services to be performed (including labour categories, labour rates, people's names).
- e. Specification of the Requested Products Delivery Schedule and/or of the Engineering Services Period of Performance.
- f. Specification of the Products Delivery Location and/or of the Engineering Services Place of Performance.
- g. Shipping instructions.
- h. Security requirements.
- i. Completion of "Non-Transfer and Use Certificate" (e.g. DSP 83), Export License or equivalent, as applicable.
- j. Testing and Acceptance criteria and provisions.

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**EXHIBIT B - AUTHORISATION TO USE BOA BY NATO
CONTRACTORS**

Attn.: 'Company'* Manager of Contracts

Subject: Order under NCIA/BOA/.....'Company'* is hereby authorised to procure under Order No. (...), in accordance with NCIA Basic Ordering Agreement (NCIA/BOA/.....). Each Order placed shall quote the above-mentioned BOA, the appropriate Order Number and shall state:

“This Order is placed under NCIA/BOA/..... 'Company'* hereby agrees that the terms and conditions contained in the NCIA/BOA/..... shall govern the purchase/license of Products and/or Engineering Services covered by this Order, unless otherwise agreed between the Parties to this Order. 'Company'* places this Order under written authorisation from [Name of Eligible Purchaser]. The Products and/or Engineering Services covered by the Order will be directly utilised by [Name of Eligible Purchaser].”

A copy of this authorisation will be sent to “Company”.
NCIA shall not be liable in any form for any Order issued and concluded between Purchaser, other than by NCIA itself, and ‘Company’*.

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EXHIBIT C - PRODUCTS AND SERVICES

To be completed by the Company

Part I - a) Short Company Description

Part I - b) List and Short Description of offered Products and/or
Services

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