BASIC ORDERING AGREEMENT
NCIA AGENCY/BOA/[

Between
NATO COMMUNICATIONS AND INFORMATION AGENCY
Represented by
THE GENERAL MANAGER, NCI AGENCY
And
|COMPANY |
For
|PRODUCTS & SERVICES|
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BASIC ORDERING AGREEMENT WITH NCI AGENCY

COMPANY (Company) and NATO COMMUNICATIONS AND INFORMATION AGENCY (NCI Agency) 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 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 the current member countries of the North Atlantic Treaty.

This Agreement establishes the Terms and Conditions under which Products and 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 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 -- Preferred Customer Certificate
- Exhibit B -- Authorisation for NATO Contractors to use BOA
- Exhibit C -- Task Order (Template)

Company and NCI Agency have read this Agreement, understand it, and agrees to be bound by its Terms and Conditions. NCI Agency and Company further agrees 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 NCI Agency 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.

NCI AGENCY
Boulevard Leopold III
B-1110 Brussels, Belgium

Company Name
ADDRESS

Title: ____________________________
Date: ____________________________
PART I - SPECIAL PROVISIONS

1. TERM

1.1 This Agreement shall become effective (the “Effective Date”) upon the date of last signature by the Parties. It will automatically expire after 3 (three) years from the signature date. Should either Party wish to terminate the Agreement, it has to communicate to the other Party in written form its intention with 30 (thirty) days notice.

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, the Director of Acquisition or the Chief of Contracts of NCI Agency and any designated representative of an Eligible Purchaser.

2.3 "Contractor" means any entity working on a project for any Eligible Purchaser.

2.4 “Deliverable” means any and all goods (including movable and immovable goods) to be delivered pursuant to the terms of this Contract including, without limitation components, intermediate assemblies, parts, end products, hardware, documentation, data, software.

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 "Governmental Agency" means any governmental agency, including military forces, of a NATO Member Nation.

2.8 “Member Nation” means any of the Member Nations of NATO.

2.9 “NATO” means the North Atlantic Treaty Organisation.
2.10 "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.

2.11 "Order" means any instrument/document, e.g. Purchase Order or Task Order, used for the procuring of Products and/or Services under this Agreement.

2.12 CompanyCompanyCompany “Parties” means NCI Agency and Company.

2.13 “Partnership for Peace (PfP) Countries” means those countries who are signatories to the Partnership for Peace Agreement dated 10 January 1994.


2.14.1 “Hardware” means the tangible mechanical, magnetic, electronic, and electrical components of Products.

2.14.2 "Software" shall mean each software program provided by Company in machine readable, object, printed or interpreted form.

2.14.3 “Facilities” means premises and their furnished equipment.

2.14.4 “People” means manpower supplied as temporary personnel.

2.15 “Services” means all items included in the 'List of Product and Services Categories considered for BOA Application' of the relevant 'Procedures governing the use of Basic Ordering Agreements (BOAs)’ version.

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 All NATO Bodies

3.1.2 Governmental Agencies of NATO Member Nations as per 2.8 above

3.1.3 Contractors performing work on behalf of the categories mentioned in 3.1.1 and 3.1.2 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 NCI Agency and Company.

4. ORDERING PROCEDURE

4.1 All Orders under this Agreement shall contain, as a minimum, the information detailed in Exhibit C, and shall be subject to acceptance by Company.

4.1.1 Orders may be placed with Company for the Products and/or Services identified in the BOA Categories of Products and Services List. Orders may be placed hereunder for Products and/or Services not included herein, subject to determination of availability and price by Company.

4.1.2 Company accepts that NCI Agency shall not be liable in any form for any Order issued and concluded between a Purchaser, other than by NCI Agency 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 NCI Agency 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 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 Services’ prices shall be quoted as firm rates per particular time units by labour category in accordance with Exhibit A pricing practices as disclosed and agreed to by NCI Agency or any other Eligible Purchaser.
6.2 All Product prices are quoted DDP 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 Hardware against defects in workmanship of materials for two (2) years from the date of either shipment or Company-performed installation. The Purchaser should return the Hardware Company 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 each Software delivered will conform to all requirements specified in the Order. This will also include Software design specifications, including software configuration. Regardless of the Purchaser initiation of or participation in developing Software design or specifications, each Software delivered under this Contract will conform to the essential Performance requirements set forth in this Contract, as those essential Performance requirements measured, tested, and verified by tests and procedures set forth in the Order. For each Software delivered the Contractor Warranties shall extend to all defects discovered within 12 months from the date of acceptance of the Software by the Purchaser.

7.3 People Warranty. Company warrants to provide professional Temporary personnel, qualified as specified in the Order. Should the person(s) be unable or unwilling to perform the tasks specified in the Order, as determined by the Purchaser or his authorized representative within a reasonable timeframe, the Company warrants to provide a suitable replacement within [specify period] days.

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 Services shall be specified on each 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:  

NATO UNCLASSIFIED
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 NCI Agency 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:

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<thead>
<tr>
<th>Company:</th>
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<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Title:</td>
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<tr>
<td>Department:</td>
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<tr>
<td>Address:</td>
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<tr>
<td>Tel:</td>
</tr>
<tr>
<td>e-mail:</td>
</tr>
</tbody>
</table>

NCI Agency:

Name:  
Title:  
NCI Agency – Acquisition Directorate
NATO HQ
Boulevard Léopold III
B-1110 Brussels
Belgium
Tel: +32 2 707
E-Mail:
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.
PART II - GENERAL PROVISIONS

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 any item of Hardware, material, document, technical data, information and Software or any other item of property furnished by the Purchaser to the Contractor required or useful for the performance of the Task Order.

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.
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.

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 OF DELIVERABLES

7.1 Unless otherwise specifically provided for in the Order, all Deliverable Products covered by this Agreement, shall be compliant with appropriate professional standards and fit for the purposes intended. Hardware, 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 Products 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.

7.3 No representative, 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 a Purchaser representative shall not relieve Company from any of the requirements of this Agreement.

7.5 In the event that any Deliverable Products 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 Deliverables, the Purchaser shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction or replacement. Products 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 Products, the Purchaser either:

7.5.1 may by Order or otherwise return, replace or correct such Products 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 Products within the delivery schedule, the Purchaser may require the delivery of such Products 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 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 Products 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 Products shall be made as promptly as practicable after delivery, except as otherwise provided in the Order, but failure to inspect and accept or reject Products shall neither relieve Company from responsibility for such Products 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 Products 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.

7.9 Acceptance of Deliverable Products shall take place when the Purchaser confirms acceptance of the Products 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 Products 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 Products into use subject to 10.4 of the Special Provisions;

7.9.2 The Purchaser has not exercised its right of rejection of the Products within any period specified for that purpose in 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.

8. INSPECTION, ACCEPTANCE AND REJECTION OF SERVICES

8.1 Unless otherwise specifically provided for in the Order, all Services covered by this Agreement, shall be provided in a professional manner consistent with industry standards and specific Key Performance Indicators in the Order, if any.

8.2 The Purchaser has the right to inspect and test all Services called for by the Order, to the extent practicable at all places and times during the term of the Order. The Purchaser shall perform inspections and tests in a manner that will not unduly delay the work.

8.3 If any of the Services performed do not conform with 8.1 above and/or any other Order requirements, the Purchaser may require the Contractor to perform the Services again in conformity with such requirements, for no additional fee. When the defects of Services in design, material, workmanship or manufacturing quality, or otherwise not in conformity with the
PART II - GENERAL PROVISIONS

8.3.1 Require the Contractor to take necessary action to ensure that future performance conforms to Order requirements; and

8.3.2 Reduce any fee payable under the Order to reflect the reduced value of the Services performed.

8.4 If the Contractor fails to promptly perform the Services again or take the action necessary to ensure future performance in conformity with Order requirements, the Purchaser may—

8.4.1 By Order or otherwise, perform the Services and reduce any fee payable by an amount that 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”; or

8.4.2 Terminate the contract for default as provided in the clause of this Agreement entitled “Termination for Default”.

8.5 Acceptance of Services shall take place when the Purchaser confirms their acceptance 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 Services without prejudice to any other remedies, when the Purchaser has not exercised its right of rejection of the Services within any period.

8.6 The Contractor shall provide and maintain an inspection system acceptable to the Purchaser covering the Services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Purchaser during contract performance and for as long afterwards as the Order requires.

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
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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 3 (three) 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;

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. It is the Company's responsibility to ensure a responsible officer is designated.

[ 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 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.

11. INVOICES

11.1 Invoices shall be prepared and submitted electronically by Company to accounts payable@ncia.nato.int, or another mutually agreed manner, and shall contain: BOA number, Order number (if any), description of Products and/or Services, 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 COTS;

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

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.

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 30 (thirty) 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 30 (thirty) 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:

13.2.1 for any costs incurred more than 20 (twenty) 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 90 (ninety) 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 90 (ninety) 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 par. 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 30 (thirty) 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.
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 NCI Agency 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 30 (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 15 (fifteen) days following the expiration of the first period of 30 (thirty) days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal within 30 (thirty) days following the expiration of the said first period, the appointment shall be made, within 21 (twenty-one)
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 NCI Agency, 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 Products 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 authorise 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, Products or Services similar to those so terminated, and Company shall be liable to the Purchaser for any excess costs for such similar Products 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 Products 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:

19.4.1 any completed Products, and

19.4.2 such partially completed Products 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;

19.4.3 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 Products 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 such completed Products 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.

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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 for 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 Products or Services 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;

(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 45 (forty-five) 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.
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 Products or Services 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 Products 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 Products or Services paid or to be paid for under paragraph 20.6 (i) hereof;
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 Products 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:
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(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.
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 Products 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 Products, or out of the use or disposal by or for the account of the Purchaser of such Products or Services. 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 Products and Services under this Agreement.
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 Products 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 45 (forty-five) days from the date Company has knowledge or should have had knowledge of the facts on which it bases its claim;

23.2.2 3 (three) 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

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
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 Products 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 performed. Company shall be responsible for the safeguarding of classified information, documentation, material and other Products 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;

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 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

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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 NCI Agency 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 NCI Agency Point Of Contact (POC), indicated in Clause 10 - Miscellaneous of the Part I - Special Provisions of the BOA.

32.3 In case if NCI Agency becomes aware of the change(s) described in para 1 above from any other source than official registered letter received from the Company, NCI Agency reserves the right to suspend Company’s BOA immediately after NCI Agency 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

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.
PART II - GENERAL PROVISIONS

(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

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

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.
EXHIBIT A – PREFERRED CUSTOMER CERTIFICATE

In accordace with to Art. 10 of AC/4-D(2019)0004 (INV) – Procedures Governing the Use of Basic Ordering Agreements (BOAs):

[Company Name] 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.

[Company Name]

________________

[Title:]

Date:
EXHIBIT B – AUTHORISATION TO USE BOA BY NATO CONTRACTORS (Template)

Attn.: ‘Company’ Manager of Contracts

Subject: Order under NCIA/BOA/nnnn

[Company Name] is hereby authorised to procure under Order No. (…), in accordance with NCI Agency Basic Ordering Agreement (NCIA/BOA/nnnn). Each Order placed shall quote the above-mentioned BOA, the appropriate Order Number and shall state:

“This Order is placed under NCIA/BOA/nnnn, ‘Company’ hereby agrees that the terms and conditions contained in the NCIA/BOA/nnnn shall govern the purchase/license of Products and/or 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 Services covered by the Order will be directly utilised by [Name of Eligible Purchaser].”

A copy of this authorisation will be sent to Company.
NCI Agency shall not be liable in any form for any Order issued and concluded between Purchaser, other than by NCI Agency itself, and ‘Company’.
EXHIBIT C – PURCHASE/TASK ORDER (Template)