

Agreement no. ...

dated ..-..- .. - .. - ..

concerning

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

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

Whereas:

agree as follows:

Number of pages: ...

Number of annexes: ...

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Article 1 Definitions and abbreviations

Definitions:

Agreement:	This Agreement, including annexes.
Availability:	The likelihood that a system will be able to fulfil its role at a random point in time.
Corrective Maintenance:	Maintenance carried out following a malfunction or damage.
Defence Purposes:	Any use by or on behalf of the Netherlands armed forces in the widest sense of the word.
Functional Requirements:	The Functional Requirements set out in of ANNEX A - PROGRAMME OF REQUIREMENTS.
Government Purposes	Any use by or on behalf of the Netherlands Government in the widest sense of the word.
Technical Information:	Information of a scientific or technical nature or origin, regardless of the form or method in which it is recorded or presented, including but not limited to: know-how, specifications, design information, inventions, calculation methods, test data, software (excluding Source Codes), including the associated documents and or drawings and/or draft versions thereof.

Abbreviations:

CGAS, Defence Cluster:	Central Government Audit Service, Defence Cluster
AQAP:	Allied Quality Assurance Publication
CMP:	Configuration Management Plan
CMS:	Configuration Management System
COC:	Certificate of Conformity
COMSEC:	Communications Security
EM-emissions:	ElectroMagnetic-emissions
I&R Report:	Inspection and Receiving Report

Article 2 Scope of the Supplier's obligations

1. Under the terms and conditions set out in the Agreement the State hereby places an order with the Supplier, who hereby accepts the same, for:
 - The delivery of a NOISE MONITORING SYSTEM. as specified in ANNEX A - PROGRAMME OF REQUIREMENTS,
 - The delivery of documentation, as specified in ARTICLE11 - DOCUMENTATION,
 - The delivery of training materials and the provision of training as specified in ARTICLE 12- TRAINING,
2. The goods delivered and/or the services rendered shall meet the requirements set out in ANNEX A - PROGRAMME OF REQUIREMENTS. Goods supplied must be new from the factory.
3. If compliance with the Other Requirements set out in ANNEX A. - PROGRAMME OF REQUIREMENTS would result in non-conformity with the Functional Requirements set out in the same annex, the Functional Requirements shall prevail and the Supplier shall present proposals for the necessary amendment of the Other Requirements. After such proposals have been approved by the State, all work already done as well as any work still to be done shall be carried out in conformity with the amended requirements. The application of the provisions of this sub-clause shall not affect either the price or the delivery time in a manner that is unfavourable for the State, unless the Supplier could not have reasonably discerned that compliance with a Functional Requirement would result in non-compliance with one of the Other Requirements, in which case the State and the Supplier shall make further arrangements about the price and/or delivery time.
4. Where no further specification has been given of the requirements to be met by goods or services, these shall in any case at least satisfy the legal requirements that have been drawn up for these products and be of good quality and meet the customary standards of soundness, safety, suitability and workmanship, or be carried out professionally and efficiently.
5. By signing the Agreement the Supplier declares that he has sufficiently familiarised himself with the objectives of the State in acquiring the aforementioned goods and services, that the State has furnished him with adequate and accurate information with respect thereto and that the said goods and services are suitable for the State's purposes .
6. The State's approval of and/or agreement with drawings, specifications, diagrams, documents and other information shall leave the Supplier's responsibility for the conformity of goods and services with the Agreement fully intact.
7. The Supplier shall point out to the State any unsuitability or defects of goods and/or processes furnished and/or prescribed by or on behalf of the State that the Supplier was or reasonably should have been aware of.
8. The goods delivered and services rendered by the Supplier under the Agreement shall be free from all and any special charges and restrictions, with the exception of charges and restrictions that have been expressly accepted by the State in writing.

Article 3 Assignment of Supplier's obligations and performance of work by third parties

1. The Supplier's obligations under the Agreement or its legal relationship with the State may only be transferred to a third party with the State's prior consent in writing. Notwithstanding the provisions of ARTICLE 17 - DISSOLUTION, paragraph ., this situation may arise if the Supplier is declared bankrupt or if the Supplier is granted a court ordered provisional or definitive suspension of payment.
2. The Supplier may only assign work and deliveries to third parties with the prior written consent of the State. Permission is hereby as granted to the third parties specified in ANNEX .. - PERFORMANCE OF WORK BY THIRD PARTIES.
3. The consent referred to in paragraph 2 of this article shall not detract from the Supplier's full responsibility for performance of the Agreement.
4. The consent referred to in paragraphs 1 and 2 of this article may be subject to conditions. To the extent that such conditions concern third parties, the Supplier shall stipulate the same conditions vis-à-vis such third parties on behalf of the State.
5. The Supplier shall include the relevant provisions of the Agreement in any agreements to be concluded by Supplier with third parties in connection with the Agreement. The provisions referred to in the preceding sentence shall in any case include the provisions pertaining to audits, quality assurance, intellectual property, security and conditions of employment. If a third party does not accept any of the relevant provisions or otherwise refuses to cooperate, the Supplier shall immediately consult with the State. The State shall decide whether such third party may nevertheless be engaged by the Supplier.
6. Paragraphs 2 and 5 of this article, with the exception of the terms set out in relation to conditions of employment, do not apply to agreements concluded by the Supplier with third parties for the procurement of items common in commercial practice and for the provision of standard services.

Article 5 Price adjustment/ option

1. *The prices stated in ARTICLE 4 - PRICES shall be adjusted by applying the following **to be agreed upon** price- adjustment formula:*
2. The price adjustment may not be officially prohibited.

Article 6 Payment

1. When ownership of goods has been transferred in accordance with ARTICLE 9 - DELIVERY, ACCEPTANCE, OWNERSHIP AND RISK, or a service has been properly rendered, the Supplier may submit an invoice for the same based on the provisions of ARTICLE 4 - PRICES. [Any costs ensuing from payment transactions shall be shared by the State and the Supplier.]
2. The invoice shall at least state the number and date of the Agreement, as well as the VAT identification number NL00.80.78.452.B. The invoice should include a description of the goods and/or services, a currency symbol and the total amount. In addition to the Chamber of Commerce registration number, Suppliers must include their bank account number, the Bank Identification Code (BIC) and the International Bank Account Number (IBAN) of the house banker on the invoice.
3. Payment shall be made in the currency in which the price is expressed.
4. Invoices shall be sent to the address stated in paragraph 2 of ARTICLE 19 - CORRESPONDENCE accompanied by the required documents.
5. Only invoices without a late payment surcharge shall be accepted.
The State shall in no case be bound to make payment if it has not received the invoice at the agreed address, if the invoice does not state the number and date of the Agreement, or if the invoice does not state the other information or is not accompanied by the documents required pursuant to the Agreement. The State shall inform the Supplier in writing forthwith and request the submission of a correct invoice.
6. In the event of an imputable failure of the State to meet any of its obligations for payment within 30 days of receipt of the invoice, the State shall be in default without notice of default and shall owe the legal interest on the arrears for the period during which the default continues.

[Additional provision to be included if a PRICE ADJUSTMENT ARRANGEMENT has been agreed:

7. For the price adjustment as stated in ARTICLE 5 – PRICE ADJUSTMENTS, the Supplier should submit a separate invoice. That invoice must state the number and the amount of the invoice by which the base price was invoiced. Copies of the documents used for calculating the price adjustment shall be enclosed with the invoice for the price adjustment. Price adjustments shall be made on the basis of the most recently published preliminary statistical data available at the time of invoicing.
8. Within three months of the publication date of the definitive data the Supplier shall send the State the final invoice or credit note in respect of the price adjustment, in duplicate, enclosing the documents used for the computation. On this invoice the amount already paid by the State in respect of the item(s) in question shall be visibly deducted from the definitive price, stating the numbers of the related invoices.
9. Upon verification of an invoice, if any invoice amount is found to be incorrect, the Supplier shall submit a corrected invoice within thirty days of the State having sent written

notification to that effect to the Supplier. If the difference is to be credited to the State, the Supplier shall owe the legal interest thereon from the date of payment of the original invoice.]

Article 7 Audit

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

Article 8 Technical changes

1. The State may amend the requirements laid down in ANNEX A - PROGRAMME OF REQUIREMENTS or the technical design of goods or parts of goods.
2. The Supplier may suggest amendment of the requirements laid down in ANNEX A- PROGRAMME OF REQUIREMENTS, or of the technical design of goods or parts of goods.
3. For the purpose of implementing paragraphs 1 and 2 of this article the Supplier shall present a document containing proposed amendments to the State for approval. If the amendments will have consequences for the performance pursuant to ANNEX A. - PROGRAMME OF REQUIREMENTS, or for prices, delivery times, documentation or the delivery of spare parts, the Supplier shall indicate this.
4. Until the Supplier has received the document containing proposed amendments signed as agreed by the State, the Supplier shall carry out the order as originally agreed.
5. All proposals for amendments shall be submitted in triplicate at the address stated in ARTICLE 19 - CORRESPONDENCE, . [and to the oversight body].

Article 9 Delivery, acceptance, ownership and risk

1. The Supplier shall deliver goods and render services in accordance with the delivery schedule set out in ANNEX .. - DELIVERY SCHEDULE.
2. The delivery date(s) or term(s) agreed are strict and final deadlines. If no goods or services conforming to the Agreement have been delivered or rendered in full, respectively at the agreed place and within the agreed time, the Supplier shall be in default without notice of default being required.

Article 10 Penalty clause

1. If at the agreed place and within the agreed time, no goods conforming to the Agreement have been delivered in full or no services conforming to the Agreement have been rendered in full, the Supplier shall, without notice of warning or other prior notice, owe the State a penalty that shall be immediately due and payable in the amount of 0.1% of the price, plus Netherlands turnover tax, of the goods or services in question for each day that the failure continues up to a maximum of 10%. If the delivery or the rendering of services has become permanently impossible, the full penalty shall be immediately payable. If the Agreement is dissolved by the State for grounds other than stated in ARTICLE 17 - DISSOLUTION paragraph 1, the penalty becomes immediately payable in full.
2. The State shall be entitled to payment of the penalty without prejudice to all its other rights or claims, including:
 - a. its right to claim performance of the obligation to deliver goods or to render services which conform to the Agreement (in so far as performance has not become permanently impossible);
 - b. its right to claim damages to the extent that the damages exceed the amount of the penalty.
3. The penalty shall be set off against any amounts owed by the State whether or not the claim for payment thereof has passed to a third party.

Article 11 Documentation

1. Detailed specifications of the documentation to be delivered by the Supplier are set out in ANNEX A - PROGRAMME OF REQUIREMENTS. The Supplier shall deliver the documentation in accordance with the provisions of ANNEX A - PROGRAMME OF REQUIREMENTS.
2. The Supplier shall deliver the documentation Delivered Duty Unpaid (DDU) ... (place) (INCOTERMS 2010) to the address stated in ARTICLE 19 - CORRESPONDENCE, paragraph 1.
3. As soon as possible, but no later than 2 months after receipt of the documentation in whole or in part, the State shall examine the same for quality and completeness. After the State has examined the documentation or part of the documentation and found it correct, the documentation shall be accepted. The Supplier shall rectify the defects and deliver documentation conforming to the Agreement yet. None of the above shall result in any postponement of the agreed delivery date.
4. Errors or defects in the documentation delivered shall be corrected by the Supplier without any cost for the State .
6. The Supplier is responsible for the accuracy and completeness of the data and instructions provided in any documentation.

Article 12 Training

1. The Supplier shall provide the training materials and the training referred to in ANNEX A - PROGRAMME OF REQUIREMENTS for the benefit of the personnel of the State on the dates mentioned in ANNEX A - PROGRAMME OF REQUIREMENTS.
2. The training courses shall be given in Dutch and/or in English.
3. Three months before the commencement of a training course, the Supplier shall present a teaching plan specifying the subject matter to be taught in each lesson to the State for approval. The latter shall notify the Supplier within 4 weeks of its assent or its comments. The comments, if any, shall be incorporated by the Supplier in the course materials before the course is started.
4. Books and course materials used for training shall become the property of the State. The State has the right to reproduce the books and course materials for its own use free of charge.
5. The training courses shall take place at location: TBD...
6. Travel and accommodation expenses and personnel expenses of the State's personnel shall fall on the State.

Article 13 Intellectual property

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

Article 14 Reports and notices

1. Within 5 weeks of the end of each Calendar year , the Supplier shall present a progress report in duplicate in respect of that quarter, which shall at least contain the following:
 - a. general information about the progress with the performance of the Agreement;
 - b. description of the work done/ services rendered with regard to the Agreement;
 - c. a detailed overview of the deliveries made, the inspection results, the invoices submitted and the payments received with regard to the Agreement.

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

2. The Supplier shall also promptly report verbally, followed by a written report within 2 weeks, as soon as a problem occurs which may affect the performance of the Agreement. Such report shall at least comprise the following elements:
 - a. detailed description of the problem;
 - b. date that the problem was detected;
 - c. how the problem arose;
 - d. who are involved in the problem;
 - e. estimated duration of the problem;
 - f. the intended solution to the problem;
 - g. the impact of the problem on the delivery schedule;
 - h. the (estimated) technical and other consequences.

3. The reports shall be sent to the address stated in paragraph 1 of ARTICLE 19
- CORRESPONDENCE.

4. All correspondence shall include a reference stating the name and number of the Agreement.

5. In addition to the above reports, the progress shall be discussed between the State and the Supplier at least TBD... times per quarter for a period of TBD.. years after the signature of the Agreement.

Article 15 Non-imputable failures (force majeure)

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

Article 16 Performance

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

Article 17 Dissolution

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

Article 18 Disputes

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

Article 19 Correspondence

1. Unless otherwise provided elsewhere, the Supplier shall send all correspondence relating to the Agreement to:

...
Division ...
Section ...
Office...
P.O. Box ...
25.. .. The Hague.
2. The Supplier shall send invoices to *e-mail address* *FABK.Buitenlandse.Facturen@mindef.nl / FABK.Digitale.Facturen@mindef.nl / ...*
3. Unless otherwise provided elsewhere, the State shall send all correspondence relating to the Agreement to:

...
4. The parties shall state the number and name of the Agreement on all correspondence.
5. All communications by one party to the other party of any nature whatsoever in connection with the Agreement shall be valid only if made in writing.

Article 20 Liability

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

The limitation of liability referred to above does not apply:

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

Article 21 General

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

The Minister of Defence
per

...

name:
position:
date:
city:

Supplier

...

name:
position:
date:
city:

ANNEX .. – CERTIFICATE OF CONFORMITY

**Annex B to
AQAP 2070**

Certificate of Conformity – Part I		1. Supplier Serial No:		
2. Supplier (include Name, Address, E-mail etc.):		3. Contract Number:		
		4. Contract Modification Number:		
5. Approved Deviations and/or Concessions		6. Acquirer (include Name, Address, email etc.)		
7. Delivery Address:		8. Applicable to: Partial Delivery Number: Final Delivery Number:		
9. Contract Item	10. Product Description or Part	11. Quantity	12. Shipment Document	13. Undelivered Quantity

14. Remarks or Comments:

15. Supplier Statement of Quality:

It is certified that apart from the approved deviation permits/concessions noted in block #5 above, the products listed above conform in all respects to the contract requirements.

Date:

Supplier Name and Title
(*member of certifying staff*):

Stamp and
Supplier Signature:

Certificate of Conformity – Part II

1. Supplier CoC Serial No:

2. Supplier:

3. Contract Number:

4. Contract Modification Number:

5. Remarks or Comments:

6. Government Quality Assurance Representative Statement of GQA:

Referring to the CoC indicated in block 1, this is to attest that Government Quality Assurance has been performed, within the provisions of STANAG 4107, AQAP 2070 and in accordance with the agreed RGQA No./Rev.....

(the GQAR Statement of GQA above and the GQAR signature below do not mean acceptance on behalf of the Acquirer and/or Delegator of the supplies identified by the Supplier in Part I, do not necessary mean that the individual items have been inspected, nor do they mean that certification has been granted).

	<p>GQAR Information:</p> <p>Name:</p> <p>Phone Number:</p> <p>E-mail Address:</p>	<p>GQAR Signature:</p>
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ANNEX A – PROGRAMME OF REQUIREMENTS