



EUROPEAN COMMISSION  
DG Communication  
Director General

## **FRAMEWORK SERVICE CONTRACT**

### **Contract No PO/2006-39/Dir D Multiple Framework Contract with renewed competitive tendering for the provision of "Integrated Communication Services"**

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this Contract by **MR. CLAUS SØRENSEN**, Director General for Communication

of the one part,

and the consortium European Service Network S.A. / Saatchi & Saatchi, represented for the purposes of this contract by:

#### **EUROPEAN SERVICE NETWORK S.A.**

Société anoyne (Belgian law)

Galerie Ravenstein, 4

1000 Ixelles

Belgium

Registration Number: RPM 0428 304 785

VAT registration number: BE 428.304.785

(hereinafter referred to as "the Contractor"), *represented for the purposes of the signature of this contract by* **DR. KOENRAAD TOMMISSEN**, Managing Director

of the other part,

HAVE AGREED

the **Special Terms and Conditions** and the **General Terms and Conditions** below and the following Annexes:

- Annex I - Tender Specifications** No PO-2006-39-DirD, "Integrated Communication Services" sent to the Contractor on 22 .05.2007.
- Annex II - Contractor's Tender** of 29 June 2007
- Annex III - Model Specific Contract**

which form an integral part of this contract (hereinafter referred to as "the Contract").

The terms set out in the Special Terms and Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Terms and Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the orders and specific contracts (Annex III), the latter in turn taking precedence over the Tender (Annex II).

Subject to the above, the several instruments forming the parts of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.

## **I – SPECIAL TERMS AND CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1** The subject of the Contract is the supply to the Commission of integrated communication services, as described in the Specifications (Annex I).
- I.1.2** Signature of the Contract imposes no obligation on the Commission to purchase these services. Only the implementation of the Contract through specific contracts is binding for the Commission.
- I.1.3** Once implementation of the contract has been requested or has commenced, the Contractor shall reply and provide the services in accordance with all terms and conditions of the Contract.
- I.1.4** The Contract does not confer on the Contractor any exclusive right to provide to the Commission the services described in Annex I. The Contractor is selected as a contractor for a multiple Framework Contract with renewed competitive tendering.

### **ARTICLE I.2 - DURATION**

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2** Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the tasks may under no circumstances begin before the date on which the order or specific contract enters into force.
- I.2.3** The Contract is concluded for a period of 24 months with effect from the date of its entry into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The orders or specific contracts shall be returned signed before the contract to which they refer expires.  
  
After the Contract expires, it shall remain in force with regard to these orders and specific contracts, until three months after the expiry of the Contract at the latest.
- I.2.5** The Contract will be automatically renewed once only, under identical terms and conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other party three months before expiry of the Contract. Renewal does not imply any modification or deferment of existing obligations.

### **ARTICLE I.3 - PRICES**

- I.3.1** The prices for the services identified when concluding the framework Contract are shown in Annex II. For those services which have not been identified, the prices will be determined at the time of the renewed competitive tendering procedure.

The maximum total value of the orders which may be placed each year is as follows:

*Annual maximum ceiling: € 20 000 000*

The activities cover the 27 existing Member States of the European Union.

In the context of the execution of this Contract, the Commission reserves the right to apply Article 126§1(f) of Commission Regulation (EC, Euratom) No 2342/2002<sup>1</sup> permitting use of a negotiated procedure for additional contracts consisting in the repetition of similar services or works entrusted to the Contractor, provided that the subject of the Contract conforms to the present Specifications.

**I.3.2** Prices shall be expressed in EUR.

**I.3.3** Prices identified when the Contract is concluded shall be fixed and shall not be subject to revision during the first year of the Contract.

From the beginning of the second year of the Contract, a fraction (80%) of each price may be revised upwards or downwards each year, if so requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which the Contract was signed. The Commission shall purchase on the basis of the prices in force on the date on which orders or specific contracts are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index (EICP) published for the first time by the Office for Official Publications of the European Communities in the Eurostat New Cronos Database <http://www.cc.cec/newcronos/> (Theme 2 - Economy and Finance; Price - Prices and Purchasing Power Parities; Monetary Union Index of Consumer prices (HMIDX) – monthly data (index)).

The revision shall be calculated in accordance with the following formula:

$$Pr = Po \left( 0,2 + 0,8 \frac{Ir}{Io} \right)$$

where:

- Pr = revised price;
- Po = the price in the original tender;
- Io = index for the month in which the validity of the tender expires;
- Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

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<sup>1</sup> Commission Regulation (EC, EURATOM) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ357 of 31/12/2002, p. 1), as amended by Commission Regulation (EC, EURATOM) No 1261/2005 of 20 July 2005 (OJ L 201 of 2 August 2005, p. 3), by Commission Regulation (EC, EURATOM) No 1248/2006 of 7 August 2006 (OJ L 227 of 19 August 2006, p. 3), and by Commission Regulation (EC, EURATOM) No 478/2007 of 23 April 2007 (OJ L 111 of 28 April 2007, p.13).

**I.3.4.** In addition to the total amount specified in each order or specific contract, travel and subsistence expenses for the progress meetings referred to at point 7.3 of the Specifications shall be reimbursed in accordance with Article II.7. The daily subsistence allowance referred to in Article II.7.4(d) shall be EUR 149.63.

#### **ARTICLE I.4 - IMPLEMENTATION OF THE CONTRACT**

**I.4.1** If the Commission has addressed a request for performance of a specific communication project to the Contractor, it must receive the completed tender, duly dated and signed, within 10 to 30 working days of the date of dispatch of its invitation, depending on the complexity of the project. If the Contractor fails to comply with these conditions, he shall be regarded as having waived his participation in the competitive procedure. The Commission may sign a specific contract with the contractor submitting the best specific tender on the basis of the award criteria set out in the request for a communication action. The specific contract may restate the terms of the present framework Contract or modify them slightly, particularly with regard to prices.

#### **ARTICLE I.5 – TIME LIMITS FOR PAYMENT**

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be made only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests shall be inadmissible if payments for previous orders or specific contracts have not been made as a result of default or negligence on the part of the Contractor.

##### **I.5.1 Pre-financing**

Pre-financing shall be applicable if expressly provided for in the specific contracts.

##### **I.5.2 Interim payments**

Interim payments shall be applicable if expressly provided for in the specific contracts.

##### **I.5.3 Payment of the balance**

To be valid, the Contractor's request for payment of the balance must be accompanied by:

- the final technical report in accordance with the instructions laid down in Annex I,
- statements of reimbursable expenses in accordance with Article II.7,
- the relevant invoices, indicating the reference number of the Contract and of the order or specific contract to which they refer,

provided that the Commission has approved the report.

The Commission shall have a period of 45 days from the date of receipt to approve or reject the report, and the Contractor shall have a period of 20 days in which to submit further information or a new report.

Within 30 days of the date on which the Commission approves the report, payment of the balance corresponding to the invoices concerned shall be made.

For contractors established in Belgium, the orders shall include the following statement: "*En Belgique, l'utilisation de ce bon de commande vaut présentation d'une demande d'exemption de la TVA n° 450*" or an equivalent statement in Dutch or German. The Contractor shall state on his invoice(s): "*Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA*" or an equivalent statement in Dutch or German.

#### **I.5.4 Performance guarantee**

A performance guarantee shall be applicable if expressly provided for in the specific contracts.

#### **ARTICLE I.6 - BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in euros and identified as follows:

ING  
Rue du Trône, 1  
Mr. Koenraad Tommissen  
Managing Director  
310 1801689 97  
BE54 3101 8016 8997

#### **ARTICLE I.7 - GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract and to its implementation shall be made in writing and shall bear the number of the Contract, order or specific contract. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Commission:  
European Commission  
**MR. ALAIN DUMORT**  
Head of Unit COMM A2-Communication Projects and Strategies  
Directorate-General for Communication  
B-1049 Brussels  
[Alain.Dumort@ec.europa.int](mailto:Alain.Dumort@ec.europa.int)

Contractor:  
**DR. KOENRAAD TOMMISSEN**  
Managing Director  
EUROPEAN SERVICE NETWORK S.A.  
Société anoyne (Belgian law)  
Registration Number: RPM 0428 304 785  
Galerie Ravenstein, 4  
1000 Ixelles

#### **ARTICLE I.8 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.8.1** The Contract shall be governed by the national substantive law of Belgium.
- I.8.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Belgium.

#### **ARTICLE I.9 - DATA PROTECTION**

Any personal data included in or relating to the Contract, including its execution, shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. They shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the Assistant to the Director-General, without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the Assistant to the Director-General. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

## **II – GENERAL TERMS AND CONDITIONS**

### **ARTICLE II. 1 - PERFORMANCE OF THE CONTRACT**

- II.1.1** The Contractor shall perform the Contract to the highest professional standards. He shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to them.
- II.1.5** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
  - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises, or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace that person without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.



- II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem as well as an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages, as provided for in Article II.16.

## **ARTICLE II. 2 — LIABILITY**

- II.2.1** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.
- II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

## **ARTICLE II.3 - CONFLICT OF INTERESTS**

- II.3.1** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such a conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

**II.3.2** The Contractor shall abstain from any contact likely to compromise his independence.

**II.3.3** The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

**II.3.4** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

## **ARTICLE II.4 - INVOICING AND PAYMENTS**

**II.4.1** Pre-financing:

Where required by Article I.5.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

**II.4.2** Interim payments:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Commission a formal request for payment, accompanied by those of the following documents which are provided for in the Special Terms and Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, upon its receipt the Commission shall have the period of time indicated in the Special Terms and Conditions in which to:

- approve it, with or without comments or reservations, or suspend such period and request additional information; or:
- reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Terms and Conditions. The new report shall likewise be subject to the above provisions.

#### **II.4.3 Payment of the balance:**

Within sixty days of completion of the tasks referred to in each order or specific contract, the Contractor shall submit to the Commission a formal request for payment, accompanied by those of the following documents which are provided for in the Special Terms and Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, upon its receipt the Commission shall have the period of time indicated in the Special Terms and Conditions in which to:

- approve it, with or without comments or reservations, or suspend such period and request additional information; or:
- reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Terms and Conditions. The new report shall likewise be subject to the above provisions.

## **ARTICLE II.5 - GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.5.1** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.5.2** The payment periods referred to in Article I.5 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt as to the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.5 shall begin to run again once the suspension has been lifted.

**II.5.3** In the event of late payment the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus seven percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to and including the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

## **ARTICLE II. 6 — RECOVERY**

**II.6.1** If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

**II.6.2** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

**II.6.3** In the event of failure to pay by the deadline specified in the request for reimbursement, the Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## **ARTICLE II. 7 — REIMBURSEMENTS**

**II.7.1** Where provided by the Special Terms and Conditions or by Annex I, the Commission shall reimburse the expenses that are directly connected with

execution of the tasks on production of original supporting documents, including receipts and used tickets.

**II.7.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

**II.7.3** Travel expenses shall be reimbursed as follows:

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- d) travel outside Community territory shall be reimbursed under the General Terms and Conditions stated above provided the Commission has given its prior written agreement.

**II.7.4** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3..

**II.7.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

## **ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Community, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

## **ARTICLE II. 9 — CONFIDENTIALITY**

**II.9.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

**II.9.2.** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

## **ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION**

**II.10.1** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.9 shall apply.

**II.10.2** Unless otherwise provided by the Special Terms and Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

**II.10.3** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

**II.10.4** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

## **ARTICLE II. 11 – TAXATION**

**II.11.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

- II.11.2** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.11.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

#### **ARTICLE II. 12 - FORCE MAJEURE**

- II.12.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II. 13 - SUBCONTRACTING**

- II.13.1** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.13.2** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

**II.13.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

#### **ARTICLE II. 14 — ASSIGNMENT**

**II.14.1** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

**II.14.2** In the absence of the authorisation referred to in the above paragraph, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

#### **ARTICLE II.15 - TERMINATION BY THE COMMISSION**

**II.15.1** The Commission may terminate the Contract, a pending order or a specific contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- (c) where the contractor has been guilty of grave professional misconduct proven by any means which the Commission can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he or she is established or with those of the country whose law is applicable to the contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;



- (i) where execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days of the date foreseen<sup>2</sup>, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

**II.15.2** In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

**II.15.3** Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

**II.15.4** Consequences of termination:

In the event of the Commission terminating the Contract or a pending order or specific contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Terms and Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the contract.

On termination the Commission may engage any other contractor to execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees enforceable under the Contract.

## **ARTICLE II. 16 - LIQUIDATED DAMAGES**

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to

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<sup>2</sup> This period may be modified in the Special Conditions depending on the nature of the contract.

terminate the Contract, the Commission may decide to impose liquidated damages of 0.2%<sup>3</sup> of the amount of the relevant purchase per calendar day of delay. The Contractor may submit arguments against this decision, within thirty days of notification, by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not punitive, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

## **ARTICLE II. 17 - CHECKS AND AUDITS**

**II.17.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the contract up to five years after payment of the balance of the last implementation.

**II.17.2** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the contract up to five years after payment of the balance for the last implementation.

**II.17.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the contract up to five years after payment of the balance of the last implementation.

## **ARTICLE II. 18 - AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties. An order or a specific contract may not be deemed to constitute an amendment to the Contract.

## **ARTICLE II.19 - SUSPENSION OF THE CONTRACT**

Without prejudice to the Commission's right to terminate the Contract, the Commission may at any time and for any reason suspend execution of the Contract, pending orders or of specific contracts or any part thereof. Suspension shall take

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<sup>3</sup> The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, orders or specific contracts, or part thereof.

## SIGNATURES

For the Contractor,  
**EUROPEAN SERVICE NETWORK**  
**DR. KOENRAAD TOMMISSEN**  
Managing Director

Signature: \_\_\_\_\_

Done at Brussels,

In duplicate in English.

For the Commission,  
**MR. CLAUS SØRENSEN**  
Director General

Signature: \_\_\_\_\_

Done at Brussels, 13. 12. 2007

Comm/D/3/2007/D/21522

## MODEL SPECIFIC CONTRACT

**SPECIFIC CONTRACT No [complete]**  
implementing Framework Contract No PO/2006-39-Dir D, "Integrated  
Communication Services"

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this Contract by [name in full, position, department]

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]<sup>4</sup>

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"<sup>5</sup>), [represented for the purposes of the signature of this contract by [name in full and function,]]

of the other part,

HAVE AGREED

### **ARTICLE III.1: SUBJECT**

**III.1.1** This specific contract implements Framework Contract No PO/2006-39/Dir D – "Integrated communication services" - signed by the Commission and the Contractor on [enter date] [and renewed on] [enter date].

**III.1.2** The subject of this specific contract is [short description of subject].

**III.1.3** The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the Annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] [specified in Annex [complete].]

### **ARTICLE III.2: DURATION**

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<sup>4</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>5</sup> In the case of a joint bid, and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract".

**III.2.1** This specific contract shall enter into force on the date on which it is signed by the Commission.

**III.2.2** The duration of the tasks shall not exceed [*days/months*]. Performance of the tasks shall start on the date of entry into force of the specific contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

### **ARTICLE III.3 - PRICES**

**III.3.1** The total amount to be paid by the Commission under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.

**III.3.2** In addition to the price, costs up to an amount of EUR ... will be reimbursed according to the provisions of the Framework Contract.

For Contractors established in Belgium, the provisions of this contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): "*Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA*" or an equivalent statement in Dutch or German.

### **ARTICLE III.4 – PRÉ-FINANCING, INTERIM PAYMENTS AND PERFORMANCE GUARANTEE**

#### **III.4.1 Pre-financing**

Within 30 days

- of the date on which the Contractor returns the order form or specific contract and the relevant invoice, indicating the reference number of the Contract and of the order or specific contract to which it refers,
- [of the receipt by the Commission of a duly constituted financial guarantee equal to at least [complete]% of the total value of the order or specific contract}<sup>6</sup>,

a pre-financing payment of [complete]% of the total value of the order or specific contract shall be made.

#### **III.4.2 Interim payments**

Requests for interim payment by the Contractor in accordance with the instructions laid down in Annex I shall be admissible if accompanied by:

- an interim technical report
- statements of reimbursable expenses in accordance with Article II.7,
- the relevant invoices, indicating the reference number of the Contract and of the order or specific contract to which they refer,

provided that the Commission has approved the report.

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<sup>6</sup> This guarantee shall be mandatory for pre-financing payments exceeding EUR 150.000.

The Commission shall have a period of 20 days from the date of receipt to approve or reject the report, and the Contractor shall have a period of 15 days in which to submit further information or a new report.

Within 20 days of the date of receipt of the relevant invoice(s) following the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices, equal to [complete] % of the total amount referred in the relevant order or specific contract shall be made.

#### **I.4.3 Performance guarantee**

Option 1: Performance guarantee for each order or specific contract issued - discharge after payment of the balance

[A performance guarantee shall be constituted by deduction[s] of 10% of the total value of the service purchased. It shall be withheld for up to [complete]<sup>7</sup> months from the date of payment of the balance of the order or specific contract. It shall cover its performance in accordance with the terms set out in Annex I.]

Option 2: Performance guarantee for each order or specific contract issued - release on payment of the balance

[A guarantee for an amount of EUR [complete the amount in figures and in words] shall be issued by a bank, an authorised financial institution or a third party in favour of the Commission. It shall be released on payment of the balance of the order or specific contract. It shall cover its performance in accordance with the terms set out in Annex I.]

#### **ARTICLE III.5: ANNEX[ES]**

**Annex A** - Resources allocated<sup>8</sup>

**Annex B** – Contractor's specific tender (no [complete] of [date: complete])

#### **SIGNATURES**

For the Contractor,

For the Commission,

Signature(s): \_\_\_\_\_

Signature[s]:.....

..... \_\_\_\_\_

Done at Brussels, (date)

Done at Brussels, (date)

In duplicate in English.

<sup>7</sup> The period for release of the performance guarantee is determined by the need to check the execution of complex tasks (due to the particular nature of the service). It may vary from the shortest possible period after payment (where the satisfactory performance of the contract is self-evident) to many months.

<sup>8</sup> Only if it has not been possible to include the resources allocated in the body of the specific contract.