



EUROPEAN COMMISSION

Directorate General for Education and Culture

Directorate Culture, Audiovisual policy and Sport

Unit Audiovisual policy

Annex 2:

DRAFT SERVICE CONTRACT*

CONTRACT NUMBER – [complete]

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 Gregory PAULGER, director, Directorate Culture, Audiovisual policy and Sport

of the one part,

and

[official name in full]

[*official legal form*]

[*statutory registration number*]

[official address in full]

[*VAT registration number*]

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

of the other part,

HAVE AGREED

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

Annex I – Terms of Reference

Annex II – Tender of the Contractor (no. GD EAC 02/04/[*complete*])

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

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Terms of Reference (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the foregoing, the several instruments forming part of this Contract are to be taken as mutually explanatory of one another. In the case of ambiguities or discrepancies within or between such parts, the same shall be explained and adjusted by the issue of a written instruction by the Commission, subject to the Contractor's rights under Article I.7, should the Contractor dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is a study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aids schemes for films and audiovisual productions.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Terms of Reference annexed to the Contract (Annex I).

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.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks shall not exceed **12.5 months**. This period, as well as all other periods of the Contract, are calculated according to calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

The Commission is not obliged to react to request for extension of the duration of the tasks received less than 40 days before the expiry of the period of execution, or received with less than one-third of the period for execution remaining, whichever is the shorter period. An extension of the duration will in any case only be agreed where judged by the Commission to be necessary for the completion of the project, and where the reason for the amendment is beyond the control of the Contractor.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.
- I.3.2** The total amount referred to in the above paragraph shall be fixed and not subject to revision.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES¹

Payments under the Contract shall be made in accordance with Article II.4. Each payment is carried out only if the Contractor has fulfilled all his contractual obligations by the date relating to the introduction of an invoice.

I.4.1. Pre-financing:

Following the signature of the Contract by the last contracting party, within 30 days of

- the receipt by the Commission of a request for pre-financing with a relevant invoice and,
- the receipt by the Commission of a duly constituted financial guarantee equal to at least the pre-financing amount

a pre-financing payment of

EUR [complete amount in figures and in words] equal to 30 % of the total amount referred to in Article I.3.1

shall be made.

The guarantee shall be released upon the interim payment by the Commission.

I.4.2. Interim payment:

The request for interim payment by the Contractor shall be admissible if accompanied by

- the second interim report.

On receipt of the report, the Commission shall have sixty days to approve or reject the report, and the Contractor shall have twenty days in which to submit additional information or a new report.

Should the Commission still not consider the report acceptable, the Contractor will be invited to amend it until the Commission is satisfied.

- the relevant invoice

Within 30 days of the date on which the report is approved by the Commission, the interim payment corresponding to EUR [complete amount in figures and in words] equal to complete 40 % of the total amount referred to in Article I.3.1 shall be made.

1.4.3. Payment of the balance:

The request for payment of the balance of the Contractor shall be admissible if accompanied by

- the final report

On receipt of the report, the Commission shall have sixty days to approve or reject the report, and the Contractor shall have twenty days in which to submit additional information or a new report.

Should the Commission still not consider the report acceptable, the Contractor will be invited to amend it until the Commission is satisfied.

- the relevant invoice

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to EUR [complete amount in figures and in words] equal to complete 30 % of the total amount referred to in Article I.3.1 shall be made.

For Contractors established in Belgium, the provisions of the Contract constitute request for VAT exemption no 450, provided that the Contractor indicates in his invoice(s) as follows: “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA.” or equivalent indication in Dutch or German language.

For Contractors established in Italy, the provisions of the Contract constitute request for VAT exemption, provided that the Contractor indicates in his invoice(s) as follows: “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell’8/8/1996”.μ

1.4.4. Performance guarantee:

A performance guarantee corresponding to 7 % of the total value of the Contract shall be constituted by deduction from the interim payment. The guarantee shall be released with the payment of the balance.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor’s bank account denominated in euro, identified as follows:

Name of bank: [complete]

Full address of branch: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

[*IBAN*² code: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be considered received by the Commission at the date it is registered by the department responsible mentioned below. Email shall be considered received on the date it is received. However, if the Contractor receives a reply asking them to redirect the email, it shall not be considered received until the correctly redirected email is received. Communications shall be sent to the following addresses:

Commission:

European Commission
Directorate-General for Education and Culture
Directorate Culture, Audiovisual policy and Sport
Unit Audiovisual policy
B-1049 Brussels

email: avpolicy@cec.eu.int

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[*Company name*]
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by the national substantive law of Belgium

I.7.2. 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.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor 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 him.
- 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 him 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, an indication of the date on which it started and of the corrective actions 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.15.

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 it 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 an insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation . He shall take out supplementary insurance reasonably required under standard industry practice. 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 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, the Contractor shall immediately take all necessary steps to resolve the conflict.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary, within the time limit fixed by the Commission. 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, in any period leading up to the award of the Contract, undertaken any action of any kind which constitutes an illegal practice or involves corruption, either directly or indirectly, by giving or accepting any advantage of any kind, related to the preparation of his tender, to the award of the Contract, or in any other way linked to the tender process or the implementation of the Contract, outside the strict obligations of the tender process and the Contract;
- that he will not, at any time during or after the implementation of the Contract, undertake any action of any kind which constitutes an illegal practice or involves corruption, either directly or indirectly, by giving or accepting any advantage of any kind, related to the implementation of the Contract or the tender process, outside the strict obligations of the tender process and 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 – PAYMENTS

II.4.1. Pre-financing:

Where required by Article I.4.1, 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. This 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 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 discharged the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment:

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 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 to which they refer.

When the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments, reservations or suspend the period and requests for additional information; or
- to 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 or information enclosed.

Where the Commission requests a new report, because the one previously submitted is rejected, this shall be submitted within the period of time indicated in the Special 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 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 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 to which they refer.

When the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which :

- to approve it, with or without comments, reservations or suspend the period and requests for additional information; or
- to 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 is rejected, this shall be submitted within the period of time indicated in the Special 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.4 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 produced correctly. In case of doubt on the eligibility of expenditure appearing in a 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 indeed eligible.

The Commission shall notify the Contractor accordingly in writing. Suspension shall take effect from the date of dispatch of the communication. The remainder of the period referred to in Article I.4 shall begin to run again after the end of suspension.

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 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 under the Contract 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. Such interest rate is published in the C series of the Official Journal of the European Union. 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.** 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 – 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 entering into the Contract.

ARTICLE II.8 – CONFIDENTIALITY

- II.8.1.** 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 the performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.
- II.8.2.** 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.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.9.1. The Contractor authorises the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data enclosed in or related to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports.

II.9.2. Unless otherwise provided for in the Special 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.9.3. 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.9.4. 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.10 – TAXATION

II.10.1. 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.10.2. 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.10.3. 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.10.4. Invoices presented by the Contractor shall specify separately his VAT taxation place, the amounts not including VAT and the amounts including VAT.

ARTICLE II.11 – FORCE MAJEURE

II.11.1. 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.11.2. Without prejudice to the terms of Article II.1.8, if either of the contracting parties is faced with force majeure, he shall notify the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.11.3. 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.11.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.12 – SUBCONTRACTING

II.12.1. 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.12.2. 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 bear the exclusive liability for the proper performance of the Contract.

II.12.3. 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.16.

ARTICLE II.13 – ASSIGNMENT

II.13.1. 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.13.2. In the absence of the authorisation referred to in 1 above, 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.14 – TERMINATION BY THE COMMISSION

II.14.1. The Commission may terminate the 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 his 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 contracting authority 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 is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Contractor is subject, in the Commission's opinion, to serious suspicions of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor violates his obligations under Article II.3;
- (g) where the Contractor is guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or fails 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 has not actually commenced within three months of the date foreseen, 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 written summons to comply, specifying the nature of the alleged failure and after being given the opportunity to cure the failure within a reasonable time following receipt of written summons, persists to seriously fail to meet his contractual obligations.

II.14.2. In case of force majeure, notified in accordance with Article II.11, either contracting party may terminate the Contract, where performance of the Contract cannot be ensured for a period corresponding at least to one fifth of the time foreseen in Article I.2.3.

II.14.3. Prior to termination under points e), h) or k), Contractor shall be given the opportunity to present his observations.

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

II.14.4. Consequences of termination:

In the event of the Commission terminating the 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 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.

Upon termination the Commission may engage any other contractor to complete the services. The Commission will be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees of the Commission under the Contract.

ARTICLE II.15 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the deadlines specified in 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 terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 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 the Contractor's 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 are not enforced where late interests are foreseen. The Commission and the Contractor expressly acknowledge and agree that any sums which would be payable under this paragraph are in the nature of liquidated damages and not a penalty, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure.

ARTICLE II.16 – CHECKS AND AUDITS

II.16.1. According 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 up to five years after the final payment.

II.16.2. 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 the compliance of the tasks with the contractual obligations up to five years after the final payment.

II.16.3. In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with the Council Regulation (Euratom, EC) No 2185/96 and with Regulation (EC) no 1073/1999 of the Parliament and the Council up to five years after the final payment.

ARTICLE II.17 – 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.

Amendments may be made to the Contract only where the amendment is judged by the Contracting Authority to be necessary for the completion of the project, and where the reason for the amendment is beyond the control of the Contractor.

ARTICLE II.18 – 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 be suspended the execution of the tasks under the Contract or any part thereof. Suspension shall take 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 provides so. The Commission may at any time following a suspension give notice to Contractor to resume the work previously suspended. Contractor shall not be entitled to claim for compensation due to the suspension of the Contract or part thereof.

SIGNATURES

For the Contractor,
[*Company name/forename/surname/function*]

For the Commission,
PAULGER Gregory, Director

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at Brussels, [date]

In duplicate in [language].

ANNEX I

Tender Specifications and Monitoring

The Commission must be able to conduct, throughout the duration of the Contract, an accurate appraisal of whether the Contractor is executing the tasks assigned to him in accordance with the provisions of the Contract.

So that the Commission can regularly identify the progress made in execution of the tasks in accordance with the Tender Specifications, appropriate monitoring, assessment, and supervisory procedures shall be set up. For these purposes, the Call for Tenders (Tender Specifications) shall include all necessary details on monitoring and reporting, in particular, where relevant, the following:

- (i) schedule of interim and final reports – terms for approval, structure and content;
- (ii) schedule of audits to be carried out in accordance with Article II.17 of the Contract.