

**CONTRACT**

№...../.....

**PROCEDURE:**

**Delivery and deployment of QKD equipment for the purposes of the "BG National QCI Plan" project, financed by the European Union and part of the "Digital Europe" program**

Today, ..... in city of Sofia, between:

**Enterprise Communications Group EOOD**, with registered office and address of management: Sofia 1766, 251 G Okolovrasten pat Str., MM Business Center Building, UIC 175157251 represented by Georgi Aleksandrov Georgiev - CEO, hereinafter referred to as the CONTRACTOR, from one side  
and

..... with registered office and address of management .....  
registered in the ....., tel: ..... represented by  
..... referred to for short as “..... and/or the EXECUTOR,  
from the other side,

The CONTRACTOR and the EXECUTOR collectively referred to as the “Parties” and each individually a “Party”

**SUBJECT OF THE CONTRACT**

**Art. 1.** Pursuant to the terms and conditions set forth in this supply contract (hereinafter referred to as the "*Contract*" and/or the "*Agreement*"), the CONTRACTOR assigns, and the EXECUTOR accepts, to perform **the delivery and deployment of QKD equipment for the purposes of the "BG National QCI Plan" project, financed by the European Union and part of the "Digital Europe" program** in accordance with the Technical Specification, Documentation, Technical Proposal and the Price Proposal, approved by the the CONTRACTOR, constituting respectively Annexes No. 1-4 to this Contract and constituting an integral and substantial part thereof.

**Art. 2.** The equipment delivered by the EXECUTOR should be new and unused and meet the European standards for the relevant type of product (if any are applicable to it).

**TERM OF THE CONTRACT. TERM AND PLACE OF PERFORMANCE**

**Art. 3.** The Contract enters into force from the date of its signing and is valid until the final fulfillment of all obligations of the Parties under it, including the warranty period.

**Art. 4.** The deadline for delivery of the equipment, as described in the Annexes, (hereinafter referred to as the "*Delivery*"), subject of the Contract, is 5 (five) calendar months, counted from the date of award and execution.

**Art. 5.** The place of execution of the Contract is Sofia, Bulgaria.

## **PRICE, ORDER AND TERMS OF PAYMENT**

**Art. 6. (1)** For the performance of the Contract, the CONTRACTOR owes the EXECUTOR remuneration in the amount of EUR ..... (in words: ..... ) without VAT according to the EXECUTOR's price proposal.

**according to the Bulgarian and European legislation.”**

**(2)** The price under paragraph 1 includes all the costs of the EXECUTOR for the execution of the order, including costs for delivery, service, training and warranty.

**(3)** The price specified in paragraph 1 is final for the duration of the Contract and is not a subject to change.

**(4)** The total value of the delivery made and accounted for under this Agreement cannot exceed the value of the Agreement.

**Art. 7. (1)** The CONTRACTOR shall pay the EXECUTOR a total price of the Contract in the amount of .....(.....) EUR, excluding VAT. **according to the Bulgarian and European legislation.”**

**(2)** Payment is made by bank transfer in euro to a bank account specified by the EXECUTOR.

**(3)** The payment will be made in a single solution within 30 (thirty) days, starting from the date of the delivery after signing the Contract. The invoice will be submitted when the material will be delivered.

**Art. 8.** Payment under this Contract is made on the basis of a handover protocol for acceptance of the Delivery, signed by the CONTRACTOR and the EXECUTOR.

**Art. 9. (1)** All payments under this Agreement are made in EUR by bank transfer to the following bank account of the EXECUTOR:

Bank:

IBAN:

BIC:

### **Account holder:**

**(2)** The EXECUTOR is obliged to notify the CONTRACTOR in writing of all subsequent changes under paragraph 1 within 3 (three) days from the moment of the change. In the event that the EXECUTOR does not notify the CONTRACTOR within this period, it is considered that the payments have been duly made.

**(3)** To make the payments, the EXECUTOR prepares invoices. The invoice should be issued in the name of CONTRACTOR five days after signing the handover protocol with the following data:

**Recipient:** Enterprise Communications Group EOOD

**Address:** Sofia 1766, 251 G Okolovrasten pat Str., MM Business Center Building.

**UIC:** 175157251

## **RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **General rights and obligations of the EXECUTOR**

**Art. 10. (1)** The EXECUTOR has the right to:

1. to receive remuneration in the amount, terms and under the conditions under Articles 6-9 of the Contract for the actually performed Delivery, subject of the Contract;
2. to request and receive from the CONTRACTOR the necessary assistance for the fulfillment of the obligations under this Agreement, as well as all necessary documents, information and data directly related to or necessary for the fulfillment of the Agreement.

**(2)** The EXECUTOR undertakes:

1. to carry out the Delivery and installation and to fulfill its obligations under this Agreement within the agreed terms and with quality, in accordance with the Agreement, the Technical Specification, Technical Proposal, Price Proposal and Documentation of the CONTRACTOR - appendices to the Contract;
2. carry out delivery and installation of the equipment at the place under Article 5 of this Contract;
3. to remove, at his own expense, the shortcomings, errors and established defects in the process of the execution of the Contract within the terms provided for in it and proposed in the technical proposal;
4. to fulfill its obligations under the Agreement regarding the warranty maintenance of the delivered equipment;
5. to carry out warranty maintenance/service for the period indicated in the technical specification of the CONTRACTOR and accepted in the technical proposal by the EXECUTOR, during which period he shall provide technical support with his own transport and at his own expense;
6. to submit a report to the CONTRACTOR and carry out revisions and/or additions in terms of instructions from the CONTRACTOR, when the CONTRACTOR has requested this;
7. to fulfill all lawful instructions and requirements of the CONTRACTOR;
8. to provide conditions for the CONTRACTOR to carry out ongoing control over the implementation of the Contract, as well as to check and review the compliance of the deliveries made under the Contract;
9. to promptly inform the CONTRACTOR of all obstacles arising in the course of the execution of the work, to propose a way to remove them, and may request instructions and/or assistance from the CONTRACTOR for their removal;
10. to monitor and report irregularities in the performance of the Agreement, where applicable. In the case of an established irregularity, the EXECUTOR is obliged to reimburse the CONTRACTOR all amounts unlawfully paid, together with the interest due;
11. to keep the confidential information confidential, in accordance with the Agreement;
12. not to assign the work or parts of it to subcontractors other than those specified in the EXECUTOR's offer, to assign a relevant part of the Delivery to the subcontractors specified in the EXECUTOR's offer, and to supervise the performance of their obligations;
13. to participate in all work meetings related to the implementation of this Agreement.

**Art. 11. (1) THE CONTRACTOR has the right to:**

1. to demand and receive the Delivery within the agreed terms, quantity and quality;
2. to supervise the performance of the obligations undertaken by the EXECUTOR, including to request and receive information from the EXECUTOR's throughout the duration of the Agreement, or to carry out inspections, if necessary, at the place of execution of the Agreement, but without thereby hindering the execution;
3. when the EXECUTOR has deviated from the quantity and/or type of Delivery subject to this Agreement, refuse to accept part or all of the quantity, as well as refuse to pay the corresponding remuneration until the EXECUTOR fulfills its obligations under the Agreement;
4. to demand from the EXECUTOR the replacement of the poor-quality, incomplete or defective delivery in the manner and within the terms specified in this Agreement;
5. to absorb such part of the guarantee as covers the EXECUTOR's liability for the default;
6. to absorb the sums due for penalties and compensations in connection with non-fulfillment of the Agreement from the performance guarantee. In the event that the EXECUTOR's non-fulfillment of the obligations under the Contract exceeds the amount of the guarantee, the CONTRACTOR has the right to seek compensation under the general rules;
7. to refuse payment on an invoice presented by the EXECUTOR, in which the total price

and/or the price of any of the items subject to the contract is different from those offered in the Participant's Price Proposal, an integral part of this Contract;

8. in case of culpable delay in Delivery, the CONTRACTOR draws up a protocol, which it submits for coordination with the EXECUTOR. The same is obliged to sign the protocol or object in writing within 3 (three) days. In the event of failure to reach agreement or failure to sign the protocol within the agreed time period, the CONTRACTOR has the right to exercise its rights set forth in the Contract;

9. the CONTRACTOR is not responsible for damages suffered by the employees or the property of the EXECUTOR or in relation to third parties during the execution of the Contract or as a consequence of it. The CONTRACTOR does not owe compensation or additional payments, beyond those provided for in the Contract, related to such damages.

(2) THE CONTRACTOR undertakes:

1. to accept the performance of the Delivery when it meets the agreed upon, in accordance with the terms and conditions of this Agreement;

2. to pay the EXECUTOR the price in the amount, according to the order and under the conditions stipulated in this Agreement;

3. to provide and ensure access to the EXECUTOR to the information necessary for the performance of the Delivery, subject of the Contract, subject to the relevant requirements or restrictions according to the applicable law;

4. to keep the confidential information confidential, in accordance with the Agreement;

5. to provide assistance to the EXECUTOR in connection with the implementation of this Agreement, including the removal of obstacles to the implementation of the Agreement, when the EXECUTOR requests this;

6. to exercise control over the implementation of the Agreement through its control bodies;

7. to appoint persons as its representatives to monitor the implementation of the Agreement and to sign the necessary documents.

### **DELIVERY AND ACCEPTANCE OF PERFORMANCE. WARRANTY.**

**Art. 12. (1)** The transfer of the performance of the Delivery is documented with a handover protocol, which is signed by representatives of the CONTRACTOR and the EXECUTOR in two original copies - one for each of the Parties.

(2) At least the following data shall be explicitly recorded in the handover protocol: the received equipment by type, quantity, unit price and total price, name and surname of the handover and receiver, signatures of the persons.

**Art. 13. (1)** THE CONTRACTOR has the right to:

1. to accept the performance when it corresponds to the agreed;

2. to request revision and/or addition of the acceptance-handover protocol within a period specified by him, in which case the revision and/or addition shall be carried out within a period specified by the CONTRACTOR and shall be entirely at the EXECUTOR's expense. When inconsistencies between the performance and the agreed upon are found or deficiencies are found, the CONTRACTOR may refuse to accept the performance until the deficiencies are eliminated, giving an appropriate deadline for their elimination at the EXECUTOR's expense;

3. in the event that the CONTRACTOR discovers a defect or defect in a given product during its acceptance, the CONTRACTOR has the right not to accept the relevant product and immediately return it to the EXECUTOR. The CONTRACTOR has the right to make claims to the quality of the product, in case it does not perform its intended functions or has hidden defects.

4. to refuse to accept the performance in the event of significant deviations from the agreed upon in the event that the identified deficiencies are of such a nature that they cannot be remedied within the performance period under the Contract and the result of the performance becomes useless for the CONTRACTOR.

(2) The final acceptance of the performance of the Delivery under this Agreement is carried out after the presentation and signing of the handover protocol by the Parties. In the event that deficiencies in the implementation are found at this time, they are described in the final handover protocol and their removal or the imposition of a sanction follows, according to the Agreement.

**Art. 14 (1)** The EXECUTOR is obliged to provide a warranty period for the equipment delivered and installed by him within a period of ..... /...../ months, counting from the date of signing the handover protocol for acceptance of delivery and installation. The removal of damage and/or hidden defects and defects during the warranty period is entirely at the EXECUTOR's expense, incl. and transport costs, if it is necessary to transport equipment to the service base of the EXECUTOR, which is carried out with his motor vehicle.

#### **PENALTIES FOR FAILURE TO COMPLY**

**Art. 15.** In the event of a delay in the performance of the obligations under this Agreement, the non-performing Party owes the defaulting Party a penalty in the amount of 0.05% of the price for each day of delay, but not more than 10% (ten percent) of the value of the Agreement.

**Art. 16.** In case of non-fulfillment of the subject of the Agreement by the EXECUTOR, he owes a penalty in the amount of 10% (ten percent) on the value of the ordered but undelivered or delivered poor-quality goods. The payment of the penalty does not deprive the Party in good standing of the right to seek real performance and compensation for suffered damages and lost benefits.

**Art. 17.** In the event of a finding of bad performance or other **inaccurate** or partial performance of individual activities or in case of deviation from the requirements of the CONTRACTOR specified in the technical specification, the CONTRACTOR has the right to request the EXECUTOR to perform the relevant activity in full and qualitatively, without owing additional remuneration for this.

**Art. 18.** In case of cancellation of the Agreement due to non-performance by one of the Parties, the Party responsible for this shall owe a penalty in the amount of 10% (ten percent) of the value of the Agreement.

**Art. 19.** The payment of the penalties stipulated in this Agreement does not limit the right of the non-performing Party to seek actual performance and/or compensation for damages suffered and lost profits in a greater amount, according to the applicable law.

**Art. 20.** The EXECUTOR is responsible and bears all damages caused to third parties during the execution of the Contract, as a result of his actions or inactions.

**Art. 21.** Any disputes shall be resolved by court order.

#### **RECOGNIZED CAUSES OF DELAY**

**Art. 22.** The Parties agree that, for the purpose of excluding the applicability of penalties, in addition to the recognized causes of force majeure, any causes of delay in the Supply of Products/Services dependent on:

- ..... or third parties used by .....
- Public or private entities which will have to issue any authorization for the supply.

In any case, these causes must be identified and ascertained by a written report shared by the

Parties in which they will also redefine the rescheduling of the impacted activities as well as other obligations or activities connected to them.

#### **WARRANTY OF PERFORMANCE. ADVANCE PAYMENT GUARANTEE**

**Art. 23.** The EXECUTOR guarantees the fulfillment of his obligations arising from this Contract with a performance guarantee in the amount of ..... (.....) EUR, representing 1% (one percent) of its total value.

**Art. 24.** The CONTRACTOR retains and is satisfied with the guarantee when the EXECUTOR interrupts or delays the performance of his obligations under the Contract for more than 15 (fifteen) days.

**Art. 25.** The guarantee for the performance of the Agreement is presented in one of the following forms:

A sum in the amount of 1% (one percent) of the value of the Contract, in the amount of ..... (.....) EUR, transferred to the account of Enterprise Communications Group:

**Bank: ProCredit Bank Bulgaria EAD**

**IBAN: BG36 PRCB 9230 1049 7255 01**

**BIC: PRCBGSGF**

Or

Original bank guarantee of the same value or insurance that ensures the performance by covering the EXECUTOR's liability.

When the participant chooses the performance guarantee to be a bank guarantee, then it must explicitly state that it is unconditional and irrevocable, that it is in favor of the CONTRACTOR and that it is valid for at least 30 (thirty) days after the expiry of the guarantee period of the supplied equipment.

When the EXECUTOR chooses Insurance, which ensures the performance, by covering the EXECUTOR's liability, it has a validity period of the warranty period, plus 30 (thirty) days. The assignor should be listed as a third party beneficiary under this insurance.

For the performance of deliveries under Article 1 of this Agreement, the EXECUTOR should include the following text: "Guarantee for the performance of the tender "Delivery and deployment of QKD equipment for the purposes of the "BG National QCI Plan" project, financed by the European Union and part of the "Digital Europe program".

**Art. 26.** (1) The assignor does not owe interest, fees, commissions or any other payments on the sums of the provided guarantees, regardless of the form in which they are provided.

(2) The guarantee is not released by the CONTRACTOR if, in the process of the execution of the Contract, a dispute arose between the Parties regarding non-fulfillment of the EXECUTOR's obligations and the matter was referred to a court for resolution. Upon resolution of the dispute in favor of the CONTRACTOR, he may proceed to retain the guarantees.

(3) The CONTRACTOR has the right to withhold the performance guarantee in whole or in part, in the event of full or partial non-fulfillment of the obligations under this Agreement by the EXECUTOR and/or in the event of cancellation or termination of this Agreement due to the EXECUTOR's fault. In these cases, the CONTRACTOR has the right to withhold from the performance bond amounts covering the EXECUTOR's liability for non-performance, provided that the same is not withheld or returned to the EXECUTOR.

#### **TERMINATION OF THE CONTRACT**

**Art. 27. (1)** This Agreement is terminated:

1. The Contract enters into force from the date of its signing and is valid until the final

fulfillment of all obligations of the Parties under it, including the warranty period.

2. with the fulfillment of all obligations of the Parties under it;

3. in the event of complete objective impossibility of performance, for which circumstance the affected Party is obliged to notify the other Party within 7 (seven) days from the occurrence of the impossibility and to present evidence;

4. upon termination of a legal entity – Party to the Agreement without legal succession, within the meaning of the legislation of the country in which the relevant entity is established.

(2) The contract can be terminated:

1. by mutual agreement of the Parties, expressed in writing;

2. when bankruptcy or liquidation proceedings are opened for the EXECUTOR - at the request of each of the Parties.

**Art. 28. (1)** For the purposes of this Agreement, the Parties shall consider any of the following cases as a breach of a material obligation of the EXECUTOR:

1. when the EXECUTOR has not made the Deliveries within the agreed period;

2. The EXECUTOR has made a significant deviation from what was assigned under the Contract;

3. The EXECUTOR has not complied with another deadline proposed by him under this Contract.

(2) The CONTRACTOR may cancel the Contract only with a written notification to the EXECUTOR and without giving him an additional deadline for performance, if due to the EXECUTOR's delay it has become useless or if the obligation had to be fulfilled without fail in the agreed time.

**Art. 29.** In all cases of termination of the Agreement, except for termination of a legal entity - Party to the Agreement without legal succession:

1. The CONTRACTOR and the EXECUTOR draw up a finding protocol for the work performed at the time of termination and the amount of any payments due.

2. The EXECUTOR undertakes:

a) to suspend the Delivery, except for those products that may be necessary and requested by the CONTRACTOR;

b) to hand over to the CONTRACTOR all reports and protocols prepared by him in execution of the Contract until the date of termination;

c) to return to the CONTRACTOR all documents and materials that are the property of the CONTRACTOR and were provided to the EXECUTOR in connection with the subject of the Contract.

## **GENERAL PROVISIONS**

### Concepts defined and interpretation

**Art. 30. (1)** In the event of a conflict between various provisions or conditions contained in the Agreement, the following rules shall apply:

1. special provisions take precedence over general provisions;

2. the provisions of the Appendices take precedence over the provisions of the Agreement.

### Compliance with applicable regulations

**Art. 31.** When performing the Contract, the EXECUTOR is obliged to comply with all applicable legal acts, regulations, standards and other requirements related to the subject of the Contract, and in particular, all applicable rules and requirements related to environmental protection, social and labor law, applicable collective agreements and/or provisions of international environmental, social and labor law.

### Confidentiality

**Art. 32. (1)** Each of the Parties to this Agreement undertakes to keep confidential and not to disclose or distribute information about the other Party that became known to it during or on the occasion of the execution of the Agreement. Confidential information includes, but is not limited to: any financial, commercial, technical or other information, analyses, compilations, studies, documents or other materials relating to the business, management or operations of the other Party, of any nature or in any form, including, financial and operating results, markets, current or potential customers, property, methods of operation, personnel, contracts, commitments, legal matters or strategies, products, processes related to documentation, drawings, specifications, diagrams, plans, notices, data, samples, models, samples, software, software applications, computer devices or other materials or records or other information, whether written or oral, or contained on a computer disk or other device.

**(2)** With the exception of the cases specified in paragraph 3 of this Article, confidential information may be disclosed only after prior written approval from the other Party, and this consent may not be unreasonably withheld.

**(3)** It shall not be considered a breach of non-disclosure obligations when:

1. the information has become or becomes publicly available without breach of this Agreement by either Party;
2. the information is required by law applicable to either Party;
3. the provision of the information is required by a regulatory or other competent authority and the relevant Party is obliged to comply with such requirement;

In the cases under points 2 or 3, the Party that should provide the information shall immediately notify the other Party under the Agreement.

**(4)** The obligations under this clause relate to the CONTRACTOR and the EXECUTOR, all their divisions, companies and organizations controlled by them, all their employees and natural or legal persons employed by it, and each Party is responsible for the fulfillment of these obligations by such persons.

**(5)** Obligations related to non-disclosure of confidential information remain in force even after termination of the Agreement for any reason.

### Public Statements

**Art. 33.** The Parties do not have the right to make public statements and announcements, to disclose or publicize any information he has received in connection with the performance of the supplies subject to this Agreement, regardless of whether it is based on data and materials of the CONTRACTOR or on the results of the work of the EXECUTOR, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

### Transfer of rights and obligations

**Art. 34.** Neither Party has the right to transfer any of the rights and obligations arising from this Agreement without the consent of the other Party. Monetary claims under the Contract and the subcontracts may be assigned or pledged according to applicable law.

### Changes

**Art. 35.** This Agreement may be amended only by additional agreements drawn up in writing and signed by both Parties.



Force majeure

**Art. 36. (1)** The Parties are not responsible for non-performance of an obligation under this Agreement when the impossibility of performance is due to force majeure.

**(2)** For the purposes of this Agreement, "force majeure" has the meaning of such term within the meaning of the Bulgarian and European Commercial Law. The Parties agree that force majeure will also be considered changes in the applicable law, concerning the activity of any of them, and hindering the performance or leading to the impossibility of performance of the obligations assumed by the Agreement.

**(3)** The Party affected by force majeure is obliged to take all reasonable efforts and measures to minimize the damages and losses suffered, as well as to notify the other Party in writing immediately upon the occurrence of the force majeure. The notification shall be accompanied by all relevant and/or legally established evidence of the occurrence and nature of the force majeure, the causal relationship between this circumstance and the impossibility of performance, and the expected duration of the non-performance.

**(4)** As long as the force majeure lasts, the performance of the obligation is suspended. The affected Party is obliged, after agreement with the opposite Party, to continue to fulfill that part of its obligations that is not prevented by the force majeure.

**(5)** Force majeure cannot be invoked Party:

1. which was in delay or other default before the occurrence of force majeure;
2. which has not informed the other Party of the occurrence of force majeure;
3. whose negligence or intentional acts or omissions have resulted in the impossibility of performing the Contract.

**(6)** Lack of cash does not constitute force majeure.

Nullity of individual clauses

**Art. 37.** In the event that any clause of this Agreement is invalid or unenforceable, this shall not affect the remaining clauses. An invalid or unenforceable clause is replaced by a mandatory legal rule, if any.

Notifications

**Art. 38. (1)** All notices between the Parties in connection with this Agreement shall be in writing and may be delivered in person or by registered letter, courier, fax, e-mail.

**(2)** For the purposes of this Agreement, the data and contact persons of the Parties are as follows:

1. For the CONTRACTOR:

Mailing address: .....

Tel.: .....

Fax: .....

e-mail: .....

Contact person: .....

2. For the EXECUTOR:

Mailing address: .....

Tel.: ..... e-mail: .....

Contact person: ..... – .....

**(3)** Any correspondence between the Parties will be considered valid if it is sent to the addresses indicated above (including electronic ones), through the above means of communication and to the indicated contact persons. In the event of a change in the specified addresses, telephone numbers and other contact details, the respective Party is obliged to notify

the other in writing within 3 (three) days from the occurrence of the change. In default of this obligation, any notice will be deemed validly served if sent to the above addresses, through the described means of communication and to the specified contact persons.

**(4)** In case of transformation without termination, change of the name, legal organizational form, headquarters, address of management, subject of activity, term of existence, management bodies and representation of the EXECUTOR, the same undertakes to notify the CONTRACTOR of the change within 3 (three) days from its entry in the relevant register.

#### Applicable law

**Art. 39.** This Agreement, as well as all resulting or related agreements, and all related rights and obligations, shall be governed by and construed in accordance with Bulgarian and European legislation.

#### Settlement of disputes

**Art. 40.** All disputes arising out of or relating to this Agreement, including disputes arising out of or relating to its interpretation, invalidity, performance or termination, as well as disputes to fill gaps in the Agreement or adapt it to new circumstances, shall be settled between The parties through negotiations, and if no agreement is reached, the dispute will be referred to the competent Bulgarian and European legislation, depending on the generic jurisdiction.

The following documents are annexed to this Contract:

Appendix No. 1 - Technical specifications;

Appendix No. 2 – Technical proposal of the CONTRACTOR;

Appendix No. 3 – Price proposal of the CONTRACTOR;

Appendix No. 4 – Tender documentation.

**For the CONTRACTOR:**

**For the EXECUTOR:**