

DOCUMENTATION

for awarding the public acquisition contract subject to the provision of consultancy services in view of verifying the report on the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV CODE: 71621000-7)

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SECTION 1: ACQUISITION DATA FILE**I. CONTRACTING AUTHORITY****I.1) NAME, ADDRESS AND CONTACT POINT(S)**

Official name: NATIONAL AUTHORITY for MANAGEMENT and REGULATION in COMMUNICATIONS (ANCOM)		
Postal address: 2 Delea Noua Street, sector 3		
City: BUCHAREST	Postal code: 030925	Country: ROMANIA
Contact point(s): For the attention of: Ms Gemma IOSIP Ms Codruța MERAN	Telephone: +40 372845350 +40 372845612	
E-mail: gemma.iosip@ancom.org.ro codruta.meran@ancom.org.ro	Fax: +40 372845402	
Internet address: (if applicable)		
General address of the contracting authority (URL): www.ancom.org.ro		
Address of the buyer profile (URL): www.e-licitatie.ro		

Further information can be obtained from: The above mentioned contact point(s).

The Terms of Reference and additional documents can be obtained from: The above mentioned contact point(s).

Tenders or requests to participate must be sent to: The above mentioned contact point(s).

Number of days in which clarifications may be requested before the deadline for the submission of tenders: 9

I.2) TYPE AND MAIN ACTIVITY (ACTIVITIES) OF THE CONTRACTING AUTHORITY

Ministry or any other national or federal authority, including their regional or local sub-divisions.	<u>General services of the public administration</u>
The contracting Authority is purchasing on behalf of other contracting authorities: NO .	

II. OBJECT OF THE CONTRACT**II.1) DESCRIPTION****II.1.1) Title attributed to the contract by the contracting authority**

Services contract having as object the provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)

II.1.2) Type of contract and location of working place:

Services: 12 - Architectural services; engineering services and integrated engineering services; urban planning and landscape architecture services; related scientific and technical consulting services; technical testing and analysis services

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Working place: - the provider's headquarters and the headquarters of the contracting authority in Bucharest, 2 Delea Noua Street, Sector 3, Postal code: 030925, NUTS code RO321.

II.1.3) The procedure involves: a public acquisition contract.

II.1.5) Short description of the contract or purchase(s)

Services contract having as object the provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7) in accordance with the provisions of Section 2: Terms of Reference.

II.1.6) CPV classification (common procurement vocabulary)

	Main vocabulary
Main object	71621000-7 – Technical analysis or consultancy services
Additional object	-

II.1.7) The contract is covered by the Government Procurement Agreement (GPA): **YES**

II.1.8) The contract is divided into lots: **NO**

II.1.9) Variants will be accepted (alternative offers): **NO**

II.2) QUANTITY OR SCOPE OF THE CONTRACT

II.2.1) Total quantity or scope (*including all lots and options, if applicable*):

The quantities and types of services to be purchased under the services contract having as object the provision of technical consultancy services are detailed in Section 2: Terms of Reference.

Estimated value excluding VAT (*figures only*): 147,765 Currency: Euro.

II.2.2) Options: NO

II.3) DURATION OF THE CONTRACT OR TIME LIMIT FOR COMPLETION

Duration in months: 6 (six) months *from the award of the contract/issuance of the order to begin the works.*

II.4) CONTRACT PRICE ADJUSTMENT

II.4.1. Contract price adjustment: **NO**

III: LEGAL, ECONOMIC, FINANCIAL AND TECHNICAL INFORMATION

III.1) CONDITIONS RELATING TO CONTRACT

III.1.1) Deposits and guarantees required (*if applicable*)

III.1.1.a) Tender bond: **YES**

i. **The amount** of the tender bond is **10,000.00 Lei or 2,214.00 Euros**. NBR exchange rate leu/euro which was the basis for determining the amount of the tender bond in lei is 4.5173 valid at 25.02.2014. For tender bond issued in other currency the equivalence will also be made at the NBR exchange rate valid at 25.02.2014.

ii. **Setting up:** in accordance with provisions of art.86 para.(1) of Government Ordinance no.925/2006, by:

a) bank transfer into the bank account of ANCOM RO22TREZ7005005XXX000932, opened with the ATCPMB, FIC:14751237: - for the Romanian legal/natural persons, for payments in Lei - or into the bank account RO86RNCB0082 044181470003, opened with the Romanian Commercial Bank – Unirii Branch for foreign legal/natural persons, for payments in Euro.

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or

b) guarantee tool.

iii. The guarantee tool shall be set up irrevocably in favour of ANCOM, by a bank or an insurance company, and shall be submitted, in original, pursuant to the form under Annex no. 9 in Section 4 - Forms. If the guarantee tool is not drawn up in Romanian, then it must be accompanied by a Romanian translation performed by an authorised translator.

Note: The guarantee tool must include all the 4 (four) cases provided for in the form under Annex no. 9 letters a) to d), otherwise the contracting authority shall take the measures specified at point vi below.

iv. **Validity period** of the tender bond: at least **100(one hundred) days from the deadline set for the reception of tenders.**

v. Proof of setting up the tender bond shall be submitted **on the date and at the time established for tender opening**, at the latest.

vi. If the proof of setting up the tender bond is not submitted on the date and at the time established for tender opening, at the latest, as well as if it is not set up in the amount, under the form and within the validity period provided above, the respective tender shall be deemed **unacceptable and rejected** according to the provisions of art. 33(3) letter b) corroborated with the provisions of art. 36(1) letter a) of the Government Decision no. 925/2006.

vii. ANCOM has the right to retain an amount from the tender bond set up by a contesting tenderer under the conditions of art.278¹ of Government Emergency Ordinance no.34/2006. The amount to be retained according to para. (1) letter b) and para. (2) under the abovementioned article is 4,447.5 Lei or 984.5 euro or the value corresponding to other currency calculated at NBR reference rate on 25.02.2014.

III.1.1.b) Performance bond: YES

i. **Value** of the performance bond: **5% of the total contract price**, excluding VAT.

ii. The performance bond **is set up:** according to the provisions of art. 90 para. (1) and (2) of Government Ordinance no. 925/2006. The guarantee tool shall follow the model provided for in **Annex no. 12** in Section 4: Forms.

iii) **The performance bond** set up on grounds of the awarded services contract shall be **released/returned**, pursuant to the provisions of art. 92 para. (2) of the Government Decision no. 925/2006, **within 14 (fourteen) days** from the date of the provider's fulfilment of the obligations undertaken pursuant to the contract, if the contracting authority has not claimed it until that time.

III.1.2) Main financing conditions and payment arrangements and/or reference to the relevant provisions governing them: own revenues.

III.1.3) Legal form to be taken by the group of economic operators to whom the contract is to be awarded: association according to art. 44 of Government Emergency Ordinance no. 34/2006, with the subsequent amendments and completions.

Annex no. 6 in Section 4: Forms shall be submitted in original.

III.1.4) The performance of the contract is subject to particular conditions: NO

III.1.5) Applicable legislation

a) Government Emergency Ordinance no. 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts, approved with amendments and completions by Law no. 337/2006, with the subsequent amendments and completions;

b) Government Decision no. 925/2006 for the approval of the application norms of the Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts, with the subsequent amendments and completions;

c) Order of ANRMAP President:

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- no. 314/2010 on the implementation of the certificate of participation in tenders with an independent tender
- no. 302/2011 approving the standard forms of the Minute of the tender opening meeting and of the Procedure report, corresponding to the procedures of award of public procurement contracts, public works concession contracts and services concession contracts;
- no. 509/2011 on formulation of the qualification and selection criteria;
- no. 170/2012 on the interpretation of art. 69¹ under Government Emergency Ordinance no. 34/2006;
- no. 171/2012 on the clarifications concerning the content of the award documentation;
- e) other relevant normative acts published on the www.anmap.ro website.

III.2) CONDITIONS FOR PARTICIPATION

III.2.1) Personal situation of economic operators, including requirements relating to enrollment on professional or trade registers

III.2.1.a) Personal situation of the candidate or tenderer:

Statement on eligibility (falling outside the scope of art. 180 of the Government Emergency Ordinance no. 34/2006): the tenderer shall submit, **in original**, a statement on own responsibility of its legal representative in accordance with the form under **Annex no. 1** in Section 4: Forms.

The document shall also be submitted by the supporting third party, if applicable.

Statement on falling outside the scope of provisions of art. 181 of the Government Emergency Ordinance no. 34/2006: the tenderer shall submit, **in original**, a statement on own responsibility of its legal representative in accordance with the form under **Annex no. 2** in Section 4: Forms.

The document shall also be submitted by the supporting third party, if applicable, according to the mention in Annex no. 2 - supporting third party shall submit a Statement on falling outside the scope of provisions of **art. 181 letters a), c¹) and d)** of the Government Emergency Ordinance no. 34/2006, according to the model in **Annex no. 2**.

Statement on falling outside the scope of provisions of art. 69¹ of the Government Emergency Ordinance no. 34/2006: the tenderer shall submit, **in original**, a statement on own responsibility of its legal representative in accordance with the form under **Annex no. 3** in Section 4: Forms. In the sense of the above-mentioned article, the persons with decision-making duties within the contracting authority are as follows: Marius Cătălin MARINESCU – ANCOM President, Cornelia CIONCA, Director of the Economic and Administrative Division, Ovidiu Florin TABĂRĂ – Head of the Acquisitions Department, Bogdan MĂRGINEANU – Head of Unit, Acquisitions Legal Advice Unit, Acquisitions Department, Daniela – Ioana MOHORA – Legal adviser, Acquisitions Legal Advice Unit, Acquisitions Department, Codruța Georgeta MERAN, Head of Unit, Operational Acquisitions Unit, Acquisitions Department, Mirela Rodica BEJGU, expert, Operational Acquisitions Unit, Acquisitions Department, Gemma Luminița IOSIP, expert, Operational Acquisitions Unit, Acquisitions Department, Niculae Cătălin CALOIU, expert, Operational Acquisitions Unit, Acquisitions Department, Magda DINU, expert, Operational Acquisitions Unit, Acquisitions Department, Eduard LOVIN, Executive Director, Regulation Executive Division, Gheorghe RUSEN, Director of the Economic Regulation Division, Regulation Executive Division, Roxana Ionela CÎRJAN Head of Unit, Audit and Cost Accounting Unit, Economic Regulation Division, Regulation Executive Division, Eugenia OANA, expert, Audit and Cost Accounting Unit, Economic Regulation Division, Regulation Executive Division, as specified in the form under **Annex no. 3** in Section 4: Forms.

The document shall also be submitted by the sub-contractor and the supporting third party, if applicable.

Certificate of participation in the tender with an independent tender: the tenderer shall submit, **in original**, the *Certificate of participation in the tender procedure with an independent tender* signed by the legal representative, in accordance with the form under **Annex no. 4** in Section 4: Forms.

Note: In the case of a joint tender, each participant to the association shall submit documents proving

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that the qualification criteria concerning the personal situation of the tenderer are met.	
III.2.1.b) Capacity of performing the professional activity	
REGISTRATION	
<p>i) The Romanian economic operator: The tenderer shall submit the original, or an authenticated copy, or a legible copy certified by the tenderer's representative with the mention "according to the original" of the acknowledging certificate/registry extract issued by the Trade Register Office of the competent territorial Court, and the representative of the economic operator shall inscribe the mention – "The information in this certificate is true/actual as of the date set for tender submission". The acknowledging certificate/registry extract must show:</p> <p>a) the tenderer's object of activity; the object of the contract must have a correspondent in the CAEN (Classification of the national economy activities) under the acknowledging certificate issued by the National Trade Register Office (ONRC).</p> <p>b) the situation of the tenderer;</p> <p>c) the persons representing the economic operator in its relation with third parties.</p> <p>In the tender evaluation stage, before communicating the outcome of the award procedure, the contracting authority shall request the first ranked tenderer to submit for conformity the above-mentioned documents, in original/authenticated copy.</p> <p>ii) Foreign economic operator: The tenderer shall submit relevant documents, translated into Romanian by an authorised translator, true/actual as of the date set for tender submission, proving a form of registration as a natural/legal person or a form of registration/certification or professional membership and which indicate the persons representing the economic operator in its relation with third parties, in accordance with the legal provisions from the tenderer's country of residence. As well, the submitted documents must contain information on the tenderer's object of activity and situation of tenderer.</p> <p>In the case of a joint tender, each participant to the association shall submit documents that show the fulfillment of the qualification criteria concerning the capacity of performing the professional activity for the part of the contract they undertake to perform.</p>	
III.2.2) Economic and financial ability: NO	
III.2.3.a) Technical and/or professional capacity	
Information and/or minimum level(s) necessary for evaluating if requirements are met (<i>if applicable</i>):	Fulfillment
<p>A. Similar experience</p> <p>The List of the main services provided in the last 3 (three) years is requested, to show that the tenderer undertook at least one consultancy project on the assistance granted in the field of electronic communications or postal services for the calculation of the net cost of the universal service provision or at least one project on the preparation or auditing of the separate financial statements prepared by the companies designated as universal service providers in electronic communications or postal services.</p> <p>The completed form must necessarily be accompanied by certificates/documents issued or countersigned by the beneficiary/beneficiaries of the contract/contracts mentioned, which comprise</p>	<p>The following shall be submitted:</p> <p>in original, the form under Annex no. 5 in Section 4: Forms – Statement on the List of main services provided to would show that the tenderer undertook, in the last 3 (years), at least one consultancy project on assistance granted in the field of electronic communications or postal services for the calculation of the net cost of the universal service provision or at least one project on the preparation or auditing of the separate financial statements prepared by the companies designated as universal service providers in electronic communications or postal services.</p> <p>The completed form must necessarily be accompanied by certificates/documents issued or</p>

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information supporting the data mentioned in the List and indicate that the services have been provided in compliance with the contractual obligations.	<p>countersigned by the beneficiary/beneficiaries of the contract/contracts, which comprise information supporting the data mentioned in the List and indicate that the services have been provided in compliance with the contractual obligations.</p> <p>Notes:</p> <ol style="list-style-type: none"> 1. The certificates/documents shall be presented in original or an authenticated copy, or a legible copy certified by the tenderer's representative with the "according to the original" mention, accompanied by an authorised translation into Romanian (if applicable). 2. In the case of a joint tender, the qualification criteria concerning the similar experience are proven by taking into consideration the resources of all the members of the group (cumulatively) pursuant to art. 190 para. (3) of the Government Emergency Ordinance no. 34/2006.
<p>B. Information on subcontractors</p> <p>If applicable, information on the part/parts of the contract which the tenderer intends to subcontract is requested.</p>	<p>Fulfilment:</p> <p>the form under Annex no. 7 in Section 4: Forms - Statement on the part/parts of the contract which is/are undertaken by subcontractors and their specialization shall be submitted in original. The statement shall mention the part/parts of the contract which are to be subcontracted and the consents of the proposed subcontractors, with signature specimen.</p> <p>Note: At the conclusion of the public acquisition contract, the winning tenderer has the obligation to submit the contracts concluded with the subcontractors, and these contracts must be consistent with the tender and shall be included as annex to the public acquisition contract.</p>
III.2.3.b) Quality standards and environment protection standards: NO	
III.2.4) Reserved contracts (if applicable): NO	

III.3) CONDITIONS SPECIFIC TO SERVICES CONTRACTS

III.3.1) Provision of the services is reserved to a particular profession: NO
III.3.2) Legal persons must indicate the names and professional qualifications of the staff responsible for the execution of the services: NO

IV: PROCEDURE**IV.1) TYPE OF PROCEDURE AND HOW IT IS CONDUCTED**

IV.1.1.a) The award procedure is conducted: Offline
IV.1.1.b) Type of procedure: <u>open tender</u>

IV.2) AWARDING CRITERION

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IV.2.1) Awarding criterion: "The most advantageous economic offer"

Mentioned in art. 198 para. (1) letter a) of Government Emergency Ordinance no. 34/2006.

- 1) The winning offer is the offer which receives the highest score resulted from the application of the criteria system established below.

No.	Criteria	Maximum score
1.	Offer price (in Euro excluding VAT)	65
2.	Description of intangible benefits proposed in addition to the minimum mandatory ones, including the methods of evaluation/quantification of each type of intangible benefits which could be considered in the net cost estimation	20
3.	Description of the criteria for the evaluation of the extent to which the provision of the universal service is an unfair burden for CNPR, proposed in addition to the minimum mandatory ones, including the method of evaluation of each additional criteria used for the unfair burden assessment	15
TOTAL		100

1. The score for the criterion "offer price" is granted as follows:

a) for the lowest price offer, the maximum score allocated for the respective evaluation criterion is granted;

- b) for other price than the one under letter a) the score is granted as follows:

$$P_n = (\text{price}_{\text{minimum}} / \text{price}_n) \times \text{weighting}_{\text{maximum}}$$

Note: The prices which are compared in view of granting the score are the prices tendered in Euro, without VAT, for the provision of the services according to Section 2 - Terms of Reference.

2. The score for the evaluation criterion "Description of intangible benefits proposed in addition to the minimum mandatory ones, including the methods of evaluation/quantification of each type of intangible benefits which could be considered in the net cost estimation" is granted as follows: for each intangible benefit, described and accompanied by the methods of evaluation/quantification, presented in addition to the minimum mandatory ones requested under Section 2 - Terms of Reference, 5 points up to maximum 20 points are granted.

3. The score for the evaluation criterion "Description of the criteria for the evaluation of the extent to which the provision of the universal service is an unfair burden for CNPR, proposed in addition to the minimum mandatory ones, including the method of evaluation of each additional criteria used for the unfair burden assessment" is granted as follows: for each criterion presented described and accompanied by the method of evaluation of each additional criteria used for the unfair burden assessment in addition to the minimum mandatory ones requested under Section 2 - Terms of Reference 5 points up to maximum 15 points are granted.

4. The ranking based on which the winning tender is established will be made from the highest total score to the lowest total score obtained by each tender.

5. If, following the enforcement of the aforementioned calculation algorithm, the resulted score of all

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offers ranked first is the same, the contracting authority shall award the contract to the tenderer whose Financial proposal features the lowest price.

6. If, following the enforcement of the aforementioned calculation algorithm, the resulted score of all tenders ranked first is the same, and the tendered prices are also the same, the contracting authority shall require the tenderers concerned to submit a new Financial proposal in a closed envelope, a case in which the contract shall be awarded to the tenderer whose Financial Proposal features the lowest price.

IV.2.2) An electronic auction will be used: NO

IV.3) ADMINISTRATIVE INFORMATION

IV.3.1) File reference number attributed by the contracting authority: SAO/GI/2.2014

IV.3.2) Previous publication(s) concerning the same contract: NO

IV.3.6) Language(s) in which tenders or requests to participate may be drawn up: Romanian

Currency in which the financial proposal is made: Euro

IV.3.7) Minimum time frame during which the tenderer must maintain the tender (from the date stated for receipt of tenders):

Duration in days: 90 days

IV.4. PRESENTATION OF THE TENDER

IV.4.1. Presentation of the Technical proposal

The **Technical proposal** shall meet the minimum mandatory requirements under **Section 2 – Terms of Reference**.

In order to be considered compliant, the **Technical proposal** must meet all the minimum mandatory requirements under **Section 2 – Terms of Reference**.

The **Technical proposal** shall contain the following:

- a comment on the specifications under Section 2 – Terms of Reference, whereby to prove the correspondence between the Technical proposal and the provisions of the Terms of Reference;
- other information deemed important for the proper evaluation of the Technical proposal requested under the Terms of Reference.

The Technical proposal compels the tenderer to undertake the obligation to ensure the observance of all the activities and due timeframes, otherwise its tender is to be considered **non-compliant**.

As well, tenderers must present in the Technical proposal:

- **the evaluation criteria**, as mentioned at point IV.2.1 in the Acquisition data file, in a **separate document** according to the model in **Annex no.1 to the Terms of Reference**. The tendered values for each criterion mentioned in this document shall be read in the tender opening meeting and shall be mentioned in the tender opening minute.

- the statement on the conflict of interests pursuant to the model in **Annex no. 8 in Section 4: Forms**.

During the provision of services, the tenderer must respect all mandatory rules set by the legal regulations concerning the labour conditions and labour protection in force at national level (Labour security and health law no. 319/2006 and the Methodological rules for the implementation of Law no. 319/2006 approved by Government Decision no. 1425/2006, as well as the other normative acts in the field). The tenderer must indicate that it took into account the obligations referring to the labour conditions and labour protection in the elaboration of the tender.

IV.4.2. Presentation of the Financial proposal

The tenderer must present, in **original**, the **Tender form** completed in accordance with **Annex no. 10**

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of Section 4: Forms.

The price presented in the **Tender form** must be final and expressed in Euro, with and without VAT, and will include all the direct and indirect costs of the tenderer related to the conclusion and performance of the services contract in accordance with the minimum mandatory requirements under Section 2: Terms of Reference.

Partial payments shall be made only after the signing of the minute of reception for each deliverable, as specified in **Section 2 - Terms of Reference and Section 3 – Binding contractual terms**.

The financial proposal form shall provide the financial proposals for each deliverable. The deliverables of the activities 1 and 2 in **Section 2 - Terms of Reference** shall be prepared by the provider and paid after their reception by the buyer, regardless if CNPR is sending or not the request for compensation of the net cost of universal service provision to ANCOM.

The deliverables of the activities 3.1, 3.2, 3.3, 4.1 in **Section 2 - Terms of Reference** shall be prepared by the provider and paid after their reception by the buyer, only if CNPR requests ANCOM to compensate the net cost of the universal service provision.

The deliverable of the activity under 4.2 in **Section 2 - Terms of Reference** shall be prepared by the provider and paid after their reception by the buyer, only if the conclusions of the report - deliverable 4.1 indicate that the universal service provision is an unfair burden for CNPR.

If the provider resides in Romania, the payment shall be made in Lei to the provider's account opened with the State Treasury, at the exchange rate communicated by the National Bank of Romania (BNR) and valid on the day on which the invoice is issued.

If the provider does not reside in Romania, the payment shall be made by external payment order, in Euro, while any amounts representing taxes owed according to the fiscal legislation in force in Romania shall be withheld, if case requires. The tax share enforced shall be the one regulated by the fiscal legislation in force in Romania. The equivalent in Euro of the price in Lei shall be established at the Leu/Euro exchange rate communicated by BNR and valid on the day on which the invoice is issued.

Where the invoice is received before or on the date of reception, the payment shall be made within maximum 30 (thirty) days from the signing of the reception minute for the respective deliverable and in accordance with the provisions of art. 36 para. (1) of Government Emergency Ordinance no. 34/2009 on the payment of invoices between the 24th and 31th of the month.

Where the invoice is received after the signing of the reception minute for the respective deliverable, the buyer has the right to make the payment within 30 (thirty) days from the reception of the invoice and in accordance with the provisions of art. 36 para. (1) of Government Emergency Ordinance no. 34/2009 on the payment of invoices between the 24th and 31th of the month.

Prepayments are not allowed.

The tenderer shall bear all the costs associated to the elaboration and submission of its tender, as well as of the complementary documents, whereas the contracting authority shall not be held liable for the respective costs.

IV.4.3. Tender submission

Number of original copies: 1 (one).

The tenderer shall submit the technical proposal, the financial proposal and the qualification documents in **3 (three) interior envelopes** sealed and marked with the tenderers' name and address. The

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Technical proposal shall be introduced in **one interior envelope**, the **Financial proposal** in **another interior envelope** and, finally, the **Qualification documents** in **another interior envelope**. The **interior envelopes** shall be introduced in a non-transparent and adequately closed **exterior envelope**. The **exterior envelope** shall be marked with the name and address of the contracting authority, the name and address of the tenderer and the mention "DO NOT OPEN BEFORE..... (date and time mentioned in the tender notice)". Moreover, the tenderer shall write on the **exterior envelope** "for the attention of the ANCOM Acquisitions Department/Operational Acquisitions Unit".

If the **exterior envelope** is not marked according to the aforementioned provisions, the contracting authority does not hold any responsibility for the offer mislay.

Tenderers have the obligation **to number and sign each page of the offer and to attach a content of the documents**. The tender shall be signed by the tenderer's legal representative or by a purposefully mandated person, case in which the mandate drawn up therefor shall be attached.

The tenderer has the obligation to fill in the **Submission letter**, in accordance with the form under **Annex no. 11** in Section 4 - Forms, which is to accompany the above-mentioned exterior envelope.

The offer may be withdrawn and amended before the deadline set for submitting the offer, respectively the **date and time mentioned in the tender notice**.

Tenders shall be submitted and opened at the headquarters of the contracting authority in Bucharest, 2 Delea Noua Street, Sector 3, Postal code: 030925, Romania.

Tenders submitted to another address or after the **date and time mentioned in the tender notice** shall be rejected as unacceptable and returned unopened.

The offer and accompanying documents must be written in Romanian, or, if case, accompanied by a romanian translation performed by an authorised translator. Communication will be also conducted in Romanian.

Note: To facilitate understanding of the content of the terms of reference, the contracting authority makes available to tenders an English translation of this document. If, as a result of the translation, there are differences between the Romanian version and the English version, Romanian language version shall prevail.

VI: COMPLEMENTARY INFORMATION

VI.1) This is a recurrent procurement: NO

VI.2) The contract is related to a project/programme financed by European Union/operational programme/national rural development programme: NO

Type of financing: Budgetary funds

VI.3) Additional information:

A. The tenders **shall be opened on the day, at the time and place mentioned in the tender notice**. Tenderers' representatives may attend the tender opening meeting **provided that they submit written mandates, accompanied by an authorised translation into Romanian, if applicable**.

B. Any tender with a validity period below the required one shall be rejected. Before the expiry of the tender validity, the contracting authority has the obligation to require the tenderers - under exceptional circumstances imposing such request - to extend its validity. In case of extending the tender validity, the

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Documentation for awarding the public acquisition contract subject to the provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)

validity of the tender bond shall also be extended correspondingly.

The tenderer has the obligation to communicate the contracting authority its agreement/disagreement with the extension of the validity period. A tenderer which does not agree with the extension of the tender validity shall be deemed withdrawn from the tender. This shall not trigger the loss of the tender bond.

C. The wording "9 days" standing for the time frame in which requests of clarifications may be submitted before the deadline set for tender submission, mentioned under point I.1 herein, means: 3 (three) working days plus 6 (six) calendar days before the deadline set for tender submission according to art. 78 para. (2) and art. 79 para. (1) of the Government Emergency Ordinance no. 34/2006.

D. Additional information on the establishment of the winning offer according to point IV.2.1.

E. In order to access the award documentation on the SEAP website, the economic operators must have a program required for visualising the electronically signed documents.

VI.4) PROCEDURES FOR APPEAL**VI.4.1) Body responsible for appeal procedures**

Official name: **NATIONAL COUNCIL for SOLVING COMPLAINTS**

Postal address: 6 Stavropoleos Street, sector 3

City: BUCHAREST

Postal code: 030084

Country: ROMANIA

E-mail: office@cnsr.ro

Telephone: +4 0 21.310.46.41

Internet address (URL):
www.cnsr.ro

Fax: +4 0 21.310.46.42

VI.4.2) Lodging of appeals:

Appeals may be lodged within 10 days beginning with the day following the one of learning about the act which is deemed as not being legal according to the provisions of art. 256² para. (1) letter a) of the Government Emergency Ordinance no. 34/2006

VI.4.3) Service from which information about the lodging of appeals may be obtained

Official name: Acquisitions Department/Acquisitions Legal Advice Unit

Postal address: 2 Delea Noua Street, Sector 3

City: Bucharest

Postal code: 030925

Country: Romania

E-mail:

bogdan.margineanu@ancom.org.ro

Telephone:

+40 372845339

Internet address (URL):

www.ancom.org.ro

Fax: +40 372845406;

+40 372845402

SECTION 2: TERMS OF REFERENCE

The *Terms of Reference* are an integral part of the awarding documentation and assemble the minimum mandatory requirements based on which each tenderer elaborates the Technical Proposal.

The provisions of the Terms of Reference shall be considered minimum compulsory requirements. In this respect, any submitted offer which deviates from the provisions of these Terms of Reference will be taken into account only if the Technical Proposal ensures a superior quality level to the one provided by the minimum requirements of the Terms of Reference. Any offer with technical characteristics inferior to the ones required in the Terms of Reference will be considered noncompliant and will be disqualified.

I. OBJECTIVE

Consultancy services in view of verifying the report on the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of the universal service provision for 2013 and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation.

II. CONTEXT AND REQUIREMENTS

Compania Nationala Posta Romana (CNPR) was designated as the universal service provider in the postal sector until 31 December 2012 pursuant to the ANCOM President's Decision no. 293/2009 designating CNPR as the universal service provider in the postal services sector. According to this decision, CNPR has the obligation to provide the following postal services within the scope of universal service:

- a) clearance, sorting, transport and delivery of the domestic and cross-border postal items, weighing up to including 2 kg and consisting of items of correspondence and printed matter items;
- b) clearance, sorting, transport and delivery of the domestic and cross-border postal parcels, weighing up to including 10 kg;
- c) distribution of postal parcels weighing between 10 and 20 kg sent from outside Romania to an address located in Romania;
- d) service for registered postal items dealing with the domestic and cross-border postal items weighing up to including 2 kg referred to in letter a);
- e) service for insured items dealing with:
 - 1. the domestic and cross-border postal items weighing up to including 2 kg referred to in letter a);
 - 2. domestic and cross-border postal parcels weighing up to including 10 kg;
 - 3. postal parcels weighing between 10 and 20 kg sent from outside Romania to an address on its territory.

Later on, by the ANCOM President's Decision no. 293/2009 as amended and completed by the ANCOM President's Decision no. 975/2012, *CNPR* was designated as a universal service provider in the postal sector until 31 December 2013.

According to the ANCOM President's Decision no. 293/2009 as amended and completed by the ANCOM President's Decision no. 975/2012, the universal service provider has the right to request, until 1 July 2014, the compensation of the net cost of the provision of the services within the scope of universal service, for the services provided in 2013. Pursuant to art. 14 para. (7) of the ANCOM President's Decision no. 541/2013 on the conditions and procedure for the designation of the universal service providers in the postal sector, ANCOM decides on the net cost compensation and, if applicable, on the amount to be compensated within 45 days from receiving the compensation request from CNPR, accompanied by the report on the costs, revenues and capital employed for the provision of services within the scope of universal service.

In this respect, the net cost of the universal service obligations is calculated as the difference between the net cost incurred by Compania Nationala Posta Romana S.A., hereinafter CNPR, with the universal service obligations (base case scenario) and the net cost of CNPR without the universal service obligations (commercial scenario). Thus, the *base case scenario* (including, without limiting to, the identification of the categories of inefficient costs and grounded proposals for efficiency adjustments) needs to be validated as well as the analysis of the reasonableness of the hypotheses grounding the *commercial scenario*, as supported by hypotheses which can be obtained from market surveys, reports etc.. These will support the verification of the report on costs, revenues and capital employed for the provision of services within the scope of universal service, which substantiate the request for the compensation of the net cost of the universal service provision.

III. Methodology and Deliverables

The provider will elaborate and make available to ANCOM the deliverables of the following activities:

1) Conducting a market survey among the end-users in order to assess the evolution of the demand of (postal and non-postal) services in case of CNPR's alteration of the quality of service provision conditions

The provider will conduct a market survey among the end-users (residential and business) in order to determine whether their consumption behaviour would change if the quality of the services provided by CNPR (e.g. the narrowing of the coverage area, the shortening of the working programme, the reduction of the number of clearances/deliveries per week, the decrease of the postal items circulation speed) or their price (increase/decrease of prices, charging non-uniform prices etc.) were changed, in the absence of the universal service obligations.

The outcomes of the survey will be used to verify the reasonableness of the revenues estimated by CNPR, as well as to assess some elements such as the required staff, the working programme, the efficiency of the routes and other operational adjustments in the case of the commercial scenario.

Furthermore, the survey will assess the users' perception of the substitutability of the services provided by CNPR at least in terms of availability, quality and price.

Researches will be performed on representative samples for the population under survey. The samples will have to ensure a probability of outcomes guarantee of at least 95% and a reasonable acceptable error limit.

Deliverable: Market survey among the end-users in order to assess the evolution of the demand of services (postal and non-postal) in case of CNPR's alteration of the quality of service provision conditions.

Maximum delivery term:

The Provider may begin the activities corresponding to this deliverable at the date of the signing of the contract by both parties, irrespective of other activities within the contract, and the deliverable must be submitted to the buyer within maximum **42 calendar days** from the date on which ANCOM transmits to the Provider the request for the net cost compensation, accompanied by the report on the costs, revenues and capital employed for the provision of services within the scope of universal service submitted by CNPR. If CNPR does not request the compensation of the net cost of the universal service provision, the deliverable must be submitted to the buyer within maximum 80 days from the signing of the contract.

This activity will be performed and paid after reception of deliverable, regardless of whether CNPR sends or not to ANCOM the request for the compensation of the net cost of the universal service provision.

2) Identification of the required access points (served or unserved by personnel) for fulfilling the universal service obligations under the ANCOM President's Decision no. 293/2009.

In order to evaluate the net cost of the provision of the services within the scope of universal service, it is necessary to verify that the number of access points necessary for fulfilling the universal service obligations is not overestimated by CNPR. The provider will rigorously verify the list of non-profitable postal units, areas and users which CNPR would not serve in the absence of the universal service obligations, taking into account the efficiency of costs (e.g., the losses caused by the inefficiency of operating in a crowded area or the excessive values of certain categories of costs shall not be considered costs incurred with the universal service).

The provider will verify the list of postal units and/or alternative means for providing services within the scope of universal service in the areas and units which CNPR would not serve in the absence of the universal service obligations from the standpoint of economic and operational viability.

As well, the provider will also consider the list of localities characterised by exceptional geographic conditions for which CNPR requested to be exempted from the obligation to ensure, in every locality throughout Romania, at least one clearance from each access point and at least one delivery to each indicated address, every working day, but no less than 5 days a week. Since the exemption does not however refer to the working hours, there are many cases where the working hours are of 2, 3 or 4 hours a day, in the cases where the postal traffic does not justify a daily public working programme of 8 hours. The provider will analyse, for the access points served by personnel with an 8-hour daily working programme (Monday to Friday), if this programme is due to commercial reasons or derives from the obligations imposed on CNPR as a universal service provider.

The provider will assess whether the list of access points and their characteristics valid at year end-2013 correspond to the necessary of postal units CNPR would operate in order to fulfil the universal service obligations and whether it is not overestimated.

The information on the inefficiency of operation, the working hours for the access points served by personnel, the frequency of deliveries etc. identified by the Provider will be used in the stage of the assessment of the base case scenario elaborated by CNPR.

Deliverable: At the end of this activity the provider will prepare a **report on the access points (served and unserved by personnel) required for fulfilling the universal service obligations** provided for in the ANCOM President's Decision no. 293/2009 and/or in the conditions of operation determined by the universal service obligation (working programme, number of employees etc.). The report will comprise at least:

- a list of the administrative territorial units where CNPR had to ensure access points served by personnel to enable the submission of postal parcels, printed matter items and items of correspondence of non-standard sizes, as well as of registered postal items pursuant to the obligations imposed at the designation as a universal service provider;
- a list with the number of the postal boxes which CNPR had the obligation to install in each Romanian locality, according to the provisions of art. 15 para. (2) of Decision no. 293/2009;
- a list of the access points served by personnel that are incurring losses, but that are kept in operation due to commercial reasons;
- the provider's findings on the possible operational inefficiencies, the working hours of the access points served by personnel, the frequency of deliveries etc.

In view of this report, ANCOM will submit to the provider the list of access points served by personnel and the public working hours for each of these access points, the list of localities characterised by exceptional geographic conditions, the number of postal boxes installed in each locality. The provider may request additional information in view of the analysis.

Maximum delivery term:

The Provider may begin the activities corresponding to this deliverable at the date of the signing of the contract by both parties, irrespective of other activities within the contract, and the deliverable must be submitted to the buyer within maximum **42 calendar days** from the date on which ANCOM transmits to the provider the request for the net cost compensation, together with the report on the costs, revenues and capital employed for the provision of services within the scope of universal service submitted by CNPR. If CNPR does not request the compensation of the net cost of the universal service provision, the deliverable must be submitted to the buyer within maximum 80 days from the signing of the contract.

This activity will be provided and paid after reception of the deliverable, regardless of whether CNPR submits or not to ANCOM the request for the net cost compensation.

3) Assessment of the base case scenario and of the commercial scenarios in view of determining the value of the net cost of universal service, as well as estimation of the intangible benefits

3.1) Assessment of the base case scenario elaborated by CNPR

According to the methodology regarding the net cost calculation of the universal service provision, CNPR has the obligation to elaborate a base case scenario which "reflects the conditions of operation and the costs incurred in the case where the services within the scope of universal service are provided pursuant to a legal obligation."

The provider will verify if the information in the base case scenario is based on the audited separate financial statements for 2013.

In this context, the provider will verify if the base case scenario includes the parameters of the universal service obligation and the elements determined by the operational constraints of CNPR which derive from other obligations imposed on it (e.g. the distribution of pensions) or which CNPR undertook in relation to the services outside the scope of universal service (e.g. 6 days a week working program). In view of isolating the influences on the costs incurred due to aspects which are not caused by the universal service obligations, the provider will make an analysis of these elements based on the parameters used by CNPR to justify the preparation of the tables under the Annex to the ANCOM President's Decision no. 293/2009 as amended and completed by the ANCOM President's Decision no. 975/2012 and will determine if there is a reasonable correspondence between the justifying data and the non-profitable postal units identified by CNPR. Also, the Provider will establish if these postal units are included in this category exclusively as a result of the universal service obligations.

Following this analysis, the Provider will propose either to adjust the base case scenario, in the sense of removing the costs which are not caused by the universal service, or to identify these elements and make a correspondence with the commercial scenario, so that these would not influence the value of the net cost.

Furthermore, the Provider will pursue the way in which the expenses were allocated to cost centres, namely will identify the correspondence with the elements used in the commercial scenario, in order to make sure that the same hypotheses are used in both scenarios and are quantified based upon the same allocation principles and methods.

The Provider will pursue the level of operational and cost efficiency in correlation with the commercial scenario and will propose adjustments, if such is the case, to include a realistic level of efficiency. In this sense, the Provider will evaluate both the adjustments to the base case scenario as opposed to the commercial scenario (if such is the case) and the efficiency adjustments to the commercial scenario as opposed to an optimum level determined based upon a benchmark with other operators and/or upon the evaluation of the operational activity and of the costs incurred by CNPR.

As part of the evaluation of the efficiency level, in the case where CNPR presents total levels of the general and administrative costs (as opposed to the presentation of costs on distinct categories so as to identify the expenses caused by the universal service and the additional efficiency adjustments taken into consideration by CNPR in the commercial scenario), the Provider will determine their level of adjustment in order to reflect realistic values both in the base case scenario and in the commercial scenario.

In the process of efficiency evaluation, the Provider will not take into consideration the radical amendment of the efficiency standard incurred by CNPR at the time of the evaluation (for instance the Provider will not take into account the possibility of using an automatic sorting centre or the possibility of selling buildings).

Deliverable: At the end of this activity the Provider will prepare an **assessment report on the *base case scenario* elaborated by CNPR**, including on its adjustments and hypotheses taken into consideration by CNPR and by the independent auditor in the Report of factual findings which is to be sent by CNPR together with the request for the net cost compensation. This activity will be performed by the Provider and the corresponding deliverable

will be paid for by the Buyer only if CNPR requests ANCOM to compensate the net cost of the universal service provision.

Maximum delivery term:

42 calendar days from the date on which ANCOM transmits to the provider the request for the net cost compensation, together with the report on the costs, revenues and capital employed for the provision of services within the scope of universal service submitted by CNPR.

ANCOM may postpone the reception of deliverable 3.1 until the reception of the deliverables referred to in points 1 and 2.

3.2) Elaboration of the report on the assessment of the commercial scenario proposed by CNPR, as well as of the *commercial scenarios* proposed by the Provider and identification of the optimum commercial scenario

The following activities will be performed to this end:

3.2.1) Assessment of the commercial scenario elaborated by CNPR

In accordance with the provisions of the Annex to the ANCOM President's Decision no. 293/2009, as amended and completed by the ANCOM President's Decision no. 975/2012, the net cost of the universal service obligations is calculated as the difference between the net cost with the universal service obligations (Base case scenario) and the net cost of CNPR without the universal service obligations (Commercial scenario).

Given that the commercial scenario is based on a series of hypotheses, ANCOM anticipates the possibility that CNPR provides several versions of the same hypotheses and grounded justifications for the selection of the suitable ones.

The Provider will make a detailed assessment of the commercial scenario proposed by CNPR in the request for the compensation of the net cost in view of its validation by ANCOM and of all the hypotheses underpinning its elaboration. To this end the Provider will focus on at least the following elements:

- the operational and commercial credibility and viability of each hypothesis. The provider will assess the coherence between the commercial hypotheses used, the specific national market conditions and the business strategy of CNPR;

- the applicability of each hypothesis. The provider will analyse and assess the extent to which all the changes/effects caused by a certain hypothesis used in the commercial scenario regarding the demand and the users are captured, as well as their realism and coherence. The Provider will propose and use, based on studies, its experience and other relevant and justified information, possible completions to/changes of the hypotheses and their effects;

- the optimisation of the postal network. The Provider will assess, in terms of reasonableness and practical applicability, the hypotheses used in the commercial scenario on the changes in the postal network, the structure and the operational flows. The Provider will propose and use, based on relevant and justified information, possible completions to/changes of the hypotheses used in this context so that the postal network, the structure and the operational flows applicable to the commercial scenario could be realistic and coherent both from the technical/operational and from the economic efficiency point of view;

- financial implications. The Provider will estimate the impact of each analysed hypothesis on the commercial scenario by comparison against the base case scenario. The Provider will analyse the effects on the costs, revenues and profitability incurred by CNPR as a result of the hypotheses used and of the effects of these hypotheses on the demand, competition, postal network, structure, operational flows etc. The Provider will verify the reasonableness of the estimates made to this end by CNPR and will propose possible grounded completions /corrections to the entry data and financial data estimated by CNPR in the commercial scenario. The Provider will estimate the profitability of each analysed commercial scenario for comparison against the base case scenario;

- the quality parameters. Considering the quality objectives imposed on CNPR by the ANCOM President's Decision no. 293/2009, the Provider will assess the extent to which these influence the parameters taken into consideration for preparing the commercial scenario and, implicitly, the corresponding financial data. To this end, the results of the real flow measurements, of the real flow audit programmes and of the quality measurements made by independent auditors can be used, or the Provider can use its own studies. If it is assessed that CNPR did not meet the quality conditions imposed and that there are adjusted elements in the commercial scenario as opposed to the base case scenario, the Provider will verify whether it is necessary to adjust the commercial scenario so as to reflect the costs caused by the provision of services within the scope of universal service under real quality conditions and not under the conditions imposed by ANCOM;

- any other elements which the Provider deems relevant in view of identifying an optimum commercial scenario in terms of justifying elements used as hypotheses.

The Provider will evaluate and verify all the information provided by CNPR for the net cost calculation required under the *ANNEX* to the *ANCOM President's Decision no. 293/2009* on the *Calculation of the net cost of the universal service provision* and, if deemed necessary, it shall require other information that would allow an as thorough as possible analysis of the net cost in any of the evaluated commercial scenarios. Also, the Provider will evaluate the way in which the mentioned data were used in the calculation of the net cost and will propose possible completions/corrections to the calculation. Should the level of detail of the information in the commercial scenario proposed by CNPR be insufficient to make an objective evaluation of the net cost, e.g. CNPR does not offer information on postal offices or on the delivery areas, respectively routes etc., the Provider will ensure based on complementary information either the completion of the commercial scenario proposed by CNPR, or the elaboration of another scenario which incorporates all this information at a high level of granularity.

3.2.2) Development of at least two *commercial scenarios*, based on the different operational hypotheses in the case where no obligations to provide services within the scope of universal service were in place, and identification of the optimum commercial scenario

The Provider will propose at least two additional commercial scenarios, besides the scenario and hypotheses provided by CNPR, relying on different operational assumptions applying in the situation where no obligations to provide services within the scope of universal service were in place. Based on the analysis of all the viable scenarios, the Provider will identify and propose an optimum scenario from commercial, operational and financial standpoints that will underpin the calculation and validation of the net cost of universal service provision.

The Provider will analyse the information which justify all the hypotheses used in the elaboration of each commercial scenario (market studies, operational data, financial data, international benchmarks etc.) and will propose, if deemed necessary, the use of some new and/or improved sources of qualitative and quantitative data, while justifying these proposals. The Provider will make sure that there is coherence between the base case scenario validated by ANCOM and the commercial scenarios proposed as regards the entry data, principles and mechanisms of revenues and costs allocation and the calculation of similar indicators. As well, the Provider will ensure that the operated/validated efficiency adjustments in the base case scenario will be appropriately applied in the commercial scenario.

After the optimum scenario is chosen, the Provider will make a sensitivity analysis to test whether the calculated net cost has changed as a result of changing the underlying hypotheses used in the elaboration of the commercial scenario. The sensitivity caused by the change of the hypotheses with the highest degree of uncertainty, e.g. change of demand, change in the number of access points etc., shall be tested.

Deliverable: Report on the assessment of the commercial scenario proposed by CNPR, as well as of the *commercial scenarios* proposed by the Provider and identification of the optimum commercial scenario. The activities under Point 3.2 will be performed by the Provider and the corresponding deliverable will be paid for by the Buyer only if CNPR requests ANCOM to compensate the net cost of the universal service provision.

Maximum delivery term: 42 calendar days from the date on which ANCOM transmits to the provider the request for the net cost compensation, together with the report on the costs, revenues and capital employed for the provision of services within the scope of universal service submitted by CNPR.

ANCOM may postpone the reception of deliverable 3.2 until the reception of the deliverables referred to at points 1 and 2.

3.3) Estimation of the intangible benefits (enumeration of the types of benefits, analysis of each category and quantification of the benefits, where applicable)

According to the Annex to the ANCOM President's Decision no. 293/2009, as amended and completed by the ANCOM President's Decision no. 975/2012, CNPR must identify and quantify the intangible benefits that can be accrued as a result of CNPR being designated as universal service provider.

The Provider will evaluate whether CNPR identified all the types of intangible benefits that may appear as a result of the designation as a universal service provider, in accordance with the list of intangible benefits identified by the Provider within the offer, as well as whether their value was correctly estimated.

A principle which can be used for identifying the types of intangible benefits is that if the benefit continues to exist in the commercial scenario (without the universal service obligation), then it should not be included in the net cost calculation.

The Provider will determine if the benefits were included in the net cost calculation as part of the hypotheses used in the elaboration of the scenarios, in which case it will extract the intangible elements from the calculation in order to ensure that these were correctly evaluated, or if these were distinctly identified, in which case it will estimate the correctness of their value.

In the event in which CNPR omitted some types of intangible benefits and/or estimated incorrectly their value, the Provider will make an independent evaluation of the types and

values of these elements and will propose the adjustment of the value of the net cost calculated by CNPR.

In the specialty literature and in the regulatory practice there have been identified several categories of intangible benefits. In view of inclusion in the net cost calculation, the Provider will envisage, without limitation, the following types of benefits:

- Economies of scale (they shall be identified distinctly or within the commercial scenario with the specification of the cost categories which are influenced)
- Marketing effect – can be estimated for instance as compared to the advertising space that would be used if the universal service obligations did not exist
- Ubiquity – considering that the commercial scenario most likely includes hypotheses resulting from the obligations in force and analysis the opportunity of removing some postal units, this benefit should be evaluated regardless of the number of units kept in the commercial scenario
- Trademark, reputation – the quantification of the services won by CNPR as a result of its designation as universal service provider (e.g. clients who pay their utility bills while sending the correspondence)
- Benefits related to the applicable tax regime (e.g. VAT exemption)

Deliverable: This activity will finalize with preparation of the **report on the intangible benefits** accrued by CNPR as a result of being a universal service provider. The activity under point 3.3 will be performed by the Provider and the corresponding deliverable will be paid for by the Buyer only if CNPR requests ANCOM to compensate the net cost of the universal service provision.

Maximum delivery term: 42 calendar days from the date on which ANCOM transmits to the Provider the request for the net cost compensation, together with the report on the costs, revenues and capital employed for the provision of services within the scope of universal service submitted by CNPR.

ANCOM may postpone the reception of deliverable 3.3 until the reception of the deliverables referred to in points 1 and 2.

4) Determining the extent to which the net cost is an unfair burden

To this end, the Provider will undertake the following activities:

4.1) Evaluation of the extent to which the universal service provision is an unfair burden for CNPR

The Provider will elaborate a report on the evaluation of the extent to which the universal service provision is an unfair burden for CNPR, in which will establish a set of relevant criteria.

Within the report, the Provider will analyse in depth elements concerning the financial situation of CNPR as a universal service provider, the market conditions and the competition environment, formulating evaluation criteria used in the international practice and criteria specific to the existing situation on the Romanian postal market. The advantages and disadvantages deriving from using each criterion or criterion type will be presented.

Within the activities of the project, the Provider will assess at least the following criteria, as well as the extent to which these are relevant in determining the character of unfair burden and in establishing the amount that should be compensated:

- the absolute value of the net cost determined (including the intangible benefits);
- the absolute value of the profit incurred by CNPR;
- the CNPR market share on the market of services within the scope of universal service.

The evaluation will rely on the information available from the separate financial statements and the statutory financial statements prepared by CNPR or other postal service providers, other financial and/or commercial information which the Provider will request from ANCOM, studies, market researches, as well as reports, relevant studies from the international theory and practice. All this information will be justified by the Provider and will be made available to the ANCOM staff involved in the project.

Furthermore, in determining the character of unfair burden and the amount to be compensated, the Provider will also take into account the costs and opportunity associated to the implementation of a compensation mechanism.

Based on this analysis, the Provider will propose the adequate set of criteria and the share of each criterion in determining the extent to which the net cost of the universal service provision is an unfair burden for CNPR. The report will include the Provider's recommendation on the character of unfair burden for CNPR and, if applicable, the level of the net cost that should be compensated.

Deliverable: Report on the evaluation of the extent to which the losses resulted from the provision of the universal service are an unfair burden for CNPR and, if applicable, the level of the net cost that should be compensated. The activity under point 4.1 will be performed by the Provider and the corresponding deliverable will be paid for by the Buyer only if CNPR requests ANCOM to compensate the net cost of the universal service provision.

Maximum delivery term: 42 calendar days from the date on which ANCOM transmits to the Provider the request for the net cost compensation, together with the report on the costs, revenues and capital employed for the provision of services within the scope of universal service submitted by CNPR.

ANCOM may postpone the reception of deliverable 4.1 until the reception of the deliverables referred to in points 1, 2 and 3.

4.2) The evaluation of the means of compensation and the support for the ANCOM decision on the net cost compensation

If, following the evaluations on the amount of the net cost and the character of unfair burden, ANCOM decides to compensate the net cost of CNPR, the Provider will evaluate the means of compensation of the net cost of universal service as provided for in art. 15, paragraphs (1) and (5) of the ANCOM President's Decision no. 541/2013, namely:

- the financial resources resulted from the contributions of the postal providers authorised according to the general authorisation procedure for the provision of services within

the scope of universal service or of services which can be deemed substitutable to these services (art. 15 para. 1 letter a);

- the financial resources resulted from the contributions of the users of postal services, by means of a tax applied to the postal services that they use (art. 15 para. 1 letter b);

- the financial resources referred to in art. 15, para. (1) letters a) and b).
- should the amounts collected via one of the methods provided for in art. 15 para. (1), in the conditions of establishing a reasonable amount of the contributions which does not prejudice the providers' economic viability, be insufficient, the difference between the net cost to be compensated and these amounts shall be covered from public funds according to the provisions of the Government Emergency Ordinance no. 13/2013, approved with amendments and completions by Law no. 187/2013.

For each of the enumerated compensation means, the Provider will make a thorough analysis of the advantages and disadvantages that would result from their implementation, in particular in terms of impact on the postal users and providers, difficulty of implementation and other elements which the Provider deems relevant. The Provider will also analyse the use of a combined net cost financing mechanism. Depending on the results of the aforementioned analysis, the Provider will recommend to ANCOM the compensation means appropriate to the Romanian market.

Within the analysis on the setting up of the universal service fund from financial resources gathered from providers, the Provider will also evaluate the elements under art. 16 para. (2) of the ANCOM President's Decision no. 541/2013 referring to the substitutability of other postal services with the services within the scope of universal service.

Within the analysis on the financing of the net cost from financial resources gathered from users, the Provider will evaluate, based on the relevant financial data, the amount of the tax that would be applied to the postal services, the categories of services to which the tax would be applied, as well as the impact of this tax on the users and market conditions (change of demand etc.).

If ANCOM decides that the provision of services within the scope of universal service is an unfair burden for CNPR and establishes the level of the net cost that needs to be compensated, the Provider will offer support to ANCOM in the elaboration of the decision on the net cost compensation and of the support documents thereto.

Deliverable: Report on the means of net cost compensation. The activity under point 4.2 will be performed by the Provider and the corresponding deliverable will be paid for by the Buyer only if the conclusions of the report corresponding to deliverable 4.1 indicate that the provision of the universal service is an unfair burden for CNPR.

Maximum delivery term: 20 calendar days from the date on which ANCOM communicates to the Provider the decision on the compensation of the net cost corresponding to the provision of services within the scope of universal service.

Elaboration

The Provider will submit all the reports to ANCOM, for approval, in electronic and physical form.

The reports will comprise:

- a detailed description of the principles and hypotheses used, with the justification of the qualitative assessments and options used;
- the substantiation of the entry data used in the calculations directly made by the Provider in the provided calculations.

IV. Specific requirements for the elaboration of the technical offer:

The Technical Offer will include, besides other mandatory qualification elements, the following specific aspects:

1) A description of the way in which the process of determining the access points (served and unserved by personnel) required for fulfilling the universal service obligations provided for in the ANCOM President's Decision no. 293/2009 will be evaluated.

2) As for the intangible benefits, the technical offer will include at least the benefits enumerated at point 3.3) above and a description of at least one type of intangible benefits selected from the ones enumerated at point 3.3) that shall be assessed in order to be included in the universal service net cost calculation. If the tenderer proposes the evaluation of intangible benefits additional to the ones enumerated under point 3.3), each type of additional benefit needs to be described, together with the methods of evaluation/quantification of each type of additional intangible benefits proposed to be considered in the estimation of the net cost. The additional intangible benefits represent evaluation factors within the criterion called the most advantageous economic offer and will be appropriately scored if these additional benefits are described and accompanied by the above-indicated methods in the Technical Proposal.

The number of intangible benefits additionally proposed must be stated by tenderers in a **separate document** as illustrated in **Annex 1 to the Terms of reference**. The number of intangible benefits stated in this document will be read at the tender opening session and will be mentioned in the minutes of the tender opening session.

3) As for the relevant criteria in determining the character of unfair burden and establishing the amount that should be compensated, the tenderer shall describe within the technical offer at least the minimum set of evaluation criteria mentioned at point 4.1) above. In order to obtain an additional score, the technical offer will include the additional criteria that will be analysed and the way in which these will be considered within the process of determining the character of unfair burden for CNPR. The additionally proposed criteria represent evaluation factors within the criterion called the most advantageous economic offer and will be appropriately scored if within the Technical Proposal are included their description and the method of evaluation of each additional criteria used to assess the unfair burden.

The number of criteria additionally proposed must be stated by tenderers in a **separate document** as illustrated in **Annex 1 to the Terms of reference**. The number of criteria stated in this document will be read at the tender opening session and will be mentioned in the minutes of the tender opening session.

4) A statement on own responsibility as illustrated in **Annex 8 from section 4 Statements** whereby the tenderer guarantees that it is not in a conflict of interests, and binds

to prevent the occurrence of such a situation and to inform at once the Buyer on any situation which generates or might generate such a conflict.

A conflict of interests represents any situation which influences the tenderer's capacity to provide an objective and impartial professional opinion or prevents at any moment the tenderer from granting priority to the interests of ANCOM, related to possible future contracts or to conflicts entailing other commitments, past or present, of the tenderer.

V. OTHER MANDATORY REQUIREMENTS

The Provider will closely work with the ANCOM staff during the performance of all the activities under the project. The Provider will offer to the ANCOM representatives all the explanations and documentations necessary for understanding the process of evaluation and elaboration of deliverables, in order to ensure the possibility of their use and adjustment in the future.

The Provider commits to maintain the confidentiality of the data obtained from *CNPR* and ANCOM for the project roll-out.

The Provider will be available to carry its activity in Bucharest for a period of at least 50% of the effective working time.

The property rights over the deliverables resulting from the provision of the services covered by these Terms of Reference are transferred from the Provider to ANCOM upon signing without objections the reception minutes for each deliverable.

The deliverables will be delivered in written form, in English language or Romanian language, to the ANCOM headquarters in Bucharest, 2 Delea Nouă Street, Sector 3, as well as on electronic support.

The Provider must ensure the compliance with the maximum delivery terms as stipulated in the current terms of reference for each deliverable.

The estimated term for the provision of all activities within the contract is 6 (six) months from the date on which the supply contract becomes effective.

ANCOM will communicate to the provider the compensation request and accompanying documents submitted by CNPR within 3 days from their reception.

The term set for the provision of services pursuant to the provisions of these Terms of Reference does not include the period of analysis of the deliverables by ANCOM in view of their reception. The analysis period for each deliverable may not exceed 10 days.

ANCOM will provide all available information, relevant for the execution of the supply contract, within 5 (five) working days from its request by the Provider (in order to observe the maximum term for the provision of services mentioned above, the Provider must take into account the periods set for the provision of information by ANCOM). ANCOM will make all efforts to collect, with the celerity imposed by the project's timeframe, information which is not available within ANCOM, relevant for the contract execution, from *CNPR*. In order to minimise the terms needed for obtaining and sending the mentioned relevant information, the tenderer will present within the offer a list of the relevant data and information deemed necessary for the execution of the services contract. If during the project the provider considers that other information and data could be useful, these shall be provided/requested subsequently. In the event ANCOM exceeds the 5(five) working days term for the provision of information, the exceeding period will not be included in the term for the provision of services.

The technical offer shall include the provider's commitment to assume responsibility for the provided services. In this respect, the provider must undertake that it shall answer any written request from ANCOM, in order to clarify or support all elements indicated in the

deliverables presented in these Terms of Reference, for a period of at least 6 (six) months after the signing of the reception minute for the last deliverable. The deadline for answering such requests will not exceed 10 (ten) working days from ANCOM's request.

Partial payments - yes. The tenderer will make the financial offer detailed on deliverables.

The tenderers should take into account the fact that the buyer will pay the value of each deliverable that is mentioned in the detailed financial proposal, but not more than 20% of the total price of the offer for the deliverables corresponding to the activities provided for at points 1 and 2 of the terms of reference and not more than 75% of the total price of the offer for the deliverables corresponding to the activities provided for at points 3 and 4.1 of the terms of reference. For the deliverable corresponding to the activity provided for at the point 4.2 of the terms of reference, the buyer will pay the amount mentioned in the detailed financial offer but not more than 5% of the total price of the offer.

VI. AWARDING CRITERION

VI.1. The criterion applied for awarding the supply contract: **"the most advantageous economic offer"**, mentioned in art. 198 para. (1) letter a) of the Government Emergency Ordinance no. 34/2006.

VI.2. The winning offer is the offer which receives the highest score resulted from the application of the evaluation criteria system established below.

No.	Evaluation criteria	Maximum score
1.	Offer price (in Euros, without VAT)	65
2.	Description of the intangible benefits proposed in addition to the minimum mandatory ones, including the methods of evaluation / quantification of each type of intangible benefits which could be considered in the net cost estimation	20
3.	Description of the criteria for the evaluation of the extent to which the provision of the universal service is an unfair burden for CNPR, proposed in addition to the minimum mandatory ones, including the method of evaluation of each additional criteria used for the unfair burden assessment	15
TOTAL		100

1. The score for the evaluation criterion **"offer price"** is granted as follows:

a) for the lowest price offer, the maximum score allocated for the respective evaluation criterion is granted;

b) for other price than the one under letter a), the score is granted as follows:

$$P_n = (\text{price}_{\text{minimum}} / \text{price}_n) \times \text{score}_{\text{maximum}}$$

Note: The prices which are compared in view of granting the score are the prices tendered in Euro,

without VAT, for the provision of the services according to Section 2 – Terms of Reference.

2. The score for the evaluation criterion **"Description of the intangible benefits proposed in addition to the minimum mandatory ones, including the methods of evaluation / quantification of each type of intangible benefits which could be considered in the net cost estimation"** is granted as follows: for each intangible benefit presented in addition to the minimum mandatory ones requested in Section 2 – Terms of Reference, described and accompanied by the evaluation/quantification methods, 5 points up to maximum 20 points.

3. The score for the evaluation criterion **"Description of the criteria for the evaluation of the extent to which the provision of the universal service is an unfair burden for CNPR, proposed in addition to the minimum mandatory ones, including the method of evaluation of each additional criteria used for the evaluation of the unfair burden"** is granted as follows: for each criterion presented and described, including the method of evaluation of each additional criteria used for the evaluation of the unfair burden in addition to the minimum mandatory ones requested in Section 2 – Terms of Reference, 5 points up to maximum 15 points.

VI.3. The ranking based on which the winning offer is established will be made from the highest total score to the lowest total score obtained by each offer.

VI.4. If, following the enforcement of the aforementioned calculation algorithm, the resulted score of all offers (placed first) is the same, the contracting authority will award the contract to the tenderer whose Financial Proposal features the lowest price.

VI.5. If, following the enforcement of the aforementioned calculation algorithm, the resulted score of all offers (placed first) is the same, and the tendered prices are also the same, the contracting authority will require the tenderers concerned to submit a new Financial proposal in a closed envelope, a case in which the contract will be awarded to the tenderer whose Financial Proposal features the lowest price.

Annex 1 to the Terms of Reference

Evaluation criteria in the technical proposal

No.	Evaluation criteria in the technical proposal	Submission by tenderer
1.	Description of intangible benefits proposed in addition to the minimum mandatory ones, alongside the methods of evaluation/quantification of each type of intangible benefits which could be considered in the net cost estimation	Number of additional intangible benefits
2.	Description of the criteria for the evaluation of the extent to which the provision of the universal service is an unfair burden for CNPR, proposed in addition to the minimum mandatory ones, including the method of evaluation of each additional criteria used for the evaluation of the unfair burden	Number of additional evaluation criteria

SECTION 3: MANDATORY CONTRACTUAL PROVISIONS

The following are deemed mandatory contractual provisions:

- The **contract price** shall be total price tendered, in EUR, which includes all the costs directly and indirectly incurred by the Provider in relation to Contract conclusion and execution; it shall remain unchanged and cannot be amended throughout the **Contract** duration;
- The price to be actually paid by the Buyer shall be determined based on the deliverables that the Provider has actually performed and submitted to the Buyer under the terms stipulated in the Terms of Reference and in the Technical Proposal;
- the Buyer shall pay the value of each deliverable, stipulated in the detailed financial proposal, but no more than 20% of the total contract price as regards the deliverables corresponding to activities mentioned at points 1 and 2 in the Terms of Reference and no more than 75% of the total contract price as regards the deliverables corresponding to activities mentioned at points 3 and 4.1 in the Terms of Reference. For the deliverable corresponding to activity mentioned at point 4.2 in the Terms of Reference, the Buyer shall pay the value stipulated in the detailed technical offer but no more than 5% from the total bid price.
- The invoices shall be submitted to the Buyer's headquarters in Bucharest, 2 Delea Noua Street, Sector 3;
- Payment for services shall be made in RON, by payment order, to the Provider's treasury account, at the exchange rate communicated by BNR and valid on the day the invoice is issued (*if the Provider is a Romanian resident*)
Where the Provider is not a Romanian resident, the payment shall be performed by foreign currency payment order, in EUR. If case requires, the amount representing the value of the tax on the revenues obtained by non-residents from services provided in Romania and, respectively, any other amounts representing taxes owed according to the fiscal legislation in force in Romania shall be withheld. The tax share enforced shall be the one regulated by the fiscal legislation in force in Romania.
- Partial payments are allowed to the extent they represent the value of the deliverables stipulated in the Terms of Reference – Annex 1, and only upon the signing without objections of the final reception minutes for each deliverable;
- Where an invoice has been received before or on the reception date, the payment shall be performed within maximum 30 days from the date of signing without objections the final reception minute for the corresponding deliverable, and in accordance with the provisions of Article 36(1) of GEO no.34/2009 on invoice payment between the 24th and the 31st of every month;
- Where an invoice has been received after the date of signing without objections the final reception minute for the corresponding deliverable, the Buyer has the right to perform the payment within maximum 30 days from the date of receiving the invoice, and in accordance with the provisions of Article 36(1) of GEO no.34/2009 on invoice payment between the 24th and the 31st of every month;
- Prepayments or partial payments are not allowed, except for the ones representing the value of the deliverables stipulated in the Terms of Reference – Annex 1;

- Payment is deemed made on the date the Buyer's account is debited;
- At the moment of signing without objections the final reception minute for each deliverable, automatically and without fulfilling any other prior formality, the property right, including all the copyright patrimony rights, on all deliverables of the services provided within the Contract are exclusively transferred to the buyer. The Buyer shall have the exclusive and unlimited right to use, distribute and/or multiply and/or amend the deliverables and the information within the deliverables as it considers proper, according to its needs. For the avoidance of doubt, the parties agree that the transfer of copyright patrimony rights has an exclusive character, is not territorially limited, shall be valid for an unlimited and undetermined period, is final and integral. The total Contract price includes the price of this transfer;
- The Buyer shall certify the fact that the services supplied observe the specifications in the Terms of Reference – Annex 1 and in the Technical Proposal – Annex 2 to this Contract and that the deliverables have been elaborated in compliance with the conditions provided in these documents by its authorised representatives' signing without objections the final reception minutes for the deliverables;
- The Provider declares and guarantees that it holds full competence with respect to signing this Contract and to fulfil the obligations pursuant to this Contract, in view of the assumed obligations specificity , in accordance with the legal provisions in the field and in compliance with the conditions provided in the Terms of Reference and in the Technical Proposal;
- The Provider may start supplying the services for activities no. 1 and no. 2 on the Terms of Reference – Annex 1, on the date of the parties' signing the contract, while the deliverables corresponding to these services shall be sent to the Buyer within maximum 42 (forty-two) days from the date the Provider receives from the Buyer the request for the net cost compensation elaborated by CNPR. These services shall be performed by the Provider irrespective of whether CNPR sends the request for the net cost compensation or not. If the compensation of the net cost for the provision of Universal Service is not requested, the deliverables must be submitted to the Buyer within 80 days from the date of the parties' signing the Contract, under the provisions of the Terms of Reference – Annex 1 and in the Technical Proposal – Annex 2 to this Contract.
- The services for activities 3.1, 3.2, 3.3. and 4.1 in the Terms of Reference – Annex 1 will be provided by the Provider only to the extent that CNPR requests the compensation of the net cost for the provision of Universal Service. The deliverables corresponding to these services must be submitted to the Buyer within maximum 42 (forty-two) days from the date the Provider receives from the Buyer the request for the net cost compensation elaborated by CNPR.
- The services for activity no. 4.2 in the Terms of Reference – Annex 1 will be provided by the Provider only to the extent that the conclusions of the previous deliverables reveal that the provision of the universal service is an unfair burden to CNPR. The deliverable corresponding to these services must be submitted to the Buyer within maximum 20 (twenty) days from the date the Provider receives from the Buyer the decision regarding the compensation of the net cost for the provision of services within the scope of Universal Service.
- The service supply deadlines are deemed met to the extent that the final reception minutes for the deliverables are signed without objection by the expiry of the corresponding deadlines. With a view to meeting the above-mentioned deadlines, the Provider must also take into consideration the intervals required for the Buyer's providing the necessary information, as

stipulated in the Terms of Reference. The service provision deadlines do not include the period of the Buyer's analysis of the deliverables, as stipulated in the Terms of Reference.

- The Supplier guarantees that it is not in a conflict of interests case and commits to prevent the occurrence of such a situation and undertakes to inform the Buyer as soon as a situation generates or may generate such a conflict.

In this vein, the Supplier guarantees that - throughout the duration of this contract - it has not supplied, is not supplying and will not supply neither consultancy services regarding the assistance provided to CNPR in conducting the separated financial statements for 2013 or regarding the auditing of the 2013 separate financial statements conducted by CNPR, nor consultancy services regarding the assistance provided in calculating the net cost of CNPR's universal service provision for 2013;

- The **amount of the delay penalties** is 0.15%, for each delayed day, of the total contract price, without VAT, for the Provider, and respectively from the unpaid amount, without VAT, for the Buyer;

- Upon signing without objections of the final reception minutes for the last deliverable, throughout of at least a 6 (six)-month period from the respective date, the Provider commits to answer, free of charge, any written request from the Buyer, i.e. clarifying or supporting the findings of the deliverables. The answering interval shall not exceed 10 (ten) working days from the Buyer's request.

- Any dispute arising from or related to this Contract, including with reference to its conclusion, enforcement or termination, shall be settled in front of the competent court in Bucharest, Romania;

- At the conclusion of the contract, **the contract model below** shall be considered. If the tenderers have no objections/modification proposals as to the contract model below, they shall submit, **in original**, a statement of acceptance on the contract conditions as per the form in **Annex no.13** of Section 4: Forms. Should there be objections/proposals on the clauses provided in the contract model (other than the mandatory ones above), the Tenderers must specify them in the submitted offers, and these shall be analysed by the tender evaluation commission. Offers containing proposals related to the contractual provisions that are obviously disadvantageous for the contracting authority shall be deemed noncompliant, in accordance with the provisions of art. 36(2) letter b) of the Government Emergency Ordinance no. 925/2006.

SUPPLY CONTRACT MODEL

Chapter 1. CONTRACTING PARTIES:

Between,

THE NATIONAL AUTHORITY for MANAGEMENT and REGULATION in COMMUNICATIONS (ANCOM), Bucharest, 2 Delea Noua Street, Sector 3, Telephone: +40.372.845.400, Fax: +40.372.845.402, Fiscal identification code: 14751237 (fiscal registration code for VAT purposes RO27855892 for external contracts), Bank account no.: RO03TREZ7005025XXX000274, opened with *Activitatea de Trezorerie și Contabilitate Publică a Mun. București*, duly represented by the President, Mr. Marius Cătălin MARINESCU, as, and hereinafter referred to as, the **Buyer**,

and

S.C., located in, Street, Sector/County, Telephone:, Fax:, , registered with the Trade Register Office no., Unique registration code:, Bank account no.:, opened with....., duly represented by mandated representative, Ms./Mr. as, and hereinafter referred to as, the **Provider**

each named "Party" and collectively "Parties", this **Contract** has been concluded.

This **Supply Contract** – hereinafter referred to as the "**Contract**" was concluded in accordance with the legislation in force in Romania in the public acquisition field.

Chapter 2. DEFINITIONS

2.1. Under this **Contract** the following terms shall be interpreted as follows:

- a) **Contract** – the present legal act, including all its annexes, representing the agreement of will of the 2 (two) parties, concluded between the **Buyer** and the **Provider**;
- b) **Buyer** and **Provider** – the contracting parties, as these are named in the present **Contract**;
- c) **Addendums** to the **Contract** – the legal acts to be attached to the present **Contract** should certain changes, completions or renouncement relating to the **Contract** provisions occur; **the Addendums** are part of the **Contract**;
- d) **Contract price** – the price to be paid by the **Buyer** to the **Provider** on the basis of the **Contract** for the comprehensive and corresponding compliance with all the obligations born through the present **Contract**;

e) **Services** – consultancy services for verifying the report on the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost for the provision of universal service for 2013, and consultancy services regarding the decision on the net cost compensation , respectively the compensation amount and compensation means(CPV code: 71621000-7), in accordance with the Terms of Reference - Annex no. 1, the Technical Proposal - Annex no. 2 and the Financial Proposal - Annex no. 3 to the present Contract;

f) **Deliverables** – the reports elaborated by the **Provider** following the completion of the consultancy services for the activities provided in the Terms of Reference – Annex no.1, which the **Provider** must submit to the **Buyer**, in accordance with the provisions of the Terms of Reference – Annex 1 and the Technical proposals – Annex 2;

g) **Final reception minute**– the quantitative and qualitative reception document which acknowledges the provision by the **Provider** and submission to the **Buyer** of the **Deliverables**, under the conditions specified in the Terms of Reference - Annex no. 1 and in the Technical Proposal - Annex no. 2 to the present **Contract**;

h) **Standards** – the standards, technical and/or financial and/or legal regulations or other such requirements provided in the Terms of Reference - Annex no. 1 and in the Technical Proposal - Annex no. 2 to the present **Contract**, which, under any circumstances, shall comply at least with the standards or other authorised legal regulations;

i) **Conflict of interests** - any situation which influences the **Provider's** capacity to provide an objective and impartial professional opinion or prevents at any moment the **Provider** from granting priority to the interests of the **Buyer**, related to possible future contracts or to conflicts entailing other past or present commitments of the **Provider**;

j) **Force majeure** – all the events and/or the external circumstances, beyond the will of the parties, unpredictable and unavoidable, and which, intervening after the conclusion of the **Contract**, totally or partially prevent or delay the fulfilment of the obligations born through this **Contract**. An event similar to the ones mentioned above, which, without creating execution impossible makes it extremely onerous to one of the parties, shall not be considered force majeure;

k) **Day** – calendar day, if there is no other specification in the **Contract**;

l) **Year** – 365 days, or 366 days - for leap years;

m) **CNPR** - *Compania Națională Poșta Română*, universal service provider in the postal services field.

2.2. Within the present **Contract**, except for a contrary provision, the wordings in singular shall include the plural form and vice versa, where the context allows it.

Chapter 3. OBJECT AND DURATION OF THE CONTRACT

3.1. The **Provider** undertakes to provide the services specified in point 2.1. letter e) which are subject to the present **Contract**, according to the Terms of Reference - Annex no. 1, the Technical Proposal - Annex no. 2 and the Financial Proposal - Annex no. 3 to this **Contract**,

whereas the **Buyer** undertakes to pay the value of these services under the terms of the present **Contract**.

Chapter 4. CONTRACT PRICE

4.1. (1) The total price agreed for fulfilling the contractual obligations, to be paid by the **Buyer** to the **Provider**, is **EUR**....., to which VAT is added (hereinafter referred to as the "price" or "total price"), established on grounds of the Financial Proposal submitted by the **Provider** - Annex no. 3 to the present **Contract**.

(2) The price to be actually paid by the **Buyer** shall be determined based on the deliverables actually elaborated by the **Provider** and handed over to the **Buyer** under the terms provided in the Terms of Reference – Annex 1 and in the Technical proposal – Annex 2.

(3) The Buyer shall pay the value of each deliverable as follows:

- a) for deliverables corresponding to activities mentioned at points 1 and 2 in the Terms of Reference – Annex 1 to the **Contract**, the value mentioned in the Financial proposal – Annex 3 to the **Contract** but no more than 20% of the total price stipulated at point 4.1.(1);
- b) for deliverables corresponding to activities mentioned at points 3 and 4.1 in the Terms of Reference – Annex 1 to the **Contract**, the value mentioned in the Financial proposal – Annex 3 to the **Contract** but no more than 75% of the total price stipulated at point 4.1.(1);
- c) for the deliverable corresponding to activity mentioned at point 4.2 in the Terms of Reference – Annex 1 to the **Contract**, the value mentioned in the Financial proposal – Annex 3 to the **Contract** but no more than 5% of the total price stipulated at point 4.1.(1).

4.2. The total price agreed for fulfilling the contractual obligations includes all the **Provider's** direct and indirect costs, related to the conclusion and execution of the **Contract**.

4.3. The total price agreed for fulfilling the contractual obligations shall remain unchanged and shall not be modified during the entire **Contract** duration.

4.4. The invoices shall be sent to the **Buyer's** headquarters in Bucharest, 2 Delea Noua, Sector 3, Postal code: 030925.

Chapter 5. PAYMENT MODALITY

5.1. (1) Payment shall be made in RON, by payment order, to the **Provider's** treasury account, at the RON/EUR exchange rate communicated by BNR and valid on the day the invoice is issued (*if the Supplier is a Romanian resident*)

Where the Supplier is not a Romanian resident, the payment shall be performed by foreign currency payment order, in EUR. If case requires, the amount representing the taxes and dues owed according to the fiscal legislation in force in Romania shall be withheld. The tax share enforced shall be the one regulated by the fiscal legislation in force in Romania.

(2) Partial payments are allowed to the extent they represent the value of the deliverables stipulated in the Terms of Reference – Annex 1, and only upon the signing without objection of the final reception minutes for each deliverable;

(3) Payment shall be made on grounds of the invoices submitted by the **Provider**, received and accepted by the **Buyer**, in accordance with the provisions of Article 36(1) of GEO no.34/2009 on invoice payment between the 24th and the 31st of every month;

5.2. (1) Where an invoice has been received before or on the date of signing without objections the final reception minute, the payment shall be performed within maximum 30 days from the date of the signing without objection of the reception minute for the corresponding deliverable and in accordance with the provisions of Article 36(1) of GEO no.34/2009 on invoice payment between the 24th and the 31st of every month.

(2) If the invoice is received after the date of signing without objections of the final reception minute for the corresponding deliverable, the **Buyer** has the right to pay it within maximum 30 days from the date of receiving the invoice and in accordance with the provisions of Article 36(1) of GEO no.34/2009 on invoice payment between the 24th and the 31st of every month.

5.3. Prepayments or partial payments are not allowed, except for the ones representing the value of the deliverables stipulated in the Terms of Reference – Annex 1.

5.4. Payment is deemed made at the date the **Buyer's** account is debited.

Chapter 6. ENTRY INTO FORCE

6.1. The present **Contract** shall enter into force from the moment it is signed by both parties.

Chapter 7. STANDARDS

7.1. The deliverables under the **Contract** shall observe the standards, technical and/or financial and/or legal regulations or any other such requirements stipulated in the Terms of Reference - Annex no. 1 and in the Technical Proposal - Annex no. 2 to the present **Contract**, which, under any circumstance, shall comply at least with the standards or other authorised legal regulations.

Chapter 8. CONTRACT DOCUMENTS

8.1. The **Contract** documents are:

- a) the present document;
- b) the Terms of Reference – Annex no. 1;
- c) the Technical Proposal – Annex no. 2;
- d) the Financial Proposal – Annex no. 3;

e) the Performance Bond – Annex no. 4;

f) Addenda, if any.

8.2. Documents under point 8.1 are integral part of the **Contract**.

8.3. If, during the **Contract**, it is assessed that certain elements of the Technical proposal - Annex no.2 are inferior to the requirements of the Terms of Reference - Annex no.1 to the present **Contract**, the provisions of the Terms of Reference shall prevail.

Chapter 9. CONFIDENTIALITY

9.1. Without the written agreement of the other party, a contracting party does not have the right to:

a) disclose the **Contract** or any of its provisions to a third party, except for the persons involved in the contract fulfilment;

b) use the information and documents obtained or to which it has access during the contract duration for other purposes than the ones related to the fulfilment of its contractual obligations.

9.2. Disclosure of any information to the persons involved in fulfilling the **Contract** shall be made in a confidential manner and shall include only the information necessary to fulfil the **Contract**.

9.3. In view of observing the confidentiality obligations, the **Provider** undertakes the following:

- to take all necessary and reasonable measures, within its internal organisation structures, to prevent the disclosure of information or documents to which it has access during the **Contract** duration to other persons than its own personnel authorised to receive these documents or information, as well as to forbid the access of unauthorised persons to these documents or information;

- not to make copies of the information or documents to which it has access during the **Contract** period and not to reproduce them in any way, unless for distributing them to its own personnel in view of fulfilling the contractual obligations;

- to keep record of all received documents or other information, as well as of the persons to whom these were given.

9.4. If the **Provider** is aware of any disclosure or unauthorised use of the information or documents to which it has access during the **Contract** duration, it shall notify at once the **Buyer** in this regard and it shall take all measures in order to reduce any present or future damages or losses, resulting from the respective disclosure and/or unauthorised use of information or documents.

9.5. The **Provider** undertakes to compensate the Buyer for the entire prejudice produced following the non-compliance or faulty compliance of any of the confidentiality obligations assumed under the **Contract**.

9.6. One contracting party shall be exonerated from liability for disclosing contract-related information if:

a) the information was known by the contracting party before it was received from the other contracting party;

b) the information was disclosed upon obtaining the written consent of the other contracting party for such disclosure;

c) the contracting party was legally obliged to disclose the information.

Chapter 10. PROPERTY RIGHTS

10.1. The **Provider** guarantees to the **Buyer** that the services provided, the deliverables and/or materials used do not breach in any way the rights of a third party.

10.2. The **Provider** has the obligation to compensate the **Buyer** against any:

a) reclamations, complaints and/or court actions, resulting from the breach of certain intellectual property rights (patents, names, trademarks, copyright etc.), related to the services provided and/or materials used, and

b) due damages, costs, taxes and expenses of any kind.

10.3. In the cases provided at point 10.2, the **Provider** shall have the right to intervene in any process and to establish any defence against such action or claim, and upon the **Buyer's** request, the **Provider**, on its expense, shall intervene and lead any dispute to occur in relation to those previously mentioned.

10.4. (1) If the ruled decision refers in any way to the case where the right to use the deliverables/materials employed harm the rights of another person, within maximum 30 (thirty) days from the ruling of the respective decision, the **Supplier**, on its expense, shall proceed as follows:

(i) either shall obtain the **Buyer's** right to further use the materials and/or deliverables;

(ii) or shall modify or replace the materials and/or deliverables, so as to not bring prejudice in any way to the rights of a third party.

(2) If the **Provider** does not observe the obligations under paragraph (1), the **Buyer** has the right to request delay penalties according to point 13.6 and/or to require the **Contract** rescission according to Chapter 16.

10.5. At the moment of signing without any objections the reception minutes of each deliverable, automatically and without fulfilling any other prior formality, the property right, including any copyright patrimony rights, on all deliverables of the services provided under this **Contract**, are exclusively transferred to the **Buyer**. The **Buyer** shall have the exclusive and unlimited right to use, distribute and/or multiply and/or exploit the deliverables and information within the deliverables, as it considers fit, according to its needs. For the avoidance of doubt, the parties agree that the transfer of copyright patrimony rights has an exclusive character, is not territorially limited, shall be valid for an unlimited and undetermined period, is final and integral. The total Contract price includes the price of this transfer.

Chapter. 11. PERFORMANCE BOND

11.1. The **Provider** guarantees the quantitative and qualitative performance of the obligations under the **Contract**, by submitting, within maximum 7 (seven) working days from the day both parties sign the **Contract**, a letter of guarantee/guarantee instrument for an amount up to, accounting for 5% of the total **Contract price** provided at Chapter 4., excluding VAT, valid at least until, issued exclusively in favour of the **Buyer**, under a form and with a content significantly identical to the model under Annex no. 4. From the submission date, the letter of guarantee rightfully replaces the model under Annex no. 4. If the amount of the performance bond is not large, the **Provider** may submit it, in cash, to the **Buyer's** cash desk.

11.2. In case of failure to observe the obligation under point 11.1., the **Provider** shall owe to the **Buyer** delay penalties of 0.15% from the value of the performance bond, for each day of delay in correspondingly fulfilling the obligation. Such penalties may be claimed and/or deducted and withheld by the **Buyer** from the price payment obligation, without any other prior formality of putting in default.

11.3. The **Buyer** has the right to claim the performance bond if the **Provider** fails to fulfil the obligations assumed under the present **Contract**. Prior to claiming the performance bond, the **Buyer** has the obligation to send the **Provider** a notification whereby it assesses the latter's fault, specifying at the same time the obligations which have been breached. If the performance bond does not fully cover the value of the prejudice, the **Buyer** has the right to require the **Provider** the payment of any amount to fully cover the suffered prejudice.

11.4. Within 14 (fourteen) days from signing without objections the final reception minute for the last deliverable, if by that time the **Buyer** has not claimed the performance bond, the parties agree to fully release the performance bond.

Chapter 12. RECEPTION

12.1. Deliverables provided in Article 2.1 letter f), representing the outcome of the completion of services, shall be delivered to the **Buyer's** headquarters in Bucharest, 2 Delea Noua Street, Sector 3.

12.2. If the services that are the object of this **Contract** do not correspond to the specifications provided in the Terms of Reference - Annex no. 1 and in the Technical Proposal - Annex no. 2, the **Buyer** has the right to refuse their reception, and the **Provider** has the obligation to make all necessary changes in order for the services to be in line with the specifications and standards imposed by the **Buyer**.

12.3. The **Buyer** shall acknowledge that the services provided are in line with the specifications provided in the Terms of Reference - Annex no. 1 and in the Technical Proposal - Annex no. 2 to the present **Contract** and that the deliverables have been elaborated in compliance with the conditions provided in these documents upon its authorised representatives' signing without any objections the reception minutes provided in Article 2.1 letter g).

Chapter 13. PROVIDER'S MAIN OBLIGATIONS

13.1. The **Provider** declares and guarantees that it holds the full competence to sign the present **Contract** and to execute the obligations falling from the present **Contract**, in consideration of specificity of the assumed obligations, according to the legal provisions in the field and in compliance with the conditions provided in the Terms of Reference – Annex 1 and in the Technical Proposal – Annex 2 to this **Contract**.

13.2. The person signing the present **Contract** on behalf of the **Provider** is legally mandated therefor.

13.3. (1) The **Provider** may start the provision of the services for activities no. 1 and no. 2 in the Terms of Reference – Annex 1 on the date of the two parties' signing the **Contract**, whereas the deliverables corresponding to these activities must be sent to the **Buyer** within maximum 42 (forty-two) days from the date the **Provider** receives from the **Buyer** the request for the compensation of the net cost elaborated by CNPR.

(2) The services provided in paragraph (1) will be supplied by the **Provider** irrespective of whether CNPR sends the request for the net cost compensation or not.

(3) If the compensation of the net cost for the provision of Universal Service is not requested, the deliverables corresponding to activities 1 and 2 in the Terms of Reference – Annex 1 must be submitted to the **Buyer** within maximum **80 (eighty) days** from the date of the parties' signing the **Contract**, under the provisions of the Terms of Reference – Annex 1 and in the Technical Proposal – Annex 2 to this **Contract**.

13.4. (1) The services for activities 3.1, 3.2, 3.3. and 4.1 in the Terms of Reference – Annex 1 will be provided by the **Provider** only to the extent that CNPR requests the compensation of the net cost for the provision of Universal Service.

(2) The deliverables corresponding to the services provided in paragraph (1) must be sent to the **Buyer**, within maximum **42 (forty-two) days** from the date the **Provider** receives from the **Buyer** the request for the net cost compensation elaborated by CNPR.

13.5. (1) The services for activity no. 4.2 in the Terms of Reference – Annex 1 will be provided by the **Provider** only to the extent that the conclusions of the previous deliverables reveal that the provision of the universal service is an unfair burden to CNPR.

(2) The deliverable corresponding to the services provided in paragraph (1) must be sent to the **Buyer** within maximum **20 (twenty) days** from the date the **Provider** receives from the **Buyer** the decision regarding the compensation of the net cost for the provision of services within the scope of Universal Service.

13.6. (1) The execution deadlines for services under paragraphs **13.3 – 13.5** are deemed met to the extent that the final reception minutes for the deliverables are signed, without objection, by the expiry of the corresponding deadlines.

(2) With a view to meeting the above-mentioned deadlines, the **Provider** must take into consideration also the intervals required for the **Buyer** to provide the necessary information, stipulated in the Terms of Reference – Annex 1 to this **Contract**.

(3) The service provision deadlines do not include the period necessary for the **Buyer** to analyse the deliverables, provided in the Terms of Reference – Annex 1 to this **Contract**.

13.7. In case of guiltily failing to observe any of the obligations under the present **Contract**, the **Provider** shall pay to the **Buyer** delay penalties of 0.15% from the total **Contract** price provided in Chapter 4, excluding VAT, for each day of delaying the corresponding fulfilment of any of the obligations. Such penalties may be claimed and/or deducted and withheld by the **Buyer** from the price payment obligation, without any other prior formality of putting in default. If penalties cannot be deducted from the price, the **Provider** shall pay them within maximum 10 (ten) days from receiving the **Buyer's** request.

13.8. (1) The **Provider** guarantees it is not in a conflict of interests situation, as defined at point 2 letter i) under the **Contract**, and undertakes to prevent the occurrence of such situation and to inform at once the **Buyer** on any situation which generates or might generate such a conflict.

(2) In the vein of the provisions of paragraph (1), the **Provider** guarantees that - throughout the duration of this **Contract** and related to the provision of services under this **Contract** - it has not supplied, is not supplying and will not supply neither consultancy services regarding the assistance provided to CNPR in conducting the separated financial statements for 2013 or regarding the auditing of the 2013 separate financial statements conducted by CNPR, nor consultancy services regarding the assistance provided in calculating the net cost of CNPR's universal service provision for 2013.

13.9. Throughout the **Contract** duration, the **Provider** undertakes to observe all the conditions and obligations regarding environment protection and ensuring labour health and safety, established by the national and European legislation. The responsibility for failure to comply with these obligations lies exclusively with the **Provider**.

13.10. Upon the signing without objection of the final reception minutes for the last deliverable, throughout of at least a 6 (six)-month period from the respective date, the **Provider** commits to answer, free of charge, any written request of the **Buyer**, i.e. clarifying or supporting the findings of the **deliverables**. The answer shall be sent within 10 (ten) working days from the **Buyer's** request.

Chapter 14. BUYER'S MAIN OBLIGATIONS

14.1. The **Buyer** declares and guarantees that it is a public institution with the legal capacity to conclude the present **Contract** and to fulfil all the deriving obligations.

14.2. The persons signing the present **Contract** on behalf of the **Buyer** are legally mandated therefor.

14.3. The **Buyer** binds to pay for the services provided under the conditions and within the term specified in Chapters 4 and 5.

14.4. (1) The **Buyer** shall supply to the **Provider** all the data and information required for providing the services according the provisions of the Terms of Reference – Annex 1, within maximum 5 (five) working days from the **Provider's** request.

(2) As well, the **Buyer** shall analyse the deliverables and shall send the resulting remarks to the **Provider** within maximum 10 (ten) working days from receiving each of the deliverable.

(3) Where the **Buyer** fails to meet the deadlines mentioned in paragraphs (1) and (2), the periods exceeding these deadlines cannot be counted within the service provision terms the **Provider** should comply with and no delay penalties could be requested from any of the parties for such delays.

14.5. The **Buyer** shall communicate the **Provider** the persons to be involved in the execution of the **Contract**.

14.6. Should the **Buyer** fail to make the payments according to Chapters 4 and 5, it shall be obliged to pay a delay penalty equal to 0.15% of the value of the unpaid amount, except VAT, for each delay day, until payment of the entire amount.

14.7. The **Buyer** shall send the **Provider** a notification regarding the termination of the **Providers** obligations stipulated at points 3 and 4 in the Terms of Reference – Annex 1 to the **Contract**, in case CNPR does not submit a net cost compensation request. In this situation the **Buyer** shall only pay for the deliverables received prior to the notification and within the terms stipulated at article 4.1.

Cap. 15. ADDENDA

15.1. The contracting parties have the right, during **Contract** execution, to agree on amending the **Contract** provisions, by means of addenda.

Chapter 16. CONTRACT RESCISSION

16.1. The **Contract** is rightfully rescinded, upon the simple written notification submitted by the **Buyer** and without any other formality of putting in default or any other prior formality, in any of the following cases:

a) if the **Provider** does not set up the **Contract** performance bond within 15 (fifteen) days from the term stipulated at point 11.1;

b) if the **Provider** fails to fulfil its service execution obligations within 30 (thirty) days from the terms stipulated at points 13.3, 13.4, or respectively 13.5;

c) if it is assessed that the **Provider** is in a conflict of interests case, as defined at point 2 letter i) and paragraph 13.8 under the **Contract**.

16.2. If the **Contract** is terminated under the terms of point 16.1., the **Buyer** has the right to the payment by the **Provider** of an amount of up to 30% of the total **Contract** price provided in Chapter 4, excluding VAT, as compensatory damages. The reception of the damages does not bring prejudice to the **Buyer's** right to address the Court for covering the suffered prejudice following the **Provider's** non-compliance with the assumed obligations.

Cap. 17. TRANSFER

17.1. (1) The **Provider** shall not, totally or partially, transfer its rights and/or obligations falling from the **Contract**.

(2) By way of exception from paragraph (1), the **Provider's** right to receive the amount for the services under this **Contract** may be transferred, in strict compliance with the applicable legal provisions in force.

17.2. Cession shall not exonerate the **Provider** of any responsibility regarding the duties falling from the **Contract**.

Chapter 18. FORCE MAJEURE

18.1. Force majeure is certified by the competent authority.

18.2. During the entire period it exists, force majeure exonerates from responsibility the contracting parties for failing to observe the obligations falling from the **Contract**.

18.3. **Contract** fulfilment shall be suspended during the force majeure existence, without prejudicing however the rights the parties had until its occurrence.

18.4. The contracting party invoking the force majeure shall notify the other party, immediately and comprehensively, on its occurrence/cessation and shall take any available measures in view of minimising consequences.

18.5. If force majeure exists or if a competent authority estimates it shall exist for more than 30 (thirty) days, each party shall have the right to notify the other party on the rightful cessation of the present **Contract**, whereas none of the parties shall be able to claim damages.

Chapter 19. SETTLEMENT OF DISPUTES

19.1. The **Buyer** and the **Provider** shall make all the necessary efforts in order to settle amicably, through direct negotiations, any dispute falling from or relating to the **Contract**, including regarding its conclusion, execution or termination.

19.2. If the **Buyer** and the **Provider** fail to settle in an amicable way any dispute falling from or relating to the **Contract**, including regarding its conclusion, execution or termination, these shall be settled by the relevant Court, in Bucharest, Romania, the possibility of referring to law conflicts being excluded.

Chapter 20. LANGUAGE

20.1. The language governing the present **Contract** is Romanian.

Chapter 21. APPLICABLE LAW

21.1. The **Contract** shall be interpreted according to the Romanian laws, the possibility of referring to law conflicts being excluded.

Chapter 22. COMMUNICATIONS

22.1. Any communication between parties, related to **Contract** fulfilment, shall be transmitted in writing.

22.2. Any written document shall be registered both at delivery and at reception.

22.3. Communication between parties may also be made on the telephone or by e-mail, under the condition of confirming in writing the reception of communication.

Chapter 23. FINAL PROVISIONS

23.1. (1) If any of this **Contract** provisions is declared null or may not be executed, the other **Contract** provisions shall not be affected in any way, shall remain valid and shall be executed to the extent allowed by the law.

(2) The parties agree that any provision declared null shall be replaced with another one, valid, legal and applicable, which could produce the same legal and/or economic effects.

(3) The **Provider** cannot unilaterally terminate the **Contract**.

23.2. The titles of the articles are inserted for an easier reference for the contracting parties and do not affect in any way their interpretation or fulfilment.

The present **Contract** was signed, in 2 (two) originals, one for each contracting party.

BUYER,

PROVIDER,

SECTION 4: FORMS

Section 4 contains forms intended to facilitate the elaboration and presentation of the offer and of the complementary documents, on the one hand, and enable the tender commission to examine and assess rapidly and correctly all the offers submitted, on the other hand.

Each tenderer participating in the procedure for awarding the public acquisition contract has the obligation to submit the forms provided for in this Section, duly completed and signed by the authorised persons.

Annex no. 1

TENDERER,

.....
(name)

STATEMENT on eligibility

I, the undersigned,....., legal/mandated representative of
..... (name and headquarters/address of the economic operator), in its capacity as tenderer / associate tenderer / supporting third party in the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report on the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility, under penalty of being excluded from the awarding procedure and under sanctions applied for false statements, that we do not find ourselves under any of the circumstances provided in art. 180 of the Government Emergency Ordinance no. 34/2006 on the award of public acquisition contracts, of public works concession contracts and of service concession contracts, with the subsequent amendments and completions, respectively we have not been sentenced by final decision of a court of justice, within the past 5 (five) years, for engagement in criminal activities, corruption, fraud and/or money laundering.

As well, I declare that in the present procedure:

- I do not submit two or more individual and/or joint tenders; and
- I do not submit an individual/joint tender being appointed subcontractor within another tender;
- I do not submit an individual/joint tender being appointed supporting third party within another

tender.

I, the undersigned, declare that the information provided is complete and correct in every detail and I understand that the contracting authority has the right to request any additional information for the purpose of verifying and confirming the statements.

Date of filling in

TENDERER,

.....
(authorised signature and seal)

Note: In the case of joint tender, this statement shall be submitted by each associate, while in the case of a tender supported by third party(ies), this statement shall be submitted by the tenderer and the supporting third party(ies).

TENDERER,

(name)

STATEMENT

**on falling outside the scope of the provisions of art. 181
of Government Emergency Ordinance no. 34/2006**

I, the undersigned,....., legal/mandated representative of _____ (*name and headquarters/address of the economic operator*), in its capacity as tenderer/associate tenderer/supporting third party in the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision in 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility that:

a) we have not declared bankruptcy following the decision ruled by the syndic judge;
c) we have complied with the payment obligations regarding taxes and social insurance contributions to the budgets in the general consolidated budget, according to the legal provisions in force in Romania or in my country of residence;

c¹) we have fully fulfilled in the past 2 (two) years the contractual obligations under the contracts concluded with various beneficiaries and there were no cases of defective accomplishment of the contractual obligations on our behalf, out of reasons imputable to us, a fact which would have generated or can produce serious prejudices to the beneficiaries of the contracts;

d) we have not been sentenced, in the past 3 (three) years, by final decision of a court of justice, for an act which breached the professional ethics or for committing a professional error.

I, the undersigned, declare that the information provided in view of proving the fulfilment of the qualification and selection criteria is complete and correct in every detail and I understand that the contracting authority has the right to request any additional information for the purpose of verifying and confirming the statements.

I understand that if false information is presented or if the information requested in view of fulfilling the qualification and selection criteria is not submitted, the contracting authority has the right to exclude us from the award procedure according to the provisions of art. 181 letter e) of Government Emergency Ordinance no. 34/2006.

I understand that if this statement is not concordant to the reality I am liable for breaching the provisions of the penal legislation on false statements.

Date of filling in.....

TENDERER,

(authorised signature and seal)

Note: In the case of joint tender, this statement shall be submitted by each associate, while in the case of a tender supported by third party(ies), this statement shall be submitted by the tenderer and the supporting third party(ies). If applicable, the supporting third party shall submit the Statement on falling outside the scope of the provisions of art. 181 letters a), c¹) and d) of Government Emergency Ordinance no. 34/2006, according to the model in Annex no. 2

ECONOMIC OPERATOR,

(name)

STATEMENT
on falling outside the scope of the provisions of art. 69¹
of Government Emergency Ordinance no. 34/2006

I, the undersigned,....., legal/mandated representative of, *(name and headquarters/address of the economic operator)* in its capacity as tenderer / associate tenderer / supporting third party in the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility, under the sanction of being excluded from the award procedure and under sanctions applied for false statements, that I do not have members in the management board/management and supervisory body and/or I do not have shareholders or associates persons that are my husband/wife, kinsmen or relatives up to including fourth degree nor do I find myself in commercial relationships, as provided in art. 69 letter a) of Government Emergency Ordinance no. 34/2006, with the persons, enlisted below, who have decision-making duties within the contracting authority:

Name	Position
Marius Cătălin MARINESCU	President
Cornelia CIONCA	Director, Economic and Administrative Division
Eduard Lucian LOVIN	Executive Director, Regulation Executive Division
Gheorghe RUSEN	Director, Economic Regulation Division, Regulation Executive Division
Ovidiu Florin TABĂRĂ	Head of Department, Acquisitions Department
Bogdan MĂRGINEANU	Head of Unit, Acquisitions Legal Advice Unit, Acquisitions Department
Daniela-Ioana MOHORA	Legal adviser, Acquisitions Legal Advice Unit, Acquisitions Department
Codruța Georgeta MERAN	Head of Unit, Operational Acquisitions Unit, Acquisitions Department
Mirela Rodica BEJGU	Expert, Operational Acquisitions Unit, Acquisitions Department
Gemma Luminița IOSIP	Expert, Operational Acquisitions Unit, Acquisitions Department
Niculăe Cătălin CALOIU	Expert, Operational Acquisitions Unit, Acquisitions Department
Magda DINU	Expert, Operational Acquisitions Unit, Acquisitions Department
Roxana Ionela CÎRJAN	Head of Unit, Audit and Cost Accounting Unit, Economic Regulation Division, Regulation Executive Division
Eugenia OANA	Expert , Audit and Cost Accounting Unit, Economic Regulation Division, Regulation Executive Division

Date of filling in _____

ECONOMIC OPERATOR,

(authorised signature and seal)

Note: In the case of joint tender, this statement shall be submitted by each associate, while in the case of a subcontracting, this statement shall be submitted by the tenderer and the subcontractor(s). In the case of a tender supported by third party(ies), this statement shall be submitted by the tenderer and the supporting third party(ies).

Annex no. 4

TENDERER,

(name)

**CERTIFICATE
of participation in the tender procedure with an independent tender**

I. I/We, the undersigned,, legal representative/representatives of, an undertaking/association which is to participate in the public acquisition procedure held by the National Authority for Management and Regulation in Communications, as contracting authority, under no. as of (date), certify hereby that the information hereunder is true and complete in every detail.

II. I/We certify hereby, on behalf of, the following:

1. I/we read and understood the content of this certificate;
2. I/we agree with our disqualification from the public acquisition procedure should my/our statements prove to be untrue and or incomplete in any way;
3. each signature on this document stands for the person designated to submit the tender, including as regards the terms under the tender;
4. pursuant to this certificate, a contestant is any natural or legal person, other than the tenderer on behalf of which we submit this certificate, who tenders within the same public acquisition procedure or could tender, as long as the respective natural or legal person meets the participation requirements;
5. the submitted tender was conceived and formulated independently from any contestant, and no consultations, communications, agreements or arrangements were made with the latter;
6. the submitted tender does not contain elements deriving from agreements between contestants as regards: the prices/tariffs or their calculation methods/formulae, the intention to tender or to not tender within the respective procedure, or the intention to include in the tender elements which, by their nature, do not concern the object of the respective procedure;
7. the submitted tender does not contain elements deriving from agreements between contestants as regards the quality, quantity, particular specifications of the offered products or services;
8. the details under the tender have not been communicated, directly or indirectly, to any contestant before the official moment of public opening announced by the contractor.

III. Under the sanctions provided by the legislation in force, I/we declare that the statements under this certificate are true and reflect entirely the reality.

Date:

TENDERER,
Legal representative/representatives
(signatures)

TENDERER,

(name)

STATEMENT
on the list of main services provided in the last three years*

I, the undersigned _____ legal/mandated representative of _____ *(name and headquarters/address of the economic operator)* in its capacity as tenderer in the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for the compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility, under sanctions applied for false statements and under the sanction of being excluded from the award procedure, that the data from the attached table are true.

I, the undersigned, declare that the provided information is complete and correct in every detail and I understand that the contracting authority has the right to request any additional information for the purpose of verifying and the statements.

I, the undersigned, hereby authorise any institution, commercial company, bank, and other legal persons to provide information to the authorised representatives of the contracting authority on any technical or financial aspect related to our activity.

No.	Object of the contract	Name of the Beneficiary/Client/ Address	Capacity of the supplier**	Contract duration*** day/month/year

* The last three years are counted backwards from the final date to submit the offer

** The capacity in which the supplier participated in the performance of the contract, i.e. single contractor or leading contractor (association leader); associated contractor, subcontractor, shall be specified;

*** The contract commencement and completion dates shall be specified.

As well, I declare that under the contracts specified at no. in the table above, we provided consultancy services in the area of support granted in the field of electronic communications or postal services for the calculation of the net cost of the universal service provision or services covering the elaboration or auditing of the separate financial statements prepared by the companies designated as universal service providers in the field of electronic communications or postal services.

I attach hereto, as required in the award documentation, certificates/documents issued or countersigned by the beneficiary/beneficiaries of this/these contract/contracts which reflect the data provided above and prove that the services have been supplied in accordance with the contractual obligations.

Date of filling in

TENDERER,

(authorised signature and seal)

Annex no. 6

TENDERERS,

.....

(*names*)

STATEMENT

on submitting a joint tender

We, the undersigned,

a), legal representative of
 _____ (*name and headquarters/address of the*

economic operator) - **association leader**

and

b), legal representative of
 _____ (*name and headquarters/address of the*

economic operator) - **associate**

.....
 in the procedure of award of the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility, under penalty of sanctions applied for false statements, that we submit a joint tender, we undertake the joint obligation for the joint tender, and we commit to be jointly held liable for any consequences of the future public acquisition contract in case the joint tender is declared the winner.

Date of filling in

TENDERER,

 (authorised signature and seal)

TENDERER,

 (authorised signature and seal)

Annex no. 7

TENDERER,

(name)

STATEMENT

**on the part/s of the contract to be fulfilled by the subcontractors
and their specialization**

I, the undersigned,, legal/mandated representative of *(name and headquarters/address of the economic operator)*, in my capacity as tenderer in the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for the compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility, under penalty of being excluded from the award procedure and under sanctions applied for false statements, that the data presented in the annexed table are true.

I, the undersigned, declare that the information provided is complete and correct in every detail and I understand that the contracting authority has the right to request any additional information for the purpose of verifying and confirming the statements herein and the data in the documents accompanying the tender.

I, the undersigned, hereby authorise any institution, commercial company, bank, other legal persons to provide information to the authorised representatives of the contracting authority on any technical and financial aspect related to our activity.

No.	Subcontractor's name	Part/s of the contract to be subcontracted	Acceptance of the subcontractor with signature specimen

Date of filling in:

TENDERER,

(authorised signature and seal)

TENDERER,

(name)

**STATEMENT
on the conflict of interests**

I, the undersigned,, legal/mandated representative of *(name and headquarters/address of the economic operator)*, in my capacity as tenderer in the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility, under penalty of being excluded from the award procedure and under sanctions applied for false statements, that we did not provide nor do we provide consultancy services for the support granted to CNPR for the elaboration of the separate financial statements for 2013 or the auditing of the separate financial statements for 2013 prepared by CNPR, nor consultancy services for the support granted for the calculation of the CNPR's net cost of the universal service provision for 2013.

Furthermore, we guarantee that we will not provide the above-mentioned services during the period of the consultancy contract concluded with ANCOM, should the tender we submitted within the present award procedure is declared the winning tender.

Date of filling in: .../.../.....

TENDERER,

(authorised signature and seal)

Note: In the case of a joint tender, this statement shall be submitted by each associate, while in the case of a subcontracting, this statement shall be submitted by the tenderer and the subcontractor(s). In the case of a tender supported by third party(ies), this statement shall be submitted by the tenderer and the supporting third party(ies).

Documentation for awarding the public acquisition contract subject to the provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)

ISSUER,

.....
(name)

**GUARANTEE TOOL (LETTER OF GUARANTEE)
for the participation with a tender in the award procedure
for the public acquisition contract**

To

National Authority for Management and Regulation in Communications
2 Delea Noua Street, sector 3, Bucharest

Regarding the procedure of "open tender" held in order to award the contract subject to the provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7), we (name of the bank/insurance company), with the registered headquarters in (address of the bank/insurance company), hereby commit toward the National Authority for Management and Regulation in Communications (ANCOM) to pay the amount of..... (.....), should one or several of the following situations arise*:

- a) the tenderer (name) withdrew its tender, during the tender validity period;
- b) the tenderer (name) submitted a complaint to the National Council for Solving Complaints, and the complaint was rejected, being found ungrounded**;
- c) its tender being declared winner, the tenderer (name) did not set up the performance bond within the tender validity period;
- d) its tender being declared winner, the tenderer (name) refused to sign the contract within the tender validity period.

This guarantee is valid until _____._____.

Endorsed by the Issuer _____ on day ____ month _____ year _____
(authorised signature)

**According to the provisions of Art. 86(3) corroborated with Art. 86(4) letter c) of the Government Decision no. 925/2006, with the subsequent amendments and completions, the guarantee tool (letter of guarantee) must provide that:*

- *either the payment of the bond shall be made upon the simple request of ANCOM, which does not have the obligation to justify the respective request provided that it specifies therein that the amount is requested because of the existence of one or more of the situations described above;*
- *or the payment of the bond shall be made upon the request of ANCOM accompanied by documents submitted within the awarding procedure whereby the existence of one or several of the situations described above is assessed.*

***The amount to be withheld by ANCOM from the tender bond is 4.447,5 Lei or 984,5 Euro or the equivalent amount of another currency at the BNR (Banca Nationala a Romaniei) exchange rate on 25.02.2014 on the day on which the request to execute the guarantee tool is made, established in accordance with the provisions of Art. 278¹ (1) of the Government Emergency Ordinance no. 34/2006, with the subsequent amendments and completions.*

TENDERER,

.....
(name)

TENDER FORM

To

National Authority for Management and Regulation in Communications
2 Delea Noua Street, Sector 3, Bucharest

1. After examining the Award Documentation under the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for the compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, I, the undersigned,....., legal/mandated representative of the tenderer (name of the tenderer) hereby declare that we commit, in accordance with the provisions and requirements under the above-mentioned documentation, to provide the services of **consultancy in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for the compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)** for the total amount of Euro..... (in letters and figures), to which the value added tax of Euro (in letters and figures) shall be added.

2. If our tender wins, we commit to conclude the contract and provide the services subject to this award procedure pursuant to the conditions specified in the Terms of References and the Technical Proposal.

3. We bind to maintain this tender valid until..... (day/month/year). The tender is compulsory to us and may be accepted any time before the expiry of the validity period.

4. Until the conclusion and signing of the contract by both parties, this tender and your communication announcing that our tender is established winner of the tender procedure shall represent a binding contract between us.

5. We understood and we consent, if our tender wins, to set up the performance bond under the subsequent contracts, in accordance with the provisions under the Award Documentation.

Date of filling in: .../.../.....

TENDERER,

(authorised signature and seal)

NATIONAL AUTHORITY FOR MANAGEMENT AND REGULATION IN COMMUNICATIONS (ANCOM)

Documentation for awarding the public acquisition contract subject to the provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)

Annex no. 10A

TENDERER,

..... *(name)*

DETAILED TENDER FORM

No. of the deliverable acc. to the Terms of Reference	Deliverable	Price in Euro without VAT
1	Market survey among the end-users in order to assess the evolution of the demand of services (postal and non-postal) in case of CNPR's alteration of the quality of service provision conditions	
2	Report on the access points (served or unserved by personnel) required for fulfilling the universal service obligations	
3.1	Assessment report on the base case scenario elaborated by CNPR	
3.2	Report on the assessment of the commercial scenario proposed by CNPR, as well as of the commercial scenarios proposed by the provider and identification of the optimum commercial scenario	
3.3	Report on the intangible benefits accrued by CNPR as a result of being a universal service provider	
4.1	Report on the evaluation of the extent to which the losses resulted from the provision of the universal service are an unfair burden for CNPR and, if applicable, the level of the net cost that should be compensated	
4.2	Report on the means of net cost compensation	
	TOTAL (Euro without VAT)	
	TOTAL (Euro with VAT)	

Date of filling in: .../.../.....

TENDERER,

(authorised signature and seal)

TENDERER,

.....

(name)

Registered at ANCOM headquarters under

no.dayhour.....

SUBMISSION LETTER

To

National Authority for Management and Regulation in Communications

Bucharest, 2 Delea Noua Street, sector 3

Following the Tender notice on the procedure of "open tender" held in order to award the contract subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, we, (*name of the tenderer*) send you herewith the sealed and visibly marked parcel containing:

- a) the technical proposal;
- b) the financial proposal;
- c) the documents accompanying the tender;
- d) the document proving the setting up of the tender bond.

We hope that our tender is compliant and satisfies your requirements.

Date of filling in

Yours sincerely,

TENDERER,

.....

(authorised signature and seal)

ISSUER,

.....
(name)

PERFORMANCE BOND GUARANTEE TOOL

To

National Authority for Management and Regulation in Communications
2 Delea Noua Street, Sector 3, Bucharest

Regarding the services contract no. subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for the compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, concluded between _____, as Supplier, and the National Authority for Management and Regulation in Communications (ANCOM), as Buyer, we irrevocably commit hereby to pay to the Buyer, by the amount of _____(_____), which accounts for 5% of the value of the respective contract, without VAT, any amount the latter requests as follows:

i) unconditionally, upon its first request accompanied by a declaration on the Supplier's fault

or

ii) conditionally, upon the Buyer's request, after the Supplier's fault is assessed, in accordance with the guaranteed contract and upon the submission of this finding by the Buyer.

Payment shall be made within the time frame specified in the request, without any other additional formality from the Buyer or the Supplier.

This guarantee is valid until _____.

If the contracting parties agree to extend the validity period of the guarantee or to amend certain contractual provisions with effects on the issuer's engagement, our prior approval shall be requested, otherwise the present letter of guarantee loses its validity.

Sealed by Issuer _____ on day ____ month _____ year _____
(authorised signature)

Note: The guarantee tool (letter of guarantee) shall specify one of the two modalities provided at points i) and ii), respectively.

TENDERER,

(name)

**STATEMENT
on accepting the contractual clauses**

I, the undersigned, _____, legal/mandated representative of _____ (name and address of the tenderer), in its capacity as tenderer in the procedure of "open tender" held in order to award the framework-agreement subject to the **provision of consultancy services in view of verifying the report of the costs, revenues and capital employed for the provision of services within the scope of universal service, underlying the request for compensation of the net cost of universal service provision for 2013, and consultancy services regarding the decision on the net cost compensation, respectively the compensation amount and means of compensation (CPV code: 71621000-7)**, organised by the National Authority for Management and Regulation in Communications, declare on own responsibility that I agree with all the contractual clauses provided for in the contract model under Section 3: Mandatory contractual clauses of the Award Documentation.

Date of filling in _____.

TENDERER,

(authorised signature and seal)

Note: This statement shall be submitted where the tenderer does not have objections to/proposals for amending the contractual clauses provided for in the contract model under Section 3: Mandatory contractual clauses of the Award Documentation.

Tenderers have the right to transmit under the tender objections to/proposals for amending the contractual clauses referred to above. These shall be analysed by the Tender Commission in accordance with the provisions of art. 36(2) letter b) of the Government Decision no. 925/2006, with the subsequent amendments and completions.