**CALL FOR TENDERS**

**Hosting, development, design and maintenance services ROMACT/ROMED WEBSITES**

**PART II – TENDER RULES**

**ARTICLE 1 – IDENTIFICATION OF THE CONTRACTING AUTHORITY**

* 1. **Name and address**

**COUNCIL OF EUROPE**

Directorate General of Democracy

Support Team of the Special Representative of the Secretary General for Roma issues

**Avenue de l’Europe**

**F – 67075 STRASBOURG Cedex**

[**http://hub.coe.int**](http://hub.coe.int)

* 1. **Background**

The activities of the Organisation are governed by its Statute. These activities concern the promotion of human rights, democracy and the rule of law. The Organisation has its seat in Strasbourg and has set up external offices in about 20 member and non-member states (in Ankara, Baku, Belgrade, Brussels, Bucharest, Chisinau, Erevan, Geneva, Kyiv, Lisbon, Moscow, Paris, Podgorica, Pristina, Rabat, Sarajevo, Skopje, Tbilisi, Tirana, Tunis, Warsaw, Venice and Vienna).

Contracts, framework contracts and framework agreements awarded by the Council of Europe are governed by the Financial Regulations of the Organisation and by Rule 1333 of 29 June 2011 on the procurement procedures of the Council of Europe.

The Organisation enjoys privileges and immunities provided for in the General Agreement on Privileges and Immunities of the Council of Europe, and its Protocols, and the Special Agreement relating to the Seat of the Council of Europe.[[1]](#footnote-1)

The purpose of this call is to contract with a provider to support the hosting, development, design and maintenance of ROMACT and ROMED Websites. Further details on the project are provided for in the Specifications (see Part I).

**ARTICLE 2 – OBJECT AND SCOPE OF THE TENDERING PROCEDURE**

This tendering procedure is a restricted call for tender. It aims at concluding a contract with **one Provider**, provided that it satisfies the exclusion and eligibility criteria and has submitted a compliant and satisfactory tender.

The scope of the tendering procedure is described in the Specifications.

**ARTICLE 3 – PLACE OF PERFORMANCE**

Services are likely to be considered as performed in the country where the Provider is established.

**ARTICLE 4 – VALIDITY OF THE TENDERS**

Tenders are valid for 120 calendar days as from the closing date for their submission.

**ARTICLE 5 – DURATION OF THE CONTRACT**

The contract will take effect from the date of its signature by both parties, and until completion of obligations of both parties.

**ARTICLE 6 – LEGAL FORM OF TENDERERS**

Natural and legal persons are accepted.

**ARTICLE 7 – MODALITIES OF THE TENDERING**

**7.1 Content of the tender file**

The tender file is composed of:

* Part I. Specifications.
* Part II. Tender rules.

**7.2 How to send tenders**

Tenders must be sent to the Council of Europe in the form of:

* 1 electronic/scanned copy to be sent only to the following address roma.team@coe.int. Tenders submitted to another e-mail account will be excluded from the procedure;

**And**

* 1 paper hardcopy in A4 format (21x29,7 cm) by post, as specified below. Tenders submitted to another address will be excluded from the procedure.

Tenders shall be submitted in a sealed envelope. The first sealed envelope shall be placed inside a second envelope addressed to the buying entity, showing the file reference object, as follows:

COUNCIL OF EUROPE

For the attention of the Support Team of the Special Representative of the Secretary General on Roma issues

**Call for Tenders ROMACT ROMED Websites**

F – 67075 STRASBOURG Cedex

France

Tenderers are requested to indicate their names and address on the outside envelope for identification purposes.

**7.3 Deadline for submission of tenders**

The deadline for the submission of tenders is **27 September 2015** as evidenced by the postmark or by the receipt of the dispatch provided by the dispatching company.

**ARTICLE 8 – ASSESSMENT OF THE TENDERS**

**8.1. Exclusion criteria**

Tenderers shall be excluded from participating in the tender procedure if they:

* have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
* are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
* have received a judgment with *res judicata* force, finding an offence that affects their professional integrity or serious professional misconduct;
* do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence.

**Documents to be provided**

* The Declaration (See **Appendix I**) MUST be signed by the Tenderer.

The Council of Europe reserves the right to ask tenderers, at a later stage, to supply the following supporting documents:

* An extract from the record of convictions or failing that an equivalent document issued by the competent judicial or administrative authority of the country of incorporation, indicating that the first three above listed requirements are met;
* A certificate issued by the competent authority of the country of incorporation indicating that the fourth requirement is met.

**8.2 Eligibility criteria**

Tenderers shall demonstrate that they fulfil the following criteria:

* At least 2 years of professional experience of hosting, development, design and maintenance services on websites built in Drupal.

**Documents to be provided**

Tenderers shall submit in this regard:

* A portfolio of websites in Drupal already built by the Tenderer is obligatorily attached to the present call.

**8.3 Award criteria**

Only the tenders of tenderers who have passed the exclusion and eligibility tests will be assessed against the following award criteria:

* (60%) The financial offer as indicated in the Table of fees (See **Appendix II**);
* (40%) Capacity to respect the requirements of the Specifications, including
	+ Experience of the person designated to execute the contract;
	+ Capacity to meet the deadline specified in the Specifications.

**Documents to be provided**

All tenders shall include in this regard:

* The **table of fees**, duly completed (See **Appendix II**);
* **Detailed CV** of the person designated to execute the contract;
* A **calendar** providing estimated dates for execution of the expected services.

**ARTICLE 9 – ORDERING PROCEDURE**

**9.1 Extra- Services (Needs 1.1.11 and 2.1.9)**

Extra-Services to be provided under need lines 1.1.11 and 2.1.9 (See Part I – Specifications) will be requested on an “as needed basis” only. The Council of Europe is not bound, through this contract, by a minimum purchase requirement. Therefore, **the selection of a Provider will not give rise to a right for the Provided concerned to be awarded subsequent orders**.

Purchase of deliverables shall be carried out on the basis of orders submitted by the Council to the Provider, by post or electronically. The ordering procedure will be defined in the Contract (See draft reproduced in **Appendix III**).

* 1. **Optional lots**

Optional lots (1.2 and 2.2) will be ordered only upon exercise of the purchase option by the Council of Europe. This order will take the form of a written amendment signed by both parties.

In case the Council of Europe does not exercise its purchase options, services listed for the lot concerned will not be executed, and no payment will be made. The Provider will not be entitled to claim any compensation in this regard.

The Council of Europe reserves the right to exercise its purchase options, by notifying its intention in writing to the Provider, until:

* 30 November 2015 for lot 1.2;
* 31 December 2015 for lot 2.2.

**ARTICLE 10 – SUPPLEMENTARY INFORMATION**

General information can be found on the respective websites as indicated in the Specifications.

Other questions regarding this specific tendering procedure shall be sent at the latest on **22 September 2015**, in English or French, and shall be exclusively sent to the following addresses:

* For specific questions on Lot 1, please mail us at romact@coe.int;
* For specific questions on Lot 2, please mail us at romed@coe.int.

It will not be answered to questions sent through other means of communication.

Answers will be published on **23 September 2015** at the following address: <http://coe-romed.org> and <http://coe-romact.org>

**ARTICLE 11 – CHANGE, ALTERATION AND MODIFICATION OF THE TENDER FILE**

Any change in the format, or any alteration or modification of the original tender will cause the immediate rejection of the tender concerned.

**ARTICLE 12 – CONTRACT**

A contract will be signed with the selected Provider upon completion of the selection process.

The draft contract reproduced in **Appendix III to the present Tender Rules** is for information purpose only. The Council of Europe reserves the right to propose changes to this template.

\* \* \*

**APPPENDICES:**

**APPENDIX I : DECLARATION ON EXCLUSION CRITERIA**

**APPENDIX II: TABLE OF FEES**

**APPENDIX III: DRAFT CONTRACT**

**APPENDIX I – Declaration on exclusion criteria**

**\* \* \***

I the undersigned hereby agree that the information provided in my tender may be audited by the Council of Europe or verified by other means.

I hereby undertake to update Council of Europe with significant information changes within a reasonable time. Signification information changes include, but are not limited to: change of legal status, ownership, name and address, loss of license of registration, filing bankruptcy, suspension or debarment by any national or local governmental agency or assimilated.

I hereby agree that failure to provide accurate and reliable information required by this call for tenders may result to exclusion of my tender from the tendering procedure and/or terminating all contracts signed as a result of the tendering procedure.

I hereby declare that I:

• have not been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;

• am not in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or subject to a procedure of the same kind;

• have not received a judgment with res judicata force, finding an offence that affects my professional integrity or serious professional misconduct;

• do comply with my obligations as regards payment of social security contributions, taxes and dues, according to its applicable statutory provisions.

|  |  |
| --- | --- |
| **Date** | **\_\_\_ / \_\_\_ / \_\_\_\_\_\_** |
| **Name of the Tenderer** |  |
| **Signature** |  |

**APPENDIX II – TABLE OF FEES**

**Do not forget to attach to this document:**

* **A portfolio** of websites in Drupal already built by the Tenderer;
* **A Detailed CV** of the person designated to execute the contract;
* A **calendar** providing estimated dates for execution of the expected services (possibly need by need respecting the order presented in the Specifications).

|  |  |
| --- | --- |
| **Expected Services**(Refer to Part I - Specifications for further details) | **Fees**(Indicate your fee in Euros tax exclusive in each of the boxes below) |
| **Needs 1.1.1 to 1.1.10**Deadline for execution : 30 November 2015As only one set of documents is required to be created under 1.1.10 and 2.1.8, only 50% of the costs related to these documents needs to be charged under 1.1.10. | \_\_\_\_\_\_\_\_\_\_ €***Indicate global fee*** |
| **Need 1.1.11** | \_\_\_\_\_\_\_\_\_\_ € / hour***Indicate hourly fee*** |
| **Needs 1.2.1 to 1.2.13**Deadline for execution:31 May 2016As only one set of documents is required to be updated under 1.2.13 and 2.2.9, only 50% of the costs related to these documents needs to be charged under 1.2.13. | \_\_\_\_\_\_\_\_\_\_ €***Indicate global fee*** |
| **Needs 2.1.1 to 2.1.8**Deadline for execution:31 December 2015As only one set of documents is required to be created under 1.1.10 and 2.1.8, only 50% of the costs related to these documents needs to be charged under 2.1.8 | \_\_\_\_\_\_\_\_\_\_ €***Indicate global fee*** |
| **Need 2.1.9** | \_\_\_\_\_\_\_\_\_\_ € / hour***Indicate hourly fee*** |
| **Needs 2.2.1 to 2.2.9**Deadline for execution:31 March 2016As only one set of documents is required to be updated under 1.2.13 and 2.2.9, only 50% of the costs related to these documents needs to be charged under 2.2.9. | \_\_\_\_\_\_\_\_\_\_ €***Indicate global fee*** |

**APPENDIX III – Draft Contract**

**\* \* \***

**Article 1. Preamble**

The Provider has developed specific technical know-how and expertise in the field of IT services described in the Specifications reproduced in PART I of the present call for tender.

In particular, concerning the provision of hosting services, the Provider has declared:

- that it has at its disposal, within a Data Centre, located at [SPECIFY], servers of which it is the sole owner;

- that it has full control of those servers, such control constituting a decisive reason for the Council of Europe’s consent;

- that it is able to place at Council of Europe’s disposal some of the storage space on those servers.

The Council of Europe wishes to benefit from this specific technical expertise and know-how in the provision of services for which it does not have the necessary in-house resources.

The expected deliverables are described, by lot, in the Specifications as reproduced in PART I of the present call for tenders.

After familiarising itself with these Specifications and having been able to obtain all the necessary information on the internet sites concerned from the Council of Europe, the Provider has declared that it has all the expertise required for the execution of the services.

Consequently, the Parties have agreed to conclude the present Contract.

**Article 2. Definitions**

In this Contract, the words which begin with a capital letter shall be defined as follows:

**“Anomaly” or “Incident”** means any defect affecting the Server or Software which makes it impossible, slower or in any way difficult to access the Hosted Content, and more generally any non-conformity of the Services with the provisions of the Contract.

**“Bandwidth”** means the rate of data transfer on the line by which the Server is linked to the Provider’s access provider, expressed in terms of millions of bits per second (Mbits/s).

"**Contract**" means the contract as a whole, as defined in Article 3.

"**Deliverable(s)**" means any IT service implemented by the Provider for the Council of Europe within the framework of the present Contract, notably those indicated in the Specifications as reproduced in PART I of the present call for tenders.

**“Data Centre”** means the infrastructure managed by the Provider, comprising appropriate, equipped and secure premises, as described in its technical offer, within which is installed the Server containing the Hosted Content.

**“Hosted Content”** means all the material, such as texts, images, sound, videos, programmes, databases, data flows, files and, more generally, any information of any kind whatsoever, made accessible on line, i.e. via the Internet, by means of the Server. Hosted Content includes in particular all the material comprising the website or websites placed on line by the Council of Europe, including the material supplied by third parties, such as users of that website or websites, by any means whatsoever (discussion forum, blogs, etc.).

 **“Hosting”** means the service supplied by the Provider, comprising the supply to the Council of Europe of storage space on the Server.

**“Software”** means the software installed on the Server enabling the Client and the public to access the Hosted Content. The Software is listed in the technical offer of the Provider.

**“Maintenance”** means the service supplied by the Provider, comprising maintenance of the Server and of the Software.

**“Server”** means the secure hardware platform described in the technical offer of the Provider, administered and maintained by the Provider within the Data Centre, to which the Council of Europe may transfer the Hosted Content via the Internet, particularly in order to make it accessible to users.

**Article 3. Contract**

The present Contract comprises the following documents, listed in order of decreasing legal force:

* the present document and its Appendices;
* the Specifications (Part I of the Tender file);
* the Tender Rules (Part II of the Tender file);
* the Provider’s bid.

**Article 4. Subject-matter**

The purpose of the Contract is to define the conditions in which the Provider will provide the Services required in the Specifications and will assign, when applicable, intellectual property rights over the Deliverables to the Council of Europe.

**Article 5. Duration**

The Contract will take effect as from the date of its signature by both parties and will end upon completion of obligations of the parties.

**Article 6. Obligations of the Council of Europe**

The Council of Europe undertakes to:

* pay, in accordance with the arrangements for settlement provided for in this Contract, the costs mentioned in the Provider’s bid;
* collaborate and co-operate fully with the Provider, in so far as it is competent to do so, in order to make possible the proper execution of the Deliverables;
* to provide to the Provider all information necessary to the execution of the Contract;
* make use of the Hosted Content under its own responsibility.

**Article 7. Obligations of the Provider**

**7.1 Provision of Deliverables**

The Provider undertakes to supply to the Council of Europe all the Deliverables described in the Specifications and in its bid.

The Provider bears sole responsibility for all the decisions made and the human, technical, logistic, material and computing resources used in the context of the Contract in order to supply the Deliverables, with due respect for the Council of Europe’s needs and constraints, as contractually defined, and for the applicable regulations.

The Provider recognises that it is subject to a general obligation to provide advice, and particularly to provide information and make recommendations, to the Council of Europe. In this context, the Provider shall supply to the Council of Europe all the advice, warnings and recommendations necessary particularly in terms of quality of services, security and compliance with professional standards. The Provider undertakes to advise the the Council of Europe in the event that the latter makes complementary requests in the course of execution of the Contract. The Provider also undertakes to inform the Council of Europe as soon as it becomes aware, during the execution of the Contract, of any technological innovation or of the availability of any new product or service more appropriate to the Council of Europe’s needs.

**7.2 Sickness insurance, social security and travel insurance cover**

The Provider shall take all necessary steps to take out sickness insurance and social security cover for the entire duration of performance of the Contract. The Provider hereby recognises and accepts that the Council of Europe assumes no liability for health or social risks relating to sickness, pregnancy or an accident that might arise during the performance of the contracted services.

**7.3 Fiscal obligations of the Provider**

The Provider undertakes to observe any applicable law and to comply with its fiscal obligations in conformity with the legislation of the Provider’s country of fiscal residence, in particular in submitting an invoice in conformity with the applicable legislation, or a request of payment in the case of Providers who are not subject to VAT.

**7.4 Other obligations of the Provider**

In the performance of the present contract, the Provider undertakes to comply with the applicable principles, rules and values of the Council[[2]](#footnote-2).

The Staff Regulations and the rules concerning temporary staff members shall not apply to the Provider or its staff.

Nothing in this contract may be construed as conferring on the Provider or its staff the capacity of a Council of Europe staff member or employee.

**Article 8. Hosting**

**8.1 Description of the Service**

The Provider undertakes to supply to the Council of Europe a Hosting Service comprising the rental to the Council of Europe, of storage space on the Server, as specified in the Technical Specifications.

The purpose of that space is the storage of the Council of Europe’s Hosted Content. The Council of Europe is explicitly authorised to upload the Hosted Content to the Server, and to access it at any time, physically or remotely.

The Server comprises the hardware and software necessary to enable:

- the Council of Europe to log on remotely, in order to carry out data transfer or recovery operations, using the confidential logins and passwords supplied to it by the Provider on conclusion of the Contract, and which the Council of Europe may subsequently alter or create when opening user accounts;

- the public to log on via the Internet in order to consult the Hosted Content.

The Hosting service comprises the placing at the Council of Europe’s disposal of an Internet connection as specified in the Specifications, particularly in terms of bandwidth.

**8.2 Availability of the Hosted Content**

The Provider undertakes to ensure that the Hosted Content is accessible round the clock (24 hours a day, seven days a week).

The Provider guarantees an availability rate for the Hosting service and, consequently, a rate of remote accessibility of the Hosted Content via the Internet of at least 99.95%, this rate being calculated on a monthly basis.

Unavailability of the Hosted Content while Maintenance work is carried out will be counted as a period of unavailability for the calculation of the availability rate, even if the interruption was planned.

**8.3 Network**

The Provider is responsible for the connection of the Server to the Internet and the associated costs.

In this context, the Provider is responsible, in particular, for:

- taking out in its own name and at its own expense any necessary subscriptions;

- defining the networks’ technical specifications;

- establishing management and operation procedures in respect of the networks;

- creating interconnections.

The Provider shall ensure that any access which it authorises can in no circumstances jeopardise the security of the Hosted Content or of the Council of Europe’s computing facilities.

**8.4 Installation and acceptance**

The Council of Europe itself can install and update the Hosted Content on the Server, logging in to the Server remotely or, if necessary, travelling to the Data Centre.

The Provider undertakes to supply to any member of the Council of Europe’s staff duly authorised by the Council of Europe physical and logical access to the Server, both at the beginning of the Contract, for the purposes of installation, and throughout the execution of the Contract.

Installation shall give rise to the signature of an acceptance protocol by the Parties, confirming the accessibility of the Hosted Content and the proper functioning of the Server and the network connection.

In the event of any Anomaly, the Provider undertakes to do everything necessary to remedy it as speedily as possible (within 3 hours for breakdown or non-accessibility of the site platforms and 12 hours in all other cases).

**8.5 Administration interface**

The logins and passwords communicated by the Provider to the Council of Europe provide it with access to an administration interface enabling it to:

- Edit, remove, modify any content on any platform

- Manage user accounts and set up the relative roles

- Access statistics

- Access logs

The administrator cannot:

- Access the server directly (through SSH, FTP, etc.)

- Install/remove software

- Stop-reboot the server

**8.6 Security**

The Provider declares that it is aware of the prime importance to the Council of Europe of securing the Hosted Content in terms of confidentiality, integrity and data back-up, particularly in respect of the risks of physical or logical intrusion. The Provider guarantees that no third party has access to the Council of Europe’s data, in particular other clients of the Provider using the same Server.

The Provider undertakes to put in place and maintain a security policy which meets the highest relevant security standards. To this end, it undertakes to prevent physical access to the Server by any unauthorised third party and to keep the Server on premises which comply with professional standards, particularly in terms of electrical safety and protection from the risks of intrusion, fire or overheating.

The Provider also undertakes to put in place the necessary technical measures to protect the Hosted Content against computer viruses and against intrusions or attacks which might adversely affect the Hosted Content or its accessibility.

**8.7 Back-up**

The Provider undertakes, throughout the period of the Contract, to carry out every 24 hours two sets of a complete back-up of all Hosted Content, and to implement the security instructions in order to ensure the safety and integrity of the data backed up.

The arrangements for back-up and for the keeping of the data backed up shall comply with the highest security standards.

**8.8 Property**

The Hosted Content and all the rights attached thereto, particularly intellectual property rights, remain the sole property of the Council of Europe. The domain names which make access to the Hosted Content possible also remain the sole property of the Council of Europe. The Contract confers on the Provider no rights of any kind whatsoever in respect of the Hosted Content and the Council of Europe’s domain names.

The Provider undertakes, on its own behalf and on behalf of the persons working for it, that it will not misappropriate, reproduce, make use of or communicate to third parties the Hosted Content. The only copies which the Provider is authorised to make are the back-up copies for which Article 8.7 of this Contract provides.

**Article 9. Maintenance and technical support**

**9.1 Description of the Service**

The Provider undertakes to provide material and computing maintenance of the Server, of the Data Centre and of its hardware throughout the period of the Contract.

It undertakes in this context to carry out, at its own expense, any necessary action and repairs, and to replace any damaged hardware if necessary, in order to keep it in a perfect state of operation.

In the event that the Provider’s action is such as to cause an interruption to the availability of the Hosted Content on the Internet, the Provider shall inform the Council of Europe, which may ask the Provider to defer that action until a time determined by joint agreement.

The Provider undertakes to provide ongoing and corrective maintenance of the Software, in accordance with Specifications, and to guarantee the compatibility of the Software with the Server.

The Provider undertakes to inform the Council of Europe of planned Maintenance operations.

The Provider undertakes to monitor the Server and the Data Centre in order to detect any Anomalies likely to occur.

It undertakes to remedy any Anomalies thus detected and any Anomalies reported by the Council of Europe within the time limits referred to in the Specifications.

In the event of a failure to comply with these time limits, the Council of Europe can apply the penalties referred to in Article 18.

**9.2 Planned Maintenance operations**

The Provider shall freely determine the timing of planned Maintenance operations, provided that these operations have no effect on the execution of the Deliverables.

In the event that a Maintenance operation necessitates an interruption to the accessibility of the Hosted Content or is likely to entail temporary deterioration of the service, that operation shall be carried out at a weekend, at a time agreed on a case-by-case basis with the Council of Europe.

**9.3 Technical support**

The Provider places at the Council of Europe’s disposal a technical Support service accessible online, 24 hours a day, 7 days a week, at the following address and number [SPECIFY].

This technical Support is provided in order to:

- supply to the Council of Europe information about access to the Server and to the Hosted Content;

- assist the Council of Europe with the initial takeover of the Services and with the use of the administration interface;

- enable the Council of Europe to report any Anomalies;

- assist the Council of Europe in the resolution of these.

**Article 10. Development services**

The Provider undertakes to supply to the Council of Europe all the development services described in the Specifications and in its bid.

The Deliverables shall be subject to an acceptance procedure by the Council of Europe.

The purpose of the acceptance procedure is to enable the Council of Europe to verify the conformity and proper functioning of the Deliverables supplied by the Provider.

**Article 11. Reversion and transfer**

During the reversion or transfer implementation period, the Provider shall, as far as is necessary, provide either the Council of Europe or the new contractor, as appropriate, with access to equipment and software, provided that this access does not affect the ability of the outgoing contractor to provide the deliverables that are the subject of the contract.

The transition period is the period in which the Council of Europe undertakes the transfer of functions performed by itself or another contractor whose contract is expiring to the holder of the new outsourcing contract. Transition periods are for a maximum of six months. The period starts on the date of notification of the contract. During the transition period, the contractor shall organise the migration of services currently operated by or on behalf of the Council of Europe to deliverables supplied by itself.

 “Reversion” signifies the return of technical responsibility, in which the Council of Europe takes back items assigned to the holder of an outsourcing contract that is about to expire.

“Transfer” signifies the transfer of technical responsibility, in which the Council of Europe passes on to a new contractor the items previously assigned to the holder of the outsourcing contract that is about to expire.

Reversion or transfer periods are the periods covering the return or transfer of the previously defined technical responsibilities.

The “reversion plan” or “transfer plan” is the document appended to the specific conditions that describes the length of and conditions governing the implementation of reversion or transfer.

**Article 12. Intellectual property rights**

In exchange for the payment referred to in this Contract, the Provider assigns exclusively to the Council of Europe all intellectual property rights over the results of the design and development services provided in the framework of this Contract, including where relevant any trademarks and patents registered in connection with these deliverables.

These deliverables are hereafter referred to as "creations".

The parties intend that the rights assigned shall be:

* the right to reproduce or cause to be reproduced, free of charge or for a consideration, in unlimited numbers, all or part of the creations, in any medium, known or unknown, existing or future, and in particular on paper or in related form, in analogue or digital, optical or magnetic form or in any other computerised, electronic or telecommunications-based form;
* the right to present, disseminate or cause to be disseminated, free of charge or for a consideration, to any audience and by any means of its choice, existing or future, and in particular by presentation, projection, transmission, broadcasting or any form of communication or telecommunication, on any network, in particular telephone, cable, terrestrial or satellite;
* the right to adapt, modify, cause to be developed, improve or curtail creations, directly or through a third party, in particular the right to adapt them to any electronic or data processing mediums, to produce new versions or new developments, and to ensure their maintenance, free of charge or for a consideration;
* the right to translate or transcribe creations, or to cause then to be translated or transcribed, into any language or any computer language;
* the right to exploit and commercialise creations, directly or through a third party, and in particular to assign the rights to third parties, temporarily or permanently, in whole or in part, and in any form, by assignment, licence or any other form of contract.

The present assignment concerns all rights of reproduction, use, exploitation and modification of source codes, object codes and executable codes of any creation in any computer language.

The aforementioned rights are assigned irrevocably to the Council of Europe throughout the entire world and for the entire period of intellectual property rights protection.

These rights are assigned for the purposes of use, information, illustration, commercialisation, distribution, promotion or advertising.

The Provider undertakes to sign any document and complete any formality that the Council of Europe may deem necessary to establish and protect all the rights assigned to the Council of Europe under this Contract.

The Provider undertakes to transfer all the obligations of the present Article to any subcontractor.

The provisions of the present Article will remain applicable even in case of termination of the Contract, whatever its cause.

Any intellectual property rights of the Provider over methods, knowledge and information which are in existence at the date of the conclusion of the Provider contract and which are comprised in or necessary for or arising from the performance of the Provider contract shall remain the property of the Provider. However, in consideration of the fees payable pursuant to this contract the Provider hereby grants the Council a non-exclusive and free licence without any temporal or geographical limitations for the use of such methods, knowledge and information.

If the deliverable expected results in the provision of a training session, and provided the training materials are not the property of the Council of Europe, the Provider grants the participants in the training a non-exclusive licence without any temporal and geographical limitation for their own professional use of the training materials made available by the trainer.

**Article 13. Protection of personal data**

The Parties recognise that the Council of Europe acts in the capacity of data controller and that the Provider acts in the capacity of processor on behalf of, and on the instructions of, the Client and will perform the services supplied in pursuance of this Contract in conformity with the relevant provisions of French law, particularly the law of 6 January 1978.

The personal data processed by the Provider on behalf of the Council of Europe will remain the property of the Council of Europe. The Provider undertakes to keep the personal data processed on behalf of the Council of Europe for the duration of the Contract, and the Provider will return or destroy them, as decided by the Council of Europe, at the end of the Contract.

In its capacity of processor, the Provider undertakes:

* to process personal data in the strict and necessary context of the services supplied under the Contract and, in general, to act only on the written instructions of the Council of Europe, the data controller;
* to take all useful precautions to preserve the confidentiality and security of those personal data, and, in particular, to prevent them from being distorted, damaged or communicated to unauthorised third parties, and more generally to implement the appropriate technical and organisational measures to protect those personal data from accidental or unlawful destruction, from unauthorised alteration, dissemination or access, and from all forms of unlawful processing;
* not to give, rent, transfer or otherwise communicate to another person some or all of those personal data, even free of charge;
* not to use those personal data for purposes other than those for which this Contract provides;
* to inform the Council of Europe within five working days of any request which comes to its notice made by the persons concerned by the processing of personal data or by any other competent authority, and to inform it immediately of any checks carried out on the spot or on the basis of documents by any other competent authority relating to the processing of personal data carried out under this Contract;
* to co-operate in accordance with the Council of Europe’s instructions in the event of requisitioning, official order, notice to take action or any other similar decision by any other competent authority, or to assist the Council of Europe with the preparation of the replies to be given to those authorities. The Provider undertakes to assist the Council of Europe in the event that the latter is obliged to demonstrate that it is complying with the applicable regulations on the protection of personal data;
* to inform the Council of Europe immediately in writing of any amendment or change concerning itself which might have an impact on the processing of personal data carried out by it or by the Council of Europe;
* in the event of the use of a sub-contractor, transfer to the sub-contractor all the obligations imposed on it by this clause.

If the Provider has reason to believe, or has become convinced, that there has been a security breach, or a loss or alteration of the personal data processed on behalf of the Council of Europe, it undertakes:

* to notify the existence of that incident as speedily as possible to the Council of Europe;
* to refrain from communicating about that incident;
* to assist the Council of Europe, without invoicing any additional cost, in the taking of steps to put an end to the breach and to make good any damage that it may have caused.

The Provider undertakes not to transfer, without the prior authorisation of the Council of Europe, personal data outside the European Economic Area to any country not recognised by the European Commission as having an adequate level of protection within the meaning of Directive 95/46/EC of 24 October 1995.

**Article 14. Insurance**

The Provider hereby declares that it holds an insurance policy with a reputedly solvent insurance company covering its professional civil liability and liability resulting from damage of any kind caused by it, its agents or its sub-contractors to the Council of Europe or the agents thereof or to third parties in the performance of the Contract.

The Provider hereby undertakes to submit to the Council of Europe, before the date of signature of the present Contract, a copy of its insurance policy together with a cover note for the insurance policy held by any sub-contractor. The Provider shall guarantee that the said insurance policy provides adequate cover for the obligations incumbent on it in respect of the Contract. The Provider shall maintain the said insurance policy in force for the entire duration of the Contract. In the event of any change for which it is not responsible, the Provider shall take all necessary measures, at its own expense, to ensure uninterrupted cover as specified in the said insurance policy and supply the Council of Europe with a new copy.

In the event of failure to comply with this obligation, the Client may *ipso jure* terminate the Contract in the conditions defined in Article 20.

**Article 15. Documentation**

The Provider undertakes to prepare, in accordance with normal practice, and supply to the Council of Europe in digital form all the functional and technical documentation pertaining to the development services to be produced under this contract.

**Article 16. Guarantee of peaceful possession**

The Provider shall guarantee the Council of Europe's peaceful exercise of the rights transferred or conceded to it under Article 12 against all disturbance, claims and attempts at dispossession whatsoever from third parties maintaining that a Deliverable infringes their rights, including intellectual property rights.

The Provider shall guarantee that its creation of all or some of the Deliverables shall not be the result of unfair actions or parasitic copying on its part.

Consequently, the Provider shall guarantee the Council of Europe against any legal action in any respect whatsoever by any person having contributed directly or indirectly to the creation of the Deliverables or believing that they possess rights over one of those Deliverables.

The Council of Europe shall have the sole right to take the necessary steps to put an end to any counterfeiting, imitation or exploitation in any form whatsoever of all or some of those Deliverables. The Provider shall support its guarantee by providing assistance for any action undertaken by the Council of Europe relating to an infringement of the rights held by the latter pursuant to Article 12.

The provisions of the present Article shall remain applicable indefinitely, including after any transfer of the present Contract for whatever reason.

**Article 17. Financial Conditions**

**17.1 Prices**

In return for the deliverables supplied by the Provider and the transfer of the intellectual property rights stipulated in Article 12, the Council of Europe shall pay to the Provider fees as specified in its bid.

It shall also be the responsibility of the Provider, where it considers that a service, including a service requested by the Council of Europe, is not included in the business proposal set out in its tender bid and has therefore not been evaluated, to inform the Council of Europe without delay in writing, specifying the nature of the service and the corresponding additional charge.

This shall be the case in particular if an additional need is expressed by the Council of Europe during the execution of the Contract.

The Provider may in no circumstances claim that the Council of Europe has changed the scope of the Contract if it has not alerted the Council of Europe, as soon as it becomes aware of it, to such a change and to the foreseeable ramifications for the contract budget and schedule.

Non-payment may in no circumstances be cited by the Provider as a reason for suspending its services, which may be halted only on a decision by an arbitration board or after termination of the Contract, in the conditions for which Article 20 provides.

**17.2 Arrangements for invoicing and payment**

Services will be invoiced following receipt of the services and their acceptance by the Council of Europe.

Invoices shall refer to the stipulations of the present Contract.

The Provider shall submit an invoice, or request for payment in the case of Providers who do not charge VAT under the applicable legislation, in triplicate and in Euros in conformity with the applicable legislation, for each service or batch of services delivered. A model invoice is attached in Appendix to this Contract. This model can be modified as appropriate to conform to the applicable legislation.

The fee shall be payable within 60 calendar days, to the bank account indicated in this Contract, upon receipt of the services and their acceptance by the Council and on presentation of an invoice in triplicate, or a request for payment in the case of Providers who no not charge VAT under the applicable legislation, and in Euros.

Where relevant, advance payments can be agreed in writing on between the parties, within the limit of 30% of the total volume of the fee.

[Should the Provider be located in France, the amount invoiced will have to include VAT. The Council of Europe will then reclaim the VAT from the French authorities.

Should the Provider be located in another EU country, and should the deliverables be taxable in this country, the Council of Europe will provide the Provider with an exemption certificate. The exemption certificate sent by the Council of Europe should be retained by the Provider and presented to the relevant tax authorities to justify tax-free invoicing. In accordance with Article 2 b) of Council Directive 2001/115/EC, the following should be stated in the invoice: “Intra-Community service to an exempted organisation: Articles 143 and 151 of Council Directive 2006/112/EC” and should indicate the final total amount excluding VAT. In case the Council of Europe will not be in a position to provide the said certificate, the Council will pay the invoice with VAT included.

Should the Provider be located in a non-EU country, or should the deliverables be taxable in a non-EU country, the VAT regime will depend on the local (national) legislation, or on the existence of an agreement between the Council of Europe and the authorities of the country concerned. The Council of Europe will inform the Service Provider accordingly.] **TO BE ADAPTED DEPENDING ON THE PLACE OF ESTABLISHMENT OF THE PROVIDER AND THE NATURE OF THE SERVICES**

**17.3 Banking details**

The Provider: […]

The Council of Europe: […]

**Article 18. Penalties**

The penalties for unavailability of the Hosted Content and for failure to comply with the time limits for action or remedial action shall be as follows:

* 4 to 10 hours of unavailability or failure to comply with the time limits for action or remedial action : 10 euros per hour;
* More than 10 hours of unavailability or failure to comply with the time limits for action or remedial action : 15 euros per hour.

These penalties have the character of contractual daily penalty payments. They do not result in discharge or have a compensatory character. They therefore apply without prejudice to the damages which might be charged to the Provider in compensation for the damage caused to the Council of Europe.

These penalties will be payable on first demand by the Council of Europe, which may, if it so wishes, validly offset those penalties against the sums due to the Provider.

**Article 19. Liability**

The Provider shall be bound by an obligation of result with regards to compliance with contractual time-limits and the conformity of the Deliverables to the Specifications and the normally expected standards of execution.

The Provider shall bear full liability for the consequences of its failings, errors or omissions, as well as the failings, errors or omissions of its agents or sub-contractors, and be responsible for taking action against the agent(s) or sub-contractor(s) concerned to enforce their liability.

In particular, the Provider shall take full responsibility vis-à-vis the Council of Europe for any loss of earnings, increased overheads, disruption to schedules and breaches of data and information systems that might be caused to the Council of Europe by failings, errors, omissions or negligence on the part of the Provider or their agents or sub-contractors.

The Provider shall take full responsibility for the obligations attached to its capacity of employer.

In the event of serious or repeated failure by the Provider in its obligations, the Council of Europe may terminate the Contract, in the conditions defined in Article 20.

**Article 20. Termination**

In the event of a failure by the Provider to fulfil the obligations of this Contract, not remedied within two weeks after notification of the failure concerned by registered letter for which an acknowledgement of receipt has been requested, the Council of Europe may *ipso jure* terminate the Contract in all or in part, i.e. by lot.

In such a case, the Council of Europe shall pay only the amount corresponding to the Deliverables and/or services actually delivered at the time of the Contract's termination. The Council of Europe shall not pay the amounts corresponding to Deliverables and/or services that have not been supplied or from which it could not derive any benefit owing to the termination of the Contract; in the event of such amounts already having been paid, it shall demand their reimbursement.

The amounts remaining due shall be paid by the Provider into the bank account of the Council of Europe within 60 calendar days following written notification from the Council of Europe to the service Provider in this connection.

For a period of six months after the effective date of termination of the Contract, the Provider shall keep the Hosted Content.

The Council of Europe shall have the faculty during this period of recovering the Hosted Content through downloading, or of asking the Provider to send to it a copy of the data concerned on a standard physical device, the cost of this service being included in the cost of the Contract.

In the event of termination of the Contract, for any reason whatsoever, the Provider undertakes to supply to the Client all the technical information, procedures and documentation necessary to enable the Council of Europe to ensure the reversibility of the Hosting, i.e. to enable it to host the Hosted Content itself or to have this done by another service provider. In this context, the Provider shall, in particular, communicate to the Council of Europe full information about the Software in use, including version numbers, and shall supply to it all necessary reinstallation procedures.

**Article 21. Loyalty and Confidentiality**

In the performance of the present Contract, the Provider shall not seek or accept instructions from any government or any authority external to the Council of Europe and shall undertake to comply with the Secretary General's instructions for the performance of work required of it, to observe absolute discretion and to refrain from any statement or act that may be construed as committing the Council of Europe.

All the documents and information of any kind whatsoever to which the Parties have access during the execution of the Contract shall be treated by them as strictly confidential.

Each Party shall refrain from communicating to anyone, directly or indirectly, some or all of the information of any kind – commercial, industrial, technical, financial, identity-related, etc – which has been communicated to it by the other Party, or which has come to its notice during the execution of the Contract.

The confidentiality obligation, furthermore, does not apply to information known to the receiving Party prior to its communication (the Party citing such prior knowledge being responsible for providing evidence thereof), to information obtained from third parties by legitimate means and not subject to a confidentiality obligation, to information developed independently or to information made public by the Party which communicated it.

The Parties undertake to comply with the obligations resulting from this Article throughout the period of the Contract and for a period of five years following the expiry thereof, and to impose this confidentiality obligation on their employees and sub-contractors.

Any violation of this undertaking by a Party shall constitute a grave breach of its obligations, incur its liability and entitle the other Party to seek compensation for the damage caused.

**Article 22. Disclosure of the terms of the Contract**

The Provider is informed and gives an authorisation of disclosure of all relevant terms of the Contract, including identity and price, for the purposes of internal and external audit and to the Committee of Ministers and to the Parliamentary Assembly of the Council of Europe with a view to these latter discharging their statutory functions.

Whenever appropriate, specific confidentiality measures shall be taken by the Council of Europe to preserve the vital interests of the Provider.

**Article 23. Use of the name of the Council of Europe**

The Provider shall not use the Council’s name, flag or logo without prior authorisation of the Secretary General of the Council. Such a request for authorisation shall indicate the purpose for which the name and logo of the Council of Europe are to be used.

**Article 24. Subcontracting**

Since this is an *intuitu personae* contract, the Parties hereby agree that the Provider may in no circumstances sub-contract the performance of all or some of the services covered by it to a third party without the prior written agreement of the Council of Europe.

In the event of the Provider using the services, with the prior written agreement of the Council of Europe, of one or more sub-contractors, it is expressly agreed that:

* the use of sub-contractors shall not in any way lessen the Provider's liability vis-à-vis the Council of Europe in respect of the Contract, and the Provider shall remain the guarantor for the Council of Europe of the proper performance of the Contract and its sole point of contact;
* the Provider shall impose contractual conditions on its sub-contractors to ensure that it can fulfil its obligations to the Council of Europe;
* the Provider shall select its sub-contractors in accordance with criteria of reliability, security and sustainability and define their obligations in such a way as to ensure strict fulfilment of its own obligations;
* the Provider shall inform the Council of Europe, before the event and as soon as possible, of its intention to cease using a sub-contractor;
* the Provider's sub-contractors and employees shall be placed under obligation to assign to the Provider all intellectual property rights relating to their creation of all or part of the Deliverables, so that all such rights may be exclusively assigned to the Council of Europe by the Provider, in accordance with Article 12 of the present Contract.

**Article 25. Independence of the Parties**

The Parties hereby recognise that they are each acting on their own behalf and shall not be considered as the other party's agent.

The present Contract constitutes neither an agreement of association nor a franchise nor a mandate given by one of the Parties to the other.

Neither of the Parties may enter into a commitment in the name of and on behalf of the other Party.

Furthermore each of the Parties retains sole liability for its acts, allegations, undertakings, services, products and staff.

**Article 26. Transfer of Contract**

The present Contract is concluded on a personal basis with the Provider, which may not transfer or assign either the Contract or the rights and obligations arising thereunder without the prior written agreement of the Council of Europe, including in the event of a merger with or acquisition by a third party.

**Article 27. General Provisions**

The present Contract sets out all the obligations binding on the Parties in respect of its subject matter. Any document drawn up or signed after the signature of the present Contract is expressly declared outside the contractual scope thereof.

The fact that one of the Parties does not demand the application of any of the present Contract's provisions, whether on a permanent or temporary basis, may not in any way be construed as waiving the rights of that Party arising from the provision concerned.

Should any one of the clauses in the present Contract be deemed invalid, it shall be considered as null and void whereas the other clauses shall remain valid.

**Article 28. Amendments**

The provisions of this Contract cannot be modified without the written agreement of both parties.

This Contract may not be transferred, in full or in part, for money or free of charge, without the Council of Europe’s prior authorisation in writing.

**Article 29. Ordering procedure**

Hourly fees to be paid under needs 1.1.10 and 2.1.9 should be ordered on an as needed basis only.

Services shall be carried out on the basis of Order Forms (as reproduced in Appendix III to the present Contract) submitted by the Council, by post or electronically. The Provider undertakes to take all the necessary measures to send to the Council within 7 (seven) working days the signed Order Form together with a quote in line with the indications specified on each Order Form. Each quote must strictly respect the fees indicated in the Table of fees attached to the original Provider’s tender as recorded by the Council of Europe. In case of non-compliance with the fees as indicated in the original Provider’s bid, the Council of Europe reserves the right to terminate the Contract with the Provider, in all or in part.

An Order Form is considered to be legally binding when the quote is approved by the Council of Europe, by displaying a Council’s Purchase Order number on the order, as well as by signing and stamping the Order concerned. Copy of each approved Order Form shall be sent to the Provider, to the extent possible on the day of its signature.

**Article 30. Force majeure**

In the event of force majeure, the parties shall be released from the application of this Contract without any financial compensation. Force majeure is defined as including the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks or events that would require the Council or the Consultant to cancel the contract.

In the event of such circumstances each party shall be required to notify the other party accordingly in writing, within a period of 7 calendar days.

**Article 31. Jurisdiction and applicable law**

In accordance with the provisions of Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe, any dispute relating to the validity, interpretation, execution or application of the Contract shall, failing a friendly settlement between the Parties, be submitted for decision to an Arbitration Board comprised of two arbitrators, each selected by one of the Parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event that no presiding arbitrator is appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment, in accordance with the provisions of Rule No. 481 of the Secretary General (see Appendix I).

Failing an agreement between the Parties as to the applicable law, the Arbitration Board or, if need be, the arbitrator shall decide *ex aequo et bono*, taking into account the general principles of law and the customary practices of commerce.

**\* \* \***

**Appendices to the Contract** (not provided with the tender file):

* Appendix I: Rule 481
* Appendix II : Model Invoice
* Appendix III: Model Order Form
1. Available on the website of the Council of Europe Treaty Office: [www.conventions.coe.int](http://www.conventions.coe.int) [↑](#footnote-ref-1)
2. See www.coe.int and, in particular, Instruction No. 44 of 7 March 2002 on the protection of human dignity of the Council of Europe and Instruction No. 47 of 28 October 2003 on the use of the Council of Europe’s information system. [↑](#footnote-ref-2)