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| Contract No. ► | 8423/2018/234 |
| Project ID / Sector ► | BH 8423 VC “Continued Support to the Criminal Justice Reform in Ukraine”, Human Rights National Implementation Division, Human Rights Policy & Cooperation Department, Council of Europe Office in Ukraine |
| Council of Europe contact point ► |  |

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**ACT Of ENGAGEMENT**

**(Restricted consultation procedure / One-off contract)**

**This Act of Engagement lays down the terms and conditions of the contract between the Provider, as described below, and the Council of Europe[[1]](#footnote-2) for the procurement of the IT equipment and software for the Qualification and Disciplinary Commission of Prosecutors and National Academy of Prosecutors of Ukraine, in the framework of the Council of Europe Project “Continued Support to the Criminal Justice Reform in Ukraine”.**

The signature of this Act of Engagement by the tenderer alone shall not constitute or imply any sort of contractual commitment on the part of the Council of Europe. This Act shall become contractually binding only **upon signature by a Council of Europe authorised staff member** (see Section B).

Tenderers shall:

1. Fill in the below sections **Contact details of the Provider** and **Bank details**. Ensure that the “Name” of the Provider and the “Account holder” are the same.

2. Fill in the column “Fees” of the table of fees (See Section A);

3. Sign the Act of Engagement (See Section B) and send a signed and scanned copy to the Council (See Contact person details above).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contact details of the Provider** | Name and address  ► |  | | |
| Representative  ► |  | | |
| Contact person  ► |  | | |
| VAT n° (if any)  ► |  | | |
| Country and registration n° (if any)  ► |  | | |
| Email (Contact person)  ► |  | | |
| Phone number (Contact person)  ► |  | | |
| **Bank details** | Account holder  ► |  | | |
| IBAN n°  (if available)  ► |  | Full bank account n° (for non-IBAN countries only) ► |  |
| Bank name  and Branch  ► |  | BIC/SWIFT Code  ► |  |
|  | Bank Address  ► |  | Account currency ► |  |

1. **Terms of reference / Table of fees**

The Council of Europe is currently implementing a Project entitled “Continued Support to the Criminal Justice Reform in Ukraine” funded by the Government of Denmark (the CJR Project) that is aimed at supporting the reform of the Public Prosecutor’s Office of Ukraine. The list of beneficiaries of the CJR Project includes the Qualifications and Disciplinary Commission of Prosecutors (hereinafter QDCP) and the National Academy of Prosecutors of Ukraine (hereinafter NAPU). Among other objectives, the CJR Project aims at developing capacities of the QDCP and the NAPU to effectively implement their main functions.

In order to implement initial and continued training programmes effectively through using modern tools and approaches by the NAPU, as well as to ensure smooth conduct of operations of the QDCP, it is necessary for these institutions to be equipped with appropriate IT equipment and software. The CJR Project is supporting the QDCP and the NAPU through purchasing the IT equipment and software required for the document flow and file storage systems. In that context, the CJR Project is looking for a Provider for the provision of the IT equipment and software described in the table below and in line with the minimum technical specifications described in Annex I hereto (Technical Specifications of IT equipment and software). The IT equipment and software should be covered by a warranty period of not less than 12 (twelve) months and should be delivered to the premises of the QDCP and the NAPU located at 81B, Melnykova Street, Kyiv, 04050, Ukraine.

Prices indicated below are final and not subject to review, throughout the duration of the contract.

Prices are indicated in EUR without VAT. For the VAT regime to be mentioned on the invoice(s), please refer to Article 4.2 of the Legal Conditions (See Section C. below).

The Provider shall indicate its proposed lead time for delivery and fee(s) in the box(es) below.

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| **Deliverables (**See Annex I hereof for detailed description of technical specifications) **▼** | **Lead time for**  **delivery ▼** | **Exclusion level**  **▼** | **Fees**  **▼** |
| **Provision and delivery of the IT equipment for the QDCP** |  |  |  |
| 1. virtualization server |  | Maximum 40 calendar days from signature of the contract by both parties |  |
| 1. 19" rack cabinet 42U |  | Maximum 40 calendar days from signature of the contract by both parties |  |
| 1. UPS |  | Maximum 40 calendar days from signature of the contract by both parties |  |
| 1. Cisco Switch (WS-C3650-24TS, 4 x Gigabit Ethernet with Small Form‑Factor Pluggable (SFP)) |  | Maximum 40 calendar days from signature of the contract by both parties |  |
| TOTAL ► | |  |  |

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| **Deliverables (**See Annex 1 to the Act of Engagement for detailed description of technical specifications) **▼** | **Lead time for**  **delivery ▼** | **Exclusion level**  **▼** | **Fees**  **▼** |
| **Provision and delivery of the IT equipment and software for the NAPU** |  |  |  |
| 1. virtualization server |  | Maximum 40 calendar days from signature of the contract by both parties |  |
| 1. data storage server |  | Maximum 40 calendar days from signature of the contract by both parties |  |
| 1. Software (VMware vSphere 6 Essentials) |  | Maximum 40 calendar days from signature of the contract by both parties |  |
| TOTAL ► | |  |  |

|  |  |
| --- | --- |
| GRAND TOTAL ► |  |

**B. Declaration of Agreement and Signature**

I, the undersigned, acting on my own behalf or as a representative of the Provider indicated below, hereby:

* Declare having the authority to represent the Provider;
* Declare that the information provided to the Council under this procedure is complete, correct and truthful.
* Acknowledge, in signing this document, that I have been notified that if any of the statements made or information provided prove to be false, the Council reserves the right to exclude the tender concerned from the procedure or to terminate any existing contractual relations related to the latter;
* Express consent to any audit or verification that the Council may initiate by any means on the information provided under this procedure;
* Declare that neither I or the Provider I represent is in any of the situations listed in the exclusion criteria as reproduced in Appendix I of [Rule 1333 on the procurement procedures of the Council of Europe](https://wcd.coe.int/ViewDoc.jsp?p=&id=1807541&direct=true);
* Declare that neither I, nor the Provider I represent, are in a situation of has a conflict of interests or a potential conflict of interest in relation to this procedure. I have been notified and understand that a conflict of interests may arise, in particular, from economic interests, political or national affinities, emotional or family ties or any other type of shared relationship or interest;
* Undertake to update the Council with significant information changes within a reasonable time. Significant information changes include, but are not limited to change of legal status, ownership, name and address, loss of licence of registration, filing bankruptcy, suspension or debarment by any national or local governmental agency or assimilated;
* Accept without any derogation all the terms of the Legal Conditions as reproduced in the present document and understand that its signature **shall constitute signature of the contract** with the Council subject to the selection of the tender by the Council and the signature of this Act by a representative of the Council.

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| The Provider shall **fill in this part**, **print the document**, **sign in the last box** below and **send a scan copy of the document** to the email address indicated on the 1st page. | | | | | |
|  | | | | | |
|  | **For the Provider ▼** | |  | **For the Council of Europe ▼**  On behalf of the Secretary General of the Council of Europe | |
| Signature | Signatory (Name, Function and Entity) ► |  |  | Signatory (Name, Function and Entity) ► | Marten Ehnberg  Head of the Council of Europe Office in Ukraine |
| Provider ► |  |  | % of advance payment accepted ► | 30% |
| Place of signature ► | In |  | Place of signature ► | In Kyiv, Ukraine |
| Date of signature ► | \_\_\_ / \_\_\_ / \_\_\_\_\_\_ |  | Date of signature ► | \_\_\_ / \_\_\_ / \_\_\_\_\_\_ |
| Signature  ► |  |  | Signature► |  |
|  |  |  |  | PO Number ► |  |
|  |  |  |  | FIMS Number ► |  |

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| **Invoicing** (This part is reserved for the Council of Europe) | | | |
| **Invoicing Address** ► | | | **Council of Europe Office in Ukraine, 8, Illinska Street, entrance 7, floor 5, Kyiv, 04070, Ukraine** |
| ☐ | The invoice shall indicate prices ***net fixed amount.*** | | |
| ☐ | The invoice shall be established ***excluding tax.*** | | |
| ☐ | The invoice shall be established ***excluding tax***, the following shall appear on the pro-forma invoice and on the final invoice: According to Article 2 b) of Directive 2001/115/EC: “Intra-Community service/sale to an exempted organisation: Articles 143 and 151 of Directive 2006/112/EC."  The Council of Europe shall provide a VAT exemption certificate to the service provider/supplier with each order. The exemption certificate should be retained by the Provider/Supplier and presented to the relevant tax authorities to justify tax-free invoicing. In case the Council of Europe is not in a position to provide the said certificate, the invoice shall be established including all taxes. | | |
| ☐ | The invoice shall *be established* ***including all taxes***. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount ‘including all taxes’.  For services physically carried out in France, providers who do not have a French VAT number must register with the French Fiscal Authorities: Directorate for non-resident tax / [sie.entreprises-etrangeres@dgfip.finances.gouv.fr](mailto:sie.entreprises-etrangeres@dgfip.finances.gouv.fr) / 10, rue du Centre / 93465 Noisy-le-Grand Cedex / + 33 (0)1 57 33 85 00 | | |
| ☐ | The invoice shall be established ***including all taxes*** (French VAT at the applicable rate). Providers/suppliers are required to register for VAT purposes at the VAT Mini One Stop Shop (VAT MOSS) of their choice. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount ‘including all taxes’. The invoice shall also stipulate the following statement: “French VAT collected by the Provider and paid to the Mini One-Stop shop in [Address/Country] under the MOSS identification number [No. XX]”. | | |
| Comments | |  | |
| The Provider shall invoice the Council as indicated above. For any question, please contact the contact point of this contract. For aspects other than VAT, the invoice shall conform to the applicable legislation. Unless agreed otherwise between the parties, the invoice shall be in the currency specified in the table of fees (See Section A). | | | |

**C. Legal Conditions**

**Article 1 – General provisions**

1.1 The Provider undertakes, on the conditions and in the manner laid down by common agreement hereafter excluding any accessory verbal agreement, to provide the list of deliverables reproduced in the Terms of reference (Section A above) and in Annex I related to the present contract and in the tender submitted by the Provider.

1.2 The present contract is composed, by order of precedence, of:

a) the Act of Engagement, in its entirety (cover page, Sections A and B, the present Legal Conditions and Annexes I and II) and b) the Technical and Financial Proposal in the tender submitted by the Provider.

1.3 Any general purchasing terms and conditions of the Provider shall never prevail over these legal conditions. Any provision proffered by the Provider in its documents (general conditions or correspondence) conflicting with the clauses of these legal conditions shall be deemed void, except for any clauses which may be more favourable to the Council.

* 1. For the purposes of this Contract:

a) “Contract” shall refer to the documents described in 1.2, above;

b) “Council” shall mean the Council of Europe;

c) “Deliverables” shall mean the services or goods as described in the Terms of Reference (Section A above) and the Technical and Financial Proposal in the tender submitted by the Provider;

d) “Parties” shall mean the Council and the Provider;

e) “Provider” shall mean the legal or physical person selected by the Council for the provision of the Deliverables;

f) “Recipients” shall mean the institutions and structures as specified in the Terms of Reference (Section A above).

1.5 The documents described in Article 1.2 above constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

1.6 Each party acknowledges that in entering into this contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this contract.

1.7 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this contract.

1.8 Nothing in this clause shall limit or exclude any liability for fraud.

1.9 The Council accepts no responsibility for damage or injury of any kind sustained by the staff or property of the Provider or by third parties, arising out of this contract or in relation to the manufacture, supply, installation or use of the equipment referred to in this contract. It shall not be liable for damage caused by any negligence or other action of its employees and agents, or any third party.

1.10 Upon transfer of the contract in accordance with Article 6.4, the Provider agrees to the transfer of all future claims, rights, benefits and interest, in particular all warranties express and implied, as well as any outstanding obligations, to the transferee. The Provider agrees to release the Council entirely from any future liability arising under the contract.

**Article 2 – Duration**

The contract is concluded until complete execution of the obligations of the parties and takes effect as from the date of its signature by both parties. The services shall be executed in accordance with the timeframe indicated in the Terms of Reference (Section A, above) or, by default, in the tender submitted by the Provider.

**Article 3 – Obligations of the Provider**

**3.1 General obligations**

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

3.1.2 The Provider recognises that it is subject to a general obligation to provide advice, including, but not limited to, an obligation to provide any relevant information or recommendations to the Council. In this context, the Provider shall supply to the Council all the advice, warnings and recommendations necessary particularly in terms of quality of deliverables, security and compliance with professional standards. The Provider also undertakes to inform the Council as soon as it becomes aware, during the execution of the Contract, of any initiatives and/or adopted laws and regulations, policies, strategies or action plans or any other development related to the object of the Contract.

**3.2 Place and date of delivery**

3.2.1 The place of delivery shall be as defined in the Terms of Reference (Section A above).

3.2.2 Delivery shall be completed within the period defined in the Terms of Reference (Section A above).

3.2.3 Precise dates and times for delivery shall be agreed between the Provider and the Council following signature of this contract and at least 2 (two) weeks prior to the first delivery. In the absence of agreement, the final date for delivery shall be presumed to be 40 calendar days after the signature and entry into force of the Act of Engagement.

3.2.4 The Provider shall take all the necessary measures in order to assure that the equipment is delivered intact to the place of delivery, with all applicable customs duties and taxes paid, in the presence of the responsible person referred to in Article 3.3.2, efficiently and on time, in accordance with the provisions of Article 3.1.2.

3.2.5 The Provider shall make all efforts to deliver the totality of the equipment ordered at the same date and time to facilitate acceptance procedures. The Provider shall notify the Council of Europe of any problem arising with the delivery of any items at the latest five working days prior to the delivery date, as agreed in accordance with Article 3.2.3.

**3.3 Special delivery conditions and acceptance procedure**

3.3.1 The Provider understands and agrees that the contracted equipment shall be delivered subject to the following conditions and procedures.

3.3.2 The Provider agrees to deliver the equipment to the Recipients on behalf of the Council of Europe, at the address given in the Terms of Reference (Section A above). The responsible person(s) for the reception of the equipment is/are:

* [Name and title of CoE representative(s)]

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3.3.3 Upon supply of the equipment, the Provider shall provide an Act of Acceptance for the equipment, using the Model reproduced in Annex II to the present contract, to the Council for signature. The Act of Acceptance must be signed in two copies – one for the Council and one for the Provider. The Council shall have the right to appoint expert(s) to inspect the equipment in the warehouse or upon physical delivery and to confirm or deny that it conforms to the specifications agreed under the contract prior to acceptance of delivery.

3.3.4 If the delivery and installation of the equipment is not possible on the initially agreed dates, the Provider shall ensure safe storage for the equipment upon the request of the Council or the Recipients. Such storage shall be at the cost of the Provider, unless the delay is caused by the Recipients, in which case, the party having caused the delay shall cover the storage cost. The maximal duration of such storage may not exceed 2 (two) calendar months from the date of intended delivery. Upon request of the Recipients or on the working day following the expiration of the maximal 2 (two) month storage period, the equipment shall be delivered, except where otherwise agreed, to the address given in the Terms of Reference (Section A above).

3.3.5 Signature of the Act of Acceptance shall have effect as from the date of signature.

3.3.6 The Council shall take all necessary measures within its means to inspect the equipment and to either accept or reject it, in whole or in part, for non-conformity with the specifications agreed under the contract within 15 (fifteen) working days from receipt of the goods by the Recipients. The Council’s right to reject any goods shall not be in any way limited or waived by the inspection of the goods, or by the signature of an Act of Acceptance by any person other than a delegated representative of the Council.

3.3.7 All rejected items shall be returned to the Provider (transportation charges collect), or held by the Recipients for collection by the Provider at the Provider’s risk and expense. The Provider shall continue to be bound to provide, within the shortest possible delay, those items which have been rejected, unless the contract is terminated by express notification of the Council.

3.3.8 Persons designated by the Council under Article 3.3.2 above shall have power to sign the Act of Acceptance.

3.3.9 In the event that the Recipients find that the delivered and installed equipment does not conform to the specifications agreed under the present contract, the Recipients shall inform the Provider and the Council in writing. Should the Council consider that the information presented by the Recipients is sufficient to conclude a breach by the Provider of the conditions laid down in this contract, the Council may refuse to sign the Act of Acceptance. The Council shall pay only the amount corresponding to goods actually delivered and services actually provided at the time of breach of the contract and shall be entitled to reimbursement of any sums already paid for goods not delivered or services not provided.

3.3.10 Without prejudice to the provisions of Article 3.3.3, 3.3.6 and 3.3.9, the Council shall sign the two copies of the Act of Acceptance in acceptance of the equipment received from the Provider within a reasonable time following full equipment delivery. Upon signature by the Council of Europe, the final balance shall become due within the time limit set down in Article 4.3.

3.3.11 Following transfer of the title in the equipment to the Recipient in accordance with Article 6.4, the Council shall retain any rights, duties and claims already accrued under the contract, in particular the right to enforce delivery, refuse payment, or claim reimbursement of any sums advanced in the event of non-delivery of any part of the equipment or other non-performance of any part of the contract at any time prior to the transfer of title. The Council shall also remain liable for payment of the final balance as defined in Article 4.3.

3.3.12 The Recipients assume the risk of accidental damage or accidental loss of the equipment upon delivery. The Recipients shall indemnify the Council for any claims arising out of the storage, handling and all other form of use of the equipment by the Recipients or any third party.

3.3.13 The Recipients shall indemnify the Council against all liabilities, costs, expenses, damages and losses that the Council suffers or incurs under or in connection with the Contract after the signature of the Act of Acceptance, except to the extent that such losses, damages or costs arise as a result of the Council’s failure to perform or satisfy its obligations under the Contract before that date.

3.3.14 The Council shall take such action as the Recipients may reasonably request to avoid, dispute, compromise or defend any claim, action or proceedings brought under or in connection with the Contract after signature of the Act of Acceptance.

**3.4 Installation and demonstration of the equipment**

3.4.1 Unless otherwise agreed in writing prior to the final date of delivery, the Provider shall install the items indicated in the Terms of Reference (Section A above) at the place of delivery prior to signature of the Act of Acceptance relative to those items. The Provider shall install the goods in the locations indicated by the Council or the Recipients in advance/on the day of delivery.

3.4.2 Manuals for each item of equipment shall be provided with the equipment at the time of delivery. The manuals shall be in both English and Ukrainian/Russian. Any difference from this specification shall be notified to the Council of Europe at least 4 (four) weeks prior to delivery.

3.4.3 The Provider shall arrange for the demonstration of proper use of the equipment detailed in the Terms of Reference (Section A above), by an appropriate expert, on the day of delivery at the location indicated. Alternatively, the demonstrations shall take place at no extra cost to the Council at the latest within 2 (two) weeks of the date of delivery. Arrangements for the demonstration shall be agreed in writing with the Council of Europe and the Recipients at least 2 (two) weeks in advance of the proposed date of demonstration.

**3.5 Warranty**

3.5.1 The Provider warrants that the services and equipment comply with the standards and technical requirements recorded in the Technical Specifications (Annex I).

3.5.2 The Provider further warrants that the services and equipment comply with the standards and technical requirements established in the beneficiary country as well as the regulatory documents and State standards.

3.5.3 The Provider warrants that the material of which the equipment is made has no defects and that the equipment has been manufactured to the required standard, and is absent of defects related to the manufacturing process.

3.5.4 The Provider undertakes to replace or repair any defective part in the items listed in the Technical Specifications (Annex I) free of charge. The warranty period, as indicated in the Technical and Financial proposal in the tender submitted by the Provider and the relevant warranty certificates, is to be calculated from the earliest of the following dates: a) the date of signing of the equipment’s Act of Acceptance; b) the date when the Recipients first uses the provided equipment for the purposes intended under the Project described in the Terms of Reference (Section A above); c) the date falling on the sixtieth day after the date of equipment’s delivery to the Recipients, if the installation of the products is postponed for sixty days or more from that date for reasons beyond the control of the Provider.

3.5.5 The Provider shall not be liable to replace or repair free of charge parts damaged by normal wear and tear, unless covered by the warranty period described in the Technical and Financial proposal in the tender submitted by the Provider and the relevant warranty certificates

3.5.6 The Provider shall ensure the availability upon order of spare parts for all items of equipment listed in the Technical Specifications (Annex I) as from the date of signing of the Act of Acceptance.

3.5.7 In the event of termination of the product line for spare parts for any pieces of the equipment within 5 (five) years from the date of signing of the Act of Acceptance, the Provider shall notify the Recipients in advance so as to allow the possible purchase of spare parts in a timely manner.

3.5.8 The Provider shall provide the Recipients upon delivery with the respective and duly filled-in warranty certificates for each item of the equipment to be delivered under this contract, containing a description of the equipment, serial numbers and after-sales service terms as well as user manuals.

3.5.9 The warranty to the equipment shall not cover defects in their operation resulting from improper use of the equipment contrary to the user manuals provided for that equipment.

3.5.10 If, during the warranty period, the Recipients discover defects of the equipment which were not identified at the transfer of the equipment, the Recipients shall take all necessary measures to prevent further deterioration of the equipment and send an appropriate written notification about these defects to the Provider.

3.5.11 The Provider guarantees the correction of defects free of charge within 15 (fifteen) calendar days from the receipt of the Recipients’ notification during the warranty period. In the event that repair or replacement proves impossible within 15 days, the Provider shall notify the Recipients as soon as possible of the reason for delay and provide an estimate of the time for completion. All corrections of defects shall be completed within 60 days of the Recipients’ notification.

3.5.12 The correction of defects under warranty can be made by way of replacement or repair of the equipment.

3.5.14 The Provider shall deliver spare parts required for the repair of abovementioned defects and any damage caused by the defect in the equipment under warranty at its own expense. Where the Recipients wishes replacement spare parts to be fitted at the same time, independent of the defective part or any fault of the Provider, the Recipients shall agree to pay the market price where these goods are not covered by the warranty.

3.5.15 After the expiry of the equipment warranty period, the Provider and the Recipients may by mutual consent conclude a post-warranty service agreement for all or some of the equipment on a one-off or continuing basis.

3.5.16 All disputes concerning the warranties for the equipment shall be determined in accordance with Article 11 below.

**3.6 Health and social insurance of the Provider or its employees**

The Provider shall undertake all necessary measures to arrange for health and social insurance during the entire contract. The Provider acknowledges and accepts in this regard that the Council shall not assume any responsibility for any health and social risks concerning illness, maternity or accident which might occur during the performance of work under the contract.

**3.7 Fiscal obligations**

The Provider undertakes to inform the Council about any change of its status with regard to VAT, to observe all applicable rules and to comply with its fiscal obligations in:

a) submitting a request for payment, or an invoice, to the Council in conformity with the applicable legislation;

b) declaring all fees received from the Council for tax purposes as required in his/her/its country of fiscal residence.

**3.8 Loyalty and confidentiality**

3.8.1 In the performance of the present contract, the Provider will not seek or accept instructions from any government or any authority external to the Council. The Provider undertakes to comply with the Council’s directives for the completion of the deliverables and to refrain from any word or act that may be construed as committing the Council.

3.8.2. The Provider shall observe the utmost discretion in all matters concerning the contract, and particularly any matters or data that have been or are to be recorded that come to the Provider’s attention in the performance of the contract. Unless obliged to do so under the terms of the contract, or expressly authorised to do so by the Secretary General of the Council, the Provider shall refrain at all times from communicating to any person, legal entity, government or authority external to the Council any information which has not been made public and which has come to the Provider’s notice as a result of dealings with the Council. Nor shall the Provider seek to gain private benefit from such information. Neither the expiry of the contract nor its termination by the Council shall lift these obligations.

**3.9 Disclosure of the terms of the contract**

3.9.1 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 with a view to these latter discharging their statutory functions, as well as for the purpose of meeting the publication and transparency requirements of the Council of Europe or its donors. The Provider authorises the publication, in any form and medium, including the websites of the Council of Europe or its donors, of the title of the contract/projects, the nature and purpose of the contract/projects, name and locality of the Provider and amount of the contract/project.

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

**3.10 Use of the Council of Europe’s name**

The Provider shall not use the Council’s name, flag or logo without prior authorisation of the Council.

**3.11 Data Protection**

3.11.1 Without prejudice to the other provisions of this Contract, the Parties undertake, in the execution of this Contract, to comply at all times with the legislation applicable to each of them concerning the processing of personal data.

3.11.2 Where the Provider, pursuant to its obligations under this Contract, processes personal data on behalf of the Council, it shall:

i. Process personal data only in accordance with written instructions from the Council;

ii. Process personal data only to the extent and in such manner as is necessary for the execution of the Contract, or as otherwise notified by the Council;

iii. Implement appropriate technological measures to protect personal data against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, or damage while having regard to the nature of the personal data which is to be protected;

iv. Take reasonable steps to ensure the reliability of the Provider’s employees having access to the personal data and to ensure that they have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and thus agree to comply with the data protection obligations set out in this Contract;

v. Obtain written consent from the Council prior to any transfer of possession or responsibility for the personal data to any subcontractors. If the Council chooses to authorise subcontracting, the same data protection obligations as set out in this Contract shall be imposed on the subcontractor by way of a contract. The Provider shall remain fully liable to the Council for the performance of that subcontractor’s obligations.

vi. Notify the Council within five working days if it receives:

a. a request from a data subject to have access (including rectification, deletion and objection) to that person’s personal data; or

b. a complaint or request related to the Council’s obligations to comply with the data protection requirements.

vii. Provide the Council with full assistance in relation to any such request or complaint and assist the Council to fulfil its obligation to respond to the requests for rectification, deletion and objection, to provide information on data processing to data subjects and to notify personal data breaches;

viii. Allow for and contribute to checks and audits, including inspections, conducted or mandated by the Council or by any authorised third auditing person. The Provider shall immediately inform the Council of any audit not conducted or mandated by the Council;

ix. Not process nor transfer personal data outside the jurisdiction of a Council of Europe Member State without the prior authorisation of the Council and provided that an adequate level of protection is guaranteed by law or by ad hoc or approved standardised safeguards (such as binding corporate rules) in the jurisdiction of the Recipients;

x. Make available to the Council all information necessary to demonstrate compliance with the obligations under the Contract in connection with the processing of personal data and the rights of data subjects;

xi. Upon the Council’s request, delete or return to the Council all personal data and any existing copies, unless the applicable law requires storage of the personal data.

**3.12 Other obligations**

3.12.1 In the performance of the present contract, the Provider undertakes to comply with the applicable principles, rules and values of the Council.

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

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

**Article 4 – Fees, expenses and mode of payment**

**4.1 Fees**

4.1.1 In return for the fulfilment by the Provider of its obligations under the contract, the Council undertakes to pay the Provider the fees as indicated in their offer, in the currency specified in the Table of fees.

4.1.2 Amounts are final and not subject to review.

**4.2 VAT**

4.2.1 Should the Provider not be subject to VAT, the amount invoiced shall be a net fixed amount. Should the Provider be subject to VAT, the amount shall be invoiced as indicated in Articles 4.2.2 to 4.2.5.

4.2.2 Should the deliverables be taxable in France, the amount invoiced shall be VAT inclusive.

4.2.3 Should the deliverables be taxable in another EU country, and unless otherwise agreed between the Parties, the Council will provide the Provider with an exemption certificate prior to the signature of the contract. 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 sale/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 CoE will not be in a position to provide the said certificate, the Council will pay the invoice with VAT included.

4.2.4 Should the deliverables be taxable in a non-EU country, the amount invoiced will not include VAT if the local (national) legislation allows for it, or if the Council of Europe enjoys tax exemption through other means in the country concerned. Otherwise, it shall include VAT.

4.2.5 For the provision of “online services”, should the Provider be established either in an EU country (other than France) or in a non-EU country, the invoiced amount shall include French VAT at the applicable rate. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount ‘all tax included’. The invoice shall also stipulate the following statement: “*Intra-community sale/service: French VAT collected by the Provider and paid to the Mini One-Stop shop in [Address/Country]*”.

**4.3 Invoicing and payment**

4.3.1 Upon acceptance of the deliverables by the Council, the Provider shall submit an invoice or a request for payment in triplicate and in the currency specified in the Table of fees, in conformity with the applicable legislation.

4.3.2 Before accepting the deliverables, the Council reserves the right to ask the Provider to submit any other document or information that may serve the purpose of establishing that the Contract has been duly executed.

4.3.3 In the case of event organisation, the Provider shall in any case submit any document that proves that the event took place, including but not limited to an attendance sheet broken down into half days specifying the location, date(s) and time(s) of the event(s) or activity(ies), to be individually signed by each participant and the Provider.

4.3.4 The payment for the deliverables to be paid by the Council shall be made within 60 calendar days of submission of the invoice described in Article 4.3.1, subject to the delivery and installation of the deliverables and their acceptance by the Council.

4.3.5 In cases where an advance payment is foreseen, it shall be paid within 60 calendar days upon signature of the contract.

**4.4 Other expenses**

4.4.1 In the event of the Provider being required to travel for the purposes of the contract, and provided the Terms of reference do not stipulate that the fees already include travel and subsistence expenses, the Council undertakes, subject to its prior agreement, to reimburse travel and subsistence allowances in compliance with the Council’s applicable Rules.

4.4.2 Travel expenses referred to under 4.4.1 will be reimbursed on the basis of the rail fare (first class) or air fare (tourist class) upon presentation of an invoice on the letterhead of the relevant vouchers. Subsistence expenses (including travel expenses within the locality visited) will be reimbursed at the applicable daily rate.

4.4.3 In the event of the Provider being required to travel for the purposes of the contract, the duration of the Provider’s travel and stays will be covered by an insurance policy with the insurers CHARTIS (Policy No. 2.004.761). A telephone helpline is available in case of emergency (+ 32 (0)3 253 69 16). The said insurance will cover specific risks related to travel and stay of the Provider (including medical costs related to unforeseen illness or accident, repatriation, death, cancellation of journey or flight, theft or loss of personal possessions). The insurance policy does not cover persons over 75 years of age.

**Article 5 - Breach of contract**

5.1 In the event that the Provider does not satisfy the conditions laid down in this contract or those resulting from any modifications duly accepted in writing by both parties, in accordance with the provisions of Article 6 below, or the deliverables provided as referred to under Article 1.1 do not reach a satisfactory level, the Council shall consider there to have been a breach of contract and may consequently refuse to pay to the Provider the amounts referred to in Article 4.1 above.

5.2 In the cases described in paragraph 5.1 above, the Council reserves further, at any moment and further to prior notification to the Provider, the right to terminate the contract in all or in part. In case of termination, the Council shall pay only the amount corresponding to the deliverables actually and satisfactorily provided at the time of termination of the contract and shall request reimbursement of the sums already paid for Deliverables not provided. In case of partial termination, the obligations of the parties shall endure for all deliverables which are not subject of the notification of termination.

5.3 The outstanding sums shall be paid to the Council’s bank account within 60 calendar days from the notification in writing by the Council to the Provider regarding the outstanding sums to be paid.

**Article 6 - Modifications and transfer**

6.1 The provisions of this contract cannot be modified without the written agreement of both parties. This agreement may take the form of an exchange of emails provide it is done using the contact details specified in Article 8.

6.2 Any modification shall not affect elements of the contract which may distort the initial conditions of the tendering procedure or give rise to unequal treatment between the tenderers.

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

6.4 The parties agree that the Council may transfer this contract in full or in part, to the Recipients. Title of the goods may be transferred to the Recipients at any time by the Council. The Council may also assign the benefit of this contract to the Recipients.

6.5 The Provider may not subcontract all or part of the deliverables without the written authorisation of the Council.

**Article 7 - Case of force majeure**

7.1 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 Provider to cancel the contract.

7.2 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 8 - Communication between the parties**

8.1 The Contact point within the Council of Europe is indicated on the cover page of the Act of Engagement (See page 1 above).

8.2 The Provider can be reached through the means indicated in the Act of Engagement (see page 1 above).

8.3 Any communication is deemed to have been made when it is received by the receiving party, unless the Contract refers to the date when the communication was sent.

8.4 Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in paragraphs 1 and 2 above. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any of the other addresses listed in paragraphs 1 and 2 above. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline, provided the communication is dispatched by another means of communication without further delay.

8.5 Mail sent to the Council using the postal services is considered to have been received by the Council on the date on which it is registered by the department identified in paragraph 1 above.

8.6 Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

**Article 9 –Acceptance**

The provision of deliverables referred to in this contract shall be the subject of a special acceptance procedure, as set out in Article 3.3 above.

**Article 10 – Changes in the Provider’s situation or standing**

10.1 The Provider shall inform the Council without delay of any changes in their address or legal domicile or in the address or legal domicile of the person who may represent them.

10.2 The Provider shall inform also inform the Council without delay:

1. if they are involved in a merger, takeover or change of ownership or there is a change in their legal status;
2. where the Provider is a consortium or similar entity, if there is a change in membership or partnership.
3. if they are sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
4. if they 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 not subject to a procedure of the same kind;
5. if they have received a judgment with *res judicata force*, finding an offence that affects their professional integrity or serious professional misconduct;
6. If they 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 legal domicile;
7. If they are or are likely to be in a situation of conflict of interests.

**Article 11 - Disputes**

11.1 Any dispute regarding this Contract shall - failing a friendly settlement between the Parties - be submitted to arbitration.

11.2 The Arbitration Board shall be composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being 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.

11.3 Alternatively, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.

11.4 The Board referred to in paragraph 2 of this Article or, where appropriate, the arbitrator referred to in paragraph 3 of this Article, shall determine the procedure to be followed.

11.5 If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide ex aequo et bono having regard to the general principles of law and to commercial usage.

11.6 The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

**Article 12 - Addresses and bank details of the parties**

The bank details of the Provider are indicated on the first page of this Act of Engagement. The bank details of the Council of Europe are the following:

Bank address: F-67075 Strasbourg Cedex, France

Bank name: Société Générale Strasbourg

Code IBAN: FR76 30003 02360 001500 1718672

SWIFT Code: SOGEFRPP

1. Which has its seat Allée de l’Europe, 67075 Strasbourg Cedex, France [↑](#footnote-ref-2)