

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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## **SUPPLEMENTARY GENERAL CONDITIONS**

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### **IT SERVICES**

## TABLE OF CONTENTS

<b>PART 1 - INTRODUCTION .....</b>	<b>4</b>
ARTICLE 1 - SCOPE.....	4
ARTICLE 2 – DEFINITIONS.....	4
ARTICLE 3 – GENERAL OBLIGATIONS OF THE PARTIES .....	5
ARTICLE 4 – SECURITY OBLIGATIONS.....	6
ARTICLE 5 – PROTECTION OF THE WORKFORCE AND WORKING CONDITIONS .....	7
ARTICLE 6 - PROTECTION OF THE ENVIRONMENT.....	7
ARTICLE 7 – COMPENSATION FOR DAMAGE .....	7
ARTICLE 8 – INSURANCE .....	7
<b>PART 2 – PRICE AND SETTLEMENT .....</b>	<b>7</b>
ARTICLE 9 – PRICE .....	7
ARTICLE 10 – OTHER ASPECTS OF THE SETTLEMENT ARRANGEMENTS .....	8
ARTICLE 11 – SETTLEMENT IN THE CASE OF A CONSORTIUM OR SUBCONTRACTING.....	10
<b>PART 3 – DEADLINES .....</b>	<b>11</b>
ARTICLE 12 – PERIOD FOR PERFORMANCE.....	11
ARTICLE 13 – PENALTIES.....	11
ARTICLE 14 – BONUSES FOR EARLY SUPPLY OF DELIVERABLES .....	13
<b>PART 4 – IMPLEMENTATION .....</b>	<b>13</b>
ARTICLE 15 – PLACES OF IMPLEMENTATION.....	13
ARTICLE 16 – ITEMS MADE AVAILABLE TO THE PROVIDER .....	13
ARTICLE 17 – PREPARATION OF PREMISES INTENDED FOR THE MATERIAL TO BE USED IN THE CONTRACT.....	14
ARTICLE 18 – STORAGE, PACKAGING AND TRANSPORT .....	14
ARTICLE 19 – DELIVERY .....	14
ARTICLE 20 – UPDATES AND NEW VERSIONS OF THE SOFTWARE – TECHNICAL DOCUMENTATION .....	15
ARTICLE 21 – FACTORY SURVEILLANCE.....	15
<b>PART 5 – MONITORING THE PROVISION OF DELIVERABLES – GUARANTEE .....</b>	<b>15</b>
ARTICLE 22 - INSTALLATION AND ACTIVATION .....	15
ARTICLE 23 – VERIFICATION OPERATIONS.....	15
ARTICLE 24 – QUANTITATIVE VERIFICATIONS .....	16
ARTICLE 25 – QUALITATIVE VERIFICATIONS.....	16
ARTICLE 26 – DECISIONS FOLLOWING VERIFICATION .....	17
ARTICLE 27 – ACCEPTANCE, DEFERRAL, REDUCTION IN PRICE AND NON-ACCEPTANCE.....	18
ARTICLE 28 – TRANSFER OF OWNERSHIP.....	19
ARTICLE 29 – GUARANTEE .....	19
<b>PART 6 – SPECIFIC PROVISIONS RELATING TO MAINTENANCE, APPLICATION MANAGEMENT AND OUTSOURCING.....</b>	<b>20</b>
ARTICLE 30 - DEFINITIONS .....	20
ARTICLE 31 – MAINTENANCE OF DELIVERABLES.....	21
ARTICLE 32 – TERMINATION OF THE PROVISION OF DELIVERABLES.....	22
ARTICLE 33 – REVERSION AND TRANSFER.....	22
<b>PART 7 – USE OF THE RESULTS .....</b>	<b>22</b>
ARTICLE 34 – DEFINITION OF RESULTS .....	22
ARTICLE 35 – RULES GOVERNING PRIOR KNOWLEDGE .....	22
ARTICLE 36 – RULES GOVERNING INTELLECTUAL PROPERTY RIGHTS RELATING TO STANDARD SOFTWARE .....	23
<b>PART 8 – TERMINATION OF THE CONTRACT.....</b>	<b>32</b>

ARTICLE 38 – GENERAL PRINCIPLES..... 32  
ARTICLE 39 – CANCELLATION FOR REASONS NOT STIPULATED IN THE CONTRACT ..... 32  
ARTICLE 40 – TERMINATION FOR EVENTS ASSOCIATED WITH THE CONTRACT ..... 33  
ARTICLE 41 – TERMINATION FOR PROVIDER’S FAULT ..... 33  
ARTICLE 42 – TERMINATION FOR REASONS OF GENERAL INTEREST ..... 34  
ARTICLE 43 – TERMINATION ACCOUNT ..... 34  
ARTICLE 44 – RETURN OF DELIVERABLES AND MATERIAL RESOURCES NECESSARY FOR THE PERFORMANCE OF CONTRACTS..... 35  
ARTICLE 45 – SUPPLY OF THE DELIVERABLE AT THE PROVIDER’S RISK AND EXPENSE ..... 35  
ARTICLE 46 – SUMMARY LIST OF EXCEPTIONS TO THE GENERAL CONDITIONS ..... 36  
ARTICLE 47 – VARIOUS PROVISIONS ..... 36

## **PART 1 - INTRODUCTION**

### **Article 1 - Scope**

These general provisions shall apply to contracts for IT services, entered into by the Council of Europe and the Provider, which make express reference hereto. They supplement the Council of Europe General Conditions. Specific contractual documents may provide for exceptions to certain of the provisions contained herein.

### **Article 2 – Definitions**

For the purposes of this document:

- The “Provider” is the business undertaking that has entered into the contract with the Council of Europe. In the event of a consortium of business undertakings the “Provider” shall signify the members of the consortium, represented, if appropriate, by their authorised agent;
- “Notification” is the action whereby information or a decision is communicated to the contracting party or parties by any material or digital means permitting identification of the date of receipt. The date of receipt, which may be referred to in an acknowledgement of receipt, is considered to be the date of notification;
- “Deliverables” signifies, depending on the purpose of the contract, goods or services, particularly relating to information technology or telecommunications; "Notification" is the act of communicating information or a decision to a contracting party or parties by any physical or electronic means enabling the date and time of its receipt to be established with certainty. The date and time of receipt, which may be entered on a receipt acknowledgment, shall be considered to be the date and time of the notification.
- The “purchase order” is the Council of Europe decision specifying the means by which the deliverables provided for in the contract shall be supplied;
- “Acceptance” is the decision by which, after verification, the Council of Europe acknowledges that these deliverables comply with the provisions of the contract. The acceptance decision constitutes formal acknowledgement that a deliverable has been accepted and constitutes the start of the period covered by a guarantee;
- “Deferral” is the decision taken by the Council of Europe when it considers that deliverables are acceptable subject to certain modifications by the Provider;
- “Reduction in price” is the Council of Europe decision to reduce the level of payment to the Provider when it considers that the deliverables supplied do not fully comply with the provisions of the contract, but can still be accepted as they stand;
- “Rejection” is the decision taken by the Council of Europe when it considers that the deliverables cannot be accepted, even after deferral or reduction in price;
- “Software” refers to the body of programmes, procedures and rules related to the operation of data processing and the accompanying documentation. The simple term software used in this document refers equally to standard and specific software;
- “Standard software” is software designed by the Provider or a third party to be supplied to several users to perform the same function;
- “Specific software” is software specially designed by the Provider to provide a solution tailored to the Council of Europe’s particular requirements. It may be an original piece of work created from scratch or one that is adapted, with the aid of specific developments, from existing forms of standard or specific software;
- An “application” is the body of software necessary to perform a particular task.

### **Article 3 – General obligations of the parties**

#### **3.1. Form of notifications and items of information**

Notification to the Provider of Council of Europe decisions or information incorporating a deadline shall be delivered:

- directly to the Provider or its duly qualified representative, or;
- by electronic/dematerialised means; or;
- by any other means permitting formal acknowledgement of the date of acceptance of the decision or information.

Such notification may be sent to the address of the Provider specified in the Provider's bid or, failing that, to its registered office, unless these documents require it to elect another domicile.

In the case of a consortium, notification shall be delivered to the consortium's designated agent.

#### **3.2. Arrangements for calculating deadlines for submitting deliverables**

3.2.1. Any time-limit stipulated in the contract shall begin running at 00.00 hours on the day following the date of the event from which the time-limit is calculated. The applicable dates and times are those used in the Specific contractual documents for the supply or implementation of deliverables.

3.2.2. When a time-limit is laid down in days, it shall be understood to be expressed in calendar days and shall expire at midnight on the last day of the time-limit.

3.2.3. When a time-limit is laid down in working days, it shall be understood to exclude Saturdays, Sundays and public holidays. If the last day of the time-limit is a Saturday, Sunday or public holiday, the time-limit shall be extended to the end of the first subsequent working day at midnight.

3.2.4. The period applicable to the Provider does not include the period required by the Council of Europe to carry out verification operations and take its decision pursuant to the relevant provisions of this contract.

#### **3.3. Representation of the Council of Europe**

As from notification of the contract, the Council shall appoint a natural person authorised to represent it in dealings with the Provider for the purposes of performing the contract. Other natural persons may be authorised by the Council during the performance of the contract. As from the notification of their name(s) to the Provider, by the required date or contractual deadline, the representative(s) shall be deemed to have sufficient authority to take any necessary decisions binding the Council.

#### **3.4. Representation of the Provider**

3.4.1. After notification of the contract, the Provider shall nominate one or more persons with authority to represent it in dealings with the Council of Europe in connection with performance of the contract. Other persons may be authorised by the Provider in the course of the contract's performance. As from the notification of their name(s) to the Council, by the required date or contractual deadline, the representative(s) shall be deemed to have sufficient authority to take any necessary decisions binding the Provider.

3.4.2. The Provider shall be required to notify the Council of Europe immediately of any modifications occurring in the course of the contract's performance concerning:

- the persons authorised to enter into commitments on its behalf;
- the legal form under which they exercise their activity;
- the information it has supplied concerning acceptance of a sub-contractor or terms of payment; and in general any significant changes its operations that could influence the performance of the contract.

### 3.5. Joint contracting

In the event of the default or failure to perform of the agent representing the relevant consortium, the members of the consortium shall appoint a replacement. Failing that, and after a period of eight days following notification of the Council of Europe's instruction to take action, the joint Provider listed in second position in the contract shall become the new agent representing the consortium.

### 3.6. Assignment of the contract and subcontracting contracts for deliverables

3.6.1. The holder of a contract for deliverables wishing to subcontract part of it shall seek the Council of Europe's approval of each sub-contractor and ensure by contractual means that the sub-contractor agrees to all the relevant provisions of this contract.

3.6.2. Following signature of the special instrument recording its approval of the sub-contractor, the Council of Europe shall communicate to the Provider and each of the sub-contractors concerned a copy of the special instrument applicable to them. Following receipt of the relevant notification the Provider shall inform the Council of Europe of the person authorised to represent the sub-contractor.

3.6.3. The Provider is required to forward the contract governing the subcontracting arrangements and any supplementary agreements to the Council of Europe if it so requests. If the Provider fails to do so within fifteen days of receipt of notice to that effect from the Council of Europe, the Provider shall incur a penalty equal to 1/3 000 of the value of the contract before tax or of the part of the contract concerned, possibly modified by a supplementary agreement, or, failing that, of the amount of the purchase order concerned. This penalty shall apply to each day by which the period is exceeded.

### 3.7. Purchase orders

3.7.1. The Council of Europe shall notify the Provider of any purchase orders.

3.7.2. When the Provider considers that the provisions of a purchase order notified to it call for its comments it shall transmit them to the signatory of the purchase order concerned within fifteen days of its acceptance, after which they will be out of time.

3.7.3. The Provider shall comply with purchase orders of which it is notified, whether or not it has commented on them.

3.7.4. In the case of joint contracting, purchase orders shall be sent to the consortium's authorised agent, who has sole authority to submit comments to the Council of Europe.

3.7.5. When a framework contract which provides for a minimum purchase level has reached its expiry, if the total amount of purchase orders placed by the Council of Europe has not reached the minimum laid down in the contract, in value or in quantity, the Provider is entitled to compensation equal to the profit margin which it would have earned on the difference between the deliverables actually supplied under the contract and the minimum set down in the contract.

## Article 4 – Security obligations

4.1 The Provider shall comply with the safety, security and access measures in force within the Council.

4.2 The Provider may not use this as justification for extending the deadline for performance of the contract, for compensation or for a price increase, unless the Provider is only informed of the relevant measures after submission of its tender and can demonstrate that the obligations that they entail necessitate an extension of the period required to supply the deliverables provided for in the contract or make it more difficult or costly for it to perform the contract.

4.3 Use of the Council of Europe's information system is governed by Instruction No. 47 of 28 October 2003 on the use of the Council of Europe's information system, of which the Provider shall acknowledge that it has taken notice.

## **Article 5 – Protection of the workforce and working conditions**

- 5.1. The Provider's obligations are those provided for in the laws and regulations governing protection of the workforce and working conditions in force when the contract is performed, in the country where the workforce is employed.
- 5.2. The Provider shall inform its sub-contractors that the obligations listed in this article are applicable to them and is responsible for compliance with them.

## **Article 6 - Protection of the environment**

The Provider shall ensure that the deliverables it supplies during performance of the contract comply with legislative and regulatory requirements in force in connection with the environment, personal health and safety and neighbourhood conservation. It must be able to show evidence of this, at the Council of Europe's request, during the deliverable guarantee period.

## **Article 7 – Compensation for damage**

- 7.1. The Provider shall bear the cost of damage or detriment of any nature to Council of Europe personnel or property caused by the Provider in the performance of the contract. The Council of Europe shall bear the cost of damage or detriment of any nature to the Provider's personnel or property caused by the Council of Europe in the performance of the contract.
- 7.2. For as long as items remain the property of the Provider, in the absence of fault by the Council of Europe, the Provider shall be solely responsible for damage suffered by these items arising from any cause other than exposure to formally acknowledged artificial radioactivity or natural disasters. This provision does not apply in the case of additional equipment supplied by the Council of Europe to the Provider's material that causes damage to the latter.
- 7.3. The Provider shall guarantee the Council of Europe against damage or destruction caused by the material it supplies or the actions of its employees affecting the premises where the material is used, and this shall include any claims by neighbours.

## **Article 8 – Insurance**

- 8.1. The Provider shall take out insurance guaranteeing its liability with regard to the Council of Europe and third parties suffering accidents or damage caused by the supply of deliverables.
- 8.2. It must demonstrate, within a period of fifteen days from notification of the contract and before any commencement of its activities, that it has taken out such insurance, by means of a certificate setting out the extent of the guaranteed liability. At any time during the performance of the contract, the Provider must be able to produce this certificate, at the Council of Europe's request, within fifteen days of receipt of the request.

## **PART 2 – PRICE AND SETTLEMENT**

### **Article 9 – Price**

- 9.1. General rules
  - 9.1.1. The prices are deemed to be firm and in principle are not revisable.
  - 9.1.2. When firm prices are subject to updating and/or review, the adjustment coefficient shall be rounded up to the nearest thousandth of one percent.
  - 9.1.3. The prices are deemed to include all taxes and other charges to which the deliverables are obligatorily liable, costs relating to preparation, storage, packaging, insurance and transport to the place of delivery, costs arising from the application of Article 16.1.2 and any other expenses necessary for the supply of deliverables, risk margins and profit margins. The Provider shall be liable for costs incurred by its failure to request dispatch documentation for administrative

purposes or its delays in submitting this request. The Provider shall be liable for handling or transport costs arising from the deferral or rejection of deliverables.

#### 9.1.4. Contracts containing maintenance services

The Provider's maintenance charges shall include the cost of parts, tools or ingredients and the related labour costs, including travel expenses and any expenses incurred in making the modifications referred to in Article 31. Maintenance charges do not cover the following services, for which the Council of Europe is liable:

- delivery or exchange of consumable supplies or accessories, painting and the external cleaning of material;
- modifications requested by the Council of Europe to the material specifications provided for in the contract;
- repair of operational malfunctions that are the fault of the Council of Europe or the use of material that is incompatible with the rules laid down in the documents supplied by the Provider;
- repair of operational malfunctions caused by defects in installations that are the Council of Europe's responsibility;
- repair of operational malfunctions caused by the addition of material from another source by a person other than the Provider or a person that it has designated to install this material.

#### 9.2. Determination of the settlement price

9.2.1. When the contract stipulates that the price to be paid is based on the application of a provision in the regulations, a schedule, tariff, market price list, indicator or index, or any other basis not included in the contract, the basis to be taken into account is the one in force on:

- the day of delivery or the completion of supply of deliverables, if these are carried out within the period set by the Council of Europe or if the Council of Europe has not set a deadline;
- the final date set by the Council of Europe for delivery or the completion of supply of deliverables, when the specified deadline is exceeded.

9.2.2. When the Specific contractual documents provide, as an exception to the principle laid down in Article 9.1.1, for a revision of the prices, these shall be revised on the date or according to the frequency laid down in the Specific contractual documents. However, when the price includes a significant proportion of raw materials or products that are directly affected by fluctuations in world prices, prices shall be revised at least once every three months from the date of notification of the contract. The conditions governing the revision of prices shall be laid down in the Specific contractual documents. The prices to be paid are those applicable on the day of delivery or the completion of supply of deliverables.

9.2.3. When prices may be revised, the revision coefficient shall be rounded up to the nearest thousandth.

### **Article 10 – Other aspects of the settlement arrangements**

#### 10.1 Invoicing

Invoicing shall be in conformity with the terms of the current contract

#### 10.2 Advances

Unless otherwise provided for in the Specific contractual documents, there shall be no payment of advances. In no case shall any advance provided for exceed 30% of the total value of the contract or of the relevant component, or be payable without a reasoned request from the Provider which has been approved in writing by the Council of Europe.

#### 10.3 Instalments

When the contract only specifies the frequency of instalments, the amount of each of them is decided on by the Council of Europe, on the basis of a description of the deliverables supplied and their cost, submitted by the Provider. Each instalment must be preceded by a request for payment. They must not in any event exceed 30% of the total amount of the contract or of the relevant component.

#### 10.4. Requests for payment



When the Provider submits a request for payment to the Council of Europe, this shall include the necessary documentation to justify the payment.

#### 10.5. Content of request for payment

10.5.1. A request for payment must be dated. It shall include the contract references and, as appropriate:

- the quantity of deliverables accepted, drawn up according to the stipulations of the contract, before VAT and, where appropriate, reduced by any reductions in price fixed pursuant to Article 27.3;
- the breakdown of fixed prices or details of the unit prices when these aspects are specified in the specific contractual documents or when, pursuant to the provisions of the contract, the deliverables supplied are incomplete or are non-compliant;
- if payment is provided for at the end of certain stages of performance of the contract, the sum corresponding to the relevant period;
- in the case of a consortium, for each business operator, the value of deliverables supplied by that operator;
- in the case of subcontracting, the nature of the deliverables supplied by the sub-contractor, their total value before tax, their value after tax and, if appropriate, the price variations before and after tax;
- if appropriate, compensation, bonuses and retentions other than holdbacks, calculated in accordance with the provisions of the contract.

10.5.2. In the case of deliverables supplied at the expense and risk of a defaulting Provider, the additional cost borne by the Council of Europe, corresponding to the difference between the price that it should have paid to the Provider for the supply of deliverables and the price actually paid for their supply on behalf of the defaulting Provider, is deducted from the sums payable to the Provider for deliverables accepted.

10.5.3. The request for payment shall specify the elements that are subject to VAT and distinguish between them according to the applicable rate.

10.5.4. Unit prices may be split to take account of deliverables currently being produced.

10.5.5. Fixed payments may be split if the deliverable or part of a deliverable to which the price applies has not yet been supplied. A fraction of the price is then calculated based on the percentage of the deliverable supplied. To calculate this percentage, the Council of Europe may ask for a breakdown of the prices referred to in Article 10.5.1.

10.5.6. The Provider prepares its invoices according to Article 3.9 and according to any recommendation shown in the Specific contractual documents.

#### 10.6. Calculation of the sum owed by the Council of Europe for deliverables supplied

10.6.1. The amounts due may be calculated on the basis of a report drawn up by both parties, when this is provided for in the Specific contractual documents.

10.6.2. When the contract provides for the payment of instalments at the end of certain stages of the contract performance, and it specifies the proportion of the price to be paid on completion of each of them, the request for payment shall comprise:

- for each part of the contract performed, the corresponding proportion;
- for each part of the contract commenced, with the agreement of the Council of Europe, a fraction of the corresponding proportion, equal to the percentage of the relevant deliverables actually supplied.

#### 10.7. Submission of the request for payment

10.7.1. The payment request shall be submitted on:

- the dates stipulated in the contract, or;
- after receipt of the deliverables, pursuant to the stipulations of the contract, or;
- in the case of deliverables that are supplied on a continuing basis, at the start of each month for the deliverables supplied in the preceding month. The Provider shall then submit to the Council of Europe a monthly payment request, drawn up at the end of the previous month,

showing the total amount of the payments claimed for the performance of the contract since the start of that month, or;

- the stipulated dates for the payment of instalments.

10.7.2. The request for payment may indicate the supplies that, pursuant to the contract or by agreement between the parties, have been paid for, even though they are still in the Provider's stores.

10.8. Acceptance by the Council of Europe of the payment request

The Council of Europe shall accept or modify the payment request. It may possibly supplement it by adding the advances for repayment, bonuses and reductions in price imposed. It will calculate the amount for payment and if this differs from the amount shown on the payment request this shall be notified to the Provider.

10.9. Final payment and final partial payments

10.9.1. The payment request shall be sent to the Council of Europe after the decision has been taken to accept it. The payment request may also give rise to a partial final payment for the deliverables supplied, if the Specific contractual documents provide for payments following the supply of certain parts of the deliverables stipulated in the contract.

10.9.2. If, after being instructed to so, the Provider fails to submit its payment request within forty-five days of acceptance of the deliverables, the Council of Europe may make the settlement of its own motion, based on a statement that it itself has drawn up. This statement shall be notified to the Provider.

10.9.3. In the event of a dispute about the amounts owed, the Council of Europe shall pay the amount that it has accepted. After the dispute has been settled it shall, if necessary, pay the balance, together, if necessary, with the default interest applicable from the date the Provider presented its request.

## **Article 11 – Settlement in the case of a consortium or subcontracting**

11.1. Provisions relating to consortia

11.1.1. In the case of a severally-liable consortium, each member of the consortium shall receive directly the payments relating to the supply of its own deliverables.

11.1.2. In the case of a jointly-liable consortium, the payment is made to a single account opened in the name of the members of the consortium or of the authorised agent, unless the contract provides for the apportionment of payments between the members of the consortium and lays down the arrangements for this apportionment.

11.1.3. Whatever the form of the consortium, the agent has sole authority to submit the payment request to the Council of Europe. In the case of a severally-liable consortium, the payment request presented by the agent shall be broken down into as many parts as there are members of the consortium to be paid separately. Each part shall include the information necessary for payment of the undertaking concerned.

11.1.4. The agent has sole authority to draw up or submit claims on behalf of consortium members.

11.2. Provisions relating to subcontracting

Deliverables supplied by sub-contractors shall be paid for in accordance with the conditions specified in the contract or in a specific agreement.

## **PART 3 – DEADLINES**

### **Article 12 – Period for performance**

#### 12.1. Commencement of the performance period

12.1.1. The period for performing the contract starts on the date of its notification.

12.1.2. The period for the performance of a purchase order starts on the date of its notification.

12.1.3. The period for performance of a conditional stage of work starts on the date of notification of the confirmation decision.

#### 12.2. Expiry of the performance period

12.2.1. In the case of deliverables delivered to or produced in the Council of Europe premises, the expiry date for the performance period is the date of delivery or the completion of the deliverables.

12.2.2. When the contract stipulates that acceptance will take place in the Provider's premises, the expiry date for the performance period is the one scheduled for acceptance.

12.2.3. In the case of intellectual deliverables, the expiry date for performance is the date on which the relevant results are presented to the Council of Europe, pending the start of verification operations.

12.2.4. If the Provider fails to complete performance by the final date of validity of the contract, the performance period for deliverables shall expire on the final date of validity of the contract, with the exception of purchase orders issued during the contract's validity period.

#### 12.3. Extending the performance period

12.3.1. When the Provider is unable to meet the deadline for performance, because of either the Council of Europe's action or an event constituting force majeure, the Council of Europe shall extend the performance period. The extended deadline shall have the same effects as the contractual period.

12.3.2. To justify this extension, the Provider shall indicate to the Council of Europe the factors causing the delay in performing the contract within the stipulated period. It must make such a request within a period of fifteen days of the date on which the relevant events occurred or, if the contract is due to expire in fewer than fifteen days, within the period up to the expiry of the contract. It shall also inform the Council of Europe in its request of the length of the extension sought.

12.3.3. The Council of Europe shall have fifteen days, from the date of reception of the Provider's request, to notify it of its decision, on condition that the contract has not reached its expiry date before the end of this period.

Unless the contract is not itself intended to provide a response to a situation of extreme urgency resulting from unforeseeable circumstances, the request for an extension cannot be refused when the delay is the result of the service provider's involvement in an extremely urgent contract resulting from unforeseeable circumstances.

The performance period of the contract shall be extended by the time necessary to perform the requirements of the extremely urgent contract.

12.3.4. No request for an extension of the performance period may be presented after expiry of the contracted period for supply of the deliverable.

### **Article 13 – Penalties**

#### 13.1. Penalties for late delivery

13.1.1. The penalties for late delivery shall take effect, without the need for prior notice, on the day after the expiry date of the contractual period for supply of the deliverables, subject to the stipulations of Articles 12.3 and 19.4.

The penalty is calculated according to the following formula:

$$P = V * R / 1\ 000$$

In which:

P = the amount of the penalty;

V = the value of the deliverables on which the penalty calculation is based, this value being equal to the base price cost, before price variations and not including VAT, of the portion of the deliverables that is supplied late or of all the deliverables, if the delay in supplying one part makes the whole package unusable;

R = the number of days late.

13.1.2. Once the level of penalties has been calculated, the variation formula stipulated in the contract shall apply.

13.1.3. The Provider shall be exempt from penalties if the total does not exceed EUR 300 (before tax) for the whole of the contract.

### 13.2. Penalties for unavailability

13.2.1. Material is deemed to be unavailable if, through no fault of the Council of Europe and aside from preventive maintenance work, its use has been made impossible because of the defective operation of an element or system or of a component functionality, or because of the unavailability of another element of the material to which it is linked by connections supplied and maintained by the Provider and for which it is responsible for performing the work underway at the time of the incident.

13.2.2. The unavailability period starts:

- in the case of on-site maintenance, at the time of arrival of the request to the Provider to take action. If the Provider's staff access to the defective material is delayed through the Council of Europe's action the unavailability period is suspended until the time when this access becomes effective;
- in the case of maintenance in the Provider's premises, from the time of the return of the defective item to the Provider or its representative, in a place specified in the contract.

13.2.3. Any software specified in the contract shall be deemed to be unavailable if it cannot be used because of an operational defect identified by the Council of Europe. The unavailability applies to the most recent version activated by the Council of Europe.

The Provider shall undertake to make the defective software available for the Council of Europe's use within a period of twenty-four hours, according to the provisions of Article 13.2.6, or, failing that, to make available an alternative solution with equivalent functionalities.

If new defects are observed in the software in question, the Provider shall be required to make fresh corrections subject to the same conditions.

During this period, and until the software becomes useable again, the material that the Council of Europe cannot use, because of the unavailability of an item of software, shall be deemed to be unavailable. The penalties shall then be calculated in accordance with the final sub-section of Article 13.2.6.

Payment for the usage rights of the unavailable software shall be suspended.

13.2.4. The unavailability period ends when the items concerned are once more placed at the Council of Europe's disposal, in working order. However, if the repaired items once again become unavailable, for the same reasons, within eight hours of use after their refurbishment, the length of the unavailability period is calculated from the initial unavailability finding.

13.2.5. The Provider is required to inform the Council of Europe of the likely period of unavailability if this exceeds the relevant threshold specified in Article 13.2.6.

13.2.6. Other than in cases of force majeure, if the observed unavailability period exceeds the relevant threshold, the Provider shall be liable to penalties.

The thresholds are:

- eight working days for on-site maintenance;
- fifteen consecutive days for maintenance in the Provider's premises.

The penalty is calculated according to the following formula:

$$P = (V \cdot R) / 30;$$

P = the amount of the penalty;

V = the value of the monthly payment for maintenance;

R = the number of days of delay.

#### **Article 14 – Bonuses for early supply of deliverables**

There shall be no bonuses for early completion of performance.

### **PART 4 – IMPLEMENTATION**

#### **Article 15 – Places of implementation**

- 15.1. The Provider shall inform the Council of Europe, on request, of the location where deliverables will be produced. The Council of Europe may monitor implementation on site. Access to sites where operations are performed is restricted to the Council of Europe's representatives. The persons it appoints for that purpose shall only have free access to the areas concerned by the supply of deliverables provided for in the contract, and shall comply with the safety regulations applicable to the site. They shall be bound by the confidentiality requirements provided for in the general conditions.
- 15.2. If the Provider impedes the Council of Europe's exercise of its right of supervision during performance of the contract it shall be liable to the penalties laid down in Article 41.

#### **Article 16 – Items made available to the Provider**

- 16.1. The provisions of this article apply when the Council of Europe provides the Provider with items necessary for producing the deliverable. When these items are the property of the Council of Europe they shall be placed free of charge at the Provider's disposal for the performance of the contract.
  - 16.1.1. A report drawn up by both parties may be prepared at the Council of Europe's request to record the state of these items when they are first supplied to the Provider. This report shall be signed by both parties. It will record the value of these items. The date on which the items are made available will be that on which the report is drawn up.
  - 16.1.2. The Provider is responsible for the storage, maintenance and use of all the items entrusted to it, once these items have been placed at its disposal. They can only be used to fulfil the purpose of the contract. Documentation and any training necessary for the use of any of the items entrusted to the Provider shall be provided by the Council of Europe when they are made available.
  - 16.1.3. Once the contract has been fulfilled or terminated, or after the period laid down in the contract, the items concerned shall be returned to the Council of Europe.
  - 16.1.4. If one of these items is damaged, destroyed or lost, the Provider is obliged to repair it, replace it or repay the residual value at the time of its disappearance or damage.
  - 16.1.5. If the Provider fails to comply with the obligations in sub-paragraphs 2 to 4 above, the Council of Europe may suspend payment of sums owed under the contract equal to the estimated value of the detriment suffered, until these obligations have been met.
- 16.2. Apart from the penalties specified above, the contract may be terminated, pursuant to Article 41, in the event of failure to present, misuse or inappropriate use of the items supplied to the Provider.

## **Article 17 – Preparation of premises intended for the material to be used in the contract**

The Council of Europe shall prepare, at its own expense, the premises to be used to install the material and, if appropriate, and after consulting the Provider, provide for its maintenance and the provision of fluids. The Council of Europe shall inform the Provider that the premises are available. This information shall be supplied at least fifteen days before delivery of the material. These preparations must be completed before the planned delivery date.

## **Article 18 – Storage, packaging and transport**

### 18.1. Storage

18.1.1. If the Specific contractual documents include an obligation to store items in the Provider's premises, the latter shall bear depositary's liability for a period specified in those documents, starting from the time of their acceptance.

18.1.2. If storage takes place in Council of Europe premises, the latter shall bear depositary's liability until the acceptance decision.

### 18.2. Packaging

18.2.1. Packaging must be of an appropriate standard for the transport conditions and arrangements specified in the Specific contractual documents. It shall be the Provider's responsibility.

18.2.2. The packaging shall remain the property of the Provider.

### 18.3. Transport

Transport to the place of delivery shall be the Provider's responsibility. It is also responsible for the preparation, loading, stowage and unloading of deliverables.

## **Article 19 – Delivery**

19.1. Any deliveries carried out by the Provider shall be accompanied by a delivery purchase order or a list, drawn up separately for each recipient, and specifying in particular:

- the date of dispatch;
- the purchase order or contract reference;
- the identity of the Provider;
- details of the items delivered and, when appropriate, the contents of each package;
- the manufacturer's lot number or numbers, in cases where this is required by the labelling regulations.

Each package must show, in a visible fashion, its purchase order number, as it appears on the delivery order or list. It will include an inventory of its contents.

19.2. Delivery is acknowledged by the issuing of a receipt to the Provider or by the signature of the delivery order or list, with a copy going to each party. If delivery is impossible, this must be recorded on one of these documents.

19.3. If the layout or location of the designated premises creates exceptional handling difficulties, not provided for in the Specific contractual documents, the resulting additional delivery costs shall be paid for separately. A supplementary document will be drawn up for these handling services.

19.4. The Provider may be granted an extension to the delivery date if, apart from the reasons for extending deadlines provided for in Article 12, a factor outside its control prevents the performance of the contract within the contractual period. The Provider may also be granted a delivery extension if it can show that it is justified by specific measures and precautions linked to the means of transport and delivery to reduce their environmental impact.

The delivery period extension also suspends, for a length of time equal to its duration, the application of penalties for late delivery.

The formalities for the granting of a delivery period extension are the same as those for the extension of deadlines specified in Article 12.3. The Provider may not request an extension of

the delivery period in connection with events occurring after expiry of the contract performance period, possibly as already extended.

## **Article 20 – Updates and new versions of the software – technical documentation**

### 20.1. Updates and new versions of the software

When the deliverables include the delivery of standard or specific software, they shall also include, during the period of the contract, delivery of the relevant updates and of new versions. The price of these updates or new versions is included in the contract price.

### 20.2. Technical documentation

The Provider shall deliver, with each item of equipment or software, technical documentation in French with instructions for their application or use. The same applies to each delivery of updates or new versions of the software. The price of this technical documentation shall be included in the contract price. The technical documentation shall include the composition and characteristics of the equipment or software, and current procedures for its use. It must be supplied upon or before the delivery of the relevant equipment, software, updates or new versions.

## **Article 21 – Factory surveillance**

21.1. When the Specific contractual documents provide for factory surveillance of the production of deliverables, the Provider shall comply with the provisions of this article. It shall notify the Council of Europe of the various plants, workshops or sites in which the various stages of the provision of these deliverables will take place. It will undertake to arrange free access for the Council of Europe to these plants, workshops or sites and will supply it, free of charge, with the necessary means and resources to carry out this task.

21.2. The Provider shall notify the Council of Europe, in good time, of all the operations that the latter has stated a wish to observe; if it fails to do so, the Council of Europe may either require the operations to be carried out again or refuse to accept the deliverables pertaining to the operations that it is unable to monitor. The Council of Europe must be notified immediately of any events likely to modify the planned performance of these operations.

21.3. In the course of the production of deliverables, the Council of Europe shall advise the Provider of any aspect of the deliverable that is unsatisfactory.

21.4. Exercise of this surveillance shall not affect the sole responsibility of the Provider and shall not limit the Council of Europe's right to refuse to accept deliverables recognised as defective when verifications are carried out.

21.5. Authorised representatives of the Council of Europe who, in performing their duties, are informed of means of production or any other information pertaining to the Provider shall be subject to the obligation of confidentiality laid down in the General Conditions. Their travel expenses and remuneration in connection with these surveillance activities shall be met in full by the Council of Europe.

## **PART 5 – MONITORING THE PROVISION OF DELIVERABLES – GUARANTEE**

### **Article 22 - Installation and activation**

The installation and activation of the equipment and software shall be carried out by the Provider. For this purpose, the Provider shall have one month from the contractual date of delivery to complete the activation process. It shall submit an activation report to the Council of Europe, stating whether it will be present at the verification operations. The period initially laid down for the activation process may be interrupted or extended as provided for in Article 12.3.

### **Article 23 – Verification operations**

23.1. The starting point of the verification period

For verifications carried out in the Provider's premises, the verification period begins on the date on which the Provider notifies the Council of Europe in writing that the deliverables are ready for verification. For verifications carried out in Council of Europe premises, the verification period begins on the date on which the Provider submits the activation report to the Council of Europe.

### 23.2. Verification costs

23.2.1. Whatever the results of the verifications, where verification operations are carried out, in accordance with the contract, in its own premises, the associated costs shall be borne by the Council of Europe. In all other cases, they shall be borne by the Provider.

However, when one of the parties has agreed to have verifications carried out in its own premises when, in accordance with the contract, these tests should have been carried out in those of the other party, the corresponding costs shall be borne by the party in whose premises the verifications should have been carried out.

23.2.2. The Provider shall advise the Council of Europe of the date from which the deliverables can be presented for verification.

### 23.3. Presence of the Provider

The Council of Europe shall inform the Provider of the days and times set for the verifications, to enable it to attend or be represented. The absence of the duly informed Provider, or its representative, shall not prevent the verification operations from taking place or render them invalid.

### 23.4. Tests and testing

The Council of Europe may take equipment and software needed for the relevant tests from deliverables supplied under the contract, to ensure, for example, that the tests carried out during the tender selection process concerned the same items as those that were actually delivered.

## **Article 24 – Quantitative verifications**

The purpose of quantitative verifications is to ensure that the quantity delivered or the work carried out is the same as the quantity and the work ordered by the Council of Europe.

## **Article 25 – Qualitative verifications**

25.1. The purpose of qualitative verifications is to enable the Council of Europe to determine whether the Provider:

- has used the means and resources specified in the contract and in accordance with its provisions;
- has supplied the deliverables identified in the contract, in accordance with the contractual provisions.
- In the case of equipment and software, the Council of Europe shall ensure that the deliverables supplied comply with the provisions of the contract and satisfy any tests that the Council of Europe chooses to apply.

25.2. There are two stages to qualitative verifications: aptitude and regular service checks.

### 25.2.1. Aptitude checks

Aptitude checks are carried out following activation. They are designed to ensure that the technical characteristics of the deliverables supplied or developed meet the requirements laid down in the Specific contractual documents. In accordance with the contract, such aptitude checks may also follow the application of one or more tests or test programmes specified in the contract. The Council of Europe shall make its decision in accordance with the provisions of Article 26.2. If the aptitude checks give a positive result the regular deliverable checks can start.



### 25.2.2. Regular service checks

Regular service checks are intended to ensure that the deliverables supplied are capable of offering a regular service under the required operating conditions specified in the Specific contractual documents. The regular functioning of the service will be monitored for a month, starting on the day on which the Council of Europe decides that its aptitude checks have achieved a satisfactory result.

The service is deemed to be regular if, during that month, the total of periods of non-availability attributable to each aspect of the equipment does not exceed 2% of the period of its effective use between the hours of 8 am and 6 pm, Monday to Friday, excluding public holidays.

The Council of Europe shall reach its decision in accordance with the provisions of Article 26.2 below.

## **Article 26 – Decisions following verification**

In the case of contracts composed of distinct deliverables, the delivery of each deliverable is subject to separate verifications and decisions.

### 26.1. Following quantitative checks

If, after quantitative checks have been carried out, the quantity supplied or the deliverables supplied do not comply with the requirements of the contract, the Council of Europe may decide to accept them in their current state or order the Provider:

- to take back the excess quantity supplied, or;
- complete the delivery or the provision of the deliverable; within a specified period.

The process of securing the quantitative compliance of deliverables shall not impede the application of qualitative checks.

### 26.2. Following qualitative checks

#### 26.2.1. Following qualitative checks:

The Council of Europe shall carry out aptitude checks and notify the Provider of its decision within one month of the date on which the Provider notifies the Council in writing that the deliverables supplied are ready for checking or, failing that, the date on which the Provider submits its activation report to the Council of Europe.

If the Council of Europe is unable to reach a positive decision following its aptitude checks, it shall take a deferral or rejection decision, in accordance with Article 27 below. In the event of a deferral, the Council of Europe may require a new activation procedure.

#### 26.2.2. Following regular service checks:

The Council of Europe shall notify the Provider of its decision in respect of the regular service checks within seven days. If the decision on the regular service checks is positive, the Council of Europe will accept the deliverables.

Acceptance may be confined to those aspects whose compliance with regular service requirements has been verified, so long as they can be used in conditions that the Council of Europe deems to be acceptable.

If the result of the regular service checks is negative, the Council of Europe shall notify the Provider in writing of its decision, namely:

- deferred acceptance, and regular service checks, for an additional period of up to one month, or;
- acceptance with reduction in price, or;
- rejection.

If the Council of Europe does not notify its decision within the period of seven days specified in the first paragraph of Article 26.2.2, the result of the regular service checks shall be considered positive and the deliverables deemed to be accepted.

## **Article 27 – Acceptance, deferral, reduction in price and non-acceptance**

### 27.1. Acceptance

The Council of Europe shall accept the deliverables if they satisfy the requirements laid down in the contract. Acceptance shall take effect from the date when the Provider is notified of the acceptance decision. In the event of tacit acceptance, the latter shall take effect at the end of the seven day period referred to in the first paragraph of Article 26.2.2.

### 27.2. Deferral

27.2.1. When it considers that deliverables can only be accepted if certain changes are made, the Council of Europe may decide to defer acceptance of deliverables in a decision setting out its reasons. The decision shall invite the Provider to make a fresh presentation of the modified deliverables within a period of fifteen days.

The Provider must announce its agreement within ten days of notification of the deferral decision. If the Provider refuses its agreement or fails to reply within this period, the Council of Europe may either order acceptance of the deliverables at a reduced price or their non-acceptance, in accordance with the conditions laid down in Articles 27.3 and 27.4, within fifteen days of notification of the Provider's refusal or of the expiry of the ten day period referred to above.

If the Council of Europe fails to respond within this fifteen day period, this shall be taken as a decision not to accept the deliverables.

27.2.2. If the Provider makes a fresh presentation of the deliverables, duly modified, following a deferral decision, the Council of Europe shall again have available the full period in which to carry out the verification of deliverables, from the date of the Provider's new presentation.

27.2.3. When the verification procedures have taken place in Council of Europe premises, the Provider shall have a period of fifteen days in which to remove the items that have been the subject of the deferral decision. Beyond this period, the Council of Europe may remove or destroy the verified deliverables, at the Provider's expense. Items related to deferred deliverables whose continued presence in Council of Europe premises constitutes a risk or an unacceptable disruption may be immediately removed or destroyed, at the Provider's expense, once the latter has been informed.

### 27.3. Reduction in price

When the Council of Europe considers that, while not entirely compatible with the requirements of the contract, deliverables may nevertheless be accepted in their current state, it may accept them at a price that is reduced in proportion to the scale of the shortcomings identified. Reasons must be given for this decision. The Provider may only be notified of the decision once it has been given an opportunity to submit its observations.

If the Provider does not present observations within fifteen days of the decision to accept at a reduced price, it is deemed to have agreed to it. If the Provider does make observations within this period, the Council of Europe then has fifteen days to notify it of a fresh decision. In the absence of such notification, the Council of Europe is deemed to have accepted the Provider's observations.

### 27.4. Non-acceptance

27.4.1. When the Council of Europe considers that the deliverables are incompatible with the requirements of the contract and cannot be accepted in their current state, it shall order their partial or total non-acceptance. Reasons must be given for non-acceptance decisions. They can only be taken when the provider has been given the opportunity to submit its observations within 15 days from notification.

27.4.2. In the event of non-acceptance, the Provider shall be required once more to supply the deliverables specified in the contract.

27.4.3. The Provider shall have a period of one month from notification of the non-acceptance decision to remove the non-accepted items. After this period has expired, the Council of Europe may remove or destroy them, at the Provider's expense. Non-accepted deliverables whose continued presence in Council of Europe premises constitutes a risk or an unacceptable disruption may be immediately removed or destroyed, at the Provider's expense, once the latter has been informed.

#### 27.5. Poor quality or defective supplies and equipment

When the poor quality or defective nature of supplies or equipment provided by the Council of Europe and forming part of the deliverables concerned is the cause of these deliverables' non-compliance with contract requirements, the Council of Europe may not order deferral, acceptance at a reduced price or non-acceptance if:

- the Provider has, within fifteen days of the date when it was able to identify them, informed the Council of Europe of the shortcomings of supplies or equipment provided, other than hidden defects that could not be identified with the resources at its disposal, and;
- the Council of Europe has decided that the relevant supplies or equipment must nevertheless be used and has notified its decision to the Provider.

#### 27.6 Recovery of over-payments

27.6.1. If the total payments made exceed the amount actually due under the contract or if recovery is justified pursuant to the contract, the Provider shall reimburse the corresponding amount in Euros upon receipt of the debit note, in accordance with the procedures and within the time limits laid down by the Council of Europe.

27.6.2. In the event of failure to make the payment within the period specified in the repayment request, the sum due shall be charged interest at a rate equal to the marginal lending rate of the European Central Bank applicable during the period concerned, increased by three percentage points. The interest shall be payable from the calendar day following the due date for payment to the calendar day when the debt has been fully repaid.

27.6.3. The Council of Europe may, after informing the Provider, recover sums established as certain, of a fixed amount and due, in cases where the Provider also has a claim against the Council of Europe which is certain, of a fixed amount and due. It may also claim against the guarantee, where provided for.

### **Article 28 – Transfer of ownership**

Acceptance of supplies or equipment acquired by the Council of Europe entails the transfer of their ownership. The transfer of ownership of deliverables subject to intellectual property law is carried out pursuant to Article 37.

### **Article 29 – Guarantee**

29.1. The deliverables shall have a minimum one year guarantee. The starting point for the guarantee period is the date of notification of the acceptance decision.

29.2. Under this guarantee, the Provider is obliged to restore or replace, at its own expense, any part of the deliverable recognised to be defective, other than in cases where the defect is attributable to the Council of Europe.

The guarantee also covers the travel costs of staff, and of the preparation, packaging and transport of equipment needed for restoration or replacement purposes, whether these operations take place on site or it is agreed that the relevant material should be returned for this purpose to the Provider's premises.

When, during the restoration period, the loss of use suffered by the Council of Europe is detrimental to it, it may require the Provider to supply equivalent replacement equipment. The guarantee period shall be extended to take account of the period of loss of use.

- 29.3. The period available to the Provider to carry out required developments or repairs shall be laid down in the Specific contractual documents or, in their absence, by decision of the Council of Europe after consulting the Provider.
- 29.4. During the guarantee period, the Provider shall carry out such repairs as the Council of Europe specifies. The Provider may ask for payment, if it can show that the enforcement of the guarantee is not justified.
- 29.5. Extension of the guarantee period

If, when the guarantee period expires, the Provider has not carried out the required work, the period shall be extended until the work is completed.

29.6. Guarantee of compliance of standard software

The Provider shall guarantee the compliance of standard software with the specifications in the Specific contractual documents.

Accordingly, during the guarantee period, the Provider shall correct, free of charge, any operational malfunctioning of the software, having regard to the contract specifications.

When the malfunctioning occurs on standard software not produced by the Provider, the latter shall apply the provisions of the guarantee provided by the publisher of the standard software, of which the Council of Europe shall be advised in advance. The correction shall be carried out free of charge.

Pursuant to this Article, the Council of Europe shall draw up a written report of these defects, including all the necessary information for the Provider to identify them. The report must be submitted to the Provider as soon as the Council of Europe becomes aware of the defect.

29.7. Free software:

Free software shall be used in its existing form. The Provider will not be held responsible for any damage caused by the use, by the Council of Europe, of free software of which the Provider is not the publisher.

## **PART 6 – SPECIFIC PROVISIONS RELATING TO MAINTENANCE, APPLICATION MANAGEMENT AND OUTSOURCING**

### **Article 30 - Definitions**

30.1. For the purposes of this Part:

“Maintenance” signifies preventive or corrective deliverables for maintaining equipment in an operational condition.

“Application management” signifies deliverables for maintaining computer programmes in a state that enables them to fulfil their purpose. These deliverables for maintaining programmes in an operational condition may be preventive or corrective. They may also include deliverables concerned with software development. They may be produced on the Council of Europe site or remotely in the Provider’s premises. An application management contract may include equipment maintenance deliverables.

“Preventive” signifies maintenance measures performed to avoid malfunctioning.

“Corrective” signifies measures to correct malfunctions.

“Development” signifies maintenance measures to develop or adapt one or more applications in order to incorporate new functions, improve their operation or take account of new legislative or regulatory provisions.

“Outsourcing” signifies the externalisation of the management or operation of all or part of the Council of Europe’s computer system. Outsourcing may concern application management services or infrastructure hosting.

“Remote outsourcing” refers to all the deliverables produced on the Provider’s site.

“On-site outsourcing” refers to all the deliverables produced by the Provider on the Council of Europe’s site.

30.2.1 Where the contract involves outsourcing, the technical specifications shall specify:  
service levels, that is the agreed levels for the quality indicators relating to deliverables, which the Provider undertakes to achieve;  
the resources allocated to this task, the conditions governing their use and the methods used to measure the service level achieved;  
the applicable penalties for failure to achieve the specified levels.

30.2.2. An outsourcing service may be general or partial.

General outsourcing services entail total responsibility for the following activities:

- development or operation of all or part of applications;
- operation of data centres.

Partial outsourcing services may concern computer operations or applications management.

30.3. The “transition period”

The transition period is the period in which the Council of Europe undertakes the transfer of functions performed by itself or another Provider 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 Provider shall organise the migration of services currently operated by or on behalf of the Council of Europe to deliverables supplied by itself.

30.4. “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 Provider 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 contractual documents that describes the length of and conditions governing the implementation of reversion or transfer.

## **Article 31 – Maintenance of deliverables**

31.1. Maintenance conditions.

If the technical specifications provide for the maintenance of deliverables supplied, this shall include interventions requested by the Council of Europe, in the event of the malfunctioning of any one of the elements that are the subject of the contract, and preventive maintenance.

Maintenance also covers modifications made on the Provider’s initiative to deliverables supplied. The Council of Europe shall be notified in advance of these modifications and may object to them. The Council of Europe may only carry out maintenance operations not provided for in the contract with the Provider’s agreement.

31.2. Access to Council of Europe premises for maintenance operations

31.2.1. When maintenance is carried out in Council of Europe premises, the relevant activities shall be carried out during the previously specified times, referred to as the intervention period. The time limit laid down for the Provider to respond to a request for intervention will only apply during the intervention period, which runs from 8 am to 6 pm, Monday to Friday, excluding public holidays.

31.2.2. The Council of Europe shall ensure that the Provider’s duly authorised maintenance staff have access to its premises. The Council may withdraw such authorisation, in a reasoned decision,

notified to the Provider. When they are in Council of Europe premises, the Provider's staff shall be subject to the rules governing access and security drawn up and communicated to the Provider by the Council of Europe.

### **Article 32 – Termination of the provision of deliverables**

At the end of the transition period, the Council of Europe may decide to terminate the provision of deliverables, either on its own initiative or at the Provider's request, on condition that the deliverable covering the transition period is identified in the Specific contractual documents, accompanied by a specific sum.

Termination of the provision of deliverables entails termination of the contract with no compensation in accordance with Article 40.3.

### **Article 33 – Reversion and transfer**

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

## **PART 7 – USE OF THE RESULTS**

### **Article 34 – Definition of results**

For the purposes of this part:

- 34.1. The "results" constitute all the elements, in whatever form, nature or medium, that result from the supply of the deliverables that are the subject of the contract, such as, for example, works, software, its implementation or new versions, data bases, distinctive names, domain names, information, internet sites, reports, studies, trademarks, drawings or models, patentable and non-patentable inventions under international property law, and more generally all such aspects as know-how, business confidentiality and the right of persons and property to their image, whether or not protected by international property law or any other form of protection.
- 34.2. "Know-how" is a body of non-patented, tried and tested practical information that is:
  1. secret, which means not generally known or readily accessible;
  2. substantial, which means important and useful for producing results;
  3. identified, which means described in a sufficiently detailed fashion to establish that it meets the conditions described in sub-paragraphs 1 and 2 above.
- 34.3. "Prior knowledge" signifies all the elements, of whatever form, nature or medium, that are not the result of the implementation of the deliverables that are the subject of the contract, such as works, software, its implementation or new versions, data bases, distinctive names, domain names, information, internet sites, reports, studies, trademarks, drawings or models, patentable and non-patentable inventions under international property law, and more generally all such aspects as know-how, business confidentiality and the right of persons and property to their image, whether or not protected by international property law or any other form of protection, which belong, on the day the contract is notified, to the Provider or third parties, or which have been licensed out to them. Prior knowledge shall be identified in the technical specifications.
- 34.4. "Third parties designated in the contract" refers to persons that enjoy the same rights and are subject to the same obligations as the Council of Europe in connection with the use of the results. A list of these designated third parties shall appear in the technical specifications.

### **Article 35 – Rules governing prior knowledge**

- 35.1. Conclusion of the contract does not entail transfer of intellectual property rights or rights of any other nature relating to prior knowledge. The Council of Europe, the Provider and the third parties designated in the contract shall continue to hold the intellectual property rights or rights of any other nature relating to prior knowledge, with regard to those aspects that concern each of them.

35.2. If the Provider incorporates prior knowledge into the results or uses prior knowledge that is under licence but freely available, or if prior knowledge, while not incorporated into the results, is strictly necessary for the implementation of the results, the Provider shall grant the Council of Europe and third parties designated in the contract the non-exclusive right to use the results, permanently or temporarily, in whole or in part, and by any means and in any form, for requirements arising from the purpose of the contract. This right includes the right to reproduce, copy, download, display, store, execute or perform the prior knowledge in order to use the results.

The concession of rights to prior knowledge is included in the contract price. The rights are granted for the same period as the rights to use the results.

The rights of modification, adaptation and translation shall be exercised, if appropriate, pursuant to the conditions laid down in the Specific contractual documents.

35.3. While the contract is being performed, the Provider may not, without the Council of Europe's prior agreement, use or incorporate prior knowledge necessary to meet the purpose of the contract that is likely to limit the exercise of the rights pertaining to the results or make it more costly.

### **Article 36 – Rules governing intellectual property rights relating to standard software**

#### 36.1. Extent of the rights granted

The Provider shall grant the Council of Europe and the third parties designated in the contract, non-exclusively, the rights, for France and for the legal duration of the property rights, to use or cause to be used, as provided for in the applicable legislation, the standard software and its related documentation for requirements arising from the purpose of the contract, subject to any restrictive conditions provided for and accepted by the Council of Europe in the Specific contractual documents. In the event of publication on the internet, the rights shall be granted for the entire world.

The Provider may not reserve the exclusive right to make changes to the standard software that are necessary for its intended use.

The Provider shall authorise the Council of Europe freely to extract and use information from the databases that may be included in the results, particularly with a view to making that information publicly available for reuse, either free of charge or for payment.

#### 36.2. Availability of source codes

The source codes shall be accessible in accordance with the provisions of the Specific contractual documents.

#### 36.3. Other provisions

36.3.1. Should the contract be terminated for whatever reason, the Council of Europe and the third parties designated in the contract shall continue to hold the licences for all the usage rights pertaining to the results and prior knowledge that are necessary to meet the purpose of the contract.

36.3.2. The Council of Europe and third parties designated in the contract shall be empowered to sublicense and subcontract the implementation of the results on their own behalf, subject to the terms of the contract.

36.3.3. For a period of two years, the Provider shall be required, at the request of the Council of Europe and the third parties designated in the contract, to provide any assistance that is essential for the exercise of the rights assigned.

In particular, the Provider shall:

- a. supply within a maximum period of two months from receipt of the request all drawings, plans, documents, templates and models necessary for implementation of the results. This period may be extended by the Council of Europe, at the Provider's request, in the case of material that cannot be made available without substantial additional work;

- b. assist the Council of Europe and third parties designated in the contract by means of technical advice and the temporary support of specialist staff, and by supplying information on all the manufacturing processes and know-how that could have been used to produce the deliverables and that are necessary for the use of the results to meet the purpose of the contract.
- c. The technical specifications shall specify the technical and financial arrangements governing the provision of this assistance.

#### 36.3.4. Guarantees of rights

1. The Provider shall guarantee that the Council of Europe and third parties designated in the contract have full and unrestricted enjoyment of the rights assigned under the terms of the contract.

To that end, it shall guarantee that:

- it owns or holds the assigned rights to the results and prior knowledge;
- it shall indemnify the Council of Europe and any third party designated in the contract, in the absence of any fault directly attributable to them, and without any benefit of seizure and sale or division<sup>1</sup>, against any action, claim or form of opposition by any person whose right has been allegedly infringed by the use of the results and of prior knowledge pursuant to Articles 35 and 36. If the Council of Europe or third parties designated in the contract are, through no fault of their own, the subject of demands or accusations on grounds of forgery, unfair competition or plagiarism on account of the use of the results and of prior knowledge pursuant to Articles 34 and 35, they shall immediately inform the Provider, who may then intervene in any proceedings under way;
- it undertakes, in such circumstances, to provide the Council of Europe and the third parties designated in the contract with any necessary assistance at its own cost;
- it undertakes, as it chooses, (i) to modify or replace the items in dispute, so that they cease to come within the scope of the complaint, while remaining compatible with the contract specifications, or (ii) to ensure that the Council of Europe and any third party designated in the contract can have unlimited use of the disputed items at no extra cost, or (iii) if neither of these solutions is reasonably practicable, to reimburse the sums paid by the Council of Europe and the third parties designated in the contract in connection with the disputed items and compensate them for detriment suffered.

Under these circumstances, and in the absence of any fault directly attributable to them, the Provider shall meet the cost of any damages that the Council of Europe and any third party designated in the contract are required to pay on grounds of forgery, unfair competition or plagiarism, following the use of the results and of prior knowledge pursuant to Articles 35 and 36, once the Council of Europe considers that the judgment handed down has become operative.

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<sup>1</sup> Within the meaning of Articles 2298 and 2303 of the French civil code:

#### **Article 2298**

A surety is bound towards the creditor to pay him only upon the debtor's failure, whose property must be previously exhausted, unless the surety has renounced the benefit of seizure and sale, or unless he is bound jointly and severally with the debtor, in which case the effect of his undertaking is governed by the principles established for joint and several debts.

#### **Article 2303**

Nevertheless, each one, unless he has renounced the benefit of division, may demand that the creditor previously divide his action and reduce it to the part and portion owed by each surety. Where, at the time when one of the sureties had the division effected, some of them were insolvent, that surety is proportionately liable for those insolvencies; but he may no longer be sued for insolvencies happening after the division.



The Provider shall guarantee the rights to the results or prior knowledge that it has assigned to the Council of Europe and the third parties designated in the contract in the event of any assignment or concession of rights relating to the results or prior knowledge.

2. The Provider shall not be liable for any allegations concerning:

- prior knowledge that the Council of Europe and the third parties designated in the contract have supplied to the Provider for the performance of the contract;
- items incorporated in the results at the express request of the Council of Europe and the third parties designated in the contract;
- modifications and adaptations to the results, if the allegation is based on a modification or adaptation made by the Council of Europe or the third parties designated in the contract or at their express request.

Article 37 - Rules governing intellectual property rights or rights of any nature relating to results not involving standard software

This article comprises two alternative options: A and B.

The Specific contractual documents shall specify which option shall apply, failing which option B shall apply.

## **OPTION A - Concession of rights to use the results**

### **Article A.37**

The Provider shall grant to the Council of Europe and the third parties designated in the contract, non-exclusively, the right to use or cause to be used the results, as they stand or modified, permanently or temporarily, in whole or in part, and by any means and in any form. This concession is only valid for requirements arising from the purpose of the contract and for France. In the event of publication on the internet, the rights shall be granted for the entire world.

This concession of rights covers the results, from the time of their delivery and subject to acceptance of the deliverables.

The right to use the results shall not include commercial use of the results.

Under this contract, the Council of Europe and the third parties designated in the contract do not become the owners of the rights relating to the results, including the ownership of inventions arising from, or developed or used during, the performance of the contract.

The price of this concession shall be included in full in the contract price.

In the case of software licences, the Specific contractual documents shall specify the number of copies or users of the software and future changes in this number for the Council of Europe. If it is not possible to determine in advance the conditions governing the use of this software in the light of these future requirements, option B, which provides for an assignment of rights, may be considered.

When inviting tenders, the Council of Europe may authorise a variant inviting candidates to submit their tenders in the absence of an initial decision on which option to apply.

A.37.1. Rights of the Council of Europe and the third parties designated in the contract in the Specific contractual documents.

A.37.1.1. Results protected by a literary and artistic property right.

1. The Provider shall grant the Council of Europe and the third parties designated in the contract, non-exclusively, the pecuniary rights to the copyrights or similar rights relating to the results, for requirements arising from the purpose of the contract.

The concession of the rights shall cover the results from the time of their delivery and subject to acceptance of the deliverables, for France, and for the legal duration of the copyrights or similar rights.

These rights shall comprise all the pecuniary rights of reproduction and performance and in particular the rights to reproduce, download, display, store, execute, adapt, arrange, correct, translate and

incorporate and the right to communicate the results to third parties for non-commercial purposes, particularly for the purpose of providing information and promotional activities.

2. The rights relating to results in the form of software shall also include those of evaluating, observing, testing, analysing and decompiling, for requirements arising from the purpose of the contract, in accordance with the provisions of the intellectual property code.
3. The source codes of the software and specific software and the documentation necessary to give effect to the rights relating to the results shall be delivered at the same time as the object code. The source codes and the documentation shall be confidential.

#### A.37.1.2. Results protected by an industrial property right

1. If the results give rise to an application for an industrial property title, such as, in particular, one relating to trade marks, patents, utility certificates, additional protection certificates, semiconductor topographies, designs or models, the Provider shall grant the Council of Europe and the third parties designated in the contract a non-exclusive licence to use the intellectual property rights relating to the results for requirements arising from the purpose of the contract.

This concession of the rights shall cover the results from the time of their delivery and subject to acceptance of the deliverables, for France, and for the legal duration of the protection.

2. The price of this licence is included in the contract price in the case of titles and applications for titles lodged after notification of the contract and for those applied for in the period between the first written consultation of the Council of Europe and notification of the contract. The same applies to the concession of usage rights relating to the results that are not subject to industrial property titles or applications for such titles.
3. The Provider shall complete all the formalities necessary to make the licence binding on third parties, in all the territories where the rights have been granted. The cost of these formalities is included in the contract price.

#### A.37.1.3. Results relating to other forms of protection

1. The Provider shall authorise the Council of Europe and the third parties designated in the contract to apply the know-how necessary to use the results or to use the results covered by the know-how and trade secrets, while maintaining confidentiality.
2. The Provider shall grant the Council of Europe and the third parties designated in the contract full freedom to extract and reuse the databases included in the results, particularly with a view to making that information publicly available for reuse, either free of charge or for payment.
3. The Provider shall authorise the Council of Europe and the third parties designated in the contract to use the domain names that form part of the results, together with the images of property and persons incorporated in the results.

#### A.37.2. Common provisions

- A.37.2.1. In general, the Provider may not rely on its intellectual property rights or titles or any other rights to impede the use of the results when this use is compatible with the requirements arising from the purpose of the contract.

In particular, the Provider may not rely on any right relating to graphic presentation, sequences and menu and command headings that could limit the scope of the development, adaptation, translation or incorporation of the results for the purposes of interoperability with other systems and software.

- A.37.2.2. In the event of termination of the contract for whatever reason, the Council of Europe and the third parties designated in the contract shall remain the licensees for all the usage rights relating to the results and prior knowledge that are necessary for the requirements arising from the purpose of the contract.

- A.37.2.3. The Council of Europe and the third parties designated in the contract are empowered to sublicense or subcontract the implementation of the results on their behalf, within the limits of the purpose of the contract.

A.37.2.4. The Council of Europe and the third parties designated in the contract may freely publish the results, after informing the Provider, subject to any confidentiality conditions laid down in the Specific contractual documents and on condition that this publication does not constitute disclosure under the terms of the intellectual property code.

Any restrictions on the right to publish the results shall not prevent the publication of general information on the existence of the contract and the nature of the results.

In the implementation of these rights, the restrictions on the right to publish cannot be relied on to prevent the Council of Europe and the third parties designated in the contract from informing a third party of these results, in whole or in part, in compliance with the general conditions.

Any publication must quote the name of the Provider and of the authors.

A.37.2.5. The parties shall inform each other of modifications they wish to make to the results in order to receive any useful comments from the other party. They shall make minor modifications and corrections to the results freely available to each other.

A.37.2.6. For a period of two years, the Provider shall be required to provide, at the request of the Council of Europe and the third parties designated in the contract, any essential assistance needed for the exercise of the rights granted.

In particular, the Provider shall:

- a. supply, within a maximum period of two months from receipt of the request, any drawings, plans, documents, templates and models necessary for implementation of the results. The Council of Europe may extend this period, at the Provider's request, in the case of items that cannot be made available without substantial additional work;
- b. assist the Council of Europe and the third parties designated in the contract by providing specialist advice and temporary support from its specialist staff and information on any manufacturing processes and know-how that it might have used to produce the deliverables and that are necessary for the use of the results for requirements arising from the purpose of the contract.
- c. The Specific contractual documents shall specify the technical and financial arrangements governing the provision of this assistance.

### A.37.3. Guarantee of rights

A.37.3.1. The Provider shall guarantee the Council of Europe and the third parties designated in the contract full and unrestricted enjoyment of the rights granted under the contract. To this purpose, it shall guarantee that:

- it is the owner or holder of the granted rights relating to the results and prior knowledge;
- in the absence of any fault directly attributable to them, and without any benefit of division and discussion, it shall indemnify the Council of Europe and any third party designated in the contract against any action, claim or form of opposition by any person relying on a right that the use of the results and of prior knowledge pursuant to Articles 35 and A.37 has allegedly infringed. If the Council of Europe or third parties designated in the contract are, through no fault of their own, the subject of demands or accusations on grounds of forgery, unfair competition or plagiarism on account of the use of the results and of prior knowledge pursuant to Articles 35 and A.37, they shall immediately inform the Provider, who may then intervene in the judicial proceedings;
- it undertakes, in such circumstances, to provide the Council of Europe and the third parties designated in the contract with any necessary assistance at its own cost;
- it undertakes, as it chooses, (i) to modify or replace the items in dispute, so that they cease to come within the scope of the complaint, while remaining compatible with the contract specifications, or (ii) to ensure that the Council of Europe and any third party designated in the contract can have unlimited use of the disputed items at no extra cost, or (iii) if neither of these solutions is reasonably practicable, to reimburse the sums paid by the Council of Europe and the third parties designated in the contract in connection with the disputed items and compensate them for detriment suffered.

Under these circumstances, and in the absence of any fault directly attributable to them, the Provider shall meet the cost of any damages that the Council of Europe and any third party designated in the contract are required to pay on grounds of forgery, unfair competition or plagiarism, following the use of the results and of prior knowledge pursuant to Articles 34 and A.37, once the judgment handed down becomes operative.

The Provider shall guarantee the rights to the results or prior knowledge that it has granted the Council of Europe and the third parties designated in the contract in the event of any assignment or concession of rights relating to the results or prior knowledge.

A.37.3.2. The Provider shall not be liable for any allegations concerning:

- prior knowledge that the Council of Europe and the third parties designated in the contract have supplied to the Provider for the performance of the contract;
- items incorporated in the results at the express request of the Council of Europe and the third parties designated in the contract;
- modifications and adaptations to the results, if the allegation is based on a modification or adaptation made by the Council of Europe or the third parties designated in the contract or at their express request.

A.37.4. Provider's rights

A.37.4.1. The Provider owns the rights and titles relating to the results.

The Provider may use the results achieved in the course of the contract, including their use for commercial purposes, subject to the agreement of the Council of Europe or third parties designated in the contract in the case of prior knowledge supplied by the latter for the performance of the contract.

A.37.4.2. The Provider shall undertake not to use the results to the detriment of the rights or image of the Council of Europe or third parties designated in the contract.

A.37.4.3. The Provider may publish the results, subject to compliance with the confidentiality requirements laid down in the general conditions, supplemented, if appropriate, by the Specific contractual documents, and to the prior agreement of the Council of Europe or third parties designated in the contract if the results include prior knowledge supplied by the latter for the performance of the contract. The publication must state that the results were financed by the Council of Europe.

A.37.5. Fees

A.37.5.1. In the event of the commercial use of all or part of the results, whether alone or incorporated into products or services, or in the event of the total or partial concession of the operating rights over the results, the Provider shall pay a fee to the Council of Europe.

The figure on which the calculation of the fee is based shall be 30% of the Provider's income from the sale, before tax, after deducting manufacturing and marketing costs. These costs may be calculated on a fixed-rate basis or as a percentage of the income received. In all cases, the assessment basis for the fee may not be less than 2% of the income received, before tax, ex-works and excluding packaging.

The fee shall be calculated by multiplying the basis for assessment with a weighted coefficient representing the proportion of the total development cost of the products or services marketed by the Provider that is financed by the Council of Europe and the third parties designated in the contract and the proportional contribution of the prior knowledge that the latter have made available.

A.37.5.2. However, the fee shall be at a fixed rate in the following cases:

- when the basis for calculating the proportional participation cannot, in practice, be determined;
- there are no means of monitoring the application of the participation;
- the costs of the calculation and monitoring operations are out of proportion to the expected results;
- in the event of the assignment of rights relating to software, pursuant to Article L 134-4 of the intellectual property code.

A.37.5.3. The Specific contractual documents shall specify the arrangements for calculating the fee.

A.37.5.4. The Provider shall pay the fee for the duration of the use of all or part of the results.

A.37.5.5. The Provider shall inform the Council of Europe of any sale, leasing or licensing of the items within one month of the conclusion of the relevant contract. It shall then send it, in the month following each calendar half-year, a statement of the sales, leasing or licensing contracts agreed in that half year, and the amounts to be taken into consideration in this period for the calculation of payments.

The Provider shall make these payments within thirty days of receipt of a payment order notified by the Council of Europe. Beyond this period, interest shall be charged on the amounts owed at the default interest rate. The Provider shall provide the Council of Europe with the means of checking the accuracy of the statements provided. The Specific contractual documents shall specify the arrangements for the Council of Europe to carry out its checks.

A.37.5.6. When the total fees paid by the Provider at constant prices are equal to the contract fee paid by the Council of Europe, after tax, no further payments will be made.

In determining whether this situation of equality applies, the sums concerned will be expressed on a constant price basis with reference to the consumer price index published by the French national statistics and economic studies institute (INSEE).

A.37.6. Use of the results for commercial purposes by the Council of Europe or third parties designated in the contract.

The provisions of this article shall only apply if the use of the results for commercial purposes is expressly provided for in the Specific contractual documents.

A.37.6.1. Further to Articles A.37.1, A.37.2, A.37.3, A.37.4 and A.37.5, the Provider shall authorise the Council of Europe and the third parties designated in the contract to use the results commercially in accordance with the duration, territory, operating procedures and fee specified in the Specific contractual documents.

The Provider shall exempt the Council of Europe and the third parties designated in the contract from all the legal and contractual obligations vis-à-vis the Provider's employees and principals.

A.37.6.2. As consideration for such commercial use, the Council of Europe shall pay the Provider a fee, when the total income from the commercial use of the results exceeds the amount paid by the Council of Europe. This fee shall be calculated in accordance with the provisions of Article A.37.5, up to an amount equal to the contract price, at constant prices.

#### **OPTION B.- Exclusive assignment of the Provider's rights to the Council of Europe**

Article B 37.- The Provider shall exclusively assign to the Council of Europe all the rights and titles of any nature in the contract relating to the results, thus enabling the Council of Europe to use them freely, including their commercial exploitation, for the purposes specified in the Specific contractual documents.

The Specific contractual documents may provide for the Council of Europe, as beneficiary of the assignment, to assign back, on a non-exclusive basis, certain usage rights to the Provider.

The territory, duration and operating procedures applicable to the assigned rights and the price shall be specified in the Specific contractual documents.

The Provider shall retain sole responsibility for its employees and third parties operating on its behalf.

The amount of the fee payable by the Provider for uses, particularly commercial uses, that the partial assignment or non-exclusive concession might authorise it implement, shall be specified in the specific contract conditions.

### B.37.1. Council of Europe's rights

#### B.37.1.1. Results protected by a literary and artistic property right

1. The Provider shall assign to the Council of Europe the pecuniary rights to the copyrights or similar rights relating to the results, for the territory or territories, duration, operating procedures of the assigned rights and price specified in the Specific contractual documents for requirements arising from the purpose of the contract.

This assignment of rights shall cover the results once they are known, from their delivery, subject to acceptance of the deliverables.

These rights shall comprise all the pecuniary rights of reproduction and performance and in particular the rights to reproduce, download, display, store, execute, adapt, arrange, correct, translate and incorporate the results and the right to distribute the results for commercial purposes, with regard to the operating procedures specified in the Specific contractual documents.

2. With regard to the operating procedures specified in the Specific contractual documents, the right of reproduction shall include, if necessary, the right to reproduce the results, with no restriction on numbers, in whole or in part, as they stand or modified, by any processes and by any medium, including ones that were unforeseeable or unknown when the contract was signed, for the purposes of their use, in particular their commercial use, subject to remuneration to be agreed for forms of further use that were unknown on the day the contract was signed.
3. With regard to the operating procedures provided for in the Specific contractual documents, the right of performance and distribution shall include, if necessary, the right to communicate with the public and make the results available to the public, in whole or in part, as they stand or modified, by any medium, method or process, including ones that were unforeseeable or unknown when the contract was signed, for the purposes of their use, in particular their commercial use, subject to remuneration to be agreed for forms of further use that were unknown on the day the contract was signed.

The source codes and the documentation necessary to give effect to the rights relating to the results shall be delivered, on a usable medium, at the same time as the object code. The source codes shall be confidential.

#### B.37.1.2. Results protected by an industrial property right

1. The Provider shall inform the Council of Europe of any result that has been identified as likely to be protected by an industrial property title.
2. The Provider shall authorise the Council of Europe to lodge any application or industrial property title to protect the results, on behalf of and at the expense of the Council of Europe. The Provider shall take all reasonable steps to assist the Council of Europe to lodge such industrial property titles. To that end, it shall transmit to the Council of Europe the necessary information and authorisations to secure the industrial property rights relating to the results.
3. If titles have been lodged, the Provider shall assign to the Council of Europe (i) full ownership of the industrial property titles and applications for titles relating to the results that it has lodged, (ii) any Union priority right attached to the industrial property titles and to applications for titles, (iii) the right to bring an action for any cases of forgery, unfair competition or plagiarism, before or after the signing of the contract.

#### B.37.1.3. Results relating to other forms of protection

1. The Provider shall assign to the Council of Europe, exclusively, finally and irrevocably, the right to use the results covered by its know-how and trade secrets.
2. The Provider shall assign to the Council of Europe the right to use any databases that might be included in the results.
3. The Provider shall assign exclusively to the Council of Europe the domain names that it has registered.

## B.37.2. Common provisions

B.37.2.1. In general, the Provider may not rely on its intellectual property rights or titles or any other rights for the purpose of using the results.

B.37.2.2. In the event of termination of the contract for whatever reason, the Council of Europe shall continue to be the assignee for all the usage rights pertaining to the results.

B.37.2.3. The Provider may publish the results, subject to the Council of Europe's prior agreement.

Any restrictions on the right to publish the results shall not prevent the publication of general information on the existence of the contract and the nature of the results.

The publication must state that the results have been financed by the Council of Europe.

B.37.2.4. For a period of two years, the Provider shall be required to provide, at the request of the Council of Europe, any essential assistance needed for the use of the results.

In particular, the Provider shall:

- a. supply, within a maximum period of two months from receipt of the request, any drawings, plans, documents, templates and models necessary for implementation of the results. The Council of Europe may extend this period, at the Provider's request, in the case of items that cannot be made available without substantial additional work;
- b. provide assistance in the form of specialist advice and temporary support from its specialist staff and information on any manufacturing processes and know-how that are necessary for the use of the results.

The Specific contractual documents shall specify the technical and financial arrangements governing the provision of this assistance.

## B.37.3. Guarantees of rights

B.37.3.1. The Provider shall guarantee that the Council of Europe has full and unrestricted enjoyment of the intellectual property rights and rights of any nature relating to the results assigned to it under the terms of the contract.

The Provider shall guarantee that:

- it owns the intellectual property rights, the applications for titles and the titles that it has assigned;
- it is the owner or holder of the granted rights relating to prior knowledge;
- it has not granted made a concession to any third party of a licence, pledge or any other right pertaining to the results, titles and applications for titles;
- there are no proceedings under way or pending in connection with the rights that have been assigned and it has not been informed of any proceedings likely to be brought;
- in the absence of any fault directly attributable to the Council of Europe, and without any benefit of division and discussion, it shall indemnify the Council of Europe against any action, claim or form of opposition by any person relying on a right that the use of the results and of prior knowledge pursuant to Articles 35 and B.37 has allegedly infringed. If the Council of Europe is, through no fault of its own, the subject of demands or accusations on grounds of forgery, unfair competition or plagiarism on account of the use of the results and of prior knowledge pursuant to Articles 35 and B.37, it shall immediately inform the Provider, who may then intervene in the judicial proceedings;
- in such circumstances, it shall provide the Council of Europe with any necessary assistance at its own cost;
- it undertakes, as it chooses, (i) to modify or replace the items in dispute, so that they cease to come within the scope of the complaint, while remaining compatible with the contract specifications, or (ii) to ensure that the Council of Europe can have unlimited use of the disputed items at no extra cost, or (iii) if neither of these solutions is reasonably practicable, to reimburse the sums paid by the Council of Europe in connection with the disputed items and compensate it for detriment suffered.

Under these circumstances, and in the absence of any fault directly attributable to the Council of Europe, the Provider shall meet the cost of any damages that the Council of Europe is required to pay on grounds of forgery, unfair competition or plagiarism, following the use of the results and of prior knowledge pursuant to Articles 35 and B.37, once the judgment handed down becomes operative.

B.37.3.2. The Provider shall not be liable for any allegations concerning:

- prior knowledge that the Council of Europe has supplied to the Provider for the performance of the contract;
- items incorporated in the results at the express request of the Council of Europe;
- modifications and adaptations to the results, if the allegation is based on a modification or adaptation made by the Council of Europe or at its express request.

#### B.37.4. Provider's rights

B.37.4.1. The Provider shall undertake, from the date of assignment of the rights, not to grant any licence pertaining to, or to use or exploit in any way, the assigned rights.

B.37.4.2. The Provider shall retain its own rights, including usage rights, concerning the prior knowledge incorporated into the results, in accordance with the provisions of Article 35. The Provider may use the results, including their use for commercial purposes, subject to the prior and written agreement of the Council of Europe, and to the conditions provided for in the Specific contractual documents.

## **PART 8 – TERMINATION OF THE CONTRACT**

### **Article 38 – General principles**

The Council of Europe may terminate the provision of the deliverables that are the subject of the contract before their completion at the Provider's request, in accordance with the provisions of Article 40, or for fault committed by the Provider, in accordance with the provisions of Article 41, or in the event of the changes in the Provider's situation or standing referred to in Article 39 or the general conditions.

The Council of Europe may also terminate the provision of the deliverables at any time for reasons of general interest. In such cases, the Provider shall be compensated for detriment caused as a result of this decision, in accordance with the provisions of Article 42.

The decision to terminate the contract shall be notified to the Provider. Subject to the specific provisions specified below, termination takes effect on the date specified in the termination decision or, failing that, on the date of its notification.

### **Article 39 – Cancellation for reasons not stipulated in the contract**

#### 39.1. Death or civil incapacity of the Provider

In the event of the Provider's death or civil incapacity, the Council of Europe may cancel the contract or agree to its continuation by the beneficiaries or the administrator. A supplementary agreement recording the transfer shall be drawn up for that purpose. If termination is ordered, it shall take effect on the date of death or civil incapacity. It shall not entitle the Provider or its beneficiaries to any compensation.

#### 39.2. Insolvency proceedings and bankruptcy

In the event of insolvency proceedings, if the court appointed administrator states that he is unable to fulfil the Provider's obligations the contract is terminated.

In the event of the Provider's bankruptcy, if the court appointed liquidator states that he is unable to fulfil the Provider's obligations the contract is terminated.

If termination is ordered, it shall take effect on the date of the event. It shall not entitle the Provider to any compensation.

#### 39.3. Provider's physical incapacity

In the event of the Provider's manifest and sustained physical incapacity that poses a threat to the proper performance of the contract, the Council of Europe may terminate the contract. The termination shall not entitle the Provider to any compensation.



## **Article 40 – Termination for events associated with the contract**

### **40.1. Difficulty in executing the contract**

When, in the course of producing deliverables, the Provider encounters specific technical difficulties whose solution would necessitate the input of resources out of proportion to the contract price, the Council of Europe may terminate the contract, of its own motion or at the request of the Provider.

When the Provider is unable to fulfil the contract for reasons of force majeure, the Council of Europe shall terminate the contract.

### **40.2. Delayed purchase order**

When termination is ordered at the Provider's request in accordance with Article 3.8.3, it shall be compensated for any expenses and investment costs incurred in connection with the contract that are strictly necessary for its performance.

### **40.3. Cessation of the supply of deliverables**

When the cessation of the supply of deliverables is ordered pursuant to Article 32, the Council of Europe shall terminate the contract. The termination does not entitle the Provider to any compensation.

## **Article 41 – Termination for Provider's fault**

41.1. The Council of Europe may terminate the contract for fault committed by the Provider in the following circumstances:

- a. The Provider is in breach of its legal or regulatory employment or environmental protection obligations or of regulations in force in the Council of Europe that are applicable to third parties and of which it has been informed.
- b. The Provider has been allocated resources and one of the circumstances specified in Article 16 is applicable.
- c. The Provider has not fulfilled its obligations within the period specified in the contract.
- d. The Provider has prevented the Council of Europe from carrying out an inspection pursuant to Articles 15 and 21.
- e. The Provider has subcontracted in breach of the contractual provisions relating to subcontracting.
- f. The Provider has failed to produce the insurance certificates stipulated in Article 8.
- g. In circumstances other than those specified in Article 39.1, the Provider has stated that it is unable to fulfil its obligations.
- h. The Provider has not informed the Council of Europe of the modifications referred to in Article 3.4.2 and these modifications are liable to impede the successful performance of the contract.
- i. In performing the contract, the Provider has carried out fraudulent acts.
- j. The Provider or the sub-contractor has not complied with its obligations relating to confidentiality, personal data protection and security, pursuant to provisions contained herein and in the general conditions.
- k. The Provider has failed to perform maintenance services for thirty consecutive days.
- l. The Provider's delays in performing the contract have seriously hindered the Council of Europe's use of the results.
- m. Subsequent to the signing of the contract, the Provider has been prohibited from undertaking any commercial or industrial activity.
- n. Subsequent to the signing of the contract, the information or documentation submitted by the Provider in support of its application or required prior to the awarding of the contract have been shown to be inaccurate.

41.2. Other than in the cases specified in i, m and n of Article 41.1, the Provider must first be issued with a warning and this must remain without effect for 10 days. In the warning that is issued, the Council of Europe shall inform the Provider of the penalties likely to be imposed and invite it to present its observations.

41.3. Termination of the contract shall not prevent the Council of Europe from taking any appropriate legal action against the Provider.

## **Article 42 – Termination for reasons of general interest**

When the Council of Europe terminates a contract for reasons of general interest, including those arising from a decision of the Council of Europe's Committee of Ministers, the Provider is entitled to compensation for termination, calculated by applying a percentage laid down in the Specific contractual documents, or in its absence 5%, to the original contract price, before tax, minus the unrevised value, before tax, of deliverables accepted.

The Provider is also entitled to compensation for any expenses and investment costs incurred in connection with and strictly necessary for the contract that have not been taken into account in payments already made. It shall be required to submit all the necessary supporting documents for calculating this part of the compensation within fifteen days of the notice of termination of the contract.

The cost of these forms of compensation is met from the termination account and the Provider is not required to submit any particular request in this connection.

## **Article 43 – Termination account**

43.1. The Council of Europe shall prepare a termination account after the termination of contract, to be notified to the Provider.

43.2. The liquidation account following a termination decision taken pursuant to Articles 40 and 42 shall include:

43.2.1. To be debited to the Provider:

- the total of sums paid as advances, instalments, final partial settlements or balances;
- the value, as laid down in the contract and any supplementary agreements, of resources entrusted to the Provider that the latter is unable to return and the residual value of resources that the Council of Europe assigns to the Provider by mutual agreement;
- the total of any penalties.

43.2.2. To be credited to the Provider:

43.2.2.1. The value of deliverables supplied to the Council of Europe :

- the contractual value of deliverables accepted, including, if appropriate, any default interest;
- the value of any deliverables supplied at the Council of Europe's request, such as the storage of supplies;

43.2.2.2. Expenditure incurred by the Provider for the provision of deliverables that have not yet been supplied to the Council of Europe, if these expenses have not been previously written off or cannot be written off subsequently, namely:

- the cost of objects supplied for the purposes of performing the contract;
- the cost of plant, material and tools installed for the performance of the contract;
- other costs incurred by the Provider directly relating to the contract.

43.2.2.3. Staff costs that the Provider can show are the direct and necessary consequence of the termination of the contract;

43.2.2.4. If the termination of contract is pursuant to Article 42, a lump sum calculated by applying a percentage to the difference between the non-revised value of the contract, before VAT, and the non-revised value of deliverables accepted, before VAT. Unless the contract states otherwise, this percentage is 5%. The resulting sum shall be revised on the date when termination takes effect, pursuant to the provisions of the contract;

43.2.2.5. More generally, any detriment suffered as a result of the termination of contract by the Provider and any sub-contractors and suppliers.

43.3. The liquidation account following a termination decision taken pursuant to Article 41 shall include:

43.3.1. To be debited to the Provider:

- the total of sums paid as advances, instalments, final partial settlements or balances;
- the value, as laid down in the contract and any amendments, of resources entrusted to the Provider that the latter is unable to return and the residual value of resources that the Council of Europe assigns to the Provider by mutual agreement;
- the total of any penalties;
- if appropriate, any additional costs arising from contracts entered into by the Provider at its own risk and expense in the circumstances specified in Article 45.

43.3.2. To be credited to the Provider:

- the contractual value of deliverables accepted, including, if appropriate, any default interest;
- the value of any deliverables supplied at the Council of Europe's request, such as the storage of supplies.

43.4. The liquidation account following a termination decision taken pursuant to Article 39 or at the Provider's request shall include:

43.4.1. To be debited to the Provider:

- the total of sums paid as advances, instalments, final partial settlements or balances;
- the value, as laid down in the contract and any amendments, of resources entrusted to the Provider that the latter is unable to return and the residual value of resources that the Council of Europe assigns to the Provider by mutual agreement;
- - the total of any penalties.

43.4.2. To be credited to the Provider:

- the contractual value of deliverables accepted, including, if appropriate, any default interest;
- the value of any deliverables supplied at the Council of Europe's request, such as the storage of supplies.

43.5. The Council of Europe shall notify the Provider of the account no later than two months after the date when the termination of contract comes into effect. Where appropriate, penalties for delays shall be applicable up to and including the day immediately preceding the date when the termination came into effect.

#### **Article 44 – Return of deliverables and material resources necessary for the performance of contracts**

In the event of termination of contract, the Council of Europe may require the Provider to:

- return deliverables currently being developed and any objects held for the purposes of fulfilling a contract;
- return material resources specifically intended for performance of the contract;
- take precautionary measures, relating in particular to storage and security surveillance.

The Council of Europe shall inform the Provider or its beneficiaries of this requirement when it gives notice of the termination, laying down the deadline for the Provider to return the relevant items and the conditions governing their storage pending this return. In the event of termination of contract because of fault committed by the Provider, the application of this article shall be at the Provider's expense.

#### **Article 45 – Supply of the deliverable at the Provider's risk and expense**

45.1. If the Specific contractual documents so provide and the termination of contract decision expressly refers to it, the Council of Europe may instruct a third party to supply the deliverables specified in the contract, at the Provider's risk and expense, if the latter has failed to supply a deliverable that, by its nature, cannot be delayed or if the contract has been terminated because of the Provider's fault.

- 45.2. If the Council of Europe is unable to secure, under acceptable conditions, deliverables that are totally compatible with those whose performance is provided for in the Specific contractual documents, it may replace them with equivalent deliverables.
- 45.3. The former Provider may not take part, directly or indirectly, in the supply of deliverables undertaken at its risk and expense. It must, however, supply all the information gathered and all the resources deployed in connection with performance of the initial contract that would be necessary for the performance of this contract by the third party appointed by the Council of Europe.
- 45.4 Any additional expenditure over and above the contract price resulting from the provision of deliverables at the Provider's risk and expense shall be met by the Provider. It shall not benefit from any reduction in expenditure.

#### **Article 46 – Summary list of exceptions to the general conditions**

The Specific contractual documents shall identify the articles of the general conditions that shall not be applicable.

#### **Article 47 – Various provisions**

- 47.1 The contract shall be governed by French law. The Council of Europe shall not waive its privileges and immunities, and in particular its immunity from jurisdiction. Any dispute will be resolved in accordance with the provisions of the general conditions.
- 47.2 The contract shall be in English or French. All communications between the parties shall be written in the language of the contract.
- 47.3 Should one of the provisions of the contract be or become null the remainder of the contract shall continue to be valid. The null provision shall be replaced by a valid provision whose spirit and purpose most closely reflect those of the non-valid provision.
- 47.5 If this contract contains omissions or ambiguities, it must be interpreted in the light of its object and purpose.