

## **APPENDIX 1 – Draft Contract for IT Development Services For information**

**Sections in brackets/highlighted will be completed by the Council and the selected Service Provider before the contract is signed**

### **Article 1 Preamble**

The Service Provider has developed specific technical know-how and expertise in the field of IT services described in the Tender file.

The Council of Europe wishes to benefit from this specific technical expertise and know-how by having the Service Provider implement an IT project (hereinafter the "Project") for which it does not have the necessary in-house resources.

The Project entails developing an application called Procurement for a collaboration and knowledge platform for civil servants for the Department of Public Administration (hereinafter the "Application"), the expected functionalities of which are described in detail in the Tender file.

After familiarising itself with these technical specifications and having been able to obtain all the necessary information on the content of the Project from the Council of Europe, the Service Provider has declared that it has all the expertise required to carry the Project out.

Consequently, the Parties have agreed to conclude the present Contract, with a view to the Service Provider providing the IT services needed for the design and creation of this Application.

### **Article 2 Definitions**

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

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

"Application" means the software to be developed by the Service Provider within the framework of the present Contract.

"Object code" means all the programmes making up the Application in the form of machine-executable files obtained through compiling Source code.

"Source code" means the computer programmes making up the Application in the form of a sequence of instructions written in a programming language.

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

"Documentation" means all the documents describing the architecture, specifications or functionalities of the Application.

"Deliverable(s)" means any item, document or IT programme implemented by the Service Provider for the Council of Europe within the framework of the present Contract, notably those indicated in the technical specifications in the Tender file.

"Phase(s)" means the different phases of the Project as described in the Tender file:

- Phase 1: drawing up of the Detailed Specifications by the Service Provider
- Phase 2; validation of the Detailed Specifications by the Council of Europe
- Phase 3: development of the Application by the Service Provider
- Phase 4: validation of the delivery of the solution
- Phase 5: tests and acceptance of the Application
- Phase 6: Acceptance of the Application (Aptitude Validation - VA)
- Phase 7: regular service checks (VSR)
- Phase 8: regular service validation (VSR validation)
- Phase 9: Guarantee
- Phase 10: End of guarantee validation

"Detailed Specifications" means the exact, detailed description of all of the Application's characteristics and functionalities. The Detailed Specifications shall be established by the Service Provider as part of Phase 1, on the basis of the needs expressed by the Council of Europe in the technical specifications as reproduced in Article 3 of the present contract, and then be validated by the Council of Europe in Phase 2. They shall then have contractual value.

"Work Package" refers to the series of services described in the Tender file and as listed in Article 3.2.

### **Article 3 Contract**

#### **3.1 Contractual documents**

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

- The present Contract and its Annex(es);
- The Tender file and its Annexes;
- The Service Provider's Tender Proposal Form, as recorded by the Council of Europe;
- La « valise du développeur » (Available at: <http://vdd.coe.int/2.8.0/>)

### **[3.2 Work Packages]**

#### **Work package 1: Development of a collaboration and knowledge platform for civil servants for Department of Public Administration**

**Work package 2: XX (N/A)**

**Work package 3: XX] (N/A)**

#### **Article 4 Subject-matter**

The purpose of the Contract is to define the conditions in which the Service Provider will provide the Deliverables required in the Tender file and will assign all intellectual property rights over the Deliverables to the Council of Europe.

#### **Article 5 Duration**

The contract will take effect from the date of its signature by both parties, and until completion of obligations of both parties **[under any of the work packages]**. The periods of execution of the Contract are the following:

- [Work package 1 will be due **15 May 2018;**

- [Work package 2 will be due **XX;**] (N/A)

- [Work package 3 will be due **XX;**] (N/A)

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

The Council of Europe undertakes to:

- pay, in accordance with the arrangements for settlement provided for in Article 13, the costs mentioned in the Service Provider's Tender Proposal Form;
- collaborate and co-operate fully with the Service Provider, in so far as it is competent to do so, in order to make possible the proper execution of the Deliverables;
- to provide to the Service Provider all information necessary to the execution of the Contract;
- to designate, within its staff, a unique counterpart to follow-up the Project together with the Service Provider;
- to make available to the Service Provider all means and physical access and software necessary to the execution of the Contract.

#### **Article 7. Obligations of the Service Provider**

##### **7.1 Provision of Services and Deliverables**

The Service Provider undertakes to provide to the Council of Europe all the Services and Deliverables described in the Tender file.

It shall hand over to the Council of Europe all the Deliverables, in the format and on the media indicated and in compliance with the imperative deadlines prescribed by the Council of Europe.

The Service Provider shall carry out all necessary in-house tests before delivering each Deliverable in order to check the conformity of the Deliverables in question. In this connection, the Service Provider shall supply, if the Council of Europe so requests, the test scenarios used for the in-house testing it has carried out.

The staff of the Service Provider required to perform services on the premises of the Council of Europe shall comply with the working hours, in-house rules and health and safety rules applicable on those premises, unless otherwise agreed in writing by the Parties.

It is expressly agreed that the present Contract shall not entail any secondment of staff and that the staff of the Service Provider assigned to performing the relevant services shall in all cases remain under the supervision and hierarchical and disciplinary authority of the Service Provider, which shall be responsible for the technical management and the administrative, accounting and social management of its staff.

It is specified in this connection that the staff of the Service Provider assigned to performing relevant services shall receive their instructions from their hierarchical superiors within the Service Provider and report back on their activities to the Service Provider.

The Service Provider shall guarantee that the employees performing relevant services are legally employed in accordance with the provisions of the applicable labour legislation.

##### **7.2 Obligation to provide advice, information and warnings**

The Service Provider recognises that it is subject to a general obligation to provide advice, and particularly to provide information and make recommendations, to the Council of Europe. In this context, the Service Provider shall provide to the Council of Europe all the advice, warnings and recommendations necessary particularly in terms of quality of services, security and compliance with professional standards. It undertakes to take into account the needs of the Council and to ask, throughout the duration of the Contract, any information or document useful for the full understanding of these needs.

The Service Provider undertakes to inform and advise the Council of Europe at any step of the Project, and to warn the Council, in due time, of any difficulty it may encounter or of any over-budget cost, be it already occurred or predictable. It also undertakes to inform and advise the Council in the event that the latter makes complementary requests in the course of execution of the Contract.

The Service Provider also undertakes to inform the Council as soon as it becomes aware, during the execution of the Contract, of any technological innovation or of the availability of any new product or service more appropriate to the Council of Europe's needs.

### **7.3 Sickness insurance, social security and travel insurance cover**

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

### **7.4 Fiscal obligations of the Service Provider**

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

### **7.5 Allocation of persons to the Project**

The Service Provider undertakes to allocate sufficient human resources to ensure the smooth implementation of the Project.

The Service Provider agrees that the Project Manager and all other persons allocated to the Project shall not be replaced before the completion of obligations of the Service Provider without notice to the Council, unless:

- a) the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the agreement for a significant period; or
- b) the individual resigns from employment with the Service Provider; or
- c) the contract of employment of the individual is terminated; or
- d) the Council makes a reasonable written request to the Service Provider to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Service Provider's obligations under this contract howsoever arising.

If any such person is replaced, the Service Provider shall consult with the Council about the identity of a suitable replacement.

### **7.6 Other obligations of the Service Provider**

In the performance of the present contract, the Service Provider undertakes to comply with the applicable principles, rules and values of the Council<sup>1</sup>.

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

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

### **Article 8 Intellectual property rights**

In exchange for the payment referred to in Article 13, the Service Provider assigns exclusively to the Council of Europe all intellectual property rights over the deliverables provided in the framework of this Contract, including where relevant any trademarks and patents registered in connection with these deliverables.

These deliverables are hereafter referred to as "creations".

The parties intend that the rights assigned shall be:

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

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<sup>1</sup> See [www.coe.int](http://www.coe.int) and, in particular, Instruction No. 44 of 7 March 2002 on the protection of human dignity of the Council of Europe, Instruction No. 47 of 28 October 2003 on the use of the Council of Europe's information system and Rule No. 1267 of 20 January 2007 prohibiting smoking inside all Council of Europe buildings.

third parties, temporarily or permanently, in whole or in part, and in any form, by assignment, licence or any other form of contract.

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

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

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

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

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

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

#### **Article 9 Receipt of the deliverables**

The purpose of the approval/acceptance procedure is to enable the Council of Europe to check the conformity of the Deliverables supplied by the Service Provider.

The receipt of the deliverables will occur in accordance with the procedure prescribed in the Business Requirements (see Tender file).

#### **Article 10 Insurance**

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

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

specified in the said insurance policy and supply the Council of Europe with a new copy.

#### **Article 11 Warranties**

##### **11.1 Guarantee of peaceful possession**

The Service Provider shall guarantee the Council of Europe's peaceful exercise of the rights transferred or conceded to it under Article 8 against all disturbance, claims and attempts at dispossession whatsoever from third parties maintaining that a Deliverable infringes their rights, including intellectual property rights.

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

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

The Council of Europe shall have the sole right to take the necessary steps to put an end to any counterfeiting, imitation or exploitation in any form whatsoever of all or some of those Deliverables. The Service Provider shall support its guarantee by providing assistance for any action undertaken by the Council of Europe relating to an infringement of the rights held by the latter pursuant to Article 8.

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

##### **11.2 Guarantee of correct operation**

The Service Provider shall guarantee that the Application conforms to the Detailed Specifications as well as to the normally expected standards of execution.

In respect of this guarantee, the Service Provider shall rectify, free of charge, any anomalies reported to it by the Council of Europe up to the expiry of a period of three months dating from the signature of the Application's acceptance report by the Parties.

This guarantee constitutes an essential obligation on the part of the Service Provider and a decisive prerequisite for the Council of Europe's consent to the present Contract.

This contractual guarantee shall be applicable without prejudice to the application of legal guarantees.

It is expressly agreed that the services provided to rectify anomalies may not be invoiced in any circumstances.

## Article 12 Access to Source Codes

The Service Provider undertakes to communicate to the Council of Europe all the source and object codes of the application, object of the present Contract, in the language defined by the Council of Europe, as well as any preparatory material, and their corrections, updates and documentation.

## Article 13 Financial Conditions

### 13.1 Prices of services supplied

In return for the services supplied by the Service Provider and the transfer of the intellectual property rights stipulated in Article 8, the Council of Europe shall pay to the Service Provider the respective price per work package as specified in the Service Provider's Tender Proposal Form.

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

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

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

The present contract includes **1 work package**. The payment for respective work packages will be due in accordance with the Service Provider's Tender Proposal Form (as recorded by the Council of Europe) in return for the services supplied by the Service Provider under respective work package and the transfer of the intellectual property rights stipulated in Article 8.

### [13.2 Ordering procedure

This provision applies to evolutionary maintenance services only.

These services shall be carried out on the basis of Order Forms submitted by the Council, by post or electronically. The Provider undertakes to take all the necessary measures to send to the Council within 5 (five) working days the signed Order Form together with a quote in line with the indications specified on each Order Form, and respecting the unit prices fixed in the Contract.

An Order Form is considered to be legally binding when the quote is approved by the Council, by displaying a Council's

Purchase Order number on the Order, as well as by signing and stamping the Order concerned. Copy of each approved Order Form shall be sent to the Service Provider, to the extent possible on the day of its signature.

If the Service Provider fails to provide the expected service level, as defined in the Contract, the Council reserves the right to deduct from the price to be paid an amount corresponding, on a pro rata basis, to the level of service that the Service Provider failed to provide, and/or to terminate the contract, in all or in part.]

### 13.3 Arrangements for invoicing and payment

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

Invoices shall refer to the stipulations of the present Contract. The Provider shall submit an invoice, or request for payment in the case of Providers who do not charge VAT under the applicable legislation, in triplicate and in Euros in conformity with the applicable legislation, for each service or batch of services delivered.

The fee shall be payable within 60 calendar days, to the bank account indicated in this Contract, upon receipt of the services and their acceptance by the Council and on presentation of an invoice in triplicate, or a request for payment in the case of Providers who do not charge VAT under the applicable legislation, and in Euros.

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

#### 13.3.1 For Work Package[s] [1]:

The invoicing schedule shall be as follows:

- **XX** % of the total amount, upon signature of the present Contract;
- **XX** % of the total amount, after [transfer of documents from the existing systems - phase 7]);
- The balance, after [after delivering user manuals for internal/external users and system administrators (Phase 9)].

### 13.4 Addresses and bank details of the parties

13.4.1 Supplier  
[...]

13.4.2 Council of Europe  
[...]

#### **Article 14 Penalties**

In case of delay on the Key Date of [Phase 9 <go live>], exclusively and directly attributable to the Contractor, the Council of Europe reserves the right, to request the Service Provider for the justifications of such delay, and in case of rejection of these justifications to ask the Service Provider for the remittance of a penalty of 400 € (four hundred Euro) duty-free, a day calendar of delay, culminated in 20 % total sums of the Contract. Penalties will be regulated by the programme of a credit.

#### **Article 15 Liability**

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

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

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

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

#### **Article 16 Breach of the Contract**

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

If, within a period of 15 (fifteen) days following receipt of this letter giving formal notice, the Service Provider has not fulfilled its obligation, the Council of Europe reserves the right to terminate the Contract, with no other formality required than a registered letter with acknowledgement of receipt. In such a case, the Council of Europe shall pay only the amount corresponding to the Deliverables and/or services actually delivered at the time of the Contract's termination. The Council

of Europe shall not pay the amounts corresponding to Deliverables and/or services that have not been supplied or from which it could not derive any benefit owing to the termination of the Contract; in the event of such amounts already having been paid, it shall demand their reimbursement.

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

#### **Article 17 Loyalty and Confidentiality**

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

The Service Provider shall observe the utmost discretion in all matters concerning the Contract, and particularly any service matters or data that have been or are to be recorded which come to the Service Provider's knowledge in the performance of the Contract. Unless obliged to do so under the terms of the Contract, or expressly authorised to do so by the Secretary General of the Council, the Service Provider shall refrain in all circumstances from communicating to any person, legal entity, government or authority external to the Council of Europe any information which has not been made public and which has come to the Service Provider's knowledge as a result of its dealings with the Council of Europe. Nor shall the Service Provider seek to gain any private benefit from such information.

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

#### **Article 18 Disclosure of the terms of the contract**

The Service Provider is informed and gives an authorisation of disclosure of all relevant terms of the contract, including identity and price, for the sole purposes of internal and external audit and to the Committee of Ministers and to the Parliamentary Assembly of the Council with a view to these latter discharging their statutory functions, as well as for the purpose of meeting the publication and transparency requirements of the Council of Europe or its donors. The Service Provider authorises the publication, in any form and medium, including the websites of the Council of Europe or its donors, of the title of the contract/projects, the nature and purpose of the contract/projects, name and locality of the Service Provider and amount of the contract/project.

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

#### **Article 19 Use of the name of the Council of Europe**

The Service Provider shall not use the Council's name, flag or logo without prior authorisation of the Secretary General of the Council.

#### **Article 20 Subcontracting**

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

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

- the use of sub-contractors shall not in any way lessen the Service Provider's liability vis-à-vis the Council of Europe in respect of the Contract, and the Service Provider shall remain the guarantor for the Council of Europe of the proper performance of the Contract and its sole point of contact;
- the Service Provider shall impose contractual conditions on its sub-contractors to ensure that it can fulfill its obligations to the Council of Europe;
- the Service Provider shall select its sub-contractors in accordance with criteria of reliability, security and sustainability and define their obligations in such a way as to ensure strict fulfilment of its own obligations;
- the Service Provider shall inform the Council of Europe, before the event and as soon as possible, of its intention to cease using a sub-contractor;
- the Service Provider's sub-contractors and employees shall be placed under obligation to assign to the Service Provider all intellectual property rights relating to their creation of all or part of the Deliverables, so that all such rights may be exclusively assigned to the Council of Europe by the Service Provider, in accordance with Article 8 of the present Contract.

#### **Article 21 Independence of the Parties**

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

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

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

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

#### **Article 22 Transfer of Contract**

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

#### **Article 23 General Provisions**

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

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

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

#### **Article 24 Amendments**

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

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

#### **Article 25 Force majeure**

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

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

#### **Article 26 Jurisdiction and applicable law**

In accordance with the provisions of Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe, any dispute relating to the validity, interpretation, execution or application of the Contract shall, failing a friendly settlement between the Parties, be submitted for decision to an

Arbitration Board comprised of two arbitrators, each selected by one of the Parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event that no presiding arbitrator is appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment, in accordance with the provisions of Rule No. 481 of the Secretary General (See Annex).

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

#### **Article 27 – Date, place and signatures of the parties**

Signed in two original counterparts, in [place], on [date],

[...]



## ANNEX

### **Rule No. 481 of 27 February 1976 laying down the arbitration procedure for disputes between the Council and private persons concerning goods provided, services rendered or purchases of immovable property on behalf of the Council**

The Secretary General of the Council of Europe,

Having regard to the Statute of the Council of Europe, of 5 May 1949, and in particular its Articles 11 and 40,

Having regard to the General Agreement on Privileges and Immunities of the Council of Europe signed on 2 September 1949, and in particular its Articles 1, 3, 4 and 21, as well as the Special Agreement relating to the seat of the Council of Europe signed on 2 September 1949,

Considering that it is appropriate to determine the arbitration procedures for any disputes between the Council and private persons regarding supplies furnished, services rendered or immovable property purchased on behalf of the Council,

Having regard to the decision of the Committee of Ministers of the Council of Europe at the 253<sup>rd</sup> meeting of the Deputies,

#### **DECIDES:**

##### **Article 1**

Any dispute relating to the execution or application of a contract covered by Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.

##### **Article 2**

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

##### **Article 3**

The Board referred to in Article 1 or, where appropriate, the arbitrator referred to in Article 2 shall determine the procedure to be followed.

##### **Article 4**

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

##### **Article 5**

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

Strasbourg, 27 February 1976 / Georg KAHN-ACKERMANN /  
Secretary General