

FRAMEWORK AGREEMENT

between the

European Stability Mechanism

and

[NAME OF THE SERVICE PROVIDER]

THIS FRAMEWORK AGREEMENT IS MADE BETWEEN:

European Stability Mechanism, an international financial institution governed by public international law, with its seat and principal office at 6a, Circuit de la Foire Internationale, L-1347 Luxembourg

(hereinafter called the “**ESM**”)

and

[NAME OF THE SERVICE PROVIDER], a **LEGAL TYPE OF ENTITY** established and existing under the laws of **[COUNTRY]**, with its registered office at **[ADDRESS]**

(hereinafter called the “**Service Provider**”)

(the ESM and the Service Provider hereinafter also called a “**Party**” and together the “**Parties**”).

WHEREAS:

1. The Service Provider offers to provide to the ESM technical maintenance and other related services described in the terms of reference attached to this framework agreement as Appendix A (the “**Terms of Reference**”).
2. The Terms of Reference describe the specific nature of the services to be provided, as well as the terms and conditions for their performance.
3. The ESM has decided to conclude this framework agreement with the Service Provider upon its selection pursuant to the procurement procedure no. FM/18/TM/MC/23 published on [] for the provision of technical maintenance and other related services and subsequently to conclude specific contracts with it to cover particular requests thereunder.
4. The mutual rights and obligations of the ESM and the Service Provider are as set out in this framework agreement.

NOW THEREFORE it is hereby agreed as follows:

Article 1 – DEFINITIONS

Those words and terms, which are not otherwise defined in the documents annexed to this framework agreement, are defined below:

“**Contract**” means an Implementing Contract or Release Order entered into between the ESM and the Service Provider pursuant to Article 7.

“**ESM Terms and Conditions**” means the ESM’s terms and conditions for framework agreements for the provision of services to the ESM attached to this Framework Agreement as Appendix B.

“**Framework Agreement**” means this framework agreement.

“**Implementing Contract**” means a contract entered into between the ESM and the Service Provider pursuant to Article 7 substantially in the form as attached hereto as Appendix C – Implementing Contract Template, for a Complex Technical Project specified by the ESM for which the use of a Release Order is not appropriate given the risk, complexity or other factors related to that particular Complex Technical Project.

“**Release Order**” means a document containing a RO number and substantially in the form as attached hereto as Appendix D – Release Order Template. A Release Order is used as a Contract between the ESM and the Service Provider only for the services specifically indicated in the Framework Agreement for which a Release Order is to be used. Such services will cover, except for Complex Technical Project(s) unless the ESM has determined the use of a Release Order is appropriate given the risk, complexity or other factors related to the particular Complex Technical Project, other services than the Ordered Services and will be issued pursuant to Article 7.

“**Release Order Number**” or “**RO Number**” means the reference number(s) generated by the ESM that the Service Provider must include on all invoices. The ESM may send the RO number(s) to the Service Provider via email or it may be included on a release order document. RO numbers are provided for inclusion on invoices only.

“**Services**” or “**Assignment**” means those services and related deliverables which will be provided by the Service Provider pursuant to this Framework Agreement and which are defined in Article 2, the Terms of Reference and in the Contracts.

Article 2 – SUBJECT MATTER

- 2.1 This Framework Agreement covers the provision of the Services to the ESM as specified in the Terms of Reference.
- 2.2 The procedure for the award and performance of specific Contracts is set out in Article 7 below.
- 2.3 The Service Provider is required to appoint a named individual, as well as a back-up person, with overall responsibility for managing and administering this Framework Agreement and Contracts.
- 2.4 Subject to Article 2.5 below, this Framework Agreement does not confer on the Service Provider any right to provide the Services to the ESM and there is no obligation on the ESM to request the Services from the Service Provider.

- 2.5 The Parties agree that by entering into this Framework Agreement, the ESM orders and the Service Provider undertakes to provide following Services: Caretaker Services; Site Supervisor Services; Contract management / Account Manager Services; Building Maintenance Services; Out-of-Hours Services; supply of Consumables, materials and spare parts with a cost of up to € 150 per item; Start-Up Phase services the “**Ordered Services**”). Except for the Start-Up Phase services which will commence on the Effective Date and continue until the ESM’s acceptance of the completion of the Start-Up Phase, the provision of the Ordered Services under this Framework Agreement will commence as of [] and will continue, unless earlier terminated, in full or in part, in accordance with Article 4.1 below, for the term of this Framework Agreement. Should the Service Provider receive from the ESM a release order document concerning the Ordered Services and containing a RO number on it, for the avoidance of doubt, such a document is not a binding Contract between the Parties and is sent by the ESM to the Service Provider for including a RO on invoices only.

Article 3 – PERFORMANCE OF THE FRAMEWORK AGREEMENT, OBLIGATIONS OF THE SERVICE PROVIDER

- 3.1 The Service Provider will perform the Services in accordance with the specifications set out in the Terms of Reference, including in the relevant Contracts.
- 3.2 The Service Provider is under the obligation to carry out the Services with all reasonable care and skill and to conform in all respects with the terms and conditions of the Framework Agreement and Contracts.
- 3.3 The Service Provider, when performing the Assignment, will comply with the ESM’s rules and regulations, which have been notified to the Service Provider and, in particular, with the ESM Terms and Conditions.
- 3.4 Unless otherwise agreed between the Parties, the Service Provider will provide its employees who are performing the Services with equipment, materials and all other items required for the provision of the Services.
- 3.5 Upon the ESM’s request, the Service Provider will provide all necessary certifications and authorisations relating to the performance of the Services.
- 3.6 Should the Service Provider receive from the ESM a release order document containing a RO number on it, which, however, is not a Release Order used as a Contract defined in the Framework Agreement, for the avoidance of doubt, such a document is not a binding Contract between the Parties and is sent by the ESM to the Service Provider for including a RO number on invoices only.

Article 4 – DURATION

- 4.1 This Framework Agreement will enter into force as of [date] (the “**Effective Date**”), as soon as it has been signed by both Parties, and will remain in force for a period of four (4) years, that is until [date] (the “**End Date**”), save where it is terminated earlier in accordance with the terms of the Framework Agreement.
- 4.2 This Framework Agreement will continue to apply to the Contracts whose end date falls after the date this Framework Agreement expires or terminates, unless otherwise specified in a Contract.

Article 5 – PRICE

- 5.1 In consideration for performing the Services, the Parties agree to the following fees:

[PLACEHOLDER]

- 5.2 The above-mentioned fees and rates are exclusive of VAT and any other tax liability. The Service Provider is responsible for all tax liabilities arising as a result of the provision of the Services and the remuneration obtained under the Framework Agreement and the Contracts. The ESM as an international organisation benefits from a VAT exemption in respect of goods and services supplied to it under Article 151, paragraph 1 a) of the Council Directive 2006/112/EC of 28 November 2006 as may be amended.
- 5.3 Unless otherwise stated in this Article 5 or in a Contract, the above-mentioned fees and rates are inclusive of any and all expenses incurred by the Service Provider in connection with the Services provided under this Framework Agreement and any Contracts concluded hereunder, including but not limited to, salaries,

employer's social security contributions, training, uniforms, equipment and tools, contract administration, reporting and management fees, overheads.

- 5.4 The above-mentioned fees and rates are fixed for the entire term of the Framework Agreement and include, in particular, any and all possible legal indexation cost increases that may apply during the entire term of the Framework Agreement. For the avoidance of doubt, the Service Provider will not have any right to increase the costs payable by the ESM, including when due to an increase in indexation during the term of this Framework Agreement.

Article 6 – TERMS OF PAYMENT

- 6.1 Unless otherwise agreed by the Parties in a Contract and with the exceptions of Articles 6.2. - 6.4. below, the Service Provider will provide at the beginning of each calendar month one monthly invoice which will cover all Ongoing Services and On Demand Services, which will be sent via e-mail to: InvoicesFM@esm.europa.eu with: PayablesFC@esm.europa.eu in copy (cc)).
- 6.2. The annual fees referred to in Article [●], i.e., Building Maintenance Costs, Consumables, and auxiliary materials, spare parts costs, Contract management fee and Out of Hours Services (Annual fee / standing charge for 24/7 cover) will be invoiced monthly and reflected in the invoices referred to in Article 6.1. above. The annual fees will be pro-rated if the Services underlying them were not provided for the entire year.
- 6.3. For the one-off fixed fee for Start-Up Phase services, the Service Provider will issue an invoice following the ESM's acceptance of the completion of the Start-up Phase as described and defined in the Terms of Reference.
- 6.4 Fees for Simple Technical Projects, Complex Technical Projects and Projects involving Partition wall systems – New installations or modifications will be invoiced in accordance with Contracts under which these Services have been provided by the Service Provider to the ESM and which have been awarded to the Service Provider following the procedure for awarding Contracts and execution of Contracts set out in Article 7 below.
- 6.5 The Service Provider will ensure that each issued invoice will show a detailed breakdown of the monthly costs in accordance with the ESM's requirements set out in § 8 of the ESM Terms and Conditions and will reflect the ESM cost centres, RO Number(s) and any other administrative information as required by the ESM. The ESM will provide the Service Provider with the relevant administrative information to be included on the invoices. The ESM has the right to change this information at any point and time by informing the Service Provider in writing (including via e-mail). Any such change(s) will take effect from the following month and will need to be applied to next monthly invoices.
- 6.7 In addition to the terms set out in this Article 6 and § 8 of the ESM Terms and Conditions, the Parties acknowledge the importance of accurate invoicing to avoid an unacceptable administrative burden on the ESM. If the Service Provider does not submit a monthly invoice by 5th business day of a given month or submits an incorrect invoice, the ESM will have the right, at its sole discretion, to deduct additional administration costs of €500 per each delayed or incorrect invoice and apply it as a credit for the next invoice.
- 6.8 The Service Provider will send all invoices in soft copies to the e-mail addresses set out in Article 6.1 above.

Article 7 – PROCEDURE FOR AWARDING CONTRACTS, EXECUTION OF CONTRACTS

A. Implementing Contracts

- 7.1 Unless the ESM uses a Release Order to request the Services other than Ordered Services in line with Article 1 of this Framework Agreement, the ESM will request the Service Provider to provide the Services other than Ordered Services and the Service Provider will provide such Services as agreed between the Parties in the relevant Implementing Contract. The ESM will provide in the Assignment Terms of Reference for the proposed Assignment the requirements and specifications of the Services required.

- 7.2 Once the Parties have agreed on the Services, the Parties will formalise this agreement by entering into an Implementing Contract, substantially in the form as in Appendix C.
- 7.3 Once the Implementing Contract has been signed by both Parties it becomes a part of this Framework Agreement and all terms of this Framework Agreement (as amended, if applicable), including, in particular, the Terms and Conditions, apply to any Implementing Contract in full force and effect and the services agreed in any Implementing Contract are the Services under this Framework Agreement. If there is a conflict between the Implementing Contract and this Framework Agreement, the terms of this Framework Agreement will prevail unless the Implementing Contract includes a specific wording amending the terms of this Framework Agreement.
- 7.4 All Implementing Contracts concluded pursuant to this Framework Agreement will conform to the terms set out therein.
- 7.5 The Service Provider will perform all Implementing Contracts in accordance with the specifications set out in the Terms of Reference and the Implementing Contract.
- 7.6 The Service Provider will at all times carry out the Services under an Implementing Contract with all reasonable care and skill and will conform in all respects with the terms and conditions of this Framework Agreement and the Implementing Contract.
- 7.7 No amendment or modification to any Implementing Contract will be effective unless and until agreed upon in writing and signed by the Parties. The ESM may terminate a Contract at any time during execution thereof with respect to the part still outstanding: (i) by giving the Service Provider a one month's written notice; or (ii) on the grounds and under the conditions set out in § 16 of the ESM Terms and Conditions.

B. Release Orders

- 7.8 If the ESM requires any of the Services covered by the Framework Agreement for which the Release Order is to be used, the ESM will provide the Service Provider with a Release Order.
- 7.9 The Service Provider is deemed to have accepted any Release Order by commencing delivery of the services described in such Release Order, accepting any payment from the ESM in relation to such Release Order or providing the ESM with any other acknowledgement of such Release Order (e.g. acknowledgement by handwritten signature or copy of same, e-mail, facsimile or any other means).
- 7.10 The Release Order issued by the ESM may specify a fixed fee, or a cap (maximum) fee, or the applicable hourly rate(s), number of man-hours purchased by the ESM and the estimated maximum fee payable by the ESM under the Release Order. If the ESM purchases man-hours, the ESM will only pay for the actual number of man-hours consumed. If any changes to the Release Order are required (in particular, additional number of man-hours) they must be approved by the ESM and an amendment/modification to the Release Order must be executed in accordance with Article 7.13 below.
- 7.11 Once the Release Order has been accepted by the Service Provider it becomes a part of this Framework Agreement and all terms of this Framework Agreement (as amended, if applicable), including, in particular, the Terms and Conditions, apply to any Release Order in full force and effect and the services agreed in any Release Order are the Services under this Framework Agreement. If there is a conflict between the terms of the Release Order and this Framework Agreement, the terms of this Framework Agreement (including the Terms of Reference and Terms and Conditions) will prevail.
- 7.12 Each Release Order will become effective on the 'Date of RO Issue' specified in the respective Release Order and will stay in force until (a) end delivery date specified in the Release Order or (b) termination of the Release Order, whichever event occurs earlier. The ESM may terminate a Release Order at any time during execution thereof with respect to the part still outstanding: (i) by giving the Service Provider a one month's written notice; or (ii) according to § 16 of the ESM Terms and Conditions.
- 7.13 In derogation from § 23 of the ESM Terms and Conditions, the Parties may amend or modify a Release Order on mutual agreement. No amendment or modification to any Release Order will be deemed effective unless and until the ESM provides the Service Provider with a revised Release Order specifying the amendment or modification (by completing the 'Change Order General Description' section, the 'Date of RO Change Order' section and 'RO Change Order N°' section in the Release Order Template). The Service Provider is deemed to have accepted the revised Release Order by commencing or continuing delivery of the services described in the revised Release Order, accepting any payment from the ESM in relation to such revised

Release Order or providing the ESM with any other acknowledgement of such revised Release Order (e.g. acknowledgement by handwritten signature of copy of same, e-mail, facsimile or any other means).

Article 8 – LAW AND JURISDICTION

- 8.1 This Framework Agreement and all Contracts and any non-contractual obligations arising out of or in connection with them will be governed by the laws of the Grand Duchy of Luxembourg.
- 8.2 The courts of the City of Luxembourg have the exclusive jurisdiction to settle any dispute arising out of or in connection with this Framework Agreement or any Contracts (including any dispute regarding the existence, validity or termination of this Framework Agreement or the Contract or any contractual or non-contractual obligations arising out of or in connection with this Framework Agreement or the Contracts).

Article 9 – SUSPENSION

- 9.1 Without prejudice to the ESM's right to terminate this Framework Agreement, the ESM may at any time and for any reason suspend the performance of this Framework Agreement or pending Contract(s) or any part thereof. Where possible, the ESM will notify its decision to suspend the performance of the Framework Agreement or any Contract reasonably in advance. Suspension will take effect on the day the Service Provider receives notification, or at a later date where the notification so provides. The ESM may at any time following suspension give notice to the Service Provider to resume performance of this Framework Agreement or pending Contract(s). In the event Services resume following the suspension of the Framework Agreement or pending Contract(s), the Service Provider will use reasonable efforts to ensure the continuation of the Service Provider resources allocated to the Framework Agreement or Contract(s) prior to the suspension.
- 9.2 The Service Provider will not be entitled to claim compensation on account of suspension of this Framework Agreement or pending Contract(s) but will be remunerated for all Services provided to the ESM until the date of suspension of this Framework Agreement or any pending Contract(s).

Article 10 – NOTICES AND CONTACT PERSON

- 10.1 Unless otherwise provided for in this Framework Agreement, the Terms of Reference, the ESM Terms and Conditions or in a Contract, notices and other communications given hereunder addressed to either Party will be in writing and will be served by hand delivery, registered letter or other means of transmission which affords evidence of receipt by the addressee to its address set out below, or to such other address as one Party previously notified to the other Party in writing:

for the ESM:	Attention: Secretary General European Stability Mechanism 6a, Circuit de la Foire Internationale L-1347 Luxembourg
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Copy: General Counsel

for the Service Provider:	Attention: ● [ADDRESS OF THE SERVICE PROVIDER]
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- 10.2 The date of registration or, as the case may be, the stated date of receipt of transmission will be conclusive for the determination of a period.

- 10.3 The Service Provider will have as a contact person at the ESM [name of the ESM contact/business person] to whom the Service Provider will report in respect of the execution of the Services, or any other person that the ESM has expressly notified to the Service Provider.

Article 11 – ENTIRE AGREEMENT

- 11.1 This Framework Agreement contains all covenants, stipulations and provisions agreed by the Parties. No

agent or representative of any Party has authority to make, and the Parties will not be bound by or be liable for, any statement, representation, promise or agreement not set out herein.

11.2 The following documents attached hereto will be deemed to form an integral part of this Framework Agreement:

- Appendix A: Terms of Reference
- Appendix B: ESM Terms and Conditions
- Appendix C: Implementing Contract Template
- Appendix D: Release Order Template

11.3 In case of any inconsistency between the terms of this Framework Agreement, the following order of priority will apply:

- Terms set out in Articles 1 to 11 of this Framework Agreement
- Appendix A
- Appendix B
- Appendix C
- Appendix D

IN WITNESS WHEREOF, the Parties hereto have caused this Framework Agreement to be signed in their respective names as of the Effective Date.

Luxembourg, [DATE]
Signed for and on behalf of the
EUROPEAN STABILITY MECHANISM

[PLACE], [DATE]
Signed for and on behalf of
[NAME OF THE SERVICE PROVIDER]

By: ●
Title: ●

By: ●
Title: ●

By: ●
Title: ●

Appendix A

Terms of Reference

These Terms of Reference apply to and form part of the framework agreement concluded between the ESM and the Service Provider. Terms defined in the Framework Agreement have the same meaning when used herein.

[PLACEHOLDER]

Appendix B

ESM Terms and Conditions

Framework Agreements for the Provision of Services to the European Stability Mechanism

§ 1 Scope of application and order of precedence

These Terms and Conditions apply to and form part of the framework agreement concluded between the ESM and the Service Provider with a view to sign one or more subsequent contracts for the provision of services to the ESM. The ESM and the Service Provider are hereinafter also called a “**Party**” and together the “**Parties**”. Additional or different terms and conditions do not apply.

Terms defined in each contract concluded pursuant to the Framework Agreement to which this copy of these Terms and Conditions are attached (each such contract hereinafter the “**Contract**”) have the same meaning when used herein.

The Service Provider shall be deemed to have accepted these Terms and Conditions through any one of the following acts: (a) signature of the Framework Agreement, (b) commencement of the performance of services to the ESM, or (c) acceptance of any payment from the ESM.

Annexes I, II and III hereto form an integral part of these Terms and Conditions. In the event of any inconsistency between the Annexes hereto and the other provisions of these Terms and Conditions, the following order of precedence shall apply: (1) the other provisions of these Terms and Conditions, (2) Annex III, (3) Annex II and (4) Annex I.

§ 2 Service Provider obligations

The Service Provider shall provide the Services specified in the Framework Agreement and the Contract (these Services hereinafter also the “**Assignment**”) in accordance with the requirements and specifications set forth in the Framework Agreement and the Contract and in accordance with any instructions issued from time to time by the members of the ESM’s staff identified therein as the Service Provider’s contact person(s) for the purposes of the Assignment.

The Service Provider undertakes to perform the Services at all times in accordance with the highest standards of professional and ethical competence and integrity in the Service Provider’s industry, having due regard for the nature and purposes of the ESM as the permanent crisis resolution mechanism for the countries of the euro area and to ensure that its present, past and future employees, persons working as independent contractors or and any other persons acting on behalf of the Service Provider in the performance of the Services (hereinafter each such person is called the “**Employee**”) as well as subcontractors will conduct themselves in a manner consistent therewith.

The Service Provider shall at all times cooperate with the ESM, its members of staff and agents in the interests of the project to which the Services relate (hereinafter the “**Project**”). The Service Provider shall report immediately to the ESM any circumstances or events which might reasonably be expected to hinder the timely performance of the Assignment.

The Service Provider shall perform the Services as an independent contractor under the general guidance of the ESM. The Service Provider’s Employees, subcontractors and any other persons acting on behalf of the Service Provider in the performance of the Services shall not act as agents or members of staff of the ESM.

The Service Provider shall respect and comply with all applicable laws and regulations, including, but not limited to, any applicable laws and regulations of the European Union and of any country in which the Services are to be performed.

In case the Assignment triggers the application of any provisions of Luxembourg law or of a collective labour agreement regarding transfers of undertakings, in particular, but not limited to, Articles L.127- 1 to L.127-6 of the Luxembourg Labour Code (collectively the “**Regulations**”), the Service Provider will fully comply with any of its obligations under the Regulations, including, but not limited to, taking over and/or transferring employees if required under the Regulations.

Under no circumstances shall the ESM be held responsible for any obligations of the Service Provider in connection with the Regulations, and the Service Provider will at all times fully, without being subject to the limitation of liability provided in § 14, indemnify, defend and hold harmless the ESM against any loss, liability or costs in respect of anything done or omitted to be done under the Regulations or which arises from or in connection with the application of the Regulations or the transfer of any employment relationship in

connection with the Regulations.

Upon expiry or termination of the Framework Agreement, the Contract or notice of an alleged breach leading to termination of a Contract or the Framework Agreement, the Service Provider will comply with all reasonable requests of the ESM and/or any third party provider of services which are identical or substantially similar to any of the Services and which the ESM receives in substitution for any of the Services following the termination or expiry of the Framework Agreement or the Contract (the “**Replacement Service Provider**”) in order to determine whether the change from the Service Provider to the Replacement Service Provider leads to a transfer of employees under the Regulations and allow the Replacement Service Provider to take the appropriate actions to comply with the Regulations. If the change from the Service Provider to the Replacement Service Provider leads to the application of the Regulations, the Service Provider will implement the transfer process provided for by the Regulations. When doing so, the Service Provider will at all times comply with the Luxembourgish law of 2 August 2002 on the protection of persons with regard to the processing of personal data (in its then current version) when providing information regarding employees. In the event that any person engaged or employed by the Service Provider claims that its employment contract and/or its employment rights have transferred to the ESM, the ESM may, subject to applicable law, from the first day the person claims that its employment contract and/or its employment rights have transferred to the ESM, either (i) terminate any such person’s employment or purported employment with the ESM, and the Service Provider will fully, without being subject to the limitation of liability provided in § 14, indemnify, defend and hold harmless the ESM against any loss, liabilities or costs it may suffer or incur arising out of or in connection with any employee’s transfer claim, the Regulations and/or the employment and termination of employment, or (ii) agree with the claimant and the Service Provider or the Replacement Service Provider that the claimant’s employment contract shall be transferred to the Service Provider or the Replacement Service Provider, and the Service Provider or the Replacement Service Provider will assume any and all obligations arising from the employment contract or the transfer of the employment contract and/or employment rights.

§ 3 Term of Engagement

The Service Provider shall provide the Services during the period (hereinafter the “**Term of Engagement**”) commencing on the Effective Date stated in the Framework Agreement or the Contract and ending, unless agreed otherwise, on the End Date stated therein.

§ 4 Deliverables

Where a deliverable forms a subject matter of the Contract (the “**Deliverable**”), the timetable for submitting the Deliverable and the payment schedule in respect of that Deliverable shall be as stated in the Contract or as otherwise notified by the ESM to the Service Provider. In the case of partial acceptance of a Deliverable by the ESM, the ESM shall have the right to withhold the corresponding portion of the Service Provider’s remuneration until such time as the Service Provider has performed such remedial work as is necessary to achieve acceptance by the ESM.

§ 5 Assignment and subcontracting

The Service Provider shall not assign, in whole or in part, the rights and obligations arising out of the Framework Agreement or the Contract nor subcontract any part of the Services without the ESM’s prior written consent.

Even where the ESM authorises the Service Provider to subcontract all or part of the Services to third parties, the Service Provider shall nonetheless remain bound by its obligations to the ESM under the Framework Agreement or the Contract and liable towards the ESM for any acts or omissions by its subcontractors.

The Service Provider undertakes to include in any contract signed with a subcontractor for all or part of the Services provisions (1) requiring the subcontractor to comply with these Terms and Conditions and any and all other Service Provider’s obligations towards the ESM and (2) enabling the ESM to enjoy the same rights in relation to the subcontractor as in relation to the Service Provider itself. Upon request of the ESM, the Service Provider shall provide to the ESM proof that it has complied with this undertaking.

§ 6 Employees

The Service Provider shall:

- i. provide all necessary Employees in order to complete the Assignment;
- ii. ensure that its Employees are suitably skilled, experienced and professional;
- iii. notify the ESM of the identity of and, if so requested by the ESM, provide a skills profile for each of its Employees assigned to the Project;
- iv. ensure that its Employees behave in a proper and reasonable manner, work in a constructive manner with the members of staff and contractors of the ESM to the extent necessary for the successful completion of the Project and comply with the ESM's rules and regulations in accordance with § 9 of these Terms and Conditions;
- v. not remove or replace without the prior written consent of the ESM, which shall not be unreasonably withheld, any of its Employees assigned to the Project, unless such removal or replacement is due to accident, illness or other disability or cessation of employment by the Service Provider; and
- vi. if the ESM reasonably objects to the assignment or continued assignment of any particular person to work on the Project, promptly replace that person.

Without prejudice to indents (v) and (vi) above, the Service Provider may, during the Term of Engagement, submit a written request to the ESM to substitute one or more of its Employees who have been assigned to work on the Project by other Employees having the same skills profile, provided that, unless specifically otherwise agreed in writing: (i) it shall submit its request at least one month prior to the date on which the replacement is to take effect and (ii) it shall set out in its request the reasons for the proposed substitution, which must be related to the successful completion of the Assignment, as well as the identity and skills profile of the proposed new candidate(s).

Any change of the Employees on the part of the Service Provider shall be at no cost consequences to the ESM. The Service Provider shall ensure that performance of the Services is not disrupted as a result of any change of the Employees. In the event that any Employee is replaced, the Service Provider will ensure that the replacement Employee possesses the same (or a greater) level of experience.

§ 7 Remuneration

The Service Provider shall be remunerated in accordance with the prices specified in the Framework Agreement or the Contract, which, unless otherwise therein specified, shall include all expenses. The Services may be provided on a time and materials basis or on a fixed-price basis or a combination of both.

Where the remuneration is expressed in terms of an hourly or daily rate, the time spent in performing the Services shall be determined on the basis of the number of hours or days actually spent in performing the Services.

Except as otherwise agreed between the ESM and the Service Provider, no remuneration shall be paid in respect of Services which are not performed during the Term of Engagement.

§ 8 Terms of payment

Unless otherwise agreed between the ESM and the Service Provider, no advance payment shall be made for the supply of Services or the delivery of a Deliverable, and the agreed remuneration shall be invoiced by the Service Provider upon completion of the Assignment or, where the remuneration relates to recurrent Services payable on a monthly basis, at the beginning of each calendar month which shall cover the Services provided during the preceding calendar month. In the case of a Deliverable, the Service Provider shall submit its invoice upon receiving notification of the ESM's acceptance of the Deliverable.

The Service Provider's invoice shall make reference to the corresponding purchase order and contract reference numbers of the ESM, if applicable, and, except as may be provided otherwise in the Framework Agreement or the Contract, shall contain the following information:

- in case of a time and materials contract, a reference to the calendar month covered by the invoice together with a summary of days and/or hours worked, the daily and/or hourly rate and, if applicable, the daily expense charge for each Employee of the Service Provider, subcontractor or other person acting on behalf of the Service Provider in the performance of the Services;
- in case of a fixed-price contract, a summary of the Services provided by the Service Provider during the period covered by the invoice with reference to the agreed payment schedule;

- where there is a Deliverable, reference to: (i) the type of Deliverable (ii) the date of acceptance by the ESM of the Deliverable, and (iii) the agreed payment schedule for that Deliverable;
- the total amount to be paid in the currency set out in the Framework Agreement or the Contract; and
- the Service Provider's bank account to which payment is to be made.

Where an invoice covers more than one activity, the relevant entries should be indicated separately for each activity, together with the total amount to be paid.

The Service Provider's invoice shall be accompanied by such supporting documentation as the ESM may reasonably require, including, in the case of a time and materials contract, time sheets for each Employee of the Service Provider assigned to the Project.

All invoices shall be submitted in soft copies to the following email address: InvoicesFC@esm.europa.eu and the email address of the ESM's responsible person requesting the Services.

Unless otherwise specified in the Framework Agreement or the Contract, the ESM shall make payment in euro within 30 days of receipt of a correct invoice. If the ESM is of the opinion that the invoice submitted by the Service Provider is incorrect, it shall reject the invoice and shall inform the Service Provider of the reasons thereof.

§ 9 Compliance with the ESM's rules and regulations

The Service Provider undertakes to comply with the ESM's rules and regulations (as they may be amended from time to time), to the extent they are applicable to the Service Provider and to the extent the Service Provider has been informed of such rules and regulations.

The Service Provider shall report immediately to the ESM any circumstances or events that are liable to constitute bullying or harassment and which involve the Service Provider's Employees, subcontractors or any other person acting on behalf of the Service Provider in the performance of the Assignment.

§ 10 Environmental requirements

The Service Provider undertakes to comply, in the performance of the Framework Agreement and the Contract, with all applicable environmental, social and labour law obligations established by European Union law, national law, collective agreements or the international social and environmental conventions listed in Annex X to Directive 2014/24/EU of the European Parliament and of the Council, or any other applicable legal obligations. The Service Provider further undertakes to comply, in the performance of the Framework Agreement and the Contract, with the environmental criteria and any other similar conditions set out in the specifications of the Framework Agreement or the Contract, if any, and will provide the ESM with proof of same on request.

§ 11 Tax and social security obligations

The Service Provider shall be responsible for all tax liabilities arising as a result of the remuneration obtained under the Framework Agreement and the Contract.

The Service Provider shall also be responsible for all tax and social security payments due in respect of itself and its Employees. The Service Provider shall indemnify the ESM against any claim made against the ESM for non-compliance thereof.

Upon request of the ESM, the Service Provider shall provide to the ESM proof that it has complied with these obligations.

§ 12 Confidentiality and protection of personal data

Each Party must treat as confidential, and only disclose with the other Party's prior written approval, any information which it acquires from such other Party or any other person in the course of the performance of the Services, including the existence of the relationship between the Parties and the existence and terms of the Framework Agreement and the Contract (the "**Confidential Information**"). However, the foregoing obligation of confidentiality shall not apply to any information that was in a Party's possession prior to commencement of the Services, or which is in or later enters the public domain other than by wrongful disclosure of such Party. For the avoidance of doubt, ESM Confidential Information includes in particular but is not limited to any reference to the cooperation with the ESM whether in print or online or in marketing or pitch materials for other clients or potential clients

In case the Service Provider receives any request, from any source, for copies of or access to, or other disclosure of any ESM Confidential Information, the Service Provider will promptly communicate such request to the ESM

and invoke towards the requestor the immunity of the property of the ESM as set out in § 21 of these Terms and Conditions.

The Service Provider must not disclose any ESM Confidential Information unless upon (i) receipt of written consent of the ESM, (ii) a final and legally binding order of a court of a member state of the euro area, or (iii) a final and legally binding order of a court of a non-euro area member state provided that the respective court proceedings have allowed an appeal and a participation of the ESM.

The ESM must not disclose any Service Provider Confidential Information unless upon (i) receipt of written consent of the Service Provider, (ii) if required to do so in a judicial or administrative proceedings, or (ii) if it is otherwise required to disclosed it by law or regulation.

The Service Provider will comply with the relevant provisions of personal data protection legislation of the European Union and the provisions of the relevant national legislation, in particular in relation to commissioned data processing and including any requirements resulting from EU guidelines.

The Service Provider will further implement the following technical and organisational measures for the protection of the personal data and the ESM Confidential Information processed under the Framework Agreement and the Contracts:

1. Access control to premises and facilities: The Service Provider must prevent unauthorised access to its premises and facilities (i.e. technical and organisational measures to control access to premises and facilities, in particular to check authorisations, must be in place).
2. Access controls to systems: The Service Provider must prevent unauthorised access to IT systems (i.e. technical (ID/password security) and organisational (user master data) measures for user identification and authentication must be in place).
3. Access control to data: The Service Provider must prevent any activities in IT systems which are not covered by the allocated access rights (i.e. requirements-driven definition of the authorisation scheme and access rights, and monitoring and logging of accesses must be in place).
4. Disclosure control: The Service Provider must control all aspects of the disclosure of data: electronic transfer, data transport, transmission control, etc. (i.e. measures to transport, transmit and communicate or store data on data media (manual or electronic) and measures for subsequent checking must be in place).
5. Input control: The Service Provider must maintain full documentation on data management and maintenance (i.e. measures to check whether data has been entered, changed or removed (deleted), and by whom must be in place).
6. Job control: The Service Provider must carry out commissioned data processing in accordance with the ESM's instructions.
7. Availability control: The Service Provider must protect data against accidental destruction or loss (i.e. measures to assure data security (physical/logical) must be in place).
8. Segregation control: The Service Provider must process data collected for different purposes separately (i.e. measures to provide for separate processing (storage, amendment, deletion, transmission) of data for different purposes must be in place).

In addition, the Service Provider and any of its subcontractors will not store, process or access any data received from the ESM outside of the euro area without the ESM's prior written consent. If the Service Provider or any of its subcontractors want to store, process or access any personal data received from the ESM outside of the European Economic Area, in addition to receiving the ESM's prior written consent, the Parties will agree on adequate contractual safeguards with respect to the protection of personal data outside of the European Economic Area.

The Service Provider is responsible for ensuring that all of its Employees, subcontractors and any other persons acting on behalf of the Service Provider in the performance of the Services will comply with all aspects of and all obligations arising out of this § 12 and Annex II and III and will be liable for any breach by them of these obligations. Without prejudice to Clause 1.5 (Reporting) of Annex II hereto the Service Provider shall report to the ESM any actual or suspected breach of confidentiality, integrity and/or availability of ESM data, including personal data, held by or processed by the Service Provider. Such reports shall be issued within 24 hours upon identifying the breach and shall contain details on the actions undertaken to investigate and repair such breach.

§ 13 Warranty

The Service Provider represents and warrants that the Services will fulfil their intended purpose, comply with any applicable industry standards and best practices and conform to the Terms of Reference and any other

specifications and requirements agreed by the Parties (the “**Warranty**”). If, during the Term of Engagement, the ESM is of the opinion that the Services do not conform to the Warranty, the ESM will notify the Service Provider accordingly who will promptly remedy such nonconformity at no additional costs for the ESM.

The Service Provider shall not be liable for the tools, hardware or software provided by: (i) third parties directly to the ESM; or (ii) the ESM, and, the Service Provider makes no commitment or warranty regarding such components. In particular, the Service Provider shall not be liable in respect of:

- the availability, regular or irregular operation, malfunction or maintenance of the hardware, software, telecommunication systems, networks or any third party system used by the ESM or supplied by a third party to the ESM to perform the Services;
- any non-compliant or improper use by ESM, its subcontractors or a third party of the Services, specific Deliverables, hardware, or software used to carry out the Services.

§ 14 Liability and Force Majeure

The Service Provider shall be liable to the ESM for any loss, injury or damage arising out of the performance (or non-performance or improper performance) of the Services, including for failing to submit deliverables within the term specified in the Contract. In no event shall the Service Provider’s liability to the ESM arising out of the Contract exceed the greater of (a) one million euro or (b) the maximum remuneration payable to the Service Provider under the Contract. Notwithstanding the foregoing, the Service Provider’s liability shall not be limited in the events of wilful intent or gross negligence or in respect of death or personal injury resulting from acts, omissions or negligence on the part of the Service Provider. This § 14 does not apply to any indemnity provided under the Framework Agreement or the Contract.

If a Force Majeure Event occurs which prevents, hinders or delays a Party from performing its obligations under the Framework Agreement or the Contract, the affected Party will not be liable to the other Party for any non-performance or improper performance of its obligations to the extent that its ability to perform those obligations has been directly affected by the Force Majeure Event (and the performance of the affected obligations shall be suspended until cessation of the Force Majeure Event), provided that:

- i. the affected Party notifies the other Party in writing as soon as reasonably practical of the occurrence of the Force Majeure Event and the nature and likely duration of its impact upon the performance of the obligations;
- ii. proper business continuity plans are in place and their procedures had been followed;
- iii. the non-performance or improper performance (including in particular any delay) could not have been prevented by reasonable precautions or could not have been reasonably circumvented by the use of alternative sources, workarounds or other means;
- iv. the affected Party continues to use its best endeavours to recommence performance to the extent possible without delay; and
- v. the affected Party continues to perform all its obligations which have not been affected by the Force Majeure Event.

Upon cessation of the Force Majeure Event, the affected Party will promptly notify the other Party of such cessation and resume performance of the affected obligations.

The ESM will not be obliged to pay any fees and/or reimburse any expenses relating to the affected obligations until the Service Provider re-commences their performance.

“**Force Majeure Event**” shall mean an event or circumstance which is beyond the control and without the fault or negligence of the affected Party and which could not have been prevented and cannot be remedied by the affected Party by exercise of all available efforts, including in particular: riot, war, acts of terrorism, earthquake, flood, fire or other physical natural disaster, strikes and industry disputes at national or industry level, worldwide or national level pandemic.

§ 15 Intellectual property rights

15.1 Definitions:

“**ESM Materials**” mean any materials or information that the ESM owns or licenses from a third party, including but not limited to concepts, works, inventions, information, drawings, designs, templates, interfaces, programs, or software (in source code and object code form), as well as any related documentation and instructions.

“**Intellectual Property Rights**” or “**IPR**” means any intellectual property or proprietary rights, including without limitation, all present and future patents, utility models, ideas and rights to inventions (whether or not patentable or reduced to practice), improvements, all copyright and neighbouring rights (including without limitation moral rights, as well as the rights of reproduction, distribution, communication to the public, renting and lending), trademarks (whether registered or unregistered), service marks, rights in designs or models (whether registered or unregistered), brand names, product names, logos, slogans, trade names, company names and reputation, domain names, database right, rights in confidential and / or proprietary information (including without limitation know-how and trade secrets), rights in trade dress, rights in goodwill, rights in clientele, unfair competition rights, network configurations and architectures, concepts, marketing and development plans, methods and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**New Work Product**” means any Work Product directly or indirectly developed, made, conceived, compiled, created or customised (and in such case of customisation solely for the customised part thereof) by the Service Provider in connection with the Services and Deliverables falling within the scope of the Framework Agreement or the Contract. The New Work Product may include as relevant any new version, improvement, enhancements or derivative works of ESM Materials or Service Provider Materials developed, made, conceived, compiled, created or customised (and in such case of customisation solely for the customised part thereof) by the Service Provider in connection with the Services and Deliverables.

“**Service Provider Materials**” mean any materials or information that the Service Provider owns or licenses from a third party, including but not limited to concepts, works, inventions, information, drawings, designs, templates, interfaces, programs, or software (in source code and object code form), as well as any related documentation and instructions. For the avoidance of doubt, the Service Provider retains ownership of any such Service Provider Materials.

“**Pre-Existing Work Product**” means any Work Product directly or indirectly developed, made, conceived, compiled, created or customised by the Service Provider prior to the Effective Date, including Service Provider Materials, if any. For the avoidance of doubt, the Service Provider retains ownership of any such Pre-Existing Work Product.

“**Work Product**” means any work product, including without limitation, all computer software and software programs (including without limitation any algorithms, APIs, source codes, executable and object codes, apparatus, circuit designs and assemblies), reports, notes, specifications, manuals, plans, documentation, concepts, works, inventions, information, drawings, designs, templates, interfaces and programs) as well as any related documentation and instructions.

- 15.2 The Parties agree that any New Work Product will be the sole property of the ESM and any copyright and all other IPR to such New Work Product will belong to the ESM. For the avoidance of doubt, this includes, but is not limited to, the exclusive, transferable and irrevocable right for the ESM, covering all forms of use known at the time of concluding the Contract, to use such New Work Product for the ESM’s business purposes and all other ways and forms of use without any restrictions in terms of time and place of use. The right of use includes, but is not limited to, the right to copy, modify, distribute, display and make available to the public, transfer and access, combine (including combinations with any other Work Products developed, made, conceived, compiled, created or customised by the Service Provider for the ESM), further develop and otherwise use, exploit and dispose of any New Work Product at the sole discretion of the ESM. In such case the ESM will have the unlimited right of use as described above also regarding all unknown future ways of use, if any.
- 15.3 With respect to any Pre-Existing Work Product, to the extent any such Pre-Existing Work Product is embodied in any New Work Product, the Parties agree that the ESM will have the non-exclusive, transferable and irrevocable right to use, covering all forms of use known at the time of concluding the Contract, for the ESM’s business purposes and all other ways and forms of use without any restrictions in terms of time and place of use. This right of use includes, but is not limited to, the right to copy, modify, distribute, display and make available to the public, transfer and access, combine (including combinations with any other Work Products developed, made, conceived, compiled, created or customised by the Service Provider for the ESM), further develop and otherwise use, exploit and dispose of any such Pre-Existing Work Product embodied in any New Work Product at the sole

discretion of the ESM. In such case the ESM will have the unlimited right of use as described above also regarding all unknown future ways of use, if any.

- 15.4 The Service Provider will not access, use, copy, or distribute any Work Product protected by IPR owned by the ESM (including any ESM Materials and any New Work Product) without the ESM's prior written permission, and except as set out in the next sentence of this § 15.4. In so far as the ESM grants the Service Provider such permission, the ESM hereby grants to the Service Provider a royalty free, non-exclusive, temporary, revocable license to use such Work Product solely for the purpose of and during the period required for the provision of the Services and Deliverables to the ESM in accordance with the Contract, with the right to sub-license such license on the terms set forth in this § 15.4 to the subcontractors of the Service Provider which have been authorised by the ESM in accordance with § 5.
- 15.5 The Service Provider represents and warrants that no (i) New Work Product or (ii) Pre-Existing Work Product embodied in any New Work Product pursuant to § 15.3 above or (iii) any combination of any New Work Product with any other Work Product that the Service Provider developed, made, conceived, compiled, created or customised for the ESM infringes any third party IPR, including but not limited to third-party rights that may limit or exclude the use by the ESM as described in § 15.2 and 15.3 above. The Service Provider also represents and warrants that for any Work Product provided to the ESM that contains or is covered by third party IPR or Open Source Code the Service Provider will have all licenses required to ensure that the ESM can use the Work Product without infringing any third party IPR. If the Parties agree in writing that a Work Product will contain certain third party IPR or Open Source Code and that the ESM has to comply with certain license terms of the third party or Open Source Code provided by the Service Provider to the ESM, the ESM will comply with such license terms insofar as they are applicable to the ESM.
- 15.6 The Service Provider agrees to fully, without being subject to the limitation of liability provided in § 14, indemnify, defend and hold harmless the ESM and its employees, officers, directors and members of the management board from and against any claims, damages, losses, liabilities, costs and expenses arising out of or in relation to any third party claim concerning the alleged infringement or misappropriation of any third-party IPR in relation to the Services and/or Deliverables in breach of the above § 15.5, except to the extent the alleged infringement or misrepresentation:
- is the result of a subsequent modification, made solely by the ESM and/or any of its subcontractors.

For the avoidance of doubt, this does not apply to any combination and use as described in § 15.2 and § 15.3 above. Also, this does not limit the Service Provider's obligation to provide the Services and Deliverables with the rights for the ESM as described in § 15.2 and 15.3 above;

- results from the use of any Work Product by the ESM or any of its subcontractors in violation of the Contract or any other agreement entered into between the Service Provider and the ESM which cause such infringement; or
- results from requirements, instructions or specifications provided by the ESM to the Service Provider concerning the Services or Deliverables which have been developed or specified solely by the ESM and per se directly constitute an infringement of the third-party IPR. The Parties agree that if the Service Provider is aware or becomes aware of the fact that any requirements, instructions or specifications provided by the ESM infringe or may reasonably infringe third-party IPR, the Service Provider will promptly inform the ESM thereof.

The ESM (the "**Indemnified Party**") will promptly notify the Service Provider (the "**Indemnifying Party**") of any claim subject to this § 15.6, but if the Indemnified Party fails to promptly notify the Indemnifying Party, this will only affect the Indemnifying Party's obligations under this § 15.6 to the extent that the Indemnified Party's failure prejudices the Indemnifying Party's ability to defend the claim. The Indemnifying Party may: (a) use counsel of its own choosing (subject to the Indemnified Party's written consent which shall not be unreasonably withheld or delayed) to defend against any claim; and (b) settle the claim as it deems appropriate, provided that the Indemnifying Party obtains the Indemnified Party's prior written consent which shall not be unreasonably withheld or delayed. The Indemnified Party may also participate in the defence of the claim at its own expense.

- 15.7 Both the ESM and the Service Provider undertake to have all arrangements in place, in particular with its personnel and/or any other party (including subcontractors), as necessary to establish the other party's rights as set forth in this § 15.

§ 16 Termination

The ESM may at any time terminate the Framework Agreement or the Contract by giving the Service Provider one month's written notice.

The ESM may terminate the Framework Agreement or the Contract immediately by notice in writing to the Service Provider if:

- i. the Service Provider is in material breach of any of its obligations under the Framework Agreement or the Contract;
- ii. the Service Provider, any of its Employees assigned to the Project, any subcontractor of the Service Provider or any other person acting on behalf of the Service Provider in the performance of the Services has been engaged in conduct bringing the ESM into disrepute;
- iii. the Service Provider is in a situation of conflict or potential conflict of interest, as defined in § 17 of these Terms and Conditions;
- iv. the Service Provider has ceased or has resolved to cease to carry on the whole or any substantial part of its business or activities; or
- v. any corporate action, legal proceedings or other procedure is taken in any jurisdiction in relation to:
 - (a) the suspension of payments, a moratorium of any indebtedness, the winding-up, dissolution, administration or reorganisation of the Service Provider;
 - (b) a composition, assignment or arrangement with any creditor of the Service Provider; or
 - (c) the appointment of a liquidator, receiver, administrator, administrative receiver, regulatory official, compulsory manager or similar officer in respect of the Service Provider.
- vi. the Service Provider is in breach of any applicable environmental, social or labour law obligations established by European Union law, national law, collective agreements or the international social and environmental conventions listed in Annex X to Directive 2014/24/EU of the European Parliament and of the Council, or any other applicable legal obligations.

The Service Provider may terminate the Framework Agreement or the Contract upon written notice to the ESM if the ESM fails to pay an undisputed amount in accordance with the Framework Agreement or the Contract and the ESM fails to cure such default within thirty (30) days of receipt of written notice sent by the Service Provider identifying the default and requiring its remedy.

§ 17 Conflict of interest

The Service Provider shall ensure that no circumstances arise during the Term of Engagement in which the performance of the Services by the Service Provider conflict or might conflict with the Service Provider's personal interests or with any services which the Service Provider may render to third parties. In the event of such conflict or potential conflict of interest, the Service Provider shall immediately notify the ESM to the extent permissible under such applicable law and professional rules and with a view to the Service Provider's confidentiality obligations towards its other clients. In the event of such conflict or potential conflict of interest, the Service Provider shall immediately notify the ESM and where a Contract has already commenced, the Parties will engage in good faith discussions to find an amicable solution which may include termination of the Contract or other compensatory measures, as appropriate.

§ 18 Insurance and reporting

The Service Provider shall maintain in effect throughout the Term of Engagement, at its own expense and to the satisfaction of the ESM, insurance covering work activity and comprehensive general liability insurance including professional liability coverage. At the request of the ESM, the Service Provider shall promptly provide evidence to the ESM showing that such insurance has been taken out.

The Service Provider shall report immediately to the ESM any accident, injury and damage to the property of the ESM or to the property or person of any third party occurring in or arising out of the performance of the Services, as well as any act or matter which within the Service Provider's knowledge may have caused such accident or injury.

§ 19 Inspection and audit

The ESM reserves the right to perform audits of all books, records, internal processes, and controls of the Service Provider which relate to the performance of the Framework Agreement and the Contracts to the extent permissible under applicable law and professional rules and with a view to the Service Provider's confidentiality obligations towards its other clients. The Service Provider shall maintain accurate records at all times. Upon fourteen days' notice, and no more than once per calendar year, the Service Provider shall provide the ESM reasonable access to

the Service Provider's records (or their copies) to verify compliance with the terms of the Framework Agreement and the Contract. The detailed scope and duration of the audit will be agreed between the Parties prior to the commencement of the audit. The access to the Service Provider's records will be strictly limited to the records which are directly related to the performance of the Framework Agreement and the Contract. The ESM shall be permitted to conduct these audits at its own cost with any of its own internal audit resources or by securing the services of third party experts, solely at the ESM's election. The ESM will obtain the consent of the Service Provider, which will not be unreasonably withheld, in the event third party experts will be used to conduct any audit. The ESM will be responsible for their third party experts. In the event such audit reveals a discrepancy or shortfall in the Service Provider's performance under the Framework Agreement or any Contract, the Service Provider shall immediately remedy the discrepancy and/or make up the shortfall, and it shall reimburse the ESM in respect of its and any of its third party's costs incurred for such audit.

During the course of any audit and in order to perform the audit, the ESM will, and will require that its third party experts will, i) use reasonable efforts to ensure minimum disruption to the Service Provider; and 2) comply with the Service Provider's rules and regulations, to the extent they are applicable and to the extent they have been informed of such rules and regulations.

On the prior consent of the Service Provider, which will not be unreasonably withheld, the ESM shall have the right to copy, at its own expense, any records related to the services performed pursuant to the Framework Agreement and the Contract. The ESM and its third party experts shall be obliged to keep confidential any Confidential Information provided by the Service Provider or to which the ESM or its third party experts have access to in connection with this § 19. The provisions on confidentiality set out in § 12 above apply to this § 19 accordingly.

If available, the Service Provider shall provide the ESM upon request within one month with the International Standard on Assurance Engagements (ISAE) No. 3402, Assurance Reports on Controls at a Service Organization.

§ 20 Inside information

The Service Provider acknowledges that information to which the Service Provider may have access, may contain inside information as defined by Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC. The Service Provider shall have adequate policies and procedures in place to prevent the use of such inside information by its Employees or other individuals who have access to such insider information.

§ 21 Immunity of ESM Property

The Service Provider shall ensure that any property (including any data) of the ESM located at or held by the Service Provider or its subcontractors on behalf of the ESM shall be clearly identifiable as property of the ESM.

The Service Provider acknowledges that such property enjoys the legal status, privileges and immunities accorded by Article 32 of the Treaty Establishing the ESM, including but not limited to such property being immune from search, requisition, confiscation, expropriation or any other form of seizure, taking or foreclosure by executive, judicial, administrative or legislative action. If such property of the ESM, which is located at or held by the Service Provider or its subcontractors, is threatened by the aforementioned actions the Service Provider or its subcontractors shall invoke the immunity of the property of the ESM and inform the ESM without undue delay.

§ 22 Severability

Each term and provision of the Framework Agreement and the Contracts shall be valid and enforceable to the fullest extent permitted by law and any invalid, illegal or unenforceable term or provision shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

The invalidity or unenforceability of any of the provisions of the Framework Agreement or the Contract shall not affect the validity or enforceability of any other provision of the Framework Agreement or the Contract, which shall remain in full force and effect.

§ 23 Entire agreement and amendments

The Framework Agreement and the Contract (together with all documents deemed to be an integral part thereof) shall constitute the entire agreement between the ESM and the Service Provider with respect to the Assignment which is the subject matter of the Framework Agreement and the Contract. It shall supersede any prior proposal or agreement, whether written or oral, and any other communication concerning the Assignment.

The Framework Agreement and the Contract may be signed and later modified only by an instrument in writing signed by both the ESM and the Service Provider via handwritten signature or copy of the same.

§ 24 Waiver

No term or provision of the Framework Agreement and the Contract or any document deemed to be an integral part thereof (including, without limitation, these Terms and Conditions) shall be deemed waived by the ESM and no breach excused unless the ESM signed a waiver or consent to that effect.

§ 25 Applicable law and jurisdiction

The Framework Agreement and the Contracts and any non-contractual obligations arising out of or in connection with them will be governed by the laws of the Grand Duchy of Luxembourg.

The courts of the City of Luxembourg have the exclusive jurisdiction to settle any dispute arising out of or in connection with the Framework Agreement or any Contracts (including any dispute regarding the existence, validity or termination of the Framework Agreement or the Contract or any contractual or non-contractual obligations arising out of or in connection with the Framework Agreement or the Contracts).

§ 26 Survival of obligations and cooperation with the ESM

The provisions of § 9, § 11, § 12, § 14, § 15, § 19, § 20 and § 21 of these Terms and Conditions, as well as all provisions of the Framework Agreement and Contracts concerning matters covered by the mentioned paragraphs of these Terms and Conditions, survive the expiry or termination of the Framework Agreement or the Contract and continue for a period of twenty years thereafter.

After the expiry or termination of the Framework Agreement or the Contract, irrespective of its cause and as requested by the ESM in its sole discretion, the Service Provider will continue to perform all its obligations set out in the Framework Agreement or the Contract according to the fees specified in the Framework Agreement or the Contract until full and successful migration to the ESM or another service provider of all services, data, processes and anything else affected by the expiry or termination of the Framework Agreement or the Contract. The completion of the full and successful migration will be determined by the ESM in its sole discretion and the ESM will inform the Service Provider once no services are required to be provided by the Service Provider anymore. The Service Provider will support the ESM and provide all necessary information and assistance in order to secure a successful migration to the ESM or the new service provider, including, but not limited to, the following, as requested by the ESM in its sole discretion: (a) provide consulting services related to the termination and migration; (b) support the transfer and migration to the ESM or the new service provider; (c) provide any information relevant for the performance of the expired/terminated services; (d) train the ESM and/or the new service provider's personnel; (e) novate or assign software licences and any other relevant third party agreements from the Service Provider to the ESM or the new service provider, or, if so stipulated by the ESM, transfer management responsibilities in respect of such licences and/ or agreements from the Service Provider to the ESM or the new service provider, with the cost of any new or increased charges to be borne by the ESM or the new service provider (subject to prior written agreement with the ESM or the new service provider); (f) offer to sell to the ESM or the new service provider at fair market value any equipment used by the Service Provider in connection with delivering services to the ESM; (g) transfer the ESM's data to the ESM or the new service provider; (h) grant the ESM or the new service provider access to all documents and any other materials produced by the Service Provider in connection with delivering services to the ESM. Without prejudice to any other provision of the Framework Agreement or the Contract, three (3) months prior to the expiry of the Framework Agreement or the Contract or as soon as a notice to terminate the Framework Agreement or the Contract has been served, each Party will designate a contact person responsible for the termination and migration process. The Parties will then agree on the technical steps which are necessary for the successful transfer and migration to the ESM or another service provider of all services, data, processes and anything else affected by the expiry or termination of the Framework Agreement or the Contract. If the Framework Agreement or the Contracts expire, or the ESM terminates the Framework Agreement or the Contracts, or any part thereof, for convenience, or if the Service Provider terminates the Framework Agreement or the Contracts, or any portion of them, for cause due to a material default by the ESM, or if the Framework Agreement or Contract expires without renewal, then the ESM will pay the applicable fees associated with the migration in accordance with the rates applied by the Service Provider for the Services or as otherwise agreed between the Parties. In all other cases, the Service Provider will bear its costs associated with the migration.

ANNEX I
to the Terms and Conditions

**RULES AND REGULATIONS APPLICABLE TO SERVICE PROVIDERS WORKING ON THE
ESM'S PREMISES**

Access to the ESM building

The Service Provider is required to follow the rules and regulations of the ESM in force regarding access to the ESM's building, identification and tracking of all persons on the premises that are not members of the ESM's staff. Accordingly the Service Provider undertakes to comply with these rules and regulations as they may be amended from time to time.

Access is permitted only via the main entrance.

The Service Provider undertakes to limit its presence on the ESM's premises only to areas necessary for execution of the Assignment.

ANNEX II
to the Terms and Conditions

IT SECURITY

1 IT SECURITY

1.1 Security controls

The ESM has implemented various controls to protect its IT systems and data. The Service Provider undertakes not to attempt to bypass these controls in any way except where specifically allowed for within the terms of reference of the Assignment.

1.2 Data Transmission

Should it be necessary to transfer ESM information outside the ESM for the purposes of the Assignment, the Service Provider shall obtain written permission from the ESM's information owner prior to the transfer of the aforementioned information. Furthermore any ESM information transmitted outside the ESM is subject to the rules of confidentiality and protection of data as specified in § 12 of the Terms and Conditions.

1.3 Hardware

The Service Provider will be provided with such equipment as is necessary to carry out its duties as specified by the terms of reference of the Assignment. The Service Provider undertakes not to connect any non- ESM equipment to the ESM's network without justification and prior written authorisation by the ESM.

If, with the ESM's consent, the Service Provider will use a laptop or desktop that has not been provided by the ESM for the purposes of carrying out its duties under the Assignment, the Service Provider will ensure:

1. Anti-virus software is installed on the device used, and regularly updated;
2. The operating system installed on the device is regularly updated; and
3. The device is password protected, and the password is known only to the user of the device and the Service Provider.

1.4 Software

The Service Provider shall not install or operate any unauthorised software on equipment connected to the ESM's network. Should the installation or operation of non-ESM standard software be required for the Assignment, such software may only be installed and operated after prior written justification and authorisation from the ESM.

1.5 Reporting

The Service Provider undertakes to report any security breach or incident concerning hardware or software, which may compromise the ESM's IT security, immediately to the ESM, either by telephone or email. Furthermore the Service Provider undertakes to follow the instructions of the ESM (for security matters), in case of any security breach or problems with the ESM's IT systems.

1.6 User ID and password

If necessary, a User ID will be created for the Service Provider to access the ESM's network. Where the Service Provider has more than one person assigned to the Project, each such person will be assigned a separate User ID and password. The User ID's and passwords on the ESM's network are strictly for individual use. The Service Provider undertakes to request a separate User ID for each person using the ESM's network in respect of the Assignment. Passwords are not to be stored in unencrypted form either on paper or electronically.

1.7 Data import

The Service Provider undertakes to ensure that any data or files required to carry out the Assignment, which may need to be imported onto the ESM's network, are free from any viruses or malicious code, which may either compromise security or damage any ESM data already stored on the network. All files must be checked using the latest version of the Virus checking software which is provided (and regularly updated) on the workstation provided by the ESM.

1.8 Software copyright

All software and data provided on the ESM's network, mainframe and workstations may not be copied or distributed without prior, written justification and authorisation by the ESM.

1.9 End of Assignment

At the end of the Assignment, the Service Provider undertakes to either return or destroy any data or information belonging to the ESM in its possession, and to continue to comply with the provisions regarding confidentiality of information set out in § 12 of the Terms and Conditions. However, the Service Provider may retain certain data or information belonging to the ESM and being in the Service Provider's possession for legal, regulatory, internal compliance and audit purposes.

2 MANAGEMENT OF EMAIL ACCOUNTS

2.1 Email accounts

If necessary, a named email account associated with the User ID as described in the above Section 1.6 may be created for each Employee of the Service Provider assigned to work on the Project. Like the network User ID, this account is personal and may not be shared with any other user.

2.2 Sharing of email accounts

Sharing of email accounts is strictly forbidden. Should users need to share information received by email, use should be made of distribution lists or the delegate function. Further information on the use of these functions can be requested from the ESM's Help Desk (extension 444).

3 MODEM CONNECTIONS

3.1 Telecommunications lines

Provision of connections is subject to prior written justification and authorisation as per the ESM's internal procedures.

3.2 External networks

The Service Provider undertakes to ensure that any hardware accessing an external network will not be connected to the ESM's network at the same time, except where this is specifically defined in the terms of reference of the Assignment.

3.3 Use of lines

Telecommunications lines provided are to be strictly used for ESM business. It is prohibited to use these lines for any private or unlawful purposes, as well as any activities, which could harm the reputation of the ESM or any of its members of staff.

3.4 Data transfer

Any data required for the purposes of the Assignment from an external network should be sent to the ESM's network as an attachment to an email so it can be checked for harmful or malicious code by the ESM's firewall and security measures protecting the network. Should the email be blocked for any reason by the ESM's security systems, the Service Provider may request the ESM to release the email provided the email is business related and free of any virus or harmful code. Should data transfer not be possible by means of email then an alternative means of communication should be defined jointly between the Service Provider and the ESM.

ANNEX III
to the Terms and Conditions

RULES FOR THE PROTECTION OF THE ESM'S DATA / PERSONAL DATA

1. The Service Provider and all its present, past and future employees, persons working as independent contractors or other **persons involved in the execution of the Services (each such person in this Annex is called an “Employee”)** shall at all times be aware of the sensitive and highly confidential nature of the ESM's data / personal data (“**Data**”) to which they may have access and which they may be required to process in the course of the execution of the Services.
2. The Service Provider and each Employee shall respect the integrity of the Data and observe the strictest confidentiality in relation thereto throughout the execution of the Services, as well as thereafter.
3. In particular, neither the Service Provider nor any Employee shall divulge any such Data on any account to any third party not duly authorised by the ESM or copy (on any medium whatsoever) or transmit the Data except in the course of backup, recovery or testing operations essential to the execution of the Services.
4. Without prejudice to the foregoing, neither the Service Provider nor any Employee shall to the extent not authorized by applicable law keep any copy, file or list (on any medium whatsoever) of the Data to which it has access in the course of the execution of the Services.
5. These rules shall also apply to all codes and procedures for accessing the Data and the systems supporting them, as well as to all related literature and technical or regulatory documentation to which the Service Provider or any Employee has access in the course of the execution of the Services.
6. The Service Provider and each Employee acknowledge that in the event of any violation of the above mentioned rules the ESM may sue the infringer, without prejudice to any legal proceedings which may be brought by wronged members of staff of the ESM or by third parties.

The Service Provider will ensure that each Employee and subcontractor complies with these points.

This Annex is without prejudice to § 12 of the Terms and Conditions concerning the general obligation of confidentiality and protection of I data, which the Service Provider is required to fulfil.

Appendix C

Implementing Contract Template

CONTRACT
implementing the Framework Agreement signed
as of [Insert Date] by the European Stability Mechanism and [Service Provider]

BETWEEN:

European Stability Mechanism, an international financial institution governed by public international law, with its seat and principal office at 6a, Circuit de la Foire Internationale, L-1347 Luxembourg

hereinafter called the “**ESM**”

and

[Service Provider], a company established and existing under the laws of **[Country]**, with its registered office at **[Registered Address]**

hereinafter called the “**Service Provider**”

WHEREAS:

1. the ESM and the Service Provider signed as of **[Insert Date]** a framework agreement (the “**Framework Agreement**”) covering their mutual rights and obligations in respect of future Assignments concerning Complex Technical Projects;
2. all capitalised terms not defined in this Contract have the respective meaning set out in the Framework Agreement;
3. the provisions of the Framework Agreement apply to all matters which are not covered by this Contract;
4. the ESM distributed to the Service Provider the Assignment Terms of Reference attached hereto as Annex A which describe the Services to be provided by the Service Provider under the Contract.

IT IS HEREBY AGREED AS FOLLOWS:

Article 1 – SUBJECT

The Service Provider undertakes, on the terms of this Contract and documents deemed to form an integral part of it, to carry out an assignment consisting of the provision of the Services specified in the Assignment Terms of Reference.

Article 2 – DURATION AND TERMINATION

- 2.1 The Contract will enter into force as of **[Insert Date]** (the “**Effective Date**”), as soon as it has been signed by both Parties, and will remain in force until **[Insert Date]** (the “**End Date**”).
- 2.2 The term of the Contract may be extended under the same terms and conditions by mutual agreement between the Parties by up to **[Insert how many times]** additional calendar months, via one or multiple extensions.
- 2.3 This Contract may be terminated in accordance with the provisions of the Framework Agreement.

Article 3 – PRICE

In consideration for carrying out the Services under this Contract, the Service Provider will be paid the following fees

[PLACEHOLDER]

[The total price which can be paid to the Service Provider will not exceed EUR●, covering all Services executed as part of the Contract.]

Article 4 – MISCELLANEOUS

The Service Provider may in addition to this Contract receive a release order document from the ESM with a RO number on it. In this case, for the avoidance of doubt, the Contract is the only binding contract between the Parties and the release order document has been sent by the ESM to the Service Provider for including a RO number on invoices only.

Article 5 – ANNEXES AND ORDER OF PRIORITY

5.1. The following documents attached hereto will be deemed to form an integral part of this Contract:

- Annex A: Assignment Terms of Reference.

5.2. In case of any inconsistency between the terms of this Contract and those of the Framework Agreement, the following order of priority will apply:

- Terms set out in Articles 1 to 5 hereof;
- Annex A;
- the Framework Agreement.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed in their respective names.

Luxembourg, [DATE]
Signed for and on behalf of the
EUROPEAN STABILITY MECHANISM

[TBD], [DATE]
Signed for and on behalf of
[SERVICE PROVIDER]

By: ●
Title: ●

By:
Title:

By: ●
Title: ●

Appendix D**Release Order Template**

RELEASE ORDER (RO)		RO N°:
Supplier Name:	Change Order General Description:	RO Change Order N°:
		Date of RO Issue:
		Date of RO Change Order:
Supplier Address:	Invoice to:	Delivery Address:
Supplier Contact:	ESM Finance & Control 6a, Circuit de la Foire Internationale 1347 Luxembourg Luxembourg InvoicesFC@esm.europa.eu	ESM 6a, Circuit de la Foire Internationale 1347 Luxembourg Luxembourg Attn:

This Release Order is issued under and subject to the Framework Agreement referenced above ("Framework Agreement"). By accepting this Release Order, the Supplier accepts the application of the terms of the Framework Agreement, and the terms of any applicable contract issued under the Framework Agreement, to this Release Order. Any attachment to this Release Order forms an integral part of this Release Order. In case of conflict, the following order of precedence applies: (1) Framework Agreement, (2) applicable contract issued under the Framework Agreement, (3) this Release Order, (4) attachments to this Release Order. The Supplier is deemed to have accepted this Release Order by commencing delivery of any products and/or services provided below, accepting any payment from the ESM in relation to this Release Order or providing the ESM with any other acknowledgement of this Release Order (e.g. acknowledgement by handwritten signature or copy of same, e-mail, facsimile or any other means). In order to ensure prompt payment, a) a copy of this Release Order and related delivery slips or other supporting materials should accompany any invoices submitted and b) the Release Order number should be referenced on any documents.

Line	Quantity	UoM	Start Delivery Date	End Delivery Date	Description	U/Price	Total
1							
						Total amount in	
							EUR