

European Stability Mechanism



## Request for Proposal

**Ref. No.: PSIR/02/CS/AG/19**

**Provision of consultancy services for the evaluation  
programme**

**14/03/2019**

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# 1 Introduction

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## 1.1 The European Stability Mechanism

The European Stability Mechanism (“**ESM**”) is a permanent crisis resolution mechanism established by the euro area Member States as an intergovernmental organisation under public international law. Its purpose is to ensure the financial stability of the euro area as a whole, and of its Member States experiencing severe financing problems, by providing financial assistance through a number of instruments.

More background information about the ESM may be found on the website: [www.esm.europa.eu](http://www.esm.europa.eu).

**Neither Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014, nor Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (as amended) apply to the ESM. The ESM procures supplies, services and works on its own behalf and for its own account pursuant to the ESM Procurement Policy as published on the ESM website. Please visit the ESM website for further information.**

## 1.2 Overview of this RFP

This Request for Proposal (“**RFP**”) sets out the procurement requirement and procurement process of the ESM that parties are invited to respond to. The agreement to be awarded as a result of this procurement process (“**Agreement**”, “**Framework Agreement**” or “**Contract**”) will be awarded to the Candidate whose Proposal best meets the award criteria. The Agreement will include the requirements and obligations set out in the Terms of Reference, enclosed as Annex 1, and those set out in Annex 4 of this RFP.

For the purposes of this RFP, candidates who wish to participate in this procurement process are referred to as “**Candidate**” or “**Candidates**” and their response is referred to as a “**Proposal**” or “**Proposals**”.

Unless otherwise defined in this RFP, all capitalised terms used in this RFP have the meanings ascribed to them in the ESM Procurement Policy.

## 1.3 Overview of the Procurement Requirement

The ESM intends to conclude a single Agreement for the provision of the services with a single service provider (“**Service Provider**”) to support the service needs of the ESM as further detailed in the Terms of Reference provided in Annex 1 of this RFP (“**Services**”).

The ESM’s official working language is English and the Services must be provided in English.

The Agreement will be awarded for an initial term from 1 July 2019 until 31 May 2020 with a possibility for the ESM, in its sole discretion, to extend the Agreement for a period of up to three (3) months.

## 2 RFP Content

The RFP package consists of the following documents:

No.	Document Title	Comment
1.	Request for Proposal – Core Document	This document
<b>Annexes</b>		
2.	Annex 1 – Terms of Reference	Below
3.	Annex 2 – Section 1: Declaration on the Exclusion Criteria, Economic, Financial, and Operating Capacity and Absence of Conflict of Interest Annex 2 – Section 2: Non-Collusion Declaration, Section 3: Cover Certification Form	Below
4.	Annex 3 – Selection and Award Criteria and response elements	Below
5.	Annex 4 – Draft Agreement	Attached

## 3 The RFP Process

### 3.1. Type of Procurement Procedure

This procurement process is carried out by the ESM under an Open Procedure in accordance with Article 9.1 (2) of the ESM Procurement Policy and is referred to in this RFP as a procurement process or a procurement procedure.

### 3.2. Procurement Process Steps and Timelines

The ESM plans to carry out the procurement process in accordance with the steps defined in the table below. The ESM reserves, at its sole discretion, the right to vary the steps and timelines.

No.	Procurement Process Steps	Timeline
1.	Publication of the Contract Notice and the RFP	14/03/19
2.	Deadline for submission of clarifications/questions on the Contract Notice and the RFP	01/04/19 14:00 hrs (local Luxembourg time)
3.	Response to the clarifications/questions on the Contract Notice and the RFP	Regularly
4.	Deadline for submission of Proposals	09/04/19 14:00 hrs (local Luxembourg time)

No.	Procurement Process Steps	Timeline
5.	Target dates for presentations of the Candidates that are eligible and meet the selection criteria	18/04/19 to 26/04/19
6.	Target notification of the ESM's decision to advance/not advance the Candidate's Proposal	08/05/19
7.	Agreement's commencement date	01/07/19

### 3.3. Eligibility, Selection and Award Criteria

In order to be eligible to participate in this procurement process, Candidates must be natural or legal persons and state that they are not subject to any of the exclusion situations listed in the declarations included in Annex 2 Section 1. If such circumstances arise in the course of the procurement process, the Candidate concerned must inform the ESM without undue delay.

Candidates may submit, and if requested by the ESM will submit, evidence to demonstrate their eligibility despite the existence of grounds for exclusion. The ESM may, in its sole discretion, decide whether such evidence is satisfactory.

Candidates must comply with all eligibility criteria to be assessed further.

ELIGIBILITY CRITERIA – elements of the evaluation		
Eligibility Criteria	Duly completed and signed declarations as requested in Annex 2	Pass / Fail

In order to assess a Candidate's capacity to perform the contract the ESM will apply the following selection criteria (full information can be found in Annex 3).

SELECTION CRITERIA – elements of the evaluation		
Selection Criteria	Technical or professional ability	Pass / Fail + 1 scored question
	Authorisation and suitability to carry out the relevant professional activity	Pass / Fail

Only those Candidates who meet a minimum threshold of 60 points for the scored item under technical or professional ability selection criterion and who achieved "pass" for all "pass/fail" selection criteria will be further assessed in the award stage.

The Proposals submitted by the Candidates will be evaluated, in accordance with the following award criteria:

AWARD CRITERIA			
QUALITY	%	PRICE	%
Proposed consultant's technical skills	35%	Price*	20%
Relevance of the proposed consultant's evaluation project and other professional experience	25%		
Presentation (English and presentation skills, team fit)	20%		
<b>Score available</b>	<b>80%</b>		<b>20%</b>
<b>Total Score 100%</b>			

\*The Candidates' Commercial response will be evaluated according to the following formula:

$$\text{Candidate's Commercial Score} = \frac{\text{Lowest offered TOTAL COST}}{\text{Candidate's Proposed TOTAL COST}} \times \text{Maximum Price score (20\%)}$$

The Agreement will be awarded to the Candidate whose Proposal best meets the award criteria on the basis of the best price-quality ratio.

### 3.4. The ESM "Sole Contact" Details

Procurement

European Stability Mechanism

6a, Circuit de la Foire Internationale

L-1347 Luxembourg

Email: [procurement@esm.europa.eu](mailto:procurement@esm.europa.eu)

Attention: Asta Gerhardt

Unless notified otherwise, the person indicated above will be the Candidates' single point of communication with the ESM for the duration of this procurement process ("**ESM Sole Contact**").

The ESM will not be bound by and the Candidate agrees not to rely upon any written or verbal statements or representations of any other persons, whether employed by the ESM or not.

### 3.5. Clarifications of the RFP

The process for clarifications pertaining to this RFP will be as follows:

- a) Queries can be raised to the ESM Sole Contact as identified in this RFP.
- b) Queries can be raised on any matter in this RFP. However, the ESM reserves the right not to answer any particular query.
- c) The ESM will endeavour to respond to all queries and issue responses in a timely and professional manner. The ESM reserves the right not to answer any queries received after the deadline for submission of the queries.
- d) Responses to the queries will be sent to all Candidates on an anonymous basis unless the ESM determines, in its sole discretion, that a query is relevant to the requesting Candidate only, in which case the ESM will provide a response to that Candidate only.

### **3.6. Presentations**

The ESM will invite the Candidates that are eligible and meet the selection criteria for a presentation. The presentation may take place via telephone, Skype, or in person. The presentation will be at the Candidates' expense and will be scored as part of the quality award criterion.

### **3.7. Notification of the ESM's decision**

The ESM will notify in writing its decision to advance or not advance the Candidate's Proposal. The notification is sent by electronic means at least fifteen (15) business days prior to the signing of the Agreement by the ESM.

### **3.8. Agreement**

The draft Agreement enclosed as Annex 4 to this RFP will form the agreement between the ESM and the selected Candidate. The ESM views this Agreement to be fair and balanced and expects that Candidates will agree to it without reservation. By submitting a Proposal, Candidates accept the Agreement without reservation and acknowledge that their own agreements, contracts or terms and conditions will not apply.

## **4 Terms and Conditions of the RFP**

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### **4.1 Rights of the ESM**

By submitting a Proposal, Candidates confirm that they have taken note and accepted all terms and conditions of this RFP.

The ESM reserves the right, at its sole discretion and in exceptional circumstances, to accept Proposals received after the deadline for submission of Proposals.

After the ESM opens Proposals, it may request Candidates to submit, supplement, clarify or complete information or documentation which is or appears missing, incomplete, inconsistent or erroneous within an appropriate time limit. The ESM reserves the right at its sole discretion to reject from further consideration any such Proposal.

The ESM reserves the right to request that Candidates provide documentary evidence in support of the statements made in their Proposal.

Any effort by the Candidate to influence the ESM in the process of examination, evaluation and comparison of Proposals may result in the rejection of the Candidate's Proposal.

The ESM may decide, at its sole discretion while respecting the general principles set forth in the ESM Procurement Policy, to cancel this procurement process in whole or in part at any time before the Agreement is signed. The cancellation does not give rise to any form of compensation for Candidates.

The ESM will ensure that the information provided by Candidates is treated and stored in accordance with the principles of confidentiality and integrity.

The ESM reserves the right at its sole discretion to disclose the contents of Proposals to its third party advisors (if applicable) who are bound by the same confidentiality and integrity obligations as the ESM.

If the ESM discovers, before the expiry of the deadline for submissions of Proposals, a lack of precision, an omission or any other type of error in this RFP, it will rectify the error and inform all Candidates in writing.

## **4.2 Cost of Participating in the Procurement Process**

All costs relating to the participation in this procurement process, including in particular any costs in relation to the attendance at Presentations and of any other documents requested by the ESM and any subsequent follow-up will be borne exclusively by Candidates.

## **4.3 Materials and Documents**

All materials and documents provided by the ESM during this procurement process will remain the ESM's property. Nothing in this RFP or in any other document issued by the ESM in connection therewith will be construed as to grant Candidates any right or license to use these documents for any purpose, except the right to use them in as much as necessary to prepare their Proposals.

All materials and documents prepared by the Candidate, once submitted to the ESM in response to this procurement process, will become the property of the ESM and, irrespective of the outcome of the procurement process, may be retained by the ESM, and, in any case, the ESM will have the right to use any concept or ideas contained therein without incurring any costs or expenses or any liability whatsoever.

## **4.4 Validity of the Proposal**

By submitting a Proposal, Candidates acknowledge and agree that their Proposal will remain valid for a period of 6 months from the deadline for submission of Proposals.

## **4.5 Compliance with Law**

Candidates are invited, but not bound to participate in this procurement process. Yet, the participation in this procurement process following the receipt of the RFP from the ESM implies the acceptance of the terms and conditions of the RFP and any other provisions of the RFP and any breach of these will be subject to appropriate remedies under the applicable law.

Before the Agreement enters into force, the successful Candidate undertakes to comply with all applicable laws and regulations and to obtain all relevant authorisations, permits and certificates required to provide the services described in this RFP.

Nothing in this RFP will be construed as implying a waiver, renunciation or modification by the ESM of any rights, privileges, immunities or exemptions from which ESM may benefit under the Treaty establishing the ESM or any applicable laws.

## **4.6 Trade Name, Logo and Marks**

The ESM logo, covers, page headers, custom graphics, icons, other design elements and other words or symbols used to identify the description of the procurement requirement described are either trademarks, trade names or service marks of the ESM and its licensors, or are the property of their respective owners. These marks may not be copied, imitated or used, in whole or in part, without the explicit prior written consent of the ESM.

## **4.7 Confidentiality**

All documents and information provided by the ESM in connection with this RFP constitute Confidential Information within the meaning of this section.



If the Candidate considers that any part of its Proposal or other documents/information submitted to the ESM include Confidential Information within the meaning of this section it must clearly mark such parts of Proposal or other documents/information as 'confidential'.

Candidates are advised that their participation in this procurement process constitutes Confidential Information except for the involvement of a third party in the supply of the services offered the Candidate and the announcement by the ESM of the successful Candidate on the ESM website in accordance with Article 9.17 (3) of the Procurement Policy.

Except if required in a judicial or administrative proceeding, or if it is otherwise required to be disclosed by any law or regulation, or where information is already in the public domain, the ESM or the Candidate will (a) not disclose the Confidential Information, (b) take all reasonable measures to preserve the confidentiality and avoid disclosure, dissemination or unauthorised use of Confidential Information, and (c) not use such Confidential Information for any purpose other than as is necessary in connection with this RFP. Confidential Information does not include information which (a) was known to the ESM or the Candidate prior to receiving the information from the Candidate or the ESM; (b) becomes rightfully known to the ESM or the Candidate from a third-party source not known to the ESM or the Candidate (after diligent inquiry) to be under an obligation to the Candidate or the ESM to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the ESM or the Candidate; or (d) has been developed independently by the ESM or the Candidate or authorised to be disclosed by the Candidate or the ESM. Confidential Information may only be shared with third parties (e.g. contractors) that have a need to know the Confidential Information in relation to this procurement process and provided that such third parties comply with the confidentiality obligations provided in this section.

In addition, if the Candidate has signed an ESM confidentiality undertaking the Candidate agrees to comply with all obligations set forth in such confidentiality undertaking. If there is a conflict between such confidentiality undertaking and this RFP, the confidentiality undertaking will prevail.

## **4.8 Involvement of Third Parties in the RFP**

If the Candidate intends to involve a third party when taking part in this procurement procedure, the Candidate has to ensure that any such third party is bound by the requirements set forth in this RFP.

### **1) Consortia**

If a Candidate submits its Proposal as part of a consortium with a third party/third parties, such Candidate must provide as part of its Proposal:

- a) a clear description of the proposed consortium, its organisational hierarchy and structure, the names of all consortium members and the roles, activities and responsibilities of the consortium leader and each consortium member;
- b) a document authorising the consortium leader to act on behalf of the consortium member(s) (e.g. power of attorney);
- c) a written undertaking from the consortium member(s) confirming that it/they will place, at the consortium leader's disposal, the resources necessary for the performance of the Contract. The written undertaking must be signed by an authorised representative of each such consortium member; and
- d) information on whether the consortium will form a legal entity and if yes, details of the actual or proposed percentage shareholding within such legal entity and other official documents

confirming existence of such legal entity. If not, full details of the proposed consortium arrangement including submission of an executed consortium agreement.

For the avoidance of doubt, if a Candidate submits its Proposal as part of a consortium it cannot submit another Proposal in its own name.

If a Contract is awarded to a consortium, all consortium members will be jointly and severally liable towards the ESM for all obligations arising of or resulting from the Contract.

If a Candidate considers any changes in the consortium structure it must immediately notify the ESM in writing. The composition of a consortium (including the roles, activities and responsibilities of the consortium leader and each consortium member) cannot be modified or members of the consortium cannot be exchanged, whether during the course of this procurement process or during the term of the Contract, without the prior written consent of the ESM.

## 2) Subcontracting

If a Candidate intends, from the beginning, to subcontract some of the services offered to the ESM in its Proposal to a third party, the Candidate must provide as part of its Proposal:

- a) a clear description of the proposed subcontracting arrangement, in particular which tasks the Candidate intends to subcontract and their volume or proportion, the name(s) of the proposed subcontractor(s) and its/their roles, activities and responsibilities; and
- b) a document signed by a subcontractor stating its intention to collaborate with the Candidate should the Candidate be awarded a Contract.

If a Candidate subcontracts some of the services under the Contract to subcontractors, it will nevertheless remain fully liable towards the ESM for the performance of such services and responsible for the Contract as a whole. The ESM will have no direct legal commitments with the subcontractor(s).

**Regardless whether the Candidate takes part in this procurement procedure in its own name and behalf or with third parties in a consortium or a subcontracting arrangement, the Service Provider acknowledges and agrees that the proposed consultant who has been assessed by the ESM (and interviewed during a presentation where applicable) will be named in the Contract and the Service Provider may not change the proposed consultant during the entire Contract's duration without the express written consent of the ESM.**

## 5 Structure of the Proposal

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When preparing Proposals, Candidates should observe the following:

- All documents must be submitted in English.
- Any deviations from the specified requirements of this RFP that cannot be satisfied by the Candidate, should be clearly identified in the Proposal.
- In some cases, page/word limits may be specified. Any response exceeding the specified limits may be disregarded beyond that limit.
- Answers should be as concise as possible, complete and comprehensive.
- The ESM does not wish to receive any marketing or other promotional materials.
- All digital copies of the Proposal should be submitted in compliance with the following guidelines:

- a) One file per section as described in the “Proposal Structure” table below.
- b) Any supporting or additional files should be clearly named.
- c) All files should be named clearly with a sequential number and relevant file name.
- d) All files should be provided in a standard non-editable format, such as PDF.

Proposal Structure			
#	Section	Template and instructions	Document format
1.	Cover Certification Form	Candidates are requested to provide completed, dated and signed by a duly authorised representative Annex 2 Section 3 – “Cover Certification Form”	Fully scanned copy with signature in PDF
2.	Declaration on the Candidate’s Exclusion Criteria, Economic, Financial and Operating Capacity and Absence of Conflict of Interest	Candidates are requested to submit completed, dated and signed declaration, signed by a duly authorised representative Annex 2 Section 1 – “Declaration on the Candidate’s Exclusion Criteria, Economic and Financial Capacity and Absence of Conflict of Interest”)	Fully scanned copy with signature in PDF
3.	Non-Collusion Declaration	Candidates are requested to submit completed, dated and signed by a duly authorised representative Annex 2 Section 2 – “Non-Collusion Declaration”	Fully scanned copy with signature in PDF
4.	Selection Criteria	Candidates are requested to address the requirements under the selection criteria listed in Annex 3	Fully scanned copy with signature in PDF
5.	Technical Proposal	Candidates are requested to address the requirements under the quality award criteria listed in Annex 3 in compliance with the Terms of Reference provided in Annex 1. Candidates are requested to submit their technical proposal <b>as a separate attachment within the Proposal submission email.</b>	Fully scanned copy with signature in PDF
6.	Commercial Proposal	Candidates are requested to address the requirements under the price award criteria listed in Annex 3 in compliance with the Terms of Reference provided in Annex 1. Candidates are requested to provide commercial proposal <b>as a separate attachment within the Proposal submission email.</b>	Fully scanned copy with signature in PDF and an writable Excel version

## 6 Submission of the Proposal

Proposals must be submitted no later than by the “**Deadline for submission of Proposals**” specified at point No. 4 of the **Procurement Process Steps and Timelines** table in Section 3.2 of this RFP and must be submitted via email to:

Email: [procurement@esm.europa.eu](mailto:procurement@esm.europa.eu)

Ref. No.: PSIR/02/CS/AG/19

Attention: Asta Gerhardt

Only Proposals received through these means will be accepted.

## Annex 1

### Terms of Reference

#### 1. BACKGROUND & OBJECTIVES OF THE ASSIGNMENT

Established in October 2012, the European Stability Mechanism (the “**ESM**”) is an international financial institution with the mandate to safeguard financial stability in the euro area by raising funds in capital markets and to finance loans to euro area Member States.

During the ESM Annual Meeting on 16 June 2016, the Board of Governance (the “**BoG**”) mandated the ESM to carry out the first evaluation of financial assistance provided by the European Financial Stability Facility (the “**EFSF**”) and ESM (so-called first evaluation exercise). On 29 June 2016, the EFSF Board of Directors also acknowledged that the EFSF financial assistance programmes would be part of the first evaluation exercise. Following the completion of the first evaluation of EFSF/ESM financial assistance, the BoG called for “conducting an evaluation of the Greek programmes after completion”<sup>1</sup> (so-called second evaluation exercise).

Under consultation of the ESM Member States, a high-level independent evaluator was appointed to lead the second evaluation exercise.<sup>2</sup> He will be supported by an ESM evaluation team and external advisors. The objective of the second evaluation will be to further improve the relevance and effectiveness of the ESM programme-related activities and to support informed policy decision-making processes going forward. Moreover, drawing lessons from the assistance provided to Greece will further enhance the ESM’s ability to address potential future crises.

In this context, the ESM requires the services of one (1) senior consultant (the “**Senior Evaluation Consultant**”) to perform tasks as an evaluation expert within the ESM evaluation team. The Senior Evaluation Consultant will be required to take a ‘hands-on’ approach to ensure the successful delivery of requirements and excellence in support of the ESM evaluation team.

The ESM intends therefore to conclude a single contract with a single service provider (“**Service Provider**”) for the provision of the services by a Senior Evaluation Consultant (the “**Contract**”). The duration of the Contract will be from 1 July 2019 until 31 May 2020 with a possibility to extend the duration for a period of up to three (3) months.

#### 2. SERVICES AND DELIVERABLES

The Senior Evaluation Consultant will provide to the ESM expert advice in the area of programme evaluation, and in particular, he/she will assist the ESM evaluation team in conducting an impartial and credible evaluation of the financial assistance to Greece (the “**Project**”).

The Senior Evaluation Consultant will work under the guidance of the ESM’s Project manager to render the deliverables as detailed below (the “**Services and Deliverables**”):

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<sup>1</sup> <https://www.esm.europa.eu/press-releases/esm-board-governors-statement-evaluation-report>.

<sup>2</sup> <https://www.esm.europa.eu/press-releases/joaqu%C3%ADn-almunia-lead-esm-evaluation-financial-assistance-greece>.

- Apply qualitative and quantitative data collection and evaluation analysis tools, techniques and approaches;
- Identify effective existing tools suitable for the Project;
- Participate in designing tools and approaches by proposing practical implementation options for decisions to be taken by the ESM under time pressure;
- Conduct ‘hands-on’ evaluation studies with moderate supervision from the ESM in line with the Project work plans or assist the ESM’s evaluation team members in carrying out evaluations of the relevant financial assistance programmes and related processes in accordance with the Project’s agreed terms of reference;
- Prepare methodological notes and guidance for structured data collection, effective interviews, and technically sound analyses and synthesis in this context;
- Perform research on relevant issues and subjects of interest for potential work planning items making practical resolution proposals with moderate guidance from the ESM;
- Where requested, contribute to the drafting of the evaluation report. Review documents for content and style and assist with formal presentations, applying ESM guidelines, and by articulating relevant subject matter in a clear and concise way;
- Contribute to the drafting of final project recommendations and presentations;
- Apply high professional norms and standards of the international financial institutions’ and other peer institutions’ evaluation functions (such as ECG and UNEG);
- Assist the ESM’s evaluation team in preparing and organising meetings, workshops and other discussions to establish a dialogue on findings and conclusions of the Project;
- Assist the assigned ESM evaluation team in planning and coordinating Project tasks to assure their timely completion.

### 3. CONSULTANT PROFILE

The Senior Evaluation Consultant will have the following profile:

- Advanced university degree (e.g. a Master’s degree) in economics, business administration, applied mathematics, or in social science with experience relevant for the ESM’s mandate as a crisis resolution mechanism;
- At least 10 years or relevant professional work experience, of which minimum 6 years in evaluation practice, ideally in the area of country programmes and budget support;
- Good knowledge of various methodologies in evaluation, including the mixed methods approach, and good capability to develop and apply the most effective methodology for specific parts of the Project design, with a very short on-boarding period;
- Demonstrated qualitative analysis skills, including experience in operating advanced functions ideally in a recent version of Nvivo QDA software or equivalent;
- Excellent practical skills in quantitative evaluation analysis;
- Strong technical skills to analyse programme data, conducting policy analysis, macroeconomic, financial market and social network analysis;
- Good competencies in collecting reliable, valid and accurate information in an objective way;
- Ability to develop questionnaires, interview protocols and other review instruments that will address issues identified in the evaluation design;
- Excellent oral and written communication skills: excellent English language skills including capacity to take accurate ‘in vivo’ notes in frontline discussions and transcribe technical interview recordings reliably and independently;

- Demonstrated ability to articulate relevant subject matter in a clear and concise way, and to contribute information in formal settings; excellent interview skills and visual data communication (charts, graphs, dash boards), including working with Tableau as a user;
- Ability to work together with team members in a professional manner exhibiting courtesy, and respect for others and their ideas;
- Strong understanding of evaluation norms and standards applied in international organisations;
- Objective, with high professional integrity and absence of bias as these are key elements of impartial evaluation. Able to act with integrity and honesty in relationships with stakeholders.

**In addition, the Senior Evaluation Consultant has not been involved in the implementation of the Greek country programme related activities subject to review under the second evaluation exercise.**

#### **4. WORK PERIOD AND WORKING ARRANGEMENTS**

In principle, the Senior Evaluation Consultant will work at the ESM headquarters in Luxembourg minimum 4 working days a week (unless otherwise agreed in writing by the dedicated Project manager) and will report to the dedicated Project manager.

The ESM will advise the Senior Evaluation Consultant of the ESM's holiday schedule for 2019 (and beyond if applicable) via email after the conclusion of the Contract.

The ESM will not provide any administrative support to the Senior Evaluation Consultant. The ESM will provide, however, an office space and ESM system access. In addition, the ESM will provide any necessary hardware, including a functional laptop with appropriate software to enable the Senior Evaluation Consultant's day-to-day activities.

#### **5. NO CHANGE OF PERSONNEL**

**Regardless whether the Candidate takes part in this procurement procedure in its own name and behalf or with third parties in a consortium or a subcontracting arrangement, the Service Provider acknowledges and agrees that the proposed Senior Evaluation Consultant who has been assessed by the ESM (and interviewed during a presentation where applicable) will be named in the Contract and the Service Provider may not change the proposed Senior Evaluation Consultant during the entire Contract's duration without the express written consent of the ESM.**

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## **Annex 2**

### **Eligibility Criteria, and other required information and documents**

#### **1. Eligibility Criteria**

##### **Section 1: Declaration on the Exclusion Criteria, Economic, Financial and Operational Capacity and the Absence of Conflict of Interest**

Candidates are requested to complete, date and duly sign by an authorised representative the below Declaration on the Exclusion Criteria, Economic, Financial and Operational Capacity and the Absence of Conflict of Interest.



**DECLARATION ON THE EXCLUSION CRITERIA, ECONOMIC, FINANCIAL AND OPERATIONAL CAPACITY AND THE ABSENCE OF CONFLICT OF INTEREST**

**The undersigned, acting in his/her own name/acting as [a] duly appointed representative(s)<sup>1</sup> on behalf of [                    ], certify (certifies) the following and will provide the evidence to that effect as specified in the procurement documents (if applicable):**

1. The Candidate is not bankrupt or being wound up, subject to administration or in any similar situation provided for in national legislation or regulations.
2. The Candidate is not guilty of grave professional misconduct, which renders its integrity questionable.
3. The Candidate is not in breach of obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which the Candidate resides or is established or where the contract awarded as a result of this procurement process is to be performed.
4. The Candidate has not shown significant or persistent deficiencies in the performance of another contract, or with its obligations under the law.
5. The Candidate or its management, staff or agents are not subject to a conflict of interest.
6. The Candidate has not seriously misrepresented information required by the ESM.
7. The Candidate did not and will not contact other Candidates with the purpose of distorting competition, or try to unduly influence the ESM's decision-making process.

If any circumstances arise during the course of the procurement process which may affect the above, the Candidate must inform the ESM thereof without undue delay.

The Candidate may submit evidence to demonstrate its eligibility despite the existence of grounds for exclusion. The ESM may, in its sole discretion, decide whether such evidence is satisfactory.

**The Candidate declares also that:**

1. The Candidate has the economic, financial and operational capacity (technical, management) to carry out the proposed work and tasks.
2. The Candidate has approved financial statements for the last three financial years, if a legal entity.
3. The Candidate meets all requirements set out in Annex 1 to this RFP Terms of Reference, in particular the Candidate, or the consultant proposed by the Candidate, has not been involved in the implementation of the Greek country programme related activities subject to review under the second evaluation exercise to be undertaken by the ESM.

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<sup>1</sup> Delete as appropriate.



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**By:**    **Signature (Signed)**    \_\_\_\_\_  
          **Name and Title (Typed)**    \_\_\_\_\_  
          **Place and Date**    \_\_\_\_\_

## **Section 2: Non-Collusion Declaration**

Candidates are requested to complete, date and duly sign by an authorised representative the below Non-Collusion Declaration.

### NON-COLLUSION DECLARATION

The undersigned, acting in his/her own name/as [a] duly appointed representative(s)<sup>1</sup> of [NAME OF THE CANDIDATE ] declare(s) the following:

I refer to the RFP Ref. No.: PSIR/02/CS/AG/19 launched by the ESM in relation to which the Candidate has submitted a Proposal.

In relation to the RFP Ref. No.: PSIR/02/CS/AG/19 the Candidate has not breached any applicable provisions of competition law or other applicable laws. In particular, the Candidate has prepared the Proposal completely independently and certifies that it has not and will not divulge, discuss or compare its Proposal with other Candidates participating in this procurement process and has not and will not contact or collude with such other Candidates with the purpose of distorting competition. The Candidate will take all appropriate and necessary measures to ensure that its subcontractors or other third parties involved respect the same rules and principles.

The Candidate is not aware of any elements that could influence competition between the different Candidates participating in this procurement process. If the Candidate becomes aware of any such elements it will immediately and in writing disclose such elements to the ESM.

**By:     Signature (Signed)**                   \_\_\_\_\_

**Name and Title (Typed)**           \_\_\_\_\_

**Place and Date**                     \_\_\_\_\_

---

<sup>1</sup> Delete as appropriate.

---

## **Section 3: Other Required Information and Documents**

### **Cover Certification Form**

Candidates are requested to complete, date and duly sign by an authorised representative the Cover Certification Form below.

**Annex 2 – Section 3 – RFP Ref. No.: PSIR/02/CS/AG/19**  
**Title: Provision of consultancy services for the evaluation programme**

**COVER CERTIFICATION FORM**

**Submitted in Response to RFP Ref. No.: PSIR/02/CS/AG/19**

The undersigned, acting in his/her own name/acting as [a] duly appointed representative(s)<sup>1</sup> on behalf of [ ], certify that this Proposal is made without prior understanding, agreement, or connection with any other person(s) or company(ies) submitting an Proposal in this procurement process and is in all aspects fair and without collusion or fraud. I certify that I am authorised to sign this Proposal on behalf of the Candidate.

I further certify that:

- The submission of this Proposal is deemed as acceptance of all the terms and conditions of this RFP.
- The content of this Cover Certification Form, the Declaration on Exclusion Criteria, Economic, Financial and Operational Capacity and the Absence of Conflict of Interest, the Non-Collusion Declaration and the Application are true, accurate and complete.
- When providing an attestation/confirmation in my responses and justifications to the Selection criteria such responses and justifications are true, accurate and complete.

**Required Information**

**Response of Candidate**

**Exact legal name:**

**Legal type (e.g. private limited liability company):**

**City, Country:**

**Nationality or Head Office Location:**

**Registered office address:**

Name of the authorised contact person for matters pertaining to this RFP	
E-mail:	

**Name and title of representative(s) signing the Application on behalf of the Candidate:**

**By: Signature (Signed)** \_\_\_\_\_

**Name and Title (Typed)** \_\_\_\_\_

**Place and Date** \_\_\_\_\_

<sup>1</sup> Delete as appropriate.

## **Annex 3**

### **Selection and Award Criteria and Response Elements**

#### **1. Selection Criteria**

The following criteria are considered the selection criteria under this RFP. Candidates are requested to address each subsection below and supply the requested elements in a correspondingly named and numbered response subsection.

## 2.1 Technical or professional ability

Item No	Score or Pass/Fail	SELECTION CRITERIA	RESPONSE REQUIREMENTS
1.	60 (60 points out of 100)	Demonstrated at least 10 years of relevant work experience, of which six years in evaluation practice.	<p>As evidence, provide at least 3 relevant references including the following information about the referenced programme evaluations:</p> <ul style="list-style-type: none"> <li>i) name, scope, size and short description</li> <li>ii) start and end date</li> <li>iii) tasks undertaken</li> <li>iv) client name (if not possible due to confidentiality reasons the client entity (type of entity, size, location, and industry in which it operates))</li> <li>v) location of the evaluated programme or project.</li> </ul> <p>The Candidate's response will be scored based on its relevance to the services described in Annex 1 to this RFP. Candidates with previous and/or on-going relevant work experience in programme evaluation practice with International Financial Institutions will be scored higher.</p>
2.	Pass/Fail	Demonstrated experience in applying qualitative and quantitative data analysis techniques and tools and 'Theory of Change' principles in projects.	<p>As evidence, provide details of at least 3 past projects including the following information:</p> <ul style="list-style-type: none"> <li>i) name, scope, size and short description</li> <li>ii) methodology applied</li> <li>iii) start and date</li> <li>iv) location of the project</li> </ul>



## 2.2 Authorisation and suitability to carry out the relevant professional activity

Item No	Pass/Fail	SELECTION CRITERIA	RESPONSE REQUIREMENTS
1	Pass/Fail	The Candidate must be able to deliver the Services described in Annex 1 to this RFP in Luxembourg and within the EEA as may be required by the ESM.	Attestation to confirm.

## 2. Award Criteria

The Agreement will be awarded to the Candidate whose Proposal best meets the award criteria. The Agreement will be awarded on the basis of the best price-quality ratio.

AWARD CRITERIA			
QUALITY	%	PRICE	%
Proposed consultant's technical skills	35%	Price*	20%
Relevance of the proposed consultant's evaluation project and other professional experience	25%		
Presentation (English and presentation skills, team fit)	20%		
<b>Score available</b>	<b>80%</b>		<b>20%</b>
<b>Total Score 100%</b>			

### 2.1 Quality – Technical Proposal Elements

In their technical responses, Candidates should refer to the quality award criteria.

The Candidates' technical response should then be sent to the ESM as a separate PDF attachment along with the other documents requested (see Section 5 'Structure of the Proposal').

**In order to evaluate the quality award criteria, the following documents are required:**

- 1) ESM will select one (1) person to provide the Services. The Candidate may provide detailed resumes for up to a maximum of two (2) consultants.
- 2) The Candidates' Proposals, and each of the proposed consultant(s)' resumes contained therein, must be sufficiently detailed to address and accurately describe the qualifications, capabilities, and experience of the consultant(s) proposed by the Candidate, and all other requirements set out in Annex 1 to this RFP.

### 2.2 Price – Commercial Proposal Elements

In their commercial responses, Candidates should refer to the price award criteria.

The Candidates' commercial response should then be sent to the ESM as a separate PDF attachment along with the other documents requested (see Section 5 'Structure of the Proposal').


**In order to evaluate the price award criteria, the following is required:**

Identify an "all-inclusive" daily rate expressed in euros (i.e. any and all amounts to be charged to the ESM for the Services, including but not limited to, accommodation and travel expenses, or any price increases) (the "**Daily Rate**").

Please observe the following when calculating the Daily Rate in your Proposal:

- 1) The Daily Rate will be applied on the basis of a professional working day at the ESM (excluding ESM holidays and/or any agreed vacation periods);
- 2) The Daily Rate must be firm, fixed, and unchanged for the entire duration of the Contract (including extensions);

3) The Daily Rate must be VAT exclusive.

<p>European Stability Mechanism</p> 
<p><b>RFP Annex 4</b></p> <p><b>Proposed Agreement</b></p>
<p><b>RFP Ref. No.: PSIR/02/CS/AG/19</b></p>
<p><b>Provision of consultancy services for the evaluation programme</b></p>

# **CONTRACT FOR THE PROVISION OF SERVICES**

**between the**

**European Stability Mechanism**

**and**

**[NAME OF THE SERVICE PROVIDER]**

THIS CONTRACT 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 [**TYPE OF LEGAL ENTITY**] company established and existing under the laws of [**COUNTRY**], with its address and 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 ESM conducted a procurement procedure for the provision of consultancy services for the evaluation programme [Insert number].
2. The terms of reference (the “**Terms of Reference**”, Appendix A) describe the specific nature of the services to be provided, as well as the terms and conditions for their performance.
3. The ESM notified the Service Provider of its intention to engage the latter to provide these services upon its selection.
4. The mutual rights and obligations of the ESM and the Service Provider will be as set out in this contract (the “**Contract**”).

**NOW THEREFORE** it is hereby agreed as follows:

**Article 1 – SUBJECT MATTER**

The Service Provider will perform the services (the “**Services**” or “**Assignment**”) as described in the Terms of Reference.

**Article 2 – PERFORMANCE OF THE CONTRACT**

- 2.1 The Service Provider will perform the Services in accordance with the specifications set out in the Terms of Reference.
- 2.2 The Service Provider will at all times carry out the Services with all reasonable care and skill and will confirm in all respects with the terms and conditions of the Contract.
- 2.3 When performing the Contract, the Service Provider will comply with the ESM’s terms and conditions for contracts for the provision of services attached to this Contract as Appendix B (the “**Terms and Conditions**”).
- 2.4 The Service Provider will provide its employees, who are performing the Services, with equipment, materials and all other necessary items required for the provision of the Services.
- 2.5 The Service Provider will appoint the following person for the performance of the Services to the ESM: [ ] (the “**Senior Evaluation Consultant**” or “**Consultant**”). The Service Provider acknowledges and agrees that it may not change the Senior Evaluation Consultant during the Contract’s duration without the express written consent of the ESM.
- 2.6 In addition to the Service Provider’ obligations set out in § 12 of the Terms and Conditions (Confidentiality and protection of personal data), the Service Provider confirms that it will treat as confidential, and only disclose with the ESM’s prior written approval, any information which it acquires from the ESM or any other person in the course of the performance of the Services including the existence of the relationship between the Parties, the existence and the Contract, and any output of the Services carried out under this Contract or elements of it.

### Article 3 – DURATION

- 3.1 The Contract will enter into force as of 01 July 2019 (the “**Effective Date**”), as soon as it has been signed by both Parties, and will remain in force until 31 May 2020 (the “**End Date**”), save where it is terminated earlier in accordance with the terms of the Contract.
- 3.2 The ESM reserves the right, in its sole discretion, to extend the Contract term, under the same terms and conditions, for a period of up to three (3) months.
- 3.3 The Services will be provided during the period specified in Article 3.1, and 3.2, except for the specific ESM holidays that the ESM will advise the Service Provider on and any other working days identified by the ESM where the ESM does not require the Services of the Consultant.
- 3.4 The Contract may be terminated in accordance with § 16 of the Terms and Conditions (Termination).

### Article 4 – PRICE

In consideration for performing the Services, the Service Provider will be paid a daily rate of [AMOUNT] per professional working day, exclusive of VAT (the “**Daily Rate**”). The Daily Rate includes all expenses related to the performance of the Services and no further expenses are payable under the Contract.

### Article 5 – TERMS OF PAYMENT

- 5.1 The Service Provider will issue an invoice at the beginning of each calendar month which will cover the Services provided during the preceding calendar month.
- 5.2 The Service Provider will issue invoices, and the ESM will make payment, in accordance with the provisions of § 8 of the ESM Terms and Conditions.
- 5.3 Payments will be made to such bank account as the Service Provider will notify in writing to the ESM.

### Article 6 - LAW AND JURISDICTION

- 6.1 This Contract and any non-contractual obligations arising out of or in connection with this Contract will be governed by the laws of the Grand Duchy of Luxembourg.
- 6.2 The courts of the City of Luxembourg have the exclusive jurisdiction to settle any dispute arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract or any non-contractual obligation arising out of or in connection with this Contract).

### Article 7 –NOTICES AND CONTACT PERSON

- 7.1 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

Copy: General Counsel

for the Service Provider:                      Attention: ●  
[ADDRESS OF THE SERVICE PROVIDER]

- 7.2 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.
- 7.3 The Service Provider will have as a contact person at the ESM [NAME] 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 8 – ENTIRE AGREEMENT**

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

- Appendix A: Terms of Reference;
- Appendix B: ESM Terms and Conditions;

8.2 In case of any inconsistency between the terms of this Contract, the following order of priority will apply:

- Terms set out in Articles 1 to 8 of this Contract;
- Appendix A; and
- Appendix B.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

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 contract concluded between the European Stability Mechanism (the “**ESM**”) and [NAME OF THE SERVICE PROVIDER] (the “**Service Provider**”) effective as of 01 July 2019 (the “**Effective Date**”) (together the “**Contract**”). Terms defined in the Contract have the same meaning when used herein.

[To be completed based on the Terms of Reference as provided in Annex 1 of the RFP]

## Appendix B

### ESM Terms and Conditions

#### Contract 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 contract concluded between the European Stability Mechanism (the “ESM”) and [NAME OF THE SERVICE PROVIDER] (the “Service Provider”) effective as of 01 July 2019 (the “Contract”). 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 the Contract have the same meaning when used herein, and vice versa.

The Service Provider shall be deemed to have accepted these Terms and Conditions through any one of the following acts: (a) signature of the Contract, (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 Contract (these Services hereinafter also the “Assignment”) in accordance with the requirements and specifications set forth in 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 ESM and the Service Provider (including their members of staff and agents) shall at all times cooperate 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 Contract, or notice of an alleged breach leading to termination, 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 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 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 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 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 latter shall nonetheless remain bound by its obligations to the ESM under the Contract.

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 (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.

## **§ 7 Remuneration**

The Service Provider shall be remunerated in accordance with the prices specified in 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 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 Contract;
- project code PROJ\_00043; 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 either in:

- a) hardcopies to the following address :  
European Stability Mechanism  
6a, Circuit de la Foire Internationale  
L-1347 Luxembourg  
Attention: Finance and Control; or
- b) softcopies to the following email address: InvoicesFC@esm.europa.eu

Unless otherwise specified in 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 warrants, represents and undertakes to comply, in the performance of the Contract, with the environmental criteria and any other similar conditions set out in the specifications of 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 Contract.

The Service Provider shall also be responsible for all 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 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.

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 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 processed under the Contract:

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 personal 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 personal 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 (which may include, by way of example, binding corporate rules).

The Service Provider is responsible for ensuring that all of its Employees comply with all aspects of and all obligations arising out of this § 12 and Annex III and will be liable for any Employee breach of these obligations.

Without prejudice to Clause 1.6 (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, 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.

## § 14 Liability

The Service Provider shall be liable to the ESM for any loss, injury or damage arising out of the performance (or non-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 Contract.

## § 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 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) without the ESM's prior written permission. 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 for the duration of the Contract to use such Work Product solely for the purpose of 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 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 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 Contract by giving the Service Provider one month’s written notice.

The ESM may terminate 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 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.

The Service Provider may terminate the Contract upon written notice to the ESM if the ESM fails to pay an undisputed amount in accordance with 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.

## **§ 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 Contract 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 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 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 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 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 Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation. 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 Contract 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 Contract shall not affect the validity or enforceability of any other provision of the Contract, which shall remain in full force and effect.

### **§ 23 Entire agreement and amendments**

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 Contract. It shall supersede any prior proposal or agreement, whether written or oral, and any other communication concerning the Assignment.

The Contract may be modified only by an instrument in writing signed by both the ESM and the Service Provider.

### **§ 24 Waiver**

No term or provision of 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 Contract and any non-contractual obligations arising out of or in connection with the Contract will be governed by the laws of the Grand Duchy of Luxembourg.

The courts of the Grand Duchy of Luxembourg have the exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract (including a dispute regarding the existence, validity or termination of the Contract or any non-contractual obligation arising out of or in connection with the Contract).

### **§ 26 Survival of obligations and cooperation with the ESM**

The provisions of § 9, § 11, § 12, § 14, and § 19 of these Terms and Conditions survive the expiry or termination of the Contract and continue for a period of twenty years thereafter.

After the expiry or termination of 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 this Contract according to the fees specified in 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 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 Contract, three (3) months prior to the expiry of the Contract or as soon as a notice to terminate 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 Contract. If the Contract expires, or the ESM terminates the Contract, or any part thereof, for convenience, or if the Service Provider terminates the Contract, or any portion of it, for cause due to a material default by the ESM, or if the 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.

**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 his presence on the ESM's premises only to areas necessary for execution of the Assignment.

## 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 personal 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.

#### 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. The Service Provider may retain copies of data or information belonging to the ESM if required by applicable law.

## **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 1.7 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 Telecommunication 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.

**RULES FOR THE PROTECTION OF 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 personal 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 these 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 personal data on any account to any third party not duly authorised by the ESM or copy (on any medium whatsoever) or transmit these 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 keep any copy, file or list (on any medium whatsoever) of the personal 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 personal data in question 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 shall bring the rules of points 1 to 6 above to the attention of each Employee and subcontractor.

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