

<p>European Stability Mechanism </p>
<p>Request for Proposal</p>
<p>Ref. No.: FM/08/CS/MC/18</p>
<p>Provision of consultancy services for Facilities Management</p>
<p>02/01/2019</p>

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1 Introduction

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.

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 a four (4) year term.

2 RFP Content

The RFP package consists of the following documents:

No.	Document Title	Comment
1.	Request for Proposal – Core Document	This document
Annexes		
2.	Annex 1 – Terms of Reference	Attached
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	Attached
4.	Annex 3 – Selection and Award Criteria and response elements	Attached
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	02/01/2019
2.	Deadline for submission of clarifications/questions on the Contract Notice and the RFP	23/01/2019 11:00 hrs (local Luxembourg time)
3.	Response to the clarifications/questions on the Contract Notice and the RFP	Regularly
4.	Deadline for submission of Proposals	07/02/2019 11:00 hrs (local Luxembourg time)

No.	Procurement Process Steps	Timeline
5.	Target dates for Presentations of the eligible Candidates	06/03/2019 to 11/03/2019
6.	Target notification of the ESM's decision to advance/not advance the Candidate's Proposal	18/03/2019
7.	Agreement's target commencement date	30/04/2019

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 executed declarations as requested in Annex 2 Section 1	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 2 Section 2).

SELECTION CRITERIA – elements of the evaluation		
Selection Criteria	Economic and financial standing	Pass / Fail
	Technical or professional ability	Pass / Fail
	Authorisation and suitability to carry out the relevant professional activity	Pass / Fail

Candidates must achieve "pass" for all "pass/fail" criteria and must comply with all eligibility and selection criteria to be assessed further.

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

AWARD CRITERIA			
QUALITY	%	PRICE	%
Personnel	35%	Price*	30%
Methodology	25%		
IT security & data location	10%		
Score available	70%		30%
Total Score 100%			

*The Candidate proposing the lowest price over the entire Agreement term will be given the maximum financial score available. Other Candidates' (higher) prices will be divided by the lowest price and the result multiplied by the maximum score given.

Technical proposals of those Candidates who received less than 49% of the maximum available score for the Quality (70%) will be deemed of insufficient quality and eliminated from further evaluation.

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
 Attention: Marion Courbis

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 eligible Candidates 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.

The ESM requires Candidates to present the proposed personnel (e.g. a project manager and a senior consultant) that, if the Candidate is awarded the Agreement, will be physically assigned to the ESM when needs arise. However, as the ESM will award a framework agreement which does not involve any upfront commitment to specific work, it is acknowledged that once the Agreement is signed and a need arises, if the personnel interviewed during the presentation is not available, other personnel of the same or higher qualifications will be proposed.

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.

The Agreement will be exclusively in the English language.

4 Terms and Conditions of the RFP

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 180 calendar days 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

If the Candidate intends to involve a third party in the supply of the services offered to the ESM the Candidate has to ensure that any such third party is bound by the requirements set forth in this RFP.

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.

If a Candidate intends to subcontract some of the services offered to the ESM 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).

Where the information provided to the ESM indicates that subcontractor(s) is/are to play a significant role in delivering the services offered to the ESM, any changes to the proposed subcontractors must be notified immediately to the ESM. Candidates cannot exchange or replace the subcontractors or modify the nature of the subcontracting arrangement (including the subcontracted tasks, their volume or proportion), whether during the course of this procurement procedure or during the term of the Contract, without the prior written consent of the ESM.

Moreover, any additional subcontractor(s) which was/were not assessed by the ESM during this procurement procedure may only be appointed if the ESM's has given its prior written consent.

5 Structure of the Proposal

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 as a separate attachment within the Proposal submission email.	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 as a separate attachment within the Proposal submission email.	Fully scanned copy with signature in PDF and an writable Excel version
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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

Ref. No.: **FM/08/CS/MC/18**

Attention: Marion Courbis

Only Proposals received through these means will be accepted.

Annex 1 Terms of Reference

1. BACKGROUND

The European Stability Mechanism (the “**ESM**”) is a permanent crisis resolution mechanism established by the euro area Member States as an intergovernmental organisation under public international law, with its seat and principal office at 6a, Circuit de la Foire Internationale, L-1347 Luxembourg (the “**KUBIK Building**”). 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.

Currently, the ESM has rented the ground, first and second floors of the KUBIK Building, and some storage and archive areas on the first and second underground floors. The total rented area is approximately 8,500 m² (the “**Existing Area**”) and provides about 300 workspaces, 20 meeting rooms (capacity of 2-80 people), a conference area (capacity of 200 people on the first underground floor), language rooms, an interview room, and a creative/project area. In addition, there is a staff restaurant located on the ground floor and tea kitchens on the underground, ground, first and second floors. There are also gym facilities, nursing room and a quiet break room located on the first underground floor and several functional rooms (i.e. server / technical, sanitary, small storages, UPS etc.) throughout the KUBIK building.

The ESM’s Facilities Management team (the “**FM Team**”) consists of 4 people and 1 trainee.

The ESM uses several external providers for provision of services such as security, cleaning, building technical and maintenance services, catering, plant maintenance, furniture, etc. The majority of these providers are based in Luxembourg as is the property manager of the KUBIK Building’s landlord.

2. OBJECTIVES

Where expert knowledge on complex facilities management (FM) topics is required, or during periods of high demand, the ESM supplements its internal FM Team capacity with temporary external resources.

The ESM therefore intends to establish a framework agreement (the “**Framework Agreement**”) with a single service provider (the “**Consultant**”) which will support the FM Team, on a non-exclusive basis, by providing the following consultancy services:

- Advisory and project management on any FM topics
- Resource backfilling

together the “**Services**” which are described in detail in Section 3 below.

The ESM will sign implementing contracts (the “**Implementing Contracts**”) under the Framework Agreement defining the nature of such Services (individual assignments) to be performed by the Consultant (the “**Assignments**”).

3. SERVICES

3.1 Advisory and project management

On an ad-hoc basis, the ESM will require the Consultant to provide consultancy services on a range of FM-related subjects. All of the below require expert knowledge in terms of current trends and developments as well as assessments and process improvements, including updating and/or setting up procedures, processes, policies and documentation.

The Services will cover everything from advisory services to project management. The areas where expert knowledge might be required to focus on are, but not limited to, the below list:

- Occupational Health & Safety
 - Make recommendations in regards to best practices on occupational health and safety. Advise the ESM on any regulations that are relevant for the ESM's operations in general and/or in Luxembourg.
- Space, Change & Asset Management
 - Provide recommendations on how the ESM can optimise the use of available office space and storage.
 - Provide recommendations on how to optimize the space management processes in the ESM's current information system, ServiceNow, and/or propose new solutions and systems if required by the ESM.
 - Provide recommendations on how to optimize the asset management processes in the ESM's current information system, ServiceNow, and/or propose new solutions and systems if required by the ESM.
 - Develop an appropriate communication strategy for any changes that might occur for the ESM offices. This includes leading staff training sessions where required and preparing and distributing bulletins to ESM staff covering topics such as: regular progress updates; notification of project related disruptions; motivation to accept the new workplace standards, etc. and making the changes as smooth and convenient as possible.
 - Plan and supervise internal moves, fit-outs and extension projects, if necessary.
- Event related services
 - Support the organisation and execution of high level events. Specific tasks in relation to this may include:
 - The organization of events jointly done by the ESM and the ESM's event management provider.
 - The coordination of special security measures (special body-guards, bug-proofing, police, etc.).
 - The coordination of specialist services and equipment (catering, cleaning, special technology e.g. for translators, etc.) with the ESM's external providers.
 - General administrative tasks (contact with authorities, information letters, welcome screens, etc.).
- Service Management
 - Review all of the services which the FM Team delivers internally, either directly or through external providers, and make recommendations as to how these might be improved or optimised. Provide recommendations on improved procedures, SLA's and KPI's to be included in the agreements with external providers.

- Vendor Management
 - Advise the FM Team on appropriate vendor management and monitoring approaches for services provided by external providers (SLAs, KPIs, management reporting, escalation points etc.).
- Contract and Procurement related services
 In collaboration with the FM Team and the ESM's Commercial Legal and Procurement team:
 - Support the FM Team in the process of drafting technical specifications. In addition, the Consultant will execute and analyse current contracts with external providers to maximize operational and financial performance of the services provided to the ESM.
 - Support the FM Team in the process of selecting external service providers, establishing relevant pricing schemes, analysing pricing proposals, strategic vetting, commercial negotiations and actual ordering of goods or services.
- Security Management
 - Conduct risk assessments in relation to the ESM physical security concept of the KUBIK Building and provide recommendations for optimisation based on the current and future threat levels.
 - Provide advice and support to the FM Team on managing the ESM's travel security management process and provide proposals for service optimisation.
- Budgeting
 - Provide recommendations for optimising the annual budgeting exercise jointly executed by the FM Team and Finance and Control division.
- Quality Management
 - Provide recommendations on how to mature the FM Team within the ESM. Advise on methods for standardisation in procedures, processes, contracts execution, policies, etc.
- Building Management & Smart Building Solutions
 - Provide recommendations for optimising the current technical and building services (such as energy provision, HVAC, building automation system, lighting system, access control system, intrusion systems, etc.), including recommendations for SMART building technologies to optimise the use of the ESM offices.
- Sustainability
 - Make recommendations in regards to achieving best practices in environmental, energy and waste management policies. Offer innovative approaches to assist the ESM to excel in this area.
- Operator responsibility (as per FM guideline GEFMA 190)
 - Review and provide advice on further improvements regarding ESM's compliance on technical topics by providing subject matter expertise.
 - Analyse root causes for any divergences and provide solutions for improvements.

In addition, the ESM may require the Consultant to provide advice and support with regards to special projects/tasks, examples of which are provided below:

- Projects
 - Electrical network resilience and other technical projects
 - Implementation of physical security information management system
 - Building automation system and other FM related tools and systems
 - Integrated workplace management systems
- Security audits and other special evaluations (e.g. regarding operator responsibility, etc.).

3.2 Resource backfilling

The ESM may from time to time require the Consultant to provide resources (the “Resources”) to cover for the absence of FM Team members. The Consultant will in such cases provide Resources of at least equivalent seniority and areas of expertise as those members of the FM Team they are covering for.

Normally, the resource backfilling will be required on an exceptional basis to provide cover for planned absences (long-term sick leave, parental leave, staff leaving the FM Team, etc.) where the ESM will be able to provide the Consultant with a notice of one week or longer. However, the Consultant should also have capacity to provide the Resources on short notice (within 2 working days) in emergency situations.

4. CONSULTANT EXPERTISE AND TEAM REQUIREMENTS

The Consultant will be required to demonstrate the following:

- The ability to provide best practice advice and recommendations on all topics listed in Section 3 above.
- The ability to draft technical specifications and scope of work documents to support the FM Team through procurement activities.
- A strong understanding of the market environment and constraints in relation to all topics listed in Section 3 above.
- A strong knowledge of external providers providing services to the Luxembourg market is not a mandatory requirement but will be considered an advantage.
- Ability to provide the ESM with benchmark pricing exercise in relation to all topics listed in Section 3 above.
- Comprehensive knowledge of all relevant regulations in the FM field in the European Union.
- Excellent written and spoken English (the working language of the ESM) and the ability to communicate with external providers in French and German.

The Consultant will ensure that the Services are performed to the highest standard, and will have appropriate measures in place to monitor performance and delivery of the Services (e.g. key performance indicators).

The Consultant will be required to staff Assignments with resources (experts) with the following profiles:

Project Assistant

- To provide mainly administrative and simple coordinative tasks.
- Project assistants are not required to hold any particular qualification but must have good organisational and MS Office skills.

Junior Consultant

- To provide support on project and advisory Assignments, with the ability to take the lead on some topics.
- A minimum of three years’ experience in the relevant stream of FM (operations and services, building extension or construction projects, relocation and space planning projects, etc.).
- Junior consultants must hold a university degree (bachelor level) relevant for the Assignment.
- Holding a IPMA C level (or equivalent) certification for Junior consultants is not a mandatory requirement but will be considered an advantage.

Senior Consultant

- To take the lead on project and advisory Assignments.
- A minimum of seven years' experience in the relevant stream of FM (operations and services, building extension or construction projects, relocation and space planning projects, etc.), including a minimum of three years in a leading role.
- Senior consultants must hold a university degree (masters' level) relevant for the Assignment.
- Senior consultants must hold at least IPMA C level (or equivalent) certification.

Project Manager

- To take overall responsibility for results, deadlines and resources in the relation to all project and advisory Assignments.
- To take the lead on project and advisory Assignments.
- A minimum of ten years' experience in the relevant stream of FM (operations and services, building extension or construction projects, relocation and space planning projects, etc.), including a minimum of six years in a leading role.
- Project managers must hold a university degree (masters' level) relevant for the Assignment.
- Project managers must hold IPMA B level (or equivalent) certification.

Subject Matter Experts

For topics requiring a high degree of specialisation, the Consultant will provide the services of subject matter experts. Where the specific expertise is not available in-house, the Consultant may be allowed to sub-contract subject matter services. Subject matter expertise may be required in all fields of facilities management.

5. DELIVERABLES AND DOCUMENTATION

All documentation deliverables will be prepared in English and provided to the ESM through its extranet workspace unless specifically agreed otherwise. The document management rules of the ESM have to be respected, and documents have to be provided in an editable format best suitable for the purpose of the document as required by the ESM.

The deliverables for the Assignments will be defined in the relevant Implementing Contracts.

6. IMPLEMENTATION ARRANGEMENTS

The implementation arrangements for the Assignments will be governed by the related Implementing Contract. In general, the responsible person per topic within the FM Team will be the point of contact for the Consultant. When contacted by the ESM, the Consultant will need to respond to the request within the following timelines:

1. For simple requests: within two business days.
2. For complex topics: within two business days provide a date by when the query will be answered.
3. Availability for online meetings: within two business days.
4. Availability for on-site presence: within five business days from the date of the notification by the ESM (based on standard urgency, can be shorter for defined high-priority topics and longer for low-priority and plannable topics).

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.

Section 2: Non-Collusion Declaration

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

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.

COVER CERTIFICATION FORM**Submitted in Response to RFP Ref. No.: FM/08/CS/MC/18**

The undersigned, acting in his/her own name/acting as [a] duly appointed representative(s)¹ 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 _____

¹ 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 Economic and financial standing

Item No	SELECTION CRITERIA	RESPONSE REQUIREMENTS
1	The Candidate must have an annual, global revenue in excess of €2,000,000 Euros in each of its last two (2) most recent completed fiscal years from the provision of services similar to those described in Annex 1.	<ul style="list-style-type: none"> Confirmation of Pass or Fail and, As evidence, copies of financial statements etc.

2.2 Technical or professional ability

Item No	SELECTION CRITERIA	RESPONSE REQUIREMENTS
1	Confirm the Candidate has the ability and capacity to deliver, without exception, the requirements sought by the ESM as set out in Annex 1.	<ul style="list-style-type: none"> Confirmation of Pass or Fail As evidence, three recent (from the last three calendar years) examples of the provision of services of similar size, scope and complexity as described in Annex 1 which demonstrate a proven track-record of successful delivery. This should include: i) a summary description of the services provided for each example, including size, scope and complexity and ii) any available on-line reference materials (if such exist) and iii) client names or client industry (if for confidentiality reasons client names may not be provided). As evidence, provide an indication of how many resources per type of profile can be supplied and how many you have actively placed each year in the past three calendar years

2.3 Authorisation and suitability to carry out the relevant professional activity

Item No	SELECTION CRITERIA	RESPONSE REQUIREMENTS
1	Confirm and provide evidence that you have an authorisation to perform the services described in Annex 1 under national law applicable to the Candidate and in Luxembourg.	<ul style="list-style-type: none"> Confirmation of Pass or Fail Relevant supporting documents such as a recent copy of a document confirming inclusion in a relevant professional or commercial register



<p>2</p>	<p>Confirm the Candidate is able to provide resources to work on-site at ESM's offices in Luxembourg for short and long-term (multi months) assignments.</p>	<ul style="list-style-type: none">• Confirmation of Pass or Fail
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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	%
Personnel	35%	Price	30%
Methodology	25%		
IT security & data location	10%		
Score available	70%		30%
Total Score 100%			

2.1 Quality – Technical Proposal Elements

In their technical responses, Candidates should refer to the quality award criteria and instruction numbers before providing their answers.

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').

Technical proposals of those Candidates who received less than 49% of the maximum available score for the Quality (70%) will be deemed of insufficient quality and eliminated from further evaluation.

Quality	70%
1. Quality of Personnel	35%
<p>1) Provide CVs of the core team you will send to the ESM whenever a need arises.</p> <p>As the ESM will award a framework agreement which does not involve any upfront commitment to specific work, therefore it is acknowledged that once the Agreement is signed and a need arises, if the personnel interviewed during the presentation is not available because of other commitments etc., other personnel of the same or higher qualifications will be proposed and vetted by ESM at that time.</p> <p>2) Provide up to 3 CVs for each of the following profiles:</p> <ul style="list-style-type: none"> • Project assistant • Junior consultant • Senior consultant • Project manager <p>3) Explain the roles and responsibilities these resources would have when working with the ESM.</p> <p>Note that at least one of the named personnel proposed (whose CV was submitted) for a project manager and a senior consultant will be required to attend the presentation.</p>	
2. Quality of Methodology	25%

<ol style="list-style-type: none"> 1) Explain the approach you would propose to apply when providing the services described in Annex 1 and how you can adapt it to the needs of the ESM. 2) Explain how you will respond to short term requests and ensure the ESM receives the best advice at all times. 3) Explain which FM norms and guidelines you follow. 4) Explain if you have experience with local providers and local authorities that would benefit the ESM, and if this is not the case how you will intend to build this. 5) Explain how you ensure the Services are performed to the highest standard. How do you ensure appropriate performance management of the Services and what measures do you put in place to monitor this. 	
3. Governmental Access Risk, Data Protection & IT security	10%
<p>Describe your company's (including that of your subcontractor(s), if any) approach (by providing examples of operational processes, audit reviews, legal & regulatory compliance and certifications as appropriate) to securing ESM data, including personal data, and ensuring it remains confidential, its integrity is maintained, is available as required, and is destroyed if no longer required. Your response should describe the following:</p> <ul style="list-style-type: none"> • ITSM - describe the IT Service Management processes employed. • Encryption - in transit? At rest? Who has the key? • Audit - describe your audit schedule and provide audit reports - SOC1, SOC2 etc. • Compliance - provide evidence of ISO 27002 best practice, ISO 27001 Certification or other evidence of equivalent appropriate controls. • Data Protection - describe how you will protect our personally identifiable information and what technical and organisational measures would you implement to meet the requirements of GDPR and protect the rights of data subject (GDPR compliance, description of segregation etc.). • Where the server(s) containing ESM data will be located. • The location of any entities that may have access to ESM data. 	
<p>Describe your company's (including that of your subcontractor(s), if any) approach to maintain service continuity including all aspects of IT and information security (as per your response to the previous criterion) during an adverse condition.</p> <p>Your response should describe the following:</p> <ul style="list-style-type: none"> • Disaster Recovery Plan • Business Continuity Plan • Testing Regime (and post-exercise reports if not covered by audit reports) • Supporting Facilities • Information Security 	
<p>Describe your company's (including that of your subcontractor(s), if any) approach to protecting services and systems against malware and your procedure for identifying and responding to technical vulnerabilities of IT systems hosting ESM information and data.</p> <p>Your response should describe the following:</p> <ul style="list-style-type: none"> • Tools - detection, prevention & recovery controls to protect against malware implemented • Processes - Security Incident Management policies and processes • Anticipation - Threat horizon reviews etc. 	

2.2 Price – Commercial Proposal Elements

In their commercial responses, Candidates should refer to the price award criteria and instruction numbers before providing their answers.

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').

1) HOURLY RATES

Candidates are requested to fill out the table below with proposed hourly rates. The hourly rates must include any and all amounts to be charged to the ESM for the Services, including, but not limited to all expenses such as accommodation, expenses, travel and Candidate overheads (the "Hourly Rates"). Please observe the following when calculating the Hourly Rates in your commercial proposal:

- a) The Hourly Rates apply at all times;
- b) The Hourly Rates are to be firm, fixed, and remain unchanged for the entire Agreement term;
- c) The hourly Rates must be exclusive of VAT.

Table 1: Hourly Rates

Profiles	Hourly Rate ⁴	Coefficient for evaluation purposes*
Project Assistant	€	6%
Junior Consultant	€	33%
Senior Consultant	€	33%
Project Manager	€	22%
Subject Matter Expert	€	6%

* The coefficients reflected are only for the purpose of the evaluation and do not reflect a commitment from the ESM. These coefficients will be used to calculate a blended hourly rate for the price evaluation.

2) VOLUME DISCOUNTS

Candidates are requested to fill out the table below with proposed volume discounts.

Table 2: Volume discounts

Overall Turnover*	<€50,000	[€50,001 - €100,000]	[€100,001 - €150,000]	[€150,001 - €200,000]	[€200,001 - €500,000]	> €500,000
Discount	%	%	%	%	%	%

* Turnover is understood as the total amount invoiced to the ESM for the Services provided under the Agreement and any Implementing Contracts signed under the Agreement.

Volume discounts will be calculated on the Turnover from the start date of the contract throughout the entire Agreement term. As soon as the ESM spend reaches a level that entitles the ESM to a discount, the discount will be applied to the applicable spend on the relevant invoice.

Prior to raising each invoice, the Service Provider it will have to calculate the cumulative Turnover from the start date of the contract to ensure the correct volume discount is deducted from each invoice.

⁴ Hourly rates remain unchanged

Example:

If the Service Provider enters into the first Implementing Contract with the ESM for EUR 50,000, the Service Provider will apply the discount, relevant to the amount of Turnover (i.e. EUR 50,000), to the relevant invoice(s) for that Implementing Contract.

If the Service Provider enters into a second Implementing Contract with the ESM for EUR 20,000, the Service Provider will apply the discount, relevant to the new amount of Turnover (i.e. EUR 70,000)), to the relevant invoice(s) for the second Implementing Contract.

Annex 3

Draft Agreement

FRAMEWORK AGREEMENT

between the

European Stability Mechanism

and

[NAME OF THE SERVICE PROVIDER]

Framework Agreement Number: [TBC]

THIS FRAMEWORK AGREEMENT IS MADE BETWEEN:

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

(hereinafter called the “**ESM**”)

and

[NAME OF THE SERVICE PROVIDER], a **[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 selection of a company specialising in the provision of the consultancy services for Facilities Management [Insert number].
2. The terms of reference attached to this framework agreement as Appendix A specify the nature of the services to be provided to the ESM as well as the terms and conditions for their performance.
3. The ESM has decided to conclude this framework agreement with the Service Provider upon its selection and subsequently to conclude specific contracts with the Service Provider to cover particular assignments thereunder.
4. The mutual rights and obligations of the ESM and the Service Provider shall be as set out in this Framework Agreement

NOW THEREFORE it is hereby agreed as follows:

Article 1 – DEFINITIONS

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

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

“**Assignment**” means a specific assignment required by the ESM for the purpose of which the Service Provider will provide the Services as agreed between the Parties in a Contract.

“**Assignment Terms of Reference**” means the terms of reference of a specific Assignment for which the ESM and the Service Provider will enter into a Contract.

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

“**Business Day**” means a day on which the ESM is open for business.

“**Contract**” or “**Implementing Contract**” means a contract entered into between the ESM and the Service Provider pursuant to Article 4, a template of which is attached to this Agreement as Appendix C.

“**Services**” means the consultancy services for Facilities Management specified in this Agreement, in the Terms of Reference, in the Contracts.

“**Terms of Reference**” means the document specifying the services to be provided to the ESM, attached to this Agreement as Appendix A.

Article 2 – SUBJECT MATTER

- 2.1 The Service Provider will provide the Services to the ESM as specified in this Agreement, in the Terms of Reference, and in the relevant Contract.
- 2.2 The procedures for the award and performance of individual Assignments are set out in Article 4 below.
- 2.3 The Service Provider, when performing an Assignment, will comply with the ESM’s rules and regulations which have been notified to the Service Provider, in particular with the Terms and Conditions.
- 2.4 The Service Provider will be required to appoint a named individual, as well as a back-up person with overall responsibility for managing and administering this Agreement, including Assignment requests from the ESM, and Contracts concluded with the ESM, as they arise.

- 2.5 This Agreement does not confer on the Service Provider any right to provide Services to the ESM and there is no obligation on the ESM to request Services from the Service Provider.

Article 3 – DURATION AND TERMINATION

- 3.1 The Agreement enters into force as of [DATE] (the “**Effective Date**”), as soon as it has been signed by both Parties, and will remain in force for a period of four (4) years, that is until [DATE] (the “**End Date**”).
- 3.2 The term of the Agreement and all other periods specified in this Agreement are calculated in calendar days unless otherwise indicated.
- 3.3 This Agreement will continue to apply to Contracts whose end date falls after this Agreement expires.
- 3.4 The Agreement may be terminated in accordance with § 16 of the Terms and Conditions (Termination).

Article 4 – PROCEDURE FOR AWARDING AND PERFORMANCE OF SPECIFIC ASSIGNMENTS

- 4.1 In the event the ESM requires the Services, the ESM will request the Service Provider to provide the Services and the Service Provider will provide such Services as agreed between the Parties in the relevant Contract. The ESM will provide in the Assignment Terms of Reference for the proposed Assignment the requirements and specifications of the Services required.
- 4.2 Once the Parties have agreed on the Services, the Parties will formalise this agreement by entering into a Contract, substantially in the form as attached to the Terms of Reference as Appendix C (the “**Contract Template**”). Within five Business Days of receiving from the ESM the execution copy of the Contract, the Service Provider will return one original of the Contract, duly signed and dated, thereby acknowledging receipt of the Contract and acceptance of its terms.
- 4.3 Once the Contract has been signed by both Parties it becomes a part of this Agreement and all terms of this Agreement (as amended, if applicable), including, in particular, the Terms and Conditions, apply to any Contract in full force and effect and the services agreed in any Contract are the Services under this Agreement. If there is a conflict between the Contract and this Agreement, the terms of this Agreement will prevail unless the Contract includes a specific wording amending the terms of this Agreement.
- 4.4 The Service Provider will perform the Assignment in accordance with the specifications set out in this Agreement, the Terms of Reference, the Contract and the Assignment Terms of Reference.
- 4.5 The Service Provider will at all times carry out the Assignment with all reasonable care and skill and will conform in all respects with the terms and conditions of this Agreement and of the Contract. The Assignment will be carried out by the Service Provider in collaboration with and under the supervision of members of staff of the ESM.
- 4.6 The performance of the Service Provider and its employees will be tracked throughout the Assignment and the Service Provider will provide, unless otherwise agreed, on a weekly basis, a report on progress, status and forecast utilisation for all deliverables and resources on the Assignment.
- 4.7 Where the execution of the Contract has not actually commenced within ten days of the scheduled date for the commencement of the Assignment and the new date proposed by the Service Provider, if any, is considered unacceptable by the ESM, the ESM may terminate the Contract without prior notice. If time is of the essence and execution of the Contract has not actually commenced on the scheduled date for the commencement of the Assignment, the ESM may terminate the Contract immediately without prior notice. Termination will take effect from the day after the day on which the Service Provider receives written notification of the termination from the ESM.
- 4.8 No amendment or modification to any Contract will be effective unless and until agreed upon in writing and signed by the Parties. The ESM may terminate a Contract at any time during execution thereof on the grounds and under the conditions set out in § 16 of the Terms and Conditions with respect to the part still outstanding.

Article 5 – PRICE

5.1 Hourly rates

[PLACEHOLDER]

5.2 Volume discounts

[PLACEHOLDER]

Article 6 – TERMS OF PAYMENT

- 6.1 Unless agreed otherwise differently in a Contract, 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. The invoice will contain all information required to validate the amounts billed (i.e. brief description of work performed, time spent, resource names etc.)
- 6.2 Invoices are to be issued and payment by the ESM will be made in accordance with the provisions of § 8 of the Terms and Conditions. In addition the Parties agree that the Service Provider will provide the ESM's assignment manager (as notified by the ESM) with weekly time sheets, which will among other matters, identify the nature of the work performed by working day and the skill set (Junior to Expert) of the Service Provider consultants who performed it. Subject to the ESM's assignment manager's satisfaction, acting reasonably, the ESM assignment manager will review and if appropriate, sign the time sheets provided by the Service Provider.
- 6.3 Payments will be made to the bank account notified in writing by the Service Provider to the ESM.

Article 7 – Place of work

The Service Provider will execute the Assignment from the ESM's premises in the Grand Duchy of Luxembourg and/or other premises as agreed for the particular Assignment.

Article 8 – LAW AND JURISDICTION

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

Article 9 – SUSPENSION OF THIS AGREEMENT

Without prejudice to the ESM's right to terminate this Agreement, the ESM may at any time and for any reason suspend the performance of this Agreement or pending Contracts or any part thereof. Suspension will take effect on the day the Service Provider receives notification, or at a later date where the notification so provides. The ESM may at any time following suspension give notice to the Service Provider to resume performance of this Agreement or pending Contracts. The Service Provider will not be entitled to claim compensation on account of suspension of this Agreement or pending Contracts.

Article 10 – NOTICES AND CONTACT PERSON

- 10.1 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 it previously notifies to the other in writing:

for the ESM:

Attention: Secretary General
European Stability Mechanism
6a, Circuit de la Foire Internationale

L-1347 Luxembourg

for the Service Provider: Attention: [TBC]

- 10.2 The date of registration or, as the case may be, the stated date of receipt of transmission will be conclusive for the determination of a period.
- 10.3 The Service Provider will have as a contact person at the ESM, [TBC], to whom the Service Provider will report in respect of the execution of the Services, or any other person that the ESM has expressly notified to the Service Provider.

Article 11 – ENTIRE AGREEMENT

- 11.1 This Agreement contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of any Party has authority to make, and the Parties will not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 11.2 The following documents attached hereto will be deemed to form an integral part of this Agreement:
- Appendix A: Terms of Reference;
 - Appendix B: Terms and Conditions; and
 - Appendix C: Contract Template.
- 11.3 In case of any inconsistency between the terms of this Agreement, the following order of priority will apply:
- Terms set out in Articles 1 to 11 of this Agreement;
 - Appendix A;
 - Appendix B; and
 - Appendix C.

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

By: ●
Title: ●

By: ●
Title: ●

[PLACE], [DATE]

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

By: ●
Title: ●

Appendix A

Terms of Reference

These Terms of Reference apply to and form part of the framework agreement concluded between the European Stability Mechanism (the “ESM”) and [NAME OF THE SERVICE PROVIDER] (the “Service Provider”) effective as of [DATE] (the “Effective Date”) (together the “Agreement”). 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

Terms and Conditions

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

§ 1 Scope of application and order of precedence

These Terms and Conditions apply to and form part of the framework agreement concluded between the European Stability Mechanism (the “ESM”) and [NAME OF THE SERVICE PROVIDER] (the “Service Provider”) effective as of [DATE] (the “Framework Agreement”) with a view to sign one or more subsequent contracts for the provision of services to the ESM. The ESM and the Service Provider are hereinafter also called a “Party” and together the “Parties”. Additional or different terms and conditions do not apply.

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

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

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

§ 2 Service Provider obligations

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

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

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

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

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

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

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

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

§ 3 Term of Engagement

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

§ 4 Deliverables

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

§ 5 Assignment and subcontracting

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

Even where the ESM authorises the Service Provider to subcontract all or part of the Services to third parties, the latter shall nonetheless remain bound by its obligations to the ESM under the Framework Agreement or 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 Framework Agreement or the Contract, which, unless otherwise therein specified, shall include all expenses. The Services may be provided on a time and materials basis or on a fixed-price basis or a combination of both.

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

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

§ 8 Terms of payment

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

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

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

- in case of a fixed-price contract, a summary of the Services provided by the Service Provider during the period covered by the invoice with reference to the agreed payment schedule;
- where there is a deliverable, reference to: (i) the type of deliverable (ii) the date of acceptance by the ESM of the deliverable, and (iii) the agreed payment schedule for that deliverable;
- the total amount to be paid in the currency set out in the Framework Agreement or the Contract; and
- the Service Provider's bank account to which payment is to be made.

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

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

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

§ 9 Compliance with the ESM's rules and regulations

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

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

§ 10 Environmental requirements

The Service Provider warrants, represents and undertakes to comply, in the performance of the Framework Agreement and the Contracts, 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.

The ESM reserves the right to carry out directly the necessary checks on the Service Provider to ensure that the environmental requirements are met. These checks may be conducted in part or in full by an external entity duly commissioned by the ESM.

§ 11 Tax and social security obligations

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

The Service Provider shall also be responsible for all 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

The Service Provider must 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 Service Provider and the ESM and the existence and terms of the Framework Agreement and the Contract (the "**ESM Confidential Information**"). However, the foregoing obligation of confidentiality shall not apply to any information that was in the Service Provider's possession prior to commencement of the Services, or which is in or later enters the public domain other than by wrongful disclosure of the Service Provider.

In case the Service Provider receive 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 Framework Agreement and 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 authorisation, 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 for subsequent checking must be in place).
5. Input control: The Service Provider must maintain full documentation of data management and maintenance (i.e. measures for subsequent checking whether data have 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 instructions (i.e. measures (technical/organisational) to segregate the responsibilities between the ESM and the Service Provider must be in place).
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.

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.

The Service Provider shall obtain from each of its Employees assigned to the Project and, if applicable, from each subcontractor a written undertaking in the form of Annex III hereto which it shall return to the ESM duly executed.

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 Framework Agreement or 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.

“**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.

“**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 defense of the claim at its own expense.

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

§ 16 Termination

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

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

- i. the Service Provider is in material breach of any of its obligations under the Framework Agreement or the Contract;
- ii. the Service Provider, any of its Employees assigned to the Project, any subcontractor of the Service Provider or any other person acting on behalf of the Service Provider in the performance of the Services has been engaged in conduct bringing the ESM into disrepute;
- iii. the Service Provider is in a situation of conflict or potential conflict of interest, as defined in § 17 of these Terms and Conditions;
- iv. the Service Provider has ceased or has resolved to cease to carry on the whole or any substantial part

of its business or activities; or

- v. any corporate action, legal proceedings or other procedure is taken in any jurisdiction in relation to:
 - (a) the suspension of payments, a moratorium of any indebtedness, the winding-up, dissolution, administration or reorganisation of the Service Provider;
 - (b) a composition, assignment or arrangement with any creditor of the Service Provider; or
 - (c) the appointment of a liquidator, receiver, administrator, administrative receiver, regulatory official, compulsory manager or similar officer in respect of the Service Provider.

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

§ 17 Conflict of interest

The Service Provider shall ensure that no circumstances arise during the Term of Engagement in which the performance of the Services by the Service Provider conflict or might conflict with the Service Provider's personal interests or with any services which the Service Provider may render to third parties. In the event of such conflict or potential conflict of interest, the Service Provider shall immediately notify the ESM.

§ 18 Insurance and reporting

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

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

§ 19 Inspection and audit

The ESM reserves the right to perform audits of all books, records, internal processes, and controls of the Service Provider which relate to the performance of the Framework Agreement and the Contract. The Service Provider shall maintain accurate records at all times. Upon fourteen days' notice, the Service Provider shall provide the ESM reasonable access to the Service Provider's records to verify compliance with the terms of the Framework Agreement and the Contract. The ESM shall be permitted to conduct these audits 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 shall have the right to copy, at its own expense, any records related to the services performed pursuant to the Framework Agreement and the Contract.

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

§ 23 Entire agreement and amendments

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

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

§ 24 Waiver

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

§ 25 Applicable law and jurisdiction

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

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

Appendix C

Contract Template

CONTRACT
implementing the framework agreement signed
as of [TBC] by the European Stability Mechanism and [Company name]

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

[Company name], 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**”

WHEREAS:

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

IT IS HEREBY AGREED AS FOLLOWS:

Article 1 – SUBJECT

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

Article 2 – DURATION AND TERMINATION

- 2.1 The execution of the Services under this Contract will start on [] (the “**Effective Date**”) and be completed no later than on [] (the “**End Date**”).
- 2.2 The period of execution of the Services may be extended by mutual agreement in writing between the Parties.
- 2.3 This Contract may be terminated in accordance with the provisions of the Framework Agreement.

Article 3 – PRICE

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

[PLACEHOLDER]

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

Article 4 – MISCELLANEOUS

[PLACEHOLDER – any other clauses as agreed between the Parties]

Article 5 – ANNEXES AND ORDER OF PRIORITY

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

- Annex A: Assignment Terms of Reference.

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

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

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed in two originals.

Luxembourg, [DATE]

Signed for and on behalf of the
EUROPEAN STABILITY MECHANISM

Luxembourg, [DATE]

Signed for and on behalf of
[NAME OF SERVICE PROVIDER]

By: ●
Title: ●

By: ●
Title: ●

By: ●
Title: ●