

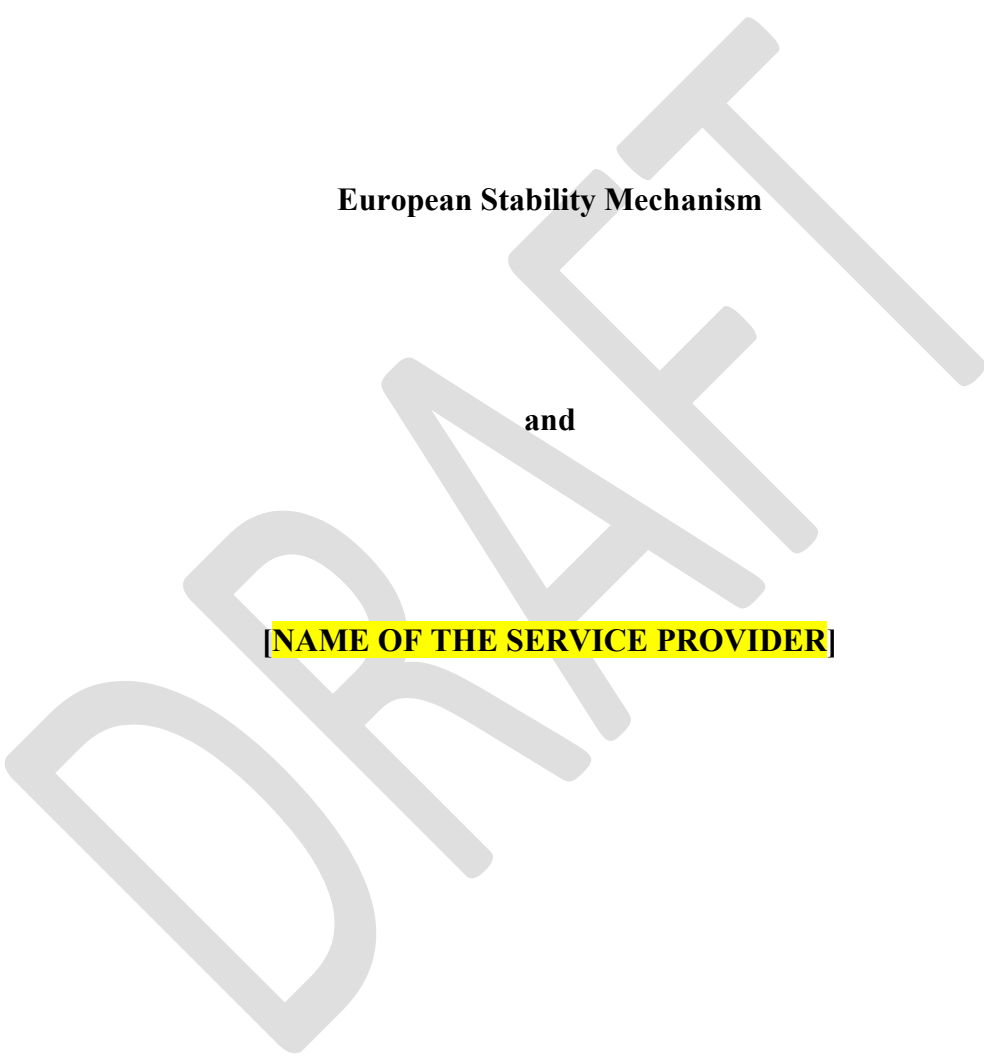
FRAMEWORK AGREEMENT

between

European Stability Mechanism

and

[NAME OF THE SERVICE PROVIDER]



THIS FRAMEWORK AGREEMENT IS MADE BETWEEN:

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

(hereinafter called the “**ESM**”)

and

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

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

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

WHEREAS:

- (a) The ESM prepared terms of reference (the “**Terms of Reference**”, Appendix A) concerning the provision of long-term lease of new vehicles (the “**lease vehicles**” or “**lease cars**”);
- (b) the Terms of Reference describe the specific nature of the services to be provided, the terms and conditions for their performance (the “**Services**” or “**Assignment**”);
- (c) the ESM has decided to conclude this framework agreement (the “**Framework Agreement**”) with the Service Provider upon its selection pursuant to the procurement procedure no. HR/12/CL/AA/22 published on [REDACTED] 2023 and subsequently to conclude individual leasing contracts (the “**Leasing Contracts**” or “**Contracts**”) with the Service Provider to cover particular requests thereunder;
- (d) the mutual rights and obligations of the ESM and the Service Provider shall be as set out in this Framework Agreement.

NOW THEREFORE the Parties hereto hereby agree as follows:

Article 1 – SUBJECT MATTER

- 1.1 This Framework Agreement covers the provision of the Services to the ESM as specified in the Terms of Reference, including in the Leasing Contracts.
- 1.2 This Framework Agreement does not confer on the Service Provider any right to provide the Services to the ESM and there is no obligation on the ESM to request the Services from the Service Provider.
- 1.3 The procedure for the award and performance of the Leasing Contracts is set out in Article 4 below.

Article 2 – PERFORMANCE OF THE FRAMEWORK AGREEMENT

- 2.1 The Service Provider will perform the Services in accordance with the specifications set out in the Terms of Reference, including in the Leasing Contracts.
- 2.2 The Service Provider is under the obligation to carry out the Services with all reasonable care and skill and to conform in all respects with the terms and conditions of the Framework Agreement, including the Leasing Contracts.
- 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 ESM Terms and Conditions. The Service Provider undertakes to comply with the ESM’s terms and conditions for framework agreements for the provision of services to the ESM (the “**Terms and Conditions**”, Appendix B).
- 2.4 Upon the ESM’s request the Service Provider will provide all necessary certifications and authorisations relating to the performance of the Services.
- 2.5 The Service Provider is required to appoint a named individual, as well as a back-up person with overall responsibility for managing and administering this Framework Agreement, including the Leasing Contracts.

Article 3 – DURATION OF THE FRAMEWORK AGREEMENT

- 3.1 The Framework Agreement will enter into force with effect from [REDACTED] (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 [REDACTED]

(the “**End Date**”), save where it is terminated earlier in accordance with the terms of the Framework Agreement.

- 3.2 This Framework Agreement will continue to apply to the Leasing Contracts whose end dates fall after the End Date of this Framework Agreement.

Article 4 – PROCEDURE FOR AWARDING LEASING CONTRACTS

- 4.1 As the ESM determines the need for a lease vehicle and the associated Services that are described in the Terms of Reference, it will send the Service Provider a request in writing via e-mail specifying the following elements (the “**Request**”):

- i. Brand and model of a lease vehicle
- ii. Anticipated start date of the lease
- iii. Duration of the lease
- iv. Maximum mileage
- v. Monthly lease fees per the Framework Agreement (unless the ESM wishes to order other vehicles’ brands and models than those listed in Article 8 below)
- vi. Process and conditions in case of excess mileage and under mileage per the Framework Agreement (unless the ESM wishes to order other vehicles’ brands and models than those listed in Article 8 below)
- vii. Specific options, elements, equipment etc.
- viii. Other elements as required by the ESM.

- 4.2 Within 7 business days following the receipt of the Request, the Service Provider will:

- i. confirm in writing that it can meet the Request, send the draft Leasing Contract to the ESM and advise on the possible start date of the lease and other matters as required by the ESM or considered appropriate by the Service Provider;
- ii. if it cannot meet the Request, provide reasons why this is not possible and make suggestions for alternative solutions.

- 4.3 A Leasing Contract, using the agreed standard Leasing Contract template to be attached to this Framework Agreement, will be concluded between the Parties for the performance of the Services according to the specifications set out in the Leasing Contract. All Leasing Contracts concluded pursuant to this Framework Agreement will conform to the terms set out herein.

- 4.4 Once the Leasing Contract has been signed by both Parties it becomes a part of this Framework Agreement and all terms of this Framework Agreement (as amended, if applicable) will apply to such Leasing Contract in full force and effect and the services agreed in any Leasing Contract are the Services under this Framework Agreement. If there is a conflict between the Leasing Contract and this Framework Agreement, the terms of this Framework Agreement will prevail unless the Leasing Contract includes a specific wording amending the terms of this Framework Agreement.

- 4.5 No amendment or modification to any Leasing Contract will be effective unless and until agreed upon in writing and signed by the Parties.

- 4.6 The actual date of delivery of the lease vehicle to the ESM is the date on which the Leasing Contract comes into effect. The term of the Leasing Contract ends on the day of the return of the lease vehicle to the Service Provider.

Article 5 – OBLIGATIONS OF THE ESM

- 5.1 The ESM will report to the Service Provider any defect of the lease vehicle without undue delay after the defect has occurred or has been noticed by the ESM.
- 5.2 The ESM will report to the Service Provider without undue delay if the lease vehicle has been involved in an accident. At the Service Provider’s request, the ESM will provide the Service Provider with an accident report for the insurance company. In the event of a claim, the ESM will respect the obligations arising from the insurance contract.

- 5.3 The Service Provider will not be held liable by the ESM for any fines if the person driving the lease car has committed a traffic offence (e.g. speeding or parking tickets). The Service Provider will not impose any fees or expenses on the ESM in this regard.
- 5.4 At the end of the Leasing Contract, the ESM will hand over the lease vehicle to the Service Provider at the Service Provider's premises in Luxembourg or at another location in Luxembourg that the Service Provider may determine. Alternatively, the return of the lease vehicle will take place at the ESM's premises in Luxembourg. The ESM will not be liable or bear the cost for the transport of the lease vehicle to any location outside Luxembourg.
- 5.5 The lease vehicle will be handed over with all keys and documents as recorded on the delivery note.
- 5.6 The ESM will not be liable for damages to the lease vehicle that can be considered normal wear and tear. If it is disputed between the Parties whether the lease vehicle is defective, an expert that is appointed by both Parties will provide a report on the condition of the lease vehicle at equal expense of both Parties.
- 5.7 The ESM will inform the Service Provider as quickly as possible if it wishes to re-assign the lease vehicle to another ESM user than the one indicated on the Leasing Contract.

Article 6 – OBLIGATIONS OF THE SERVICE PROVIDER

- 6.1 The Service Provider will provide the ESM with new lease vehicles only. All lease vehicles will be free of any defects, with all necessary on-board documents including but not limited to the number plates, certificate of insurance (proof of insurance cover), registration documents, service booklet, certificate of conformity, fuel card, emergency warning triangle, fire extinguisher, first aid kit, yellow reflective jacket, and a road tax vignette.
- 6.2 All lease vehicles ordered by the Service Provider and delivered to the ESM will be subject to the applicable car manufacturer's warranty.
- 6.3 If the ESM decides to take possession of the lease vehicle regardless of the fact that it is not free from defects or does not meet all requirements communicated in the Request, all defects or the requirements not met have to be recorded in a delivery note provided by the Service Provider. This does not affect the ESM's remedies in this regard.
- 6.4 Unless requested otherwise by the ESM, all lease vehicles will be delivered to the ESM's premises in Luxembourg. The Service Provider will inform the ESM in writing of the exact date of the lease vehicle's delivery minimum 5 business days in advance of the planned date.
- 6.5 If the Service Provider notices that the mileage agreed in a Leasing Contract is such that it may lead, in the Service Provider's professional opinion, to overutilisation or underutilisation, it will contact the ESM in order to re-adapt the contract. Article ___ applies to such re-adaptations in full force and effect.

Article 7 – POSTPONEMENT, CANCELLATION, TERMINATION, RENEWALS

- 7.1 Unless otherwise agreed in the Offer, upon giving written notice to the Service Provider, the ESM may postpone or cancel the Offer at no cost at the latest fourteen (14) calendar days following the signature of the Offer.
- 7.2 Unless otherwise agreed in the Offer, if notice is given more than fourteen (14) calendar days following the signature of the Offer, the Service Provider will be entitled to a fee for the postponement or cancellation of the Offer. The level of the fee will be negotiated and agreed between the Parties in good faith and will depend on the elements such as e.g. value of the lease vehicle as specified in the Offer and the conditions foreseen by a dealer for such specific lease vehicle. The Service Provider will not charge the ESM any fees for the administration of the postponement or cancellation of the Offer.
- 7.3 In addition to the termination rights provided in § 16 of the ESM Terms and Conditions, the ESM is entitled to terminate the Leasing Contract at any time and with immediate effect:
- a) in the event of a total loss or theft of the lease vehicle;

- b) if the lease vehicle is being seized and there is no chance for restitution;
 - c) in the event of serious technical defects as a result of which the continuation of the Leasing Contract is unreasonable.
- 7.4 If the ESM terminates the Leasing Contract in accordance with Article 7.3 and § 16 of the ESM Terms and Conditions, the Service Provider will be entitled to charge the ESM a termination fee in the amount of a difference between the market value of a specific lease vehicle and the Service Provider's book value for that lease vehicle.
- 7.5 The ESM, at its sole discretion, has the right to renew (extend) the Leasing Contracts upon mutual agreement between the Parties in writing.

Article 8 – PRICE

- 8.1 In consideration for performing the Services, the Parties agree to the following fees exclusive of VAT:
Monthly lease fees for specific vehicles' brands and models listed in the Terms of Reference are as follows:
- [PLACEHOLDER]**
- 8.2 The monthly lease fees for each lease vehicle specified in Article 8.1, and any other monthly lease fees for lease vehicles as agreed between the Parties from time to time, are inclusive of the following **minimum equipment**:
- [PLACEHOLDER]**
- 8.3 The ESM does not commit to ordering specific brands/models specified in Article 8.1. The ESM may order other vehicles' brands/models during the duration of the Framework Agreement. The monthly lease fees for such other vehicles will be separately agreed between the Parties and will always include all elements listed in Article 8.2, all available diplomatic sales discounts, and a multi-risk insurance for EUROPE.
- 8.4 In addition to the monthly lease fee and monthly fuel provision cost, the Parties agree on the following charges, if applicable:
- [PLACEHOLDER]**
- 8.5 In the event of excess mileage or under mileage utilisation, the following price/km will apply across the listed brands/models:
- [PLACEHOLDER]**
- 8.6 Additional services as specified in the Terms of Reference will be provided to the ESM free of charge.
- 8.7 If at the expiry or termination date of a Leasing Contract the mileage agreed in a Leasing Contract has not been achieved (underutilization or under mileage) or has been exceeded (overutilization or excess mileage), the following rules will apply:
- a) in the event of an underutilisation, the Service Provider will issue a credit note to the ESM in the amount corresponding to the underutilised number of kilometres;
 - b) in the event of overutilization, the ESM will pay the Service Provider the excess per each extra kilometre driven above the agreed mileage.

8.8 The prices agreed in a Leasing Contract are fixed and will not change during the entire lease term agreed in a Leasing Contract.

Article 9 – TERMS OF PAYMENT

9.1 The Service Provider will issue an invoice at the beginning of each month which will cover the Services provided during the preceding month.

9.2 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.

9.3 Payments shall be made to such bank account, as the Service Provider will notify in writing to the ESM.

Article 10 – LAW AND JURISDICTION

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

10.2 The courts of the City of Luxembourg have the exclusive jurisdiction to settle any dispute arising out of or in connection with this Framework Agreement (including but not limited to any dispute regarding the existence, validity or termination of this Contract or any non-contractual obligation arising out of or in connection with this Contract).

Article 11 – NOTICES - CONTACT PERSONS

11.1 Notices and other communications given hereunder addressed to either Party shall be in writing and shall 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: [●]
European Stability Mechanism
6a, Circuit de la Foire Internationale
L-1347 Luxembourg

Copy: General Counsel

for the Service Provider:

Attention: [●]
[ADDRESS OF THE SERVICE PROVIDER]

11.2 The date of registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.

11.3 The Service Provider shall have as a contact person at the ESM, [REDACTED], to whom the Service Provider shall report in respect of the execution of the Services or any other person that the ESM has expressly notified to the Service Provider.

Article 12 – ENTIRE AGREEMENT AND APPENDICES

12.1 This Framework Agreement contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of any Party has authority to make, and the Parties will not be bound by or be liable for, any statement, representation, promise or agreement not set out herein.

12.2 The following documents attached hereto shall be deemed to form an integral part of the Framework Agreement:

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

12.3 In case of any inconsistency between the terms of the Framework Agreement, the following order of priority shall apply:

- Terms set out in Articles 1 to 12 hereof;
- Appendix A
- Appendix B

IN WITNESS WHEREOF, the Parties hereto have caused two original copies of this Framework Agreement to be signed in their respective names as of the day and year first above written.

Luxembourg, _____

[●], _____

Signed for and on behalf of the
EUROPEAN STABILITY MECHANISM

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

By: [●]
Title: [●]

By: [●]
Title: [●]

By: [●]
Title: [●]

By: [●]
Title: [●]

Appendix A

Terms of Reference

These Terms of Reference apply to and form part of the framework agreement concluded between the European Stability Mechanism (the “ESM”) and [REDACTED] (the “Service Provider”) effective as of [REDACTED] (the “Effective Date”) (together the “Framework Agreement”). Terms defined in the Framework Agreement have the same meaning when used herein.

[PLACEHOLDER]

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Appendix B

ESM Terms and Conditions

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

§ 1 Scope of application and order of precedence

These Terms and Conditions apply to and form part of the framework agreement concluded between the European Stability Mechanism (the “ESM”) and [REDACTED] (the “Service Provider”) effective as of [REDACTED] (the “Framework Agreement”) with a view to sign one or more subsequent implementing 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 (each such contract hereinafter the “Leasing Contract” or “Contract”) have the same meaning when used herein.

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

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

§ 2 Service Provider obligations

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

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

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

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

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

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

Under no circumstances shall the ESM be held responsible for any obligations of the Service Provider in

connection with the Regulations, and the Service Provider will at all times fully, without being subject to the limitation of liability provided in § 14, indemnify, defend and hold harmless the ESM against any loss, liability or costs in respect of anything done or omitted to be done under the Regulations or which arises from or in connection with the application of the Regulations or the transfer of any employment relationship in connection with the Regulations.

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

§ 3 Term of Engagement

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

§ 4 Deliverables

Where a deliverable forms a subject matter of the Contract (the “**Deliverable**”), the timetable for submitting the Deliverable and the payment schedule in respect of that Deliverable shall be as stated in the Contract or as otherwise notified by the ESM to the Service Provider. The ESM and the Service Provider may agree in the Contract, on a case-by-case basis, specific acceptance criteria for the Deliverables to be provided under the Contract. 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 and liable towards the ESM for any acts or omissions by its subcontractors.

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

§ 6 Employees

The Service Provider shall:

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

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

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

§ 7 Remuneration

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

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

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

§ 8 Terms of payment

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

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

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

period covered by the invoice with reference to the agreed payment schedule;

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

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

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

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

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

§ 9 Compliance with the ESM's rules and regulations

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

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

§ 10 Environmental requirements

The Service Provider undertakes to comply, in the performance of the Framework Agreement and the Contract, with the environmental criteria and any other similar conditions set out in the specifications of the Framework Agreement or the Contract, if any, and will provide the ESM with proof of same on request.

§ 11 Tax and social security obligations

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

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

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

§ 12 Confidentiality and protection of personal data

Each Party must treat as confidential, and only disclose with the other Party's prior written approval, any information which it acquires from such other Party or any other person in the course of the performance of the Services, including the existence of the relationship between the Parties and the existence and terms of the Framework Agreement and the Contract (the "**Confidential Information**"). However, the foregoing obligation of confidentiality shall not apply to any information that was in a Party's possession prior to commencement of the Services, or which is in or later enters the public domain other than by wrongful disclosure of such Party.

In case the Service Provider receives any request, from any source, for copies of or access to, or other disclosure of any ESM Confidential Information, the Service Provider will promptly communicate such request to the ESM and invoke towards the requestor the immunity of the property of the ESM as set out in § 21 of these Terms and Conditions.

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

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

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

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

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

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

The Service Provider is responsible for ensuring that all of its Employees, subcontractors and any other persons acting on behalf of the Service Provider in the performance of the Services will comply with all aspects of and all obligations arising out of this § 12 and Annex II and III and will be liable for any breach by them of these obligations.

Without prejudice to Clause 1.5 (Reporting) of Annex II hereto the Service Provider shall report to the ESM any actual or suspected breach of confidentiality, integrity and/or availability of ESM data, including personal data, held by or processed by the Service Provider. Such reports shall be issued within 24 hours upon identifying the breach and shall contain details on the actions undertaken to investigate and repair such breach.

§ 13 Warranty

The Service Provider represents and warrants that the Services will fulfil their intended purpose, comply with any applicable industry standards and best practices and conform to the Terms of Reference and any other specifications and requirements agreed by the Parties (the “**Warranty**”). If, during the Term of Engagement, the ESM is of the opinion that the Services do not conform to the Warranty, the ESM will notify the Service Provider accordingly who will promptly remedy such nonconformity at no additional costs for the ESM.

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

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

§ 14 Liability and Force Majeure

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

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

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

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

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

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

§ 15 Intellectual property rights

15.1 Definitions:

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

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

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

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

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

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

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

modify, distribute, display and make available to the public, transfer and access, combine (including combinations with any other Work Products developed, made, conceived, compiled, created or customised by the Service Provider for the ESM), further develop and otherwise use, exploit and dispose of any such Pre-Existing Work Product embodied in any New Work Product at the sole discretion of the ESM. In such case the ESM will have the unlimited right of use as described above also regarding all unknown future ways of use, if any.

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

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

written consent which shall not be unreasonably withheld or delayed. The Indemnified Party may also participate in the defence of the claim at its own expense.

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

§ 16 Termination

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

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

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

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

§ 17 Conflict of interest

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

§ 18 Insurance and reporting

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

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

§ 19 Inspection and audit

The ESM reserves the right to perform audits of all books, records, internal processes, and controls of the Service Provider which relate to the performance of the Framework Agreement and the Contracts to the extent permissible under applicable law and professional rules and with a view to the Service Provider's confidentiality obligations towards its other clients. The Service Provider shall maintain accurate records at all times. Upon fourteen days' notice, and no more than once per calendar year, the Service Provider shall provide the ESM reasonable access to the Service Provider's records (or their copies) to verify compliance with the terms of the Framework Agreement and the Contract. The detailed scope and duration of the audit will be agreed between the Parties prior to the commencement of the audit. The access to the Service Provider's records will be strictly limited to the records which are directly related to the performance of the Framework Agreement and the Contract. The ESM shall be permitted to conduct these audits at its own cost with any of its own internal audit resources or by securing the services of third-party experts, solely at the ESM's election. The ESM will obtain the consent of the Service Provider, which will not be unreasonably withheld, in the event third party experts will be used to conduct any audit. The ESM will be responsible for their third-party experts. In the event such audit reveals a discrepancy or shortfall in the Service Provider's performance under the Framework Agreement or any Contract, the Service Provider shall immediately remedy the discrepancy and/or make up the shortfall, and it shall reimburse the ESM in respect of its and any of its third party's costs incurred for such audit.

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

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

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

§ 20 Inside information

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

§ 21 Immunity of ESM Property

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

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

§ 22 Severability

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

The invalidity or unenforceability of any of the provisions of the Framework Agreement or the Contract shall not affect the validity or enforceability of any other provision of the Framework Agreement or the Contract, which

shall remain in full force and effect.

§ 23 Entire agreement and amendments

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

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

§ 24 Waiver

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

§ 25 Applicable law and jurisdiction

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

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

§ 26 Survival of obligations and cooperation with the ESM

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

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

of the Framework Agreement or the Contract. If the Framework Agreement or the Contracts expire, or the ESM terminates the Framework Agreement or the Contracts, or any part thereof, for convenience, or if the Service Provider terminates the Framework Agreement or the Contracts, or any portion of them, for cause due to a material default by the ESM, or if the Framework Agreement or Contract expires without renewal, then the ESM will pay the applicable fees associated with the migration in accordance with the rates applied by the Service Provider for the Services or as otherwise agreed between the Parties. In all other cases, the Service Provider will bear its costs associated with the migration.

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ANNEX I
to the Terms and Conditions

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

Access to the ESM building

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

Access is permitted only via the main entrance.

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

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ANNEX II
to the Terms and Conditions

IT SECURITY

1 IT SECURITY

1.1 Security controls

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

1.2 Data Transmission

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

1.3 Hardware

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

1.4 Software

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

1.5 Reporting

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

1.6 User ID and password

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

1.7 Data import

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

1.8 Software copyright

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

1.9 End of Assignment

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

2 MANAGEMENT OF EMAIL ACCOUNTS

2.1 Email accounts

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

2.2 Sharing of email accounts

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

3 MODEM CONNECTIONS

3.1 Telecommunications lines

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

3.2 External networks

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

3.3 Use of lines

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

3.4 Data transfer

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

ANNEX III
to the Terms and Conditions

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

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

The Service Provider 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 data, which the Service Provider is required to fulfil.