

CONTRACT FOR THE PROVISION OF INTERIM AGENCY SERVICES

between the

European Stability Mechanism

and

[NAME OF THE SERVICE PROVIDER]

THIS CONTRACT IS MADE BETWEEN:

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

(hereinafter called the “**ESM**”)

and

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

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

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

WHEREAS:

1. The ESM requires the provision of temporary work services and contract management services related to interim workers/staff/personnel.
2. The Service Provider provides the services specified above.
3. The ESM has decided to conclude this contract with the Service Provider upon its selection.
4. The mutual rights and obligations of the ESM and the Service Provider will be as set out in this contract (the “**Contract**”).

NOW THEREFORE it is hereby agreed as follows:

Article 1 – SUBJECT MATTER

- 1.1. This Contract governs the provision by the Service Provider to the ESM on an as-required basis temporary work services and contract management services related to interim staff/workers/personnel (the “**Interim Workers**”) (together the “**Services**”).
- 1.2. The Service Provider agrees to perform all the Services described in this Contract and any services contracts entered into between the Parties (the “**Services Contracts**”) in accordance with the provisions of the Contract.
- 1.3. The ESM requires the Interim Workers for, but not limited to, the following areas:
 - 1.3.1. Finance
 - 1.3.2. Administration (including personal and administrative assistance)
 - 1.3.3. IT
 - 1.3.4. Other support functions (e.g. HR, Facilities Management and Communication)
- 1.4. This Contract does not provide for the ESM any obligation to order any Services from the Service Provider nor does it guarantee the Service Provider any amount of the Services to be provided to the ESM.
- 1.5. The place of performance of the Services and where the Interim Workers will perform their work is:

European Stability Mechanism (ESM)
6a, Circuit de la Foire Internationale
L-1347 Luxembourg
- 1.6. Interim Workers provided to the ESM by the Service Provider, if required by the ESM to travel on duty, will be subject to ESM’s duty travel regulations. The ESM will inform the Service Provider before any assignment abroad of the Interim Worker.

Article 2 – PERFORMANCE OF THE CONTRACT, OBLIGATIONS OF THE SERVICE PROVIDER

- 2.1 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 Contract. 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 will conduct themselves in a manner consistent therewith.
- 2.2 The Service Provider, when performing the Contract and any Services Contracts will comply with the ESM’s rules and regulations as they may be amended from time to time to the extent that they are relevant to the Service Provider and the Service Provider has been informed of such rules and regulations. In addition, the Service Provider will ensure that the Interim Workers provided to the ESM by the Service Provider will comply with the same. The ESM may ask Interim Workers to sign ESM’s confidentiality agreement.

- 2.3 The Service Provider will comply with all legislative and administrative rules regarding the regulation of temporary work. The Service Provider will also provide a permanent legal oversight and inform ESM, if necessary, of any development of specific regulations in this area.
- 2.4 The Service Provider will ensure that all Services are provided in accordance with the terms and conditions of this Contract and are performed in accordance with the labour law(s) applicable in Luxembourg and any other applicable laws and regulations of the European Union and of any country in which the Services are to be performed.
- 2.5 Upon the ESM's request, the Service Provider will provide all necessary certifications and authorisations relating to the performance of the Services.

Article 3 – DURATION AND TERMINATION

- 3.1 The Contract will enter into force as of [start date] (the “**Effective Date**”), as soon as it has been signed by both Parties and will remain in force for a period of four years, that is until [end date] (the “**End Date**”), save where it is terminated earlier in accordance with the terms of the Contract.
- 3.2 Either Party has a right to terminate this Contract and any Services Contracts on convenience by providing at least one month written notice to the other Party. Termination of this Contract will not affect Parties' rights and obligations under particular Services Contracts entered between the ESM and the Service Provider before the effective termination of the Contract, unless agreed otherwise by the Parties.

Article 4 – WORKING TERMS AND PROCEDURE FOR AWARDING SERVICES CONTRACTS

If the ESM determines a need for the Services, it will sign a services contract with one of the interim agencies with which the ESM has signed contracts for the provision of interim agency services.

A. Temporary work services

An interim agency with which the ESM will sign a services contract for temporary work services will be selected by conducting a mini-competition between all interim agencies, in accordance with the process described below, unless a mini-competition is not required under the ESM Procurement Policy.

1. **ESM's automated email request:** When the ESM determines a need for the temporary work services, the ESM will contact all interim agencies via an automated system notification email inviting them to access the electronic platform where they will be able to consult the job advert for which the ESM is requesting the interim agencies to propose profiles (and submit their CVs) matching the ESM's job requirements. The job advert on the electronic platform will outline (if applicable) such elements as:
 - ✓ ESM's contact details for any requests for clarification;
 - ✓ Key activities and type of profile of an interim worker;
 - ✓ If an interim worker may need to have access to local ESM's SWIFT infrastructure;
 - ✓ Reason for the interim worker need;
 - ✓ Anticipated length of the initial services contract, including the ideal start date, end date and any potential renewals or extensions;
 - ✓ Deadline for submission of CVs;
 - ✓ Other relevant matters.
2. **Clarifications:** Interim agencies may request clarifications from the ESM. The ESM will endeavour to respond to such requests for clarification in a timely manner but reserves the right not to answer a particular request. The ESM will share the interim agency's questions and responses on an anonymous basis, unless it determines, in its sole discretion, that a query is relevant to the requesting interim agency only, in which case it will provide a response to that interim agency only.
3. **Submissions of CVs:** In reply to the ESM's automated email request, the interim agency will be asked to submit (upload) CVs of the proposed profiles matching the ESM's job requirements. CVs must be submitted (uploaded) no later than by the deadline set out in the job's advert.
4. **Negotiations:** Following the receipt of the CVs, the ESM may request additional details or other information for the purposes of clarity or completeness. The ESM has the right to enter into negotiations with the highest ranked interim agency(-ies) concerning any aspect of its/their submitted (uploaded) CVs in order to bring them in line with the ESM's requirements.

5. **Evaluation:** The ESM will evaluate the submitted CVs on the basis of quality of the interim workers' profiles (i.e. relevant experience, specific qualifications, and any other aspects listed in the job advert) proposed by the interim agencies. In order to determine the price, the ESM will use the coefficient for temporary work services as provided by the interim agencies in the contracts signed between the ESM and interim agencies.
6. **Notification of the ESM's Decision:** The interim agency which achieves the highest score will be identified as the highest-ranked. The ESM will inform those interim agencies whose proposed profiles were unsuccessful as soon as practically possible but will have no obligation to provide detailed reasons.
7. **Contract Conclusion:** If the ESM determines that it wishes to proceed with a particular proposed profile, and the ESM and the selected interim agency have agreed on the proposed contract, the ESM and the selected interim agency will execute a services contract.

If the Service Provider is selected, the Parties will enter into a Services Contract pursuant to this Contract substantially in the form as attached to this Contract as Appendix A.

B. Contract management services

1. Unless not required under the ESM Procurement Policy, when the ESM determines a need for the contract management services, the ESM will apply the 'cascade' method meaning that it will contact first the interim agency that provided the highest-ranked proposal for the provision of contract management services to the ESM (the "**Highest Ranked Interim Agency**") and turn to the second interim agency, and next one(s) in descending order if the Highest Ranked Interim Agency or the second interim agency or the next one(s) is not capable of, unavailable or not interested in providing the contract management services in question.
2. If the Service Provider is selected and agrees to provide the contract management services, the Parties will enter into a Services Contract substantially in the form as attached to this Contract as Appendix A.
3. If during the lifetime of the Contract, the ESM and the Service Provider enter into service level agreements (SLAs), in the event of underperformance as described in such SLAs, when the ESM determines a need for the contract management services the ESM will have right to contact the next interim agency(ies) on the list, in descending order.

Article 5 – PRICE, REBATE AND INVOICING

A. TEMPORARY WORK SERVICES

- 5.1 According to the required qualifications of an Interim Worker, Service Provider's monthly billing will be calculated on the basis of the gross monthly salary negotiated with the ESM.
- 5.2 Two coefficients apply to temporary work services depending on the term of assignment of such Interim Worker:
 - 5.2.1. Coefficient below 6 months for temporary work services – [TBC].
 - 5.2.2. Coefficient above 6 months for temporary work services – [TBC].

For the avoidance of doubt, the modification of the coefficient from below 6 months to above 6 months will be done in accordance with the following example:

Example

Assuming an Interim Worker starts a mission at the ESM for a period from 17 April until 16 October and the ESM decides to extend the mission for 1 additional month (from 17 October to 16 November)

	< 6 months coefficient	> 6 months coefficient	
April invoice [17-30 April]	√		The coefficients are applied per full month worked, in this case 17 April to 16 October = 6 months so higher coefficient is applied
May invoice [1-31 May]	√		
June invoice [1-30 June]	√		
July invoice [1-31 July]	√		
August invoice [1- 31August]	√		
September invoice [1- 30 September]	√		

October invoice [1-16 October]	√		
			< 6 months coefficient would apply to 1-16 October and then >6 months coefficient would apply from the 17 October onward.
October invoice [1-16 / 17-31 October]	√	√	There will be 2 different coefficients on the October invoice.
November invoice 1-16 November)		√	

5.3 Once the gross monthly salary of an Interim Worker is agreed, the ESM will advise Randstad how it wishes to be invoiced based on one of the following two options:

- Per hour
- Per month

a) Invoicing per hour will be calculated as follows:

Monthly amount invoiced = Coefficient * (total number of working days for the month – public holidays – extra holidays – annual leave – sick leave) * hourly rate * 8

With the hourly rate being calculated as follows: Hourly rate = gross monthly salary / 173

b) Invoicing per month will be calculated as follows:

Monthly amount invoiced = Coefficient * gross monthly salary

5.4 The coefficients for temporary work services include the following:

- Full recruitment and selection services,
- Administrative costs,
- ESM annual leave (13.04%): 30 days,
- ESM public holidays (7.50%): 17 days,
- Extraordinary holidays: provided under Luxembourg law (covering e.g. removal, marriage, PACS, death of a family member, birth of a child and adoption),
- Social security benefits: provided under Luxembourg law (covering e.g., sick leave, maternity leave, unemployment benefits, family allowances, accidents at work, occupational diseases, disability and pensions),
- Any other mandatory employer contributions and/or costs that may apply.

B. CONTRACT MANAGEMENT SERVICES

5.5 The coefficient which applies to contract management services regardless of the monthly gross salary of the Interim Worker is: TBC.

Example:

Qualification	Monthly gross salary	Coefficient	Monthly billing (excl. VAT)
Support Function	2,700 € gross / month*	1.40	3,780 € / month

*Salary given above is only an example and will vary based on ESM's individual offer to the candidate for an Interim Worker (basis: full time).

5.6 The contract management services coefficient includes the following:

- Administrative costs,
- ESM annual leave (13.04%): 30 days,
- ESM public holidays (7.50%): 17 days,
- Extraordinary holidays: provided under Luxembourg law (covering e.g. removal, marriage, PACS, death of a family member, birth of a child and adoption),
- Social security benefits: provided under Luxembourg law (covering e.g., sick leave, maternity leave, unemployment benefits, family allowances, accidents at work, occupational diseases, disability and pensions),

- Any other mandatory employer contributions and/or costs that may apply.

C. END-YEAR REBATE

5.7 The Service Provider will provide a rebate for both type of the Services i.e. temporary work services and contract management services which will be calculated based on the total annual turnover in accordance with the following:

Total annual turnover in €	End-year rebate in %
<50,000	[TBC]
50,001-150,000	[TBC]
150,001-250,000	[TBC]
250,001-500,000	[TBC]
Above 500,000	[TBC]

5.8 For the purpose of calculating the end-year rebate, the total annual turnover is understood as the total turnover generated by the ESM from the purchase of the Services from the Service Provider under this Contract and invoiced by the Service Provider. The turnover which will be taken into consideration will be the total turnover achieved during each year of the term of this Contract starting as of the Effective Date (e.g. 01 September 2020 – 31 August 2021).

5.9 The end-year rebate will be granted to the ESM in the form of a credit note which will be issued to the ESM with 30 days as of the anniversary of the Effective Date in the amount corresponding to the applicable rebate.

5.10 The coefficients set out in clause 5.2 above are subject to adjustment as set forth in this clause. The basis for the cost adjustment is the then current “salaries and price index” published by STATEC (*Institut national de la Statistique et des Etudes économiques*) of Luxembourg. Actual prices are calculated on the basis of index number 898.93 – the salaries and wages index implemented on 1 February 2023.

The coefficients will be adapted in case of:

- (i) changes to the salaries and wages index,
- (ii) rise of the minimum salary decided by the Government of Luxembourg,
- (iii) possible modifications decided by the relevant industry (FEDIL Employment Services).

5.11 The percentage published by STATEC or the FEDIL Employment Services decisions will be the cost adjustment rate. No retroactive cost adjustments will be allowed. The Service Provider must request and provide evidence for the cost adjustment in writing via a letter. The Service Provider will send such a letter as soon as reasonably possible and at the latest within one week from the date of publication by STATEC or the FEDIL Employment Services, as applicable. The ESM will assess the request without unreasonable delay and agree to the cost adjustment in writing if it determines, in its reasonable discretion, that the requirements for price indexation set out in this Contract are met. If the ESM agrees to the cost adjustment, such cost adjustment will come into effect in the following month.

5.12 [OPTIONAL CLAUSE] If during the term of the Services Contract the ESM wishes to hire an Interim Worker, the ESM will pay a fee to the Service Provider in accordance with the following:

- During the first month of the Services Contract: [TBC] of the gross annual salary of the concerned Interim Worker,
- During the second month of the Services Contract: [TBC] of the gross annual salary of the concerned Interim Worker,
- During the third month of the Services Contract: [TBC] of the gross annual salary of the concerned Interim Worker,
- During the fourth month of the Services Contract: [TBC] of the gross annual salary of the concerned Interim Worker,
- After 4 months Service Contracts or in case of contract management services: [TBC]. [OR]

5.13 [OPTIONAL CLAUSE] If the ESM wishes to employ an Interim Worker before the end of a period of 3 months full time Services Contract, the Service Provider will invoice for recruitment fees equivalent to [TBC] of the annual gross salary of the concerned Interim Worker. [OR]

5.14 [OPTIONAL CLAUSE] In cases where the ESM wishes to immediately recruit as an ESM member of staff a candidate for an Interim Worker presented by the Service Provider, the Service Provider will be obliged, as compensation, to invoice the ESM a fee corresponding to the Service Provider's searches fee. Such fee will be equivalent to [TBC] of the annual gross salary of the concerned candidate for an Interim Worker.

D. INVOICING

- 5.15 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. The Service Provider's invoice shall be accompanied by such supporting documentation as the ESM may reasonably require.
- 5.16 The ESM will pay invoices within 30 days after receiving a correct invoice. Invoices sent electronically are deemed to be received on the same day of sending the 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.
- 5.17 All invoices will be excluding VAT.
- 5.18 The Service Provider's bank details are as follow:

Current account: [PLACEHOLDER]
BIC code: [PLACEHOLDER]

Article 6 – ESM ANNUAL LEAVE

Interim Workers may take 30 days of annual leave per year, subject to prior approval of the ESM, as per its internal procedures. The Service Provider will maintain the Interim Workers leave balance on the basis of information transmitted by the ESM.

Article 7 – ESM PUBLIC HOLIDAYS

In principle, 17 ESM public holidays are granted to Interim Workers. The ESM Managing Director may, however, decide to give less than 17 days off as public holidays, in which case the days not given as public holidays will be financially compensated. Prior to the end of each calendar year, the ESM Managing Director adopts a list of public holidays for the next calendar year. Any ESM public holiday falling on a weekend is replaced by another specified day off or an additional day of annual leave entitlement when the ESM Managing Director adopts the list of public holidays for the next calendar year.

Article 8 – REMUNERATION

Remuneration of the Interim Workers will be composed of the basic gross salary, which will not be lower than that of ESM members of staff with similar or equivalent qualifications employed under the same conditions following the end of their trial period.

Article 9 – OVERTIME

Any overtime work, work on ESM public holidays and on weekends performed by the Interim Workers is subject to the prior approval of the Head of Human Resources and Organisation of the ESM.

Article 10 – PROCEDURE IN CASE OF SICK LEAVE

As soon as the Service Provider is aware of such an absence, it will ensure that the ESM is informed without undue delay of any absence of the Interim Workers due to their sickness.

Article 11 – PROCEDURE IN CASE OF OCCUPATIONAL ACCIDENT

The ESM will inform the Service Provider of any occupational accident of Interim Workers without undue delay.

Article 12 – CONFIDENTIALITY AND PERSONAL DATA PROTECTION

- 12.1 The Service Provider will treat as confidential, and only disclose with the ESM's prior written approval, any information which it acquires from the ESM or any other person in the course of the performance of this Contract and the Services, whether in writing or orally, or to which it otherwise has access, including the existence of the relationship between the Parties and the existence and terms of this Contract, and the Services Contracts (hereinafter referred to as "**ESM Confidential Information**"). However, the foregoing obligation of confidentiality will not apply to any information that was in the Service Provider's possession prior to entering into the Contract, or which is in or later enters the public domain other than by wrongful disclosure of the Service Provider. For the avoidance of doubt, ESM Confidential Information includes in particular but is not limited to any reference to the cooperation with the ESM whether in print or online or in marketing or pitch materials for other clients or potential clients.

- 12.2 If 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.
- 12.2.1 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.
- 12.2.2 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.
- 12.3 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.
- 12.4 The Service Provider will divulge ESM Confidential Information only to those employees, personnel or other persons working as independent contractors (hereinafter called the “**Service Provider’s Personnel**”) who are directly involved in the Contract on a need-to-know basis and will ensure that the Service Provider's Personnel is aware of and will comply with.
- 12.5 The Service Provider will comply with the relevant provisions of personal data protection legislation of the European Union, including but not limited to the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “**GDPR**”), and the provisions of the relevant national legislation, in particular in relation to commissioned data processing and including any requirements resulting from EU guidelines.
- 12.6 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 Contract:
- 12.6.1. 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).
- 12.6.2. 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).
- 12.6.3. 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).
- 12.6.4. 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).
- 12.6.5. 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).
- 12.6.6. Job control: The Service Provider must carry out commissioned data processing in accordance with the ESM’s instructions.
- 12.6.7. 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).
- 12.6.8. 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).
- 12.7 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.

- 12.8 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 Article 12 and Appendix C and D and will be liable for any breach by them of these obligations.
- 12.9 Without prejudice to Clause 1.5 (Reporting) of Appendix C 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.
- 12.10 The Service Provider will not use the name "ESM", the name "European Stability Mechanism", or any ESM's logo or trademark in any advertisement, collateral or other material in any media without prior written consent from the ESM nor use such names, logos or trademarks in its solicitation of candidates for Interim Workers or otherwise, unless specifically requested by the ESM in writing.
- 12.11 The provisions of this Article will survive the termination or expiry of the Contract and/or any Services Contract and continue for a period of 20 years.

Article 13 – INTELLECTUAL PROPERTY RIGHTS

13.1. 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.

- 13.2. The Service Provider acknowledges and agrees that all Intellectual Property Rights in work arising from or created, produced or developed, made, conceived, compiled, customised (and in such case of customisation solely for the customised part thereof) by the Interim Workers (whether alone or jointly with others) under or in the course of this Contract, wherever in the world enforceable, including without limitation all right, title and interest in and to the Services, and all documents, data drawings, specifications, articles, computer programs, all computer software and software programs (including without limitation any algorithms, APIs, source codes, executable and object codes, apparatus, circuit designs and assemblies), network designs, notes, manuals, plans, sketches, drawings, reports, concepts, works, templates, interfaces, programs, inventions, improvements, modifications, discoveries, tools, scripts, as well as any related documentation and instructions or other items relating thereto, will immediately upon creation or performance vest in and will be and remain the sole and exclusive property of the ESM and the Service Provider irrevocably and unconditionally assigns to and waives in favour of the ESM all right, title and interest in and to the same.
- 13.3. For the avoidance of doubt, the transfer of IPRs from the Service Provider to the ESM 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 works 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 works developed, made, conceived, compiled, created or customised by the Service Provider for the ESM), further develop and otherwise use, exploit and dispose of any works 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.

- 13.4. For avoidance of any doubt, the transfer of IPRs from the Service Provider to the ESM also includes the sole right to use and allow the creation and use of the derivative works.
- 13.5. The Service Provider agrees, at the ESM's request, to take all actions and execute all documents as may in the ESM's opinion be necessary to enable the ESM to obtain, defend or enforce its rights, and will not do or fail to do any act which would or might prejudice the ESM's rights under this Contract.
- 13.6. 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 works in breach of the above Articles 13.2-13.4, except to the extent the alleged infringement or misrepresentation:
 - 13.6.1. is the result of a subsequent modification, made solely by the ESM and/or any of its subcontractors – without participation of the Service Provider or the Interim Workers;
 - 13.6.2. results from the use of any work 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
 - 13.6.3. results from requirements, instructions or specifications provided by the ESM to the Service Provider or the Interim Workers concerning the Services or works 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.
- 13.7. The Service Provider will not access, use, copy, or distribute any work protected by IPR owned by the ESM (including any ESM Materials) without the ESM's prior written permission, and except as set out in the next sentence of this Article 13.7. 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 solely for the purpose of and during the period required for the provision of the Services to the ESM in accordance with the Contract, with the right to sub-license such license on the terms set forth in this Article 13.7 to the subcontractors of the Service Provider which have been authorised by the ESM.
- 13.8. The ESM (the **"Indemnified Party"**) will promptly notify the Service Provider (the **"Indemnifying Party"**) of any claim subject to this Article 13.8, but if the Indemnified Party fails to promptly notify the Indemnifying Party, this will only affect the Indemnifying Party's obligations under this Article 13.8 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 will 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 will not be unreasonably withheld or delayed. The Indemnified Party may also participate in the defense of the claim at its own expense.
- 13.9. 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 Article 13.
- 13.10. The provisions of this Article will survive the termination or expiry of the Contract and/or any Services Contract and continue for a period of 20 years.

Article 14 – INSURANCE

The Service Provider will take out and maintain comprehensive insurance (at its own expense) to cover its potential liabilities to the ESM under this Contract and will, on request from ESM's representative, produce a copy of insurance and receipt for the then current paid premium.

Article 15 – SELECTION AND RECRUITMENT PROCESS OF THE INTERIM WORKERS

- 15.1. The Service Provider will ensure that the Interim Workers provided to ESM have the relevant qualifications and are able to cover the required position. In addition, the Service Provider will ensure, to the extent legally permitted, that the Interim Workers have a clean criminal record. In all cases, the Interim Workers must possess the following capabilities:
 - 15.1.1 Strong skills in MS Office (e.g. Outlook, Excel, Word, Power Point)
 - 15.1.2 Excellent written and spoken English
 - 15.1.3 Any additional skills as specified in ESM's job description
- 15.2. The Service Provider will check beforehand the Interim Workers' qualifications – diplomas, training certificates, work history, and other relevant documents. The Service Provider will also perform reference checks and assess the Interim Worker's language or/and IT skills.

Article 16 – QUALITY/REPORTING

- 16.1. The Service Provider will be responsible for maintaining effective control of the quality of the Services provided under this Contract.
- 16.2. The Service Provider will send on quarterly basis a dashboard to report on both quantitative and qualitative indicators in relation to the Service Contracts and including the main information related to the collaboration with the ESM.

Article 17 – LIABILITY AND FORCE MAJEURE

- 17.1 The Contract implies that the Interim Workers shall work exclusively under the control and supervision of the ESM who will be the principal for their duration of the assignments (article 1384, par 3 of the Civil Code). As a result thereof, the ESM shall be liable for all damages caused by the Interim Worker during and in the context of the execution of their assignments, excluding any damages caused by such Interim Workers due to fraud, wilful misconduct or gross negligence.
- 17.2 The Service Provider is insured with the insurance company for bodily harm and material damages caused to third parties for the performance of the Services for which it can be held liable in accordance with the articles 1382 to 1384 and 1386 of the Luxembourg Civil Code. With respect to the Interim Workers who will be falling under the control and supervision of the ESM during their assignment, it has been expressly agreed that:
 - 17.2.1 the Service Provider shall not be held responsible in the event of any damages caused by the Interim Workers to the vehicles, installations and furniture of the ESM which are being used by the Interim Workers as well as damages to the immovable property of the ESM where the Interim Workers perform their the work, unless in the event of fraud, gross negligence and/or wilful misconduct by the Service Provider with respect to its Services or in the event of fraud, gross negligence and/or wilful misconduct by the Interim Workers;
 - 17.2.2 the ESM will be liable and shall indemnify the Service Provider in the event of any third-party claims, in its capacity of principal over the Interim Workers who fall under the supervision of the ESM during their mission assignments, for any damages caused to these third parties due to the work performed by the Interim Workers, except for any events of (i) fraud, gross negligence and/or wilful misconduct by the Service Provider with respect to its Services and (ii) fraud, gross negligence and/or wilful misconduct by the Interim Workers.
- 17.3 The liability of the Service Provider shall in no event be involved, should there be a loss, theft or disappearance of equipment, cash, effects or goods entrusted to the Interim Worker.
- 17.4 If a Force Majeure Event occurs which prevents, hinders or delays a Party from performing its obligations under the 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:
 - 17.4.1 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;
 - 17.4.2 proper business continuity plans are in place and their procedures had been followed;
 - 17.4.3 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;
 - 17.4.4 the affected Party continues to use its best endeavours to recommence performance to the extent possible without delay; and

- 17.4.5 the affected Party continues to perform all its obligations which have not been affected by the Force Majeure Event.
- 17.5 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.
- 17.6 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.
- 17.7 “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.

Article 18 – VETTING OF INTERIM WORKERS

- 18.1 To the extent permitted under the applicable laws and regulations, and to the extent the required information is available, the Service Provider will perform background checks on all candidates for Interim Workers who may have access to local ESM’s SWIFT infrastructure i.e. SWIFT-related systems and virtualisation platform hosting SWIFT-related virtual machines. The ESM will inform the Service Provider if a given Interim Worker position requires access to local ESM’s SWIFT infrastructure in the ESM’s automated email request referred to in Article 4 A.1.
- 18.2 The Service Provider will conduct the background checks referred to in this Article 18 prior to the signature of a services contract with the ESM. The Service Provider will also confirm to the ESM in writing (e.g. via email) that the background check has been performed and if any irregularities were discovered. If the background check reveals any irregularities, the ESM in its sole discretion will decide whether to sign a services contract with the Service Provider.
- 18.3 The scope of the background checks referred to in this Article 18 will include the following elements:
- 18.3.1. Identity verification
 - 18.3.2. Confirmation of full details of qualifications
 - 18.3.3. Confirmation of previous (minimum five (5) last years) employment history
 - 18.3.4. Details of any past or pending civil or criminal proceedings
 - 18.3.5. Validation of any involvement in external businesses that could result in a conflict of interest
 - 18.3.6. Financial credit verification
- 18.4 The ESM reserves the right to perform audits on the performance of the background checks referred to in this Article 18. The Service Provider will maintain accurate records at all times. Upon fourteen days’ notice, the Service Provider will provide the ESM with evidence regarding the Service Provider’s compliance with this Article 18. The ESM will 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 will have the right to copy, at its own expense, any evidence related to performance of the background checks referred to in this Article 18.

Article 19 – GOVERNING LAW AND JURISDICTION

- 19.1 Given that the ESM is an international financial organisation governed by public international law, any dispute, controversy or claim will be first decided in accordance with the provisions of the present Contract and, if no provision of the Contract governs the issue to be addressed by the laws of the Grand Duchy of Luxembourg.
- 19.2 The courts of the City of Luxembourg have the exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract (including but not limited to a dispute regarding the existence, validity or termination of the Contract or any non-contractual obligation arising out of or in connection with the Contract).
- 19.3 The parties agree to settle any dispute arising out of or in connection with the Contract by mutual agreement within 15 (fifteen) working days after due notice given by one party to the other. If such agreement cannot be reached within this period, either party may refer the case to the competent courts of the city of Luxembourg.

Article 20 – NOTICES AND CONTACT PERSON

- 20.1 Notices and other communications given hereunder addressed to either Party will be in writing and will be

in writing and will be served by hand delivery, registered letter, e-mail or other means of transmission which affords evidence of receipt by the addressee to its address set out below, or to such other address as one Party previously notified to the other Party in writing:

for the ESM

Attention: Secretary General
European Stability Mechanism
6a, Circuit de la Foire Internationale
L-1347 Luxembourg

Copy: General Counsel

for the Service Provider:

Attention: ●
[ADDRESS OF THE SERVICE PROVIDER]

- 20.2 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.
- 20.3 The Service Provider will address all requests, recommendations and information relating to commercial issues to [name of the ESM contact/business person] or [name of the ESM contact/business person].

Article 21 – CONFLICT OF INTEREST

The Service Provider shall ensure that no circumstances arise during the term of Contract 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.

Article 22 – INSPECTION AND AUDIT

- 22.1 The ESM reserves the right to perform audits of all books, records, internal processes, and controls of the Service Provider which relate to the performance of the Contract to the extent permissible under applicable law and professional rules and with a view to the Service Provider's confidentiality obligations towards its other clients. The Service Provider shall maintain accurate records at all times. Upon fourteen days' notice, and no more than once per calendar year, the Service Provider shall provide the ESM reasonable access to the Service Provider's records (or their copies) to verify compliance with the terms of the Contract. The detailed scope and duration of the audit will be agreed between the Parties prior to the commencement of the audit. The access to the Service Provider's records will be strictly limited to the records which are directly related to the performance of the Contract. The ESM shall be permitted to conduct these audits at its own cost with any of its own internal audit resources or by securing the services of third party experts, solely at the ESM's election. The ESM will obtain the consent of the Service Provider, which will not be unreasonably withheld, in the event third party experts will be used to conduct any audit. The ESM will be responsible for their third party experts. In the event such audit reveals a discrepancy or shortfall in the Service Provider's performance under the Contract, the Service Provider shall immediately remedy the discrepancy and/or make up the shortfall, and it shall reimburse the ESM in respect of its and any of its third party's costs incurred for such audit.
- 22.2 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.
- 22.3 On the prior consent of the Service Provider, which will not be unreasonably withheld, the ESM shall have the right to copy, at its own expense, any records related to the services performed pursuant to the Contract. The ESM and its third party experts shall be obliged to keep confidential any Confidential Information provided by the Service Provider or to which the ESM or its third party experts have access to in connection with this Article 22. The provisions on confidentiality set out in Article 12 above apply to this Article 22 accordingly.
- 22.4 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.

Article 23 – 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.

Article 24 – IMMUNITY OF ESM PROPERTY

- 24.1 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.
- 24.2 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.

Article 25 - SEVERABILITY AND ENTIRE CONTRACT

- 25.1 Each term and provision of the Contract and any Services Contracts will be valid and enforceable to the fullest extent permitted by law and any invalid, illegal or unenforceable term or provision will 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.
- 25.2 The invalidity or unenforceability of any of the provisions of the Contract or any Services Contracts will not affect the validity or enforceability of any other provision of the Contract or the Services Contracts, which will remain in full force and effect.
- 25.3 This Contract 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.

Article 26 – SURVIVAL OF OBLIGATIONS

The provisions of Article 2, Article 12, Article 13, Article 17, Article 19, Article 22, Article 23, Article 24 of this Contract survive the expiry or termination of the Contract and continue for a period of twenty years thereafter.

Article 27 - APPENDICES AND ORDER OF PRECEDENCE

- 27.1 The following documents attached hereto will be deemed to form an integral part of this Contract:
 - a) Appendix A – Template of the Services Contract (*contrat de mise à disposition*);
 - b) Appendix B – Rules and regulations applicable to service providers working on the ESM's premises;
 - c) Appendix C – IT security;
 - d) Appendix D – Rules for the protection of the ESM's data / personal data.
- 27.2 In case of any inconsistency between the terms of the Contract and the documents attached hereto, the following order of priority applies:
 - a) Terms set in Articles 1 to 27 of this Contract;
 - b) Appendix D;
 - c) Appendix C;
 - d) Appendix B;
 - e) Appendix A.

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

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

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

By: ●
Title: ●

By: ●
Title: ●

By: ●
Title: ●

Appendix A

Template of the Services Contract (contrat de mise à disposition)

[PLACEHOLDER]

Appendix B

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 Contract.

Appendix C

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 Contract and the Services Contract.

1.2 Data Transmission

Should it be necessary to transfer ESM information outside the ESM for the purposes of the Contract's performance, 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 Article 12 of the Contract.

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 Contract, the Contract and the Services Contract. The Service Provider undertakes not to connect any non-ESM equipment to the ESM's network without justification and prior written authorisation by the ESM.

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

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

1.4 Software

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

1.5 Reporting

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

1.6 User ID and password

If necessary, a User ID will be created for the Service Provider to access the ESM's network. Where the Service Provider has more than one person assigned to the Project, each such person will be assigned a separate User ID and password. The User ID's and passwords on the ESM's network are strictly for individual use. The Service Provider undertakes to request a separate User ID for each person using the ESM's network in respect of the Contract and the Services Contract. 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 Contract and the Services Contract, 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 Services' performance

At the end of the Services' performance, 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 Article 12 of the Contract. 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 Interim Worker of the Service Provider assigned to perform the Services. 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 Contract and the Services Contract 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.

Appendix D

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

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

This Appendix is without prejudice to Article 12 of the Contract concerning the general obligation of confidentiality and protection of data, which the Service Provider is required to fulfil.