

Annex 9 - Legal Requirements (in addition to the ones described in the Terms of Reference)

The ESM is willing to enter into an agreement based on the contractual terms proposed by the preferred Candidate (the “**Candidate Terms**”). The proposed Candidate Terms must be submitted as part of the Proposal by the deadline for the submission of Proposals. The ESM expects the Candidate Terms to be fair and balanced and acceptable to the ESM. The ESM will review the Candidate Terms and request any changes required from the ESM’s perspective. These changes required from the ESM’s perspective include, but are not limited to, the Legal Requirements set out in this Annex 9. To the extent the Candidate does not agree with the ESM’s change requests (including the Legal Requirements set out in this Annex 9), the Candidate must provide, for each rejected change request, a clear explanation why the change request is not acceptable from the Candidate’s perspective and a counter-proposal where possible. Both parties will endeavour to find an amicable agreement. In case the ESM deems, in its sole discretion acting reasonably, that the Candidate Terms are not acceptable and the contract negotiations have failed, the Candidate will be excluded from the procurement procedure.

1. Fees and payments

- a. 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.
- b. Unless otherwise specified in the Contract, the ESM shall make payment in euro within 30 days of receipt of a correct invoice. If the ESM is of the opinion that the invoice submitted by the Service Provider is incorrect, it shall reject the invoice and shall inform the Service Provider of the reasons thereof.
- c. The Service Provider’s invoice shall make reference to the corresponding purchase order and contract reference numbers of the ESM (if applicable) and shall contain:
 - i. the information of the services or deliverables provided by the Service Provider during the period covered by the invoice with reference to the agreed payment schedule and the date of acceptance by the ESM (if applicable); and
 - ii. the total amount to be paid in the currency set out in the Contract; and
 - iii. the Service Provider’s bank account to which payment is to be made.
- d. The Implementation phase will be paid in instalments as described in the Terms of Reference .

2. Rights and obligations

- a. The Service Provider will perform the services and deliver the deliverables in accordance with the specifications set out in the Terms of Reference and following the milestones indicated in the project timeline/implementation plan.
- b. 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.
- c. The Service Provider, when performing the services, will comply with the ESM’s rules and regulations, which have been notified to the Service Provider.
- d. The Service Provider shall be responsible for all tax liabilities arising as a result of the remuneration obtained under the Contract.

- e. 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 for which the Service Provider is at fault, including for failing to submit deliverables within the term specified in the Contract.
- f. 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 the Contract.

3. Confidentiality

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

4. ESM data

- a. 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.
- b. 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:
 - i. 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).
 - ii. 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).
 - iii. 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).
- iv. 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).
 - v. 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).
 - vi. Job control: The Service Provider must carry out commissioned data processing in accordance with the ESM's instructions.
 - vii. 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).
 - viii. 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).
- c. 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.
 - d. 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.
 - e. The Service Provider acknowledges that any property of the ESM (including data) 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. The Service Provider shall ensure that any such property located at or held by the Service Provider

5. SLA and KPIs

- a. The Service Provider should provide the Service Level Agreement addressing at least the requirements listed in the Terms of Reference.

6. Audit

- a. 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.

7. Material changes

- a. The Service Provider is obliged to inform the ESM as soon as reasonably possible of any material changes in its circumstances which could have a material impact on the provision of the Services.

8. Termination

- a. The ESM is entitled to terminate the contract in the cases provided in the Terms of Reference.
- b. The ESM may terminate the Contract immediately by notice in writing to the Service Provider if:
 - i. the Service Provider is in material breach of any of its obligations under the Contract;
 - ii. the Service Provider, any of its employees, subcontractors 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;
 - 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:
 - 1. the suspension of payments, a moratorium of any indebtedness, the winding-up, dissolution, administration or reorganisation of the Service Provider;
 - 2. a composition, assignment or arrangement with any creditor of the Service Provider; or
 - 3. the appointment of a liquidator, receiver, administrator, administrative receiver, regulatory official, compulsory manager or similar officer in respect of the Service Provider;
 - vi. the Service Provider is in breach of any applicable environmental, social or labour law obligations established by European Union law, national law, collective agreements or the international social and environmental conventions listed in Annex X to Directive 2014/24/EU of the European Parliament and of the Council, or any other applicable legal obligations.

9. Exit management

- a. The Contract must include an exit management clause. After the expiry or termination of the Contract, irrespective of its cause and as requested by the ESM in its sole discretion, the Service Provider will continue to perform all its obligations set out in this Contract according to the fees specified in the Contract until full and successful migration to the ESM or another service provider of all services, data, processes and anything else affected by the expiry or termination of the Contract. The 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.