	Questions and Answers 4_ LOT 1	
1	Given that neither Directive 2014/24/EU nor Regulation 2018/1046 applies to the ESM and that nothing in the RFP is to be construed as a waiver of the ESM's rights, privileges, immunities or exemptions under the Treaty establishing the ESM: - Does the ESM intend to invoke jurisdictional and/or enforcement immunity in connection with any dispute relating to this procurement process or the resulting Agreement? If so, what contractual or judicial remedies will in practice be available to an unsuccessful Candidate or in the event of a performance dispute? - The Contract Notice names the ESM itself as the “review organisation” for procedure-related challenges. What is the applicable review procedure (timelines, deciding authority, binding nature of the decision), and is there any review body independent of the ESM? - What governing law and dispute resolution mechanism (court jurisdiction or arbitration) will apply to the final Agreement, noting that the RFP leaves this to the “Candidate Terms” to be negotiated with the preferred Candidate?	The ESM's privileges and immunities under the Treaty establishing the ESM remain fully reserved. Participation in this procurement and conclusion of an Agreement do not, by themselves, constitute a waiver. Any waiver must be express and given by the competent ESM authority in accordance with the Treaty. Procedure-related requests for review must be submitted in writing in accordance with Article 12 of the ESM Procurement Policy and the ESM Procurement Review Procedure. The ESM Procurement Policy and the ESM Procurement Review Procedure are available on the ESM webpage. The governing law and dispute-resolution provisions for the resulting Agreement will be those contained in the contractual terms proposed by the successful Candidate and accepted by the ESM following negotiation. Candidates should therefore state those provisions clearly in their Candidate Terms. In the event of a performance dispute, the available remedies — including any escalation procedure, damages, termination rights or agreed arbitration — will be those set out in the final Agreement.
2	Proposals must remain valid and binding for 180 calendar days from the submission deadline while the indicative timeline targets contract signature on 01/06/2027 for Lot 1 and 01/10/2027 for Lot 2, well beyond that 180-day window. - Does the ESM intend to seek an extension of Proposal validity if the actual timeline exceeds the initial 180 days, and if so, on what basis? - Will Candidates be permitted to update their financial offer if contract signature occurs significantly after expiry of the initial 180-day validity period?	The ESM may ask the Candidates concerned, in writing, to extend the validity of their Proposals for a specified period. Any such request will be made before expiry of the applicable validity period. Modification of the financial offer is not permitted unless requested by the ESM, for example to correct arithmetical errors or omissions, or for another duly justified reason, in accordance with the tender documents and the principle of equal treatment.
3	The RFP notes that award of the Contract may trigger Luxembourg transfer-of-undertakings rules, potentially resulting in automatic transfer of the incumbent provider's staff, with all related costs borne solely by the successful Candidate and no compensation from the ESM. Can the ESM provide, at this stage or at least ahead of Proposal submission, the information needed to assess this risk: number of potentially affected employees at the incumbent providers, average seniority, remuneration levels, and applicable employment terms?	Please refer to Clarification 2, Lot 1, Question 1.
4	The Terms of Reference require that all transition costs, costs of providing coverage on a medical-history-disregarded basis without underwriting for pre-existing conditions, claims run-off costs, and implementation/IT integration costs be fully absorbed within the proposed premiums or fees, with the estimated switching cost set at €0. Is the “zero switching cost” principle a binding requirement of result, or an indicative target for which the ESM would accept a reasoned, costed demonstration of actual transition costs during negotiations?	Candidates must include in the proposed premiums or fees all costs necessary to implement and transition the Services in accordance with the Terms of Reference, including implementation and IT-integration costs, continuity of cover on the required basis, and any claims-management or run-off obligations allocated to the Provider.

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5	Section 3.8 of the RFP requires that any new Proposal submitted during negotiations be more beneficial to the ESM than the previous one, and that it be legally binding in the same way as the original Proposal. - Does this mean a Candidate can never revert from a concession made during negotiations, even where market conditions (reinsurance terms, claims experience, FX rates) change materially between the initial submission and the close of negotiations? - What are the consequences for a Candidate that withdraws from the negotiation process after submitting its initial Proposal?	A revised Proposal submitted during negotiations must be legally binding and more beneficial to the ESM than the Candidate's immediately preceding Proposal, assessed as a whole. A Candidate should therefore not assume that a concession can later be withdrawn unilaterally. If a material external change occurs, the Candidate should notify the ESM promptly and may propose revised terms only if invited or accepted by the ESM and if the revised Proposal continues to satisfy section 3.8. A Candidate may withdraw from the negotiation process, but it will cease to be considered for award and will not be entitled to reimbursement of its participation costs. Withdrawal does not affect obligations that by their nature continue to apply, including confidentiality and the accuracy of information already submitted, or any rights the ESM may have in respect of a binding Proposal.
6	Section 4.1 of the RFP allows the ESM to cancel the procurement process in whole or in part at any time before signature, without giving rise to any compensation for Candidates. Does this exclusion of compensation also apply to a cancellation occurring after the negotiation or due diligence stage, by which point Candidates will have incurred significant costs (presentations, due diligence, contract negotiation)?	Yes. Section 4.1 applies at any time before signature of the Agreement, including after presentations, due diligence or negotiations.
7	Section 4.7 of the RFP allows the ESM, at its sole discretion, to disclose the contents of Proposals to its third-party advisors. Can the ESM clarify the categories of third-party advisors who may access commercially sensitive Proposal information (pricing, methodologies), and the contractual confidentiality safeguards actually binding on them?	Access may be given only where required for the procurement to external legal counsel, procurement advisers, actuarial or insurance specialists, technical/IT advisers, auditors or other professional advisers supporting the evaluation, due diligence or contract negotiation. Such advisers are subject to contractual or professional confidentiality obligations and, where personal data are involved, applicable data-protection and security requirements. Access is limited to information necessary for their assignment. Disclosure under section 4.7 does not permit advisers to use Proposal information for unrelated purposes.
8	The Terms of Reference repeatedly reserve the ESM's right to refine coverage levels, ceilings, thresholds and benefit parameters during the contract term, in consultation with the selected provider. Is this adjustment right subject to a corresponding premium-repricing mechanism, such that any increase in coverage triggers a proportionate premium adjustment and vice versa? If not, would the ESM be willing to incorporate such a mechanism into the Candidate Terms?	The ESM may consider adjustments to reimbursement percentages, ceilings, thresholds, session limits or other benefit parameters during the contract term. Candidates must describe in the Commercial Response their methodology for recalculating premiums if such changes occur. Any resulting premium adjustment will be handled under the premium-adjustment provisions agreed in the final contract, where applicable.
9	Is ESM considering an extension of the tender submission deadline? If yes, please advise the expected revised deadline and the anticipated timing of the communication to bidders.	No extension of the tender submission deadline is currently being considered.
10	Please confirm whether alternative offers that deviate from the Terms of Reference are permitted. If so, please specify any limitations on such deviations and the applicable evaluation criteria.	Candidates must clearly identify and explain in writing any deviations from the specified requirements. However, the ESM may exclude a Proposal that does not meet the minimum requirements, in which case the Technical Award Criteria will not be assessed.

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11	For each Lot, please confirm whether either party may terminate the contract before its scheduled expiry, including at any annual anniversary, upon six (6) months' notice. If so, please specify the notice period, grounds for termination, treatment of ongoing claims, and any run-off obligations. If not, please confirm whether bidders may propose an alternative cancellation clause allowing termination upon six (6) months' notice.	The RFP does not establish a general right for either party to terminate at each annual anniversary on six months' notice. Early-termination rights, notice periods, grounds, consequences and run-off arrangements will be governed by the contractual terms accepted by the ESM for the relevant Lot. Candidates may propose a cancellation clause in their Candidate Terms, including a six-month notice period, but the ESM is not obliged to accept it. Any proposed clause must address continuity of cover, payment and administration of claims incurred before termination, treatment of ongoing Work Incapacity, Disability or Long-Term Care benefits, transfer of data and records, and any required claims run-off or transition assistance.
12	Commercial Response_Social Security Services: Please confirm whether the premiums requested in the Commercial Response_Social Security Services.xlsx for the periods January 2029 to December 2032 (Lot 1) and January 2029 to December 2031 (Lot 2) are indicative and intended solely for evaluation and comparison purposes. Can ESM confirm that the only binding premiums to be contractually committed at award stage are those applicable for the first policy year, from January 2028 to December 2028, with premiums for subsequent years being subject to the agreed premium adjustment mechanism?	No. Candidates must provide binding premiums or fees for every contract year requested in the Commercial Response, not only for 2028. These figures will be used to evaluate the total contract cost and, if accepted, will form the commercial basis of the Agreement. Prices for later years may change only under an annual adjustment mechanism clearly proposed by the Candidate and accepted in the final Agreement.
13	Please clarify how the 25% salary threshold operates in practice. Specifically, which salary basis is used, whether the threshold is assessed per insured person or per family unit, over what period it is measured, and how the additional reimbursement is calculated once the threshold is exceeded. When eligible healthcare expenses exceed this threshold, how is the additional reimbursement calculated and administered in practice? Please confirm and provide details of these eligible healthcare expense claims and the percentage within the historical experience provided.	The 25% threshold is assessed based on the(last) gross monthly salary during ESM service of the (former) member of staff. The assessment is performed during a calendar year and applies to the portion of eligible healthcare expenses (excluding dental and optical expenses) incurred by the member of staff and his/her insured dependants that remains unreimbursed under the healthcare insurance plan. If the unreimbursed portion of such eligible expenses exceeds 25% of the (last) gross monthly salary, the beneficiary is entitled to an additional reimbursement equal to the unreimbursed amount exceeding that threshold, subject to a maximum of 150% of the defined coverage limits. An illustrative example is included under Lot 1 of the Terms of Reference. This benefit has not been used since April 2023. Consequently, no recent claims experience or meaningful utilization percentage is available.
14	Please confirm if the Dental Benefit is a carry-over, meaning any unused portion of the 24-month benefit is carried over and added to the next year's benefit.	The Dental Benefit is not a carry-over benefit. Any unused amount remains available only within the applicable 24-month cycle and is not added to the ceiling for the next cycle.