

Terms and Conditions for the Provision of Goods and Services

§ 1 Scope of Application and Order of Precedence

These Terms and Conditions (“**Terms and Conditions**”) govern and are deemed incorporated into any Order issued by the European Stability Mechanism (the “**ESM**”), 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, to you (the “**Supplier**”) for the purchase of goods (the “**Goods**”) and/or the provision of services (the “**Services**”). Goods and Services are collectively referred to as “**Deliverables**”. The provision of the Deliverables is also referred to as “**Assignment**”. The ESM and the Supplier are referred to collectively as the “**Parties**”. These Terms and Conditions prevail over and are deemed to exclude any terms or conditions (whether or not inconsistent with these Terms and Conditions) contained or referred to in any correspondence or documentation submitted by Supplier (invoice, delivery notice, etc.) or elsewhere or implied by custom, practice or course of dealing unless agreed in writing and signed by both Parties. Any modification of these Terms and Conditions must be in writing and signed by both parties. An “**Order**” means any contract, purchase order, work order or any other document containing the Deliverables ordered by the ESM. By accepting the Order, the Supplier acknowledges having read and approved these Terms and Conditions and accepts their application to the Order. The Supplier is deemed to have accepted any Order by commencing delivery of any of the Deliverables contained in the Order, accepting any payment from the ESM in relation to the Order or providing the ESM with any other acknowledgement of the Order (e.g. signature of the Order form, acknowledgement of the Order by e-mail or facsimile, or any other means). 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 Supplier Obligations

The Supplier shall provide the Deliverables requested by the ESM in accordance with the requirements and specifications set forth in the Order and in accordance with any instructions issued from time to time by the members of the ESM's staff identified as the Supplier's contact person(s) for the purposes of the Assignment.

The Supplier undertakes to perform and provide the Deliverables at all times in accordance with the highest standards of professional and ethical competence and integrity in the Supplier'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 Supplier in the performance and provision of the Deliverables (hereinafter each such person is called the “**Employee**”) as well as subcontractors will conduct themselves in a manner consistent therewith.

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

The Supplier shall perform and provide the Deliverables as an independent contractor under the general guidance of the ESM. The Supplier's Employees, subcontractors and any other persons acting on behalf of the Supplier in the performance or provision of the Deliverables shall not act as agents or members of staff of the ESM.

The Supplier 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 Deliverables are to be performed or provided.

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 Supplier 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 Supplier in connection with the Regulations, and the Supplier 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 Contract, or notice of an alleged breach leading to termination, the Supplier 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 Contract (the “**Replacement Supplier**”) in order to determine whether the change from the Supplier to the Replacement Supplier leads to a transfer of employees under the Regulations and allow the Replacement Supplier to take the appropriate actions to comply with the Regulations. If the change from the Supplier to the Replacement Supplier leads to the application of the Regulations, the Supplier will implement the transfer process provided for by the Regulations. When doing so, the Supplier 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 Supplier 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 Supplier 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 Supplier or the Replacement Supplier that the claimant's employment contract shall be transferred to the Supplier or the Replacement Supplier, and the Supplier or the Replacement Supplier will assume any obligations arising from the employment contract or the transfer of the employment contract and/or employment rights.

§ 3 **Term of Engagement**

The Supplier shall provide the Deliverables during the period (hereinafter the "**Term of Engagement**") commencing on the start delivery date stated in the Order and ending, unless agreed otherwise, on the end delivery date stated therein.

§ 4 **Goods and Service Deliverables**

Where Goods and/or deliverables in an order for Services ("**Service Deliverables**") form a subject matter of the Order, the timetable for submitting those Goods and/or Service Deliverables and the payment in respect of those Goods and/or Service Deliverables shall be as stated in the Order or as otherwise notified by the ESM to the Supplier. The ESM shall not be deemed to have accepted any Goods or Service Deliverables until it has had a reasonable time to inspect them following delivery, or, in the case of a hidden defect in the Goods or Service Deliverables, until a reasonable time after the hidden defect has become apparent. If any Goods or Service Deliverables delivered do not comply with the Order or § 13 of these Terms and Conditions or are otherwise not in conformity with the Order or these Terms and Conditions, then, without limiting any other right or remedy that the ESM may have, the ESM may:

- i) require the Supplier, at the ESM's sole discretion, to repair or replace the Goods or Service Deliverables at the Supplier's risk and expense within five business days of being requested to do so; or
- ii) (if payment has been made) require the Supplier to repay the price of the Goods or Service Deliverables in full (whether or not the ESM has previously required the Supplier to repair or replace the Goods or Service Deliverable); and
- iii) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods or Service Deliverables that are not in conformity with the terms of the Order or these Terms and Conditions.

In the case of partial acceptance of Goods or Service Deliverables by the ESM, the ESM shall have the right to withhold the corresponding portion of the Supplier's remuneration until such time as the Supplier has performed such remedial work as is necessary to achieve acceptance by the ESM. These Terms and Conditions shall apply to any repaired or replacement Goods or Service Deliverables supplied by the Supplier.

Title to the Goods passes to the ESM on delivery or payment of the Goods, whichever event occurs earlier.

§ 5 **Assignment and Subcontracting**

The Supplier shall not assign, in whole or in part, the rights and obligations arising out of an Order nor subcontract any part of the Deliverables without the ESM's prior written consent.

Even where the ESM authorises the Supplier to subcontract all or part of the Deliverables to third parties, the latter shall nonetheless remain bound by its obligations to the ESM under the Order.

The Supplier undertakes to include in any contract signed with a subcontractor for all or part of the Deliverables, provisions (1) requiring the subcontractor to comply with these Terms and Conditions and (2) enabling the ESM to enjoy the same rights in relation to the subcontractor as in relation to the Supplier 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 Supplier 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 Assignment;
- 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 Assignment 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 Assignment, unless such removal or replacement is due to accident, illness or other disability or cessation of employment by the Supplier; 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 Supplier 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 Assignment 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 Supplier shall be at no cost consequences to the ESM. The Supplier shall ensure that performance and provision of the Deliverables is not disrupted as a result of any change of the Employees.

§ 7 Remuneration

The Supplier shall be remunerated in accordance with the prices specified in the Order for the Deliverables, which, unless otherwise therein specified, shall include any taxes, duties and levies as well as any expenses and charges, including, in case of the delivery of Goods, any charges for packaging, packing, shipping, carriage, insurance, delivery and installation of the Goods at the address stated on the Order.

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 Supplier, 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 Supplier, no advance payment shall be made for the supply of the Deliverables or the delivery of a Service Deliverable, and the agreed remuneration shall be invoiced by the Supplier 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 Goods or a Service Deliverable, the Supplier shall submit its invoice upon receiving notification of the ESM's acceptance of the Goods or Service Deliverable.

The Supplier's invoice shall make reference to the corresponding Order reference numbers of the ESM, if applicable, and, except as may be provided otherwise in the Order, shall contain the following information:

- in case of a time and materials fee, 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 Supplier, subcontractor or other person acting on behalf of the Supplier in the performance of the Services;
- in case of a fixed-price fee, a summary of the Services provided by the Supplier during the period covered by the invoice with reference to the agreed payment schedule;
- where there are Goods or a Service Deliverable, reference to: (i) the type of Goods/Service Deliverable (ii) the date of acceptance by the ESM of the Goods/Service Deliverable, and (iii) the agreed payment schedule for those Goods/Service Deliverable;
- the total amount to be paid in the currency set out in the Order; and
- the Supplier'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 Supplier's invoice shall be accompanied by such supporting documentation as the ESM may reasonably require, including, in the case of a time and materials fee, time sheets for each Employee of the Supplier assigned to the Project.

All invoices shall be submitted to the following address:

European Stability Mechanism
6a, Circuit de la Foire Internationale
L-1347 Luxembourg
Attention: Finance and Control.

The ESM shall make payment in euro within 30 days of receipt of a correct invoice.

In case the ESM agrees in the Order to a different payment period than 30 days, such different payment period will apply, starting as of receipt of a correct invoice.

If the Parties agree in the Order that the ESM shall receive a discount for early payment, the number of days within which the ESM has to pay the invoice in order to receive the discount will be calculated as of the receipt of a correct invoice. The ESM will deduct the discount when paying the invoice.

If the ESM is of the opinion that the invoice submitted by the Supplier is incorrect, it shall reject the invoice and inform the Supplier of the reasons thereof.

§ 9 Compliance with the ESM's Rules and Regulations

The Supplier 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 Supplier and to the extent the Supplier has been informed of such rules and regulations.

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

§ 10 Environmental Requirements

The Supplier undertakes to comply, in providing the Deliverables, with the environmental criteria and any other similar conditions set out in the specifications of the Order, if any.

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

§ 11 Tax and Social Security Obligations

The Supplier shall be responsible for all tax liabilities arising as a result of the remuneration obtained under the Order.

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

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

§ 12 Confidentiality and Protection of Personal Data

The Supplier shall treat as confidential all information, which it acquires, from the ESM or any other person in the course of its engagement with the ESM. However, the foregoing obligation of confidentiality shall not apply to any information that was in the Supplier'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 Supplier. The Supplier shall not reference the ESM nor the existence and terms of the engagement with the ESM without the ESM's prior written approval.

The Supplier shall comply with the relevant provisions of personal data protection legislation of the European Union and the provisions of the relevant national legislation.

The Supplier is responsible for ensuring that all of its Employees comply with all aspects of and all obligations arising out of this § 12.

The Supplier shall indemnify the ESM against any loss or damage suffered by the ESM in relation to any breach by the Supplier of its obligations under this § 12.

Without prejudice to Clause 1.6 (Reporting) of Annex II hereto the Supplier shall report to the ESM any actual or suspected breach of confidentiality, integrity and/or availability of ESM data, held by or processed by the Supplier. 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 Supplier represents and warrants that the Deliverables will be of satisfactory quality, fulfill their intended purpose, comply with any applicable industry standards, best practices and all applicable statutory and regulatory requirements, be free from defects in design, material and workmanship and conform to the any specifications and requirements agreed by the Parties (the "Warranty"). If, during the Term of Engagement, the ESM is of the opinion that the Deliverables do not conform with the Warranty, the ESM will notify the Supplier accordingly who will promptly remedy such nonconformity at no additional costs for the ESM.

§ 14 Limitation of Liability

The Supplier shall be liable to the ESM for any loss, injury or damage arising out of the performance (or non-performance) of the Deliverables, including for failing to submit Deliverables or Service Deliverables within the term specified in the Order. In no event shall the Supplier's liability to the ESM arising out of the Order exceed the greater of (a) one million euro or (b) the maximum remuneration payable to the Supplier under the Order. Notwithstanding the foregoing, the supplier's liability shall not be limited in the events of willful intent or gross negligence or in respect of death or personal injury resulting from acts, omissions or negligence on the part of the Supplier or a breach of § 12.

§ 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 Supplier in connection with the Deliverables (including Service Deliverables) falling within the scope of the Order. The New Work Product may include as relevant any new version, improvement, enhancements or derivative works of ESM Materials or Supplier Materials developed, made, conceived, compiled, created or customised (and in such case of customisation solely for the customised part thereof) by the Supplier in connection with the Deliverables (including Service Deliverables).

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

“**Pre-Existing Work Product**” means any Work Product directly or indirectly developed, made, conceived, compiled, created or customised by the Supplier prior to the Effective Date, including Supplier Materials, if any.

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

- 15.2 The Parties agree that any New Work Product will be the sole property of the ESM and any copyright and all other IPR to such New Work Product will belong to the ESM. For the avoidance of doubt, this includes, but is not limited to, the exclusive, transferable and irrevocable right for the ESM, covering all forms of use known at the time of concluding the Order, 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 Supplier 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 Order, 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 Supplier 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 Supplier will not access, use, copy, or distribute any Work Product protected by IPR owned by the ESM (including any ESM Materials) without the ESM’s prior written permission. In so far as the ESM grants the Supplier such permission, the ESM hereby grants to the Supplier a royalty free, non-exclusive, temporary, revocable license for the Term of Engagement to use such Work Product solely for the purpose of the provision of the Deliverables (including Service Deliverables) to the ESM in accordance with the Order, with the right to sub-license such license on the terms set forth in this § 15.4 to the subcontractors of the Supplier which have been authorised by the ESM in accordance with § 5.
- 15.5 The Supplier 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 Supplier 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.
- 15.6 The Supplier 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 Deliverables (including Service Deliverables) in breach of the above § 15.5, except to the extent the alleged infringement or misrepresentation:
- is the result of a subsequent modification, made solely by the ESM and/or any of its subcontractors. For the avoidance of doubt, this does not apply to any combination and use as described in § 15.2 above. Also, this does not limit the Supplier’s obligation to provide the Deliverables (including Service 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 Order; or
 - results from requirements, instructions or specifications provided by the ESM to the Supplier concerning the Deliverables (including Service 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 Supplier 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 Supplier will promptly inform the ESM thereof.

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

15.7 Both the ESM and the Supplier 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 terminate any Order for Goods or any portion thereof for convenience for any reason, at any time prior to acceptance of such Goods by the ESM, at no charge and without liability by giving written notice to the Supplier, provided that, if the ESM provides the notice after shipment, the ESM will pay the shipping expenses for returning such Goods to Supplier’s shipping location.

The ESM may terminate any Order for Services or any portion thereof for convenience for any reason, at any time, at no charge and without liability, by giving at least one (1) month’s prior written notice to the Supplier. Upon any such termination, the ESM is only liable to pay for Services performed and liabilities incurred prior to the termination becoming effective, provided that if the price set forth in the Order is a fixed price, the ESM will pay the price to the extent the Order is complete.

The ESM may terminate any Order for cause immediately by notice in writing to the Supplier if:

- i. the Supplier is in material breach of any of its obligations under the Order and/or these Terms and Conditions;
- ii. the Supplier, any of its Employees assigned to the Assignment, any subcontractor of the Supplier or any other person acting on behalf of the Supplier in the performance or provision of the Deliverables has been engaged in conduct bringing the ESM into disrepute;
- iii. the Supplier is in a situation of conflict or potential conflict of interest, as defined in § 17 of these Terms and Conditions;
- iv. the Supplier 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 Supplier;
 - (b) a composition, assignment or arrangement with any creditor of the Supplier; or
 - (c) the appointment of a liquidator, receiver, administrator, administrative receiver, regulatory official, compulsory manager or similar officer in respect of the Supplier.

The Supplier may terminate the Order upon written notice to the ESM if the ESM fails to pay an undisputed amount in accordance with these Terms and Conditions and the ESM fails to cure such default within thirty (30) days of receipt of written notice sent by the Supplier identifying the default and requiring its remedy.

§ 17 Conflict of Interest

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

§ 18 Insurance and Reporting

The Supplier 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 Supplier shall promptly provide evidence to the ESM showing that such insurance has been taken out.

The Supplier 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 or the provision of the Deliverables, as well as any act or matter within the Supplier’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 Supplier which relate to the performance or provision of the Deliverables. The Supplier shall maintain accurate records at all times. Upon fourteen days’ notice, the Supplier shall provide the ESM reasonable access to the Supplier’s records to verify compliance with these Terms and Conditions and the Order. The ESM shall be permitted to conduct these audits with any of its own internal audit resources or by securing the services of third party experts, solely at the ESM’s election. The ESM shall have the right to copy, at its own expense, any records related to the Deliverables provided or performed pursuant to the Order.

If available, the Supplier 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 Insider Information

The Supplier acknowledges that information to which the Supplier may have access, may contain inside information as defined by Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation. The Supplier 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 Supplier shall ensure that any property of the ESM located at or held by the Supplier or its subcontractors on behalf of the ESM shall be clearly identifiable as property of the ESM. The Supplier 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 the property of the ESM, which is located at or held by the Supplier or its subcontractors, is threatened by the aforementioned actions the Supplier 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 Order or these Terms and Conditions 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 terms or provisions of the Order or these Terms and Conditions shall not affect the validity or enforceability of any other provision of the Order or these Terms and Conditions, which shall remain in full force and effect.

§ 23 Entire Agreement and Amendments

The Order (together with all documents deemed to be an integral part thereof, including, but not limited to, these Terms and Conditions) shall constitute the entire agreement between the ESM and the Supplier with respect to the Assignment. It shall supersede any prior proposal or agreement, whether written or oral, and any other communication concerning the Assignment. The Order may be modified only by an instrument in writing signed by the ESM.

§ 24 Waiver

No right, term or provision under the Order or any document deemed to be an integral part thereof (including, but not limited to, 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 Order and any contractual and non-contractual rights and obligations arising out of or in connection with the Order will be governed by the laws of the Grand Duchy of Luxembourg, without reference to conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Order.

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

§ 26 Survival of Obligations and Cooperation with the ESM

The provisions of § 9, § 11, § 12, § 14 and § 19 of these Terms and Conditions survive the expiry or termination of the Order and continue for a period of twenty years thereafter.

After the expiry or termination of the Order, irrespective of its cause and as requested by the ESM in its sole discretion, the Supplier will continue to perform all its obligations set out in the Order according to the fees specified in the Order until full and successful migration to the ESM or another Supplier of all services, data, processes and anything else affected by the expiry or termination of the Order. The completion of the full and successful migration will be determined by the ESM in its sole discretion and the ESM will inform the Supplier once no Deliverables are required to be provided by the Supplier anymore. The Supplier will support the ESM and provide all necessary information and assistance in order to secure a successful migration to the ESM or the new Supplier, 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 Supplier; (c) provide any information relevant for the performance of the expired/terminated services; (d) train the ESM and/or the new Supplier's personnel; (e) novate or assign software licences and any other relevant third party agreements from the Supplier to the ESM or the new Supplier, or, if so stipulated by the ESM, transfer management responsibilities in respect of such licences and/or agreements from the Supplier to the ESM or the new Supplier, with the cost of any new or increased charges to be borne by the ESM or the new Supplier (subject to prior written agreement with the ESM or the new Supplier); (f) offer to sell to the ESM or the new Supplier at fair market value any equipment used by the Supplier in connection with delivering services to the ESM; (g) transfer the ESM's data to the ESM or the new Supplier; (h) grant the ESM or the new Supplier access to all documents and any other materials produced by the Supplier in connection with delivering services to the ESM. If requested by the ESM and without prejudice to any other provision of the Order, as soon as a notice to terminate the Order has been served, the Supplier 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 the new Supplier of all services, data, processes and anything else affected by the expiry or termination of the Order.

RULES AND REGULATIONS APPLICABLE TO SUPPLIERS WORKING ON THE ESM'S PREMISES

Access to the ESM building

The Supplier 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 Supplier 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 Supplier undertakes to limit his presence on the ESM's premises only to areas necessary for the execution of the Assignment.

IT SECURITY

1 IT SECURITY

1.1 Security controls

The ESM has implemented various controls to protect its IT systems and data. The Supplier undertakes not to attempt to bypass these controls in any way except where specifically permitted in writing by the ESM.

1.2 DataTransmission

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

1.3 Hardware

The Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier to access the ESM's network. Where the Supplier has more than one person assigned to the Assignment, 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 Supplier 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 Dataimport

The Supplier 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 Supplier 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.

2 MANAGEMENT OF EMAIL ACCOUNTS

2.1 Emailaccounts

If necessary, a named email account associated with the User ID as described in the above § 1.7 may be created for each Employee of the Supplier 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 emailaccounts

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 Supplier 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 and permitted by the written instruction of the ESM.

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 Datatransfer

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 Supplier 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 Supplier and the ESM.

RULES FOR THE PROTECTION OF PERSONAL DATA

1. The Supplier and all its present, past and future employees, persons working as independent contractors or other persons involved in the execution of the Deliverables (each such person in this Annex is called an “**Employee**”) shall at all times be aware of the sensitive and highly confidential nature of the personal data to which they may have access and which they may be required to process in the course of the execution of the Deliverables.
2. The Supplier and each Employee shall respect the integrity of these data and observe the strictest confidentiality in relation thereto throughout the execution of the Deliverables, as well as thereafter.
3. In particular, neither the Supplier nor any Employee shall divulge any such personal data on any account to any third party not duly authorised by the ESM or copy (on any medium whatsoever) or transmit these data except in the course of backup, recovery or testing operations essential to the execution of the Deliverables.
4. Without prejudice to the foregoing, neither the Supplier nor any Employee shall keep any copy, file or list (on any medium whatsoever) of the personal data to which it has access in the course of the execution of the Deliverables.
5. These rules shall also apply to all codes and procedures for accessing the personal data in question and the systems supporting them, as well as to all related literature and technical or regulatory documentation to which the Supplier or any Employee has access in the course of the execution of the Deliverables.
6. The Supplier 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 Supplier shall bring the rules of points 1 to 6 above to the attention of each Employee and take all required legal steps to ensure that each Employee is bound by and complies with the rules of points 1 to 6 above.