



EUROPEAN CENTRAL BANK

EUROSYSTEM

## The European Central Bank's general contract terms

### Section 1 - Scope of application

**1.1** These general contract terms (GCTs) apply to all works carried out for the European Central Bank (ECB) and to the provision of all services and products to the ECB. They form an integral part of the Contract between the ECB and the Contractor.

**1.2** In the event of a conflict between the GCTs and the terms in the Contract sheet or any applicable specific contract terms (SCTs), the terms in the Contract sheet prevail over the SCTs, which shall prevail over the GCTs.

**1.3** The Contractor's general terms and conditions shall not apply.

### Section 2 - Definitions

The following terms have the meanings given below:

- a) 'Annex' means an annex to the Contract sheet.
- b) 'Confidential information' means any information, data or documents that the ECB has classified, orally or in writing, as 'ECB-Restricted', 'ECB-Confidential' or 'ECB-Secret', or which a reasonable contractor would consider to be confidential. Confidential information shall not include: (i) information which is or which becomes publicly available, except through a breach of confidentiality by the Contractor, any other circumstance the Contractor is responsible for; or (ii) information for which the ECB has given written authorisation for disclosure.
- c) 'Contract' means the Contract sheet and any annexes to it, including the GCTs and any SCTs.
- d) 'Contract sheet' means the individual contract document with regard to specific Deliverables signed by the Parties.
- e) 'Contract value' means the agreed remuneration under the Contract or, in the case of Framework agreements, an Order, taking into account any price adjustment according to Section 6.4 and any change in the remuneration due to Change requests according to Section 6.7.
- f) 'Contractor' means the Party or Parties identified in the Contract sheet as the 'Contractor'.
- g) 'Deliverables' means any works to be carried out or any services or products to be provided by the Contractor to the ECB or at its request in accordance with the Contract.
- h) 'ECB's house rules' means the House rules of the European Central Bank in the version in force at the time of Contractor's performance, available at: <https://www.ecb.europa.eu/ecb/jobsproc/proc/pdf/houserulesen.pdf?4384b7c70c56faa3faad4dd5ffc1ca7a>.
- i) 'ECB premises' means any of the ECB's premises in Frankfurt am Main.
- j) 'ECB Procurement Rules' means Decision (EU) 2016/245 of the European Central Bank of 9 February 2016 laying down the rules on procurement (ECB/2016/2) (OJ L 45, 20.2.2016, p. 15), as amended, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0002>
- k) 'ECB public holidays' means the public holidays defined under: <http://www.ecb.europa.eu/home/contacts/working-hours/html/index.en.html>.
- l) 'EU' means the European Union.
- m) 'Framework agreement' means a framework agreement as defined in Article 1(9) of the ECB Procurement Rules.
- n) 'GCTs' means these general contract terms.
- o) 'Order' means any order placed by the ECB under a framework agreement.
- p) 'Parties' means jointly the parties to a Contract, each individually referred to as a 'Party'.
- q) 'Price sheet' means the detailed table of the agreed remuneration attached to the Contract sheet as an Annex.
- r) 'SCTs' means any specific contract terms applicable to a Contract.
- s) 'Staff member' or 'Contractor's staff member' means an employee or freelance collaborator of the Contractor or the Contractor's subcontractors or the subcontractor itself.
- t) 'Working day' means a working day as defined in the ECB working calendar (at <http://www.ecb.europa.eu/home/contacts/working-hours/html/index.en.html>).

### Section 3 - ECB's house rules, security clearance and penalties

**3.1** If Deliverables are carried out or provided on the ECB's premises, the Contractor shall comply with the ECB's house rules and ensure that Contractor's staff members also comply with the ECB's house rules. The Contractor shall inform the ECB without delay if it considers that any

proposed change to the ECB's house rules will affect the performance of the Contract. The Parties shall then discuss and, if necessary, agree any necessary amendments to the Contract.

**3.2** The Contractor's staff members who are assigned to work at the ECB's premises shall comply with the ECB's security clearance procedure. The security clearance procedure is laid down in the ECB's house rules. The Contractor shall be responsible for the timely submission of the documentation required for security clearance, and be liable for the consequences of delayed submission.

**3.3** The Contractor shall ensure that the Staff members return all items received from the ECB when leaving the ECB's premises, including but not restricted to: security badges, keys, books and IT equipment. If, for reasons for which the Contractor is responsible, such items are not returned within a reasonable period set by the ECB, the ECB may claim from the Contractor a contractual penalty of up to EUR 500 for each unreturned item. Section 8.4 applies. The ECB shall use equitable discretion when fixing the amount of a penalty, taking into account the value of the missing item. Such penalty shall not prevent the ECB from claiming further damages, taking the contract penalty into account, and/or making further claims under other contractual terms for penalties.

### Section 4 - Use of subcontractors, Contractor's staff members

**4.1** Unless otherwise agreed, the Contractor shall carry out or provide the Deliverables in person or using its own staff. Subcontracting to a third party requires the ECB's prior written consent. If the Parties have stipulated the use of individually identified subcontractors in the Contract sheet or its Annexes, such consent shall be deemed to have been given with regard to the individually identified subcontractors. The ECB may withdraw its consent if it becomes aware of circumstances that would have justified the exclusion of the subcontractor from a procurement procedure under Article 30 (1), (4) and (5) of the ECB Procurement Rules. In this case, the ECB may request the Contractor to propose an equally qualified replacement within ten calendar days from the notification of the ECB's request. The replacement shall be subject to the ECB's prior written consent, which shall not be unreasonably withheld. In all cases, the Contractor remains responsible for providing all Deliverables in accordance with the Contract.

**4.2** If the Contract sheet or its Annexes states that the Contractor shall carry out or provide the Deliverables in person, and if the Contractor is prevented from doing so for reasons beyond its control (for example, in the event of sickness) and the ECB cannot reasonably be expected to wait as a delay would jeopardise the purpose of the Contract, the ECB may either terminate the contract or request the Contractor to propose a replacement in accordance with Section 4.5 below.

**4.3** The Contractor shall deploy a sufficient number of staff to provide the Deliverables by the agreed date. Each Contractor's staff member shall be appropriately qualified, skilled and experienced to perform their duties under the Contract. At any time and without additional charge, the ECB may request the Contractor to replace any Contractor's staff member who does not have the necessary qualifications, skills or experience, does not obtain security clearance, or repeatedly or substantially breaches the ECB's house rules, or for any other serious reason.

**4.4** If the Contractor deploys specific Contractor's staff members to carry out or provide the Deliverables, the Contractor shall not replace them unless forced to do so for reasons beyond the Contractor's control (such as sickness, or termination of the employment contract by the Contractor's staff member in question).

**4.5** Where a Contractor's staff member is replaced under Sections 4.3 and 4.4, the Contractor shall propose replacement staff with at least the same level of experience, skills and qualifications within ten calendar days from the date when the Contractor becomes aware of its own or the Contractor's staff member's unavailability, or from the notification of the ECB's request. The replacement staff shall be subject to the ECB's prior approval, which shall not be unreasonably withheld. The Contractor shall ensure that the replacement is made with an appropriate transfer of knowledge and information, so as to avoid interrupting the fulfilment of the Contract and to maintain a high level of service quality at all times.

**4.6** The Contractor represents and warrants its compliance with, and ensures that its subcontractors comply with, all statutory and/or collectively agreed minimum wage levels. The Contractor hereby unconditionally and irrevocably indemnifies the ECB from and holds it harmless against any third party claims against the ECB due to the Contractor's and/or subcontractor's breach of applicable minimum wage

regulations, in particular the Minimum Wage Act (*Mindestlohngesetz*) and the Employee Assignment Act (*Arbeitnehmerentsendegesetz*).

**4.7** The Contractor shall by means of a written contract oblige any of its subcontractors to adhere to its obligations under this Contract, in particular Section 9, 11 and 11a.

#### **Section 5 - No employment relationship – Independent contractor**

The Contractor shall perform the Contract as an independent contractor and is free to work for other clients. The Contractor is free to determine how the Contract is fulfilled within the limits set out in the Contract. The Parties agree that the Contract does not establish an employment relationship between the ECB and the Contractor or any of the Contractor's staff members. The Contractor and its subcontractors remain responsible for paying all taxes and social security contributions arising out of their activities under the Contract. The Contractor has sole responsibility for ensuring that the Staff members fulfil all the obligations required by applicable legislation concerning foreign nationals in all places of performance, including in particular the obligation to hold a valid residence permit (*Aufenthaltslaubnis*) and work permit (*Arbeitserlaubnis*) for the duration of the Contract.

#### **Section 6 – Remuneration, value added tax and change requests**

**6.1** The ECB shall pay for the Deliverables specified in the Contract on receipt of the Contractor's invoice.

**6.2** Unless otherwise agreed, the rates agreed (such as fixed prices and daily, hourly or other rates agreed) shall cover all costs and expenses relating to the provision of the Deliverables. This includes, but is not limited to, expenses for accommodation, travel and subsistence, production, packaging and distribution of the Deliverables and corresponding documents, licences and communication. Travel time of the Contractor shall not be remunerated.

**6.3** If daily rates are agreed, parts of days shall be paid pro rata on the basis of eight working hours per day. If an hourly rate for overtime is specified, overtime shall only be paid if requested or approved by the ECB and if not compensated in kind.

**6.4** If the Contract sheet provides for a price adjustment, the agreed rates shall remain stable for the first two years following signature of the Contract. Thereafter, the Contractor may claim an adjustment of the agreed rates in line with the development, since signing the Contract, of the Harmonised Index of Consumer Prices in the EU (all items) calculated by Eurostat. Further price adjustments may be made at two-year intervals. In case of a multi-supplier framework agreement without reopening of competition, a price adjustment may lead to a readjustment of the ranking of suppliers, as set out in Section 13.6.

**6.5** If the Deliverables are subject to value added tax levied in an EU Member State ('EU VAT'), the agreed remuneration shall be net of such EU VAT, unless otherwise specified in the Contract. In such case, the following shall apply:

- a) If the place of supply of the goods or services under the applicable VAT law is in Germany or Portugal, the ECB shall pay the statutory VAT in addition to the agreed remuneration at the rate applicable on the day on which the respective supply has been carried out to the ECB to the Contractor, unless the Deliverables provided are subject to the German rules on reverse charge according to § 13b(2) No 1 and (5) of the German Act on VAT (*Umsatzsteuergesetz*). The payment of the statutory VAT shall be due upon receipt of an invoice which is in compliance with the provisions of Section 7.1.
- b) If the place of supply of the goods or services under applicable VAT law is in an EU Member State other than Germany or Portugal, the Deliverables are exempt from VAT in accordance with Articles 3 and 22 of the Protocol on the Privileges and Immunities of the European Union and Article 151(1)(aa) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p.1), unless the ECB informs the Contractor that the Deliverables are exceptionally not made for the official use of the ECB and therefore not exempt from VAT. The Contractor shall comply with the necessary formalities required by the competent authorities to ensure that the Deliverables are exempt from VAT and issue an invoice which is in compliance with the provisions of Section 7.1. On request, the ECB shall provide the Contractor with a VAT exemption certificate.

If the Deliverables are subject to value added tax, turnover tax, sales tax or comparable tax or duty levied in a country other than an EU Member State ('third country tax'), the agreed remuneration shall include the amounts of any such applicable third country tax. In such case, or in case the Deliverables are subject to EU VAT and the Contract specifies that the agreed rates include the amounts of applicable EU VAT, the ECB shall pay the agreed remuneration. The Contractor shall deduct the applicable third country tax or EU VAT from the agreed remuneration.

**6.6** In case Orders under a Framework agreement are remunerated based on daily, hourly or other rates, the ECB may request the Contractor

to offer fixed prices for specific Orders or parts thereof, which shall be calculated on the basis of the agreed rates.

**6.7** The ECB may request alterations to the Deliverables and/or request additional Deliverables ('Change request') in line with the ECB Procurement Rules. The Contractor may refuse to make alterations or provide additional Deliverables if it would be technically impossible or unreasonable to do so or if no appropriate resources are available. The Contractor shall provide the ECB with a binding offer covering at least a cost-and-time evaluation and other relevant aspects that will influence the Contract, if any, within 10 calendar days of receipt of the Change request. The Contractor shall calculate all costs in accordance with the remuneration principles agreed in the Contract. If the ECB accepts an offer prepared by the Contractor in response to a Change request, the offer shall become part of this Contract and the Contractor shall perform the Change request in accordance with the terms and conditions in the Contract. If the ECB has not expressly accepted the Contractor's offer in response to a Change request, the Contractor shall perform its duties as initially agreed between the Parties, unless and until the ECB approves the Contractor's offer.

#### **Section 7 - Invoicing and terms of payment**

**7.1** All invoices shall include at least the following information: (i) the full name and address of the Contractor and of the ECB, (ii) the VAT identification number or tax number of the Contractor, (iii) the date of issue, (iv) a sequential invoice number, (v) the quantity and the nature of the goods supplied or the extent and the nature of the services rendered, (vi) the date on which the supply of goods or services was made or completed or the date on which the payment was made, in so far as that date can be determined and differs from the date of issue of the invoice, (vii) the unit price exclusive of VAT and discounts or rebates if they are not included in the unit price, (viii) the taxable amount split up per rate or per exemption applicable, (ix) the applicable VAT rate or VAT exemption, (x) the payable VAT amount, (xi) the invoice currency, (xii) a reference to the Contract, (xiii) the contract number and purchase order number, (xiv) the contracted payment terms, (xv) the Contractor's IBAN and BIC codes as well as the name of the account holder, and (xvi) a reference to the VAT exemption or where the ECB is liable for payment of VAT indicating that the supply of goods or services is exempt or subject to the reverse charge procedure. If the Contractor is remunerated on the basis of the time expended, the invoice shall also specify the number of days and hours expended, supported by a detailed record, and the applicable daily/hourly rates.

**7.2** The Contractor shall submit invoices to the ECB's Accounting Division. Electronic invoices shall be sent via email to [AP\\_invoices@ecb.europa.eu](mailto:AP_invoices@ecb.europa.eu). Electronic Invoices shall be accepted in either XML or PDF format. Invoices in XML format must be generated using the XRechnung standard and submitted using the Pan-European Public Procurement Online (PEPPOL) submission protocol. Only one invoice in XML format may be submitted per email. Invoices in PDF format, including accompanying documents in attachments relating to the invoice, if any, shall be submitted in a single PDF file. In exceptional cases, and only with the prior consent of the ECB, the Contractor may submit paper invoices.

If requesting the reimbursement of accommodation or travel expenses, the Contractor shall submit an electronic reimbursement request form together with an electronic copy of the original receipts including VAT, if such receipts exist. The reimbursement request form shall be accompanied by an invoice in accordance with the requirements set out in Sections 6.5 and 7.1.

Invoices or reimbursement request forms submitted by post shall be sent by the Contractor to the European Central Bank, Accounting, 60640 Frankfurt am Main, Germany.

The Contractor shall comply with any further instructions of the ECB relating to the provisions of this Section 7.2.

**7.3** Unless otherwise agreed, the ECB shall pay the amount of an invoice meeting the requirements set out in Section 7.1 and 7.2, either within 14 calendar days following its receipt less a 2% discount, or the full amount within 30 calendar days following its receipt. Where the date of the receipt of an invoice or request for payment is uncertain, the ECB shall pay within 30 calendar days after the date of receipt of the Deliverables.

**7.4** All payments may be made in euro or in the currency mentioned in the invoice.

**7.5** The ECB may withhold payment to the extent that an invoice does not meet the requirements set out in this Section.

**7.6** Any indemnities for operating costs or interest for late payment shall be governed by statutory law.

#### **Section 8 – Liability, maximum contractual penalties**

**8.1** The Contractor shall complete performance of the Contract by the agreed date and in the quality necessary to achieve its purpose. The Contractor shall use the relevant professional diligence, and shall comply with the state of the art in technology and industry practice.

**8.2** All Parties shall be liable for any deliberate or negligent act or omission of their staff or subcontractors in accordance with statutory law.

**8.3** Each member of a temporary grouping (*Bietergemeinschaft*) shall be jointly and severally liable (*Gesamtschuldner*) for all obligations under the Contract.

**8.4** The total sum of all contractual penalties under the Contract shall not exceed 5% of the net Contract value during the term of the Contract or, in the case of a Framework agreement, the term of the Order. The imposition of a penalty does not preclude the ECB from claiming further damages, taking the contract penalty into account, from exercising statutory rights or from terminating the Contract with immediate effect.

#### **Section 9 - Confidentiality, penalty for disclosure**

**9.1** The Contractor shall treat Confidential information in the strictest confidence, and shall not disclose it to 'Unauthorised persons'. Unauthorised persons means any persons other than (i) those who have been explicitly authorised by the ECB to access Confidential information and (ii) the Contractor's staff members and the ECB's staff members, who are directly involved in the provision of the Deliverables.

**9.2** The Contractor shall use Confidential information only for the purposes for which it is disclosed and shall not use it for its own or another person's benefit. The ECB may request the Contractor and the Staff members to sign individual confidentiality agreements.

**9.3** The Contractor shall store properly and protect all Confidential information which the ECB makes available to the Contractor or which the Contractor receives from third parties for the performance of the Contract against unauthorised access by third parties and/or accidental disclosure. The Contractor shall employ all reasonable steps under the circumstances to keep the information secret as required by Art. 2 para. 1 lit. c of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016. In case the Contractor passes on any Confidential information to a third party with the ECB's consent the Contractor has to ensure that such third party complies with this Section 9 and confirms this in writing. On termination of the Contract or an Order, the ECB may request the Contractor to destroy all copies (in whatever form) of Confidential information it has produced or received in connection with the Contract, or return it to the ECB without undue delay. The Contractor shall not invoke any right to retain Confidential information. However, the Contractor may keep copies of information to the extent required by statutory law. If the Contractor assumes a legal duty of retention, the Contractor shall inform the ECB and provide it with all information necessary to assess whether a legal obligation exists under the statutory law. To the extent that the Contractor cannot demonstrate to the ECB that a legal obligation exists, the Contractor shall refrain from keeping copies of the Confidential information.

**9.4** The Contractor shall not use the ECB's name in promotional material without the ECB's prior written consent. Such consent shall only cover the material and time period stipulated in the Contractor's request if not stated otherwise in the ECB's consent.

**9.5** The ECB may claim a contractual penalty of up to 5% of the net Contract value for each breach of confidentiality for which the Contractor is responsible, including for disclosure of Confidential information and failure to take appropriate measures to prevent unauthorised access to Confidential information. The ECB shall use equitable discretion when fixing the amount of a penalty, taking into account the seriousness of the breach and the damage caused to the ECB. At the Contractor's request, the amount of a penalty may be subject to review by a competent court. Section 8.4 applies.

**9.6** The Contractor shall promptly (i) notify the ECB in writing after becoming aware of any (a) break, interruption, corruption, attempt to break, interrupt, corrupt the security of the hardware, software, telecommunication systems and networks and other IT systems used by the Contractor and/or its subcontractors to provide the Services under this Contract (the 'IT Systems'); (b) unauthorized access or attempt to obtain unauthorized access to the IT System or any data processed in the IT System, or (c) introduction of harmful surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs or web bugs, computer viruses, trojans, or other malware, into the IT System, which has led or may potentially lead to an unauthorized access to and/or a destruction, loss, alteration of any data of the ECB and/or any other data which is subject to the provision of the Services under this Contract (the 'IT Security Incident') and (ii) investigate and – as far as possible - remediate the effects of such an IT Security Incident.

**9.7** Upon reasonable request of the ECB, the Contractor shall provide the ECB with detailed information (i) on the nature and effects of any IT Security Incident, including information on which data has been affected or may be affected, (ii) measures taken by the Contractor to remediate the IT Security Incident reported by the Contractor, and (iii) measures the Contractor will take to prevent similar IT Security Incidents.

**9.8** The Contractor's obligations relating to Confidential information, as set out in this Section, shall not apply if, and to the extent that, the Contractor is obliged by mandatory laws or enforceable orders of a court,

tribunal or public authority to disclose Confidential information. The Contractor shall, as far as possible, notify the ECB without prior request and without undue delay of i) the fact that disclosure of Confidential information is required, ii) the scope of the disclosure, and iii) all information necessary for the ECB to verify any obligations relating to Confidential information.

**9.9** The Contractor consents that the ECB may disclose this contract or information relating to the contract (i) to European or national authorities upon their reasonable request or (ii) to a third party that is not a direct competitor of the Contractor for the purpose of comparing the conditions and pricing of the contract with market conditions and to provide the ECB with a respective assessment and under the condition that the third party is obliged to treat the information confidential.

**9.10** The Contractor's obligations relating to Confidential information, as set out in this Section, shall survive and remain in force and effect also after the expiration of the Contract as long as the respective information qualifies as Confidential information.

#### **Section 10 - Data protection**

**10.1** The ECB processes personal data in or relating to the Contract and/or the fulfilment of the Contract in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98).

**10.2** In its capacity as (data) controller within the meaning of Regulation (EU) 2018/1725, the ECB shall process personal data in or relating to the Contract for contract awards and subsequent contract management. The ECB may process payment settlement data via SWIFT.

**10.3** The Contractor or any other person whose personal data are processed in relation to this Contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify any data that is inaccurate or incomplete. Data subjects also have (with some limitations) the right to delete their personal data, to restrict or object to the processing of their personal data in line with the relevant provisions of Regulation (EU) 2018/1725. For all queries relating to such data, the data subjects may address the ECB. The data subject shall have the right of recourse to the European Data Protection Supervisor (EDPS).

The ECB's Privacy Statement for the processing of personal data related to contract management is available at <https://www.ecb.europa.eu/ecb/jobsproc/tenders/html/index.en.html>

**10.4** The Contractor shall comply with, and shall ensure that its Staff members comply with, applicable data protection law.

**10.5** If the Contractor processes personal data, the Contractor shall:

- a) comply with special legal requirements as set out in the Contract (standard contractual clauses);
- b) inform the ECB of relevant changes that affect or may affect the factual or legal conditions of its data processing, in particular if they relate to transfer tools that are used in the context of the contract.

**10.6** The Contractor shall ensure that all Staff members whose personal data is transmitted by the Contractor to the ECB, are informed about the processing of their personal data in relation to this Contract by providing them with the ECB's Privacy Statement for the processing of personal data related to contract management, available at <https://www.ecb.europa.eu/ecb/jobsproc/tenders/html/index.en.html>

**10.7** The ECB may claim a contractual penalty of up to 5% of the net Contract value for each breach of Sections 10.4 to 10.6 for which the Contractor is responsible. The ECB shall use equitable discretion when fixing the amount of a penalty, taking into account the seriousness of the breach and the damage caused to the ECB. At the Contractor's request, the amount of a penalty may be subject to review by a competent court. Section 8.4 applies.

#### **Section 11 - Standards of behaviour – conflicts of interest**

**11.1** The Contractor shall comply with, and shall ensure that the Staff members comply with the standards of behaviour set out in this Section 11, including the Annex referred to in Section 11.9, as well as with any related specific obligations set out in the SCTs where applicable (together the 'standards of behaviour'). The ECB may ask the Contractor's staff members to sign a solemn declaration of compliance with these standards of behaviour.

##### **11.2 Conflicts of interest**

The Contractor and the Staff members shall avoid any situation where any benefit or potential benefit of a financial or non-financial nature or any commercial or other interest of the Contractor, its subcontractors or 'affiliated enterprises' as referred to in §§ 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*), or any European member of the network to which the Contractor belongs and which trades under the name of the Contractor ('Affiliates'), or of the Staff members, their relatives or their

close acquaintances, could influence or appear to influence the impartial and objective performance of the Contractor's contractual obligations under the Contract ('Conflict of interest').

Upon becoming aware of a potential Conflict of interest the Contractor and the Staff members shall immediately inform the ECB thereof and provide any information that the ECB reasonably requires to assess the situation. The ECB may ask the Contractor to take appropriate measures to avoid or resolve the Conflict of interest, including, but not limited to, establishing strict non-disclosure procedures, putting in place additional safeguards to protect Confidential information, and replacing any of the Contractor's staff members exposed to such a situation. If it is not possible to avoid or resolve a Conflict of interest, the ECB may suspend the right of the Contractor to participate in a process of placing Orders under Framework Agreements in accordance with Section 13 and terminate with immediate effect either the entire Contract or, in so far as legally possible, those parts of the Contract affected by the Conflict of interest.

#### 11.3 Gainful occupation of a spouse or recognised partner

The Contractor and the Staff members shall inform the ECB of any gainful occupational activity of the Contractor or the Staff members or Contractor's or any Staff members' spouse or recognised partner that may lead to a Conflict of interest affecting the performance of the Contract. Section 11.2 shall apply accordingly.

#### 11.4 Gifts and hospitality

The Contractor and the Staff members shall neither solicit nor accept for itself or any other person any advantage connected with the performance of the Contract.

'Advantage' means any gift, hospitality or other benefit of a financial or non-financial nature which objectively improves the financial, legal or personal situation of the recipient or any other person and to which the recipient is not entitled by law. Minor hospitality offered during a work-related meeting, with the exception of hospitality offered by credit institutions in the context of on-site inspections or audits undertaken by the ECB, shall not be considered as an Advantage. An Advantage is considered connected with the performance of the Contract if it is offered on the basis of the Contractor's position as a contractor of the ECB, rather than on a personal basis or on the basis of other professional relationships. The Contractor and the Staff members shall inform the ECB without undue delay of any Advantage connected with the performance of the Contract.

#### 11.5 Awards, honours and decorations

The Contractor and the Staff members shall obtain authorisation from the ECB before accepting awards, honours or decorations in connection with the performance of the Contract.

#### 11.6 Relations with external parties

The Contractor and the Staff members shall be mindful of the ECB's independence, reputation and the need to maintain professional secrecy. In the performance of the Contract, the Contractor and the Staff members shall neither seek nor take instructions from any government, authority, organisation or person outside the ECB. The Contractor and the Staff members shall inform the ECB of any attempt by a third party to influence the ECB.

The Contractor and the Staff members shall maintain caution in their relations with interest groups and the media and shall refer all requests for information from the general public or the media connected with the performance of the Contract to the ECB.

#### 11.7 Dignity at work

The Contractor shall in the course of the performance of the contract respect the dignity of the Staff members and the ECB's staff members and refrain from any inappropriate behaviour that demeans others. The Contractor's staff members shall respect the dignity of the ECB's staff and refrain from any inappropriate behaviour that demeans others. For the purpose of the standards of behaviour set out in this Section the following definitions shall apply:

- a) 'Dignity at work' means the absence of inappropriate behaviour. Inappropriate behaviour means any form of direct or indirect discrimination, physical violence, psychological harassment (also referred to as bullying or mobbing) and sexual harassment.
- b) 'Direct discrimination' shall be taken to occur where one person, because of their nationality, gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, is, has been or would be treated less favourably than another person in a comparable situation.
- c) 'Indirect discrimination' shall be taken to occur where an apparently neutral provision, criterion or practice would put a person at a particular disadvantage on the grounds of nationality, gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation compared to another person, unless the provision, criterion or practice is objectively justified.
- d) 'Physical violence' means the intentional use of physical force or the threat of physical force against another person that results in physical, sexual or psychological harm.

- e) 'Psychological harassment' means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other intentional acts that may undermine the personality, dignity or physical or psychological integrity of any person.
- f) 'Sexual harassment' means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment.

#### 11.8 Use of ECB resources

The Contractor and the Staff members shall respect and protect ECB property. ECB equipment and facilities, whatever their nature, shall not be used without the ECB's prior written authorisation for any purposes other than performing the Contract.

#### 11.9 Financial transactions

If the Contractor and/or its Staff members may have, due to the performance of their obligations under the Contract, access to information which might fulfil the criteria of 'inside information' within the meaning of Article 7 of Regulation (EU) No 596/2014 of the European Council and of the Parliament 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 (OJ L 173, 12.6.2014, p.1) ('Inside information') or other Confidential information, the Contractor shall also comply with, and shall ensure that its Staff members comply with special requirements regarding financial transactions as set out in the 'Annex on restrictions on financial transactions for Contractors and Contractors staff members', which shall be attached to the Contract.

### Section 11a – Auditing and cooperation duties

**11a.1** The Contractor shall allow the ECB or its external auditors or consultants bound by confidentiality and professional secrecy obligations to perform audits for the purposes of assessing the compliance of the Contractor with their obligations under this Contract, including obligations in respect of confidentiality, data protection and standards of behavior. Such audits may take place once per calendar year or more often if the ECB has reasonable grounds for conducting additional audits.

**11a.2** In particular, the Contractor shall:

- a) grant access to all contract documents, including invoices, accounting and other records, administrative and court decisions, regulatory actions, permits, decrees and other documents related to the Contract or the contractual performance (the 'Contract documents') as well as information, IT systems, equipment and premises which is deemed necessary to carry out an audit;
- b) submit all Contract documents and information requested without undue delay.

**11a.3** The Contractor shall ensure that no statutory provision, including any data protection law, or any of its contractual obligations to others will be violated by providing the information or Contract documents.

**11a.4** To the extent reasonably possible and required to fulfil the purposes of the audit, the Contractor shall allow the ECB or its external auditors or consultants to interview the Contractor's current and former Staff members.

**11a.5** Audits shall be conducted during normal office hours and shall not unreasonably interfere with the normal work or services of the Contractor. The Contractor shall make best efforts to cooperate with the audit. To the extent possible, the ECB shall give the Contractor at least 10 days written notice before conducting an audit.

**11a.6** The ECB and the Contractor shall meet promptly to review each audit report and to agree on an appropriate response to any deficiencies identified and changes suggested in the report. If the report indicates that the Contractor does not comply with any of the requirements set out in this Contract, the Contractor shall take prompt action to comply with the findings of the report, rectify any violation of its contractual duties and shall bear all costs of such actions. The information collected through the audit shall not be used for any purpose other than the ECB's specific use concerning the issues raised therein and the enforcement of any consequences that derive from the audit.

**11a.7** The Contractor shall fully cooperate with and assist the ECB with any internal administrative inquiry being conducted by the ECB concerning any aspect related to this Contract (e.g. as witness).

**11a.8** The provisions set out in this Section shall also apply to the Contractor's staff members and the Contractor shall ensure that its staff members comply with the obligations under this Section.

**11.a.9** The ECB's audit rights set out in this Section shall remain in force for a period of 2 years after the termination of the Contract.

**11.a.10** The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Section.

### Section 12 - Duration and termination of the Contract

**12.1** If the Contract sheet specifies that the ECB has the option to extend the Contract, the ECB may exercise this option unilaterally and shall

notify the Contractor of its request for such extension with the period of notice indicated in the Contract sheet. The ECB may exercise such option several times but not for periods shorter than one calendar month, unless stated otherwise in the Contract sheet.

**12.2** If the Contract sheet specifies that the Contract shall be extended automatically, it shall be renewed for the successive periods defined in the Contract sheet unless the ECB notifies the Contractor one month prior to the end of a contract term that the Contract will not be continued.

**12.3** The ECB may terminate Contracts without cause. The period of notice of termination shall be as stipulated in the Contract sheet. If no notice period is stipulated, it shall be six months. If the Contract concerns services according to § 627 of the German Civil Code, the ECB may terminate the Contract at any time without notice and the Contractor may terminate the Contract without cause in accordance with § 627(2) of the German Civil Code, subject to it giving three months' prior notice of termination.

**12.4** Any Party may terminate the Contract in extraordinary circumstances that render the continuation of the Contract intolerable, considering all the relevant aspects and the interests of the Parties. In particular, the ECB may terminate the Contract if:

- a) it becomes aware of circumstances that would have justified the exclusion of the Contractor or of an entity whose capacities the Contractor has relied on from the procurement procedure under Article 30 (1), (4) and (5) of the ECB Procurement Rules;
- b) the Contractor has substantially or repeatedly breached its obligations under the Contract and has not remedied such breach within a reasonable period set by the ECB, or if the breach cannot be remedied or in other circumstances defined in statutory law;
- c) the Contractor ceases trading;
- d) the Contractor does not provide a suitable replacement for a subcontractor or a Contractor's staff member within the period stated in Section 4;
- e) the Contractor has a conflict of interest that cannot be resolved by appropriate measures in accordance with Section 11.
- f) the Contractor or respectively its subcontractor does not pay to the Staff members at least the statutory and/or collectively agreed minimum wage.

**12.5** The right to terminate the Contract in accordance with its terms shall not prejudice any statutory rights or remedies of the Parties.

**12.6** Termination of this Contract must be made in writing, whereby it is sufficient to send a copy of the signed declaration by email or fax.

### Section 13 - Orders under a Framework agreement

**13.1** Where the ECB enters into a Framework agreement, this shall not impose any obligation on the ECB to place any Orders.

**13.2** A Framework agreement does not give a Contractor an exclusive right to provide Deliverables. The ECB may engage other contractors at any time.

**13.3** The ECB may, at any time, place Orders in accordance with the procedures laid down in Article 18 of the ECB Procurement Rules and in this Section. Such Orders must at least specify the scope, time limits, remuneration and any other relevant conditions for the Deliverables.

**13.4** Where a Contract constitutes a single-supplier framework agreement with a direct order (Article 18(3), first sentence, of the ECB Procurement Rules), the following applies:

- (a) The ECB shall place an Order. The Contractor shall confirm its acceptance.
- (b) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.

**13.5** Where a Contract constitutes a single-supplier framework agreement with a supplementary offer (Article 18(3), second sentence, of the ECB Procurement Rules), the following applies:

- (a) The ECB shall make a request specifying its requirements.
- (b) On receipt of the ECB's request, the Contractor shall prepare a binding supplementary offer and submit it by the date specified by the ECB. Remuneration shall be based on the prices set out in the Contract.
- (c) If the ECB accepts the Contractor's supplementary offer, it shall confirm its acceptance by placing an Order specifying the scope, remuneration, time limits and any other specifications in accordance with the supplementary offer.
- (d) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.

**13.6** Where a Contract is a multiple-supplier framework agreement, without reopening of competition (Article 18(4)(a) of the ECB Procurement Rules), the following applies:

- (a) The Contractor acknowledges: (i) that the ECB has entered into Framework agreements with a number of suppliers, as defined in the Contract sheet, including the Contractor; (ii) that the ECB has ranked the suppliers on the basis of the award criteria set out in the tender documentation; (iii) that the Contractor's offer has been ranked as specified in the Contract; and (iv) that the ECB will contact the

suppliers in the order of their ranking and place Orders with them according to their availability.

- (b) If so requested by the ECB, the Contractor may prepare a binding offer and submit it by the date specified by the ECB. The remuneration shall be based on the remuneration set out in the Contract sheet. If the Contractor is unable to submit an offer as requested, it shall inform the ECB without undue delay. If the Contractor does not submit an offer by the date set by the ECB, the ECB may request the next-ranked supplier to submit an offer.
- (c) If the ECB accepts the Contractor's offer, the ECB shall place an Order.
- (d) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.
- (e) In the event of a price adjustment pursuant to Section 6.4, the ECB may reassess the ranking of suppliers accordingly. To this end, for each supplier who requested a price adjustment, the ECB shall determine a new weighted score of the supplier's offer by replacing the financial offer with the adjusted price, while otherwise maintaining the criteria and results of the evaluation. The ECB shall then rank the suppliers based on the revised weighted scores. The ECB shall inform the Contractor in writing of any resulting change in the Contractor's position in the ranking.

**13.7** Where a Contract is a multiple-supplier framework agreement with reopening of competition (Article 18(4)(b) of the ECB Procurement Rules), the following applies:

- (a) The Contractor acknowledges: (i) that the ECB has entered into Framework agreements with a number of suppliers, as set out in the Contract sheet, including the Contractor; and (ii) that for each Order the ECB may reopen competition among all suppliers.
- (b) If the ECB intends to place an Order, it shall invite all suppliers to submit an offer in writing. The request for an offer shall specify at least the scope, timetable, time limit for the submission of offers, and award criteria.
- (c) On receipt of a request for a proposal, the Contractor may prepare and submit a written offer to the ECB which must be in accordance with the requirements set out in the request. If the Contractor is unable to submit an offer as requested, it shall inform the ECB without undue delay.
- (d) The ECB shall place the Order with the supplier who submits the best offer according to the award criteria.
- (e) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.

**13.8** Unless otherwise agreed, the ECB may terminate an Order without cause by giving two weeks' written notice. Either Party may terminate an Order without notice under the conditions set out in Section 12.4. In the circumstances listed in Section 12.4, the ECB may also decide to suspend the Contractor's right to participate in a process of placing Orders under this Contract for a reasonable period of time.

**13.9** The provisions set out in a Framework agreement and its Annexes apply to any Order under such Framework agreement, unless otherwise stated in the Order.

**13.10** If a Framework agreement expires or is terminated, the Contractor shall complete any Order placed prior to the expiry or termination of the Contract, unless the Order is terminated at the same time.

### Section 14 - Validity of certain provisions; severability

**14.1** The legal effects of any provisions of the Contract relating to intellectual property rights and confidentiality, as well as any other contractual provision whose purpose so requires, shall continue in force after the termination of the Contract.

**14.2** If any provision of the Contract is or becomes invalid, or if the Contract is incomplete, the validity of the remaining terms and provisions shall not be affected. Missing or invalid provisions shall be replaced by relevant statutory provisions.

### Section 15 - Entire agreement and written form

**15.1** The Contract constitutes the Parties' full and final agreement on the subject matter of the Contract. On the signing of the Contract by the Parties, all prior written or oral agreements between the Parties on the subject matter of the Contract shall be void. Any amendments or additions to the Contract, including to this clause on written form, and any other legally binding declarations shall be made in writing.

**15.2** The Contractor acknowledges that, under Article 38 of the Statute of the European System of Central Banks and of the European Central Bank, any commitment made on the ECB's behalf is only binding on the ECB if it is signed by the President, two members of the Executive Board or ECB staff duly authorised by the President of the ECB.

### Section 16 - Applicable law and jurisdiction

**16.1** This contract shall be governed in all respects by German law, including its validity, construction and performance, and without regard to principles of conflicts of law or the United Nations Convention on Contracts for the International Sale of Goods.

**16.2** Where the Contractor is a business person within the meaning of the German Commercial Code (*Handelsgesetzbuch*), a legal entity governed by public law or a local authority (*Gebietskörperschaft*) under public law, the exclusive place of jurisdiction for all disputes arising in connection with the Contract shall be Frankfurt am Main.

**16.3** If the Contractor has no general venue in the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes arising in connection with the Contract shall be Frankfurt am Main, Germany.

#### **Section 17 – Foreign Trade Regulations**

**17.1** With regard to applicable EU and German export control, sanctions, customs and foreign trade regulations, including person and country specific restrictions (hereafter "Foreign Trade Regulations"), the ECB may request the Contractor to sign a written confirmation that it has taken necessary measures to ensure that the contractual deliverables are performed in compliance therewith.

**17.2** In the event that any circumstances arise as a result of which the execution of the Contract is prohibited or restricted by the applicable Foreign Trade Regulations, the Contractor shall inform the ECB thereof. If it is not possible to remedy these circumstances, e.g. by replacing subcontractors, the ECB may terminate the Contract pursuant to Section 12.4.