



## TERMS OF REFERENCE FOR A DIAGNOSTIC OF ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) INTEGRATION IN THE FINANCIAL SECTOR IN PANAMA AND COSTA RICA

### I. BACKGROUND AND RATIONALE FOR THE PROJECT

The Directorate for Financial and Enterprise Affairs (DAF) assists policy makers to foster fair and efficient markets that deliver inclusive economic growth and, in turn, better lives.

#### ***About the OECD Guidelines for Multinational enterprises and supporting due diligence instruments***

Under the OECD's [Guidelines for Multinational Enterprises](#) (MNE Guidelines) the OECD developed a range of due diligence standards, including the [OECD Due Diligence Guidance for Responsible Business Conduct](#) (cross-sectoral) and standards specifically for [the financial sector](#).

The important role of financial service providers in driving global sustainability agendas has led to an increase in expectations of this sector with respect to responsible business conduct (RBC). The OECD work on RBC in the Financial Sector aims to support practitioners in the financial sector implement the MNE Guidelines with the broader aim of having the financial sector serve as an important driver of RBC and sustainability globally. Specifically, the project identifies practical approaches for how different types of financial institutions can implement the due diligence approach recommended under the MNE Guidelines to manage social and environmental risks associated with their clients and investments.

Under this project the OECD has already developed guidance for institutional investors (See OECD (2017) [Responsible Business Conduct for Institutional Investors](#)) and banks (see OECD (2019) [Due Diligence for Responsible Corporate Lending and Securities Underwriting](#)). Currently the OECD is also developing due diligence guidance for project and asset-based finance transactions.

These guidance papers provide practical recommendations for application of due diligence for banks, investors and funds in the context of certain transactions. They include targeted recommendations across the various steps of the due diligence process including i) developing policies and embedding responsible business conduct (RBC) across policy and management processes ii) identifying and assessing adverse environmental and social impacts associated with clients and investee companies iii) seeking to prevent and mitigate those impacts iv) tracking the effectiveness of due diligence processes v) communicating outcomes and vi) providing for or cooperating in remediation as appropriate. Importantly, these guidance papers move away from traditional compliance approaches and support an approach that is meaningful, prioritises preventing and mitigating environmental and social impacts and incorporates stakeholder engagement. These papers have been approved by 48 governments and endorsed by business, trade unions and civil society through a multi-stakeholder advisory group.

The OECD seeks to support the uptake of the recommendations contained in the paper through the alignment of existing and emerging standards, practices and policies with these recommendations. To support implementation efforts of responsible business conduct by host countries of financial sector practitioners in Latin America, **the OECD is commissioning a study and is now calling for proposals for a regional diagnostic of environmental, social and governance (ESG)<sup>1</sup> integration in the financial sector, with a specific focus on Panama and Costa Rica.**

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<sup>1</sup> Under the OECD Guidelines "responsible business conduct" means that business should a) make a positive contribution to economic, environmental and social progress with a view to achieving sustainable development and b) should avoid and address adverse impacts through their own activities and seek to prevent or mitigate adverse impacts directly linked to their operations,

## ***Promoting Responsible Business Conduct in Latin America and the Caribbean (LAC)***

This Market Consultation takes place within the context of a broader scope of collaboration to [promote responsible business conduct in Latin America and the Caribbean](#) between the OECD, the International Labour Organization (ILO), and the United Nations Office of the High Commissioner for Human Rights (OHCHR), and supported by the European Union. This broader project supports governments and businesses in their efforts to promote and uphold responsible business conduct in line with international standards. This project will contribute to promote inclusive and smart economic growth by creating enabling conditions for sustainable businesses and enhancing a level playing field for responsible business conduct in LAC, and, in the long-term support beneficiary countries in making responsible business conduct a policy priority.

## **II. OBJECTIVES OF THE MARKET CONSULTATION**

**The objective of this Market Consultation is to source one or two contractors to provide a diagnostic of how the financial sector<sup>2</sup> and related regulatory framework in Latin America and the Caribbean (LAC), and specifically Panama and Costa Rica is integrating environmental, social, and governance (ESG) issues into its risk management and operations.**

It should furthermore assess how current policy and practice relates to relevant OECD tools, such as OECD due diligence guidance (see above) and of implementation – if any – of due diligence initiatives and related initiatives that could be leveraged. The high-level diagnostic should lead to strategic recommendations on how to advance due diligence for responsible business conduct in the financial sector in LAC, and specifically in Panama and Costa Rica.

Recommendations should help target the OECD’s outreach and in-country training activities, and inform private sector implementation and policy-making by the countries concerned, donors and multilateral institutions.

**The diagnostic will be based on desktop research and interviews with relevant stakeholders, and result in a report with key findings and strategic recommendations based on the research. The main deliverable will be submitted as a final draft for publishing by the OECD.**

## **III. Scope of work**

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products or services by a business relationship. “Environmental, Social and Governance” (ESG) is a set of criteria for a company’s operations that financial service providers may take into account in their risk management frameworks and strategies. Environmental criteria looks at how a company performs as a steward of the natural environment. Social criteria examines how a company manages relationships with its employees, suppliers, customers and the communities where it operates and often includes human rights and labour rights. Governance deals with a company’s corporate governance – its leadership, executive pay, audits and internal controls, and shareholder rights. The scope of RBC and ESG criteria are highly related. Both relate to social and environmental considerations, however RBC is broader and specific to the standards and recommendations set out in the OECD Guidelines for Multinational Enterprises. ESG criteria may be used primarily to identify financial risks rather external risks to people and the environment. For the purposes of this note the two are terms are used interchangeably.

<sup>2</sup> For the purposes of this diagnostic the term ‘financial sector’ includes institutional investors (investment managers and asset owners including pension funds), commercial and public banks, export credit agencies, and capital markets. The scope of the research may be further refined by the consultant in consultation with and with the agreement of the OECD.

The OECD will work with contractor(s) to produce reports, which are divided in two lots of work: Panama (Lot 1) and Costa Rica (Lot 2). **Contractors may bid on Lot 1 and/or Lot 2.**

### III. A. Lot 1: PANAMA

The OECD seeks a contractor to provide a diagnostic of how the financial sector and related regulatory framework in Panama is integrating ESG issues into its risk management and operations.

#### III. A. Lot 1 – Scope of work

The diagnostic report will include an analysis on the following:

1. **High-level mapping of regulatory actors.** This will include an overview of the main regulatory agencies involved in overseeing the financial sector in Panama (e.g. central banks, supervisors, securities regulators, etc.). It may also include key sub-national or regional bodies. Other than identifying the stakeholders, the mapping exercise will include the agencies' competencies (and the respective legal/regulatory reference).
2. **Research on regulation/policy or initiatives<sup>3</sup> (or lack thereof) regarding expectations of financial sector practitioners<sup>4</sup> to integrate RBC/ESG issues<sup>5</sup> into governance, strategy and risk management.** Relevant areas of policy analysis may include:
  - Scope of fiduciary duties (as relevant) and existence (or lack thereof) of mandates for financial service providers to integrate ESG issues into investment, finance, or advisory processes.
  - Expectations (or lack thereof) that ESG risks are understood and discussed at board level and embedded into the strategy of a financial service providers.
  - Disclosure/reporting expectations on ESG issues for financial service providers.
  - Extent to which supervisory authorities are called on to support/engage with financial service providers to ensure effective integration of the ESG issues into risk management and activities.

For all policy areas examined the scope of application (e.g. types of funds, products or services covered) as well as types of risks covered (e.g. climate, human rights issues etc.) and any thresholds (as relevant) (materiality, monetary value etc.) should be outlined.

3. **Research on policies and practices of Panamanian financial institutions with respect to RBC/ESG integration**
  - a. Extent to which the top 10 largest Panamanian institutional investors, funds, and commercial banks integrate ESG issues into their activities and decision making processes. This may include:

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<sup>3</sup> This may include law/regulation as well as government policy, action plans, or voluntary stakeholder initiatives related to promoting ESG in the financial sector.

<sup>4</sup> See footnote 1

<sup>5</sup> See footnote 2

- i. Scope of RBC/ESG policies and coverage of those policies, including reference to international standards such as the OECD Guidelines, Equator Principles, PRI.
  - ii. Overview of ESG strategies (exclusion, integration, impact) and coverage of strategies across client/investment portfolios.
  - iii. Size and profile of ESG teams.
  - iv. Incentive structures related to ESG performance (where relevant)
- b. Extent to which the stock exchange of Panama requires ESG reporting by listed companies.

For ESG policies and practices the scope of application (e.g. types of funds, products or services covered) as well as types of risks covered (e.g. climate, human rights issues etc.) and any thresholds (as relevant) (materiality, monetary value etc.) should be outlined

### III. A. Lot 1 – Phases of work

In developing the diagnostic report, the consultant will carry out the following two phases of work:

**Phase 1: Desktop research, interviews.** The consultant will conduct desktop research and interviews on the topics covered by the diagnostic report. The OECD will review the research methodology for the desktop research including the sources to be used, the interview questions and list of interviewees.

**Phase 2: Drafting of diagnostic report.** The OECD is expected to review a: draft outline (i.e. structure) of the report and three drafts of the report, however, this may be increased if needed. The final report should follow the OECD style guide. Following the second draft of the report, the OECD will manage and facilitate a consultation process with stakeholders. Feedback will be aggregated by the OECD Secretariat and shared with the contractor for inclusion in the final report.

**Phase 3: Drafting final report.** The consultant should reflecting additional feedback from stakeholders in the final report. The final report should follow the OECD style guide.

### III. A. Lot 1 – Deliverables

The Contractor(s) is expected to produce a diagnostic report covering the topics indicated in Scope of Work. The full report is expected to be 10-20 pages.

The sections of the report are expected to include the following:

#### A. Summary of key findings (1-2 page)

#### B. Focus on Panama (7-10 pages)

B.1 Methodology and also limitations of the research, including gaps in available information<sup>6</sup>

B.2 Mapping of financial regulatory actors in Panama

B.3 Research on regulation/policy/initiatives(or lack thereof) in Panama regarding expectations of financial sector practitioners to integrate RBC/ESG issues

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<sup>6</sup> For example, the contractor(s) may identify that information on practices of certain financial institutions is lacking.

B.4 Research on policies and practices of Panamanian financial institutions with respect to RBC/ESG integration

#### **D. Conclusions and recommendations (1-2 pages)**

#### **III. B. Lot 2 – COSTA RICA**

The OECD seeks a contractor to provide a diagnostic of how the financial sector and related regulatory framework in Costa Rica is integrating ESG issues into its risk management and operations.

#### **III. B. Lot 2 – Scope of work**

The diagnostic report will include an analysis on the following:

1. **An introductory high-level overview of the financial sector in LAC.** This will include, for example, an overview of the main industries (institutional investment, insurance, banking, exchanges), their size (e.g. by assets under management, market value, etc.), an overview of the largest actors (banks, investors, funds, associations), geographic dispersion of the sector, and general characteristics of the sector within LAC.
2. **High-level mapping of regulatory actors.** This will include an overview of the main regulatory agencies involved in overseeing the financial sector in Costa Rica (e.g. central banks, supervisors, securities regulators, etc.). It may also include key sub-national or regional bodies. Other than identifying the stakeholders, the mapping exercise will include the agencies' competencies (and the respective legal/regulatory reference).
3. **Research on regulation/policy or initiatives<sup>7</sup> (or lack thereof) in Costa Rica regarding expectations of financial sector practitioners<sup>8</sup> to integrate RBC/ESG issues<sup>9</sup> into governance, strategy and risk management.** Relevant areas of policy analysis may include:
  - Scope of fiduciary duties (as relevant) and existence (or lack thereof) of mandates for financial service providers to integrate ESG issues into investment, finance, or advisory processes.
  - Expectations (or lack thereof) that ESG risks are understood and discussed at board level and embedded into the strategy of a financial service providers.
  - Disclosure/reporting expectations on ESG issues for financial service provider.
  - Extent to which supervisory authorities are called on to support/engage with financial service providers to ensure effective integration of the ESG issues into risk management and activities.

For all policy areas examined the scope of application (e.g. types of funds, products or services covered) as well as types of risks covered (e.g. climate, human rights issues etc.) and any thresholds (as relevant) (materiality, monetary value etc.) should be outlined.

4. **Research on policies and practices of Costa Rican financial institutions with respect to ESG integration**

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<sup>7</sup> This may include law/regulation as well as government policy, action plans, or voluntary stakeholder initiatives related to promoting ESG in the financial sector.

<sup>8</sup> See footnote 1

<sup>9</sup> See footnote 2

- a. Extent to which the top 10 largest Costa Rican institutional investors, funds, and commercial banks integrate ESG issues into their activities and decision making processes. This may include:
  - i. Scope of RBC/ESG policies and coverage of those policies, including reference to international standards such as the OECD Guidelines, Equator Principles, PRI.
  - ii. Overview of ESG strategies (exclusion, integration, impact) and coverage of strategies across client/investment portfolios.
  - iii. Size and profile of ESG teams.
  - iv. Incentive structures related to ESG performance (where relevant)
- b. Extent to which the stock exchange of Cost Rica requires ESG reporting by listed companies.

For ESG policies and practices the scope of application (e.g. types of funds, products or services covered) as well as types of risks covered (e.g. climate, human rights issues etc.) and any thresholds (as relevant) (materiality, monetary value etc.) should be outlined.

### III. B. Lot 2 – Phases of work

In developing the diagnostic report, the consultant will carry out the following two phases of work:

**Phase 1: Desktop research, interviews.** The consultant will conduct desktop research and interviews on the topics covered by the diagnostic report. The OECD will review the research methodology for the desktop research including the sources to be used, the interview questions and list of interviewees.

**Phase 2: Drafting of diagnostic report.** The OECD is expected to review a: draft outline (i.e. structure) of the report and three drafts of the report, however, this may be increased if needed. Following the second draft of the report, the OECD will manage and facilitate a consultation process with stakeholders. Feedback will be aggregated by the OECD Secretariat and shared with the contractor for inclusion in the final report.

**Phase 3: Drafting final report.** The consultant should reflecting additional feedback from stakeholders in the final report. The final report should follow the OECD style guide.

### III. B. Lot 2 – Deliverables

The Contractor(s) is expected to produce a diagnostic report covering the topics indicated in Scope of Work. The full report is expected to be 10-20 pages.

The sections of the report are expected to include the following:

- A. Summary of key findings (1-2 page)
- B. An introductory high-level overview of the financial sector in LAC (2-3 pages)
- B. Focus on Costa Rica (7-10 pages)

B.1 Methodology and also limitations of the research, including gaps in available information<sup>10</sup>

B.2 Mapping of financial regulatory actors in Costa Rica

B.3 Research on regulation/policy/initiatives (or lack thereof) in Costa Rica regarding expectations of financial sector practitioners to integrate RBC/ESG issues

B.4 Research on policies and practices of Cost Rican financial institutions with respect to ESG integration

### **C. Conclusions and recommendations (1-2 pages)**

## **IV. TIMELINE**

The project is expected to take place over a period of approximately 4 months. Research under Lot 1 and Lot 2 will take place in parallel. Therefore consultants bidding for both Lot 1 and Lot2 will be expected to conduct research within the timeframe.

The report, once finalised between the contractor(s) and the OECD, will be shared by the OECD with the relevant government agencies in Panama and Costa Rica, and prepared by OECD communications staff for publication.

## **V. MINIMUM REQUIREMENTS FOR BIDDERS FOR BOTH LOT 1 AND LOT 2**

**Candidates may apply to carry out Lot 1 and/or Lot 2.<sup>11</sup>**

Candidates responding to this Market Consultation shall demonstrate the following minimum requirements:

- a demonstrated 7+ years expertise on ESG issues in the financial sector
- experience working with the financial sector within the region (experience may include research or other project work)
- an understanding of the relevant policy environment within Panama and/or Costa Rica being bid on
- a proven record of strong analytical and drafting skills, experience designing and conducting interviews, and project management
- full written and oral proficiency in English and Spanish
- Available to conduct the research within 6 months of signature of the contract (expected start date of 1 March 2020).

In addition to this, it is recommended that the candidate(s) have:

- substantive knowledge of OECD tools and instruments relating to responsible business conduct (e.g. OECD Guidelines for Multinational Enterprises, [Responsible Business Conduct for Institutional](#)

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<sup>10</sup> For example, the contractor(s) may identify that information on practices of certain financial institutions is lacking.

<sup>11</sup> Candidates may bid for one or both Lots.

[Investors](#)), [Due Diligence for Responsible Corporate Lending and Securities Underwriting](#)), or other relevant instruments (e.g. UN Guiding Principles on Business and Human Rights)

## VI. RESPONDING TO THE MARKET CONSULTATION

The deadline for submitting proposals is **18 January 2020, 21:00 (CET/ Paris Time)**. Offers received after this deadline may not be considered. Applications shall be sent by email before the deadline to [Inmaculada.VALENCIA@oecd.org](mailto:Inmaculada.VALENCIA@oecd.org).

To participate in this market consultation, interested bidders are requested to provide a technical offer (the technical offer includes the concept note, CV(s) and written sample) and budget proposal in two separate documents. The technical proposal shall not mention any information regarding the financial proposal.

Candidates responding to this market consultation shall provide:

A **Concept Note** of no more than 10 pages including the following sections:

- A section demonstrating or describing the applicant's
  - expertise on ESG issues in the financial sector
  - experience working with the financial sector within the region (experience may include research or other project work)
  - understanding of the relevant policy environment in the LAC region, Panama and/or Costa Rica (depending upon the scope of the bid)
  - research and analytical work, including experience designing and conducting interviews, and project management
  - language competencies
  - knowledge of OECD tools and instruments relating to responsible business conduct (e.g. OECD Guidelines for Multinational Enterprises, [Responsible Business Conduct for Institutional Investors](#)), [Due Diligence for Responsible Corporate Lending and Securities Underwriting](#)) or other relevant instruments (e.g. UN Guiding Principles on Business and Human Rights);
- Proposed methodology of the research, including scope of desktop research, expected number of interviews, selection process for interviewees;
- A general description of the contractor(s) availability to undertake the project in conformance with the proposed set of tasks and the timeline that has been proposed;
- Proposed governance of the project (including roles and responsibilities of each member of the contractor(s) team if applicable);
- High-level workplan including the timeframe when the bidder will be able to start and complete the tasks.



The **Curricula Vitae** of the key elements of the proposed contractor(s) team, highlighting the following aspects:

- Relevant professional qualifications and work experience related to the minimum requirements indicated in chapter V, and
- Any additional qualification;

**Examples** of publications and/or articles demonstrating proficiency for the languages mentioned in Chapter V.

A **budget proposal** providing the cost to carry out the services and provide the deliverables described above. The candidate is expected to submit a financial proposal using the template below.

The proposal should include:

- A lump sum for the execution of the work
- A detailed fee for the activities under each project stage
- An indication of the daily rate of each member of the contractor(s) team
- The total amount excluding taxes, *and* including any applicable taxes

If candidates need any clarification on the Terms of Reference or procurement process, they can **submit their questions by email prior to 8 January 2020, 21:00 CET to [Inmaculada.VALENCIA@oecd.org](mailto:Inmaculada.VALENCIA@oecd.org)**. The OECD Secretariat will publish responses to questions submitted on the website <http://mneguidelines.oecd.org/resources/>.

		Number of days	€
<b>Lump sum for execution of the described activities</b>			
<b>Detail of activities:</b>			€
<b>Phase 1</b>	<b>Desktop research, interviews and draft diagnostic report</b>		
	Draft 1		

	Draft 2		
<b>Phase 2</b>	<b>Consultation with key stakeholders on draft 2 of the report</b>	0	
	<i>Note: Phase 2 will be carried out by the OECD Secretariat.</i>  <i>Some time may be allocated to reviewing the OECD feedback with the consultant.</i>		
<b>Phase 3</b>	<b>Final report</b>		

<b>PROJECT TEAM</b>				
<b>Name</b>	<b>Profile type (manager, senior, junior)</b>	<b>Daily rate</b>	<b># of days/staff</b>	<b>Total in €</b>

## **VII. EVALUATION CRITERIA**

An evaluation panel will evaluate all applications meeting the minimum requirements described above. The evaluation will be carried out upon the criteria described “Evaluation criteria” below.

The panel will evaluate each application for Lot 1 and/or Lot 2 independently. In each case, shortlisted candidates may be invited to participate IN interviews in order to clarify and assess their proposals.

The OECD will assess the proposals against the following criteria and weighting, based on the information provided during the Application Process:

<b>Criteria</b>	<b>Weight</b>
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Experience background (based on concept note and CV)	40%
<ul style="list-style-type: none"> <li>• expertise on environmental, social and governance issues (ESG) in the financial sector</li> </ul>	
<ul style="list-style-type: none"> <li>• an understanding of the relevant policy environment within LAC and specifically within Panama and/or Costa Rica</li> </ul>	
<ul style="list-style-type: none"> <li>• experience working with the financial sector within the region (experience may include research or other project work)</li> </ul>	
<ul style="list-style-type: none"> <li>• strong analytical and drafting skills, experience designing and conducting interviews, and project management</li> </ul>	
<ul style="list-style-type: none"> <li>• proficiency in English and Spanish</li> </ul>	
Quality and relevance of the proposal (based on concept note)	35%
<ul style="list-style-type: none"> <li>• Availability and timeframe</li> </ul>	
Financial Offer	25%

Shortlisted candidates may be invited for an interview **to assess skills, which have demonstrated through the Application process**

#### VIII. ADDITIONAL INFORMATION

##### Working with the OECD Secretariat

As stated above, the OECD Secretariat will provide feedback to the contractor(s) at key stages of the process (as decided upon between the contractor(s) and the OECD Secretariat). For example, this is likely to include: the research plan (including the methodology and scoping of the paper); interview questions and list of interviewees; prioritisation of key RBC risks; three drafts of the paper. Check-in calls will be organised semi-regularly (e.g. every week or two weeks) as needed.

##### Language

The outline, drafts and report will be written in English.

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**Event management and costs**

The OECD will coordinate venue booking and hospitality organisation and costs for events (eg. consultations) foreseen as part of this project. The contractor(s) should only budget their associated time for attending events.

**Publication**

The final report will be published by the OECD and final editing, translation or publishing work does not come under the scope of this project.

**Intellectual Property**

Any intellectual product that results from this contract shall be the property of the OECD.

## **MINIMUM GENERAL CONDITIONS FOR OECD CONTRACTS**

The following articles constitute of the minimum general conditions of the contract to be signed between the OECD and the Contractor to whom the Competitive process would have been awarded (the “Contract”). These minimum general conditions are not exclusive and could, as the case may be, be modified and/or complemented with additional conditions in the Contract.

### ***ARTICLE 1 – GOODS OR SERVICES***

The goods and/or services provided under the Contract (hereinafter “The Work”) shall strictly comply with the standards mentioned in the Terms of Reference. It is expressly agreed that the Contractor shall perform the Work in strict accordance with all standards or, where no such standards have yet been formulated, the authoritative standards of the profession will be the applicable norms.

### ***ARTICLE 2 - PRICES***

Prices charged by the Contractor for the Work shall not vary from the prices quoted by the Contractor in its Tender, with the exception of any price adjustment authorised in the Contract.

### ***ARTICLE 3 - PAYMENTS AND TAXES***

Payment will be made in Euros.

In case the Contractor is located outside of France, the Organisation may be exempted from taxation, including from sales tax and value added tax (V.A.T.). Therefore, the Contractor shall not charge any such tax to the Organisation. All other taxes of any nature whatsoever are the responsibility of the Contractor.

In other cases, the prices shall be indicated exclusive of tax. If the amounts payable to the Contractor for the Work are subject to value added tax (V.A.T.), the Contractor's invoice will show the applicable V.A.T. rate and corresponding amount on the invoices, as well as the total amount before and after such tax.

### ***ARTICLE 4 - DELAY IN EXECUTION***

The Contractor shall perform the Work in accordance with the time schedule and the terms specified in the Contract, this being an essential element of the Contract. Any delay will entitle the Organisation to claim the payment of penalties as negotiated between the Contractor and the Organisation.

### ***ARTICLE 5 - ACCESS TO THE PREMISES AND SYSTEMS***

If the Work requires at any time the presence of the Contractor and/or of the Contractor’s employees, agents or representatives (“Personnel”) on the premises of the Organisation and/or access to the OECD’s systems, they shall observe all applicable rules of the Organisation, in particular security rules, which the Organisation may enforce by taking any measures that it considers necessary.

## ***ARTICLE 6 - IMPLEMENTATION OF THE WORK***

The Contractor undertakes that the Work shall be performed by the individual(s) named in the Contract or otherwise agreed in writing by the Organisation. The Contractor may not replace said individual(s) by others, without the prior written consent of the Organisation.

## ***ARTICLE 7 - AUTHORITY***

The Contractor hereby declares having all rights and full authority to enter into the Contract and to be in possession of all licences, permits (including work permits for Contractor's Personnel) and property rights, in particular intellectual property rights, necessary for the performance of the Contract.

## ***ARTICLE 8 - LIABILITY***

The Contractor shall indemnify the Organisation and its personnel against any and all claims, losses, damages, costs or liabilities of any nature whatsoever, including those of third parties, arising directly or indirectly out of or in connection with Contractor's performance or breach of the Contract.

The Contractor shall, at its own cost, maintain throughout the duration of the Contract and as necessary thereafter adequate insurances to cover such risks, including any risks related to the execution of the Contract.

## ***ARTICLE 9 - REPRESENTATIVES***

Neither the Contractor nor any of its Personnel (including but not limited to its experts, employees, agents or representatives):

- shall in any capacity be considered as members of the staff, employees or representatives of the Organisation;
- shall have any power to commit the Organisation in respect of any obligation or expenditure whatsoever;
- shall have any claim to any advantage, payment, reimbursement, exemption or service not stipulated in the Contract. In particular and without limitation, it is understood that neither the Contractor, nor any of the Contractor's Personnel may in any manner claim the benefit of the privileges and immunities enjoyed by the Organisation or by its personnel.

## ***ARTICLE 10 - INTELLECTUAL PROPERTY***

The results and products, both intermediate and final, of the Work carried out in performance of the Contract, including all intellectual property rights arising therefrom, shall belong exclusively to the Organisation. These rights shall vest in the Organisation as and when the Work is created, or if this is not legally possible, be assigned to the Organisation by the Contractor throughout the world, on a perpetual basis.

As exclusive owner of the Work, the OECD enjoys full rights over it, including (but not limited to) the right to license, publish, display, represent, reproduce, adapt, translate, modify, create derivative work, sell, exploit, administer, use and dispose of the Work and to retain any and all benefit, revenue and income accruing therefrom, without the prior written consent of the Contractor being required. In particular, the OECD may freely decide to publish or not the Work (and/or any adaptation thereof).

All right in the Contractor's pre-existing proprietary intellectual property included in the results and products of the Work shall remain with the Contractor. If the Work includes any pre-existing materials owned by the Contractor, the Contractor grants to the OECD a perpetual, irrevocable, non-exclusive, sub-licensable, worldwide and royalty-free licence to use such materials as part of the Work.

The Contractor warrants that the results and products of the Work do not infringe the intellectual property or other rights of any third parties.

The Contractor shall not use the OECD name and/or logo without the prior written consent of the OECD.

### ***ARTICLE 11 - TRANSFER OF RIGHTS OR OBLIGATIONS***

The Contractor shall not transfer to any third party any rights or obligations under this Contract, in whole or in part, or sub-contract any part of the Work, except with the prior written consent of the Organisation.

### ***ARTICLE 12 - TERMINATION***

Without prejudice to any other remedy for breach of Contract the Organisation may claim, the Organisation reserves the right to terminate the Contract without any prior notice or indemnity:

- i) in the event of failure by the Contractor to comply with any of its obligations under the Contract; and/or
- ii) if the Contractor, in the judgment of the Organisation, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

The Organisation may also, by written notice sent through registered mail with recorded delivery to the Contractor, terminate the Contract, in whole or in part, at any time for its convenience. The notice shall specify that termination is for the Organisation's convenience, the extent to which Work of the Contractor under the Contract has been completed, and the date upon which such termination becomes effective. The Work that is complete on receipt of notice by the Contractor shall be accepted by the Organisation, at the Contract terms and prices. For the remaining, the Organisation may elect:

- i) To have any portion completed at the Contract terms and prices; and/or;
- ii) To cancel the remainder and pay to the Contractor the amount corresponding to the completed work.

### ***ARTICLE 13 – FINANCIAL INFORMATION***

During the Contract and at least seven years after its termination, the Contractor shall :

- i). keep financial accounting documents concerning the Contract and the Work ;
- ii). make available to the Organisation or any other entity designated by the Organisation, upon request, all relevant financial information, including statements of accounts concerning the Contract and the Work, whether they are executed by the Contractor or by its any of its subcontractors.

The Organisation or any other entity designated by the Organisation may undertake, including on the spot, checks related to the Contract and/or the Work.

#### ***ARTICLE 14 – ETHICAL PRACTICES***

Having due regard to the nature and purposes of the OECD as an international organisation, the Contractor shall adhere to the highest ethical and business responsibility standards. In particular, the Contractor shall comply with (and shall ensure that its Personnel complies with) all applicable national and international rules relating to ethical and responsible standards of behaviour, including, without limitation, those dealing with human rights, environmental protection, sustainable development, anti-bribery and anti-corruption.

OECD staff may not accept, directly or indirectly, any gratuity, gift, favour, loan or anything of monetary value. In addition, we request our suppliers/providers to never put the Organisation or one of its staff members in an ethically unacceptable situation by offering gifts or hospitality of any kind.

#### ***ARTICLE 15 - ARBITRATION CLAUSE***

Given the status of the Organisation as an international organisation, the Parties specifically agree that their rights and obligations shall be governed exclusively by the terms and conditions of the Contract.

Any dispute, controversy or claim arising out of or relating to the Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the PCA Arbitration Rules 2012. The number of arbitrators shall be one. The language to be used in the arbitral proceedings shall be English. The place of arbitration shall be Paris (France). The Parties expressly renounce their right to seek the annulment or setting-aside of any award rendered by the arbitral tribunal, or if this renunciation is not legally possible, the Parties expressly agree that if an award rendered by the arbitral tribunal is annulled, the jurisdiction ruling on the annulment proceedings cannot rule on the merits of the case. The dispute will therefore be settled by new arbitral proceedings in accordance with this clause.

Nothing in the Contract shall be construed as a waiver of the privileges and immunities that the OECD enjoys as an international organisation.

#### ***ARTICLE 16 – CONFIDENTIALITY***

Any information, on any medium whatsoever, sent to the Contractor to which the Contractor obtains access on account of the Contract, shall be held confidential. In consequence, the Contractor shall not disclose such information without the written prior consent of the Organisation. The Contractor shall ensure that the Contractor's Personnel is expressly bound by and respect the provisions of the present clause.

#### ***ARTICLE 17 - DATABASES***

The Contractor is informed that the OECD compiles an Organisation wide database of suppliers and that information relating to the Contractor will be included in this database. Subject to compliance with the OECD's policies on protection of personal information, the database will contain any relevant information with respect to the Contractor and the Contractor's contracts with the Organisation, including, without limitation, the financial terms, the contract deliverables and evaluations of the Contractor's work. It is the Organisation's policy to allow access to the database to certain management and administrative staff.

Notwithstanding anything expressed or implied by the present Contract or at law, and in particular any obligations of confidentiality undertaken by the Organisation, the Contractor understands and accepts that



the OECD will collect, process and disclose the information related to the Contractor in the manner described above and hereby waives all claims against the Organisation and its personnel in this respect.