



EUROPEAN CENTRAL BANK  
EUROSYSTEM

## CONTRACT FOR THE PROVISION OF SERVICES

between

The European Central Bank (the 'ECB')  
Kaiserstraße 29  
60311 Frankfurt am Main  
Germany

and

[*official name and legal form*] (the 'Contractor'<sup>1</sup>)  
[*registration number*]  
[*full address*]

(the 'Parties')

### WHEREAS

- following a procurement procedure [*insert details*], in which the Contractor has offered to provide services to the ECB with regard to Activity NEWRO, the Contractor was found to offer best value for money,
- the ECB has accepted the Contractor's offer,
- in the performance of the Contract, confidentiality, avoidance of conflicts of interest with regards to intellectual property rights and timeliness are of essence.

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<sup>1</sup> In case of a consortium lacking legal personality: consortium leader

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THE PARTIES HAVE AGREED AS FOLLOWS:

### **1. Scope of Services**

1.1 The Contractor shall provide the following services (the 'Services') to the ECB from [DD MM YYYY] until [DD MM YYYY]:

- a) a multidisciplinary market study on medium- and long-term research technologies that could be used to further secure euro banknotes in the future. The market study shall evaluate research technologies according to a methodology to be developed by the Contractor; and
- b) a detailed report setting out the findings of the multidisciplinary market study referred to under a).

The scope of Services is specified further in **Annex 1** to this contract (the 'Contract').

1.2 The ECB may, within reasonable limits, specify the scope of Services and the way the Services are performed by means of instructions. The Contractor shall comply with such instructions.

1.3 The Contractor acknowledges having set aside 10% of the budgeted expenses for unforeseen additional technical research that was not initially considered by the Parties. The ECB may additionally request further alterations to the Services and/or request additional services and the Contractor shall adapt their performance accordingly. The Contractor may refuse to perform alterations or additional services if the performance is technically impossible or unreasonable or if no appropriate resources are available. If the request entails changes to the Contract the Contractor shall inform the ECB without undue delay and shall not implement any alterations or additional services before the ECB has confirmed its acceptance in writing.

1.4 The Contractor's contact point within the ECB shall be the Directorate Banknotes. The ECB appoints [Mr/Ms YY] and the Contractor appoints [Mr/Ms YY] as contract managers.

### **2. Place of performance; house rules; security clearance**

2.1 The Services shall be principally delivered at the Contractor's registered office.

2.2 If Services are performed on the ECB's premises the Contractor shall comply with, and shall ensure that their staff and subcontractors comply with, the ECB's house rules in

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the version in force at the time of performance (published at <http://www.ecb.europa.eu> under the link 'For suppliers'). The current version of the ECB's house rules is attached as **Annex 2**.

Should any future changes to the ECB's house rules affect the performance of the Services from the Contractor's reasonable point of view, the Contractor shall inform the ECB without delay. The Parties to this Contract shall then discuss and, if necessary, agree on any amendments to this Contract.

**3. The Contractor's staff; subcontracting**

3.1 The Contractor shall deploy the following staff to perform the Services:

Name	Function	Power of representation
		Y/N

The Contractor shall not replace these staff unless it becomes necessary for reasons beyond the Contractor's control (for example sickness or termination of the employment contract). In such case the Contractor shall propose a replacement with the same level of experience and qualifications within 10 calendar days from the moment the Contractor becomes aware of the staff member's unavailability. The assignment of the replacement is subject to the ECB's prior approval which shall not be unreasonably withheld.

3.2 If a member of the Contractor's staff does not have the required qualifications or experience, does not obtain security clearance or breaches repeatedly or substantially the ECB's house rules, as well as for other serious reasons, the ECB may request the Contractor to replace the member of staff, free of additional charge, within 10 calendar days of receiving written notice from the ECB. The assignment of the replacement shall be subject to the ECB's prior approval which shall not be unreasonably withheld.

3.3 The Contractor shall act as an independent contractor in the performance of the Contract and shall be free to determine the way the Services are performed within the limits set out in this Contract. The ECB and the Contractor agree that this Contract does not establish an employment relationship between the ECB and the Contractor, or any of their staff or subcontractors. Accordingly, the Contractor and their subcontractors shall be responsible for the payment of all taxes and social security contributions

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arising out of their activities under this Contract. It is the Contractor's exclusive responsibility to ensure that their staff and subcontractors have fulfilled all obligations required by legislation concerning aliens in all places of performance, including the obligation to hold a valid residence and work permit for the term of the Contract.

- 3.4 Unless otherwise agreed, the Contractor shall use their own staff to perform the Services. Subcontracting to a third party shall require the ECB's prior written consent. The ECB may withhold consent if it has a specific interest in personal performance by the Contractor or if the subcontractor does not meet the ECB's requirements, as well as for other justified reasons. The Contractor's own responsibility for performing the Services in accordance with this Contract shall remain unaffected.

#### **4. Remuneration**

- 4.1 The ECB shall pay for the provision of the Services a fixed price of EUR [amount] plus VAT, where applicable in instalments and subject to the conditions further described in Annex 1.
- 4.2 If the ECB requests additional Services (above 10 % of the budgeted expenses (or part of) set aside for unforeseen additional technical research), it shall pay an hourly rate of EUR 100 plus VAT, where applicable.
- 4.3 The fixed price and the hourly rates shall cover all costs and expenses relating to the provision of the Services, in particular expenses for accommodation, travel and subsistence.
- 4.4 At the end of the work phases described in Annex 1, the Contractor shall submit invoices to the ECB. All invoices shall indicate at least a reference to the Contract, the purchase order number, if any, the Contractor's tax reference number, if any, a summary of the Services performed, the total amount to be paid, the VAT rate and amount, where applicable, and the IBAN and BIC codes for the Contractor's bank account. Invoices shall be sent to:

European Central Bank  
Accounting & Procurement Division  
Kaiserstraße 29  
60311 Frankfurt am Main  
Germany

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### **5. Intellectual property rights**

- 5.1 The Contractor shall grant to the ECB irrevocably the non-exclusive right to use all documents, data and other work results that the Contractor produces in performing the Services on their own or together with third parties (together the 'Work results') from the moment the Work results are protected by intellectual property law.
- 5.2 The ECB's right of use shall not be subject to any restrictions in terms of time, place or application and shall cover all forms of use known at the time of entering into the Contract. This shall include, without being limited to, the rights to copy, distribute, process, modify, further develop and/or dispose of the Work results or create derivative works based on the Work results and use them to the same extent as the original results. The ECB may transfer the right of use or grant rights thereon (sublicences) to third parties. The right to be designated as author and other mandatory moral rights, if any, shall remain unaffected.
- 5.3 Without prejudice to Articles 5.1 and 5.2, the Contractor shall remain the owner of all rights relating to deliverables, documents, tools, methodologies, processes, ideas and know-how that it developed/owned prior to the Contract or develops/acquires independently of the Services ('Pre-existing deliverables'). If such Pre-existing deliverables are made available to the ECB under the Contract, the Contractor shall grant to the ECB the non-exclusive right to use, copy and distribute such Pre-existing deliverables internally and within the European System of Central Banks.
- 5.4 The Contractor shall transfer ownership to the ECB of all physical items containing, embodying or representing the Work results.
- 5.5 The charge for granting the rights of use set out in Article 5.1, 5.2 and 5.3 shall be included in the agreed remuneration.
- 5.6 The Contractor represents and warrants that they are authorised to grant the intellectual property rights as set out in Article 5.1, 5.2 and 5.3 and that the use of such rights by the ECB in accordance with this Contract does not breach any third party property rights. In case of a dispute the Contractor shall indemnify the ECB from or hold it harmless against all third party claims in accordance with statutory law.

### **6. Confidentiality; discretion; data protection**

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6.1 The Contractor shall treat in strictest confidence and not divulge to unauthorised persons any information, data or documents concerning the ECB, its staff, the Contract or its performance which the ECB designated orally or in writing as 'restricted', 'confidential' or 'secret' or which a reasonable contractor would consider to be confidential ('Confidential information'). The Contractor shall use such Confidential information only for the purpose for which it was disclosed, that is for the provision of the Services, and shall not use or exploit such Confidential information for its own benefit or for the benefit of another person. No submission of patent applications based on confidential discussions with the ECB or third parties in the context of the Services shall be permitted without prior permission of the ECB. The Contractor shall require its staff and subcontractors to maintain confidentiality to the same extent. The ECB may request that the Contractor's staff and subcontractors sign individual confidentiality declarations.

6.2 The Contractor shall store properly

- (a) all Confidential information that the ECB makes available to them;
- (b) all Confidential information that the Contractor receives in the performance of this Contract from third parties;

and shall ensure that unauthorised persons have no access to Confidential information. In case of termination of this Contract the ECB may request the Contractor to destroy or return Confidential information to the ECB without undue delay. The Contractor may keep copies if required by law. The Contractor shall not invoke any right of retention with regard to Confidential information.

6.3 Confidential information shall not include information, data and documents

- (a) that are or become publicly available, except through a breach of confidentiality by the Contractor;
- (b) the disclosure or use of which has been authorised by the ECB in writing;
- (c) the disclosure of which is required by law.

6.4 If the Contractor or their staff or subcontractors disclose Confidential information or if the Contractor or their staff or subcontractors have not taken appropriate measures restricting access to Confidential information, the ECB may claim for each breach for which the Contractor is responsible a penalty up to an amount of EUR 50 000. Each

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patent application filed based on confidential discussions with the ECB or third parties in the context of the Services shall be considered as a single breach, irrespective of its results. The ECB shall fix the amount using equitable discretion taking into account the seriousness of the breach and the damage caused to the ECB. This penalty does not prevent the ECB from claiming further damages or from terminating this Contract with immediate effect.

- 6.5 The Contractor shall not use the ECB's name in any promotional material without the ECB's prior written consent. The consent shall cover only the promotional material described in the Contractor's request and shall only apply for the approved time period.
- 6.6 Both Parties shall comply with, and shall ensure that their staff and subcontractors comply with, applicable data protection law. The ECB may process payment settlement data via SWIFT.

### **7. Duration and termination**

- 7.1 This Contract shall become effective on its signature by both Parties, and shall remain in force until the expiry of the agreed term, until completion of the Services, or until terminated in accordance with this Contract or any statutory provision.
- 7.2 The ECB shall have the right to terminate this Contract at any time without notice (see § 627 of the German Civil Code). The Contractor may terminate this Contract without cause within the limits set by statutory law (see § 627(2) of the German Civil Code) and only with three months' prior notice.
- 7.3 Either party may terminate this Contract under extraordinary circumstances that render the continuation of this Contract intolerable considering all relevant aspects and the interests of both Parties (see § 626 of the German Civil Code). The ECB may terminate the Contract in particular:
- (a) if insolvency or similar proceedings have been opened against the Contractor's assets;
  - (b) if the Contractor retires from business;
  - (c) if the Contractor has substantially or repeatedly breached their obligations under this Contract and has not remedied such breach within a reasonable period of grace set by the ECB. No period of grace is required if the breach cannot be

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remedied or in the cases listed in § 314(2) and § 323(2) of the German Civil Code;

- (d) if the Contractor is guilty of serious misrepresentation in supplying information to the ECB or has participated in agreements restricting competition in the procurement procedure leading to this Contract;
- (e) if the Contractor does not provide a suitable staff replacement within the time limits set out in Article 3 of this Contract;
- (f) if the Contractor has a conflict of interest that cannot be solved by appropriate measures in accordance with Article 9.3.

7.4 The rights of termination in accordance with this Contract shall not prejudice any other statutory right or remedy that either Party may have.

### **8. Liability**

8.1 The Contractor shall effect complete performance in time, in the quality necessary to achieve the purpose of the Contract, and complying with the relevant professional diligence, as well as the state of technology and sciences.

8.2 Either Party shall be liable for any deliberate or negligent action or omission of their staff or subcontractors in accordance with statutory law.

### **9. Conflicts of interest; standards of behaviour**

9.1 The Contractor shall comply with, and shall ensure that their staff and subcontractors comply with, the standards of behaviour set out in Article 0.6 (Dignity at work), 0.8 (Conflicts of interest), 0.9 (Gainful employment of a spouse or recognised partner), 0.10 (Giving and accepting gifts), 0.11 (External activities performed in the course of professional duties), 0.13 (procurement) and 0.16 (Relations with external parties) of the ECB's Ethics Framework (OJ C 104, 23.4.2010, p. 3 and available under <http://www.ecb.europa.eu/ecb/legal/1008/1024/html/index.en.html>). The ECB may ask the Contractor's staff and subcontractors to sign a solemn Declaration of compliance with standards of behaviour.<sup>2</sup>

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<sup>2</sup> If the Contractor's staff is working on the ECB's premises and obtain access to confidential information they should be asked to sign a declaration of compliance with the ECB's Ethics framework.

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- 9.2 In accordance with Article 0.8 of the ECB's Ethics Framework the Contractor shall in particular ensure that no circumstances arise in which their activities under this Contract conflict or might conflict with any services which the Contractor may provide to third parties or to the ECB, in the framework of offering security printing services. Conflicts of interest arise where the Contractor, their staff or subcontractors have private or personal interests which may influence or appear to influence the impartial and objective performance of their duties. Private or personal interests mean any potential advantage for themselves, their families, their other relatives or their circle of friends and acquaintances.
- 9.3 In the event of such conflict or potential conflict, the Contractor shall immediately notify the ECB and provide the ECB with all information necessary to assess the conflict. The ECB may request the Contractor to take appropriate measures to avoid or solve the conflict of interest, including the replacement of staff exposed to such situation. If it is not possible to avoid the conflict or potential conflict of interest or to solve it in another manner, the ECB may terminate this Contract with immediate effect.

### **10. Subsidiary contracts; written form; double signature**

- 10.1 This Contract contains the entire agreement between the Parties and supersedes all prior arrangements or contracts whether written or oral, express or implied.
- 10.2 Any amendments to this Contract or supplementary contracts as well as other legally binding declarations shall be made in writing. This shall apply also to this clause itself.
- 10.3 The Contractor acknowledges that under the Statute of the ESCB any declaration made on the ECB's behalf shall only be binding with the signatures of two duly authorised members of staff.

### **11. Validity of certain provisions; severability**

- 11.1 The legal effects of the provisions of this Contract on intellectual property rights (Article 5) and on discretion and confidentiality (Article 6), as well as any other contractual provisions the purpose of which requires continuation after the end of the Contract, shall continue after the end of the contractual relationship.
- 11.2 If any provision of this Contract is found to be invalid or incomplete, the validity of the remaining terms and provisions shall not in any way be affected. In this case the Contract's provisions shall be determined on the basis of the relevant statutory provisions.

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**12. Choice of law**

This Contract shall be governed by and interpreted under German law.

**13. Jurisdiction; election of domicile**

Should the ECB and the Contractor be unable to reach agreement on any matter arising out of their contractual relationship, the matter in dispute shall be referred to the exclusive jurisdiction of the ordinary courts (*Amtsgericht* or *Landgericht*) in Frankfurt am Main, Germany. The Contractor hereby expressly agrees that the address mentioned in the header of the present Contract will serve as the address for service in the event of a dispute. [If the Contractor is resident/established outside Germany the ECB may request the Contractor to appoint a person resident or a company established in Germany that is authorised to accept service on behalf of the Contractor.]

**14. Annexes**

The following annexes form an integral part of this Contract in the following ranking and order:

- (a) the *invitation to tender* (**Annex 1.1**);
- (b) the *Contractor's offer* (**Annex 1.2**);
- (c) the ECB's house rules (**Annex 2**).

In the event of conflict, the main text of this Contract shall prevail over the annexes.

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IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Contract:

European Central Bank:

Contractor:

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Place and date

Place and date

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Name

Name

Position

Position

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Name

Name

Position

Position