

CONTRACT FOR THE PROVISION OF SERVICES

between

European Investment Bank

and

[Name of Service Provider]

For

**Gender-Smart Financing - Advisory and Capacity Building Programme
for commercial banks (AA-011951-004)**

THIS CONTRACT IS MADE BETWEEN:

the European Investment Bank, having its seat at 98-100, boulevard Konrad Adenauer, L-2950 Luxembourg, represented for the purpose of the signature hereof by [●] and by [●],

(hereinafter called the "**Bank**" or the "**EIB**")

of the first part,

and,

[Name of Service Provider], a company established under [country] law, having its registered seat at [address] represented for the purpose of the signature hereof by [●] and by [●],

(hereinafter called the "**Service Provider**")

of the second part,

(the Bank and the Service Provider hereinafter also called a "**Party**" and together the "**Parties**")

WHEREAS:

- A. On [date] the Bank published a call for tenders for Assignment AA-011951-004 (Gender-Smart Financing - Advisory and Capacity Building Programme for commercial banks) on the Official Journal of the European Union (the **"Call for Tenders"**).
- B. The Call for Tenders included the terms of reference (the **"Terms of Reference"**, Appendix A) describing the specific nature of the services to be provided, as well as the terms and conditions for their performance.
- C. In response to the Call for Tenders, the Service Provider submitted to the Bank a tender dated [date] (the **"Tender"**, Appendix B).
- D. The Bank has accepted the Tender and has notified the Service Provider of its decision to engage the latter to provide services in accordance with the terms and specifications of Appendix A.
- E. The mutual rights and obligations of the Parties shall be as set forth in this contract (the **"Contract"**).

NOW THEREFORE the Parties hereby agree as follows:

Article 1 – Subject Matter, interpretation

- 1.1 The Service Provider undertakes to perform the services (the **"Services"** or the **"Assignment"**) described in Appendix A.
- 1.2 References in this Contract to any Article or Appendix without further designation shall be construed as a reference to the Article or Appendix of this Contract so numbered.

Article 2 – Performance of the Contract

- 2.1 The Service Provider shall perform the Services in accordance with the specifications set out in Appendices A and B.
- 2.2 The Service Provider shall at all times carry out the Services with all reasonable care and skill and shall conform in all respects with the terms and conditions of the Contract.
- 2.3 The Service Provider undertakes to comply with the Bank's general terms and conditions for contracts for the provision of services (the **"Bank General Terms and Conditions"**, Appendix C).
- 2.4 The Service Provider shall ensure that all persons appointed to the performance of the Services have all equipment, materials and other things whatsoever required for the provision of the Services. Any equipment or materials made available by the Bank during the Contract shall be without prejudice to the Service Provider's obligations under this Article and do not imply any obligation whatsoever on the part of the Bank. The Service Provider shall in particular not be entitled to invoke any vested or acquired rights from past provision of equipment or materials by the Bank.

Article 3 – Duration

- 3.1 The Contract shall enter into force as soon as it has been signed by both Parties (the **"Effective Date"**).
- 3.2 The Services shall be provided from the Effective Date and for a period of 24 months thereafter (the **"End Date"**), save where the Contract is terminated in accordance with

Appendix C. The performance of the Services shall not commence before the Effective Date.

- 3.3 At the request of the Bank, the term of the Contract shall be renewed by 2 (two) additional periods of 1 (one) year each. The Bank shall notify the Service Provider of its intention to renew the term by giving at least 2 (two) month written notice prior to the date on which the Contract would otherwise expire. Renewal shall not imply any modification or deferment of existing obligations nor any increase of the rates referred to in Article 4.

Article 4 – Price

- 4.1 In consideration for performing the Services, the Service Provider shall be paid at the rates set out in Appendix B, exclusive of VAT. The Bank will reimburse authorised expenses as specified in Appendix A upon submission by the Service Provider of invoices for such expenses.
- 4.2 The rates of Article 4.1 shall be fixed and non-revisable for the first two years year of the Contract (the “**Fixed-Pricing Period**”), following which an annual indexation will apply provided one of the Parties has requested it in writing within 3 (three) months before the end of the Fixed-Pricing Period. Annual indexation will be in accordance with the EU 27 HICP – Harmonised index of consumer prices, as published by the Statistical Office of the European Communities, using the following formula:
- $$R_i = R_o \times \frac{l_i}{l_o}$$
- Ro: Current price
- Ri: New price
- lo: [EU 27 HICP/●] index of the month of the Tender or of the last indexation exercise.
- li: [EU 27 HICP/●] index of the month in which the application for revision was made.
- 4.3 The amount that can be paid to the Service Provider for the Performance of Services undertaken during the first two years of implementation of the Contract shall not exceed EUR [●], exclusive of VAT and inclusive of expenses (the “Contract Value”).
- 4.4 Pursuant to Art. 3.3, the amount that can be paid to the Service Provider can be increased up to EUR 500 000 for each renewal.
- 4.5 The maximum total expenditure by the Bank under the Contract shall be EUR 2,000,000.00, excluding VAT and including expenses and indexation and including all renewals pursuant to Article 3.3.

Article 5 – Terms of Payment

- 5.1 The Service Provider shall issue invoices as described in Appendix A.
- 5.2 Invoices are to be issued in accordance with the provisions of Article 8 of Appendix C.
- 5.3 Payments shall be made to the bank account held in the name of the Service Provider as notified to the Bank in writing on each invoice.
- 5.4 Pursuant to Articles 3, 4 and 21 of Protocol (No 7) on the Privileges and Immunities of the European Union annexed to the Treaty on the Functioning of the European Union, compensation under this Contract is exempt from VAT.¹

¹ Applicable only if the Service Provider is established in an EU Member State. [Choose this art. 5.4 only if the Service Provider is established in an EU Member State. This footnote should be left (if applicable) in the version going in the procurement documents so as to alert tenderers of the rule].

- 5.4 Any payments under this Contract shall be exempt from VAT to the extent permitted by the law of, or under any agreement between the Bank and the national authorities in, the country of establishment of the Service Provider.²

Article 6 – Place of Performance

- 6.1 The Services shall be performed at any of the locations as are specified in Appendix A or at any such other location(s) as the Bank may reasonably indicate to the Service Provider.

Article 7 – Data Protection

- 7.1 For the purposes of paragraph A of Annex II to the Bank General Terms and Conditions:
- (a) the data controller is the Head of the OPS/ORM Division, European Investment Bank;
 - (b) the data protection notice is available at <https://www.eib.org/en/privacy/procurement.htm>
- 7.2 For the purposes of paragraph B of Annex II to the Bank General Terms and Conditions:
- (a) the subject matter and purpose of the processing of personal data by the Service Provider are the implementation of the Assignment as the latter is defined in Appendix A (the Terms of Reference);
 - (b) The localisation of and access to the personal data processed by the Service Provider shall comply with the following:³
 - i. the personal data shall only be processed within the territory of the European Union and the European Economic Area [and, provided it continues to be covered by an adequacy decision as defined in Article 47 of Regulation (EU) 2018/1725, of the United Kingdom]⁴ and will not leave that territory;
 - ii. the data shall only be held in data centres located within the territory of the European Union and the European Economic Area [and, provided it continues to be covered by an adequacy decision as defined in Article 47 of Regulation (EU) 2018/1725, of the United Kingdom]⁵;
 - iii. [no access shall be given to such data outside of [the European Union and the European Economic Area]] OR [access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data]⁶;
 - iv. the Service Provider may not change the location of data processing without the prior written authorisation of the Bank;

² Applicable only if the Service Provider is not established in an EU Member State. [Choose this art. 5.4 only if the Service Provider is **not** established in an EU Member State. This footnote should be left (if applicable) in the version going in the procurement documents so as to alert tenderers of the rule].

³ This article must be adapted with care on the basis of a risk assessment related to the processing of personal data for the relevant contract.

⁴ Applicable only if the Service Provider is based in the UK and the duration of the Contract does not go beyond 27-Dec-2031 (i.e. the period of validity of the European Commission's adequacy decision in favour of the UK).

⁵ Applicable only if the Service Provider is based in the UK and the duration of the Contract does not go beyond 27-Dec-2031 (i.e. the period of validity of the European Commission's adequacy decision in favour of the UK).

⁶ Applicable only if the Service Provider is based in the UK and the duration of the Contract does not go beyond 27-Dec-2031 (i.e. the period of validity of the European Commission's adequacy decision in favour of the UK).

- v. any transfer of personal data under the Contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725.
- (c) Upon a period of five (5) years following the expiry or termination of the Contract, the Service Provider shall [effectively delete all personal data processed on behalf of the controller, and any copies thereof, unless Union or national law requires a longer storage of personal data;
- (d) Written instructions from the Bank include: the name, last name, email, telephone number(s), address, and professional roles of individuals only for the purpose of carrying out the services as described in Appendix A.
- (e) [In case the Service Provider is established in a third country (as defined in Chapter V of Regulation (EU) 2018/1725) or in a country that becomes a third country during the term of the Contract, and as long as such third country is not covered by an adequacy decision referred to in Article 47 of Regulation (EU) 2018/1725, the Service Provider agrees to be bound by the provisions of Appendix D. References to Regulation (EU) 2016/679 included in Appendix D shall be understood as references to the equivalent provisions of Regulation (EU) 2018/1725. Alternatively, the Service Provider is obliged to provide EIB with evidence of its adherence to the binding corporate rules, codes of conduct or certification mechanisms referred to in Article 48 (2) point (d) of Regulation (EU) 2018/1725. Contractual references to obligations at law assumed by the Service Provider as per the application of Union data protection law will be considered as non-applicable to it.]^{7 8}

Article 8 – Law and Jurisdiction

- 8.1 The Contract shall be governed and construed in accordance with the laws of Luxembourg.
- 8.2 The Parties hereby submit to the exclusive jurisdiction of the District Court of and in Luxembourg city (*Tribunal d'arrondissement de et à Luxembourg*) to settle any dispute arising out of or in connection with this Contract.

Article 9 – Notices - Contact Persons

- 9.1 Notices and other communications given hereunder addressed to either Party shall be in writing and shall be served by hand delivery, registered letter, e-mail or other means of transmission which affords evidence of receipt by the addressee to its address set out below, or to such other address as it previously notifies to the other in writing:

for the Bank:	Attention: [name of recipient] European Investment Bank 98-100 boulevard Konrad Adenauer L-2950 Luxembourg E-mail: [●]
for the Service Provider:	Attention: [name of recipient] [address] E-mail: [●]

⁷ This sub-clause will apply if the successful tenderer is a service provider established in a third country (for which there is no adequacy decision by the European Commission), or in a country likely to become a third country during the term of the Contract. [This footnote should be left in the version going in the procurement documents so as to alert tenderers of the possibility of its application].

⁸ This sub-clause is not needed for transfers to the UK since there is an adequacy decision valid until 27 Dec 2031.

- 9.2 The date of registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.
- 9.3 The Service Provider shall have as [a] contact person[s] in the Bank [name] to whom they shall report in respect of the execution of the Services and [name] for notifications, or any other person that the Bank has expressly notified to the Service Provider.

Article 10 – Termination

Pursuant to article 18.1 of the Bank General Terms and Conditions, the Bank may terminate this Contract without incurring any liability by serving written notice to the Service Provider, where the cost of the Services is expected to be covered, wholly or partially, by a third party, including the European Union, and such financing is cancelled or withdrawn by the third party or if for any reason whatsoever the underlying financing agreement is terminated or ceases to be valid and in full force and effect.

Article 11 –Verification by EU bodies

- 11.1 The Service Provider will allow the European Commission, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO) and the European Court of Auditors directly or through third parties commissioned by them to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks of original documents, the implementation of the Contract and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the Contract. In order to carry out these verifications and audits, the Service Provider shall ensure that on-the-spot access is available at all reasonable times, notably at the Service Provider 's offices, to its computer data, to its accounting data and to all the information needed to carry out the checks, verifications or audits, including information on individual salaries of persons involved in the project. The Service Provider shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. The above verifications, audits and on the spot checks may take place up to 5 years following the End Date of the Services and the Service Provider shall keep records of this Agreement and its execution during this period.

The European Anti-Fraud Office (OLAF) will carry out on the spot checks and verifications in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013, Regulation (Euratom, EC) No 2185/96 and Regulation (EC Euratom) No 2988/95, as may be amended, supplemented or modified from time to time, in order to protect the financial interests of the Union, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) may carry out investigations and prosecutions pursuant to Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ L 283, 31.10.2017, p. 1), as may be amended, supplemented or modified from time to time, in order to protect the financial interests of the Union.

- 11.2 The Service Provider undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO) and of the European Court of Auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the Contract and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO) and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to

facilitate their examination. The Service Provider must inform them and EIB of their precise location.

- 11.3 The Service Provider guarantees that the rights of the European Commission, of the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO) and of the European Court of Auditors to carry out audits, on the spot checks and verifications will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefiting from EU budget (or EDF funds).

Article 12- Other Specific Conditions applying to the Contract

- 12.1. The following provisions shall supplement Article 2 (Service Provider's obligations) of the Bank General Terms and Conditions:

"Pursuant to Article 15, paragraph 2 of these General Terms and Conditions, if the Service Provider is a consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium. Any alteration of the composition of the consortium without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.

The Service Provider must take the necessary measures to ensure the visibility of the funding source of the Contract. Such measures must be in accordance with the applicable rules on visibility, as specified in set out in Appendix A – Terms of Reference."

- 12.2. The following provision shall supplement Article 15 (*Liability*) of the Bank General Terms and Conditions:

"The Service Provider shall be liable to the Bank for any loss, injury, fine or damage arising out of the performance (or non-performance) of the Contract, including the acts and omissions of the Service Provider's Personnel and for failing to submit deliverables within the term specified in the Contract. Where the Service Provider is a joint venture or any other type of consortium or collective entity (legally incorporated or not), such liability shall apply jointly and severally to all entities comprising the Service Provider.

Each Party's liability to the other Party arising out of the Contract shall in no event exceed the maximum remuneration payable to the Service Provider under the Contract. Notwithstanding the foregoing, the Parties' liability shall not be limited in the event of wilful intent or gross negligence or in respect of death or personal injury resulting from acts, omissions or negligence.

When, in a given Assignment a third party (e.g., identified as promoter or final beneficiary) is benefitting from the Services, in conformity with a bilateral agreement signed with the Bank, the Bank shall not be liable towards the Service Provider for any act or omission of the third party or for the failure of the third party to comply with its obligations set out in the said bilateral agreement. Any such act, omission or failure shall not be interpreted as giving the right to the Service Provider to terminate the Contract under the provisions of Article 18 (Termination) of these General Terms and Conditions."

- 12.3. The following provisions shall supplement Article 21 (*Insurance and reporting*) of the Bank General Terms and Conditions

"Within 20 days of signing the Contract, the Service Provider shall take out, unless it already has such a policy, and maintain, a full indemnity insurance policy, for a sum up to the higher of the maximum amount foreseen by the legislation of the beneficiary country and headquarters, and covering, during the period of implementation of the tasks, the following aspects:

- (a) The Service Provider's liability in respect of sickness or industrial accident affecting its employees, including the cost of repatriation on health grounds;
- (b) Loss of, or damage to, the EIB's equipment, if any, used by the Service Provider, its agents or employees, to perform the Contract;
- (c) Civil liability in the event of accidents caused to third parties or to the EIB and any employee of that the latter, arising out of the performance of the Contract by the Service Provider, its agents or employees;
- (d) Accidental death or permanent disability resulting from bodily injury incurred by any person in connection with the performance of the Contract by the Service Provider, its agents or employees."

Pursuant Article 21 (*Insurance and reporting*) of the Bank General Terms and Conditions, the Service Provider shall ensure that all the insurance policies effected under these provisions shall contain a waiver of subrogation rights, in favour of the EIB.

13.4. The following article will be added to the Bank General Terms and Conditions as Article 27:

"Article 27. Delays in implementation of the tasks

If the Service Provider does not perform the Services within the period of implementation of the tasks specified in the Contract, the Service Provider will be subject without formal notice a penalty for every day, or part thereof, which shall elapse between the end of the period of implementation of the tasks specified in the Contract and the actual end of the period of implementation of the tasks.

The daily rate for the penalty will be 0.05% of the Price / Maximum Contract Value, as applicable.

If the damages exceed more than 15% of the Price / Maximum Contract Value, as applicable, the EIB may, after giving notice to the Service Provider:

- (a) terminate the Contract; and
- (b) complete the Services at the Service Provider's own expense."

13.5. It is expected that the Contracts will mainly be established to support activities financed through the InvestEU Programme Mandate (or its relevant successor during the transition period if applicable). However, the EIB reserves the possibility to activate this Agreement to support activities financed through other financing sources when and if fit for purpose. Depending on the funding source of a given Assignment additional requirements (including specific visibility requirements) may become applicable. Those additional requirements shall be communicated to the Framework Members at the time of dispatch of the Assignment Terms of Reference.

Article 10 – Appendices

10.1 The following documents attached hereto shall be deemed to form an integral part of the Contract:

- (a) Appendix A: Terms of Reference, including any clarifications issued by the Bank before the deadline for submitting tenders;

- (b) Appendix B: Tender, including any clarifications submitted by the Service Provider during tender evaluation at the request of the Bank; **[and]**
 - (c) Appendix C: Bank General Terms and Conditions; **[and]**
 - (d) **[Appendix D: Standard Contractual Clauses (EU Controller to Non-EU Processor).]⁹**
- 10.2 In case of any inconsistency between the terms of the Contract, the following order of priority shall apply:
- 1) Terms set out in Articles 1 to 10;
 - 2) Appendix C;
 - 3) **[Appendix D];**
 - 4) Appendix A; and
 - 5) Appendix B.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by having their authorised representatives apply their respective qualified digital signature in compliance with EU Regulation No 910/2014 (eIDAS Regulation) on their behalf.

Luxembourg,
Signed for and on behalf of the
EUROPEAN INVESTMENT BANK

[city],
Signed for and on behalf of
[NAME OF THE SERVICE PROVIDER]

[name, position, department]

[name, position]

[name, position, department]

⁹ This Appendix will apply if the successful tenderer is the Service Provider established in a third country (for which there is no adequacy decision by the European Commission), or in a country likely to become a third country during the term of the Contract. [This footnote should be left in the version going in the procurement documents so as to alert tenderers of the possibility of its application].