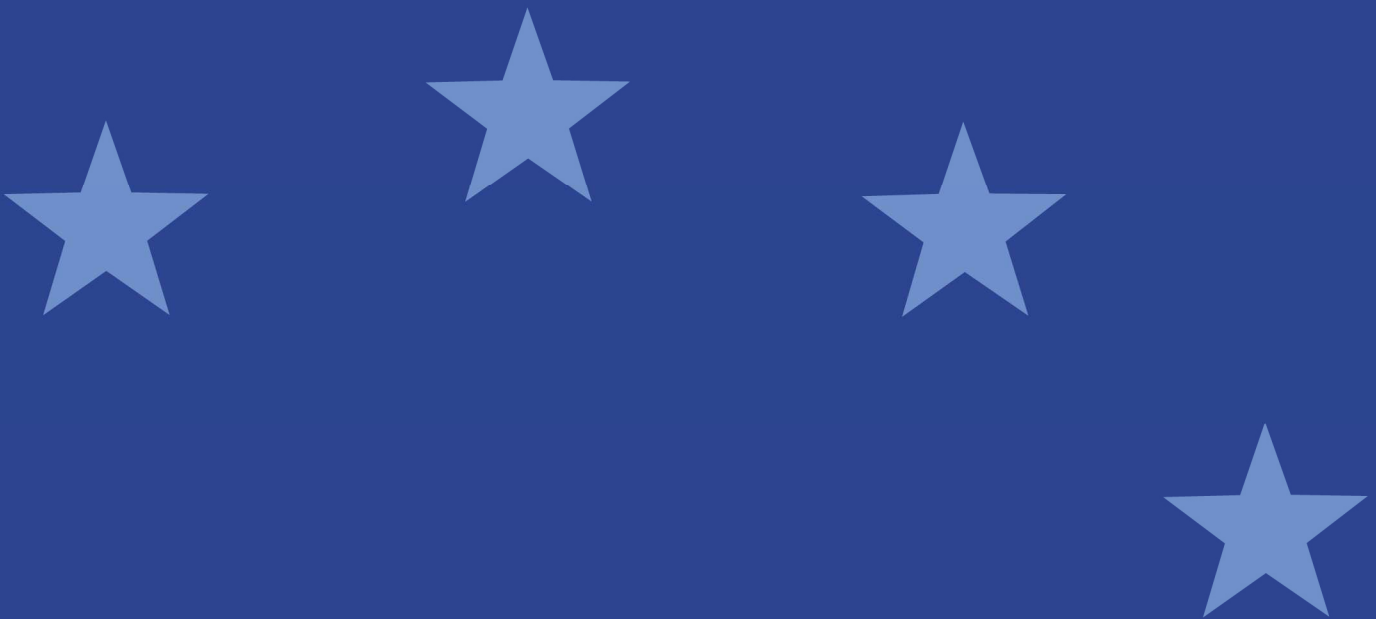




European Securities and
Markets Authority

**Non-disclosure agreement for the OJ/26/06/2012-PROC/2012/004
“ESMA registers”**



NON-DISCLOSURE AGREEMENT

Concerning the release and use of business requirements in the frame of procurement procedure **ESMA - OJ/26/06/2012-PROC/2012/004– “ESMA registers”**

By and between,

The European Securities Market Authority (hereinafter referred to as "the ESMA"), represented for the purposes of the signature of this contract by Verena Ross, Executive Director

of the one part,

and

[official name in full]
[official legal form]
[official address in full]

Represented, for the purpose of the signature of this non-disclosure agreement, by, (function),

and,

_____ hereinafter referred to as the
"Recipient", whose registered office is at:

[Official address in full]

Represented, for the purposes of the signature of this non-disclosure agreement, by

[Title and name in full and function of company representative authorised to sign the agreement]

Hereinafter individually referred to as the "**Party**" or collectively referred to as the "**Parties**"

PREAMBLE

WHEREAS, the ESMA has launched an open procurement procedure with the aim to enter into framework service contract providing IT services for the Agency;

WHEREAS, in order to assess the required effort for the tasks of the contract listed in the Contract Notice and Invitation to Tender with its annexes, the Recipient needs to have access to the Proprietary Information;

WHEREAS, in consideration of the above, the Recipient expressly agrees to use the Business Requirements in accordance with the terms of this Agreement and pursuant to the security procedures specified by the authorities concerned.

THEREFORE, the Parties agree the following:

Article 1 – Definitions

For the purpose of this Agreement:

"Agreement" shall refer to the present Non-Disclosure Agreement.

"Business Requirements" shall refer to each and/or all documents listed in the annex to this Agreement.

"Purpose" shall refer to the Recipient's participation or involvement (including its request to participate) in procurement procedure ESMA OJ/26/06/2012-PROC/2012/004

"Completion of the Purpose" shall mean two months following the deadline for submission of the tender for ESMA OJ/26/06/2012-PROC/2012/004 if the Recipient has not submitted a tender; up to contract expiry or termination if the Recipient enters into the Contract contemplated by this procurement procedure with the ESMA.

Article 2 – Scope

2.1 This Agreement sets forth the Recipient's obligations regarding access to, use, distribution, disclosure and protection of the Business Requirements provided by the ESMA for the Purpose.

- 2.2 Under this Agreement, the Recipient undertakes to use the Business Requirements solely for pursuing the Purpose in accordance with the terms of this Agreement.
- 2.3 No provision of this Agreement shall be construed to be an obligation by either Party to disclose information to the other Party or to enter into further agreements with the other.

Article 3 – Confidentiality and conditions of access to and use of the Proprietary Information

3.1 The Recipient undertakes to ensure that the access to, use, distribution, disclosure and protection of such information will comply with following conditions:

3.1.1 The Business Requirements is supplied to the Recipient solely and exclusively for the Purpose. The Business Requirements cannot be used totally or partially, directly or indirectly, for any other purpose than that defined in Article 2.2 above, unless the ESMA gives its prior written authorisation.

In any case, the Recipient shall not use the Proprietary Information:

- (i) in a manner conflicting with the objectives of the European ESMA programmes;
- (ii) after Completion of the Purpose.

3.1.2 The Recipient shall not copy, reproduce, duplicate, distribute, communicate or otherwise make available the Proprietary Information, either in whole or in part, to third parties unless and to the extent the ESMA gives its express prior written authorisation thereto.

3.1.3 The Recipient shall keep the Business Requirements and any copies thereof secure by effective and reasonable means in such a way as to prevent unauthorised access.

3.1.4 The Recipient will not object to an application for a patent filed by the ESMA pleading want of novelty if it is due to:

- (i) receipt of information to be treated as confidential pursuant to this Agreement; or
- (ii) breach of this Agreement by the Recipient.

3.1.5 Nothing contained in this Agreement shall be construed as granting any right, title or interest in the Business Requirements including any intellectual property right. The Recipient shall not itself, nor authorise any third party to, write, publish or disseminate any description of the Business Requirements or elements of it, such as its structure or content for so long as it is bound by this Agreement.

3.1.6 In the event that the Recipient becomes aware of any unauthorised use of the Business Requirements or of any unauthorised copy of the Business Requirements in the public domain or with third parties or of any unauthorised derivative work, it shall immediately inform the ESMA thereof.

3.2 Disclosure, protection and use of Classified Business Requirements shall, in addition to the terms and conditions of this Agreement, be made pursuant to the security procedures specified by the authorities concerned.

Article 4 – Limitation on protection of the Proprietary Information

The obligations contained in Article 3 are not applicable to information that the Recipient can demonstrate by written evidence:

- 4.1 has come into the public domain prior to, or after, the date of receipt of the Business Requirements from the ESMA through no fault or unauthorised act of the Recipient;
- 4.2 was already lawfully developed or acquired by the Recipient at the date of receipt of the Business Requirements from the ESMA;
- 4.3 has been or is published without violation of this Agreement;
- 4.4 was lawfully obtained by the Recipient without restriction and without breach of this Agreement from a third party, who is in lawful possession thereof, and under no obligation of confidentiality to the ESMA (or any other person/entity);
- 4.5 is disclosed pursuant to the request of a governmental or jurisdictional authority or is disclosed according to the law or regulations of any country with jurisdiction over the Recipient; in either case the Recipient, subject to possible constraints of such governmental or jurisdictional authority, shall immediately give the ESMA a written notice of the above request and shall reasonably cooperate with the ESMA in order to avoid or limit such disclosure;
- 4.6 was disclosed and/or used pursuant to and to the extent of an express written authorisation from the ESMA.

Article 5 – Retention policy

- 5.1 Upon Completion of the Purpose, if the Recipient is successful candidate of the procurement procedure, or at any other time at the ESMA's written request, the Recipient, shall return to the ESMA all the Business Requirements. And shall destroy any electronic version of the Business Requirements and remove them from any of its or third parties archives.

Article 6 – Breach of obligations

Should the Recipient breach any of its obligations of confidentiality under this Agreement and without prejudice to any right of the ESMA to seek damages before any competent jurisdiction, the ESMA may, by written notice to the Recipient, withdraw the right of the Recipient to use the Business Requirements for the Purpose.

Article 7 – Duration of this Agreement and protection of the Proprietary Information

- 7.1 This Agreement shall enter into force on the date of the last signature by the Parties and shall remain in effect until the Completion of the Purpose.
- 7.2 The obligations imposed by Articles 2 and 3 above with respect to the access to, use, distribution, disclosure and protection of Business Requirements for pursuing the Purpose shall apply:

— for 10 years with regards to Proprietary Information;

from the date of entry into force of the Agreement, notwithstanding the Completion of the Purpose.

Article 8 – Communication of the Business Requirements and regarding the Agreement

8.1 The ESMA shall send the Business Requirements to the following person:

Title and full name	
Function	
Company name	
Official address in full	
Telephone number	
Fax number	
Email address	

8.2 The ESMA shall send any communication regarding the Agreement to the following person:

Title and full name	
Function	
Company name	
Official address in full	
Telephone number	
Email address	

8.3 The Recipient shall send any communication regarding the Agreement to the following person:

Title and full name	Ms Guia Miniotti
Company name	ESMA
Official address in full	European Securities and Markets Authority (ESMA) 103, rue de Grenelle, 75007 Paris – France
Email address	procurement@esma.europa.eu

8.4 In accordance with Article 5 above, the Recipient shall return the Business Requirements to the following person:

Title and full name	Mr. Michael Jordan
Function	Project Manager

Company name	ESMA
Official address in full	European Securities and Markets Authority (ESMA) 103, rue de Grenelle, 75007 Paris – France
Email address	<Michael.Jordan@esma.europa.eu>

Article 9 – Waiver, disclaimer and liability

- 9.1 No failure or delay by the ESMA in exercising any of its rights under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise of such rights.
- 9.2 The Business Requirements is provided "as is" and the ESMA disclaims all warranties of any kind relating to the Proprietary Information, whether expressed or implied, including but not limited to, any implied warranty against infringement of third party property rights or as to merchantability or fitness for any particular purpose.
- 9.3 The ESMA will not be liable for any damages whatsoever including, but not limited to, damages for loss of business profit, business interruption, loss of business information, or any other pecuniary loss arising out of the use of, or inability to use, the Proprietary Information.

Article 10 – Applicable law; Dispute

- 10.1 This Agreement shall be governed and construed in accordance with the laws of France.
- 10.2 The Parties shall make their best efforts to settle amicably all disputes arising in connection with this Agreement.
- 10.3 If such amicable settlement fails, the said dispute shall be finally settled by the Court of Justice of the European Union in accordance with its rules of procedure.

Article 11 – Final provisions

- 11.1 The Parties shall bear their own costs incurred under or in connection with the present Agreement.
- 11.2 This Agreement and the rights and obligations hereunder may not be transferred or assigned by the Recipient without the prior express written approval of the ESMA.

- 11.3 This Agreement represents the entire understanding and agreement of the Parties with respect to the Proprietary Information, as defined in Article 2 above, and supersedes and cancels any and all previous declarations, negotiations, commitments, communications either oral or written, approvals, agreements and non-disclosure agreements between the Parties in respect thereto. Any rights and obligations which, by their nature, are to remain in effect beyond expiration or termination of such non-disclosure agreements will survive.
- 11.4 If any term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, this shall not affect the legality, validity or enforceability in that jurisdiction of any other terms of this Agreement, nor the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.
- 11.5 No amendment or modification of this Agreement shall be binding or effective unless made in writing and signed on behalf of both Parties by their respective duly authorised representative.

Done in two originals in the English language,

<p>On behalf of _____ <i>[Recipient name]</i></p> <p>Read and agreed,</p> <p>On <i>[date]</i> _____, in <i>[place]</i> _____</p> <p><i>Signature:</i></p> <p>_____ <i>[Name of authorized representative],</i></p> <p>_____ <i>[Function of authorised representative],</i> authorized representative of</p> <p>_____ <i>[Recipient name]</i> for the signature of this Agreement</p>	<p>On behalf of the ESMA</p> <p>Read and agreed,</p> <p>On _____, in Paris</p> <p><i>Signature:</i></p> <p>Verena Ross , Executive Director of the ESMA for the signature of this Agreement</p>
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ANNEX I

LIST OF BUSINESS REQUIREMENTS

This list of Business Requirements can subsequently be modified for the purpose of this procurement procedure by registered letter by the ESMA.

Title	Ref:	Issue-Date	Classification	Owner
Draft Business Requirements MIFID	2012-ITMG-19	05/06/2012	Limited	ESMA
Draft Business Requirements PROSPECTUS	2012-ITMG-27	05/06/2012	Limited	ESMA

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