

Annex VI Draft Framework service contract for outsourcing

Contract number – EMA/2012/21/IS

European Medicines Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by [complete],

of the one part,

and

[official name in full of company and statutory registration number of company]

whose registered address is at [official address in full]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by [name in full and title], a duly authorised officer of the Contractor

of the other part,

Have agreed

the **Special Conditions** and the **General Conditions** below and the following Annexes:

Annex I – Tender Specifications (Invitation to Tender No EMA/2012/21/IS of [complete])

Annex II – Contractor's Tender (No [complete] of [complete])

Annex III – Sample Specific Contract and Purchase Order

Annex IV – Sample Exit Plan

Annex V – Service Level Agreement

Annex VI – Disaster Recovery and Business Continuity Plan

[Other Annexes]

which form an integral part of this framework contract (hereinafter referred to as "the Contract").

In the event of any conflict herein, the terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Purchase Orders (as defined below) and/or Specific Contracts (as defined below) shall take precedence over those in the Contract. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

For the avoidance of doubt, the Contractor acknowledges and agrees that the terms of the Contract shall apply to the exclusion of the Contractor's standard terms and conditions and or any conditions which might be implied by trade custom, practice or other course of dealing.

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency, subject to the rights of the Contractor under Article I.7 should it dispute any such instruction.

I – Special Conditions

Article I.1 - Subject

- I.1.1.** The subject of the Contract is the provision of on-site technical support, including an experienced on-site manager, maintenance of audio-visual equipment, supply and installation of audio-visual equipment including consumables as set out in Annex I (the "Goods" and the "Services").
- I.1.2.** Execution of the Contract imposes no obligation on the Agency to purchase the Goods or the Services. Only the implementation of the Contract through purchase orders in a form set out in Annex III ("Purchase Orders") and/or specific contracts in the form set out in Annex III ("Specific Contract") are binding on the Agency and authorise implementation of the provision of the Services and supply of the Goods ("Implementation").
- I.1.3.** Upon Implementation, the Contractor shall provide the Services and supply the Goods in accordance with Annexes I and V.
- I.1.4.** All Specific Contracts and Purchase Orders giving rise to Implementation of the Contract shall conform to the terms set out herein.
- I.1.5.** The Contract does not confer on the Contractor any exclusive right to provide the Services or supply the Goods described in Annex I to the Agency.

Article I.2 – Duration and implementation of the Contract

- I.2.1.** The Contract and Purchase Orders or Specific Contracts shall become effective on the date on which they are signed by the last contracting party.
- I.2.2.** Under no circumstances may Implementation take place before the date on which the Contract and Purchase Orders and/or Specific Contracts issued hereunder have become effective.
- I.2.3.** This Contract is concluded for a period of twenty (20) months with effect from the date on which it becomes effective. This contractual period and all other periods specified in the Contract are calculated in calendar months unless otherwise indicated.
- I.2.4.** The Purchase Orders and/or Specific Contracts must become effective before this Contract expires by effluxion of time or is terminated. The Contract shall continue to apply to such Purchase Orders and/or Specific Contracts after its expiry or termination, but no later than six months.
- I.2.5.** Within five working days of a request for Goods and/or Services being sent by the Agency, the Contractor shall return a duly justified estimate of the resources to be allocated for the

execution thereof. Within five working days of a Specific Contract being sent by the Agency, the Contractor shall return it, duly signed and dated.

- I.2.6.** Goods shall be delivered to the Loading Bay of the Agency at 7 Westferry Circus, Canary Wharf, London E14 4HB. The Contractor shall notify the Agency of the exact date of delivery at least two working days in advance. All deliveries shall be made between 0800 hours and 1700 hours at the agreed place of delivery.
- I.2.7.** Purchase Orders shall be placed and executed in accordance with Article II.1. Within five working days of a Purchase Order being sent by the Agency, the Contractor shall return it, duly signed and dated. The period allowed for delivery of Goods and the provision of Services, indicated on the Purchase Order, shall start to run on the date the Contractor returns the Purchase Order, unless a different date is indicated on the Purchase Order.

Article I.3 – Contract price

- I.3.1.** The amounts payable for the Goods and the Services shall be in GBP as listed in Annex II exclusive of VAT covering all the Goods supplied and the Services provided (the “Charges”).
- I.3.2.** It is agreed that the Charges include all other expenditure that may be incurred by the Contractor in performance of this Contract, including travel, subsistence or any other related expenses.
- I.3.3.** The Charges shall be fixed and not subject to revision for the duration of the Contract. Should the Agency update the list of equipment covered by this Contract as listed in Annex I, it will ask the Contractor to provide revised Charges for the maintenance. Such Charges may be revised either upwards or downwards according to whether items have been added or removed from the list of equipment. Any revised Charges will be subject to the written approval of the Agency and will be subject of a written amendment to the Contract.

New Charges will only apply from the date from which the amendment will come into force. The Contractor is advised that any change in Charges must reflect only a change in the equipment to be maintained.

Article I.4 – Payment periods and formalities

- I.4.1.** Payment of the Charges under the Contract shall be made only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is correctly submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.
- I.4.2.** No later than four months of completion of the Services and delivery of the Goods the Contractor shall submit an admissible invoice, indicating the reference number of the Specific Contract or Purchase Order to which it refers as communicated to the Contractor, for payment. Payments shall be made on the basis of the invoice issued by the Contractor and verified by the Agency. Any invoice must give a breakdown of the Charges. Subject to verification by the Agency, payment shall be made no later than 30 days from receipt of the invoice.
- I.4.3.** The payment periods for the Charges will be stipulated in the relevant Purchase Orders and/or Specific Contracts. The Agency reserves the right to set off any amount owing to it by the Contractor from any amount payable by it to the Contractor.

Article I.5 – Bank account

Payments shall be made direct to the Contractor's bank account, identified as follows:

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
IBAN code: [complete]

Article I.6 – Notice/administrative provisions

Any notice or other communication relating to the Contract shall be made in writing, shall bear the Contract number and shall be sent to the appropriate address set out below (or such other address, fax number or person as the relevant party may notify to the other). Ordinary mail sent by prepaid, first class post or recorded delivery shall be deemed to have been received by the Agency on the date on which it is registered by the department responsible and indicated below. All email and facsimile communications are deemed received on the working date following transmission. All notices or other communications shall be sent to the following addresses:

The Agency:

European Medicines Agency
Infrastructure Services Sector
7 Westferry Circus
Canary Wharf
London E14 4HB
UK

Contractor:

Mr/Mrs/Ms [complete]
[Title]
[Company name]
[Official address in full]

Article I.7– Applicable law and settlement of disputes

- I.7.1.** The Contract shall be governed and construed in accordance with the laws of England and Wales.
- I.7.2.** Failing an amicable settlement, the Court of Justice of the European Union shall have exclusive jurisdiction in any dispute relating to the performance or the interpretation of the Contract.

Article I.8 – Termination by either contracting party

Either party may, of its own volition and without being required to pay compensation, terminate the Contract by serving three months' formal prior notice. In the case of Goods, should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to the Goods which are the subject of valid Purchase Orders and delivered before the date termination is notified to become effective ("Termination Date"). In the case of Services, should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to the Services which are the subject of valid Purchase Orders or Specific Contracts before the date termination is notified to become effective. On receipt of such notice from the Agency the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments in relation to the Agency. It shall draw up any documents required by the Contract and its Annexes for the Goods delivered and

Services provided up to the Termination Date, within a period not exceeding sixty days from the Termination Date.

[Article I.9 – Transition for use when the Contractor is replacing an outgoing contractor (as applicable)]

I.9.1. The Contractor is replacing a previous contractor of similar services (the “Outgoing Contractor”) and the parties hereto acknowledge and agree that this is a change of service provision whereby the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (or where applicable outside of the UK any equivalent law implementing the EU Acquired Rights Directive 77/187) (the “TUPE Regulations”) shall apply requiring a transfer of employees from the Outgoing Contractor to the Contractor, the Agency and the Contractor undertake to carry out such transition in a manner consistent therewith and in accordance with the reasonable requirements of the Agency (“Transition”).

I.9.2. The Contractor undertakes to (a) co-operate with the Outgoing Contractor in order to obtain a smooth transfer of the employees of the Outgoing Contractor to the Contractor and (b) to provide to the Agency and/or the Outgoing Contractor all necessary information and perform such other obligations as required in the UK by Regulations 13, 14 or any award of compensation under Regulation 15 of the TUPE Regulations or which the Outgoing Contractor shall require to comply with section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended (“TULR(C)A”) and shall indemnify the Agency and the Outgoing Contractor for costs, claims, damages or expenses (including legal expenses) incurred in respect of any claim whatsoever arising from any failure to comply with the foregoing. In relation to this clause, the Outgoing Contractor shall also have the benefit of this indemnity in respect of any failure of the Contractor’s obligations by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

I.9.3. The Contractor shall indemnify and keep indemnified the Agency in respect of costs, claims, damages or expenses (including legal expenses) incurred in relation to any claim (whether received directly or by way of a claim from the Outgoing Contractor) in relation to:

(a) any claim relating to any employee of the Outgoing Contractor who is transferred to the Contractor and which arises on and from the date of transfer except to the extent that any liability arises as a result of any act, fault or omission of the Outgoing Contractor prior to the date of transfer;

(b) any claim relating to any employee of the Outgoing Contractor on the grounds that there is a substantial change in the terms and conditions of employment which are to his/her detriment or that a change in the identity of the employer is a significant change to his/her detriment as defined in Regulation 4 of the TUPE Regulations; and

(c) any claim relating to any alteration on or after the date of transfer of the terms and conditions of employment of any employee of the Outgoing Contractor.

In relation to this clause the Outgoing Contractor shall also have the benefit of this indemnity in respect of any failure of the Contractor’s obligations by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.]

Article I.10 - Step-in rights

- I.10.1.** The Agency reserves the right where reasonable without incurring liability to the Contractor to provide itself and/or use alternative contractor(s) in the event of:
- (a) the Contractor being unable or being perceived as being likely to be unable for any reason to provide the Goods and/or Services whether in whole or in part or otherwise in accordance with the requirements of this Contract; and
 - (b) where a regulatory authority has expressed concern as to the Contractor's past ability or future ability to perform the Contractor's obligations.
- I.10.2.** In such circumstances, the Agency reserves the right to charge the Contractor for additional costs incurred as a direct result thereof save where such failure arises due to force majeure in the circumstances described in the Contract; or an act or default of the Agency.
- I.10.3.** Except in case of genuine urgency or emergency or unless otherwise directed by a regulatory authority, the Agency shall not exercise any right of step-in without first notifying the Contractor of this course of action.
- I.10.4.** The Contractor shall work with the Agency in good faith to resolve the cause which gave rise to the exercise of the Agency's rights under this clause.

Article I.11 Not applicable

Article I.12 - Contractor personnel

- I.12.1.** Operational, managerial and supervisory employees, directors or other officers or members of the staff of the Contractor (the "Contractor Staff") used in the provision of the Services shall be of sufficient numbers and of suitable experience, grade and calibre at all times to provide and maintain the Services. Contractor employees must be qualified or otherwise trained and experienced both generally and in accordance with and meet the requirements of this Contract in relation to the nature of their specific duties. All Contractor employees employed in professional or craft positions must hold appropriate qualifications and/or certification. The foregoing shall not apply with effect from the effective date of this Contract as detailed in Article I.2.1 with respect to any Contractor employees who are Outgoing Contractor employees or contractors, responsibility for which transfers to the Contractor under the Contract, who do not comply with the foregoing. The Contractor shall make good the foregoing requirements within the period of six months following the effective date of this Contract.
- I.12.2.** The Contractor shall comply with all statutory requirements applicable to the employment of labour at all times.
- I.12.3.** Not applicable.
- I.12.4.** Contractor Staff employed to perform the Services shall be subject to all reasonable policies, standards and procedures laid down from time to time by the Agency relating to access to premises, equipment, restricted areas, dress, conduct, proper safety and good housekeeping practice. Regulations laid down and enforced from time to time pursuant to this Article shall be those considered to be necessary for good safety and housekeeping practices and shall be in line with the regulations enforced on the Agency's labour force in the performance of their duties.
- I.12.5.** Not applicable.

- I.12.6.** Not applicable.
- I.12.7.** Contractor Staff requiring regular or temporary access to the premises will be issued by the Agency with a photograph identity access card. Contractor Staff are responsible for the safe-keeping of the cards. The cards must be worn and displayed at all times whilst on the premises. Lost or stolen cards shall be reported promptly to the Agency's Security Office and the Contractor shall pay an administrative charge for replacement cards. The Contractor shall be responsible for returning cards following any change of Contractor Staff for any reason. The Contractor shall indemnify the Agency in respect of any direct loss or damage which is suffered by the Agency to the extent that it results from any misuse or unauthorised use made of cards issued to Contractor Staff, including (without limitation) where a card is lost, stolen, improperly retained or otherwise; provided, however, that the Contractor shall not have any liability for such loss or damage occurring after such time as the Agency's Security Office is notified of any such loss, theft or improper retention of a card, misuse or unauthorised use of the card in question, such notice to be effective for the purpose of limiting the Contractor's liability when given if given between 9.00 am and 5.00 pm on a week day (Monday to Friday) and if given otherwise, then with effect from 9.00 am on the next week day.
- I.12.8.** All Contractor Staff will be expected to understand, write and speak English to a standard which is commensurate with the requirements of the work they are engaged to carry out.
- I.12.9.** If requested, the Contractor must supply the Agency with the National Insurance numbers, or other identifying identity card, passport, social security or taxation reference numbers (if applicable) of all Contractor Staff engaged in connection with the provision of the Services.
- I.12.10.** The Agency, acting reasonably, reserves the right to refuse access to any person it considers undesirable.
- I.12.11.** The Contractor shall assume full responsibility for the actions or defaults of Contractor Staff while performing the Services and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, redundancy and unfair dismissal payments, disability benefits and the like.
- I.12.12.** The Contractor shall indemnify the Agency against claims by any personnel made against the Agency arising out of their contracts of employment with the Contractor or their termination including (without limitation) any claim of unfair dismissal or redundancy payment or damages for wrongful dismissal. The Contractor shall have full conduct of the defence or negotiation of any such claim but will consult with the Agency and comply with any reasonable requirement or request in relation thereto.
- I.12.13.** During the currency of this Contract and for twelve (12) months thereafter neither party will, without the prior written consent of the other, knowingly directly or indirectly entice or solicit in any way any employee of the other party directly involved in the operation of this Contract. This provision shall not apply if an employee is employed without enticement or solicitation as a result of a response by the employee to a public advertisement for employees. In the event of any breach of this provision, the defaulting party shall pay the other by way of liquidated damages in full and final settlement of any losses incurred a sum which is fifty (50) per cent of the starting annual salary of the enticed or solicited employee.

Article I.13 – Change control

- I.13.1.** The Agency shall have the right to request a change to the Services provided in accordance with the following provisions.
- I.13.2.** Subject to the Contractor having the technical ability to provide the requested change, a change requested by the Agency shall, subject to the change control process, set out below, be implemented at the Agency's request.
- I.13.3.** Without prejudice to the foregoing the Agency shall also have the right to decrease the size and/or number and/or location of its premises which are to receive the Services.
- I.13.4.** Any change described in the foregoing Articles ("Amended Service") shall take effect as amendments (where relevant) to this Contract following the application of the change control processes described below. However, for the avoidance of doubt, a decision by the Agency to request Amended Services is a decision that is within the ultimate decision of the Agency alone.
- I.13.5.** The Contractor shall provide the Agency with a written statement of the expected effects (if any) on the Services for each Specific Contract of the Amended Service, including (but not limited to) matters such as:
- (a) the Charges;
 - (b) the cost of implementing the change and where the cost is chargeable to the Agency, whether the charge is a single or recurring cost;
 - (c) the duration of the Specific Contract and this Contract;
 - (d) impact on existing Services;
 - (e) whether the change involves or potentially involves any transfer of personnel under the TUPE Regulations;
 - (f) personnel to be involved/required;
 - (g) training to be provided;
 - (h) documentation to be provided;
 - (i) Deliverables and quality of service delivery;
 - (j) working arrangements.
- I.13.6.** If an Amended Service involves closures of premises in circumstances, other than those following a transfer, then the Agency shall give as much notice of its decision as reasonably possible. The Contractor recognises that it may not be possible for the Agency to discuss the possibility of closure until either a late stage in the process or in some cases not until the decision has been taken.
- I.13.7.** The Agency and the Contractor shall work together in co-operation to facilitate the change in the most operationally beneficial, timely and cost-effective way possible.
- I.13.8.** The cost of any change shall be borne as follows:
- (a) if the change is a requirement of the Agency as to the nature or extent of the Services or their method of performance then the cost shall be borne by the Agency;

(b) if the change is a requirement of the Contractor as a result of any requirement of the Contractor to change the nature or extent of the Services or the method of their performance then the cost shall be borne by the Contractor;

(c) if a change is required by any regulatory authority or change in the law and practice which affects both the Contractor and the Agency then the cost shall be borne in such proportions as shall be fair and equitable having regard to the nature and impact of the requirement.

For the avoidance of doubt, where the result of any change required by a regulatory authority reduces the costs of the Contractor in providing the Services then the Agency shall be entitled to a reasonable reduction in the Charges the same to be negotiated in good faith if not agreed.

- I.13.9.** The Agency and the Contractor agree that there may be occasions when the formal change control procedure is not applicable, such as following a catastrophe or force majeure event or where an acquisition takes place on short notice. In such circumstances, the Agency and Contractor shall co-operate in good faith. The Contractor shall be remunerated for the provision of additional services or assistance in accordance with the rates for Charges where appropriate or, if not appropriate, then using the Contractor's published price list or, if none, then on a fair and reasonable basis.

Article I.14 – Not applicable

Article I.15 - Exit Plan

- I.15.1.** Upon signature of this Contract, the Contractor must produce an exit plan in accordance with Annex IV of this Contract (the "Exit Plan").
- I.15.2.** The Contractor shall update the Exit Plan when requested by the Agency throughout the currency of the Contract reflecting changes which have occurred in the operation of this Contract. The Contractor shall forward each revised Exit Plan to the Agency for its approval.
- I.15.3.** Following the commencement of the period immediately following receipt of notice by either side to terminate the Contract ("Exit Period") the Contractor shall:
- (a) update the Exit Plan;
 - (b) form with the Agency, an exit co-ordination committee consisting of not less than two (2) persons from each party which shall have the responsibility to co-ordinate and manage the exit process.
- I.15.4.** With respect to expiry or termination of the Contract for any reason, the Contractor and the Agency will provide each other with any reasonable co-operation and assistance necessary to ensure that an orderly transfer is achieved to the Agency or a new contractor with minimal disruption of the Services, functions and operations which were provided prior to expiry or termination. The provisions of this Article I.15 or the remainder of any Specific Contract shall not prejudice or limit this obligation.
- I.15.5.** The Contractor will perform, support and offer reasonable assistance in connection with such transfer including without limitation (at the Agency's sole direction) in accordance with the following provisions of this Article I.15. The costs of such assistance shall be borne as follows:
- (a) in the event of termination by the Agency pursuant to Article I.15 the costs incurred by the Contractor in providing such assistance shall be borne by the Contractor; or

(b) in the case of expiry in the normal course such costs shall be borne equally by the Contractor and the Agency.

I.15.6. The Contractor shall:

(a) in all cases, at the request of the Agency, provide continued performance for a further period of not exceeding (6) months in the case of expiration and not exceeding twelve (12) months in the case of termination for any other reason, from the expiry or termination date of all or any part of the Services, functions and operations performed by the Contractor, in the same manner and upon the same financial terms (pro-rated as appropriate) as required prior to termination or expiry. For the avoidance of doubt, this provision shall apply notwithstanding the giving of any notice of termination, which would otherwise have the effect of terminating the Contract or any Specific Contract PROVIDED that, in the case of termination by the Contractor arising from breach of the Contract or a Specific Contract for unjustified non-payment of Charges, the Contractor's performance and continued performance of the Services and the provision of exit assistance shall be conditional upon the Contractor being satisfied and continuing to be satisfied that it shall be paid for outstanding Charges and continuing Charges and for the costs of providing exit assistance;

(b) provide (on one or more occasions) to the Agency and/or new contractor(s) of such reasonable information as provided for in Articles I.15.6 (g) and (h), access to agreements between the Contractor and third parties (to the extent permitted by such agreements) and co-operation as may be reasonably required for the purposes of achieving a timely and successful transfer (such information and co-operation not to be unreasonably withheld or unreasonably delayed);

(c) provide to the Agency and/or its new contractor(s) the option to acquire from the Contractor at fair market value all or any equipment owned by the Contractor and not subject to any leasing agreement and used exclusively for the provision of the Services;

(d) provide to the Agency (or its new contractor(s), if the Contractor believes that such sale is feasible, the possibility of acquiring at fair market value from the Contractor or members of its group, all or any equipment not subject to any leasing agreement and not used exclusively for the provision of the Services;

(e) use commercially reasonable efforts to provide to the Agency or its new contractor(s) the opportunity, so far as lies within the Contractor's power, to acquire the benefit of any other asset or agreement (such as equipment leases, maintenance/service agreements, software licences) used solely in the provision of the Services but not owned by the Contractor, and co-operate in good faith to achieve a lease, assignment or novation by the Agency or its new contractor(s) of the rights of the Contractor in respect of such asset or agreement provided that the Contractor is released from any and all liability under any agreement by which the Contractor is bound with respect to such asset or agreement from and after the date of transfer to the Agency or its new contractor(s). Any charges or fees payable to a third party in respect of such transfer, novation or assignment shall be borne according to the circumstances of the termination and the responsibility for costs as outlined in Article I.15.5;

(f) use its best endeavours at the Agency's request in the case of inability to transfer any of the agreements in Article I.15.6(e) the right of the Agency or a new contractor a temporary use of the asset or service to enable the Agency or new contractor to arrange an alternative resource to be found. The Agency shall reimburse at cost any ongoing cost for the use of such asset or service;

(g) provide to the Agency or to new contractor(s) all information of employees of the Contractor then employed in the provision of the Services as is required by the Agency in order to ensure compliance by the Agency or new contractor(s) with the TUPE Regulations;

(h) provide to the Agency full and complete information as to the assets, software, operation of the Services as the Agency or a new contractor shall reasonably require.

I.15.7. In order to facilitate the operation of this Article I.15, the following provisions shall apply, whereby the Contractor shall not from the period six (6) months prior to the expiry of the term of the Specific Contract or otherwise with effect from the date of any notice to terminate:

(a) remove or replace any Contractor Staff who can be fairly regarded as essential to the uninterrupted operation of the Services without the express written consent of the Agency provided always this provision shall not apply to any person who resigns or retires in the normal course of his or her employment or who is otherwise dismissed for cause;

(b) make any changes in the levels of staffing used in the operation of the Services without the express written consent of the Agency;

(c) make any changes to the remuneration, benefits or conditions of service of any Contractor Staff (other than changes which the Contractor is contractually bound to implement as a result of agreement(s) entered into prior to the commencement of the Exit Period;

(d) remove any Contractor equipment which is used in the operation of the Services;

(e) make any changes to any equipment, software or other items used in the provision of the Services;

(f) make any changes to or renewals of any third-party agreements which the Contractor owns or manages in relation to the Services.

I.15.8. The Agency and the Contractor will co-operate with each other at the time of expiration or termination of the Specific Contract to ensure a smooth transfer of relevant employees to the Agency or to any new contractor in accordance with the TUPE Regulations. Without prejudice to the generality of the foregoing and subject to data protection considerations, the Contractor shall ensure that the Agency or any new contractor receives full details of the employees concerned, their terms and conditions, pay, bonuses, pensions and other benefits that they enjoy.

I.15.9. The Contractor warrants to the Agency and any new contractor the accuracy of the employee information provided under Article I.15.8.

I.15.10. The Agency shall provide or ensure the provision of all necessary information for the Contractor to comply with its obligations under Regulation 13 of the TUPE Regulations.

I.15.11. The Contractor and the Agency shall respectively be responsible for payment of all wages, National Insurance, holiday pay, pension contributions and other emoluments in relation to transferring employees before and after any relevant transfer date and the same shall be apportioned where appropriate on a time basis.

I.15.12. The Contractor shall indemnify the Agency and any new contractor in respect of any liability in relation to employees who transfer under the provisions of the TUPE Regulations in relation to:

(a) any liability for any wrongful act or omission in relation to any transferring employee which has transferred under the provisions of the TUPE Regulations and which relates to a period prior to the relevant transfer date; and

(b) any liability for failure to comply with Regulation 13 of the TUPE Regulations except to the extent that the same is due to any act or default of the Agency.

I.15.13. The Agency shall indemnify the Contractor in relation to transferring employees who transfer under the TUPE Regulations in respect of:

(a) any liability for any wrongful act or omission in relation to any transferring employee which has transferred under the provisions of the TUPE Regulations and which relates to a period on and with effect from the relevant transfer date, including for the avoidance of doubt, any alteration in the terms and conditions of employment from or following the relevant transfer date; and

(b) any liability incurred by the Contractor or as a result of failure to comply with Regulation 13 of the TUPE Regulations arising from any act or default of the Agency or new contractor(s) in performing the obligations of transferees under Regulation 13 of the TUPE Regulations.

I.15.14. The Contractor acknowledges that a new contractor shall have the benefit of all its warranties and indemnities in this Article I.15 pursuant to the Contracts (Rights of Third Parties) Act 1999.

Article I.16 – Service level agreement

I.16.1 The Agency and the Contractor shall negotiate and sign a Service Level Agreement (SLA) within three months following entry into force of the Contract. The SLA shall be incorporated into the Contract by way of an amendment and shall form Annex V of it. The Contractor shall meet or exceed the service level requirements set out at Annex V of the Contract. The scope of the SLA shall be to clearly define the Contract management procedure and to fix quality indicators and levels for the provision of Services and for the Contract administration.

I.16.2 The Contractor acknowledges and confirms that:-

(a) it has had the opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Agency all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the Contract;

(b) it has received all information requested by it from the Agency pursuant to Article I.16.2 (a) to enable it to determine whether it is able to provide the Services in accordance with the Contract;

(c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Agency pursuant to Article I.16.2 (b); and

(d) it has entered into the Contract in reliance on its own due diligence.

I.16.3. Save as provided in the Contract, no representations, warranties or conditions are given or assumed by the Agency in respect of any information which is provided to the Contractor by the Agency and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

- I.16.4.** The Agency may review the SLA from time to time and request amendment at its discretion. The Contractor shall implement all amendments which do not amount to a material detriment to them within a reasonable time and otherwise by agreement.

II – General Conditions

Article II.1 – Performance of a Specific Contract or Purchase Order

- II.1.1.** The Contractor shall supply the Goods in accordance with Article II.1.10 and perform the Services to a professional standard which might reasonably be expected of it and in any event with reasonable skill and care. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on it, notably but not limited to those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for the supply of the Goods and the performance of the Services under the laws and regulations in force at the place where the Purchase Orders are to be fulfilled and the Services are to be provided.
- II.1.3.** Without prejudice to Article II.3 any reference made to any employee, director or other officer or member of staff of the Contractor ("Contractor's Staff") in the Contract shall relate exclusively to individuals involved in the fulfilment of the Purchase Orders and the performance of the Services.
- II.1.4.** The Contractor must ensure that:
- II.1.4.1** all of the Contractor's Staff performing the Contract have the professional qualifications, experience and authorisation required for the fulfilment of the Purchase Orders and the performance of the Services assigned to them; and
 - II.1.4.2** all of the Contractor's Staff performing the Contract have read, are familiar with and shall abide by the "Health and Safety Information for Contractors" policy or plan as may be applicable from time to time and which can be obtained from the Agency on written request.
- II.1.5.** The Contractor shall neither hold itself out as representing the Agency nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the Contractor's Staff who perform the Services assigned to them and agrees that no member of the Contractor's Staff shall transfer to the Agency on termination hereof.

The Contractor shall make provision for the following employment or service relationships with the Contractor's Staff:

- the Contractor's Staff performing the Services assigned to the Contractor may not accept orders or instructions direct from the Agency in relation to how they provide the Services;
- the Agency may not under any circumstances be considered to be the employer of the Contractor's Staff and the said staff shall undertake if requested by the Agency and as far as they are able not to invoke in respect of the Agency any right arising from the contractual relationship between the Agency and the Contractor.

- II.1.7.** Notwithstanding the above, the Contractor shall indemnify and hold the Agency harmless against all and any claims, loss, cost or expenses suffered as a consequence of any claim arising from any employee or other member of the Contractor's Staff or any claim, assessment or other levy made by any competent taxation or other governmental agency in connection with the provision of the Services by the Contractor to the Agency and/or the termination thereof (howsoever caused) in relation to, inter alia, any claim against the Agency arising from the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- II.1.8.** In the event of disruption resulting from the action of a member of the Contractor's Staff working on the Agency's premises or in the event of the expertise of a member of the Contractor's Staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Agency shall have the right to request the replacement of any such member of the Contractor's Staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the Purchase Orders and the Services assigned to him resulting from the replacement of the Contractor's Staff in accordance with this Article.
- II.1.9.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the Purchase Orders or Services, either partially or totally, the Contractor shall immediately and on its own initiative record it and report it to the Agency. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.10.** Phases of execution of purchase orders for Goods

Whenever the Agency requests Goods to be supplied pursuant to the Contract through Purchase Orders, it shall send a Purchase Order to the Contractor, specifying the terms of supply of the Goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the Contract.

Acknowledgment of the Purchase Order by the Contractor

Within the period indicated in Article I.2.7, the Contractor shall return one original of the Purchase Order, duly signed and dated, thereby acknowledging receipt of the Purchase Order and acceptance of the terms.

Delivery

a) Time allowed for delivery

The time allowed for delivery shall be notified on the Purchase Order and calculated in accordance with Article I.2.

b) Date, time and place of delivery

The Agency shall be notified in writing of the exact date of delivery within the period indicated in Article I.2. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article I.2.

The Contractor shall bear all costs and risks involved in delivering the Goods to the place of delivery.

c) Consignment note

Each delivery shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or its carrier, giving the Purchase Order number and particulars of the Goods delivered. One copy of the consignment note shall be countersigned by the Agency and returned to the Contractor or to its carrier.

Certificate of conformity

Signing of the consignment note by the Agency, as provided for in subparagraph c) above, is simply an acknowledgment of the fact that the Goods have been delivered and in no way implies conformity of the Goods with the Purchase Order.

Conformity of the Goods delivered shall be evidenced by the signing of a certificate to this effect by the Agency no later than one month after the date of delivery, unless provision is made for a different period in the Special Conditions or in Annex I.

Conformity shall be declared only where the conditions laid down in the Contract and in the Purchase Order are satisfied and the Goods conform to Annex I.

Where, for reasons attributable to the Contractor, the Agency is unable to accept the Goods, the Contractor shall be notified in writing at the latest by the deadline for conformity.

Conformity of the Goods delivered with the Contract

a) The Goods delivered by the Contractor to the Agency must be in conformity in quantity, quality, price and packaging with the Contract and the relevant Purchase Order.

b) The Goods delivered must:

- correspond to the description given in Annex I and possess the characteristics of the Goods supplied by the Contractor to the Agency as a sample or model;
- be fit for any specific purpose required of them by the Agency and made known to the Contractor at the delivery of the Purchase Order;
- be fit for the purposes for which Goods of the same type as the Goods are normally used;
- demonstrate the quality and performance which are normal in goods of the same type as the Goods and which the Agency can reasonably expect, given the nature of the Goods and taking into account any public statements on the specific characteristics of the Goods made by the Contractor, the producer or the manufacturer or its representative, particularly in advertising or on labelling;
- be packaged according to the usual method for goods of the same type as the Goods or, failing this, in a way designed to preserve and protect them;
- comply with all applicable statutory and regulatory requirements.

Remedy

a) The Contractor shall be liable to the Agency for any lack of conformity which exists at the time the Goods are verified.

b) In case of lack of conformity, the Agency shall be entitled to reject the Goods and:

- either to have the Goods brought into conformity, free of charge, by repair or replacement;
- or to have an appropriate reduction made in the Charges.

c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the Agency, taking account of the nature of the Goods and the purpose for which they are required by the Agency.

d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the Goods into conformity, particularly the cost of postage, labour and materials.

Assembly

If required by Article I.1.3 of the Special Conditions, the Contractor shall assemble the Goods delivered within a period of one month unless otherwise specified in the Special Conditions or in Annex 1.

Notwithstanding any liability conferred on the Contractor by any other relationship between the parties, any lack of conformity resulting from incorrect installation of the Goods delivered shall be deemed to be equivalent to lack of conformity of the Goods if installation forms part of the Contract and the Goods were installed by the Contractor or under its responsibility. This shall apply equally if the Goods were to be installed by the Agency and were incorrectly installed owing to a shortcoming in the installation instructions.

Services provided to Goods

If required by Annex I, Services to Goods shall be provided accordingly.

II.1.11. General provisions concerning Goods

a) Packaging

Where appropriate, the Goods shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets and their contents (including the Goods), shall not weigh more than 2000 kg which represents the limit of the pallet transporter of the Agency.

Unless otherwise specified in the Special Conditions or in Annex I, pallets shall be considered as one way packaging and may be disposed of by the Agency and will not be returned to the Contractor regardless of whether the Goods have been rejected. Each box shall be clearly labelled with the following information:

- the Agency and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Purchase Order ;
- EC code number of article.

b) Guarantee

The Goods shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a different period in Annex I.

The Contractor shall ensure and represents and warrants that any permits and licences required for manufacturing and selling the Goods have been obtained.

The Contractor shall replace at its own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not become apparent until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, Goods used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other Goods that are part of the Purchase Order, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

Article II.2 – Liability/indemnity

- II.2.1.** The Agency shall not be liable for any claim, loss, cost or expense sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Agency.
- II.2.2.** The Contractor shall be liable for any claim, loss (save in respect of consequential loss), cost (including legal and other professional fees) or expenses sustained by the Agency but caused by the Contractor in the performance of the Contract, including that arising in the event of subcontracting under Article II.13. The Agency shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3.** The Contractor shall indemnify and hold the Agency harmless from all such claims, losses, costs and expenses incurred or paid by the Agency, pursuant to Article II.2.2 above and further provide compensation in the event of any action, claim or proceeding brought against the Agency by a third party which requires the Agency to devote management time thereto.
- II.2.4.** The Contractor's liability shall be capped at amount payable under the Specific Contract or Purchaser Order whereby the liability was incurred.
- II.2.5.** In the event of any action brought by a third party against the Agency in connection with performance of the Contract which does not fall within Articles II.2.2 and II.2.3 above, the Contractor shall assist the Agency. Expenditure incurred by the Contractor to this end may be borne by the Agency at its sole discretion.
- II.2.6.** The Contractor shall take out and maintain for the duration of the Contract insurance with a reputable insurance company against all normal business risks and damage relating to performance of the Contract including but not limited to Employer's Liability Insurance (if applicable) and Public Liability Insurance, both to a minimum cover of £5,000,000.00 or the equivalent in Euros. If required by the relevant applicable legislation, the Contractor shall take out supplementary insurance as reasonably required in accordance with reasonably prudent practices in its industry. A copy of all the relevant insurance contracts shall be sent to the Agency should it so request.

Article II.3 - Conflicts of interest

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflicts of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflicts of interest which could arise during performance of the Contract must be notified to the Agency in writing without delay. In the event of any such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Agency reserves the right to verify that such measures are reasonable and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that the Contractor Staff are not placed in a situation which could give rise to conflicts of interest. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Agency, any member of the Contractor Staff exposed to such a situation.

II.3.2. The Contractor shall abstain from entering into any contract likely to compromise its independence.

II.3.3. The Contractor declares:

- that it has not made and will not make any offer or agreement with any third party of any type whatsoever from which an advantage can be derived under the Contract,
- that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any third party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to the Contractor Staff as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Agency should it so request.

Article II.4 – Guarantees and reports – not applicable

Article II.5 – General provisions concerning payments

II.5.1. Payments shall be deemed to have been made on the date on which the Agency's account is debited.

II.5.2. The payment period referred to in Article I.4 may be suspended by the Agency at any time if it informs the Contractor that its invoice is incorrect, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Agency may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Agency shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter.

The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

- II.5.3.** In the event of late payment the Contractor shall be entitled to interest, provided that the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus eight percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Agency may not be deemed to constitute late payment.

Article II.6 – Recovery

- II.6.1.** If total payments made exceed the amount actually due under a Specific Contract or if recovery is justified in accordance with the terms of a Specific Contract, the Contractor shall reimburse the appropriate amount on receipt of the debit note, in the manner and within the time limits set by the Agency.
- II.6.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.6.3.** In the event of failure to pay by the deadline specified in the request for reimbursement, the Agency may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Agency that is certain, of a fixed amount and due. The Agency may also claim against the guarantee.

Article II.7 – Non-solicitation

- II.7.1.** Except in respect of any transfer of staff pursuant to the TUPE Regulations, neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Agency) in the receipt of the Services at any time during the Contract term or for a further period of [12] months after the termination of this Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- II.7.2.** If either the Contractor or the Agency commits any breach of article II.7.1, the breaching party shall, on demand, pay to the claiming party a sum equal to the recruitment costs incurred by the claiming party in replacing such person.

Article II.8 – Ownership of intellectual property rights

- II.8.1.** Any database rights, copyright, trademarks, trade names, domain names, designs or patents (whether registered or unregistered) including but not limited to, all other intellectual or industrial property rights such as know-how, trade secrets and goodwill (the "Intellectual

Property Rights”), created by the Contractor, specifically for the Agency, shall be owned solely by the Agency, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation.

- II.8.2.** Where Intellectual Property Rights existed prior to the Contract being entered into and are utilised in the Goods or the provision of the Services in an incidental way, and which are necessary for the ongoing benefit of those Goods and Services, the Contractor shall, or shall procure that any third party owner of said Intellectual Property Rights shall, grant to the Agency a perpetual, royalty free licence in connection therewith.
- II.8.3.** The Contractor shall execute any documents and do all things necessary to vest the Intellectual Property Rights, referred to in Article II.8.1 above, in the ownership of the Agency as may be requested by the Agency from time to time.
- II.8.4.** The Contractor represents and warrants that the Intellectual Property Rights arising, or utilised, in accordance with Articles II.8.1-2 are or shall be original and will not infringe any Intellectual Property Rights owned by any third party (including, but without limitation to, all moral rights).
- II.8.5.** The Contractor shall indemnify and hold the Agency harmless from all claims and liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Agency as a result of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of Goods or the Services.

Article II.9 – Confidentiality

- II.9.1.** In this Article, “Information” shall include any information intentionally or unintentionally provided directly or indirectly by either the Agency or the Contractor to the other in oral or documentary form or by way of electronically accessible media or other tangible form or by demonstrations and whether created or arising in connection with the Goods and/or Services or existing before, on or after the date of the Contract.
- II.9.2.** In this Article, “Confidential Information” shall mean:
 - (a) in respect of Information provided in documentary or by way of a presentation or in other tangible form, Information which at the time of provision is marked or otherwise designated to show expressly or is created or arises as a consequence of the provision of the Goods and/or Services or by necessary implication that it is imparted in confidence; and
 - (b) in respect of Information that is imparted orally, any information that the Agency or its representatives informed at the time of disclosure was imparted in confidence; and
 - (c) in respect of Confidential Information imparted orally, any note or record of the disclosure; and
 - (d) any copy of any of the foregoing; and
 - (e) the fact that Goods and/or Services are being provided hereunder.
- II.9.3.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge or disclose to any third parties any Confidential Information without prior written consent of the Agency. The Contractor shall continue to be bound by this undertaking after the termination or expiry of this Contract.

- II.9.4.** The Contractor shall obtain from each member of the Contractor Staff an undertaking that they will respect the confidentiality of any of the Confidential Information and that they will not divulge or disclose to any third parties or use for their own benefit or that of any third party any Confidential Information not available publicly, even after termination or expiry of this Contract.

Article II.10 - Use, distribution and publication of information/data protection

- II.10.1.** The Contractor shall authorise the Agency to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, the identity of the Contractor, the subject matter, the duration, the amount paid and any other information required by it to be so published, other than that which might reasonably amount to the trade secrets of the Contractor.
- II.10.2.** Unless otherwise provided by the Special Conditions, the Agency shall not be required to distribute or publish the Confidential Information supplied by the Contractor in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Agency.
- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Agency and shall mention the amount paid by the Agency. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency's official position.
- II.10.4.** The use of Confidential Information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Agency has specifically given prior written authorisation to the contrary.
- I.10.5.** The parties shall, and the Contractor shall procure that all its subcontractors shall, comply at all times with the Regulation (EC) No 45/2001, Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner (the "Data Protection Legislation") and shall not perform their obligations under the Contract in such a way as to cause either party to breach any of its obligations under the Data Protection Legislation. The Contractor shall immediately notify the Agency in the event that it becomes aware of any breach of the Data Protection Legislation by it or any of its subcontractors in connection with the Contract.

Article II. 11 – Taxation

- II.11.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to it. Failure to comply shall render the relevant invoices invalid.
- II.11.2.** The Contractor recognises that the Agency is, as a rule, exempt from all taxes and duties, and in certain circumstances is entitled to a refund for indirect tax incurred such as value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the Goods and Services required for performance of the Contract are exempt from taxes and duties, including VAT (if applicable).
- II.11.4.** Invoices presented by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

Article II.12 – Force majeure

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties including acts of terrorism which prevents either of them from performing any of their obligations under this Contract or a Specific Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the provisions of Article II.1.9, if either party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3.** Neither party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for the Goods actually delivered and Services actually executed.
- II.12.4.** The contracting parties shall take all necessary measures to reduce damage to a minimum including the right of the Agency to terminate and retain new suppliers.

Article II.13 – Subcontracting

- II.13.1.** The Contractor shall not subcontract the supply of the Goods and the performance of the Services without prior written consent from the Agency nor cause the Contract to be performed in fact by third parties. In the event that the Agency authorises the Contractor to subcontract to a third party the Contractor shall, if requested by the Agency, provide the Agency with a copy of all terms and conditions relating thereto prior to its entry into the same.
- II.13.2.** Even where the Agency authorises the Contractor to subcontract to third parties, the Contractor shall remain bound by its obligations to the Agency under the Contract and shall guarantee the supply of the Goods and the provision of the Services and be liable for the proper performance of the Contract as if it were supplying the Goods and performing the Services itself.
- II.13.3.** The Contractor shall ensure that the subcontracting of its obligations does not affect rights and guarantees to which the Agency is entitled by virtue of the Contract and agrees to indemnify the Agency against any claim, loss, cost and expenses sustained by the Agency as a consequence thereof.

Article II.14 – Assignment

- II.14.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written consent from the Agency.
- II.14.2.** In the absence of the authorisation referred to in II.14.1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall be void against and shall have no effect on the Agency.

Article II.15 – Termination by the Agency

- II.15.1.** Notwithstanding any other term of this Contract, the Agency may terminate this Contract and any Specific Contract forthwith in the following circumstances:

- (a) where the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations applicable to the Contractor;
- (b) where the Contractor is an individual, he has been convicted of a criminal offence by a judgement which has the force of *res judicata* (other than minor road traffic offences which do not affect the provision of the Services);
- (c) where the Contractor has been sanctioned for professional misconduct proven by any means which the sanctioning authority can reasonably justify;
- (d) where the Agency has evidence or seriously suspects the Contractor or any related entity or person of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Agency's financial and/or reputational interests;
- (e) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor was guilty of misrepresentation in supplying the information in the Contractor's Tender or required by the Agency as a condition of entering into the Contract or failed to supply this information;
- (g) where there is a change of control of the Contractor and or any holding company of the Contractor whereby the Agency (acting reasonably at all times) considers there is a material detriment to its financial situation or its ability to carry out its functions in the way expected of it. In this clause (g), control means the ability to direct the affairs of another, whether by way of contract, ownership of shares or otherwise howsoever;
- (h) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes, whether or not in connection with the Contractor's Staff, in accordance with the legal provisions of the country in which it is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (i) where the Contractor is in breach of any obligations under Articles II.3 and II.9;

- II.15.2.** Notwithstanding any other term of this Contract, the Agency may terminate the Contract forthwith in the following circumstances:

(a) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Agency's reasonable opinion, have a significant effect on the performance of a Specific Contract;

(b) where delivery of the Goods other than Goods ordered when time is expressed to be of the essence, has not actually commenced within fifteen days of the date agreed and/or where provision of the Services has not actually commenced within one month of the date agreed, and the new date proposed, if any, is considered unacceptable by the Agency;

(c) where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of a Specific Contract;

(d) where the Contractor is in breach of any other obligations hereunder;

PROVIDED the Contractor fails to remedy said breach, only after receiving formal notice in writing to remedy said breach which specifies the nature of the alleged breach and gives the Contractor the opportunity to remedy the breach, other than Goods ordered when time is expressed to be of the essence within a reasonable period following receipt of the formal notice but in any event not exceeding 14 days.

II.15.3. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate a Specific Contract at any time, where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article I.2.3 immediately following the event amounting to force majeure occurring.

II.15.4. Prior to termination under point a), b), c) or d) of Article II.15.2, the Contractor shall be given the opportunity to submit its observations.

II.15.5. Termination shall take effect on the date on which a notice with pro-forma acknowledgment of receipt attached terminating the Contract is received by the Contractor, or on any other date indicated in the notice.

II.15.6. Consequences of termination:

In the event of the Agency terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments. The Contractor shall draw up any documents required by the Special Conditions for the Goods already supplied or the Services already performed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Agency may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Agency may engage any other contractor to supply the Goods and provide the Services. The Agency shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the supply of Goods and provision of Services, without prejudice to any other rights or guarantees it has under the Contract.

Article II.15a – Substantial errors, irregularities and fraud attributable to the Contractor

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Agency may suspend the Contract, refuse to make payments, may recover amounts already paid or may terminate all contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

Article II.16 – Not applicable

Article II.17 – Access, inspection and audits

- II.17.1.** The Contractor, during the currency of the Contract shall, or shall procure that its subcontractors shall gather, compile, correlate, collect and otherwise maintain all relevant accounts, records, books and other information in documentary form or on easily accessible electronic media ("Records"), arising in connection with the performance of the Contract.
- II.17.2.** In accordance with the Agency's Financial Regulation, the European Court of Auditors shall be entitled upon reasonable notice to access, inspect and audit the Records held by the Contractor in connection with the performance of the Contract up to five years after the last payment is made to the Contractor by the Agency.
- II.17.3.** The Agency or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of access, inspection and audit of the Records in accordance with Article II.17.2 above.
- II.17.4.** In addition, the Contractor acknowledges that the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 and agrees to submit thereto.

Article II.18 - Cancellation of Purchase Orders and Specific Contracts

- II.18.1.** Where delivery of the Goods as directed by a Purchase Order has not actually occurred within fifteen days of the date required and the new date proposed, if any, is considered unacceptable by the Agency, the Agency may cancel such Purchase Order by notice with immediate effect. Cancellation shall take effect from the day after the day on which the Contractor receives notice accompanied by the pro-forma acknowledgment of receipt or equivalent.

The Agency may cancel a Purchase Order at any time during delivery thereof on the grounds and under the conditions set out in Article II.15 with respect to the part of the delivery still outstanding. The Contractor shall accept, as the aggregate liability of the Agency, payment of the price of the Goods actually delivered by it as at the effective date of cancellation.

- II.18.2.** Where execution of a Specific Contract has not actually commenced within one month of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by the Agency, the Agency may cancel such Specific Contract with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgement of receipt or equivalent.

The Agency may cancel a Specific Contract at any time during execution thereof on the grounds and under the conditions set out in Article II.15 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of the Agency, payment of the price of the Goods delivered or Services provided by it as at the effective date of cancellation.

Article II.19 – Whole agreement and amendments

This Contract (together with any documents referred to herein and any Purchaser Order or Specific Contract issued hereunder) constitutes the whole agreement between the parties hereto relating to its subject matter and no variations or amendments to the Contract shall be effective unless the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

Article II.20 – Business continuity

- II.20.1.** The Contractor shall ensure that it is able to implement the provisions of the disaster recovery and business continuity plan set out at Annex VI (the “Disaster Recovery and Business Continuity Plan”) at any time in accordance with its terms.
- II.20.2.** If requested by the Agency, the Contractor shall test the Disaster Recovery and Business Continuity Plan. The Agency shall be entitled to participate in such tests as it may reasonably require.
- II.20.3.** Following each test, the Contractor shall send to the Agency a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Agency considers to be necessary as a result of those tests.
- II.20.4.** The Contractor shall implement the Disaster Recovery and Business Continuity Plan in the event that the Services are not available for more than twenty-four hours.

Article II.21 – Waiver

No forbearance or delay -by either party-in enforcing its -respective- rights will prejudice or restrict - the rights of that party-, and no waiver of any other rights or of any breach of any terms of the Contract will be deemed to be a waiver of any other right or of any later breach. In particular but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Agency to the Contractor in respect of the Goods and Services, or any omission on the part of the Contractor to communicate such prior acceptance or approval shall not relieve the Contractor of its obligations to deliver the Goods and Services in accordance with the provisions of the Contract.

Article II.22 - Relationship of the parties

Nothing in this Contract is intended to create a partnership or legal relationship of any kind that would impose liability on one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall make representations, act in the name of, on behalf of or otherwise bind the other party.

Article II.23 - Severance

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the

provisions. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this agreement is held to any extent to be invalid, the Agency and the Contractor shall immediately commence good faith negotiations to remedy such invalidity. Neither party shall unreasonably withhold or delay their agreement to any such matters.

Signatures

For the Contractor,
[Company name/forename/surname/title]

For the Agency,
[forename/surname/title]

signature: _____

signature:_____

Done at [place], [date]

Done at London, [date]

In duplicate in English.

Annex I

**Tender specifications (invitation to tender no.
EMA/2012/21/IS of [complete])**

Annex II

Contractor's tender (no [complete] of [complete])

Annex III

Sample Specific Contract

Specific Contract no. [complete] to framework service
contract no.[refer to number of framework contract]

European Medicines Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this Specific Contract by [name in full and title],

of the one part,

and

[official name in full of company]

whose registered address is at [official address in full]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by [name in full and title], a duly authorised officer of the Contractor

of the other part,

Have agreed

the following Specific Contract and the following Annexes:

Annex I – Request Form for Services

Annex II – Contractor's Response to the Request Form

Annex III – Deliverables

[Other Annexes]

which form an integral part of this specific contract (the "Specific Contract").

This Specific Contract implements the framework contract no. [complete] and its Annexes signed by the Agency and the Contractor on [complete date] [*and renewed on* complete date] (the "Framework Contract").

For the avoidance of doubt, the Contractor acknowledges and agrees that the terms of the Specific Contract and Framework Contract shall apply to the exclusion of the Contractor's standard terms and conditions.

Article I.1 - Subject

I.1.1. The subject of this Specific Contract is [short description of subject] (the "Services").

I.1.2. The Contractor undertakes, on the terms set out in the Framework Contract, this Specific Contract and its Annexes, to provide the Services in accordance with the Request Form

(Annex I), the Contractor's Response to the Request Form (Annex II) and the specified deliverables (Annex III).

Article I.2 - Duration

- I.2.1.** This Specific Contract shall become effective [on the date on which it is signed by the last contracting party] *OR* [on specific date]. The supply of the Goods shall take place on [indicate date]. Provision of the Services shall start from [*date of entry into force of this Specific Contract*] [*indicate date*] ("Implementation").
- I.2.2.** Implementation of this Specific Contract may under no circumstances begin before the date on which the Specific Contract becomes effective.
- I.2.3.** The duration of the Services shall not exceed [specify duration]. The period allowed for the supply of the Goods and the provision of the Services may be extended only with the express written consent of the Agency before such period elapses.

Article I.3 – Price

The total Charges to be paid by the Agency under the Specific Contract shall be [GBP] exclusive of VAT covering all Goods supplied and all Services provided.

Payment shall be made [insert payment terms here].

Invoices must contain the following Agency reference: PO [complete].

Article I.4 – Key personnel

In relation to [complete] and [complete] (the "Key Personnel"):

(a) during the period of six (6) months from the effective date of this Specific Contract, Key Personnel shall not be reassigned without the prior written consent of the Agency; and thereafter

(b) Key Personnel and other personnel who are from time to time identified and agreed upon as Key Personnel shall not be reassigned without the prior consent of the Agency, such consent not to be withheld where the Contractor can satisfy the requirement that his/her replacement (including any temporary replacement) is of equal or better suitability and that the provision of such replacement is done in such manner as to facilitate a handover with no disruption to the Services; and

(c) except in cases of instant/negotiated dismissal, notice shall be given to the Agency at the earliest available opportunity before any Key Personnel cease to be involved in the operation of this Contract together with details of how and when they are to be replaced (whether on a temporary or permanent basis); and

(d) the Agency shall have the right to approve and meet with any proposed permanent replacement and see his/her Curriculum Vitae. Approval shall not be unreasonably withheld, delayed or qualified.

Article I.5 – Amendments

No amendment to this Specific Contract shall be effective unless the subject of a written amendment executed by all parties. An oral agreement shall not be binding on either of the parties.

Signatures

For the Contractor,

For the Agency,

[Company name/forename/surname/title]

[forename/surname/title]

signature: _____

signature:_____

Done at [place], [date]

Done at London, [date]

In duplicate in English.

Annex III

To specific contract – to be completed with Deliverables

Annex IV

Exit Plan

1. Purpose of this annex

It is important that upon the expiry or termination of this Contract that:

- (a) the Services shall continue without interruption and/or degradation of the Deliverables; and
- (b) where the Services or any part of them are being migrated to an Exit Transferee (as defined below) such migration takes place in a project managed, professional and orderly manner with minimal business disruption.

2. Definitions and interpretation applicable to this annex

2.1 In this Annex the following additional definitions shall apply:

<i>Exit Transferee(s)</i>	the Agency and/or any new contractor(s);
<i>Exit Period</i>	as defined in Article I.15.3;
<i>Employment Claim</i>	means: any claim in connection with an employment relationship and arising in relation to any aspect thereof including (but not limited to) claims or liabilities related to: (i) redundancy, wrongful dismissal, unfair dismissal, unlawful deduction of wages, any category of discrimination, equal pay, incorrect treatment of part time workers, disability, unfair treatment, harassment, failure to consult; or (ii) liabilities in contract, tort, or otherwise arising out of or within an employment relationship. all losses, costs, claims, demands, damages, actions, fines, penalties, compensation payments, awards, liabilities and expenses (including any legal expenses on an indemnity basis) in connection with or as a result of any liability under the foregoing. and whether such claim is brought by or on behalf of any person with an employment relationship.
<i>Fair Market Value</i>	means the price payable between a willing buyer and willing seller.

2.2 In the event of a termination of a part of the Services only, the Exit Plan shall be adjusted for such Services as are so terminated and this Annex shall apply to the Services so terminated.

2.3 Where the exit is conducted in stages then this Annex shall be interpreted accordingly.

- 2.4 Exit Transferees shall have the benefit of all relevant warranties or indemnities given by the Contractor in this Annex under the provisions of the Contracts (Rights of Third Parties) Act 1999.

3. Exit plan – updates and review

Throughout the currency of the Contract, the Contractor shall review the Exit Plan when requested by the Agency and recommend any changes thereto in light of any changes in the Services or other significant circumstances. The Contractor shall provide a copy of the updated plan and a note of its changes not less than 10 (ten) business days prior to the review described above.

4. Exit plan – implementation

Exit Management – upon the activation of the Exit Plan the Agency and Contractor will jointly establish an 'exit co-ordination committee' that shall have overall responsibility for managing and implementing the exit process. Each party shall commit such resources, personnel or otherwise as is necessary to ensure compliance with the exit requirements of this Contract.

5. Continuity of services

- 5.1 **Continuity of Services** – during the exit process the Contractor shall continue to provide the Services.

- 5.2 **Continuity of Services where Exit cannot be achieved in Due Time etc** – where the exit process cannot be completed prior to the term expiry date and in all cases of termination the Contractor shall unless otherwise directed by the Agency continue to supply for a period not exceeding:

5.2.1 six (6) months from the Contract expiry date in the case of expiration; or

5.2.2 twelve (12) months in the case of termination from the date of notification of termination,

all or any part of the Services in the same manner and upon the same financial terms (prorated as appropriate) as required prior to termination or expiry.

For the avoidance of doubt, this provision shall apply notwithstanding the giving of any notice of termination, which would otherwise have the effect of terminating this Contract. In the case of termination by the Contractor arising from breach of this Contract for unjustified non-payment of Charges or due to the insolvency of the Agency or, where following any termination or expiry the Agency shall unjustifiably refuse to pay Charges or becomes insolvent, then the Contractor's:

- continued performance of the Services; and/or
- provision of exit assistance (if applicable),

is conditional upon the Contractor being satisfied and continuing to be satisfied that it shall be paid for outstanding and continuing Charges and for any Exit Assistance Payment (if applicable).

6. Transfer assistance

- 6.1 Contractor shall provide or give or carry out as appropriate:

- 6.1.1 **General Co-operation** – to provide general co-operation to the Exit Transferee(s).
- 6.1.2 **Updating of Registers etc** – to the extent not already done so, the Contractor shall update and maintain all the registers that it is obliged to maintain under the Contract and make them available to the Exit Transferee(s).
- 6.1.3 **Knowledge and Information Transfer** – the provision to Exit Transferee(s) of necessary information including but not limited to:
 - 6.1.3.1 technical briefing sessions in respect of assets or software transferred or licensed as the case may be;
 - 6.1.3.2 details of third party contracts and their operation;
 - 6.1.3.3 information or briefings relating to the operation of the Services.
- 6.1.4 **Removal of Contractor property and vacation of the Agency premises** – all premises are left in a proper state and any damage occasioned by the Contractor, or third party contractors for whom they are responsible is made good.
- 6.2 **Options to acquire assets**
 - 6.2.1 **Option to acquire exclusively used Contractor assets** – provide to the Exit Transferee(s) the option to acquire, at Fair Market Value, any equipment wholly owned and used exclusively for the provision of the Services.
 - 6.2.2 **Possibility to acquire non exclusively used Contractor assets** – provide to the Exit Transferee(s), if it does not affect its other operations, the possibility of acquiring, at Fair Market Value, any wholly owned equipment but not used exclusively for the provision of the Services.
- 6.3 **Provision of software – Not applicable**
- 6.4 **Third-party contracts**
 - 6.4.1 **Management of third-party contracts** – no changes or renewals in relation to third-party contracts shall be made without the Agency's written consent.
 - 6.4.2 **Transfer of third party contracts** – requires Contractor to assign or novate in favour of the Exit Transferees(s) third-party contracts including (but not limited to) supply contracts, equipment leases, hire agreements, maintenance agreements or software licences. All costs or premiums charged by any third party for its agreement to assign or novate shall be borne by the Agency.
 - 6.4.3 **Position if a third-party contract cannot be transferred**
 - (1) If a contract is an agreement which, despite the Contractor's best endeavours, cannot be the subject of a separate contract capable of assignment or novation under Clause 6.4.2, then the Contractor shall, if required, use its best endeavours to secure the right of the Exit Transferee(s) a temporary use of the asset, purchase of goods or services or other rights to allow time for an alternative resource to be found. The Agency shall reimburse at cost any ongoing cost or a fair and equitable proportion thereof for the same.
 - (2) for all other contracts the Contractor shall, to the extent permissible, continue to hold the benefit of the contract upon trust for the benefit of the Exit Transferee(s) until the earlier of:

- (i) assignment or novation;
- (ii) alternative arrangements are put in place; or
- (iii) the expiry of six (6) months from the date of completion of the exit.

During this period the Contractor shall perform the third party contract, in accordance with its terms and conditions until it is assigned or novated or alternative arrangements are put in place and the Agency shall reimburse the Contractor at cost for the use of any asset, goods or services or other rights supplied under such contract. If after six (6) months the third party has not consented to assign or novate the aforesaid the aforesaid arrangement shall cease and the Contractor, at its expense, may terminate the contract.

The parties shall, where appropriate, endeavour to include provisions to enable any transferred contract under Clauses 6.4.2 or 6.4.3 to be to be transferred to the Agency or another service provider in the event of a further transfer of any relevant part of the Services.

6.4.4 Liability for third-party contract performance

6.4.4.1 The Agency shall indemnify Contractor against any liability arising as a result of any act or omission by the Exit Transferee(s) relating to the period after (whichever is the earlier):

- any assignment or novation; or as the case may be;
- the date when the Exit Transferee(s) assume operational responsibility for the third party contract.

6.4.4.2 The Contractor shall indemnify the Exit Transferee(s) against any liability incurred or suffered arising as a result of any act or omission by the Contractor or members of the Contractor Group relating to the period before (whichever is the earlier):

- the assignment or novation; or as the case may be;
- the date when the Exit Transferee(s) assume operational responsibility for the third party contract.

7. Employment transfer

7.1 **Application of this Paragraph 7** – in the application of this Paragraph 7 it is assumed, unless otherwise specifically agreed, that there are no transfers of employees other than those employed by the Contractor. References to Contractor Staff shall be construed accordingly.

7.2 **Information** – upon an expiry or termination where there is an exit in the nature of a transfer of any one or more of the Services (Transferred Service(s)):

7.2.1 Contractor shall promptly provide to the Exit Transferee(s) complete and accurate details of:

7.2.1.1 the names and ages(subject to data protection and other legal constraints) of all Contractor Staff employed in the performance of the Transferred Services whose employment may pursuant to the TUPE Regulations transfer;

- 7.2.1.2 terms and conditions of employment;
- 7.2.1.3 pension, health, life assurance and other benefits enjoyed (whether contractual or otherwise);
- 7.2.1.4 collective bargaining or any similar arrangements;
- 7.2.1.5 disciplinary or grievance proceedings in respect of Contractor Staff within Paragraph 7.2.1.1;
- 7.2.1.6 claims made, threatened or in progress (whether in litigation or otherwise) by or on behalf of any person(s) within Paragraph 7.2.1.1;
- 7.2.1.7 current pay or other negotiations with any Contractor Staff, unions or other representative bodies;
- 7.2.1.8 such other information as may be reasonably requested.

The information required by the foregoing paragraphs:

(i) is to be supplied on one or more occasions as the circumstances require. In particular, the Contractor shall promptly and in writing notify any change in the information previously provided;

(ii) shall be warranted as to its accuracy and completeness. The Contractor shall indemnify and hold harmless the Agency from and against any Employment Claim or other loss, liability or claim incurred by the Agency in connection with or as a result of the Contractor providing inaccurate or incomplete information to an Exit Transferee. For the avoidance of doubt, this indemnity shall include any liability that the Agency or member of the Agency Group incurs in supplying such information to a new contractor.

7.3 Changes in staff or terms and conditions – Contractor shall not during the Exit Period, without the prior written consent of the Agency (the same not to be unreasonably withheld), in relation to Contractor Staff who may transfer under the TUPE Regulations:

7.3.1 move any Contractor Staff except with the prior written consent of the Agency which may be on terms to ensure proper continuity and knowledge transfer applicable to that employee. This shall not apply to any Contractor Staff member who:

- 7.3.1.1 resigns; or
- 7.3.1.2 is promoted; or
- 7.3.1.3 is dismissed for serious misconduct; or
- 7.3.1.4 is incapable of performing his/her duties; or
- 7.3.1.5 is ill; or
- 7.3.1.6 is a temporary employee.

Where an employee resigns the Contractor shall generally require a resigning individual to work his/her notice in full unless the Contractor believes this to be inappropriate in the circumstances. In such a case the Contractor shall advise the Agency;

7.3.2 propose or agree any changes to the terms and conditions of employment of any Contractor Staff (other than those agreed to prior to the Exit Period or which generally apply to the Contractor's employees).

7.4 **Warranties** – the parties shall provide appropriate warranties to each other in respect of any Contractor Staff who may by virtue of the TUPE Regulations transfer to the Exit Transferee(s).

7.5 **Apportionment of salaries etc** – all salaries, wages and bonuses and other emoluments, all statutory contributions and all income tax deductible under PAYE or under NI, all employer's contributions to pension and insurance schemes and all other employment costs and holiday pay (including any accrued holiday pay) in respect of any Contractor Staff to whom the TUPE Regulations apply will be apportioned on a time basis and borne:

7.5.1 by the Contractor in respect of the period prior to the transfer; and

7.5.2 by the Agency thereafter.

The Contractor shall be responsible for all payments of bonuses and the like, which are payable prior to the transfer date or which accrue before and after the transfer date and which are payable after the transfer date.

7.6 Contractor's indemnities for employment claims – Contractor shall indemnify and keep indemnified the Agency from any liability incurred by the Agency (whether received directly or by way of a claim from any new contractor) by way of costs, claims, damages or expenses (including legal expenses) arising from or in connection with:

7.6.1 an Employment Claim in respect of any member of the Contractor Staff who is transferred to the Exit Transferee(s) and which arose prior to the relevant transfer date except to the extent that any liability arises as a result of any act, fault or omission of an Exit Transferee on or after the relevant transfer date;

7.6.2 an Employment Claim arising from any assertion, claim or demand that either: (i) in relation to any person not being agreed as a transferring employee (including, but not limited to, any other employee or former employee of the Contractor or a third party contractor) that a contract of employment has, by virtue of the application of the TUPE Regulations, transferred or ought to transfer to an Exit Transferee; or (ii) that any undisclosed collective agreement (including any similar arrangement) has been transferred pursuant to the said regulations. For the avoidance of doubt, the indemnity shall also include liabilities incurred by an Exit Transferee in terminating any such contract of employment together with any accrued wages etc or terminating any such collective agreement. [Such indemnity is conditional upon (i) the Agency promptly notifying the Contractor in writing within twenty (20) days of its becoming aware of any such contract of employment or the existence of the undisclosed collective agreement and (ii) the Agency taking such action (at the Contractor's cost and expense) as the Contractor shall reasonably request in relation thereto to mitigate and/or contest such claim or demand.]

7.6.3 an Employment Claim arising from any failure of the Contractor to comply with the obligations of a transferor under Regulations 13, 14 or 15 of the TUPE Regulations except to the extent that any liability arises as a result of any act, fault or omission of an Exit Transferee.

- 7.7 **The Agency's Indemnity for Employment Claims** – the Agency shall indemnify and keep indemnified the Contractor from any liability for costs, claims, damages or expenses (including legal expenses) incurred by the Contractor arising from or in connection with:
- 7.7.1 an Employment Claim in relation to any Contractor Staff who is transferred to an Exit Transferee and which arises on and from the date of transfer except to the extent that any liability arises as a result of any act, fault or omission of the Contractor prior to the date of transfer;
 - 7.7.2 an Employment Claim in relation to an Exit Transferee's failure to comply with the obligations of a transferee under Regulation 13 of the TUPE Regulations or to supply appropriate information to enable a transferor to comply with section 188 of TULR(C)A except to the extent that any liability arises as a result of any act, fault or omission of the Contractor;
 - 7.7.3 an Employment Claim relating to any member of the Contractor Staff on the grounds that there is a substantial change in the terms and conditions of employment which are to his/her detriment or that a change in the identity of the employer is a significant change to his/her detriment as defined in Regulation 4 of the TUPE Regulations;
 - 7.7.4 an Employment Claim in relation to any alteration by an Exit Transferee of the terms and conditions of employment of any transferring Contractor Staff.

8. Exit retentions

- 8.1 Subject to Paragraph 8.3, the Agency may levy the following sums by way of an exit retention ('Exit Retention'):

Time before expiry date or termination date when exit retention may be made	Retention sum	Requirements for release of an Exit Retention
A. Three months	2% of the Charges in the third month prior to date of expiry or the effective date of termination	The Contractor has: performed any actions required to be completed before the commencement of this period; completed any actions which require to be completed in this period; commenced as appropriate any actions which are required generally under this Annex but which are not to be completed within this period.
B. Two months	1.5% of the Charges in the second month prior to date of expiry or the effective date of termination.	Ditto.

Time before expiry date or termination date when exit retention may be made	Retention sum	Requirements for release of an Exit Retention
C. One month	1% of the Charges for the final month's Services prior to the effective date of termination.	This retention shall be released after the Contractor has completed all actions to be performed by the Contractor in relation to the exit that are required to be performed prior to the expiry date or effective date of termination.

- 8.2 Where there is an exit of one or more Single Services the Exit Retention shall be calculated as a percentage of the Charges for the Single Service(s).
- 8.3 Exit Retention may not be levied where the Contractor's failure to perform any of its obligations is due to the acts or omissions of any of the Exit Transferee(s).

Annex V

Service Level Agreement

Annex VI

Disaster Recovery and Business Continuity Plan

1. Details of how the Contractor will implement the Plan
2. Details of how the Plan inter-operates with any other disaster recovery and business continuity plan of the Agency (as notified by the Agency to the Contractor from time to time)
3. Details as to how the invocation of any element of the Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services
4. Identification of all reasonably possible failures of or disruptions to the Services
5. Back-up methodology
6. Data verification procedures
7. Identification of all potential disaster recovery scenarios
8. Provision of appropriate levels of spares, maintenance equipment and test equipment
9. Responsibilities of subcontractors in the event of a disaster
10. Hardware configuration details, network planning and invocation rules and procedures
11. Data centre site audits
12. Service Levels that the Contractor will have to comply with in the event of a disaster
13. The Agency obligations and dependencies
14. The Contractor should also ensure that the Plan defines the processes, activities and responsibilities relating to the application of emergency fixes in business-critical emergency situations. It shall also define the rules for storing data, the required availability for that data and the mechanisms for making that data available. It should also include:
 - (a) risk analysis (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis);
 - (b) possible areas where system critical elements can be "dual sourced" so as to eliminate or minimise single points of failure;
 - (c) business continuity maintenance;
 - (d) documentation of business processes, procedures and responsibilities;
 - (e) a communications strategy; and
 - (f) procedures for reverting to normal service.
15. It should be agreed that the Plan should be reviewed by the Agency and the Contractor annually, or at such other times as may be requested by the Agency or the Contractor.