

EMEA CONDITIONS FOR INFORMATICS (“IT”) CONTRACTS

Article 1 - Quality and standards

- 1.1. The Contractor shall ensure that it performs the Services and provides the Goods in full knowledge and consideration of EMEA's prevailing computing environment. It shall perform the Services and provide the Goods in accordance with technical norms, standards and procedures based on best professional practice in the informatics and/or telecommunications field, and in particular with the ISO 9000 standards.
- 1.2. EMEA shall supply, upon the written consent of the Contractor and without delay, all the assistance, data and information that the Contractor considers reasonably necessary or useful for providing its Goods and Services.
- 1.3. EMEA and the Contractor shall notify each other in writing of any factor likely to impair or delay the proper execution of the Contract immediately upon such circumstances arising or coming to their notice.
- 1.4. The Contractor guarantees that any Goods delivered under this Contract, whether or not developed in execution of this Contract, will not fail to execute their programming instructions due to defects and poor workmanship when properly installed and used on the device(s) designated by the Contractor. They shall be devoid of any deliberate mechanism which leaves it under the Contractor's control after supply to EMEA. They shall meet the operating requirements, specifications and characteristics laid down in this Contract and its Annexes.
- 1.5. The quality of the Contractor's Goods and Services shall be measured by reference to the definitions, quality standards and procedures defined in this Contract or, in default, implied by law. Quality standards may be revised in line with developments on the market at EMEA's absolute discretion.
- 1.6. The Contractor undertakes to comply with those quality standards. Compliance with the standards shall be monitored by EMEA. Unless otherwise stated in the Contract, in the event of non-compliance with one or more of the standards over a sliding period of three (3) months, the Contractor shall submit an improvement plan. In the event of non-compliance with one or more of the standards for three (3) months, consecutive or not, over a sliding period of six (6) months, Goods for which quality has proved substandard may be withdrawn, or the Contract may be terminated where the overall quality of the Services is substandard.
- 1.7. Unless otherwise stated in this Contract, in the event of a complete failure of the combination of Goods and Services to operate together as a system in a way anticipated in this Contract (the “System”) and lasting more than twenty-four (24) hours from the time this state of affairs is notified in writing to the Contractor (“System Failure”), or in the event of intermittent System Failures lasting more than forty-eight (48) hours for any reason whatsoever, the Contractor shall respond according to the following priority:
 - (i) for production Systems (Category A), the Contractor must restore Services within 6 hours of call from EMEA;
 - (ii) for test and development Systems and non-critical units (Category B), the Contractor must restore Services within 24 hours of call from EMEA;

- (iii) for peripheral and basic Systems (Category C), repair of units must be within five days of call from EMEA.

If the Contractor can demonstrate that the failure is not attributable to it, it may charge the cost to EMEA at rates to be agreed between EMEA and the Contractor.

Article 2 – Common Technical Provisions

2.1 Security

- 2.1.1. The Contractor's Staff working at the EMEA's office premises must conform to any internal EMEA security rules. If members of the Contractor's Staff are working at the EMEA's office premises, the Contractor shall replace immediately and without any compensation any person considered undesirable by EMEA, at EMEA's request.
- 2.1.2. Any security requirements for individual projects shall be notified by EMEA from time to time or as required.
- 2.1.3. The Contractor agrees to contractually impose the security obligations of this Article upon any of its subcontractors (if applicable) and their staff who perform Services for EMEA in execution of this Contract.
- 2.1.4. The Contractor recognises that no goods, equipment or material whatsoever owned by EMEA or present at EMEA's premises, may be moved or removed without EMEA's express written approval.
- 2.1.5. The Contractor shall take all appropriate steps in relation to all Goods to ensure that the data and the magnetic media upon which they are stored are safely preserved. The Goods supplied shall not contain any mechanism (e.g. including, but not limited to, viruses, etc) which could compromise their proper operation or that of other any other goods or systems at EMEA. The cost of repairing the damage caused by such a mechanism shall be borne entirely by the Contractor.
- 2.1.6. The Contractor undertakes to inform EMEA in writing as soon as it has any knowledge of defaults in its Goods or Services that endanger the security of the configurations of which they may form a part. It shall immediately take any measures necessary to restore the security of the configurations and correct the defaults.
- 2.1.7. The Contractor shall ensure that all security precautions for each of the Goods are clearly identified in the relevant documentation supplied to EMEA and relating to the Goods in question.
- 2.1.8. Should the Contractor need remote access to internal informatics resources from the external domain during the performance of the Services which are the subject of this Contract, it shall be requested to comply with EMEA's internal rules on practical and technical security for remote intervention. This must be achieved by way of signature of a Specific Contract for remote intervention provided by EMEA.

2.2. Specific Intellectual Property Rights

- 2.2.1. As regards all Goods or other protected material or Intellectual Property Rights arising from any Services provided and for which the Intellectual Property Rights are the exclusive property of EMEA or which have been licensed to EMEA by third

parties, and which the Contractor is likely to use in the execution of its obligations under this Contract, EMEA expressly authorises the Contractor to use such Goods or other protected material or Intellectual Property Rights, within the limits strictly necessary for the execution of this Contract.

In view of the preceding, the Contractor undertakes:

- not to copy any such Goods or other protected material or Intellectual Property Rights without prior written authorisation from EMEA;
- to use such Goods or other protected material or Intellectual Property Rights exclusively in the context of this Contract;
- to protect and indemnify EMEA against all third-party claims or actions alleging a breach of their Intellectual Property Rights, or a use of such Goods or other protected material or Intellectual Property Rights in contravention with the present Article.

2.2.2. The Contractor undertakes to obtain written consent from EMEA prior to:

- filing a trademark, patent or design application in relation with any of the results or rights obtained in performance of the Contract in its own name or that of a third party;
- claiming a copyright over the results or rights obtained in performance of the Contract in its own name or of that of a third party;
- allowing a third party to do such filings or claims.

Failure to obtain permission from EMEA will entitle EMEA to seek damages against the Contractor and will not prevent EMEA from protecting the rights assigned under this Contract.

2.2.3. The Contractor declares that it is the rightful owner of the Intellectual Property Rights in all Goods and/or the author of the Intellectual Property Rights arising in connection with the provision of the Services delivered under this Contract, and that in relation to the Goods, it is entitled to assign or licence those Intellectual Property Rights in accordance with the terms of this Contract. If those Intellectual Property Rights are the property of third parties, the Contractor guarantees that it has requested and obtained those third parties' written authorisation to grant to EMEA the assignment or licence of their Intellectual Property Rights to the extent as provided under this Contract or necessary to allow EMEA unencumbered use of the Intellectual Property Rights. The Contractor shall be solely responsible for taking the necessary steps, under the laws and regulations in force at the place where the tasks assigned to the Contractor are to be performed, to ensure the opposability to third parties of the assignments or licences granted to EMEA by the Contractor or by such third parties.

2.2.4. The Contractor guarantees that none of the Goods, Services or other protected material delivered, whether or not developed in execution of this Contract, infringes any third party's Intellectual Property Rights.

2.2.5. Each party shall inform the other party of the existence or threat of any third party's action or claim alleging an infringement of its Intellectual Property Rights by EMEA's use of any Goods, Services or other protected material delivered under this Contract, provided such use is made in conformity with the terms of this Contract.

- 2.2.6. In the event of such a dispute or threat thereof, the Contractor undertakes to conduct all litigation, arbitration or negotiations for settlement, in its own name as well as in EMEA's name, at its own and sole expense.

EMEA agrees to provide the Contractor with all information and assistance that may reasonably be required, at the Contractor's own and sole expense.

However, EMEA reserves the right to decide to conduct its own defence or to negotiate its own settlement, at its own discretion. The Contractor will be responsible for any payment arising out of any settlement or judgment following such a dispute or threat, except for the payment of a settlement made by EMEA without the Contractor's written consent. Such consent may not be withheld without reasonable grounds.

If the infringement of a third party's Intellectual Property Rights is declared in a judgment, arbitration sentence or party settlement, or if such is likely to happen, the Contractor agrees to (1) either procure for EMEA the right to continue using the Goods and its documentation, (2) either replace them with substantially equivalent non-infringing Goods, or, if none of the foregoing is available, (3) grant to EMEA a credit in the amount corresponding to the purchase price of the proportion of the Goods which can no longer be used.

The Contractor will not be responsible under the present guarantee for any third party claiming an infringement of its Intellectual Property Rights based on (1) EMEA's use of Goods in combination with equipment not delivered by the Contractor, if such combined use is the cause of the claimed infringement, or (2) EMEA's use of any Goods delivered hereunder in a form other than the one delivered by the Contractor, if such change in form is the cause of the claimed infringement.

- 2.2.7. The guarantee against third party claims afforded by the Contractor to EMEA shall subsist for five (5) years following the end of the Contract, or for five (5) years following the last use by EMEA of the Goods and its documentation delivered by the Contractor, whichever period ends last.

2.3. Co-operation

- 2.3.1. The Contractor shall assist and advise EMEA on the use of its Goods and Services. It shall be responsible for product integration as regards its inclusion in this Contract, its operation in EMEA's environment and the introduction of new versions.

2.4. Product/Goods developments

- 2.4.1. Any Goods or Services delivered under this Contract shall have been demonstrated by the Contractor, at its expense, to conform to the technical specifications sent to the Contractor (Annex I).
- 2.4.2. Any Goods capable of replacing a previously approved product in the same operational environment, with no loss of performance and at no extra cost to EMEA, may be used by the Contractor in the performance of this Contract.
- 2.4.3. Proposals to include new Goods or Services involving new features or functions not previously available amongst the Goods or Services listed in this Contract shall only be considered in the context of the principal overall specifications covered by the call for tenders (Annex I).

- 2.4.4. Even if Goods or Services are approved by EMEA, any incompatibility with previous Goods and Services that become apparent in the course of their use shall be resolved by the Contractor as swiftly as possible and at no cost to EMEA.

[2.4.5. Evaluation procedures and trials of new products before inclusion in the price list may be specifically defined in this Contract.]

2.5. Product life or life of Goods

- 2.5.1. The Contractor shall ensure that the Goods, or similar replacement products, are marketed or available during the lifetime of this Contract from the date of their delivery.

The Contractor shall further ensure that maintenance of the Goods delivered under this Contract may be requested and provided for a period of at least five (5) years from the date of signature of this Contract, or, where applicable, of their certificate of conformity, whichever is the latest.

2.6. Use of Goods

- 2.6.1. From the date of signature of the consignment note, or, if applicable, of the certificate of conformity, whichever is the latest, EMEA may make unrestricted use of the Goods under normal operating conditions. EMEA may use the Goods for services it is carrying out for other institutions, agencies or bodies. If the Goods are rented or leased, the right of use applies for the duration specified. If a guarantee applies, maintenance may not start until the guarantee has expired.
- 2.6.2. The Contractor must ensure that EMEA may add compatible Goods of any origin to a System or connect to it, either directly or via telecommunications networks.
- 2.6.3. In view of EMEA's supranational nature, the Contractor shall not exert any right of inspection over EMEA's use of the Goods.

2.7. Documentation

The Contractor shall provide EMEA with its documentation and updates, as soon as they become available to its customers, in as many copies, whether in machine-readable form or on paper, as are stated in this Contract or its Annexes. EMEA may reproduce this documentation in full or in part for any internal use by its staff. EMEA shall reproduce all references to Intellectual Property Rights appearing on the originals.

2.8. Benchmarking

EMEA may undertake a process of benchmarking of the levels and the charges of the Goods and Services provided under this Contract by comparison with similar goods and services provided by outsourcing vendors and/or in-house IT service providers and suppliers ("Benchmarking"). The results of such Benchmarking shall be available in identical form to both EMEA and the Contractor.

In order to guarantee that a valid comparison is made, EMEA will ensure that the:

- scope of the Goods and Services being provided by the Contractor is taken into consideration;

- comparison group consists of at least four vendors and/or service providers and suppliers to ensure statistical significance; and
- relevant comparison data must be guaranteed.

The period for Benchmarking shall not exceed four (4) months

For the first Benchmarking exercise, the comparison group shall be defined in a document entitled “Comparison Group Definition”. EMEA reserves the right to change the comparison group algorithm to reflect any changes in its business from time to time.

The nominated person carrying out the Benchmarking process on behalf of EMEA (the “Benchmarker”) shall be a qualified and objective third party selected by EMEA through a procurement procedure. EMEA will pay all of its own costs and the Benchmarker’s costs during the Benchmarking period. The Contractor will pay all of its own costs. Interpretation of the results of the Benchmarking shall be the sole prerogative of the Benchmarker.

EMEA and the Contractor shall set aside sufficient time and resources for each stage of the Benchmarking, such as:

- identification and location of Benchmarking data,
- performing the Benchmarking, and
- implementation of the conclusions of the Benchmarker.

EMEA and the Contractor will be free to suggest changes in Benchmarking parameters as the Goods and Services evolve over the term of this Contract.

The Benchmarker shall treat as confidential all data provided by EMEA and the Contractor, and will return all material and media once the Benchmarking is completed.

If a Benchmarking reveals that the level of a Service does not reach the comparison group’s service levels, the Contractor shall immediately prepare an action plan, which will specify all actions necessary to rectify the deviations. The full and measurable implementation of the action plan shall in no circumstances exceed one (1) year. If the Contractor fails to fully implement the action plan, EMEA may claim damages. If a Benchmarking reveals that charges are higher than the comparison group’s charges, the Contractor shall immediately reduce its charges to the comparison group level, with effect from the date on which the results of the Benchmarking were delivered to the parties.

2.9. Confidentiality

The Contractor must sign a confidentiality agreement with EMEA guaranteeing that each of its staff members will not disclose any proprietary information belonging to EMEA without prior written consent from EMEA management.

Article 3 - Specific Provisions Relating To the Purchase and Rental Of Complex Hardware Goods or Products

3.1. Additional specifications for Hardware Goods Delivery

3.1.1. Terms

All complex hardware Goods shall be tested by the Contractor before their delivery. The Contractor shall be able to demonstrate that the pre-delivery test was satisfactory if EMEA so requests. The number of copies of documentation to be supplied shall be at least one (1) copy per unit of complex hardware Goods, or as requested by EMEA. The Contractor shall notify EMEA in writing of its packaging terms at least two (2) weeks prior to the delivery date provided for in Article I.2 of the Contract (the “Delivery Date”). [The Contractor shall remove all packaging material used during delivery.]

3.1.2. Dates

Failure regarding the Delivery Date is considered a breach of condition of the Contract. Should the Contractor be unable to deliver on the specified Delivery Date, it must then supply equivalent Goods or System with EMEA's prior consent.

Where EMEA has incurred costs vis-à-vis a third party by reason of a delay in delivery or commissioning attributable to the Contractor, then the Contractor shall reimburse those costs upon production of supporting documents, provided that EMEA has notified the Contractor in writing of the risk of incurring damages due to the late delivery soon after having been informed of the Contractor's inability to deliver on time. If a Delivery Date is overrun by more than [forty-five (45)] calendar days, EMEA is entitled to terminate the Contract immediately.

3.1.3. Procedure

The Contractor shall confirm the exact Delivery Date of each consignment of Goods as specified in Articles I.2 and II.1.11 of the Contract.

EMEA shall, during normal working days and hours, provide access to its premises for delivery on the notified Delivery Date. Delivery and installation costs shall be borne by the Contractor. Deliveries shall be complete.

3.2. Goods & Product installation

3.2.1. Installation requirements

For all Goods listed in this Contract, the Contractor shall specify in writing the technical installation requirements and any refurbishment necessary for the premises intended to house the Goods.

EMEA shall ensure that the premises where the Goods are installed satisfy the conditions set out by the Contractor regarding access, air-conditioning and electric power supplies and are equipped with the necessary data transmission lines.

EMEA shall grant the Contractor access to its premises for the assembly of complex hardware Goods on the installation date, which must be duly notified by the Contractor with a means of registered communication within five (5) working days upon EMEA's notification.

3.2.2. Procedure

– Pre-installation meeting

A pre-installation meeting may be organised. A technical representative of the Contractor will be available for a pre-installation meeting organised on EMEA's premises. The purpose of this meeting is to review practical issues related to installation of the Goods. The minutes of each pre-installation meeting should be drafted after the pre-installation meeting by the Contractor, unless otherwise agreed at this meeting.

– Installation

Installation will be done in conformity with this Contract and with the minutes of the pre-installation meeting and in accordance the methodology agreed in the pre-installation meeting if appropriate.

If the place of delivery is not the place of installation, EMEA shall arrange for the Goods to be moved at its own risk from the place of delivery to the place of installation within fifteen (15) working days from the day of signature of the consignment note and undertakes to notify the Contractor of the place of the move in writing within five (5) working days upon successful move of the Goods to the installation site.

3.3. Acceptance

3.3.1. The Commissioning Date

The assembly of complex hardware Goods and the bringing into service of a System shall be executed by the Contractor at its own expense, unless otherwise agreed. The complex hardware Goods or System shall be assembled, installed, and brought into service no later than fifteen (15) working days after the date of notification by EMEA of its removal to the installation site unless another time limit is agreed in writing between EMEA and the Contractor.

Upon successful installation, the Contractor shall notify EMEA by a means of communication of the date on which complex hardware Goods or System have/has been brought into service, which date will be the "Commissioning Date" for the particular Goods or System.

3.3.2. The acceptance period

The acceptance period will run up to seventy-five (75) working days from the Commissioning Date.

During this acceptance period, EMEA shall notify any defaults in the complex hardware Goods or System to the Contractor in writing. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies in writing that it has remedied the notified default, this date will reinitiate the acceptance period for the rest of the [seventy-five (75)] working days period, with a guaranteed minimum period of [twenty-five (25)] working days after the last notification by the Contractor that it has remedied a default.

Upon the expiry of the acceptance period, acceptance of the Goods or System will be recorded in a certificate of conformity that shall indicate inter alia the detailed nature of the accepted complex hardware Goods and the reference number of this Contract. If no certificate of conformity has been issued at the end of the acceptance period and

if no notification of faulty operation is pending, EMEA shall be considered as having accepted the complex hardware Goods or System.

3.3.3. Termination

If, due to faulty operation by the Contractor, acceptance cannot be completed within a maximum time limit of [hundred and fifty (150)] calendar days from the Commissioning Date, unless a different time limit has been agreed in writing, EMEA shall be entitled to terminate the Contract after giving the Contractor [thirty (30)] calendar days' notice in writing to meet its obligations.

3.4. Guarantee specifications for complex hardware Goods or Systems

The Contractor shall guarantee all Goods are delivered in conformity with Annex I. During the one-year guarantee period, the Contractor shall provide maintenance at its own and sole expense. The guarantee period shall be automatically extended by the total duration of stoppages attributable to the Contractor during that period, as recorded under the maintenance procedures. For this purpose only stoppages lasting eight (8) consecutive working hours or more shall be counted. One day's extension therefore corresponds to a stoppage of eight (8) consecutive working hours, which may be interrupted by a period of hours not defined as working hours. If failures during the guarantee period are such as to make Goods or the System unusable for an uninterrupted period of more than [one (1) calendar week], EMEA shall be entitled to have the complex hardware Goods and/or System immediately replaced free of charge by the Contractor. If the aggregate unavailability of Goods during normal working hours exceeds forty-eight (48) hours, EMEA is entitled to terminate the part of the Contract relating to these Goods or System.

Article 4 - Specific Provisions Relating to the Purchase of other than complex hardware Goods or System

4.1. Configuration and delivery

4.1.1. Configuration

In respect of each Specific Contract:

- (1) all Goods (including all Goods making up a System) shall be specified;
- (2) installation of all Goods shall be carried out in accordance with the specifications of this Contract.

4.1.2. Delivery

The Delivery Date shall be set at maximum [thirty (30)] calendar days from the date of signature of this Contract, unless a different term has been agreed in writing between the EMEA and the Contractor.

If the Delivery Date is overrun by more than [twenty-one (21)] calendar days, EMEA shall be entitled to terminate the Contract and claim damages thereafter.

A failure regarding the Delivery Date is considered as damage to EMEA. The place of delivery shall be as specified in Article I.2 of the Contract. At the time of delivery, the incoming Goods may be subject to quantitative and qualitative checks by EMEA

within five (5) working days. The receipt of each delivery of Goods shall be then recorded in a written consignment note signed by EMEA.

If no certificate of conformity has been issued at the end of the one-month acceptance period and if no notification of faulty operation is pending, EMEA shall be considered as having accepted the complex hardware Goods.

Unless expressly requested by EMEA, partial delivery of a System is not allowed.

4.2. Guarantee specifications for other than complex hardware Goods

The Contractor shall guarantee all Goods delivered for one year.

When other than complex hardware Goods are delivered on several dates, the guarantee period for all the components of the other than complex hardware Goods shall expire with the end of the guarantee period of the final component of the other than complex hardware Goods delivered in accordance with this Contract.

During the one-year guarantee period the Contractor shall provide maintenance at its own and sole expense.

Article 5 - Specific Provisions Relating to Licensed Software

5.1. Delivery - installation – Documentation

5.1.1. The Delivery Date of the Goods amounting to software (“Software”) shall be set at maximum ten (10) working days from the date of signature of this Contract, unless a different term has been agreed in writing by the parties. A failure concerning the Delivery Date is considered as a breach of condition to EMEA. EMEA may decide to claim the payment of damages only or to terminate the Contract immediately and claim damages thereafter.

5.1.2. EMEA shall be permitted to request additional assistance from the Contractor to install the Software on the adequate hardware equipment and for training of its personnel at the time of production start-up. Those additional expenses shall be charged to EMEA.

5.1.3. EMEA and the Contractor shall each designate in due time one person each in charge of decisions regarding the delivery and installation of the Software.

5.1.4. The manner in which the Software shall be delivered shall be agreed upon writing by the parties.

When it is agreed that the Software shall be delivered as material support, the Software shall be delivered on a machine-readable medium (CD or DVD) reproducing the original Software kept in the Contractor's or EMEA's archives. It shall be sent with one copy of its documentation per licensed copy unless agreed otherwise between the parties. Any additional copy of its documentation shall be invoiced to EMEA at the price shown in this Contract. When it is agreed that the Software may be downloaded by EMEA, then the Contractor shall precisely indicate the location of the download area (such as from an area on the Contractor's website, from an FTP site, etc.) and provide EMEA, by a means of communication, with the accurate and complete instructions, including access codes, enabling it to perform such downloads.

- 5.1.5. Delivery of the Software shall be recorded in a consignment note, presented by the Contractor for signature by EMEA. In the event that the Software is downloaded, EMEA will issue the consignment note based on the communication of the Contractor with the downloading instructions.
- 5.1.6. If no certificate of conformity has been issued at the end of the one-month acceptance period and, if no notification of faulty operation is pending, EMEA is considered as having accepted the Software.
- 5.1.7. The Contractor authorises EMEA to reproduce the documentation for any internal use provided that any copyright indication in the documentation is also reproduced.

5.2. Trial – acceptance

- 5.2.1. Upon the request of EMEA, the Contractor shall grant for each new licensed piece of Software or each new version of the Software a one (1) month trial period during which the Software shall be available for non-productive use. Longer test periods and their conditions may be convened by agreement in writing between the parties.
- 5.2.2. The trial period shall begin on the day of the installation of the Software by the Contractor on the appropriate hardware equipment, or if EMEA does not require installation of the Software by the Contractor, fifteen (15) calendar days after signature of the consignment note.
- 5.2.3. At the end of the trial period, acceptance of the Software shall only result from the signature of a certificate of conformity by both parties. If no certificate of conformity has been issued at the end of the trial period and, if no notification of faulty operation is pending, EMEA shall be considered as having accepted the Software.
- 5.2.4. At any moment during the trial period, EMEA may terminate the testing licence upon notification in writing with immediate effect if the Software does not perform and conform to its description, its specifications or its documentation. Additional acquisitions of Software already tested by EMEA shall be accepted by signature of the consignment note.

5.3. Guarantee specifications for Software

- 5.3.1. The Contractor shall guarantee that the Software delivered is in conformity with the Specifications set out in Annex I.
- 5.3.2. The Contractor warrants that:
 - (1) the documentation is in conformity with the Software supplied;
 - (2) the Software is capable of performing the functions described in the aforementioned documentation and conform to the specifications described in the Specifications set out in Annex I.
- 5.3.3. The Contractor does not warrant that the Software will enable EMEA to achieve any ancillary target aims, productivity levels or time savings not referred to in this Contract or any of its Annexes.
- 5.3.4. Guarantee period

During the one-year guarantee period the Contractor shall provide maintenance at its own and sole expense.

5.4. Use

- 5.4.1. The Contractor hereby grants, and EMEA accepts, a non-exclusive licence to use the Software, under the conditions set hereunder.
- 5.4.2. EMEA may use the Software for its [internal] use.
- 5.4.3. EMEA may acquire "floating licences" for use by external, service-providing companies working under contract on projects for EMEA. At the end of the project, EMEA shall reclaim these licences and may either add them to the existing licence scheme or reallocate them to another company.
- 5.4.4. EMEA undertakes not to reproduce the Software in part or in whole, except for the purposes of back-ups and archives, and after taking all the necessary precautions. Such copies shall remain the Contractor's property.
- 5.4.5. The parties may by this Contract agree that the licence be an exclusive licence for EMEA to use the Software.
- 5.4.6. For the purpose of this Article 5.4., the Software shall be read as including its documentation.

5.5. Compatibility

The Contractor guarantees to EMEA that at the date of signature of this Contract the Software is compatible with all hardware or software described in the Specifications set out in Annex I.

5.6. Escrow rider

- 5.6.1. EMEA and the Contractor may appoint, by mutual agreement, an escrow agent (the "Escrow Agent") who will provide appropriate safekeeping facilities ("Escrow") for the Software and its documentation under separate treaty or rider. If applicable, the Escrow rider shall be concluded between the Contractor, the Escrow Agent and EMEA. The Escrow rider shall provide that the Contractor must deposit with the Escrow Agent a copy of all necessary Software and documentation, source code and that EMEA shall have access to this copy as provided under Article 5.6.2 below.
- 5.6.2. The Escrow rider shall provide that if the Contractor discontinues the maintenance of the Software, EMEA may instruct the Escrow Agent to deliver a copy of the actual source code for the Software involved, including associated control statements required for operation, maintenance and use of the source code, each in programmer-readable form (collectively: the "Source Code"), along with any associated documentation including updates, to the relevant installation site. If EMEA receives the Source Code in the manner provided hereunder, no additional fees shall be charged. Title to the Source Code shall remain with the Contractor.
- 5.6.3. EMEA shall have the right at any time to contact the Escrow Agent for the purpose of confirming the existence of the Source Code and associated documentation including updates thereto and for verification of the instructions to the Escrow Agent to release the Source Code under the circumstances specified under this Article.

- 5.6.4. The Contractor may propose to apply or to enter into a two-party escrow agreement with a third party escrow. In this case, the Contractor shall provide, prior to applying or entering into such agreement, a copy of the proposed agreement to EMEA without charge and all fees in relation to it will be afforded by the Contractor. Should the Contractor fail to provide this copy, EMEA shall be entitled to claim execution of Article 5.6.1.
- 5.6.5. When EMEA considers that the terms of the proposed escrow agreement offer sufficient guarantees to it, it will authorise the Contractor to apply or enter into such agreement with this third party escrow. If EMEA is not entirely satisfied, it may request additional guarantees before authorising the Contractor to enter into the agreement.
- 5.6.6. After having applied or entered into the authorised agreement, the Contractor shall notify EMEA in advance in writing and request its consent for the following:
- the implementation of any change in the terms of this agreement;
 - its termination by the third party escrow;
 - its replacement by a new Contract;
 - a change in third party escrow, or any other change materially affecting the contractual guarantee offered to EMEA.
- EMEA may offer its comments and may withhold its consent should it find that the change may result in the absence of the necessary guarantees of access to the Source code within the duration of this Contract.
- 5.6.7. In the event of the escrow agreement being terminated by the third party escrow, or its terms being changed such that the contractual guarantee is materially affected, the Contractor shall immediately notify EMEA of such fact in writing. The Contractor shall then seek a new escrow agreement meeting the requirements of this Article, subject to EMEA's consent prior to the signature of such agreement.
- 5.6.8. Should the Contractor fail to notify EMEA of any change in accordance with the present Article, EMEA shall be entitled to terminate this Contract at the Contractor's expense. EMEA shall also be entitled to seek damages and interest from the Contractor resulting from the Contractor's failure to fulfil its obligations under this Article.

Article 6. - Specific Provisions relating to Maintenance of Goods

6.1. Common provisions

- 6.1.1. Contractual maintenance Services shall commence on the day after expiry of the guarantee period applying to the Goods delivered, unless another date is agreed in writing.
- 6.1.2. The Contractor shall at all times comply with the quality standards and the maintenance security rules contained in this Contract.
- 6.1.3. The maintenance Services shall be provided during normal working hours on normal working days. EMEA may require the Contractor to offer maintenance outside these

times (“Extended Working Hours”), and the applicable rates for Extended Working Hours will be specified in the relevant Specific Contract.

- 6.1.4. Maintenance Services are deemed to comprise all operations necessary to maintain the Goods in perfect working order, or to restore defective Goods or one of its components to perfect working order, inclusive of the costs of travelling, parts and labour.

6.2. Maintenance Services

6.2.1. Terms

The Contractor undertakes to maintain the Goods covered by this Contract in perfect working order. In order to do this, the Contractor shall at all times have a stock of spare parts or shall obtain the necessary parts at its own and sole expense.

The Contractor shall provide maintenance Services on site within the following timescale for the three categories of Systems:

- (i) Production Systems (Category A), restoration of Services must be within 6 hours of call from EMEA;
- (ii) Test and development Systems and non-critical units (Category B), restoration of Services must be within 24 hours of call from EMEA;
- (iii) Peripheral and basics Systems (Category C), repair of units must be within 5 days of call from EMEA.

For category A products these must be in line with the Extended Working Hours outlined in 6.1.3 above.

If the Contractor is of the opinion that a repair will not be possible within a reasonable repair time from its arrival, it shall make substitute Goods available to EMEA for the duration of the repair.

Repairs, extensions and modifications to the Goods and/or System shall be carried out only by the Contractor or the firms authorised by it.

Preventive maintenance Services shall be scheduled periodically, by agreement between EMEA and the Contractor.

The Contractor shall carry out corrective maintenance Services involving debugging, repair or replacement of faulty Goods at EMEA's request.

The Contractor will formally close each maintenance Service. At the same time it will supply the information needed to measure the quality of the Services and the Goods against the standards laid down in this Contract.

Where computer security has been affected it will submit a report to EMEA.

The Contractor shall compile a monthly management report giving the following particulars of corrective maintenance Services carried out, without prejudice to the relative SLA:

- (1) a list of outstanding problems, with the cause and the expected date of resolution;

- (2) an analysis of problems encountered by type of failure and Goods affected;
- (3) various statistics as requested by EMEA to enable it to produce an internal audit report.

6.2.2. Hardware Goods

On the part of EMEA, hardware maintenance Services shall involve the obligation to use the Goods as specified in the documentation and the installation requirements, and not to alter or repair them itself. On the part of the Contractor, without prejudice to the relative SLA, corrective maintenance Services shall involve:

- (1) diagnosing the cause of failures affecting hardware Goods or the System, whether they are due to its Goods or not;
- (2) correcting faults as rapidly as possible;
- (3) replacing components, printed circuits and electronic units that prove defective in the course of normal use, and effecting any alterations deemed necessary by it to improve operation of the hardware Goods or the System;
- (4) acting as the link with its own central maintenance departments;
- (5) reprogramming or replacing Software in the event of error;
- (6) providing "hot-line" support to resolve urgent problems and System Failures;
- (7) providing drivers for correct function of hardware Goods.

Maintenance Services shall not include the complete repair of all or part of any hardware Goods that are no longer functional as a result of everyday wear and tear. If EMEA decides not to carry out the restoration proposed by the Contractor, the hardware Goods in question will be withdrawn from the Contract.

6.2.3. Software Goods

On the part of EMEA, without prejudice to the relative SLA, maintenance of Software shall involve:

- (1) preparing and sending the Contractor all documents and additional information at its disposal which the Contractor might reasonably request in order to detect and correct errors;
- (2) testing and accepting, when it is reasonable to do so, new versions or new releases of the Software, as proposed by the Contractor. One year after the date of such an acceptance, the Contractor is no longer required to provide maintenance for previous versions or releases of the Software and any other dependent Goods;
- (3) installing any preventive corrections provided by the Contractor as long as it is agreed that such corrections are necessary.

On the part of the Contractor, without prejudice to the relative SLA, maintenance of Software shall involve:

- (1) diagnosing errors or faults encountered by the Contractor or EMEA in the content of the Software and making any necessary corrections; the Contractor shall effect corrections only if the error can be reproduced or if EMEA provides the Contractor with sufficient information from which the error can be diagnosed;
- (2) providing EMEA with successive versions and releases of the Software and the relevant reference documentation; installing new releases and new versions free of charge on the existing hardware at EMEA's request; where necessary, adapting any other Goods and/or System that were using the previous version of the Software, free of charge;
- (3) effecting all corrections (including patches) needed to ensure that the Software and/or System operate as specified in the documentation within thirty (30) working days of receipt of a notification by a means of communication from EMEA giving details of a problem;
- (4) rewriting the Software where necessary so as to correct all known problems or faults diagnosed by the Contractor;
- (5) providing telephone support for EMEA during working hours to advise it on the use of Software;
- (6) providing "hot-line" support to resolve urgent problems with the Software and any related System Failures.

6.2.4. The Contractor undertakes to provide EMEA, upon request, with any remote maintenance service, which it already operates or intends to set up. The remote maintenance service must comply with the rules set out in the Contract. All terminal connection, utilisation and communication charges shall be borne by the Contractor.

6.2.5. Responsibility for diagnosis

The Contractor has sole responsibility for diagnosing and determining the origin of failures affecting all or part of the System or any Software. As part of this obligation, the Contractor shall, in the event of a diagnosis error, reimburse any costs incurred by EMEA as a result of [needless] corrective action carried out by another supplier.

6.2.6. The expenses due to an intervention of the Contractor necessitated by a serious error or omission of EMEA, PROVIDED it is recognised as such by EMEA, shall be borne by EMEA, according to [the Contractors prevailing standard charges as evidenced by their latest published price list][the conditions and prices in this Contract].

6.2.7. Technical modifications by the Contractor

The Contractor may propose modifications on its own initiative. It will implement them, with EMEA's consent, at times agreed by both parties. These modifications may not entail any additional cost to EMEA or cause any deterioration in performance or loss of function.

6.2.8. Equipment

Test equipment, tools, documents, programs and files kept on EMEA 's premises for maintenance purposes shall remain the property of the Contractor and shall be insured by the Contractor.

Article 7. - Specific Provisions relating to all Informatics Services

7.1. Types of Services

7.1.1. Unless agreed otherwise, the Services shall be provided, both intra muros and extra muros, during EMEA's working hours on EMEA working days.

7.1.2. Training

Services relating to the training and use of the Goods ("Training") can be required at EMEA's office premises. In many cases it may be preferable to host training off-site either at the Contractor's premises or at a mutually agreed location. Training shall be addressed to users of the Goods and to the technicians responsible for support within EMEA. The number of participants for each course shall be determined by mutual agreement between the parties at the time of signature of the relevant Specific Contract. Training and course materials must be available in English.

When Training is provided on EMEA premises, the infrastructure necessary to the courses (buildings, data-processing equipment, video equipment etc.), the administrative organisation of the courses (planning, notifications, and evaluation) and the reproduction of course documentation shall be provided by EMEA.

7.1.3. Consultancy Services relating to the use of the Goods

Consultancy informatics Services consist of transmitting know-how for the use of the Goods covered by this Contract.

7.1.4. Technical Documentation of the Goods

These informatics Services shall relate to the drafting of any technical documentation in relation to the Products covered by the Contract. Technical documentation shall be available in English. It shall be intended for users, both experienced and inexperienced, and for EMEA's technicians responsible for support or maintenance. The Contractor shall produce the documentation on the basis of the content and structure specifications notified to it by EMEA. Reproduction of documentation shall not form part of the Service.

7.1.5. Integration work

Informatics Services are performed on the basis of integration specifications communicated by EMEA.

7.1.6. Informatics engineering and maintenance

Informatics engineering Services consists of building and implementing projects of data-processing infrastructure (system software, telecommunications networks etc.) and maintenance on the basis of specifications provided by EMEA.

7.1.7. Software development, maintenance and related activities

This consists of the development of Software, maintenance and related activities (e.g. studies, consultancy, documentation, quality assurance etc.) [using the standard EMEA Informatics Architecture], on the basis of specifications provided by EMEA.

7.1.8. Removals

Removals consist of transferring any Goods from one specified place to the other, whether or not within the same building or city. Removals may take place during working hours or Extended Working Hours.

7.1.9. Logistics

Logistics includes but is not limited to, inventory, counting, equipment tagging, security labelling, just-in-time delivery, unpacking and installation in end-user's office.

7.2. Time-and-means Contracts

7.2.1. Services shall be provided on a time-and-means basis when the parties agree that a daily sum is to be paid for a number of days in return for the provision of the means to perform the informatics Services. The sum payable and the nature of the Services will be indicated in the relevant Specific Contract.

7.2.2. At the request of EMEA, the Contractor shall supply all the necessary personal information regarding the Contractor's Staff providing the Services.

7.2.3. Every day during which Services are provided, the Contractor or the Contractor's Staff shall record the time worked. The records shall be set up in the manner defined by EMEA's appointed manager, the name of whom will be notified to the Contractor. At the end of each month, the Contractor or a member of the Contractor's Staff shall complete and sign the attendance sheet proposed by EMEA and forward it to EMEA's appointed manager who shall be in charge of checking the consistency between the daily records and the monthly attendance sheet.

7.3. Quoted time-and-means Contracts.

7.3.1. The "Quoted Time & Means" method may be used for Contractor's Staff outside EMEA premises.

7.3.2. For Quoted Time & Means projects, the work will be ordered for a total number of days and will be divided into various sub-tasks (or "quoted time & means").

7.3.3. EMEA will provide the Contractor with a detailed description of each sub-task. The Contractor will then send EMEA an estimate of the number of days needed to carry out the sub-task and the expected Delivery Date.

7.3.4. Once the estimate has been accepted by EMEA, only the number of days indicated in the estimate will be chargeable.

7.3.5. The invoicing, approved by EMEA, will be carried out on the basis of each sub-task accepted and signed for by EMEA using a specific form.

7.4. Fixed-price Contracts

7.4.1. Services shall be provided at a fixed price when the parties agree an overall sum, which must be justified using the agreed daily rates in this Contract, and the sum is paid following express acceptance of the Services by EMEA.

- 7.4.2. The Services shall be undertaken by the Contractor in accordance with the specifications set out in this Contract and its Annexes.
- 7.4.3. Each result and deliverable shall be subject to acceptance by EMEA, in order to ensure conformity with the specifications. The acceptance period will run up to a maximum of seventy-five (75) working days from the day of signature of a consignment note. During this acceptance period, EMEA may notify any defaults in the result or deliverable to the Contractor in writing. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies in writing that it has remedied the notified default, which date will reinitiate the acceptance period for the rest of the [seventy-five (75)] working days period, with a guaranteed minimum period of [twenty-five (25)] working days after the last notification by the Contractor that it has remedied a default. Upon successful expiry of the acceptance period, EMEA will sign a certificate of conformity for each delivered result or deliverable. If no certificate of conformity has been issued at the end of the acceptance period and no default is pending, EMEA shall be considered as having accepted.

7.5. Stability of Services

- 7.5.1. EMEA and the Contractor shall exchange any information needed for the Services to be provided. Throughout the term of this Contract they shall maintain the required level of information and make it available to the other party for the purpose of providing the Services. The updating of information shall not give rise to any payment.
- 7.5.2. Throughout the term of this Contract the Contractor shall ensure that a stable and consistently high quality of Services is maintained.
- 7.5.3. EMEA must be notified in advance of changes to the Contractor's Staff and reserves the right to refuse them. When a change of Contractor's Staff or a change of Services is unavoidable there should be a ten-day period of adjustment when both the replacement and original personnel should work side by side for training and transfer of relevant information. The costs of this period of adjustment shall be borne by the Contractor.

In no event shall the Contractor be able to plead a change of the Contractor's Staff as a reason for not meeting any of its obligations, in particular with regard to deadlines and quality.

For all Services with a low degree of substitutability, for example project co-ordination, studies and development, the Contractor shall ensure that staff are changed only in the event of force majeure as defined in Article II.12 of the Contract. EMEA must be notified in advance of any changes proposed to the Contractor's Staff and reserves the right to refuse them.

- 7.5.4. The Services provided on EMEA's premises shall not be supplied by the same persons for more than any maximum period which may be applicable according to EMEA's regulations on non-permanent staff in force at the time of provision of the Services, provided that the initial or renewed duration of the Contract covers that duration.

7.6. Timetable

- 7.6.1. The Contractor shall propose a full and detailed timetable for the development of software Services or related tasks. If such a timetable cannot be prepared for projects of longer duration, the parties shall first fix a provisional timetable. The final timetable shall be fixed at a date stated in the Specific Contract.
- 7.6.2. The time needed by the Contractor to install and prepare the Software or a System for operation shall be stated in the Specific Contract. If no time is specified, the period shall be fifteen (15) calendar days.

Article 8. - Specific Provisions relating to Development and Maintenance of Commissioned Software Goods

8.1. Compliance with technical specifications

When providing the Services of development or maintenance of commissioned Software to EMEA, the Contractor undertakes, in addition to the general quality requirements as specified herein to observe EMEA's "Standard Tools and Methodologies" documentation which outlines EMEA's IT toolset and IT agreed working standards.

Except where expressly stated, the present this Article 8 shall also apply to the development and maintenance of a System commissioned by EMEA.

8.2. Acceptance

- 8.2.1. Software development Services shall be provided in accordance with specifications as agreed upon in writing, and these and the maintenance Services shall be provided in accordance with the following conditions.
- 8.2.2. Delivery of the commissioned software Services, or as the case may be, its different versions, shall be recorded in a consignment note in accordance with Article II.1. of the Contract, presented by the Contractor for signature by EMEA.
- 8.2.3. Acceptance period

The acceptance period will run up to a maximum of [seventy-five (75)] working days from the day of signature of the consignment note. During this acceptance period, EMEA shall notify any defaults in the commissioned software to the Contractor by a means of registered communication. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies by a means of registered communication that it has remedied the notified default, which date will reinitiate the acceptance period for the rest of the [seventy-five (75)] normal working days period, with a guaranteed minimum period of [twenty-five (25)] normal working days after the last notification by the Contractor that it has remedied a default.

- 8.2.4. The certificate of conformity

Upon the expiry of the acceptance period, acceptance of the commissioned software Services will be recorded in a certificate of conformity, as stated in Article II.1. of the Contract, which shall indicate inter alia any reservations EMEA may have regarding the commissioned software Services. If no certificate of conformity has been issued at the end of the acceptance period and, if no notification of faulty operation is

pending, EMEA shall be considered as having accepted that the commissioned software Services have been satisfactorily completed.

8.2.5. If, after three (3) attempts at acceptance, the commissioned software Services still fail to meet the terms of this Contract, EMEA shall have the following options:

- (1) to require the Contractor to supply, without charge, a replacement commissioned software Services or additional set of software Goods as appropriate;
- (2) to accept part of the commissioned software Services, at a reduced price agreed between EMEA and the Contractor;
- (3) to refuse to accept the commissioned software Services have been supplied satisfactorily and cancel this Contract on reimbursement of any sums previously and duly paid and cancellation of any other sums due or becoming due.

8.3. Guarantee of proper operation of commissioned software Services

8.3.1. Except in the case of hidden defects, for which its liability shall be of unlimited duration, the Contractor shall guarantee the commissioned software Services will be in conformity with the Specifications in Annex I of the Contract. It shall be held responsible for the immediate repair, at its own expense, of any breakdowns that occur during the guarantee period, unless it can prove that such breakdowns have occurred for reasons other than mistakes made in performance of the Services, or other than manufacturing or design errors in that portion of the work for which it was responsible.

8.3.2. EMEA shall notify in writing the Contractor of the type and scale of any failure as soon as it occurs. If the Contractor does not repeat the commissioned software Services without delay, EMEA may have it undertaken by a third party, on the responsibility and at the own and sole expense of the Contractor.

8.3.3. The parties shall jointly define and duly record in minutes the major problems that might affect the commissioned software Services.

8.3.4. The duration of the guarantee shall be extended by the period which elapses between the notification of a major problem to the Contractor duly sent by EMEA during the stated guarantee period and the date at which EMEA accepts the corrected Services.

8.4. Intellectual property rights and ownership of source code

8.4.1. The Contractor hereby assigns to EMEA, which accepts, all Intellectual Property Rights created during the supply of the commissioned software Services, for the entire world, for the entire duration of the Intellectual Property Rights involved, and on an exclusive and definite manner.

8.4.2. EMEA shall become the owner of source code, results, documentation and sets of tests that correspond to payments already made, except when the same relate to pre-existing Software provided. The use of pre-existing Software shall be subject to EMEA's prior written consent.

- 8.4.3. EMEA shall have the right to disseminate and distribute details of the commissioned software Services to third parties, even if it contains pre-existing Software, subject to observance of any licence terms in respect of third party Software.

8.5. User manuals and Documentation

- 8.5.1. The Contractor shall prepare the manuals and documentation needed for the appropriate and proper use of the commissioned software Services and shall make them available to EMEA. It shall comply with the provisions under Article 10 below in preparing such manuals and documentation.

- 8.5.2. The material shall as a rule comprise:

- (1) an installation manual;
- (2) a “Getting Started” manual;
- (3) an administration manual;
- (4) a user manual;
- (5) implementation documentation.

- 8.5.3. The manuals and the documentation shall be in the file format of the word processing software goods used by EMEA and prepared so that they may be published on EMEA's intranet.

- 8.5.4. The user manuals and the documentation shall be supplied English.

- 8.5.5. The Contractor shall update and, if necessary, replace at a reasonable cost the user manuals and documentation files for the maximum duration of the Contract.

8.6. Interfaces and Compatibility

- 8.6.1. If there are interfaces that need to be observed, the Contractor shall not modify such interfaces without EMEA's written agreement. Such agreement shall not be unreasonably withheld.

- 8.6.2. Where the commissioned software Services supplied utilise software from a third party and where that software is updated, the Contractor shall adapt the commissioned software Services in accordance with terms jointly agreed.

- 8.6.3. The Contractor shall ensure that all the commissioned software Services supplied under the Contract are compatible and operate by means of interfaces with all other software utilized by EMEA.

Article 9. - Specific Provisions relating to training organised for EMEA

9.1. Instructors

Instructors shall be proposed to EMEA on the basis of their professional experience and their ability to provide the Services. EMEA must be notified in advance of any changes to agreed instructors and reserves the right to refuse them.

9.2. Organisation of courses

- 9.2.1. The parties shall draw up a schedule of courses and preparatory measures for a period of several months, normally six (6) months. The schedule shall outline the content of the courses and measures their duration, the dates on which they are to take place, the intended instructors, the number of participants, and the cost.
- 9.2.2. The parties shall make a final decision on all the schedule no later than three (3) weeks prior to the date on which training is to take place. The Contractor shall then specify the timetables for the courses and shall undertake to adhere to the timetable. If the schedule is disrupted by one or other party, that party shall endeavour to find an equivalent solution.
- 9.2.3. When an instructor is not available, a course may be cancelled or postponed no later than ten working days prior to its commencement. If three courses have been cancelled or postponed without meeting these conditions, EMEA shall be entitled to terminate the Contract pursuant to the provisions under Article II.15.

9.3. Instructor's manual

The Contractor shall comply with EMEA's standard practice as regards:

- (1) the preparation and holding of courses;
- (2) administrative and security regulations;
- (3) health and safety regulations.

9.4. Provision of training Software Goods

- 9.4.1. Training Software that has been developed specifically for EMEA shall be owned in full by EMEA.
- 9.4.2. The provision of training Software shall be covered by a site licence, whose terms shall be consistent with the nature and subject of the training.

Article 10. - Specific Provisions relating to documentation produced for EMEA

- 10.1.1. The Intellectual Property Rights in the documentation that has been developed specifically for EMEA shall belong exclusively to EMEA.
- 10.1.2. The provision of reference documentation shall be covered by a site licence, the terms of which shall be consistent with the nature and subject of the documentation.