

Annex 07 Draft Framework service contract

Contract number – EMA/2012/13/ICT Lot 1

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

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/2012/13/ICT of 3 January 2013)

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

Annex III – Sample Specific Contract

Annex IV – Conditions for Informatics Contracts

Annex V – Service Level Agreement

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 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), the Conditions for Informatics Contracts (Annex IV) and the Service Level Agreement (Annex V).

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 external service providers for software applications: on-line analytical processing systems – Lot 1 – Time and Materials (the “Services”).
- I.1.2.** Execution of the Contract imposes no obligation on the Agency to purchase the Services. Only the implementation of the Contract through specific contracts in the form set out as Annex III (“Specific Contract”) is binding for the Agency and authorises implementation of the provision of the Services (“Implementation”).
- I.1.3.** Upon Implementation, the Contractor shall provide the Services in accordance with Annex I.
- I.1.4.** All Specific Contracts 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 described in Annex I to the Agency. The Contractor is selected as the [complete] contractor of a multiple framework contract.

Article I.2 – Duration and implementation of the Contract

- I.2.1.** The Contract and 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 Specific Contracts issued hereunder have become effective.
- I.2.3.** This Contract is concluded for a period of **24 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. The Contract may be renewed up to two times, each time for a period of execution of the Services of 12 months, with the express written agreement of the parties before the expiry of the Contract, indicating the date on which execution of the Services shall start. Renewal does not imply any modification or deferment of existing obligations.
- I.2.4.** The Specific Contracts must become effective before this Contract expires by effluxion of time or is terminated. The Contract shall continue to apply to such Specific Contracts after its expiry or termination, but no later than 12 months.
- I.2.5.** Within two working days of a Request for Services being sent by the Agency, the Contractor shall acknowledge its receipt. Within the time period specified in the Request for Services, which shall be a maximum of three days, the Contractor shall state whether or not it will make an offer in respect of that Request for Services. Should the Contractor be unable to fulfil the Request for Services, the Contractor shall explain this to the Agency within this same time period and the Agency shall be entitled to place a Request for Services with the next contractor on its framework supplier list. In the event of failure to meet this deadline, the Contractor shall be considered unwilling or unable to provide the

Services and any exclusivity granted to the Contractor pursuant to Article I.1.5 shall be suspended forthwith.

- I.2.6.** By the date specified in the Request for Services being sent by the Agency, the Contractor shall return a duly justified estimate of the resources to be allocated, including named resources, to be allocated for the execution thereof to the appointed person at the Agency. Should the Contractor be unable to meet the request for Services, the Contractor shall explain this to the Agency within the same time period and the Agency shall be entitled to send a request to the next contractor on the list. In the event of failure to meet this deadline, as well as in the case of disagreement on the allocation of resources, the Contractor shall be considered unavailable and the Agency shall be entitled to send a request to the next contractor on the list.
- I.2.7** All candidates proposed by the Contractor to the Agency must be available for interview at the Agency in the two weeks following the sending of the Curricula Vitae. If the Contractor does not comply with this provision, the Contractor shall be deemed to have not fulfilled the requirements and the Agency shall be entitled to send a request for services to the next contractor on the list.
- I.2.8** If the Agency accepts a candidate as a result of interviews, the Agency shall send an e-mail to the Contractor indicating that the candidate(s) has been accepted and will request a formal offer from the Contractor.
- I.2.9** If any candidate is found to be unacceptable to the Agency, the Agency will advise the Contractor by e-mail and will give feedback, wherever possible, on the reasons why the candidate has been rejected. If the final date specified in the Request for Services has not yet been reached, the Agency may permit the Contractor to forward more Curricula Vitae for consideration. If the final date specified in the Request for Services has been reached, the Contractor shall be deemed to have not fulfilled the requirements and the Agency shall be entitled to forward the Request for Services to the next Contractor on the list.
- I.2.10** Within ten working days of a Specific Contract being sent by the Agency, the Contractor shall return it, duly signed and dated. In the event of failure to observe this deadline, the Contractor shall be considered unwilling or unable to provide the Services and any exclusivity granted to the Contractor pursuant to Article I.1.5 shall be suspended forthwith.

Article I.3 – Contract price

- I.3.1.** The amount payable for the Services shall be as listed in Annex II exclusive of VAT covering all the Services provided (the "Charges").
- I.3.2.** Subject always to the approval and discretion of the Agency, in addition to the Charges, travel and subsistence expenses may be charged by the Contractor and reimbursed by the Agency in accordance with Article II.23.
- I.3.3.** The Charges shall be fixed and not subject to revision for Specific Contracts concluded during the first year of performance of the Contract.

From the beginning of the second year of performance of the Contract, the Charges may be revised upwards or downwards each year, where such revision is requested by one of the contracting parties by notice served no later than three months before the anniversary of the date on which the Contract became effective in accordance with Article I.2.1 above. Specific Contracts shall be concluded on the basis of the Charges in force on the date on which they become effective. Such Charges shall not be subject to revision.

This revision shall be determined by the trend in the European Index of Consumer Prices (EICP) published in the Statistical Office of the European Union in its monthly bulletin under the theme of Economy and Finance: Harmonized Indices of Consumer Prices (<http://epp.eurostat.ec.europa.eu/>).

Revision shall be calculated in accordance with the following formula:

$$A^r = A^o * \frac{I^r}{I^o}$$

Where

A^r = revised total amount

A^o = total amount in the original tender

I^r = index for the month corresponding to the date of receipt of the letter requesting revision of prices

I^o = index for the month in which the validity of the tender expires

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.** Payments shall be made on the basis of an 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. Invoices must contain the following Agency reference: PO [complete].
- I.4.3.** The payment periods for the Charges will be stipulated in the relevant 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.
- I.4.4.** Within four months of completion of the Services the Contractor shall submit an admissible invoice, indicating the reference number of the Specific Contract to which it refers, for payment.

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
Programme & Project Management, ICT Unit
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 twelve months' formal prior notice. 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 and executed before the date termination is notified to become effective ("Termination Date"). 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 Services provided up to the Termination Date, within a period not exceeding sixty days from the Termination Date.

Article I.9 – Service Level Agreement

- I.9.1** The Agency and the Contractor shall negotiate and sign a globally applicable Service Level Agreement ("SLA") within six weeks following entry into force of the Contract. The SLA shall be incorporated into the Contract by way of an amendment and shall be deemed to form Annex V of it from the date of said amendment. Any Specific Contracts implemented prior to incorporation of the SLA shall be provided in accordance with minimum standards to be reasonably expected within the industry in the context of the Charges incurred thereby. 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 procedures and to fix appropriate quality indicators and levels for the provision of Services and for the Contract administration.

- I.9.2** 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.9.2 (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.9.2 (b); and
- (d) it has entered into the Contract in reliance on its own due diligence.

I.9.3 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.

II – General Conditions

Article II.1 – Performance of the Contract

II.1.1. The Contractor shall 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 performance of the Services under the laws and regulations in force at the place where 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 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 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 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 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.

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 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's 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's 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's 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 – Payments

II.4.1. Not applicable.

II.4.2. Not applicable.

II.4.3. Not applicable.

II.4.4. If any reports to be submitted by the Contractor are a condition for payment, on receipt the Agency shall have the following time for approval of such reports:

a) 30 calendar days for straightforward contracts relating to Services;

b) 60 calendar days for other contracts;

c) 90 calendar days for contracts involving technical Services, which are particularly complex to evaluate.

The Agency may either approve the report, with or without comments or reservations, or suspend such time period and request additional information, or reject the report and request a new report. If the Agency does not respond within the above time limits, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed. Any new report requested shall be subject to the above provisions.

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 seven 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 the Contract or if recovery is justified in accordance with the terms of the 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.** 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 any guarantee, where provided for.

Article II.7 – Data protection

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.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 provision of the Services in an incidental way, and which are necessary for the ongoing benefit of those 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 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 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 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 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 the 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’s 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

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.

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 the 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 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 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 provision of the Services and be liable for the proper performance of the Contract as if it were 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 the 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 the Contract;

(b) where provision of the Services has not actually commenced within three months 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 the 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 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 the 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 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 provide the Services. The Agency shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the 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 Specific Contracts

Where execution of a Specific Contract has not actually commenced within three months 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 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 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 – 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 such 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 without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Agency to the Contractor in respect of the 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 Services in accordance with the provisions of the Contract.

Article II.21 - 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.22 - 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.

Article II.23 –Reimbursements

II.23.1. Where provided by the Special Conditions or by Annex I, the Agency shall reimburse the expenses which are directly connected with provision of the Services in accordance with the Agency's expenses policy from time to time in force or as follows on production of original supporting documents, including receipts and used tickets.

II.23.2. Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.23.3. Unless otherwise specified in the Special Conditions, travel expenses shall be reimbursed as follows:

Air

Economy class fare or business class fare when the cost is not substantially more and allows more flexibility, by the most direct route.

Train

First class return train travel

Car

Reimbursement for the use of a private car to drive to the airport when the distance between the Contractor's work place and the airport is more than 30km. Reimbursement will be granted at a rate of EUR 0.30 per km and no other costs will be taken into account (e.g. car parking).

II.23.4. Subsistence expenses shall be reimbursed on the basis of a daily allowance, as follows:

EUR 105 for each day's attendance at the Agency, to cover meals and all local transport (including return transport from the airport.)

II.23.5. Hotel expenses shall be reimbursed as follows:

Apart from the special rates the Agency has negotiated with selected hotels (list available on request) and reserved through the Agency, hotel bills will be reimbursed up to a ceiling of GBP 160 per night, including breakfast and VAT.

Reimbursement of accommodation expenses for one night prior to and after attendance at EMEA is allowed when the departure time from the airport or railway station is before 08h00 and when the arrival time at the airport or railway station is after 23h00.

For business trips longer than 12 hours, one night's accommodation may be reimbursed on request. The duration of the trip is calculated from the time of departure of the means of transport used to the time of return to the Contractor's work place.

A hotel night will be granted based on the time of the next available flight/train after the meeting ends.

In the case of flight or train cancellations due to unforeseen circumstances, one night's accommodation may be reimbursed upon request, subject to justification, where the carrier offers no suitable alternative arrangements.

Reimbursement of expenses under point II.23.3 applies to Contractors whose offices are more than 50 miles (80km) from the Agency. For Contractors whose offices lie at less than 50 miles, hotel expenses will be reimbursed under point II.23.5 where an overnight stay in London is necessary.

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/2012/13/ICT of 3 January 2013)

Annex II

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

Annex III

Sample Specific Contract

Specific Contract no. [complete] to Framework Service Contract no.

EMA/2012/13/ICT Lot 1

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 specific 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/amended 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"). This Specific Contract relates to Lot 1 of the Framework Contract.

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) and the Contractor's Response to the Request Form (Annex II) which shall result in the specified deliverables (Annex III).

I.1.3 The Agency may call off the days per profile in different proportions, and allocate these days to the identified projects differently, provided always that:

- any allocations between projects shall be between projects identified in the request for services; and
- the total amount payable under the Contract remains the same.

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] [on specific date]. Provision of the Services shall start from [date of entry into force of this Specific Contract] [indicate other 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 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 [EUR] exclusive of VAT covering all the Services provided.

Payment shall be made [insert payment terms here: in arrears/monthly/other option to complete].

Within four months of completion of the Services the Contractor shall submit an admissible invoice, indicating the Contract reference number and the reference number of the Specific Contract to which it refers and the following Agency reference: PO [complete], for payment.

Article I.4 – 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,
[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 III
to Specific Contract – to be completed

Deliverables

Annex IV

Conditions for Informatics Contracts

Agency 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 the Agency'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. The Agency 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. The Agency 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 the Agency. 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 the Agency's absolute discretion.

1.6. The Contractor undertakes to comply with those quality standards. Compliance with the standards shall be monitored by the Agency. 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 the Agency;

(ii) for test and development Systems and non-critical units (Category B), the Contractor must restore Services within 24 hours of call from the Agency;

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

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

Article 2 – Common technical provisions

2.1 Security

2.1.1. The Contractor's Staff working at the Agency's office premises must conform to any internal the Agency security rules. If members of the Contractor's Staff are working at the Agency's office premises, the Contractor shall replace immediately and without any compensation any person considered undesirable by the Agency, at the Agency's request.

2.1.2. Any security requirements for individual projects shall be notified by the Agency 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 the Agency in execution of this Contract.

2.1.4. The Contractor recognises that no goods, equipment or material whatsoever owned by the Agency or present at the Agency's premises, may be moved or removed without the Agency'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 the Agency. 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 the Agency 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 the Agency 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 the Agency'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 the Agency.

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 the Agency or which have been licensed to the Agency by third parties, and which the Contractor is

likely to use in the execution of its obligations under this Contract, the Agency 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 the Agency;
- to use such Goods or other protected material or Intellectual Property Rights exclusively in the context of this Contract;
- to protect and indemnify the Agency 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 the Agency 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 the Agency will entitle the Agency to seek damages against the Contractor and will not prevent the Agency 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 the Agency the assignment or licence of their Intellectual Property Rights to the extent as provided under this Contract or necessary to allow the Agency 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 the Agency 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 the Agency'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 the Agency's name, at its own and sole expense.

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

However, the Agency 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 the Agency 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 the Agency 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 the Agency 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) the Agency'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) the Agency'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 the Agency shall subsist for five (5) years following the end of the Contract, or for five (5) years following the last use by the Agency 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 the Agency 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 the Agency'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 the Agency, 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 the Agency, 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 the Agency.

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, the Agency may make unrestricted use of the Goods under normal operating conditions. The Agency 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 the Agency 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 the Agency's supranational nature, the Contractor shall not exert any right of inspection over the Agency's use of the Goods.

2.7. Documentation

The Contractor shall provide the Agency 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. The Agency may reproduce this documentation in full or in part for any internal use by its staff. The Agency shall reproduce all references to Intellectual Property Rights appearing on the originals.

2.8. Benchmarking

the Agency 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 the Agency and the Contractor.

In order to guarantee that a valid comparison is made, the Agency 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". The Agency 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 the Agency (the "Benchmarker") shall be a qualified and objective third party selected by the Agency through a procurement procedure. The Agency 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.

The Agency 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.

The Agency 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 the Agency 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, the Agency 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 the Agency guaranteeing that each of its staff members will not disclose any proprietary information belonging to the Agency without prior written consent from the Agency 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 the Agency 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 the Agency. The Contractor shall notify the Agency 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 the Agency's prior consent.

Where the Agency 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 the Agency 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, the Agency 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.

The Agency 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.

The Agency 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.

The Agency 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 the Agency'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 the Agency'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, the Agency 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 the Agency of its removal to the installation site unless another time limit is agreed in writing between the Agency and the Contractor.

Upon successful installation, the Contractor shall notify the Agency 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, the Agency 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, the Agency 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, the Agency 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, the Agency 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, the Agency 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 Agency and the Contractor.

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

A failure regarding the Delivery Date is considered as damage to the Agency. 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 the Agency within five (5) working days. The receipt of each delivery of Goods shall be then recorded in a written consignment note signed by the Agency.

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, the Agency shall be considered as having accepted the complex hardware Goods.

Unless expressly requested by the Agency, 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 the Agency. The Agency may decide to claim the payment of damages only or to terminate the Contract immediately and claim damages thereafter.

5.1.2. The Agency 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 the Agency.

5.1.3. The Agency 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 the Agency'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 the Agency at the price shown in this Contract. When it is agreed that the Software may be downloaded by the Agency, 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 the Agency, 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 the Agency. In the event that the Software is downloaded, the Agency 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, the Agency is considered as having accepted the Software.

5.1.7. The Contractor authorises the Agency 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 the Agency, 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 the Agency 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, the Agency shall be considered as having accepted the Software.

5.2.4. At any moment during the trial period, the Agency 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 the Agency 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 the Agency 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 the Agency accepts, a non-exclusive licence to use the Software, under the conditions set hereunder.

5.4.2. The Agency may use the Software for its internal use.

5.4.3. The Agency may acquire "floating licences" for use by external, service-providing companies working under contract on projects for the Agency. At the end of the project, the Agency shall reclaim these licences and may either add them to the existing licence scheme or reallocate them to another company.

5.4.4. The Agency 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 the Agency 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 the Agency 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. The Agency 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 the Agency. 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 the Agency 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, the Agency 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 the Agency 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. The Agency 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 the Agency without charge and all fees in relation to it will be afforded by the Contractor. Should the Contractor fail to provide this copy, the Agency shall be entitled to claim execution of Article 5.6.1.

5.6.5. When the Agency 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 the Agency 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 the Agency 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 the Agency.

The Agency 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 the Agency of such fact in writing. The Contractor shall then seek a new escrow agreement meeting the requirements of this Article, subject to the Agency's consent prior to the signature of such agreement.

5.6.8. Should the Contractor fail to notify the Agency of any change in accordance with the present Article, the Agency shall be entitled to terminate this Contract at the Contractor's expense. The Agency 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. the Agency 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 the Agency;
- (ii) Test and development Systems and non-critical units (Category B), restoration of Services must be within 24 hours of call from the Agency;
- (iii) Peripheral and basics Systems (Category C), repair of units must be within 5 days of call from the Agency.

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 the Agency 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 the Agency and the Contractor.

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

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 the Agency to enable it to produce an internal audit report.

6.2.2. Hardware Goods

On the part of the Agency, 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 the Agency 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 the Agency, 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 the Agency 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 the Agency provides the Contractor with sufficient information from which the error can be diagnosed;
- (2) providing the Agency 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 the Agency'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 the Agency 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 the Agency 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 the Agency, 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 the Agency as a result of 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 the Agency, PROVIDED it is recognised as such by the Agency, shall be borne by the Agency, according to 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 the Agency's consent, at times agreed by both parties. These modifications may not entail any additional cost to the Agency or cause any deterioration in performance or loss of function.

6.2.8. Equipment

Test equipment, tools, documents, programs and files kept on the Agency'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 the Agency's working hours on the Agency working days.

7.1.2. Training

Services relating to the training and use of the Goods ("Training") can be required at the Agency'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 the Agency. 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 the Agency 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 the Agency.

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 the Agency'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 the Agency. 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 the Agency.

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 the Agency.

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.) on the basis of specifications provided by the Agency.

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 the Agency, 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 the Agency'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 the Agency and forward it to the Agency'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 the Agency 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. The Agency will provide the Contractor with a detailed description of each sub-task. The Contractor will then send the Agency 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 the Agency, only the number of days indicated in the estimate will be chargeable.

7.3.5. The invoicing, approved by the Agency, will be carried out on the basis of each sub-task accepted and signed for by the Agency 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 the Agency.

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 the Agency, 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, the Agency 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, the Agency 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, the Agency shall be considered as having accepted.

7.5. Stability of Services

7.5.1. The Agency 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. The Agency 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. The Agency 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 the Agency's premises shall not be supplied by the same persons for more than any maximum period which may be applicable according to the Agency'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 the Agency, the Contractor undertakes, in addition to the general quality requirements as specified herein to observe the Agency's "Standard Tools and Methodologies" documentation which outlines the Agency'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 the Agency.

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 the Agency.

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, the Agency 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 the Agency 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, the Agency 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, the Agency 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 the Agency 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. The Agency 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, the Agency 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 the Agency during the stated guarantee period and the date at which the Agency accepts the corrected Services.

8.4. Intellectual Property Rights and ownership of source code

8.4.1. The Contractor hereby assigns to the Agency, 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. The Agency 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 the Agency's prior written consent.

8.4.3. The Agency 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 the Agency. 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 the Agency and prepared so that they may be published on the Agency'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 the Agency'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 the Agency.

Article 9 - Specific provisions relating to training organised for the Agency

9.1. Instructors

Instructors shall be proposed to the Agency on the basis of their professional experience and their ability to provide the Services. The Agency 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 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, the Agency 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 the Agency'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 the Agency shall be owned in full by the Agency.

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 the Agency

10.1.1. The Intellectual Property Rights in the documentation that has been developed specifically for the Agency shall belong exclusively to the Agency.

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.

Annex V

Service Level Agreement