



EUROPEAN MEDICINES AGENCY
SCIENCE MEDICINES HEALTH

23 June 2012
EMA/338770/2012

Technical specifications for open invitation to tender EMA/2012/01/A-FI-AC for Banking Services

Table of contents

1. Title of the invitation to tender.....	3
2. Objectives and context of the invitation to tender.....	3
3. Subject of the tender.....	4
4. Participation in the tender.....	4
4.1. Multilateral agreement on public procurement.....	4
4.2. Subcontracting.....	4
5. Additional documentation available to tenderers	4
6. Information visit	5
7. Variants.....	5
8. Estimated contract volume	5
9. Price	5
9.1. Currency of tender	5
9.2. All-inclusive prices.....	5
9.3. Price revision	5
9.4. Costs involved in preparing and submitting a tender.....	5
9.5. Period of validity of the tender	6
9.6. Protocol on the Privileges and Immunities of the European Union	6
10. Payment arrangements	6
10.1. Charges.....	6
10.2. Remuneration	6



11. Contractual details	6
12. Exclusion criteria	7
13. Selection criteria: financial and economic capacity.....	7
14. Selection criteria: technical and professional capacity	8
15. Award criteria.....	10
<i>1. Quality of information and banking network (See award criteria a)</i>	<i>11</i>
16. Tender to be submitted	13

Annex I	Costing sheet
Annex II	Exclusion criteria statement and detail of supporting documentation required
Annex III	Summary checklist of documents which tenderers must submit
Annex IV	Draft contract

Technical specifications for open invitation to tender

No. EMA/2012/01/A-FI-AC

1. Title of the invitation to tender

This document contains the Technical Specifications for the Open Invitation to Tender no. EMA/2012/01/A-FI-AC for Banking Services.

The contract notice for this open tender has been published in the Official Journal of the European Union 23 June 2012 OJS 119.

2. Objectives and context of the invitation to tender

The European Medicines Agency ("EMA" or "the Agency") is a decentralised body of the European Union based in Canary Wharf in the Docklands area of London (E14). Its main responsibility is the protection and promotion of public and animal health, through the evaluation and supervision of medicines for human and veterinary use.

The Agency was established in 1995 and operates under Council Regulation No 726/2004 to provide a system for the authorisation of medicinal products. The Agency is an Agency of the European Union and has its own legal personality. The Agency's budget is subject to checks and audits by the European Court of Auditors.

The Agency is responsible for the scientific evaluation of applications for European marketing authorisation for medicinal products (centralised procedure). Under the centralised procedure, companies submit a single marketing authorisation application to the Agency. Once granted by the European Commission, a centralised marketing authorisation is valid in all European Union and EEA-EFTA states. The safety of medicines is monitored constantly by the Agency through a pharmacovigilance network.

The Agency also gives scientific advice and protocol assistance to companies for the development of new medicinal products. It publishes guidelines on quality, safety and efficacy testing requirements. A dedicated office provides special assistance to small and medium-sized enterprises (SMEs). Six scientific committees, composed of members of all EU and EEA-EFTA states, some including patients' and doctors' representatives, conduct the main scientific work of the Agency. EMA requires banking facilities for its financial operations and is required by the Implementing Rules of its Financial Regulation to organise a tender for the provision of its banking services every five years.

The Agency receives fees in euros from pharmaceutical companies mainly based in EU but also from many Non EU countries.

The Agency makes payments to UK suppliers in GBP and salaries are also paid in GBP. The Agency reimburses the members of the scientific committees, drawn from all members states, for travel and accommodation costs whilst attending the scientific committee meetings. The latter accounts for approx. 60% of the volume of payments in euros.

The main requirements of the Agency with regard to banking operations are

- to rapidly identify the provenance of customer receipts to ensure prompt booking in customer accounts
- to closely monitor charges and commissions on its transactions

- maximize control over value dates of payments to beneficiary bank accounts
- provide clear indications to beneficiary on items being paid
- perform automatic reconciliation of bank accounts
- integration with the Agency's accounting systems

3. Subject of the tender

The Agency requires 3 bank accounts in GBP and 4 in EUR, with a SEPA compliant bank, located in London, UK and having its Registered office within the EU, from which it will execute payments in GBP, EUR and in other currencies, receive and credit incoming funds, provide cash management, provide Investment services, provide Foreign Exchange services including forward contracts, and other banking related services.

EMA employs a staff of approximately 800. Within the framework of its activities, EMA is responsible for an annual budget, which for the year 2012 is 220 million Euros and is expected to grow at an annual rate of 5%.

In addition EMA requires a web based foreign exchange facility to invest its surplus funds of approx. € 50 million at a competitive market rate on a short-term basis – overnight to 6 months. A foreign currency conversion facility, mainly converting Euros balances into GBP, and a hedging facility for approx. £ 100 million annually is also required.

A cash withdrawal services whereby the cash is delivered to the business address. This service entails around £5,000 withdrawn and around 5 times a year.

Credit cards for about 10 business users.

Investment of EMA's surplus funds and currency conversion requirements is subject to a best bid from money market traders.

4. Participation in the tender

4.1. Multilateral agreement on public procurement

Participation in this tendering procedure shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the European Union in the field of public procurement under the conditions laid down in that agreement.

Where the Multilateral Agreement on Public Procurement concluded within the World Trade Organisation applies, the tendering procedure shall also be open to nationals of the countries which have ratified this agreement, under the conditions laid down in that Agreement.

4.2. Subcontracting

Sub-contracting is not permitted.

5. Additional documentation available to tenderers

Further information about the work of the Agency can be obtained on its website:

<http://www.ema.europa.eu>.

6. Information visit

Not required.

7. Variants

Not required.

8. Estimated contract volume

- Anticipated annual volume of transactions:

	UK 3 day value	UK same-day value	EU-SEPA	EU non - SEPA	Overseas
Payments	15,000	100	15,000	500	500
Receipts	100	10	2,500	250	250

- Letter and cheques payments only occur in exceptional circumstances.

9. Price

9.1. Currency of tender

Prices should be submitted in GBP or Euro as applicable. The costing sheet attached to these specifications must be used to submit a tender. For the purposes of evaluation and comparison of the prices in the tender, and to ensure equal treatment of Tenderers, prices shall be converted by using the European Central Bank exchange rate in force on the date of the deadline of submission of this tender.

9.2. All-inclusive prices

Prices submitted in response to this tender must be inclusive of all costs involved in the performance of the contract. No expenses incurred in the performance of the services will be reimbursed separately by the Agency.

Where payments are made in the UK and for SEPA regulated payments in the EU-27 member states the price must be all-inclusive and full cost of the transaction must be charged at ONE time only.

In case of interest payment from the bank it must be paid in Gross without deduction of any tax at source and in the currency of the account.

9.3. Price revision

Prices shall be fixed and not subject to revision for the contract duration.

9.4. Costs involved in preparing and submitting a tender

The Agency will not reimburse any costs incurred in the preparation and submission of a tender. Any such costs must be paid by the tenderer.

9.5. Period of validity of the tender

Tenderers must enclose a confirmation that the prices given are valid for six months from the date of submission of the tender.

9.6. Protocol on the Privileges and Immunities of the European Union

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. Tenderers must therefore give prices which are exclusive of any taxes and duties and must indicate the amount of VAT separately.

10. Payment arrangements

10.1. Charges

Your bank undertakes to debit in one go from a nominated account on a quarterly basis all charges and commissions related to the quarter, with value date the last day of each quarter (31.03, 30.06, 30.09, 31.12). The supporting calculation and statement must be sent by your bank at the latest on the 15th day of the following month.

Your bank will send to the Agency by the above deadline a statement of charges indicating:

- the number of transactions of each type, consistently with pricing tables,
- the unit cost of each type of transaction,
- their total cost,
- the date when the statement of charges was produced,
- details of any other charges

10.2. Remuneration

Balances on Call deposit accounts

Interest shall be payable on all credit balances and must be calculated at least Half-yearly, and paid without deduction of any tax.

Interest on short/Fixed Term deposit accounts

Interest payable on the short term fixed term investment must be paid in GROSS (without deduction of taxes) on its due date.

11. Contractual details

A draft contract is attached to these Technical Specifications as Annex IV. Tenderers must confirm acceptance of the draft contract and terms and conditions of the tender as part of their tender response. The draft contract may be updated to include any statutory or regulatory provisions applicable to the provision of the services.

The Agency wishes to conclude a service contract to provide banking services, for a period of five years.

12. Exclusion criteria

Tenderers shall be excluded from participation in this procurement procedure if:

- they are insolvent (or the subject of bankruptcy proceedings if an individual) or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- they have been convicted of an offence (if an individual) or judgment has been made against them concerning their professional conduct by a judgment which has the force of *res judicata*;
- they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interests;
- Following another procurement procedure or grant award procedure financed by the European Union budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Contracts may not be awarded to tenderers who, during the procurement procedure:

- are subject to a conflict of interest;
- are guilty, either knowingly or negligently, of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.
- that on the date of submission of the tender, the bank he represents for this tender is not subject to a conflict of interests in the context of this invitation to tender; he undertakes to inform the agency without delay of any change to this situation after the date of submission of the tender that the information provided to the agency within the context of this invitation to tender is accurate, sincere and complete.

Tenderers must complete, date and sign the declaration in Annex II in relation to Exclusion Criteria. Only the successful tenderer will be required to provide all the supporting documentation indicated in this Annex at a later stage prior to contract signature.

13. Selection criteria: financial and economic capacity

The *selection criteria* are a **binding constraint** which must be met in full by all banks submitting tenders. Your tender will therefore take part in the evaluation **only** if your bank meets all the following criteria.

All the documents which are relevant to the criteria 1 and 2 are mandatory and must be attached to the tender.

Criterion 1

Tenderers must be in a stable financial position and have the economic and financial capacity to perform the contract.

Evidence required:

The documents or information listed below must be presented as evidence of compliance with the economic and financial capacity.

1. A copy of the most recent audited accounts that cover the last three years of trading or for the period that is available if trading for less than three years.
2. Evidence of professional risk indemnity insurance.

Criterion 2

Your bank's short term credit rating must be, as a minimum, one of these 3 ratings: either P-1 (Moody's), or A-1 (S&P), or F1 (Fitch Ratings)

Please provide in the space below the short term credit rating of your bank

	Short term credit rating	Date
Moody's		
Standard and Poors		
Fitch		

Your bank undertakes to immediately inform the Agency of any modification to one of these ratings submitting the relevant documents (provided by the rating agencies).

Please attach to your tender an original relevant document issued by the rating agency (or a copy of it duly signed and certified by your bank).

14. Selection criteria: technical and professional capacity

All the documents relevant to criteria 1 to 5 are mandatory and must be attached to the tender.

Evidence required:

The documents or information listed below must be presented as evidence of compliance with these selection criteria.

Criterion 1

- The establishment of your bank where the bank account will be located meets the operating conditions imposed by the competent supervisory authorities of a Member State of the European Union and has all the authorisations necessary to execute the required services in the country where the account will be located.

Please attach to your tender an original relevant document issued by the competent supervisory authority.

Criterion 2

- Your bank must be a "BACS" (Bankers' Automated Clearing Service in the UK) and "SEPA compliant" (Single Euro Payments Area) payment services provider. As such it must have formally adhered to the BACS and SEPA Credit Transfer Scheme at the time of the submission of the offer in reply to this call for tenders.

Please attach to your tender a copy of your bank's BACS Adherence Agreement and SEPA Credit Transfer Adherence Agreement with the European Payments Council.

Criterion 3

- Your bank must be a direct participant to a BACS compliant clearing for UK and SEPA compliant clearing and settlement infrastructure at the time of the submission of the offers. Any future changes in this respect should be immediately communicated to the Commission by your bank.

Please attach to your tender a copy of a relevant document stating the SEPA compliant clearing and settlement infrastructure, and confirming your bank's direct participation to it.

Criterion 4

Your bank must be able to provide a seamless interface with the agency's accounting system

- The Agency operates SAP (ECC 6.0 Enhancement Pack 4 EHP4) application as its main tool for financial transactions that includes exchange of DATA by electronic means and in the following formats.
- The Agency uses the SWIFT BIC plus IBAN Directory to maintain and update payee master data.

For Import

- for Bank statements

File Formats currently used = BAI

If the BAI file format cannot be supported then the details of an alternative file formats recognised as compatible with SAP system MUST be provided:

- Payment advices, Incoming Receipts advices and Cash-Management

For Export

For Export of payments files currently the DME tool (Data Medium Exchange) is used to produce text files.

File formats currently used = TXT via DME

The requirement to the tenderer is that he must be able to accept upload of electronic batch files of payments.

Please attach details to your tender

Criterion 5

Proven experience in providing banking facilities to the public sector bodies ***Please attach details to your tender***

15. Award criteria

The tendering banks which are not affected by any of the exclusion criteria (see pages 5 and 6) and which meet the selection criteria (see pages 7 and 8) are assessed within the framework of the award criteria.

Award criteria are the quality of service and quality of the banking network (qualitative part) and the cost of the bank account (quantitative part).

a. Qualitative part (60 points):

The *quality of the service* accounts for 40 points and is assessed on the basis of the following:

- the quality of information transmitted for debits and credits (12 points) see tables below on pages 11 & 12
- the execution period for debits (16 points) see tables below on pages 11 & 12
- Confirmation that your bank will have dedicated "Help-services" contact and response time (8 points), please provide details of "help-Desk" services
- the bank's policy in the event of disruption of business of the either parties (4 points).

The quality of the banking network accounts for 20 points and is assessed on the basis of the following

- The number of countries in the EU where the bank has a branch or a subsidiary with its own BIC code (16 points) see tables below on pages 12 & 13.
- The number of countries outside the EU where the bank has a branch or a subsidiary with its own BIC code (4 points) see tables below on pages 12 & 13.

b. Quantitative part (40 points):

After comparison of the various tenders, the tenderer which offers the lowest price shall obtain the maximum score of **40 points**, with the other tenderers scoring proportionately according to the formula below.

"Price" shall be calculated using the scenario set out below which is for evaluation purposes only and not binding on the Agency.

The award criteria for price shall be evaluated according to the following formula:

Lowest price x weighting for price

Tenderer's price

Scenario for evaluation of price only, the following number of transactions is presumed per year:

- Number of SEPA credit transfers 2,500

- Number of GBP Payments in UK using BACS 15,000
- Number of EUR SEPA payments within the EU 15,000
- Number of other payments within the EU 500
- Number of other payments outside the EU 500

Payments to beneficiary accounts held with your bank will be assumed to be 10 % for GBP payments and 5 % for SEPA payments. For evaluation purposes only charges for 3 day value payments will be taken into account.

c. Final Score:

Each tendering bank will receive a final score which will be the sum of the points obtained in the qualitative part and in the quantitative part. The tenderer scoring the highest number of points shall be awarded the contract.

1. Quality of information and banking network (See award criteria a)

- When a payment in GBP and EUR is made, how much information is received by the beneficiary or his bank concerning the reason for payment? How many characters are contained in the message sent to the beneficiary?
 - (please mark the appropriate box):

	GBP credit transfer	Related points
< 10 characters		0
=>10 characters		Up to 5

	SEPA credit transfer	Related points
< 140 characters		0
=> 140 characters		Up to 5

	Other payments	Related points
< 140 characters		0
=> 140 characters		2

In the table below please specify for each type of transaction **the number of working days** (zero, 1, 2 or 3 days) **required to execute the transaction** provided the instruction reaches the bank by the cut-off time.

Transactions	Method of transmission	Execution period In working days	Cut-off Time: UK
GBP-Payments in UK	Electronic Method		
EURO-SEPA- Payments within EU	Electronic Method		

The most favourable "cut-off" period in workings days will be awarded a maximum of 6 points for the UK BACS payments and 10 points for the SEPA payments.

- Please provide information on the number of countries within and outside the EU where your bank has a branch or a subsidiary having its own BIC code:
 - number of countries within the EU where your bank has a branch, a subsidiary or an agent bank having its own BIC code
 - (please mark the appropriate box):

	Related points
- 1 to 5	1
- 6 to 20	3
- more than 20	Up to 16

- number of countries outside the EU where your bank has a branch, a subsidiary or agent bank having its own BIC code
- (please mark the appropriate box):

		Related points
- 0 to 5		0
- more than 6		Up to 4

16. Tender to be submitted

In order to assess each tenderer according to the above-mentioned criteria, the following information must be submitted by the tenderer:

- A letter enclosing the tender on the official letter headed paper of the tenderer and signed by an authorised representative of the tenderer.
- An information sheet on the tenderer indicating:
 - the name and registered business address including telephone number, e-mail address and website address;
 - any other different current or previous trading name in the past three years;
 - the name and contact details of the person whom may be contacted with any queries regarding this tender;
 - the legal status of the tenderer;
 - if the tenderer is a company the company registration number, VAT registration number and date of incorporation;
 - if the tenderer is a member of a group of companies and if so the relationship between the tenderer and the ultimate holding company, the name and address of the holding company and its registration number, whether the ultimate holding company would be prepared to guarantee the liabilities in connection with this contract;
 - details of organisational structure including organisation chart;
 - number and locations of premises;
 - number of employees;
 - name of the person authorised to sign contracts on behalf of the tenderer.
- Completed declaration in Annex II relating to Exclusion Criteria.
- Documentation requested to enable assessment of Selection Criteria (points 13 and 14 above).
- Documentation requested to enable assessment of Award Criteria (point 15 above).
- A statement to confirm that information provided in response to this tender is accurate and complete as at the date of submission and acknowledgement that the provision of false information, either knowingly or negligently, in response to this tender could result in the tenderer being excluded from future tenders for contracts with the Agency.
- Confirmation of acceptance of the draft contract and terms and conditions of tender.

- An undertaking to inform the Agency promptly following any matter which would alter or add to any of the information given in response to this tender.
- Documents as requested in relation to proposed subcontracting.
- Tenders submitted by consortia or by groups of service providers *[or suppliers]* must indicate the role, title and experience of each member or of the group.
- **To be submitted in separate binders or folders, which must be clearly labelled**, a detailed financial tender using the costing sheet attached in Annex I, and exclusive of VAT, signed by an authorised representative of the tenderer.
- Tenderers are requested to make use of the checklist given in Annex III to ensure that no enclosure has been omitted in their tender.

Annexes

- I Costing Sheet to be used by tenderers
- II Exclusion criteria statement and detail of supporting documentation required
- III Summary Checklist of Documents which tenderers must submit
- IV Draft contract

Annex I

Costing sheet

Tenderers must use the following table to submit their tender. **Tenderers should submit this sheet in separate binders or folders which must be clearly labelled.**

Name of tenderer: _____

All requested charges should be completed. Any tenderer failing to complete the costing sheet in full shall be eliminated. Tenderers should avoid using any ranges of charges; should any range be indicated the highest price in that range shall be used in the scenario for evaluation of price.

Tariff for Charges

Currency of payment	Method of transmission	Cut-off time	Charges for same day value	Charges for same day value	Charges for 3 working day Value	Charges for 3 working day value
			Your Bank	All others	Your Bank	All others
GBP- Payments in UK	Electronic Method					
EURO- SEPA- Payments within EU	Electronic Method					
All Other Payments within EU	Electronic Method					
All Payments Outside EU	Electronic Method					

Please list all other charges in addition to the specific charges listed above.

Date: _____ Signature of authorised representative:
(Print name): _____
Position in Company: _____

Annex II

Exclusion criteria declaration upon honour and detail of supporting documentation required

Tenderers must:

- Answer the following questions by indicating yes or no in each case. A “yes” response to questions 1-11 inclusive will result in the tenderer being eliminated from the procedure. A “no” response to questions 12-17 will result in the tenderer being eliminated from the procedure.
- Ensure that the declaration is signed and dated by the tenderer.
- Ensure that signature is by either a company director or any person with powers of representation or control in relation to the tenderer.
- Note that where subcontracting is envisaged, the tenderer must certify, if requested at a later stage by the Agency, that any subcontractor is not in one of the following situations of exclusion.
- Note that if the tenderer is a legal entity, it must provide, if requested by the Agency at a later stage in the procedure, any further information on the ownership or on the management, control and power of representation of the legal entity.

Declaration upon honour

The undersigned declares upon honour the following answers in relation to the company or organisation that he/she represents:

1. Is the tenderer insolvent (or the subject of bankruptcy proceedings if an individual) or being wound up?	Yes/No
2. Is the tenderer having its affairs administered by the courts?	Yes/No
3. Has the tenderer entered into an arrangement with creditors?	Yes/No
4. Has the tenderer suspended business activities?	Yes/No
5. Is the tenderer the subject of proceedings concerning any such matters referred to in 1, 2, 3 or 4 above or in any analogous situation arising from a similar procedure provided for in national legislation or regulations?	Yes/No
6. Has the tenderer been convicted of any offence (if an individual) or judgment been made against it concerning its professional conduct by a judgment which has the force of res judicata?	Yes/No
7. Has the tenderer been guilty of grave professional misconduct?	Yes/No
8. Has the tenderer failed to fulfil its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed?	Yes/No

9. Has the tenderer been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interests?	Yes/No
10. Following any other procurement procedure or grant award procedure financed by the European Union budget, has the tenderer been declared to be in serious breach of contract for failure to comply with their contractual obligation and is the tenderer subject to any administrative penalty as a result of this?	Yes/No
11. Does the tenderer have conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest?	Yes/No
12. Will the tenderer inform the Agency, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest?	Yes/No
13. Does the tenderer confirm that it has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract?	Yes/No
14. Does the tenderer confirm 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 party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract?	Yes/No
15. Does the tenderer confirm that it is not guilty of any serious misrepresentation, either knowingly or negligently, in supplying any information required by the Agency?	Yes/No
16. I note that the Agency reserves the right to check the responses to the above information.	Yes/No
17. I agree to provide the supporting documentation listed below should the tenderer be awarded a contract by the Agency.	Yes/No

I declare upon my honour that the above responses are correct.

Date: _____ Signature of authorised representative: _____
(Print name): _____
Position in Company: _____
Representing (name of tenderer): _____

Signature should be by either a company director or any person with powers of representation or control in relation to the tenderer.

Tenderers must note that the following supporting documentation will have to be provided at a later stage prior to contract signature but only by the successful tenderer. No contract can be signed without receipt of such supporting documentation. For successful joint tenderers exclusion criteria declarations and supporting documents are required from each company individually.

In support of the above responses, the successful tenderer will provide following documents:

Proof regarding situations mentioned in points 1, 2, 3, 4, 5, 6 and 9 in the form of a recent extract from the judicial record, or failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that these requirements are satisfied. The extract(s) or equivalent documentation must be the most reasonably available.

The Agency will accept a recent certificate issued by the competent authority of the country concerned as satisfactory evidence that the tenderer is not in the situation mentioned in point 8 above. The certificate must be dated less than four months before the final date for submission of tenders.

Where no such certificate is issued in the country concerned, it may be replaced by a sworn or a solemn statement made by the tenderer before a judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

Annex III

Summary checklist of documents which tenderers must submit

1. Letter enclosing the tender on the official letter headed paper of the tenderer and signed by an authorised representative of the tenderer.
2. Tender in one original paper copy with one copy of all documents on CD-ROM, containing the following elements:
 - Information sheet on the tenderer (as detailed in point 16 above).
 - Completed declaration in Annex II relating to Exclusion Criteria.
 - Documentation requested to enable assessment of Selection Criteria (points 13 and 14 above).
 - Documentation requested to enable assessment of Award Criteria (point 15 above).
 - A statement to confirm that information provided in response to this tender is accurate and complete as at the date of submission and acknowledgement that the provision of false information, either knowingly or negligently, in response to this tender could result in the tenderer being excluded from future tenders for contracts with the Agency.
 - Confirmation of acceptance of the draft contract and terms and conditions of tender.
 - An undertaking to inform the Agency promptly following any matter which would alter or add to any of the information given in response to this tender.
 - Documents as requested in relation to proposed subcontracting.
 - Tenders submitted by consortia or by groups of service providers *[or suppliers]* must indicate the role, title and experience of each member or of the group.
 - **To be submitted in separate binders or folders, which must be clearly labelled**, a detailed financial tender using the costing sheet attached in Annex I, and exclusive of VAT, signed by an authorised representative of the tenderer.

END

Annex IV

Draft Service contract

Contract number – EMA/2012/01/A-FI-AC

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

of the one part,

and

[official name in full and statutory registration number]

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/2012/01/A-FI-AC of 23 June 2012)

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

Annex III – Deliverables

[other annexes]

which form an integral part of this 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 Tender (Annex II) shall take precedence over those in the Tender Specifications (Annex I).

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 for the provision of standard banking services for current accounts and deposit accounts, and where mandate and account authority documents and/or applications for other products or services are executed by the Agency from time to time, the terms and conditions expressed to be applicable thereto and notified to the Agency will take precedence and apply thereto in lieu of the Contract.

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

I – Special Conditions

Article I.1 - Subject

- I.1.1.** The subject of the Contract is the provision of banking services to the Agency (the “Services”).
- I.1.2.** The Contractor shall provide the Services assigned to it in accordance with the Tender Specifications annexed to the Contract (Annex I) and the Deliverables (Annex III).

Article I.2 - Duration

- I.2.1.** The Contract shall become effective on the date on which it is signed by the last contracting party. Provision of the Services shall start from [indicate specific date] (the “Effective Date”).
- I.2.2.** Provision of the Services may under no circumstances begin before the Effective Date.
- I.2.3.** The duration of the Services shall not exceed sixty months. This period and all other periods specified in the Contract are calculated in calendar months.

Article I.3 – Contract price

- I.3.1.** The amounts to be paid by the Agency under the Contract shall be as set out in Annex II exclusive of VAT covering all the Services provided (the “Charges”).
- I.3.2.** It is agreed that the Charges include all other expenditure that may be incurred by the Contractor in performance of this Contract, including travel, subsistence or any other related expenses.
- I.3.3.** The Charges shall not be subject to revision during the subsistence of the Contract.

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.
- I.4.2.** All Charges payable under the Contract may be collected by the Contractor by direct debit method.

Article I.5 – Not applicable

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
Finance and Budget Sector
7 Westferry Circus
Canary Wharf
London E14 4HB
UK

Contractor:

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

Article I.7– Applicable law and settlement of disputes

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

Article I.8 – Termination by either contracting party

Either party may, of its own volition and without being required to pay compensation, terminate the Contract by serving six months' formal prior notice. Should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Services 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 commitment 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 on which termination takes effect, within a period not exceeding sixty days from the Termination Date.

Article I.9 – Mandates and account authorities

The Agency shall execute such mandate and account authority documentation as the Contractor shall from time to time notify as being reasonably necessary for the provision of Services.

Article I.10 – Other Specific Services

Where the Agency enters into a separate arrangement for the supply by the Contractor of specific services which are not covered under the present Contract, whether by electronic or automated facility or otherwise, the provisions of such separate agreement and related instructions to the Contractor will apply.

Article I.11 – Other Special Conditions

[to be completed as required]

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 (the "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 execute 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.** Except as may be expressly stipulated elsewhere in the Contract the following provisions of this clause II.2 set out the entire liability of the Contractor (including liability for the acts or omissions of its employees, agents and subcontractors) to the Agency in respect of any breach of the Contract and any statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- II.2.2.** The Contractor shall be liable for any claim, loss, cost or expense sustained by the Agency but caused by the performance of the Contract, including that arising in the event of subcontracting under Article II.13. Subject always to the provisions of the Contract, 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 will not be liable for any loss of profits, loss of business, loss of goodwill, depletion of goodwill or similar losses, loss of anticipated savings, loss of or corruption of data or any information or any indirect or consequential loss, costs, damages, charges or expenses or any form of special damages arising from the Services whether or not such liability was foreseeable and whether or not the Contractor was advised of the possibility of such loss being incurred.
- II.2.4.** All warranties and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law provided that nothing in the Contract limits or excludes the liability of the Contractor for fraud or fraudulent misrepresentation by the Contractor or its employees or agents.
- II.2.5.** For the avoidance of doubt the Contractor will not be liable for any fraud, mistakes on the Agency's accounts, consequential or indirect loss of profits, loss of business or loss of goodwill arising out of use of a third party aggregation service.
- II.2.6.** Subject as aforesaid the Contractor's liability on contract, tort (including negligence) or breach of statutory duty, misrepresentation or otherwise arising in connection with the supply of the Services shall in the case of any transaction in relation to accounts held by the Agency be limited to the monetary amount of the transaction in respect of which the Contractor has incurred a liability hereunder.

Article II.3 - Conflict of interests

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 contact 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 – Not applicable

Article II.5 – Not applicable

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.** In the event of failure to pay by the deadline specified in the request for reimbursement, the Agency may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Agency that is certain, of a fixed amount and due. The Agency may also claim against the guarantee.

Article II.7 – 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 the results - intellectual and industrial property rights

- II.8.1.** Unless stipulated otherwise in the Contract or as may be agreed between the parties in writing, any copyright, trademarks, trade names, designs or patents (whether registered or unregistered) including all other intellectual or industrial property rights (the "Intellectual Property Rights"), arising or created by the Contractor, in the performance of the Contract, shall be owned solely by the Contractor.
- II.8.2.** Where Intellectual Property Rights are utilised in the provision of, and ongoing benefit of, the Services the Contractor represents and warrants to the Agency that the receipt of the Services by the Agency will not constitute an infringement of any such Intellectual Property Rights.
- II.8.3.** If the Contract, or other agreement, provides that Intellectual Property Rights are to be owned by the Agency then but not otherwise the Contractor shall, to the extent that it has the right so to do, 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 transferred to the Agency in accordance with Article II.8.3 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).

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. Either party may disclose Confidential Information of the other to the minimum extent required by any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body or applicable laws or regulations of the United Kingdom provided that in the case of a disclosure under the Freedom of Information Act 2000 none of the exemptions to that Act applies to the information disclosed.

11.10.2 Before the disclosure of any Confidential Information the party making the disclosure shall (to the extent permitted by law) use all reasonable endeavours:

(a) to inform the other of the full circumstances of the disclosure and the information that will be disclosed and take all steps as may be reasonable and practicable to agree the contents of such disclosure with the other party before making the disclosure; and

(b) to gain assurances as to confidentiality from the body to whom the information is to be disclosed.

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 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 or 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 one month of the date agreed, and the new date proposed, if any, is considered unacceptable by the Agency;

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

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 Services

Where execution of the Services has not actually commenced, through no fault of the Agency, within one month of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by the Agency, the Agency may cancel such Services 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.

Article II.19 – Whole agreement and amendments

This Contract (together with any documents referred to herein) 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.

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/2012/01/A-FI-AC)

Annex II

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

Annex III
To be completed
Deliverables