

FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – **2016/EMSA/OP/31/2015**

The European Maritime Safety Agency (hereinafter referred to as "EMSA"), with its seat at Praça Europa 4, 1249-206 Lisbon, Portugal, VAT registration no.: 507 685 326, represented by Markku Mylly, Executive Director,
of the one part,

and

[full official name]
[official legal form]
[statutory registration number]
[official address in full]
[VAT registration number]

(hereinafter referred to as "the Contractor"¹), [represented by [name in full and function,]]

of the other part,

¹ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis EMSA for the performance of this contract".

HAVE AGREED

the **Special Conditions**, and the following Annexes the :

Annex I	General Conditions
Annex II	General Terms and Conditions for Information Technologies Contracts
Annex III	Specific Contract – Template
Annex IV	Tender Specifications (Invitation to Tender No [complete] of [complete])
Annex V	Contractor's Tender (No [complete] of [complete])
Annex VI	Performance Guarantee
Annex VII	Service Level Agreement
Annex VIII	IPR Identification Form

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

- The terms set out in the Special Conditions and in the Service Level Agreement 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 General Terms and Conditions for Information Technologies Contracts.
- The terms set out in the General Terms and Conditions for Information Technologies Contracts shall take precedence over those in the Annexes of the Contract (except for the Service Level Agreement).
- The terms set out in the Framework Contract shall take precedence over those in the Specific Contracts.
- The terms set out in the Tender Specifications (Annex IV) shall take precedence over those in the Tender (Annex V).

Subject to the above, the several instruments forming part of this 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 EMSA; subject to the rights of the Contractor under Article 8 should he dispute any such instruction.

SPECIAL CONDITIONS

ARTICLE 1 - SUBJECT

- 1.1 The subject of the Contract THETIS Enhancement and Maintenance is:
- the development and assignment of the rights on the *Software Products* as set out in the Annexes and the provision of the corresponding maintenance and *Documentation*.
 - the assurance by the Contractor of the coherence and correct functioning of the System and its integration into the informatics architecture of EMSA.

The *Services* covered by this Contract are listed in Annex IV and Annex V.

- 1.2 Upon implementation of the Contract, the Contractor executes the tasks in accordance with Annex IV and Annex V.
- 1.3 Signature of the Contract imposes no obligation on EMSA to purchase. Only the implementation of the Contract through Specific Contracts is binding on EMSA.
- 1.4 All Specific Contracts implementing the Contract shall be in conformity with the terms set out in this Contract.

ARTICLE 2 - DURATION

- 2.1 The Contract shall enter into force on 7 September 2016 in case of a familiarization time or 7 November 2016 otherwise.
- 2.2 Under no circumstances implementation may take place before the date on which the Contract enters into force. Specific Contracts may under no circumstances be placed before the date on which the Contract enters into force.
- 2.3 The Contract is concluded:
- For THETIS Enhancement and Maintenance for a period of 4 years with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- 2.4 The Specific Contracts pursuant to the Contract shall be signed before the Contract to which they refer expires. The Contract shall continue to apply to Specific Contracts executed after the Contract expires. Such Specific Contracts shall be executed no later than six (6) months after expiry of the Contract.
- 2.5 The Contract may be renewed:
- For THETIS Maintenance up to 1 time, for a period of 12 months only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE 3 - PRICES

- 3.1 The prices of the services covered by this Contract shall be as listed in Annex V.
- 3.2 The maximum amount of this Framework Contract shall be 2.200.000€ (two million two hundred thousand Euro).
- 3.3 Prices shall be expressed in Euro.
- 3.4 Prices shall be fixed and not subject to revision.

ARTICLE 4 –PERFORMANCE OF THE CONTRACT

For THETIS enhancement

- 4.1** Within 10 working days of a request for Services being sent by EMSA, the Contractor shall return an estimate of the resources to be allocated for its execution, with particulars in support.
Within 10 working days of a demand for conclusion of a Specific Contract being sent by EMSA, the Contractor shall return it, duly signed and dated.

For THETIS maintenance

- 4.2** Within 10 working days after request of a Specific Contract being sent by EMSA, the Contractor shall return it, duly signed. The period allowed for the execution of the tasks shall start to run on the date of the signature of the Specific Contract, unless a different date is indicated on the Specific Contract

ARTICLE 5 – PAYMENT ARRANGEMENTS

Payments under the Contract shall be made in accordance with Article 1.6. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

For THETIS Enhancement

5.1 Payment arrangements

Payment scheme shall be established in the Specific Contracts.

For THETIS Maintenance

5.2 Interim payment

The contractor shall submit an invoice for an interim payment equal to 50 % of the total price referred to in the relevant specific contract.

Invoices for interim payment shall be accompanied by a 6 months maintenance report.

EMSA shall make the payment within 90 days from receipt of the invoice. The contractor shall have 30 days in which to submit additional information or corrections, if it is required by EMSA.

5.3 Payment of the balance

The contractor shall submit an invoice for payment of the balance.
The invoice for balance shall be accompanied by 6 months maintenance report.

EMSA shall make the payment within 90 days from receipt of the invoice. The contractor shall have 30 days in which to submit additional information or corrections, if it is required by EMSA.

5.4 Performance guarantee

EMSA reserves the right to request an additional performance guarantee with respect to the Specific Contracts which proportionally represent a relevant value in

relation to the Framework Contract.

ARTICLE 6 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro², 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]
[IBAN³ code: [complete]]

ARTICLE 7 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract and order or specific contract numbers. Ordinary mail shall be deemed to have been received by EMSA on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

EMSA:

European Maritime Safety Agency
Markku Mylly
Executive Director
Praça Europa 4
1249-206 Lisbon
Portugal

Contractor:

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

Invoices shall be sent to the following address:

EMSA:

European Maritime Safety Agency
Invoice Registration (IR)
Unit A.2 – Legal and Financial Affairs
Praça Europa 4
1249-206 Lisbon
Portugal

ARTICLE 8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 8.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Portugal.
- 8.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Lisbon, Portugal.

² Or local currency where the receiving country does not allow transactions in EUR.

³ BIC code for countries with no IBAN code.

ARTICLE 9 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by Head of Unit B.3 acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

ARTICLE 10 – INTELLECTUAL PROPERTY RIGHTS

10.1 Ownership of the results and licensing of the pre-existing rights

The ownership of the results as defined in the tender specifications (Annex IV) shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article I.18.2.

All pre-existing rights as defined in the *IPR Identification Form* in accordance with Article 10.2 shall be licensed by the contractor to EMSA in accordance with Article I.18.3. Under observance of the limitations, if any, provided by applicable laws, the pre-existing rights may be used by EMSA for any of the following purposes:

- (a) use for its own purposes:
 - (i) making available to the staff of EMSA
 - (ii) making available to the persons and entities working for EMSA or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies

- (b) distribution to the public:
 - (i) publishing in hard copies
 - (ii) (publishing in electronic or digital format
 - (iii) (publishing on the internet as a downloadable/non-downloadable file
 - (iv) broadcasting by any kind of technique of transmission
 - (v) public presentation or display
 - (vi) communication through press information services
 - (vii) inclusion in widely accessible databases or indexes
 - (viii) otherwise in any form and by any method]

- (c) modifications by EMSA or by a third party in the name of EMSA:
 - (i) shortening
 - (ii) summarizing
 - (iii) (modifying of the content
 - (iv) making technical changes to the content:

- necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
- (v) (addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
- (vi) (preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
- (vii) extracting a part or dividing into parts
- (viii) use of a concept or preparation of a derivate work
- (ix) digitisation or converting the format for storage or usage purposes
- (x) modifying dimensions
- (xi) translating, inserting subtitles, dubbing in different language versions:
- English, French, German
 - all official languages of EU
 - languages used within EU
 - languages of candidate countries
 - [other languages]]

(d) the modes of exploitation listed in article I.18.4

(e) authorise, license, or sub-license the pre-existing rights to any third party

(f) use material and know-how derived from the use of the pre-existing rights as set out in any of the points (a) to (e)

Where EMSA becomes aware that the scope of modifications exceeds that envisaged in the contract EMSA shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to EMSA within one month and shall provide its agreement including any suggestions of modifications free of charge. The contractor shall also warrant that any creators and/or other right holders have agreed except when a creator or other right holder refuses the intended modification expressly on the grounds that it may harm his honour, reputation or distort integrity of the work only.

10.2 Intellectual property rights identification

The contractor shall provide to EMSA at the same time with the delivery of the results (at the end of each specific contract) a duly completed and signed *Annex VIII – IPR Identification Form*, with an exhaustive list of intellectual property rights applicable to the results and pre-existing rights, including incorporated trade secrets and third parties' rights as provided for in Article I.18.5.

ARTICLE 11 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving six (6) months formal prior notice. Should EMSA terminate the Contract, the Contractor shall only be entitled to payment corresponding

to the goods and services ordered before the termination date, provided that they have duly delivered in conformity with the Contract and the relative Specific Contract(s). On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the goods delivered and *Services* rendered up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

ARTICLE I.12 – E-PROCUREMENT

The execution of the contract between EMSA and the contractor may be automated by the use of one or more of the following applications: e-Request, e-Catalogue, e-Ordering and e-Fulfilment and e-Invoicing.

At the request of EMSA, the use of the above applications may be mandatory during the lifetime of the contract.

ARTICLE 13 VPN REMOTE ACCESS

Should the contractor be granted remote access, the Condition of Use shall be signed between the contractor and EMSA}

ARTICLE 14 SPECIFIC SERVICE LEVELS

Specific service levels are stated in a Service Level Agreement which forms an integral part of the Framework contract.

ARTICLE 15 CONTRACTUAL PENALTIES

Should the Contractor fail to perform his obligations under the Contract in accordance with the deadlines specified in in the Framework Contract including Service Level Agreement and Specific Contracts EMSA may - without prejudice to apply any other measures provided for in the Contract - reduce or recover payments:

- 1) in case of THETIS Enhancement
Price as indicated in the Specific Contract will be reduced of the value of the price of the working day per calendar day of delay. (Price of the working day = Price of the project/Duration of the project in calendar days).
- 2) in case of THETIS Maintenance
Price as indicated in the Specific Contract will be reduced of the value of the price of the working day per calendar day of delay (Price of the working day = Price of the yearly maintenance/365 days).
The maximum amount of penalties may not exceed 10% of the value of the relevant Specific Contract.

Article 16 SPECIAL IPR PROVISIONS

16.1 As regards to the *Software* for which the intellectual property rights are the property of EMSA or which have been licensed to EMSA by third Parties, and which the Contractor is likely to use in the execution of its obligations under this Contract, EMSA expressly authorises the Contractor to use such *Software* within the limits strictly necessary for the execution of this Contract.

In view of the preceding paragraph, the Contractor undertakes:

- not to copy any such *Software* without prior written authorisation from EMSA;
- to use such *Software* exclusively in the context of this Contract;
- to protect and indemnify EMSA against all third-party claims or actions alleging a breach of their Intellectual property rights, or a use of such *Software* in contravention with the present Article;

- to take all measures necessary vis-à-vis its end user personnel and persons having access to the *Software*, to ensure that the confidentiality of the *Software* is observed;
- not to pledge, assign, sub-license, transfer or lend, for payment or otherwise, the *Software*;
to inform EMSA immediately in the event of seizure, to protest against it and to take all necessary steps in order to safeguard the integrity of EMSA's intellectual property rights.

16.2 Each party shall inform the other party of the existence or threat of any third party's action or claim alleging an infringement of the third party's intellectual property rights by Contractor's use of the *Software* delivered by EMSA under the Contract, provided such use is made in conformity with the terms of this Contract.

SIGNATURES

For the Contractor,
[Insert name and title of the Authorising Officer]

For EMSA,
[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [place], [date]

Done at Lisbon [date]

In duplicate in English.