

## FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – **EMSA/OP/18/2015**

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"), [represented by [name in full and function,]]

of the other part,

HAVE AGREED

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

<b>Annex I</b>	General Conditions
<b>Annex II</b>	General Terms and Conditions for Information Technologies Contracts
<b>Annex III</b>	Specific Contract – Template
<b>Annex IV</b>	Tender Specifications (Invitation to Tender No [complete] of [complete])
<b>Annex V</b>	Contractor's Tender (No [complete] of [complete])
<b>Annex VI</b>	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.
- 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 is the Provision of ICT services for upgrades related to SafeSeaNet European Index Server, Central Ship/Location/ Organisation databases as well as helpdesk, corrective maintenance services for applications supporting SSN Central System services to MS.

The *Products* covered by this Contract are listed in Annex V.

- 1.2 Upon implementation of the Contract, the Contractor shall provide the Services related to them 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 to the terms set out therein.

### **ARTICLE 2 - DURATION**

- 2.1 The Contract shall enter into force on the date on which it is signed by the last contracting party.
- 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 For the Services stated in Art 1.1 related thereto The Contract is concluded for a period of 2 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 which it refers 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 For the Services stated in Art 1.1, the Contract may be renewed twice, each time for a period of 12 months, only before expiry of the Contract and with the express written agreement of the parties.

### **ARTICLE 3 - PRICES**

- 3.1 The prices of this contract shall be as listed in Annex V.
- 3.2 The maximum amount of this Framework Contract shall be EUR [...].
- 3.3 Prices shall be expressed in Euro.

## Type of prices

- 3.5** The total amount referred to in the above paragraph shall be fixed and not subject to revision for the first year of performance of the Contract.

Prices shall be fixed and not subject to revision for Specific Contracts placed during the first year of performance of the Contract or Amendment. From the beginning of the second year of performance of the Contract or Amendment only the following prices may be subject to revision on the basis of indexation:

- (1) annual Software licences;
- (2) Products maintenance that is calculated at a fixed price expressed in an absolute figure;
- (3) prices or fees relating to Services.

Prices may be revised upwards or downwards each year, where such revision is requested by one of the contracting parties by registered letter no later than 31st July in order that the new rates may take effect on 1st January of the following year. Specific Contracts shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision, unless and only when the duly signed Specific Contract provides that it will be in force after the 1st January of the following year.

This revision shall be determined by the trend in the harmonised consumer price index EU-27 published for the first time by the Office for Official Publications of the European Union in the Eurostat monthly bulletin at <http://www.ec.europa.eu/eurostat/> [HICP – Harmonized Indices of Consumer Prices; DATA; Database, HICP- Monthly Data (2005=100)].

Revision shall be calculated in accordance with the following formula:

Ir

$$Pr = Po \left( \frac{Ir}{Io} \right)$$

where:

Pr = revised price;

Po = price in the original tender;

Io = index for the month in which the validity of the tender expires;

Ir = index for the month [corresponding to the final date of receipt of the letter requesting a revision of prices]

## ARTICLE 4 - PERFORMANCE OF THE CONTRACT

### **Performance of the Contract for Task 1 – Corrective maintenance**

- 4.1** Within 10 (ten) working days of a specific contract being sent by EMSA to the contractor, EMSA shall receive it back, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the date the contract is signed by the last party, unless a different date is indicated in the specific contract.

## **Performance of the Contract for Tasks 2 and 3 – Upgrading and developments**

**4.2** Within 15 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.

## **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.

Interim or balance payments will only be made after the site acceptance of the software release and all deliverables (including documentation and source code) have been provided to EMSA.

Payment requests may not be made if payments for previous Specific Contracts have not been executed as a result of default or negligence on the part of the Contractor.

### **5.1 Payment modality for Task 1 - Corrective maintenance (related to SSN EIS and CSD/COD/CLD Software)**

#### **5.1.1 Interim payments**

After six-months from the entry into force of the relevant specific contract, the contractor shall submit an invoice for an interim payment equal to 50 % (fifty) of the total price referred to in the relevant specific contract.

Invoices for interim payment shall be accompanied by a maintenance progress report or any other document in accordance with the relevant specific contract. EMSA shall make the payment within 30 (thirty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new maintenance progress report or other documents if it is required by EMSA.

#### **5.1.2 Payment of the Balance**

Upon completion of the services the contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by the final maintenance progress report or any other document in accordance with the relevant specific contract. EMSA shall make the payment within 30 (thirty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new final maintenance progress report or other documents if it is required by EMSA.

### **5.2 Payment modality for task 1 - Corrective maintenance (related to SSN GI/STIRES/Streaming interface applications)**

#### **5.2.1 Payment of the Balance**

Upon completion of the services the contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by the final maintenance progress report or any other document in accordance with the relevant specific contract. EMSA shall make the payment within 30 (thirty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new final maintenance progress report or other documents if it is required by EMSA.

### **5.3 Payment modality for tasks 2 and 3 – Upgrading and developments**

The payment modalities will be determined in the relevant specific contract(s).

## **ARTICLE 6 – BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in euro, 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 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.

## **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 Leendert Bal, Acting Head of Unit Information Services – Technical Management 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 the pre-existing rights**

The ownership of the results as defined in the tender specifications (Annex I), and of all pre-existing rights defined in the *IPR Identification Form* in accordance with Article I.8.2 shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article I.8.

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 (and pre-existing rights) a duly completed and signed *Annex VI – 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 II.10.5.

## **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 Services rendered up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

## ARTICLE 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 – OTHER SPECIAL CONDITIONS-REDUCTION OF PAYMENT FOR SERVICE NON-COMPLIANCE

According to the terms included in the FWC contract the following price reductions shall be applied in case of service non-compliance, for service provided under a corrective maintenance and help-desk services contract:

- For non-compliances related to “Critical” issues: A reduction to the contracted value equivalent to (for each day of breaching the SLA) the price of two person days of a senior programmer rate, up to a maximum 10% reduction to the contractual value.
- For non-compliances related to “urgent” issues: A reduction to the contracted value equivalent to (for each day of breaching the SLA) the price of one person day of a senior programmer rate, up to a maximum a 7% reduction to the contractual value.
- For non-compliances related to “normal” issues: A 5% reduction to the contracted value if, during the course of the contract, at least 20 breaches of the SLA for “Normal” issues are recorded.

### SIGNATURES

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

For EMSA,  
Markku Mylly,  
Executive Director

signature[s]: \_\_\_\_\_

signature:\_\_\_\_\_

Done at [place], [date]

Done at Lisbon [date]

In duplicate in English.