

FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – 2015/EMSA/OP/21/2015

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 :

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	Statement of Contractor concerning right to delivered result
Annex VII	Statement of creator / intermediary in delivery

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

- 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 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 Framework Contract is the development and maintenance of a Central Access Rights Database.
- The Services covered by this Contract are listed in Annex IV and Annex V.
- 1.2** Upon implementation of the Contract, the Contractor shall execute the tasks in accordance with Annex IV and Annex V.
- 1.3** The Contract does not confer on the Contractor any exclusive right to provide Services referred to in the above paragraph.
- 1.4** Signature of the Contract imposes no obligation on EMSA to purchase. Only the implementation of the Contract through Specific Contracts is binding on EMSA.
- 1.5** 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** The Contract is concluded, for the Services stated in Art 1.1, for a period of 30 months 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** The Contract may be renewed for the Services stated in Art 1.1 the Contract may be renewed up to one 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.

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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 [complete].

- 3.3 Prices shall be expressed in Euro.
- 3.4 Prices shall be fixed and not subject to revision.
- 3.5 Travel and accommodation expenses shall not be reimbursed separately but be included as part of the price for the services as indicated under point 12.3 of the Tender Specifications (Annex IV to this Contract).

ARTICLE 4 - PERFORMANCE OF THE CONTRACT

Performance of the Contract for Modules 1 and 3 – Design, Implementation / Enhancements and new developments

- 4.1 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 draft Specific Contract being sent by EMSA, the Contractor shall return it, duly signed and dated.

Performance of the Contract for Module 2 – Corrective maintenance

- 4.2 Within 10 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.

ARTICLE 5 – PAYMENT ARRANGEMENTS

Payments under the Contract shall be made in accordance with Article I.6. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

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

5.1 Payment modalities for Module 1 and 2 – Design, Implementation, Test and delivery of the CARD/ Corrective maintenance

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

The invoice shall be accompanied by the final progress report or any other document in accordance with the relevant specific contract. When payment is linked to acceptance, a copy of the Certificate of conformity or where applicable the Consignment note and/or the relevant documents indicated in the Specific Contract, shall be attached to the invoice.

EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 10 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

5.2 Payment modality for Module 3 – Enhancements and new 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]
[IBANcode: [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 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, Head of Unit C.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 – EXPLOITATION OF THE RESULTS OF THE CONTRACT

10.1 Modes of exploitation

In accordance with Article I.18.2 whereby the EMSA acquires ownership of the results as defined in the tender specifications, these results may be used 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) public presentation or display
 - (ii) communication through press information services
 - (iii) inclusion in widely accessible databases or indexes
 - (iv) 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 derivative 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
- (d) the modes of exploitation listed in article II.10.4
- (e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (c) to third parties.

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 creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

10.2 Pre-existing rights and transmission of rights

All pre-existing rights shall be licensed to EMSA in accordance with Article I.18.3.

The contractor shall provide to EMSA a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article I.18.5.

The contractor shall present relevant and exhaustive evidence about the acquisition of all the necessary pre-existing rights and third parties' rights together with delivery of the final report at the latest. This obligation should be fulfilled by presentation of the contractor's statement prepared in accordance with Annex VII and third parties' statements prepared in accordance with Annex VIII and the relevant evidence listed in article I.18.5 as appropriate.

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 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

For the corrective maintenance, the following price reductions shall be applied in case of service non-compliance:

- (i) 20% reduction for non-compliances related to at least one “Urgent” issue.
- (ii) 10% reduction for non-compliances related to more than 4 “Critical” issues.
- (iii) 5% reduction for non-compliances related to more than 14 “Standard” issues.

The total price reduction is the sum of each reduction coefficient.

ARTICLE 14 - VPN REMOTE ACCESS

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

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.