

Framework Donation Agreement EMSA/CP/01/2015

The European Maritime Safety Agency (hereinafter referred to as the "EMSA"), with its seat at Praça Europa 4, 1249-206 Lisbon, Portugal, VAT registration no.: 507 685 326, represented by Isabel Torné, Head of Department Corporate Services

of the one part,

and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

(hereinafter referred to as "the Donee"), of the other part.

Whereas EMSA has taken the Award Decision of [date] authorising the donation of the items listed in EMSA CP 01 2015 – Annex I – Catalogue, the following has been agreed:

to the special conditions, the general conditions and the following annexes:

Annex I - Call for Proposals (reference No. EMSA/CP/01/2015 of [date]);

Annex II - Proposal (reference No. [complete] of [date]);

which form an integral part of this agreement ("the Agreement")

1. EMSA agrees to donate, free of charge, the items indicated in the Proposal to the Donee.
2. The ownership of the items shall be transferred from EMSA to the Donee as from the moment physical possession of the items passes to the Donee upon collection at EMSA's premises.
3. The Agreement is concluded for a period of four years with effect from the date of the signature by the last party.
4. The Donee agrees that the items are donated as they are, thus not obliging EMSA to provide any warranty as to the quality or condition of any item donated.
5. As from the moment of transfer of ownership, the Donee shall have sole responsibility for the items, including all relevant dismantling, transport and insurance. All related costs shall be borne by the Donee and items shall not be returned to EMSA.
6. The Donee agrees to carry out a basic hard disk wipe of any informatics equipment donated by EMSA and agrees to provide a certificate confirming that the basic hard disk wipe has been successfully performed. The Donee agrees that failure to provide such certificate may result in the award decision for donation being revoked. EMSA is not liable for any costs incurred by the Donee prior to any resulting revocation of the award decision for donation.
7. EMSA agrees to update the Catalogue annexed to the Call for Proposals on a regular basis and communicate such updates to the Donee.

8. Following EMSA's communication on updates to the Catalogue, the Donee shall inform EMSA in writing of the number and type of items additionally requested. The Donee may, at any time during the validity of the agreement, collect items listed in the Catalogue.
9. Any communication in connection with this agreement shall indicate the number of the Agreement and shall be sent to the following address:

<u>For EMSA:</u> European Maritime Safety Agency Mart Martins E-mail: Marta.Martins@emsa.europa.eu Praça Europa 4 1249-206 Lisbon Portugal	<u>For the Donee:</u> Mr./Ms. [...] [Function] [Official denomination] [Official address in full]
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For the Donee,

[name/forename/surname/function]

For EMSA

Isabel Torné, Head of Department Corporate Services

Signature[s]:

Done at [...], on [date]

Signature:

Lisbon,

GENERAL CONDITIONS

ARTICLE I.1 – PERFORMANCE OF THE AGREEMENT

I.1.1 The parties shall perform their tasks and responsibilities under this Agreement to the highest professional standards.

I.1.2 The Donee shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

I.1.3 EMSA warrants that:

- (a) the donated equipment is suitable for use by the Donee; and
- (b) there are no claims, judgements, liens or other encumbrances of any kind whatsoever against or upon title to the donated items.

ARTICLE I. 2 – LIABILITY

I. 2.1. EMSA shall not be liable for damage sustained by the Donee in the performance of the Agreement except in the event of wilful misconduct or gross negligence on the part of EMSA.

I.2.2. The Donee shall be liable for any loss or damage caused by himself in performance of the Agreement.

I.2.3. Under no circumstances will EMSA be liable to the Donee or any other person for any direct, indirect, incidental, special or consequential damages arising out of or related to this Agreement or the donated equipment.

Article I.3 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.3.1. The Agreement shall be governed by the law of Portugal.

I.3.2. Any dispute between the parties in relation to the interpretation, application or validity of the agreements which cannot be settled amicably, shall be brought before the courts of Lisbon, Portugal.

Article I.4 – DATA PROTECTION

I.4.1. Any personal data included in the Agreement shall be processed pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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.

I.4.2 Such data shall be processed by the Head of Unit A.2 – Legal, Financial & Facilities Support as data controller, solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

I.4.3 The Donee shall have the right of access to his/her personal data and the right to rectify any such data. Should the Donee have any queries concerning the processing of his/her personal data, he/she shall address them to the data controller, identified in Article I.4.2.

I.4.4 The Donee shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.5 – CONFIDENTIALITY

I.5.1. EMSA and the Donee shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Agreement and which are explicitly indicated in writing as confidential.

I.5.2. The Donee shall not use confidential information and documents for any reason other than fulfilling its obligations under the Agreement, unless otherwise agreed with EMSA in writing.

I.5.3. EMSA and the Donee shall be bound by the obligations referred to in Articles I.5.1 and I.5.2 during the implementation of the Agreement and for a period of four years starting from the entry into force of this Agreement, unless:

- a) the concerned party agrees to release the other party from the confidentiality obligations earlier;
- b) the confidential information becomes public through other means than in breach of the confidentiality obligation;
- c) the disclosure of the confidential information is required by law, regulation or court order.

Article I.6 – FORCE MAJEURE

I.6.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the agreeing parties which prevents either of them from performing any of their obligations under the Agreement, 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.

I.6.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

I.6.3 The parties shall take the necessary measures to limit any damage due to force majeure. They shall do their best to resume the implementation of the action as soon as possible.

I.6.4. Neither party shall be held in breach of its obligations if it has been prevented from performing them by force majeure.

ARTICLE I.7 – TERMINATION OF THE AGREEMENT

I.7.1 Termination of the Agreement by the Donee

The Donee may, only in the event of force majeure, terminate the Agreement by formally notifying EMSA thereof, stating clearly the reasons and specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect.

I.7.2 Termination of the Agreement by EMSA

I.7.2.1 EMSA may decide to terminate the Agreement in the following circumstances:

- a) if the Donee does not implement the necessary action(s) as specified in this Agreement and in Annex I, or fails to comply with another substantial obligation incumbent on it under the terms of the Agreement;
- b) in the event of force majeure, notified in accordance with Article I.6, where the implementation is impossible or where the necessary modifications to the Agreement would result in unequal treatment of applicants;
- c) if EMSA has evidence that the Donee or any related person, as defined in the second subparagraph below, have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the European Union's financial interests;
- d) if EMSA has evidence that the Donee or any related person, as defined in the second subparagraph below, have committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Agreement, including in the event of submission of false information or failure to submit required information in order to obtain the donation provided for in the Agreement; or

For the purposes of the above points (c) and (d), "any related person" shall mean any natural person who has the power to represent the Donee or to take decisions on its behalf.

I.7.2.2 Before terminating the Agreement, EMSA shall formally notify the Donee of its intention to terminate, specifying the reasons thereof and inviting the Donee, within 45 calendar days from receipt of the notification, to submit observations and, in the case of point (b) of Article I.7.2.1, to inform EMSA about the measures taken to ensure that it continues to fulfil its obligations under the Agreement.

If, after examination of the observations submitted by the Donee, EMSA decides to stop the termination procedure, it shall formally notify the Donee thereof.

If no observations have been submitted or if, despite the observations submitted by the Donee, EMSA decides to pursue the termination procedure, it may terminate the Agreement by formally notifying the Donee thereof, specifying the reasons for the termination.

In the cases referred to in Article I.7.2.1, the formal notification shall specify the date on which the termination takes effect.

ARTICLE I.8 – CHECKS AND AUDITS

The Donee shall make available to the competent bodies of the European Union, upon request, all relevant financial information, including statements of accounts concerning this Call for Proposals, where it implements this Call for Proposals or where its affiliated entities or a subcontractor/s take part in this Call for Proposals.

ARTICLE I.9 - INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS

I.9.1 Industrial and intellectual property rights to items or related material shall not be transferred to the Donee excluding right of ownership to the items.

I.9.2 Where industrial and intellectual property rights, including rights of third parties, exist prior to the conclusion of the Agreement, EMSA shall establish a list that shall specify all rights of ownership and use of the pre-existing industrial and intellectual property rights and disclose it to the Donee at the latest before the handover of the items.

I.9.3 If any claims derived from the use or maintenance of the items and related material that are presented against the Donee or EMSA concerning intellectual property rights relating to the delivered items or related material, the Donee shall be obliged to meet these claims at its own expense.

ARTICLE I.10 – AMENDMENTS

I.10.1 Any amendment to the Agreement shall be made in writing.

I.10.2 An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the decision awarding the donation or be contrary to the equal treatment of applicants.

I.10.3 Any request for amendment shall be duly justified and shall be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the period set out in Article 3 above, except in cases duly substantiated by the party requesting the amendment and accepted by the other party.