

## FRAMEWORK CONTRACT FOR SERVICES

FRAMEWORK CONTRACT NUMBER – 2016/EMSA/NEG/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,

on the one part, and

MDA GEOSPATIAL SERVICES INC  
13800 Commerce Parkway  
Richmond British Columbia  
Canada V6V 2J3  
Registration nr 1520024

(hereinafter referred to as "the contractor"), *represented by* [forename, surname and function,]

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts** for services, the model specific contract and the following annexes:

<b>Annex I</b>	Tender specifications (reference No [complete] of [insert date])
<b>Annex II</b>	Contractor's tender (reference No [complete] of [insert date])
<b>Annex III</b>	Single User Radarsat End User Licence Agreement
<b>Annex IV</b>	IPR Identification Form

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

This FWC sets out:

1. the procedure by which the contracting authority may order services from the contractor;
2. the provisions that apply to any specific contract which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this FWC. In all circumstances, in the event of contradiction between this FWC and documents issued by the contractor, this FWC prevails, regardless of any provision to the contrary in the contractor's documents.

## **I - SPECIAL CONDITIONS**

### **ARTICLE I.1 – ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between different provisions in this FWC, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the FWC.
- (b) The provisions set out in the general conditions take precedence over those in the specific contract
- (c) The provisions set out in the specific contract take precedence over those in the other annexes.
- (d) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).
- (e) The provisions set out in the FWC take precedence over those in the specific contracts.

### **ARTICLE I.2 – SUBJECT MATTER**

The subject matter of the FWC is the provision of Radarsat satellite program licences for EMSA Earth Observation services.

### **ARTICLE I.3 – ENTRY INTO FORCE AND DURATION OF THE FWC**

**I.3.1** The FWC shall enter into force on the date on which it is signed by the last party.

**I.3.2** The implementation of the FWC cannot start before its entry into force.

**I.3.3** The FWC is concluded for a period of 36 months with effect from the date on which it enters into force.

**I.3.4** The parties must sign any specific contract before the FWC expires

The FWC continues to apply to such specific contracts after its expiry. The services relating to such specific contracts must be performed no later than six months after the expiry of the FWC.

#### **I.3.5 FWC renewal**

The FWC is renewed automatically up to one period of 12 months under the same conditions, unless one of the parties receives a formal notification to the contrary at least three months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

### **ARTICLE I.4 –IMPLEMENTATION OF THE FWC**

#### **I.4.1 Type of contract**

The contractor is selected for a single FWC.

#### **I.4.2 Period of provision of the services**

The period for the provision of the services starts to run from the date on which the specific contract is signed by the last party.

### **I.4.3 Single FWC**

The contracting authority orders services by sending the contractor a specific contract in paper format by mail.

Within 10 working days, the contractor must either:

- send the specific contract back to the contracting authority signed and dated; or
- send an explanation of why it cannot accept the order.

If the contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

## **ARTICLE I.5 – PRICES**

### **I.5.1 Maximum amount of the FWC and maximum prices**

The maximum amount covering all purchases under this FWC, including all renewals and reimbursement of expenses is EUR [*amount in figures and in words*]. However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the services are as listed in Annex II.

## **ARTICLE I.6 – PAYMENT ARRANGEMENTS**

### **I.6.1. Interim payment**

1. The contractor (or leader in the case of a joint tender) must send a quarterly invoice in paper format for the interim payment as provided for in the tender specifications, accompanied by the following:

- a list of all pre-existing rights to the results or parts of the results or a declaration stating that there are no such pre-existing rights, as provided for in Article II.13.4;
- insert relevant progress report or deliverable result or reference to tender specifications or specific contract;

2. The contracting authority must approve any submitted documents or deliverables and pay within 60 days from receipt of the invoice.

If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

3. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2) above unless it rejects partially or fully the submitted documents or deliverables.

## **I.6.2 Payment of the balance**

1. The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice in paper format for payment of the balance due under a specific contract, as provided for in the tender specifications and accompanied by the following:

- a list of all pre-existing rights to the results or parts of the results or a declaration stating that there are no such pre-existing rights, as provided for in Article II.13.4;
- insert relevant final progress report or deliverable or reference to tender specifications or specific contract

2. The contracting authority must approve the submitted documents or deliverables and pay within 60 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7.

The contractor (or leader in the case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2) above unless it rejects partially or fully the submitted documents or deliverables.

## **ARTICLE I.7 – BANK ACCOUNT**

Payments shall be made to the contractor's bank account denominated in euro identified as follows:

Name of bank: [complete]

Full address of branch: [complete]

Exact designation of account holder: [complete]

Full account number including [bank] codes: [complete]

[IBAN<sup>1</sup> code: [complete]]

## **ARTICLE I.8 – COMMUNICATION DETAILS AND DATA CONTROLLER**

For the purpose of this FWC, communications must be sent to the following addresses:

EMSA:

European Maritime Safety Agency

Name of Authorising Officer [complete]

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<sup>1</sup> BIC or SWIFT code for countries with no IBAN code.

Title of Authorising Officer [complete]  
Praça Europa 4  
1249-206 Lisbon  
Portugal

Contractor:

[Full name]  
[Function]  
[Company name]  
[Full official address]  
Email: [complete]

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 I.9 –DATA CONTROLLER**

For the purpose of Article II.9, the data controller is Leendert Bal, Head of Operations Department C.

## **ARTICLE I.10 - INTELLECTUAL PROPERTY RIGHTS**

### **I.10.1 – USER RIGHTS**

All the results, as defined in the tender specifications (Annex I), and the pre-existing rights, as defined in the IPR Identification Form in accordance with Article I.10.2 shall be licensed by the contractor to EMSA in accordance with Article II.13.3. Under observance of the limitations, if any, provided by applicable laws, the licenses shall provide EMSA the following limited, non-transferable and non-exclusive rights under the condition that the Products are for non-commercial use, and the proper copyright<sup>2</sup> is conspicuously marked:

- To acquire the Products as defined in the tender specifications (Annex I);

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<sup>1</sup> The following copyright must be conspicuously displayed alongside the Product or any portion thereof: "RADARSAT Data and Products © MacDONALD, DETTWILER AND ASSOCIATES LTD. (year of acquisition) – All Rights Reserved" and "RADARSAT is an official mark of the Canadian Space Agency" must appear as a credit.

- To reformat the Products into different formats or media from those in which it is delivered. EMSA shall not or allow anyone to reverse engineer, disassemble or decompile the Products;
- To make a copy of the Products for the EMSA database, own publications, internal archive or for backup purposes only;
- To make a copy of the Products available to EMSA staff. EMSA may post the Products to an internal network only accessible to EMSA's employees;
- To process the Products to retrieve full resolution;
- To use the Products for further analysis and/or processing and/or to create 'Further Processed Data';
- To modify/process the Products through manipulation/processing techniques and/or the addition of other data, provided that the value-added products generated do not retain the pixel structure of the Products and include a significant addition of external information;
- To provide the Products in full resolution to the government users of the EMSA service and for non-commercial use;
- EMSA may
  - a) post Products to Internet website in resolution reduced two (2) or more times and provided that: the Products are in a secure format that allows only printing and viewing and prohibits, at current technical standard, manipulating the Product's pixel or metadata;
  - b) make public presentation or display the data;
  - c) communicate them through press information services. The proper copyright has always to be marked conspicuously; and
  - d) not further distribute the Products;
- To distribute hard-copies Products in full resolution on a non-commercial basis to all users and littoral states in the same sea basin. These hard-copy Products can also be distributed, on a non-commercial basis to International Organisations in accordance, which are involved in oil spill monitoring and maritime surveillance provided that the proper copyright is conspicuously marked.
- Any third party receiving the Products shall not be granted any right (in particular the right to reproduce and/or to distribute) on such Products;
- To use the Products for internal or external demonstration purposes, including as evidence or for other purposes in legal or administrative proceedings, on a non-commercial basis provided that such Products is not distributed, sold, leased, rent, sub-licensed, copied, transferred, reproduced or given in whole or in part;

EMSA and the authorised end users shall not:

- Post the Products to Internet web sites in a non-secure format that allows manipulation of the Products;
- Alter or remove any copyright notice or proprietary legend contained in or on the Products;
- On its own, or permit any third party to, release or publish hardcopies of Single-Look Complex Data as defined in the EULA (hereafter the "SLC Data") in any beam mode or post such SLC Data on any publicly accessible network;
- Further process, or permit any third party to further process SLC Data to generate any product with (a) an impulse response resolution in either range or azimuth finer than (i) 2.0 meters for single-or dual-polarization modes, (ii) 6.0 meters for quad-polarization beam modes, where resolution is measured

horizontally in the ground plane;

- If applicable, further process, or permit any third party to further process Spotlight beam mode to generate any product with an impulse response resolution finer than 2.0 meters in range and 0.74 meters in azimuth, where resolution is measured horizontally in the ground plane;
- Use or permit any third party to generate a Value Added Product, as defined in the EULA, using interferometric processing techniques from at least one scene of Radarsat satellite program SLC Data where the interval of collection is less than 24 days. Such Value Added Products include interferograms, coherent change detection products, or interferometric digital elevation models.

EMSA will immediately notify the Contractor if EMSA becomes aware of a) a disclosure of the Products to an unauthorised user and b) an infringement or violation of the intellectual property rights and ownership of the Contractor or the satellite owners represented by the Contractor. The Contractor will determine the steps to be taken under these circumstances. In the meantime, EMSA agrees to immediately cease the distribution of the Products to the end user who is in violation of the above terms. Both parties agree to cooperate fully and in good faith for this purpose.

#### **I.10.2 – ACTIVITIES BY THE CONTRACTED SERVICE PROVIDER(S)**

The EMSA contracted 'Service Providers' will have:

- the right to process the imagery acquired by the ground station for EMSA into basic Products and to deliver such Products to EMSA only;
- the right to modify the Products acquired for EMSA so as to produce Further Processed Data and to deliver such Further Processed Data to EMSA

Provided the Service Provider a) has an effective agreement with EMSA to receive the Products on behalf of EMSA, and b) the Service Provider's ground receiving station has been certified by the Contractor.

EMSA or the Service Provider will ensure that the proper End User Licence Agreement accompanies the distribution of the Products.

#### **I.10.3 – ACTIVITIES BY THIRD PARTIES**

All acquisition, processing and analyses activities may be performed by a third party on behalf of EMSA. The third party may be consultants, contractors, service providers or other non-commercial public organisations. Products with the associated license will only be granted/provided to the third party to the extent necessary for the third party to perform the requested activities. Third party must not retain the Products or copies of the Products after completion of their work. No further rights, including distribution, copyright and other intellectual or industrial property rights, shall be passed on to these third parties.

#### **I.10.4 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 IV–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.13.5.

#### **ARTICLE I.11 – TERMINATION BY EITHER PARTY**

Either party may terminate the FWC and/or the FWC and specific contracts by sending formal notification to the other party with nine month's written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the services provided before termination takes effect.

The second, third and fourth paragraphs of Article II.18.4 apply.

#### **ARTICLE I.12 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.12.1** The FWC shall be governed by Union law, complemented, where necessary, by the law of Portugal.

**I.12.2** Any dispute between the parties in relation to the interpretation, application or validity of the FWC which cannot be settled amicably shall be brought before the courts of Lisbon, Portugal.

#### **ARTICLE I.13 – INTER-INSTITUTIONAL FRAMEWORK CONTRACT**

Not applicable

#### **ARTICLE I.14 – 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 I.15 – NEW SERVICES CONSISTING IN THE REPETITION OF SIMILAR SERVICES**

In accordance with Article 134 1(e) and (4) of Delegated Regulation (EU) No 1268/2012 on the rules of application as amended, EMSA may exercise during the 3 years following signature of the initial framework contract the option to make use of a negotiated procedure without prior publication of a contract notice in order to include new services under the framework contract consisting in the repetition of similar services.

## ARTICLE I.16 – OTHER SPECIAL CONDITIONS

Not applicable

### SIGNATURES

For the contractor,

[*Company name*/forename/surname/function]

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

Done at:

Date:

For EMSA,

Markku Mylly

Executive Director

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

Done at Lisbon

Date:

In duplicate in English.

## II – GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES

### ARTICLE II.1 – DEFINITIONS

For the purpose of this FWC, the following definitions (indicated in *italics* in the text) apply:

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *implementation of the FWC*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective *implementation of the FWC* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the FWC;

**Force majeure**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’**: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**‘Implementation of the FWC’**: the purchase of services envisaged in the FWC through the signature and *performance of specific contracts*;

**‘Irregularity’**: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Order form’**: a simplified form of specific contract by which the contracting authority orders services under this FWC;

**‘Performance of a specific contract’**: the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

**‘Personnel’**: persons employed directly or indirectly or contracted by the contractor to implement the FWC;

**‘Professional conflicting interest’**: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to implement the FWC or to perform a specific contract to an appropriate quality standard.

**‘Related person’:** any person who has the power to represent the contractor or to take decisions on its behalf;

**‘Request for services’:** a document from the contracting authority requesting that the contractors in a multiple FWC provide a specific tender for services whose terms are not entirely defined under the FWC;

**‘Specific contract’:** a contract implementing the FWC and specifying details of a service to be provided;

**‘Substantial error’:** any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget.

## **ARTICLE II.2 – ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER**

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group

## **ARTICLE II.3 – SEVERABILITY**

Each provision of this FWC is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

## **ARTICLE II.4 – PROVISION OF SERVICES**

- II.4.1** Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.
- II.4.2** The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender.
- II.4.3** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>3</sup>.
- II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

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<sup>3</sup> OJ L 94 of 28.03.2014, p. 65

- II.4.6** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- II.4.7** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:
- (a) they may not accept any direct instructions from the contracting authority; and
  - (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.8** The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.9** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:
- (a) does not have the expertise required to provide the services; or
  - (b) has caused disruption at the premises of the contracting authority.
- The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.
- II.4.10** The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

## **ARTICLE II.5 – COMMUNICATION BETWEEN THE PARTIES**

### **II.5.1 Form and means of communication**

Any communication of information, notices or documents under the FWC must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the FWC number and, if applicable, the specific contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail,.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

### **II.5.2 Date of communications by mail and email**

Any communication is deemed to have been made when the receiving party receives it, unless this FWC contract refers to the date when the communication was sent.

Email is deemed to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

*Formal notifications* are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

## **ARTICLE II.6 – LIABILITY**

- II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *implementation of the FWC*.
- II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.
- II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request. If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 applies.
- II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *implementation of the FWC*.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **ARTICLE II.7 – CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS**

- II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the contractor.

**II.7.3** The contractor must pass on all the relevant obligations in writing to:

- (a) its *personnel*;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the *implementation of the FWC*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## **ARTICLE II.8 – CONFIDENTIALITY**

**II.8.1.** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC* and identified in writing as confidential.

**II.8.2.** Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a specific contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;
- (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

**II.8.3** The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law requires the disclosure of the *confidential information or documents*.

**II.8.4** The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *implementation of the FWC* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

## ARTICLE II.9 – PROCESSING OF PERSONAL DATA

- II.9.1** Any personal data included in the FWC must be processed in accordance with 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. Such data must be processed by the data controller solely for the purposes of the implementation, management and monitoring of the FWC. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.
- II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.
- II.9.3** The contractor has right of recourse at any time to the European Data Protection Supervisor.
- II.9.4** If the FWC requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.
- II.9.5** The contractor must grant *personnel* access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.
- II.9.6** The contractor must adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
    - (i) unauthorised reading, copying, alteration or removal of storage media;
    - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - (iii) unauthorised use of data processing systems by means of data transmission facilities;
  - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
  - (c) record which personal data have been communicated, when and to whom;
  - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
  - (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;



- (f) design its organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.10 – SUBCONTRACTING**

- II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

## **ARTICLE II.11 – AMENDMENTS**

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.
- II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

## **ARTICLE II.12 – ASSIGNMENT**

- II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

## **ARTICLE II.13 – INTELLECTUAL PROPERTY RIGHTS**

### **II.13.1 Definitions**

In this contract the following definitions apply:

- (1) 'results' means any intended outcome of the performance of the contract which is delivered and finally accepted by EMSA.
- (2) 'creator' means any natural person who contributed to the production of the result and includes personnel of EMSA or a third party.
- (3) 'pre-existing rights' means any intellectual property rights, including background technology, which exist prior to EMSA or the contractor ordering them for the purpose of the contract execution and include rights of ownership and use by the contractor, the creator, EMSA and any third parties.

### **II.13.2 Ownership of the results and/or the pre-existing rights**

Under observance of the limitations, if any, provided by applicable laws, the ownership of the results and/or the pre-existing rights which, under Article I.10.1, are to be transferred to EMSA, if any, shall be fully and irrevocably acquired by EMSA under this contract including any rights in any of the results and/or the pre-existing rights listed in this contract, including industrial property rights, copyright and other intellectual property rights, and all technological solutions and information contained therein. All the rights shall be acquired by EMSA from the moment the results and/or the pre-existing rights are delivered by the contractor and accepted by EMSA. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to EMSA.

The payment of the price as set out in the contract is deemed to include any fees payable to the contractor in relation to the acquisition of ownership of rights by EMSA.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by EMSA without the written consent of the contractor, unless the contract explicitly provides for it to be treated as self-contained result.

### **II.13.3 Licensing of the results and/or the pre-existing rights**

Under observance of the limitations, if any, provided by applicable laws, the results and/or the pre-existing rights which, under Article I.10.1, are to be licensed to EMSA, if any, shall be fully licensed to EMSA under this contract on a royalty-free, non-exclusive and irrevocable basis and EMSA may use the results and/or the pre-existing rights as foreseen in Article I.10.1 or in order forms or specific contracts. All the results and/or the pre-existing rights shall be licensed to EMSA from the moment the results and/or the pre-existing rights are delivered and accepted by EMSA. Such delivery and acceptance are deemed to constitute an effective licensing of rights from the contractor to EMSA.

The licensing of the results and/or pre-existing rights to EMSA under this contract covers all territories worldwide and is valid for the whole duration of the intellectual property rights protection.

The payment of the price as set out in the contract is deemed to include any fees payable to the contractor in relation to the licensing of the results and/or the pre-existing rights including all forms of use of the result and/or pre-existing rights foreseen in Article I.10.1.

### **II.13.4 Modes of exploitation**

Results produced as an outcome of this contract may be used by EMSA for any of the following purposes:

- (a) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (b) storage of the original and copies made in accordance with this contract;
- (c) archiving in line with the document management rules applicable to EMSA.

### **II.13.5 Identification and evidence of granting of pre-existing rights and rights of third parties and of creators**

When delivering the results, the contractor shall warrant to EMSA that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by EMSA, except as expressly disclosed by the contractor to EMSA. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this contract or parts thereof. This list shall be provided no later than the date of delivery of the final results.

As to the results the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

Upon request by EMSA, the contractor shall promptly provide evidence of ownership or of rights to use all the listed pre-existing rights and rights of creators and third parties, except for the pre-existing rights and rights owned by EMSA.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include all the information and/or documents required by law, including, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The contractor shall also warrant to EMSA that it possesses the relevant rights and powers to execute the transfer or, as applicable, the licensing, of the results and/or of the pre-existing rights to EMSA and that it has paid or has verified payment of all due fees, including fees due to collecting societies, related to the final results and/or any pre-existing rights.

#### **II.13.6 Creators and third parties**

By delivering the results the contractor shall warrant to EMSA that the creators and third parties have undertaken not to oppose that their names be recalled when the results are presented to the public and shall confirm that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to EMSA.

The contractor shall obtain the consent of creators and third parties regarding the granting of the relevant rights to EMSA and be ready to promptly provide documentary evidence of such consent upon request of EMSA.

#### **II.13.7 Persons appearing in photographs or films**

If natural, recognisable persons appear or their voice is recorded in a result the contractor shall submit to EMSA a statement of these persons (or of the persons exercising parental authority in case of minors or of the persons legally responsible in case of persons with disabilities determined by a court of law or other competent authority) where they give their permission for the described use of their image or voice on request by EMSA. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

#### **II.13.8 Copyright for pre-existing rights**

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.10.1 with the following disclaimer: © - year - EMSA. All rights reserved. Certain parts are licensed under conditions to EMSA.

#### **II.13.9 Visibility of EMSA funding and disclaimer**

When making use of the results, the contractor shall declare that they have been produced within a contract with EMSA and that the opinions expressed are those of the contractor only and do not represent EMSA's official position. EMSA may waive this obligation in writing.

#### **II.13.10 Trade secrets**

Under observance of the limitations, if any, provided by applicable laws, EMSA shall have the right to disclose trade secrets which are incorporated in the results and/or pre-existing rights to a third party who is modifying the results and/or pre-existing rights in the name of EMSA in accordance with Article I.10.1 provided that the trade secrets are used solely in connection with the modification of the result and/or the pre-existing rights on behalf of EMSA. EMSA shall ensure that the third party is bound by the confidentiality obligations contained in this contract or by essentially corresponding confidentiality terms.

### **ARTICLE II.14 – FORCE MAJEURE**

**II.14.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

**II.14.2** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result* of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

**II.14.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

### **ARTICLE II.15 – LIQUIDATED DAMAGES**

#### **II.15.1 Delay in delivery**

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, the contracting authority may claim liquidated damages for each day of delay using the following formula:

$0.3 \times (V/d)$

where:

*V* is the price of the relevant purchase or deliverable or *result*;

*d* is the duration specified in the relevant specific contract for delivery of the relevant purchase or deliverable or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant specific contract, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

#### **II.15.2 Procedure**

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

#### **II.15.3 Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this FWC.

#### **II.15.4 Claims and liability**

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

### **ARTICLE II.16 – REDUCTION IN PRICE**

#### **II.16.1 Quality standards**

If the contractor fails to provide the service in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a report or deliverable as defined in Article I.6 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

#### **II.16.2 Procedure**

The contracting authority must *formally notify* the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

#### **II.16.3 Claims and liability**

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

### **ARTICLE II.17 – SUSPENSION OF THE IMPLEMENTATION OF THE FWC**

#### **II.17.1 Suspension by the contractor**

If the contractor is affected by *force majeure*, it may suspend the provision of the services under a specific contract.

The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

The contractor must *notify* the contracting authority as soon as it is able to resume *performance of the specific contract*, unless the contracting authority has already terminated the FWC or the specific contract.

#### **II.17.2 Suspension by the contracting authority**

The contracting authority may suspend the *implementation of the FWC* or *performance of a specific contract* or any part of it:

- (a) if the procedure for awarding the FWC or a specific contract or the *implementation of the FWC* proves to have been subject to *substantial errors, irregularities* or *fraud*;
- (b) in order to verify whether the presumed *substantial errors, irregularities* or *fraud* actually occurred.

The contracting authority must *formally notify* the contractor of the suspension. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a specific contract under Article II.18.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the FWC or a specific contract.

## ARTICLE II.18 – TERMINATION OF THE FWC

### II.18.1 Grounds for termination by the contracting authority

The contracting authority may terminate the FWC or a specific contract in the following circumstances:

- (a) if provision of the services under a pending specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation<sup>4</sup>;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition.

### II.18.2 Grounds for termination by the contractor

The contractor may terminate the FWC or a specific contract if:

<sup>4</sup> Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the FWC or the *implementation of the FWC*;
- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

### **II.18.3 Procedure for termination**

A party must *formally notify* the other party of its intention to terminate the FWC or a specific contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

### **II.18.4 Effects of termination**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1(j), (k) or (l) or in Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.



In the case of joint tenders, the contracting authority may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.18.1, under the conditions set out in Article II.11.2

## **ARTICLE II.19 – INVOICES, VALUE ADDED TAX AND E-INVOICING**

### **II.19.1 Invoices and value added tax**

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *implementation of the FWC* are exempt from taxes and duties, including VAT.

### **II.19.2 E-invoicing**

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

## **ARTICLE II.20 – PRICE REVISION**

If a price revision index is provided in Article I.5.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the FWC.

At the beginning of the second and every following year of the FWC, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the FWC. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

The contracting authority purchases on the basis of the prices in force at the date on which the specific contract enters into force.

The price revision is calculated using the following formula:

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

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the FWC enters into force;

Ir = index for the month in which the request to revise prices is received.

## **ARTICLE II.21 – PAYMENTS AND GUARANTEES**

### **II.21.1 Date of payment**

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

### **II.21.2 Currency**

Payments are made in euros or in the currency provided for in Article I.7.

### **II.21.3 Conversion**

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

### **II.21.4 Costs of transfer**

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

### **II.21.5 Pre-financing, performance and money retention guarantees**

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the specific contract.

Retention money guarantees cover full delivery of the service in accordance with the specific contract including during the contract liability period and until its final approval by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The contracting authority must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

#### **II.21.6 Interim payments and payment of the balance**

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.6 or in the tender specifications or in the specific contract.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the tender specifications or in the specific contract.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

#### **II.21.7 Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.6 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the specific contract in accordance with Article II.18.1(c).

#### **II.21.8 Interest on late payment**

On expiry of the payment periods specified in Article I.6, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

### **ARTICLE II.22 – REIMBURSEMENTS**

**II.22.1** Where provided by the special conditions or by the tender specifications, EMSA shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets

**II.22.2** Travel expenses are reimbursed on the following basis:

- a. The shortest and most economical normal route by rail (first class) between the seat of the contractor and the place where the task is to be executed.
- b. If the journey includes at least six hours of night travel between 22:00 and 7:00, the cost of accommodation in a double sleeper.
- c. Seat reservations and transport of necessary luggage, and supplements for high-speed trains.
- d. Expenses arising for journeys by sea are reimbursed on presentation of the supporting documents. The cost of transporting a car by sea is not reimbursed.
- e. Where the person concerned travels by car, travel expenses are reimbursed on the basis of the first class rail fare, excluding any supplements. The person is requested to provide supporting documents as to the actual price of a first class rail ticket for the journey in question at the occasion the experts is participating in.

- f. Where the distance by rail exceeds 400 km, or where the route includes a sea crossing, the cost of travel by air will be reimbursed on the basis of the fare in economy class or, if that is not available, business class.
- g. Taxi fares are not reimbursed

**II.22.3** Subsistence expenses are reimbursed on the following basis:

- a. For journeys of less than 200 km (return trip) no subsistence expenses shall be payable.
- b. Reimbursement of accommodation is based on actual costs of accommodation on production of an original invoice up to the ceiling as indicated in Annex IV per necessary over night stay related to the tasks executed. Accommodation shall be arranged and paid directly by the contractor.
- c. Flat rate daily allowance as specified in Annex III shall be reimbursed for days during which the tasks are executed. This amount covers all expenses at the place where the tasks related to the contract are executed, including the cost of meals and local transport (incl. taxi).
- d. Daily allowance for up to two days may be paid for extra over night stays necessary to qualify for a reduced transport fare through e.g. a stay over from Saturday to Sunday, provided the reduction amounts at least to the extra allowance paid.

**II.22.4** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided EMSA has given prior written authorisation.

**II.22.5** Conversion between the euro and another currency shall be made as specified in Article II.21.3.

**ARTICLE II.23 – RECOVERY**

**II.23.1** If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

**II.23.2 Recovery procedure**

Before recovery, the contracting authority must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

**II.23.3 Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

#### **II.23.4 Recovery rules in the case of joint tender**

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the contracting authority may claim the full amount to any other member of the group by *notifying* the debit note already sent to the leader under Article II.23.2.

### **ARTICLE II.24 – CHECKS AND AUDITS**

**II.24.1** The contracting authority and the European Anti-Fraud Office may check or require an audit on the *implementation of the FWC*. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

**II.24.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last specific contract issued under this FWC

**II.24.3** The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

**II.24.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

**II.24.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

**II.24.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

**SPECIFIC CONTRACT No [complete]**

implementing Framework contract No [complete]

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 [insert name, title Authorising Officer],

on the one part,

and

[full official name]

[official legal form]<sup>5</sup>

[statutory registration number or ID or passport number]

[full official address]

[VAT registration number]<sup>6</sup>

(hereinafter referred to as "the contractor"), [represented by [forename, surname and function,]]<sup>7</sup>

on the other part,

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<sup>5</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>6</sup> Repeat these data as many times as there are contractors in case of joint tender and continue numbering

<sup>7</sup> 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

#### ARTICLE III.1 - SUBJECT MATTER

- III.1.1** This specific contract implements Framework Contract (FWC) No [complete] signed by EMSA and the contractor on [complete date].
- III.1.2** In accordance with the provisions set out in the FWC and in this specific contract and [its][their] annex[es], which form an integral part of it, the contractor must provide the [following services:] [services specified in Annex [complete].]

#### ARTICLE III.2 - ENTRY INTO FORCE AND DURATION

- III.2.1** This specific contract shall enter into force [*on the date on which it is signed by the last party*] [on [insert date] *if it has already been signed by both parties*].
- III.2.2** The provision of the services starts from [the date of entry into force of this specific contract] [*insert date*]
- III.2.3** The provision of the services must not exceed [complete] [days] [months]. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.

#### ARTICLE III.3 - PRICE

- III.3.1** The maximum price payable under this specific contract is EUR [amount in figures and in words] including all services to be provided [and reimbursement of expenses].
- III.3.2** [Reimbursement of expenses is not applicable to this specific contract.] [Within the maximum price payable, up to EUR [amount in figures and in words] is earmarked for expenses, which must be reimbursed in accordance with the FWC]

#### ARTICLE III.4 - PERFORMANCE GUARANTEE

Performance guarantee is not applicable to this specific contract.

#### ARTICLE III.5 - EXPLOITATION OF THE RESULTS

[Not applicable]

[Insert details on the intended use of results linked to the specific request for service supplementing or replacing clause I.10 of the special conditions]

#### ARTICLE III.6 - RETENTION MONEY GUARANTEE

Retention money guarantee is not applicable to this specific contract.

#### ANNEXES

Request for service

Contractor's specific tender (No [complete]<sup>8</sup> of [insert date])

## **SIGNATURES**

For the contractor,

For EMSA

[*Company name*/forename/surname/function]

[Insert name and title of the Authorising Officer]

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

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

Done at:

Done at Lisbon

Date:

Date:

In duplicate in English.

---

<sup>8</sup> Number to be inserted in case of competitive multiple framework contract.

## **ANNEX I**

### Tender Specifications

## **ANNEX II**

Contractor's Tender (No. [complete] of [complete])

### **Annex III**

#### Single User Radarsat End User Licence Agreement

## ANNEX IV

### IPR Identification Form

#### 1. CONTRACT INFORMATION

Contract number: .....

Contractor: .....

#### 2. RESULTS

Do results incorporate  
pre-existing rights?

YES ☐

*(If yes, please complete part 3)*

NO ☐

Do results/pre-existing rights  
incorporate trade secrets?

YES ☐

*(If yes, please complete part 4)*

NO ☐

#### 3. PRE-EXISTING RIGHTS (if applicable)

Please indicate below separately the different pre-existing rights incorporated in the results.

*(In order to add another pre-existing IPR, please press the box "Add item")*

Pre-existing IP  
(+short description)

IPR applicable

*(Please identify IPR: copyright and/or related rights; database right; patent, trademark; design; ...)*

Registered IPR?

YES ☐

NO ☐

*(If Yes, please provide proof of registration)*

IPR duration  
(according to  
national law)

IP ownership

CONTRACTOR ☐

THIRD PARTY ☐

PROPRIETARY license ☐

OPEN SOURCE license ☐

Add Item

X

#### 4. TRADE SECRETS (if applicable)

Please indicate below separately the different trade secrets incorporated in the results/pre-existing rights.  
(In order to add another trade secret, please press the box "Add item")

**Trade secret**  
(+short description)

**Ownership**

CONTRACTOR ☐

THIRD PARTY ☐

Add Item

X

I, [insert name of the authorised representative of the contractor], declare that this statement is true and accurate.

Date, place and signature:

**This form should be provided to EMSA at the same time with the delivery of the results (and pre-existing rights), duly completed and signed by the authorised representative of the Contractor.**