

FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – [...] / EMSA/OP/16/2016

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

and

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

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

of the other part,

HAVE AGREED

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

Annex I	General Conditions
Annex II	General Terms and Conditions for Information Technologies Contracts
Annex III	Order Form / Change Request – Template
Annex IV	Tender Specifications (Invitation to Tender No [complete] of [complete])
Annex V	Contractor's Tender (No [complete] of [complete])
Annex VI	IPR Identification form

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

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the General Terms and Conditions for Information Technologies Contracts.
- The terms set out in the General Terms and Conditions for Information Technologies Contracts shall take precedence over those in the Annexes of the Contract.
- The terms set out in the Framework Contract shall take precedence over those in the Order Forms and Change Requests.
- The terms set out in the Tender Specifications (Annex IV) shall take precedence over those in the Tender (Annex V).

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by EMSA; subject to the rights of the Contractor under Article 8 should he dispute any such instruction.

SPECIAL CONDITIONS

ARTICLE 1 - SUBJECT

- 1.1** The subject of the Contract is the provision of Software Maintenance Support Services for the EU LRIT DC, LRIT-IDE, and LRIT-Ship DB systems.
- 1.2** Upon implementation of the Contract, the Contractor shall provide the Services in accordance with Annex IV and Annex V.
- 1.3** The Contract does not confer on the Contractor any exclusive right to provide Services referred to in the above paragraph.
- 1.4** Signature of the Contract imposes no obligation on EMSA to purchase. Only the implementation of the Contract through Order Forms/Change Requests is binding on EMSA.
- 1.5** All Order Forms/Change Requests implementing the Contract shall be in conformity with to the terms set out therein.

ARTICLE 2 - DURATION

- 2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- 2.2** Under no circumstances implementation may take place before the date on which the Contract enters into force. Order Forms may under no circumstances be placed before the date on which the Contract enters into force.
- 2.3** For the Services stated in Art 1.1 the Contract is concluded for a period of **36 months** with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- 2.4** The Order Forms/Change Requests pursuant to the Contract shall be signed before the Contract which it refers expires. The Contract shall continue to apply to Order Forms/Change Requests executed after the Contract expires. Such Order Forms/Change Requests shall be executed no later than six (6) months after expiry of the Contract.
- 2.5** The Contract may be renewed:

For the Services stated in Art 1.1 the Contract may be renewed once, for a period of 12 months, only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE 3 - PRICES

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

Type of prices

- 3.4** Prices shall be fixed and not subject to revision.

ARTICLE 4 –PERFORMANCE OF THE CONTRACT

Within 15 working days after a Request for Services being sent by EMSA, the Contractor shall return an estimate of the resources to be allocated for its execution, with particulars in support.

Within 10 working days of a demand for conclusion of an Order Form (for Modules 1 and 2) or Change request (Module 3) being sent by EMSA, the Contractor shall return it, duly signed and dated.

ARTICLE 5 – PAYMENT ARRANGEMENTS

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

Payment requests may not be made if payments for previous Order Forms/Change Requests have not been executed as a result of default or negligence on the part of the Contractor.

Payment scheme

5.1 - Module 1 – Familiarisation Phase

5.1.1 - Payment of the balance

The contractor shall submit an invoice for payment of the balance, indicating the reference number of the Contract and the Order Form to which it refers to.

The invoice shall be accompanied by the final report for Module 1 or any other document in accordance with the relevant Order Form or the instructions laid down in Annex IV. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 10 days in which to submit additional information or corrections, a new final report or other documents if it is required by the contracting authority.

5.2 - Module 2 – Maintenance (including technical support for operations/incidents/problems)

5.2.1 - Interim payment

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

Invoices for interim payment shall be accompanied by a maintenance progress report or any other document in accordance with the relevant Order Form or the instructions laid down in Annex IV. EMSA shall make the payment within 60 (sixty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new maintenance report or other documents if it is required by EMSA.

5.2.2 - Payment of the Balance

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

The invoice shall be accompanied by the final maintenance report or any other document in accordance with the relevant Order Form or the instructions laid down in Annex IV. EMSA shall make the payment within 60 (sixty) days from receipt of the invoice. The contractor shall have 10 (ten) days in which to submit additional information or corrections, a new final maintenance report or other documents if it is required by the contracting authority.

5.3 - Module 3 – New Developments/Change Requests:

5.3.1 Interim payment

The contractor shall submit an invoice for an interim payment after completion and approval of the milestones referred in the relevant Change Request.

Invoices for interim payment shall be accompanied by a progress report or any other document in accordance with the relevant Change Request or the instructions laid down in Annex IV. EMSA shall make the payment within 60 (sixty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new progress report or other documents if it is required by EMSA.

5.3.2 Payment of the balance

The contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by the final progress report or any other document in accordance with the relevant Change Request or the instructions laid down in Annex IV. EMSA shall make the payment within 60 (sixty) days from receipt of the invoice. The contractor shall have 10 (ten) days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

ARTICLE 6 – BANK ACCOUNT

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

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
[IBAN code: [complete]]

ARTICLE 7 – GENERAL ADMINISTRATIVE PROVISIONS

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

EMSA:

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

Contractor:

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

Invoices shall be sent to the following address:

EMSA:

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

ARTICLE 8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

ARTICLE 9 – DATA PROTECTION

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

ARTICLE 10 – INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

(c) modifications by EMSA or by a third party in the name of EMSA:

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

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

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

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

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

10.2 Intellectual property rights identification

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

ARTICLE 11 - TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving six (6) months formal prior notice. Should EMSA terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services ordered before the termination date, provided that they have duly delivered in conformity with the Contract and the relative Order Form(s)/Change Request(s). On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the and Services rendered up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

ARTICLE I.12 - E-PROCUREMENT

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

ARTICLE 13 - VPN remote access

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

SIGNATURES

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

For EMSA,
Markku Mylly,
Executive Director

signature: _____

signature: _____

Done at:

Done at Lisbon

Date:

Date:

in duplicate in English.