

## ANNEX I

### I – GENERAL CONDITIONS

#### ARTICLE I.1 – GENERAL PROVISIONS IN CASE OF PROVISION OF GOODS

##### Delivery

- a) Time allowed for delivery

The time allowed for delivery shall be calculated in accordance with Article 4.

- b) Date, time and place of delivery

EMSA shall be notified in writing of the exact date of delivery within the period indicated in Article 4. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article 4.

The Contractor shall bear all costs and risks involved in delivering the goods to the place of delivery.

- c) *Consignment note*

Each delivery shall be accompanied by a *Consignment note* in duplicate, duly signed and dated by the Contractor or his carrier, giving the Specific Contract number and particulars of the goods delivered. One copy of the *Consignment note* shall be countersigned by EMSA (or its representative) and returned to the Contractor or to his carrier.

##### Certificate of conformity

Signature of the *Consignment note* by EMSA, as provided for in subparagraph c) above, is solely an acknowledgment of the fact that the delivery took place and in no way implies conformity of the goods with the Specific Contract.

Conformity of the goods delivered shall be evidenced by the signature of a certificate to this effect by EMSA no later than one month after the date of delivery, unless otherwise specified in the Special Conditions or in the General Terms and Conditions for Information Technologies Contracts.

Conformity shall be declared only where the conditions laid down in the Contract and in the Specific Contract are satisfied.

Where, EMSA is unable to accept the goods, the Contractor shall be notified in writing at the latest by the deadline for delivery of the conformity certificate.

##### Conformity of the goods delivered with the Contract

- a) The goods delivered by the Contractor to EMSA must be in conformity in quantity, quality, price and packaging with the Contract and the relevant Specific Contract.
- b) The goods delivered must:

- correspond to the description given in the tender specification and possess the characteristics of the goods supplied by the Contractor to EMSA as a sample or model;
- be fit for any specific purpose required by EMSA and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
- be fit for the purposes for which goods of the same type are normally used;
- demonstrate the quality and performance which are normal in goods of the same type and which EMSA can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
- be packaged according to the usual method for goods of the same type or, failing this, in a way designed to preserve and protect them.

#### Remedy

- a) The Contractor shall be liable to EMSA for any lack of conformity which exists at the time the goods are verified.
- b) In the event of lack of conformity, without prejudice to Article I.5 regarding liquidated damages applicable to the total price of the goods concerned, EMSA shall be entitled:
  - either to have the goods brought into conformity, free of charge, by repair or replacement by the Contractor;
  - or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to EMSA, taking account of the nature of the goods and the purpose for which they are required by EMSA.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly but not limited to the cost of carriage, labour and materials.

#### Assembly and installation

If required by tender specification, the Contractor shall assemble and install the goods delivered within a period of one month unless otherwise specified in the Special Conditions or in the General Terms and Conditions for Information Technologies Contracts.

Any lack of conformity resulting from incorrect installation of the goods delivered shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the Contract and the goods were installed by the Contractor or under his responsibility. This shall apply equally if the product was to be installed by EMSA and was incorrectly installed owing to a shortcoming in the installation instructions.

#### Services provided to goods

If required by the Contract, services to goods shall be provided accordingly.

### Packaging

The goods shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg, unless otherwise defined in the Specific Contract.

Unless otherwise specified in the Special Conditions or in the tender specifications, pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- EMSA address for delivery;
- name of Contractor;
- description of contents;
- number and date of Specific Contract;
- number of Framework contract;
- EC code number of article.

### Guarantee

The goods shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision for a longer period is made in tender specification.

The Contractor shall guarantee that any permits and licences required for manufacturing and selling the goods have been obtained.

The Contractor shall replace at his own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, goods used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other goods that are part of the Specific Contract, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

## ARTICLE I.2 PERFORMANCE OF THE CONTRACT

- a) The Contractor shall perform the Contract to the highest professional standards.
- b) The Contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations= applicable.
- c) Without prejudice to Article I.4 any reference made to the Contractor's personnel in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- d) The Contractor must ensure that personnel performing the Contract possesses professional qualifications and experience required for the execution of the tasks assigned to it.
- e) The Contractor shall neither represent EMSA nor behave in any way that would give such an impression. The Contractor shall inform third parties as appropriate, that he does not belong to the European public service.
- f) The Contractor shall have sole responsibility for the personnel who execute the tasks assigned to him.

The Contractor shall stipulate for the following employment or service relationships with its personnel:

- personnel executing the tasks assigned to the Contractor may not be given orders directly by EMSA;
  - EMSA may not under any circumstances be considered to be the employer and the personnel referred to in point (a) shall undertake not to invoke against EMSA any right arising from the contractual relationship between EMSA and the Contractor.
- g) In the event of disruption resulting from the action one of the Contractor's personnel working on EMSA premises or in the event of the expertise - one of the contractor's personnel fails to correspond to the profile required by the Contract the Contractor shall replace him without delay. EMSA shall have the right to make a reasoned request for the replacement of any such personnel. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of personnel.
  - h) Should the execution of the tasks be directly or indirectly hampered either partially or totally by any unforeseen event, action or omission, the Contractor shall immediately and on its own initiative record it and report it to EMSA. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such an event the Contractor shall give priority to solving the problem rather than determining liability.
  - i) Should the Contractor fail to perform its obligations under the Contract or *Order Form* or Specific Contract in accordance with the provisions laid down therein, EMSA may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of theunperformed obligations. In addition, EMSA may impose penalties or liquidated damages in accordance with Article I.5.

## **ARTICLE I.3 - LIABILITY**

- I.3.1 The Contractor shall be solely responsible for complying with any legal obligations incumbent on it.
- I.3.2 EMSA shall not be held liable for any damage caused or sustained by the Contractor including any damage caused by the contractor to third parties during or as a consequence of performance of the Contract except in the event of wilful misconduct or gross negligence on the part of EMSA.
- I.3.3 The Contractor shall be liable for any loss or damages sustained by EMSA in performance of the Contract, including in the event of subcontracting and for any claim by a third party. EMSA shall not be liable for any act or default on the part of the Contractor in performance of the Contract. Notwithstanding the above, the Contractor shall not be liable for consequential loss and/or indirect damage exceeding the sum as set out for his professional risk insurance provided that this sum is no less than three times the total price/total amount of the Specific Contract(s) or *Order Form(s)* the execution of which is relevant for the loss or damage. The Contractor shall remain liable without any limitation as to the amount if the damage or loss is caused by the gross negligence or wilful conduct of the Contractor or by its employees, and for death caused by negligence or wilful conduct of its employees.
- I.3.4 Subject to the maximum amount provided in 3.2, the Contractor shall provide compensation in the event of any action, claim or proceeding brought against EMSA by a third party as a result of damage caused by the Contractor in performance of the Contract.
- I.3.5 In the event of any action brought by a third party against EMSA in connection with performance of the Contract including any alleged breach of intellectual property rights, the Contractor shall assist EMSA. Expenditure incurred by the Contractor may be borne by EMSA.
- I.3.6 The Contractor shall take out insurance policy against risks and damages relating to performance of the Contract if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to EMSA should it so request.

## **ARTICLE I.4 - CONFLICT OF INTERESTS**

- I.4.1 The contractor shall take all necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the FWC is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.
- I.4.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the FWC shall be notified to EMSA in writing without delay. The contractor shall immediately take all necessary steps to rectify the situation.

EMSA reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.
- I.4.3 The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the Contract.
- I.4.4 The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in

a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the Contract including subcontractors.

## **ARTICLE I.5 - LIQUIDATED DAMAGES**

EMSA may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time-limits set by the FWC or the relevant *Order Form* or specific contract, then, without prejudice to the contractor's actual or potential liability or to EMSA's right to terminate the FWC or the relevant *Order Form* or specific contract, EMSA may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

*V* is the price of the relevant purchase;

*d* is the duration specified in the relevant *Order Form* or specific contract or, failing that, the period between the date specified in Article 4.1 and the date of delivery or performance specified in the relevant *Order Form* or specific contract, expressed in calendar days

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by EMSA within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

## **ARTICLE I.6 – REPORTING AND PAYMENTS**

### **I.6.1 Date of payment**

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

### **I.6.2 Currency**

The IT Framework Contract shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article 6.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

### I.6.3 Costs of transfer

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

### I.6.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the IT Framework Contract reference and reference to the *Order Form* or specific contract.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

All invoices shall indicate both the contractor's and EMSA's VAT number.

EMSA is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

### I.6.5 Pre-financing and performance guarantees

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

Performance guarantees shall cover performance of the service in accordance with the terms set out in the request for services until its final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total price of the *Order Form* or specific contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article 5, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- a) the financial guarantee is provided by a bank at the request of the contractor and agreement by 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 cost of providing such guarantee shall be borne by the contractor.

### I.6.6 Interim payments and payment of the balance

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article 5 or in the tender specifications or in the *Order Form* or specific contract.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in the specific Contract, accompanied by a final progress report or any other documents provided for in Article 5 or in the tender specifications or in the *Order Form* or specific contract.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment, within the periods specified in Article 5, provided the invoice and documents have been approved and without prejudice to Article I.6.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

#### I.6.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article 5 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the IT Framework Contract, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again 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 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 and the new document produced is also rejected, the contracting authority reserves the right to terminate the *Order Form* or specific contract in accordance with Article I.13.1(c).

#### I.6.8 Interest on late payment

On expiry of the payment periods specified in Article 5, and without prejudice to Article I.6.7, the contractor 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 percentage points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with I.6.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article I.6.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

### ARTICLE I.7

Not Applicable

### ARTICLE I.8 –RECOVERY

I.8.1 If an amount is to be recovered under the terms of the Contract, the contractor shall repay EMSA the amount in question according to the terms and by the date specified in the debit note.

I.8.2 If the obligation to pay the amount due is not honoured by the date set by EMSA in the debit note, the amount due shall bear interest at the rate indicated in Article I.6.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when EMSA receives the full amount owed.

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

I.8.3 If payment has not been made by the due date, EMSA may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by EMSA or by calling in the financial guarantee, where provided for in Article 5 or in the specific contract.

### ARTICLE I.9



Not applicable

#### **ARTICLE I.10– FORCE MAJEURE AFFECTING THE CONTRACT OR THE SPECIFIC CONTRACT(S)**

- I.10.1 Force majeure means any unforeseeable and exceptional situation or event beyond the control of the contracting parties' control which prevents either of them from performing any of their obligations under the Contract, which was not attributable to error or negligence on their part or on the part of a subcontractors which proves to be inevitable in spite of exercising due diligence. Any default of a service defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as force majeure.
- I.10.2 A party is faced with force majeure shall notify the other party without delay stating the nature, likely duration and foreseeable effects.
- I.10.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the Contractor is unable to fulfil its contractual obligations owing to force majeure, he shall have the right to remuneration for the tasks actually executed.
- I.10.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

#### **ARTICLE I.11 – SUBCONTRACTING**

- I.11.1 The Contractor shall not subcontract without prior written authorisation from EMSA nor cause the Contract to be de facto performed by third parties.
- I.11.2 Even where EMSA authorises the Contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this Contract.
- I.11.3 The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to EMSA by virtue of this Contract, notably by Article I.15.

#### **ARTICLE I.12 – ASSIGNMENT**

- I.12.1 The Contractor shall not assign the rights including claims for payments, and obligations arising from the Contract, in whole or in part, without prior written authorisation from EMSA.
- I.12.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against EMSA and shall have no effect on it.

#### **ARTICLE I.13 – TERMINATION OF CONTRACT**

- I.13.1 Grounds for termination

EMSA may terminate the Contract, an *Order Form* or a specific contract a ending order or a specific contract in the following circumstances:

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the Contract, an *Order Form* or a specific contract substantially or calls into question the decision to award the Contract.

- (b) if execution of the tasks under a pending *Order Form* or a specific contract has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by EMSA, taking into account article I.16.2;
- (c) if the contractor does not perform the Contract, an *Order Form* or a specific contract as established in the tender specifications or request for service or fails to fulfil another substantial contractual obligation; termination of three or more *Order Form*s or specific contracts on this ground shall constitute ground for termination of the Contract;
- (d) in the event of force majeure notified in accordance with article I.10 or if the performance of the Contract, an *Order Form* or a specific contract has been suspended by the contractor as a result of force majeure, notified in accordance with article II.10.2, where either resuming performance is impossible or the modifications to the Contract, an *Order Form* or a specific contract might call into question the decision awarding the Contract, an *Order Form* or a specific contract, or result in unequal treatment of tenderers or contractors;
- (e) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this Contractor those of the country where the Contract is to be performed;
- (h) if EMSA has evidence that the Contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity;
- (i) if EMSA has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the Contract, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract, an *Order Form* or a specific contract;
- (k) if the needs of EMSA change and it no longer requires new services under the FWC;
- (l) when due to the termination of the Contract with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

#### I.13.2 Procedure for termination

When EMSA intends to terminate the Contract, an *Order Form* or a specific contract it shall notify the contractor of its intention specifying the grounds thereof. EMSA shall invite the contractor to make any observations and, in the case of point (c) of Article I.13.1, to inform EMSA about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification. If EMSA does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination EMSA shall notify the contractor about its decision to terminate the Contract, an *Order Form* or a specific contract. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article I.13.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article I.13.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

#### I.13.3 Effects of termination

In the event of the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination the contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments. The contractor shall have 60 days from the date of termination to draw up the documents required by the special conditions or *Order Form s* or specific contracts for the tasks already executed on the date of termination and produce an invoice if necessary. EMSA may recover any amounts paid under the Contract.

EMSA may claim compensation for any damage suffered in the event of termination.

On termination EMSA may engage any other contractor to execute or complete the services. EMSA shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the Contract.

#### **ARTICLE I.14 - CANCELLATION OF SPECIFIC CONTRACTS**

Where execution of the Specific Contract has not actually commenced within fifteen (15) days of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by EMSA, EMSA may cancel such Specific Contract with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgment of receipt or equivalent.

EMSA may cancel a Specific Contract at any time during execution thereof on the grounds and under the conditions set out in Article I.13 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of EMSA, payment of the price of the goods delivered or services provided by him as at the effective date of cancellation.

#### **ARTICLE I.15 – CHECKS AND AUDITS**

- I.15.1 EMSA and the European Anti-Fraud Office may check or carry out an audit on the performance of the Contract. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the Contract and during a period of five years which starts running from the date of expiry of the Contract.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by EMSA. Audits shall be carried out on a confidential basis.

- I.15.2 The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of expiry of the Contract.
- I.15.3 The Contractor shall allow EMSA's staff and outside personnel authorised by EMSA the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.
- I.15.4 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

On the basis of the final audit findings, EMSA may recover all or part of the payments made and may take any other measures which it considers necessary.

- I.15.5 By virtue of 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 (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on the spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by EMSA.
- I.15.6 The Court of Auditors shall have the same rights as EMSA, notably right of access, for the purpose of checks and audits.

#### **ARTICLE I.16 - AMENDMENTS**

- I.16.1 Any amendment to the Contract or *Order Form* or specific contract shall be made in writing before fulfilment of all contractual obligations. An *Order Form* or a specific contract may not be deemed to constitute an amendment to the FWC.
- I.16.2 The amendment may not have the purpose or the effect of making changes to the Contract or to *Order Forms* or specific contracts which might call into question the decision awarding the Contract, *Order Form* or specific contract or result in unequal treatment of tenderers or contractors.

#### **ARTICLE I.17 – CONFIDENTIALITY**

- I.17.1 EMSA and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the IT Framework Contract and identified in writing as confidential.  
The contractor shall:
- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the IT Framework Contract, *Order Form* or specific contract without prior written agreement of EMSA;
  - (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
  - (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of EMSA.
- I.17.2 The confidentiality obligation set out in Article I.17.1 shall be binding on EMSA and the contractor during the performance of the IT Framework Contract and for five years starting from the date of the payment of the balance unless:
- (a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;
  - (b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
  - (c) the disclosure of the confidential information is required by law.
- I.17.3 The contractor shall 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 performance of the IT Framework Contract, *Order Form* or specific contract an undertaking that they will comply with the confidentiality obligation set out in Article I.17.1.

## **ARTICLE I.18 – OWNERSHIP OF THE RESULTS - INTELLECTUAL PROPERTY RIGHTS**

### **I.18.1 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 industrial and 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.

### **I.18.2 Ownership of the rights in the results**

EMSA acquires irrevocably worldwide ownership of the results and of all intellectual property rights under the FWC. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the results and to all technological solutions and information created or produced by the contractor or by its subcontractor in implementation of the FWC. EMSA may exploit and use the acquired rights as stipulated in this FWC or order forms or specific contracts. EMSA acquires all the rights from the moment it approves the results delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to EMSA.

The payment of the price as set out in this FWC or order forms or specific contracts is deemed to include any fees payable to the contractor about the acquisition of ownership of rights by EMSA including for all forms of exploitation and of use of the results.

The acquisition of rights by EMSA under this contract covers all territories worldwide.

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 or order form or specific contract explicitly provides for it to be treated as a self-contained result.

### **I.18.3 Licensing rights on pre-existing materials**

Unless provided otherwise in the special conditions, EMSA does not acquire ownership of pre-existing rights under this FWC.

The contractor licenses the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to EMSA, which may use the pre-existing materials for all the modes of exploitation set out in this FWC or in specific contracts. All pre-existing rights are licensed to EMSA from the moment the results are delivered and approved by EMSA. Such delivery and approval are deemed to constitute an effective licensing of rights from the contractor to EMSA.

The licensing of pre-existing rights to EMSA under this FWC covers all territories worldwide and is valid for the duration of intellectual property rights protection. Under observance of the limitations, if any, provided by applicable law, the pre-existing materials may be used for any of the following purposes:

- (a)** use for its own purposes:
- I. making available to the staff of EMSA
  - II. making available to the persons and entities working for EMSA or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
  - III. installing, uploading, processing
  - IV. arranging, compiling, combining, retrieving
  - V. copying, reproducing in whole or in part and in unlimited number of copies
- (b)** distribution to the public:
- I. 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 to making modifications
  - V. addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
  - VI. preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
  - VII. extracting a part or dividing into parts
  - VIII. use of a concept or preparation of a derivative work
  - IX. digitisation or converting the format for storage or usage purposes
  - X. modifying dimensions
  - XI. translating, inserting subtitles, dubbing in different language versions (including, but not limited to all official languages of the EU and languages of candidate countries)
- (d)** the modes of exploitation listed in article II.18.4
- (e)** rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (d) to third parties.

The modes of exploitation may be defined in more detail in the specific contract.

Where EMSA becomes aware that the scope of modifications exceeds that envisaged in the contract, specific contract or order form, EMSA shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to EMSA within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

The payment of the price as set out in this FWC or order forms or specific contracts is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to EMSA, including for all forms of exploitation and of use of the results.

Where the implementation of the FWC requires that the contractor uses pre-existing materials belonging to EMSA, EMSA may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this FWC.

#### **I.18.4 Exclusive rights**

EMSA acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of results or copies of the results to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the results, and any other alteration of the results, subject to the respect of moral rights of authors, where applicable;
- (g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of EMSA, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the results are documents:
  - (i) 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;
  - (ii) the right to store and archive the results or copies of the results in line with the document management rules applicable to EMSA, including digitisation or converting the format for preservation or new use purposes;



- (l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
  - (i) end-user rights, for all uses by EMSA or by subcontractors which result from this FWC and from the intention of the parties;
  - (ii) the rights to decompile or disassemble the software;
- (m) to the extent that the contractor may invoke moral rights, the right for EMSA, except where otherwise provided in this FWC, to publish the results with or without mentioning the creator(s)' name(s), and the right to decide when and whether the results may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by EMSA on all parts of the results, be they created by the contractor or consisting of pre-existing materials.

Where pre-existing materials are inserted in the results, EMSA may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the results, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to EMSA. In such case, the contractor will have to clearly inform EMSA before making such choice and EMSA has the right to refuse it.

#### **I.18.5 Identification of pre-existing rights**

When delivering the results, the contractor must warrant that, for any use that EMSA may envisage within the limits set in this FWC, the results and the pre-existing material incorporated in the results are free of claims from creators or from any third parties and all the necessary pre-existing rights have been obtained or licensed.

To that effect, the contractor must establish a list of all pre-existing rights to the results of this FWC or parts thereof, including identification of the rights' owners. If there are no pre-existing rights to the results, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to EMSA together with the invoice for payment of the balance at the latest.

#### **I.18.6 Evidence of granting of pre-existing rights**

Upon request by EMSA, the contractor must promptly provide evidence that it has the ownership of or the right to use all the listed pre-existing rights, except for the rights owned or licensed by EMSA. EMSA may request this evidence even after the end of this FWC.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programmes ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, 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 if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The contractor shall also warrant to EMSA that it possesses the relevant rights or 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.

#### **I.18.7 Quotation of works in the result**

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

#### **I.18.8 Moral rights of creators**

By delivering the results, the contractor warrants that the creators will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the results are presented to the public;
- (b) that the results be divulged or not after they have been delivered in their final version to EMSA;
- (c) that the results be adapted, provided that this is done in a manner which is not prejudicial to the creator's honour or reputation.

If moral rights on parts of the results protected by copyright may exist, the contractor must obtain the consent of creators regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

#### **I.18.9 Image rights and sound recordings**

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.

#### **I.18.10 Copyright notice for pre-existing rights**

When the contractor retains pre-existing rights on parts of the results, reference must 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', or with any other equivalent disclaimer as EMSA may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

#### **I.18.11 Visibility of EMSA funding and disclaimer**

When making use of the results, the contractor must declare that they have been produced under 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 or provide the text of the disclaimer.

#### **I.18.12 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 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 FWC or by essentially corresponding confidentiality terms.

#### **ARTICLE I.19**

Not applicable

#### **ARTICLE I.20 – SUSPENSION OF THE CONTRACT**

##### **I.20.1 Suspension by the contractor**

The contractor may suspend the performance of the Contract or *Order Form* or specific contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform EMSA about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the Contract, *Order Form* or specific contract.

Once the circumstances allow resuming performance, the contractor shall inform EMSA immediately, unless EMSA has already terminated the Contract, *Order Form* or specific contract.

##### **I.20.2 Suspension by EMSA**

EMSA may suspend the performance of the Contract, *Order Form* or specific contract or any part thereof:

- a) if the Contract, *Order Form* or specific contract award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the contractor receives formal notification, or at a later date where the notification so provides. EMSA shall as soon as possible give notice to the contractor to resume the service suspended or inform the contractor that it is proceeding with the termination of the Contract, *Order Form* or specific contract. The contractor shall not be entitled to claim compensation on account of suspension of the Contract, *Order Form* or specific contract or of part thereof.

#### **Article I.21 – PROCESSING OF PERSONAL DATA**

I.21.1 Any personal data included in the FWC shall be processed pursuant to Regulation (EC) 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 shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

I.21.2 The Contractor shall have the right to access to 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.

I.21.3 The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

- I.21.4 Where the Contract requires the processing of personal data by the Contractor, 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 which may be processed, the recipients of the data, and the means by which the data subject may exercise his rights.
- I.21.5 The Contractor shall grant personnel; access to the data to the extent strictly necessary for the performance, management and monitoring of the Contract.
- I.21.6 The Contractor undertakes to adopt appropriate technical and organisational security measures having 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 having access to computer systems processing personal data, and especially:
    - aa) unauthorised reading, copying, alteration or removal of storage media;
    - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - ac) unauthorised using 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 EMSA;
  - 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.