

## Donation Agreement

### Donation of shore-based Automatic Identification Systems (AIS) equipment to ENP Countries

AGREEMENT NUMBER - 2018/EMSA/D/01/2018

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, Authorising Officer,

on the one part,

and

[full official name]

[official legal form]<sup>1</sup>

[statutory registration number]<sup>2</sup>

[full official address]

[VAT registration number]

"the Beneficiary", [represented for the purposes of signature of this agreement by [name, forename and function]]

on the other part,

Whereas EMSA has taken an Award decision no. [ ] on [XX Month YYYY] authorising the donation of the following Equipment: [description of the equipment to be donated] as described in the Article 4 below.

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<sup>1</sup> Delete if Beneficiary is a natural person or a body governed by public law.

<sup>2</sup> Delete if Beneficiary is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

HAVE AGREED

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

Annex I - Call for Proposals No.2018/EMSA/CP/01/2018

Annex II - Technical Specifications

Annex III - Proposal (reference No [complete] of [insert date])

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

- The terms set out in the special conditions shall take precedence over those in the other parts of the agreement.
- The terms set out in the general conditions shall take precedence over those in the other parts of the agreement.
- The terms set out in the Call for proposals (Annex I) shall take precedence over those in the proposal/s (Annex III).

## **SPECIAL CONDITIONS**

### **ARTICLE 1 – PURPOSE OF THE DONATION AGREEMENT**

- 1.1. EMSA has decided to award this Agreement, under the terms and conditions set out in the Special Conditions and the General Conditions, which the Beneficiary hereby declares that he has taken note of and accepts, for the action entitled ***Donation of shore-based Automatic Identification Systems (AIS) equipment to ENP Countries*** ("the Action").
- 1.2. The Beneficiary accepts the donation under the terms and conditions of this Agreement and undertakes to, acting on his own responsibility, do everything in his power to carry out the action as described in the Articles 2 and 3 below.

### **ARTICLE 2 – OBJECTIVE OF THE ACTION**

The overall objective of this action is to ensure the effective implementation of the relevant international agreements by providing the beneficiary countries with the possibility to strengthen their cooperation on AIS matters by taking part in pilot project on AIS information sharing thorough the Mediterranean AIS Regional Server (MAREΣ). For that purpose a Donation of shore-based Automatic Identification Systems (AIS) equipment consisting of *[insert number or delete as appropriate] shore-based AIS stations and [insert number or delete as appropriate] Central nodes to ENP Countries will be implemented.*

### **ARTICLE 3 – DESCRIPTION OF THE ACTION**

To achieve the above objective a Donation of shore-based Automatic Identification Systems (AIS) equipment consisting of *[insert number or delete as appropriate] shore-based AIS stations and [insert number or delete as appropriate] Central nodes to ENP Countries will be implemented.*

The Donation of shore-based Automatic Identification Systems (AIS) equipment includes the following tasks to be completed by EMSA (3.1) and by the Beneficiary (3.2.):

#### **3.1. Tasks to be completed by EMSA as per Annex 1:**

- EMSA will order to the contractor *[insert number or delete as appropriate] shore-based AIS stations and [insert number or delete as appropriate] Central nodes;*
- EMSA contractor shall take out full risk insurance for the equipment covering any damage, loss, theft or liability caused to or by the equipment during loading/unloading, transportation, eventual storage and handling or by the other relevant action in which damage to the equipment may occur during the contracting. This insurance shall cover the period from taking over the equipment from the initial location by the contractor until the delivery of the equipment to the beneficiary country;
- EMSA through its contractor will deliver the equipment to the quay of the port indicated by the Beneficiary;
- EMSA in cooperation with the Beneficiary will specify the delivery date, the location and the contact details of the receiving authority/person;
- EMSA shall hand over the equipment after it has been delivered at the quay of the port indicated by the Beneficiary. The equipment will be accompanied with standard operational manuals necessary to maintain and operate the equipment, both electronic and paper versions;

#### **3.2. Tasks to be completed by the Beneficiary as per Annex 1:**

- Before the handover of the equipment the Beneficiary shall make sure that all import duties and taxes are covered thus not exposing EMSA to any additional costs and tasks besides the cost and tasks already foreseen;
- Following the handover of the equipment the Beneficiary shall take care about the installation, all the servicing of the equipment, overhauling, insurance etc. as applicable, as well as contacts with the supplier and/or manufacturer;
- The Beneficiary shall commit to maintain and store the donated equipment in order to remain operational for seven (7) years as minimum. Independently of that option the beneficiaries shall endeavour to meet the technical requirements indicated in the Call for proposals (Annex I) in order to ensure the smooth operation of the donated equipment.

**3.3.** If requested by the Beneficiary, EMSA may consider providing technical support and guidance to the Beneficiary for the planning of the tasks mentioned in the previous paragraph (3.2).

#### **ARTICLE 4 – EQUIPMENT SUBJECT TO DONATION**

- 4.1.** Subject to the terms and conditions of this Agreement, EMSA shall transfer the ownership of the following equipment for the use of the Beneficiary: [short description of the equipment to be donated].
- 4.2.** The equipment is used and shall be donated as is. Detailed description of the equipment is provided in the Technical Specifications attached to this Agreement (Annex II).

#### **ARTICLE 5 – USE OF THE EQUIPMENT**

The Beneficiary shall use the equipment for any purpose it deems appropriate so far as it is related to the objective of this action as described in the Article 2 above.

#### **ARTICLE 6 – ENTRY INTO FORCE AND DURATION**

The Agreement is concluded for a period of seven years with effect from the date of the signature by the last party.

#### **ARTICLE 7 – DELIVERY**

- 7.1.** The ownership of the equipment together with associated risk shall be transferred by EMSA to the Beneficiary upon delivery of the equipment to the Beneficiary.
- 7.2.** The delivery shall be at [insert as appropriate] indicated in the Beneficiary's proposal. The delivery is expected to take place in the course of year 2018. EMSA shall notify the Beneficiary of the expected delivery date at least 30 days in advance. EMSA may send a representative on the delivery date.
- 7.3.** The delivery of the equipment will be accompanied by a consignment note in duplicate, duly signed and dated by the carrier. The Beneficiary agrees to sign both copies of the consignment note in order to acknowledge delivery of the equipment and to return one copy to the carrier and a copy to EMSA by e-mail. By the date of delivery of the equipment, all amenities, facilities and conditions required for the receipt of it shall be in place.
- 7.4.** The Beneficiary shall be responsible to clear the equipment for import tax and take care of all the necessary formalities for that (if any). The Beneficiary shall also be responsible to take care and pay for the local transport from the port where the equipment was delivered on quay to the place where the equipment shall be stored.

- 7.5.** Additional modalities of handover of the equipment may be agreed by the parties upon the delivery of the equipment.
- 7.6.** The Beneficiary has 10 days after delivery of the equipment to notify EMSA about lack of conformity of the equipment with the Technical specifications (Annex II). The Beneficiary loses the right to rely on a lack of conformity of the equipment if he does not give the notice thereof at the latest within a period specified in this paragraph.

## **ARTICLE 8 - FINANCING THE ACTION**

- 8.1.** The cost of the action as described in paragraphs 3.1 and 3.3 above shall be covered by EMSA.
- 8.2.** The expenses related to the actions described in the paragraph 3.2 of the Article 3 shall be covered by the Beneficiary acting on his own responsibility.
- 8.3.** Any other expenses that have not been explicitly provided for by this Agreement shall be born by the Beneficiary unless otherwise agreed by the parties.

## **ARTICLE 9 - GENERAL ADMINISTRATIVE PROVISIONS**

Any communication in connection with this agreement shall indicate the number of the Agreement, and shall be sent to the following addresses:

For EMSA:

European Maritime Safety Agency  
Giuseppe Russo  
Senior Project Officer  
Praça Europa 4  
1249-206 Lisbon  
Portugal

For Beneficiary:

Mr./Ms. [...]  
[Function]  
[Official denomination]  
[Official address in full]

## **GENERAL CONDITIONS**

### **ARTICLE I.1 – PERFORMANCE OF THE AGREEMENT**

- I.1.1.** The parties shall perform their tasks and responsibilities under this Agreement to the highest professional standards.
- I.1.2.** The Beneficiary shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- I.1.3.** EMSA warrants that:
- the donated equipment is suitable for use by the Beneficiary in accordance with the objective of the action.
  - there are no claims, judgements, liens or other encumbrances of any kind whatsoever against or upon title to the donated equipment.

### **ARTICLE I. 2 – LIABILITY**

- I.2.1.** EMSA shall not be liable for damage sustained by the Beneficiary in performance of the Agreement except in the event of wilful misconduct or gross negligence on the part of EMSA.
- I.2.2.** The Beneficiary shall be liable for any loss or damage caused by himself in performance of the Agreement.
- I.2.3.** Under no circumstances will EMSA be liable to the Beneficiary or any other person for any direct, indirect, incidental, special or consequential damages arising out of or related to this Agreement or the donated equipment.

### **Article I.3 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.3.1.** The Agreement shall be governed by law of the European Union.
- I.3.2.** The General Court or, on appeal, the Court of Justice of the European Union, shall have sole jurisdiction to hear any dispute between the Union and the beneficiary concerning the interpretation, application or validity of this Agreement, if such dispute cannot be settled amicably.

### **ARTICLE I.4 – DATA PROTECTION**

- I.4.1.** Any personal data included in the Agreement shall be processed pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
- I.4.2.** Such data shall be processed by Head of Unit B.3 as data controller, solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

- I.4.3.** The beneficiary shall have the right of access to his/her personal data and the right to rectify any such data. Should the beneficiary have any queries concerning the processing of his/her personal data, he/she shall address them to the data controller, identified in Article I.4.2.
- I.4.4.** The Beneficiary shall have right of recourse at any time to the European Data Protection Supervisor.

## **ARTICLE I.5 – CONFIDENTIALITY**

- I.5.1.** EMSA and the Beneficiary shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Agreement and which are explicitly indicated in writing as confidential.
- I.5.2.** The Beneficiary shall not use confidential information and documents for any reason other than fulfilling its obligations under the Agreement, unless otherwise agreed with EMSA in writing.
- I.5.3.** EMSA and the Beneficiary shall be bound by the obligations referred to in Articles 3.1 and 3.2 during the implementation of the Agreement and for a period of seven years starting from the entry into force of this Agreement, unless:
- (a) the concerned party agrees to release the other party from the confidentiality obligations earlier;
  - (b) the confidential information becomes public through other means than in breach of the confidentiality obligation; ;
  - (c) the disclosure of the confidential information is required by law, regulation or court order.

## **Article I.6 – FORCE MAJEURE**

- I.6.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the agreeing parties which prevents either of them from performing any of their obligations under the Agreement, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence.
- I.6.2.** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- I.6.3.** The parties shall take the necessary measures to limit any damage due to force majeure. They shall do their best to resume the implementation of the action as soon as possible.
- I.6.4.** Neither party shall be held in breach of its obligations if it has been prevented from performing them by force majeure.

## **ARTICLE I.7 – TERMINATION OF THE AGREEMENT**

### **I.7.1. Termination of the Agreement by the Beneficiary**

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

### **I.7.2. Termination of the Agreement by EMSA**

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

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

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

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

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

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

## **ARTICLE I.8 – CHECKS AND AUDITS**

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

## **ARTICLE I.9 - INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**

- I.9.1.** Industrial and intellectual property rights to equipment or related material shall not be transferred to the Beneficiary excluding right of ownership to the equipment.
- I.9.2.** Where industrial and intellectual property rights, including rights of third parties, exist prior to the conclusion of the Agreement, EMSA shall establish a list which shall specify all rights of ownership and use of the pre-existing industrial and intellectual property rights and disclose it to the Beneficiary at the latest before the handover of the equipment.
- I.9.3.** If any claims derived from the use or maintenance of the equipment and related material that are presented against the Beneficiary or EMSA concerning intellectual property rights relating to the delivered equipment or related material, the Beneficiary shall be obliged to meet these claims at its own expense.



## ARTICLE I.10 – AMENDMENTS

- I.10.1.** Any amendment to the Agreement shall be made in writing.
- I.10.2.** An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the decision awarding the Donation or be contrary to the equal treatment of applicants.
- I.10.3.** Any request for amendment shall be duly justified and shall be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the period set out in Article 6, except in cases duly substantiated by the party requesting the amendment and accepted by the other party.

## SIGNATURES

For the Beneficiary,

[*name*/forename/surname/function]

For EMSA,

[forename/surname/function]

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at .....

Done at Lisbon,

Date:

Date:

In duplicate in English.