

## SERVICE CONTRACT

CONTRACT NUMBER – EMSA/OP/24/2015

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

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

<b>Annex I</b>	General Conditions
<b>Annex II</b>	General Terms and Conditions for Information Technologies Contracts
<b>Annex III</b>	Tender Specifications (Invitation to Tender No [complete] of [complete])
<b>Annex IV</b>	Contractor's Tender (No [complete] of [complete])
<b>Annex V</b>	IPR Identification Form <sup>1</sup>

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 Specific Contracts.
- The terms set out in the Tender Specifications (Annex III) shall take precedence over those in the Tender (Annex IV).

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.

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<sup>1</sup> To be provided also in electronic format by EMSA after signature of Contract.

## SPECIAL CONDITIONS

### ARTICLE 1 - SUBJECT

- 1.1 The subject of this Contract is the provision of ICT services for the design, development, upgrade, helpdesk and corrective maintenance to the Central Hazmat Database application (CHD) and the MARine Chemical Information sheets application (MAR-CIS 2).
- 1.2 Upon implementation of the Contract, the Contractor shall provide the Services in accordance with Annex III and IV.
- 1.3 The Contract does not confer on the Contractor any exclusive right to provide Services referred to in the above paragraph.

### 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.
- 2.3 For the Services stated in Art 1.1, the Contract is concluded for **24 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.

### ARTICLE 3 - PRICES

- 3.1 The prices of this contract shall be as listed in Annex IV.
- 3.2 The maximum amount of this Service Contract shall be [...EUR], distributed as follows:
  - 1 - Module 1 - Implementation of CHD and MAR-CIS 2 - [...EUR];
  - 2 - Module 2 - Provision of further application upgrades - [...EUR];
  - 3 - Module 3 – Corrective maintenance - [...EUR]
- 3.3 Prices shall be expressed in Euro.

### ARTICLE 4 - PERFORMANCE OF THE CONTRACT AND PAYMENT ARRANGEMENTS

#### 4.2 Payment modalities

Payments shall be made as follows:

##### 4.2.1 For Module 1 – Implementation of CHD and MAR-CIS 2

###### 4.2.1.1 Interim Payment

Following the delivery to EMSA of the requested software and FAT report, the contractor may submit an invoice for an interim payment of EUR [amount in figures and in words], equal to 30 % of the total amount referred to in each Specific Contract. EMSA shall make the payment within 60 days from receipt of the invoice.

EMSA may refuse to make payments where the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud attributable to the contractor.

#### **4.2.1.2 Payment of the balance**

Following the software acceptance by EMSA and the GO LIVE of CHD and MARCIS 2 application in production, the contractor may submit an invoice for payment of the balance.

The invoice for payment of the balance shall be accompanied by the final report for Module 1. EMSA shall make the payment within 60 days from receipt of the invoice and approval of the report and all due deliverables. In case of rejection of the report or deliverables by EMSA, the contractor shall have 20 days in which to submit additional information, corrections or a new final report, if so required by EMSA.

### **4.2.2 For Module 2 – Provision of further application upgrades**

#### **4.2.2.1 Interim Payments**

Requests for services under this Service Contract for Module 2 will be placed through Requests for Change (RFC) registered in the application lifecycle management system of EMSA (TeamForge) and confirmed via e-mail. A fixed scope of work, price and delivery time shall be agreed for each request. The prices shall be calculated on the basis of the number of person-days per expert profile.

Various interim payments shall be executed, upon acceptance of the software to be delivered. Each payment will correspond to the value agreed for a specific set of requirements defined in each RFC.

The Contractor shall submit to EMSA an invoice, accompanied by an interim report corresponding to the software services completed.

EMSA shall have 60 days from receipt to accept the software and to pay the Contractor in proportion of the software service delivered against a specific Request for change. The Contractor shall have 20 days in which to submit additional information or corrections, a new interim report or other documents if so required by EMSA.

#### **4.2.2.2 Payment of the balance**

Upon delivery of all software services requested under Module 2 and conditioned to the acceptance of these services by EMSA, the Contractor shall submit an invoice for payment of the balance.

The invoice for the payment of the balance shall be accompanied by the final report for Module 2. EMSA shall make the payment within 60 days from receipt of the invoice and approval of the report and all due deliverables. In case of rejection of the report or deliverables by EMSA, the contractor shall have 20 days in which to submit additional information, corrections or a new final report if so required by EMSA.

### **4.2.3 For Module 3 – Corrective maintenance**

#### **4.2.3.1 Interim Payments**

Every six months following the GO Live date of CHD and MAR-CIS 2 applications of Module 1 Services, the Contractor shall submit to EMSA, within 10 days from the end of the six-months period, an invoice corresponding to the proportional part of the Module 3 services executed and the second three-monthly report. Both the invoice and the report should indicate the reference number of the Contract.

Conditioned to the acceptance of Services delivered under Module 3, EMSA shall have 60 days from receipt to approve or reject the second three-monthly report of each six-month period and, to pay to the Contractor the proportional part of the Module 3 Services. The Contractor shall have 20 days in

which to submit additional information, corrections or a new three-monthly report if so required by EMSA.

#### **4.2.3.2 Payment of the Balance**

Upon delivery of all Services contracted under Module 3 and conditioned to the acceptance of these by EMSA, the Contractor may submit an invoice for payment of the balance. The invoice shall be accompanied by a Final Report for Module 3.

EMSA shall have 60 Days from receipt to approve or reject the Final Report and to pay the Contractor. The Contractor shall have 20 days in which to submit additional information, corrections or a new final report if so required by EMSA.

### **ARTICLE 5 – 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 6 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract and order or specific contract 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 7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 7.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Portugal.
- 7.2** 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 8 – 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 Leendert Bal, Acting Head of Unit Information Services – Technical Management acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

## **ARTICLE 9 - INTELLECTUAL PROPERTY RIGHTS**

### **9.1 Ownership of the results and the pre-existing rights**

The ownership of the results as defined in the tender specifications (Annex III), and of all pre-existing rights defined in the *IPR Identification Form* in accordance with Article I.8.2 shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article I.8.

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.

### **9.2 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 V – IPR Identification Form*, with an exhaustive list of intellectual property rights applicable to the results and pre-existing rights, including incorporated trade secrets and third parties' rights as provided for in Article II.10.5.

## **ARTICLE 10 – 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 goods and services ordered before the termination date, provided that they have duly delivered in conformity with the Contract and the relative Specific Contract(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 Services rendered up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

## **ARTICLE 11 – 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 12 – OTHER SPECIAL CONDITIONS-REDUCTION OF PAYMENT FOR SERVICE NON-COMPLIANCE**

According to the terms included in the service contract the following price reductions shall be applied in case of service non-compliance, for services provided under a corrective maintenance and helpdesk service under Module 3:

- (i) For non-compliances related to “Critical” issues: A reduction to the contracted value equivalent to (for each day of breaching the SLA) the price of two person days of a senior programmer rate, up to a maximum 10% reduction to the contractual value.
- (ii) (For non-compliances related to “Urgent” issues: A reduction to the contracted value equivalent to (for each day of breaching the SLA) the price of one person day of a senior programmer rate, up to a maximum a 7% reduction to the contractual value.
- (iii) For non-compliances related to “normal” issues: A 5% reduction to the contracted value if, during the course of the contract, at least 20 breaches of the SLA for “Normal” issues are recorded.

The total price reduction is the sum of each reduction coefficient.

The reduction, if applicable, shall be applied in the payment of the balance of Module 3.

## **SIGNATURES**

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

For EMSA,  
Markku Mylly,  
Executive Director

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

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

Done at [place], [date]

Done at Lisbon [date]

In duplicate in English.

## **ANNEX III**

### **Tender Specifications**



## **ANNEX IV**

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

## ANNEX V – IPR IDENTIFICATION FORM

### 1. CONTRACT INFORMATION

Contract number: .....

Contractor: .....

### 2. RESULTS

Do results incorporate  
pre-existing rights?

YES ☐

NO ☐

*(If yes, please complete part 3)*

Do results/pre-existing rights  
incorporate trade secrets?

YES ☐

NO ☐

*(If yes, please complete part 4)*

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

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

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

Pre-existing IP  
(+short description)

IPR applicable

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

Registered IPR?

YES ☐

NO ☐

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

IPR duration  
(according to  
national law)

IP ownership

CONTRACTOR ☐

THIRD PARTY ☐

PROPRIETARY license

OPEN SOURCE license

☐
☐

Add Item



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

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

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**Trade secret**  
(+short description)

**Ownership**

CONTRACTOR ☐

THIRD PARTY ☐

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Add Item



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

Date, place and signature:

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