

Draft SERVICE CONCESSION CONTRACT

CONTRACT NO [complete]*

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

EMSA of the one part,

and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

hereinafter referred to as 'the Contractor', represented for the purposes of the signature of this Contract by (forename, surname and function),

of the other part,

*
Options [*in italics*] to be deleted where not applicable.
Options [in roman] to be completed.
Contract number: YYYY/EMSA(NEG)(OP)(RES)(CD)/XX/YYYY
First year YYYY = year of signature
Last year YYYY = year of procurement

HAVE AGREED

to the **special conditions**, the **general conditions for service** and the following annexes:

Annex I Tender specifications (reference No [complete] of [insert date])

Annex II Contractor's tender (reference No [complete] of [insert date])

[Annex III *Daily Allowance and Accommodation ceilings*

Annex IV *Expenses Reimbursement Form*

Annex V *Pre-financing Guarantee*

Annex VI *IPR Identification Form]*

[*Other annexes*]

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

This contract sets out the obligations of the parties during and after the duration of this contract.

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

PART I – SPECIAL CONDITIONS

ARTICLE I.1 – ORDER OF PRIORITY OF PROVISIONS

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

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

ARTICLE I.2 – SUBJECT MATTER

I.2.1 The Contractor undertakes to perform the services of *[complete]* in accordance with the terms set out in this Contract and the annexes thereto.

To that end, the Contractor shall ensure, the provision of all services necessary for the proper functioning of the activities forming the subject matter of this Contract as a matter of its own responsibility, at its costs and under the best possible conditions for customers, in accordance with the specifications and the implementing arrangements set out in Annex I and Annex II.

EMSA shall place at the Contractor's disposal, for the purpose of the provision of the services forming the subject matter of this Contract, the existing facilities in the buildings occupied by EMSA. Any use of the facilities made available other than that specified in this Contract and the tender specifications shall be excluded.

EMSA shall not guarantee a minimum customer use or turnover threshold.

The closure of points of sale by EMSA shall not give rise to entitlement to any compensation whatsoever.

I.2.2 *[This concession is divided into [complete] lots:*

This Contract shall apply to the following lot: [complete]]

ARTICLE I.3 - DURATION

I.3.1 The Contract shall enter into force on *[insert date]*, provided that it has already been signed by both Contracting Parties.

I.3.2 Under no circumstances may implementation commence before the date on which the Contract enters into force.

I.3.3 The Contract is concluded for a period of *[insert]* with effect from the date on which it enters into force. Unless otherwise indicated, that contractual period and all other periods specified in the Contract are calculated in calendar days.

I.3.4 Renewal of the Contract

The Contract may be renewed automatically up to *[insert]* times, each time for a period of *[insert]* years, and therefore for a total maximum duration of *[insert]* years, under the same conditions, save where one of the parties informs the other party of its intention not to renew the Contract and that notification is received by its addressee 3 months before expiry of the Contract. Such renewal does not entail any modification or deferment of the obligations in force.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

I.4.1 EMSA cafeteria shall operate on a self-service basis, i.e. customers shall be served directly at the front desk. Customers shall make payments directly to the Contractor.

I.4.2 The prices are expressed in euros.

[I.4.3 Price revision index

[Price revision is not applicable to this Contract.]

[Price revision is determined by the formula set out below and using the trend in the harmonised indices of consumer prices (HICP) [complete]¹ published for the first time in Eurostat's monthly 'Data in Focus' publication available on the website: <http://www.ec.europa.eu/eurostat/>

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

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

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

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

The price revision is calculated using the following formula:

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

where: Pr = revised price;

Po = price in the tender;

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

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

ARTICLE I.5 – PAYMENTS AND IMPLEMENTATION OF THE CONTRACT

I.5.1 Operating prices

The financial return for the services provided by the Contractor is ensured by the revenues collected from the customers, with all the risks associated with the operation being borne by the Contractor.

[I.5.2. Reimbursement of expenses²

¹ Specify the consumer price index or any other index adapted to the purchase, e.g.:

- 'Monetary union index of consumer prices' (MUICP): (euro area) for contracts expressed in euro (as a general rule);
- 'European index of consumer prices' (EICP): for contracts performed in the European Union outside the euro area;
- consumer price index of the state in whose currency the FWC price is expressed:
 - a) index of the state where the contractor is mainly based; or
 - b) index of the state where the service will be mainly carried out.
- Any other index corresponding to the main cost of the contract (e.g. index linked to salaries for interim services, oil prices for transport-related contracts, etc.).

Travel, subsistence expenses shall be reimbursed in accordance with Article II.18, as shall other expenses provided for by the tender specifications up to a maximum amount of EUR [amount in figures and in words].

The daily allowance and accommodation ceilings referred to in Article II.18.4 shall be determined in accordance with Annex III. Expenses Reimbursement Form is attached in Annex IV]

ARTICLE I.6 – BANK ACCOUNT

Payments for the services ordered by the departments of EMSA shall be made to the Contractor's bank account, which is denominated in euros and identified as follows:

Name of bank:

Full address of branch:

Exact name of the account holder:

Full account number including bank codes:

IBAN code:

ARTICLE I.7 – COMMUNICATION DETAILS AND DATA CONTROLLER

For the purpose of Article II.5, the data controller is *[insert position of the data controller and name of the organisational entity]*.

Any communication relating to the Contract or to its implementation shall be made in writing in paper or electronic format and shall bear the number of this Contract. Ordinary mail shall be deemed to have been received by EMSA on the date on which it is registered by the department responsible as indicated below.

Any electronic communication must be confirmed by a paper version if one of the parties so requests. The parties agree that an electronic communication bearing an electronic signature shall have the same value as a paper version.

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

EMSA:

European Maritime Safety Agency

Name of Authorising Officer *[complete]*

Title of Authorising Officer *[complete]*

Praça Europa 4

1249-206 Lisbon

Portugal

Contractor:

[Full name]

[Function]

[Company name]

[Full official address]

Email: *[complete]*

Invoices shall be sent to the following address:

EMSA:

² In most cases a global price covering all parts of the services is strongly recommended, so this option should be deleted save in exceptional cases. As a principle, if reimbursement costs have to be used, they should be defined in the contract.

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

ARTICLE I.8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

ARTICLE I.9 – DATA PROTECTION

The personal data mentioned in the Contract shall be processed in accordance with 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. In accordance with Article II.5 of the General Conditions, such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the entity referred to in Article I.7, in its capacity as data controller, without prejudice to their possible transmission to the bodies charged with the monitoring or inspection tasks to be performed in accordance with Union law and/or the applicable national law.

ARTICLE I.10 - INTELLECTUAL PROPERTY RIGHTS

[OPTION 1 – I.10.1 Ownership of the results and the pre-existing rights]

The ownership of the results as defined in the tender specifications (Annex I), and of all pre-existing rights defined in the IPR Identification Form in accordance with Article I.10.2 shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article II.10.2.]

[OPTION 2 – I.10.1 Ownership of the results and licensing of the pre-existing rights]

The ownership of the results as defined in the tender specifications (Annex I) shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article II.10.2.

All pre-existing rights as defined in the IPR Identification Form in accordance with Article I.10.2 shall be licensed by the contractor to EMSA in accordance with Article II.10.3. Under observance of the limitations, if any, provided by applicable laws, the pre-existing rights may be used by EMSA for any of the following purposes:

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

- (i) *publishing in hard copies*
 - (ii) *publishing in electronic or digital format*
 - (iii) *publishing on the internet as a downloadable/non-downloadable file*
 - (iv) *broadcasting by any kind of technique of transmission*
 - (v) *public presentation or display*
 - (vi) *communication through press information services*
 - (vii) *inclusion in widely accessible databases or indexes*
 - (viii) *otherwise in any form and by any method]*
- (c) *modifications by EMSA or by a third party in the name of EMSA:*
- (i) *shortening*
 - (ii) *summarizing*
 - (iii) *modifying of the content*
 - (iv) *making technical changes to the content:*
 - *necessary correction of technical errors*
 - *adding new parts or functionalities*
 - *changing functionalities*
 - *providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications*
 - (v) *addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.*
 - (vi) *preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.*
 - (vii) *extracting a part or dividing into parts*
 - (viii) *use of a concept or preparation of a derivate work*
 - (ix) *digitisation or converting the format for storage or usage purposes*
 - (x) *modifying dimensions*
 - (xi) *translating, inserting subtitles, dubbing in different language versions:*
 - *English, French, German*
 - *all official languages of EU*
 - *languages used within EU*
 - *languages of candidate countries*
 - *[other languages]]*
- (d) *the modes of exploitation listed in Article II.10.4*
- (e) *authorise, license, or sub-license the pre-existing rights to any third party*
- (f) *use material and know-how derived from the use of the pre-existing rights as set out in any of the points (a) to (e)*

Where EMSA becomes aware that the scope of modifications exceeds that envisaged in the contract EMSA shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to EMSA within one month and shall provide its agreement including any suggestions of modifications free of charge. The contractor shall also warrant that any creators and/or other right holders have agreed except when a creator or other right holder refuses the intended modification expressly on the grounds that it may harm his honour, reputation or distort integrity of the work only.³]

[OPTION 3 – I.10.1 Licensing of the results and the pre-existing rights

All the results, as defined in the tender specifications (Annex I), and the pre-existing rights, as defined in the IPR Identification Form in accordance with Article I.10.2 shall be licensed by the contractor to EMSA in accordance with Article II.10.3. Under observance of the limitations, if any,

³ If there are any possible modifications of the results envisaged, they should be clearly described in the Tender Specification (otherwise they will have to be agreed with the creator on the ground of this article).

provided by applicable laws, the results and the pre-existing rights may be used by EMSA for any of the following purposes:

- (a) use for its own purposes:
 - (i) making available to the staff of EMSA
 - (ii) making available to the persons and entities working for EMSA or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
 - (i) publishing in hard copies
 - (ii) publishing in electronic or digital format
 - (iii) publishing on the internet as a downloadable/non-downloadable file
 - (iv) broadcasting by any kind of technique of transmission
 - (v) public presentation or display
 - (vi) communication through press information services
 - (vii) inclusion in widely accessible databases or indexes
 - (viii) otherwise in any form and by any method]
- (c) modifications by EMSA or by a third party in the name of EMSA:
 - (i) shortening
 - (ii) summarizing
 - (iii) modifying of the content
 - (iv) making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
 - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
 - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - (vii) extracting a part or dividing into parts
 - (viii) use of a concept or preparation of a derivate work
 - (ix) digitisation or converting the format for storage or usage purposes
 - (x) modifying dimensions
 - (xi) translating, inserting subtitles, dubbing in different language versions:
 - English, French, German
 - all official languages of EU
 - languages used within EU
 - languages of candidate countries
 - [other languages]
- (d) the modes of exploitation listed in article II.10.4
- (e) authorise, license, or sub-license the results and pre-existing rights to any third party.
- (f) use material and know-how derived from the use of the results and pre-existing rights as set out in any of the points (a) to (e).

Where EMSA becomes aware that the scope of modifications exceeds that envisaged in the contract EMSA shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to EMSA within one month and shall provide its agreement including any suggestions of modifications free of charge. The contractor shall also warrant that any creators and/or other right holders have agreed except when a creator or other right holder refuses the intended modification expressly on the grounds that it may harm his honour, reputation or distort integrity of the work only.⁴]

I.10.2 Intellectual property rights identification

The contractor shall provide to EMSA at the same time with the delivery of the results (and pre-existing rights) a duly completed and signed Annex VI – IPR Identification Form, with an exhaustive list of intellectual property rights applicable to the results and pre-existing rights, including incorporated trade secrets and third parties' rights as provided for in Article II.10.5.

ARTICLE I.11 – TERMINATION BY THE CONTRACTING PARTIES

Either party may, of its own volition and without being required to pay any compensation, terminate the Contract by giving [insert] months' notice to the other party. Should EMSA terminate the Contract, the Contractor shall be entitled to payment corresponding to the part-performance of the services ordered before the termination date only. Article II.11.4 shall apply accordingly.

ARTICLE I.12 – CONTRACT CONCLUDED BEFORE THE EXPIRY OF THE STANDSTILL PERIOD

If it is signed by both EMSA and the Contractor before the expiry of a period of 15 calendar days from the day after the date of the simultaneous notification of the award and rejection decisions, this Contract shall be null and void.

ARTICLE I.13 – INTERINSTITUTIONAL CONTRACT

[Not applicable]

***[I.13.1]** This Contract is interinstitutional. The lead contracting authority acts on its own behalf and on behalf of the bodies listed in the title of the Contract as the contracting authorities, which provided the lead contracting authority with a power of attorney before Contract signature. The lead contracting authority signs the Contract and any amendments on behalf of itself and of all other contracting authorities.*

***I.13.3** If the contractor has a complaint about the conclusion, performance or termination of the contract, the contractor remains bound by its obligations under the contract.]*

ARTICLE I.14 – OTHER SPECIAL CONDITIONS

I.14.1 Compulsory insurance

The Contractor must take out insurance to cover the risks linked to operations and, in particular, 'public liability' insurance to cover any liability that it may incur as a result of physical or material injury arising from its operations, and submit a copy of the policy to EMSA no later than two weeks after the signature of this Contract.

The Contractor must also, at its own expense, take out insurance to cover its own liability in the case of accidents involving tangible or intangible property, in particular in the event of fire, water damage or broken glass.

⁴ If there are any possible modifications of the results envisaged, they should be clearly described in the Tender Specification (otherwise they will have to be agreed with the creator on the ground of this article).

The Contractor shall waive, and shall ensure that its insurers waive, any claim against EMSA, inter alia in the event of glass breakage, theft or any other criminal act occurring in the areas occupied by it.

I.14.2 Contractor's liability

The Contractor shall bear sole liability as regards:

- suppliers, in particular in respect of payments;
- the Portuguese authorities, in respect of the statutory and regulatory provisions relating to the operations;
- EMSA, its staff and its visitors as well as third parties, in respect of any damage resulting directly or indirectly from the services provided.

In the event of serious and duly identified failures on the part of the Contractor to comply with one or more of its obligations, EMSA shall send the Contractor a registered letter with acknowledgement of receipt requiring that it take action to remedy the failures identified within a specific period of time, without prejudice to the application of the penalties provided for in Article I.14.9 of this Contract.

If the Contractor proves incapable of remedying those failures within the deadline set, EMSA reserves the right to terminate the Contract, subject to the same notice periods as those set out in Article I.11, after sending a second registered letter of formal notice, and without prejudice to any damages.

Throughout the duration of the Contract, the Contractor shall be liable for damages or injury caused to persons, goods or facilities on account of its activities or those of any of its subcontractors. For that purpose, but not limited to that purpose, the Contractor shall be required to take out the insurance provided for in point I.14.1.

EMSA shall accept no liability for any event beyond its control or for which it is not liable which prevents the Contractor from carrying out its activities.

The Contractor undertakes to make good any damages suffered by EMSA, its staff or its visitors in connection with this Contract, on account of the services provided by the Contractor.

The Contractor shall take any action to avoid damage to immovable property and facilities, and shall not obstruct the effective operation of EMSA's departments. It shall immediately notify any anomaly identified that may adversely affect any persons and/or assets.

The Contractor shall refrain from holding EMSA liable for injuries suffered by the Contractor's staff in performance of this Contract, save where that injury is due to serious or gross negligence on the part of EMSA or its staff.

The Contractor shall indemnify EMSA and its staff against any action for compensation in respect of damages caused to third persons in performance of this Contract, in so far as those damages are not due to serious or gross negligence on the part of EMSA or its staff.

Food shall be transported and delivered in strict compliance with the related Portuguese and European legislation and any new legislation or directive which enters into effect in the course of the performance of the Contract.

I.14.3 Contractor staff

The Contractor undertakes to employ staff in sufficient numbers and of sufficient quality to guarantee the performance of its obligations under this Contract, in line with the requirements laid down in Annex I. It likewise undertakes to impose the same conditions on its subcontractors.

Those members of staff shall comply with Portuguese legislation, in particular as regards tax legislation, employment legislation and social security legislation.

EMSA reserves the right to request the immediate removal of any of the members of staff assigned, and shall not bear any consequences for so doing. Any request of this kind shall be accompanied by a statement of reasons and confirmed in writing to the Contractor.

For the purposes of the performance of the present Contract, and with the express and prior authorisation of EMSA, the Contractor may make use of subcontractors and the services of third parties. The Contractor undertakes to ensure that that collaboration is sufficient in quantitative and qualitative terms in order to guarantee the performance of its obligations under this Contract.

With regard to EMSA, the Contractor bears sole liability for the operation forming the subject-matter of the concession and shall remain liable under all circumstances for the involvement of subcontractors, both from the perspective of all the terms of the Contract and from the perspectives of administration and statutory liability.

I.14.4. Preparatory measures for implementing the Contract

The premises where the activities under this Contract shall be furnished and equipped with non-expendable equipment and cabling and energy and water supplies. The premises shall be made available to the Contractor free of charge.

An inventory of the premises and the furnishings/equipment provided shall be drawn up jointly by EMSA and the Contractor at the start of operations.

By approving the condition of the premises, the Contractor shall accept the premises and furnishings/equipment entrusted to it and undertakes to use those premises and furnishings/equipment properly, in accordance with the builders' and manufacturers' instructions.

The Contractor must inform EMSA, as soon as possible and no later than three days after discovery, of any damage, missing items, malfunctions and need for review, repair or replacement in relation to all assets belonging to EMSA and made available to the Contractor.

Failure to comply with that obligation shall automatically mean that the Contractor assumes responsibility for the damage suffered.

The Contractor shall adopt any monitoring arrangements necessary to avoid loss and damages in respect of all goods belonging to EMSA and made available to the Contractor.

The Contractor shall be required to reimburse EMSA for any expenditure incurred to restore the premises and facilities to their original state or to replace equipment where the liability for same is a result of fault or negligence.

Should the Contractor prefer to restore or replace the damaged premises or equipment at its own cost, the prior agreement of EMSA shall be required.

This provision shall cover not only damage or losses, but also unusual wear and tear and breakages due to incorrect handling and misuse.

The Contractor shall be required to allow EMSA carry out the necessary repairs or changes of any kind to immovable property or facilities, without compensation for disturbance or loss of enjoyment, on the understanding that the works shall be carried out in such a way as to limit in so far as possible any inconvenience, resulting from those works, to the provision of services.

I.14.5 Permits and licences

The Contractor shall bear sole responsibility for taking the necessary steps to obtain any permit or licence required for the performance of the Contract under the laws and regulations in force at the places where the services entrusted to it are to be performed.

Should the Contractor be unable to obtain one of the permits or licences necessary for the performance of the Contract, the Contract may be terminated by EMSA without notice.

I.14.6 Duty of discretion

The Contractor undertakes not to use or disclose to third parties any facts, information, knowledge, document, etc. communicated to it or of which it has become aware as a result of the performance of the Contract, as well as any of the results of the services provided by it. Those obligations shall continue following performance of this Contract.

The Contractor must obtain from all its members of staff a written undertaking to respect the secrecy of any information of which they are aware in connection with the provision of the services and not to disclose to third parties, or use for their personal benefit or the benefit of a third party, any document or information not publicly available, even after they have ceased to be assigned to the provision of those services. A copy of that undertaking must be submitted to EMSA.

The Contractor shall not be authorised to publicise, by means of advertising, that it is EMSA's supplier; it may, however, use the European Commission as a reference.

Advertising on any equipment (such as, for example, the Contractor's logo on trays, crockery, glassware, cutlery, etc.) and advertising displays of any kind shall be prohibited.

[I.14.7 Obligations in the event of assignment

Article II.8 of this Contract shall apply to any assignment, whether in whole or in part.

In addition to the obligation to obtain the prior authorisation of EMSA, the Contractor shall be obliged, in the event of the assignment of the Contract in whole or in part, to include in each assignment contract concluded with third parties all the provisions enabling the European Commission to exercise the same rights and to benefit from the same guarantees with regard to those third parties as with regard to the Contractor itself.]

I.14.8. Tax provisions

EMSA shall be exempt from all duties, taxes and charges, including value added tax, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Institutions.

I.14.9. Penalties

EMSA may require the payment of penalties every time the Contractor fails, for any reason other than *force majeure*, to perform the services described in Article I.1 of this Contract and in accordance with the arrangements reproduced in the tender specifications. The imposition of penalties shall in no way diminish the obligation on the part of the Contractor to perform the services in question.

In the event of a failure identified by EMSA and notified to the Contractor in writing, the following flat-rate penalties may be applied in respect of the catering services:

- EUR 750 in the event of a one-off failure on the part of the Contractor, the risk of which is high and the weighting of which is deemed critical (see Annex I, Technical Specifications, Comcal specific programme);
- EUR 500 in the event of a repeated failure (5 times), the risk of which is significant and the weighting of which is deemed incompatible (see Annex I, Technical Specifications, Comcal specific programme);
- EUR 250 in the event of a repeated failure (10 times), the risk of which is average and the weighting of which is deemed incompatible (see Annex I, Technical Specifications, Comcal specific programme);
- EUR 250 in the event of a repeated failure (15 times), the risk of which is low and the weighting of which is deemed incompatible (see Annex I, Technical Specifications, Comcal specific programme);
- In the event of the recurrence (3 times) of the same penalty, the risk of which is deemed to be high by EMSA, EMSA reserves the right to impose on the Contractor a supplementary penalty of EUR 1 500.

If an operation is closed or, without EMSA's agreement, fails to provide the services described in Article I.2 of this Contract and in accordance with the arrangements reproduced in the tender specifications, EMSA shall notify the Contractor in writing that the situation must be remedied within a fixed period of time. Any failure to comply with that deadline shall automatically entail the application of a penalty payment of EUR 1 500 per day until EMSA finds that the services are being duly provided.

In the event of a failure on the part of the Contractor, the penalties described above shall be applied by means of the issue of debit notes by EMSA. The corresponding payment shall be made within a maximum of 30 calendar days from the issue of the debit note.

If payment is not made, the sums payable shall accrue interest automatically at the rate applied by the European Central Bank to its transactions in euros, plus eight percentage points, in force at the date of the failure to comply with the due date up until the day payment is actually made.

Notwithstanding the penalties set out above, EMSA reserves the right to initiate any action for damages as compensation for harm suffered as a result of the Contractor's failure to fulfil its obligations under the Contract.

This article shall not preclude the right of termination.

[I.14.10. Guarantee

As a guarantee of the proper performance of the Contract, the Contractor shall, before signing this Contract, constitute an irrevocable and unconditional guarantee in the amount of EUR (equivalent to 5% of the annual turnover of the lot in question). That guarantee shall be capable of being called in on first request by EMSA.

In the event of the non-performance of this Contract, a delay and/or defect in its performance, or a failure to fulfil obligations arising from the provision of the premises and facilities, EMSA shall be able to obtain compensation for all damages, interest and costs equivalent to adequate reparation for the harm, inter alia by deducting the amount from the guarantee.

The amount of that guarantee may be updated on each anniversary of the Contract and any renewal dates at the express request of EMSA or of the Contractor. That update shall be dependent on the remaining collateral value (after any compensation of EMSA), and on the development of the annual turnover of the lot concerned by this Contract.

The guarantee shall be released no later than 60 days after the expiry of this Contract and of any renewals thereof.]

I.14.12 Other special clauses

Articles II.10, II.15 and II.18 of the General Conditions (Part II) shall not apply.

SIGNATURES

For the Contractor,
[company name/forename/surname/function]

For EMSA,

signature[s]: _____

signature[s]: _____

Done at....., on [insert date]

Done at Lisbon, on

in duplicate in English.

PART II – GENERAL CONDITIONS FOR SERVICE CONCESSION CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for compliance with any legal obligations incumbent on it, inter alia those resulting from employment, tax and social security legislation.
- II.1.2** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks entrusted to the Contractor are to be performed.
- II.1.3** Without prejudice to Article II.3, any reference to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4** The Contractor must ensure that any person involved in the performance of the Contract has the professional qualifications and experience required to perform the tasks assigned to it.
- II.1.5** The Contractor shall neither represent EMSA nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The Contractor shall have sole responsibility for the staff who perform the tasks entrusted to it.

In the context of the employment or service relationships with its staff, the Contractor shall specify that:

- the staff performing the tasks entrusted to the Contractor may not be given direct orders by EMSA;
 - EMSA may not under any circumstances be regarded as the employer of those members of staff, and those members of staff undertake not to invoke in relation to EMSA any right arising from the contractual relationship between EMSA and the Contractor.
- II.1.7** In the event of disruption resulting from the action of a member of the Contractor's staff working on EMSA's premises, or in the event of the experience or skills of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace that member of staff without delay. EMSA shall have the right to request the replacement of the member of staff in question, by stating its reasons for so doing. 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 performance of the tasks entrusted to it resulting from a staff replacement.
- II.1.8** Should an unforeseen event, action or omission directly or indirectly hamper/ hinder the performance of the tasks, either in whole or in part, 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 indicate the date on which it started and the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such circumstances, the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the Contractor fail to perform its obligations under the Contract, EMSA may, without prejudice to its right to terminate the Contract, reduce or recover payments made by it in proportion to the non-performance of obligations identified. In addition, EMSA may claim compensation or impose the damages provided for in Article II.2.

ARTICLE II. 2 – LIABILITY

- II.2.1** EMSA shall not be held liable for damages sustained by the Contractor in performance of the Contract, save in the event of wilful misconduct or gross negligence on the part of EMSA.
- II.2.2** The Contractor shall be liable for losses and damages sustained by EMSA in performance of the Contract, including in the context of subcontracting as provided for in Article II.6, but limited only to an amount not exceeding three times the total value of this Contract. However, if the damage or loss is attributable to the gross negligence or wilful misconduct of the Contractor or of its employees, the Contractor shall have unlimited liability for the amount of the damage or loss.
- II.2.3** 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.
- II.2.4** In the event of any action brought by a third party against EMSA in connection with performance of the Contract, the Contractor shall assist EMSA. The expenditure incurred by the Contractor in that regard may be borne by EMSA.
- II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the applicable legislation. It shall take out supplementary insurance in line with the standard practice in its industry. A copy of all the relevant insurance contracts shall be sent to EMSA, should it so request.

ARTICLE II.3 - IMPARTIALITY

- II.3.1** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any such situation arising during the performance of the Contract must be notified to EMSA in writing without delay. In the event of such situation, the Contractor shall immediately take all necessary measures to resolve it.

EMSA reserves the right to verify that such measures are adequate and to require that additional measures be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that its staff and the members of its supervisory and management boards are not placed in a situation which could give rise to a conflict of interests. Without prejudice to Article II.1, the Contractor shall replace, immediately and without requiring that EMSA provide any compensation, any member of its staff exposed to such a situation.

- II.3.2** The Contractor shall refrain from any contact likely to compromise its independence.
- II.3.3** The Contractor declares:
- that it has not made, and will not make, an offer of any kind whatsoever from which an unjustified advantage could be derived under the Contract;
 - 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, whether financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward linked to the performance of the Contract.
- II.3.4** The Contractor shall distribute all the relevant obligations in writing to its staff and to the members of its supervisory and management boards, as well as to third parties involved in performance of the Contract.

ARTICLE II. 4 – CONFIDENTIALITY

- II.4.1.** The Contractor undertakes to treat in the strictest confidence, and not to make use of or disclose to third parties, any information or document linked to performance of the

Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

- II.4.2.** The Contractor shall obtain from each member of its staff and of its supervisory and management boards an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to the performance of the tasks, and that they will not disclose to third parties or use for their own benefit or that of a third party any document or information not available publicly, even after completion of those tasks.

ARTICLE II.5 – DATA PROTECTION

- II.5.1** The Contractor shall have the right to access its personal data and the right to correct such data. The Contractor shall address to the entity designated in Article I.7, in its capacity as data controller, any questions regarding the processing of those data.
- II.5.2** The Contractor shall have the right of recourse at any time to the European Data Protection Supervisor.
- II.5.3** Where this Contract entails the processing of personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise its rights.
- II.5.3.a** In accordance with the applicable national legislation, the Contractor shall inform those from whom it collects personal data inter alia of the existence of a right to access the data concerning them and to correct such data, as well as of the existence of the right of recourse at any time to the competent data protection authority.
- II.5.4** The Contractor shall limit the access to data to the staff strictly necessary for the performance, management and monitoring of the Contract.
- II.5.5** The Contractor shall undertake to adopt 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 access by unauthorised persons to the IT systems used to process personal data, and in particular to prevent:
 - aa) any unauthorised reading, copying, alteration or removal of storage media;
 - ab) any unauthorised retrieval of data, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) the use of data processing systems by unauthorised persons by means of data transmission facilities;
 - b) ensure that the authorised users of a data processing system can access only the personal data to which their right of access relates; permet de consulter;
 - c) record which personal data have been communicated, when and to whom;
 - d) ensure that the personal data processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
 - e) ensure that, during the communication of personal data and the transportation of storage media, the data cannot be read, copied or erased without authorisation;
 - f) design its organisational structure in such a way as to comply with data protection requirements.

ARTICLE II. 6 – SUBCONTRACTING

- II.6.1** The Contractor may not enter into subcontracting agreement or cause the Contract in fact to be performed by third parties without prior written authorisation from EMSA.
- II.6.2** Even where EMSA authorises the Contractor to subcontract to third parties, the Contractor shall nevertheless remain bound by its obligations to EMSA under the Contract and shall bear exclusive liability for the proper performance of the Contract.
- II.6.3** The Contractor shall make sure that the subcontracting agreement does not affect the rights and guarantees enjoyed by EMSA under this Contract, in particular Article II.20 thereof.

ARTICLE II. 7 – AMENDMENTS

Any change to the Contract must form the subject of an amendment agreement concluded in writing by the Contracting Parties prior to the performance of all their contractual obligations. An oral agreement shall not be binding on the Contracting Parties.

ARTICLE II. 8 – ASSIGNMENT

- II.8.1** The Contractor may not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from EMSA.
- II.8.2** In the absence of such authorisation or in the event of a failure to observe the terms attached to that authorisation, the assignment by the Contractor shall not be enforceable against, and shall have no effect on, EMSA.

ARTICLE II.9 – USE, DISTRIBUTION AND PUBLICATION OF INFORMATION RELATING TO THE CONTRACT

- II.9.1** The Contractor shall authorise EMSA to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever media, the data contained in the Contract, in particular the identity of the Contractor, the subject matter and duration of the Contract, and the amount paid. Where the data are personal data, Articles I.8 and II.5 shall apply.
- II.9.2** Unless otherwise provided by the Special Conditions, EMSA shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to distribute or publish the documents or information thus supplied, the Contractor may not distribute them or have them published elsewhere without prior written authorisation from EMSA.
- II.9.3** Any distribution or publication of information relating to the Contract and any use of the results of the implementation of the Contract, provided as such by the Contractor, shall be subject to the prior written authorisation of EMSA and, where EMSA so requests, shall state that the results were produced in the context of a contract with EMSA. The distribution or publication shall specify that the views expressed therein reflect the Contractor's opinion only and do not represent EMSA's official position.
- II.9.4** The use of information obtained by the Contractor in the course of the Contract for purposes other than the performance of the Contract shall be prohibited, save where EMSA has specifically given prior written authorisation.

ARTICLE II.10 - OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

- II.10.1** 'Results' shall be understood to mean any outcome following from the implementation of the Contract and supplied as such by the Contractor.

'Creator' shall mean any person who contributed to the production of the results.

'Pre-existing intellectual property rights', sometimes referred to as 'the background technology', shall mean the intellectual and industrial property rights existing prior to the conclusion of the Contract, including the rights of ownership and use held by the Contractor, EMSA and third parties ('the pre-existing rights').

The obligation imposed on Contractors to submit a list of the pre-existing rights no later than the date of delivery of the final results shall constitute a material term and an essential component of the Contract.

- II.10.2** Ownership of all the results or rights related thereto mentioned in the tender specifications and in the tender attached to the Contract, in particular copyright and other intellectual or industrial property rights, and all technological solutions and information contained in those results or rights obtained in performance of the Contract, shall be

irrevocably and fully acquired by EMSA, which may use them as described in the Contract. All the rights shall be acquired by EMSA from the moment EMSA accepts the results delivered.

In the interests of clarity, and in so far as necessary, that acquisition of rights shall also be deemed to constitute an effective assignment of rights from the Contractor to EMSA.

The payment of the price provided for in Article I.4 shall be deemed to cover all forms of use of the results by EMSA to which Article I.10 refers.

That irrevocable acquisition of rights by EMSA under the Contract shall be valid worldwide and for the entire duration of the protection of the intellectual property rights.

II.10.3 EMSA may not use the interim results, raw data and interim analyses communicated by the Contractor without the latter's written consent, unless the tender specifications explicitly provide that those elements are to be treated as a self-contained result.

II.10.4 The Contractor shall retain all rights and interests relating to the pre-existing rights which are not acquired in full by the EMSA in accordance with Article I.10.2 and shall grant to EMSA, at the latter's request and for the period requested, a licence to use the pre-existing rights in so far as this is necessary in order to make use of the results delivered.

II.10.5 The Contractor shall ensure that the results delivered are free from rights and claims by third parties, including in relation to the pre-existing rights, in respect of all the uses envisaged by EMSA. This provision does not concern the moral rights of natural persons or the rights provided for in Article II.10.4.

II.10.6 The Contractor shall clearly identify all quotations of existing written works to which it refers. The complete reference shall include, as appropriate, the name of the author, the title of the work, the date of publication, the date of creation, the place of publication, the address of publication on the internet, the number, the volume and any other information which allows the origin of the text to be easily identified.

II.10.7 The Contractor shall clearly indicate all the parts in respect of which there are pre-existing rights and all the parts of the results which originate from external sources: parts of other documents, images, graphs, tables, data, software, technical innovations, know-how, etc. (in paper, electronic or another form).

In the case of non-written results or results delivered solely on an electronic medium, the accompanying description, instructions or explanatory document must indicate all the parties which originate from external sources: IT development tools, routines, subroutines and other programmes ('background technology'), concepts, designs, installations or works of art, data, sources, pre-existing documents or any other part of external origin.

II.10.8 If EMSA so requests, the Contractor shall demonstrate that it has ownership of or the rights to use any right necessary in relation to the documents referred to in Article II.10.7.

II.10.9. By delivering the results, the Contractor confirms that those results may be disclosed and that their creators undertake not to oppose their names being mentioned when the results are presented to the public.

The Contractor shall have obtained the necessary consent of the creators and shall attest to this by providing documentary evidence.

II.10.10. By delivering the results, the Contractor warrants that the aforementioned assignment of rights is not in breach of any statutory provision or prejudicial to the rights of others, and that it has the rights or powers necessary to make the assignment. It shall also warrant that it has made all payments or ascertained that such payments have been made, including the prices payable to collecting societies, in relation to the final results.

II.10.11. The Contractor shall indemnify the EMSA against any claims or costs in the event of an action brought by a third party, in particular creators or intermediaries, for infringement of intellectual, industrial or other property rights on account of the use of the works by the EMSA in respect of which the Contractor has afforded rights of use to the EMSA.

ARTICLE II.11 – FORCE MAJEURE

II.11.1 'Force majeure' shall mean any unforeseeable and exceptional situation or event beyond the parties' control and not attributable to error or negligence on one of their parts or on

the part of a subcontractor which prevents one of the parties from performing one or more of its obligations under the Contract and could not have been avoided by the exercise of due diligence. Defects in equipment or material(s) or delays in making it/them available, labour disputes, strikes and financial problems cannot be invoked as force majeure unless they are the direct consequence of an established case of force majeure.

- II.11.2** Without prejudice to Article II.1.8, if either Contracting Party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement of receipt, or by an equivalent means, stating the nature, likely duration and foreseeable effects of that event.
- II.11.3** Neither Contracting Party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration in respect of the tasks actually performed only.
- II.11.4** The Contracting Parties shall take the necessary measures to reduce any damage to a minimum.

ARTICLE II.12 – DAMAGES

If the Contractor fails to perform its contractual obligations within the period specified by the Contract, and regardless of the Contractor's actual or potential contractual liability and of EMSA's right to terminate the Contract, EMSA may decide to require the Contractor to pay damages per calendar day of delay as calculated according to the following formula: $0.3 \times (V/d)$

V is the price of the relevant purchase;

d is the duration, expressed in days,

The Contractor may challenge that decision within thirty days of its notification, by registered letter with acknowledgement of receipt or by any equivalent means. If EMSA fails to respond or does not set aside the decision in writing within thirty days of the receipt of the challenge, the decision imposing the damages shall become enforceable. Such damages shall not be imposed where there is provision for interest on account of late completion. EMSA and the Contractor expressly acknowledge and agree that any sums payable under this article constitute damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such a failure to perform obligations.

ARTICLE II. 13 – SUSPENSION OF THE CONTRACT

Without prejudice to its right of termination, EMSA may suspend the performance of the Contract, in whole or in part if the Contract is vitiated by substantial errors, irregularities or fraud. Suspension shall take effect on the day the Contractor receives notification, by registered letter with acknowledgement of receipt or by any equivalent means, or at a later date where the notification so provides. EMSA shall inform the Contractor as soon as possible of its decision to resume the performance of the service suspended or to terminate the Contract. The Contractor may not claim compensation in the event of the suspension of the Contract, in whole or in part.

ARTICLE II. 14 - TERMINATION BY EMSA

- II.14.1** EMSA may terminate this Contract in the following circumstances:
- a) where the Contractor is being wound up, is having his 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;
 - b) where the Contractor has not fulfilled 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 law of the country applicable to the Contract or those of the law of the country where the concession is to be performed;

- c) where EMSA strongly suspects the Contractor or any related body or person of serious professional misconduct, or has proof of such misconduct;
- d) where EMSA has serious suspicions of fraud, corruption or involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests on the part of the Contractor or of any related body or person, or where EMSA has proof of such activities;
- e) where EMSA has serious suspicions concerning substantial errors, irregularities or fraud on the part of the Contractor or of any related body or person in connection with the award procedure or the performance of the concession, or where EMSA has proof of such activities;
- f) where the Contractor is in breach of its obligations under Article II.3;
- g) where the Contractor has been guilty of misrepresentation in supplying the information required by EMSA as a condition of its participation in the concession, or has failed to supply this information;
- h) where a change in the Contractor's legal, financial, technical or organisational circumstances is, in EMSA's view, capable of having a substantial effect on the performance of the Contract;
- i) where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
- k) where the Contractor, even after receiving a letter of formal notice specifying the nature of the alleged failure to fulfil obligations and affording it a reasonable period of time to remedy that failure, remains in breach of its contractual obligations;

II.14.2 In the event of force majeure notified in accordance with Article II.11, either Contracting Party may terminate the Contract where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article I.3.3.

II.14.3 Prior to any termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit its observations.

Termination shall take effect on the date on which the registered letter with acknowledgement of receipt terminating the Contract is received, or on any other date indicated in the letter of termination.

II.14.4 Effects of termination

In the event of the termination of the Contract by EMSA in accordance with this article, and without prejudice to the other terms of the Contract, the Contractor shall waive any claim for compensation for indirect harm, in particular the loss of anticipated profits, as a result of the incomplete provision of the service. On receipt of the letter terminating the Contract, the Contractor shall take all necessary measures to minimise costs, prevent damage and cancel or reduce its commitments. It shall draw up the documents required by the Special Conditions in respect of the tasks performed up to the date on which termination takes effect within a maximum period of sixty days from that date.

EMSA may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

Following termination, EMSA may engage any other contractor to perform or complete the works. EMSA shall be entitled to claim from the Contractor payment of all additional costs thus incurred, without prejudice to all the other rights and guarantees afforded to EMSA in this Contract.

ARTICLE II.14a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

If, following the award of the concession, the award procedure or the performance of the concession proves to be vitiated by substantial errors, irregularities or fraud, and if those errors, irregularities or frauds are attributable to the Contractor, EMSA may refuse to make

payments, recover the amounts already paid or terminate all the contracts concluded with that Contractor, in proportion to the seriousness of those errors, irregularities or frauds.

ARTICLE II.15 - INVOICING AND PAYMENTS

II.15.1 Pre-financing, performance and money retention guarantees

If, as provided for in Article I.4, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

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

The contractor bears the cost of providing such guarantee.

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

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

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

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

II.15.2 Interim payments and payment of the balance

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.4 or in the tender specifications or in the contract.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.4, in the tender specifications or in the contract.

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

Payment of the balance may take the form of recovery.

II.15.3 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

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

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

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

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.14.1(c).

II.15.4 Interest on late payment

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.15.3 is not considered as giving rise to late payment.

II.15.5. Currency and payment costs

Payments shall be made in the currency of the Contract.

The transfer costs shall be borne as follows:

- the costs of dispatch charged by EMSA's bank shall be borne by EMSA;
- the costs of receipt charged by the Contractor's bank shall be borne by the Contractor;
- all the costs linked to an additional transfer attributable to one of the parties shall be borne by that party.

ARTICLE II. 16 – GENERAL PROVISIONS RELATING TO PAYMENTS

II.16.1 Payments shall be deemed to have been made on the date on which EMSA's account is debited.

II.16.2 In the event of late payment, the Contractor shall be entitled to the payment of interest, provided that the interest calculated exceeds EUR 200. If the interest does not exceed EUR 200, the Contractor may apply to receive late-payment interest no later than two months from the date of receipt of the payment. Interest shall be calculated at the rate applied by the European Central Bank to its main refinancing operations (*'the reference rate'*), plus eight percentage points (*'the margin'*). The reference rate in force on the first day of the month in which the payment is due shall apply. That rate of interest is published in the C series of the Official Journal of the European Union. Interest shall be payable in respect of the period which has elapsed between the calendar day following the deadline for payment and the date of the payment inclusive. A suspension of payments by the EMSA may not be deemed to constitute late payment.

ARTICLE II. 17 – TAX PROVISIONS

II.17.1 The Contractor shall have sole responsibility for compliance with applicable tax laws. Any such failure to comply shall render the relevant invoices invalid.

- II.17.2** The Contractor recognises that EMSA is exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- II.17.3** Accordingly, the Contractor shall complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.17.4** The invoices submitted by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts exclusive of VAT and the amounts including VAT.

ARTICLE II. 18 - REIMBURSEMENTS

- II.18.1** Where provided by the Special Conditions or by Annex I, EMSA shall reimburse the expenses that are directly connected with performance of the tasks on production of original supporting documents, including receipts and used tickets.
- II.18.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.18.3** Travel expenses shall be reimbursed as follows:
- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
 - b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
 - c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
 - d) travel outside Union territory shall be reimbursed subject to the general conditions stated above, provided EMSA has given its prior written consent.
- II.18.4** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:
- a) for journeys of less than 200 km (return trip), no subsistence allowance shall be payable;
 - b) daily subsistence allowances shall be payable only on receipt of a supporting document proving that the person concerned was present at the destination;
 - c) the daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
 - d) the daily subsistence allowance shall be paid, where applicable, at the rate specified in Article I.3.
- II.18.5** The cost of the shipment of equipment or unaccompanied luggage shall be reimbursed provided EMSA has given prior written authorisation.
- II.18.6.** Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the C series of the *Official Journal of the European Union* on the date of the expenditure or, failing that, at the monthly accounting exchange rate established by EMSA and published on its website.

ARTICLE II. 19 – RECOVERY

- II.19.1** If the total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the corresponding amount in euros on receipt of the debit note, in the manner and within the time limits set by EMSA.
- II.19.2** In the event of a failure to pay by the deadline specified in the debit note, the sum due shall accrue interest at the rate indicated in Article II.15.4. Interest shall be payable from the calendar day following the due date up until the calendar day on which the sum owed is repaid in full.
- II.19.3** EMSA may, after informing the Contractor, recover claims which are established as certain, of a fixed amount and due by offsetting where the Contractor has a claim on the Union or the European Atomic Energy Community/EMSA? that is certain, of a fixed

amount and due. EMSA may also claim against the guarantee, where provision is made for a guarantee.

ARTICLE II. 20 – CHECKS AND AUDITS

- II.20.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Union, the Court of Auditors shall be authorised to inspect the documents held by natural or legal persons who receive payments from the budget of the European Union, from the signature of the Contract until the fifth anniversary of the payment of the balance of the final application.
- II.20.2** EMSA or an external body of its choice shall have the same rights as the Court of Auditors as regards the inspections and checks relating to compliance with contractual provisions, from the signature of the Contract until the fifth anniversary of the payment of the balance of the final application.
- II.20.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections, pursuant to Council Regulation (Euratom, EC) No 2185/96 and to Regulation (EC) No 1073/1999, from the signature of the Contract until the fifth anniversary of the payment of the balance of the final application.