

## FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – [...]/**EMSA/OP/11/2016**

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

and

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

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

of the other part,

HAVE AGREED

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

<b>Annex I</b>	General Conditions
<b>Annex II</b>	General Terms and Conditions for Information Technologies Contracts
<b>Annex III</b>	Specific Contract – Template
<b>Annex IV</b>	Tender Specifications (Invitation to Tender No [complete] of [complete])
<b>Annex V</b>	Contractor's Tender (No [complete] of [complete])
<b>Annex VI</b>	IPR Identification form

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

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

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

## **PREAMBLE**

The Contractor was selected, as one of the contractors of a multiple contract with re-opening of competition, at the conclusion of the evaluation process, on the basis of its bid submitted on [insert date] in response to the invitation to tender.

## **SPECIAL CONDITIONS**

### **ARTICLE 1 - SUBJECT**

- 1.1 The subject of the Contract is the provision of testing and quality assurance services related to EMSA maritime applications.
- 1.2 Upon implementation of the Contract, the Contractor shall provide the Services in accordance with Annex IV and Annex V.
- 1.3 The Contract does not confer on the Contractor any exclusive right to provide Services referred to in the above paragraph.
- 1.4 Signature of the Contract imposes no obligation on EMSA to purchase. Only the implementation of the Contract through Specific Contracts is binding on EMSA.
- 1.5 All Specific Contracts implementing the Contract shall be in conformity with to the terms set out therein.

### **ARTICLE 2 - DURATION**

- 2.1 The Contract shall enter into force on the date on which it is signed by the last contracting party.
- 2.2 Under no circumstances implementation may take place before the date on which the Contract enters into force. Specific Contracts may under no circumstances be placed before the date on which the Contract enters into force.
- 2.3 The Contract is concluded:  
  
For the Services stated in Art 1.1 and the maintenance related thereto a period of 48 months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- 2.4 The Specific Contracts pursuant to the Contract shall be signed before the Contract which it refers expires. The Contract shall continue to apply to Specific Contracts executed after the Contract expires. Such Specific Contracts shall be executed no later than six (6) months after expiry of the Contract.

### **ARTICLE 3 - PRICES**

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

#### **Type of prices**

- 3.4 The total amount referred to in the above paragraph shall be fixed and not subject to revision for the first year of performance of the Contract.  
  
Prices shall be fixed and not subject to revision for Specific Contracts placed during the first year of performance of the Contract or Amendment. From the beginning of the second year of performance of the Contract or Amendment only the following prices may be subject to revision on the basis of

indexation:

- (1) annual Software licences;
- (2) *Products* maintenance that is calculated at a fixed price expressed in an absolute figure;
- (3) prices or fees relating to *Services*.

Prices may be revised upwards or downwards each year, where such revision is requested by one of the contracting parties by registered letter no later than 31st July in order that the new rates may take effect on 1st January of the following year. Specific Contracts shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision, unless and only when the duly signed Specific Contract provides that it will be in force after the 1st January of the following year.

This revision shall be determined by the trend in the harmonised consumer price index EU-27 published for the first time by the Office for Official Publications of the European Union in the Eurostat monthly bulletin at <http://www.ec.europa.eu/eurostat/> HICP – Harmonized Indices of Consumer Prices; DATA; Database, HICP- Monthly Data (2005=100).

Revision shall be calculated in accordance with the following formula:

Ir

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

where:

- Pr = revised price;
- Po = price in the original tender;
- Io = index for the month [in which the validity of the tender expires] [corresponding to the final date for submission of tenders xx/xx/200X];  
[corresponding to the date of signature of this Framework contract];
- Ir = index for the month [corresponding to the final date of receipt of the letter requesting a revision of prices]

## ARTICLE 4 – PERFORMANCE OF THE CONTRACT

### For Services

- 4.2** Within 10 working days of a request for *Services* being sent by EMSA, the Contractor shall return an estimate of the resources to be allocated for its execution, with particulars in support. Should the Contractor be unavailable, he shall give reasons for refusal within the same period and EMSA shall be entitled to send a request to the next Contractor on the list. In the event of failure to observe this deadline or disagreement on the allocation of resources, the Contractor shall be considered unavailable.

Within 10 working days of a demand for conclusion of a Specific Contract being sent by EMSA, the Contractor shall return it, duly signed and dated. In the event of failure to observe this deadline, the Contractor shall be considered unavailable.

### 4.3 Delivery

The *Services* shall be delivered at EMSA via VPN access.

The Contractor shall notify EMSA of the exact date of delivery at least 5 (five) days in advance. All deliveries shall be made between 9 hours and 17 hours at the agreed place of delivery.

## **ARTICLE 5 – PAYMENT ARRANGEMENTS**

Payments under the Contract shall be made in accordance with Article I.6. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous orders or Specific Contracts have not been executed as a result of default or negligence on the part of the Contractor.

Payment schemes shall be defined in the Specific Contracts.

### **5.1 Interim payment**

The contractor shall submit an invoice for an interim payment equal to [complete] % of the total price referred to in the relevant specific contract.

Invoices for interim payment shall be accompanied by a progress report or any other document in accordance with the relevant specific contract. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections, a new progress report or other documents if it is required by EMSA.

### **5.2 Payment of the balance**

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

The invoice shall be accompanied by the final progress report or any other document in accordance with the relevant specific contract or the instructions laid down in Annex IV. When payment is linked to acceptance, a copy of the Certificate of conformity or where applicable the Consignment note or the relevant documents indicated in the Specific Contract, shall be attached to the invoice. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

## **ARTICLE 6 – BANK ACCOUNT**

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

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

## **ARTICLE 7 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the 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]

[email]

Invoices shall be sent to the following address:

EMSA:

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

## **ARTICLE 8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

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

## **ARTICLE 9 – DATA PROTECTION**

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

## **ARTICLE 10 – INTELLECTUAL PROPERTY RIGHTS**

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

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

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

- (a) use for its own purposes:
- (i) making available to the staff of EMSA
  - (ii) making available to the persons and entities working for EMSA or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions

- (iii) installing, uploading, processing
  - (iv) arranging, compiling, combining, retrieving
  - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
- (i) publishing in hard copies
  - (ii) publishing in electronic or digital format
  - (iii) publishing on the internet as a downloadable/non-downloadable file
  - (iv) broadcasting by any kind of technique of transmission
  - (v) public presentation or display
  - (vi) communication through press information services
  - (vii) inclusion in widely accessible databases or indexes
  - (viii) otherwise in any form and by any method]
- (c) modifications by EMSA or by a third party in the name of EMSA:
- (i) shortening
  - (ii) summarizing
  - (iii) modifying of the content
  - (iv) making technical changes to the content:
    - necessary correction of technical errors
    - adding new parts or functionalities
    - changing functionalities
    - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
  - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
  - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
  - (vii) extracting a part or dividing into parts
  - (viii) use of a concept or preparation of a derivate work
  - (ix) digitisation or converting the format for storage or usage purposes
  - (x) modifying dimensions
  - (xi) translating, inserting subtitles, dubbing in different language versions:
    - English, French, German
    - all official languages of EU
    - languages used within EU
    - languages of candidate countries
- (d) the modes of exploitation listed in article I.18.4
- (e) authorise, license, or sub-license the pre-existing rights to any third party
- (f) use material and know-how derived from the use of the pre-existing rights as set out in any of the points (a) to (e)

Where EMSA becomes aware that the scope of modifications exceeds that envisaged in the contract EMSA shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to EMSA within one month and shall provide its agreement including any suggestions of modifications free of charge. The contractor shall also warrant that any creators



and/or other right holders have agreed except when a creator or other right holder refuses the intended modification expressly on the grounds that it may harm his honour, reputation or distort integrity of the work only.

## **10.2 Intellectual property rights identification**

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

## **ARTICLE 11 – TERMINATION BY EITHER CONTRACTING PARTY**

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving six (6) months formal prior notice. Should EMSA terminate the Contract, the Contractor shall only be entitled to payment corresponding to the 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 12 – E-PROCUREMENT**

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

At the request of EMSA, the use of the above applications may be mandatory during the lifetime of the contract.

## **ARTICLE 13 - VPN REMOTE ACCESS**

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

## **SIGNATURES**

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

For EMSA,  
Markku Mylly,  
Executive Director

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

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

Done at:

Done at Lisbon,

Date:

Date:

In duplicate in English.