

ENCLOSURE T.4 - EQUIPMENT ASSISTANCE SERVICE (EAS) EXERCISE PARTICIPATION AGREEMENT

Enclosed to Procurement Procedure No EMSA/CPNEG/2/2020 - Service Contract for Equipment Assistance Service (EAS) – Southern Europe

Competitive procedure with negotiation

Phase II – Invitation to Tender

Between

I. The Requesting State, *[to be completed]*, hosting exercise *[to be completed]*, hereby referred to as the “**Requesting State**”. The Requesting State is represented by *[to be completed]*,
and

II. The European Maritime Safety Agency, hereby referred to as “**EMSA**”. EMSA is represented by *[to be completed]*,

EMSA calls its Contractor for Equipment Assistance Services following request from the State to participate in the exercise *(name, when, where)* with the following Oil Pollution Response Equipment owned by EMSA *(identify equipment)* hereinafter referred to as the “**Equipment**”

1) Nature of agreement

- a) For the purpose of participating to the exercise, the Contractor is responsible to:
 - (i) Arrange and bear responsibilities and risks of transportation by road of the Equipment to the Place of Handover with easy access by road transport as indicated by the Requesting State and from the Place of Redelivery;
 - (ii) Upon EMSA request, make available technical support personnel at the Place of Handover to assist with the equipment delivery to the Requesting State and its use and actual deployment if so requested.
 - (iii) As between EMSA, the Contractor and the Requesting State, the Requesting State shall have control over the exercise organisation and the involvement of the Equipment and of the personnel provided that the personnel may always decline to carry out any instruction of the Requesting State where the safety of the personnel is deemed to be at risk.
- b) The Requesting State shall:
 - (i) Furnish the Contractor and EMSA with all information regarding the Place of Handover which shall be easily accessible by road transport and where the Contractor shall make the equipment available to the Requesting State;
 - (ii) Arrange and bear responsibilities and risks of transportation (including loading and unloading) of the Equipment from the Place of Handover to the place where the exercise will be performed which may be on land, on a vessel including offshore installations and return of the Equipment to the Place of Redelivery upon completion of the exercise;
 - (iii) Co-operate with the Contractor to ensure that all authorisations, permit, clearances, licences required under the national laws and regulations in force at the place where the Equipment has to be handed over and technical support personnel has to perform the required duties have been obtained;

- (iv) Ensure Equipment protection and preservation as from date and time of handover until date and time of redelivery as stated in the Equipment handover/redelivery statement;
- (v) Ensure Equipment routine maintenance, running repair;
- (vi) Provide and bear the costs of all fuel and lubricating oil consumed by the Equipment as from its handover until redelivery to the Contractor;
- (vii) Facilitate customs clearance, immigration when applicable;
- (viii) Redeliver the equipment clean and in good condition.

2) The Equipment

The Requesting State is responsible for the safe use of the equipment and its preservation from the time of handover until redelivery. The Requesting Party will be responsible for the routine equipment maintenance as well as running repairs to maintain equipment operational. All losses or damages sustained by the Equipment from the time of handover until redelivery will be for the sole account of the Requesting Party. If the Equipment is not redelivered by the Requesting Party in working condition, normal wear and tear being for the account of EMSA, the Requesting Party shall indemnify EMSA for all costs reasonably incurred by it in restoring the Equipment or any part of it or in replacing the Equipment or any part of it if it cannot be so restored at a cost below the cost of replacement. Where Equipment is lost, becoming a constructive total loss or is damaged beyond repair, the Requesting Party shall indemnify EMSA of the replacement cost on the basis of new for old up to the relevant Equipment value indicated in point 3 (a) below. Where Equipment is damaged and if so agreed between the Requesting Party and EMSA, the Requesting Party shall pay directly the entity contracted by EMSA for performing the repairs, the Requesting Party would then actually honour EMSA's contractual obligations.

3) Insurance

The Requesting State can cover its liability for loss of or damage to the equipment in two different ways:

- a) By taking out an all-risk insurance. This insurance can be specific for the Equipment or can be an existing relevant insurance policy extended to cover the Equipment whilst in the care of the Requesting State.

The insurance shall cover all risks of actual physical total or partial loss or damage to the Equipment whilst in storage, transit, handling, operational activities in/on water. The insurance cover shall be taken out no later than the day on which the Equipment is delivered to the Requesting Party by the Contractor and must be maintained until redelivery of the Equipment to the Contractor.

EMSA owner of the Equipment must be named as co-insured and the Requesting State shall cause the insurers to indemnify EMSA for the damage to or loss of the equipment. The Requesting State and its insurers shall waive subrogation rights against EMSA and the Contractor.

For insurance purposes, the individual values to be declared are:

- *[to be completed with equipment type/name, acquisition value: EUR in figures and words. Insert as many lines as equipment sets];*

The Equipment shall be insured on a 'replacement as new' basis. The above values reflect the 'replacement as new' cost. Lower limits cannot be opposed to EMSA. The maximum aggregate limit per occurrence shall be the total value of all equipment items mobilised at the amount of EUR *[to be completed with overall value of all equipment items involved in the exercise. EUR in figures and words]*.

The insurance shall be primary and non-contributory. Deductibles shall be for the account of the Requesting State. Exclusions to the insurance cover cannot be opposed to EMSA.

- b) By agreeing to an extension of the Contractor's insurance cover to include the Equipment whilst made available to the Requesting State. The Contractor and its insurers shall waive their subrogation rights against the Requesting Party, its contractors and subcontractors and employees and workmen of any of the foregoing.

A copy of the equipment insurance terms and conditions shall be supplied by the Contractor to the Requesting Party.

Deductibles at the amount of [*EUR in figures and words to be completed with deductibles applicable under the relevant Contractor insurance policy*] shall be for the account of the Requesting Party.

- c) Where the Requesting State has taken out an insurance cover on its own as per point 3 (a) above, the indemnity is valued as follows:
- (i) For Equipment which can be repaired, the Requesting State shall indemnify EMSA for all costs for repairing or restoring the Equipment or any part of it;
 - (ii) For Equipment or Equipment parts lost or damaged and which cannot be repaired at a cost below the replacement cost, the Requesting State shall indemnify EMSA up to the Equipment values stated in point 3 (a).

The Requesting State/its insurers shall pay EMSA within thirty (30) days of presentation of a debit note. Following payment, the Requesting State's obligations for the Equipment under this Clause shall cease.

The indemnity paid by the Requesting State/its insurers under this clause does not result in the sale of the Equipment, which remains the exclusive property of EMSA. EMSA decides alone to proceed or not to repair.

- d) For the avoidance of doubt, the insurance taken out by the Requesting State regarding the equipment does not exempt the Requesting State from having a general third party liability insurance in particular to cover damage to third parties caused by the equipment when under the control of the Requesting Party during the exercise.

4) Payments

This agreement is entered into following Article I.14 Framework Service Contract N°*[to be completed]*, signed between EMSA and the Contractor on *[to be completed]* and EMSA will pay the Contractor for its participation in the exercise in accordance with article I.5.4 of this Framework Service Contract.

5) Liability and indemnities

- a) The Contractor shall have no liability to the Requesting State for:
- (i) any loss or damage caused to any person, property or the environment, of any nature or kind; or
 - (ii) any liability arising as the result of the breach of any statute, regulation, rule, court order or other governmental or administrative decree having the force of law,

caused by an act or omission of the Requesting Party or

caused by an act or omission of the Contractor unless such act or omission is a result of the wilful misconduct or gross negligence of the Contractor, its personnel, or its contractors and subcontractors.

- b) Unless wilful misconduct or gross negligence on the part of the Contractor, the Requesting State shall defend, protect, indemnify and hold harmless the Contractor, its personnel, its contractors and subcontractors and EMSA from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities including claim for consequential damages, whatsoever arising out of or in connection with this Agreement. The Requesting State acknowledges that the Contractor and EMSA shall not be required to exhaust their resources against any third party as a condition precedent to claiming indemnification under this clause.

For EMSA, [Insert name and title of the Authorising Officer]	For the Requesting State [State name/forename/surname/ function]
Signature:	Signature:
Done at [<i>Lisbon</i>], [date]	Done at [place], [date]

In duplicate in English.

Cc: Contractor