

ANNEX III

SPECIFIC CONTRACT No [complete] implementing Framework Contract N° ...

The European Maritime Safety Agency (hereinafter EMSA), with its seat at Praça Europa 4, 1249-206 Lisbon, Portugal, VAT registration no.: 507 685 326, represented by [name in full, function, department],

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"¹), [represented for the purposes of the signature of this contract by [name in full and function,]]

of the other part,

HAVE AGREED

ARTICLE III.1: SUBJECT

III.1.1 This specific contract implements Framework Contract No [complete] signed by EMSA and the Contractor on [complete date] *[and renewed on complete date]*.

III.1.2 The subject of this specific contract is [short description of subject]. *[This specific contract relates to lot [complete] of the Framework Contract.]*

III.1.3 The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] *[specified in Annex [complete].]*

ARTICLE III.2: DURATION

III.2.1 This specific contract shall enter into force *[on the date on which it is signed by the last contracting party]² [on complete if it has already been signed by both contracting parties]*.

III.2.2 The duration of the tasks shall not exceed [days/months]. Execution of the tasks shall start from [date of entry into force of this specific contract] or [indicate date]. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE III.3: PRICE

¹ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis EMSA for the performance of this contract".

² As a rule EMSA signs last. In this case, the Contractor should be duly informed of the date on which the specific contract enters into force.

III.3.1 The total amount to be paid by EMSA under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.

III.3.2 In addition to the price [no reimbursable costs are foreseen][costs up to an amount of EUR ... will be reimbursed according to the provisions of the Framework contract]

Article III.3: PAYMENT ARRANGMENTS

[III.3.1 Pre-financing³

Following signature of the order form or specific contract by the last party and its receipt by EMSA, a pre-financing payment of [complete]% of the total price of the order form or specific contract shall be made within 30 days of the receipt of an invoice [and the receipt by EMSA of a duly constituted financial guarantee equal to at least [complete]% of the total price of the order form or specific contract]⁴. EMSA may refuse to make payments where the award procedure or performance of the order form or specific contract prove to have been subject to substantial errors, irregularities or fraud attributable to the contractor.]

[The contractor shall inform EMSA by [31 December] [30 November] each year about the cumulative expenditure incurred under ongoing order forms or specific contracts as from the start date of the order form or specific contract. This information is required for EMSA's accounting purposes.]⁵

[III.3.[complete] Interim payment

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

[Option 1 - No report]

[EMSA shall make the payment within 30 days from receipt of the invoice.]

[Option 2 - With report]

[Invoices for interim payment shall be accompanied by [a progress report or any other document in accordance with the relevant specific contract] [and] [statements of reimbursable expenses in accordance with Article II.16]. EMSA shall make the payment within [60][90]⁶ days from receipt of the invoice. The contractor shall have [complete] days in which to submit additional information or corrections, a new progress report or other documents if it is required by EMSA.]

[III.3.[complete] Payment of the balance

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

[Option 1 - No report]

³ Pre-financing should be exceptional in procurement contracts. If applicable it should not exceed 30% of the total amount of the order form or specific contract.

⁴ Requesting a pre-financing guarantee is not allowed for contracts of less than EUR 60 000 and in other cases it should be duly justified through a documented risk assessment.

⁵ To be added only in the case of order forms or specific contracts of more than EUR 5 000 000 for which a pre-financing is paid and the reporting periods for interim payments or payments of the balance exceed 18 months.

⁶ Maximum 90 days for complex contracts and 60 days for other contracts.

[EMSA shall make the payment within 30 days from receipt of the invoice.]

[Option 2 - With report]

[The invoice shall be accompanied by [the final progress report or any other document in accordance with the relevant specific contract] [and] [statements of reimbursable expenses in accordance with Article II.16]. EMSA shall make the payment within [60][90]⁷ days from receipt of an invoice. The contractor shall have [complete] days in which to submit additional information or corrections, a new final progress report or other documents if it is required by EMSA.]

ARTICLE III.4: EXPLOITATION OF THE RESULTS OF THE CONTRACT

<OPTION 1 – III.4.1 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.8.2 shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article II.10.2.>

<OPTION 2 – III.4.1 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.8.2 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

⁷ Maximum 90 days for complex contracts and 60 days for other contracts.

- (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.^{8>}

<OPTION 3 – III.4.1 Licensing of the results and the pre-existing rights

⁸ 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).

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.8.2 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 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.⁹

III.4.2 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 IV – 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 III.5: QUALITY PARAMETERS

To be added, if applicable in line with art 14 of special conditions

ANNEXE[S]

Annex 1 - Resources allocated

Annex 2 – Contractor's specific Tender (no [complete] of [complete])

SIGNATURES

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

For EMSA
[Insert name and title of the Authorising Officer]

signature[s]: _____

signature: _____

Done at [place], [date]

Done at [Lisbon], [date]

⁹ 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).

In duplicate in English.