SPECIFIC CONDITIONS OF CONTRACT (SCC)

OPEN CALL FOR TENDERS

Procedure for which provision is made under Article 67 of Decree no. 2016-360 of 25 March 2016

DEVELOPMENT AND DEMONSTRATIONS OF CMEMS DOWNSTREAM SERVICES CONTRIBUTING TO IMPLEMENTATION OF THE EU MARINE STRATEGY FRAMEWORK DIRECTIVE

COPERNICUS MARINE ENVIRONMENT MONITORING SERVICE

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1. CONTEXT

A Delegation Agreement has been signed between the European Commission and Mercator Océan for the Copernicus Marine Environment Monitoring Service (CMEMS) implementation. The Copernicus Marine Service provides regular and systematic reference information on the physical state and dynamics of the ocean and marine ecosystems for the global ocean and the European regional seas. This capacity encompasses the description of the current situation (analysis), the prediction of the situation a few days ahead (forecast), and the provision of consistent retrospective data records for recent years (re-analysis).

CMEMS provides a sustainable response to European user needs in four areas of benefits that are:

- coastal and marine environment,
- maritime safety,
- marine resources,
- climate, seasonal and weather forecasting.

The areas of benefits and their sub-categories are listed in the CMEMS registration form, paragraph 2.2 (http://marine.copernicus.eu/web/56-user-registration-form.php)

The delegation agreement between the European Commission and Mercator Océan requires the development and the implementation of a User Uptake strategy to firstly secure the loyalty of its users and secondly to attract new user communities. This component is complementary to the long term "service evolution" which allows for R&D evolutions according to users' needs and applications. These two components feed the CMEMS service by proposing evolution and innovation both on the upstream and downstream aspects that can then be an integral part of the service.

The first User Uptake contracts focus on demonstrations of coastal and operational downstream CMEMS services, including those linked to the EU Marine Strategy Framework Directive (www.msfd.eu) and an inventory of mobile application that use CMEMS products.
Forthcoming User Uptake contracts will require other demonstrations of coastal and open sea downstream services targeting geographical domains and areas of benefits not provided for in previous contracts, as well as tool development, always taking into account users' needs.

CMEMS will mention the names of the organisations at the origin of the demonstrations or the tools, purchased by Mercator Océan, which will be displayed on its own website in different pages, including the one that will be created to increase the visibility of the chosen services, tools and applications, object of the User Uptake tenders.

2. DEFINITIONS APPLICABLE TO ALL CONTRACTUAL DOCUMENTS

Service: This involves making ocean products or information available to meet one or more user needs.

CMEMS downstream service (or Downstream service): This is a service that provides value-added ocean products or information or derived products developed from information provided by CMEMS.

Value-added product: A product that has been created by modifying a CMEMS product to a higher processing level while retaining the original source image data and pixel structure of a CMEMS product.

Derived product: Any product and/or information that has been derived, developed and irreversibly modified from CMEMS product(s) or value added product(s) and does not retain the original pixel structure of a CMEMS product.

Coastal service: A service whose geographical area partially or totally includes the maritime and coastal areas of one or more countries.

Outermost Regions of the European Union (ORs): These include European Union territory which is not on the European continent. There are currently 9 remote regions, the Canary Islands (Spain), Guadeloupe, French Guiana, Martinique, Mayotte, Reunion Island, Saint-Martin (France), the Azores and Madeira (Portugal).

Operational service: This is a service which is still being provided or which can be reactivated. This service may be provided continuously or intermittently, according to user expectations.

Demonstration: This involves the presentation and detailed description of a service developed by the candidate that demonstrates the integration and usefulness of CMEMS, thus arousing the interest of future CMEMS users.

MSFD: Marine Strategy Framework Directive
www.msfd.eu/knowseas/library/commissiondescriptordecision.pdf.

3. CONTRACT DOCUMENTS

The Contract is made up of the following documents numbered in decreasing order of priority:

- the Deed of Commitment to which the Price Note is appended,
- these Specific Conditions of Contract (SCC) and Appendices, of which the original copy kept by MERCATOR is alone binding,
- the Statement of Work (SoW) and Appendices, of which the original copy kept by MERCATOR is alone binding,
- the Candidate's Proposal and Appendices,
- the General Conditions of Contract applicable to public contracts for Information & Communication Technologies (GCC/PI) approved by the Order of 16 October 2009.

In the event of contradiction or difference between contract documents, these documents take

precedence in the order in which they are listed.

In the event of contradiction between two documents of the same ranking, the most recent one shall take precedence. The contract and its appendices may in no way be modified without the signature of a rider by the parties' duly authorized representatives.

No rider may jeopardize the aim of the contract, nor financially affect it.

Once approved by the parties in line with the foregoing terms, any rider or modification of one of the contractual documents shall have the rank of the document which it completes or amends.

In any event, any of the Contractor's general sales clauses which is contrary to the provisions of this Contract, is considered as being unwritten.

4. AIM OF THE CONTRACT AND GENERAL PROVISIONS

4.1. Object of the call for tender – allotment.

The aim of the contract is to enhance the usefulness and use of CMEMS, develop user loyalty and attract new users.

The aim of the consultation is to promote **demonstrations of coastal, operational and CMEMS downstream services and contributions to the EU Marine Strategy Framework Directive.**

This consultation is divided into 4 lots.
The EU Marine Strategy Framework Directive covers a broad spectrum of very complex indicators. Having a variety of examples of services in accordance with it is important. This diversity of technical possibilities will be demonstrated by buying demonstrations from candidates of various know-how.

For that reason, this consultation is made up of 4 covering the same need, each lot leading to the conclusion of a contract.

4.2. Form of the contract

This is a simple contract.

4.3. Duration of the contract

The Contract lasts for a total of 6 months, starting from the contract notice day, with no renewal possible.

4.4. Form of the Consortium

In the case of a consortium of companies within the meaning of Article 45 of Decree No. 2016-360 of 25 March 2016 fixing the rules applicable to contracts concluded by the contracting authorities mentioned in Article 10c of Order no. 2015-899 of 23 July 2015 concerning contracts concluded by certain public or private persons not subject to the code of public contracts, the consortium responsible for carrying out the Contract is a joint-and-several liability consortium, whose representative is appointed in the deed of commitment. In the event of default of one or several members of the consortium, each member shall act in place of the latter in order to perform the Contract.

The co-contractors making up the joint-and-several liability consortium are bound to notify MERCATOR immediately of any modification that occurs during the performance of the Contract related to:

- the person with the power to commit the co-contracting company in question,
- the legal and corporate form of the co-contracting company in question, its company name, its registered offices and/or share capital,

and, generally speaking, any important modification affecting the Articles of association or operations of the co-contracting company in question (leasing, merger-absorption, division, partial transfer of assets, etc.) as well as any event which might bring about a change in control or management.

4.5. Language of execution of the contract

The contracting language is French.

Candidates may however fill their application file and offer in English provided that they produce within one month, a translation of the offer in French, certified as true to the original by a sworn translator, should the contract be awarded to them.

The execution language of the Contract is English.

4.6. Place of execution of the Contract

The place of performance of the contract is at the candidate's establishment where the work will be carried out.

In addition, it is specified that work meetings may be organised in Toulouse at Mercator Ocean‘s offices or by videoconference.

5. EXECUTION OF THE CONTRACT

On informing the successful candidate that he has won the contract, Mercator Ocean is simultaneously giving him the go ahead to start the contract.

6. PROCEDURES FOR ACCEPTANCE OR ADMISSION

6.1 Deliverables

The deadline date is the date when the holder delivers the deliverables. The other deliverables are due according to the provisional schedule, found in Articles 3 and 4 of the Statement of Work.
These dates shall be confirmed in the contract schedule, which will be established according to the conditions fixed in Article 7.2 of this document.

6.2 Verification and admission operations

Quantitative and qualitative verification operations aim to make it possible for Mercator Ocean to control in particular that the contractor:

— has implemented the means defined in the contract, in accordance with the prescriptions that are fixed therein;

— has performed the services defined in the contract as being under its responsibility, in accordance with contractual provisions.

The contracting authority has a 15-day timeframe to proceed with verifications and notify its decision to accept, adjourn, reduce or reject.

At the end of verification operations the contracting authority, takes within the above 15-day timeframe, a decision to accept, adjourn reduce or reject in the conditions of article 26 and 27 of CCAG/ICT.

7. THE CONTRACTOR'S OBLIGATIONS

7.1 Obligation in the execution.

7.1.1 The candidate shall submit no later than **18 months** (counted in calendar days) after the contract begins:

- a full descriptive report highlighting the service presented, the usefulness and the use of the CMEMS products, the items developed in the framework of this contract, the methodology used and a justification of compliance with the MSFD, and mentioning at least the targeted descriptors and geographical areas of Europe where these services could be deployed.
- a hyperlink, pointing to a dedicated web page, hosted in the candidate's premises, which describes the demonstration of the service chosen.
- statistics on users of the service presented.
- proof that Member States, currently benefiting from the service have received information about the demonstration.
- information concerning the service chosen, thus enabling a "use case" to be presented on the CMEMS portal.

7.1.2 The candidate shall inform the official representative* of the Copernicus Programme, nominated by its Member State authorities, of the usefulness of CMEMS for the setting up of the service demonstrated and will explain the background, the user need to which the service provides an answer, the targeted market and activity created as a result.

The delivery of a copy of the letter testifying to the above, sent by registered mail with acknowledgment of receipt to the official representative, is the requested deliverable. The official list is available at :
http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail&groupID=2584

**in case no official representative has been nominated to the Copernicus Programme, the candidate shall send the letter to the official representative of the ministry dealing with the marine environment of the country benefiting from the service.*

7.2 Obligation to inform, counsel and caution

7.2.1 The Contractor is perfectly advised that the Services with which it is tasked under the Contract require an enhanced duty to assist, inform, counsel and caution, especially given that the services proposed are of a particularly sensitive nature.

7.2.2 As such, the Contractor undertakes in particular to actively:

- contribute towards analysing and anticipating the needs of MERCATOR OCEAN, by requesting, if needs be, any information and/or documents required to perfectly understand the objectives, needs and specific requirements of MERCATOR OCEAN;

- formally caution MERCATOR OCEAN when (i) the latter's requirements, (ii) any difficulty encountered by the Contractor in organising tasks carried out by the Project Team or (iii) when any other event of which the Contractor is aware, risks affecting the aims of MERCATOR OCEAN, or modifying the conditions of the Contract.

7.2.3 The Contractor has a performance obligation with regard to Services and/or obligations with which it is contractually tasked.

8. MONITORING PERFORMANCE OF THE CONTRACT

Within the scope of the performance of the Contract, MERCATOR OCEAN and the Contractor agree to set up the following structures to monitor the Contract as described below.

As soon as the Contract is notified to the Contractor:

- it shall, as Project Leader, appoint a special contact to carry out the Contract who, on the one hand, shall have the skills and experience required to lead the team designated by the Contractor to carry out the Contract and, on the other hand, be able to steer the performance of all Contract Services with skill and authority;

- MERCATOR OCEAN shall appoint a competent and decision-making Project Leader who shall be the special contact for the Contractor's Project Leader, and whose particular mission shall be to ensure global monitoring of services.

9. THE CONTRACTOR'S STAFF

9.1 Status of the Candidate's staff

9.1.1 The Contractor's staff tasked with performing the Contract shall, in all circumstances, be placed under the authority, management and supervision of the Contractor.

9.1.2 If the said member of staff is required to work on MERCATOR OCEAN's premises, he/she shall comply with MERCATOR OCEAN's rules of procedure, access, safety and security.

9.1.3 In addition, the provisions of Article 6 of the GCC/ICT are expressly applied.

10. FINANCIAL CONDITIONS

10.1 Breakdown of the price

10.1.1 Article 10 of the GCC/ICT is applied with the following additional provisions:

- In return for supply of Deliverables and provision of Services defined herein, MERCATOR OCEAN undertakes to pay the Contractor the full and lump sum price stipulated in the Price Note appended to the Deed of Commitment.

- Prices are considered as including the whole tax burden or other mandatory costs with regard to services, relevant travelling and subsistence expenses and transport, as well as any other expenses required to perform services, risk margins and profit margins, transfer of representation and reproduction rights concerning the services provided.

10.2 Advance Payments

Advance payments shall be made to the Contractor, under the contract, in accordance with terms set out in appendix 1 hereof.

10.3 Evolution of price

The price is firm for the duration of the contract (not including any renewals).

10.4 Invoicing and settlement

10.4.1 Each economic operator, whether individual candidates or co-contractors, shall issue invoices bearing the following minimum information:

- date of invoicing,
- corporate name and complete address of the Contractor
- its SIRET number and, if needs be, its registration number with the registry of commerce and companies or the trade directory or any other registration number,
- date of issue and number of the invoice,
- number of the contract,
- dates of the beginning and end of execution of the service,
- the portion of the price for which payment is requested,
- in the case of a temporary consortium of economic operators constituted in application of Article 22 of Decree No. 2005-1742 of 30 December 2005, the corporate name of the member of the consortium which provided the service,
- the rate and amount of VAT applicable or information regarding non-taxation,
- the total amount inclusive of tax or net of taxes to be paid, in accordance with the Contractor's fiscal regime (in numbers and letters if the invoice is hand-written),
- in case of sub-contracting, in accordance with Articles 136 of Decree n°2016-360 of 25 March 2016, the amount to be paid to the sub-contractor

10.4.2 Invoices shall be drawn up in a single original with one copy. They must be sent by email to MERCATOR OCEAN within a maximum timeframe (date of receipt) of 4 days following each advanced payment date as defined in the schedule in the appendix hereto, and by postal mail before the 20th day of each month.

10.4.3 For groupings, all invoices should be collected and sent by the representative.

10.4.4 Failure to do so will mean that the invoice will only be processed and settled at the following due date.
This time lag in payment is entirely attributable to the Contractor and, as such, does not provide entitlement to payment of interest on arrears.

10.4.5 Invoices shall be forwarded to MERCATOR OCEAN, or any other address that MERCATOR OCEAN notifies to the Contractor. Any invoice to be modified after being checked by MERCATOR OCEAN will be returned to the Contractor. Payment will depend on receipt of the new invoice.

10.4.6 MERCATOR OCEAN undertakes to settle invoices by bank transfer within thirty (30) days end of month, date of receipt of the invoice.

10.5 Terms of payment of co-contractors and subcontractors

10.5.1 Distribution of payments

The deed of commitment and its appendices indicate what is to be paid respectively:

- if there is no consortium, to the Contractor and its subcontractors;
- if there is a consortium, to the authorised representative, co-contractors and

subcontractors.

10.5.2 Direct payment of co-contractors

By way of derogation to Article 12.1.2 of the GCC/ICT, each member of the consortium shall receive directly on its account the amounts related to their services.

10.5.3 Direct payment of subcontractors

Subcontractors issue and send the invoice to the holder of the market.

For the Contractor's subcontractors benefitting from direct payment, the Contractor provides to MERCATOR OCEAN the amount to be paid to each subcontractor in the core of the invoice the amount to be paid to each subcontractor as stipulated in Article 10.3.1. This amount is inclusive of VAT.

10.6 Travel expenses

Travel expenses are included in the overall and lump sum price set out in the contract's deed of commitment.

11 TRANSFER OF OWNERSHIP

Pursuant to Article 28 of Ruling no. 377/2014 of the European Parliament and the Council Meeting of 3 April 2014 establishing the Copernicus programme and repealing EU Ruling no. 911-2010, the Deliverables of this Contract are the complete and irrevocable property of the European Union, including copyright and any other intellectual or industrial property rights, as well as all technological solutions and information contained arising from execution of this Contract.

All rights, particularly intellectual property rights regarding Deliverables, belong to the European Union at the time when such Deliverables are delivered and accepted without reservations.

The said deliveries and acceptances are considered as constituting an effective transfer of rights to the European Union.

Payment of the price stipulated in this Contract includes all costs to be paid with regard to acquisition of the ownership of rights by the European Union, including any use of results.

Acquisition of the ownership of rights by the Union under this Convention covers all territories on a global scale.

12 INSURANCE

The Contractor declares that it has underwritten an insurance policy covering its professional civil liability and declares that, as such, it is ensured against all harmful consequences caused by failure to respect the obligations defined herein. It undertakes to forward to MERCATOR OCEAN, at the latter's first request, a currently valid insurance certificate and to allow it to consult its insurance policy on the Contractor's premises.

13 TERMINATION

13.5 In addition to the cases referenced in Chapter VIII of the GCC/ICT, MERCATOR OCEAN may notify termination of the Contract to the Contractor for faults committed by the latter:

- in the event of inaccuracy of information supplied to MERCATOR OCEAN in application of Articles 44 of Decree no. 2016-360 of 25 March 2016, without prejudice to any further proceedings.

- as well as, generally speaking, in the event of the Contractor's failure to meet its obligations under the Contract and if such failure has not been remedied within a timeframe of thirty (30) days as from notification thereof by MERCATOR OCEAN serving formal notice to remedy such.

13.6 Such termination shall be effective in accordance with the law on receipt by the Contractor of a registered letter with acknowledgement of receipt notifying such termination, without the need to carry out any other legal or extralegal formality. Termination shall not affect damages which MERCATOR OCEAN might claim as a result of such failures, nor any other remedies it might exert with regard to the Contractor. In addition, all penalties paid or due by the Contractor under the Contract shall belong entirely to MERCATOR OCEAN.

14 SUBCONTRACTORS BESIDES THOSE LISTED IN THE CONTRACTOR'S PROPOSAL

14.1 The Contractor may subcontract performance of certain parts of the Contract for Services set out in its Proposal, provided MERCATOR OCEAN accepts the subcontractor(s) and approves the terms of payment for each subcontracting contract.

14.2 Subcontracting the entire Contract is prohibited. If the Contractor breaks these obligations, it exposes itself to application of the measures provided for under Article 13 herein.

14.3 In order to obtain such acceptance and approval, the Contractor shall remit a declaration against receipt to MERCATOR OCEAN or send such via registered letter with acknowledgement of receipt, mentioning:

- the nature of the services for which subcontracting is scheduled;
- the name, corporate name and address of the proposed subcontractor;
- the provisional amounts to be paid directly to the subcontractor;
- the subcontractor's declaration that it is not affected by any prohibition from bidding for public contracts;
- the terms of payment for which provision is made under the proposed subcontracting contract and the provisional amount for each subcontracted service must be stipulated, in particular the date when the prices were established and, if needs be, the terms in variation of prices, the scheme of advances, advanced payments, reductions, bonuses or penalties.

14.4 Acceptance of the subcontractor and approval of the terms of payment shall be set out in a special instrument signed by MERCATOR OCEAN and the Contractor, which includes all information mentioned in Article 14.3 hereof, as well as the terms of settling amounts to be paid directly to the subcontractor.

14.5 During the period when the Contract is being performed, the Contractor shall be bound to immediately notify MERCATOR OCEAN of any modification mentioned in Article 14.3 hereof with regard to the subcontractor.

14.6 When acceptance of the subcontractor and approval of the latter's terms of payment are requested, the Contractor shall be bound to establish that transfer or pledges of receivables resulting from the contract do not prevent direct payment to the subcontractor.

14.7 The Contractor shall be bound to communicate the subcontracting contract(s) and any riders to MERCATOR OCEAN if the latter requests such.

14.8 The Contractor who, without valid grounds, fifteen (15) calendar days after being notified in writing so to do, does not communicate the documents mentioned in Articles 14.3 and 14.7 hereof, incurs application by MERCATOR OCEAN of the penalties mentioned in Article 14.1 of the GCC/ITC. If, after one month following formal notice, the Contractor has not communicated the documents in question, it risks application of the measures for which provision is made under Article 15 hereof.

14.9 In the event of subcontracting, the Contractor shall remain personally responsible for the performance of the whole Contract.

15 GUARANTEE

In application of article 126 of Decree 2016-360 of 25 March 2016, the Contractor shall guarantee that the coastal downstream service, object of the this market, shall be maintained and updated regularly to function for at least one year after the end date of the contract and, if possible until the end of March 2021. This guarantee includes the CMEMS product catalogue evolutions.

16 FORCE MAJEURE

16.1 In the event of *force majeure*, the obligations under the Contract shall be suspended for the complete duration of the interruption of Services due to these reasons. It is expressly stipulated that the only cases considered as *force majeure* are those normally accepted by jurisprudence in French courts.

16.2 In the event of force majeure, the parties agree to discuss the transitional measures to be envisaged and adopted in order to limit the effects of force majeure and respect deadlines, in particular Mandatory Deadlines. The parties shall try to agree on an additional timeframe for performance whose duration is equivalent to that of the case of force majeure.

16.3 If Services are interrupted as a result of force majeure for a period of fifteen (15) calendar

days, MERCATOR OCEAN may notify the Contractor by registered letter with acknowledgement of receipt of the immediate termination in accordance with the law of the Contract.

17 CONCILIATION

In the event of a disagreement during the execution of this contract prior to any court action, the Contractor and MERCATOR OCEAN commit to resort to mediation under the terms of Article 142 of Decree 2016-360 of 25 March 2016.

18 APPLICABLE LAW – JURISDICTION OF THE COURTS

Entered into in compliancy with the rules of Order no. 2015-899 of 23 July 2015 relating to contracts concluded between certain public and private persons not subject to the code for public contracts, this Contract is governed by French law.

French courts alone have jurisdiction.

19 REFERENCE

Use by the Contractor of the name of MERCATOR OCEAN, for whatsoever ends, and reference to this Contract and/or Services provided within the framework hereof, are subject to the written and prior consent of MERCATOR OCEAN.

20 EXEMPTIONS FROM THE GENERAL CONDITIONS OF CONTRACT APPLICABLE TO PUBLIC CONTRACTS IN INTELLECTUAL SERVICES.

Article 6 of the present document contravenes Article 26 of the GCC/ITC.
Article 10.2 of the present document contravenes Article 11.2 of the GCC/ITC.
Article 10.4 of the present document contravenes Article 11.4 of the GCC/ITC.
Article 12.4 “Terms of payment of co-contractors and subcontractors” of the present document, contravenes Article 12.1.2 of the GCC/ITC.
Article 17 of the present document completes Article 30 of the GCC/ITC.
Article 13 “Transfer of Ownership” of the present document contravenes Article 29 of the GCC/ITC.

ANNEX 1
ADVANCED PAYMENT SCHEDULE

These payments are governed by the acceptance process described in the SCC, specifically the deliverable mentioned in Article 7.

Invoicing date	Deliverable	Part of the amount indicated in the price note
1 month after the notification of the market	Schedule for the planned developments	20%
6 months after the notification of the market	Report on the state of progress of the planned demonstration. Mock-up of the web page dedicated to the service.	40%
18 months after the notification of the market	Report describing the demonstration. Web link. Web page dedicated to the service. Copy of the letter sent to the Member States to promote the service. "Use case" form	40%