

## ANNEX III to DRAFT FRAMEWORK SERVICE CONTRACT

### Incident Response Contract-Equipment (IRC-E) – Requesting State

#### **Enclosed to Procurement Procedure No EMSA/CPNEG/2/2019 - Service Contract for Equipment Assistance Service (EAS)**

#### **Competitive procedure with negotiation**

#### **Phase II – Invitation to Tender**

### **0. DEFINITIONS**

In this IRC-E, save where the context otherwise requires, the following terms shall have the meaning set forth below:

1. **Contract Form:** The form attached to this Incident Response Contract as annex 4.
2. **Contracting Party:** The Requesting Party, on the one hand, and the Contractor, on the other hand, collectively the **Contracting Parties**.
3. **Contractor:** person or persons stated in Box B.1 jointly and severally liable vis-à-vis the Requesting Party for the performance of this Incident Response Contract-Equipment. The Contractor has been awarded by EMSA the service Contract for Equipment Assistance Service following a public procurement procedure based on Regulation 2018/1046<sup>1</sup>. This IRC-E was part of the tender documentation.
4. **Day(s):** Calendar day(s) of 24 hours.
5. **Dispersant:** Approved oil dispersant<sup>2</sup> when available at the Equipment and/or dispersant storage location and if so chosen by the Requesting Party as per the option and quantity stated in Box A.2 of the Contract Form. If Box A.2 is left blank the Contractor is not obliged to provide Dispersant.
6. **EMSA:** The European Maritime Safety Agency.
7. **Equipment:** the specialised equipment items stated in Box A.1 of the Contract Form as chosen by the Requesting Party and which the Contractor shall make available to the Requesting Party at the Place of Handover as stated by the Requesting Party in Box C.4.
8. **Handover/redelivery statement:** Equipment and/or Dispersant inventory list to be signed by the Contractor and the Requesting Party upon handover and redelivery of the Equipment and/or Dispersant attached as annex 3.
9. **Equipment and/or dispersant storage location:** place(s), usually the Contractor's warehouse, as stated in Box B.3 where the Equipment and/or Dispersant are stored and from where the Equipment and/or Dispersant should be mobilised and loaded for transportation by the Contractor.
10. **IRC-E:** This Incident Response Contract-Equipment.
11. **Notice of Delivery:** Notice sent by the Contractor to the Requesting Party when the Equipment and if so chosen by the Requesting Party in Box A.3 technical support personnel and/or Dispersant have arrived at the Place of Handover as per Box C.4.

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<sup>1</sup> Regulation (EU, EURATOM) No 2018/1046 on the financial rules applicable to the general budget of the Union.

<sup>2</sup> Normally type 3 dispersant.

12. **Notice of Dispatch:** Notice sent by the Contractor to the Requesting Party and to the OSC or its nominee confirming that the Equipment and/or the Dispersant are en route to the Place of Handover and indicating the earliest possible date and time for delivery at the Place of Handover. The Notice of Dispatch shall also indicate the Estimated Time of Arrival of the technical support personnel if the Requesting Party has requested technical support personnel as per Box A.3.
13. **Notice of Ending Operational Activities:** Notice sent by the Requesting Party or by the OSC or its nominee to the Contractor indicating the date and time as from which the Equipment shall cease all activities. The Equipment shall then be redelivered clean and in good working condition at the Place of Redelivery stated in Box C.4.
14. **Notice of Redelivery:** Notice sent by the Requesting Party or its nominee and to the OSC or its nominee to the Contractor at the arrival of the Equipment and/or the Dispersant at the Place of Redelivery as per Box C.4.
15. **Oil or other pollutant:** Petroleum in any form including crude oil, fuel oil, residual oil, bunker oil, sludge, oil refuse and refined products, as well as any vegetable based products or other type of dispersible oil.
16. **Oil spill:** The incident which led to the services of the Contractor being requested by the Requesting Party.
17. **On Scene Commander (OSC):** A person so called or whoever may for the purpose of this IRC-E be considered as equivalent thereto appointed by the Requesting Party to assume the operational control of oil recovery and/or Dispersant spraying operations. The OSC is authorised to delegate one or more tasks to one or more nominees.
18. **Place of Handover:** The place with easy access by truck stated by the Requesting Party in Box C.4 where the Equipment and/or Dispersant can be delivered to the Requesting Party and where the Contractor will report upon arrival of the Equipment and/or Dispersant.
19. **Place of Redelivery:** The place indicated in Box C.4 where the Equipment shall be redelivered by the Requesting Party to the Contractor clean and in working condition.
20. **Requesting Party:** person or persons stated in Box C.1. Public body representing the Requesting State to which the Contractor agrees to render the services.
21. **Technical support personnel:** Contractor's personnel engaged in the services and duties if such option has been chosen by the Requesting Party in Box A.3. The role of the technical support personnel is to support the equipment handover including familiarisation of the Requesting Party with the equipment and, if needed, to assist the equipment deployment and use by the Requesting Party as part of the operational activities.
22. **Time:** UTC. Any reference to time in this contract should be understood as UTC.
23. **Working day** (technical support personnel): a calendar day with effective working time of eight hours.

The Requesting Party of Box C.1, on behalf of the Requesting State, which is represented for the purposes of the signature of this contract by the Person identified in Box D.2, hereinafter referred to as the "Requesting Party", on one side

and

the person(s) of Box B.1, represented for the purposes of the signature of this Incident Response Contract by the person(s) identified in Box D.1, hereinafter referred to as the "Contractor" on the other side

HAVE AGREED:

that the Contractor shall provide the Equipment as referred to in Box A.1 and if so chosen by the Requesting Party in Box A.3 technical support personnel and/or the type and quantity of Dispersant as referred to in Box A.2, to the Requesting Party under the terms and conditions of this Incident Response Contract-Equipment, hereinafter referred to as the Contract.

**I. SERVICES**

**I.1.** The Requesting Party and the Contractor may reach agreement and sign a contract using only the Contract Form (as attached). The provisions of this contract are pre-fixed and known to both and will equally apply to them.

**I.2. Contractor to provide:**

Under this IRC-E the Contractor shall:

- a) Have the Equipment and/or Dispersant ready for dispatch within 12 hours from the time and date when the Contract Form is signed by both contracting parties;
- b) Send Notices of Dispatch and of Delivery to the Requesting Party, the OSC or his/her nominee for the requested operation;
- c) Arrange and bear responsibilities and risks of transportation by road of the Equipment stated in Box A.1 to the Place of Handover stated by the Requesting Party in Box C.4 promptly and with due care as well as with utmost despatch;
- d) Make available the Equipment for the period the Requesting Party deems necessary given the Oil Spill incident circumstances without prejudice to the Requesting Party's right to notify the end of the activities under this Contract in accordance with article II.2;
- e) Make available the number of technical support personnel as chosen by the Requesting Party in Box A.3. If Box A.3 is left blank the Contractor is not obliged to provide technical support personnel;
- f) Provide the technical support personnel with all personal protective equipment necessary for when assisting the Requesting Party;
- g) Transport the Equipment promptly and with due care as well as with utmost despatch from the Place of Redelivery back to the Equipment and/or dispersant storage location;
- h) Arrange and bear responsibilities and risks of transportation of the type and quantity of Dispersant stated in Box A.2 from its storage location stated in Box B.3 to the Place of Handover. If so requested by the Requesting Party transport any remaining Dispersant in the original sealed IBC back from the Place of Redelivery.

**I.3. Requesting Party to provide:**

Under this IRC-E the Requesting Party shall:

- a) Acknowledge in due time the receipt of the Notices of Dispatch and Delivery sent by the Contractor;
- b) Unload the Equipment and/or Dispersant from the arriving mean of transport at the Place of Handover and load the Equipment and/or any remaining Dispersants on the collecting mean of transport at the Place of Redelivery and bear all associated responsibilities and risks;
- c) Arrange and bear responsibilities and risks of transportation of Equipment and/or Dispersant from the Place of Handover to the Oil spill site;
- d) Arrange and bear responsibilities and risks of transportation of Equipment and/or any remaining Dispersant back to the Place of Redelivery;
- e) 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

and/or Dispersant have to be handed over and technical support personnel has to perform the required duties have been obtained;

- f) Ensure Equipment protection and preservation as from the date and time of Handover until the date and time of Redelivery as stated in the Handover/redelivery statement;
- g) Ensure Equipment routine maintenance, running repair;
- h) Provide and bear the costs of all fuel and lubricating oil consumed by the Equipment as from its handover to the Requesting Party by the Contractor until redelivery to the Contractor;
- i) Ensure that an all-risk insurance cover is provided for Equipment against any loss or damage, theft or liability from the time the Equipment is delivered to the Requesting Party by the Contractor until redelivery of the Equipment to the Contractor by the Requesting Party at the Place of Redelivery. For insurance purposes the equipment value is stated in Box A.1;
- j) Ensure security and safety to the technical support personnel;
- k) Ensure a safe working environment in accordance with applicable laws, regulations and policies at the place where the technical support personnel has to perform duties;
- l) Be responsible for the accommodation and meals of the technical support personnel for the duration they are providing assistance on board the vessel;
- m) Facilitate customs clearance, immigration when applicable;
- n) Send Notices of Ending of Operational Activities and of Redelivery to the Contractor;
- o) Redeliver the equipment clean and in working condition.

#### **I.4. Hand over of equipment**

The Contractor will deliver to the Requesting Party, the OSC or her/his nominee the Equipment stated in Box A.1 and/or the type and quantity of Dispersant as stated in Box A.2 at the Place of Handover as indicated in Box C.4.

For the purposes of the handover and redelivery, both parties agree to use the Handover/redelivery statement (Annex 3).

As from handover until redelivery, the Requesting Party remains responsible for the reasonable and safe use of the Equipment and its deployment. If so requested by the Requesting Party as per Box A.3, the technical support personnel shall provide assistance to the Requesting Party during the equipment handover.

## **II. PERIOD**

**II.1.** The Services and the obligations provided for under this IRC-E shall start when the Contract Form is signed by both Contracting Parties.

**II.2.** The providing of Services may at any time be ended by Notice of the Requesting Party, its nominee or the OSC or its nominee. Upon receipt of the Notice of Ending Operational Activities the Equipment shall cease all activities. The Equipment shall then be cleaned with utmost despatch and be made available by the Requesting Party to the Contractor at the Place of Redelivery as per Box C.4, the Requesting Party having to send a Notice of Redelivery once the Equipment is at the Place of Redelivery.

**II.3.** Demobilisation of the Technical Support Personnel will be mutually agreed between the Requesting Party and the Contractor.

## **III. EXECUTION OF SERVICES AND DUTIES**

**III.1.** The Requesting Party, the OSC or her/his nominee shall at all times have the ultimate decision as to the use and safety of the Equipment and/or Dispersant. The Requesting Party remains responsible for control of all matters at the location of the clean-up operations.

**III.2.** The Requesting Party shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for the Equipment deployment and/or Dispersant spraying under the laws and regulations in force at the place where these activities are to be executed.

**III.3.** If technical support personnel is made available by the Contractor, as requested by the Requesting Party, the technical support personnel will not act against the orders of the Requesting Party. The technical support personnel may not follow orders of the Requesting Party which in her/his opinion could endanger his/her safety. In such case she/he has to inform the OSC or her/his nominee on her/his decision, the reasons and the possible consequences.

**III.4.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Requesting Party may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure.

**III.5.** Whenever possible, the Requesting Party shall provide suitable accommodation, including meals and bedding, to the technical support personnel. If not provided directly by the Requesting Party, the costs related to technical support personnel accommodations and daily expenses shall be reimbursed by the Requesting Party in accordance with article IV.5.3.

**III.6.** The Contracting Parties shall co-operate and provide each other with any assistance reasonably requested by the other Party in connection with obtaining any documentation and/or authorisations as may be required under local laws or regulations to allow each technical support personnel to perform his/her duties.

**III.7.** The Contractor shall neither represent EMSA or the Requesting Party 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 or National public service. The Requesting Party may not under any circumstances be considered to be the employer of the technical support personnel and the technical support personnel shall undertake not to invoke against the Requesting Party any right arising from the contractual relationship between the Requesting Party and the Contractor.

### **III.8. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

This Contract shall be governed by the national law of the Requesting State and any dispute arising out of this Contract shall be referred to a court of the Requesting State, indicated in Box C.4 provided that the Requesting State is an EU Member State or a Member State of the EFTA.

In case the Requesting State is a third country sharing a regional sea basin with the EU, this Contract shall be governed by the national law of the State in which the Contractor has its corporate seat and any dispute arising out of this contract shall be referred to the court responsible at the seat of the Contractor, indicated in Box C.4.

Even if another law would be applicable on this Contract it is agreed that in the drafting and therefore interpretation of the various clauses of the Contract English law has been guiding.

**III.9.** Provided that the Requesting State is an EU Member State or a Member State of the EFTA, two versions of this Contract have been drafted in English and in the official language of the Requesting State. If legally possible under the law and proceedings of the place of dispute, only the English version of this Contract shall be deemed authentic.

## **IV. PAYMENTS**

### **IV.1. Mobilisation lump sum**

The Requesting Party shall pay a mobilisation lump sum as stated in Box A.0 for mobilisation of the Equipment stated in Box A.1 and/or Dispersant as per Box A.2.

### **IV.2. Technical support personnel rate**

When the Requesting Party has required the availability of technical support personnel as per Box A.3, the Requesting Party shall pay the Contractor a daily rate for the technical support personnel involved in the required services. The rate for personnel shall be due per working day for the number of days the technical support personnel is providing assistance, excluding any travel time to and from the Place of Handover / Redelivery. The working days will count from the time on which the technical support personnel arrive at the Place of Handover to the time the Requesting Party demobilises the technical support personnel.

### **IV.3. Insurance charges**

When in accordance with article VI.5.2, the Requesting Party has required as per Box A.4 to insure its liability regarding the equipment through an extension of the Contractor's insurance policy, the Requesting Party shall pay the Contractor the daily insurance charges indicated in Box A.1 per equipment set pro rata the number of sets mobilised and pro rata the number of days from the earliest time the equipment is delivered to the Requesting Party to the time the equipment is redelivered to the Contractor. Both delivery and redelivery times are indicated in the Handover/redelivery statement.

Any part of the day shall be considered as a full day for the purpose of the insurance and the full daily insurance charge shall be due in respect of that day.

**IV.4.** If the Requesting Party terminates this IRC-E less than 12 hours after the date and time the Contract Form is signed by both contracting parties the Requesting Party shall pay to the Contractor the Equipment and/or Dispersant mobilisation lump sum plus any Equipment and/or Dispersant transportation costs and/or technical support personnel travel costs already incurred by the Contractor as per Article IV.5 below.

**IV.5.** In addition to the Equipment and/or Dispersant mobilisation lump sum and, if requested, technical support personnel rate and insurance charges, the Requesting Party will reimburse the Contractor for the following costs, if not paid directly by the Requesting Party:

1. All transportation costs of Equipment and/or Dispersant from the Equipment and/or dispersant storage location to the Place of Handover and costs of transportation back of the Equipment and of any remaining Dispersant from the Place of Redelivery to the Equipment and/or dispersant storage location as well as associated costs such as tolls and ferry costs when applicable. Indication of road transport costs to transport Equipment and/or Dispersant is stated in Box A.0;
2. Travel expenses for the technical support personnel which are directly connected with execution of the tasks on production of original supporting documents such as invoices, receipts and used tickets;
3. Subsistence expenses for the technical support personnel including:
  - a) Reimbursement of accommodation based on actual costs of accommodation on production of an original invoice up to the ceiling as indicated in Annex 2 per necessary overnight stay related to the tasks executed. Accommodation shall be arranged and paid directly by the contractor unless accommodation is provided by the Requesting Party;
  - b) Flat rate daily allowance as specified in Annex 2 shall be reimbursed for days during which the tasks are executed. This amount covers all expenses at the place where the tasks related to the contract are executed, including the cost of meals and local transport;

4. Customs duties, all permits, import duties and taxes, any administrative authorisations and clearance expenses as may be required and arising out of this Contract;
5. Consular charges appertaining to the technical support personnel;
6. Costs linked to the cleaning of the Equipment before redelivery of the Equipment to the Contractor. It is understood that this will occur at a place where such an operation can be professionally undertaken at controllable competitive costs and in order to enable the Contractor to bring the Equipment back as soon as possible into the original service. With respect to the quality of cleaning, the standard is "ready for paint".
7. Costs for the disposal of empty Intermediate Bulk Containers (IBCs).

**IV.6.** Invoices may be issued weekly or at the earlier termination of this Incident Response Contract. Without prejudice to the relevant national regulation of the Requesting State, all payments under this Contract shall be made free of any deductions or set offs whatsoever within 21 days of the issue of an invoice by the Contractor. Invoices may be faxed or telexed or otherwise electronically transmitted to the Requesting Party as stated in Box C.2. Nevertheless, the original invoice will be provided before actual payment is made.

**IV.7.** Payments shall be deemed to have been made on the date on which the Requesting Party's bank account is debited.

**IV.8.** Payments shall be made to the Contractor's bank account, identified as in Box B.4. Article VIII.2 shall apply in case of late payments.

**IV.9.** In case the Requesting State seeks to recover the costs incurred in relation to this Contract from the entity liable under International Conventions and/or national regulations for pollution damage resulting from marine oil spills, the Requesting State shall include EMSA's costs related to establishing the services, purchasing the Equipment and/or Dispersants in its claim and, if successful, reimburse EMSA. For this purpose, the Requesting State, EMSA and the Contractor shall co-operate and provide each other any documentation, explanation and information necessary in this regard.

## **V. ADMINISTRATIVE PROVISIONS**

Any communication relating to this Contract shall be made in writing or by fax or as scanned copies attached to e-mails and shall be addressed according to Box B.2 for communications to the Contractor and according to Box C.2 for communications to the Requesting Party. Electronic communications shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

## **VI. THE EQUIPMENT**

**VI.1.** The following conditions are to be complied with by the Requesting Party when in the possession of the equipment:

- The Equipment is to be installed, operated and maintained by suitably trained and authorised personnel acting under appropriate supervision;
- The Equipment is not to be operated in conditions which exceed the recommendations given by the manufacturers and/or the Contractor;

- The Equipment shall not be used recklessly, or without due regard for the safety of any person or property, or with deliberate intent to cause injury, loss or damage;
- The Requesting Party shall keep the Contractor fully informed of any malfunctioning of the Equipment, loss or damage thereof.

**VI.2.** The Requesting Party 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 Box A.1 of the Form. 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.

**VI.3.** If part of or all the Equipment is prevented from working by reason of deficiency, breakdown or others, accident which prevents the Equipment from working, the Requesting Party or his nominee will transport the Equipment back to the Place of Redelivery and send a Notice of Redelivery to the Contractor.

The Contractor may propose to the Requesting Party to replace the Equipment or part of it by any other Equipment items which is suitable for the purpose of this Contract and at a time and condition which is acceptable to the Requesting Party. Thereafter the replacement Equipment shall be subject to all terms of this Contract. It is understood that the Contractor shall only claim costs as per Chapter IV for the Equipment without prejudice to the possibility of the Requesting Party or his nominee to terminate the Incident Response Contract as per Article II.2.

**VI.4.** Provided the Requesting Party is a third country sharing a regional sea basin with the EU, the Requesting Party shall make a security deposit equal to 10% of the value of the Equipment as per Box A.1 to the Contractor's bank account as identified in Box B.4 within 3 working days following signature of the Contract Form.

The Contractor is not obliged to engage into the services under the Contract, to send a Notice of Dispatch to the Requesting Party and may terminate the Contract by written notice to the Requesting Party if a bank deposit has not been made by the Requesting Party on his/her bank account within the above deadline.

Within 30 days following redelivery of the Equipment clean and good condition, normal wear and tear being for the account of EMSA, to the Contractor as evidenced by the Handover/redelivery statement, the Contractor shall return the amount equal to the deposit to the Requesting Party.

**VI.5.** The Requesting Party can cover its liability for loss of or damage to the equipment in two different ways:

1. 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 Party.

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.

The European Maritime Safety Agency (EMSA) owner of the Equipment must be named as co-insured and the Requesting Party shall cause the insurers to indemnify EMSA for the damage to or loss of the equipment and to waive subrogation rights against EMSA and the Contractor.

For insurance purposes, the individual values to be declared are the ones per equipment stated in Box A.1 of the Form. The Equipment shall be insured on a 'replacement as new' basis. The values stated in Box A.1 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 under this Contract.

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

2. By agreeing to an extension of the Contractor's insurance cover to include the Equipment whilst made available to the Requesting Party under this Contract. The Requesting Party shall declare its agreement in Box A.4 of the Form. 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.

The daily insurance charges stated in Box A.1 apply in accordance with article IV.3. A copy of the equipment insurance terms and conditions shall be supplied by the Contractor to the Requesting Party.

Deductibles shall be for the account of the Requesting Party.

**VI.6.** Where the Requesting Party has taken out an insurance cover on its own, the indemnity is valued as follows:

- a) For Equipment which can be repaired, the Requesting Party shall indemnify EMSA for all costs for repairing or restoring the Equipment or any part of it;
- b) For Equipment or Equipment parts lost or damaged and which cannot be repaired at a cost below the replacement cost, the Requesting Party shall indemnify EMSA up to the Equipment values stated in Box A.1

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

The indemnity paid by the Requesting Party/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.

**VI.7.** For the avoidance of doubt, the insurance taken out by the Requesting Party regarding the equipment does not exempt the Requesting Party 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 under this contract

## **VII. LIABILITY AND INDEMNITIES**

### **VII.1.**

- (a) The Contractor shall have no liability to the Requesting Party 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 Party 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 Contract. The Requesting Party 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.

**VII.2.** The Requesting Party shall be responsible for disposal of all oil and hazardous substances collected, and at no time shall the Contractor be considered to have title to or be in possession or control of any oil or hazardous substances.

### **VII.3. LIMITATIONS**

Nothing contained in this Contract shall be construed or held to deprive the Contractor, the Requesting Party, as against any person or party, including as against each other, of any right to claim limitation of liability provided by any applicable law, statute or convention, save that nothing in this Contract shall create any right to limit liability. Where the Contractor or the Requesting Party may seek an indemnity under the provisions of this Contract or against each other in respect of a claim brought by a third party, the Contractor or the Requesting Party shall seek to limit their liability against such third party but only for the limited purpose of contracting for the extension of such benefits to such persons and parties.

### **VII.4. EMSA**

The Equipment is owned by EMSA. EMSA and the Contractor are parties to a service contract under which the Contractor shall provide pollution response services to a Requesting Party under the terms and conditions of this Contract.

### **VIII. RECOVERY**

**VIII.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount on receipt of the debit note, in the manner and within the time limits set by the Requesting Party.

**VIII.2.** In the event of late payment interest at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus seven percentage points ("the margin") is automatically and without necessity of prior notice due. The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment.

## **IX. CONFIDENTIALITY**

**IX.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the Services.

**IX.2.** The Contractor shall obtain from each member of her/his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the Services and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the Services.

## **X. FORCE MAJEURE**

**X.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence or omission on their part or on the part of a subcontractor and could not have been avoided by the exercise of due diligence and cannot be rectified. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

**X.2.** If either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**X.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 her/his contractual obligations owing to force majeure, she/he shall have the right to remuneration only for Services actually executed and the Requesting Party or his nominee shall have the right to terminate the contract.

**X.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **XI. SUBCONTRACTING**

**XI.1.** The Contractor shall not subcontract without prior written authorisation from the Requesting Party nor cause the Contract to be performed in fact by third parties.

**XI.2.** Even where the Requesting Party authorises the Contractor to subcontract to third parties, she/he shall none the less remain bound by her/his obligations to the Requesting Party under the Contract and shall bear exclusive liability for proper performance of the Contract.

## **XII. WAR**

**XII.1.** Unless the consent of the Contractor is obtained first, the Contractor, his/her subcontractors his/her personnel including technical support personnel shall not be ordered nor continue to place nor be sent on any service which will bring them within a zone which is dangerous as a result of any actual or threatened act of war, war hostilities, warlike operations, acts of hostility or malicious damage by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of sanctions, nor carry any goods that may in any way expose the Contractor, his/her subcontractors his/her personnel including technical support personnel to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any government or rulers.

**XII.2.** Should the Contractor, his/her subcontractors his/her personnel including technical support personnel approach or be brought within such zone, or be exposed in any way to the said risks, it shall do so at the Contractor's own risk. Notwithstanding, payment shall be due for all time lost including any time lost in connection to or arising out of the loss of or the injury to Contractor personnel including the technical support personnel or the refusal by any of them to proceed to such zone or to be exposed to such risks.

**XII.3.** In the event of any of the Parties becomes unable to perform this IRC-E, for reason of war the other Contracting Party may terminate this IRC-E.

### **XIII. AMENDMENTS**

Any amendment to the terms and conditions of this IRC-E shall be made in writing.

### **XIV. TERMINATION**

**XIV.1.** The Requesting Party may terminate the Contract in the following circumstances:

- a) where execution of the Services has not actually commenced within five days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Requesting Party;
- b) where the Contractor is unable, through her/his own fault, to obtain any permit or licence required for performance of the Contract;
- c) where the Contractor is being wound up, is having her/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.

**XIV.2.** In case of force majeure, notified in accordance with Article X.2, either contracting party may terminate the Contract.

**XIV.3.** Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

#### **XIV.4. Consequences of termination**

In the event of the Requesting Party terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce her/his commitments.

### **XV. TIME FOR SUIT**

All and any suits if any must be brought within 6 months of the services being terminated failing which they are time-barred.

**Specific references may be added later (as an annex 1) to facilitate the acceptance of this Incident Response Contract under national public law of individual Member States.**

**ANNEX 1**  
**List of specific references to National Public Law of Individual Member States**

**ANNEX 2**

**Daily allowances and accommodation ceilings**

<b>COUNTRY</b>	<b>DAILY ALLOWANCE IN €</b>	<b>MAXIMUM HOTEL PRICE IN €</b>
ALBANIA	50	160
ALGERIA	85	85
AUSTRIA	102	132
BELGIUM	102	148
BOSNIA AND HERZEGOVINA	65	135
BULGARIA	57	135
CROATIA	75	110
CYPRUS	88	140
CZECH REPUBLIC	70	124
DENMARK	124	173
EGYPT	65	140
ESTONIA	80	105
FINLAND	113	142
FRANCE	102	180
GEORGIA	80	215
GERMANY	97	128
GREECE	82	112
HUNGARY	64	120
ICELAND	85	160
IRELAND	108	159
ISRAEL	105	210
ITALY	98	148
LATVIA	73	116
LEBANON	70	190
LIBYA, JAMAHIRIYA AR.	50	175
LITHUANIA	69	117
LUXEMBURG	98	148
MALTA	88	138
MONACO	72,58	97,27
MONTENEGRO	80	140
MOROCCO	75	130
NETHERLANDS	103	166
NORWAY	80	140
POLAND	67	116
PORTUGAL	83	101
RUSSIA	90	275
ROMANIA	62	136

<b>COUNTRY</b>	<b>DAILY ALLOWANCE IN €</b>	<b>MAXIMUM HOTEL PRICE IN €</b>
<b>SLOVAK REPUBLIC</b>	<b>74</b>	<b>100</b>
<b>SLOVENIA</b>	<b>84</b>	<b>117</b>
<b>SPAIN</b>	<b>88</b>	<b>128</b>
<b>SWEDEN</b>	<b>117</b>	<b>187</b>
<b>SYRIA</b>	<b>80</b>	<b>145</b>
<b>TUNISIA</b>	<b>60</b>	<b>85</b>
<b>TURKEY</b>	<b>55</b>	<b>165</b>
<b>UKRAINE</b>	<b>80</b>	<b>190</b>
<b>UNITED KINGDOM</b>	<b>125</b>	<b>209</b>

**ANNEX 3  
HANDOVER/REDELIVERY STATEMENT**

	Equipment / Dispersant <sup>3</sup> handover	Equipment / Dispersant redelivery
From:		
To:		
Place of Handover:		
Place of Redelivery		
Technical Support Personnel complete list:	<ul style="list-style-type: none"> <li>-</li> <li>-</li> <li>-</li> </ul>	
Place and Date of arrival:		
Place and Date of departure:		

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<sup>3</sup> Delete as appropriate

**LIST OF HANDED OVER / REDELIVERED EQUIPMENT / DISPERSANTS<sup>4</sup>**

N°	Category	Item	Description	ID Code	Condition Good/Average/Poor at receipt	Condition Good/Average/Poor at return	Comments

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<sup>4</sup> Delete as appropriate

Comments on the condition and completeness of the equipment / dispersants <sup>5</sup>
Contractor: Name: Date: Signature:
Requesting Party: Name: Date: Signature:

Handover	Redelivery

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<sup>5</sup> Delete as appropriate

**ANNEX 4  
IRC-E FORM**

A. EQUIPMENT, DISPERSANT AND TECHNICAL SUPPORT PERSONNEL	
Requesting Party to indicate options	
<b>A.0 Mobilisation &amp; Transport Costs</b>	
Mobilisation lump sum (EUR):	
Indicative price / km 20ft truck (EUR):	0-500 km: 0.0; 500-2000 km: 0.0; over 2000 km: 0.0
Indicative price / km 40ft truck (EUR):	0-500 km: 0.0; 500-2000 km: 0.0; over 2000 km: 0.0
Additional expenses:	(e.g. tolls, ferry transport) to be covered by the Requesting Party
<b>A.1 Equipment</b>	
<b>A.1.1 Name of equipment system</b>	State "YES" if requested
Equipment type:	State quantity required (max. 00 set)
Transport requirements:	
Equipment acquisition value per set (EUR)	Insurance charges per set per day (EUR)
<b>A.1.2 Name of equipment system</b>	State "YES" if requested
Equipment type:	State quantity required (max. 00 set)
Transport requirements:	
Equipment acquisition value per set (EUR)	Insurance charges per set per day (EUR)
<b>A.1.3 Name of equipment system</b>	State "YES" if requested
Equipment type:	State quantity required (max. 00 set)
Transport requirements:	
Equipment acquisition value per set (EUR)	Insurance charges per set per day (EUR)
<b>A.1.4 Name of equipment system</b>	State "YES" if requested
Equipment type:	State quantity required (max. 00 set)
Transport requirements:	
Equipment acquisition value per set (EUR)	Insurance charges per set per day (EUR)
<b>A.1.5 Name of equipment system</b>	State "YES" if requested
Equipment type:	State quantity required (max. 00 set)
Transport requirements:	
Equipment acquisition value per set (EUR)	Insurance charges per set per day (EUR)
<b>A.1.6 Name of equipment system</b>	State "YES" if requested
Equipment type:	State quantity required (max. 00 set)
Transport requirements:	
Equipment acquisition value per set (EUR)	Insurance charges per set per day (EUR)
<b>A.1.7 Name of equipment system</b>	State "YES" if requested
Equipment type:	State quantity required (max. 00 set)
Transport requirements:	
Equipment acquisition value per set (EUR)	Insurance charges per set per day (EUR)

<b>A.2 Dispersant</b>	State "YES" if requested	State quantity required (max 00 m³)
Transport requirements:		
Dispersants value per set (EUR)		

<b>A.3 Technical Support Personnel</b>	State "YES" if requested	State number required (max 00 pax)
Daily rate (EUR):		
Additional expenses:	travel, accommodation) to be covered by the Requesting Party	

<b>A.4. Insurance for equipment</b>	State "YES" if requested
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<b>B. CONTRACTOR</b>		
<b>Contact Details</b>	<b>B.1 Operational</b>	<b>B.2 Administrative</b> <i>(Notices, Invoices, other)</i>
Name		
Full Address		
Telephone (24/7):		
Fax:		
Mobile responsible pers:		
Email:		
<b>B.3 Operational Details</b>		
Equipment Storage Location:		
Dispersant Storage Location:		
Estimated Time to be Ready for dispatch:		
<b>B.4 Financial Details: Bank Account</b>		
Bank Name:		
Account Holder:		
Full IBAN:		
Address of the branch:		

C. REQUESTING PARTY	
C.1 General Contact Details <i>(Operational)</i>	C.2 Administrative Contact Details <i>(Notices, Invoices, other)</i>
Name	
Full Address	
Telephone (24/7):	
Fax:	
Mobile responsible pers:	
Email:	
C.3 Contact Details Supreme On Scene Commander (SOSC) or equivalent:	
Name:	
Telephone (24/7):	
Fax:	
Mobile responsible pers:	
Email:	
C.4 Other Details	
Place of Handover:	
Place of Redelivery:	
Court for Disputes:	
D. SIGNATURES	
D.1 Contractor Representative:	D.2 Requesting Party Representative:
Name	Name
Position	Position
Place	Place
Date/Time(UTC)	Date/Time(UTC)
Signature	Signature

B. CONTRACTOR	
B.1 General Contact Details	B.2 Administrative Contact Details <i>(Notices and other communications)</i>
Name	
Full Address	
Telephone (24/7):	
Fax:	
Mobile responsible pers:	
Email:	
B.3 Operational Details	
Equipment Storage Location:	
Dispersant Storage Location:	
Estimated Time to be Ready for dispatch:	
B.4: Bank Account	
Bank Name:	
Account Holder:	
Full IBAN:	
Address of the branch:	
C. REQUESTING PARTY	
C.1 General Contact Details	C.2 Administrative Contact Details <i>(Notices, Invoices and other communications)</i>
Name	
Full Address	
Telephone (24/7):	
Fax:	
Mobile responsible pers:	
Email:	
C.3 Contact Details Supreme On Scene Commander (SOSC) or equivalent:	
Name:	
Telephone (24/7):	
Fax:	
Mobile:	
Email:	
C.4 Other Details	
Place of Handover:	
Place of Redelivery:	
Court for Disputes:	
D. SIGNATURES	
D.1 Contractor Representative:	D.2 Requesting Party Representative:
Name	Name
Position	Position
Place	Place
Date/Time(UTC)	Date/Time(UTC)
Signature	Signature